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## **Sub-Committee on the Implementation of Judgments of the European Court of Human Rights**

*Committee on Legal Affairs and Human Rights*

### **Judgments of the European Court of Human Rights pending implementation concerning hate crimes**

#### **Information note**

prepared by the secretariat for the information of the Sub-Committee

#### **1. Introduction**

1. A hate crime is an act of harassment, intimidation, or physical violence that is carried out by the perpetrator due to their prejudice against certain characteristics of the victim, such as the victim's ethnicity, religion, sexual orientation or gender identity. The case-law of the European Court of Human Rights ("the Court") requires the authorities to act to protect individuals from such crimes, as well as ensure their proper investigation and punishment. According to the Court's case-law, victims of hate crime in Europe whose rights are often not sufficiently protected are ethnic minorities (particularly Roma), religious minorities (including Jews, Muslims, and Jehovah's Witnesses), and individuals targeted as a result of their sexual orientation or gender identity. Articles of the European Convention on Human Rights that are violated in the context of hate crimes include Articles 2 (right to life), 3 (freedom from torture and inhuman or degrading treatment), 8 (right to private and family life), 9 (freedom of religion), and 11 (freedom of assembly and association), taken alone or in conjunction with Article 14 (principle of non-discrimination).

2. There are at least 13 leading judgments of the Court pending implementation that concern hate crimes. Leading cases are those which have been identified by the Committee of Ministers as disclosing a recurring problem at national level, often requiring the adoption by the respondent State of reforms to prevent recurrence of similar violations.

#### **2. Example of implementation in a hate crime case**

3. Života Milanović is a leading member of Serbia's Hare Krishna religious community. Mr Milanović contacted the police after he began receiving anonymous threats which he suspected were coming from members of a far-right group. The threats soon turned into violence. Mr Milanović was beaten and stabbed outside his home many times over the course of several years. On one occasion, an attacker carved a crucifix into Mr Milanović's head. The police allowed the investigation to last many years without taking adequate steps to identify and prosecute the perpetrators.

1. In the case of *Milanović v Serbia*, the European Court found that Serbian police had failed to prevent or properly investigate the attacks on



*The victim - Života Milanović*

\* Document declassified by the Sub-committee on 14 November 2023.

Života because they appeared to have serious doubts, related to his religion, as to whether he was a genuine victim.<sup>1</sup>

2. After the judgment, Serbia introduced the offence of hate crime and made motives based on hatred, including religious hatred, an aggravating factor. The authorities must now take reasonable steps to identify hate-related motives, including religiously motivated hatred, when investigating violent attacks. Furthermore, Serbia's Chief Public Prosecutor issued guidelines to raise awareness among public prosecutors of the importance of prosecuting hate crimes. Information offices were also set up to help victims.<sup>2</sup>

### 3. Issues highlighted by the judgments<sup>3</sup>

3. *Failure to investigate alleged crimes, including a failure to investigate whether a crime was motivated by hatred.*<sup>4</sup> This is the most common issue highlighted by the Court. Crimes include physical violence (including acts carried out by police), hate speech, destruction of property, and murder.

4. *Failure to take adequate steps to prevent and protect people from alleged crimes* (and sometimes the authorities' acquiescence and connivance in them).<sup>5</sup> Physical violence is the most common crime.

5. *Abusive and humiliating police conduct with a hateful motivation.*

### 4. Steps necessary for implementation

6. In order to implement judgments of the Court, *individual measures* and *general measures* may be necessary.

7. *Individual measures* are the steps required to provide justice to the applicant in the particular case. This usually involves the payment of compensation (often called just satisfaction). In an individual case it may also require individual investigations, prosecutions or disciplinary action taken against individuals, or the revision of national-level judicial decisions.

8. *General measures* are the steps required to ensure the same violation(s) does not happen again, to protect human rights in the society as a whole. General measures may be required if the Committee of Ministers regards the judgment(s) to represent a wider problem and not simply reflect an isolated incident. If general measures are not enacted where they are necessary, there is a strong risk that repetitive cases will be brought before the ECHR. General measures can be more challenging and are therefore where the activity of parliamentarians and other stakeholders can be particularly important. In hate crime cases, the following steps are often required:

- *Changes to national legislation* may be needed to bring legal standards into line with the Convention and the Court's case-law. An issue that is particularly common is the lack of provisions in the criminal code to specifically penalise crimes committed that are motivated by hatred.<sup>6</sup>
- *New procedural guidelines for police and prosecutors* can be particularly important in order to ensure that they carry out the tasks necessary to prevent and punish hate crimes.
- *Training of judges, prosecutors, lawyers, and police* is often also necessary in order to ensure that changes to legal standards and procedural guidelines are applied in practice. Violations of the ECHR linked to hate crimes are often carried out in the context of discriminatory discourse in society as a

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<sup>1</sup> [Milanović v. Serbia](#) (No. 44614/07), judgment of 14 December 2010.

<sup>2</sup> Resolution [CM/ResDH\(2019\)365](#).

<sup>3</sup> The list in this section is non-exhaustive. For more information on the Court's case-law as a whole on this subject, see '[Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination](#)' (updated as of 31/08/2023) published by the European Court of Human Rights and available on the Court's website.

<sup>4</sup> Referred to in the Court's case-law as a procedural violation of Article 2 and Article 3.

<sup>5</sup> Referred to in the Court's case law as a positive obligation under Articles 2, 3, and 8.

<sup>6</sup> For example, in the process of implementing the *Secić v. Croatia* group concerning hate crimes against ethnic minorities, the Croatian authorities passed a series of amendments to the Criminal Procedure Code and legislation concerning the role and duties of the police, to significantly strengthen the responsibility to investigate and effectively prosecute hate crimes.

whole. If effective and sustained training is not carried out, changes to national legislation or guidelines may not be applied in practice by relevant authorities in certain cases.

9. *The impact of reforms will often need to be demonstrated* in order for a case to be considered implemented, such as a reduction in the incidence of reported hate crimes, and/or an increase in the number of prosecutions following allegations of hate crimes.

#### 5. **Actions by parliamentarians to promote implementation**

10. Parliamentarians and other stakeholders will be best placed to know how to advance the implementation of these judgments in their own countries. The following may be relevant:

- **Proposing draft legislation or legislative amendments** in parliament.
- **Ensuring budgetary support** for the implementation of certain judgments.
- **Engaging with the government, parliamentarians, the judiciary and media** to highlight the need for action to implement particular judgments.
- **Holding the authorities to account** for their actions relating to the implementation of judgments.
- **Championing the work of civil society groups** to promote the required reforms to implement judgments (including NGOs, faith groups, etc).

## Annex: Select Examples of Judgments of the Court Pending Implementation Concerning Hate Crimes

Leading cases pending implementation are listed in alphabetic order by country, with repetitive cases in footnotes.<sup>7</sup>

Leading cases are those which have been identified by the Committee of Ministers as disclosing a problem, in law and/or practice, at national level, often requiring the adoption by the respondent State of new or additional general measures to prevent recurrence of similar violations. Repetitive cases relate to a structural and/or general problem already raised before the Committee in the context of one or several leading cases. Repetitive cases are usually grouped together with the leading case, to form a 'group' named after the leading case.

- **Oganezova v. Armenia** (71367/12), judgment of 17 May 2022: lack of protection against homophobic attacks and hate speech and failure to carry out effective investigation.
- **Budinova and Chaprazov v. Bulgaria group** (12567/13), judgment of 16 February 2021: failure to afford redress for discriminatory statements concerning persons of Roma and Jewish origin. 1 repetitive case.<sup>8</sup>
- **Stoyanova v. Bulgaria** (56070/18), judgment of 14 June 2022: failure to ensure aggravated criminal responsibility for deadly attacks motivated by hostility towards victims' actual or presumed sexual orientation.
- **Sabalić v. Croatia group** (50231/13), judgment of 14 January 2021: failure to investigate the possibility that a violent attack motivated by sexual orientation was motivated by hatred. Erroneous discontinuation of criminal proceedings. 1 repetitive case.<sup>9</sup>
- **Identoba and Others v. Georgia group** (73235/12), judgment of 12 May 2015: lack of protection against homophobic and religiously motivated attacks. 4 repetitive cases.<sup>10</sup>
- **Balazs. v. Hungary group** (15529/12), judgment of 20 October 2015: Failure of the authorities to carry out effective investigations into possible racial motives and offences committed in the context of anti-Roma demonstrations. 3 repetitive cases.<sup>11</sup>
- **Beizaras and Levickas v. Lithuania** (41288/15), judgment of 14 January 2020: refusal to start a pre-trial investigation into the allegations of extreme homophobic online hate speech.
- **Lingurar v. Romania** (48474/14), judgment of 16 April 2019: police raid based on ethnic profiling of a Roma community and failure to conduct effective investigation and court proceedings, including into discriminatory motives for the raid.
- **M.C. and A.C. v. Romania** (12060/12), judgment of 12 April 2016: lack of an effective investigation into ill-treatment by private parties including into possible homophobic motives behind the attack.
- **Association ACCEPT and Others. v. Romania** (19237/16), judgment of 1 June 2021: failure to take adequate steps to prevent homophobic attacks.
- **Berkman v. Russia group** (46712/15), judgment of 12 January 2020: failure to take into account homophobic overtones of a violent attack. 2 repetitive cases.<sup>12</sup>
- **R.R. and R.D. v. Slovakia group** (20649/18), judgment of 1 September 2020: failure to investigate alleged racist motives in cases of police violence and ill-treatment. 3 repetitive cases.<sup>13</sup>
- **Fedorchenko and Lozenko v. Ukraine group** (387/03), judgment of 20 September 2012: failures to carry out an effective investigations into violent acts and ill-treatment allegedly carried out on ethnic or religious hatred grounds. 6 repetitive cases.<sup>14</sup>

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<sup>7</sup> All of the leading cases in the bullet-point list below are pending implementation, whilst many of the repetitive cases in the footnotes are no longer awaiting implementation.

<sup>8</sup> *Behar and Gutman v. Bulgaria*.

<sup>9</sup> *Beus v. Croatia*.

<sup>10</sup> *Aghdgomelashvili and Japaridze v. Georgia, Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia, Mikeladze and Others v. Georgia, Women's initiatives supporting group and Others v. Georgia*.

<sup>11</sup> *Kiraly and Domotor v. Hungary, M.F. v. Hungary, R.B. v. Hungary*.

<sup>12</sup> *Ivanov v. Russia, Teplitskaya and Bogach v. Russia*.

<sup>13</sup> *M.B. and Others v. Slovakia, M.B. and Others v. Slovakia (no. 2), P.H. v. Slovakia*.

<sup>14</sup> *Burlya and Others v. Ukraine, Grigoryan and Sergeyeva v. Ukraine, Kornilova v. Ukraine, Migoryanu and Religious Community v. Ukraine, Migoryanu and Religious Community Jehovah's Witnesses of City of Izmail v. Ukraine*.