

Questions of Hate Crimes With Special Regard to Austrian and Hungarian Case Law

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My doctoral project focuses on bias-motivated crimes. Bias crimes, including, but not limited to racially motivated hate crimes differ from other criminal activities in several regards. In Hungary, similarly to other Central-European post-communist countries in the region, despite the fact that the legislative framework sets forth a number of bias-crime provisions, authorities often fail to apply them. While in the UK the number of cases is around 40,000 annually for a population of 63 million, in Austria, for a population of 8.4 million, about one hundred cases, in Hungary, with a population of 10 million, only a dozen cases are prosecuted. The paper provides an overview of the general approaches to hate crimes through examples from the Austrian and Hungarian legislation, cases and statistics, explains the above mentioned differences, points out the reasons of the differences between the official and civil statistics, and gives examples of good practices from North America where I am currently doing my research. Finally, it highlights the most important questions in addressing hate crimes.

Definition of Hate Crime

The first question is what hate crime is. Hate crimes are criminal acts committed with a bias motive. The first element of a hate crime is the act that constitutes an offence under criminal law. Common offences are assaults, threats, arson, murders, and property damage. The second element is the hate or bias motivation. The term 'bias' is more appropriate, because in several cases the offender might not hate the victim, but is motivated by bias, by some negative attitude towards the victim.¹ The negative attitude is based on the personal characteristics of the victims; the perpetrator intentionally chooses the victim because of particular characteristic, such as race, ethnicity, national origin, religion, sexual orientation, or disability. There is no shared global approach to who/which groups should be protected by hate crime laws. Therefore, specific definitions of hate crime differ under domestic laws. The Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE)² gives one of the most comprehensive definitions:³

¹ Frederick M. Lawrence, *Punishing Hate: Bias Crimes Under American Law*, Harvard University Press, Cambridge, Ma, 1999, 9-28. and Tim J. Berard, *Hate Crimes and their Criminalization*, in: *Research in Social Problems & Public Policy*, vol. 17, 2010, 15-40, here 16-17.

² The OSCE (Organization for Security and Co-operation in Europe) is the world's largest regional security organization with 57 States (Austria and Hungary are among the participating States). The Organization has a long history of dealing

‘A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in Part B.

B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.’

This negative attitude may not necessarily be rooted in the perception of the perpetrator, but may be rooted in the social prejudices.⁴ The distinction is thereby made between prototypical and opportunistic hate crimes. The prototypical hate crime is an act, where the perpetrator targets the victim because of the victim’s group membership. Opportunistic hate crimes are not motivated by a perpetrator’s hostility towards a particular group. Rather, the perpetrator intentionally selects a (supposedly) vulnerable⁵ victim for gaining ‘easy money’ or ‘respect’ within his peer group.⁶

Significance

Hate crimes differ from other criminal acts in several regards. Firstly, their impact on individual victims is more serious. One of the most comprehensive studies in the field of hate crime victimization was conducted by McDevitt, Balboni, Garcia, and Gu in 2001. The study takes a comparative look into the experience of bias and non-bias victims. The study surveys a comparable group of violent bias and non-bias assault victims identified from law enforcement and advocacy agency legal records. The victims of bias crimes recorded statistically significant higher level of depression, nervousness, lack of concentration, and unintentional

with hate crimes. The OSCE Ministerial Council has established the ODIHR, which serves as a collection point for information and statistics on hate crimes and makes this information publicly available.

³ Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2006, 9, available at: <http://www.osce.org/odihr/26759>, 10 October 2013.

⁴ ‘In 2006, Michael Sandy, a gay man, was attacked by three men who were trying to rob him, he fled for his life across a highway, he was struck by a car and killed. The men testified at trial that they did not actually hate Michael because he was gay, but they targeted him because he was gay and they thought a gay man would be less likely to fight back. The court rejected this defense. The Court interpreted the New York hate crime law to require nothing more than the intentional selection of the victim because of a particular attribute – in this case his sexual orientation.’ Allison Jernow, A Human Rights Approach to Hate Crimes, Closing conference of Working with the police and challenging hate crimes in Europe 2008-2011, 8 and 9 December 2011 in The Hague, The Netherlands, http://www.ilga-europe.org/home/issues/hate_crime_hate_speech/projects/ilga_europe_hate_crime_project/closing_conference, 31 January 2014.

⁵ Jordan Blair Woods, Taking the ‘Hate’ Out of Hate Crimes: Applying Unfair Advantage Theory to Justify the Enhanced Punishment of Opportunistic Bias Crimes, in: UCLA Law Review 56/2, Los Angeles, California, December 2008, 489–521, here 491.

⁶ Consider a man who is looking to prove his masculinity to his friends and chooses to assault an Amish man because he believes that the Amish will not fight back by virtue of their pacifist commitments.

thinking of the incident. They also asked how safe the victims feel after the crime. Bias crime victims are significantly less likely to feel safe.⁷ According to the British Crime Survey, higher proportions of victims of racially motivated crime, compared with victims of non-racially motivated crime, reported being ‘worried’ or ‘very worried’ about future victimization (worry about rape provides the exception to the trend, as equal proportions of minority ethnic respondents were worried about future victimization, irrespective of whether or not they were victims of racially motivated crime.).⁸

Secondly, hate crimes affect the whole group and not just the victim. The victim experiences the incident as a message that his or her group is of inferior value.⁹ Many scholars¹⁰ emphasize that hate crimes are ‘message crimes’ that emit a warning to all members of the victim’s community.¹¹ Consequently, such crimes send a message to the victim and the entire community that they are not welcome, they do not belong to society, and every member of the community could equally be a target.¹²

Finally, patterns of violent hate crime can also serve as indicators and (somewhat) early warning signals for social or ethnic conflict, because hate crimes might escalate to intergroup aggression. Hate crimes, therefore, can damage the fabric of society and fragment communities.¹³ Therefore, hate crimes call into question the basic concept and self-understanding of modern pluralist societies, which is based on the notion of individual human dignity. A related area is that anxiety triggered by the victimization of one’s group can easily erupt into periods of retaliatory violence. For instance, in the United States, Chief Justice Rehnquist acknowledged this in the widely cited *Wisconsin v. Mitchell* (1993)¹⁴. He argued for the recognition of hate crime as a special class of offence because of the likelihood that it would, in fact, initiate yet more violence.¹⁵

⁷ Jack McDevitt, Jennifer Balboni, Luis Garcia and Joann Gu, Consequences for Victims: A Comparison of Bias and Non-bias Motivated Assaults, in: *American Behavioral Scientist*, 46/1, 2001, 27-50, here 32.

⁸ Paul Iganski and Sporidoula Lagou, How Hate Crimes Hurt More: Evidence from the British Crime Survey, in: Barbara Perry and Paul Iganski (Eds.), *Hate Crimes. The Consequences of Hate Crime*, 2 vols., Praeger, Westport, Connecticut/London, 2009, 1–13, here 9.

⁹ Paul Iganski and Sporidoula Lagou, *How Hate*, 12.

¹⁰ See eg. Kellina M. Craig-Henderson, The Psychological Harms of Hate: Implication and Interventions, in: Barbara Perry and Paul Iganski (Eds.), *Hate Crimes. The Consequences of Hate Crime*, 2 vols., Praeger, Westport, Connecticut/London, 2009, 15-30 and Barbara Perry and Patrik Olsson, Hate Crime as a Human Rights Violation, in: Barbara Perry and Paul Iganski (Eds.), *Hate Crimes. The Consequences of Hate Crime*, 2 vols., Praeger, Westport, Connecticut/London, 2009, 175–191.

¹¹ Barbara Perry and Patrik Olsson, *Hate Crime as a Human Rights Violation*, 179.

¹² ODIHR, *Hate Crime Laws. A Practical Guide*, Warsaw, 2009, 17. Available at: <http://www.osce.org/odihr/36426?download=true>, 22 January 2014.

¹³ ODIHR: *Hate*, 17, available at: <http://www.osce.org/odihr/36426?download=true>, 22 January 2014.

¹⁴ On the evening of October 7, 1989, a group of young black men and boys, including Mitchell, gathered at an apartment complex in Kenosha, Wisconsin. Several members of the group discussed a scene from the motion picture ‘Mississippi Burning’, in which a white man beat a young black boy who was praying. The group moved outside and beat the first white boy severely, and stole his tennis shoes. The boy was rendered unconscious and remained in a coma for four days. Available at: <http://www.law.cornell.edu/supct/html/92-515.ZO.html>, 26 January 2014.

¹⁵ Perry – Olson, *Hate*, 179.

Legal Framework

Three main approaches may be identified in the field of hate crime laws in different countries. The least common approach is that acts committed with hate-based motivation constitute a specific category of offences, by redefining the conduct that is already a criminal act as a specific crime.¹⁶ The second approach is the most common, the sentence enhancement type, where the perpetrator might be sentenced to a more severe penalty due to the hate/bias motivation; these laws increase the penalty for a particular crime. There are two possible ways of penalty enhancement: the specific¹⁷ and the general¹⁸ penalty enhancement. A specific penalty enhancement applies an increased sentence to specific crimes committed with bias motivation. The general penalty enhancement applies to nearly all crimes in the criminal code. It usually sets out aggravating circumstances and can include bias motivation against certain protected characteristics.¹⁹ The bias motive may be considered an aggravating circumstance in an ‘ordinary’ crime, requiring a stronger penalty. Third, some hate crime laws make no amendments to the criminal law, but require administrative agencies to collect hate crime statistics. Furthermore, we can find a combination of these approaches.²⁰ Whether a hate crime law takes the first (substantive offence) or second (sentence enhancement) form, the result is the same – more severe punishment.

The Austrian and Hungarian Criminal Codes combine the different ways of regulation.

A. Aggravating Circumstance/Sentence Enhancement:

In the Austrian Criminal Code, bias motive is considered as an aggravating circumstance to the ‘ordinary’ crimes, and requires a more severe penalty. One of the aggravating circumstances that is considered by courts when imposing punishment under Article 33 is ‘when the perpetrator [...] 5. has acted out of a racist, xenophobic or other particularly reprehensible motive; [...]’.²¹

In the Hungarian Criminal Code, the provisions of assault (Article 164) and homicide (Article 160) include an aggravating circumstances called malicious motive (when somebody commits a crime with a base reason or with a base purpose).

¹⁶ If, for instance, the Criminal Code creates new offences of ‘racially-aggravated’ assault.

¹⁷ If, for instance, the Criminal Code provides that murder committed on racial motive is punishable by a minimum term of 10 years’ imprisonment; without the penalty enhancement the minimum period is five years.

¹⁸ If the Criminal Code provides an aggravating circumstance e.g. racist and xenophobic motives that courts consider when it impose the punishment in the case of assault, murder, harassment or other crimes.

¹⁹ ODIHR, Prosecuting Hate Crimes. A Practical Guide (Working Draft, March 2010), 4.

²⁰ ODIHR, Hate, 80.

²¹ The translation is based on an online legislative database. Legislationline was created in 2002 to assist OSCE participating States in bringing their legislation into line with relevant international human-rights standards. It is the most comprehensive database on legislation related to hate crime in English. The above used text is an excerpt. Legislationline, Austria, Hate Crimes Laws, <http://legislationline.org/topics/country/44/topic/4/subtopic/79>, 26 January 2014.

B. Substantive offence

Austria's hate crime legislation does not create a specific category of offences based on motivation²². The only provision is the 'incitement to violence'. Pursuant to Article 283 (1) 'In a manner likely to jeopardize public order, incites to hostile action against a church or religious community established in the country or a group defined by their affiliation to such a church or religious community or to a race, nation, ethnic group or state is punishable with up to two years imprisonment; [...]'.²³

However, hate crimes are different from laws that penalize public expression of hate, also known as hate speech or incitement to hatred laws. These laws do not have the element of a common crime (*i.e.* assault, threat, vandalism, etc.), but criminalize certain forms of expression.²⁴

The Hungarian Criminal Code (CrC.) contains a *sui generis* hate crime provision on 'violence against a member of a community', prescribing more severe punishment than similar acts of violence without a hate motivation. Under Article 216, any person who displays an ostensibly anti-communal conduct against a member of a community, which is suitable for inducing indignation or alarm in the members of the community, or assaults another person for belonging to, whether in fact or under presumption, of a national, ethnic, racial, [or] religious group, or certain groups of the population, especially their disability, sexual identity or gender identity, or compels him by applying coercion or duress to do, not to do, or to endure something [...]. Pursuant to Article 216(2), the punishment shall be imprisonment between two to eight years if the act of crime is committed: (a) by force of arms; (b) with a deadly weapon; (c) causing a considerable injury of interest; (d) with the torment of the injured party; (e) in groups; (f) in criminal conspiracy. Finally, any person who engages in preparations for violence against member of community is guilty of a misdemeanor punishable by imprisonment for up to two years.²⁵

²² There are a number of concepts which are closely related to hate crime which are not included within my research.

Although genocide is a crime motivated by bias it has been excluded from the research, because it has certain special characteristics which make it different from 'ordinary' crimes. Although national legislations may prohibit genocide and other related crimes, they are not, in this context, described as hate crime laws. Genocide requires an intention to destroy — in whole or in part — a national, ethnic, racial or religious group. This is qualitatively and quantitatively different from hate crimes, as are all crimes under international law that require widespread, systematic acts of violence. The legislative, investigative and prosecutorial issues arising from such international crimes are very different from those which arise in hate crimes. All such crimes are therefore outside the scope of this paper.

²³ Legislationline, Austria, Hate Crimes Laws, <http://legislationline.org/topics/country/44/topic/4/subtopic/79>, 26 January 2014.

²⁴ ODIHR, Prosecuting, 3.

²⁵ These are examples for the Austrian and Hungarian regulation. The following offences in the Hungarian Criminal Code are to be considered as hate crimes: 'incitement against a community' (CrC. Art. 332), 'violation of the freedom of conscience and religion' (CrC. Art. 215.), 'use of totalitarian symbols' (CrC. Art. 335), 'theft or criminal damage against religious or consecrated objects or cemeteries and other burial sites' (CrC. Art. 370(3) b; Art. 371(3)(bb)), 'public denial

Official Statistics

Most states collect some form of data on hate crimes by the police and/or public prosecutors and the judiciary, just as in Austria and Hungary (Figure 1). The report of ODIHR provides a brief overview of the hate crime data-collection systems and results, including a comparative table with the number of reported hate crimes from the years 2010 through 2012.²⁶

Cases Recorded by the Police		
Year	Austria²⁷	Hungary²⁸
2010	99	19
2011	57	35
2012	90	36

Figure 1: Cases recorded by the police in Austria and Hungary

Cases Recorded by the Police (OSCE 2011)	
Country	Recorded Cases
United Kingdom	41,204
Sweden	5,518
Germany	4,514
Belgium	(first semester) 614
Switzerland	181
Ireland	98

Figure 2: Cases recorded by the police (OSCE 2011)

of the sins committed by the national socialist and communist systems' (CrC. Art. 333). The CrC. Art. 216 is based on the author's translation.

²⁶ ODIHR, Hate Crimes in the OSCE Region, Incidents and Responses, Annual Report for 2012 25–30. <http://tandis.odhr.pl/hcr2012/>, 27 January 2014.

²⁷ Data include crimes of incitement to hatred, in addition to hate crimes.

²⁸ Data include crimes of incitement to hatred and of discrimination, in addition to hate crimes.

Figure 1 and 2 present a summary of the number of hate crimes recorded in these countries above. However, the number of cases needs to be analyzed with great caution, because some states record hate crimes specifically, while others look at the crime statistics for general figures. The number of recorded cases of hate crimes simply indicates incidents acknowledged by the authorities as hate crimes or reported by victims.²⁹ When hate crimes are enacted, for instance, as substantive offences, the crime usually has greater visibility and hate crime data is easier to collect. States that do not have any express provisions to address bias motivation, general sentencing principles can be applied to impose a greater sentence for hate crimes, but the statistics may not appear all of the hate crimes. For instance, there are two main official sources for the number of hate crime offences in England and Wales: the Crime Survey for England and Wales (CSEW) and police recorded crimes.³⁰

Consequently, the low numbers of registered hate crimes in Austria and Hungary cannot be explained by the low level of actual prevalence, rather with the limited data collection, as the hereunder victim survey indicates it. Besides, there are a number of differences in the coverage of the victimization surveys and police recorded crimes. In a report on racist violence in 15 EU Member States, the Vienna-based European Monitoring Centre on Racism and Xenophobia concluded that no data are available that can reliably be used to assess the extent of the phenomena of hate crimes in the Member States. . In several countries, no official data on ‘hate crimes’ is collected at all. In the European Survey on Crime and Safety (EU ICS) 2005 respondents in the 15 old EU Member States were asked whether they had fallen victim to any crime because or partly because of their nationality, race, or color, religious belief or sexual orientation in 2004. The results allow a first rough assessment in comparative perspective of the extent of such ‘hate crimes’ in the EU as perceived by respondents (see Figure 3).³¹

Percentages of Population Victimized by Hate Crime in 2004	
Country	%
United Kingdom	4.2
Sweden	3.0
Germany	2.6

²⁹ ODIHR, Hate Crimes in the OSCE Region, 23.

³⁰ Home Office, Office for National Statistics and Ministry of Justice, An Overview of Hate Crime in England and Wales, 10 December 2013. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266358/hate-crime-2013.pdf, 27 January 2014.

³¹The Burden of Crime in the EU, Research Report, A Comparative Analysis of the European Crime and Safety Survey (EUICS) 2005, 52. <http://www.europeansafetyobservatory.eu/downloads/EUICS%20-%20The%20Burden%20of%20Crime%20in%20the%20EU.pdf>, 11 October 2013.

Belgium	4.1
Ireland	2.3
Austria	1.8
Hungary	1.1

Figure 3: Percentages of population victimized by hate crime in 2004

Differences between victimization surveys and police statistics, as well as the obstacles to monitoring and latency in general are to be explained by two sets of factors: those that discourage victims from reporting crimes to the police, and those that result in offences not being recorded as having hate motivation. These factors result in both underreporting and under-recording of hate-motivated crimes.³²

The reasons of differences in the statistics, with special regard to Hungary, are the following: the first is underreporting, which may derive from the victim's previous negative experience of the police, or the victims may believe that nothing will happen, the police will not take the report seriously, police officers and prosecutors will **not** take appropriate action to respond to the incident, either as an ordinary crime or as a hate crime. Research shows that there is a low level of general trust in the police among members of minority groups.³³ A common reason is the fear of hostility or prejudice by the police (secondary victimization) or fear of retaliation; many victims fear that if they report a crime the perpetrators or others with similar views will retaliate against them (or their family, community). Victims may be unaware of the relevant legal provisions and the available procedures to access justice. In the case of the Lesbian, Gay, Bisexual and Transgender (LGBT) communities, victims may not want to report the crime because they would like to keep their sexual orientation or transgender identity private or because of any other personal reason.

³² ODIHR, Preventing and Responding to Hate Crimes, A Resource Guide for NGOs in the OSCE Region, 34. <http://www.osce.org/odihr/39821?download=true>, 27 January 2014.

³³ 'The EU-MIDIS survey results also show a pattern between general levels of trust in the police and perceptions of discriminatory police profiling. In the survey, respondents were asked a general question about their trust in the police prior to being asked questions about their experiences of police stops and whether they considered they were the victims of discriminatory police profiling. The results indicate that those respondents who tended to have lower levels of trust in the police also tended to perceive ethnic profiling more in their encounters with the police; for example: 50% of minority respondents who were stopped by the police and did not consider it to be a result of ethnic profiling said they generally trust the police, whereas only 27% of minority respondents who were stopped and did consider it to be a result of profiling tended to trust the police. Although it cannot be determined from the results whether heightened distrust in the police predated respondents' negative perceptions of police treatment, or whether negative perceptions of police profiling led to increased distrust in the police, the findings do point to the existence of a relationship that cannot be readily overlooked.' European Union Agency for Fundamental Rights (FRA), Towards More Effective Policing, Understanding and Preventing Discriminatory Ethnic Profiling: A Guide, Publications Office of the European Union, Luxembourg, 2010, 43.

Secondly, the lack of a comprehensive definition³⁴ and ‘misqualification’ may be also significant reasons that contribute to under-recording. Law enforcement agencies disregard the motivation during the investigation. Because the lack of knowledge of hate crime laws, police officers may not recognize the hate motivation which may derive from the low level of awareness (because of the lack of specialized training or guidelines). For instance, police officers in Hungary often identify incidents as vandalism instead of Art. 216 (‘Violence against a member of a community’), thereby failing to recognize the hate motivation. Thus, the investigation is launched of an ordinary crime instead of a hate crime. It is vital that the police open the investigation of a hate crime instead of an ordinary crime, seeing as the qualification may determine the entire case from the phase of investigation through the prosecution up unto the tribunal phase. In the UK for instance, the police have adopted a policy that the investigation should start regarding a hate crime if the incident is perceived as such by the victim or by an other person. Thus, the perception of the victim determines the qualification of the incident.³⁵

As a consequence of underreporting and under-recording of hate offences, violence remains invisible for law enforcement authorities, for lawmakers, for public policy decision makers, and for the general public. Therefore, lack of data limits the ability to highlight the extent of this type of violence, while lack of information about where and when offences tend to take place restricts the possibility of preventing occurrences of hate violence. In addition, it makes it difficult to raise awareness among decision makers on the need to adopt laws to protect victims from hate violence.³⁶

Cases and the Circumstances That may Confirm the Hate Motivation

There are factors that do not confirm that the incident was a hate offense but which may indicate the need for further investigation into motive, such as perceptions of the victim(s) and witnesses about the crime; the perpetrator’s comments, gestures or written statements that reflect bias (e.g., graffiti or other symbols); similar incidents in the same town or neighborhood to determine whether a pattern exists; whether the victim was engaged in activities promoting his/her group or community; whether the incident coincided with a holiday or

³⁴ Because not all hate crimes fall under e.g. the provision of Art. 216. Criminal law does not create a specific category of offences based on motivation and does not require administrative agencies to collect special hate crime statistics. For instance in the case of homicide committed with malicious motive, there are no statistics for the number of hate crimes within the above mentioned aggravating circumstance.

³⁵ Christine Loudes and Evelyne Paradis, Handbook on Monitoring and Reporting Homophobic and Transphobic Incidents, ILGA Europe (International Lesbian, Gay, Bisexual, Trans and Intersex Association), August 2008, 52. http://www.ilga-europe.org/home/issues/hate_crime_hate_speech/ilga_europe_reports, 26 January 2014.

³⁶ Loudes – Paradis, Handbook, 10.

date of particular significance; involvement of organized hate groups or their members; absence of any other motive such as economic gain.³⁷

A. Austria

On 26 November 2006, a man broke into the Lauder Chabad School in Vienna, smashing windows and breaking other objects with a crowbar. The police arrested a man who was subsequently sentenced to 15 months in prison for vandalizing the school. During the trial, the man claimed that there were ‘too many Jews in Austria’. His racist motivation was deemed as an aggravating circumstance by the court.³⁸ In the present case, vandalism was the ordinary crime and the anti-Semitic motivation constituted the bias motivation. The key indicators that indicated that a hate crime may have been committed: the perpetrator’s comments, gesture, behavior, and statements during the procedure, and the place of the offence.

B. Hungary

In August 2012, Sz. N. contacted a homosexual man on a dating website, agreed with him on a date, planned the murder, took a knife, met him at the victim’s apartment, and murdered him with more than twenty stabs. He stabbed several times to the chest and the back of the victim. He confessed that he wanted to kill more people following a homophobic motivation. The court sentenced him for life imprisonment for homicide, planned in advance, for base reason or purpose (the latter includes the hate motivation), with special cruelty etc. – several aggravating circumstances). In this case, homicide is the ordinary crime and the homophobic motivation constituted the bias motivation. The key indicators might be the perpetrator’s comments, gesture, behavior, and statements during the procedure; and the absence of any other motive such as economic gain, for example.

Consequences

Adoption of adequate legislation to define and punish hate crimes is a key initial step in addressing the problem. Laws – especially criminal laws – are an expression of society’s values. The extension of the legal framework may represent a symbol for the victims of hate crimes. Hate crime laws both express the social value of equality and foster the development of values. However, the lack of specialized hate crime laws does

³⁷ The International Association of Chiefs of Police’s (IACP) publication – Responding to Hate Crimes: A Police Officer’s Guide to Investigation and Prevention – contains two training tools: a 12-page guidebook that covers major components of an effective response to an investigation of hate crimes and a smaller, detachable pocket guide outlining specific investigative procedures. IACP: Responding to Hate Crimes: A Police Officer’s Guide to Investigation and Prevention, <http://www.theiacp.org/ViewResult?SearchID=123>, 3 September 2013.

³⁸ ODIHR, Hate Crimes in the OSCE Region. Incident and Responses, Annual Report for 2006, 33. <http://www.osce.org/odihr/26759>, 5 February 2014.

not mean a lack of hate crime prosecution. Therefore, police officers and investigators have more important roles to play in responding to hate incidents and crimes. Police officers are usually the first professionals arriving to the scene of a hate crime, thus their actions significantly affect the outcome of the criminal investigation as well as the community's response to the incident. Law enforcement agencies have a special role in responding to, preventing, investigating, and prosecuting hate crimes.

Policing of hate crimes is a complex task. The police service is responsible for recording hate offences and for implementing related legislation. The police may influence the perception of hate crimes by the state and by the general public. The low level of trust towards the police by ethnic and sexual minorities and religious communities may be a special barrier.³⁹ To successfully carry out their tasks, police officers and prosecutors must receive training on recognition and investigation of potential hate crimes, have clear protocols on how to respond to hate violence, and develop innovative programs for preventing and responding to hate crimes.⁴⁰

Proving the hate motivation may be difficult, because it is connected to the perpetrator's subjective mental status. Thus, law enforcement must investigate the additional aspects of the case (such as all of the personal circumstances, group membership, the perpetrator's comment) and find all of the possible evidence, which can confirm the hate motivation. Hate crime prosecution is important to both the individual victim and the affected community. It sends an important message to the society about the values of social cohesion.

The European Court of Human Rights (ECtHR) has ruled in a number of cases that states are obliged to 'unmask' the motivation behind crimes committed with bias motivation. If the criminal justice system overlooks the bias motivation behind a crime, then this amounts to a violation of Article 14 of the European Convention of Human Rights⁴¹ (ECHR).⁴² As the ECtHR pointed out in the case of *Secic v. Croatia* '[...] treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights'.⁴³ In the case of *Nachova and Others v. Bulgaria* the Court declared for the first time that states have a positive duty, stemming from Article 14 of the ECHR, to investigate whether an act of violence was

³⁹ Neil Chakraborti and John Garland, *Hate Crime: Impact, Causes and Responses*, Sage, Los Angeles/London/New Delhi/Singapore/Washington DC, 2009, 107.

⁴⁰ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Agencies, *Addressing Hate Crimes. Six Initiatives that are Enhancing the Efforts of Criminal Justice Practitioners*, Maine, February 2000, prepared by Stephen Wessler, 7.

⁴¹ ECHR, Article 14, Prohibition of discrimination, http://www.echr.coe.int/Documents/Convention_ENG.pdf, 20 May 2014. 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

⁴² FRA, *Making Hate Crime Visible in the European Union: Acknowledging Victims' Rights*, 7. http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf, 28 January 2014.

⁴³ ODIHR, *Prosecuting*, 5.

motivated by racial hatred. In the *Nachova* case, a military policeman shot two Roma men while he was trying to arrest them. According to the Bulgarian authorities, the act on police was compatible with the regulations on the use of firearms by the military police, leading to the authorities' refusal to prosecute the military police officer. The Court found that there had been a violation of Article 2 of the ECHR⁴⁴ regarding the two men's deaths and also because Bulgaria failed its obligation under Article 2 of the Convention to investigate the deprivation of life effectively. The Court found that the authorities failed in their duty under Article 14 of the ECHR taken in conjunction with Article 2 to take all possible steps to investigate whether or not discrimination may have played a role in the events. It follows that there had been a violation of Article 14 of the Convention taken in conjunction with Article 2 in its procedural aspect.⁴⁵

States should consider persistent measures to ensure that law-enforcement officials, prosecutors, and judges are well equipped to prevent and respond effectively to hate crimes, by enforcing effectively the available hate crime laws. Professional training helps law-enforcement officers to identify, investigate and register bias motives, and ensures that prosecutors are trained how to present evidence of bias motivation. Education for service providers is a substantial component of long-term strategies aimed at reducing hate crimes reduction strategies, see, *e.g.*, a Canadian example, the 'City of Edmonton Hate and Bias Crime Investigation Online' training material.⁴⁶

Cooperation with civil society is also a major factor. Civil society organizations may have the capacity and knowledge to supplement the law enforcement authorities' activities to address hate crime, especially through monitoring incidents and assisting victims. Several good practices are known in the field of encouraging reporting and increasing access to support. A form of effective partnership engagement is cooperation with organizations with the capacity to introduce a third-party reporting system. Third-party reporting allows a victim (or any other person) to report the crime to a partner organization, which then forwards the report to the police. In London, the Metropolitan Police Service encourages members of all communities to report incidents to the police. Even if the incident does not amount to a crime, the police will still record and investigate it. The police co-operate with independent civil society organizations with the aim of increasing the number of reported hate incidents. The victims of hate crimes within the LGBT community can report hate incidents to the police's partner organization Gay London Police Monitoring Group GALOP. The GALOP is

⁴⁴ ECHR, Article 2, Right to life.

⁴⁵ Case of *Nachova and Others v. Bulgaria* (6 July 2005), HUDOC, European Court of Human Rights, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69630#{"itemid":\["001-69630"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69630#{), 26 January 2014.

⁴⁶ Canadian Police Knowledge Network, Course Catalogue, http://www.cpkn.ca/course_catalogue, 26 January 2014.

an LGBT organization of volunteers who provide support and counseling to victims of homophobic and transphobic hate crimes.⁴⁷

A Hungarian NGO coalition, ‘Working Group Against Hate Crimes’ (*Gyűlölet-bűncselekmény Elleni Munkacsoport*)⁴⁸ has been working on hate crimes since 2012. The coalition issued recommendations for legislation and judicial practice on hate crimes and provided training sessions and seminars for police officers. The coalition also works on raising awareness among the target groups and conducts international research of investigation protocols, police structures, and adequate data collection. The working group’s first initiative was to contribute to the codification process of the new Criminal Code of Hungary in 2012 by providing recommendations regarding the conceptualization of hate crimes. Some of the recommendations – e.g., explicit mentioning of sexual orientation, gender identity, and disability among the protected characteristics – were integrated in the new Criminal Code. In March 2013, the working group participated in a hate crime seminar within the framework of a project delivered by the Police College. The coalition also regularly holds lectures and organizes conferences in cooperation with state institutions, university bodies and civil organizations. The member organizations of the coalition also provide services to victims, such as legal representation.

Besides the above-mentioned tools, community mobilization may also be an answer for hate activities. North America has the best practices with regard to community organizing, for instance, in Canada, the Alberta Hate Crimes Committee set up a toolkit collecting good practices in the field of community responses which helps to address hate as it arises in their community. It is designed to help community members to identify what hate is, what the relevant laws are, how to address hate crimes through community action, education, prevention and partnership, and how to protect groups and individuals targeted by hatred.⁴⁹

The community-based movement called ‘Not in Our Town’ in the U.S. is aimed to guide, support and inspire people and communities to work together to eliminate hate and build a safe, inclusive environment for all. The project’s started twenty years ago, when a film crew went to Billings, Montana to document a story about community members who stood up for their neighbors when they were under attack by white supremacist,

⁴⁷ Metropolitan Police Service, Reporting Hate Crime Information, http://content.met.police.uk/cs/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22293%2F748%2Freporting_crime.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283591737823&ssbinary=true, 29 January 2014.

⁴⁸ The author is a member of the Working Group Against Hate Crimes. <http://gyulotellen.hu/munkacsoportrol>, 20 May 2014.

⁴⁹ Alberta Hate Crime Community, Good practice: Canada Beyond Hate. A Resource Toolkit, Building a Community Response Plan to Counter Hate, February 2012, 7. <http://www.beyondhate.ca/index.php/homepage/pdf-toolkit>, 29 January 2014.

after attacks on a Native American woman's house, an African-American church, and a Jewish family's home,⁵⁰

Another good example is the practice of employing liaison officers, merging the 'official system' and the community-based approach. Several countries have introduced liaison officers with specific responsibility for engaging with communities and providing support to victims and witnesses of hate crimes. In the UK over 150 police officers and support staff have trained as Gay Liaison Officers (GLOs), whose role it is to support LGBT people when they are victims of hate crime.⁵¹

Another critical area is data collection, as the above-mentioned differences between official and victim statistics demonstrated. There are numerous barriers to obtaining reliable data. The lack of accurate, comprehensive data on hate crimes undermines the ability of states to understand fully and to deal effectively with the problem of hate crime. Accurate monitoring of hate crimes is essential to give an overview of ongoing trends and enable appropriate preventive action in the form of support or referral to another agency (such as to ODIHR).⁵²

According to the European Union Agency for Fundamental Rights (FRA)⁵³ report, official data collection mechanisms can be classified into three categories, based on their scope and transparency (amongst the 27 EU Member States): 'limited data', 'good data', and 'comprehensive data'. Countries in the 'limited data' category record few incidents and a narrow range of bias motivation; Hungary belongs to this category. Countries with 'good' data collection, such as Austria, record a range of bias motivations. Finally, countries with 'comprehensive' data collection record a range of bias motivation, types of crimes, and characteristics of incidents, such as in the United Kingdom.⁵⁴ In the UK in 2007, the members of the criminal justice system (police, Crown Prosecution Service, Prison Service, and other agencies) agreed on a common definition of monitored hate crime to cover five 'strands', in particular: disability, race, religion/faith, gender identity, and sexual orientation. Primarily, this was to ensure a consistent working definition to allow accurate recording and monitoring.⁵⁵

⁵⁰ Not In Our Town, About Not In Our Town, <http://www.niot.org/about>, 26 January 2014.

⁵¹ Loudes – Paradis, Handbook, 56.

⁵² Association of Chief Police Officers in Scotland (ACPOS), Hate Crime Guidance Manual 2010, Northern Constabulary, September 2010, 29.

⁵³ The FRA is one of the EU's decentralised agencies. These agencies are set up to provide expert advice to the institutions of the EU and the Member States on a range of issues. FRA helps to ensure that the fundamental rights of people living in the EU are protected. <http://fra.europa.eu/en>, 20 May 2014.

⁵⁴ FRA, Making Hate, 8.

⁵⁵ GOV.UK, Statistics, Hate Crimes, England and Wales 2011 to 2012, 13 September 2012, <https://www.gov.uk/government/publications/hate-crimes-england-and-wales-2011-to-2012--2/hate-crimes-england-and-wales-2011-to-2012>, 30 January 2014.

Unfortunately, the work in confronting bias, hate, prejudice, and violence is not over neither in Austria, nor in in Hungary. Hate crimes present a challenge to states to create effective legal frameworks, to law enforcement bodies to design mechanisms and systems for responding to the divisive and destructive impact of hate violence and to civil society organizations and communities to address and combat hate as it arises in local communities. However, it has to be acknowledged that Austria and Hungary have already taken effective steps to improve the hate crimes legislation. Nevertheless, they could strengthen hate crimes laws to protect historically oppressed groups against violence motivated by bias and intolerance, implement public awareness campaigns to include law enforcement officials and organize training for police officers, prosecutors and judges in order to ensure that they can recognize, investigate and prosecute hate crimes. As the differences between the official and victim statistics show both countries may consider to strengthen the implementation of hate crime legislation by continuing to monitor incidents. Finally, ensuring that victims of hate crimes have access to assistance and protection, including counseling and legal assistance, may help making hate crimes visible. Fortunately, several good practices are available for both Austria and Hungary to combat hate violence in all the significant fields.