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COMMITTEE OF EXPERTS ON HATE CRIME PC/ADI-CH

Preliminary outline of the draft Recommendation on combating Hate Crime¹

¹ Revised version following the first meeting of the PC/ADI-CH, pending approval by members.

The following outline prepared by the Secretariat is for illustrative purposes and is to be used to guide the potential areas the Committee of Experts may wish to consider throughout the drafting process of the Draft recommendation and/or its explanatory memorandum. Additional elements may be considered and added at the discretion of the Committee.

Preamble

- Introduction to the topic, restatement of relevant Council of Europe instruments and standards, as well as relevant international instruments and standards.
- Recall ECHR case law and related positive obligations.
- Contextual factors: why is there urgency to address hate crime (framing the scope and depth of the problem of hate crime in Europe with respect to the prevalence and negative impact it has on victims, communities, and the wider society, as well as the ability of legal systems to recognise, respond to, and address hate crime).
- Deplore the abuse of the internet for the purposes of preparing, facilitating or committing hate crime.
- Recognise the importance of a comprehensive and victim-centered approach to addressing hate crime.
- Identify systemic or structural features of hate crime are relevant for the Recommendation's operative elements.
- Emphasise the value of prevention.
- Recognition of the need to develop a robust but flexible framework for protected characteristics which reflects the multiplicity and intersectionality of hate crime and the harm it causes, aware of the need to take the local context and relevant socio-political factors into account.
- Acknowledge the potential of restorative justice
- Acknowledging the importance of multi-stakeholder cooperation and the key roles of both public institutions, including NHRIs, as well as non-governmental stakeholders in combating hate crime.

Main elements of the Recommendation

- Scope, definition and approach of the Recommendation
 - Working definitions (including the concept of hate crime, bias motives, and relevant thresholds for criminality) and key terms (including hate, motive, bias, comprehensive, victims, special characteristics)
 - Conceptual and legal overlap between HC and HS, refer to Hate Speech Recommendation
- Basic principles
 - Human rights standards (and ECtHR case law)
 - Procedural safeguards (due process rights for all the parties including victims, offenders and other protections)
- Legislative model and range of offences
 - Substantive offences (physical violence, threats, arson and destruction of property, hate crime in cyberspace, desecration offences etc.), protected characteristics and groups

- Penalty enhancement models (aggravated acts and aggravated sentencing) and extent of enhancement
- Victims' rights and protection services
 - Status, role and rights of the victim and victim communities in hate crime cases
 - Responding to and receiving victims by police
 - Victim needs assessments
 - Victim protection and special rights, including support services, legal advice and legal aid (c/f EU Victims' Rights Directive)
 - Compensation
 - Harm reduction and trauma-informed approaches to protect against re-victimisation, ensure privacy
 - Restorative justice, transitional justice and community conflict resolution

Criminal justice system

- Policy areas
 - Training and sensitisation of police and other professionals
 - Recording hate crime cases (data collection) and referrals
- Procedure and processing of hate crime cases
 - Law enforcement elements: victim identification, case handling, investigation, prosecution
 - Triggers for investigation, bias indicators, and evidential standards
 - Victim testimony, impact statements and participation in hate crime cases
 - Role of judicial bodies; judicial decisions
 - Sanctions and measures: sentencing, administrative sanctions
 - Post-conviction: rehabilitation, social reintegration, "exit" work
- Reporting
 - Official reporting by state entities, and third-party reporting by civil society groups and non-governmental organisations
 - Measures to address underreporting/facilitate the reporting of hate crime
 - Privacy, data protection, right to a good name
 - Complaints hotlines and public services
 - Complaints' hotlines and support mechanisms run/provided by independent institutions (equality bodies, NHRIs, Ombudspersons) and civil society organisations
 - Complaints procedures
- Monitoring
 - Data generation, collection (centralisation) and publication
 - Accessibility of data and research
 - Victimisation surveys and third-party data collection
- Prevention
 - Primary prevention, including formal and non-formal education and public awareness-raising measures

- Assessment/analysis of risk of hate crimes being committed, risk management strategies to prevent hate crime
 - Dissuasive and deterrence measures to reduce engagement with violent extremism and hate groups
 - Specialisation in investigatory and prosecutorial functions
 - Prevention mechanisms and measures, including physical protection of vulnerable targets and persons
- National cooperation and coordination
- National prevention policies, strategies and action plans (including national and sub-national institutional roles and responsibilities)
 - Coordination with and between national, regional and local authorities
 - Cooperation agreements and arrangements with civil society organisations
- International cooperation and coordination
- Mutual legal assistance, including in criminal matters
 - Exchange of information
 - International cooperation in criminal matters
 - Cooperation with transnational victim support organisations or services
- Recommendations concerning state and non-state stakeholders
- Government
 - Police and other law enforcement bodies
 - Judiciary
 - Independent institutions (NHRI-EBs)
 - NGOs and civil society organisations
 - HR Defenders
 - Healthcare providers and frontline responders
 - Legal aid providers
 - Victim support organisations
 - Educational institutions
 - Media
 - Private Sector, including internet platforms and related companies
 - International organisations