



Preventing Racism and Intolerance (PRINT)

**HANDBOOK OF PRACTICES
TO BETTER FIGHT AGAINST
RACISM AND INTOLERANCE**



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This publication has been produced with the financial support of the REC (Rights Equality Citizenship) Programme of the European Union. The contents of this publication can in no way be taken to reflect the views of the European Commission or of the German Federal Ministry of Justice and Protection of Consumers.

This project has been completed thanks to the combined efforts of Claire Quesnel, deputy head of the general criminal policy office, DACG, French Ministry of Justice and of Claire Vuillet before her, of Donatien Le Vaillant, advisor for justice and international relations, DILCRAH (Interministerial delegation to the fight against racism, anti-Semitism and LGBT hate) and of Audrey Nespoux, task officer. The handbook has been drafted by Claire Quesnel and Donatien Le Vaillant.

Our most sincere thanks go to the French and German experts who have delegated much of their precious time to the collection of good practices and avenues of reflection during the study visits of the project and to all the people met during these visits.

Contents

12 practices implemented in the countries studied to better fight against racism at the judicial level	9
INTRODUCTION	11
• Genesis and objectives of the project	11
• Progress and challenges of the project	13
1. Progress	13
2. Goals	15
• Preliminary observation: a harmonised legislative framework	16
PART I: NATIONAL STRATEGIES DESIGNED, IMPLEMENTED, AND EVALUATED WITH THE PARTICIPATION OF CIVIL SOCIETY ACTORS	28
I. Defining national strategies in light of the measurements and analyses conducted	28
A. Improved identification and understanding of racist conduct and speech	28
B. Defining national strategies	36
II. Implementing national strategies for preventing and combating racism.....	42
A. Instructions or practical guides for use by investigators or prosecutors	44
B. Training and awareness of police and justice professionals	47
III. Evaluation of strategies to combat racist crime.....	52
A. Evaluating national strategies to combat hate crime in light of international standards and specific studies	52
B. Evaluation by parliaments, the administration and civil society organisations	55
PART II – INNOVATIVE SOLUTIONS IN THE PREVENTION AND JUDICIAL TREATMENT OF RACIST ACTS AND DISCOURSE	58
I. Encouraging and supporting reporting	58
A. Supporting the reporting of incidents.....	59
B. Facilitating the filing of complaints	62
II. Improving the quality of the investigation: the challenge of stakeholder specialisation	67
A. Stakeholder specialisation and specific investigation methods	67

B. Monitoring the criminal response	73
III. Improving the judicial response: the educational challenge	76
A. A graduated response, appropriate to the perpetrator's personality	76
B. Educational dimension of the punishment	80
CONCLUSION	85

12 practices implemented in the countries studied to better fight against racism at the judicial level

1. Confront the number of racist acts and speech reported to police services and the number established by **victim surveys**, in order to measure the under-declaration phenomenon; publish the results; carry out local victim surveys targeting most exposed areas and communities;
2. Carry out and publish an exhaustive count of official victim complaints and of « **incidents of racist nature** » (recorded in the register of offences through an official entry or through any other way);
3. Push the **recording system of complaints** and the **collection of statistical data** forward thanks to the establishment of an interdisciplinary group including civil society, and which recommendations would be published; ensure a systematic collection of data based on the victims' declarations;
4. **Define and implement the national strategies to fight against racism with the support of civil society members**; appoint a referent person, specifically trained on the matter in charge of implementing this national strategy in the courts;
5. **Encourage the victims to file complaints** thanks to an online complaint system, to the backing of specific victims' support groups, to the awareness raising of general victims' support groups and to the development of a service-orientated culture favouring victims' treatment in police services; facilitate the collection of testimonies, including online;
6. Draft in cooperation with victims' support groups a complete **methodology guide** on investigations and judicial treatment of hate acts and speech; develop specifically the probative technique of « a set of corroborating evidence of hate »; make the guide accessible to the public;
7. Support the implementation of complaint recording methods and methodology guides by appropriate **technical trainings**; generalise initial and continuous training for police officers, prosecutors and judges on the **history** and **culture** of the **different minority groups**;
8. Ensure the **specialisation of professionals** assigned to the treatment of racist offences or who come to deal with their victims; Develop the networking and a systematic training of all specialised stakeholders; organise regular meetings between police local units, the prosecution offices and victims of hate crimes support groups;
9. Develop and concentrate the resources of the **fight against hate online** thanks to an appropriate legislation, the support to “trusted flaggers” and the implementation of State/civil society/big digital companies interfaces to enhance reports and judicial investigations in particular;
10. **Broaden the criminal response** to hate acts and speech: aggravating circumstances of racism, educational penalties such as citizen courses, restaurative justice measures, simplified procedures for certain cases;

11. Publicise and make known by the **wider public thanks to online information portals** judicial decision for racist offences and also practical advice to victims, information for isolated people, quantitative and qualitative data on hate offences, along with any useful research documentation;

12. Assess concretely the national strategies elaborated to fight against racism with the assistance of civil society members; establish review groups of anonymised procedures concerning racist offences and bringing together prosecutors, victims' support groups' members and law professionals from civil society.

INTRODUCTION

- *Genesis and objectives of the project*

The fight against all forms and manifestations of racism and xenophobia is simultaneously a priority for all the Member States of the European Union and a legal obligation for those States; since 2005, the European Court of Human Rights has several times made clear that the Member States have a procedural duty to conduct appropriate investigations *in the event of possible* racist motivations.¹

The proliferation of hateful conduct is unacceptable in the European Union, and incompatible with the common values of equality and tolerance upon which Europe was built.

Although the fight against racism requires a comprehensive approach involving proactive prevention policies, particularly in schools, criminal law and its application within States has a key role to play as well.

Thus, an EU-wide criminal approach to the phenomenon of racism, based on shared European values, took shape on 28 November 2008 with the adoption of Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The aim of this directive was to establish a common foundation, by introducing a minimal harmonisation able to ensure that all national bodies of law establish sufficient legal definitions in this regard, and that effective judicial cooperation can thus be brought about.

From that point on, what are considered to be the most serious manifestations of racism and xenophobia were to be made to constitute an offence in all Member States, and those perpetrating or responsible for such offences were to be subject to effective, proportionate and dissuasive criminal penalties.

¹ According to rulings handed down by the European Court of Human Rights condemning Member States on the basis of Article 14 of the European Convention on Human Rights, which prohibits discrimination, police agencies are required to conduct appropriate investigations, *in the event of possible racist motives*. See ECHR Grand Chamber, 6 July 2005, *Nachova and Others vs. Bulgaria*, 43577/98 [this case involved the homicide of two Roma persons, committed by a police officer who had manifested his hostility to that community; however, no corresponding investigation had been conducted in the course of the proceedings; see also, ECHR *Balzas vs. Hungary*, 20 Oct. 2015, 15529/12; ECHR *Secic vs. Croatia*, 31 May 2007, 40116/02].

The same applies in case of the possibility of motives involving religion (ECHR *Milanovic vs. Serbia*, 14 Dec. 2010, 44614/07), sexual orientation (ECHR *Identoba vs. Georgia*, 12 May 2015, 73235/12), or gender identity (ECHR *BS v. Spain*, 24 July 2012, 47159/08).

See <https://fra.europa.eu/en/publication/2018/unmasking-bias-motives>

Nevertheless, despite the development of these legal instruments, **ethnic and religious minorities in the European Union continue to face racism, discrimination, exclusion and verbal and physical violence.**

It thus appears that although transposing the Framework Decision into national bodies of law may be a first step towards effectively fighting racism and xenophobia via criminal law,² it cannot be considered sufficient.

Beyond the creation of a complete and common legislative arsenal, the fight against racism also requires that efforts be made to **improve the effectiveness of the implementation of these rules and the protection of the persons most vulnerable to these kinds of acts by developing better knowledge of the phenomenon and the effective means of fighting it.**

For this purpose, it has become apparent that innovative practices could be sought amongst the governments dealing with these kinds of issues, which can be observed in all European countries.

Faced with the increase in criminal cases, **alternative dispute resolution methods**³ appear in particular to be **effective resources**, for promoting an **individualised and adapted criminal response**, involving active participation by victims and perpetrators, while responding to the increase in the number of cases, specifically for the fight against racism.

Some countries, like France, have tended to prefer this method of caseload management for less serious offences (in France, in 2013, alternative measures represented 61% of the criminal response in racism cases), while in other countries, such as Belgium, the number of cases that end with a sentence handed down is greater than the number of cases that end with the prosecutor opting for an alternative measure.

The implementation of the legislative framework contributing to the fight against racism, understood in this project **as acts of a racist and xenophobic nature, i.e., as any criminal act committed on grounds of race, nationality, ethnic origin or religion**, can be improved by promoting greater dialogue among members of law enforcement agencies, prosecutors and judges.

It must however be acknowledged that for the European Union as a whole, there is a lack of organised entities providing a forum⁴ for dialogue amongst judicial authorities

² See the conclusions of the European Commission in the context of the report of 27 January 2014 to the European Parliament and Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law

³ Mediation, practiced in 26 EU countries in accordance with recommendation R99 of 15 September 1999, simplified and negotiated processes, settlements, conditional dismissals, probation)

⁴The European Commission's creation on 14 June 2016, however, of a high-level group to focus on the fight racism, xenophobia and other forms of intolerance, aimed in particular at monitoring the commitments made by

concerning the effective and coherent implementation of these common criminal provisions for the fight against racism.

Noting the diversity of approaches developed in the Member States and the interest in promoting reciprocal interactions to help create an updated body of recommendations and good practices able to be shared and adopted within the European Union, the French Ministry of Justice, in partnership with the Interministerial Delegation for the Fight Against Racism, Anti-Semitism and Anti-LGBT Hatred,⁵ resolved to propose a co-operation project seeking to obtain a grant within the framework of the Rights, Justice and Equality Programme of the European Commission.

The main objective of the project was to encourage dialogue amongst judicial actors working to fight against racism and improve knowledge of the modes of criminal response available to authorities dealing with issues of racism and xenophobia, for the apprehension both of racist speech and racist acts.

The aim was to achieve a better understanding both of the specific legal framework in place and the judicial practices in use, so as to identify good practices that might be transposed into other States' legal systems and disseminate common responses.

- *Progress and challenges of the project*

1. **Progress**

The project, which was named PRINT (Preventing Racism and Intolerance), was filed with the European Commission on 5 January 2017. The Board issued a favourable decision on **22 May 2017** and [agreed](#) to grant the requested subsidy.

With a planned duration of 16 months, the PRINT project was thus launched on 20 November 2017.

This project, organised in partnership with Germany, permitted the study of four different legal systems. To allow deeper thinking and help produce a more relevant comparative analysis, the legal systems of Spain and the United Kingdom were studied as well, in addition to the French and German systems.

certain internet operators in the fight against the spread of hate speech online, did provide an occasion for dialogue concerning the practices of the various Member States.

⁵Created by Decree no. 2012-221 of 16 February 2012, the Interministerial Delegation for the Fight Against Racism and Antisemitism has reported to the Prime Minister since November 2014, and since 16 October 2018 has operated under the authority of the Secretary of State to the Prime Minister for Equality between Women and Men and the Fight against Discrimination.

The project was built around two core structures:

- a **steering committee** composed of three members (one member from the French Ministry of Justice,⁶ one member from the Interministerial Delegation against Racism, Anti-Semitism and Anti-LGBT Hatred, and one lead coordinator),⁷ in charge of guiding the work and coordinating the activities of the second structure, i.e., the working group.
- a **working group**: composed of representatives from each of the partner countries,⁸ responsible for developing a survey and analysis of the judicial systems of the Partner States and of the United Kingdom and Spain, and identifying effective or innovative practices that could potentially be disseminated and adopted by the Member States to create a greater consistency of criminal responses within the EU.

The progress of the project was characterised by three core stages: an overview of practices, field study visits, and a review of results.

➤ *Overview and analysis of practices*

The purpose of this first step was to permit a comparison of the legislative framework and practices implemented by each of the States studied in order to define common criteria to identify good practices and ensure that the practices selected correspond to an understandable and transposable model (determination of a common vocabulary).

The collection of data on racist acts and existing law enforcement mechanisms was based on the development by the steering committee of a **survey questionnaire**⁹ **covering the legal framework and its application**, sent out to all partner States.

This data collection activity permitted the development of a repository of existing practices, an analysis of these practices, and a comparison of field data collected over time.

➤ *Field study visits*

The second stage of the project involved the organisation of field study visits, in which the members of the steering committee and the experts from each of the partner states participated.

Four study visits were organised.

⁶ A representative of the DACG [Criminal Affairs and Pardons Office]

⁷ A legal expert specialised in project management

⁸Two French experts and three German experts

⁹ See Appendix 1

The first study visit was held in Paris on 5 and 6 March 2018. The second took place in London on 17 and 18 May 2018, the third in Berlin on 9 and 10 July 2018, and the final study visit was organised in Madrid on 10 and 11 September 2018.

Each of these study visits took place over two days and was organised around dialogue with both the judicial and institutional authorities of the countries visited, and with representatives of civil society. They also presented an occasion for work meetings bringing together the steering committee and the members of the working group, where a summary of the work done could be prepared, future prospects examined, and the preparation of a good practice guide studied.¹⁰

➤ *Review and dissemination of results of the work*

The last phase consisted of the preparation of this guide, which aims to present the good practices identified in the course of the project for the fight against racism and xenophobia.

Lastly, at **the final review of results conference** scheduled for 11 March 2019 the guide will be presented to all representatives of the European Union and to representatives from the Council of Europe, the Agency for Fundamental Rights, and the European Commission.

2. **Goals**

The goals of this project are:

- **to improve the European criminal response** to racist, anti-Semitic and xenophobic offences by promoting dialogue amongst judicial actors in the States visited, by surveying the judicial systems of these States, in particular regarding the collection of complaints, investigative methodologies, judicial responses, and the system for holding large internet companies liable for offences committed online,
- **the execution of a comparative study to identify innovative judicial practices and the dissemination of knowledge** to institutional actors in other EU Member States.

Given the Europe-wide scale of this process, the primary difficulties that had to be **overcome** were:

- **the highly varied approaches to combating racist crime, even within the same country, due to the diversity of cultural and legal traditions.**¹¹

¹⁰See the report on these 4 study visits in the appendix

¹¹ It was noted in particular that the opinions of the various experts, even within the same Member State, could at times vary, between judicial (judge, prosecutor, police officer), institutional, or private actors in the fight against racism and antisemitism.

- **the difficulty of obtaining** information from the different actors of a nature sufficiently exhaustive to permit comparison with the measures taken by other States and be usable in view of the project's objectives.

The steering committee and all project members worked to overcome these pitfalls by staying constantly in contact with the different States visited.

This extensive dialogue made it possible to fulfil our objective of comparing and analysing the legislative frameworks of the States studied.

It was thus possible to observe that there has been a harmonisation of legislative frameworks in line with the recommendations of the 2008 Framework Decision.

- ***Preliminary observation: a harmonised legislative framework***

Whether by transposing the provisions established by the 2008 Framework Decision into national law, or having determined such transposition to be unnecessary in the light of the legislation already in force, all the States studied have a legislative framework capable of punishing the most serious manifestations of racism.

It should be explicitly pointed out in this regard that a racist crime is an offence motivated by discriminatory racial prejudice. That is its defining characteristic. What distinguishes it from other offences is the nature of the motive, being based on hostility or prejudice, which leads the perpetrator to commit the crime.

Certain States have established a definition of racially motivated offences based on the notion of *hostility* towards a person presenting a legally protected characteristic (e.g., their supposed race, national origin, ethnic origin, nationality, or religion, etc.). **In this hypothetical case, the applicable law requires an element establishing hostility or hatred: it must be shown that the offender acted out of hatred/hostility towards the victim** (see section 28 of the 1998 Crime and Disorder Act, United Kingdom.)¹²

Other States have adopted a different analysis, holding that discriminatory targeting based on *prejudice* is sufficient to demonstrate the existence of a racist motive:¹³ **the perpetrator deliberately targeted the victim based on a protected characteristic, but in such case it is not necessary to demonstrate that the perpetrator acted out of hatred or hostility.** Thus,

¹² Or "hatred, contempt and hostility," in Art. 377bis, Belgian Criminal Code; "enmity and hostility," in Art. 67(3), Ukrainian Criminal Code – OSCE ODIHR "Hate Crimes - A Practical Guide," 2009-2015

¹³ For example, the imposition of aggravated sentences if it has been proven that the offence was motivated by ethnic origin, religion, or sexual orientation; see section 81(vi) of the Danish Criminal Code

the violent robbery of an immigrant person on the assumption that because that person is an immigrant he or she will be reluctant to file a complaint with a police service, or targeting a person because of his or her religious or ethnic affiliation, assuming they are therefore likely to be rich, may constitute a racist crime, since the motive was based on prejudice that led to discriminatory targeting.

Some other States, lastly, have adopted both models at the same time - both hostility and prejudice - such as in France, Germany, or Spain (see below, Art.132-76 of the French Criminal Code, Article 46 of the German Criminal Code, or Article 22(4) of the Spanish Criminal Code).¹⁴

➤ **GERMANY**

• **Racist or xenophobic motives, an aggravating circumstance for sentencing**

Article 46 of the German Criminal Code (*Strafgesetzbuch*, StGB) provides that in the context of sentencing, the circumstances in favour of and against the accused must be taken into consideration. These circumstances include, among others, racist motives, xenophobia or other inhumane motivations, including anti-Semitic motivations, but also motivations based on the victim's religion, sexual orientation, gender identity, disability or social status.

Thus, apart from cases where the racist motive is a constituent element of the offence, the racist or xenophobic motivations of the accused must be taken into consideration by the court.

The enumeration of these motives in a law passed in 2015 highlighted their importance in sentencing. As the law requires such motives to be taken into consideration by judges in assessing the gravity of the offence and determining the penalty to be imposed on the accused, it is incumbent upon the public prosecutor to seek out any such motives.

• **The fight against hateful conduct**

The German Criminal Code punishes hate speech and hateful conduct.

The Law of 16 March 2011 transposing Framework Decision 2008/913/JHA and the Additional Protocol of 28 January 2003 to the Council of Europe Convention of 23 November 2001 on Cybercrime made it possible to ensure that German criminal law conforms to European requirements.

The following definitions of criminal activity may appropriately be included:

- Section 130 (1) of the Criminal Code punishes with 3 months to 5 years' imprisonment any person who, acting in a manner capable of disturbing the public peace:

- ↳ **incites hatred** against a national, racial, religious group or a group defined by their ethnic origins, or against a segment of the population or certain individuals because they belong to one of the

¹⁴ See also "offences motivated by prejudice or hate," Art.718.2(a) of the Canadian Criminal Code; or "on the basis of nationality, race, religion or political beliefs," Art.162 (2) of the Bulgarian Criminal Code.

aforementioned groups

↳ **calls for violent or arbitrary measures against such persons,**
↳ **undermines their human dignity by insulting, slandering or denigrating them.**

- **Article 130 (2) of the Criminal Code** punishes with imprisonment not exceeding 3 years or a fine, whosoever:

↳ **refuses, publicly displays, offers, presents, or otherwise makes accessible to a person under eighteen years of age** written materials that incite hatred against any person, group, or segment of the aforementioned population,

↳ **calls for violent or arbitrary measures to be taken against them,**
↳ **undermines their dignity by insulting, slandering or defaming them.** This text also includes content broadcast by radio, media services, or telecommunication services.

- **Section 130 (3) of the Criminal Code** punishes with imprisonment of up to 5 years or a fine any person who, in a manner capable of disturbing the public peace, publicly or in a meeting **approves, denies, or downplays any act committed under the National Socialist regime of the kind included under paragraph 6 (1) of the Code of Crimes against International Law** (a German law that punishes violations of public international law, and more specifically crimes of genocide, war crimes, and crimes against humanity).

- **Section 130 (4) of the Criminal Code** punishes with imprisonment not exceeding three years or a fine any person who, publicly or in a meeting, **disturbs the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying the National Socialist rule of arbitrary force.**

- **Article 140 (2) of the Criminal Code** punishes with imprisonment not exceeding three years or a fine any person who **in a manner capable of disturbing the public peace, publicly, in a meeting, or by the dissemination of written materials, glorifies or expresses approval of any of the offences covered in paragraph 126(1) after they have been committed or attempted.** The acts covered include homicide, murder, war crimes, crimes against humanity, serious violence, theft and extortion.

- **Article 86 of the Criminal Code** punishes with a penalty not exceeding 3 years and a fine any person who **distributes the propaganda writings of prohibited organisations or parties.** This includes writings whose content infringes upon freedom, democracy, or the idea of the comity of nations.

- **Article 86a of the Criminal Code (Use of Symbols of Unconstitutional Organisations)** imposes a penalty of imprisonment not exceeding 3 years and a fine upon any person who **distributes or uses a symbol of an unconstitutional or prohibited party or association.** These provisions include all symbols identified as referring to such party or association, such

as the swastika.

- **Section 166 of the Criminal Code** (defamation of a religion, religious or ideological association) protects and maintains order and social peace by ensuring mutual respect amongst all persons, whether or not they are believers, and whether or not they express religious or ideological beliefs. Any person who publicly **defames the religion or ideology of others, or defames a church or other religious or ideological association in Germany in such a way as to disturb the public peace, may be punished by up to 3 years' imprisonment and a fine.**

- **Article 185 of the Criminal Code** punishes insult with a term of imprisonment not exceeding one year and a fine. Insult is understood to mean **any contemptuous remark illegitimately infringing upon a person's honour, dignity or reputation. Insult may be brought about by writings, images, words, gestures or any other mode of expression.**

Insults may only be prosecuted if the victim files a complaint within three months counted from the end of the day during which the person entitled to file such complaint acquires knowledge of the offence and the identity of the perpetrator (Articles 194 and 77b of the Criminal Code).

The time-bar for crimes of incitement to hatred, the distribution of the propaganda material of prohibited organisations or parties, or the distribution or use of a symbol of an unconstitutional or prohibited party or association is 5 years.

The time-bar for the crime of insult is 3 years.

➤ **SPAIN**

- **Racism and discrimination constitute an aggravating circumstance for offences of any kind in Spain.**

Article 22-4 of the Criminal Code provides that: *"to commit a crime with a racist, anti-Semitic or any other discriminatory motive based on the victim's ideology, religion, beliefs, ethnicity, race, nationality, sex, sexual orientation or identity, gender, illness, or disability shall constitute aggravating circumstances."*

Heavier sentences may also be pronounced against certain specific persons who perpetrate such crimes, such as teachers, for example.

- **In 2015, Spain introduced a major reform of criminal law and legal procedure to more effectively fight cybercrime, in particular extremist discourse and propaganda online.**

A new type of criminal offence has thus been created, to punish the dissemination of messages giving encouragement to offences disturbing the public order, and in particular to violent attacks (Articles 550 to 561 of the Criminal Code).

Incitement to hatred and violence has also been redefined (Articles 510 et seq. of the Criminal Code), as have provisions relating to crimes under international law (Articles 607 to 614 of the Criminal Code).

Since the 2015 reform of the Criminal Code:

⇒ **The prison sentences that may be imposed have been increased.**

⇒ **The incitement, encouragement or promotion of racial hatred, hostility and discrimination are now expressly sanctioned.**

Article 510 of the Criminal Code provides a penalty of one to four years' imprisonment and 6 to 12 months of fines¹⁵ for any person who: *"publicly encourages, promotes or directly or indirectly incites to hatred, hostility or violence against any group, or part thereof, or against any particular person by reason of their belonging to such group, for racist, anti-Semitic or ideological motives, or on the basis of their religion or beliefs, family background, their membership in an ethnic group, race or nation, their nationality of origin, sex, sexual orientation or sexual identity, illness, or disability."*

⇒ **The production, possession, access, and distribution of any type of media whose content encourages, promotes or incites to racist hatred, hostility and discrimination are expressly sanctioned.**

The same penalties apply to the **production, development or possession for distribution purposes of any media that encourages this type of conduct.**

⇒ **The perpetration of such conduct via social networks, the internet or the use of any technology is sanctioned by heavier penalties.**

Article 510-3 states that the sanction must fall within upper half of the permitted penalty range when the offence is committed via social media, by internet, or any information technology

¹⁵In Spanish law, fines operate as follows: the judge determines a per-day amount, which may vary from €2 to €200 depending on the acts committed and the convict's economic capacities. Generally, the daily amount of the fine is between €3 and €6. So, in this case, if the penalty is set at €3 per day, the total fine will come to between €540 and €1,080.

accessible to a large number of persons.

⇒ **Heavier penalties apply when the abovementioned conduct is perpetrated in such a way as to create a disturbance of public order or create a serious feeling of insecurity or fear among the members of a given group.**

The sanction must fall within upper half of the permitted penalty range when the offence may create a disturbance of public order or a serious feeling of insecurity or fear among the members of a given group.

⇒ Express provision is made for penalties involving bans on professional practice.

Article 510-5 provides in all cases a **ban on exercising any profession in the education sector** for a period of 3 to 10 years.

⇒ **The destruction, erasure or deactivation of any media (books, recordings, documents, articles) that allowed such offences to be committed may be ordered as well.**

⇒ **Express provision is made for the criminal liability of legal entities.**

When a legal entity is responsible for one of the aforementioned offences, a 2 to 5 month fine may be imposed.

⇒ **The denial, trivialisation and defence of crimes of genocide, crimes against humanity, or against protected persons during armed conflicts are punishable by law.**

The offence of publicly denying, trivialising or defending a crime of genocide, a crime against humanity or against protected persons during armed conflicts, or defending their perpetrators is punishable by 6 months' to 2 years' imprisonment and a 6 to 12 month fine.

⇒ **The law expressly criminalises humiliation, denigration and discredit of a person or a group of people based on racist motives.**

Article 510-2 of the Criminal Code provides for the punishment of **any person who violates the dignity of others by actions involving the humiliation, denigration or discrediting of any of the groups mentioned in the previous paragraph for racist or anti-Semitic reasons** by 6 months' to 2 years' imprisonment and a 6 to 12 month fine. The same penalties are applied to any person who defends or justifies such offences.

- **The fight against racism and xenophobia in sports**

The purpose of Law 19/2007 of 11 July 2007 was to establish a set of measures to combat violence, racism, xenophobia and intolerance in sports.

Public acts of a racist nature, committed during a sports event by an individual person or a legal entity, were thus classed as offences.

When an offence is observed, the referee or sport judge directing the match may impose a temporary or permanent suspension.

The law classifies these offences into three categories: extreme, serious and minor. Fines range from €150 to as high as €650,000 for the most extreme offences.

In addition, organisers of sports events may be sentenced to a ban on organising such events and the temporary closure of the sports facility for a maximum of 2 years for extreme offences and for a period of 2 months for serious offences.

Individual persons may also be sentenced to perform community service in the field of sport and banned from all sports events for a maximum period of 5 years in case of extreme offences.

Clubs and sports associations may also ban spectators from sports venues.

➤ **FRANCE**

French law penalises hateful conduct and hate speech. The criminalisation of hateful conduct is based on provisions included in the Criminal Code, and the criminalisation of hate speech is based on a special law related to the rights of the press, based on the Law of 29 July 1881 on the freedom of the press.

French legislation has progressively evolved towards the reinforcement of this fight by more severely repressing hateful conduct and speech.

In a recent illustration of this evolution, **Law no. 2017-86 of 27 January 2017 on equality and citizenship**, which entered into force on 1st March 2017, has modified several provisions of the Criminal Code, the Code of Criminal Procedure and the Law of 29 July 1881 on freedom of the press, primarily in view of enhancing the fight against racism and discrimination.

- **Punishment of hateful conduct:**

The criminalisation of racist, anti-Semitic or xenophobic acts in the French Criminal Code is based on the **introduction of aggravating circumstances when the offence was committed on the basis of the victim's membership or non-membership, true or supposed, in a given ethnic group, nation, race or religion.**

This aggravating circumstance, provided under **Article 132-76 of the Criminal Code**, is deemed to exist when the offence is preceded, accompanied or followed by the presence of words, images, objects or acts of any kind that offend the honour or esteem of the victim, or of a particular group of persons of which the victim is a member due to their membership or non-membership, true or supposed, in a given ethnic group, nation, race or religion.

⇒ **The following consequences then apply:**

- **the sentence may be doubled, for sentences of three years or less**
- **or, for sentences of other durations, the custodial sentence imposed may be increased by one degree in the sentencing scale.**

The aggravating circumstance has no effect on the fine imposed.

Starting with the Law of 27 January 2017 on equality and citizenship, this aggravating circumstance may be applied in general to any crime or offence punishable by imprisonment.

Specific aggravation is provided for violent crimes that did not result in any total occupational incapacity (ITT), or ITT of less than 8 days (Articles 5 bis and 5 ter of Article 222-13 of the Criminal Code).

- **The criminalisation of hate speech:**

The Law of 29 July 1881 on the freedom of the press criminalises the **publication or dissemination** of racist or anti-Semitic remarks.

The media of public communication specific to the identification of these offences are listed in **Article 23 of the Law on the freedom of the press**, which is broad enough to cover all means of public expression (speeches, shouts, threats, writings, printed matter, drawings, engravings, paintings, symbols, images, etc.), and any media permitting wide dissemination to the public.

The following definitions of criminal activity may appropriately be included:

- public incitement to discrimination, hatred or racial or religious violence (Article 24 paragraph 7: *"Any person who by any of the means referenced in Article 23 incites to discrimination, hatred or violence against a person or group of persons on the basis of their origins or their belonging or non-belonging to a particular ethnic group, nation, race or religion, shall be punished with one year's imprisonment and a fine of €45,000, or one or the other of these two penalties."*)

- **public insult based on a victim's real or alleged belonging or non-belonging to a particular ethnic group, nation, race or religion** (Article 33, paragraph 3, as amended by the Law of 27 January 2017 on equality and citizenship "*The offence of insulting a person or group of persons by the abovementioned means on the basis of their origins or their belonging or non-belonging to a particular ethnic group, nation, race or religion, shall be punished by one year's imprisonment and a fine of €45,000.*")

- **public defamation based on a victim's real or alleged belonging or non-belonging to a particular ethnic group, nation, race or religion** (Article 32, paragraph 2: "*The offence of the defamation of a person or group of persons by the abovementioned means on the basis of their origins or their belonging or non-belonging to a particular ethnic group, nation, race or religion, shall be punished by one year's imprisonment and a fine of €45,000, or one or the other of these penalties.*")

- **the questioning of crimes against humanity, including crimes of enslavement or the exploitation of an enslaved person, when such crime has been condemned by a French or international court** (Article 24 bis: "*Any person who, by any of the means indicated in Article 23, has questioned the existence of one or more crimes against humanity as defined by Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, committed by members of an organisation declared criminal under Article 9 of said charter, or by a person found guilty of such crimes by a French or international court, shall be punished by one year of imprisonment and a fine of €45,000. The same penalties shall be imposed on any person who, by any of the means given in Article 23, denies, minimises, or grossly trivialises the existence of a crime of genocide other than those mentioned in the first paragraph of this article, or another crime against humanity, or crime of enslavement or exploitation of an enslaved person, or a war crime as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court signed in Rome on 18 July 1998, and in Articles 211-1 to 212-3, 224-1 A to 224-1 C, and 461-1 to 461-31 of the Criminal Code, where:*

1° This crime has resulted in a sentence handed down by a French or international court (...)"

- **the defence of war crimes, crimes against humanity, crimes or offences of collaboration with the enemy, and crimes of enslavement or the exploitation of an enslaved person**, even if these crimes did not result in a conviction of the perpetrators, is punishable by a penalty of 5 years' imprisonment and a fine of €45,000 (**Article 24 paragraph 5**: "*(...) any person who, using any of the means given in Article 23, defends the crimes referred to in the first paragraph, or any war crime, crime against humanity, or crime of enslavement or exploitation of an enslaved person, or crimes or offences of collaboration with the enemy, even if those crimes did not result in a conviction of the perpetrators.*")

The time-bar for public prosecution in cases of defamation and insult on the grounds of race or religion, or incitement to discrimination, hatred or violence on grounds of race or religion **is one year** (Article 65-1 of the Law on the Freedom of the Press).

➤ THE UNITED KINGDOM¹⁶

The United Kingdom is based on what is known as the "common law" system, in which customary law and jurisprudence are the essential sources of law. The country uses an adversarial type criminal procedure.

As the UK has no law on secularism, it has chosen instead, in arbitrating conflicts between freedom of thought and religion and other fundamental rights, to regulate on a case-by-case basis.

The definition of "hate crimes" is more a governmental than a legal one.

- Since the mid-1960s, a law known as the **Race Relations Act** has been in force across the United Kingdom, with the exception of Northern Ireland. This 1965 law was a response to the influx of African immigrants, particularly Kenyans and Ugandans, and to the problems potentially posed by the massive influx of foreigners, particularly with respect to the growing sense of distrust towards immigrant populations. This law was amended in 1968 and again in 1976. All discriminatory behaviour falls within the scope of this Race Relations Act, which is thus the primary instrument in the fight against racism in the United Kingdom.

In 1986, the **Public Order Act** was enacted, which affirmed the classification of racial hatred as a criminal offence. It should be pointed out however that this act only punished the stirring up of racial hatred, whether by the use of words or the distribution of materials.

These provisions have been narrowly interpreted by English courts, which have granted this protection only to groups determined by their ethnic origins. Thus, religious groups that cannot be seen as ethnic groups were excluded from protection.

In 1993, after the murder of a black British student, Steven Lawrence, the fight against racism gained momentum and became a priority for the British government.

- This event ultimately led to the 1998 adoption of the **Crime and Disorder Act**. This law affirmed, in England and Wales, the recognition of a specific criminal classification of acts committed or presumably committed on the basis of the victim's race (**sections 38-42**).

The notion of religion was, however, again excluded from this legislation.

Apart from these specific qualifications, the Criminal Justice Act of 2003 made motives based on hatred (racial or religious) into a general aggravating circumstance for any type of offence.

¹⁶The legal system of the United Kingdom is not unified: England, Scotland, and Northern Ireland each have their own systems.

- In order to standardise legislation in this domain, so as to respond in a manner capable of considering matters of religion among the motivators of hatred, the government enacted the **Racial and Religious Hatred Act of 2006**, which came into effect on 1st October 2007, supplementing to the Public Order Act of 1986 by extending its protections against racial hatred to include religious hatred as well.

However, certain provisions of this text have not yet entered into force, in particular those criminalising:

- the use of words or the exhibition of writings inciting to religious hatred, whether such offence is committed in public or in private;
- the publication and distribution of writings intended to incite religious hatred;
- the public presentation of performances intended to stir up religious hatred and the distribution and promotion of recordings intended to encourage religious hatred.

Since this reform, both **incitement to racial hatred** and **incitement to religious hatred can be prosecuted**.

However, although incitement to racial hatred can be proved to exist as soon a person has uttered or made threats, insults or words that may tend to stir up or actually do stir up racial hatred (speeches, disclosure of written documents, theatrical performances), the notion of incitement to religious hatred only includes threatening words or conduct, with the specific purpose of inciting religious hatred, as long as the above-cited provisions have still not come into effect.

As a political offence, incitement to hatred is considered one of the most serious offences.

- Furthermore, uttering racist slogans in football matches is specifically criminalised by the **Football (Offences) Act of 1991**.

Lastly, there is no specific provision criminalising Holocaust denial. Though the defence of crimes against humanity would seem to imply incitement to racial hatred, questioning of crimes against humanity is not sanctioned by the law. Freedom of expression prevails in this case over the concern to preserve historical truth and fight all forms of racism.

The study of the legal systems and judicial practices of the four states involved in the project (Germany, Spain, Great Britain and France) shows that strategies conceived, implemented, and evaluated with the help of civil society organisations (Part I) have helped identify innovative solutions for the prevention and judicial treatment of racist acts and speeches (Part II).

PART I: NATIONAL STRATEGIES DESIGNED, IMPLEMENTED, AND EVALUATED WITH THE PARTICIPATION OF CIVIL SOCIETY ACTORS

In recent years, the feeling among certain communities that they are victims of aggressive behaviour due to their true or supposed belonging to a group sharing a religion or an so-called race is showing a resurgence.

Though the alleged causes of racism are multiple and often common (in particular a degraded social situation), the solutions implemented by the various States to address them are varied.

The study of practices in the various States participating in the project thus highlights the virtuous circle created by complementary actions by public authorities and civil society organisations, since statistical measures and analyses can thus inform the determination of national strategies (I.), which will in turn be broken down into different segments (II.), then evaluated (III.),

I. Defining national strategies in light of the measurements and analyses conducted

The tools put in place to identify and comprehend the forms of hateful conduct and speech (A.) help us better define national strategies to combat racism on the judicial level (B.).

A. Improved identification and understanding of racist conduct and speech

Within each of the States concerned, particularly shocking hate crimes have raised awareness of the phenomena of racism: the burning of the homes of several gypsy families on 14 April 1986 in Martos, province of Jaens (Spain); the assassination of the Dominican Lucrecia Pérez on 13 November 1992 in Monclao-Aracava (Spain); the murder of Steven Lawrence, a black teenager, on 22 April, 1993 in Lewisham - London (United Kingdom); the murder of Michèle Kieswetter on 25 April 2007 in Heilbronn (Germany); the assassination of Ilan Halimi on 13 February 2006 in Bagneux (France); or the murder of Zang Chaolin on 7 August 2016 in Aubervilliers (France) all had major impact on public opinion in these four States.

The need for more precise intelligence regarding the forms, geographical location, and primary characteristics of hate crimes and offences has led States to develop tools for the analysis and detection of these phenomena.

In this respect, as the European Commission, the Fundamental Rights Agency¹⁷ and the ODIHR/OSCE have pointed out, **it would seem that the detection, analysis and publication of statistical data on hateful conduct and hate speech is essential for determining national strategies to combat racism, both in terms of prevention and punishment.**

It can help:¹⁸

- understand the prevalence and nature of hate crimes,
- improve victim support measures,
- prevent hate crime,
- evaluate the effectiveness of measures taken to combat hate crime,
- inform victims, affected groups or communities and the broader public of the justice system's response to hate crimes.

➤ **IN FRANCE**

The Ministry of the Interior, through the Ministerial Internal Security Statistical Department (SSMSI), produces and disseminates official and detailed statistics on offences with aggravating circumstances related to a person's alleged race, religious beliefs, or real or imagined belonging to an ethnic group or foreign nation.

Statistics and analysis are regularly published on the interstats website, hosted by the Ministry of the Interior. They are produced on the basis of two bodies of source data:

- the central register of procedures reported by the police and the gendarmerie.
- the annual victims survey conducted by INSEE (National Institute of Statistics and Economic Studies) since 2007.

SSMSI also contributes to the official statistics contained in the annual report on racism, anti-Semitism and xenophobia of the National Advisory Commission on Human Rights (CNCDH).

In addition, the Ministry of Justice has taken steps to assess the treatment of offences of a racial and discriminatory nature, in both quantitative and qualitative terms, and to improve the comparability of the available statistical data. The Department of Criminal Affairs and Pardons of the Ministry of Justice prepares an annual statistical review of

¹⁷<https://fra.europa.eu/en/publication/2018/hate-crime-recording>

¹⁸ Hate Crime Data-collection and Monitoring Mechanisms – A practical guide OSCE-ODIHR - 2014

judicial activity, prosecutions and convictions, based on the available data. Since 2016, this quantified assessment has been based on a new, more reliable and more exhaustive administrative source. The assessment is distributed to any international bodies that request it (OSCE, ODIHR, ECRI), and results in an annual hearing by the National Advisory Commission on Human Rights (CNCDH) in the context of its annual report.

This assessment makes it possible to obtain a detailed analysis of the number and profiles of perpetrators, the volume and type of offences found, and the structure of the criminal response.

➤ **Cooperation with civil society organisations:**

A compendium of racist, anti-Semitic and antimuslim acts has been compiled by the Ministry of the Interior's Central Territorial Intelligence Department. This compendium includes data on the aforementioned acts as reported by the National Police and the National Gendarmerie; the nature of the acts is then checked against the reports of the Jewish Community Protection Service (SPCJ) and the French Council of the Muslim Faith (CFCM). The Ministry of the Interior issues this information once a year.

As for offences committed on the internet, the Central Office for the Fight Against Crime Linked to Information and Communications Technologies (OCTLCTIC) has signed cooperation agreements with some of these organisations, including the Representative Council of Jewish Institutions in France (CRIF), the International League against Racism and Anti-Semitism (LICRA), SOS Racism, SOS Homophobia and Refuge.

➤ **IN GERMANY**

The local police report politically motivated crimes to the regional police directorates. The information is then transmitted, after a qualification check, to the Federal Criminal Police Office (*Bundeskriminalamt*, BKA), which centralises, evaluates and analyses the national data and sends them back to all the Länder.

This collection of data helps authorities to make strategic and evidence-based decisions for the prevention of hate crimes.

A working group comprising representatives from the various Länder, academic experts, and experts from civil society reviewed the system to develop a definition of hate crime, so as to consider whether any adjustments might be necessary. Based on the opinion issued by this working group in November 2015, the Conference of German Ministers of the Interior decided that as from 1st January 2017, crimes against Muslims, Christians and Gypsies would in the future be classed in different sub-categories of hate crimes.

The Federal Ministry of the Interior publishes annual statistics based on this data on its website,¹⁹ summarising the most important figures and trends in the general criminal statistics for hate crimes.

The report on politically motivated crimes analyses their evolution based on five categories (of the political right, political left, nationalist ideology, foreign policy-related, or religion-based). The hate crimes category is divided into 11 sub-categories: anti-Semitic, romaphobic, xenophobic, anti-disabled persons, antichristian, social status-based, Islamophobic or racist acts, or acts based on other ethnic affiliations, other religions, and based on sexual orientation.²⁰

Data on hate crimes are classified by motivation (xenophobic, anti-Semitic, social class-based, sexual orientation based, or based on the apparent or perceived vulnerability of the victim) and their violent or non-violent nature.

Reforms underway

Regarding judicial statistics, the Länder Ministers of Justice decided in June 2017 to begin collecting judicial data on hate crimes. In 2018 the first Länder collected judicial statistics, which were then forwarded to the Federal Office of Justice,²¹ which in turn collected data for Germany as a whole.

The 2019 report will be the first to include national statistics on hate crime. To produce these statistics, criminal offences are classified as hate crimes, if after evaluation of the circumstances and/or the author's attitude, evidence suggests that the attack was directed against the victim because of his or her real or imagined membership of a religion, nation, ethnic group, sexual orientation, or based on his or her skin colour, or possible vulnerability, gender, social status, or political orientation.

The judicial investigative procedures will be conducted according to the type of offence, and therefore based on the following sections of the Criminal Code:

- use of symbols of unconstitutional organisations (Section 86a of the Criminal Code),
- incitement to hatred, dissemination of scenes of violence (Section 130, 131 of the Criminal Code)
- insults, slanderous denunciation and defamation (Section 185 to 187 of the Criminal Code), murder and manslaughter (Section 211-212 of the Criminal Code)

¹⁹https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/pmk_node.html
<http://www.bmi.bund.de/SharedDocs/Pressmitteilungen/DE/2017/04/pks-und-pmk-2016.html>

²⁰[https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2018/pmk-2017-hasskriminalitaet-2001-2017.pdf?__blob=publicationFile&v=2](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2018/pmk-2017-hasskriminalitaet.pdf?__blob=publicationFile&v=3)

²¹https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Straftaten/Strafrechtspflege_node.html

- violence resulting in injury (Section 223 et seq. of the Criminal Code) committed by a person holding public authority or an elected office.

➤ **Cooperation with civil society organisations:**

The Federal Ministry of the Interior has conducted research to better understand and assess the scope of cooperation between civil society organisations at the local, regional, and federal levels in Germany.

This study examines the situation in Germany. It is based on surveys and research with public authorities and NGOs, to strengthen cooperation between the police and civil society organisations to identify crimes motivated by prejudice.

In autumn 2019 the results will be presented at regional conferences that will include the main target groups: law enforcement and NGOs.

➤ **IN THE UNITED KINGDOM**

The 2007 accords on the common definition of hate crimes allowed to the police to be provided with consistent data on the subject for the first time.

The data is collected by the Crown Prosecution Service, in association with the Management Information System (MIS).

Official statistics on convictions, criminal procedures, the prosecution of offenders, and on courts and tribunals are also collected by the Ministry of Justice.

The data are published on a regular basis, from 1st April to 31 March. The various reports also contain information on how the data are collected and the identity of the body performing the collection.

Hate crimes reported by the police in England and Wales are included in the annual statistical bulletin of the Home Office. As for statistics on hate crime in Northern Ireland, they are published by the Police Service of Northern Ireland. In Scotland, these data are collected by the office of the procurator fiscal. Official statistics on crime and law enforcement are kept by the Home Office.

➤ **Cooperation with civil society organisations:**

The police and associations engaged in the fight against anti-Muslim, anti-Semitic and anti-LGBT crime, namely *Tell Mama*, *Community Security Trust* and *Galop*, have established an information sharing system for hate crimes and hate incidents.

In the United Kingdom the collection of data is not limited to judicial proceedings instituted in response to a formal complaint, but includes all hate incidents (racist, anti-religious, anti-LGBT, etc.) of which the police may become aware.

Agreements made between the Home Office and NGOs involving the sharing of data are published on the *True Vision* website.

Frequent meetings between the police and NGOs permit the exchange of data and feedback, and help improve methods and procedures used for counting and data collection.

FOCUS - THE RECORDING OF HATE CRIMES AND HATE INCIDENTS

in ENGLAND and WALES

In accordance with the instructions given to the Police Force (The College of Policing's Hate Crime Operational Guidance), not only are all complaints, and more generally all procedures concerning hate crimes systematically recorded, but hate incidents that do not lead to an investigation being opened are recorded as well.

Hate crimes and hate incidents are grouped into the "hate motivation" category, and defined as follows: "*Hate crimes and incidents are taken to mean any crime or incident where the perpetrator's hostility or prejudice against an identifiable group of people leads to their targeting the victim.*" **Given this broad and inclusive definition, the victim does not have to be a member of a particular group. In fact, anyone can potentially be a victim of a hate crime or hate incident.**

From a data collection perspective, hate incidents and hate crimes are considered as such **when they are perceived "by the victim or any other person, to be motivated by a hostility or prejudice" based on the victim's supposed race, religion, sexual orientation, disability, or gender identity, whether real or assumed.**

When filing a complaint, the victim does not have to provide any evidence of this perceived hate motivation, and at this stage the police must not challenge this perception. The proof of the perpetrator's hostility or bias is not required for an incident or crime to be recorded as a hate incident or hate crime.

These instructions, given to all police forces, are intended to help limit the phenomenon of underreporting by victims and enable police forces to better understand the nature of hate crime.

However, the evidentiary requirements remain unchanged for trials: the prosecutor must provide proof of the perpetrator's specific hostility in order to characterise an act as a racist offence, and more broadly as a hate crime.

This practice has resulted in an increase in the number of racist offences and incidents reported to 71,251 per year in the United Kingdom (95,552 hate incidents and hate crimes in

total), which are significantly higher figures than those reported in other European States, which count racist acts based not on statements made by victims but on statements made by the police.²²

➤ **IN SPAIN**

The collection of data on hate crimes follows the procedure in place for general crime statistics.

The Secretary of State for Security at the Ministry of the Interior is in charge of the management of the Criminal Statistics System (SSC) and produces statistics at a national level. The Secretary of State for Security collects information from the databases in the SSC on a monthly basis.

Derived directly from police databases, statistics on hate crimes have since 2013 been used to produce an **annual hate crimes report**, issued by the Secretary of State for Internal Security.

This report gives an overview of the most significant figures in regard to hate crimes, broken down into eight motivations, which form the basis of the statistical system: racism/xenophobia, ideology, sexual orientation or identity, gender, religious beliefs or motivations, anti-Semitism, vulnerability, aporophobia/discrimination against the poor.

The report compares the figures year after year, and specifies the type of crimes and offences, proven and not proven, their territorial distribution, and the profiles of victims and perpetrators. It also includes a section on hate speech. The report is presented to the public, and is published on the website of the Ministry of the Interior.²³

In 2015, the General Secretariat for Immigration and Emigration, the Ministry of Labour and Social Action, the General Council of the Judiciary, Ministries of Justice, the Interior, Health, Social Services, and the Centre for Judicial Studies jointly developed an agreement for collaboration and cooperation against racism, xenophobia and other forms of intolerance.

This agreement set up a working group to focus on ways to improve the collection of criminal data (to be managed by the Keeper of the Seals). This working group includes representatives from all signatory institutions. A large group of experts from the relevant NGOs participate as observers as well.

FOCUS - VICTIMISATION SURVEYS

²²Source: data provided to ODIHR – OSCE <http://hatecrime.osce.org/united-kingdom>

²³Portal Estadístico de Criminalidad <https://estadisticasdecriminalidad.ses.mir.es/>

In addition to the official statistics, victimisation surveys would also appear to be an essential support for measuring the number of hate crimes that do not enter the justice system due to the phenomenon of underreporting.

"Victimisation" surveys can also provide valuable information on victims' perceptions of many aspects of hate crime, including the resources that may be allocated:

- the level of satisfaction with the response provided by the police to the acts committed,
- the feeling of insecurity in regard to hate crimes,
- the reasons leading to a complaint or to a refusal to lodge a complaint,
- the places where the hate crimes were committed, which may make it possible to assess levels of underreporting locally,

whether the respondent has witnessed a hate crime, or whether a family member has been the victim of such an offence (which provides more information on the phenomenon of underreporting),

-the characteristics of the victims (based on the applicable data protection legislation: ethnic origin, age, gender).

For example, **in Spain** in late 2012, the racism and xenophobia observatory (Oberaxe) commissioned a study coordinated by the Centre for Sociological Research (CIS) to comprehend and interpret the opinions and attitudes of Spanish nationals towards foreign populations.

In France, the National Observatory on Crime and Criminal Justice Responses (ONDRP) also conducts a survey annually, under the supervision of the National Institute of Statistics and Economic Studies, called the "Living Environment and Security" surveys, which now include a section on discrimination based offences. In March 2017, a specific ONDRP survey assessed the number of victims of racist, anti-Semitic or xenophobic abuse at 975,000 over a two-year period.²⁴ This estimate is linked to the number of judicial proceedings instituted for racist remarks. Based on this, it has been estimated that 6 to 8% of events are reported to authorities.²⁵

In England and Wales, a victimisation survey has been published concerning hate crimes: This survey counted 222,000 hate crimes in England and Wales between 2012 and 2015; only

²⁴ ONDRP "Grand Angle" investigation, March 2017: "Les injures à caractère raciste, antisémite ou xénophobe" – an operation conducted on the basis of Living Environment and Security surveys by Mickaël SCHERR and Nadia AMROUS

²⁵Report of the National Advisory Commission on Human Rights on the fight against racism, antisemitism and xenophobia, 2017, p.171; and the abovementioned "Grand Angle" survey, p. 17

44,471 of these hate crimes were recorded by the police, resulting in a level of underreporting deemed "still excessive."²⁶ (see plan, Part I, I B.1.)

B. Defining national strategies

National strategies usually take the form of **action plans**.

➤ IN GERMANY

It was in 2008 that **Germany** submitted its first National Plan to Combat Racism, Xenophobia, Anti-Semitism and All Forms of Intolerance to the Geneva-based Office of the United Nations High Commissioner for Human Rights.

The Länder are responsible for the implementation of federal policies; under decentralisation, they have authority over the police, law enforcement, education and culture as well as social welfare and prevention. For this purpose, they must effectively coordinate their actions with the federal government to meet local needs within a global framework.

Thus, in May 2017, the government published a plan for the fight against racism, entitled "**Positions and Measures to Address Ideologies of Inequality and Related Discrimination**,"²⁷ which was financed by the relevant ministries.

This plan takes discrimination against homosexuals and transsexuals into consideration as well.

It aims in particular to:

- provide better protection for victims of discrimination, reinforce civil society organisations that provide assistance to victims of hate crime;
- improve cooperation and the use of financial resources allocated to combating hate;
- increase co-operation with the Länder and municipalities so as to make the general public aware of the principle of equality, especially equal treatment;
- encourage civic education, diversity in the working world, and civic engagement;

²⁶Action against hate, The UK Government's plan for tackling hate crime, Home Office, July 2016

²⁷https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/gesellschaft-integration/nap.pdf;jsessionid=FCE24D49B0B5162C705B9834385ADBB4.2_cid364?blob=publicationFile&v=2

- develop the criminal response to racist violence and strengthen the fight against racism and hatred on the internet.

Likewise, on **12 March 2018**, the ruling political parties CDU, CSU and SPD signed a coalition agreement for the 19th legislative period entitled: *A New Awakening for Europe, a New Dynamic for Germany, a New Cohesion for Our Country*. The plan for this coalition agreement contains several proposals to address the issues of racism, anti-Semitism, anti-LGBT hatred and hate speech.

A federal coordinator for the fight against anti-Semitism was finally appointed in May 2018. Advised by a panel of experts in the academic field, civil society, and education, he is in charge of coordinating the government's actions against anti-Semitism.

➤ **SPAIN**

The Comprehensive Strategy to Combat Racism, Racial Discrimination, Xenophobia and Intolerance, approved by the Council of Ministers on 4 November 2011, constitutes a national commitment of the Spanish State, undertaken at the international conference held at Durban in 2001.

This strategy is interministerial by nature, since it involves the participation of the Ministry of Justice, the General Prosecutor's Office, the Ministry of Social Services, the Ministry of the Interior, the Ministry of Labour and the Centre for Legal Studies.

In this context, a working group was created, with the participation of the Ministry of the Interior and the Ministry of Justice, to conduct an analysis of court decisions in this domain. This group seeks to analyse crimes listed as hate crimes in the initial complaint, and then check whether the hate motivation was still retained when the decision was finally handed down.

This national strategy also highlighted the **need to improve the collection of data on racism, xenophobia, racial discrimination** and other forms of intolerance, and gave rise to **the protocol for the action of law enforcement officers established in January 2015.**

Following the 1998 creation of the Madrid Community observatory against racism and intolerance, in particular to deal with the violence committed by the "Ultras Sur," **Racism and Xenophobia Observatory (OBERAXE)** was established by the Constitutional Law of 11 January 2000, reporting to the Secretary of State for Migration, which reports in turn to the Ministry of Labour. Its functions, redefined on 20 July 2018, include the creation of an information network on the situation and on the fight against discrimination, racism and xenophobia, in collaboration with public and private agents involved in the prevention and suppression of these phenomena.

On 23 April 2014, the Hate Crime and Discrimination Victims' Council²⁸ was formed pursuant to EU Directive 2012/29/EU of 25 October 2012 on victims' rights. This Council includes several civil society organisations: Movimiento contra la Intolerancia, Red Europea contra los Crímenes de Odio, la Asociación de Inmigrantes Senegaleses, la Asociación de Refugiados e inmigrantes de Perú, la Unión Romaní de Madrid, la Federación Estatal de Gais y Lesbianas, la Fundación Triángulo, la Federación de Comunidades Judías de España, la Red Cívica contra el antisemitismo, la Fundación Violeta Friedman, la Plataforma Ciudadana contra la Islamofobia, Red Cívica contra el Antisemitismo, Plataforma contra el Antigitanismo.

➤ IN FRANCE

Following the previous plans for 2012 and 2015, the Prime Minister announced **the National Plan to Combat Racism and Anti-Semitism 2018-2020** on 19 March 2018, a plan to be managed by the interministerial delegation for the fight against racism, anti-Semitism and anti-LGBT hatred (DILCRAH).

It involves almost all ministries and was built after consultation with anti-racism and anti-Semitism associations, based on assessments made by the National Advisory Commission on Human Rights, and by a joint oversight task force.²⁹

To implement the plan, DILCRAH has public policy tools of its own (€6.2 million, including €4.2 million in national operational funding and €2 million for the call for local projects), as well as the ability to involve other ministries.

The plan establishes several priorities:

- **the fight against hatred on the internet and on social media:** a national report³⁰ recommended stronger regulation of social networks, and resulted in the initiation of a legislative project on the subject.

The adaptation of the legislation, furthermore, has now been set in motion by the Justice Reform Bill, which provides for the extension of undercover investigations to racist and anti-Semitic offences (a possibility hitherto reserved for terrorism and child pornography investigations).

In parallel with the work undertaken towards the revision of the law, the DILCRAH reinforced the financial support provided (about €200,000) to several associations specialising

²⁸"Consejo de Víctimas de Delitos de Odio y Discriminación"

²⁹IGA-IGAEN

³⁰This report, commissioned by the President of the Republic and mentioned by the National Plan, was submitted to the Prime Minister on 20 September 2018 by Laetitia Avia, Karim Amellal and Gil Taieb; it proposes the Europe-wide creation of a "third category" for "content accelerators," in addition to those of hosts and publishers.

in the fight against online hate and in cultivating critical thinking, or in spreading discourse to counter hate online (Respect Zone, E-enfance, Conspiracy watch, Civic Fab, Génération numérique). DILCRAH also supported a Hackathon on plural identities, organised by the association Artemis (SOS group). These actions supplement the necessary development of media education.

A reporting platform called "Pharos" was set up in 2015 to allow, among other things, the reporting of illegal content for investigation purposes (in particular in the field of terrorism and child pornography, but also in matters of hate). In accordance with the commitments of the national plan, reinforcements were made to the unit assigned to online hate speech in the summer of 2018.

- improvement of educational, higher learning and research tools in this domain:

the plan thus advocates the production of resources for teachers and future teachers, training and development of partnerships with human rights education and anti-racism and anti-Semitism associations, as well as with cultural institutions and historical and memorial sites (ex. Shoah Memorial, Camp des Milles, ACTe Memorial for the history and remembrance of slavery).

The plan also includes new measures to help improve the responsiveness of schools and higher education institutions to racist and anti-Semitic incidents on the one hand, and to develop research on the other. In particular, a national "anti-Semitism/racism" team has been set up to train staff, provide concrete support, and respond to incidents.

In higher education, the racism and anti-Semitism reference officers' network created by the prior plan is being strengthened, so as to be able to act and react more effectively in a context marked by a resurgence in anti-Semitic acts at higher education institutions.

➤ **IN ENGLAND AND WALES**

Following on from the July 2016 plan, the Home Office announced an anti-hate action plan in October 2018.³¹

The plan covers measures to be taken against hate based on supposed race, religion, sexual orientation, transgender identity, and disability.

This plan recalls that hate crimes produce particularly harmful effects on their victims, in that they are intended to attack an intrinsic part of their identity, whether real or perceived.

³¹Action against hate, the UK Government's plan for tackling hate crime, Home Office, July 2016; Action against hate, the UK Government's plan for tackling hate crime – "two years on," Home Office, October 2018, Secretary of State for the Home department, Secretary of State for housing, communities and local Government

The hate crime plan establishes **5 government priorities**:

- **to prevent hate crime by fighting against prejudices and stereotypes**, by giving teachers and young students adequate tools, such as a new programme allowing teachers to tackle "difficult subjects", and an assessment of the frequency of harassment in schools, especially of an anti-Muslim, anti-Semitic, homophobic, or racist nature;
- **to combat hate crime**, with the aim of reducing the number of hate incidents in different communities: £2.4 million in funding for security measures at open places of worship, in public transport, and at night, with training and awareness raising actions, measures to facilitate the filing of complaints, measures to counteract online hate and promote online counter-discourse with the support of major social networks, as well as the funding of a police service called the "National Police Hate Crime Hub," responsible for streamlining service responses and victim support.
- **encourage the filing of complaints for hate crimes** by improving the processes, encouraging reporting to third parties (e.g. directors of associations), sometimes outside police facilities (on association premises), and working with groups that may not normally wish to file complaints (e.g., Muslim women, Orthodox Jewish Haredi community members, transgender people, Gypsies, Roma, Travellers, migrants), and by publishing any prosecutions that ultimately produce convictions so as to encourage victims to file complaints, and be confident that their complaints will be taken into consideration;
- **Strengthen support for victims of hate crime**: improvement of "Victim Personal Statements" to ensure that statements by hate crime victims are properly taken into consideration. The Crown Prosecution Service (CPS) is committed to producing a new guide on the impact of hate crime on all targeted communities. In order to improve the experiences of witnesses in the courts, the CPS will conduct a review of the dedicated police units ("Witness Care Units");
- **improve understanding of hate crime** through appropriate data collection, including statistics broken down by the religion of the victim; the Extremism Analysis Unit will conduct a study of neo-Nazi networks and continue its partnerships in the research community to better analyse hate crimes and how to better combat them.

FOCUS ON NEW LEGAL RESOURCES DEVOTED TO THE FIGHT AGAINST HATE ON THE INTERNET

- In 2017, the German government enacted a law to impose obligations of moderation and transparency on companies providing social networks to more than 2 million users.

The German law, entitled "**Netzwerkdurchsetzungsgesetz**" and known as "**NetzDG**," has been in force since 1st October 2017 and **imposes deadlines on operators for the removal of criminally punishable content**: 24 hours for obviously illegal content, 7 days for any other illegal content (deadline can be exceeded in certain cases).

The companies must offer easily recognisable, directly accessible and permanently available **procedures for reporting** criminally punishable content.

Furthermore, companies are subject to **an obligation to submit a report on their moderation practices twice a year, and appoint a legal agent in Germany**.

Under the terms of the law, companies may jointly **create a self-regulation agency**.

Furthermore, companies providing social networks are under **an obligation to keep the hate content they have removed available to the courts for 10 weeks**.

Failure to comply with this law may subject offenders to fines of up to €50 million.

• In France, the Prime Minister's announcement of the National Plan to Combat Racism and Anti-Semitism was an opportunity to recall that:

- European Directive 2000/31/EC, enacted on 8 June 2000, and thus prior to the emergence of internet social networks, defined a framework of binary liability for publishers and hosts, and that the development of social networks and video-sharing platforms **necessitates a re-evaluation of the liability regime applicable to digital platforms, and the proposal of a European legislative initiative**, to provide a harmonised response, especially to the spread of hatred on the internet.
- **a legislative project is already underway on the national level in France** so that concrete solutions can be provided that are consistent with the legal regime applicable to digital platforms: the obligation to appoint legal representation in France, transparency in platform moderation efforts, ensuring the simplicity of systems for digital reporting of illegal content, and closure of anonymous accounts broadcasting illegal content in a massive and repeated manner;

In addition, new means of judicial action such as undercover investigations have been established; interlocutory and ex parte proceedings have also been brought by prosecutors' offices to remove or block illegal content.³²

³²The Paris Regional Court, for instance, ordered the blocking and delisting of the website "democratieparticipative.biz" via an interlocutory injunction issued on 27 November 2018.

II. Implementing national strategies for preventing and combating racism

The issue of implementing national strategies for the prevention and treatment of hate crime is an essential one. It implies the establishment of a cross-disciplinary organisation involving several ministries, open to participation by civil society, with a jurisdiction covering the entire national territory.

Several institutional architectures are appropriate to meet these requirements.

In **Germany**, the "Forum gegen Rassismus"³³ ("Forum against Racism") brought together the German government and some 90 non-governmental organisations. It meets on a regular basis to develop strategies to combat racism.

The "Demokratie leben!" ("Living Democracy") federal programme is one of the core components of Germany's efforts for the prevention of extremism and the promotion of democracy. With €100 million in annual funding, it addresses children, adolescents and young adults at local, regional and national levels to help promote the development of critical thinking, and has to the creation of a "Democracy Centre" in each of the Länder to promote diversity and deal with racist or anti-Semitic incidents.

People who are discriminated against because of their ethnic origin, religion, worldview, gender identity, age, sex or disability may also contact the Federal Anti-Discrimination Agency.

In **France**, the DILCRAH reports to the Prime Minister, in line with its national and interministerial nature. It is also a government interface with associations engaged in the fight against racism, anti-Semitism and anti-LGBT hate.

DILCRAH has partnerships with more than 64 national associations, and also finances 560 local projects in the region, through the prefectures of 89 départements.

It also maintains privileged relations with the Ministry of Justice and the Ministry of the Interior to define and implement national strategies for the prevention and treatment of hate crime (e.g. training at the National School for the Judiciary or at the various schools for officers of the national gendarmerie, national police, and local police officers).

At the local level, operational committees engaged in the fight against racism, anti-Semitism and anti-LGBT hate bring together actors from the field in each département (prefect,

³³ <https://www.bmi.bund.de/DE/themen/heimat-integration/gesellschaftlicher-zusammenhalt/forum-gegen-rassismus/forum-gegen-rassismus-node.html>

prosecutor, national police, national gendarmerie, national education, a representative for DILCRAH, associations) to take stock of the actions underway and to be undertaken.

Certain prosecutors' offices and appeals court prosecutors' offices (in Paris, Lyon, and Aix-en-Provence in particular) bring together contact prosecutors and anti-racism associations in the framework of a monitoring service. (*see Part II below*)

In the **United Kingdom**, the Cross-Government Hate Crime Programme is conducted by an agency under the direction of a Superintendent, which reports to the State Secretariat for Communities and Local Government within the Home Office.

This agency acts:

- interdepartmentally, in particular with the Ministry of Justice, the Crown Prosecution Service, the Home Office, with the research and training body, the College of Policing, and the various police agencies, within each local government organisation;
- in connection with victim support associations, primarily the Community Security Trust (for anti-Semitic conduct), Tell Mama (for anti-Muslim conduct) and Galop (for anti-LGBT conduct),
- The Cross Government Hate Crime Programme is also implemented at the local level by the hate crime coordinators for each of the 13 departments of the Crown Prosecution Service, in collaboration with the scrutiny panel groups (see II.B.).

The fight against hatred on the internet has led States and civil society organisations to reconfigure their resources to meet new challenges (see focus below).

FOCUS: DEVELOPING AND CONCENTRATING MEASURES TO COMBAT HATE ON THE INTERNET

The technical sophistication of the internet, the specific nature of hate speech and the legal requirement to evaluate whether or not it is illegal, the actions necessary to identify the authors, and the establishment abroad of hosts of racist and anti-Semitic hate sites justify the use of special measures and methods of action.

Pursuant to the Code of Conduct established between internet operators and the European Commission on 16 May 2016, specific mechanisms by which civil society actors can be recognised by the major internet platforms have been set up in most European Union

countries ("trusted flaggers"), thanks to the diligence of the High Level Group against racism, xenophobia and other forms of intolerance.

Structures to facilitate the co-regulation of illegal online content by public authorities, civil society and the platforms have been strengthened to ensure technical cooperation, including at the international level, and exchange of good practices. Thus, the French civil society association "Point de Contact," which has the participation of various internet platforms, handles reports of illegal content and helps identify the companies that host it, in connection with the Ministry of the Interior's "Pharos" platform.

Networks bringing together State services, major platforms and associations have also been set up to conduct common actions: flagging, measures to counteract the filter bubble phenomenon, reinforcement of positive discourse, the emergence of cybercitizenship, and the development of media education and information literacy.

The implementation of national strategies for the fight against racism in the countries studied breaks down into instructions or guides for police forces and judicial officers to ensure the adequate judicial treatment of hate crimes (A), and actions for the training of judicial officers and investigators (B).

A. Instructions or practical guides for use by investigators or prosecutors

The identification and understanding of the experiences of discrimination suffered by persons of very different backgrounds are an essential part of effectively investigating and prosecuting hate crimes and offences.

Different states have implemented specific instructions and guides to support the training of police, prosecutors and judges and to better identify and understand the mechanisms of hate crimes and offences.

In **France**, for more than 10 years, the Ministry of Justice has been providing instructions to public prosecutors and prosecutors through circulars and dispatches³⁴ with the aim, on the one

³⁴Examples: The dispatch of 4 August 2014 relating to judicial responses to acts and statements of a racist, xenophobic and anti-Semitic nature emphasised the general instructions on the subject (to advise the DACG regularly and in real time of the most serious acts/ responsiveness of public prosecution/ provision of information to victims, and importance of dialogue with partners), as well as certain specific procedural aspects of the Law of 29 July 1881 on the freedom of the press in regard to time-bars and the institution of proceedings.

hand, to draw their attention to the need to provide a firm and rapid criminal response to racist, anti-Semitic or xenophobic conduct, and on the other hand to inform them of legislative changes.

The instructions transmitted concern both general guidelines for criminal policy, in particular with regard to the prevention, prosecution and punishment of offences, as well as specific issues, whether concerning the applicable law or procedure (proposing an analysis of a difficulty raised, or presenting new legislation), or in connection with the occurrence of events requiring an adjustment of the criminal response (attacks, remedial citizenship training).

All these directives are intended to reiterate the need for a rapid, firm and appropriate response to racist, anti-Semitic or xenophobic acts and as such to conduct public prosecutions with a high degree of responsiveness, using the highest criminal classification, as well as specific prosecution methods where possible and desirable, such as immediate trial, with requests for commitment orders.

In addition, practical tools such as methodological guides or focus sheets are available to judges on the intranet site of the Ministry of Justice to support them in their professional practice.

Training courses are also provided at the ENM. In **Germany**, though investigative methods are determined within the different Länder, the federal parliamentary commission on homicides committed by neo-Nazi groups and the group known as the "National Socialist Underground" recommended that an obligation be established to seek out and prove in legal proceedings the existence of motives of discriminatory hatred. Each Federal State is also in charge of training its own police forces and is responsible for ensuring that this recommendation is implemented.

In the **United Kingdom**, the Crown Prosecution Service of England and Wales (CPS) has produced a written guide for prosecutors on the prosecution of hate crimes.

These guides offer recommendations appropriate to the nature of offences that are racially motivated or based on religious hatred,³⁵ homophobic, biphobic or transphobic offences,³⁶ or offences directed against persons with disabilities.³⁷

A distinctive feature of this documentation is that it is published not only on the CPS website, but on the "True Vision" website intended for the general public as well (see focus). This transparency enables victim support associations, and all individuals in general, to verify the commitments undertaken by police and prosecutors in regard to the processing of hate crimes

The DACG circular of 20 April 2017 presented the provisions concerning criminal law or criminal procedure of the Law of 27 January 2017 on equality and citizenship.

³⁵<https://www.cps.gov.uk/legal-guidance/racist-and-religious-hate-crime-prosecution-guidance>

³⁶<https://www.cps.gov.uk/legal-guidance/homophobic-biphobic-and-transphobic-hate-crime-prosecution-guidance>

³⁷<https://www.cps.gov.uk/legal-guidance/homophobic-biphobic-and-transphobic-hate-crime-prosecution-guidance>

and offences, and clearly demonstrate the obligations incumbent upon prosecutors in the treatment of hate crimes and offences.

These instructions point out in particular that prosecutors are obliged to seek out proof of a possible hate crime, and indicate the various types of evidence that may be sought.

Specific documents also refer to the actions that may be taken by witnesses to an offence, and their rights and obligations.

These guides provide a practical definition of racially motivated hate crimes, offences, or incidents, that is, *that are perceived by the victim or any other person* as being motivated by hostility or prejudice based on the victim's origins or supposed race.³⁸

More complete instructions provided to the police concerning hate crimes are provided in the guide "Hate Crime Operational Guidance"³⁹ by the entity responsible in particular for training the various police forces in England and Wales, the "College of Policing." These instructions, posted on the internet, emphasise the phenomenon of underreporting hate crimes, resources for facilitating the filing of complaints and victim statements (e.g., hearings in the presence of an external party, if necessary, outside police facilities), as well as the various investigations to be carried out, from visits to crime scenes to witness and victim statements, or even in regard to offences committed online.

Practical guides or instructions can be practically implemented via training activities.

The national anti-racism strategy **in Spain** has led to the establishment of a police action protocol (for the National Police and Civil Guard) to deal with incidents of a racist nature.⁴⁰

Established by the Ministry of the Interior, the Ministry of Justice, in partnership with the National Observatory of Racism and Xenophobia, the Ministry of Labour and Social Action, the Ministry of Health, Social Services and of Equality, the Pluralism and Coexistence Foundation, and after dialogue with civil society organisations supporting victims and defending human rights, its purpose is to establish guidelines for police officers on how to identify and deal with hate incidents and offences.

In place since January 2015, it contains:

- an index of hateful conduct and violations of anti-discrimination laws,
- a list of hate incident indicators to be collected in police investigations, which must be included in police reports in order to be able to bring charges at the prosecution stage, and if necessary produce introduce evidence at the hearing (see focus),

³⁸"Any incident/crime which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person's race or perceived race"

³⁹www.report-it.org.uk/files/hate_crime_operational_guidance.pdf

⁴⁰"Protocolo de Actuación para las Fuerzas y Cuerpos de Seguridad para los Delitos de Odio y Conductas que Vulneran las Normas Legales sobre Discriminación" Instruction N. 16/2014 of the Secretary of State for Security

- a description of the different stages of the police investigation,
- guidelines concerning victim protection, relations with NGOs, on racist violence and behaviour in sport, and on offences committed online, in forums and on social networks,
- instructions on the criteria for recording incidents and hate crimes relative to the usual areas of discrimination; these instructions are necessary for the collection of statistical data and make it possible to supply data to the security forces' criminal statistics system (SEC).

The assessment conducted showed that this protocol has made it possible to strengthen collaboration between government institutions and NGOs through a series of training actions provided to police officers as well as to strengthen the network of social mediators in law enforcement agencies, and has facilitated the filing of complaints and the recording of hate crimes in recent years.

B. Training and awareness of police and justice professionals

If the victim perceives that the attack he or she suffered was motivated by hate, investigators need to take this perception into account. Police and prosecutors must therefore be made aware of the nature of the message of exclusion and rejection that hate crimes involve, and the deep trauma that may be caused to the identity and dignity of the victims by racially motivated acts or remarks.

The cultivation of such awareness should enable investigators and prosecutors to ensure that the voices of victims are welcomed, and to combat the phenomenon of the under-reporting of racist and discriminatory offences. It also involves the development of a culture of service, ensuring that victims are welcomed from their first meeting with an intake officer.

This awareness is evidently all the more important considering that victims, whose dignity has been compromised, and whose identity has been reduced to their real or supposed membership in a particular community, may have difficulty clearly expressing their perception of the acts they are reporting, and the investigators will thus need to extract from these victims' statements any elements likely to be useful in conducting investigations for evidence collection purposes. It is therefore a matter of considering the victim's perception of what happened, rather than their feelings about it.

This detailed appreciation requires specific training, based on real practical cases, but also dialogue with professionals with a privileged relationship to the victims, often persons from specialised associations, as well as historical or cultural training, and, where appropriate, training in regard to the forms of religious practice undertaken by members of the primary

national minorities. Not only can this training promote greater openness, it can also help provide information that may be required to understand the context in which the offence was committed, or be helpful in gathering clues and evidence for the investigation.

The analysis of the facts by police services and prosecutors at the beginning of the investigation is most often decisive in the future development of the procedure, because it determines in general the nature of the investigations that will be carried out.

However, assessing whether a possible racist motive may have existed at the beginning of the investigation is most often a delicate matter, especially in the absence of the victim's version of the story, especially in the case of homicide, or when victims are incapable of expressing themselves.

Thus, the possibility of a racist motive must be considered from the first stages of the investigation, and must be included in the initial analytical framework used by investigators and prosecutors, so that they can promptly conduct appropriate investigations into the events, and the personality of the victim or perpetrator: physical checks, receiving the perceptions of the victim, and of any witnesses, the behaviour of the perpetrator prior to or during the events, etc.

Investigators and prosecutors must therefore receive specific training and be provided with guides or instructions that take into consideration the possibility of a racist act from the beginning of the investigation, especially when a certain number of indications are present.

The commitment of States to improving the judicial treatment of all forms and manifestations of racism has resulted in discussions on how to develop an **in-depth training programme adapted to this type of legal action for all professionals that work with victims or participate in the conduct of investigations.**

Indeed, it is clearly necessary for all actors in the fight against racism, from the initial intake of victims to the filing of a complaint and eventual trial, to have **a sound knowledge of the issues involved in the subject.**

It is incumbent upon States to create a network of investigators and judicial officers with an awareness of the specific nature of the judicial treatment of supposed hate crimes and offences, so as to improve the quality of the statements collected from victims and the criminal procedure ultimately to be conducted.

The analysis of judicial practices **highlights the importance not only of technical training, but also of historical and sociological training.**

It is indeed now understood by all the States here studied that a better knowledge of history, religions and cultures would make it possible to develop a more appropriate position vis-à-vis victims and better comprehend their reluctance to report the facts.

FOCUS - Training in cultural exchange in Germany

The development of a knowledge of different cultures and how to understand them is one of the central issues dealt with in the training of certain units of the federal police (Ober Bundespolizeidienst).

Furthermore, since March 2013, the Federal Criminal Police Office has developed a cooperation with the Fritz Bauer Institute in Frankfurt, as part of which mosque and synagogue visits are organised along with discussion workshops concerning police conduct during the national socialist era.

This subject is also discussed in detail in the curriculum for certain federal police services and in particular for the Federal Criminal Police Office in the context of the kinds of criminal phenomena that it is particularly likely to face (political crime, trafficking in persons), as well as in more in-depth practical courses on topics such as "the questioning of specific victim groups."

As for the training of judicial officers, the Federal Ministry of Justice and the German Institute for Human Rights have conducted during the last two years a project aimed at developing training modules for judges and prosecutors on the subject of racism. The purpose of these training modules is to help judicial officers respond appropriately to acts motivated by hate, and to take into consideration in their professional practice the experience of people affected by racism, and thus ensure their effective access to justice without discrimination.

For example, in France, training courses for police and judicial officers are also provided at memorial sites, such as at the Shoah Memorial sites in Paris and Drancy, or at Camp des Milles, in Aix-en-Provence.

Supplementing this work promoting sociological and historical awareness, the study visits also highlighted the importance of **professional technical training in receiving victim statements**.

In order to help ascertain whether an offence involved a hate motivation, the professionals responsible for conducting the investigation may be **provided with tools to help guide their professional practice** and ensure **the uniformity of practices and the development of standards** for procedural conduct as soon as such hate motivation may be presumed.

FOCUS - Training in the collection of victim statements

In France

To help investigators with complaints related to these types of events, tools are given to them (action sheets prepared by DILCRAH, a methodological guide on the prevention of discrimination and racist, anti-Semitic and xenophobic acts, computer assisted gendarmerie report writing software (LRPGN)) that allow investigators taking statements from victims of discrimination or racist acts to access a list of predefined questions, so as to optimise the quality of their investigations and ensure the completeness of the evidence gathered on the offending acts and the context.

As part of the 2018-2020 inter-ministerial plan to fight racism, with the participation of the French Ministries of Justice and of the Interior, one of the measures taken has led to trials, starting in September 2018, to examine the creation of a network of investigators and judicial officers specifically trained in the fight against hate, so that police officers and gendarmes responsible for receiving complaints and carrying out investigations can develop greater awareness in this regard. The results of this experiment will make it possible to evaluate the creation of a new interview model that could be made available to participants to guide investigators in identifying the factual elements likely to objectively evaluate the aggravating circumstance of racism.

In Spain

Within the State Secretariat for Security, reporting to the Ministry of the Interior, a Hate Crimes National Office was recently established to lead training missions amongst police services throughout the national territory. This recently created unit, which currently includes four members, demonstrates the awareness of all States of the specific nature of the fight against offences classed as "hate crimes" and the need to raise awareness amongst the investigating services that handle them.

Finally, although the training of the investigators who handle victim intake and are victims' first contacts in the judicial process is vital, it must be supplemented by the **appropriate training of judicial officers**.

A common knowledge base for the treatment of racist offences must be provided for all judicial officers, whether prosecutors or judges, who may have to face with this type of criminal activity in their professional practice.

Special attention must therefore be paid to the initial training of judges and prosecutors but also to their further training. (the ENM provides this, doesn't it? It would be hard not to make some reference to that at some point)

FOCUS - mandatory training of prosecutors in England

For the last 6 years, the fight against racism has been treated as a priority issue. As such, the Crown Prosecution Service has developed **mandatory continuing education courses for all prosecutors**, taking place over **three years**. Each year a particular theme is tackled, whether disability, supposed race, religion or sexual orientation.

The training activities are conducted via face-to-face sessions held on premises external to court facilities. "Senior" prosecutors are responsible for directing the modules, which, in addition to providing practical and technical lessons, also include the viewing of victim interviews, which often has a strong impact on the professionals attending.

In order to permit the smooth operation of this training, which is mandatory for all and spread out over several years, provisions have been made for the possibility that any judicial officers who are absent may be replaced by hiring external agents.

III. Evaluation of strategies to combat racist crime

The evaluation phase for national strategies in the fight against racist hate crimes is a crucial factor in measuring their effectiveness, and initiating a virtuous circle of analysis, the determination of areas for improvement, and efficient adaptations. This evaluation may be conducted by international organisations.

A. Evaluating national strategies to combat hate crime in light of international standards and specific studies

International organisations such as the European Commission, the Fundamental Rights Agency or ODIHR-OSCE have developed analysis tools for hate crime, which can be used to evaluate the national strategies being implemented.

Firstly, a study of the factors that lead victims of hate crimes to not report has produced a general outline of what measures might be appropriate to encourage the filing of complaints.

Thus, **interviews conducted with 600 victims** of hate crimes by a team of experts from ODIHR-OSCE⁴¹ have highlighted a **series of motivations that would tend to favour the underreporting of hate crimes:**

- fear that the act may be repeated, or of reprisals by the perpetrators of the hate crime;
- feelings of humiliation or shame experienced by the victim;
- victims lacking incomplete information on the proper contact details for the agency intended to receive their complaints and on how to properly lodge a complaint; victims' doubts as to whether filing a complaint would be of any help to them, whether the authorities will be able to effectively prosecute the acts reported; the language barrier;
- the fear of being deported, for persons without identity documents;
- victims may not consider the hate incident to have constituted a criminal act.

⁴¹ Hate Crime Data-Collection and Monitoring Mechanisms – A practical guide OSCE-ODIHR – 2014 ; Investigation of hate responding to hate crimes : a police officer's guide to investigation and prevention, international association of chiefs of police

<http://www.theiacp.org/PublicationsGuides/LawEnforcementIssues/Hatecrimes/RespondingtoHateCrimesPoliceOfficersGuide/tabid/221/Default.aspx>

"Combating Xenophobic Violence: Framework for Action." Human Rights First, http://www.humanrightsfirst.org/wp-content/uploads/pdf/UNHCR_Blueprint.pdf

In addition, **after interviews with police officers and prosecutors**, experts noted that the underreporting of hate crimes may **also be due to other factors**:

- insufficient understanding of what constitutes hate crime,
- inadequate identification of potentially targeted victim groups,
- insufficient training on how to take statements from victims of hate crime, lack of policy guidance on how to receive complaints and conduct interviews of hate crime victims,
- use of police report writing software that does not include a specific space for reporting possible hate crimes,
- defaulting witnesses;
- inconsistent involvement of prosecutors in handling hate crimes,
- persistent prejudices amongst certain police or judicial personnel.

FOCUS - Expertise of ODIHR in the Collection of Hate Crime Data

Certain recommendations have been established, by experts from ODIHR-OSCE in particular.⁴²

Thus, **10 good practices** have been identified in order to achieve an efficient system for data collection in the field of hate crime:

- 1. legislation commensurate with the reality of hate crime:** aggravating circumstances in the definition of the crime, aggravated sentences, hate crimes being understood as crimes motivated by prejudice ("bias motivation").
- 2. create a national coordination structure:** an inter-ministerial working group, also including civil society organisations that provide support to victims of hate crimes or to vulnerable populations; publicising the work of the working group.
- 3. adopt a definition of hate crime for data collection purposes:** establish a list of categories of hate motivations, including at minimum those referred to in the legislation.
- 4. set up a system for recording data on accepted hate motivations:** draft a general-purpose guide, so each ministry can then appoint a manager and produce a guide ("guidance") for practitioner use.
- 5. develop and implement a training program:** for police officers, prosecutors, judges, presidents of appeal and trial courts, to permit the use of the data logging system, in

⁴²Hate Crime Data-collection and Monitoring Mechanisms – A practical guide OSCE-ODIHR – 2014

partnership with civil society organisations.

6. collect and record data: using standardised police report writing software that includes the various hate motivations; adopt the broadest possible approach for the recording of hate crimes; use the same level of detail for logging data at every level of the criminal justice system, including police, prosecution and courts.

7. make use of victimisation surveys: to measure the rate of underreporting, and determine reasons for this rate; use the same hate motivations as those used in the official data registration system so that useful comparisons can be made; identify groups insufficiently represented in these surveys so as to implement specific actions;

8. conduct reviews and analyses so as to develop policies to be implemented: analysis of the extent and nature of hate crime, the effectiveness of the policies implemented, the success of prosecutions, or the quality of victim support services; identify specific gaps or needs (e.g., investigative and prosecution techniques), protection of particular groups; establishment of national working groups to make recommendations, and developing more coordinated or strategic approaches in partnership with NGOs;

9. make information public: make the data collected public as widely as possible (publications, media awareness, internet publishing); publish hate crime data collections and victimisation survey results to permit comparisons between reported and unreported offences,

10. integrate gender analysis: integrate gender analysis into the configuration of mechanisms for hate crime data collection; use relevant data to measure the extent to which women and men may be differently affected by hate crimes; establish prevention and support measures consistent with these analyses; share information with the public about hate being based on gender as well and the corresponding impact.

ODIHR-OSCE has pointed out that even in States with strict data protection laws, police departments can record hate motivations without having to record the victim's characteristics or origins, which permits the inclusion of a broad range of offences, including mistaken hate crimes (e.g. a person of Sikh origin wearing a turban being mistaken for a Muslim person) or by association (the assault of a non-Roma person who is a member of an organisation protecting the rights of Roma people).

The expertise provided by international organisations such as ODIHR-OSCE or the European Fundamental Rights Agency can enable Member States to make progress in certain technical areas, such as the recording of hate crimes by police services, the collection of statistical data, the provision of support to victims, the investigations that may be conducted by investigative services, or the training to be provided to investigators and prosecutors.

Thus, in 2018, according to the programme set up within the OSCE, the ODIHR conducted an in-depth study of the system in place for the protection of Jewish communities and the judicial

treatment of anti-Semitic offences,⁴³ and made a number of recommendations (e.g., creation of local liaison officer positions, reinforcement of training in Jewish history and culture to be conducted directly with police forces, and with municipalities where appropriate; enhanced dissemination of guidance with regard to indicators of prejudice, treatment of low-level offences in collaboration with representatives of the Jewish community, more systematic consideration of anti-Semitic motivations when filing complaints, etc.).

An assessment of this type has also been carried out in Germany; an equivalent project is also underway for anti-Muslim acts.

The European Fundamental Rights Agency (FRA) also provides assistance to member states, including the establishment of hate crime data collection systems.

Evaluations by States themselves, by their national representation, and by civil society organisations is also essential in creating a dynamic of progress in the policies implemented.

B. Evaluation by parliaments, the administration and civil society organisations

Parliaments play an important role in the evaluation of policies intended to combat racially motivated crime.

In Germany, since the Bundestag decision of 23 April 2013,⁴⁴ the federal government has been responsible for submitting to each legislature a report prepared in light of the results of the academic evaluation of federal anti-extremism programs, including recommendations for action and an analysis of the effectiveness of the programs funded. The Bundestag thus gave approval on 14 June 2017 to the federal programme presented by the Ministry for the Family, Senior Citizens, Women and Youth.⁴⁵

In **the United Kingdom**, the Parliament, and in particular the House of Commons Home Affairs Committee, acts regularly to evaluate the effectiveness of the measures implemented within the framework of the Cross Government Hate Crime Programme.⁴⁶

Furthermore, the government commissioned the independent agency HMICFRS⁴⁷ to conduct an evaluation of the anti-hate crime programme.

⁴³"Comprendre les crimes de haine antisémite et répondre aux besoins des communautés juives en matière de sécurité- guide pratique" OSCE-ODIHR 2017; Report on Implementation in France, OSCE-ODIHR-BIDDH, October 2018

⁴⁴ Bundestagsdrucksache 17/13225; <http://dip21.bundestag.de/dip21/btd/17/132/1713225.pdf>

⁴⁵http://www.bundesregierung.de/Content/Infomaterial/BMSFJ/Breicht_der_BR_zur_Extremismuspr%C3%A4vention_BMFSFJ16-117612.html

⁴⁶ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/petitions-committee/news-parliament-2017/online-abuse-police-evidence-17-19/>
<https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2017/hate-crime-violent-consequences-evidence-17-19/>

This agency proceeded to highlight certain important elements in a public report, including the fact that in some cases victims do not know that the offences committed against them were in fact hate crimes, and in particular racist hate crimes.

In addition to the hearings held on a regular basis by committees of the National Assembly, **in France**, the National Plan to Combat Racism and Anti-Semitism 2015-2018 has also been evaluated by two institutions:

- The National Advisory Commission on Human Rights,⁴⁸
- and the General Inspectorate of Administrative Affairs⁴⁹

In addition to this institutional assessment, it is also evidently essential for civil society organisations to evaluate the national anti-racism strategies as well.

In this respect, beyond the informal and permanent forms of dialogue in place amongst representatives of the public authorities and civil society actors, it may also be useful to study certain institutionalised forms of multidisciplinary evaluation of the concrete measures implemented by public authorities to deal with racially motivated offences (see Focus below on Scrutiny Panel Groups).

FOCUS: "SCRUTINY PANEL GROUPS" IN GREAT BRITAIN

The Crown Prosecution Service has also established an evaluation strategy that consists in establishing mutual supervision involving representatives of the most representative communities and associations in regard to the judicial treatment of hate crimes.⁵⁰

Each local office of the CPS, consisting of 13 offices, has a monitoring committee, made up of members of the most representative communities, meeting regularly in thematic meetings and responsible for conducting a detailed examination of certain procedures carried out by the CPS: the group is chaired by an independent facilitator, community members or civil association members with experience providing support to witnesses or victims of hate crimes, the head of the local CPS office, an independent advisor (often from another CPS office or an external lawyer), a logistics coordinator, and any other person required, such as police or social workers.

These committees exchange information on specific topics and discuss specific case files (previously anonymised where necessary) that have been shared by the CPS so as to determine good and bad practices in dealing with the victim and/or case file.

⁴⁷ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services - <https://www.justiceinspectors.gov.uk/hmicfrs/>

⁴⁸ https://www.cncdh.fr/sites/default/files/171219_evaluation_du_plan_de_lutte_racisme_6.pdf

⁴⁹ https://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2018/02/17078r_-_pilera.pdf

⁵⁰ <https://lemosandcrane.co.uk/resources/Guide%20to%20setting%20up%20hate%20crime%20scrutiny%20panels.pdf>

This process has forced the CPS to be very objective in its analysis of case files and to question its practices through the criticisms made by these committees.

This strategy, based on mutual supervision amongst judicial actors and members of civil society, was deemed very positive by assessment. The feedback from the CPS indicates that improvements have been made in the handling of case files, now resulting in difficulty even finding any cases that would require examination by this supervisory committee.

This positive development has been noted in all national action plans, insofar as the performance of the CPS in various specific domains can be highlighted, as well as the checking of opportunities for improvement on particular points.

A domestic group has also been established to work on the same principle nationwide: the independent advisory group, which may also make recommendations to the various ministries.

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PART II – INNOVATIVE SOLUTIONS IN THE PREVENTION AND JUDICIAL TREATMENT OF RACIST ACTS AND DISCOURSE

The study visits carried out as part of this project raised questions about how a victim of an act perceived as racist would be affected by the various stages of criminal proceedings, from the reporting of the facts to the possible sentencing of the perpetrator. The objective was to understand the difficulties encountered by this victim and the means implemented by the Member States studied to overcome them. This analysis led to the identification of potential ways to improve the treatment of racism under criminal law by accompanying this victim at each of the key stages of the proceedings.

Optimising the treatment of racism under criminal law cannot be achieved without encouraging victims in the reporting process (I) and improving the quality of investigations (II).

Finally, while the fight against racism is based on the quality of the proceedings conducted, the relevance of the judicial response chosen is also an essential factor in its efficiency (III).

I. Encouraging and supporting reporting

The most effective treatment of racist offences requires that all conduct arising from a feeling of hatred towards others, in particular because of its true or supposed belonging to a presumed race or religion, **be brought to the attention of the judicial authority.**

The low rate of reporting and the difficulty in understanding the reality of the situation and the level of crime actually suffered by victims is an issue that many Member States have faced or are facing.⁵¹

While the mechanisms at work in the failure to reporting incidents are multiple, they also share similarities regardless of the system observed.

Beyond a certain mistrust by victims of a judicial authority that they consider ineffective at listening to what they have to say and unable to provide an appropriate judicial response to

⁵¹ In France: 3% of victims file complaints in the case of verbal abuse, 17% for threats and 30% for violence according to estimates from the [Living Environment and Security survey](#), conducted jointly by INSEE and ONDRP, which reveals that more than 700,000 people are victims of racist abuse every year.

In Spain, the Panel on Racial or Ethnic Discrimination (2010), which is based on the perception of potential victims, showed that only 4.3% of people who have experienced discrimination reported the related incidents. Source: [OBERAXE site – Publication: “Manual de apoyo para la formación de Fuerzas y Cuerpos de Seguridad en la identificación y registro de incidentes racistas y xenófobos”](#).

the incidents they report, victims of racially motivated acts are also often reluctant to bring to court incidents that they feel are stigmatising and related to the innermost aspects of their private lives. The fear of being exposed, judged and having to face a legal debate likely to give the incidents the publicity they fear is often one of the major obstacles to filing a complaint.

Thus, in order to help victims report these incidents to the police, it is essential that they are properly taken care of. The use of victim support associations is an effective way to support them in the process that can lead to a complaint being filed (A).

Finally, the option of filing a complaint using a simplified procedure should be encouraged in order to not deter victims who are willing to report acts (B).

A. Supporting the reporting of incidents

Supporting victims in the judicial process is a fundamental challenge facing all Member States.

The care of victims even before this process, from the stage the act is committed, is a key factor in optimising the judicial treatment of racist offences.

The lack of knowledge about the judicial system, its role and the judicial process itself is certainly a contributing factor to victims' reluctance to report these incidents to the investigating authorities and to their mistrust of them.

The study visits carried out revealed the central role played by private organisations such as victim support associations in this field.

By providing psychological support to the people who request it, they raise awareness of the status of victims and the legitimacy of the legal proceedings that they are entitled to pursue.

Awareness raising in the reception areas of police stations and hospitals helps to increase the visibility of racist, anti-Semitic and xenophobic incidents and combat the feeling of isolation that some victims experience. Racist aggression must no longer be perceived by the victim as a stigmatising act that is considered less serious by society and that affects his or her privacy. Instead, it must be perceived as an act considered intolerable by society as a whole because it constitutes a major infringement of the social pact and should therefore be reported and subject to greater crackdown.

Strong links with victim support associations specialised in the fight against racism, anti-Semitism or xenophobia should therefore be encouraged.

In France, the Ministry of Justice subsidises the International League against Racism and Anti-Semitism (LICRA), an association that specialises in taking nationwide actions in the field of access to the law, the fight against racism and anti-Semitism and legal

assistance for victims of these offences based on an agreement on objectives. This agreement aims in particular to ensure personalised legal support for victims of racist and anti-Semitic acts, the provision of a reporting platform and the long-term availability of a network of expert lawyers across France.

Beyond the awareness-raising and listening work carried out by associations providing assistance to victims of racist, anti-Semitic or xenophobic offences, they can become **an essential link in the process of reporting acts**.

- **On the one hand, these associations may become an interface between the victim and the police services by providing easily recognisable reporting tools that do not require any particular formalities.**

Anyone, whatever their knowledge of their legal system, must, as soon as they wish and without further formalities, have the opportunity to report the incidents of which they have been victims to an association that is able to forward this report to the police.

While this reporting can be done immediately without any processing of information, some Member States, such as the United Kingdom, have chosen to give a more prominent role to civil society. This is designed to be an actual step in the processing of the report, analysing the events reported in order to determine whether a judicial response should be provided or, on the contrary, whether the implementation of alternative means is preferable.

The decision on whether or not to prosecute is made in consultation with the victim. This constant dialogue allows victims to better understand and accept the absence of a criminal justice response by giving them the opportunity to be heard. The implementation of restorative justice tools (e.g. criminal mediation and psychological support) offers victims the opportunity to have the harm they have suffered and their status recognised, even in the absence of actual prosecutions.

- **On the other hand, these associations may be given the opportunity to take direct legal action instead of the victim.**

Thus, **in Germany**, any civil society organisation has the ability to report incidents to the police services, either verbally or in writing.

In France, while it is a matter of principle that only those who have suffered directly and personally from the offence may bring legal proceedings, certain categories of associations have been authorised, in exceptional circumstances, to initiate criminal proceedings for certain press offences relating to racism, anti-Semitism or xenophobia.

The action of these associations is nevertheless limited in certain circumstances. Thus, it is generally necessary for the association to have been registered for at least five years on the date of the acts and for its by-laws to mention, for the same period, an activity in the area of anti-racism justifying its legal involvement.

In addition, where the offence concerns people considered as individuals, the admissibility of the activity of these associations may be subject to, as the case may be:

- either the agreement of the individual victims,
- or the absence of any opposition to the proceedings on their part.

Focus on the Essential Role of Associations in the United Kingdom

*** TELL MAMA ***

In the United Kingdom, the **Tell Mama** programme was launched in 2012 following the rise in anti-Muslim hatred.

It is a non-religious programme and is not recognised by religious representatives of the Muslim community (e.g. mosques and imams). Despite the absence of this recognition, many victims turn to the programme for personal help.

As such, the main objective of the programme is to build trust with the police and the criminal justice system.

The programme relies in particular on the development of its own data collection system to provide a dashboard for determining the extent of anti-Muslim hatred and for making recommendations.

In addition, the programme has developed a set of mechanisms to facilitate reporting for victims. To overcome victims' reluctance to report incidents at the police station, as well as putting in place call centres, applications and a reporting form on its website, the association has also provided a WhatsApp contact and an e-mail address.

To help build trust with the community, Tell Mama also posts on social media about cases that have been successfully resolved at the judicial level.

Finally, moral and emotional support are provided to victims throughout the “judicial journey”. This long-term support helps to prevent victims from becoming discouraged and giving up on going to court.

When victims come to TELL MAMA, they have 3 options. They can:

- choose to provide the police with anonymous information about the act in question;

- decide that TELL MAMA act as the intermediary between them and the police services and lead the process on their behalf;

- choose to report the incident directly to the police and ask TELL MAMA to put them in contact with the police.

Tell Mama ensures that victims are aware of how the system works and manages their expectations.

If the Crown Prosecution Service (CPS) ultimately decides not to prosecute, Tell Mama can help victims in relation to a private prosecution process. The programme does not provide its own legal support but operates with free legal support services and can refer victims to partner organisations.

The programme also uses restorative justice tools, which work particularly well in schools.

Finally, the Tell Mama programme provides training to police services.

B. Facilitating the filing of complaints

In addition to the support that specialised associations can provide in the fight against racism, the care of victims must be one of the priorities for the judicial system.

To improve the incident reporting rate, it is important to simplify the judicial process for victims, in particular by relaxing certain procedural formalities when filing a complaint.

Anyone wishing to report a racist offence to the courts must be able to do so without being hindered in their efforts by overly rigid procedural rules.

The study visits revealed the significant involvement of Member States in supporting victims and the common ambition to facilitate access to justice.

Provisions were thus identified to ensure that compliance with procedural requirements, such as rules on territorial jurisdiction, is not a major obstacle to filing a complaint.

If such rules are necessary, it is important that compliance with them be the responsibility of the judicial authority itself and not of the victim, who is not necessarily professionally trained in this area.

In France, as with all criminal offences, police officers and gendarmes have a legal obligation to record the victim's complaint (Article 15-3 of the Code of Criminal Procedure) even if the service contacted is not the territorially competent unit, and to forward the complaint to the appropriate service. At the end of the complaint process, an acknowledgement is automatically given to the victim along with, at their request, a copy of the complaint process.

As in any complaint, the investigator is obliged to collect victim statements in order to establish the facts relating to the offence.

In Germany, in an effort to further facilitate initiating criminal proceedings, under Articles 86 and 234 of the Law on Guidelines on Criminal Prosecution and Fines (RiStBV), **it is considered that there is a public interest in prosecuting offences committed for racist, xenophobic or hostile reasons against a particular group**. This provision ensures that prosecutions are brought, regardless of any complaint, for offences which, without such a motive, require it.

This simplified access to institutions responsible for monitoring judicial proceedings seems to be one way of working towards restoring confidence in the judicial system.

Thus, the rise of new technologies and in particular the internet has led some Member States to question **the feasibility of further facilitating access to the judicial system by removing the need to physically travel to the premises of an investigatory service to report an incident**.

The use of online complaints has been developed by several Member States in order to facilitate the process for victims of crimes and to modernise the follow-up of complaints and reports filed.

There are several advantages to online complaints.

They allow:

- **the victim** to report traumatic events in a structured way more freely than in front of an investigator, to reflect on them, to synthesise them;
- **certain people who are intimidated or who refuse to visit an investigatory service** to report acts of which they are victims more easily;
- **the investigator** to whom this account is given to have initial contact with the applicant, to assess the seriousness of the facts and to determine, prior to the complaint, the first steps of the investigation strategy;
- **the investigator** to request a psychologist or social worker, where such arrangements exist, to take care of the victim immediately after a future trial;
- **the victim** to be seen by appointment without having to wait at the investigatory service's premises and informed that they may be accompanied.

It should, however, be noted that this method of filing a complaint requires that the victim be able to read and write and have access to a computer network.

Nevertheless, online complaints are not suitable **for incidents requiring urgent investigation**, particularly with regard to the risk of loss of evidence, repetition of the incident or where the victim may be in danger.

FOCUS on the Use of Online Complaints

In Germany, most Länder allow victims to file a complaint online, including for so-called “hate” crimes. This method of filing a complaint is designed to be extremely simple and to allow anyone, including those without legal knowledge, to report the acts of which they have been victims.

In the United Kingdom, victims of hate crimes can file a complaint online, and witnesses can report a hate crime online (see the focus on the True Vision website).

In France, there is an online pre-complaint system (PPEL) that facilitates the process for victims by allowing them to report crimes via an internet portal and then arrange an appointment at the police station or gendarmerie of their choice to confirm incidents already reported online through a formal complaint. Initially exclusively reserved for property-related offences committed by an unknown perpetrator, the Interministerial Delegation for Combating Racism, Anti-Semitism and Anti-LGBT Hatred (DILCRAH) and the Ministry of the Interior carried out work to trial, for a period of six months, the expansion of this online pre-complaint system to the offences of discrimination, incitement to discrimination, defamation and verbal abuse committed by unknown perpetrators. The objective is to reduce the under-reporting of these incidents by facilitating the filing of complaints through access to an online service for victims of racist or discriminatory acts.

In addition, the draft law on planning the justice system introduced by the government, which is still under consideration at the time of writing this guide, **makes it possible for victims to file a complaint online in the event of hate speech on the internet, under the new Article 15-5 of the Code of Criminal Procedure.**

TRUE VISION FOCUS

The “True Vision”⁵² is a portal that can be used by the general public to file a complaint or provide a witness statement online, directly with the local police service.

Specific information is also requested on the complaint form or to provide witness statement.

The website also contains:

- links to local police services (e.g. Northern Ireland)
- practical security advice and advice for victims in the event of an assault

⁵²<http://www.report-it.org.uk/home>

- information for people who are often isolated or have difficulty filing complaints (e. g. Roma, gypsies, travellers)
- all quantitative and qualitative data on hate crimes in England and Wales from 2009 to 2018
- examples of convictions of perpetrators of hate crimes
- detailed instructions given to the police and prosecutors regarding hate crimes
- documentation to support the investigation
- all campaigns for the prevention of racism in sport, for example, or to encourage people to provide a witness statement.

Finally, support for the victim cannot be limited to easy access to filing complaints but must also include **a genuine consideration for the victim’s psychological needs and the traumas they face.**

To allow victims of acts of a racist, anti-Semitic or xenophobic nature to express freely the events they have had to endure, consideration must be given to **the arrangements for recording their statements and for their care.**

The European Victims’ Directive 2012/29/EU of 22 October 2012 establishing minimum standards on the rights, support and protection of victims expanded the rights, including for hate crimes, that the previously adopted European instruments reserved for certain categories of victims.

These provisions require a personalised assessment of the victim and his or her care needs. **This may include the particular risks of retaliation or intimidation by the perpetrator and the risks of secondary victimisation, that is, the reactivation of the victim’s trauma following a new event such as exposure to the judicial process and repeated hearings.**

Faced with circumstances that may be perceived as stigmatising, the opportunity for the victim to be heard in a separate room, possibly assisted by a lawyer, seems particularly appropriate to facilitate the reporting of the incident.

FOCUS – the Care of Victims

In France, the law of 17 August 2015 and the decree of 26 February 2016 transposed into national law the European Directive of 22 October 2012 establishing minimum standards on the rights, support and protection of victims. **These provisions are set out in Articles 10-2 to 10-5 of the Code of Criminal Procedure (CCP), which are systematically notified to victims in the event of a complaint being filed.**

At the stage the police services record the complaint, a **personalised assessment of the victim** is carried out as soon as possible **to determine whether specific protective measures should be taken during the proceedings to avoid any secondary victimisation**. The nature and circumstances of the incident, the extent of harm suffered, the characteristics of the victim (their particular vulnerability – age, pregnancy, any disability, their relationship with the person accused, the existence of a risk of intimidation or retaliation) are examined, and the police officer states in the minutes of the hearing those factors that appear to justify being taken into account.

At the judicial inquiry stage or during the ongoing investigation, an in-depth assessment of certain victims is carried out, on the advice of the prosecutor, by a victim support association or by the victim support office (Article 41 of the CCP). This assessment may be updated throughout the proceedings (Article D.1-12 of the CCP). It is possible, as part of this in-depth assessment, to implement social measures to support victims (access to shelters, help with administrative procedures, possible protective measures in the event of very serious danger).

In Germany, the European Directive of 22 October 2012 was transposed into law by Article 48 (3) of the German Code of Criminal Procedure, which requires that questioning, hearings and other investigative procedures must always be conducted in a way that takes into account the nature and circumstances of the incident, the extent of harm suffered, the characteristics and protection needs of the witness or of a victim. **These factors are taken into account in determining whether the hearing of a witness or victim of any offence, including a hate crime, should take place in a separate room and, if appropriate**, whether it should be transmitted by video to the main trial.

This support for victims and the consideration of their needs should not be limited to the reporting stage but should be considered as an overall reflection on improving the quality of investigations into racism.

II. Improving the quality of the investigation: the challenge of stakeholder specialisation

The study visits demonstrated that the European Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia through criminal law has led to a harmonisation of criminal provisions for the suppression of racism and xenophobia within the Member States studied.

However, beyond the existence of offences targeting hate behaviour, the effectiveness of the fight against racism depends on a first-rate criminal procedure that has the potential to reveal the reality of the racist, anti-Semitic or xenophobic motive.

Member States have drawn the necessary conclusions from the distinct nature of the subject, in that, on the one hand, it affects the person's private life, their beliefs, their background and even their history, and on the other, it may have a bearing on freedom of expression, a fundamental right. They have also implemented a **specialisation programme for all professionals involved in the processing of racist offences or in dealing with their victims, as well as specific investigation methods (A).**

In addition to this work of training and specialising stakeholders in the fight against racism, the introduction of **methods for evaluating or even monitoring the quality of procedures** has become an essential condition for improving the treatment of racism under criminal law. (B).

A. Stakeholder specialisation and specific investigation methods

1. Specialisation

While the minimum training of all professionals, investigators and prosecutors who deal with racist, anti-Semitic or xenophobic offences makes it possible to standardise practices and ensure that the procedures followed meet a minimum standard of quality, the consideration given by Member States to optimising the treatment of racist offences under criminal law has also led to the **specialisation of some investigatory services, prosecutors specifically responsible for following up these types of offences.**

This specialisation, which can be either reserved for the most serious offences or extended to cover all offences involving a racist, anti-Semitic or xenophobic motive, also helps identify useful contacts, particularly for private stakeholders whose important role has already been highlighted (*see Part II/A. Supporting the reporting of incidents*).

In addition, as specialists, they may be encouraged to contribute, within their department and for other departments, to the training of professionals likely to be confronted with the subject.

This specialisation, which takes place in particular in the Netherlands (Public Prosecutor's Office on Discrimination and Hate Crimes) and in Spain (Hate Crimes and Discrimination Service, see focus), allows prosecuting authorities to build up knowledge and expertise in this field.

Other Member States, in particular the United Kingdom and France (see focus), have introduced a more flexible form of specialisation by introducing specific contact points, specialised in the handling of racist acts and discourse, within the public prosecution services. Following the 2017-2020 National Action Plan against Racism and Anti-Semitism, specific contact points have also been assigned in France to local and regional judicial police units.

The centres for combating discrimination and racist acts within the British or French prosecution services have been instrumental in developing, as closely as possible to local requirements, targeted practices to respond to local forms of crime, in conjunction with local organisations supporting victims of hate crimes.

Complaints received online or after an online pre-complaint process help to reinforce the specialisation of officials specifically assigned to process them.

The challenge is then to provide enhanced training for these contact points in the field of the judicial treatment of hate crimes, either by public prosecutors, specialised schools or external structures, as in Great Britain, by those responsible for the Government Hate Crime Programme, or in France, by the DILCRAH.

Some local police units have developed original specialised services, such as in Berlin for anti-LGBT acts.

FOCUS

HATE CRIMES AND DISCRIMINATION SERVICE FOR PROSECUTORS IN SPAIN

The Hate Crimes and Discrimination Unit of the Provincial Prosecutor's Office of Barcelona was established in October 2009 with a dual purpose: to coordinate the prosecution of hate crimes, hate motivated incidents and discrimination cases, and to provide assistance to prosecutors requiring it at trials or to deal directly with some complex cases.

With a full-time coordinator since 2010, this service has implemented a protocol on criminal proceedings in hate and discrimination cases and makes recommendations to police officers for identifying and dealing with hate crimes, systematically informing this office about cases involving hate crimes and ensuring that victims receive appropriate information on the various relevant services.

This practice was extended to the whole of Spain at the beginning of 2013: similar services specialising in the handling of cases of hate and discrimination crimes and misdemeanours, and specific contact points were created in all prosecutors' offices in the 50 Spanish judicial provinces.

The activity of these offices is coordinated by a national delegate to the Spanish Director of Public Prosecutions (*Fiscal General del Estado de España*), the most senior official of the Public Prosecutor's Office (*Ministerio Fiscal*) in Spain.

The policy on combating hate crimes in Spain is thus strengthened by more coherent action on several levels:

- establishing common criteria for interpreting the Criminal Code
- coordinating investigations and prosecutions
- collaboration between police forces and officials at different levels of the hierarchy
- improving the recording and publication of statistics on legal proceedings.⁵³

In Germany, specific treatment is reserved for so-called political offences, which cover the majority of hate crimes.

⁵³“Submissions of Spain's National Point of Contact on Combatting Hate Crimes for ODIHR's Hate Crimes in the OSCE Region”

Any offence is considered political if the circumstances surrounding it indicate that it was committed because of a political opinion, taking into account the person's nationality, ethnicity, presumed race, skin colour, religion, beliefs, origin, disability or sexual orientation (Article 207 RiStBV).

The Federal Criminal Police Office is notified when certain categories of offences, such as offences against physical integrity or fires, can be classified as political offences.

Furthermore, while the organisation of the public prosecutor's office is largely dependent on the Länder, there is often a prosecutor specialised in the prosecution of offences with a political motive.

FOCUS – Contact Prosecutors in France

Between 2003 and 2007,⁵⁴ the French Ministry of Justice encouraged all public prosecutor's offices to appoint, both in the courts of first instance and in the courts of appeal, a prosecutor to act as a contact point in the fight against racism and discrimination.

Initially responsible for questions related to anti-Semitism, these contact prosecutors have had their responsibilities extended to all forms of racism and discrimination.

Their role is to lead criminal policy in this area and to ensure its consistency.

They ensure that criminal proceedings are followed up and are informed of reports and complaints in this area. They are the primary contact points for all stakeholders specialised in this field.

The initiatives and actions carried out by the contact prosecutors in the fight against racism and anti-Semitism are structured around four main areas:

- following up criminal proceedings by public prosecutors and coordination at the local level of criminal policy in the fight against racism and anti-Semitism
- improving the exchange of information between public prosecutor's offices, appeal court prosecutor's offices, prefectures, police and gendarmerie services and representatives of the national education system
- developing a constructive dialogue with representatives of cultural and religious communities and associations
- training and coordination activities related to shared discussion and understanding.

⁵⁴The creation of contact prosecutors was specifically the result of a dispatch issued by the French Ministry of Justice to members of the Public Prosecutor's Office dated 18 November 2003, containing judicial responses to acts of an anti-Semitic nature, and a Dispatch of 11 July 2007 on the fight against discrimination.

Contact prosecutors in the field of combating racism and anti-Semitism are encouraged to participate in the training of investigators and, in some cases, in training and awareness-raising activities to combat racism and anti-Semitism in professional and academic environments.

2. Investigative Methods

Based on the typologies established in the guides for police officers in Great Britain, Spain or France, it is possible to identify a series of factors which, in the context of the country concerned, can be used to produce **a set of indicators to establish the racist motive(s)**:

- **indicators related to the time and place of the acts:** acts committed during a religious or national holiday; near a place of worship, a cemetery, a community meeting place, in any place of special significance for the community concerned, in a neighbourhood that has already experienced racist offences or incidents;
- **indicators related to the circumstances surrounding committing the offence:** assaults appearing purely gratuitous; perception of the incident by the victim or a witness; statements made before, during or after the offence, gestures, signs, symbols, graffiti; clothing, behaviour of the victim at the time of the incident; wearing religious symbols; recording the crime scene and distribution on social networks or to specific persons;
- **indicators related to the victim:** link with a minority group (i.e. national, ethnic, religious, etc.), where applicable through relationships with people in this group; a victim who has already been assaulted;
- **indicators related to the perpetrator:** activities related to a criminal or organised hate group; the perpetrator's background; comments made on social networks;
- **indicators related to the relationship between the perpetrator and the victim:** past history, knowledge that the perpetrator has before the incident about the victim's origin and national or religious affiliation or non-affiliation.

In addition, the discriminatory selection of victims on the basis of prejudice must be linked to negative prejudice in the context of the country concerned or to a stereotypical representation of the vulnerability of the group concerned. For example, theft from a person who has been selected for their real or presumed membership of a particular community and to whom an image of a person likely to carry cash or of a rich person has been attached.

FOCUS – Evidence of Racist Motive: the example of hate crime indicators in Spain

In Spain, a list of 15 hate crime indicators is included in the law enforcement protocol on action:

- **the perception of the victim;**
- **the victim's membership of a community or minority, ethnic, religious or national group, or of a group based on sexual orientation or gender identity;**
- **racist, xenophobic or homophobic comments made, or comments left by the perpetrators;**
- **hatred or discrimination in error or by association** (e.g. a heterosexual employee working for an LGBT association);
- **tattoos, clothing or the use of symbols of racist or extremist ideologies** by the perpetrator;
- **the suspect's relationship with ultra-groups of football team supporters;**
- **the apparently gratuitous nature of the violence;**
- **the wearing of items of radical propaganda, banners, flags, etc. during the acts, or found in their homes;**
- **the perpetrator's past history of similar events;**
- **the incident or offence took place on local association premises, in a place of worship or a cemetery;**
- **the suspect's relationship with activist groups acting against migrants, or anti-Semitic or anti-Muslim groups, or the long-standing hostile relationship between the group of aggressors and the victim;**
- **the day or date the incident occurred** (Wednesday for Muslims, Saturday for Jews, day of the Pride March for LGBT people);
- **an anniversary date** (Hitler's birthday, date of the invasion of Poland, etc.);
- **the behaviour of the perpetrator**, in particular during questioning or during police custody or detention;
- **phone activity, recordings** (recording or even distributing a video of the attack) as well as radical statements on social networks.

B. Monitoring the criminal response

The ambition to have a first-rate criminal procedure has led some of the Member States visited to consider ways of assessing the quality of the proceedings conducted.

Improving the judicial treatment of racist offences requires a detailed understanding of the pitfalls or difficulties faced by victims, investigators or prosecuting authorities and of any shortcomings that may affect the judicial process.

Some Member States have therefore found it useful to consider ways of assessing judicial practices in relation to hate crimes with a view to identifying ways of overcoming the obstacles encountered.

This assessment can be carried out within the framework of partnership bodies, a valuable opportunity to provide feedback on specific proceedings in which difficulties have arisen. (already mentioned with the panels?)

Their creation, in the Member States that have decided to do so, has improved collaboration between the different stakeholders and a genuine exchange of information has resulted, enabling everyone to state their expectations and also their constraints.

FOCUS – Anti-discrimination and Monitoring Units in France

Since 2007,⁵⁵ the public prosecutor's offices have been encouraged by the Ministry of Justice to set up an **anti-discrimination unit** within each regional court that can meet on a regular basis. These units are designed to promote access to justice for victims of discrimination offences and to improve the quality of the criminal response.

Since 2009,⁵⁶ their remit has been expanded to include all offences committed because the victim belongs to a particular ethnic group, nation, race or religion or because of his or her sexual orientation.

These units are structured around the contact prosecutor, the specialised prosecutor's representative where there is one, investigatory services, associations involved in the fight against discrimination, those responsible for helping victims and representatives of the other administrations concerned (prefecture, national education, etc.). The local representative of the Human Rights Defender and elected officials may be involved in the unit.

Their objective is to explain the activities and operations of the judiciary in the area of anti-racism and anti-discrimination, to draw up a regular overview of the situation in the jurisdiction and the cases referred to the public prosecutor's office.

⁵⁵Dispatch of 11 July 2007 on the fight against discrimination.

⁵⁶Dispatch of 5 March 2009 on the expansion of the remit of the anti-discrimination units to include offences committed because the victim belongs to a particular ethnic group, nation, race or religion.

In some jurisdictions, spaces have been created for discussion and exchange with religious authorities, representatives of religious associations, associations providing assistance to victims or working to combat racism or discrimination as part of **monitoring units**.

All these structures are forums for working in partnership, allowing joint discussion and thinking on criminal policy in the jurisdiction and on ways to improve the processing of racist offences.

The assessment of the introduction of these contact prosecutors and the anti-discrimination units must nevertheless be qualified today.

While all the appeal court prosecutor's offices and public prosecutor's offices in France currently have an appointed contact prosecutor, anti-discrimination units have only been set up in a very limited number of jurisdictions.

Furthermore, the number of complaints and thus criminal proceedings initiated in the field of racism despite these structures remains very low.

This observation demonstrates the need for governments, once such structures have been introduced, to constantly consider ways of boosting the networks set up and maintaining a constant commitment to the training of contact point prosecutors.

The visits carried out as part of this project demonstrated that it was also possible to go even further by implementing genuine quality control processes for the proceedings.

The role of the hierarchy must therefore be strengthened. It must not only be recognised as a contact point that can be consulted as soon as a difficulty arises, but also be encouraged to exercise scrutiny over the proceedings carried out in this area. Likely to exercise a supervisory or coordinating role, the hierarchy can in particular ensure the consistency of the criminal responses given.

Outside any hierarchical operation, the appointment of a contact point or coordinator may be encouraged.

FOCUS – Monitoring in England

- Each department in the Crown Prosecution Service (CPS) has appointed a Hate Crime Coordinator to conduct two types of monitoring of the proceedings relating to so-called hate crimes:

- Firstly, **direct monitoring** of the proceedings: For this purpose, the Coordinator is provided with a list of all hate crime cases within his/her jurisdiction and ensures that the charges brought are accurate. He/she therefore thus carries out an overall and direct examination of the quality of the proceedings conducted in this area. In particular, he/she verifies that the work to demonstrate the aggravating circumstance has been undertaken.

The coordinator is informed of all proceedings initiated on the grounds of a hate crime, with the exception of those motivated by the presumed race of the victim, for which only 10 cases can be examined due to the excessive number of proceedings initiated in this area.

The idea is to anticipate the difficulties that may arise in the judicial treatment of these cases.

➤ Secondly, **retrospective monitoring**: At the end of each month, the coordinator receives a list of all resolved cases and an overview of the sentences. He/she determines in which cases the Chief Prosecutor should have retained the aggravating factors for racist offences under section 145 of the Criminal Justice Act.

III. Improving the judicial response: the educational challenge

Reporting and the quality of criminal procedure are essential elements in the fight against racism. Nevertheless, they cannot be separated from a consideration of the criminal response.

As it concludes the judicial process, the relevance of this response is a major issue in the effectiveness of the fight against racism.

Traditionally, in addition to its role with regard to victims, the criminal response has been assigned a dual function. It must both enforce the law and punish the act committed, but also preventive, avoiding repetition or repeat offences. It must be appropriate to the seriousness of the crime, but also to the profile of the person concerned and to his or her personal and judicial background.

This individualisation of the response to an offence must be an essential principle in the criminal policy choices adopted by Member States, particularly in the fight against racism. It implies a graduated response in the application of measures and punishments according to the specific situation of the perpetrators (A).

To avoid a repetition of similar offences, it also presupposes that the sentence imposed allows the perpetrator to reflect on the act committed, on the mechanisms that led to the act and on its consequences. From this perspective, the educational dimension of the criminal response is a major challenge. (B).

A. A graduated response, appropriate to the perpetrator's personality

While racist or anti-religious acts have a particular resonance for their victims in that they are perceived as a direct attack on what is personal to them (their origin, beliefs, etc.), they also reveal in their perpetrators a particular view of society often based on prejudice and misunderstanding of each other.

Thus, any racist offence requires specific criminal treatment with regard to the care of both the victim and the perpetrator.

An isolated racist act, without physical violence, does not require the same treatment as a violent act in the context of overall racial hatred.

The individualisation of the criminal sentence begins with an individualisation of the procedural response to be given to the act committed.

While judgement before a court of justice, because of the formality it entails, is necessary for the most serious acts, alternative methods of dispute resolution may be considered for acts of lesser seriousness committed by first-time offenders.

These alternative methods, which stem in particular from the so-called “restorative” justice system and which encourage the opening of a dialogue between the perpetrator and his victim or even with the community targeted by the act as a whole, are particularly suitable for the fight against racism.

“Restorative” or reparative justice, developed over the past thirty years in English-speaking countries, proposes new practices aimed at the perpetrators, victims and also other members of the social group concerned. After an offence has been committed, the participants are encouraged to consider together the consequences of the act but also to find solutions to overcome it.

The idea is to involve the offender and the victim in a criminal process of reparation or even reconciliation that goes beyond the mere presence of the judge.

In this process, the victim, the offender and, where applicable, any other person or community member affected by the consequences of an offence, are encouraged to participate actively together in resolving the problems arising from that offence, usually with the help of a facilitator or mediator, to restore the social peace that has been broken.

A third-party mediator is used to encourage both parties to communicate and understand each other better, while at the same time promoting reparation for the harm caused.

Several restorative justice mechanisms can be considered in the fight against racism.

⇒ **Mediation between the victim and the perpetrator of the offence**, which should enable the victim and the offender to participate actively, if they consent, in resolving the difficulties resulting from the offence, with the help of an independent third party (mediator).

This requires the confidentiality of exchanges, the autonomy of the service in charge of mediation, a referral to mediation decided by the judicial authority, and the possibility of using it at all stages of the proceedings.

FOCUS – Criminal Mediation in France

In France, criminal mediation is an alternative to prosecution under Article 41-1-5 of the CCP.

Enshrined in the law of 4 January 1993, **criminal mediation consists of bringing the parties together so that they can find an amicable solution to their dispute**. Like any measure of this type, it may be implemented by the public prosecutor prior to his/her decision on the criminal proceedings and where it is apparent that such a measure is likely to ensure

reparation for the harm caused and put an end to the disruption resulting from the offence or contribute to the rehabilitation of the person responsible for the acts.

Criminal mediation consists in seeking, through the involvement of a third party, a solution freely negotiated between the parties to a conflict arising from an offence.

It establishes the perpetrator and the victim as the main actors in the resolution of the conflict, under the supervision of the mediator. The victim can express their views freely, recount the facts and make their expectations known with regard to the harm suffered and the reparation sought. For their part, the perpetrator, through direct confrontation with the victim, can be made aware of their act, understand its consequences and thus be held accountable.

If the mediation is successful, the mediator prepares a report signed by the parties indicating in concrete terms the commitments made, which he/she must confirm have been fulfilled (a report on the outcome of the mediation is sent to the public prosecutor). The public prosecutor then closes the case without further action.

If the parties refuse to take part in the mediation or if it fails, the case is referred to the public prosecutor who decides what action to take (prosecution, other alternative proceedings or closure). There is nothing preventing the public prosecutor from being aware of the cause of this failure, which allows him/her to assess the follow-up to be given to the proceedings.

Mediation may be provided either by the voluntary sector or by natural persons specially trained and authorised by the public prosecutor.

⇒ **Group conferencing**,⁵⁷ which operates on the same principle as perpetrator-victim mediation but any person with an interest in resolving the conflict may join the meeting. It identifies support that can be provided to individuals, in particular the offender, to help them change their behaviour in the future and repair the harm caused to the victim or community.

⇒ **Sentencing circles**

Extended to all members of the community who wish to participate, sentencing circles allow everyone to express their views on the conditions that led to the conflict and its consequences. These circles lead to the adoption of a consensus resolution that focuses on the sentence itself. This measure can also be used by the community even if the victim does not wish to be involved or if there is no victim.

⁵⁷ Used in Australia, the Netherlands, North America, Belgium and the United Kingdom.

⇒ Work within the “community” and Community Service

In France, community service, introduced by the Law of 10 June 1983, may be ordered by the juvenile court, by the police court for class 5 offences or by the criminal court, either as a main sentence or on a probationary basis in the form of “suspended sentence with the obligation to perform community service”.

In Germany, for offences where the punishment handed down is less than one year, the public prosecutor may suspend criminal prosecution and at the same time impose certain obligations on the accused, such as working in a specific department to compensate for the harm caused by the offence, unpaid work, or support a serious attempt at mediation with the victim and a desire to make reparations for the harm caused.

The assessment of the various restorative justice systems implemented in the countries that have adopted them, whether they are complementary to or replace traditional criminal proceedings, is evidence of their usefulness. Restorative justice is considered to better meet the expectations and needs of individuals in that it allows them to take ownership of the resolution process.

By contrast, for the most serious offences that demonstrate deeply entrenched hate behaviour on the part of the perpetrators, judicial intervention, and even more so the holding of a trial, would seem to be necessary.

It is important for the perpetrator to hear the disapproval that society as a whole has of the hate crime committed. The formality of the trial, the presence of the public prosecutor’s office responsible for representing society, whatever the system involved (adversarial or inquisitorial), the time of the judicial debate are essential in the process of understanding the punishment finally handed down.

In this respect, in some Member States such as England and Wales, the policy is to refrain from using the so-called “plead guilty” proceedings for so-called hate crimes.⁵⁸

Thus, in order to reconcile law enforcement and prevention, the response to a hate crime must be determined and graduated according to the personality of the perpetrator. Dialogue and alternative methods of resolution are paramount for the less serious crimes and whenever the perpetrator’s personality so permits, and a trial is paramount for the most serious crimes.

However, whatever the path chosen, it is important that the punishment finally handed down has an educational dimension.

⁵⁸ Source: Lifecycle of a Hate Crime: Comparative Report – Jennifer Scheppe, Amanda Haynes and Mark A Walters.

B. Educational dimension of the punishment

The reviews carried out by Member States on the effectiveness of criminal punishment and in particular the role it plays in preventing repeat offences have led to the observation that work is required on the educational dimension of the punishment.

In the fight against racism, more so than in other areas, the mechanisms at work when committing an offence, whether physical or verbal, are based on the existence of prejudices held by the perpetrator, which are deeply rooted to a greater or lesser extent.

The punishment handed down must aim to “de-normalise” this behaviour, reinforce its socially unacceptable nature and deconstruct the prejudices that motivated the act.

To this end, the criminal punishment must be educational both in terms of delivering the sentence and by its very nature.

1. Education at sentencing

The time of sentencing is a crucial time in the judicial process. To be understood and properly absorbed, the criminal punishment must be explained.

By establishing an aggravating factor linked to the hateful motives of the act in the various expert legal systems, the legislator has sought to recognise the intolerable nature of acts motivated by racial or religious hatred because they directly undermine the values of tolerance, equality and freedom.

It is therefore important that the perpetrator, when being punished, hears society’s specific condemnation of the hate crime committed.

It can thus be deemed appropriate to indicate the sentence incurred for the ordinary offence and then explain the reasons for an increase in this sentence in cases of racist, anti-Semitic or xenophobic motives. The perpetrator will thus be aware of the direct and quantifiable consequences of increasing the sentence in the event of a hate-motivated act.

FOCUS –

Determining and Handing Down Sentences in England and Wales

In **England and Wales**, section 145 of the Criminal Justice Act 2003 made racial or religious hatred a general aggravating factor for all types of offences.

The aggravating factor may be taken into account as soon as either of the following is demonstrated:

- hostility towards the victim: the perpetrator's motives are not taken into account. It does not matter whether the offence was committed out of anger rather than out of hatred. Similarly, the offence is not characterised because the person is racist or hateful but because the discourse used is abusive or violent.
- hostility against a specifically protected group: this racism or display of hatred against a specific group must be supported by circumstantial evidence gathered during the course of the investigation.

Although no method of calculating the increase in sentence is prescribed by law, there is a Sentencing Board whose role is to establish guidelines for the sentencing of hate crimes. The guidelines given concern both the specific offences of hate-related behaviour and the application of the aggravating factor resulting from the 2003 law.

The study of judges' practices reveals three main methods⁵⁹ of sentencing:

A so-called “intuitive” approach whereby judges determine the level of sentence based on the facts presented, based on their experience and without applying any scale.

A method known as “escalating conviction categories” whereby judges do not apply a percentage but simply impose the sentence from the higher conviction rank as determined from the sentencing guidelines.

A method known as the “percentage increase” method in which judges determine the overall seriousness of the offence according to general guidelines and then apply a “percentage increase” to the final sentence.

Finally, in relation to racism, when sentencing, courts must specify in their decision the sentence that should have been imposed had there been no aggravating factors.

This forces the courts to follow a two-step approach to determining the sentence and makes this approach visible in their decision.

⁵⁹ Source: Lifecycle of a Hate Crime: Comparative Report – Jennifer Scheppe, Amanda Haynes and Mark A Walters.

2. Education in the choice of sentence

Beyond the educational dimension of sentencing, which reinforces for the perpetrator the socially reprehensible nature of the act committed, the challenge of preventing repeat offending requires that the punishment meted out include in itself an educational aspect.

As mentioned above, racist behaviour stems from the existence of prejudices against certain communities and a lack of knowledge about the “the other” and about the diversity of cultures, religions and history.

The fight against racism must therefore be understood as the deconstruction of prejudice and the improvement of knowledge about cultures and religious communities.

This educational work must obviously take place before any crime is committed, through the implementation of prevention programmes, particularly in schools, but also after the crime during sentencing.

In order to develop the educational dimension of criminal justice responses, it is important to encourage working relationships with partners of the judicial system such as victims’ associations or places of remembrance.

Organising visits to sites or monuments that mark significant events in history, whether they are places where these events took place or are symbols of them, as well as access to the accounts of survivors, have proven to be extremely valuable in putting the crime in perspective with regard to a community’s history.

The introduction of training courses with modules specially geared to the fight against racism is one of the avenues to be developed to combat repeat offending.

These training courses can serve as a reminder of the republican values of tolerance and respect for human dignity while making the perpetrator aware of the criminal and civil responsibility they have and the duties that living in society entails.

In addition, certain sentences, beyond the impact they have on the perpetrator, may also have a much more widespread educational function. This is particularly the case for sentences aimed at publicising the decision, such as publishing or distributing the decision, which have a particular benefit in relation to racism by widely disseminating the legal prohibition of all hate behaviour or speech and the clampdown that society attaches to it.

FOCUS – Educational Sentences in France: The Citizenship Course

- **Since 2014, the Paris Public Prosecutor’s Office has been running a citizenship course in conjunction with the Shoah Memorial (Holocaust Museum) entitled *Awareness of the History of the Holocaust*.**

This course, which lasts two days and is attended by about ten people, aims to address all forms of racism by allowing participants to engage and express their views.

A reminder of the law on racism is presented to the participants, followed by a reflection on the genocides of the 20th century (including the accounts of survivors).

A booklet entitled “The Mechanisms of Racism and Anti-Semitism”, presenting the key information developed during the course (information on prejudice and anti-Judaism) is distributed to participants to provide them with some pointers and tools to reflect on the past.

The topics are discussed in the form of workshops with the use of various materials, such as videos, posters from the colonial period and press clippings from the beginning of the 20th century. To avoid an overly academic approach and to create a positive group dynamic, the participants are sometimes divided into sub-groups, guided by one speaker who feeds back their thoughts to the other group(s). The activities include work on the words and construction of prejudice (work on syllogisms) and on the notion of differences. These activities provide basic historical and scientific knowledge on the construction of anti-Semitism, on Nazism, the theory of evolution and the notion of race.

Work on the crimes is also included. The 20th century genocides are presented, including a visit to the Shoah Memorial and its Permanent Exhibition, as are the accounts of two survivors, one from the Holocaust and the other from the Rwandan genocide.

Finally, a workshop on the two previously mentioned genocides (using pages from a comic strip) concludes with a roundtable discussion co-facilitated by a historian specialising in genocide and a publisher specialising in inter-religious dialogue. They each emphasise the importance of accepting each other’s differences and the significance of hate speech, after having discussed their experiences.

At the end of the course, each participant is invited to describe the positive and negative points of the course. The attending public prosecutor then reminds the participants of the reasons for holding the course and the criminal consequences of racist remarks.

- **The use of citizenship courses, as alternatives to prosecution and sentencing, is therefore particularly appropriate because they are intended to remind perpetrators of the republican values of tolerance and respect for human dignity while making them aware of the criminal and civil responsibility they have and the duties that living in society entails.**

As a consequence, the Directorate for Criminal Matters and Pardons at the Ministry of Justice issued a circular on 4 December 2015 on the development of a specific topic on racism and discrimination in citizenship courses, whether in the form of:

- either the **inclusion of a specific module on racism and anti-Semitism in general citizenship courses.**

Work was carried out with the Federation of Citizens and Justice (FCJ) to create a standard module on the fight against racism and discrimination that could be incorporated into existing citizenship courses, by signing a simple amendment to the agreements implementing these courses.

- or the **development in the region of specific citizenship courses for perpetrators of racist acts, implemented by the Shoah Memorial and based on the model of the course in Paris**, which could address the needs of certain jurisdictions faced with significant or particularly acute levels of this type of incident.

On 19 February 2016, the Appeal Court Prosecutor's Office in Lyon, and on 24 March 2016, the Appeal Court Prosecutor's Office in Aix-en-Provence signed a protocol with the Shoah Memorial to implement these specific courses in their regions.

Since the signing of these protocols, the Lyon Court of Appeal has successfully organised several training sessions, one per year on average, and has assessed their introduction positively. However, both these Courts of Appeal experienced difficulties in introducing these training courses as a result of the low number of participants, in particular because of the geographical distance from the training locations, the small number of proceedings for discrimination offences, and the difficulties in defining and substantiating the offences.

The Prosecutors General in the Lyon and Aix-en-Provence Courts of Appeal, who are particularly involved in the fight against racism and anti-Semitism, are constantly working to identify ways to overcome these obstacles: broadening the scope of the agreements and constant communication with the public prosecutor's office in their jurisdiction to promote the benefit of requiring this type of measure.

CONCLUSION

On February 19th 2019 a major gathering was organised at Place de la République in Paris called by around twenty political parties to protest against the multiplication of anti-Semitic acts in France.

The purpose was also to condemn the recent anti Jewish events deplored in France in the previous weeks: Simone Veil's portraits on two mail boxes covered with swastikas in the 13th district of Paris, the word "Juden" (Jewish in German) scrawled on the window of a Bagelstein shop, the trees planted in memory of Ilan Halimi – young Jewish man tortured to death in 2016 – sawed down, or again the insults uttered against the French academician philosopher Alain Finkielkraut.

Fighting against the surge of anti-Semitic hatred is unfortunately not a challenge only France is confronted with. Many European countries face a multiplication of hateful behaviours and speech.

These despicable acts alert us on the necessity to further strengthen our actions concerning fight against racism, anti-Semitism and xenophobia. With Internet, hate speech knows no boundaries and spread in social media with no limit. As a consequence, it appears essential for the EU Member States to draw near and lead together a reflection on the means to optimise this fight.

With this in mind, the PRINT project was developed with the objective to allow an exchange of views and of practices between the project members and the public and private representatives particularly committed in this fight in each country visited.

At the end of the 16 months of the project, the main objectives of enhancing the dialogue between the judicial actors fighting against racism and improving the knowledge of the criminal reponse which can be implemented by the authorities in charge of dealing with the issues of racism and xenophobia have been fully achieved.

This project has allowed to mutualise the knowledge and reflections led and to identify the principal lines of action in the fight against racism. In spite the differences in the participating States judicial cultures, the identification and analysis of the solutions implemented in these countries can be an inspiration to all EU States.

This handbook's purpose is not to recommend a transposition *ne varietur* of the highlighted States' practices but to identify potential avenues for reflection to improve the judicial treatment of racism in view of the inovative practices listed in the countries.

APPENDIX

1) Questionnaire on legal frameworks and application

2) Study visit reports

- **France**
- **United Kingdom**
- **Germany**
- **Spain**

PRINT

(Preventing Racism and INTolerance)

QUESTIONNAIRE

The PRINT project (‘Preventing Racism and INTolerance, led jointly by France (ministry of Justice and DILCRAH) and Germany (ministry of Justice) and co-financed by the REC Programme of the European Commission, aims to bring two member States to lead a common reflection on the harmonization of enforcement patterns for racist and xenophobic crimes and speech and improve the criminal response to these wrongful acts.

An objective and comparative study of the legislation in the matter and of the criminal enforcement patterns of 4 countries (both partner countries – France and Germany – and 2 other member States – Spain and UK) should allow the participants to identify the challenges met, the good practices and common standards which could be developed in other EU member States who wish to improve their criminal law and criminal policy against racist and xenophobic hate crimes and speech.

In this context, a compilation guide of these practices will be drafted and disseminated to all EU member States notably thanks to a final conference organized in the beginning of 2019. In order to lead a thorough study, a situational analysis of the judicial framework and of the enforcement pattern of each country must be done and elements of context which may explain those elements must be gathered. This questionnaire addresses this purpose. It should only be used as a working tool and a support of reflection for the PRINT experts. The answers will not be published, only the overview of all national answers may be annexed to the follow up report of the project to the European Commission.

This questionnaire concerns all racist, anti-Semitic and xenophobic crimes and speech, mentioned below as “hate crimes and speech”. In order to have a common understanding/definition of the crimes concerned by the questionnaire we refer to the definition of offences concerning racism and xenophobia in Article 1 of the COUNCIL FRAMEWORK DECISION 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

You are invited of course to add any complementary observation, on each part of the questionnaire, and to join any useful background summary document.

I. The institutional framework and public policies tackling racist, anti-Semitic and xenophobic crimes and speech

Organisation of public policies

1. Could you present the public policy set in your country to strengthen or better organise

combating racist, anti-Semitic and xenophobic crimes and speech?
2. In the last couple of years, have particular events or incidents had a significant enough impact in your country to bring about a change in public policies combating racist, anti-Semitic and xenophobic crimes and speech?
3. Could you specify the actors in charge of the definition and implementation of these public policies– specifying the main ministries, administrative services and agencies contributing in combating racism, anti-Semitism and xenophobia? Is a specific body in charge of giving the impulsion or coordinating the fight against racism, anti-Semitism and xenophobia?
4. Could you specify if civil society organisations or so-called “community organisations” are involved in this policy to fight against racist, anti-Semitic and xenophobic crimes and speech and if so, how, on an institutionalised basis or not?
5. Do public groups for dialogue, expertise, concertation or even co-decision with civil society organisations exist at local and/or national level concerning fight against racist, anti-Semitic and xenophobic crimes and speech? If so, could you describe its/their composition, the frequency of meetings and the purpose/agenda?
<u>Evaluation of public policies</u>
6. Are public policies and the actors implementing them assessed and, if so, by whom: public authorities, civil society organisations, international organisations...?
<u>Data Collection</u>
7. Can you provide statistical data concerning racist crimes and speech in your country? How many judicial proceedings concerning racism (all types) are currently ongoing in your national courts?
8. How are hate crimes and speech counted (by investigation services and/or courts, through incidents reported to civil society organisations, through victimisation surveys...), how is the data collected (computerised process or not)? Could you specify the different categories identified: origin, physical appearance (skin colour...), religion...?

II. Judicial treatment for hate crimes and speech
<u>Repressive texts for hate offences and their legal regime</u>

9. Could you mention, specifying their degree of seriousness, the criminal offences allowing the prosecution of racist, anti-Semitic and xenophobic crimes and speech, the legal texts, the legal definitions of the offences, the potential procedural specificities they may bear (statute of limitation...) and the penalties incurred?
10. Are they general offences with specific circumstances or are they specific offences? If so, could you specify the legal terms concerning aggravating circumstance for racism, antisemitism, xenophobia and to which offences this circumstance may be applied?
<u>Investigation services</u>
Organisation
11. Which investigation services are competent? Are there specialised investigation services for hate crimes and speech? If so, could you explain how these services are organised, what are their activities (jurisdiction, workforce, number of proceedings dealt with, national or local leadership)?
<u>Collection and processing of complaints</u>
12. Are complaints concerning hate crimes and speech collected and processed with a specific procedure? If so, could you explain the system applied?
13. Does your legal system allow filing a complaint on line in case of hate crime or speech? Does an online alert system allow victims to contact police services before filing a complaint in order to be better orientated/assisted in their procedure? If so, could you explain the system applied, the legal framework (Which offences can be reported? Can the complaints concern a named person...?) What information can be provided to the victim(s)?
14. Are the staff in charge of collecting complaints and members of Investigation Services specifically trained or alerted?
15. Is the police officer recording a complaint or the investigating officer bound to register the declaration of the victim on the racist nature of an offence?
16. Is a denounced racist circumstance automatically recorded by the investigator? If relevant, could you specify the different types of origins covered? Is a police officer

recording a complaint required to ask a question on the racist/discriminatory nature of the facts reported?
<u>Investigations</u>
17. Do special investigation techniques/methodologies exist which can be implemented for hate crimes and speech – witness/victim/accused testimonies, evidence recovery, bias indicators (corroborating/supporting evidence method: e.g. apparently senseless/unmotivated aggression, victim’s clothing, visible symbols of origin or of belonging to a community, place and time of the aggression, relations between the perpetrator and the victim, perpetrator’s and victim’s judicial records, similar cases in the geographic area, perception of the victim or of a witness, membership or participation of the perpetrator to a specific group, activity of the perpetrator on social media...) ? How are these techniques made available for investigators and how are they supervised?
18. During the criminal investigation, are victims with specific needs, identified by article 22, §1 of <i>Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime</i> provided with the measures, referred to in article 23 of the directive: <ul style="list-style-type: none"> - “(a) interviews with the victim are being carried out in premises designed or adapted for that purpose; - (b) interviews with the victim are being carried out by or through professionals trained for that purpose; - (c) all interviews with the victim are being conducted by the same persons unless this is contrary to the good administration of justice.”?
<u>Prosecution authorities</u>
19. Are there specialised prosecution services/bodies concerning racist, anti-Semitic and xenophobic crimes and speech? If so, how are they organised (jurisdiction criteria, workforce, number of proceedings treated, specific training...)?
20. If not, are these cases treated by a specialised prosecutor?
21. Are specific instructions given to the prosecution authorities concerning the judicial treatment to be given to this type of cases - aggravating circumstance, investigation orientation prosecution method, required penalty...?
<u>Trial courts</u>

22. Are there trial courts dealing specifically with racist, anti-Semitic and xenophobic crimes and speech? If so, how are they organised (jurisdiction, number of specific formations, workforce, number of proceedings treated)?
23. Have specific problems been identified concerning the judicial treatment of racist, anti-Semitic and xenophobic crimes and speech such as concurrent jurisdiction, interpretation and of legislation...?
24. Which measures, penalties, sentences are available and favoured for the repression of hate crimes and speech (for example: first time offenders, adults/minors...)? Is the prison and insertion or probation staff specialised/trained? Can you provide statistical data to support this information?
25. Are IT tools (hard and soft ware) provided to judges to facilitate their work?
<u>Assistance to victims (access to law and justice and victim support)</u>
26. Are specific access to law and justice and victim support policies/procedures applied for hate crimes and speech (ex: psychological assistance...)? Can you specify if your country has implemented article 22 of the <i>European Parliament and Council 2012/29/EU Directive, October 25, 2012 establishing minimum standards on the rights, support and protection of victims of crime</i> ? Do victims of “hate inspired crimes” benefit from an “individual assessment” in order “to identify specific protection needs (...) due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation”?
27. Can access to law and justice and victim support actors benefit from specific training? If so, which kind?
<u>The role and position of civil society organisations</u>
28. Do these organisations have the ability to file complaints, to be a party in court together with the victim of a hate crime/speech? If so, which legal conditions are required?
29. Do these organisations frequently use this type of judicial procedures? Can you provide statistical data?
30. Do judges/prosecutors and investigations services meet with representatives of local civil

society organisations/community organisations? If so, how frequently and at what level are these meetings organised and are these meetings official/institutional?

III. Combating racist, anti-Semitic and xenophobic hate on the Internet
<u>Removal of illegal hate speech content</u>
31. Does your law allow to compel information society services to remove illegal hate speech content (e.g. messages and videos on social networks, or websites)- in accordance with article 14.3 of the <i>Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'))</i> ⁶⁰
32. Could you describe the relevant judicial proceeding and specify the applicable legal provisions? May individuals, civil society organisations, prosecution services or administrative authorities file a request before a judge to get an illegal hate speech content removed? What are the judicial conditions to file such a request?
33. How many criminal and/or civil judicial rulings of removal of illegal hate speech content are issued each year?
34. Exclusive of judicial proceedings, is a public authority in charge of requesting the removal of illegal hate speech content from host and content providers? If so, how many of these contents are removed each year after this type of request?
35. Is an agency/administrative service in charge of collecting alerts concerning online illegal contents? Do these alerts lead to removal requests issued to the host and content providers? If so, please describe the applicable procedure.
<u>The liability regime of web hosts for lack of removal of contents</u> ⁶¹

⁶⁰ Article 14.3 of the *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'))*: "This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.

⁶¹ See introduction point (42) "exemptions from liability" of the *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')*

36. Could you specify the legal dispositions which apply in your country implementing article 14 of the aforementioned directive on electronic commerce ⁶² ?
37. Under which conditions can a host provider be held liable for lack of removal of reported illegal hate speech content (e.g. message and videos on social media, videos or comments etc...)? Has the liability of a major host provider (Facebook, Youtube, Twitter... national companies...) already been recognised by one of your national courts for lack of removal of an illegal hate speech content?
<u>Denunciation of illegal facts by internet platforms</u>
38. Does your law provide for an obligation for host providers to report illegal hate speech content on the Internet to the police, according to the provisions of article 15.2 of the aforementioned directive on electronic commerce ⁶³ ? If so, do the services actually comply with this obligation or are problems met?
<u>The identification of authors of illegal hate speech content</u>
39. Does a special investigation unit exist for crimes committed on the Internet?
40. Do host providers comply with judicial or investigative requests to identify the authors of illegal hate speech content? Can you give an approximate number of how many requests are fulfilled?
41. If a request is not fulfilled, are police and judicial authorities informed?
42. Have law amendments been made to ease the identification of illegal hate speech contents?

⁶² **Article 14: Hosting**

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of 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) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information

⁶³ **Article 15(...)**No general obligation to monitor

2. 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.

<u>Filing and transmission of removed illegal contents</u>
43. In case illegal hate speech content is removed, do information service societies comply with judicial or investigative orders requesting the transmission of the content and the proof of its publishing, or do they ask for international mutual assistance?
44. Are these mutual assistance requests automatically executed or are problems met?
45. Has your legislation evolved in order to compel host providers to keep illegal hate speech contents - which have been subject to a removal request - available for the police or judicial authorities?
46. Does an open source reporting platform or an investigation service exist in order to record the illegal hate speech content, as soon as it is reported, in order to prove, should it be deleted, that it has been published?
<u>The protection of flaggers</u>
47. Have facts of threats against reporters of illegal hate speech been reported in your country? If so, have legal or practical measures been taken in order to put a stop to this phenomenon?

IV. Training and information of investigators, prosecutors and judges
<u>Concerning the training of judges, prosecutors and the different types of staff from the judicial police services (investigators and management officers)</u>
48. Are specific courses delivered during the initial and/or continuous training and what is their content - specifically, are the following themes tackled: <ul style="list-style-type: none"> - History of the judicial/police institutions and of judges/prosecutors/police officers; - Memorial institutions; - History, traditions and cultural sensitivities of the principal cultural, ethnic, religious... minority groups, the state of discriminations in your country; the racist, anti-Semitic or xenophobic prejudices/biases and the way to deconstruct them; - The applicable legislation; - Investigation techniques?
49. If so, for each category of staff concerned and for each topic, please specify the nature

and length of the training(s) delivered? Also, by which type of professionals are they delivered, historians, lawyers, sociologists...?
50. Finally, concerning continuous training, what is the public concerned and what is the number of participants per year?
V. Good practices
51. Could you identify a practice developed in your country for the judicial treatment of hate acts and speech which you believe could be specifically put forward as a « good practice »?

**« PRINT » (Preventing Racism and INTolerance)
Study Visit in France – March 5th – 6th, 2018
REPORT**

**Monday, March 5th, 2018
Topic : Judicial treatment of racism**

DAY 1 - MORNING

Ministry of Justice

- **Welcome and opening addresses by Mrs ANCEL, Director of criminal affairs and pardons of the French Ministry of Justice**

After welcoming all participants, Ms Ancel reminded **the challenge the PRINT project represents for the French ministry of Justice**, which, given the subject, has large expectations.

Indeed, all types of racism and xenophobia are incompatible with the French Republic values and fighting them has been a priority of the French government for many years now, in line with the common European values and the EU texts.

However, despite this engagement, Police and justice services statistics and data from non-governmental actors reveal that ethnic and religious minorities still face racism, exclusion and violence. The worsening of International conflicts, the migration crisis and the specific context caused by the terrorist attacks in France, has contributed to a multiplication of extremely violent racist acts and speech.

This statement, shared by several European countries emphasises the necessity:

- To improve the efficiency of the execution of criminal rules and the protection of the most vulnerable people, thanks to a better knowledge of the phenomenon and of effective fighting tools,
- To harmonise to struggle against racism and xenophobia in order to allow a unified protection of EU citizens as imagined by the European legislator.

To that end, it has seemed relevant to seek innovative practices in States facing the same issue and the PRINT project serves this ambition. After presenting the PRINT project, its history and methodology, Ms Ancel presented the programme set up for the first study visit in Paris.

- **Mrs Caroline GONTRAN, Head of the European and International Affairs Delegation of the French Ministry of Justice** emphasized that the key word for this project is and has been from the very beginning – **synergy** - between the French Ministry's services and French institutions but also between the EU partners.
- **Mr POTIER, National Delegate of DILCRAH** (*coordinating the project along with the Ministry of Justice thanks to the participation in the project of his representative M. Donatien LE VAILLANT as co-head of the project with Ms Claire VUILLET from the French Ministry of Justice*) also strongly believes in **collective intelligence**. Aware of the **creation in Germany of a Federal Delegate for antisemitism matters**, he expressed his wish to meet the appointed person as soon as possible in order to start working together.

In his opinion, the **most urgent matter is the improvement of assistance to victims** concerning which there is still much to be done.

- **Dr Stephen RÖBER**, PRINT project expert, *Advisor at the German ministry of Justice at the Criminal Law division in charge of criminal law, sexual offences, criminology and anti-doping legislation*, thanked for the significant dimension given to this first meeting which reflects the importance of the problem.

He reminded that, for the first time in Germany since the end of the Second World War, a populist group has been elected and has entered Parliament which shows, unfortunately, that **from speech to act there is only a short step**. The numbers are also alarming in Germany concerning racist acts. Even though the number of migrants has decreased, the problem stays unchanged and it must be resolved. The PRINT project will probably be most helpful and, should the Federal delegate be appointed soon, he/she will most probably be informed and associated to the PRINT project. Concerning victims, Dr RÖBER reminds that in November 2011, neo-Nazi groups were discovered after long investigations. From disbelief by the investigation services that this type of groups could exist, the authors were searched for among the victims' families, which created a very **unfortunate double victimisation**.

- **Mr Joël SOLIER**, PRINT project expert, *senior prosecutor of Lyon Court of appeal*, reminded that an improvement of the whole “criminal justice continuum” implies for the practitioners in Court to try to identify and disseminate a **reasonable and balanced approach which includes all public actors and authorities** with Justice at the end of the road which has the specific role to control the respect of human rights and of social fairness in the community.
- **Presentation of the legislative framework by Mrs ANCEL**

The number of racism cases (insults, defamation, assaults, discriminations and property damage) has increased considerably – 44% - between 2013 and 2016. (See figures in FR questionnaire).

The responsibility of fight against racism concerns the whole society, but the judicial answer is essential. **If France is of course, particularly committed to the respect of freedom of expression and freedom of opinion, these freedoms cannot be absolute and limitations, defined by law, are necessary** to ensure the respect of public order and to prevent propagation of hate.

The criminalisation of racist motivations is made in France through the rights of the press legislation, defined by the **Law on the freedom of the press, July 29th, 1881**, and through aggravating circumstances determined by the criminal code.

French legislation has progressively evolved to a stricter repression and to an easier repression and prosecution, as illustrated by the last law voted in that matter, **Law for Equality and citizenship, January 27th, 2017**.

1) Fight against racist acts

Criminalisation and repression of racist acts are mainly based on the **creation and generalisation of aggravating circumstances of offences provided for by the criminal code**. Since 2003, the law has introduced in article 132-76 criminal code the aggravating circumstance, for an offence, for belonging or not belonging, actual or assumed, of a victim to an ethnic affiliation, nation, alleged race or a specific religion. Since 2017, this text has been amended to **extend the application of this aggravating circumstance to all crimes or misdemeanours punished of imprisonment and plans an aggravation of the prison sentences**.

2) Fight against hate speech

Criminalisation of racist and anti-religion speech is particularly complex. **A compromise has been sought between the right to free speech and the protection of the rights of people guides the drafting of the law in that matter.**

- repressed offences

The Law of July 29th 1881 sets a principle of liberty reminded in its article 1 and **defines the abuses of free speech** that can lead to criminal offences, for example, when the speech “*generates a feeling of hostility or of rejection towards a determined group of people*”.

The law also represses the publication or diffusion of racist or anti-Semitic speech such as:

- public provocation to discrimination, to hate or to racial, religious assault,
- public insult because of the belonging or not belonging, true or alleged, to an ethnic origin, a nation, a race or a determined religion,
- public defamation in the same circumstances,
- denial of a crime against humanity,
- glorification of war crime, crime against humanity, crime or misdemeanour of collaboration with the enemy and crime of enslavement or exploitation of an enslaved person.

These offences may be characterised whatever support or means of expression used (writ, speech or image, press, television, Internet...) **the only requirement stands on the publicity** that has brought the offence to the knowledge of others. **Non-public facts** of provocation, defamation or insult of racist nature may however be subjected to prosecution according to the criminal code, sentenced as less serious offences to fines.

With the extension of the Internet, the fight against hate speech online has required the adoption of a legislative arsenal allowing setting a stronger framework to the communication services online. Since 1982, this legislative framework defines the responsibility of the diffusion of hate speech online and, if it **excludes a general monitoring obligation to Internet stakeholders, it enforces a set of obligations** (see questionnaire). However, the legislator has made the choice to maintain a general repression system allowing a wide understanding of hateful behaviours.

- The specific regime

The necessary balance to be found between a firm and efficient repression against hate crimes and the protection of free speech is **mainly based on the specific regime** provided for by the Law on the liberty of the press which, in order to protect freedom of speech provides for **a strict procedural framework**.

Adjustments have been progressively brought in order to facilitate prosecution while managing this balance (longer limitation period, possibility to requalify during the proceedings...) for example: the interim measures judge may interrupt the diffusion of provocative speech online.

3) The role of civil society

The Law recognises to associations fighting racism a right to act in court concerning hate acts and speech, even when the offence has been committed against an individual. These associations may bring an action as a party given they respect certain conditions (lawful registration, 5 years existence, and compatible statutes...)

• **Presentation of the judicial system by Ms ANCEL**

In order to guarantee the effective implementation of this judicial framework, the **ministry of Justice** leads since several years **to optimise the repression of racist offences while strengthening prevention**.

1) The role of the DACG in the judicial system to fight against racism

The Ministry of Justice, at the central level, defines a dynamic criminal policy, which includes the regular communication of general criminal policy orientations to the courts and more specifically to the prosecution services at first instance and appeal level. (See questionnaire - questions 19 to 21)

The increase of more than 40% cases brought to the prosecution services in the last three years in the result of an **active criminal policy especially concerning actions inciting victims to file complaints, raising the police and gendarmerie services' awareness to the phenomenon, and instructions of firmness and reactivity transmitted to the prosecution services.**

The Ministry of Justice also encourages the **development of pedagogical responses** for less serious acts and when the author's profile seems suitable to such measures. In order to adapt this kind of pre-existing alternative measures to racist acts, two types of courses have been chosen:

- Courses exclusively dedicated to authors of racist acts (conventions of some courts with the Memorial of the Shoah – see below)
- The integration of the authors in regular “citizenship courses” in a specific unit on the themes of Racism and “living together”.

2) The action of the courts

These orientations given by the ministry are then declined and adapted by the courts. In order to deal efficiently with racism cases, the criminal policy lead locally is set on a specific organisation of the prosecution services. This organisation aims to ensure the visibility of the policy and to fit the action in a partnership dynamic. It is set on:

- The appointment of a referent prosecutor in each prosecution service at first instance and appeal level,
On the institutionalisation of partnerships in that matter mainly through anti-discrimination poles/working groups (*see questionnaire - question 30*).

- **Presentation of the training system for fight against racism and discrimination stakeholders by Mme LEGEAY, Deputy Head of the Directorate for continuous training**

The National school for the judiciary – ENM, is a “practice” school aiming to strengthen theoretical knowledge but also professional practice in decision-making.

The subject of discrimination is treated during the initial theoretical training period – legislative framework, public policies etc. – during the practical internship, “auditors” may deal with discrimination cases but it is not a requirement and depends on the activity and caseload of the court.

Concerning the content of the training, the training offer is much more developed in continuous training than in the initial training - due to the heavy load of knowledge to be reviewed in the short period of the initial training. These courses are open to other “practice” schools and to other professionals. In 2018, a new course is developed with the DICLRAH: see below “Justice and hate speech”.

Questionnaire – question n°48:

- **As part of initial training**, during a training day entitled “*secularism – discriminations*”, half a day is specifically devoted to fight against racism.

The training is delivered to the full class of a year and concerns the evolutions and challenges of this fight, the judicial framework and tools and also on the innovative practices identified. This training is made through conferences and round tables. In 2017, a referent prosecutor on racism was invited and a representatives of the Defender of rights. In 2018, it is planned that the DICLRAH also participates for a technical training on the collection of the victim's declarations, the investigations to lead for racist or anti-Semitic offences or, furthermore on the offences concerning hate speech (Law July 29th 1881 on the freedom of the press).

- **As part of continuous training**, each year specific sessions on racism and others where the subject is dealt with are proposed.

The judges and prosecutors have a personal and annual duty of training of 5 days but they are free to choose the training activity in a catalogue proposed each year by the ENM.

- **Three specific trainings** are proposed and have been part of the continuous training catalogue of magistrates for several years:

- « **Racism and Anti-Semitism: contemporary issues** » - three days training, open to 65 participants, directed by a member of the French National Consultative Commission on Human Rights (CNCDH). It proposes a multidisciplinary approach in order to better understand these notions (intervention of specialised academics and researchers), to reflect upon the diversification of issues, their causes, remind the principles laid by the International instruments and by national provisions, put into perspective the existing legal arsenal with the public policies for preventing and fighting and take a look to the judicial answers (prosecution choices, rulings, good practices) thanks to the intervention of judges and prosecutors, lawyers and investigators. Half a day is thus devoted to raise the awareness of judges and prosecutors to the procedural specificities of the press legislation, to the judicial qualifications for racism cases and the characterisation of the offence through the constitutive elements defined by the law. The training plans the intervention of the judge in charge of the “*Press and protection of freedoms*” section of the Paris TGI court.

- « **Justice and hate speech** » - training open to 55 participants, directed by the Justice and International relations advisor of the DILCRAH. It proposes to deal, through conferences and exchanges, the repression of hate speech regarding the development of new communication tools, including Internet, and presents the different judicial tools and techniques. It plans in particular the intervention of a judge, counsellor of the High cassation court – *Cour de cassation* – specialised in Law of the press and a legal advisor for the European commission against racism and intolerance.

- « **The act of judging faced with the torments of History** », training open to around sixty people, directed by the General secretary of the French association for Justice history, which tackles justice in France between 1939 and 1945 and the Nuremberg Trial. It involves a magistrate, a historian, researchers, a Nuremberg witness, a journalist and the president of the association Buchenwald-Dora.

Furthermore, a full day out-centred training will be organised in 2018 in the Aix en Provence Court of appeal on the theme of “judges and prosecutors under occupation” which will include a visit of the “Camp des Milles”, French internment camp.

Also, the ENM is a partner to the HELP project of the Council of Europe which has developed two e-learning:

- Fight against racism, xenophobia, homophobia and transphobia;
- “Hate crime and hate speech”

- Finally, this subject is dealt with in several continuous training sessions, but not as the main subject :

- “**secularism, the judge and law**” and “**secularism in public services**”;

- “**the law of the press**”;

- “**the three monotheist religions**” (Christianism, Islam and Judaism);

- “**foreigners and the judicial judge**”;

- “**un-accompanied minors**”;

- “**non-sedentary populations and judicial practices**”, this training allows acquiring knowledge and the way of life of the different so called non-sedentary populations: Roma people-gipsies- and to study their legal status in France;

- “**Families of north Africa, Sub-Saharan Africa and Turkey and judicial practices**”, this multidisciplinary training (history, psychology, anthropology, linguistic) presents the traditional way of life of these societies (intertwining of the sacred and the profane, family structures, resolution of conflicts...), the main phases of immigration, family conflicts in the immigration context. It also aims to understand how judicial intervention can become the scene of the conflict of culture;

- **“collective internship within the Defender of rights institution”**;
- **“cyber criminality and digital evidence”**, training devoted to all criminal issues linked to the Internet and which also tackles repression of racist and anti-Semitic offences;
- **“International criminal justice”**, training open to around thirty participants, tackles about the recent developments of Internal criminal law and highlights the challenges linked to contemporary great international trials. International crimes and the criminal international trial are presented through a judicial point of view and through the social sciences angle. This session is organised alternatively with a training consecrated the treatment in France of international crimes and is chaired by a member of the “crime against humanity” section of the Paris TGI court.

DAY 1 - AFTERNOON

Palais de Justice of Paris

- **Meeting with the Director of the Shoah memorial in Paris Mr FREDJ**

The Holocaust Memorial is both a museum and an archive center open to research and a place of remembrance and transmission.

Concerning the partnership with the courts: the “citizenship courses”

At the request of the public prosecutor of Paris, the Shoah memorial created a citizenship course. The Memorial decided to accept the challenge because they were tired of only speaking to those already convinced.

These courses can be required by the courts as an alternative to imprisonment **but also as a main sentence or associated to a probation** (except hate speech, which does not allow probation).

It last 2 days. If two full days seems a bit long, they are finally essential for the awareness of the interns, the first day allowing a first contact and **the second, a further wake up call**.

The most important is to restore the social link with some of the interns and their dignity.

An improvement of the practice could be to see them again a few months later after their course, after they have returned to their environment producing the same stereotypes and “clichés”.

According to Mme DOUVRELEUR, *senior prosecutor delegated to community politics and access to justice, judicial policies service of the Paris appeal court prosecution service*, the Memorial is offering sterling work with these internships.

Concerning other partnerships

Since 2006, thanks to an exchange of archives between the Memorial and the Paris police Prefecture operated in 2005 (on the basis of a circular signed in 1997 and opening the archives of the Vichy

government), **all young police officers** reaching the end of their training, **spend half a day at the Memorial** in order to get a presentation of that period of History and **to reflect on the role of the police in a democratic system and within a non-democratic State**. A **more complete internship is proposed to Police officers/commissioners** through a more global subject “serving the State under the Vichy government”. In addition, as the police is in charge of protecting the Jewish buildings in France, a presentation of the Jewish community is also made.

- **Meeting with the judges and prosecutors of the TGI (Tribunal de Grande Instance – First instance high court) and Paris Court of appeal**

Mrs SAUTERAUD, president of chamber (2-7) of the Paris court of appeal

Mrs DOUVRELEUR, senior prosecutor delegated to community politics and access to justice, judicial policies service of the Paris appeal court prosecution service

Mrs SAVI, Substitut générale – deputy senior prosecutor at the Paris appeal court prosecution service

Mr ROUCHAYROLLES, Avocat général- senior prosecutor in charge of cyber-crime questions at the Paris appeal court prosecution service

Mrs BARBIER-CHASSAING, Avocat générale – senior prosecutor in charge of cyber-crime questions at the Paris appeal court prosecution service

Mr BADORC, deputy public prosecutor of the Paris TGI prosecution service

Mrs PHILIPPE, deputy prosecutor, head of the media section of the Paris TGI prosecution service.

- **Mrs PHILIPPE, deputy prosecutor, head of the media section of the Paris TGI prosecution service**

The **centralised specialised media section of the Paris prosecution service** (5 dedicated prosecutors) is provided for in the 1881 Law on the press. A more generalist section deals with assaults against individuals.

The media prosecution section works with a **dedicated section of the Criminal court** (*Tribunal correctionnel*) also specialised on media law.

A court clerk makes the Statistics of the section manually: in 2017, the section had 432 new cases – 400 concerned hate speech, 22 discrimination and 19 common law affairs concerning insults. 34 alternatives to prosecution were required. The cases are generally closed when the author cannot be identified.

Complaints come from individuals but many reports are made by associations, which monitor the Internet and launch the inquiries. The prosecution only works with association that deal with racism in general and do not protect a specific community.

The fact that associations can file complaints in France allows a common reflexion on how to fight against this kind of speech and acts and on the major problem of identification of authors.

The service identifies **different types of speech**:

- **“Ordinary” racism**: which will usually lead to alternatives to prosecution as a reflection from the author is considered possible. A pedagogical response is favoured.
- **“Institutionalised” racism**: by newspapers, media or by an open revisionist, through Internet websites (Blanche Europe...). No individual identification is possible and the only solution is to get to the service provider to block access to the website in France.
- **Open/assumed hate speech even though anonymised through #...** for example. Two possibilities then, centralisation in Paris or referral to a local prosecution services.
- **Hate speech by public figures**: question of parliamentary immunity for politicians...
- **Hate speech under the guise of art**: e.g. Dieudonné singer in France.

The assistance to the victim when the complaint is filed is not very complicated when it concerns hate speech but an **evaluation sheet** had been developed anyway in order to be sure to bring a suitable assistance.

Concerning sentencing: which is the best sentence to require? When is imprisonment the right option for hate speech, which is an assault as such? In Paris, the courts rarely order imprisonment sentences. Very recently, it has been imposed in first instance but the decisions are overruled in appeal.

Mrs SAVI, Substitut général –deputy senior prosecutor at the Paris appeal court prosecution service, as member of the court of appeal prosecution service answers that the main problem is the victimisation phenomenon of some public authors of hate speech who have an audience. When imprisonment is required, they victimise their freedom of expression through their prison sentence.

- **Mrs BRAY, deputy prosecutor, head of the P20 section**

The P20 section of the Paris prosecution service has jurisdiction over all non-specialised cases! 19 prosecutors are dedicated to the section. They are in charge of following all preliminary investigations (c/ flagrante delictum investigations) and judicial investigations taken over by investigative judges.

The section deals with 55 000 new procedures a year and follow more than 1000 judicial investigations.

- **Exchanges:**

In practice, the prosecutors prefer using other grounds, more objective aggravating circumstances than racism, which are easier to demonstrate: **the “thermometer is broken”**. **The burden of proof for these aggravating circumstances has become too heavy.**

As for the judges, the first instance judges regularly does not withhold the qualification or does but without motivating it and with no appeal, **the “thermometer is again broken”**.

Regularly, despite clear facts stated in the decisions, the investigative judge and the investigative appeal chamber (in charge of the appeals against the investigative judge’s decisions), have rejected the aggravating circumstances. **Fortunately, in several decisions, these have been recognised at last by the Cour de cassation – Supreme Court. But why is it necessary to fight so hard?**

What could be done? Awareness raising, backing up and training of judges and prosecutors.

Tuesday, March 6th, 2018

Topic: Fight against racism: investigations and assistance to victims

DAY 2 – MORNING

Ministry of Interior – OCLTIC (Office central de lutte contre la criminalité liée aux technologies de l'information et de la communication – Central Office for Action to Combat Crime connected with Information Technology and Communication)

- **Welcome address and opening words by Mrs Catherine CHAMBON, deputy director for the struggle against cybercrime at the Ministry of Interior**

The first IT police system dates back to the 2000's with the struggle against child-pornography on the Internet on which a more global reflection has then been built. The PHAROS system was set up in 2005 on the needs expressed by the International League against Racism and anti-Semitism – LICRA and the DILCRAH that were speaking out against the development of lawless zones on the Internet while racial discrimination was increasing and Nazism resurgence was witnessed. **Furthermore, all needed to be done as vectors of propagation due to Internet were multiplying and made all investigations useless and unsuccessful.**

The French model could give interesting tracks of reflection at the European level **to allow the different systems to communicate, which is an essential pre-requisite for a common reflection.**

The goal is to bring enough material to counter a fierce liberalism that progressively imposes a supra-national law to the States and especially to the European MS. 500 million inhabitants must be able to represent a counter force to the Internet service societies. In a recent conference, the US seem to have understood the necessity to differentiated reading levels of the 1st amendment but there is **still a strong necessity to develop clear European standards and rules.**

The dream is the **development of a European Info centre** that would gather the national systems under a European orientation.

- **Presentation of the PHAROS plateforme (Plateforme d'Harmonisation, d'Analyse, de Recoupement et d'Orientation des Signalements - platform for receiving, processing and referring notifications of unlawful content) by Mr Masson, Commissaire divisionnaire – Commissioner super intendant – Head of the OCLCTIC**

PHAROS is unique in France and has found its full mission in 2009: to centralise and process unlawful public contents. Rather than outspread investigations, PHAROS centralises in one unit.

The principle is simple: the platform is an **interface that puts through the public who reports the contents and the police services which processes them and then the Internet service companies.**

The platform officers work in **two directions:**

- the content of the report itself, which characterises the offence
- the identification of the author of the content.

The platform has developed a **national and International network:** local police and gendarmerie services, services from other ministries (e.g. fraud detection and repression service of the ministry of Finance), customs, close and daily links with Europol and Interpol allowing cross-checks with other countries and of course **partnerships with private companies and especially Internet service companies: the cooperation is essential and efficient.**

This cooperation has the best effect on the treatment of cases: the well-established trust allows dealing as well on unlawful contents online than on terrorism or child pornography. The racist and xenophobic contents are third line in numbers. **The cooperation with Internet service companies is however slightly less fluid than on terrorism matters as the interpretation of hate and discrimination is more variable.**

Concerning numbers, PHAROS represents in 2016 153 000 reports, half of which concern fraud in a large sense, 13% harm to minors, 8,6% discrimination and hate online. In 2017, 4% concern glorification of terrorism - a large decrease compared to the last years (with up to 16% reports in 2015). These numbers follow the daily news. In 2015, around 190 000 reports were treated by about 20 people and most reports concerns harm to people, **reports are necessarily prioritised according to the flux.**

Concerning the staff: the PHAROS investigators are necessarily experienced investigators capable of analysing and leading the first investigation acts in order to be the first interlocutors for the judicial services.

How does it work? PHAROS is composed both by Police and by Gendarmerie forces. It is lead today by a member of the Gendarmerie, whose deputy is a police officer. It comprises 25 agents including 12 investigators, police and gendarmerie officers processing the reports. 6 investigators deal with the blocking of contents as the law allows immediate removal of contents concerning terrorism and child-pornography without prior judicial investigation. An administrative authority controls these matters, retrospectively. **4 investigators deal specifically with hateful contents.**

Concerning the processing of information: the platform is organised in **three different portals**:

- a **reporting portal**, accessible to all internet users,
- a **registration portal** where the investigators will compile all reports and analyse them,
- an **investigation portal** where the investigators will be able to search the Internet and carry out their statements.

Around three life-threatening emergencies are reported daily to the platform. The main difficulty is that most of the time the person reporting does not know the person in danger. It would be better that the person contact the emergency hotline but often the reporters has no physical link with the person in danger. The time of treatment of this kind of emergency is about 1 to 2 hours.

Reports are directly transferred to specialised services and when it concerns a foreign country, the communication is made to Interpol.

Concerning hate speech specifically: PHAROS has signed conventions with associations so that their reports are "flagged" and allow them to attach documents to their reports, which is currently impossible for other Internet users. Most of the reports are from contents on social media. PHAROS has participated to the testing of social media operators. In spring 2017, operators removed 59% reported illegal contents. A second recent campaign has revealed a good evolution as 77% reported contents were removed.

- **Presentation of the participation of PHAROS to judicial investigations by Mrs Sandra OBERDORFF**

As above mentioned, reports are made to PHAROS by Internet individual users and by partner associations that have signed conventions with the platform.

Concerning the procedure followed by the investigators once a report is made:

In the first instance, the investigators will carry out searches in order to control that the content is still online and will then proceed to secure the judicial aspect to demonstrate that an offence is

indeed materialised in accordance with the derogatory regime planned by the Law concerning these matters.

Once the offence is established, it is **notified to the Public prosecutor of Nanterre and letters rogatory are required to lead the investigations and specifically against the service providers**: PHAROS investigates the source (the host for example...), the Internet line through which the content has been published. When the source is identified, an investigation is lead on the global context: the home of the Internet line, the individuals composing it in order to support the case. **PHAROS then transfers the file to the unit that has local jurisdiction to lead the local investigations.**

Concerning hate speech, offensive contents can usually be found on multiple supports. Concerning social media and especially the publication of articles or the comments to articles and also the content of websites or fora specifically dedicated to hate themes, PHAROS works closely with the Police Department on Delinquency on people (BRDP) in order to avoid overlapping cases.

PHAROS is meeting challenges with American social media but relations are progressively improvement. The cooperation is unreliable and uncontrolled: on some proceedings they cooperate and they moderate and remove contents completely and even, in some cases, the company geo-tracks the public consulting which allows blocking the access to some of them (but this system in easily avoidable thanks to VPNs)

In addition, the notion of **public content** necessary to characterised the offence prevents the investigators from determining an offence in closed groups. PHAROS however always guides the victim to other types of proceedings in order to be recognised.

Even if the law on the press is quite broad, PHAROS can only deal with some offences. Considering the numbers, the priority is given to the most serious offences:

- provocation to hate and discrimination and to violence because of race, ethnic origin...
 - glorification of terrorism, crimes... denial of crimes against humanity etc...
- which concern most of hate speech.

For public insults and discrimination less severely punished, they are often committed against a specific individual who is required to file a complaint.

Examples of problematic websites and fora:

« *Démocratie participative* »: publication of photos targeted against the African population; aiming at the defence of the white race and against the invasion of the black race and Africans.

A proceeding concerns YouTube and specifically a comment under a video presenting a Nazi personality.

The « *jeux vidéo.com* » which does not only deal with video games but also provides an online discussion forum with many hateful subjects. A voluntary moderation was set initially but after an outpour of hate against a person and against women, the website installed a strengthened moderation and the hate speech has been transported to another website « *Ave.noel.org* » with no moderation and which is hidden behind a filter so it is impossible for PHAROS to seek cooperation.

- **Meeting with the BRDP (*Brigade de Répression de la Délinquance faites aux Personnes – brigade for repressing crimes against people*)**
 - conversation, exchanges with **Mr BAVEYE SENECHAL and Mr MAILLE, investigators of the media section of the BRDP**

The media unit of the BRDP - *brigade for repressing crimes against people* – is composed of 6 investigators that have dealt with **477 proceedings in 2017**: 74 on provocation to racial hatred, 43 on insults, 7 proceedings concerned denial of crimes against humanity.

This unit **can deal with public and non-public facts**. Investigations are lead after victims' complaints, reports to the Public prosecutor or Pharos but mostly **on request of the prosecution service** after a report made by the DILCRAH or another association. **An investigative judge** who has been seized directly by an individual or an association **may also request the BRDP directly**.

The brigade works closely with the AC4 section of the Paris prosecution service. Use to monitor the Internet but today the BRDP only works on instructions. It works mostly on people known by the police services for their reactions and their regular comments on the daily news.

Concerning the phenomenon of hate speech on the Internet: thanks to social media, ideologies meet technology. The question is, did the ideology increase thanks to the technology or is it just the same number of people following this ideology but who are unleashed thanks to social media? It seems that there is no more racist people than before, but they dare more express their views under the cover of Internet, which they believe completely anonymous.

In addition, if social media allows better diffusion of hate speech, it also allows better communication and access to counter speech.

Concerning the link between the terrorist threat and hate speech reveals that the main problem of the Internet is that it gives a very large access to all types of information to different types of people who do not have the same objectivity or education to face and deal with it. Most variations are due to immediate "hot" reaction often by minors or incapacitated people who are not aware of the realities and of the serious nature of their acts.

In Germany, a new law binds social media to certain obligations – disclosure delay, removal of content, securing evidence for 10 weeks, publishing of transparency reports...

If they do not comply with these obligations, they may be condemned to very heavy fines (up to 50 million euros). But this law is new and its consequences cannot be studied yet.

However, the law does not bind social media to upstream surveillance and monitoring in order to **avoid an "over-blocking" phenomenon that would be harmful to free speech**.

These new rules are limited to large networks of more than 2 million users. Small gaming networks are thus not concerned. **There could be a risk of transfer to these smaller networks**.

If the law did not plan a review procedure for contents removed in an abusive way, improvements should be brought in the next few years in order to strengthen user rights.

In Practice, the law seems to have had positive effects already as, during the last testing, Germany succeeded in 100% removal of reported hate speech.

- **Visit of the PHAROS premises**

DAY 2 - AFTERNOON

DILCRAH

- **Meeting and exchanges with the representatives of the civil society**

France-victimes,

Point de contact,

CNCDH - Mrs LAFOURCADE, représentant natal ONU

SOS racism - Maître BRAUN, lawyer
Licra - Maîtres SOSKIN et GOLDMAN, lawyers
AFPI (French Association of internet providers)

- **Presentation of *Point de contact* by Mr Nicolas D'ARCY**

Created in 1998, on the initiative of the main Internet stakeholders first to fight against child pornography on the Internet, it was then asked to handle contents related to terrorism and finally of mutualising the efforts to deal with the most serious hate speech offences on the Internet.

Only around 1/10 reports from the public are qualified so the association provides a judicial qualification work in order to alert efficiently police services and Internet service.

A public/private cooperation is favoured in order to manage to shortest removal delays possible and the identification of the main hate speech diffusers. The association does not proceed to identifications but works on the proxies in order to find the source of the content, mainly through registrars, companies certified to manage "domain names" for registrees.

Point of contact is a member of the *Inhop* network concerning child-pornography and wonders if such a network could also be developed for hateful contents. Nothing would prevent it and good practices are already settled with foreign partners such as the "trusted flaggers" network.

The added value of *Point de contact* in relation to PHAROS is that, even though the association does not aim to bypass the investigators work, free from formalism, the feedback to local experts –who know local rules and context - is very quick, in the US for example. PHAROS and by the CNIL – French Data Protection Authority regularly acknowledges the work of the 3 permanent members of the team.

- **Presentation of the *CNCDH - French National Consultative Commission on Human Rights* by Mrs LAFOURCADE, Responsible of the under-committee of certification of national human rights institutions at the UN:** Half of the members of the *CNCDH* are associations from the civil society, around 30 of the 64 members including 4 NGOs on universal racism.

The *CNCDH* produces an annual report on the situation of human rights in France including a survey on the perception of the French population on biases and victimation surveys. It also requires relevant ministries, other association and to the DILCRAH to answer questions. All this material is analysed and recommendations are produced.

As above-mentioned, **the French judicial arsenal is quite complete and relevant concerning discrimination and racism but most stakeholders criticise the implementation.**

Concerning hate speech two fundamental values are to be protected, fighting against racism and hate but also freedom of expression. It is important to manage the balance. According to the *CNCDH*, **freedom of expression is the value to protect and ways to work around this freedom must be found. For the *CNCDH* there is no question of bringing out hate speech from the law on the press and to turn it into a specific offence.**

What worries the *CNCDH*, is **the difference between the number of official reports and the actual number of acts. The phenomenon concerns the full criminal chain:** from the problem of written grievances (main courante) instead of filing complaints in police services and even when a complaint is filed, the declassification rate is inexplicable. Then, the level of alternatives to prosecution proposed by the prosecution services is high above the average and finally the acquittal rate is very high. **This proves a lack of realisation/achievement of the discriminative/racist motive.**

- **Presentation of *SOS Racism* by Alexandre BRAUN, lawyer**

The lawyers of *SOS Racisme* regret the "nonchalance" of the judges, prosecutors and investigators and these matters but recognises the good cooperation they have with the AC4 section of the Paris prosecution service.

In Germany, anyway, the duty of neutrality prevents prosecutors from any communication with civil society...

- **Presentation of *Association France Victimes (ex INAVEM)* by *Olivia MONS, Spokesperson***

This association aims at protecting all victims with no specialisation. It comprises 130 association over the national territory. This global assistance to victims' movement was launched 30 years ago by the ministry of Justice and professionals, medical notably, in order to ensure a better consideration of victims whatever their status and even if they have not filed a complaint and that they do not desire to do so. **The association provide a full multi-disciplinary assistance.**

France Victimes is aware that **judicialisation may causes secondary victimisation in some cases and as such would rather propose restorative justice solutions.**

This association is not entitled to bring action to justice as its statutes does not allow it and it is not desired anyway in order to stick to an assistance and support logic. For these matters, the association will thus direct to other associations.

- **Presentation of the *LICRA* by *Ilana SOSKINE***

NGO that fights against racism and anti-Semitism and hate speech. The association only deals with cases that can be qualified as such according to the criminal legislation. The *Licra* was created in 1927 during a historical trial (Samuel Schwartzbard trial - <http://www.licra.org/qui-sommes-nous#histoire>). It was set on the principle that hate speech should be prevented to avoid hateful acts and violence. As such Mr Mario Stasi, president of the *Licra* since November 2017 said he would concentrate on education.

During the recent Abdelkader Merah trial, there were discussions among the members of the *Licra* on whether the racist nature of the act could be held considering the attack of French soldiers as French? It was finally not withheld.

Concerning what works: It is not too difficult to have the authors prosecuted when they are identified and to get significant sentences, sometimes even ambitious. The LICRA often seize the execution of sentences office of the courts in order to ensure these sentences are applied.

The *Licra* is a member of the "trusted flaggers" network and makes the most of it and of the priority channel it offers towards PHAROS and the French representatives of the main Internet service companies. The association noticed a clear improvement with Twitter and Facebook for example. **When *Licra* reports as a "trusted flagger", it provides a judicially qualified report.**

The collaboration with PHAROS and *Point de contact* allows a direct prosecution of the service providers and avoids the exercise of the principle of subsidiarity that would bind the *Licra* to claim action against all actors, and thus avoids prosecuting intermediaries.

However, what does not work is the liability system of the Internet companies in France. The law on the press only allows engaging the responsibility of the Director of communication/publication as a physical person and not as a legal entity and even less a foreign person. It is impossible to prosecute Google or Twitter for example, which do not have a physical representative, Director of communications appointed in France.

At one point, a judicial response is necessary and should a report be inefficient and a content is not removed, this lack of compliance has nearly no judicial response as the liability exists but cannot be applied! **Consequently, the *Licra* requires that France impose the appointment of a local Director of communication/publication.** The association does not require a specific offence for on-removal of content but only requires the effective application of the existing offence in France.

Racist insult is an exception to the exception in French law: indeed, the principle is the opportunity of prosecution but the law of the press plans an exception for simple insults and requires a complaint

from the victim. The principle of opportunity is restored only for the aggravating circumstance of discrimination/racism...

Unlike the *CNCDH*, the *Licra* strongly believes that the offences should be brought out of the law on the press in order to be integrated to the regular criminal law because this law does not provide for several criminal law mechanisms such as reoffending and the worsening of sentences is much slower. **According to the *Licra*, hate speech is not a speech protected by freedom of expression just as glorification of crimes against humanity and terrorism.**

This situation brings to examples like the recent trial of the murder of Chaïb Zehaf in Oullins (Rhône) so called *Meurte de Oullins* where an individual killed a person while heavily armed and bearing Nazi symbols but the aggravating circumstance of racism will however not be withheld by the Cour d'assises (criminal high court) of the Rhône...

What is wrong: anti-racist associations do not feel supported in practice. There is not so much problems with the law at least since the adoption of the 2017 law but there are **big implementation issues, already above-mentioned by *CNCDH*.**

It is also to be reminded that 25% of reports made to *SOS Racisme* are reports of racist police violence, which tends to considerably increase the black number.

Post visit reflections - Areas of improvement and good practices

❖ Broaden the coverage field of these offences:

- Include all communities that can be victims of this type of facts (e.g. Asian communities facing biases in France).
- Simplify procedures, worsen sentences applied to better deter eventual authors.

❖ Improve the assistance to victims:

- Improving the assistance of these facts by supporting them through the filing of complaint process (by associations?) and then all through the proceedings to the trial.
- Improve the reception of victims in police services: coordinators exist in France fir LGTB victims: expand to all kind of discriminative/racist acts?

❖ Improve the quality of proceedings:

- Develop/multiply trainings of investigators especially with "memory" institutions (Historical museum, Shoah memorial...)
- Intensify testing reporting campaigns on platforms in order to ensure a good inclusion of communicated information
- Improve the initial and continuous training of judges and prosecutors concerning this specific legislation and investigation methods that can be employed and make it a pre-requirement in the exercise of the functions. Use the experience and advice of civil society.
- Enhance, for this technical matter, the help to judges and prosecutors (through assistant jurists, experts, students...) on the Italian or Portuguese model.

❖ Avoid/decrease the "black number"

- Encourage victims to file complaints.
- Modify the judicial counting tools for these offences in order to retrieve correct numbers taking into account the aggravating circumstance.

❖ **Develop pedagogical responses**

- Encourage and develop the citizenship courses as alternatives to prosecution, as constraint measures before trial or after conviction and plan an assessment a few months later in order to verify the respondent's evolution after going back to his/her environment.

« *PRINT* » (Preventing Racism and INTolerance)

Study Visit in UK – May 17th – 18th, 2018

REPORT

DAY 1

Thursday, May 17th, 2018

DAY 1 - MORNING

○ **Hate crime policy and prosecution approaches**

Jonathan BUSHELL – Crown Prosecution Service (CPS)

• On the legislative framework

The definition of hate crime is a governmental definition rather than a legal definition. It is a cross-governmental definition agreed upon after the report made after the public inquiry on Stevens Lawrence's murder in London in 1993. This event changed the landscape of hate crime in the UK and the topic became the top political priority.

The criminal law only considers **5 protective strands: race, religion, sexual orientation and homophobia, disability and transgender.**

Over the years, **legislations** have been passed and **built block on block in response to events** rather than as a single cohesive structure despite the advice of the legislative commission.

A holistic, overarching structure, a general framework including all characteristics would be preferable.

- Crime and disorder act in 1998 : after the Steven Lawrence crime in 1993, the aggravated offence was recognised but only for **race**.

Concerning, religiously aggravated offences, legislators deliberately didn't make a list of religions. There is an overlap of course between race and religion, as most offenders do not distinguish. In those cases, prosecution will be on both. The situation stays unclear about cults as scientology.

- Criminal Justice act in 2003: recognised the aggravating circumstance for **gender and sexual orientation**.

The Criminal Justice act makes:

- hate based crime a **general aggravating circumstance for any type of offences**.

Demonstration of an aggravated offence: 2 limbs

1. Demonstration of hostility towards the victim: this demonstration has nothing to do with motivation. The argument that the offence was committed out of anger and not hate does not change the demonstration. The offence is not characterised because the person is racist or hateful but because the speech used was abusive: **balance with freedom of speech.**

2. Demonstration of hostility against a specific protected group through **circumstantial evidence** gathered during the investigation: this implies racism or demonstration of hate against a specific group.

- it an **obligation to register it if there is evidence.**

- it an **obligation for the court to report in the decision what would have been the sentence if the aggravating circumstance had not been upheld by the court.** The courts must treat these circumstances as an **uplifting feature** and **follow a 2 stage approach.** In addition, the 2 stages must be **visible in the decision.** For simple aggravating features (vulnerability for example) the courts are not compelled to follow and make the 2 stage approach visible in the decision.

There is pressure to increase the possible strands such as to include life style for example: indeed, the attack of a young goth woman could not be considered as a hate crime as it did not fit in one of the 5 strands.

The definition is based upon perception, the perception of the victim and not on evidence. If the crime is perceived by the victim or any other person as hostility against race etc..., it will be recorded as a hate crime. However, ultimately, even though it is recorded as a hate crime, there may not be enough evidence to prosecute upon that crime.

In any case, this automatic record upon perception allows flagging/monitoring this type of crimes, which is essential.

Because of flagging based on perception and prosecution on evidence, the statistics shows half less flagged hate crimes than prosecuted cases, and the gap is even more important for disability.

Stirring up hatred on the grounds of hate, as an offence with political grounds, is a top level offence according to Part 3/3A of the Public order act. **Prosecution must be authorised by the Attorney general** and it is led in London by a **centralised CPS.**

- **Concerning online hate:**

- the Communications act 2003 superseded the Telecommunications Act 1984. It consolidated the telecommunication and broadcasting regulators in the UK, introducing the Office of Communications (Ofcom) as the new industry regulator. Concerning hate speech online, it provides in Section 1 2 7 a lower court offence to “*send, by means of a public electronic communications network a message or other matter that is grossly offensive*”. It **includes an intentional element to cause distress** and is punishable of 6 months imprisonment.

Procedurally, prosecution has to be authorised the legal advisor of the Director of the CPS in order to ensure consistency.

- the Malicious communications act 1988: the original purpose of this act was to prevent the sending of printed matter, but **the scope of the act has been extended to cover electronic communications**. The MCA can be used to charge people for comments made via social networking sites that are "racially motivated" or "religiously motivated." As a higher court offence, it is punishable to up to 2 years imprisonment.

In GE, in theory, the principle of legality compels to bring cases to court but for less severe/minor cases in practice, the prosecutor has more discretion, it has become the rule.

- **In practice:**

The code for Crown prosecutors is a core document that underpins the work of prosecutors.

It describes the **2 stages test which applies to any case to decide upon prosecuting or not**.

1st: evidential stage. Is there enough evidence?

If not, end of the case.

If passes:

2nd: does the public interest require prosecution?

Criminal and Civil procedures are very different and civil damages can be sought even if the criminal procedure does not get through. The Prosecution represents the society and not the victim and it cuts both ways even if the victim does not wish a criminal procedure.

Disability is the strand that causes the most difficulty: section 1-4-6 of the Criminal Justice act is not fit to disability. Indeed, for disability, the aggravating circumstance should be based on targeting and not hostility as in practise disabled people are targeted out of opportunity and not hostility.

⇒ In FR: there is no requirement of hostility only targeting because of the victim's characteristics.

- The **aggravation for vulnerability** is not built in the hate crime legislation in UK but in all cases, investigators and courts have to look for aggravating and mitigating features. **The target of a vulnerable victim is an aggravating circumstance** so the prosecutor manages the same result by another way. However, as the courts don't follow the 2 stages approach (see above), **the stamp "hate crime perpetrator" and "hate crime victim" is not labelled which is not good for public confidence and the victim is even labelled as "vulnerable"**.

- **On the education of prosecutors:**

The subject has been placed on the top list priority since the last 6 years and since then, the situation started improving.

The CPS has established **compulsory continuous training for all prosecutors**. These trainings are not e-learning courses but **regular “face to face” classroom trainings bringing them out of courts**.

Senior prosecutors lead the trainings and, among the other training material, confront the prosecutors with **recorded interviews of victims, which is very impactful**.

The training has been split up in **three years with one topic a year**: disability/race and religion/sexual orientation.

In addition, to ensure day-to-day coordination, every CPS service has appointed a **hate crime coordinator**.

This coordinating prosecutor realises:

- **Live checks**: the coordinating prosecutor will get a list of all live hate crime cases in the area to make sure the charges are right. Makes a hate crime and overall quality review. The coordinator is informed of all cases a part from race for which the control is limited to 10 cases because otherwise there would be too much. The idea is to treat the problem before it happens and it is too late.

- **At the end of each month**, the coordinator gets the list of all concluded cases and overview of the sentences. He/She determines in which case the leading prosecutor should have used a 1 4 5 or 1 4 6 uplift.

- **For the police**, assistance has been given by the CPS to organise trainings on that subject.

- **Evaluation**

The CPS has also established a **Community engagement strategy**, which involves having contacts with community representatives.

Every CPS local office (13 offices) has a **local scrutiny and involvement panel** with regular thematic meetings. These panels share information on specific subjects and also **discuss on specific cases**, previously anonymised, shared by the CPS in order to determine where it has gone right or wrong in dealing with the victim and/or the proceeding.

This process has compelled the CPS to make a heavy insight and to question its proceedings through the panels' critics, but it was considered worth it as the situation improved. In time, confidence and trust really build up and is even hard to find cases and subjects to talk about. These panels are finally victim of the success!

DAY 1 - AFTERNOON

- **Antisemitism in the UK and efforts to prevent all hate crimes**

Sally SEALEY – Government lead on Antisemitism from the Ministry of Housing, Communities and Local government

- **Concerning anti-Semitic acts**

The **statistics steadily rise each year** and most acts are **non-violent abuses and mainly online**.

Statistics also show that most abuses come from far-right and far-left supporters before representatives of the Muslim community: as such, it is very unfair to blame the rise of anti-Semitic

acts on the influx of refugees. Concerning far-left supporters, it is a **major issue to make a difference between anti-Semitism and political criticism of the political choices of Israel.**

- ⇒ *In GE, a non-legally binding definition has been diffused by the federal government (but it cannot be imposed to the landers).*
- ⇒ *In Fr, there is no official definition of this difference. A judicial decision was given concerning a call for boycott of Israel products considered as hate incitement. The decision is currently in front of the ECourtHR.*

A **database registering anti-Jewish flags/comments and hate symbols in general** has been developed, that will soon be presented to the EU Commission as the UK government wishes to make it accessible to other EU countries. **If this database has not been sent to social media companies yet: it could be a good idea indeed so as to assist them identifying hate speech.**

The UK government is also leading an **impact assessment of these acts.**

- **Concerning prevention of hate crimes**

The main objective of the service is to increase the reporting and prevention of hate crimes.

It develops many programmes in schools but wishes to find ways to **work with adults**, which are the principal victims. Indeed, the government wishes to **narrow the gap between victims' surveys results and reporting numbers**, which are of 1/4 for hate crimes in general and up to 1/50 for disabilities.

Cross-government working groups have been established and **decisions mainly come from discussions in Parliament in all-party committee**

Consequently, a lot of money has been spent in reporting programmes such as Tell MAMA (see below) and in prevention programmes in communities. The more you do to encourage reporting, the more you increase the trust of the communities. However, a serious lack of trust of the Jewish community and other communities remains against the politics. Also, in public order cases, the most common cases concerning hate crimes, the defence seems always more prepared than the prosecution.

As a conclusion, Mrs SEALEY observes that each victim of each community requires a personal definition of its personal damage and has the impression that the **centralised definition and conception of a victim is getting lost**. As an example: discussions on **criminalising islamophobia** implies the risk is that this term brings back blasphemy **"by the back door"**.

- **The history of UK policy development and policing strategies for combating hate crimes**
Paul Giannasi – Head of government Hate crime programme and police policy lead
(member of independent advisory group that advises the government on hate crimes)

What is a hate crime? The criminal justice system definition is **based on hostility and not hate**. As such, according to the Director of Public prosecution in 2008: *"in abs of a precise legal definition, let us consider the dictionary definition of hostility: "unfriendliness", "antagonism", "meanness".*

The basis of current policy is that **an early response prevents escalation in seriousness** of incidents. As such, **much importance is given to education to reduce existing hostility**.

The keystone of the actual policy is the definition given in the **Stephen Lawrence Inquiry report** with the importance of “perception” which is controversial but still a key principle.

The Stephen Lawrence case, is undoubtedly the key point of change. After the murder of Stephen Lawrence in 1993, until 1999, the investigators of the London police – the MET, assumed that he was a gang leader and orientated the investigations on the family. Many said that the police was institutionally racist, it was not the specific cops but the police itself. And local police thought it was a MET problem.

Through the influence of Mr John Grieve, was appointed at the head of the MET, to save its reputation and transformed the English police “**from a police force to a police service**”. Mr Grieve introduced strong rules against police racism and a **zero tolerance disciplinary policy**. Really changed the mentalities as well and tried to make police officers understand that it was better for them, made them better officers. Indeed, discrimination and racism hugely affects the confidence in the police.

DAY 2

Friday, May 18th, 2018

DAY 2 - MORNING

○ The work with the Jewish community

Mike WHINE from the Community Security trust (CST), also UK ECRI representative at the Council of Europe and civilian adviser for the CPS terrorism working group

The CST is an independent standalone Jewish security agency founded in 1994. It is self-funding but benefits from government money for some particular projects. It provides security advice, trainings and research for the Jewish community. It is a volunteer based organisation, with over 2000 volunteers and around 90 professionals that are regularly trained through written exams.

The **UK government relies more and more on the civil society expertise**. There is a **board of Jewish deputies** for the fight of civil and political rights and the CST has also developed an **intelligence capacity** in response to a history of self-defence.

The CST works closely with the police and the government in different areas:

- Cooperation with the police and prosecutors – CPS: common working panels and also decided to lead case studies with the CPS. These studies led to the conclusion that 50% reported cases were not prosecuted and in these 50%, half failed in court because the victim/witness refuse to appear. **The CST was asked to accompany them in court.**

- Security of events and institutions: the CST provides volunteers to ensure security in collaboration with the police with **joint established command**. **Regular threat assessment meetings** are organised with the police services. The CST works especially with police services outside of London where there needs of help are more important.

At times of high tension, **volunteers often patrol jointly with the police** (civil patrol under police control and direction). The CST is fitted with a **24h/7dayweek control centre** that covers most of the territory and Jewish buildings with CCTV. **The government financed this centre for 1 million sterling.**

- Research: the CST gathers information. It benefits from quite advanced electronics with an application to scan all social networks. A **Security enhancement project to evaluate the fatalities and injuries caused by terrorist attacks** was first self-financed but then, the government offered financing to enhance the security of Jewish institutions and employ man guarding (commercial security guards) and security access control in schools.

- Cooperation between communities: The CST individually develops **Youth courses – the Streetwise program** – during which they train Jewish children to avoid problems on the streets and other civil responsibilities. **The government has asked for assistance to develop the same type of program for Muslim children - Stand Up.**

The **Government Charity Commission** has insisted since the beginning that the CST also help other communities as Christians or Hindus. The CST has assisted in strengthening Churches' security and training of volunteers. The "Sick" community was harder to work with because there is no central authority. In the last years have been working with Muslim community against far right threat and the Bahai community.

- Communications and public affairs:

The CST has published A Police Officer's Guide to Judaism translated in many languages and available in several countries. For victims, the CST has elaborated Hate Crime - A guide for those affected.

According to **Mike Whine**, the best practices which can be put forward are the following:

- 1) **The mutual exchange of data**: the police has become good at collecting data concerning hate crimes as today the police officer has to flag the motivation. The CST has established a contract to exchange/mutual exchange of data with the police, anonymised to conform to European rules.
- 2) **The way government and police works at a local level**. If local authorities establish contact with local communities, they will work better. Local cooperation works best.
- 3) **Avoiding secondary victimisation**: When there is a hate crime, there is often secondary victimisation to the community and failure for the police to understand these consequences is a huge issue. The collaboration of government with civil society is important for that reason as well.

○ **Community Engagement Strategies**
Mick CONBOY – Senior policy advisor - CPS

Concerning hate crimes, the CPS has organised with communities and academics: **1 national security panel** and **13 local scrutiny panels** for each CPS area.

The terms of references of these panels are currently changing. At first, the judicial system (judges) had been part of panels but for bias reasons it was advised for them not to continue.

(see J. Bushell intervention Thursday morning) Each local CPS has established a **hate crime insurance scheme** with an appointed CPS prosecutor as **hate crime coordinator** which leads:

- monthly check of live cases
- final checks of pre-freed files before data closed for court.

Since then, the **uplifted cases (announced aggravating circumstance)** went from 2% to over 65% in the last 5 years! These internal checks operate as **real time reminders**. The feedback from the operational side is finally very good as **the burden of these regular checks has been weighted by the prosecutors with the outcome and it comes out positive**. The message is coming through to Union sectors.

The University of Sussex led a study on the scheme with interviews of hate crime coordinators and the report is available online.

- Concerning the three years programme of mandatory training for prosecutors, the burden of the necessary resources was also weighed with the success and it comes out positive. **The delivery boards/working groups set up to establish these training programmes included civil society.**

- Concerning victims' support: it constitutes the real default of the system, as the victims do not show up in Court. The case then lacks the victim's statement and the community impact statements.

- Concerning awareness raising and public communication: The CPS issues a **quarterly hate crimes newsletter to underline positive outcomes** spread to internal and external contacts/promotion reporting on events/updates on hate crimes. The CPS keeps the information flow on what is hate crimes and what is done about it. **Helps strengthen the confidence in the CPS and in the governmental action in general.**

o **Work with Muslim communities**

Iman ABOU-ATTA –TELL MAMA (Measuring Anti-Muslim Attacks)

The programme was launched in 2012 with the rise of anti-Muslim hatred. Even though it picked-up on best practices from the CST, it built its own system on collecting data for a dashboard to establish scale of anti-Muslim hatred and produce recommendations.

Tell Mama is a non-religious programme, not recognised by the Muslim religious representatives of the community (mosques, imams). However, even though their religious community does not recognise the legitimacy of the programme, **many victims, targeted individually, report anyway directly to the programme** and seek personal help.

The programme has developed call centres, applications and a reporting form on their website but also a Whatsapp contact and an e-mail to favour reporting of anti-Muslim acts. Indeed, in majority, the victims refuse to report to the police. In order to help strengthen the trust with the community, **Tell Mama communicates success stories with the CPS and the police through reports and social media.**

As such, the main goal of the programme is to build the trust with the police and the criminal justice system.

To that end, the group, further than favouring reporting, brings moral and emotional support to victims and assists them through the "judicial journey". The victims need to be followed-up through all the process otherwise, they get lost along the way and finally do not show up in court.

When the victim report to TELL MAMA, he/she is given **3 options**:

- Transfer of anonymised information concerning the act to the police,
- Victims wish Tell mama to be middle man with the police and lead the process in their name
- Victims want to report and ask Tell mama to put them in contact with police.

Tell Mama makes sure that the victims knows how the system works and makes sure to manage their expectations by reminding that Tell Mama cannot solve everything. If the CPS finally decides not to lead a public prosecution, Tell Mama can help the victims through a **private prosecution process**. Indeed, the programme does not have private legal support but works with pro-bono legal supports and can refer the victims to partners if necessary.

The programme also uses **restorative justice tools**, which work especially well in schools.

As the CST, the Tell Mama programme offers training for police forces and informs policy makers.

DAY 2- AFTERNOON

○ **The challenges of hate crime and speech on the Internet**

Mike WHINE and Paul GIANNASI

The cooperation of the CPS and the police has led to the intergovernmental development of a website called True vision www.report-it.org.uk. This website is dedicated to victims of hate crimes and to the information of the public. Its goal is ***“to give [you] information about hate crime or incidents and how to report it”***.

On the website, the victim can:

- *“find out what hate crimes or hate incidents are.*
- *find out about the ways you can report them.*
- *report using the online form.*
- *find information about people that can help and support you if you have been a victim.”*

Hate speech represents “The foothills of terrorism”. From hate speech to execution, there are stages from anti-locution, avoidance, discrimination, physical attack to execution. If not all go all the way up, those who get to execution have gone all through the process: it is **the hate speech continuum**.

The main question of the independent advisory group to the government is how can the government avoid this escalation and how to deal with the “Competition of freedoms”?

In the matter of hate speech, the most damaging is not the most likely to be prosecuted. The tabloids for example heading top news with false information make a “Drip to drip damage”. The retreat is ordered judicially but the harm is done.

Then, who should challenge fake reporting? State, Institutions, Civil society?

The UK government has decided upon a **five strand response**:

- Reporting and enforcement,
- Victim support
- Education
- Collaboration: Eur 2008 Decision and CoE protocole
- Counter-speech: the UK has developed a counter-narrative strategy – the No hate speech movement – led through the social media pages of the CPS or the police (True vision page) for example.

Today, however if the tools exist, EU Member States need consistent European response to counter false narratives.

The UK made a proposal to set up an **Ombudsman to act as middle man between the countries and the societies** allowing MS to alert the Ombudsman of illegal contents (and not only obviously illegal) which can go to the societies to ask for retreat in exchange of an exception of liability.

The UK also proposed the reporting of not only illegal but also **“dangerous” content**.

They are also currently trying to organise a seminar to regroup key players and **establish a guide to effectively manage counter-narrative strategies**.

Most probably, only the threat of reduced revenue is what will move the internet societies to deal with hate speech online more effectively. That is why the UK has been very interested in the adoption and implementation of the Network enforcement act in Germany.

The UK police has also developed a Symbols database to register all hateful logos and symbols used online. They wish to make it open source on a European level to enrich it and extend who may contribute and share in it.

Post visit reflections - Areas of improvement and good practices

❖ Broaden the coverage field of these offences

- As in France, the offence can be characterised as a hate crime through the perception of the victim or any other person who has witnessed the offence, and even if the victim has not filed a complaint. Consequently, a person that is not part of a specific group but presumed as such by the offender can be considered as a victim of discrimination or also an atheist discriminated as such.
- However, in UK, the 5 strands do not allow to broaden the offence when a person is only targeted because of biases issuing from their belonging to a race or religion (attack of a Jewish person or an Asian person because they are supposed to be rich).

❖ Improve the assistance to victims in reporting

- The setting up of *“reporting programmes”* as in the UK (campaigns, websites, e-mail addresses, whatsapp contacts or other apps...) to incite the victims to report is very interesting.
- Also, the development by the administration of direct communication lines with the public

through websites such as “true vision” and also “school packs”.

❖ **Improve the support to victims**

- In UK, the victim is compelled to show up in Court. For homosexuals for example, they often have to do a coming-out at court so that the proceeding can continue: what about a closed session system in these types of cases?

❖ **Improve the quality of proceedings**

- By setting up, as in UK, shared files and data bases of hate symbols, logos etc... in order for the police and other stakeholders to be able to identify and localise them.

❖ **Develop pedagogical responses**

- The obligation of the courts to follow the 2 stages approach in their decisions (consequence of the uplifting circumstances) and to make it visible in the decision (sentence with and without the uplifting circumstance) is very pedagogical.

❖ **Develop a coordinated response with the other stakeholders**

- Set up of national and local panels regrouping people belonging to different communities, civil society groups, NGO's, representatives of the State, of the local administration, of the police, of the judicial authority... in order to tackle issues and especially concrete cases in order to allow adapting proceedings and responses.

❖ **Develop “counter-speech” “counter-narrative” strategies**

❖ **Train specialised actors**

- Set up a service of specialised lawyers in that matter able to assist victims and authors in these types of cases.
- Set up an internal supervision mechanism between judges and prosecutors such as the CPS hate crime coordinator.
- Develop the training of judges in this matter and of local judges especially.
- Develop continuous training courses and specifically recurring training cycles on several months (the benefit of e-learning on that matter seems to be controversial)
- Develop partnerships with universities to have the work of the different public stakeholders assessed by research teams
- Set up practical training tools such as guides on the different cults, customs, holidays and also tutorials for investigators on questions to ask and elements to characterise

❖ **Ensure the representativeness of the different communities**

- Including through associations financed by cults and communities in order to develop community representativeness (for the Muslim community in France and the Sikh in UK for example).

“PRINT” Preventing Racism and INTolerance

SV GERMANY – July 9th – 10th, 2018

REPORT

DAY 1

Monday, July 9th, 2018

Topic: Fight against Hate crime from federal and Länder perspective

Federal Ministry of Justice and for Consumer Protection (Rosenburgsaal)

○ Welcome Speech by Mr. Bernhard Böhm, Head of Division for Criminal Law

In the last years, the political focus has changed concerning fight against racism and intolerance and has developed mainly because of major blows as the murders committed by the Nationalsozialistischer Untergrund (NSU) in 2011. These events led to two parliamentary commissions. Their recommendations were followed by policy makers.

The issue also knows long term developments such as the refugee crisis with a pic in 2015 with attacks on refugee homes and mosques. It has become a mass phenomenon and populism has finally made it through Parliament. Political personalities such as Heiko Mass have become targets. Also the threat of right wing and islamist terrorism stays high. A national programme to prevent islamic terrorism has been adopted.

Projects such as PRINT are an encouraging example of EU cooperation and show that European solidarity is not exclusively created by head of States at summits. These projects represent another vehicle for sharing our common European vision.

○ Combatting Hate crime, Experiences and Best practices in the Land Berlin

Ms. Bettina Barts, Senate Administration for Justice Consumer Protection and Anti-discrimination Berlin

The **Senate of Berlin** is the executive body governing the city of Berlin. According to the Constitution of Berlin the Senate consists of the Governing Mayor of Berlin and up to eight Senators appointed by the Governing Mayor, two of whom are appointed Deputy Mayors.

Concerning Anti-discrimination, the Senate is currently leading three investigations.

The administration has also started a collection of data on the number of hate crimes including racism/LGBT/anti-Semitism, anti-Muslim, anti-Christian acts.

The Senate of Berlin has also developed a communication policy with the creation and distribution of flyers to support and connect the victims to the victims' assistance office.

In 2011, the administration also started a special coordination with the special division for hate crimes of the Public Prosecutor's office in Berlin.

Mr. Sebastian Büchner, Prosecutor in the special division for hate crime in the Public Prosecutor's Office Berlin

The special division is composed of 2 departments:

- The first on what could be called “traditional” hate crimes concerning religion/race,

- And the second specifically concerning LGBT hate crimes: more reports proves more trust with police/community spokesperson etc...

The specific approach to the LGBT community was a political decision after specific acts. There has not been claims of other communities to have each their own special dpmt yet but this specificity could indeed become problematic.

For less serious offences, the prosecution services would usually invite the victims to use a “private” prosecution but **in Berlin, the Public prosecutor’s office have decided to lead a zero tolerance policy concerning hate crimes matters and a public proceeding is always led in a public interest.**

The German system knows a principle of mandatory prosecution with a exception for lesser crimes and the Berlin Public Prosecutor’s office knows **an exception of the exception for hate crimes.**

A system of psycho-social assistance has been developped in Germany which implies contacts with lawyers and civil society associations. It is a sort of general legal assistance to explain the victim through the legal proceedings but not on the specific case. It is more of a victim counselling office in the courts to offer general support.

The definition of hate crime fo the Public prosecution in Berlin is a crime based on assumption of belonging or not belonging to a group. For statistical reasons and not for prosecution reasons a list of these groups needed to be done. **However, for a judge in Germany, there is no general definition on what is or not a hate crime.** Indeed, the landers cannot be fourced to use a specific definition as long as it is not in the law. Guidelines can be given to prosecution services but not to judges.

Concerning the procedure: **The first step** is to recognise **what is hate speech for the police:** awareness raising with police/prosecution/judges must be done. The awareness raising of the police is led by Internal affairs. Indeed, for them these crimes are polically motivated crime. In the judicial field however, they are not considered as such.

Since 2015, a crime motivated by hate is an aggravating circumstances in the federal legislation. To go further today, there is **a need for a definition of anti-Semitism.** The federal cabinet tried to agree but couldn’t manage. The “recognised” definition used today is only a working definition. This working definition has also been accepted by the Berlin lander. **Another question asked is when to consider a hate crime? From the victim’s perceptive or from the prosecutor’s?**

A concrete case: During the electoral campaign, flyers/election posters were diffused showing a physically recognisable family on a flying carpet with a non-subtil message. For the Highest constitutionnal court it was not a crime. There is a fine line between freedom of speech and hate. When the message is too implicit, not direct, it cannot be considered as a crime.

The Federal authority tried to modify the law but they soon realised they could not overcome assumption of innocence and freedom of speech. **Indeed, the criminal liability has to be decided in favour of the perpetrator: it should be assumed that the non-discriminatory interpretation non-criminal was meant.**

A conference of the Justice ministers of the länders is organised twice a year concerning decided issues (these campaign messages were one of the issues). The länders can issue Resolutions but which are still not binding to the länders. Concerning substancial and procedural law, guidelines can be issued by each ministry of länders.

There are general guidelines for the ministry of Justice of the Berlin Länder on how to fill in the forms for the statistical data in which the definition of hate crime is included. These guidelines are binding for the every day work of the Berlin prosecutors.

In GE, for data collection, it has been made possible to fill in specific information concerning the victim in order to determine the motivation of the hate crime (which religion, which race, which origin, sexual orientation). These details cannot be registered in France.

Concerning victims: There is a **Victim commissioner in Berlin**. This commissioner is a lawyer appointed by the länder minister and he/she belongs to the ministry. The commissioner coordinates the cooperation with the NGO's and makes the links between civil society projects funded by the Senate. The Commissioner also acts as an adviser to the minister and the ministry. Individuals may also contact this commissioner directly.

In Berlin, there is a Central Contact Point for those affected by terrorist attacks and major incidents and their relatives. It will assist the affected persons and their relatives immediately after the event and in the following period and will provide them with individually needed help.

The **principle of orality in criminal proceedings** requires that the victims/witnesses repeat in Court what they have declared during the investigations. However, where in UK, the absence of the victim will bring to the dismissal of the case, in GE, the case would continue even if the victim refuses to come. The victim's presence only helps to convince the judge.

The protection system for the victims in order to avoid secondary attack is the responsibility of the police. In the judicial field, the address of the victim can be blackened in the files.

o Combatting Hate Crime in Germany

Mr. Steffen Röber, German Ministry of Justice and Consumer Protection

1) The main legal sources for combating hate crime in Germany are:

Civil Law

- the Civil code for compensation for damages and injunction and damages for non-performance
- and the General act on Equal Treatment (for discrimination at work or at a club for example) to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation and to request compensation/damages.

and incidentally the Act on protection against Violence.

Public Law

The Police Law of the Länder and the Federal police Act. Both are used for public security or prevention of danger. But the Police law is not applied if the police act as investigative agency of the Public Prosecutor's office.

The Act on the Federal Criminal Police Office as central authority for the criminal investigation police, the national and *Land* police forces will then be applied with the Federal Assembly Act and Assembly Acts of the *Länder* which is specific police Law.

Criminal law

The Criminal code is composed of a general part (with provisions on criminal liability, sanctions, sentencing, probation for example...) and a special part concerning elements of crime.

There are also Criminal provisions outside the Criminal code in the International criminal code or the Federal Assembly Act and the Assembly Acts of the Länder.

Other Acts can also be concerned as the Weapons Act in case a weapon is sold in the perspective of a committing a hate crime for example.

Misdemeanours can also be found in the Administrative offences Act.

The Code on criminal Procedure includes the Rules of procedure, the Rules for execution of the sentence and Victim's rights.

As mentioned in the previous presentation, the Guidelines for Criminal Proceedings and the Imposition of Fines are not binding for judges but are generally binding for the Public Prosecutor's Office.

2) Provisions specially related to hate crime in the Criminal code:

Section 86 Criminal Code

Dissemination of propaganda material of unconstitutional organisations

Section 86a Criminal Code

Using symbols of unconstitutional organisations

Section 130 Criminal Code

Incitement to hatred

Section 166 Criminal Code

Defamation of religions, religious and ideological associations

3) General provisions related to hate crime in the Criminal Code

Section 125 and 125a Criminal Code

Rioting

Section 185 Criminal Code

Insult

Section 186 Criminal Code

Defamation

Section 187 Criminal Code

Intentional Defamation

Section 211 et seq Criminal Code

Murder

Section 223 et seqq Criminal Code

Causing Bodily Harm

Section 303 (et seqq) Criminal Code

Criminal Damage

Section 306 et seqq Criminal Code

Arson

Other

For the special provisions, the elements of the crime will immediately constitute a hate crime. For the general provisions, the demonstration of a specific motivation will make it a hate crime. However in the statistics, figures will only show when the hate crime is the most severe crime.

Figures show an explosion of numbers of hate crimes with the refugee crisis in 2016.

4) Section 46 Criminal Code Principles of sentencing

- *The guilt of the offender is the basis for sentencing. [...]*
- *When sentencing the court shall weigh the circumstances in favour of and against the offender. Consideration shall in particular be given to: the motives and aims of the offender, specifically including racist, xenophobic or other misanthropic motives; [...]*

The last part was added in 2015. It allows a very wide approach on the consideration of the motives and aims of the offender. The wording "other misanthropic motives" shall cover all motives which are

similar to racist or xenophobic motives. Examples of those motives are, as laid down in the legislative reasons (BT-DRs. 18/3007, p. 15), anti-Semitic or homophobic motives..

5) Criminal Procedure

The Criminal Procedure Code makes it a rule that a special public interest is requested to lead investigations and open public charges. However, the Guidelines for criminal proceedings, which are generally binding for the public prosecutors, "*special public interest [...] is to be expected [...] because of the racist, xenophobic or other misanthropic motives of the offender or the position of the victim in public life*".

As examples:

- **Section 163 Code on Criminal Procedure**

[Duties of the Police]

No. 15 Guidelines for Criminal Proceedings and the Imposition of Fines [Investigation of circumstances important to the legal consequences of the crime]

(1) All circumstances that may be of importance for sentencing [includes § 46 Criminal Code] [...] have to be investigated already in the preliminary proceedings.. [...]

(5) **As far as indications exist for racist, xenophobic or other misanthropic motives, investigations have to cover these circumstances.**

- **Section 153 Code on Criminal Procedure**

[Non-Prosecution of Petty Offences]

No. 234 Guidelines for Criminal Proceedings and the Imposition of Fines [Special public interest on criminal procedure]

(1) A **special public interest** on criminal procedure of causing bodily harm [...] is to be expected particularly, **if the offender [...] acts because of racist, xenophobic or other misanthropic motives** [...]

The German Criminal procedure provides a possibility for an aggrieved person to lead a private prosecution if the public prosecution decides that there is no public interest which can justify a public prosecution.

In fact, PART FIVE of the Criminal Procedure Code [PARTICIPATION OF THE AGGRIEVED PERSON IN THE PROCEEDINGS - CHAPTER I: PRIVATE PROSECUTION] even provides, in its Section 376 that "*In respect of the criminal offences specified in Section 374 the public prosecution office shall prefer public charges only if it is in the public interest*".

However, **No. 86 Guidelines for Criminal Proceedings and the Imposition of Fines**, limits the risk of a hate offence case to be considered as not in public interest with the following provisions:

"

(1) *As soon as the prosecutor hears about a crime, that is suitable for private prosecution, it has to be examined, if there is public interest in public prosecution.*

(2) *As a general rule public interest is to be expected, if trust in law is affected beyond the personal social life of the victim and the public prosecution is a current matter of the general public, e.g. [...] because of the racist, xenophobic or other misanthropic motives of the offender or the position of the victim in public life. [...]"*

6) Possible best practices

Restriction of the opportunity principle

- Forces the Prosecutor to take action
- Gives hate crime a high priority
- Forces the judicial administration to provide sufficient staff

Open approach vs. closed approach

- An open approach in defining hate crime leaves some space for new developments (e.g. crimes against homeless people)

- A closed approach guarantees certainty of justice and uniform application of the law

Statistics

- o **Presentation of the Federal Program „Demokratie Leben!“ (“Live Democracy!”)**
Mrs Daniela Kaya, The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth

The Federal Program “Demokratie Leben!” is led by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. A 25 people team is dedicated to the program at the Ministry, backed by an executive agency to manage the funds. This team selects the projects, ensures that all are academically backed. The Ministry for Family Affairs, Senior Citizens, Women and Youth is also particularly aware that the phenomenon concerns many different departments and tries to coordinate with all concerned ministries.

The Program was set in 2015, based on the federal government’s history fighting far-right extremism. The budget allocated to the program has been multiplied by ten for the last two years, 104.5 million euros in 2017 and 115.5 million euros in 2018.

This program is not set on a specific legal basis. The Program is based on a Directive that allowed a 5 years working plan for innovative projects only. As such the budgetary rules only allow to budget innovative projects without the long term requirement which brings the dilemma on how to spend these new funds while providing innovative programmes with long term effects?

In general, the program aims to promote democracy by preventing extremism and in particular right-wing extremism, Islamist extremism, left-wing militancy and other forms of group-focused enmity by strengthening **preventive-educational actions** and **civic engagement**, promoting a **democratic behaviour in a diverse society** and driving the development of targeted **prevention strategies** against radicalisation.

To this end, support is given to **associations, projects and initiatives**.

On three levels:

- **Communal:** the program focuses on developing partnerships for Democracy.

It brings support for 265 towns, municipalities and rural districts and works on strengthening the cooperation between government and NGOs.

- **Federal state level:** The Program focuses on strengthening **16 Federal State Democracy Centres**, in particular mobile counselling, victims’ counselling, federal state coordination and exit counselling and promotion of one pilot project to combat Islamism in each federal state and **Federal state-wide counselling networks** consisting of experts from government and civic society areas, set up in a federal state ministry or a selected specialist non-government organisation . The Program also favours the **pooling of information** on the skills of the experts in government and non-government organisations of the federal state in work to combat racism, right-wing extremism, anti-Semitism and other anti-democratic phenomena
- **and Federal government level:** Backing is given to the structural development of nationwide NGOs, of a nationwide specialist infrastructure. To that end the Program brings support to 35 NGOs in their work, their professionalisation process and the further development of their nationwide dimension in their respective thematic and structural areas.

To reach various **target groups**:

- children and adolescents
- their parents, relatives and attachment figures
- volunteer, part-time and full-time staff in youth welfare services
- multipliers
- government and civic stakeholder

The Program finances projects in the field of:

- Selected phenomena of group-focused enmity and approaches to strengthening Democracy in rural areas: 96 pilot projects funded, including 8 on antidiscrimination and early prevention in pre-school children, 20 on current forms of anti-Semitism, 9 on antigypsism, 10 on homophobia and transphobia, 13 on current forms of Islamophobia and Muslimophobia, 26 on racism and racist discrimination.
- Prevention of radicalisation: 78 pilot projects, including 44 on Islamist attitudes and actions, 8 on left-wing militancy, 22 on right-wing extremist attitudes and actions.
- Civic engagement and diversity at the workplace: 20 pilot projects in vocational schools/establishments and at the workplace.
- Strengthening democracy in the educational sector: promotion and development of targeted **prevention strategies as well as schemes to promote democracy and diversity in children's early educational development**. Work with cooperation partners: Federal Association of Non-Statutory Welfare and the Child and Youth Welfare Association.
- Living together in a diverse society: 44 pilot projects which promote the empowerment of individuals who are affected because of their family or their own links to migration or because they are members of a visible minority and/or other (attributed) characteristics of (multiple) discrimination, foster the problem-handling and conflict resolution skills of young people and their ability to participate in a democratic discussion culture, strengthen the positive links to societal diversity and heterogeneous ways of life and promote and strengthen antidiscrimination work in organisations / sustainable intercultural opening of organisations
- Strengthening civic engagement on the web – against online hate speech: 35 pilot projects (Rolling out of the **No Hate Speech campaign** of the Council of Europe in Germany) with the goal of **strengthening the digital skills** of children, adolescents, multipliers and attachment figures of children and adolescents when dealing with hate speech, agitation and conspiracy theories on the Web and in the social networks, **raising awareness** of enmity-driven contents on the Web, **Empowerment** of individuals and groups who are affected by racism and discrimination, in particular by hate speech and agitation on the Web.
- Prevention and De-radicalisation in prison and probation: one pilot project in each federal State in close cooperation with the federal State Ministries of Justice and the Federal Ministry of Justice and Protection of Consumers.

DAY 2

Tuesday, July 10th, 2018

Topic: Hate speech online

Federal Ministry of Justice and for Consumer Protection (Rosenburgsaal)

- Fighting Racism on the Internet from the Perspective of jugendschutz.net
Mr. Claus Peter Knoll, jugendschutz.net – legal department

jugendschutz.net is the joint center of the German Federal Government and the federal states tasked with the protection of children and young people on the internet, founded in 1997 by the federal youth ministries and organizationally bound to the Commission for the Protection of Minors on the Internet (KJM) since 2003.

jugendschutz.net looks closely at risks in internet services specifically attracting young people and urges providers and platform operators to design their content in a way that allows children and young people to use the internet free of troubles. jugendschutz.net operates a hotline accepting reports about illegal and harmful content and takes appropriate action to have this content removed as quickly as possible. The focus of the work is on risky contacts, self-harm behavior, political extremism and child sexual exploitation, but jugendschutz.net also aims at enabling young users to have safe and positive experiences online.

jugendschutz.net is a major player when it comes to the protection of minors on the internet. The center combines monitoring, research and action taken in terms of violations of youth protection laws with raising awareness among relevant stakeholders. Knowledge and findings, trends and developments are shared with civil society, internet industry, politics, educators and practitioners in the field of political education and youth social work. This multidimensional approach allows for a quick response to new phenomena on the internet.

jugendschutz.net's work in the field of political extremism is funded by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth within the federal program 'Demokratie leben!' i.e 'Live Democracy!'

The organisation was founded in 1997 by the German Youth Minister thinking on how Internet could affect children and youth which was visionary at that time. Since 2003, it is bound to the Commission for Youth Protection in the Media (KJM). The organisation is financially backed by the „Demokratie Leben!“ program.

Concretely, jugendschutz.net looks at risks in internet services specifically attractive to young users and controls the internet for violations of youth protection laws.

jugendschutz.net has 5 departments:

The first 2 departments work on internet content (Cyber Hate and Sexual Exploitation, Pornography, Violence and Self-Harm).

The 3rd works on the management of Internet Services and Platforms (Chat Rooms, Messengers, Communities, Search Engines, Video Sharing Websites and Online Games).

The 4th – Internet for Children – looks at websites and points out the good and the bad ones

The 5th – Technical Youth Protection – ensures the technical back up.

jugendschutz.net works on the legal basis of the Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (JMStV) which also – in conjunction with the German Criminal Code, the German Interstate Broadcasting Treaty and the German Telemedia Act – regulates what is illegal online and defines the duties of content providers.

jugendschutz.net pursues a multi-level strategy against cyber hate:

- Teaching **Media education** in order to enable children and young people at a very early stage to learn how to deal with hate content on the internet
- Exchanging expertise with educational staff, political and civil society actors (training of trainers to train parents)
- Ensuring persistent monitoring of cyber-hate, i.e. when problematic content is found, jugendschutz.net tries to identify the source and takes necessary measures

Measures concerning illegal content are taken according to the different levels of youth protection in Germany:

- Generally illegal content, i.e. that is forbidden to circulate;
- For content illegal for minors, the Content provider must make sure minors cannot access the content with an age verification system for example;
- For content endangering the development of children and youngsters, the content provider must take precautions for minors normally not having access as late hours broadcasting or parental control for example.
- Apart from operating a hotline that allows internet users to report illegal and harmful content, jugendschutz.net generally takes the following actions:In terms of serious crimes or immediate danger, In terms of calls in law enforcement, usually the German Federal Criminal Police Office (BKA);
- In terms of other content, jugendschutz.net contacts the providers or platform operators and urges them to remove the illegal content, block access or modify it according to the laws. When flagging content, jugendschutz.net first flags it as a 'normal' user and if there is no response, flags it as a 'trusted' flagger; if there is still no reaction, jugendschutz.net reports the content via a designated email address to an assigned contact person.
- If this does not lead to success there are two possible solutions: Concerning German providers, jugendschutz.net calls in the supervisory body (KJM) to take further steps; when it comes to providers abroad, jugendschutz.net forwards the case to the media authority for 'indexing' i.e. inclusion in the so-called List of Media Harmful to Minors of the Federal Review Board for Media Harmful to Minors (BPjM) to block the URL in Germany which is of course only a limited measure as URLs can easily be changed.

jugendschutz.net works closely with 26 organisations worldwide within INACH (International Network Against Cyber Hate) which was founded in 2002 by jugendschutz.net and the Dutch Magenta Foundation with the vision of "Bringing the Online in Line with Human Rights".

jugendschutz.net works closely with 26 organisations worldwide

The **Project "Research – Report – Remove: Countering Cyber Hate Phenomena"**, coordinated by INACH in 2016-2017 with 6 project partners from different European countries. The project issued publications and data collection on instances of cyber hate, developed an 'early warning system' for trends in cyber hate and an international complaints form and cyber hate database in 5 languages.

The **Project "SCAN: Platform Experts and Tools: Specialised Cyber activists network"** ongoing from 2018 till 2020 brings together 9 European countries to gather information and content of cyber-hate for transnational research purposes, build a stable network for monitoring exercises, create online tools and an e-learning platform to train activists, moderators and tutors on monitoring and counteraction, explore software including software solutions for automatic cyber hate monitoring.

jugendschutz.net also participated in the **"Task force against illegal online hate speech"** in 2015 under the leadership of the German Federal Ministry of Justice together with Twitter, Facebook, Google/YouTube and Civil Society Organizations according to which *"The participants of the task force are in agreement that all hate speech prohibited under German law shall be reviewed and removed without delay upon notification"*. The compliance to the rules of the task force was monitored by jugendschutz.net. Based on these monitoring results the Ministry drafted the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz, 'NetzDG') which came into force on 1 October 2017 obliging social network providers to delete unlawful content within a short time frame.

○ Introduction to the Network Enforcement Act

Ms. Melissa Saviner, German Ministry of Justice and Consumer Protection – Division for Consumer Policy in the Information Society, Telecommunication and Media Law

In June 2017, German Parliament has passed the Network Enforcement Act in order to improve the response of social networks to reports of content unlawful according to the Criminal Code. The new law entered into force on 1 October 2017. The complaints procedure had to be introduced until 1 January 2018.

- Why was NetzDG necessary?

By 2015, the increasing spread of hate crime – especially on social networks such as Facebook, YouTube and Twitter – was serious enough for the German Federal Ministry of Justice and Consumer Protection to set up a Task Force including network operators and representatives of civil society. The companies involved in the Task Force promised to improve the way they handle hate crime reported on their websites. They committed to setting up user-friendly mechanisms for people to report offensive posts. They also pledged that reported content would be reviewed within 24 hours by teams of legally and linguistically qualified staff, and that any unlawful content would be taken down. Such decisions would be taken on the basis of German law.

The voluntary commitments undertaken by these companies have led to some initial improvements. But more was required. Criminally punishable content was still not being deleted in sufficient quantities. In January/February 2017, the youth protection organisation "jugendschutz.net" monitored the deletion activities of social networks and concluded that user-flagged hate crime was still not dealt with quickly and effectively enough. While YouTube then deleted criminal content in 90% of cases, Facebook managed only 39%. At Twitter, only 1% of user reports resulted in deletion.

Social networks must take responsibility when people misuse their platforms to commit hate crime and disseminate criminally punishable fake news. The tools currently available and the system of voluntary commitments by social networks were not enough. New legal rules for social networks, including fines for non-compliance, were therefore needed if quick and effective action is to be taken against hate crime on the web.

- What does NetzDG do?

The new law applies to content that constitutes one of the following offences under the German Criminal Code (Strafgesetzbuch, StGB):

- Section 86 (Dissemination of propaganda material of unconstitutional organisations),
- Section 86a (Using symbols of unconstitutional organisations),
- Section 89a (Preparation of a serious violent offence endangering the state),
- Section 91 (Encouraging the commission of a serious violent offence endangering the state),
- Section 100a (Treasonous forgery),
- Section 111 (Public incitement to crime),
- Section 126 (Breach of the public peace by threatening to commit offences),
- Section 129 (Forming criminal organisations),
- Section 129a (Forming terrorist organisations),
- Section 129b (Criminal and terrorist organisations abroad),

- Section 130 (Incitement to hatred),
- Section 131 (Dissemination of depictions of violence),
- Section 140 (Rewarding and approving of offences),
- Section 166 (Defamation of religions, religious and ideological associations),
- Section 184b (Distribution, acquisition and possession of child pornography) in conjunction with section 184d (Distribution of pornographic performances by broadcasting, media services or telecommunications services),
- Sections 185 to 187 (Insult, malicious gossip, defamation),
- Section 201a (Violation of intimate privacy by taking photographs),
- Section 241 (Threatening the commission of a felony), or
- Section 269 (Forgery of data intended to provide proof).

The Act does not introduce any new definition of hate speech nor does it broaden the scope of illegal speech, as it only refers to existing provisions of the criminal code (See above).

The compliance rules set out in the new law will only affect social networks. They do not apply to all "service providers" under the Telemedia Act (Telemediengesetz, TMG). Services enabling individual communication, particularly email or messaging services, are not included in the definition of social networks. Additionally, the new law does not apply to social networks dedicated to specific topics. This means that professional networks, special-interest communities, online gaming platforms and shopping websites are not covered by the new law either. Platforms with journalistic/editorial content are also excluded. Finally, social networks are exempt from the obligations regarding transparency reports and complaints management if they have fewer than two million registered users in the Federal Republic of Germany.

The new law aims to fight hate crime, criminally punishable fake news (disinformation) and other unlawful content on social networks more effectively.

The main obligations imposed to Social networks are:

- They must offer users an easily recognisable, directly accessible and permanently available procedure for reporting criminally punishable content.
- They must immediately take notice of content reported to them by users and examine whether that content might violate criminal law.
- Social networks must remove or block access to content that is manifestly unlawful within 24 hours of receiving the complaint. In cases of other reported content, social networks must decide whether to delete "immediately", i.e. usually within 7 days of receiving the complaint.
- The operators of social networks are obliged to submit biannual reports on their handling of complaints about criminally punishable content. They must be published on the platform, available to everybody.
- To ensure that the law is enforced more effectively, social networks will be obliged – regardless of where they are based – to name a person in Germany who is authorised to receive service of process in regulatory fine and civil proceedings, and publish details of this person on their website. Social networks must also name a person in Germany authorised to receive information requests from law enforcement authorities.
- How is NetzDG enforced?

Social networks that fail to set up a complaints management system or do not set one up properly – especially where this means that they do not delete criminal content in full, on time or at all – are committing a *regulatory offence*. Single wrong decisions to take down content are not sanctionable, there has to be a systemic mismanagement. The federal Office of Justice is the competent authority. User can report to the Office of Justice (e.g. about failure of a network to remove unlawful content following a respective complaint).

- Is the Act effective?

All big networks signal that they want to comply. Substantial efforts to do so can also be seen. E.g. YouTube, Facebook and Twitter all have overworked their reporting mechanisms, published transparency report and named contact persons in Germany (who are authorised to receive service e.g. in certain civil procedures as well as persons in Germany authorised to receive information requests from law enforcement authorities).

In some areas improvements might be necessary, e.g. the reporting mechanisms might be too complex (or: not user-friendly) in certain cases. The Office of Justice is investigating these issues. The Law does not seem to increase overblocking. It appears that the safeguards against overblocking within the Act do work. The Networks seem to examine the user complaints thoroughly. This is indicated e.g. by the fact that according to the transparency reports, in most cases (about 80 %) of user complaints the networks come to the conclusion that a reported content is not to be taken down.

**« PRINT » (Preventing Racism and INTolerance)
Study visit in Madrid – September 10th – 11th, 2018**

COUNTRY VISIT REPORT

The political situation in Spain and the turnover of interlocutors after the change of government made it uneasy to identify and involve the competent interlocutors from the relevant services. However, an agenda could finally be organised⁶⁴.

Even though the agenda was limited compared to the missions led in the other partner countries, two meetings were finally organised, one with the administrative authorities and the second with civil society representatives. These meetings allowed gathering general knowledge concerning the Spanish system against racism and discriminations.

DAY 1

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Monday, September 10th, 2018

Presentation of the legal framework and the criminal policy concerning fight against racism

Observatorio Español del Racismo y la Xenofobia

Spanish Monitoring Centre on Racism and Xenophobia

OBERAXE

The legal framework for fighting racism⁶⁵ :

1. Racism and discrimination constitute an aggravating circumstance for every offence in Spain

Article 22-4 of the criminal code stipulates that : *«to commit an offence upon any racist, anti-Semitic or any type of discriminative motives based on ideology, religion or any other of the victim's beliefs, ethnic background, race or nation, gender, sexual orientation or identity, sickness or disability the victim suffers from, constitute aggravating circumstances »*

Heavier sentences may be delivered towards some authors committing this type of offences, as teachers for example.

2. In 2015, Spain has introduced an important reform in criminal law and criminal procedure in order to strengthen the fight against cybercrime and especially against the propaganda of extremist groups and hate speech on the internet.

A new offence was created in order to punish the dissemination of messages inciting to commit disturbances to public order, especially terrorist attacks (**articles 550 to 561 of the criminal code**).

Furthermore, behaviours promoting hate and violence have been redefined (**articles 510 and seq. criminal code**) as well as the provisions concerning international law crimes (**articles 607 to 614 criminal code**).

⁶⁴ See the list of members of the delegation and the agenda in annexe to this report

⁶⁵ The elements communicated during the meeting were completed by elements produced by the French ministry's International and European Delegation (DAEI)

Since the 2015 reform of the criminal code :

⇒ **The maximum prison sentences have been raised.**

⇒ **Encouragement, promotion or incitement to hatred, hostility and to racist discrimination are specifically sanctioned.**

Article 150 of the criminal code provides that a 1 year to 4 years prison sentence and a fine period from 6 to 12 months⁶⁶ can be delivered to any person who : *“publicly encourages, promotes or incites directly or not to hatred, hostility or violence against a group, part of a group or a specific individual for belonging to this group for racist, anti-Semitic or any ideological motives, because of his/her religion or convictions, his/her family, ethnic, nation background, because of his/her original nationality, gender, sexual orientation or identity, his/her sickness or disability.”*

⇒ **The production, possession, access, distribution of any kind of media which content encourages, promotes or incites to hatred, hostility and racist discrimination are specifically sanctioned.**

Are punished by the same sentences **the fact of producing, developing or possessing in order to distribute any media encouraging this type of behaviour.**

⇒ **Committing the above-mentioned behaviours on social media, or through the Internet or by using any technology is worth heavier sentences.**

⇒ **A heavier sentence can also be delivered, if the above-mentioned behaviours generate specific troubles to public order or a heightened sense of insecurity or fear to the members of a group.**
In the latter case, the sentence must be in the higher half of the maximum provided for in the code.

⇒ Professional bans from exercising are specifically mentioned.

Article 510-5 provides in any case a ban from exercising any educational occupation for a period of 3 to 10 years.

⇒ **The destruction, obliteration or deactivation of any medium (books, records, documents, articles...) which has allowed committing the above-mentioned offences, is specifically planned.**

⇒ **The responsibility of legal entities for this type of offences is planned.**

When a legal entity is responsible for committing one of the above-mentioned offences, a fine from 2 to 5 months can be decided.

⇒ **Denial, trivialisation, and glorification of genocide, crimes against humanity or against people protected in armed conflicts are specifically sanctioned.**

The sentence provided for these specific offences is a 6 months to 2 years prison sentence and a 6 to 12 months fine.

⇒ **Humiliation, public denigration and discredit of a person or a group upon racist motives are specifically punished.**

⁶⁶ In Spanish law, a fine is decided by the judge during a certain period of time. The judge decides on a certain amount to be paid per day. It can vary from 2 to 200 euros according to the facts and the economic capacities of the offender. In general, the daily fine is between 3 and 6 euros. In a discrimination case, for a 3 euros fine, the global amount will be between 540 (6 months) and 1080 (12 months).

Article 510-2 of the criminal code provides for a 6 months to 2 years prison sentence and a 6 to 12 months fine against any individual who **affects the dignity of a person through actions involving humiliation, denigration or discredit of one of the groups mentioned in the previous paragraphe, for racist or anti-Semitic motives.** The person who glorifies or justifies such offences face the same sentences.

3. Fight against International crimes

Article 607 of the criminal code, repressing genocide, sentences to life imprisonment those who, with the objective to destroy, totally or partially a national, ethnical, racial, religious group or individuals marked by the same disability, have killed or sexually assaulted one member of this group. The prison sentences vary from 4 to 15 years imprisonment according to the seriousness of the inflicted abuses.

Article 607bis provides that are guilty of crime against humanity those who commit offences in the context of a widespread or systematic attack against civilians based on political, racial, ethnical, cultural, religious, gender or disability reasons or any other motives in contradiction with the International law. The maximum sentence is life imprisonment.

Articles 608 and following concern crimes against individuals and property protected in case of an armed conflict (injured, sick, shipwrecked or health and religious staff, war prisoners and civilians, people fleeing the combat zone, members of parliaments, UN staff and any other individual protected by international treaties). These offences are punished of a prison sentence between 4 and 15 years according to the seriousness of the facts.

4. Fight against racism and xenophobia in the sports world

The 19/2007 law of July 11th,2007 aimed at providing a set of measures in order to fight against violence, racism, xenophobia and intolerance in the sports sector.

To this end, public racist behaviours, committed during a sporting event by an individual or a legal entity, have been raised as offences.

When an offence is observed, the referee handling the sports meeting may decide to postpone or even cancel it. The law classifies these offences in three categories: very serious, serious and minor. The fines go from 150 euros to 650 000 euros for the most serious offences.

Furthermore, the organisers of sports meetings can be banned from organising such events and required to close the sport venue for a maximum period of 2 years for the very serious offences and 2 months for serious offences.

Individuals may additionally be sentenced to community work in the sports sector and be banned from any sports event for a maximum period of 5 years for very serious offences. Sports clubs and societies may also decide to ban an individual from sports venues.

The criminal policy concerning fight against racism :

- **Concerning the existence of a national plan to fight racism :**

In November 2011, a « global strategy » was adopted, involving the ministry of Justice, the national prosecution service, the Social services ministry, the ministry of interior, labour ministry and the Judicial studies Centre.

The OBERAXE tries to promote the signature of a MOU - Memorandum of Understanding between the principal institutions concerned by fight against racism and xenophobia (labour ministry, ministry of migrations, of equality, public prosecution and judges) which would improve the training and awareness on this phenomenon.

As part of this global strategy, 4 working groups are trying to determine the weaknesses of the mechanisms set to fight against racism, attune and coordinate the divers actions led:

- **a case law analysis group** led by the ministry of Interior and the ministry of Justice. It registers the crimes reported as hate crimes to the police and compares the report with the final judicial decision to see if the “hate” motive has been held.

- **a statistical analysis group** : the OBERAXE gathers information from the police. They have worked thoroughly with the police officers to train them on what is a hate crime.

But there is a lack of information because many interlocutors concerned do not know what is a hate crime. If the OBERAXE is working on the training of prosecution services, they regret a few issues with judges - which are untrained- and admit the necessity to improve the knowledge of hate crime in judicial services.

For violence against women, a protocol has been set to identify and count at every level – police/prosecution/judges – but the same protocol does not exist for hate crimes.

- **a group on hate speech** : created recently because of the renewed interest in the question linked with the European interest (the high level group). The objective is to work at a national level on the cooperation with Internet networks and platforms - working meeting with Facebook and Twitter – in order to improve the fighting mechanisms against hate speech online.

- **a group concerning training**

- **Concerning institutional action:**

L’action institutionnelle de l’Espagne en matière de lutte contre le racisme et les discriminations est conduite sous la responsabilité principale du Ministère du travail, des migrations et de la sécurité sociale. Plus précisément cette tâche est assumée quotidiennement par un Observatoire contre le racisme et la xénophobie (Spanish Monitoring Centre on Racism and Xenophobia) ou OBERAXE, créé en 2004, composé de huit personnes qui assurent une mission de veille et de proposition au nom des pouvoirs publics.

L’observatoire publie un rapport d’évaluation annuel sur son site internet.

The institutional action in Spain concerning fight against racism and discriminations is led under the main responsibility of the labour ministry, the ministry of migrations and the Social services ministry. More specifically, the task is taken on daily by the Spanish Monitoring Centre on Racism and

Xenophobia or OBERAXE, created in 2004, comprising 8 people who monitor and propose on behalf of the public authorities.

Three main missions have been assigned to the OBERAXE:

- 1) Monitor and analyse the evolution of the racism and discriminations phenomena in Spain,**
- 2) Promote equality of treatment in the Spanish society,**
- 3) Coordinate the fight against racism and discriminations between public authorities and civil society actors.**

Pour ce faire l'Observatoire peut s'appuyer sur une législation qu'il estime assez large et robuste et notamment :

To these ends, the OBERAXE can rely on the legislation, which they consider as sufficiently large and reliable and especially:

- **Article 14 of the Constitution** which recognises the principle of equality of treatment,
- **The law of December 30th, 2003** which covers the EU directives in the field (EU Directive 2000/43/EU– Race Equality Directive of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; EU Directive 2000/78/EU– Equal treatment in employment and occupation law, of 27 November 2000 establishing a general framework for equal treatment in employment and occupation)
- **The Law of November 29th, 2013** concerning people with disabilities.

Until this day, the efforts of the public authorities concern the following issues:

1) *Gather a more specific knowledge of racist and discriminatory acts*

With the lack of permanent statistical tools – currently being developed – the OBERAXE – lies upon studies led in partnership with the University.

The OBERAXE also works with the other ministries and specifically with the Interior ministry in charge of data collection in general and for hate crimes in particular. In order to sharpen the knowledge of the phenomenon, the OBERAXE compares the data collected by private organs and the data collected in the public sphere.

2) *Ease the transmission of the facts to specialised police officers* in order to detect intolerant acts and that they are not concealed by other offences or another incrimination.

3) *Control that an investigation is being led*, that the victim is informed and followed. Ensure that the victim is cared for by an association if requested.

4) *develop partnerships with civil society groups* (associations, NGO's) involved in the defence of Human rights and the prevention of racism or any other forms of intolerance **and with the lawyers**, in order to increase the knowledge of the phenomenon, make sure the offences are prosecuted and prevent their spreading.

5) *Develop a specific attention to public demonstrations of intolerance*, on social networks, any type of audio-visual support and also posters and graffiti.

6) *Undertake awareness raising and training actions among public and/or private actors* who can be confronted with intolerant facts (judges and prosecutors, teachers, the business world...).

In the following discussions, the representatives from the OBERAXE expressed the following opinions concerning the global situation on the fight against racism and discriminations in Spain:

1) **The legislative and judicial framework is considered as correct.** It allows effective reactions and the public authorities have the means to give an answer, criminal if necessary, to intolerant or discriminatory behaviours.

2) **The system is however still under construction :** the statistical tools are not finalised, awareness raising and training of judges and police officers must be continued, convictions are still too few.

3) **The solution to be pursued must be the strengthening of the different public authorities' actions.** It would be beneficial to sign a chart between ministries in order to fine-tune their efforts in preventing and fighting against intolerance and discriminations. This initiative should then be extended to civil society groups.

4) **Racism and discrimination phenomena are considered as weak in Spain.** The country is not racist. A study led by an independent centre - Centre for Sociological Research - in 2012 shows that:

- The Spanish population is not opposed to the granting of rights to the immigrant population living in Spain – family reunification, social benefits, voting rights under certain conditions...

- Cohabitation with immigrant communities is globally not conflictual, even during the economic crisis that Spain has been through in the recent years;

- Immigration is globally not experienced as a load, but as an essential support to the economic activity.

5) **Spain does not have openly xenophobic political party and only counts about a hundred judicial cases a year concerning racism and discrimination.**

DAY 2

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Tuesday, September 11th, 2018

Meeting with representatives of the civil society

Centro Sefarad Israël

First and foremost, the delegation wishes to underline the excellent organisation of this meeting and the strong representativeness and relevance of the people invited to this meeting by Mrs Henar Corbi.

The militant commitment of the different represented groups gave to this meeting a much more critical tone concerning both the situation of racism and discrimination in the country and also towards the action of the public authorities.

The groups and communities represented have first each presented their personal situation:

1) Muslims: the Muslim community is well integrated in Spain but they are heavily stigmatised, in the media in particular which associates them to violence and terrorism.

2) Israelites: there is a very small Jewish community in Spain. Besides, this country has not participated in the genocide during the second world war. However, this does not prevent a sort of covert anti-Semitism.

The Jewish community has established a federation of its different components in order to ensure its representation. One of its essential mission aims at training, and especially through the education on the Shoah.

3) Gypsies: Important community in numbers in Spain, they have for long been ostracised and lived under a discriminative status (banned from cities for example). These laws have been abolished at Franco's death but the gypsies suffer from an intolerance which is rooted in Spain's history and culture, spread by the media.

4) LGBT: The Catholic tradition reproving homosexuality is a permanent obstacle to the acknowledgment of equality for the members of this community. The admission of the homosexual marriage is a screen to hide all other discriminations and demonstrations of intolerance. Nobody really cares about the homosexuals' fate.

All the participants throw a critical look upon the actions of the public authorities:

1) Spain, in their opinion, characterises itself by a lack of interest in the question of discriminations by the public authorities, from the political leaders, the administrative bodies and probably from the society on the whole. A full set of practical consequences arise from this situation.

2) The lack of serious statistical tools to count intolerant acts allows underestimating the phenomenon and avoiding developing a strategy and concrete actions. Likewise, the lack of global legislation on the subject does not allow treating the question in its totality. The weakness of awareness raising actions within the national education system, the deficiency in the judges, prosecutors and police officers' training and the poor support of the civil society (40.000 euros per year on the national level) shows this shortcoming of public action.

3) The institutions which should deal with this question are not granted enough means and do not feel concerned by the subject. Few directives, no communication, no interaction with the business world or the lawyers. On a global perspective, the public institutions are removed from the evolution of modern society. It is only under pressure that administrations start acting. Interactions between the civil society and the public authorities are few.

4) The question of the victims of racism and discriminations is a major issue. They are not given sufficient attention and feel neglected by the State. Some affairs are made public but on a day to day basis, victims are ignored, in particular by police services. Besides, the victims are supposed to address their cases at the ministry of social affairs to get it registered, when they really should be taken over by the Justice system. The Justice system is not responsible for the fight against intolerance.



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