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Data collection analysis on hate speech and hate crime

Authors: Bojana Netkova, LLM and Joanna Perry

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HORIZONTAL FACILITY FOR THE WESTERN BALKANS AND TURKEY II

“Promotion of diversity and equality in North Macedonia”

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ACRONYMS:

ACCMIS - Automated Court Case Management Information System

CC - Criminal Code of the Republic of North Macedonia, Official Gazette No.248/18

CJ - Code of Journalists of North Macedonia

CMS – Case automated system

CPPD - Commission for Prevention and Protection Against Discrimination

ECHR - European Convention on Human Rights and Fundamental Freedoms

ECRI – European Commission against Racism and Intolerance

MHC - Macedonian Helsinki Committee of Human Rights

ML – Media Law, Official Gazette No.184/2013; No.13/2014

MLSP – Ministry of Labour and Social Politics

MOIA – Ministry of Internal Affairs

LP – Law on Police

LPPD - Law on Prevention and Protection Against Discrimination, Official Gazette No. 258/20

NCB – National Coordinative Body

PP - Basic Public Prosecutor

RNM - Republic of North Macedonia

SRI - The Strategy for Roma inclusion 2020-2025

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Introduction and Executive summary

The Action “Promotion of diversity and equality in North Macedonia” is part of the joint EU/Council of Europe programme Horizontal Facility for the Western Balkans and Turkey II, programme aiming at supporting beneficiaries of the Western Balkan Region and Türkiye to align with Council of Europe standards. The project supports beneficiaries in North Macedonia on countering hate speech and hate crime; promoting and protecting rights of LGBTI persons; strengthening anti-discrimination institutions/mechanisms and coordination in line with the standards of the Council of Europe and monitoring bodies’ findings, notably those of the European Commission against Racism and Intolerance (ECRI)¹.

With the objective to support further reforms on hate speech and hate crime, the Action envisaged an activity where two experts (international and local) would:

- analyse the current situation regarding hate speech and hate crime in the country, including reviewing the legal framework (relevant legal and policy documents);
- review current efforts to collate and analyse data on hate speech and hate crime,
- make recommendations on how to improve data collection (please also see methodology section below).

The analysis report is divided into two parts. Part One offers an overview of current data, practices, case handling, procedures, gaps and needs in relation to disaggregated data collection on hate crime and hate speech and to identify priorities for project interventions on this topic.

Part Two gives an overview of international norms and standards, practice and research relevant to hate crime and hate speech reporting, recording and data collection and maps the national situation against international standards. It provides consolidated recommendations, which build on Part One. A cross-cutting theme for both sections is the importance of cooperating with civil society organisations, about which recommendations will also be made.

The situational analysis found that while the Republic of North Macedonia has a relatively strong legal framework for sanctioning hate crimes, the national framework for recording and monitoring hate crimes is underdeveloped. In terms of hate speech, both the legal framework and data collection system are underdeveloped. Recommendations in the first part of this report focus on strengthening the legislative and policy framework, for example by introducing a specific definition of hate speech within article 122 of the criminal code, in line with ECRI GPR no. 15.

The situational analysis also shows that efforts to develop a recording and data collection framework in the Republic of North Macedonia have been ongoing since at least 2014. Several important steps have been taken, for example, the Ministry of Internal Affairs introduced a direct reporting mechanism, ‘Red Button’, however, official data remains patchy, and a recent hate crime victimisation survey suggests that most incidents of hate crime are not reaching the attention of law enforcement or not being effectively recorded. Efforts by NGOs have been organised and impactful, especially by the Helsinki Committee for Human Rights, however relationships with public authorities and agencies should be strengthened.

The report identifies several strategic opportunities to re-start or strengthen inter-institutional cooperation, including setting up specific mechanisms of cooperation with specialist civil society organisations. In terms of hate speech, it is recommended that the possibility of a national framework for data collection and cooperation on hate speech could be developed with support from the Council of Europe, involving identified stakeholders,

¹ Please see ToR

building on the efforts set out in this report and based on Council of Europe standards, also summarised in this report.

During the situational analysis phase, it was decided to mainly focus on hate speech. This is because the OSCE Mission to Skopje has established expertise in this area and has a developed workplan involving a series of workshops with national partners using ODIHR's INFAHCT methodology (see Annex two). The authors recommend that the Council of Europe Programme Office in Skopje cooperates with the OSCE Mission in these efforts.

Part One: Situational analysis

I. Methodology

Part one's findings and recommendations are based on questionnaires distributed to the stakeholders, and online interviews with key stakeholders²; a review of current sanctioning policy and mechanisms in place to respond to hate crime and hate speech; an analysis of available data on reporting, recording and data collection and case handling; and, an assessment of the national situation against international norms and standards.

a. Desk review, including literature review

Literature reviews enable the gathering of contextual information. Documents are also important sources of information regarding government activities, strategies and action plans and their implementation, as well as current trends in data.

The literature³ includes *inter alia*:

- Relevant legislation and policy documents (Constitution of Republic of North Macedonia, Criminal Code, The Law on Prohibition of Discrimination and Media Law);
- Relevant strategies (Equality strategy and non-discrimination 2016 – 2020, Strategy for Roma inclusion 2022 – 2030);
- Relevant international and national reports regarding hate speech and hate crimes (Report issued by ECRI (2016), OSCE Annual Report on Hate Crimes 2020, EU Commission, North Macedonia 2021 Report, Results of implemented monitoring of hate speech in Republic of North Macedonia 01.05.2020 - 31.08.2020, Annual report on monitoring of hate speech at the local level in the cities of Tetovo, Bitola and Stip 2020, Results of implemented monitoring of hate speech in the Republic of North Macedonia in the cities of Tetovo, Bitola and Stip 01.01.2021- 30.04.2021, Annual reports of MoIA 2020⁴ and 2021⁵, Annual report of the Public Prosecutor of Republic of North Macedonia for 2020⁶); Studies, Analysis, Surveys and statistical data related to hate speech and hate crimes⁷

b. Questionnaires

Questionnaires with open ended questions were delivered to the main stakeholders police authorities⁸, Public Prosecutor's Office⁹, Commission for Prevention and Protection

² Helsinki Committee For Human Rights, OSCE Mission to Skopje,

³ Full references are provided throughout the report

⁴ Annual report of MoIA, 2020, Ministry of Internal Affairs, Bureau of Public Safety Criminal Intelligence and Analysis Division, n. 22.4-519/1, 15.03.2021, available at: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%202020%20kopi.pdf

⁵ Annual report of MoIA, 2021, Ministry of Internal Affairs, Bureau of Public Safety Criminal Intelligence and Analysis Division, n.22.4- 506/1, 29.03.2022, available at: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj%20na%20MVR%20za%202021%20godina,%20%20-%2015_04_2022.pdf

⁶ REPORT for the Work of Public Prosecutor's offices of the Republic of North Macedonia in 2020, Public Prosecutor's Office of the Republic of North Macedonia, available at: <https://jorm.gov.mk/wp-content/uploads/2021/08/izvestha%D1%98-za-2020-%D1%98o-na-rsm.pdf>

⁷ Including the first national hate crime victimisation survey commissioned by the OSCE Mission to Skopje, P. Iganski (2019) 'Hate Crime Victimisation Survey: Report'

⁸ The Ministry of Internal Affairs reply to the questionnaire

⁹ The Public Prosecution did not reply to the questionnaire

Against Discrimination¹⁰, Courts¹¹, The Network For Protection Against Discrimination, Helsinki Committee For Human Rights and representatives from the media¹² in order to obtain an insight into the relevant legislative that regulate hate crime and hate speech, in the competence of the institutions for collecting, systematizing and presenting the data as well as in the flow of this data from the moment of reporting the potential criminal act to the police authorities to its final court resolution. The questionnaires were structured gradually from more general and simple questions to more specific questions on the topics of the analysis and served for comparison to the collected data by the other used tools.

c. Interviews

Interviews with open ended questions were used, that allow respondents to give answers based on their complete knowledge, experience and understanding on the given topic of discussion. These kinds of interviews were preferred because they are qualitative research methods that provide enough space to the interviewee to express himself/herself freely. The Ministry of Internal Affairs and the Public Prosecutor's Office did not respond to questionnaires that were sent to them as part of the research for this report. It was also not possible to interview any representatives of these institutions. Therefore the interviews were held with representatives of OSCE mission to Skopje, Macedonian Helsinki Committee Of Human Rights and The Network For Protection Against Discrimination. The interviews allowed a clearer understanding of the relevant legislative that regulate hate crime and hate speech, the competence of the institutions for collecting, systematizing and presenting the data as well as in the flow of this data from the moment of reporting the potential criminal act to the police authorities to its final court resolution.

10 Commission For Prevention and Protection Against Discrimination did not reply to the questionnaire

11 The Basic Criminal Court in Skopje replied to the questionnaire

12 The representatives from the media did not reply to the questionnaire

II. Legislative Framework

The Republic of North Macedonia has a developed legal framework for sanctioning hate crimes. However, the national framework for monitoring and the prevention of hate crimes and legal framework in monitoring, prevention and sanctioning of hate speech are underdeveloped. Namely, in the part of hate speech, the sanctioning of the same is regulated by the criminal code. However, it is necessary to emphasize that within the CC there is an overlap of the two categories i.e. hate speech and hate crimes. Threats on the ground of race, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status according to ECRI General Policy Recommendation No. 15 on combating hate speech¹³ are hate speech, but at the same time within the CC constitute also a hate crime¹⁴. The administrative measures and misdemeanours regulating i.e. sanctioning hate speech are missing from the national legislation. Also, it should be noted that there is no provision within any law that regulates i.e. defines Hate speech or the acts or forms that hate speech can take in line with the ECRI General Policy Recommendation No. 15 on combating hate speech.

Regarding the monitoring of hate speech and data collection in the country, there is no legal framework that imposes an obligation on any of the institutions, especially in the area of monitoring hate speech through social networks and online media. Seen through the prism of general and special prevention, such a legal gap is the basis for reproducing legal uncertainty.

This section provides an introductory insight into the national legal framework that covers hate speech and hate crimes and the data collection processes.

As the highest legal act in the country the **Constitution of Republic of North Macedonia**¹⁵ regulates the civil and political freedoms and rights of its citizens, guaranteeing that the citizens of the Republic are equal in freedoms and rights regardless of gender, race, skin colour, national and social origin, political and religious beliefs, property and social status.¹⁶ It gives specific guarantees for freedom of belief, conscience, thought and public expression of thought, freedom of speech, public appearance, public information and the free establishment of public institutions for informing, free access to information, freedom to receive and impart information¹⁷ etc.

Amendment XI, which amends Article 77 of the Constitution of the Republic of North Macedonia, refers to the obligation of the Ombudsman to dedicate particular attention to the protection of the principles of non-discrimination as well as adequate and equitable representation of the members of the communities in the state government bodies, the bodies of the local self-government units and in the public institutions and services. Additionally, the Constitution gives competencies to the Constitutional Court in the field of protection of the freedoms and rights of man and citizen that relate to freedom of belief, conscience, thought and public expression of thought, political association and action and prohibition of discrimination against citizens on the grounds of sex, race, religion and nationality, social and political affiliation.¹⁸ The programs and activities of the citizens' associations and political parties cannot target activities that are aimed at overthrowing the constitutional order of the Republic and encouraging, inciting or calling for military aggression, or inciting national, racial

13 ECRI General Policy Recommendation No. 15 on combatting hate speech, adopted on 08 of December 2015, Strasbourg, 21 March 2016

14 Please see Section II.2 "Hate crime regulations and sanctions", page 21

15 Constitution of Republic of North Macedonia with the Amendments to the Constitution I - XXXII, Official Gazette No.2011, National and University Library "St. Clement of Ohrid", Skopje 342.4(497.7), ISBN 978-608-215-013-0, COBISS.MK-ID 89110026, available at:

<https://www.slvesnik.com.mk/content/Ustav%20na%20RM%20-%20makedonski%20-%20FINALEN%202011.pdf>

16 Ibid, art.9

17 Ibid, art.16

18 Ibid, art.110

or religious hatred or intolerance.¹⁹ The Constitution does not have any provisions that prohibit or condemn hate speech.

II.1 Hate Speech regulation and sanctions

The national legislation of North Macedonia regulates hate speech within the auspices of several laws, and, in general, includes the European Convention on Human Rights standards.

The Criminal Code of North Macedonia is the major law that contains provisions that prohibit and punish hate speech and the dissemination of material through the Internet that promotes or incites hatred, discrimination or violence against any person or group, on any discriminatory basis. This major national criminal legislative framework is relatively complete in dealing with hate-related phenomena. Hate speech, although not with that name, is sanctioned in the Criminal Code with the criminal offense entitled “Inciting hatred, discord or intolerance on national, racial, religious and other discriminatory grounds”(art. 319)²⁰, where the threatened punishment is from one to 5 years (para 1), and in case of severe consequences up to 10 years in prison (para 2). The provision regulating “endangering safety” (art.144 para 4) stipulates sanctioning for persons that use the computer system to threaten to commit crime against other people due to their belonging to a certain race, skin colour, origin, national or ethnic belonging, sex, gender, sexual orientation, marginalized group, language, citizenship, social background, education, religious or political belief, disability, age or any other ground.

The Criminal Code also sanctions hate speech through computer systems and through the media. The crime is titled “Spreading racist and xenophobic material through a computer system”(article 394-g)²¹. The threatened sentence is from one to 5 years (para 1), and in severe consequences up to 10 years (para 3).

The last provision that regulates and sanction hate speech in the Criminal Code and it’s a discrimination offence is titled “Racial and Other Discrimination”(art.417)²² where the foreseen sentence is from 6 months to five years, including one who persecutes an individual or an organization that fights discrimination on any grounds. Paragraph 3 establishes a hate speech offence: “he who spreads ideas of superiority of one race over another or propagates racial hatred or incite racial discrimination, shall be punished by imprisonment of six months to three years.”

¹⁹ Ibid, art.20

²⁰ “A person who by coercion, harassment, endangering security, exposing ridicule of national, ethnic, religious and other symbols, by burning, destroying or otherwise damaging the flag of the Republic of Macedonia or flags of other countries, damaging other people’s objects, desecration of monuments, graves or other discriminatory means, directly or indirectly, will cause or incite hatred, discord or intolerance based on gender, race, skin color, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, marital or marital status, property status, health status, or on any other grounds provided by law or a ratified international agreement, shall be punished by imprisonment of one to five years.”

²¹ He who through computer system in the public spreads racist and xenophobic written material, image or other representation of an idea or a theory that aids, promotes or incites hatred, discrimination or violence, against any person or group, based on gender, race, skin color, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other types beliefs, education, political affiliation, personal or social status, mental or physical disability, age, marital status, property status, health status, or on any other basis provided by law or by a ratified international agreement shall be punished by imprisonment of one to five years.

The punishment referred to in paragraph (1) of this Article shall also apply to the person who commits the crime through the media.

The person who commits the crime from paragraphs (1) and (2) of this article with abuse of position or authority or if there has been unrest as a result of those acts and violence against people or large-scale property damage, shall be punished by imprisonment of one to ten years.

²² He who based on the difference of gender, race, skin colour, gender, belonging to a marginalized group, ethnicity, language, citizenship, social background, religion or belief, other types of beliefs, education, political affiliation, personal or social status, mental or physical disability, age, marital status, property status, health status, or any other basis provided by law or ratified international agreement, violates the basic human rights and freedoms recognized by the international community, shall be punished by imprisonment of six months to five years.

With the punishment from para 1 will be punished the one who persecutes organizations or to individuals because of their commitment to human equality.

He who spreads ideas of superiority of one race over another or propagates racial hatred or incite racial discrimination, shall be punished by imprisonment of six months to three years.

Hate speech has been defined only in the Criminal Code and regulated and prohibited through various laws at the level of misdemeanours. Hence it can be noted that the formulation “hate speech” or “speech that incites hatred” are nowhere to be found within the provisions of the CC. Hate speech is criminalized with the following language “Causes or excites hatred”, “Incitement, calling or encouragement of spreading”, “With the intent to instigate hate” which falls in line with the ECRI General Policy Recommendation No. 15 on combating hate speech²³. The foreseen grounds regulated in art. 319 para 1 such as gender, race, colour of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition are also in full compliance with ECRI General Recommendation No. 15 on combatting hate speech.

ECRI Report on North Macedonia (fifth cycle) from 2016 recognizes the efforts made by the country in fulfilling the recommendations from ECRI’s fourth report on North Macedonia 28 April 2010 and welcomes the progress that has been made in number of fields such as adopting enumerated grounds race, colour, ethnic origin, language, citizenship and religion into the Law on Prevention and Protection Against Discrimination; establishing a working group on hate crime set up by the Ministry of Justice, in cooperation with the OSCE Mission to Skopje, which was convened for a limited period of time to inform major changes to the national legislative framework on hate crime; setting up the ‘Red Button’ online application within the Ministry of Internal Affairs, through which complaints about online hate speech can be lodged in a simplified manner via the internet.²⁴

However, despite the progress achieved, some issues gave rise to concern. The country’s Criminal Code is still not entirely in line with ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. Gaps also remain with regard to civil and administrative law provisions.²⁵ Ethnic tensions between the two largest communities remain high and racist hate speech is a widespread problem that remains largely unchecked and creates an atmosphere in which acts of racist violence can occur. Furthermore, the levels of intolerance towards LGBT persons are alarmingly high and incitement to homophobia and violence is increasing and is not effectively prevented or punished by the authorities. In addition, LGBT persons face other forms of discrimination and intolerance in their daily lives.²⁶

Therefore, ECRI recommends that:

- The authorities bring the country’s Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly:²⁷
 - Criminalise public racist insults and defamations;²⁸
 - Add sexual orientation and gender identity to the list of enumerated grounds in Articles 39(5) and 319;²⁹

23 ECRI General Policy Recommendation No. 15 on combatting hate speech, adopted on 08 of December 2015, Strasbourg, 21 March 2016

24 ECRI REPORT ON “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), 2016, CRI(2016)21, ECRI Secretariat, Directorate General II – Democracy, Council of Europe, available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b>

25 Ibid, page 9

26 Ibid, page 9

27 Ibid, page 11

28 Ibid, page 11

29 Ibid, page 11; With the amendments to the Criminal Code in 2018 this recommendation was addressed: Article 39 (5) When the court metes out the sentence, it shall especially consider whether the crime has been committed against a person or a group of persons or property, directly or indirectly, because of his or their sex, race, skin colour, class, member of a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs,

- Introduce a general provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.^{30 31}

The application of relevant legislation concerning hate speech is extremely weak. This problem is rooted, at least partially, in a lack of will among the relevant authorities to apply the laws in an effective manner. Training of law enforcement officials, prosecutors and judges on legislation concerning hate speech is insufficient.³²

The Academy for Judges and Public Prosecutors “Pavel Shatev”³³ in the past couple of years have organized several trainings related to hate speech, while the Centre for trainings³⁴ of law enforcement officials does not offer any available data on held or current trainings on hate speech.

In 2015, the Ministry of Internal Affairs set up the Red Button online application, through which complaints about online hate speech can be lodged in a simplified manner via the internet. So far, however, it only resulted in users reporting personal insults. However, “the application never really took off as it was not properly promoted and is unknown to the general population.”³⁵

According to the ECRI’s report (fifth monitoring cycle),2016, “this points to a general conceptual problem in the understanding of hate speech in the country, as it is insufficiently distinguished from acts of personal defamation or libel, and does not focus on the incitement of hatred and discrimination against identity-based groups, such as ethnic, religious or sexual minorities.”³⁶

ECRI recommends that the authorities take urgent measures to tackle the growing problem of racist and homo-/transphobic hate speech, in particular by i) stepping up the training activities on hate speech for law enforcement officers, prosecutors and judges; ii) introducing administrative sanctions for hate speech in the Law on Audio and Audio-visual Media Services of 2013³⁷; iii) providing the regulatory authority for audio and audio-visual media services with the possibility of issuing warnings or demanding apologies in cases of racist or homo-/transphobic hate speech and related breaches of professional journalistic standards and ethics;

education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement. Article 319 (1) Whoever by force, maltreatment, endangering the security, mocking of the national, ethnic, religious and other symbols, by burning, destroying or in any other manner damaging the flag of the Republic of Macedonia or flags of other states, by damaging other people’s objects, by desecration of monuments, graves, or in any other discriminatory manner, directly or indirectly, causes or excites hatred, discord or intolerance on grounds of gender, race, colour of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or in any other ground foreseen by law on ratified international agreement, shall be sentenced to imprisonment of one to five years.

30 Article 417 “Racial or other discrimination” (1) Whoever based on the difference in sex, race, skin colour, class, membership in a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement, violates the basic human rights and freedoms acknowledged by the international community, shall be sentenced to imprisonment of six months to five years. (2) The sentence referred to in paragraph 1 shall also be imposed to whosoever prosecutes organizations or individuals because of their efforts for equality of the people. (3) Whosoever spreads ideas about the superiority of one race over another, or who advocates racial hate, or instigates racial discrimination, shall be sentenced to imprisonment of six months to three years.

31 ECRI REPORT ON “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth monitoring cycle), 2016, CRI(2016)21, ECRI Secretariat, Directorate General II – Democracy, Council of Europe, page 35, available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b>

32 Ibid, page 15

33 Academy for Judges and Prosecutors “Pavel Shatev”, available at: <https://jpacademy.gov.mk/>

34 Centre for trainings of law enforcement officials, MoIA, available at: <https://mvr.gov.mk/kategorija/novosti-centar-za-obuka>

35 Obtained information from the interview with the representative from OSCE, Organization for security and co-operation in Europe, Mission to Skopje

36 ECRI REPORT ON “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth cycle), 2016, page 16, available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b>

37 With the Law on amending the law on audio and audio-visual media services, Official Gazette No.248, 31.12.2018 this recommendation was addressed

iv) setting up a system of information-sharing through which the regulatory authority for audio and audio-visual media services receives information from prosecutors and courts concerning cases that it forwarded in order to enable the regulatory authority to improve and optimise its media monitoring activities; and v) establishing effective regulatory bodies, while respecting the principle of media independence, that can monitor incidents of hate speech in print media and internet services. Furthermore, ECRI recommends that an evaluation of past initiatives to prevent hate speech is carried out with a view of building on existing efforts and expanding good practices, especially in the media and education sectors.³⁸

However, there is no definition of hate speech using the formulation hate speech or speech that incites hate/hatred within the CC. There is no clear distinction within the law as to which crimes are hate speech and which crimes are hate crimes or discrimination crimes, which contributes to further confusion in the recognition of these acts by prosecutors and judges.

Recommendation:

Introduce a specific definition of hate speech within the article 122 of the CC in line with ECRI General Policy Recommendation no. 15

Although this data analysis does not cover discrimination, it is crucial to pay attention to the leading Law on Prevention and Protection Against Discrimination, the way this law treats hate speech and related obligations to collect, record and process data.

The Law on Prevention and Protection Against Discrimination³⁹ is harmonized with the EU acquis⁴⁰ and regulates the prevention and prohibition of discrimination, forms and the types of discrimination, the procedures for protection against discrimination, as well as the composition and the work of the Commission for Prevention and Protection Against Discrimination.⁴¹ Its purpose is to ensure the principle of equality and prevention and protection against discrimination in the exercise of human rights and freedoms.⁴² The law prohibits any discrimination based on race, skin colour, origin nationality or ethnicity, gender, sexual orientation, gender identity, belonging to a marginalized group, language, citizenship, social origin, education, religion or belief, political belief, other belief, disability, age, marital or marital status, property status, health status, personal status and social status or any other basis.⁴³

The Law on Prevention and Protection Against Discrimination contains provisions that are directly relevant to hate speech such as: Calling, incitement and instructing discrimination (Article 9). The article reads: "Calling, incitement and instructing to discrimination shall mean any activity through which directly or indirectly called for, incited, instructed or prompted on any discriminatory grounds".⁴⁴

The law as a form of hate speech portrays the harassment that aims to provoke or

38 ECRI REPORT ON "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" (fifth cycle), 2016, page 17, available at: <https://rm.coe.int/fifth-report-on-the-former-yugoslav-republic-of-macedonia-/16808b590b>

39 LPPD, Official Gazette No. 258, 30.10.2020, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status)

40 Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

41 LPPD, art.1

42 Ibid, art.2

43 Ibid, art.5

44 LPPD, Official Gazette No. 258, 30.10.2020, art.9, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2019\)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2019)040-e#:~:text=Any%20discrimination%20based%20on%20race,age%2C%20family%20or%20marital%20status)

create a threatening or humiliating practice or approach. Article 10 para 1 defines acts of harassment: “Harassment is an unwanted act towards person or group of persons on discriminatory grounds with a purpose or consequence, violation of dignity or creation of threatening, hostile, humiliating or intimidating environment, approach or practice”. LLPD in its misdemeanour provisions⁴⁵ envisages a fine in the amount of 400 to 10,000 euros in denar counter value for the legal entity for which it has been determined by a competent authority that it has committed discrimination in accordance with Article 9 and 10 from the law. With a fine in the amount of 50 to 150 euros in denar counter value will be fined a natural person for whom it has been determined by a competent authority that he has committed discrimination in accordance with Article 9 and 10 from the law.⁴⁶

As a mechanism for combating discrimination, the law foresees the establishment of the Commission for Prevention and Protection Against Discrimination and regulates its functioning and jurisdiction.⁴⁷ The CPPD is an independent body that, in accordance with the law, acts on complaints filed by natural or legal persons who consider that they have suffered or experienced discrimination.

The law foresees that “all entities that are legally obliged to collect, record and process data, have an obligation to display this data according to discriminatory grounds from Article 5 of this Law, relevant in the field, and for the purpose of promotion and promoting equality and preventing discrimination.”⁴⁸

The EU commission’s Report on North Macedonia⁴⁹ from 19.10.2021 recognises that the Law on the Prevention and Protection against Discrimination and the Commission for Prevention and Protection against Discrimination are in place but emphasizes the importance for the country to enhance the implementation of the legislation on hate speech.⁵⁰ The civilian external oversight mechanism over the police is not fully functional, and the absence of genuinely independent investigators impedes efforts to address police impunity and effective prosecution.

The country should, in particular:⁵¹

- Implement all the provisions of the Law on the Prevention and Protection against Discrimination and allocate the necessary resources enabling the Commission for Prevention and Protection Against Discrimination to become fully functional.

As can be seen the law entails the hate speech in two provisions by using the wording calling, incitement, instruction and harassment which generally falls in line with ECRIs’ General Policy Recommendation N.15 on Combating Hate Speech where “hate speech is to be understood as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of “race”, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status;”⁵²

45 LPPD, art.41 para 1

46 Ibid, para 4

47 Ibid, art.14

48 Ibid, art.3

49 EU commission, North-Macedonia Report, Strasbourg 19.10.2021

50 Ibid, page 6

51 Ibid, page 25

52 ECRIs’ General Recommendation N.15 on Hate Speech, p.3, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

The law lacks clear and precise definition of hate speech and does not recognize hate speech as an aggravating form of discrimination and with that does not recognize different forms of hate speech and the level of seriousness of those forms.

Recommendations:

- 1) Introduce a specific definition of hate speech in line with ECRI GPR no. 15 and introduce hate speech offences, and misdemeanour provisions that will sanction the use of hate speech – LLPD.
- 2) Revise article 10 and by separating the actions that falls under the hate speech from the actions that represents harassment reproduce a new article or integrate into the article 9 (definition of hate speech) - LLPD

Hate speech is also prohibited under Article 3⁵³ of the **Law on Political Parties** as well as under Article 4 (2)⁵⁴ of the **Law on Associations and Foundations**.

The **Law on Political Parties** in its misdemeanour provisions foresees a fine in the amount of 800 to 4,800 euros in denar counter value for a misdemeanour will be imposed on a political party which is organized and acts contrary to Articles 3 of this Law. In addition, with a fine in the amount of 160 to 800 euros in denar counter value for a misdemeanour the responsible person of the political party will be sanctioned.

Media Law⁵⁵ guarantees freedom of expression and freedom of the media. Hence, this law provides for special prohibitions such as publishing or broadcasting content in the media that incites the violent overthrow of the constitutional order of the Republic, incitement to military aggression or armed conflict, incitement or spread of discrimination, intolerance or hatred on the grounds by race, gender, religion or nationality.⁵⁶ Although this law provides special prohibitions for spreading hatred, there are no misdemeanour provisions if these special prohibitions are not respected. The Code of Journalists of North Macedonia⁵⁷ states that hate speech or discrimination in the media is prohibited on several grounds, including “political grounds”⁵⁸ The Code is not a law, but it is the most important act of self-regulation and observance of professional rules in journalism, and it was adopted in 2001.

The Law on Amending the Law on Audio and Audiovisual Media Services⁵⁹ foresees special prohibitions where audio and audio-visual media services contain content that endangers national security, the violent demolition of the constitutional order of the Republic of Northern Macedonia, calls for military aggression or armed conflict, encourages or spreads discrimination, intolerance or hatred based on race, skin colour, origin, nationality or ethnicity, gender, sexual orientation, gender identity, belonging to a marginalized group, language, citizenship, social

53 The program, statute and activities of political parties cannot be aimed at: violent overthrow of the constitutional order of the Republic of Macedonia; incitement or calling to military aggression and incitement to national, racial or religious hatred or intolerance.

54 Establishment of an organization is prohibited if the program and its activities are aimed at violent overthrow of the constitutional order of the Republic of North Macedonia, incitement to military aggression and incitement of national, racial or religious hatred or intolerance undertakes activities related to terrorism, undertakes activities contrary to the Constitution or law and the freedoms and rights of others are violated.

55 Media Law, Official Gazette No.184/2013; No.13/2014, available at: https://mioa.gov.mk/sites/default/files/pbl_files/documents/legislation/Zakon_za%20mediumi_konsolidiran_15102015.pdf

56 Ibid, art.4

57 Code of Journalists of North Macedonia, 2001, available at: <https://znm.org.mk/kodeks-na-novinarite-na-makedonija/>

58 Code of Journalists of North Macedonia, 2001, art.10, <https://znm.org.mk/kodeks-na-novinarite-na-makedonija/>

59 Law on amending the law on audio and audio-visual media services, Official Gazette No.248, 31.12.2018

background, education, religion or belief, political belief, other belief, disability, age, marital status, property status, health status, personal status and social status, or any other basis.⁶⁰

The Law on Amending the Law on Audio and Audiovisual Media Services in its misdemeanour provisions foresees a fine in the amount of 1,000 to 5,000 euros in denar counter value for a misdemeanour will be imposed on a legal entity if broadcasts and creates programs that endanger national security, is violently encouraged overthrowing the constitutional order of the Republic of North Macedonia, calling for military aggression or armed conflict, inciting or spreading discrimination, intolerance or hatred based on race, skin colour, origin, nationality or ethnicity, sex, sexual orientation, gender identity, belonging to a marginalized group, language, citizenship, social background, education, religion or religious belief, political belief, other belief, disability, age, marital status, property status, health status, personal status and social status, or any other basis.⁶¹ The Agency for AAMS⁶² can impose measures when it determines hate speech in audio-visual media content (Article 48), such as: a public warning, petition for initiating a misdemeanour procedure, proposal to revoke the licence and decision to delete the media outlet from the registry (Article 23).

ECRI report on North Macedonia states that “ECRI considers hate speech particularly worrying because it is often a first step in the process towards actual violence⁶³. Appropriate responses to hate speech include law enforcement channels (criminal and administrative law sanctions, civil law remedies) but also other mechanisms to counter its harmful effects, such as self-regulation, prevention and counter speech.”⁶⁴ There is no regulatory mechanism for the internet in the country, and this area falls outside of the mandate of the authority for audio-visual media.⁶⁵

EU commission’s report on North Macedonia⁶⁶ from 19.10.2021 elaborates that there are differing opinions in the media sector concerning the legal regulation of online media in particular as regards the emerging issue of disinformation. As a response, a self-regulation mechanism⁶⁷ has been adopted, but there has been no other concrete follow-up. Hate speech is illegal both online and offline but remains prevalent online. The EU Commission recommends that further efforts are needed to address issues related to disinformation and hate speech, including online.⁶⁸

The current regulation on Audio and Audio-Visual Services does not regulate online content. The law defines an audio-visual service as service provided by an audio or audio-visual media service provider and which covers any form of economic activity whose primary

60 Ibid, art.48, available at: <https://www.slvesnik.com.mk/issues/b089570bacc436a9b39c585dca78b3f.pdf>

61 Law on amending the law on audio and audio-visual media services, art.38 (amending art.147 of the law on audio and audio-visual media services)

62 Agency for Audio and Audio-visual Media Services regulated with art.4 of the law on audio and audio-visual media services, Official Gazette No.184/13

63 ECRI REPORT ON “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth cycle), 2016, page 15 item 23

64 Ibid, page 15

65 Ibid, page 16

66 EU commission, North-Macedonia Report, Strasbourg 19.10.2021, available at: https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en

67 The Ethical Code contains a provision that addresses hate speech précisng that journalists should not consciously create or process information that jeopardizes human rights and freedoms, use hate speech and encourage discrimination on any grounds – nationality, religion, sex, social class, language, sexual orientation, political orientation... (Art. 10), *AJM (2001) Ethical Code of Journalists*. Available at: <https://znm.org.mk/kodeks-na-novinarite-na-makedonija/>; The Charter for ethical reporting during electoral campaigns contains the “Principle for respect and tolerance” which implies that media outlets will not use stereotypes, prejudices, discrimination on any ground nor hate speech and inflammatory language in its reporting, “Povelba za eticko izvestuvanje za izbornata kampanja za lokalnite izbori 2021”, Skopje: CMEM. Available at: <https://semm.mk/dokumenti/korisni-resursi/kodeks/950-povelba-za-etichko-izvestuvanje-za-izborite-2021>; The Guidelines for Ethical Reporting in Online Media were adopted in 2021 containing additional provisions in relation to Article 10 of the Ethical Code that refer specifically to online media (Article 10), “Guidelines for Ethical Reporting in Online Media”, Skopje: 2021. Available at: <https://bit.ly/3pHNYyQ>.

68 Ibid, page 31

purpose is to provide audio or audio-visual programs to inform, entertain and / or educate the wider public through electronic communication networks and audio or audio-visual commercial communication.⁶⁹

Services that do not represent audio or audio-visual media services are services whose primary purpose is not the provision of programs, i.e. where each audio-visual content is only random for the service and is not its primary purpose such as: a) websites that contain audio-visual elements only in an auxiliary way, such as are animated graphic elements, short commercials or information related to some product or service that is not audio-visual, b) search engines and c) electronic versions of newspapers and magazines.⁷⁰

The lack of legal regulation of online hate speech leads to inadequate protection from it and its uncontrolled spread through online tools. At the same time, despite the fact that hate speech is criminalized, the fact remains that misdemeanour provisions for sanctioning hate speech, especially online hate speech, are significantly needed.

Recommendations:

- To introduce a new provision within the Law on Audio and Audio-visual Services that recognizes websites that contain audio-visual elements only in an auxiliary way, such as are animated graphic elements, short commercials or information related to some product or service that is not audio-visual, search engines and electronic versions of newspapers and magazines as audio or audio-visual media services or to amend the existent article 3
- To introduce new provisions that prohibits online hate speech and misdemeanour provisions
- To amend article 2 para 1 item 1 from the Media Law and to include “as media to be consider the assets for public information i.e. any kind of communication such as newspapers, magazines, radio and television programs, teletext and other means for daily or periodic publication of editorially shaped content in written form, sound or image via internet. “
- To amend article 2 para 1 item 3 and to include “via internet”: “A media publisher is a natural or legal person that publishes print media or publishes media via Internet, or broadcasts radio and television programs (broadcasters) including via Internet.”
- To amend article 4 in order to encompass the precise formulation/definition of hate speech in line with ECRI GPR no. 15, and to expand the envisaged grounds in accordance with the Law on Prevention and Protection Against Discrimination
- To amend all other provision from Media Law to be in line with article 2

⁶⁹ Law on amending the law on audio and audio-visual media services, art.3 para 1 item a

⁷⁰ Ibid, art.3 para 2 item g

II.2 Hate Crime regulations and sanctions

The Criminal Code of North Macedonia represents the core law on hate crime establishing several different forms of crime with 'hate' as a motive. In 2018 the Criminal Code was amended, and the amendments were published in the Official Gazette No. 248/2018 where a definition⁷¹ about hate crime was added. With these amendments, one of the main things about hatred was the introduction of the definition of what is an act of hatred: "A hate crime expressly provided by the provisions of this Code is considered a criminal offense against a natural or legal person and related persons or property committed in whole or in part due to a real or presumed (imagined, conceived) characteristic or connection of the person who refers to race, skin colour, nationality, ethnicity, religion or belief, mental or physical disability, gender, gender identity, sexual orientation and political belief."⁷²

The words "out of hatred" or "if the crime was committed out of hatred" were added within the provisions, which more clearly sanctioned crimes that occur as a result of hatred, such as:

- Crimes against life and body regulated by Articles 123 and 130;
- Crimes against the freedoms and rights of man and citizen regulated by Articles 139, 140, 142, 144 and 155;
- Crimes against sexual freedom and sexual morality regulated by Article 186;
- Crimes against human health regulated by Article 208;
- Crimes against property regulated by Articles 236, 237, 238, 243 and 258;
- Crimes against order and peace regulated by Articles 386 and 400;
- Crimes against humanity and international law regulated by Articles 407-a and 417

In the auspices of the Criminal Code the word "**out of hate or hatred**" is inserted as a motive for committing the crime but also as a severe form of the crime, in the following provisions:

In the criminal act "**Murder**" under art. 123⁷³ was added "out of hate", as a more severe form for which the threatened sentence is at least 10 years in prison for those who commit a murder in order to deprive another of life out of hate or for other low motives.⁷⁴ In the case of

71 CC, art.122 para.42 "A hate crime expressly provided by the provisions of this Code is considered a criminal offense against a natural or legal person and related persons or property committed in whole or in part due to a real or presumed (imagined, conceived) characteristic or connection of the person who refers to race, skin color, nationality, ethnicity, religion or belief, mental or physical disability, gender, gender identity, sexual orientation and political belief. "

72 CC, Official Gazette NO.248/18, art. 122 para 42

73 (1) Whosoever deprives another of life shall be sentenced to at least five years of imprisonment. (2) Imprisonment of at least ten years or life imprisonment shall be ordered to whosoever: 1) deprives another of life in a cruel or treacherous manner, 2) deprives another of life by committing family violence, 3) deprives another of life and hereby, premeditatively endanger the life of another person, 4) deprives another of life for self-interest, because of committing or covering up another crime, for ruthless revenge, for hate or for other low motives, 5) deprives another of life on order, 6) deprives another of life for the purpose of extracting an organ, tissue or cells for transplantation, 7) deprives a female person of life, yet being aware of her pregnancy or the fact that she is underage and 8) deprives the life of a judge, public prosecutor or lawyer, while performing their function, i.e. duty or an official or military person, while they are performing activities of public or state security, or on duty guarding the public order, catching the offender of a crime, or guarding a person under arrest. (3) Imprisonment of at least ten years or life imprisonment shall be ordered to whosoever premeditatively deprives of life two or more persons, not being tried for previously, unless those are such crimes as referred to in Article 9 paragraph (3), Article 10 paragraph (3) and Articles 124, 125 and 127.

74 Ibid, art.123 para 2 item 4

“Bodily injury” (art.130)⁷⁵ and **“Severe bodily injury”**⁷⁶ (art.131) whosoever commits the crime out of hate shall be sentenced to imprisonment of six months to three years⁷⁷ or sentenced to imprisonment of one to five years.⁷⁸The criminal offences **“Coercion”** (art.139)⁷⁹ - Whosoever, by force or serious threat, coerces another to commit or not to commit or bear something out of hate” and **“Unlawful deprivation of liberty”** (art.140)⁸⁰ - Whosoever unlawfully confines, keeps another confined or in any other manner deprives or limits the freedom of movement to another out of hate, provide for a more serious forms of committing of the basic crime in case the perpetrator committed the crime out of hate with foreseen sentence of imprisonment from six months up to three years. In **“Endangering Security”**, (art. 144)⁸¹, the words “out of hate” are added for whosoever threatens the safety of another, by serious threat to attack his life or body or life or body to a person closely related to him and the prescribed sentence is imprisonment of three months to three years (para 2 in conjunction with para 1). This provision in para 4 envisages even more severe form of committing the crime with imprisonment of one to five years when the crime is committed by a person who by means of information

75 (1) Whosoever causes bodily injury or health deterioration to another, shall be fined or sentenced to imprisonment of up to three years. (2) Whosoever commits the crime referred to in paragraph 1 while committing family violence shall be sentenced to imprisonment of six months to three years. (3) Whosoever commits the crime of hate shall be imposed the sentence referred to in paragraph (2) of this Article. (4) The court may impose the offender of the crime referred to in paragraph 1 a court admonition if, he was provoked with especially insulting or rude behavior by the damaged person. (5) The prosecution for the crime referred to in paragraph 1 shall be undertaken upon a private complaint, and for the one referred to in paragraph 2 upon a proposal.

76 (1) Whosoever causes severe bodily injury or health deterioration to another shall be sentenced to imprisonment of six months to five years. (2) Whosoever commits the crime referred to in paragraph 1 while committing family violence or out of hate shall be sentenced to imprisonment of one to five years. (3) Whosoever causes a severe bodily injury or health deterioration to another, and because of that the life of the injured person is brought into danger, or a vital part of the body or some important organ is destroyed, or is damaged permanently or to a significant extent, or a permanent disability for work is caused, in general or for the work for which he is trained, his health is damaged permanently or gravely, or he becomes disfigured, shall be sentenced to imprisonment of one to ten years. (4) If because of the severe bodily injury referred to in paragraph 1 to 3 the injured person dies, the offender shall be sentenced to imprisonment of at least one year. (5) Whosoever commits the crime referred to in paragraph 1, 2 and 3 out of negligence, shall be fined or sentenced to imprisonment of up to three years. (6) Whosoever commits manslaughter, brought without a guilt in a condition of strong irritation by an attack or severe insult, or as a consequence of family violence by the injured party, shall be fined for the crime referred to in paragraphs 1 and 2 or sentenced to imprisonment of up to three years, and for the crime referred to in paragraphs 3 and 4 to imprisonment of one to five years.

77 CC,art.130 para 3 in conjunction with para 2

78 Ibid, art.131 para 2

79 (1) Whosoever, by force or serious threat, coerces another to commit or not to commit or bear something, shall be fined or sentenced to imprisonment of one year. (2) If the crime stipulated in paragraph 1 is committed while performing family violence or out of hate, the offender shall be sentenced to imprisonment from six months to three years. (3) If the crime referred to in paragraph 1 is committed by an official person while performing the duty, that person shall be sentenced to imprisonment of six months to five years. (4) The prosecution for the crime stipulated in paragraph 1 shall be undertaken upon a private lawsuit.

80 (1) Whosoever unlawfully confines, keeps another confined or in any other manner deprives or limits the freedom of movement to another, shall be fined or sentenced to imprisonment of up to one year. (2) If the crime stipulated in paragraph 1 is committed while performing family violence, out of hate, or against a child, the offender shall be sentenced to imprisonment from six months to three years. (3) The attempt is punishable. (4) If the unlawful deprivation of liberty is performed by an official person, by abuse of the official position or authorization, such person shall be sentenced to imprisonment of six months to five years. (5) If the unlawful deprivation of liberty lasts longer than 30 days, or if it was performed in a cruel manner, or if the health condition of the unlawfully deprived person was seriously deteriorated because of this, or if some other serious consequences were caused, the offender shall be sentenced to imprisonment of one to five years. (6) If the person unlawfully deprived of liberty dies because of that, the offender shall be sentenced to imprisonment of at least four years.

81 (1) Whosoever threatens the safety of another, by serious threat to attack his life or body or life or body to a person closely related to him, shall be fined or sentenced to imprisonment of six months. (2) Whosoever commits the crime referred to in paragraph 1 while performing family violence or out of hate shall be sentenced to imprisonment of three months to three years. (3) The sentence stipulated in paragraph 2 shall be imposed on the person that commits the crime stipulated in paragraph 1 against an official person while performing the duty, or against several persons. (4) Whosoever, by means of information system threatens to commit a crime being subject to prescribed imprisonment of five years or more serious sentence against a person because of their gender, race, color of the skin, class, member of marginalized group, ethnic background, language, nationality, social origin, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement, shall be sentenced to imprisonment of one to five years. (5) The prosecution for the crime referred to in paragraph (1) shall be undertaken with a private lawsuit.

system threatens to commit a crime being subject to prescribed imprisonment of five years or more serious sentence against a person because of their gender, race, colour of the skin, class, member of marginalized group, ethnic background, language, nationality, social origin, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement.

In **“Rape”**, art. 186, para 3 “If a severe bodily injury, death or any other severe consequences were caused because of the crime referred to in paragraph 1⁸² or the crime was committed by several persons or in an especially cruel and degrading manner or out of hate, the offender shall be sentenced to minimum imprisonment of four years”.

The Criminal Code also regulates the provisions that encompasses the phrase **“is committed out of hate or hatred”** in the following articles:

In **“Torture and other cruel, inhuman or degrading treatment or punishment”** article 142, para 1⁸³ foresees imprisonment of three years to 8 years, while in para 2 the phrase “if the crime was committed out of hate” is inserted representing a very severe form of the crime with foreseen sentence of minimum 4 years of imprisonment.

In **“Prevention or disturbance of public gathering”**, article 155, the words “committed out of hate” denote imprisonment of 3 months to 3 years when the above-mentioned crime is committed out of hate by force, serious threat, fraud or in any other manner that prevents or disturbs calling up or organizing peaceful public gathering.⁸⁴

“Not providing medical help” under article 208 para 1 encompasses sentence to imprisonment of up to one year if a doctor or any other health worker who contrary to his duty does not provide immediate medical assistance to a person whose life is in danger or the crime is committed out of hatred, shall be fined or sentenced to imprisonment of up to one year. The severe form is regulated in para 2 where sentence to imprisonment of six months to five years is foreseen if because of the crime referred to in paragraph 1 the person to whom medical assistance was not provided dies.

In **“Burglary”** under Article 236, **“Robbery”** under Article 237 and **“Armed Robbery”** under Article 238 the penalties from committing the crime out of hatred range from one to 10 years. If the theft⁸⁵ is committed out of hatred, the offender shall be sentenced to imprisonment of one to five years;⁸⁶ If the stolen object is of significant value or with value to a greater extent the sentence is imprisonment of one to ten years;⁸⁷ Whosoever by using force or by threatening to directly attack the life or body of another, takes another’s movable object with the intention to unlawfully appropriate it, shall be sentenced to imprisonment of at least five years;⁸⁸ If the value of the stolen object is of a large extent or the crime is committed out of hatred, the offender shall be sentenced to imprisonment of at least eight years.⁸⁹ Whosoever, caught in the act of stealing, uses force or threatens to directly attack upon the life or body of another with the intention of retaining the stolen object, shall be sentenced to imprisonment

82 (1) Whosoever, by the use of force or threat to directly attack upon the life or body of another or upon the life or body of someone close to that person, forces him to intercourse, shall be sentenced to imprisonment of three to ten years.

83 (1) Whosoever while performing a duty, as well as whosoever listed as official person or based on his consent, uses force, threat or any other not allowed instrument or manner with the intent to extort confession or some other statement from the convicted, the witness, the expert or other person, or whosoever causes another a severe physical or mental suffering in order to punish him for a crime committed or for a crime for which he or another person is a suspect, or to intimidate or force him to waive one of his rights, or whosoever causes such suffering due to any type of discrimination, shall be sentenced to imprisonment of three to eight years.

84 CC, art.155 para 2 in conjunction with para 1: (1) Whosoever by force, serious threat, fraud or in any other manner prevents or disturbs calling up or organizing peaceful public gathering, shall be fined or sentenced to one year of imprisonment. (2) If the crime referred to in paragraph 1 is committed out of hate or by an official person by abusing his official position or authorization, he shall be sentenced to imprisonment of three months to three years.

85 CC, art.236

86 CC, art.236 para 1 item 7

87 Ibid, para 2 and 3

88 CC, art.237 para 1

89 Ibid, para 2

of at least one year.⁹⁰ If the value of the stolen objects is of a large extent or the crime is committed out of hatred, the offender shall be sentenced to imprisonment of at least eight years.⁹¹

“**Damage to objects of others**” under article 243 envisages that whosoever damages, destroys or makes unusable the object of another, and the crime is committed out of hatred, the offender shall be sentenced to imprisonment of six months to five years.⁹²

In “**Extortion**” under article 258 para 1 and 2 is foreseen a sentence of imprisonment of at least four years for anyone who will commit crime out of hatred with the intention to obtain unlawful property benefit for him or for another, by force or by serious threat, forces another to do or not to do something that damages his own or another’s property.

Article 386 regulates the “**Act of violence**” and sanctions anyone who maltreats, roughly insults, endangers the safety or performs rough violence upon another, and herewith causes a feeling of insecurity, threat or fear among the public or by throwing pyrotechnical means or items by which he may endanger the life or the body of another or the property of facilities at a sports field or stands or by entering in the sports field with the intention to cause a fight or other violence, shall be sentenced to imprisonment of three months to three years;⁹³ If the crime is committed out of hatred the foreseen sentence is imprisonment of one to five years.⁹⁴

In “**Desecration of a grave**” under article 400 a fine or sentence to imprisonment of up to one year is foreseen for anyone who without authorization digs out, destroys or damages a grave or some other place where the deceased are buried, or roughly harms them;⁹⁵ Imprisonment of up to three years is envisaged if the crime is committed out of hatred.⁹⁶

Regarding the criminal legal framework, the Criminal Code is broadly in line with European standards⁹⁷ introducing “hate” as a motive for a large number of crimes. The criminalisation of certain acts of violence, committed with such a motive, allow better perception of hate crime, greater efficiency in detecting offenses and collecting statistics and other data on violence and hate crime. However the negative aspect of introducing the motive of hatred as subjective element in the essence of the crime (subjective element of illegality), either in the essence of the basic crime or, as a qualified form of the crime (aggravating circumstance), for which heavier sentence is prescribed is the fact that its determination is subject to the same procedures rules of proof, which also apply to other features of the criminal offense.⁹⁸ It implies that the indictment must contain explanation and presentation of

90 CC, art.238 para 1

91 Ibid, para 2

92 CC, art.243 para 1 and 2

93 Ibid, art.386 para 1 and 2

94 Ibid, para 5

95 CC, art.400 para 1

96 Ibid, para 2

97 General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, available at <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>; UN International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly by Resolution 2106 (XX) of 21 December 1965, AVAILABLE AT: UN International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>; UN Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution 61/106 on 13 December 2006, available at: <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>; The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953, available at: https://www.echr.coe.int/documents/convention_eng.pdf; The CoE’s Convention on Cybercrime (CETS No. 185); the Protocol to the CoE’s Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No. 189); CoE’s Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a; OSCE Ministerial Council Decision No. 9/09 on Combating Hate Crimes, 2 December 2009, par 9, available at <http://www.osce.org/cio/40695?download=true>; Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, available at <http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex:32008F0913>;

98 THE CONCEPT OF HATE CRIMES IN WESTERN COUNTRIES BALKANS: COMPARATIVE ANALYSIS AND CURRENT CHALLENGES,

all evidence on which the indictment is based given the legal qualification of the crime as an act of hatred i.e. the prosecutors must prove that the offender acted out of hatred towards a protected characteristic.

However, having in mind the definition of a hate crime set out in Article 122 of the Criminal Code, in which the motive for committing the crime must be based on a certain prejudice towards a protected characteristic (“race”, skin colour, nationality, ethnicity, religion or belief, mental or physical disability, gender, gender identity, sexual orientation and political belief) without including the word hate as a leading precondition for committing the crime, results in a facilitative practical approach to the application of these provisions in the detection, prosecution and processing these offenses.

Hence, the legal framework itself is well established and is sufficient to fight hate crime. On the other hand the implementation of the legal framework by all of the actors is insufficient which results in a large number of unreported crimes or crimes that have been reported and for which no appropriate procedure has been initiated at all.

The Hate crime Victimization Survey conducted by the OSCE in 2019⁹⁹ identifies the reason for non-reporting of hate crimes, i.e. underreporting of these crimes in the general perception of the victims themselves.

According to the Report,¹⁰⁰

“six out of ten (60.1%) respondents for whom the most serious crime they experienced in the last 12 months was a hate crime said that the crime was not reported to the police. The most common reason offered by just over one-third of hate crime victims for not reporting the most serious crime they experienced to the police was an acceptance that it is just something that happens. One in six hate crime victims stated that it was too trivial and not worth reporting. One third of hate crime victims also said that they were not confident that the police would be able to do anything, with a small number, just over one in twenty hate crime victims stating that the police would not have been bothered or interested.”¹⁰¹

Hate crimes are usually not reported, and even when they end up as formal complaints, they are not properly investigated by the authorities because they are not trained to identify and respond to hate crimes.¹⁰²

Andrej Bozinovski, UDK: 343.3/.7:316.613.434, page 18 and 19

available at: <http://maclc.mk/Upload/Documents/Andrej%20Bozinovski.pdf>

99 Hate crime Victimization Survey: report, Paul Iganski, OSCE 2019, available at: https://tandis.odhr.pl/bitstream/20.500.12389/22550/2/22550_EN.pdf

100 Ibid

101 Ibid, page 5

102 Annual report on hate crimes in 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, , page 31, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

II.3 Strategic Background and mechanisms

Based on the analysis of the current situation in the country in terms of the legal framework, the mechanisms for the effective and efficient management of, and fight against, hate speech and hate crimes are the National Coordinative Body on Antidiscrimination, the National Equality and Non-Discrimination Strategy 2016-2020¹⁰³ and the Strategy for Roma Inclusion 2022 -2026¹⁰⁴. Both strategies contain certain aspects in terms of hate speech and hate crime and the fight against it.

The National Equality and Non-Discrimination Strategy was adopted in 2016 and, although it is not in force, it represents one of the key documents which covers the issues of hate speech and hate crime. The intention of this strategy is the realization of human rights and the establishment of equal opportunities and non-discrimination for all people in all areas of social life. Its aims are the effective protection against discrimination and observance of the principle of equal opportunities, and the prohibition of discrimination against any person and / or group on the basis of any personal characteristic, including disability.¹⁰⁵

The strategy contains three strategic goals: advancing the legal framework for equal opportunities and non-discrimination; capacity building, work improvement and coordination of institutional mechanisms for preventing and protecting against discrimination and promoting equal opportunities; and raising public awareness to recognize forms of discrimination and promoting concepts of non-discrimination and equal opportunities. Within each of the strategic goals there are five specific goals.¹⁰⁶ The specific goals are achieved through the realization of various specific activities which are focused on building capacities of institutions and organizations at the national and local level, cooperation with NGO's, establishment of database on implemented trainings, trained persons, trained trainers and training materials;¹⁰⁷

In the Specific Strategic Objective 2.4. - Justice and Administration the following activities are foreseen:

- Building capacities of judges and public prosecutors regarding the issue of burden of proof, types of evidence and regarding forms of discrimination
- Building the capacities of judges and public prosecutors on the issue of discrimination
- Sensitizing police officers about the non-discrimination concept
- Monitoring cases of hate crime

It should be noted that the agencies responsible for conducting the last activity, ie monitoring of hate crimes are the National Coordinative Body¹⁰⁸, MOIA, Basic Public Prosecutor's Office and the courts.

The Strategic Goal 3 - Raising the public awareness about recognizing forms of discrimination and promotion of the concepts of non-discrimination and equal opportunities¹⁰⁹ envisages undertaking measures for prevention of hate speech and violence and other forms of discrimination against ethnic communities, women, LGBTI persons, persons with disabilities, etc.

103 2016-2020 NATIONAL EQUALITY AND NON-DISCRIMINATION STRATEGY, May 2016; available on: https://www.legislationline.org/download/id/6795/file/FYROM_national_equality_non_discrimination_strategy_2016_2020_en.pdf

104 Strategy for Roma Inclusion 2022 -2026; available on: <https://www.mtsp.gov.mk/content/pdf/2022/Strategija%20za%20inkluzija%20na%20Romite%202022-2030%2003-02-2022%20finalna%20verzija.pdf>

105 2016-2020 NATIONAL EQUALITY AND NON-DISCRIMINATION STRATEGY, page 15

106 Work and labour relations; education, science, sports and culture; social security; judiciary and administration; and access to goods and services

107 Strategic Goal 2 - Strengthening the capacities, advancement of the work and coordination of institutional mechanisms for the prevention of and protection against discrimination, and promotion of equal opportunities

108 The Government of the Republic of North Macedonia, at the session held on March 27, 2018 year, adopted a Decision on the establishment of a National Coordinative Body to monitor the situation with non-discrimination and the implementation of laws, bylaws and strategic documents in this area. The establishment of this body is aimed at the implementation of the Work Program of the Government of the Republic of Macedonia 2017-2020 and the Strategy for Equality and Non-Discrimination 2016-2020, which will achieve better coordination and efficiency of mechanisms for prevention and protection against discrimination, and in order to build an equal society for all.

109 Ibid, page 31

There is currently no active mechanism in the country to promote non-discrimination and equality with a focus on hate speech and hate crimes, given that this strategy is no longer in force and the new strategy has not yet been adopted¹¹⁰. Such a time gap creates uncertainty and inconsistency in the implementation of the planned activities.

The Strategy for Roma Inclusion 2022 -2026 has been adopted in accordance with the priorities of the Government 2020-2024 program which refer to ensuring accelerated and sustainable economic growth, higher standard of living and quality of life of citizens, quality education accessible to all and full implementation of the Ohrid Framework Agreement. These strategic priorities are directly related to the inclusion of Roma in terms of promoting the position of ethnic communities and ensuring equal treatment and respect for the fundamental rights of all citizens, and in the direction of the Roma community.

Within the Measure 3, Specific objective 2 from the Strategic goal 8¹¹¹ in the section improving the institutional and political framework collection of disaggregated data on hate speech and hate crimes committed with anti-Roma motives, including cross-sectoral data is envisaged. The impact of hate speech on the Roma community is particularly untreated. As members of one of the most marginalized groups of citizens in North Macedonia, Roma, especially in Bitola, suffer the most intense hate speech in the daily communication on social networks.¹¹² The consequences of not treating hate speech have an impact on the dignity of a group, creating negative social climate, as well as the transfer of hate speech off the Internet and into the everyday life. Additionally, the historical lack of commitment to eradicating racism reflects the danger of rapidly spreading anti-gypsism ideas precisely through social networks.¹¹³

The Government of the Republic of North Macedonia, at the session held on March 27, 2018, adopted a Decision¹¹⁴ on the establishment of a National Coordinative Body on Anti-Discrimination to monitor the situation with non-discrimination and the implementation of laws, bylaws and strategic documents in this area. The NCB is composed of 36 members, representatives of state institutions, local self-government units, associations, trade unions, employers' associations and independent experts.¹¹⁵ According to the decision of the Government, "External experts and representatives of the Mission of OSCE in Skopje, from the Office of the High Commissioner for Human Rights in Skopje and from the Office of the Delegation of the European Union in Skopje and other independent experts are involved in the work of the National Coordinative Body".¹¹⁶ The NCB has the task of monitoring the situation

110 At the 48th session of the Government held on May 28, 2022, the Government adopted the new Strategy on equality and non-discrimination 2022-2026, available at: <http://vlada.mk/node/28946>. However, the Strategy is still waiting for a vote before the Parliament in order to be adopted and start its implementation.

111 Eliminate the forms of manifestation of anti-Gypsyism and reduce discrimination against Roma, four specific goals are foreseen related to the creation of an institutional framework for recognizing anti-Gypsyism, sensitizing the institutions and creating mechanisms for protection against institutional discrimination

112 Annual report on hate speech monitoring, Helsinki Committee, 2020, page 17

113 Hate speech on social networks and its impact on the Roma community, Romalitico, Roma policy and analysis, 2021, page 12, available at: https://www.romalitico.org/images/2021/pdf/Govorot_na_omraza_na_socijalnite_mrezi_i_negovoto_vlijae_vrz_romskata_zaednica.pdf

114 Official Gazette No.60/2018, 3 April 2018, available at:

<https://www.slvesnik.com.mk/Issues/7b5d2407fcea4e91a124f34eb7fb7fd8.pdf>

115 Members of the NCB are the Ministry of Labor and Social Policy (six members); General Secretariat of the Government of the Republic of Macedonia (one member); Ministry of Justice (one member); Ministry of health (one member); Ministry of Education and Science (one member); Ministry of Information society and administration (one member); Ministry of Transport and Communications (one member); MoIA (one member); Ministry of Finance (one member); Secretariat for European Affairs (one member); Agency for Exercising the Rights of Communities (one member); Agency for Youth and Sports (one member); Employment Agency of the Republic of Macedonia (one member); Commission for Protection against Discrimination (one member); Ombudsman of the Republic of Macedonia (one member); The organization of employers of North Macedonia (one member); The Federation of Trade Unions of North Macedonia (one member); The community of local units self-government (one member); Margin Coalition (one member); - Helsinki Committee (one member); NGO Hera (one member); The Non-Discrimination Network (two members); Macedonian Young Lawyers Association (two members); NGO Polio Plus (one member); Institute for Human Rights (two members); Humanitarian and charitable association of Roma - Moon (one member); NGO Subversive Front (one member); Independent expert distinguished in the field of human rights as a permanent member (one member).

116 Decision on establishing a National Coordinative Body for monitoring the situation with non-discrimination and the implementation of laws, bylaws and strategic documents in this area, art.2 para 2

with discrimination, to participate in development of an anti-discrimination strategy, to monitor the implementation of the regulations in this area and to inform the Government. NCB work is based on the National Work Program for the coordinative body for monitoring the situation with non-discrimination and implementation of laws, bylaws and strategic documents in this area for the period 2018-2020. The program for 2018-2020 envisages specific activities for the NCB in several areas:

- Area 1 - Monitoring and improving the legal framework and Equality and Non-Discrimination Policies,
- Area 2 – Strengthening of capacities, promotion of work and coordination of institutional mechanisms for prevention and protection against discrimination and promoting equality,
- Area 3 - Data collection and monitoring of conditions.

As shown above, the focus of the NCB is not on hate speech which creates a gap in the area of prevention and protection from such speech.

In the country there are no strategies in force that are addressing hate speech and hate crimes towards persons with disabilities and LGBT+ persons.

In 2019 in a workshop organized by OSCE Mission to Skopje, a Declaration Against Hate Speech in Media and on Internet¹¹⁷ was signed by every institution in Republic of North Macedonia¹¹⁸. With the Declaration the Network for Combating Hate Speech in the Media has been established. The signatories of this Declaration were representatives of the professional media and journalism associations, decision-makers, state and regulatory bodies responsible for the protection of human rights, civil society organizations and education, research and other entities in the field of media and protection of freedom of expression and human rights. The main goal of the Network is to prevent the spread of hate speech in the public sphere, to strengthen the professional and ethical performance of journalistic activity and to raise the awareness of the general population about the negative consequences of hate speech.

The declaration states, among other things, that the members of the network will work on developing mechanisms for recognizing and reporting cases of hate speech to the competent institutions and bodies, will work within their competencies to develop forms and support and protect journalists and media representatives, will advocate for the affirmation of the role of the media, but also of the service providers and social networks in the prevention of hate speech, as well as coordinated initiation of programs, self-regulatory mechanisms and internal codes of the media and service providers, as well as other preventive measures which will prevent the use of hate speech in the public sphere, without endangering the right to freedom of expression.

This Declaration is not a document that imposes an obligation on institutions and other signatories to combat hate speech, nor does it impose an obligation to collect, categorise and present hate speech data. This declaration is an expression of will of the signatories to be involved in the prevention of hate speech.

However, there are no visible results from the formation of this network nor any evidence that it still exists. Some of the assumptions for the non-functioning of the network are the lack of funds in order to undertake joint activities and the lack of initiative on the part of the members in the network which is a result of not having a formal structure that includes the establishment of bodies with certain responsibilities such as the board that will adopt a plan for the operation of the network annually and coordinate the work of the network, will establish a system at work, will adopt acts for the operation of the network and will determine the budget of the network.

¹¹⁷ Available at: <https://semm.mk/attachments/deklaracija.pdf>

¹¹⁸ NGO's, MoIA, Media, The Academy for Judges and Public Prosecutors, the Agency for Audio and Audio-visual Media Services, the Association of Journalists of Macedonia, the Ombudsman, Ministry of Information Society and Administration, Cabinet of the Minister without portfolio in charge of communications, accountability and transparency etc.

Having in mind that the network is formed by signing a declaration that does not produce and does not impose any obligations on the members but is only an expression of will of the institutions in the fight against hate speech, it is necessary to establish a special/national coordinative body that will have a permanent structure and it will be formalized and will closely cooperate with the network.

Recommendation:

Establishment of a National Coordinative Body for Combating Hate Speech (with a formal structure) which will closely cooperate with the network.

III. Data

III.1 The national situation

Several institutions in the Republic of North Macedonia collect data relevant in analysing discrimination. According to the Law on Prevention and Protection Against Discrimination, all entities that are legally obliged to collect, record and process data, have an obligation to display this data by the discriminatory grounds encompassed within the Article 5¹¹⁹ of the Law relevant in the field, and for the purpose of promotion and advancement of equality and prevention of discrimination.¹²⁰

As shown above, the law does not specifically address any authority, nor does it impose an obligation to collect, record and process data. On the contrary, as for the entities to which the obligation is imposed, the law mentions “All entities that are obliged by law”, but who are those entities, and by which laws the obligation is imposed is not clearly stated. The law only imposes an obligation on these entities for displaying the collected data on discriminatory grounds such as “race”, skin colour, origin, national or ethnicity, gender, sexual orientation, gender identity, belonging to a marginalized group, language, citizenship, social origin, education, religion or belief, political belief, other belief, disability, age, marital status, property status, health status, personal status and social status or any other basis regulated with Article 5.

At the same time the law introduces an obligation for the CPPD to collect and publish statistical and other data and to form databases in relation to discrimination¹²¹, and CPPD further includes it in the annual report.

The Ombudsman is an institution that protects the rights of citizens when they are injured by public institutions. The Law on the Ombudsman¹²² does not contain specific provisions relating to hate speech. The Law uses the terms “human rights” and “discrimination” but does not offer a definition of discrimination, nor states prohibited grounds. However the Law imposes an obligation for the Ombudsman as a mechanism for civil control to prepare a report on its work and implemented actions which is an integral part of the Annual report on the degree of ensuring compliance, promotion and protection of constitutional and legal rights of citizens.¹²³ The annual report contains an analysis of the work of The Ombudsman, the degree of ensuring respect, promotion and protection of the constitutional and legal rights of the citizens and the observance of the principles of non-discrimination.¹²⁴

The Ministry of Internal Affairs, i.e. law enforcement, the Public Prosecution and the courts are the institutions primarily responsible for collecting data on crimes. The data should include the number of reported cases, number of cases processed, and cases completed¹²⁵. Pursuant to the Law on State Statistics¹²⁶, “the Ministry of Internal Affairs is one of the authorized bodies for conducting statistical research, that is, for collecting, processing, presenting, keeping, protecting and disseminating statistical data.” Based on the adopted Program for Statistical Research for the period 2018-2022¹²⁷, „the MIOA is competent to

119 race, skin color, origin, national or ethnicity, gender, sexual orientation, gender identity, belonging to a marginalized group, language, citizenship, social origin, education, religion or belief, political belief, other belief, disability, age, marital status, property status, health status, personal status and social status or any other basis.

120 LPPD, art.3 para 4

121 Ibid, art.21 para 1 item 24

122 Law on the Ombudsman, Official Gazette No. 60/03, 114/09, 181/16, 189/16, 35/2018

123 Ibid, art.31-c para 4

124 Ibid, art.36 para 1

125 Conclusion made based on the respective laws, court rules, and their annual reports

126 Law on state statistics, “Official Gazette of the Republic of North Macedonia” no. 54/1997, 21/2007, 51/2011, 104/2013, 42/2014, 192/2015, 27/16, 83/18, 220/18, 31/20, art.1, available at: <https://www.stat.gov.mk/ZakonZaStatistika.aspx>

127 Program for Statistical Research for the period 2018-2022, “Official Gazette of the Republic of North Macedonia” no. 22/18, available at: <https://www.stat.gov.mk/pdf/Programa20182022.pdf>

conduct research on crimes in the area of “justice and criminality.”^{128 129}

However, there is no precise and clear provision in the national legislation which imposes the obligation of a specific body to systematically collect, record and process data, related to hate speech and hate crimes.

The European Commission’s report on North Macedonia from 2019¹³⁰ stated that “collection of data on hate speech is not systematic while an increase in cases of hate crime was noted in the Civil Society database” followed by the same conclusion in the European Commission, North Macedonia 2020 report¹³¹ “non-systematic collection of data on hate speech remains an issue” with a continued trend of increasing hate crime cases registered in the civil society database in 2019.¹³² Still in 2021 the absence of the systematic collection of data on hate speech remains an issue.

III.1.1 Data collected by authorities

The police authorities are obliged by law¹³³ to keep records of persons whose freedom of movement is restricted on any grounds; persons for whom there are grounds for suspicion that they are perpetrators of crimes or misdemeanours; filed criminal charges against a known and unknown perpetrator, reported perpetrators and victims of criminal offenses prosecuted ex officio; perpetrators of crimes and misdemeanours - general alphabetical records, committed crimes; committed offenses/misdemeanours; etc.¹³⁴ The records referred to “committed crimes” may be structured based on:¹³⁵ records of crimes prosecuted ex officio; records of crimes prosecuted by a private lawsuit; records of injured persons.

The records from Article 69 of the Law are kept by the Police separately, depending on whether they are based on facts or intelligence.¹³⁶ Data on the number of committed crimes or misdemeanours and the number of reported perpetrators and injured parties, as well as other numerical data are displayed in the annual report prepared by the Public Security Bureau - Department of Criminal Intelligence and Analysis.¹³⁷ In the annual report 2020¹³⁸ under the section Cybercrime it was reported that “in the area of hate crime, there was a decrease of incriminations by 43.1% compared to 2019, whereby in 2020 a total of 29 crimes were registered, for which 26 criminal charges were filed against 30 perpetrators. The trend of committing acts through the information system continues - 79.3% of the total number of registered, and they are most often committed by threatening the life and body of the injured persons, directing insults and disparaging national, religious and ethnic grounds, with victims holding public office (President of North Macedonia, the Prime Minister, President of the Assembly, politicians, former and current ministers and ambassadors, judiciary), religious community, political party, as well as police officers, journalists and other individuals.”¹³⁹

The situation with hate speech and incitement to violence in 2021 worsened compared to

128 Ibid, page 5,6 and 7

129 Obtained information from the answered questionnaire by the MIoA

130 European Commission, North Macedonia 2019 report, page30 , available at: <https://ec.europa.eu/neighbourhood-enlargement/system/files/2019-05/20190529-north-macedonia-report.pdf>

131 European Commission, North Macedonia 2020 report, page32 , available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/north_macedonia_report_2020.pdf

132 Ibid

133 Law on police, Official Gazette No. 114/06, 6/09, 145/12, 41/14, 33/15; available at: <https://www.mvr.gov.mk/Upload/Documents/Zakon%20za%20policija,%20precisten%20tekst%2015.04.2015%20.pdf>

134 LP, art.69

135 Ibid, para 3

136 LP, art.70 para 1

137 Ibid, art.9

138 Annual report 2020, no. 22.4-519/1,15.03.2021; available at: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%202020%20kopi.pdf

139 Ibid, point 2.9.2 – Cybercrime, page 77

2020 which resulted with increased number of registered criminal acts by the police authorities.

Given the growing mass use of the Internet and the increased activity of social media in order to prevent the spread of false news, hate speech and incitement to violence in 2021 in the area of Cybercrime¹⁴⁰ were detected and registered 30 criminal acts “spreading racist and xenophobic material through a computer system” for which 30 perpetrators were criminally reported and 29 criminal acts “endangering security” for which 21 perpetrators were criminally reported.¹⁴¹ The trend of committing crimes through the information system continued and in 2021 it has increased by 8.7% compared to 2020 and represents 88% of the total number of registered crimes. The acts were committed by threatening the life and body and calling for violence against the injured persons, most often as victims of public office. There have also been cases of insulting and belittling on national and ethnic grounds, promoting and inciting hatred based on religion or belief, manifesting hatred, spreading and inciting violence against Macedonians and certain ethnic communities.¹⁴²

III.1.1.a Hate crime

According to OSCE ODIHR, under the section “Hate Crime Reporting”, “North Macedonia has regularly reported hate crime data to ODIHR.¹⁴³

*As noted by ODIHR **hate crime data** is collected by “police officers who record relevant information while preparing their reports in a section titled “Indication that a hate crime has been committed”. This section includes indicators that the incident was a hate crime, while also stating the relevant characteristics of the victim singled out by the perpetrator of the crime. These characteristics include: sex, race, skin colour, gender, belonging to a marginalized group, ethnic affiliation, language, nationality, social origin, religion or religious conviction, other types of conviction, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health status or any other ground set forth under law or international treaties. Data about criminal charges filed under the relevant articles are entered in the electronic data system of the Ministry of the Interior. The Ministry’s Unit for Criminal Intelligence and Analysis keeps national records.”¹⁴⁴*

Within the same section “Hate Crime Reporting”, OSCE points out that the data reported to ODIHR also include cases of incitement to hatred.¹⁴⁵

However, according to the Ministerial Council Decision 9/09¹⁴⁶, *“participating States have committed to promptly investigating hate crimes and ensuring that the motives of those convicted of hate crimes are acknowledged. To that end, the law enforcement agencies must, first of all, record the bias motivation behind hate crimes. In the Ministerial Council Decision 9/09, participating States have also committed to introducing or further developing professional training and capacity-building activities for law-enforcement, prosecution, and judicial officials dealing with hate crimes. ODIHR observes that the law enforcement agencies of North Macedonia have not recorded the bias motivations of hate crimes.”*

140 Annual report 2021, no.22.4-506/1, 15.04.2022, available at: mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj%20na%20MVR%20za%202021%20godina,%20%20-%2015_04_2022.pdf

141 Annual report 2021, no.22.4-506/1, 15.04.2022, page 41

142 Ibid, page 38,39

143 OSCE,ODIHR, Hate Crime Reporting, How hate crime data is collected in North Macedonia, available at: <https://hatecrime.osce.org/north-macedonia>

144 OSCE,ODIHR, Hate Crime Reporting , How hate crime data is collected in North Macedonia, available at: <https://hatecrime.osce.org/north-macedonia>

145 OSCE,ODIHR, Hate Crime Reporting, How hate crime data is collected in North Macedonia, available at: <https://hatecrime.osce.org/north-macedonia>

146 Ministerial Council Decision No. 9/09 COMBATING HATE CRIMES, MC.DEC/9/09, 2 December 2009, available at: <https://www.osce.org/files/f/documents/d/9/40695.pdf>

The Ministry of Internal Affairs uses a single criminal report form that contains a separate hate-crime field. MoIA is using an internal electronic bulletin that has a hate crime tick box on it. However, the police officers fail to tick it, hence the small number of hate crime offences registered.¹⁴⁷ The reason behind this could be the lack of implemented trainings against hate crimes in the past period.

According to the Annual Report on Hate crimes 2020¹⁴⁸ more than 2,000 police officers have attended the training against hate crimes for law enforcement between 2016 and 2017¹⁴⁹. However as mentioned above there is no publicly available data on how many trainings are conducted with the police officers in the period from 2017 due date.

The Report¹⁵⁰ also points out that proper and timely recognition and registration of hate crimes by the police officials and the judicial authorities is unsatisfactory.¹⁵¹ Although the police authorities have started registering i.e. recognizing some of the reported incidents as hate crimes¹⁵², still, it can be seen that it is not a regular practice based on clearly established criteria or indicators of bias.¹⁵³ This is most probably because police officers do not know or recognise hate crime bias indicators. Due to the complexity of investigating hate crime, police officers tend to address these offences as regular crimes.¹⁵⁴

Recommendations:

- To implement a separate tick box for hate speech within the Electronic bulletin.
- Capacity building on hate crimes and hate speech
- To introduce a Memorandum of collaboration with Helsinki Committee for sharing data related to reported incidents of hate crimes and hate speech

The Public Prosecution is equipped with electronic Case Management System (CMS) that should be used by PPs around the country. The CMS is different from the ACCMIS¹⁵⁵ in a way that it is meant to automatically appoint a public prosecutor who is an expert in a field, unlike the ACCMIS through which a random judge is appointed. CMS is a web-based application, and it has a hate crime tick box. Inputting data is first a task of a data clerk up to the point a public prosecutor is appointed who then takes over. The data clerk, the appointed prosecutor, his/her supervisor, and the State PP all have access to the case.¹⁵⁶

However, the level of use of CMS is insignificant for reasons that “many POs register crimes manually, not all public prosecutors have received training on how to use the CMS and POs are significantly understaffed”.¹⁵⁷ In addition, until 2017, there was some level of specialization of public prosecutors working on specific crimes, but now everyone works on

147 Obtained information from the interview with the representative from OSCE Mission to Skopje

148 Annual Report on Hate crimes 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, page 10, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

149 Obtained information from the interview with the representative from OSCE Mission to Skopje

150 Annual Report on Hate crimes 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

151 Ibid, page 10

152 Please see section “The national situation”, page 37

153 Annual Report on Hate crimes 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, page 17, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

154 Obtained information from the interview with the representative from OSCE Mission to Skopje

155 Please see further down, section: Courts in RNM

156 Obtained information from the interview with the representative from OSCE Mission to Skopje,

157 Ibid

all crime related issues.¹⁵⁸ Each lower public prosecutor's office prepares an annual report on its work and submits the report to the immediate higher public prosecutor's office. The Public Prosecutor's Office of the Republic of North Macedonia prepares a unified annual report on the work of all public prosecutor's offices.¹⁵⁹

The annual report of the Public Prosecutor of RNM for 2020¹⁶⁰ processes the data by number of submitted criminal offenses and systematizes them by adult perpetrators, juveniles, unknown perpetrators. The data is further analysed by acting on criminal charges stating the number of solved criminal charges against known perpetrators. The report also addresses the actions taken by the public prosecutors in the cases such as: Request for data collection and necessary notifications; Investigative actions of the public prosecutor in a pre-investigation procedure; Results of investigations conducted by public prosecutors / Decisions on criminal charges etc. The results of investigations conducted by public prosecutors / Decisions on criminal charges are further broken down into number and structure of decisions on solved criminal charges, in the sense of which charges were rejected and on the basis of which article of the law were rejected, for which charges an indictment was filed (act, proposal), which charges are being investigated, etc.

However, the annual report of the Public Prosecutor of RNM for 2020 does not contain a separate section or any data related to hate speech and hate crime i.e. the collected data are not disaggregated by hate crime, hate speech, discrimination and do not include other particularly vulnerable category of persons or state the relevant characteristics of the victim. When it comes to prosecuting hate crimes, the police point to a problem, and that is the lack of information of the police whether the public prosecution (PP) is processing the complaints or charges are dropped.¹⁶¹ On the other hand the PP refers to this problem as a problem caused by the MoIA, and not the PP, since they always informs the MoIA of the outcome of its complaints, but it must be the MoIA that does not inform its police officers.¹⁶²

Recommendations:

- Introduce a special law on movement of cases in the PP as is the case with the Law on movement of cases in the courts. This way an obligation for every public prosecutor to use the CSM will be imposed.
- To implement a separate tick box for hate speech within CSM
- To implement an additional field to select paragraphs from the articles within CSM
- Capacity building the PP on usage of CSM and hate crimes and hate speech

The courts in RNM in accordance with the court rules of procedure process all statistical data in accordance with the data available in the Automated Court Case Management Information System (ACCMIS) System, and prepares monthly, quarterly and annual reports. These reports are submitted to the Supreme Court of RNM and the Judicial Council of RNM. ACCMIS is used for management of the movement of the cases.¹⁶³ Automated court case management register

¹⁵⁸ Ibid

¹⁵⁹ Law on public prosecutor's office Official Gazette No. 42, 16.02.2020, art.54 para 1,2 and 4, available at: <https://jorm.gov.mk/wp-content/uploads/2020/02/sluzhben-vesnik-na-rsm-br-42-od-16.2.2020-godina-1.pdf>

¹⁶⁰ Annual report of the Public Prosecutor of RNM for 2020, available at: <https://jorm.gov.mk/wp-content/uploads/2021/08/izvestia%D1%98-za-2020-%D1%98o-na-rsm.pdf>

¹⁶¹ Obtained information from the interview with the representative from OSCE Mission to Skopje

¹⁶² Ibid

¹⁶³ LAW ON THE MANAGEMENT OF THE MOVEMENT OF CASES IN THE COURTS, No. 08-1416/1, 16 February 2020, available at: <https://www.pravdiko.mk/wp-content/uploads/2020/03/Zakon-za-upravuvane-so-dvizheneto-na-predmetite-vo-sudovite-16-02-2020.pdf>

all actions taken by the president of the court, the court administrator, the judges and court clerks, from the day of receipt of the submissions in court until the day of final completion and archiving of cases.¹⁶⁴ The ACMIS is a very advanced system that has numerous options for storing and analysing data. Similar to the Electronic bulletin (MoIA) and the CMS (PP), the ACMIS also has a tick box on hate crime. This should be used after the judgment has been delivered by the court.¹⁶⁵ However, as it is the case with the other two systems, judges fail to tick it resulting in a small number of registered hate crime cases. The ACMIS can list cases by articles, but not by paragraphs.¹⁶⁶ Also when it comes to the judges even though they can recognize a hate crime, they do not deal with it as such, fearing that they would make the situation worse.”¹⁶⁷

In terms of this tool, further updating is needed in order for the selection of cases that have been committed from hate crime to be done at the moment of submitting the indictment / proposal.

The ACCMIS does not collect any data on hate speech. The way the courts file cases is by abbreviations that refer to a certain type of crime in the register - a book for records of the types of cases in ACCMIS.¹⁶⁸ Every registrar has its mark which becomes an integral part of the number of the case that is recorded in the register, which cannot be changed. Registers are opened with an automated computer management system defining their characteristics.¹⁶⁹ The main characteristics of a register are: name, designation, to which type (criminal, investigations, investigative actions, criminally adult etc.) or subtype (criminal investigation, investigations - organized crime, certain investigative actions etc.) belongs the case and to which organizational unit (department).¹⁷⁰

As can be seen this way of filing cases does not envisage a separate register for hate speech or hate crime.

Although there are some positive changes in the field of combating hate crimes such as the improvements in the ACCMIS that now have an optional button for registering hate crime cases and the possibility to obtain information related to final judgements on hate crimes and hate speech through the Supreme Court website the fact remains that from this way of registering the hate crimes and hate speech cases it is impossible to obtain relevant information since the data are not disaggregated by hate crime and hate speech.

III.1.2 Data collected by NGOs

Data on hate crime and hate speech is regularly collected and stored by non-governmental organizations i.e. Helsinki Committee for Human Rights who further on categorize the data through 2 online platforms.

Data on hate speech is collected and recorded via <http://www.govornaomraza.mk/> platform and it is disaggregated by categories which entails every foreseen grounds with the LPPD and CC. The committee prepares and publish monthly, quarterly and annual reports on a local and national level on hate speech using analytical-synthetic approach in terms of data

¹⁶⁴ Ibid, art.3 para 1

¹⁶⁵ Obtained information from the questionnaire of the Basic Criminal Court in Skopje

¹⁶⁶ Obtained information from the interview with the representative from OSCE Mission to Skopje

¹⁶⁷ Obtained information from the questionnaire of the Basic Criminal Court in Skopje

¹⁶⁸ http://www.vsrn.mk/wps/wcm/connect/central/022a5a53-8449-45dd-8953-b2fb44561d58/Sudski-delovnik-09-05-2013.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L088FOA1K8MT8K00U4-022a5a53-8449-45dd-8953-b2fb44561d58-mAmG2Gf

¹⁶⁹ Court rules of procedure, Official Gazette No.66/2013, art.240 para 1 and 2, available at: http://www.vsrn.mk/wps/wcm/connect/central/022a5a53-8449-45dd-8953-b2fb44561d58/Sudski-delovnik-09-05-2013.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L088FOA1K8MT8K00U4-022a5a53-8449-45dd-8953-b2fb44561d58-mAmG2Gf

¹⁷⁰ Ibid, para 3

collection, documentation and analysis. The process of collecting data, ie the observed cases of hate speech at the local level is performed by the committee in the cities of Tetovo, Bitola and Stip on a monthly basis.¹⁷¹ Monitoring hate speech at the local level means direct field observation of cases by watching sports matches, concerts, political meetings, exhibitions etc. At the same time, the process includes monitoring of print and electronic media as well as internet platforms. For the purposes of reporting on national level, the data (reported cases of hate speech) obtained from the <http://www.govornaomraza.mk/> platform is processed qualitatively and quantitatively, and according to the obtained statistical data, the intensity and the most common bases of hate speech are summarized.¹⁷²

Data on hate crime is collected and stored via <https://zlostorstvaodomraza.com/en/> platform disaggregated by category of hate crimes, i.e. by criminal offences¹⁷³ and by grounds (bias motivations)¹⁷⁴. The platform provides information as to the ways in which citizens can report incidents, via e-applications, Twitter, e-mail, and online forms, and displays statistical graphics. Helsinki Committee for Human Rights regularly reports to the OSCE Mission to Skopje which contributes to a more realistic and viable picture regarding the state of affairs related to hate crimes.

In order to keep track of reported cases on hate crimes the Helsinki Committee for Human Rights prepares and publish monthly, quarterly and annual reports on a local and national level that serves as an indicator of the scope, nature, and frequency of hate incidents perpetrated in the country. For the purpose of reporting the Committee uses the following definition about hate crime: “hate crime is understood to be a crime motivated by intolerance, i.e. prejudice towards a certain group in society. Therefore, anyone can be a victim of hate crime, even though members of vulnerable communities are the most frequent victims. Hate crimes are often directed against members of different ethnical communities, religious and sacred buildings, Roma people, sexual minorities, and internally displaced persons.”¹⁷⁵ The used definitions fall in line with the definition of Hate crime in the CC¹⁷⁶.

III.1.3 Data collected by the Equality bodies

The Ombudsman and the Commission for Prevention and Protection against Discrimination collect, process and store data only for discrimination cases. The processed data is further on presented in the published annual reports¹⁷⁷ of the above-mentioned bodies. The categorization of the discrimination cases is disaggregated by the grounds regulated with art. 5 from the LPPD.

It should be noted that the Ombudsman and the Commission for Prevention and Protection against Discrimination do not collect, process, store and report data on hate speech. However, it is crucial to emphasize that the Law on Prevention and Protection Against Discrimination does not contain provisions that regulate and prohibit hate speech, which directly leads to the non-existence of legally regulated competence and obligation of these stakeholders/ equality bodies to collect and process data related to the hate speech. The LPPD

171 Annual report on hate speech monitoring, Helsinki Committee for Human Rights, 2020, page 8

172 Ibid

173 Please see section II. Legislative framework, page 8, para 3 items 1-7

174 Please see LPPD, art.5

175 Annual report on hate crimes in 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, , page 6, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

176 CC, art.122 para.42 “A hate crime expressly provided by the provisions of this Code is considered a criminal offense against a natural or legal person and related persons or property committed in whole or in part due to a real or presumed (imagined, conceived) characteristic or connection of the person who refers to race, skin color, nationality, ethnicity, religion or belief, mental or physical disability, gender, gender identity, sexual orientation and political belief. “

177 Annual report 2021, CPPD, available at: <https://kszd.mk/wp-content/uploads/2022/03/Godisen-izvestaj-2021.pdf>

as explained above¹⁷⁸ in article 10 regulates harassment as a form of hate speech that aims to provoke or create a threatening or humiliating practice or approach. Therefore, in their annual reports this issue is addressed as speech that incites harassment.

Presentation and analysis of national data

Despite the fact that hate crime data is not collected systematically, regularly disaggregated, or provided by all authorities, there is some available information on the types of offences as well as how cases have been handled.

The official statistics on hate crimes that apply to the entire territory of the Republic of North Macedonia can be found on the OSCE Mission to Skopje website. The police authorities i.e. Ministry of Internal Affairs regularly submit reports to OSCE/OIDHR and *“Helsinki Committee remains the only non-governmental organization that informs the OSCE/ODIHR about the hate crime situation in the country.”*¹⁷⁹

Table 1: Official data on hate crime¹⁸⁰

Year	Hate crimes recorded by the Police	Prosecuted	Sentenced
2020	29	Not available	Not available
2019	23	-	-
2018	33	-	-
2017	Not available	Not available	Not available
2016	2	-	-

“Figures include cases of incitement to hatred, threats and attacks due to political affiliation, which may fall outside of the OSCE’s hate crime definition.”

Statistics do not exist when it comes to monitoring how many of the recorded hate crimes have been reported to the competent prosecutor’s office. Also there are no statistics on how many cases the prosecution has filed an indictment or proposal with the courts or how many hate crimes have been finalized with a conviction, which could indicate a potential better quality of reports filed.

According to data provided by the Basic Criminal Court in Skopje in 2020 and 2021¹⁸¹, 75 cases as hate speech and hate crimes were registered out of which 58 were finalized with a sentence.

178 Please see section II.1 Hate speech regulations and sanctions

179 Annual report on hate crimes in 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, page 12, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

180 <https://hatecrime.osce.org/index.php/north-macedonia#incidents-reported>

181 Data obtained through completed questionnaires

Table 2: Hate speech and Hate crime

CRIME	YEAR OF REGISTER							
	2020				2021			
	Received	Resolved	Final		Received	Resolved	Final	
			Convictions	Acquittals			Convictions	Acquittals
Endangering security (Art.144 para.2)	20	12	12	1	28	28	21	3
Extortion (Art.258 para.2)	3	1	1	0	4	3	3	0
Coercion (Art.139 para 2)	0	0	0	0	1	1	0	0
Damage to objects of others (Art.243 para 2)	0	1	0	1	0	0	0	0
Robbery (Art.237 para 2)	0	1	1	0	0	0	0	0
Severe bodily injury (Art.131 para.2)	5	3	3	0	10	5	6	0
Racial and other discrimination	1	0	0	0	0	0	0	0
Spreading racist and xenophobic materials through computer system (Art.394-g)	2	1	1	0	1	2	2	0
TOTAL	31	19	18	2	44	39	32	3

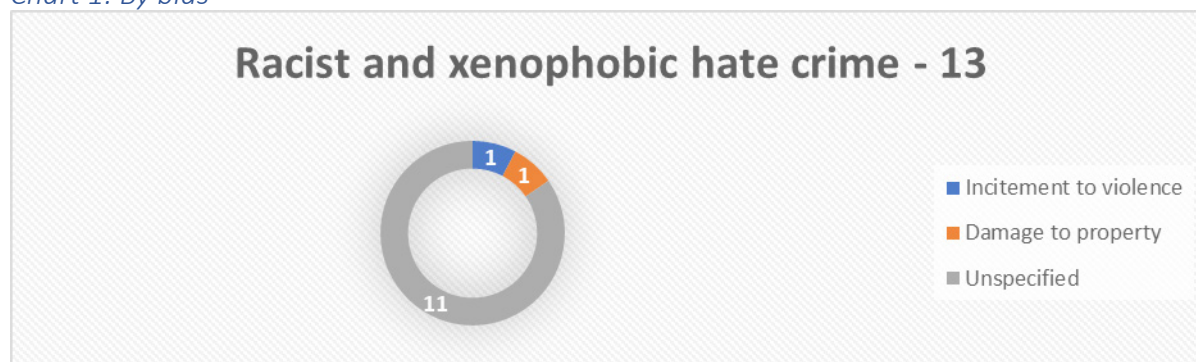
From this way of reporting, it is evident that the data are not disaggregated by hate crime and hate speech and do not include other particularly vulnerable category of persons or any protected characteristic.

Below are presented hate crime data recorded by the police disaggregated by type of crime and by bias.

This division of hate crimes into bias motivation and type of crime was made by the police. However, for bias motivation they only recorded Racist and xenophobic hate crime.

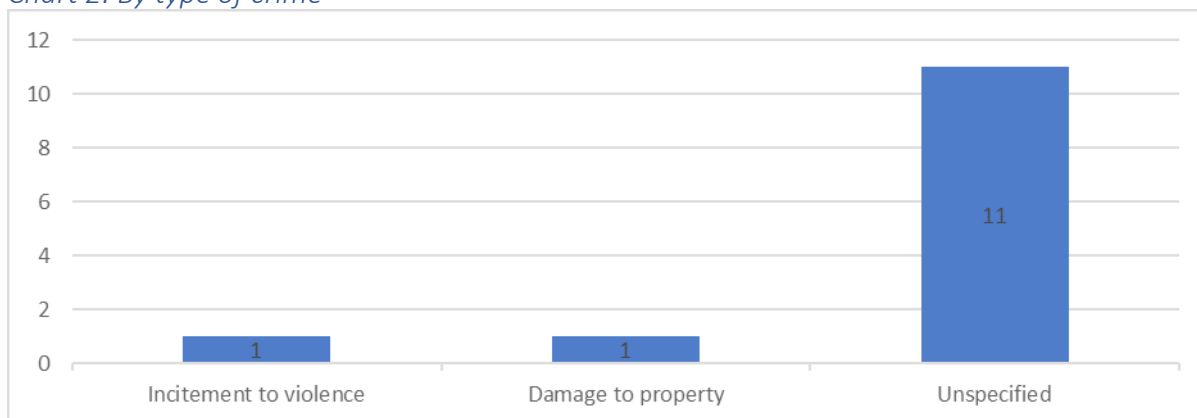
The list that the police submit to the OSCE is in Excel format (please see Annex no....)

Chart 1: By bias



The records under “unspecified” represent offences of Endangering security (Article 144 § 2 of the Criminal Code)

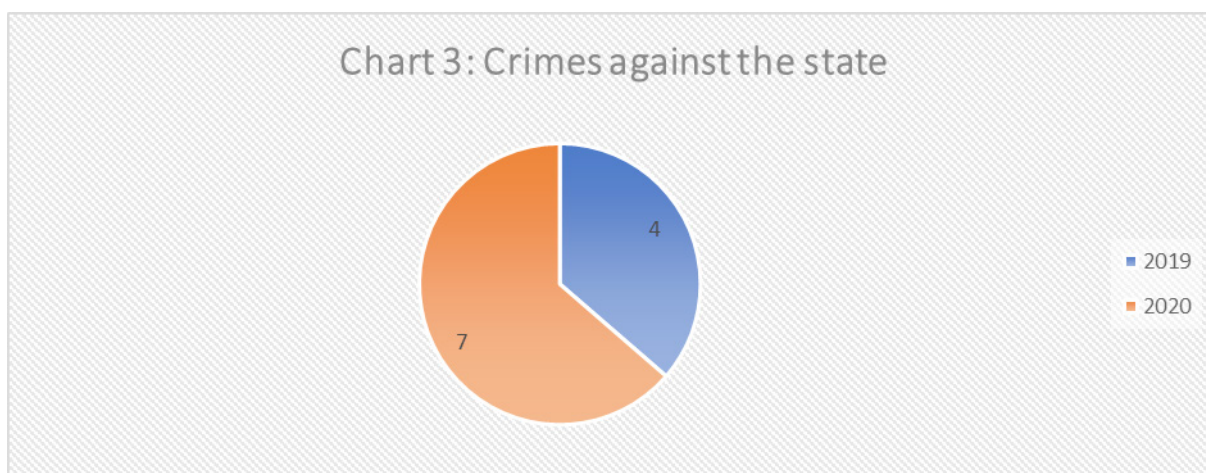
Chart 2: By type of crime



As shown above hate speech data is not collected at all by any authorities. Only the MoIA/police authorities partially keep records, namely data for received online reports through the 'Red Button' application and publish summarized data within the annual report under the heading 'hate crime'. Data includes the type of criminal offence in accordance with the articles from the CC.

From the annual report 2020¹⁸² general information can be obtained regarding the number of received reports through the "Red Button" application which is intended for reporting knowledge or information in the field of child abuse, hate crime and incitement to violence, as well as human trafficking. 223 online reports were received in all the above categories for which there are no special statistics, how many reports refer to each category individually and for how many of those reports the police officers have filed appropriate criminal charges with the competent public prosecutor's office for further action.

In the section **crimes against the state** the annual report 2020¹⁸³ in point 2.1 shows the increased number of crimes against the state in 2020 with seven crimes recorded in this area, compared to 2019 when four crimes were detected.

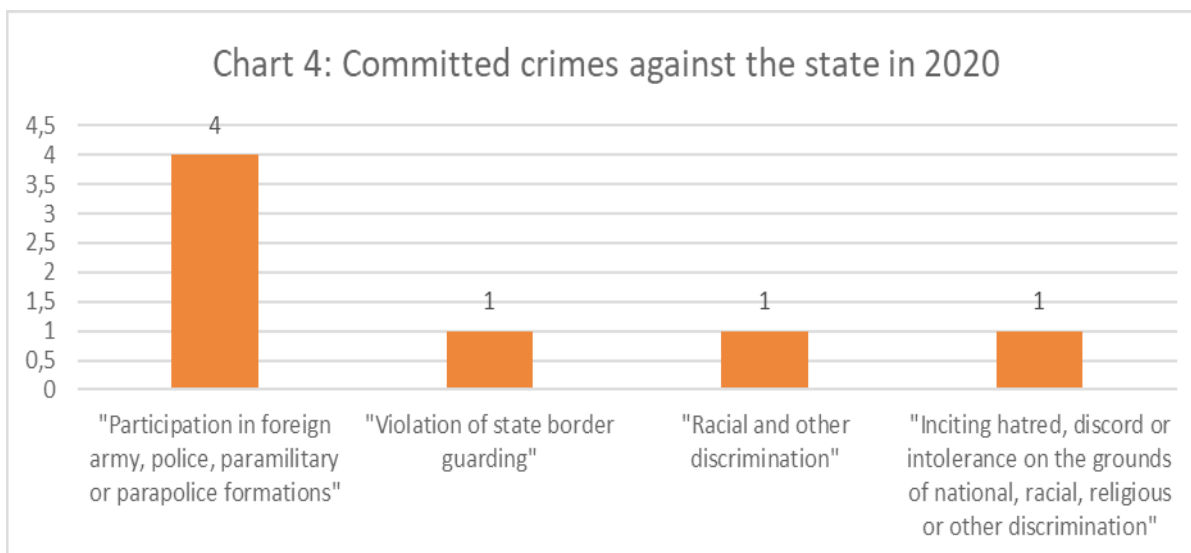


Annual report 2020¹⁸⁴

182 Annual report 2020, no. 22.4-519/1,15.03.2021, page 15

183 Annual report 2020, no. 22.4-519/1,15.03.2021; available at: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%202020%20kopi.pdf

184 Ibid, point 2.1, page 43



Annual report 2020¹⁸⁵

From the presented data in chart 4 it's evident that the data is collected and categorized by the sections¹⁸⁶ within the Criminal code (Section 28 – Crimes against the state). However, "racial and other discrimination" is regulated with art.417 from the CC and falls under the section 30 – Crimes against humanity and international law, while the crime "inciting hatred, discord or intolerance on national, racial, religious and other discriminatory grounds" (art.319) falls under the section 28 – Crimes against the state which primarily produces three perceived problems:

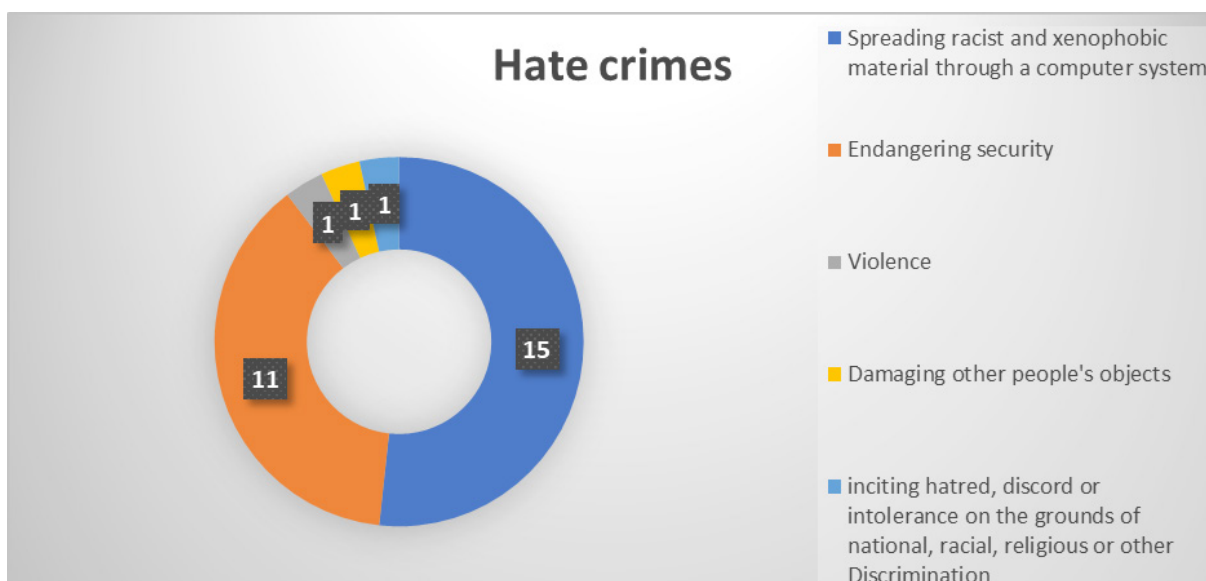
- the categorization and presentation of data is conflated and confused given the fact that the two offenses belong to different sections in criminal law
- both crimes regulate hate speech but are presented as hate crimes and are categorized as crimes committed against the state without being treated as hate speech. This points to the problem that there is no method to produce hate speech data that is disaggregated according to crime type and bias motive.
- In addition, both offences are not included in the 'hate crime' section, 2.8.8 (please see below) which only increases the confusing categorization and presentation of data.

The report contains a special section 2.8.8 dedicated to hate crime with the following data: According to the type, the most numerous criminal acts are the following:

¹⁸⁵ Ibid

¹⁸⁶ please see point III Legislative framework

Chart 05: The most numerous criminal acts categorized by type

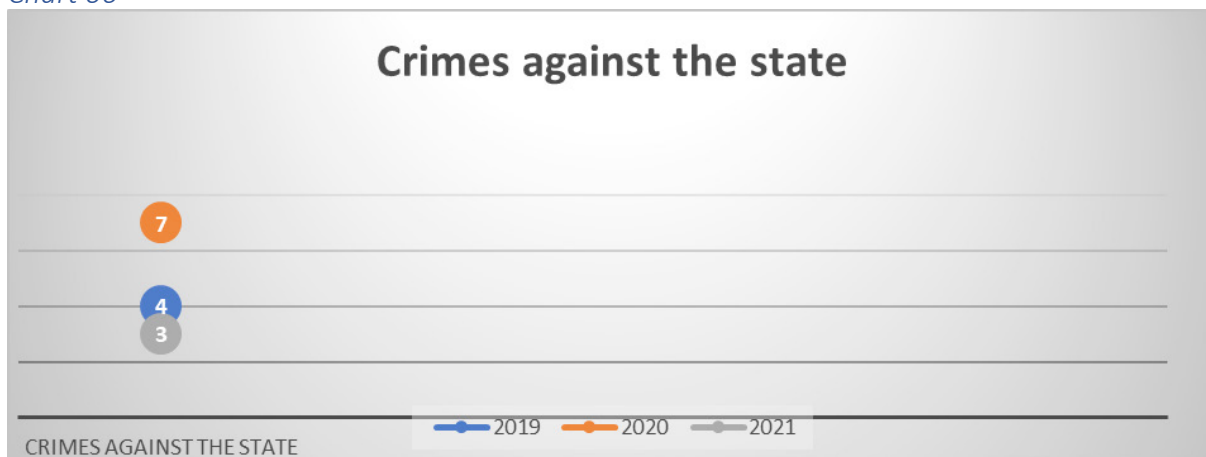


As evident from the chart the police authorities do not separate the recorded data as 'hate speech' and 'hate crime'.

The Ministry also undertake activities to detect abuses on the Internet and social networks in terms of preventing the spread of false news, hate speech and incitement to violence. In this context, the activities for detection, monitoring and elucidation of the conditions and phenomena related to the spread of racist and xenophobic material were especially emphasized, during which 28 criminal acts of "endangering security" were detected for which 25 perpetrators criminally reported and 27 criminal acts of "spreading racist and xenophobic material through a computer system" with 16 perpetrators criminally reported.¹⁸⁷

In the section **crimes against the state** in the annual report 2021¹⁸⁸, point 2.2 shows a reduction in the number of crimes by 57% compared to 2020 with three crimes detected, from which two crimes for "inciting hatred, discord or intolerance on national, racial, religious and other discriminatory grounds", and the third crime refers to "racial and other discrimination". Within the detected crimes, 10 perpetrators were criminally reported, one of whom is a minor.

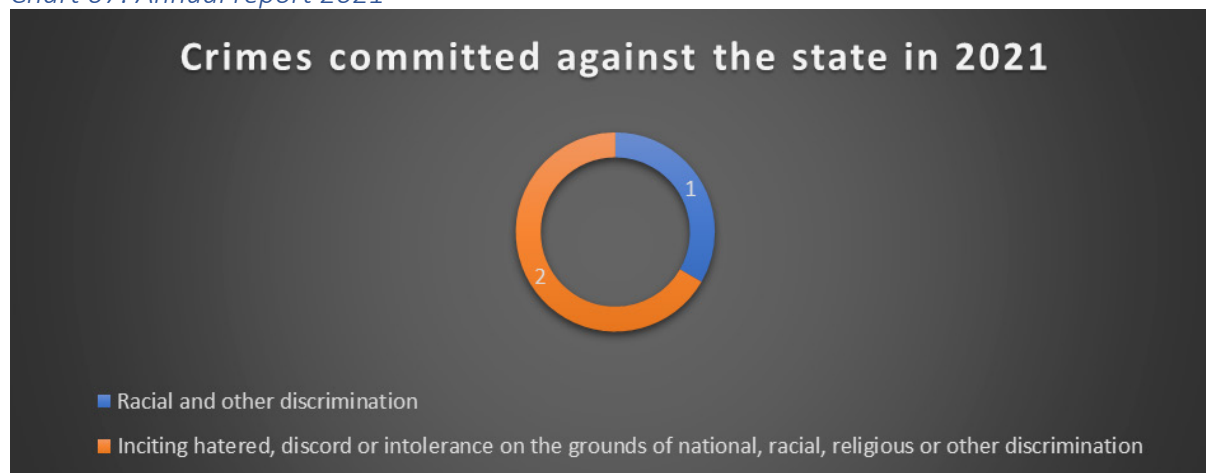
Chart 06



187 Ibid, point 2.9.2 - Cybercrime

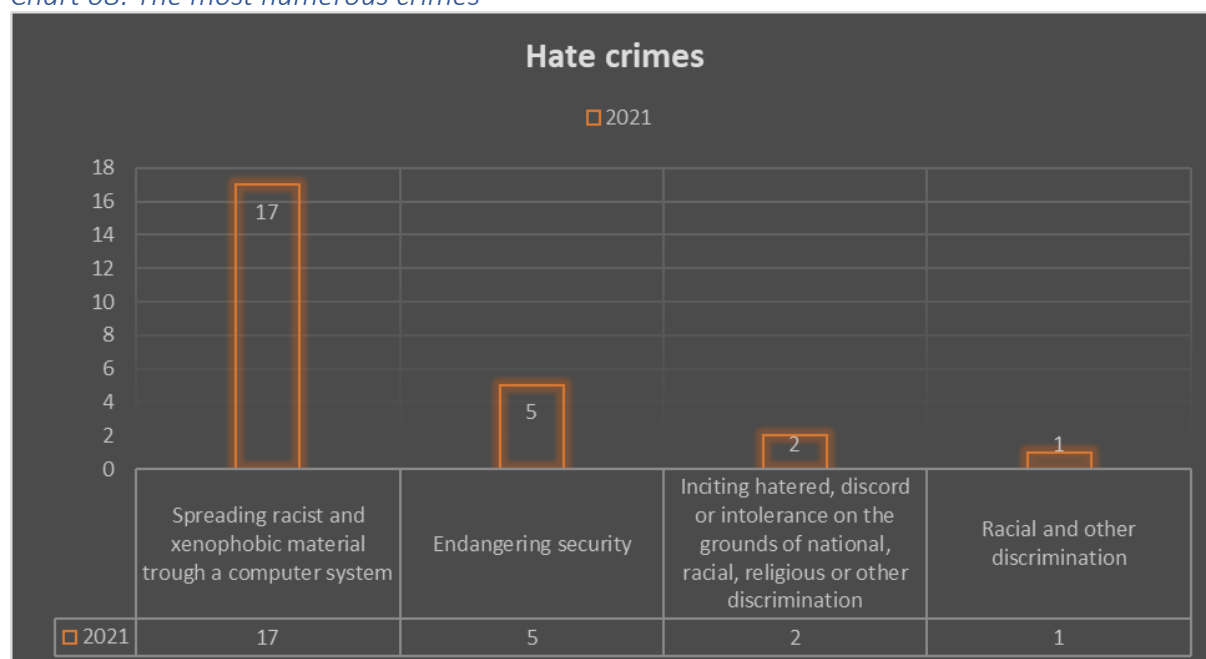
188 Annual report 2021, no.22.4-506/1.; page 20, available at: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj%20na%20MVR%20za%202021%20godina,%20%20-%2015_04_2022.pdf

Chart 07: Annual report 2021¹⁸⁹



In the section 2.13 “Hate crimes”, it is reported that during 2021, a total of 25 crimes were registered, which is a decrease of 13.8% compared to 2020. Regarding the registered 25 hate crimes, the police have filed 24 criminal charges against 31 perpetrators.

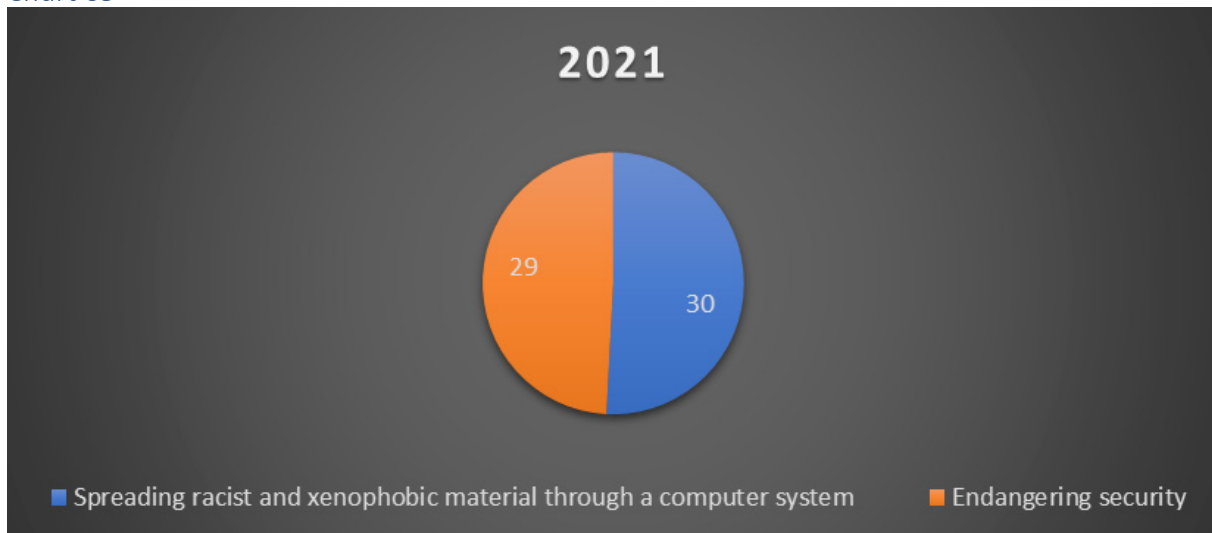
Chart 08: The most numerous crimes



According to the section 2.14.2 “Cybercrime”, in 2021 are registered 51 criminal acts related to “spreading racist and xenophobic material through a computer system” and “endangering security” for which 51 perpetrators were criminally reported.

189 Annual report 2021, no.22.4-506/1; page 20, available at: https://mvr.gov.mk/Upload/Editor_Upload/Godisen%20izvestaj%20na%20MVR%20za%202021%20godina,%20%20-%2015_04_2022.pdf

Chart 09



From the presented data it is evident that occurred hate crimes are reported by MoIA in 3 different sections, and that hate speech is identified as hate crime. As a result, it is unclear whether the authorities are aware of the distinction between hate crimes and hate speech. Additionally, the total number of detected and registered hate crimes and hate speech is not clear, given the way in which crimes are registered and presented. It is unclear whether the registered crimes against the state, such as racial and other discrimination and incitement to hatred, discord or intolerance on the basis of national, racial, religious and other discriminatory grounds, are the same crimes that are registered and presented in the section Hate Crimes i.e. the registered 3 criminal acts in the section criminal acts against the state are included in the registered 25 criminal acts in the section Hate crimes. This trend of confusing reporting continues in the area of cybercrime, where the criminal offenses of “spreading racist and xenophobic material through a computer system” (30) and “endangering security” (29) coincide with the same offenses in the area of Hate crimes, with one difference being the number of registered crimes.

Recommendations:

- Insert a separate heading for Hate speech in the Annual report of MoIA
- Create a small group within the MoIA specialized for hate crimes and hate speech
- Capacity building for police officers - members of this group
- Create Guidelines for recognizing hate speech and hate crimes
- Introduce a new way of reporting in order for every registered hate crime to be presented only in the section “Hate crime” and every registered Hate speech to be presented within the newly introduced chapter/section “Hate speech”
- To appoint focal points (trained hate crime professionals) by the Public Prosecutor’s Office and the Ministry of Internal Affairs that will coordinate and monitor the movement of hate crime cases and their registration.

From the above submitted data it is clear that the lack of available data on processed cases and cases that ended up in court with a final decision is a kind of evidence of improper handling of this type of cases. The movement of data begins in the police phase but disappears immediately upon arrival before the public prosecutor. Insufficient statistics for previous years, including 2021, makes it difficult to monitor the correlation between the number of reports

filed by the police and the reports that the prosecution has decided to accept and process to the court for further action. This lack of consistency in the movement of data points to the possibility of potentially better quality of reports submitted primarily by the public prosecutor's office.

The largest number of reports on hate crime (104) in 2020 were filed by NGOs i.e. Macedonian Helsinki Committee of Human Rights (MHC) to the OSCE mission to Skopje.¹⁹⁰ Details regarding the incidents (brief description, date, time, location, source of information, victim(s) involved, perpetrator(s), status of the case, response by authorities, and impact on the victim(s) and the community) are regularly reported to the OSCE Mission to Skopje. The tracking of the cases was largely facilitated through their hate crime online platform.¹⁹¹

MHC in its Annual Report on hate crimes¹⁹² notes that "In 2020, the Committee registered a total of 104 incidents and hate crimes. The incidents were registered immediately after they were reported by the media or the Ministry of Internal Affairs. At the same time, 37 incidents (36%) were verified, while 67 (64%) remain unverified. The majority of incidents were confirmed by checking the police bulletins and media reporting on the cases."¹⁹³

Considering that there is no hate crimes database, all 104 cases were registered by contacting the police, monitoring the media, and obtaining information directly from the victims. For each of the observed incidents, the Helsinki Committee sent a request for information to the Ministry of Internal Affairs in order to obtain details on the status of the cases. The Helsinki Committee sent requests for public information to the Ministry regarding all of the registered incidents and received information for all of the months. From the responses, the Helsinki committee observed that the police authorities have started registering some incidents explicitly as hate crimes, 9 out of 104 recorded; however, this is still not at a regular basis, and it seems to be done rather arbitrarily. Namely, these incidents concerned cases involving threats against politicians via internet and cases of spreading racial and xenophobic material via computer systems. Thus, most of the received responses from the Ministry regarding 2020 incidents were unsatisfactory and did not answer the questions in the requests. Therefore, they did not contain any specific information regarding the incidents and only noted whether the event was recorded or not by the MoIA.¹⁹⁴ Evidently this is due to the lack of knowledge to distinguish between incidents of hate crime and hate speech.

The majority of alleged criminal offences recorded by Helsinki Committee include Violence (66), Bodily and severe bodily harm (8), Causing national, racial or religious hate, discord or intolerance (8), Robbery (7), Damaging of property (5), serious threat (4), Mutilating symbols (3), and Threatening safety (3).¹⁹⁵

Despite some positive aspects of the work within the field of combating hate crimes such as "the fact that more than 2,000 police officers were trained to recognize hate crimes between 2015 and 2016; the improvements in the automatic data base systems in prosecution and judiciary that now have an optional button for registering hate crime cases; the amendments to the Criminal Code adopted in December 2018 that clarified provisions on hate crime and expanded the protected grounds in practice; and the improvement in national hate crime data collection by the Ministry of Internal Affairs.;" the general perception is that proper and timely recognition and registration of hate crimes by police officials and judicial authorities is still unsatisfactory.¹⁹⁶

190 Incidents reported by other sources, <https://hatecrime.osce.org/north-macedonia?year=2020#incidents-reported>

191 Annual report on hate crimes in 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, section 2.4., page 8, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

192 Annual report on hate crimes in 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

193 Ibid, page 11

194 Ibid, page 17

195 Ibid, page 11

196 Ibid, page 10

As presented in 2018, after the increase of registered incidents by MoIA (33 in total) in comparison to the previous years where there is available data only for 2016 with only 2 registered hate crime incidents and for 2017 there is no available data, the country reported only 23 hate crimes for 2019 and 29 hate crimes for 2020.¹⁹⁷

The reason why only some of the hate crimes are reported to the police is because of the perception that is just something that happens, fear of intimidation from perpetrators, distrust of the police, and ignorance of the crime, fear that the application will not be taken seriously etc.¹⁹⁸ Even when they end up as formal complaints, they are not properly investigated by the authorities because they are not trained to identify and respond to hate crimes.¹⁹⁹

In addition to underreporting, the hate crimes are less likely to be registered by the competent authorities i.e. fewer are prosecuted and therefore fewer are sentenced. This is because of the inability to determine the motive (the existence of prejudice and bias according to a certain aspect) or the lack of recognition and identification of a 'hate' motive among other prosecuted criminal cases.

This conclusion indisputably stems from the current practice of the prosecution and the courts.

The Public Prosecutor's Office incorrectly rejected the criminal charges for a hate crime on the basis of a disability filed by the police under article 144 of the Criminal Code "Endangering security" by wrongly qualifying the crime stating that the specific event did not meet the elements of a crime to be prosecuted ex officio.

"A parent of a child with autism reported to the Helsinki Committee that the whole family are victims of harassment and serious threats by two neighbours in the apartment building where they live. The neighbours repeatedly knocked on the family's door, shouting that they would kill them and their nine-year-old autistic child, to which they were referring to as 'mentally retarded'. The background of these attacks is the noise allegedly caused by the child. The family reported the case to the police station, but it all ended with a police report, after which no follow-up action was taken by the authorities for the harassment of the family and the child with intellectual disability. In 2018, the police filed criminal charges for 'Endangering security' under Article 144 of the Criminal Code, which was rejected by the Public Prosecutor's Office because the specific event did not meet the elements of a crime prosecuted ex officio. According to legal instructions of the Public Prosecutor's Office, the family filed a private criminal lawsuit against the neighbours."²⁰⁰

As can be seen from the above case study, there is a lack of knowledge among prosecutors to recognize the actions that define hate speech. Also it should be noted that the police when submitting the report to the prosecution are obliged to put the legal qualification of the crime for which the report is filed, but the public prosecutor has no legal obligation to accept that qualification which usually results in changing the qualification of the crime by the prosecutor in accordance with the assessment of the evidence and the explanation of the events entered in the report.

¹⁹⁷ Please see above, page 27

¹⁹⁸ Please see Hate crime victimization survey: report/ Paul Iganski, OSCE 2019, page 27

¹⁹⁹ Annual report on hate crimes in 2020 [Електронски извор] / [Vildan Drpljanin]. - Skopje : Helsinki Committee for Human Rights, 2021, section 2.4., page 31, available at: <https://mhc.org.mk/wp-content/uploads/2021/06/annual-report-on-hate-crime-2020-eng-final.pdf>

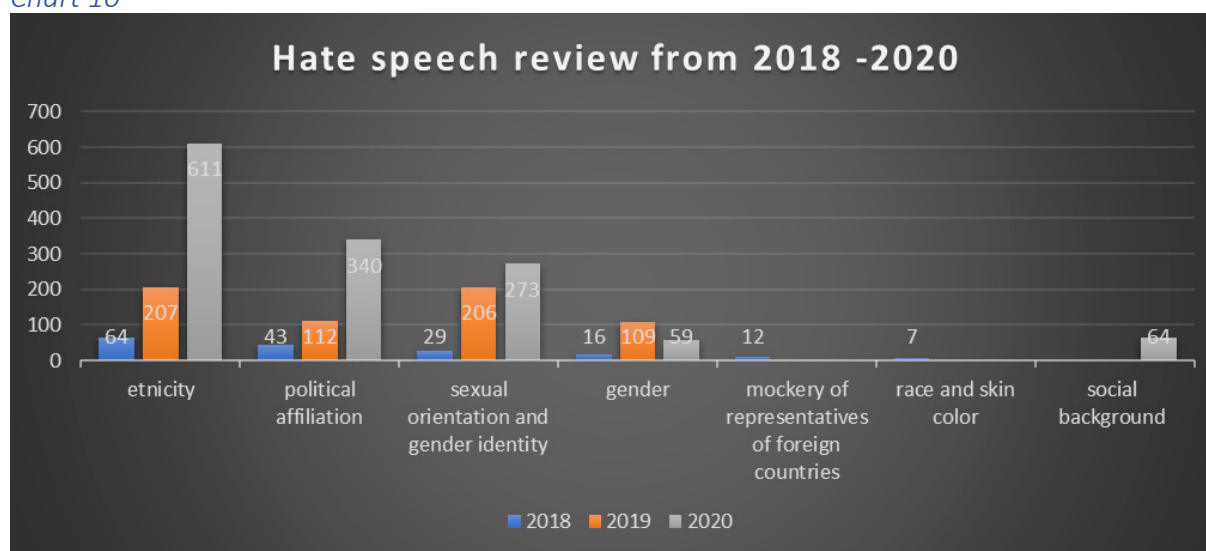
²⁰⁰ Ibid, page 22,23

Recommendations:

- Capacity building (tailored trainings) for prosecutors and police officers on hate crime and hate speech
- Introduce a separate sector within the prosecution for hate crime and hate speech with only trained prosecutors working on these kind of cases

As mentioned above, when it comes to hate speech²⁰¹, the Helsinki Committee is the only organisation that monitors, collects, documents, analyses, processes data and publishes reports with summarized data on hate speech. In the period from 2018 to 2020, there is a trend of increasing hate speech, and the number of cases each year is twice as high as the previous one.

Chart 10



Source: Annual report on hate speech monitoring, Helsinki Committee for Human Rights, 2020

Analysing the graphic representation of hate speech, it can be concluded that the majority of cases of hate speech in recent years are based on ethnicity, sexual orientation and gender identity and political affiliation.

The fact that no institution (police, prosecutors and court) collects and processes data on hate speech, given that it is criminalised is very concerning. Additionally, from the annual reports of the police, no reports of hate speech have been registered, while available data on processed criminal charges by the prosecution are missing. The Ministry of Internal Affairs lacks clear precise rules for dealing with hate speech cases. Certain crimes are too extensive to cover all cases of hate speech such as art.319 from CC “Inciting hatred, discord or intolerance on national, racial, religious and other discriminatory grounds”.²⁰² According to the MHC’s annual report, difficulties in gathering evidence, proving crimes and finding perpetrators, especially crimes committed through a computer system, are the most common problems faced by police officers.²⁰³ However, the most common reason for not registering hate crimes is the non-recognition of crimes that have hate speech as incrimination²⁰⁴.

201 Please see section III.1.2 Data collected by NGOs

202 Annual report on hate speech monitoring, Helsinki Committee for Human Rights, 2020, page 25

203 Ibid

204 Ibid

Recommendations:

- To amend the CC in order to encompass legal qualification of all forms of hate speech and clear and precise distinction of hate crimes
- Lesser forms of hate speech should be regulated as misdemeanours (Law on Misdemeanours against Public Order and Peace) or possibly sanctioned with misdemeanour provisions (Law on Prevention and Protection Against Discrimination)
- Capacity building (Specialized trainings) for recognizing hate speech and all its forms and identifying the correct articles from the CC for police officers and precise guidelines

Part Two: International analysis and recommendations

IV. Introduction

Incidents of hate speech and hate crimes are chronically under-recorded and under-reported across the Council of Europe region. As a result, policy and decision makers do not have the necessary information and awareness with which to make crucial resourcing decisions that can increase protection, support and justice for victims. States have committed to report information and statistics on the prevalence, impact and responses to these harms to international bodies such as the European Commission Against Racism and Intolerance (ECRI), the UN Committee on the Elimination of Racial Discrimination (CERD) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Efforts to develop a recording and data collection framework in the Republic of North Macedonia have been ongoing since at least 2014. However, as described in the Situational Analysis, official data remains patchy, and a recent hate crime victimisation survey suggests that most incidents of hate crime are not reaching law enforcement or not being effectively recorded.

This section, Part two of the report:

- gives an overview of international norms and standards, practice and research relevant to hate crime and hate speech reporting, recording and data collection and case handling
- suggests a framework for understanding the importance of recording, reporting and data collection in this area and for taking action
- aims to make practical and workable recommendations that serve as a useful basis for scoping, prioritising and implementing future activities.
- a cross-cutting theme is the importance of cooperating with civil society organisations.

During the situational analysis phase, it was decided to mainly focus on hate speech. This is because the OSCE Mission to Skopje has established expertise in this area and has a developed workplan involving a series of workshops with national partners using ODIHR's INFAHCT methodology (see Annex two).

V. The international framework on data collection pertaining to hate crime and hate speech

Hate crimes are criminal offences committed with a bias motive.²⁰⁵ They can include 'low level' offences such as property damage, threats and minor assaults as well as rarer and very serious offences, including sexual assaults and murder. The bias motives that drive hate crimes are preconceived, negative opinions, or intolerance towards a particular group that shares a common characteristic such as 'race', ethnicity, sexual orientation and disability and other fundamental characteristics. Hate crimes are a very serious form of discrimination, which cause deep harm to victims and communities and, if unchecked, can escalate in severity and lead to broader social unrest.

²⁰⁵ OSCE Ministerial Council Decision 9/09 on Combating Hate Crimes, <https://www.osce.org/files/f/documents/d/9/40695.pdf>. This definition is also accepted by the European Commission against Racism and Intolerance (ECRI).

Member states of the Council of Europe have committed to a number of obligations in the area of hate crime recording and data collection.²⁰⁶ For example ECRI General Policy Recommendation Number 1 explains that states should, ‘Ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted’.²⁰⁷ This obligation is echoed by OSCE Ministerial Council Decision 9/09 on combating hate crimes by which states have committed to, ‘Collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed.’ ECRI’s General Policy Recommendation No. 15 explains that hate speech, ‘entails the use of one or more particular forms of expression –namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression –that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.’²⁰⁸

Hate speech can rapidly proliferate and incite violence ‘offline’, in the real world. At the same time, efforts to counter it must be balanced with protecting the fundamental right to freedom of expression that, along with safety and security, is essential for the health and strength of democracy. As ECRI explains in its General Policy Recommendation No 15 on Hate Speech, the ‘absence of comprehensive and comparable data regarding complaints on hate speech’ means that it is difficult to determine its prevalence. However, ECRI notes that, ‘no doubt that the use of hate speech is both more visible and more readily spread as a result of the widespread availability of electronic forms of communication.’²⁰⁹

On hate speech, as explained in the introduction, ECRI GPR 15²¹⁰ commits states to gather data in two main areas: 1. to understand the nature and prevalence of hate speech and how it is used and 2. to support the effectiveness of institutional responses. Meeting the first aim involves the development of ‘reliable tools’ to ‘seek to identify the conditions conducive to the use of hate speech as a phenomenon and the different forms it takes, as well as to measure its extent and the harm that it causes, with a view to discouraging and preventing its use and to reducing and remedying the harm caused’.²¹¹ The second aim involves specific steps include working across criminal justice agencies, equality bodies and civil society to gather and publish ‘appropriately disaggregated data’.

ECRI’s GPR 15 guides states to collect and collate meaningful, disaggregated statistics that are ‘not limited to the criminal justice sector’ and, ‘the relevant public authorities should have an explicit responsibility to report in a statistical format all complaints of instances in which the use of hate speech contrary to administrative, civil or criminal law is alleged to have occurred, as well as the outcome of any action taken with respect to such complaints.’ GPR 15 goes on to recommend that states ‘disseminate, on a regular basis, data about the

206 For a relatively comprehensive list of standards in this area, please see ‘International Standards relating to hate crime reporting, recording and data collection’, Perry, J. (2019), Facing all the Facts ,<https://www.facingfacts.eu/annex-three-international-standards-relating-to-hate-crime-reporting-recording-and-data-collection/>

207 See <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.1>

208 See <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.15>

209 ECRI GPR no 15, paragraph 23, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

210 For EU standards, see for example European Commission (2016), Code of Conduct on countering illegal hate speech

211 GPR 15, Recommendation 3, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b0>

incidence of hate speech, as well as its forms and the conditions conducive to its use, both to the relevant public authorities and to the public; and draw on the results of the monitoring and the research to develop strategies to tackle the use of hate speech.’

VI. The national situation

Available data set out in Part One, including the findings of ECRI’s country report from 2016 show that hate speech and hate crime are a significant problem in the Republic of North Macedonia.²¹² Overall, more effective action needs to be taken by the authorities to address hate crime and hate speech in the country, including implementing systems and processes that allow the production of accurate, disaggregated data on hate crime and hate speech.

Several important steps, including legislative reform and police training have been taken to address hate crime and hate speech in the country. Implementing an effective, well-resourced and comprehensive recording and data collection infrastructure will help produce the necessary data for decision makers to determine the extent to which their policies have been successful in meeting these aims.

VII. Six guiding principles on disaggregated data on hate crime and hate speech

When considering hate crime and hate speech data collection and the institutional and technical frameworks necessary for an effective system, it can be easy to get lost in the technical details. It is important to remember that recording and data collection serves a purpose beyond simply gathering statistics. The aim of these efforts should be to prevent these harms and to keep victims and communities safe. To help orientate national actions in this area, Part two of the report is organised around six interlinked guiding principles that are underpinned by international standards.

Recording and data collection systems should:

1. have a victim focus
2. take a comprehensive approach: be connected to other key and strategic elements of a comprehensive approach to understanding and addressing hate crime, hate speech and discrimination;
3. seek international alignment: be aligned with international norms and standards;
4. be transparent: produce accurate data that is easily accessible to the public and affected communities;
5. reflect an understanding of prevalence and context: be implemented in the context of a commitment to understand the full prevalence and impact of these harms, and the quality and effectiveness of institutional responses;
6. be implemented in the context of a strong commitment to cooperation across criminal justice agencies, relevant government ministries, with relevant civil society organisations and academics with relevant expertise.

²¹² ECRI REPORT ON “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” (fifth cycle), 2016

VII.1 Principle one: A victim focus

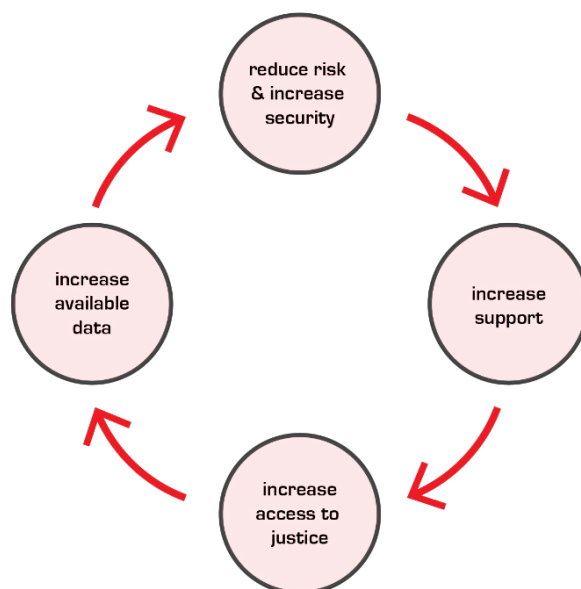
As set out in Figure One below, efforts to improve disaggregated data and information on hate crime and hate speech need to be underpinned by a vision that sees the following outcomes being achieved for victims and affected communities:

- a reduction in prevalence, re-victimisation, and/or social breakdown
 - robust and valid data can help channel prevention efforts to protect high risk groups and/ or to high-risk locations.
- an increase in support
 - demonstrating the existence and prevalence of hate crime and hate speech builds the case for appropriately resourced and skilled specialist services.
- an increase in access to justice and the effective application of relevant laws
 - understanding whether police and judicial agencies have the necessary skills to identify and prosecute these offences and put in place adjustments for victims to give evidence can help target training efforts.
 - understanding whether and how existing laws are being applied by the courts reveal strengths and gaps in legislative protection.
- an increase in reporting by victims and communities.²¹³
 - As data and information shows an increase in successful judicial and other outcomes, victims and communities are more likely to have confidence that their report will be taken seriously.

These considerations cut across the other guiding principles and will be considered in more detail below.

Figure one: a victim and outcome-focused approach to recording and data collection²¹⁴

A victim and outcome-focused framework for improving recording and increasing reporting



**FACING
FACTS**

²¹³ Perry, J. (2020), Facing all the Facts European Report

²¹⁴ This image is from the Facing all the Facts project (Perry and Brennan, 2019)

VII.2 Principle two: taking a comprehensive approach

Quality data is generated by victims and witnesses who are encouraged and supported to report an incident and by skilled practitioners who are able to identify potential cases of hate crime and hate speech, to capture relevant evidence, to identify and help meet victims' needs and apply national laws. Effective recording and data collection systems are only one part of necessary efforts to achieve these important yet, at times, elusive aims.

This 'comprehensive approach' depends on implementing many actions across different areas of policy and practices and involving a range of institutions. High quality training, investigation and prosecution guidelines and an inclusive legal and policy framework supported by sustainable funding are each equally important pieces of the puzzle.²¹⁵ National learning and development programmes should incorporate relevant training and capacity building on hate crime and hate speech across police, prosecutors and courts. Efforts to encourage reporting and institutional guidelines on how to identify and record hate crimes using 'bias indicators', amendments to institutional recording systems to accommodate detailed recording of criminal and civil cases, inter-agency agreements on 'flagging' cases so that they can be shared from the investigation to prosecution stages are all actions that can be taken to strengthen current frameworks.²¹⁶ Coordinating these efforts is most effectively achieved through the development and implementation of national strategies and action plans on hate crime and hate speech.

This section examines each element in more detail.

Action plans and strategies

ECRI's General Policy Recommendation No. 1, 'Combatting racism, xenophobia, antisemitism and intolerance' sets out a broad and comprehensive approach, recommending that states take actions across all policy areas (see Annex two). The OSCE Ministerial Council Decision 9/09 recommends a number of actions on hate crime including training, data, victim support, and legislation, and documents published by the OSCE Office of Democratic Institutions and Human Rights describe the importance of taking a 'comprehensive approach to addressing hate crimes'.²¹⁷ Also of interest, the EU Anti-Racism Action Plan 2020-2025 calls on Member States to 'develop and adopt national action plans against racism and racial discrimination'.²¹⁸ The problem of hate crime and the importance of data is cited throughout the document.

ECRI's GPR 15 sets out specific actions in the area of legislation, training and guidelines, and emphasises the usefulness of a strategic approach, 'Although all these different efforts can be undertaken in isolation, they are likely to have an even more significant impact where they are undertaken against a background of greater cooperation and coordination on the part of the different stakeholders involved. This can entail...the adoption of national strategies and action plans to fight extremism, racism, xenophobia, antisemitism and related

215 See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>

216 See for example The EU High Level Group on combating racism, xenophobia and other forms of intolerance (2017), 'Hate crime training for law enforcement and criminal justice agencies, 10 Key Guiding Principles', https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjJkFS319v3AhVwIbcAHbDdAaMQFnoECBAQAQ&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fdocument.cfm%3Fdoc_id%3D43050&usq=AOvVaw3CvPhh2RGU9r-OdVUkg9IH; and The EU High Level Group on combating racism, xenophobia and other forms of intolerance (2017), Improving the recording of hate crime by law enforcement authorities, key guiding principles, https://fra.europa.eu/sites/default/files/fra_uploads/ec-2017-key-guiding-principles-recording-hate-crime_en.pdf

217 OSCE MC decision 9/09, <https://www.osce.org/files/f/documents/d/9/40695.pdf>; for ODIHR publications see <https://hatecrime.osce.org/odihrs-capacity-building-efforts>

218 https://ec.europa.eu/info/sites/info/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf

intolerance, homophobia and transphobia. Such strategies and plans should have concrete tasks for ministries, municipalities and police and be drawn up and evaluated annually'. Recommendation 3 in GPR 15 directs states to 'draw on the results of the monitoring and the research to develop strategies to tackle the use of hate speech'.

In terms of the specific elements of a comprehensive approach, international standards and guidance recommend several actions. Such work should be underpinned by inter-institutional steering groups and/or working groups (see Principle six).

Legislation

OSCE Ministerial Council Decision 9/09, commits participating States to enact specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes.²¹⁹ Although the Republic of North Macedonia is not bound by the EU Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law it is important to note that EU Member States are bound by Article 1-3 to criminalise incitement to violence or hatred on the grounds of race and religion, and by Article 4 to 'take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties'.²²⁰

The recommended legislative framework for addressing hate speech is more complex, spanning civil, administrative and criminal law. It is also necessary to consider other non-legal frameworks for redress, for example, through social media companies' community standards frameworks. In summary, ECRI GPR recommends: the ratification of a number of international protocols and conventions,²²¹ to clarify and specify the application of criminal, civil and administrative law for the use of hate speech, 'which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those who are targeted by it while respecting the right to freedom of expression and opinion',²²² and to use 'regulatory powers with respect to the media', including the adoption and use of codes of conduct. The breadth and complexity of this necessary legislative and regulatory framework must be taken into account when planning systems to monitor its effectiveness.

Institutional guidelines

Guidelines on investigation, prosecution, recording and other responses to hate crime and hate speech can support effective, consistent and lawful practice. The OCSE Office for Democratic Institutions and Human Rights has produced a number of guides in the area of hate

219 For more information on the policy questions to be considered by law makers when developing and passing national hate crime laws, see OSCE/ODIHR (2009) 'Hate Crime LAws: A practical guide', <https://www.osce.org/files/f/documents/3/e/36426.pdf>

220 Council Framework Decision [2008/913/JHA](https://eur-lex.europa.eu/EN/legal-content/summary/framework-decision-on-combating-certain-forms-and-expressions-of-racism-and-xenophobia-by-means-of-criminal-law.html) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law., <https://eur-lex.europa.eu/EN/legal-content/summary/framework-decision-on-combating-certain-forms-and-expressions-of-racism-and-xenophobia-by-means-of-criminal-law.html>

221 Additional Protocol to the Convention on Cybercrime, concerning criminalisation of acts of a racist and xenophobic nature committed through computer systems, the Framework Convention for the Protection of National Minorities and Protocol No. 12 to the European Convention on Human Rights; Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and to Article 20 of the International Covenant on Civil and Political Rights and recognise the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals under Article 14. See ECRI GPR 15, Recommendations 1 and 2. [88https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01](https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01)

222 See GPR 15 recommendations 8 and 10.

crime, including on prosecution²²³, data collection²²⁴ and several aspects of victim support.²²⁵ ECRI GPR 15 recommends the adoption of guidelines to ‘prevent abusive prosecutions’ regarding hate speech, as well as guidelines for all institutions and organisations with responsibilities in monitoring and responding to hate speech.²²⁶

Training

The European Court of Human Rights (ECtHR) has consistently held that Article 14 imposes a positive duty on state authorities to unmask the bias motive of a crime.²²⁷ To discharge this duty, police need to be equipped with the skills, recording systems and policy guidelines to capture, record and act on this information at the earliest stage. In the OSCE Ministerial Council Decision 9/09, participating States have committed to introduce or further develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes.²²⁸ The EU high Level Group on combating racism, xenophobia and other forms of intolerance have produced key guiding principles that outline a norms-based approach to implementing needs based national training and capacity-building programmes.²²⁹

GPR 15 highlights the importance of training in securing several elements for a comprehensive response to hate speech, including criminal and non-criminal responses. For example, in the implementation of codes of conduct, ‘The effective implementation of codes is very much dependent upon the provision of appropriate training for those with responsibilities in this regard. In particular, there is a need for such persons to understand what constitutes hate speech, including its use of coded or less obvious formats, how to respond to its use and how to handle those using it, as well as how to undertake monitoring and operate complaints mechanisms appropriately. As this is not something that can be easily achieved by all the bodies, institutions and organisations for which the adoption of codes dealing with hate speech would be appropriate.’²³⁰

223 <https://www.osce.org/odihr/prosecutorsguide>

224 <https://www.osce.org/odihr/datacollectionguide>

225 <https://www.osce.org/odihr/hate-crime-victim-support>

226 ECRI GPR 15, recommendation 10 paragraph 180

227 See for example ECtHR, *Balazs v. Hungary*, No. 15529/12, 14 March 2016.

228 The council of Europe has several training resources on hate crime and hate speech, including the Human Rights Education for Legal Professionals (HELP) platform, <https://help.elearning.ext.coe.int/>; OSCE ODIHR also has several training programme on hate crime (only) for police, prosecutors and civil society, see <https://www.osce.org/odihr/guides-related-to-hate-crime>

229 ‘Hate crime training for law enforcement and criminal justice agencies, 10 Key Guiding Principles’, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjJkfs319v3AhVwIbcAHbDdAaMQFnoECBAQAQ&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fdocument.cfm%3Fdoc_id%3D43050&usg=AOvVaw3CvPhh2RGU9r-OdVUkg9IH](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjJkfs319v3AhVwIbcAHbDdAaMQFnoECBAQAQ&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fdocument.cfm%3Fdoc_id%3D43050&usg=AOvVaw3CvPhh2RGU9r-OdVUkg9IH;);

230 ECRI (2015) General Policy Recommendation on hate speech, paragraph 126, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

Also, on training GPR 15, rec 10, paragraph 192 explains, ‘all those involved in the criminal justice system ought to be provided with appropriate training to enable them to determine whether particular remarks involve the use of hate speech and, if so, whether –

having regard to the right to freedom of expression – imposing a criminal sanction would be the appropriate response. In addition, this training should provide those concerned with a more general appreciation of the impact of such use for those targeted by it and of the dangers which such use poses for society as a whole. In addition, depending upon their particular responsibilities, efforts should be made to enhance their capacity to gather and evaluate any evidence relevant to the institution and adjudication of criminal proceedings concerned with the use of hate speech. Furthermore, guidance should be provided for judges as to the approach required when determining which particular penalties to impose following a conviction. In all cases, such training and capacity development is likely to be enhanced by the exchange of good practices, particularly where certain actors in the criminal justice system have more experience than others in dealing with cases that involve the use of hate speech.’

Encouraging reporting

In the OSCE Ministerial Council Decisions 9/09 and 12/04, participating States have committed ‘to collect reliable data and statistics, take appropriate measures to encourage victims to report hate crimes, including through cooperation with civil society, and to make use of all reliable information available. To that end, a robust system for hate crime recording / initiatives to encourage victims to report must be introduced.’²³¹ The EU High Level Group on combating racism, xenophobia and other forms of intolerance explains in its Key Guiding Principles on encouraging reporting, that encouraging reporting of hate crime is key to ensuring that Member States comply with and deliver on their legal obligations to combat hate crimes and ensuring access to justice for victims.²³²

In the area of hate speech, there is both a need to encourage reporting as well as to ensure effective monitoring of hate speech by a range of actors (the latter point is addressed in detail in Principle 5).

In the area of policing and criminal justice and encouraging reporting, ECRI’s GPR 15, Recommendation 10, paragraph 189, guides investigation and prosecution authorities to enable, ‘(a) the introduction of a tool that allows the online reporting of the use of hate speech, and (g) the development of a dialogue, mutual trust and cooperation with groups of persons who are targeted by the use of hate speech so as to gain their confidence and to increase awareness of their rights. Furthermore, individual users should be encouraged to report uses of hate speech and non-governmental organisations should be supported in the undertaking of monitoring or the operation of contact points or hot-lines so that such uses of hate speech can be identified’.

Victim support

OSCE Ministerial Decisions 9/09 and 13/06 have committed Participating States ‘to provide hate crime victims with access to counselling and legal assistance, as well as effective

²³¹ See OSCE-ODIHR (2021), Main Observation 5, Main Key Observations’, <https://public.flourish.studio/story/1108641/>

²³² EU High Level Group on combatting racism, xenophobia and other forms of intolerance (2021), Key Guiding Principle on encouraging reporting of hate crime, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2a-hUKEwiYhZ_ajt73AhVhSWwGHdGNA_IQFnoECBAQAQ&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument_cf%3Fdoc_id%3D75196&usg=AOvVaw1wtlh90U0-FD6NoAaFN_t, See also FRA (2021) Encouraging reporting of hate crime in the EU

access to justice; to increase a positive interaction between police and victims of hate crimes by training front-line officers, including in providing referrals for victim assistance and protection'.²³³ ECRI GPR 15, recommendation 5 concerns the importance of support for those who are 'targeted by hate speech, both individually and collectively', including counselling, legal, help to report, and with regard to showing solidarity.²³⁴

National commentary

Legislative framework:

The Situational Analysis in Part one of this report found that the national criminal legislative framework is 'relatively complete' with regard to hate speech. It covers a wide range of protected characteristics and offences of incitement to hatred and/ or discrimination and has been found to be largely in line with ECRI's General Policy Recommendation 15 on hate speech. There are specific recommendations to include a definition of hate speech and to strengthen relevant misdemeanour provisions (See section 111.1, recommendations section). Implementing these recommendations would strengthen the basis for a national recording and monitoring framework. The national legislative framework on hate crime was revised in 2018 in line with international standards. It includes a clear definition of 'hate crime' and covers a broad list of characteristics.

Guidelines and training

There are currently no recording, investigation or prosecution guidelines on hate crime and hate speech in place. Citing a recent report (2020) by the Helsinki committee, the situational analysis explains that more than 2000 police officers were trained on hate crime between 2015-2016. ECRI's 2016 report on the Republic of North Macedonia found that training of law enforcement, officials, prosecutors and judges on legislation concerning hate speech is insufficient.²³⁵ Overall, the data shows that few cases of hate crime and hate speech have been successfully investigated, prosecuted and sentenced. It is unclear whether sufficient resources have been dedicated to efforts to identify and respond to hate crime and hate speech.

Encouraging reporting

There is no information about national efforts to encourage the reporting of hate crime. The 'Red Button' facility hosted by the Ministry of Internal Affairs allows the reporting of hate crime and hate speech, however as explored in the Situational Analysis, there are few cases reported using this facility.

Victim support

There is evidence that some NGOs provide support to victims of hate crime and hate speech, however, there is not a consistent or fully resourced service across the country.

233 See OSCE-ODIHR (2021), Complementary Observation 11, 'Complementary Key Observations', <https://public.flourish.studio/story/1108641>; see also the Enhancing hate crime victim support, the EStAR project, <https://www.osce.org/odihr/hate-crime-victim-support> for several resources in this area.

234 <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

235 ECRI REPORT ON "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" (fifth cycle), 2016, page 15

Strategic approach

It is promising that the Network for Combating Hate Speech in the Media was established in 2019. Comprised of ‘representatives of the professional media and journalism associations, decision-makers, state and regulatory bodies responsible for the protection of human rights, civil society organisations and education, research and other entities in the field of media and protection of freedom of expression and human rights’,²³⁶ the actions it committed to are in line with a coordinated approach to understanding and addressing hate speech. However, as explained in the Situational Analysis there, ‘are no visible results from the formation of this network nor any evidence that it still exists.’

A cross-government and inter-institutional approach has been taken at the national level, for example when developing options for hate crime law reform, and, more recently, in setting up a National Coordinative Body to monitor the situation with non-discrimination and the implementation of relevant laws, bylaws and strategic documents. However, there is no current national strategy or plan on hate crime or hate speech and no coordinating structures to oversee, plan and implement actions in these areas (see section III.3 of the Situational Analysis).

Recommendations

- The Council of Europe should consider exploring the status of the network for combating hate speech and its current viability. Based on its findings, it could consider supporting a review of the network, including identifying and agreeing actions in the area of hate speech recording and data collection.
- Appropriate national stakeholders could consider developing a new national strategy including actions on hate crime and hate speech recording and data collection among other elements of a comprehensive approach to hate crime and hate speech. The strategy can incorporate elements of the current Roma Inclusion Strategy that relate to hate crime and hate speech and as well as a review of the 2016-2020 National Equality and Non-Discrimination Strategy. This work should involve civil society and could be overseen by a national coordinating body similar to that which was established for the National Equality and Non-Discrimination Strategy.
- In considering the development of a national strategy, national stakeholders, with assistance from the Council of Europe, could approach colleagues in the Republic of Georgia who have recently explored options for developing a national strategy and action plan on hate crime.

The Council of Europe ‘Models of Governance of Online Hate Speech’²³⁷ is an excellent resource for national stakeholders to consider when developing a hate speech governance and action plan, including identifying national strategic governance issues and implementing the necessary frameworks at the levels of moderation, oversight and regulation.

²³⁶ See Situational Analysis p.24

²³⁷ Alexander Brown, (2020) ‘Models of governance of online hate speech’, Strasbourg: Council of Europe, available online at- https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d?fbclid=IwAR1kB_iSQcZo9bLaonb-td3AzfcOqpWoaDJ71AJE2IZq0Xybk5f1vuljHw, accessed on 31 May 2020.

VII.3 Principle three: seek international alignment

As explained in Principle one above, hate crime and hate speech recording and data collection, training, policy and law are supported by a relatively comprehensive international framework of norms and standards. National law, policy and training should be aligned with this framework as far as possible. Specifically, the concepts of hate crime and hate speech should be clearly delineated and data collected and reported on separately. At the practical level, this supports the correct application of the law in investigation, prosecution and other legal approaches and helps ensure that the resulting data is more easily submitted to regular requests from intergovernmental organisations (see ODIHR annual hate crime reporting requirements for example).²³⁸

As explained in a recent EU Guidance Note, a correct and shared understanding of the conceptual distinction between hate crime and hate speech is key to avoiding their conflation: ‘with hate speech provisions being wrongfully used to address hate crime, as it is reported to often occur. This conflation can severely weaken the effectiveness of criminal justice responses, given that the different nature of these two types of offences raises very diverse issues as regards their investigation, prosecution, trial and sentencing, including the determination of effective, proportionate and dissuasive penalties’.²³⁹ Considerations for investigation and particularly prosecution practice are set out in several OSCE-ODIHR guidelines.²⁴⁰

ECRI’s General Policy Recommendation No. 11 provides further essential, victim-focused guidance in the area of hate crime recording. It recommends that the police define and record racist incidents as “any incident which is perceived to be racist by the victim or any other person”.²⁴¹ The rationale for this approach is:

- To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account
- To establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences
- To encourage victims and witnesses of racist incidents to report such incidents

As the EU Fundamental Rights Agency explains, ‘This approach allows the police to implement their legal duty under ECtHR case law to ‘unmask bias motivation’.”²⁴²

Taking this approach allows police to access community perceptions of the risk and reality of targeted violence, get an opportunity to identify potential bias motivation as early as possible, transparently pass this information on to the prosecution stage and provide for a point of connection with CSOs that are also monitoring hate crimes.

²³⁸ See for example Hate Crime Laws, A Practical Guide, ODIHR (2009), which builds on the OSCE Ministerial Council Decision 9/09 to define hate crimes as ‘criminal offences committed with a bias motivation’ (as distinct from hate speech and discrimination) and the Guidance Note, European Commission (2018), which defines the separate concepts of hate crime and hate speech and recommends these are adopted at the national level to support the effective application of relevant law and procedure.

²³⁹ EU High Level Group on Combating Racism, xenophobia and other forms of intolerance (2018) ‘Guidance Note on the practical application of the EU Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law’

²⁴⁰ See for example OSCE-ODIHR (2014) ‘Prosecuting hate crimes: A practical guide’, <https://www.osce.org/odihr/prosecutorsguide>

²⁴¹ ECRI (2007) ECRI General Policy Recommendation No 11 On combating racism and racial discrimination in policing, paragraph 14, <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racial-discrimination/16808b5adf>

²⁴² See FRA (2018) Hate crime recording and data collection practice across the EU, p. 18, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf

It is important to note the following points:

- This definition applies to police-recorded crime. In other words, ECRI is recommending that national crime recording systems include racist crimes as a specific category, defined by the perception of the victim or any other person
- As ECHR case law and national laws have developed, there is a basis for proposing that this definition be expanded to the policing and recording of other types of hate crime. For example, the UK has expanded the ‘Macpherson Definition’, which uses the same wording as ECRI GPR No. 11 to cover five monitored strands of hate crime (Race, Religion, Sexual Orientation, Disability and Transgender identity).²⁴³

On hate speech, as explained in the introduction, ECRI GPR 15²⁴⁴ commits states to gather data in two main areas: 1. to understand the nature and prevalence of hate speech and how it is used and 2. to support the effectiveness of institutional responses. The differences in hate speech as a phenomenon in terms of its prevalence and tendency and in terms of the range of civil, criminal, administrative responses across a diversity of public, private and cross-border actors warrant a separate, but complementary monitoring framework to hate crime. International guidance in this area is not as developed compared to hate crime, however GPR 15 provides the necessary ingredients. These points are further developed under Principle five below.

National commentary

There is a lack of clarity about the concepts of hate crime, hate speech and discrimination in relevant national policy strategy and guidance in the Republic of North Macedonia. For example, the annual report of the Ministry of Internal Affairs does not separate data on hate crime and hate speech. Specific hate speech offences such as ‘spreading racist and xenophobic material through a computer system’ are presented under the category of ‘hate crimes’ (see Situational Analysis report chart 5). This is likely to reflect confusion and mistakes among those responsible for compiling this information as well as a deeper lack of understanding at the front line of police who are responsible for identifying, recording and investigating these offences.

The Situational Analysis in Part One of this report found that the concepts of hate crime and hate speech are not clearly delineated in current institutional recording mechanisms. The necessary ‘tick boxes’ to record bias motives in potential hate crimes is missing in police crime recording systems and there is evidence that the police still lack awareness about how to identify a hate crime. While the prosecution service does have the facility to capture hate crimes separately, the evidence suggests that it is rarely used and there is a lack of coordination between the investigation and prosecution stages. The courts case management system also has a specific tick box to capture hate crimes, however it is also rarely used.

National analysis suggests that there is a lack of understanding about the different concepts. OSCE/ ODIHR has also repeatedly remarked on this in their annual reporting (see situational analysis, Section IV.1.1.a).²⁴⁵

There is evidence that despite a focus on the importance of disaggregated data collection, especially in the area of hate crime, there is an underappreciation of why it is important and a lack of leadership in this area.

There has been limited focus on gathering quality data on hate speech.

²⁴³ see <https://www.cps.gov.uk/crime-info/hate-crime>

²⁴⁴ For EU standards, see for example European Commission (2016), Code of Conduct on countering illegal hate speech

²⁴⁵ See <https://hatecrime.osce.org/north-macedonia>

In contrast, efforts by NGOs have been impressive. The data gathered by NGOs and from a recent national victimisation survey commissioned by the OSCE Mission to Skopje is reviewed under Principle 5.

There is very limited disaggregated data on specific types of hate crime and hate speech and/or specific offences. For example, in the area of hate crime, patterns of crimes against people or property are unknown; information about the most targeted communities is also missing. In the case of hate speech, the nature and prevalence of the problem is also unknown.

Recommendations:

The policy and technical framework that the Republic of North Macedonia adopts to record and collect data should be fully aligned with international concepts of 'hate crime' and 'hate speech', in line with repeated recommendations from OSCE/ODIHR in its annual hate crime reporting.²⁴⁶ Using this approach will support improvements in case handling by police and prosecutors and in data quality, and facilitate the sharing of information with international agencies, which the Republic of North Macedonia has only complied with in a limited way.

The OSCE Mission to Skopje is planning to implement the OSCE/ODIHR INFACHT programme with national partners over the course of 2022. It is likely that this work will support measurable improvements in this area. It is recommended that this work takes account of the findings of this report and that the OSCE Mission and the Council of Europe national office coordinate as appropriate. It is recommended that the national authorities fully commit to this programme, also in close cooperation with specialist civil society organisations.

Within this work, it is recommended that time is dedicated to identifying how ECRI's GPR 11 guidance on perception-based recording of racist incidents could be implemented in the country. The CoE could offer assistance in this area based on its work in other countries such as Georgia and the Republic of Moldova.

The CoE Office should explore whether national partners require assistance in defining the nature and scope of their hate speech monitoring activities. This could include support in developing a hate speech monitoring definition that can be easily used by law enforcement, judicial and other agencies and institutions identified in the Situational Analysis with responsibilities in this area. A supporting framework, based on GPR 15 is outlined in Annex Four.

²⁴⁶ See <https://hatecrime.osce.org/north-macedonia>

VII.4 Principle four: be transparent

The general public and affected communities are key stakeholders in efforts to understand and address hate crime, hate speech and discrimination. In a context of increasing polarisation, misinformation and disinformation regarding issues of diversity, equality and inclusion, it is essential all citizens can easily access accurate information about the prevalence, nature and impact of these harms, as well as information about the steps that the authorities are taking to address them.²⁴⁷

As explained by the European Fundamental Rights Agency in its recent report on hate crime recording and data collection practices in the EU, ‘the collection of detailed and disaggregated data on hate crime – at minimum, by bias motivation and by type of crime – is necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously and sends a message to the public that hate crime is monitored, addressed and not tolerated.’²⁴⁸ The OSCE Ministerial Council Decision 9/09, commits participating States to ‘make reliable and detailed data and statistics on hate crimes public’.²⁴⁹ ECRI’s GPR 1 and 9 recommend that states publish disaggregated information about the number of incidents that are reported, investigated, prosecuted and sentenced.²⁵⁰

ECRI’s GPR No. 15 on hate speech tasks states to ‘disseminate, on a regular basis, data about the incidence of hate speech, as well as its forms and the conditions conducive to its use, both to the relevant public authorities and to the public’.²⁵¹ The GPR also explains in relation to hate speech data, ‘the data that is being gathered and its analysis should be widely disseminated. It should thus be provided not only to all those bodies and individuals that have formal responsibilities for tackling the use of hate speech but also to politicians, religious and community leaders and others in public life who are in a position to make it clear that the use of hate speech is unacceptable in a democratic society. Furthermore, it is important that the data and its analysis should also be presented in a format that is accessible for further dissemination through media outlets. This will enable the public to appreciate what is occurring and the harm that the use of hate speech causes.’²⁵²

247 See FRA Opinion, ‘Collecting and publishing disaggregated hate crime data’, which states, ‘As FRA’s reports repeatedly highlight, the collection of detailed and disaggregated data on hate crime – at minimum, by bias motivation and by type of crime – is necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously and sends a message to the public that hate crime is monitored, addressed and not tolerated.’, FRA (2018), ‘Hate crime recording and data collection practice across the EU’, p. 11, <https://fra.europa.eu/en/publication/2018/hate-crime-recording-and-data-collection-practice-across-eu>; See also ODIHR’s publication, Hate Crime Data collection and Monitoring Mechanisms, A practical guide (2014) p. 43. See also relevant ECRI GPRs and OSCE Ministerial Commitments.

248 FRA (2018), ‘Hate crime recording and data collection practice across the EU’, p. 11, <https://fra.europa.eu/en/publication/2018/hate-crime-recording-and-data-collection-practice-across-eu>

249 See also ODIHR’s publication, Hate Crime Data collection and Monitoring Mechanisms, A practical guide (2014) p. 43, <https://www.osce.org/odihr/datacollectionguide>

250 See for example, OSCE Ministerial Council Decision 9/09 on Combating Hate Crimes

251 ECRI (2015) GPR 15 on Hate Speech, point 3.g, p. 5 <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

252 ECRI (2015) GPR 15 on Hate Speech, paragraph 86, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

National commentary

Data on hate crime and hate speech is not easily accessible to the general public in the Republic of North Macedonia. The clearest and most accessible hate crime data is shared in response to OSCE/ODIHR requests for their annual hate crime reporting. While OSCE data is the most accessible, it isn't available in the national languages, and thus to the general public. The lack of clear definitions for the purposes of recording, monitoring and disaggregation makes it difficult to interpret the data that is available at the national level in official reports (see Principles three and five). Taken together, the evidence suggests that there is not a strong societal understanding of hate crime and hate speech as national problems of concern.

In addition, as explained in Principle one above, there is no national strategy explaining the government's efforts in this area.

Recommendations

National awareness-raising efforts should be included in any plans for a national strategy and action plan on hate crime and hate speech (see Principle one).

As part of the INFAHCT programme led by the OSCE Mission, national stakeholders should agree specific steps towards publishing and disseminating clear, robust and accurate data on hate crime.

In addition to the INFAHCT programme, national stakeholders should agree specific steps towards publishing and disseminating robust and accurate data on hate speech, with the support of the Council of Europe.

Current data on hate crime and hate speech should be made more visible to the general public.

VII.5 Principle five: gathering and using data to understand prevalence, impact and responses

Evidence suggests that only a small percentage of hate crimes and incidents of hate speech are reported to and recorded by the authorities in most countries.²⁵³ This means that 'official data' gathered by law enforcement and prosecutions offices can only reveal a fraction of the actual prevalence of hate crime and hate speech.²⁵⁴ Further, understanding the strengths and weaknesses of institutional responses, for example, the success of investigations and prosecutions, whether victims received the necessary support and whether relevant national legislation was applied, depends on robust administrative data from the relevant agencies and organisations. As examined in the Situational Analysis and in this document, this level of quality has yet to be achieved in many countries, including the Republic of North Macedonia.

In terms of uncovering the prevalence of hate crime, the EU Fundamental Rights Agency explains, 'Designing crime victimisation surveys that include hate crime-specific questions would allow authorities to shed light on the 'dark figure' of crime – that is, the number of

²⁵³ See FRA (2018)

²⁵⁴ See victimization surveys, including EU-MIDIS I and EU-MIDIS II; see also ODIHR's recommendations 20-24, which detail how victimization surveys can be carried out and what they should cover, in 'Hate Crime Data Collection and Monitoring Mechanisms: A practical guide', (2014), pp. 33-39.

crimes that are not reported to the police – and to understand victim experiences, trends and emerging issues.²⁵⁵

Data from civil society organisations is also key to understanding the prevalence, nature and impact of hate crime and hate speech, as well as the quality of institutional responses and victim support.²⁵⁶ The ECtHR has held that the police and other authorities should know or ought to know that minority communities are at risk of targeted violence where there is reliable evidence of previous incidents and negative public attitudes from NGO monitoring efforts and other sources.²⁵⁷ As a result, those civil society organisations that record and monitor hate crime based on clear, transparent and robust methodologies should be treated as equal partners to the police, prosecution service and judiciary in national efforts to understand and address hate crime and hate speech.

Therefore, data needs to be gathered from a number of sources when trying to piece together this national picture, and civil society organisations are a key partner in these efforts. In addition to the benefit of accessing civil society data (in accordance with relevant protections for victim data and confidentiality) this cooperation can increase the quality and depth of relationships, which, in turn, can increase the chance that victims will remain engaged in criminal justice, and other legal processes, and develop confidence in the authorities. It is also necessary to work closely with relevant civil society organisations to review, develop and adopt specific awareness-raising and victim-outreach strategies that also address evidenced barriers to reporting including poor police responses and lengthy delays in investigations.²⁵⁸

However, this approach requires resources and the commitment to develop the capacity of civil society organisations that are currently not able to conduct monitoring and victim support to a sufficiently high standard.

The EU Fundamental Rights Agency identifies four types of cooperation with civil society:

- exchanging relevant data and information;
- working together to uncover the ‘dark’ figure of hate crime;
- setting up working groups;

Establishing working groups on how to improve the recording of hate crime.²⁵⁹

Perception-based recording can be a crucial connecting point between NGO and police or other ‘official data’. Recalling the discussion under Principle Three above, ECRI’s General Policy Recommendation No. 11 recommends that the police define and record racist incident as “any incident which is perceived to be racist by the victim or any other person”.²⁶⁰ Adopting this standard would allow law enforcement to automatically consider NGO data as part of the official ‘picture’ of hate crime. Encouraging the reporting of hate crimes and hate speech is also crucial as detailed in Principle one above.

In terms of institutional responses and data on hate crime, Annex three shows the specific data that is necessary to understand the prevalence and nature of hate crime as well

255 FRA (2018) ‘Hate crime recording and data collection practice across the EU’, FRA Opinion, ‘Designing and carrying out crime victimisation surveys that include hate crime-specific questions’ p. 12, FRA (2018), <https://fra.europa.eu/en/publication/2018/hate-crime-recording-and-data-collection-practice-across-eu>

256 See for example, OSCE Ministerial Council Decision 9/09 on Combating Hate Crimes

257 See for example, *Identoba and others v. Georgia*, no 73235/12, 12 May 2015.

258 See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odjhr/datacollectionguide?download=true>; see also ECRI GPR No. 11 in relation to the police, ‘To establish frameworks for dialogue and co-operation between the police and members of minority groups’.

259 See FRA, 2018.

260 ECRI GPR 11

as the strengths and gaps in institutional responses, along with the frameworks that need to be in place to produce it. These points are also addressed in Principles three, four, and six.

Prevalence and impact of hate speech: data

In terms of hate speech, the data on prevalence, impact and responses is somewhat different and requires a specific approach. There is also less guidance in the area compared to hate speech. However, as explained in GPR 15, understanding the prevalence, nature and impact of hate speech is essential: ‘The need to address the present limited understanding of this phenomenon and the lack of certainty as to its extent and effects is considered to be essential. Without such an understanding, effective action cannot be taken both to discourage and prevent the use of hate speech and to reduce and remedy the harm which such use causes. Improving the level of understanding and dispelling the uncertainty will, however, require various tools to be developed and used.’²⁶¹ ECRI also identifies the importance of understanding, ‘the range of circumstances that can give rise to the use of hate speech and to this taking particular forms, as well as to measure both the extent of such use and the impact which it has.’²⁶²

Such tools include specific research projects in which data is gathered based on clear, shared definitions of hate speech, and in line with data protection requirements. It is also necessary that unreported instances are captured, and that discourse and content analysis is conducted.

ECRI identifies a strong role for civil society organisations and human rights institutions in these monitoring activities and highlights the importance of proper resourcing, ‘there will, however, be a need to ensure that appropriate support is provided for such monitoring, which can require the financing for either the human analysts required or the hardware and software necessary to undertake automated techniques of analysis. Equality bodies/national human rights institutions and other competent bodies should also be able to undertake or commission surveys of those who may be targeted by hate speech in order to establish its frequency especially in circumstances where such occurrence may not be readily monitored or reported....Such surveys can also be used to establish the consequences of this use for persons in these groups, particularly as regards the possibility of them feeling fear, isolation and shame, withdrawing from society and being reluctant to complain or being deterred from doing so’.²⁶³

Responses to the phenomenon of hate speech

In relation to Recommendation 10 of GPR 15, paragraph 189 explains specific actions to enhance effective investigation and prosecution of the use of hate speech through monitoring and data collection: regular analysis of the follow-up to complaints about the use of hate speech from the time of their recording by the police to assess whether complainants received an adequate response and the undertaking of systematic monitoring of the online use of hate speech so that investigations are no longer just based on complaints.

As explained above there are many bodies with potential responsibilities in the area of responding to hate speech. Ideally each body would monitor their performance and this data would form part of the national picture regarding the prevalence of hate speech and the effectiveness of responses to it. ECRI GPR 15 identifies the following bodies that make up this hate

²⁶¹ ECRI GPR 15, paragraph 72,

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

²⁶² ECRI GPR 15, paragraph 72,

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

²⁶³ ECRI GPR 15, paragraph 84,

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

speech ‘response system’: police, prosecution and judicial agencies, social media companies, publishers, human rights institutions, equality bodies, criminal, civil and administrative courts, and media regulators. Crucially for this study, ECRI emphasises that ‘the data being gathered through these different techniques is collated and appropriately analysed, using modern processing technology for this purpose, so that the overall scale of the phenomenon to be addressed can be discerned. In particular, whenever data has been gathered from two or more sources and put together or “aggregated” into an anonymised statistical format to illustrate the incidence of particular uses of hate speech – such as those contrary to administrative, civil or criminal law – it should still be capable of being broken down into small information units so that issues relating to particular groups (such, as disability, gender, religion or belief) and factors (such as the type of user or the location of the use) can be identified. This would ensure that the emergence of certain trends or the particular vulnerability of certain targets of hate speech becomes more evident. Such considerations could then be factored into the adoption of responses to tackle the use of hate speech’.²⁶⁴

The Recommendation also specifies that ‘the relevant public authorities should have an explicit responsibility to report in a statistical format all complaints of instances in which the use of hate speech contrary to administrative, civil or criminal law is alleged to have occurred, as well as the outcome of any action taken with respect to such complaints’.²⁶⁵

National Commentary

There are several sources of data that shed some light on the prevalence and impact of hate crime and hate speech and on institutional responses. However, there are also major gaps. Official data on hate crime is presented on the OSCE Hate Crime Reporting Website (See Table One of the Situational Analysis). In summary, it appears that there are very few cases investigated by the police and no information on the number of crimes that have been prosecuted (see Principle three above for more analysis on hate crime data). Official data almost certainly represents significant under reporting by victims and under recording of the problem by the police. For example, only 29 hate crimes were reported to the OSCE in 2020. According to the Situational Analysis, data on hate speech is not routinely collected by public authorities. 223 reports were received through the ‘Red Button’, however, these are not disaggregated by crime type and there is no information about police action or follow up. The Situational Analysis suggests that there is a low awareness about the mechanism in the country.

The hate crime victimisation survey commissioned by the OSCE Mission to Skopje provides robust and precious data on the prevalence and impact of hate crime in the country.²⁶⁶ 1510 people were included in the survey and 9.1% reported that they had been a victim of hate crime. Importantly, the findings show that compared to victims of non-hate crime, hate crime victims are more likely: to report post-victimization, including socio-emotional, psychological, psychosomatic and behavioural impacts; to worry about potential crime victimisation, and to report symptoms of post- traumatic stress. The survey also showed that they are less likely to report that they were treated fairly and with respect by the police. These are similar to findings from comparable surveys in other countries and provide important information when considering a victim-focused approach (see Principle one).²⁶⁷

264 ECRI GPR 15, paragraph 85 <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

265 ECRI GPR 15, paragraph 82, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

266 Iganski, P. (2019) Hate Crime Victimisation Survey, Report, published by the OSCE Mission to Skopje, <https://www.osce.org/files/f/documents/8/c/424193.pdf>

267 See for example hate crime victimisation surveys carried out in England and Wales, <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020>

The Helsinki Committee for Human Rights deserves special mention for the work that it has done on making hate crime and hate speech visible in the country over many years through its online reporting platform (see section IV.1.2-IV.1.3 of the Situational Analysis for a detailed description of their methodology). It repeatedly reports the highest number of hate crime incidents, compared to public authorities. For example, it reported 104 hate crimes to the OSCE Mission to Skopje in 2020. Their data is also well separated according to crime types. There is evidence of cooperation between the Helsinki Committee and the police in terms of referring incidents from the Committee to the police and following up on cases. However, as explained in the Situational Analysis, the Ministry of Internal Affairs regularly failed to respond to requests for information.

On hate speech, again, data from the Helsinki Committee is the most robust and numerous, with a clear methodology and findings (see Situational Analysis Chart 6).

Recommendations

Encourage cooperation, formal agreements and shared definitions between the Helsinki Committee and Police/ MoIA on hate crime and hate speech. This can be supported by the OSCE Mission as well as CoE colleagues.

The responsible authorities should carefully review the findings, identify the learning points in terms of the nature and impact of hate crime in the country and agree actions to feed into plans for a national strategy (see principle one) and a coordinated response (see principle 6). It is likely that this survey will also inform upcoming planned INFAHCT workshops and follow up to be held by the OSCE (seen Annex two).

Conduct regular hate crime victimisation surveys based on the OSCE Methodology. Review the findings and identify key actions to improve data and responses. For example, findings outlined above suggest that victims are in need of specialist support to cope with the specific impact of hate crimes.

Consider how victim perception can be consistently captured by police recording systems. One option could be to adopt the perception-based definition recommended in ECRI GPR 11 for all hate crime categories. A second option is to ensure that victim perception is a mandatory question in all potential hate crime cases and recorded accordingly.

Support the police to engage with the Helsinki Committee regarding the sharing of data on hate crime incidents.

Explore the possibility of a specific research project on the nature and impact of hate speech in the Republic of North Macedonia, with possible support from the Council of Europe and with the support of the responsible national public authorities

Explore the possibility of developing a hate speech recording and data collection framework at the national level, based on GPR 15 guidelines and with support from the Council of Europe. Involve all relevant bodies, including the national human rights institution, the equality body and relevant civil society organisations.

VII.6 Principle six: commitment to cooperation

As explained in Principle one the success of efforts to gather data on hate crime and hate speech is predicated on a commitment to cooperation across government departments, public authorities, criminal justice agencies, and ombudsman's offices, NHRIs, and specialist NGOs. For example, effective police recording system will be severely limited if there is no connection with prosecution and judicial approaches. Likewise, failing to cooperate with civil society organisations that are expert in hate crime and hate speech, and in supporting victims with their practical and legal needs, will result in a lack of knowledge and information about the prevalence and impact of unreported hate crime and hate speech.²⁶⁸ Such cooperation is more likely to succeed if it is underpinned by cross-government protocols and frameworks with clearly set out roles and responsibilities (see Principle one).²⁶⁹

Cooperation in GPR 15, Rec 10, paragraph 191 explains, 'Firstly, the various actors - and in particular the police and prosecution authorities - having in place both suitable good arrangements for cooperation and coordination of their individual activities. There are various ways in which this can be achieved. However, such cooperation and coordination will be more readily achieved through the establishment of good communication channels between the authorities. Moreover, there ought to a common indication from those in leadership positions that working together to tackle the use of hate speech through criminal proceedings – where this is appropriate – is a high priority for each of the authorities concerned.'

Equality bodies have a key role to play in collecting, collating and sharing data and information on hate crime and hate speech as serious forms of discrimination. [ECRI's GPR 2](#) guides equality bodies to collect and collate disaggregated data on discrimination complaints and their outcomes, as well as information from 'surveys, studies and data collection conducted by the body itself and analysis of equality surveys, studies and data from various sources. Collecting and systematising case law on equality, discrimination and intolerance also provides added value'. The Commission for the Prevention and Protection against Discrimination could consider its role, and in doing draw on good practice from other countries.

Within this principle should be the commitment to avoid unnecessary bureaucratic burdens on operational police, prosecution and other relevant staff. As far as possible, these recording systems should be integrated into existing systems.

In contrast with hate crime, which primarily places law enforcement, criminal justice agencies and specialist CSO with clear responsibilities in relation to recording and data collection, in the area of hate speech recording and disaggregated data collection, a higher number of agencies, institutions and organisations potentially have responsibilities, adding another layer of complexity. This point is addressed in the above Principle. For the purposes of ensuring cooperation and coordination in the area of collecting and collating hate speech data from a range of sources, in its GPR 15, ECRI recommends, a specific public authority should be designated as having the responsibility for coordinating these activities.²⁷⁰

268 Also see ECRI GPR No 15 on "Combating Hate Speech" recommends to state authorities to support the monitoring of hate speech by civil society, equality bodies and national human rights institutions and promote cooperation in undertaking this task between them and public authorities.

269 See FRA (2018) on cooperating with civil society, and ODIHR (2014) on setting up cross government frameworks. In this context 'relevant civil society organisations' includes those organisations that have a track record in robust and transparent recording and data collection on hate crime/hate speech and/or discrimination.

270 ECRI GPR 15, paragraph 87, <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

National commentary

There is no evidence of institutionalised cooperation, for example, in the form of shared definitions, coordinated guidelines across the range of actors that have responsibility to understand and address hate crime and hate speech in the Republic of North Macedonia.

Recommendations

In line with above recommendations, it is recommended that national stakeholders fully engage with the planned INFACHT programme, organised by the OSCE Mission to Skopje. The programme includes a focus on the necessary technical cooperation across relevant bodies and institutions in the area of hate crime recording and data collection.

With several parallel mechanisms of sanctions (from criminal to self-regulation) for hate speech, and uncoordinated efforts to record and monitor incidents, it is necessary to map current efforts, develop a clear mechanism of referrals and to identify the areas of responsibilities of stakeholders. Organising a mapping exercise, already undertaken by the CoE in Georgia could be considered as an option.

A framework for data collection and cooperation on hate speech could be developed with support from the Council of Europe (see Principle 5 above and Annex four).²⁷¹

The following actions can also be considered:

Coordination and data sharing

Due to the variety of hate speech, both criminal and non-criminal, and the number of agencies that are responsible, it is important that agencies and organisations work to establish definitions and referral protocols and share data for prevention and response purposes, while ensuring the protection of personal data. For example, where the police receive a report of harmful, non-criminal speech that falls within the remit of another regulator, there should be a clear process to record it as a hate incident and to refer the incident to the appropriate body. CSOs conducting monitoring should also have clear referral procedures and lines of communication. It should also be clear how to record and refer instances of breaches of social media platforms' community standards. Due to the high volume of hate speech and the numerous stakeholders, it is recommended that regular meetings are held, within established structures recommended in this report.

Work with social media companies

Much of the harmful speech online does not qualify as a criminal act yet might breach social media companies' community standards. Alternatively, the speech might be criminal, yet can only be removed by social media companies. The relevant government ministries should seek to explore being appointed 'trusted flaggers' by, for example Google (YouTube)

²⁷¹ For example, the 'report harmful content' platform in the UK provides direct links to social media platforms for different harmful content: <https://reportharmfulcontent.com/>; The Council of Europe has developed an easy reference tool for key social media platforms reporting processes for behaviour that breaches their respective community standards. [https://www.coe.int/en/web/no-hate-campaign/reporting-on-social-media-platforms#%2237117289%22:\[1\]}](https://www.coe.int/en/web/no-hate-campaign/reporting-on-social-media-platforms#%2237117289%22:[1]})

and develop and support the capacity of CSOs to play this role. In setting up these structures, government ministries should draw on the EU Code of Conduct on countering illegal hate speech and related practice.²⁷²

Capacity building

Law enforcement and prosecutors should receive training on investigating and prosecuting criminal hate speech. All stakeholders should receive training on agreed definitions for hate speech and non-crime hate speech incidents and their application in terms of recording, monitoring, data collection and responses.

It is vital to note that work to improve hate speech recording and data collection takes place in a broader context of leadership in terms of politicians refusing to engage in hate speech as well as consistently challenging and countering the problem, and a broader strategy to understand and counter hate speech, including education and awareness raising.²⁷³

²⁷² European Commission (2016)

²⁷³ See the No Hate Speech movement resources for many relevant tools.

VIII. LIST OF RECOMMENDATIONS

RECOMMENDATIONS ²⁷⁴	RESPONSIBLE INSTITUTION
1. Introduce a specific definition of hate speech in line with ECRI GPR no. 15 and introduce hate speech offences, and misdemeanor provisions that will sanction the use of hate speech – LLPD.	MoLSP ²⁷⁵ COE
2. Revise article 10 and by separating the actions that falls under the hate speech from the actions that represents harassment reproduce a new article or integrate into the article 9 (definition of hate speech) - LLPD	MoLSP COE
3. To introduce a new provision within the Law on Audio and Audio-visual Services that recognizes websites that contain audio-visual elements only in an auxiliary way, such as are animated graphic elements, short commercials or information related to some product or service that is not audio-visual, search engines and electronic versions of newspapers and magazines as audio or audio-visual media services or to amend the existent article 3	MIOA ²⁷⁶ COE
4. To introduce new provisions that prohibits online hate speech and misdemeanour provisions	MIOA COE
5. To amend article 2 para 1 item 1 from the Media Law and to include “as media to be consider the assets for public information i.e. any kind of communication such as newspapers, magazines, radio and television programs, teletext and other means for daily or periodic publication of editorially shaped content in written form, sound or image via internet. “	MIOA COE
6. To amend article 2 para 1 item 3 and to include “via internet”: “A media publisher is a natural or legal person that publishes print media or publishes media via Internet, or broadcasts radio and television programs (broadcasters) including via Internet.”	MIOA COE
7. To amend article 4 in order to encompass the precise formulation/definition of hate speech in line with ECRI GPR no. 15, and to expand the envisaged grounds in accordance with the Law on Prevention and Protection Against Discrimination.	MIOA COE
8. To amend all other provision from Media Law to be in line with article 2	MIOA COE
9. Establishment of a National Coordinative Body for Combating Hate Speech (with a formal structure) which will closely cooperate with the network.	MIOA MoLSP MoIA MoJ COE NGO’s

10. To implement a separate tick box for hate speech within the Electronic bulletin.	MoIA COE
11. Capacity building on hate crimes and hate speech	MoIA through the Training centre COE
12. To introduce a Memorandum of collaboration with Helsinki Committee for sharing data related to reported incidents of hate crimes and hate speech	MoIA Helsinki Committee COE
13. Introduce a special law on movement of cases in the PP as is the case with the Law on movement of cases in the courts. This way an obligation for every public prosecutor to use the CSM will be imposed.	MoJ pp ²⁷⁷ Council of Public Prosecutors COE
14. To implement a separate tick box for hate speech within CSM	PP Council of Public Prosecutors COE
15. To implement an additional field to select paragraphs from the articles within CSM	PP Council of Public Prosecutors COE
16. Capacity building the PP on usage of CSM and hate crimes and hate speech	Academy for Judges and Public Prosecutors "Pavel Shatev" COE
17. Insert a separate heading for Hate speech in the Annual report of MoIA	Public Security Bureau - Department of Criminal Intelligence and Analysis (MoIA) COE
18. Create a small group within the MoIA specialized for hate crimes and hate speech	MoIA COE
19. Capacity building for police officers - members of this group	MoIA through the Training centre COE
20. Create Guidelines for recognizing hate speech and hate crimes	MoIA COE

<p>21. Introduce a new way of reporting in order for every registered hate crime to be presented only in the section “Hate crime” and every registered Hate speech to be presented within the newly introduced chapter/section “Hate speech”</p>	<p>Public Security Bureau - Department of Criminal Intelligence and Analysis (MoIA) COE</p>
<p>22. To appoint focal points (trained hate crime professionals) by the Public Prosecutor’s Office and the Ministry of Internal Affairs that will coordinate and monitor the movement of hate crime cases and their registration.</p>	<p>MoIA PP COE</p>
<p>23. Capacity building (tailored trainings) for prosecutors and police officers on hate crime and hate speech</p>	<p>Academy for Judges and Public Prosecutors “Pavel Shatev” MoIA through the Training centre COE</p>
<p>24. Introduce a separate sector within the prosecution for hate crime and hate speech with only trained prosecutors working on these kind of cases</p>	<p>PP COE</p>
<p>25. To amend the CC in order to encompasses legal qualification of all forms of hate speech and clear and precise distinction of hate crimes</p>	<p>MoJ COE</p>
<p>26. Lesser forms of hate speech should be regulated as misdemeanours (Law on Misdemeanours against Public Order and Peace) or possibly sanctioned with misdemeanour provisions (Law on Prevention and Protection Against Discrimination)</p>	<p>MoIA MoLSP COE</p>
<p>27. Capacity building (Specialized trainings) for recognizing hate speech and all its forms and identifying the correct articles from the CC for police officers and precise guidelines</p>	<p>MoIA through the Training centre</p>
<p>28. The Council of Europe should consider exploring the status of the network for combating hate speech and its current viability. Based on its findings, it could consider supporting a review of the network, including identifying and agreeing actions in the area of hate speech recording and data collection.</p>	<p>CoE</p>
<p>29. Appropriate national stakeholders could consider developing a new national strategy including actions on hate crime and hate speech recording and data collection among other elements of a comprehensive approach to hate crime and hate speech. The strategy can incorporate elements of the current Roma Inclusion Strategy that relate to hate crime and hate speech and as well as a review of the 2016-2020 National Equality and Non-Discrimination Strategy. This work should involve civil society and could be overseen by a national coordinating body similar to that which was established for the National Equality and Non-Discrimination Strategy.</p>	<p>MoLSP</p>

<p>30. In considering the development of a national strategy, national stakeholders, with assistance from the Council of Europe, could approach colleagues in the Republic of Georgia who have recently explored options for developing a national strategy and action plan on hate crime.</p>	<p>MoLSP</p>
<p>31. The Council of Europe ‘Models of Governance of Online Hate Speech’²⁷⁸ is an excellent resource for national stakeholders to consider when developing a hate speech governance and action plan, including identifying national strategic governance issues and implementing the necessary frameworks at the levels of moderation, oversight and regulation.</p>	<p>All relevant national stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>32. The policy and technical framework that the Republic of North Macedonia adopts to record and collect data should be fully aligned with international concepts of ‘hate crime’ and ‘hate speech’, in line with repeated recommendations from OSCE/ODIHR in its annual hate crime reporting.²⁷⁹ Using this approach will support improvements in case handling by police and prosecutors and in data quality, and facilitate the sharing of information with international agencies, which the Republic of North Macedonia has only complied with in a limited way.</p>	<p>All relevant national stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>33. The OSCE Mission to Skopje is planning to implement the OSCE/ODIHR INFACHT programme with national partners over the course of 2022. It is likely that this work will support measurable improvements in this area. It is recommended that this work takes account of the findings of this report and that the OSCE Mission and the Council of Europe national office coordinate as appropriate. It is recommended that the national authorities fully commit to this programme, also in close cooperation with specialist civil society organisations.</p>	<p>OSCE Mission to Skopje and relevant national stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>34. Within this work, it is recommended that time is dedicated to identifying how ECRI’s GPR 11 guidance on perception-based recording of racist incidents could be implemented in the country. The CoE could offer assistance in this area based on its work in other countries such as Georgia and the Republic of Moldova.</p>	<p>All relevant national stakeholders MoIA PP MIOA MoLSP MoJ and CoE</p>
<p>35. The CoE Office should explore whether national partners require assistance in defining the nature and scope of their hate speech monitoring activities. This could include support in developing a hate speech monitoring definition that can be easily used by law enforcement, judicial and other agencies and institutions identified in the Situational Analysis with responsibilities in this area. A supporting framework, based on GPR 15 is outlined in Annex Four.</p>	<p>CoE</p>

<p>36. National awareness-raising efforts should be included in any plans for a national strategy and action plan on hate crime and hate speech (see Principle one).</p>	<p>All relevant national stakeholders</p>
<p>37. As part of the INFAHCT programme led by the OSCE Mission, national stakeholders should agree specific steps towards publishing and disseminating clear, robust and accurate data on hate crime.</p>	<p>All stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>38. In addition to the INFAHCT programme, national stakeholders should agree specific steps towards publishing and disseminating robust and accurate data on hate speech, with the support the Council of Europe.</p>	<p>All stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>39. Current data on hate crime and hate speech should be made more visible to the general public.</p>	<p>All stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>40. Encourage cooperation, formal agreements and shared definitions between the Helsinki Committee and Police/ MoIA on hate crime and hate speech. This can be supported by the OSCE Mission as well as CoE colleagues.</p>	<p>CoE OSCE</p>
<p>41. The responsible authorities should carefully review the findings, identify the learning points in terms of the nature and impact of hate crime in the country and agree actions to feed into plans for a national strategy (see principle one) and a coordinated response (see principle 6). It is likely that this survey will also inform upcoming planned INFAHCT workshops and follow up to be held by the OSCE (seen Annex two).</p>	<p>All stakeholders MoIA PP MIOA MoLSP MoJ</p>
<p>42. Conduct regular hate crime victimisation surveys based on the OSCE Methodology. Review the findings and identify key actions to improve data and responses. For example, findings outlined above suggest that victims are in need of specialist support to cope with the specific impact of hate crimes.</p>	<p>MIOA</p>
<p>43. Consider how victim perception can be consistently captured by police recording systems. One option could be to adopt the perception-based definition recommended in ECRI GPR 11 for all hate crime categories. A second option is to ensure that victim perception is a mandatory question in all potential hate crime cases and recorded accordingly.</p>	<p>MoIA COE</p>

44. Support the police to engage with the Helsinki Committee regarding the sharing of data on hate crime incidents.	COE
45. Explore the possibility of a specific research project on the nature and impact of hate speech in the Republic of North Macedonia, with possible support from the Council of Europe and with the support of the responsible national public authorities	All relevant national stakeholders MoIA PP MIOA MoLSP MoJ and CoE.
46. Explore the possibility of developing a hate speech recording and data collection framework at the national level, based on GPR 15 guidelines and with support from the Council of Europe. Involve all relevant bodies, including the national human rights institution, the equality body and relevant civil society organisations.	All stakeholders MoIA PP MIOA MoLSP MoJ
47. In line with above recommendations, it is recommended that national stakeholders fully engage with the planned INFAHCT programme, organised by the OSCE Mission to Skopje. The programme includes a focus on the necessary technical cooperation across relevant bodies and institutions in the area of hate crime recording and data collection.	All stakeholders MoIA PP MIOA MoLSP MoJ
48. With several parallel mechanisms of sanctions (from criminal to self-regulation) for hate speech, and uncoordinated efforts to record and monitor incidents, it is necessary to map current efforts, develop a clear mechanism of referrals and to identify the areas of responsibilities of stakeholders. Organising a mapping exercise, already undertaken by the CoE in Georgia could be considered as an option.	CoE
49. A framework for data collection and cooperation on hate speech could be developed with support from the Council of Europe (see Principle 5 above and Annex four). ²⁸⁰	All stakeholders CoE
50. Coordination and data sharing	All stakeholders MoIA PP MIOA MoLSP MoJ CoE

51. Work with social media companies	All stakeholders MoIA PP MIOA MoLSP MoJ CoE
52. Capacity building: Law enforcement and prosecutors should receive training on investigating and prosecuting criminal hate speech. All stakeholders should receive training on agreed definitions for hate speech and non-crime hate speech incidents and their application in terms of recording, monitoring, data collection and responses.	All stakeholders MoIA PP MIOA MoLSP MoJ CoE

274 All recommendations should be implemented with the support, guidance or assistance of CoE

275 Ministry of Labor and Social Policy

276 Ministry of Information Society and Administration

277 Public Prosecution

278 Alexander Brown, (2020) 'Models of governance of online hate speech', Strasbourg: Council of Europe, available online at- https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d?fbclid=IwAR1kB_iSQcZo9bLaonb-td3Azfc_OqpWoaDJ71AJE2lZq0XybK5f1vuljHw, accessed on 31 May 2020.

279 See <https://hatecrime.osce.org/north-macedonia>

280 For example, the 'report harmful content' platform in the UK provides direct links to social media platforms for different harmful content: <https://reportharmfulcontent.com/>; The Council of Europe has developed an easy reference tool for key social media platforms reporting processes for behaviour that breaches their respective community standards. [https://www.coe.int/en/web/no-hate-campaign/reporting-on-social-media-platforms#%2237117289%22:\[1\]}](https://www.coe.int/en/web/no-hate-campaign/reporting-on-social-media-platforms#%2237117289%22:[1]})

Annex One: relevant norms and standards

*Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*²⁸¹

The Additional Protocol²⁸² to the “Budapest Convention on Cybercrime” commits States to consider as crimes, whenever carried out through computer systems, the following conducts: the dissemination of racist and xenophobic material, at least in cases in which the material promotes or incites violence (Art. 3); racist and xenophobic threats and insults (Articles 4 and 5); condoning, grossly trivializing, approving of or justifying genocide or crimes against humanity (Art. 6). Italy signed the Protocol in 2011 but has not ratified it yet.

EU Framework decision

The Framework Decision on Combatting Racism and Xenophobia criminalises the public incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. Hate speech as defined in this Framework Decision is a criminal offence also when it occurs in the online world

E-Commerce Directive 2000/31/EC of 8 June 2000

Article 14 of the E-Commerce Directive.²⁸³ This article establishes that hosting service providers cannot be held liable for the information stored at the request of third parties, on condition that (a) they do not have actual knowledge of the illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent or (b), upon obtaining such knowledge or awareness, they act expeditiously to remove or to disable access to the information. At the same time, the Directive should “constitute the appropriate basis for the **development of rapid and reliable procedures for removing and disabling access to illegal information**”²⁸⁴.

Code of Conduct on countering illegal hate speech

The Code was adopted on 31 May 2016. It aims to support the implementation of the FD, while protecting the right to freedom of expression, which as stated by the ECHR “is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”.²⁸⁴ ‘make sure that requests to remove illegal content are dealt with speedily’. The companies that have signed up to the Code ‘have committed to reviewing the majority of these requests in less than 24 hours and to removing the content if necessary’.

²⁸¹ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189>

²⁸² Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

²⁸³ It should be noted that, under the E-Commerce Directive, only those providers of information society services benefit from the liability exemption of Articles 12-14 that qualify as intermediary service providers (i.e. providing mere conduit, caching or hosting services, respectively). Recital 42 clarifies that, for activities to be covered by the liability exemption they must be “of a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of nor control over the information which is transmitted or stored.”

²⁸⁴ *Handyside v. the United Kingdom* judgment of 7 December 1976

European Commission 'Communication on Tackling Illegal Content Online – Towards and enhanced responsibility of online platforms. 28 September 2017

Its summary states, 'This Communication lays down a set of guidelines and principles for online platforms to step up the fight against illegal content online in cooperation with national authorities, Member States and other relevant stakeholders. It aims to facilitate and intensify the implementation of good practices for preventing, detecting, removing and disabling access to illegal content so as to ensure the effective removal of illegal content, increased transparency and the protection of fundamental rights online.'²⁸⁵

Detecting and notifying illegal content.

The communication identifies three ways that online platforms can be notified of illegal content.

- (i) court orders or administrative decisions;
- (ii) notices from competent authorities (e.g. law enforcement bodies), specialised "trusted flaggers", intellectual property rights holders or ordinary users
- (iii) through the platforms' own investigations or knowledge.

'In addition to legal obligations derived from EU and national law and their 'duty of care', as part of their responsibilities, online platforms should ensure a safe online environment for users, hostile to criminal and other illegal exploitation, and which deters as well as prevents criminal and other infringing activities online.'²⁸⁶

National authorities could consider reviewing:

- current processes for detecting and notifying illegal content against these categories.
- map and assess whether there are CSOs that could act at 'trusted flaggers'²⁸⁷ and the role of police and other authorities as trusted flaggers, including whether there are sufficient resources to play this role. When conducting this exercise, section 3.2.1 of the European Communication on Tackling Illegal Content Online should be consulted. 'The Commission **encourages the close cooperation between online platforms and trusted flaggers. Notices from trusted flaggers should be able to be fast-tracked by the platform.** This cooperation should provide for mutual information exchange so as to evaluate and improve the removal process over time. The Commission will further **explore**, in particular in dialogues with the relevant stakeholders, the **potential of agreeing EU-wide criteria for trusted flaggers.**'
- Whether online platforms have 'easily accessible and user-friendly mechanism(s) that allows their users to notify content considered to be illegal and which the platforms host'²⁸⁸. See 3.2.2 of the European Commission communication for more detail.

²⁸⁵ European Commission (2017) 'Communication on Tackling Illegal Content Online – Towards and enhanced responsibility of online platforms', available at, <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-illegal-content-online-towards-enhanced-responsibility-online-platforms>

²⁸⁶ European Commission (2017) 'Communication on Tackling Illegal Content Online – Towards and enhanced responsibility of online platforms', available at, <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-illegal-content-online-towards-enhanced-responsibility-online-platforms>, p. 6

²⁸⁷ According to the European Commission Communication, (2017) trusted flaggers are 'specialised entities with specific expertise in identifying illegal content, and dedicated structures for detecting and identifying such content online.

²⁸⁸ European Commission Communication, (2017) p. 9

- Establish or strengthen points of contact with main online platforms to ensure that close cooperation with law enforcement and other competent authorities is possible.²⁸⁹
- Whether online platforms are complying with the Code of Conduct on countering illegal hate speech is being complied with, including whether content is removed within 24 hours of notification.

ECHR CASE OF BEIZARAS AND LEVICKAS v. LITHUANIA

ECHR finds that hate speech on Facebook not properly investigated, breach of Article 8;

<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-200344%22%5D%7D>

Good practice

1. Understanding and reporting hate speech: Facing Facts Online hate speech course
2. HELP Course on Hate Speech²⁹⁰
3. Center for Countering Digital Hate (2019) 'Don't Feed the Trolls, How to Deal with Hate on Social Media'²⁹¹

This publication focuses on the practical actions to take when being targeted by an online 'troll'. These include blocking the person, capturing evidence of the trolling if it appears to be criminal, reporting the person to the social media platform for breach of community standards, seeking support. It also includes recommendations for the media (e.g. 'do not amplify hate by filing easy but pointless reports on hashtag trends targeting an individual' social media companies'), social media companies (when social media companies publish and therefore promote trends, they act as publishers not simply as platforms; trends amplify bullying; introduce human moderation of 'trends' and exclude bullying behaviour; help users identify when they are at the centre of a 'storm')

4. European Commission work with social media platforms and CSOs to identify and remove illegal hate speech and materials that breach social media company's own community standards. Over several stages, the percentage of content removal steadily increased.²⁹² According to the Commission Communication on Tackling Illegal Content Online, 'This shows

²⁸⁹ See European Commission Communication (2017) [online platforms] should also **cooperate closely with law enforcement and other competent authorities** where appropriate, notably by ensuring that they can be rapidly and effectively contacted for requests to remove illegal content expeditiously and also in order to, where appropriate, alert law enforcement to signs of online criminal activity; Article 15(2) of the E-Commerce Directive establishes that "Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements."

²⁹⁰ <http://help.elearning.ext.coe.int/course/index.php?categoryid=100>

²⁹¹ Center for Countering Digital Hate (2019) 'Don't Feed the Trolls, How to Deal with Hate on Social Media', available at https://252f2edd-1c8b-49f5-9bb2-cb57bb47e4ba.filesusr.com/ugd/f4d9b9_ce178075e9654b719ec2b4815290f00f.pdf

²⁹² See here - https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1471 - 'On average, in **59%** of the cases, the IT companies responded to notifications concerning illegal hate speech by **removing the content**. This is more than **twice** the level of **28%** that was recorded six months earlier. The **amount of notifications reviewed within 24 hours improved from 40% to 51%** in the same six months period. Facebook is however the only company that fully achieves the target of reviewing the majority of notifications within the day.'

that a non-regulatory approach may produce some results in particular when flanked with measures to ensuring the facilitation of cooperation between all the operators concerned.²⁹³

Good practice on hate speech

Promo-LEX Association, Moldova

The Promo-LEX Association²⁹⁴ has conducted, since 2017, wide research on hate speech and incitement to discrimination in the media and in the public space in the Republic of Moldova. The research is based on a monitoring process, which is conducted every year, covering up to six months and most of the media and online space, as well as the most important public events. The monitoring is made by trained monitors with expertise on hate speech and discrimination issues. The data is analysed by experts and structured in detailed reports. These reports present a large variety of disaggregated data, such as: the number of identified cases, public resonance (views and shares), sex and age of the authors, sex and age of the victims, the context of manifestation (political, religious and other), protected grounds, affected groups, politicians and political parties which used hate speech and which were affected by it, dynamics of hate speech, media which used hate speech and other.²⁹⁵

https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/equal_treatment_2017/hate_speech_in_the_public_online_debate_eng_2017.pdf

Annex two: Relevant extracts from ECRI GPR No. 1, Combatting racism, xenophobia, antisemitism and intolerance.²⁹⁶

- Ensure that the general public is made aware of the legislation combating racism, xenophobia, antisemitism and intolerance;
- Ensure that criminal prosecution of offences of a racist or xenophobic nature is given a high priority and is actively and consistently undertaken
- Ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted;
- Ensure that adequate legal remedies are available to victims of discrimination, either in criminal law or in administrative and civil law where pecuniary or other compensation may be secured;
- Ensure that adequate legal assistance is available to victims of discrimination when seeking a legal remedy;
- Ensure awareness of the availability of legal remedies and the possibilities of access to them

293 European Commission (2017) p. 4

294 Promo-LEX Association is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society. <https://promolex.md/misiune/?lang=en>

295 'Hate Speech and Incitement to Discrimination in the public space and in the media of the Republic of Moldova, period 2018-2021', available at https://promolex.md/wp-content/uploads/2021/11/Factsheet_HS_2018-2021_ENG.pdf

296 <https://rm.coe.int/compilation-of-ecri-s-general-policy-recommendations-march-2018/16808b7945>

Hate crime strategies can also ensure that coordinated action on a number of policy areas can be taken and communicated to the general public and affected communities, including education:

- Take measures in the fields of education and information in order to strengthen the fight against racism, xenophobia, antisemitism and intolerance;
- Adopt policies that enhance the awareness of the richness that cultural diversity brings to society
- Undertake research into the nature, causes and manifestations of racism, xenophobia, antisemitism and intolerance at local, regional and national level;
- Ensure that school-curricula, for example in the field of history teaching, are set up in such a way to enhance the appreciation of cultural diversity;
- Set up and support training courses promoting cultural sensitivity, awareness of prejudice and knowledge of legal aspects of discrimination for those responsible for recruitment and promotion procedures, for those who have direct contact with the public and for those responsible for ensuring that persons in the organisation comply with standards and policies of non-discrimination and equal opportunity;
- Ensure, in particular, that such training is introduced and maintained for the police, personnel in criminal justice agencies, prison staff and personnel dealing with non-citizens, in particular refugees and asylum seekers;
- Encourage public officials to bear in mind the desirability of promoting tolerance in their public comments;
- Ensure that the police provide equal treatment to all members of the public and avoid any act of racism, xenophobia, antisemitism and intolerance;
- Develop formal and informal structures for dialogue between the police and minority communities and ensure the existence of a mechanism for independent enquiry into incidents and areas of conflicts between the police and minority groups;
- Encourage the recruitment of members of public services at all levels, and in particular police and support staff, from minority groups;
- Ensure that all public services and services of a public nature such as healthcare, social services and education provide non-discriminatory access to all members of the public;
- Take specific measures, such as providing targeted information, to ensure that all eligible groups de facto have equal access to these services
- Promote and increase genuine equality of opportunity by ensuring the existence of special training measures to help people from minority groups to enter the labour market;
- Initiate research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing;
- Ensure that public sector housing is allocated on the basis of published criteria which are justifiable, i.e. which ensure equal access to all those eligible, irrespective of ethnic origin;
- Since it is difficult to develop and effectively implement policies in the areas in question without good data, to collect, in accordance with European laws, regulations and recommendations on data-protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, antisemitism and intolerance²⁹⁷

297 ECRI GPR No. 1, Combatting racism, xenophobia, antisemitism and intolerance. <https://rm.coe.int/compilation-of-ecri-s-general-policy-recommendations-march-2018/16808b7945>

Annex Three: Step by step diagnosis using the INFAHCT tool²⁹⁸

I. Establishing a hate crime recording framework

The following actions should be considered:

1. Develop and agree on a monitoring definition, defining the types of acts the authorities will register as hate crimes;
2. Develop a policy on hate crime recording, incorporating and implementing the monitoring definition, and setting-up data-sharing processes among the agencies involved;
3. Improve the recording of hate crimes within each of the criminal justice bodies involved, by:
 - a. Updating the police incident reporting forms to capture information identifying an incident as a hate crime;
 - b. Drafting instructions for police agencies on using available IT and forms to capture bias indicators, bias motivations and to flag hate crime cases and provide correct preliminary legal qualification;
 - c. Drafting guidance for prosecutors on recording of hate crimes and prosecutorial action in hate crime cases and synchronizing this with approaches by police;
 - d. Drafting instructions or guidance for the judicial administration and/or courts to report on judicial outcomes in hate crime cases; and
 - e. Drafting a protocol for assessment of needs of hate crime victims and provision of support, linked with and triggered at the moment a potential hate crime has been recorded.

II. Institutionalizing co-ordination and co-operation among key actors

The following actions should be considered:

1. Develop a cross-governmental policy to determine the flow of recorded data on hate crimes, the roles of various entities, to establish a national “hate crime data leads” and determine processes for the centralized compilation of hate crime data and production of statistics;
2. Establish a national co-ordination mechanism in the form of a regularly meeting working group, bringing together representatives of all the agencies and civil society organizations (CSOs) working with hate crime complaints, incidents and statistics;
3. Ensure the regular exchange of information on hate crimes between the criminal justice system bodies and other entities, such as the equality body or CSOs monitoring hate crimes; and
4. Form a joint hate crime monitoring network comprising government bodies and CSOs.

²⁹⁸ See <https://www.osce.org/files/f/documents/f/3/392117.pdf>

III. **Storing, using and compiling recorded hate crime data**

The following actions should be considered:

1. Update the police agencies IT tools and/or databases to enable them to perform the following functions:
 - a. Capture bias indicators in a structured way;
 - b. Identify bias motivation(s);
 - c. Provide correct preliminary legal qualification (where relevant) by listing all hate crime provisions in the criminal code and enabling selection among them;
 - d. Flag a case file as a (potential) hate crime, and have the flag accompany the case file; and
 - e. Facilitate the implementation of the above by the recording officers (use of prompts, pop-ups, mandatory fields, automation and building in links between the above functions).
2. Update, connect or synchronize the IT used by police agencies with the system used by prosecutors to enable transfer of recorded information on hate crimes;
3. Update the IT systems and/or database used by the prosecutors to capture:
 - a. The hate crime flag, type of bias motivation, bias indicators, hate crime provisions invoked in the indictment, and prosecutorial/ judicial outcomes;
 - b. Any removal or alteration (during investigation, prosecution) of the hate crime flag and the reasoning for the change in the crime status;
4. Provide for easy filtering and search of the hate crime cases across the IT systems used at all stages of the proceedings, in order to produce statistics.

IV. **Reviewing recorded data**

The following actions should be considered:

1. Set up a comprehensive review system to verify accuracy and consistency of data, as well as gaps in recording of hate crimes; and
2. Set up separate review mechanism for the prosecutors and courts to handle registered potential hate crimes, where hate crime flagging has not been implemented and/or the flag cannot transfer from police systems to those of prosecutors.

V. **Analysing and publishing available information**

The following actions should be considered:

1. Analyse available data in their entirety in order to arrive at conclusions about the scope, nature and development of the hate crime problem, as well as to inform further action;
2. Publish hate crime data at least once per year to inform the public. This enables scrutiny and increases the public's trust in the work of the criminal justice system. The report on the data could also identify the trends, lessons learned and priorities for government action;
3. Inform the public about other initiatives to improve the recording and data collection on hate crimes, as well as sectoral policies and work of the government co-ordination mechanism; and
4. Develop a dedicated website to report hate crime statistics and other related information.

VI. Improving recording through training

The following action should be considered:

1. Develop a specific training (programme or module) focused on correctly recognizing, categorizing and registering hate incidents.

VII. Assessing the level and nature of unreported hate crime

The following actions should be considered:

1. Make use of available data (official, international, civil society monitoring) to identify potential target groups
2. Broaden the scope of existing crime (victimization surveys) or a census by including questions about hate crime victimization.
3. Regularly conduct a specific hate crime victimization survey or research activity
4. Support and/or co-operate with academia and CSOs on joint research or surveys; and
5. Use data available to international organizations, based on their research or surveys of local populations on issues of discrimination or hate crime, to complement nationally available information.

VIII. Increasing the level of reporting

The following actions should be considered:

1. Conduct awareness-raising campaigns, targeting the general public, communities known to be vulnerable to hate crimes, and police.
2. Set up a network of community liaison officers within the police force across the country, including hate crime specialists;
3. Build or encourage additional systems for reporting hate crimes to police, such as telephone hotlines and online reporting tools, including anonymous online forms; and
4. Build the capacity of the police to act on reports from third parties, such as the Ombudsman's Office or a CSO.

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