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COMMITTEE OF EXPERTS ON HATE CRIME

PC/ADI-CH

Background document

Mandate

Under the supervision of the European Committee on Crime Problems (CDPC) and the European Committee on Anti-Discrimination, Diversity and Inclusion, the ADI/PC-CH is entrusted with the preparation of a new and comprehensive legal instrument on combating hate crime, building on the case law of the European Court of Human Rights and drawing upon existing Council of Europe texts.

A. Background

Addressing the causes and effects of hate crime is one of the toughest challenges facing many societies today. Violence and hateful actions aimed at a person's identity can spread fear to entire communities and destabilise democracies.

The impact of hate crime can be far greater than that of similar crimes committed without a bias motive. Hate crime is often considered to be a signal crime, where targeting an identity trait sends a hostile message that anyone who shares the target's particular characteristics is not welcome or is at risk of further violence. Hate crime thus threatens not just the individual targeted, or their community, but can represent a much greater threat to social cohesion, and to the principles of equality and non-discrimination. If hate crime is not appropriately addressed by state authorities, it can alienate targeted groups, foster inter-community hostility and distrust, and undermine the effectiveness of law enforcement and the criminal justice system.

Significant gaps exist within and between Council of Europe member states in their approaches to hate crime. This can lead to further difficulties in comparing between different jurisdictions' experiences and responses in combating hate crime. Under-reporting and issues with data collection persist across many countries, as does the additional complexity that comes from taking into consideration local dimensions to hate crime and other forms of violence motivated by bias and prejudice.

B. The draft recommendation on a comprehensive approach to addressing hate crime

The Committee of Experts on Hate Crime (PC/ADI-CH) is an intergovernmental committee composed of ten national experts nominated by member states, and supported by four independent experts.

The main objective of the Committee of Experts is to prepare and draft a Committee of Ministers Recommendation on combating hate crime in Europe by the end of 2023. This Recommendation will complement and advance existing Council of Europe standards in the area of hate crime, as well as findings and recommendations by monitoring bodies and the relevant case law of the European Court of Human Rights (see Section C below).

In drafting its Recommendation, the Committee will take a comprehensive approach to the issues related to hate crime. It will attempt to identify key contextual factors which facilitate or lead to violence motivated by bias and prejudice in Europe, and will examine the legal and policy frameworks in member states to prevent and address these complex and interrelated issues.

The Committee will be supported in this process by a range of international partners, international organisations and representatives from civil society.

Council of Europe standards in the area of hate crime

Article 14 of the European Convention on Human Rights prohibits discrimination, stipulating that “[t]he enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 4 of the [Additional Protocol to the Cybercrime Convention](#) provides for the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Furthermore, several non-binding Council of Europe standards in this area set out the requirement that criminal offences should be subject to special treatment when committed with prejudice or bias, including the [2002 ECRI GPR No. 7](#) (revised 2017) which calls for legislation to combat crimes motivated by hostility towards a person or a group’s perceived race, colour, language, religion, nationality, or national or ethnic origin.

The Parliamentary Assembly of the Council of Europe has drafted and adopted a range of Resolutions and other instruments aimed at furthering standards in this area, notably in terms of systematically addressing all forms of racial discrimination and protecting certain groups from hate crime and violence (see Section C below).

The Council of Europe has also developed several key manuals and guides on addressing certain aspects of hate crime, including the [HELP course on hate speech and hate crime](#) and the [SOGI manual on Policing Hate Crime against LGBTI persons](#).

Furthermore, the Secretary-General has created the position of [Special Representative on Antisemitic, Anti-Muslim and other forms of religious intolerance and hate crimes](#).

The Recommendation will also take into account key European Court of Human Rights case law on the subject of hate crime. The Court’s [case law](#) has reinforced the positive duty of law enforcement authorities to conduct an adequate and effective investigation into possible bias motives in criminal cases involving alleged [discriminatory violence](#), regardless of whether the offence was committed by state authorities or by private persons. Furthermore, the Recommendation will ensure that appropriate procedural safeguards are in place in accordance with [Article 6](#) of the European Convention on Human Rights and relevant case law of the ECtHR, particularly with regard to the due process rights for all the parties, including the role of victims in criminal justice, and the due process rights of suspected offenders.

Definition(s)

There are a range of definitions of hate crime in Council of Europe member states. At the international level, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) uses the following non-legally binding [definition](#) of hate crime: “criminal acts motivated by bias or prejudice towards particular groups of people.” As such, hate crime offences within this

definition are usually understood to be comprised of two main legal elements: conduct which amounts to a criminal offence and a biased or prejudiced motivation.

In light of this definition, hate crime is most commonly understood as a criminal act in which a perpetrator targets a victim based perceived membership or association with a particular group. The target of such a crime may be one or more persons, or may be property (including private property, community facilities, religious sites, or other common spaces) associated with a group that shares a particular protected characteristic. These protected characteristics can vary across jurisdictions, and thus may include race, language, religion, ethnicity, nationality, sexual orientation, gender, gender identity, gender expression and disability, as well as other common features that are fundamental to a person's identity depending on national or local contexts. Furthermore, different legal systems often recognise that hate crime might have multiple, intersecting biases and motivations which may not be solely based on a singular motive.

Legislative and other approaches to hate crime

Across Council of Europe member states, different legislative approaches to hate crime have been adopted. Three main models may be considered. The first model is often referred to as a “sentence enhancement model”, which stipulates that in cases where criminal conduct is motivated or aggravated by racial, religious or other forms of prejudice or group hostility, offenders may be sentenced to an additional penalty beyond what the offence would ordinarily require (see, for instance, § 21 of [ECRI's GPR No. 7](#)). A second approach is the “sentence aggravation model”, which allows prejudice and bias to be taken into account during sentencing, allowing judicial bodies more discretion to consider such bias as aggravating circumstances warranting further penalties, though not beyond existing sentencing maxima for the underlying offence. Another approach taken by jurisdictions is the “substantive offence model” whereby hate crime constitutes a stand-alone offence with the elements of bias, prejudice or hostility forming an integral part of the legal definition of the offence (see § 18 d and 3 of [ECRI's GPR No. 7](#)).

Furthermore, increasingly national authorities have been undertaking action to prevent hate crime. This involves a range of strategies, practices and policies aimed at tackling the root causes of hate crime, reducing the risk of hate crime occurring, and increasing the likelihood of perpetrators being arrested, prosecuted and convicted for hate crime offences. Additionally, this may also involve a range of local and civil society actors to reduce the impact and harmful consequences of hate crime, including through educational initiatives or by raising public awareness (see, in this respect, [ECRI GPR No. 11](#)).

In the European Union, the main legislative instrument is the [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, which calls on EU Member States to ensure that racist and xenophobic motivations are considered as aggravating circumstances when determining criminal penalties. Moreover, the European Commission adopted on 9 December 2021 a Communication titled '[A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime](#)' which aims to trigger a Council Decision extending the current list of so-called 'EU crimes' as laid down in Art 83 on the Treaty on the Functioning of the European Union to hate crime and hate speech. This is aimed at enabling the European

Commission to strengthen the legal framework on tackling hate speech and hate crime across the EU.

At the United Nations, work on hate crime is carried out by the United Nations [Office on Drugs and Crime](#) (UNODC) and, recently, through the [Kyoto Declaration](#) which addresses hate crime by requesting states to “[d]evelop effective strategies, including by enhancing the capacity of criminal justice professionals, to prevent, investigate and prosecute hate crimes”.

Hate crime reporting and data collection

Systematically recording data on hate crime can be a valuable tool in raising public awareness on such hate crime and hate incidents among the general public. Many countries record and publish figures on hate crime and have set up mechanisms to encourage victims to report hate crime and hate incidents, including through third-party reporting systems or dedicated telephone lines, often in cooperation with civil society. These systems are regularly described in the sections on violence in ECRI’s respective [country monitoring reports](#).

However, depending on the relationship between minority communities and the police; the capacity of law enforcement, civil society organisations and other bodies; as well as on policies to guide the recording of reports, the quality of such recorded data can vary widely within and between jurisdictions. It is very difficult to meaningfully compare hate crime statistics across countries as there can be significant legislative differences in what constitutes a hate crime, as well as variations in the way in which incidents are recorded by officials or reported by victims.

At the international level, OSCE’s [ODIHR](#) and the [European Union Agency for Fundamental Rights \(FRA\)](#) provide essential standards on data collection and records of hate crime incidents. Additionally, surveys have been conducted by FRA with a range of minority communities (LGBT survey data, Roma and Travellers, or [MIDIS II](#)) regularly targeted by hate crime. These large-scale surveys indicate that official statistics may mask the true levels of hate crime victimisation in these communities. These surveys highlight a continuing issue relating to underreporting, meaning that there are likely significantly more hate crime incidents that go unreported and unaddressed.

Victims of hate crime

Respecting the dignity of victims and recognising the negative effects hate crime can have on those directly affected is critical when responding appropriately to hate crime. The Recommendation will take a victim-centred approach and seek to ensure that criminal justice procedures and other services dealing with the aftermath of hate crime do not cause further unnecessary distress. Instead, focus will be placed on encouraging positive protective action against repeat victimisation, and thereby reduce the risk of secondary victimisation or harms. Among others, this may include policies to ensure that victims of hate crime have access to justice as well as non-judicial redress mechanisms (see in this respect also §§ 14 et seq. of ECRI’s GPR No. 2).

Among other key instruments, the Committee of Experts will build on [Recommendation \(2006\)8](#) on Victim Support Services, which outlines a set of minimum standards for the treatment of victims as well as for the establishment of specialised centres, national help lines

and co-ordination of services for victims. This approach encourages training and processes which include a range of key areas needed to protect the victims' personal safety and security, providing them with practical help and psychological support, and ensuring respectful and dignified treatment when dealing with the criminal justice system and beyond.

Restorative justice and other alternatives to criminal justice

While seeking to improve standards in the way law enforcement and criminal justice actors approach hate crime will be a core aspect of the Recommendation, in line with [Recommendation \(2018\)8 on restorative justice](#) the Committee of Experts will also examine alternative mechanisms to complement this process. As such, restorative justice approaches will be considered as a potential way to address and repair the harm which hate crime causes to individuals, communities and wider society, by enabling victims, perpetrators and other stakeholders to actively participate in the resolution and reparation of the crime. Rather than focusing on individual criminal responsibility for hate crime, this approach attempts to identify the needs and interests of a wider range of actors and seek means of redress in a balanced, just and collaborative manner.

There have also been significant developments in many member states as to the role of rehabilitation, disengagement and other processes aimed at helping perpetrators (or would-be perpetrators) to desist from hateful behaviour, leave hate-based groups and (re)integrate peacefully into society. These interventions, sometimes known as "exit" work, can be a valuable means of preventing repeat offences and to helping those convicted of hate-related offences to repair the harm done, leave behind crime and violence, and change their lives for the better.

Relevant actors

The Committee of Experts will be looking at the important role played by state authorities, independent agencies, and civil society organisations in addressing hate crime. These include:

- Law enforcement and police
- Prosecutorial bodies
- Prison and probation services
- Judicial bodies
- Independent institutions (including, for example, Equality bodies, National Human Rights Institutions or Ombudspersons)
- Non-governmental organisations and civil society
- Human Rights Defenders
- Media
- Private sector entities

Furthermore, to facilitate common approaches to addressing hate crime, the Committee of Experts will consider the international legal framework relating to international cooperation, cross-border information exchange, and mutual legal assistance in this area.

C. Relevant reference documents

European Court of Human Rights case law on hate crime

[Sabalić v. Croatia](#), No. 50231/13, 14 January 2021

[Beizaras and Levickas v. Lithuania](#), No. 41288/15, 14 January 2020

[Ayoub and Others v. France](#), Nos. 77400/14 and 2 others, 8 October 2020

[Škorjanec v. Croatia](#), No. 25536/14, 28 March 2017

[Identoba v. Georgia](#), No. 73235/12, 12 May 2015

[Virabyan v. Armenia](#), No. 40094/05, 2 October 2012

[Dordevic v. Croatia](#), No. 41526/10, 24 July 2012

[B.S. v. Spain](#), No. 47159/08, 24 July 2012

[Milanović v. Serbia](#), No. 44614/07, 14 December 2010

[Nachova and Others v. Bulgaria](#) [GC], No. 43577/98 and 43579/98, 6 July 2005

Recommendations/Declarations of the Committee of Ministers

[Recommendation CM/Rec\(2018\)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters](#)

[Recommendation Rec\(2006\)8. of the Committee of Ministers to member states. on assistance to crime victims.](#)

[Recommendation \(2003\) 21 concerning partnership in crime prevention](#)

Parliamentary Assembly of the Council of Europe

[Resolution 2368 \(2021\) Preserving national minorities in Europe](#)

[Recommendation 2098 \(2017\) Ending cyberdiscrimination and online hate](#)

[Resolution 2106 \(2016\) Renewed commitment in the fight against antisemitism in Europe](#)

[Resolution 2128 \(2016\) Violence against migrants](#)

[Resolution 2048 \(2015\) Discrimination against transgender people in Europe](#)

[Resolution 1967 \(2014\) A strategy to prevent racism and intolerance in Europe](#)

[Resolution 1948 \(2013\) Tackling discrimination on the grounds of sexual orientation and gender identity](#)

The European Commission against Racism and Intolerance (ECRI)

[ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level](#) - adopted on 13 June 1997 and revised on 7 December 2017

[ECRI General Policy Recommendation N°7 \(revised\) on national legislation to combat racism and racial discrimination](#) - adopted on 13 December 2002 and revised on 7 December 2017

[ECRI General Policy Recommendation N°11 on combating racism and racial discrimination in policing](#) - adopted on 29 June 2007

[ECRI General Policy Recommendation N°15 on Combating Hate Speech](#) - adopted on 8 December 2015

Recent European Union (EU), United Nations (UN) and Organisation for Security and Cooperation in Europe (OSCE) Standards and Policies on the Prohibition and Prevention of Hate Crime

[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

[Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012](#) establishing minimum standards on the rights, support and protection of victims of crime (Victim's Directive)

European Union Fundamental Rights Agency: [Unmasking bias motives in crimes: selected cases of the European Court of Human Rights](#) (2018)

OSCE Hate Crime Data - <https://hatecrime.osce.org/hate-crime-data>

OSCE Office for Democratic Institutions and Human Rights (ODIHR), [Understanding the Needs of Hate Crime Victims](#) (2020)

United Nations, [Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development](#) (2021)