



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 November 2013

16278/13

**FREMP 186
JAI 1011
COPEN 206
DROIPEN 141
SOC 946**

COVER NOTE

from: The European Union Agency for Fundamental Rights (FRA)
to: Delegations

Subject: FUNDAMENTAL RIGHTS CONFERENCE 2013
Combating hate crime in the EU - Giving victims a face and a voice

Delegations will find attached the conclusions from the Fundamental Rights' Conference 2013: "*Combating hate crime in the EU - Giving victims a face and a voice*" organised by the European Union Agency for Fundamental Rights (FRA) in cooperation with the Lithuanian Presidency, held in Vilnius on 12-13 November.

Encl.:



FUNDAMENTAL RIGHTS CONFERENCE 2013

Combating hate crime in the EU

Giving victims a face and a voice

12-13 November 2013, Vilnius, Lithuania

Conference conclusions

The Fundamental Rights Conference was organised by the European Union Agency for Fundamental Rights (FRA) in cooperation with the Lithuanian Presidency of the Council of the EU. The event brought together over 400 representatives from international organisations, EU institutions and bodies, national administrations and parliaments, representatives of law enforcement agencies, the judiciary, civil society, and academia. Key speakers included European Home Affairs Commissioner Cecilia Malmström, Lithuanian Justice Minister Juozas Bernatonis, Irish Justice and Equality Minister Allan Shatter TD, as well as many other policy makers and experienced practitioners.

The conference featured thematic working groups that addressed the issues most pertinent for policy making in the field of hate crime, including (1) evidence on the extent of hate crime, (2) underreporting, (3) gaps in monitoring and recording, (4) legal instruments pertaining to hate crime in the EU, (5) victim support services, (6) effective practices of investigation and prosecution, (7) the discriminatory aspects of hate crime, (8) human rights education and remembrance, (9) capacity building for law enforcement and criminal justice systems, and (10) the challenges of cyberhate. The conference discussions resulted in a variety of concrete suggestions by conference participants, which are clustered below under proposals relating to legislation, policy implementation/practice, and data collection.

Protecting all victims of hate crime

Discussions throughout the conference showed clearly that hate crime is a problem which must be acknowledged by policy makers throughout the EU. Hate crime damages the lives of individuals and instills fear in entire communities. Hate crime undermines the EU's core values of respect for human dignity and human rights as set out in the Treaty on the European Union. These values reject the model of authoritarian or totalitarian regimes or any system that is founded on one ideology to the exclusion and discrimination of all others.



Facilitating reporting and increasing trust

The fact that hate crime is a daily reality in the EU calls for a decisive coordinated response at all levels of society and the institutional framework. In order to successfully combat hate crimes and the discriminatory attitudes underlying such offences, an effective criminal justice response is needed. Such a response must encourage and enable victims to report their experiences to the police. In reality, evidence shows that the criminal justice response is severely hampered by extensive under-reporting by victims. To counter this phenomenon, better victim support services are needed, as well as a response from the police that deals with victims in a respectful manner.

There are other powerful impediments that prevent victims of hate crime from reporting their experiences. These include feelings of fear, shame and guilt. Creating a culture of policing based on transparency, cooperation with communities, and accountability would do much to increase public trust in the police.

The uniqueness of hate crime

Hate crime does lasting damage that reaches far beyond the individual victim, but such offences nonetheless often remain unrecognised, unprosecuted and therefore invisible. If a person is targeted just because they are perceived as having a particular characteristic, the victim becomes afraid of repeat victimisation, while other people who may be perceived as sharing this characteristic may be afraid they, too, will become a target. Indeed, the physical harm resulting from violence motivated by prejudice is often less significant than the powerful accompanying sense of violation and humiliation. For all these reasons, victims must be given targeted support.

Politicians and public figures have a responsibility to take particular care of how they express themselves and should publicly condemn all forms of hate crime, as their words have a greater influence on the general climate of respect and tolerance than statements by members of the general public. Such action would help to prevent a sense of impunity among perpetrators and potential perpetrators, and counteract the fear that bias-motivated offences cause among others who could subsequently be targeted.

Promising practices

Member States are encouraged to take into account the positive experiences of other countries at every level when developing their own strategies to combat hate crime. A number of such experiences were discussed at the conference, with participants pooling their knowledge about existing promising practices in the Member States.

One such example is in Barcelona, where a special prosecution service has been set up to investigate and prevent bias-motivated crimes. This service cooperates with NGOs in order to build a closer relationship with victims, and has a rapid response mechanism for reporting Neo-Nazi events. The practice has been found so successful that it is being expanded to cover all of Spain.



I. LEGISLATION

1. European Union level

- 1.1. One of the main results of the conference was an overwhelming consensus that measures to address hate crime should be extended to cover all forms of bias and not prioritise victims of a particular form of discrimination. The legal framework needs to reflect this comprehensive approach. Therefore EU institutions should – by a unanimous decision of the Council and on the basis of the consent of the European Parliament – use the means offered by Article 83 (1) TFEU to extend protection to all the grounds covered by Article 21 of the EU Charter of fundamental rights; to crimes of public incitement to violence and hatred; to negationism; and to all attempts to revive any authoritarian or totalitarian ideologies of the past.
- 1.2. On this basis, a directive should replace the Framework Decision on Racism and Xenophobia.

2. EU Member States level

- 2.1. All Member States must fully implement the Framework Decision on Racism and Xenophobia.
- 2.2. When implementing the Victims Directive, Member States should pay particular attention to the rights and the differing situations of victims of crimes committed with a discriminatory motive. A case-by-case assessment of the individual victim's specific needs (Article 22 of the Directive) is also necessary. Victims and witnesses of hate crime must be given the opportunity of reporting the incident to the police and access to redress without fear of deportation.
- 2.3. All Member States should sign and ratify the additional protocol to the Convention on Cybercrime.
- 2.4. The legal responsibility of service providers, content providers and social media with regard to incitement to hatred online must be clarified.
- 2.5. Member States should extend protection against discriminatory crime to all the grounds listed in Article 21 of the EU Charter of Fundamental Rights.
- 2.6. Member States must ensure that the police always investigate the bias motive behind a crime whenever there is indication of such a motivation.
- 2.7. Member States should establish systems enabling victims and witnesses of hate crime to report incidents through a variety of means, including to the police, online, through civil society organisations, or through smartphone applications. All of these systems need to be coordinated.
- 2.8. Member States should consider the application of penalty enhancement in criminal legislation as a means of ensuring that bias motives are taken into consideration in a timely fashion and throughout criminal proceedings.
- 2.9. Member States could take the guidance offered by the European Commission for Democracy through Law (Venice Commission) and the European Commission against Racism and Intolerance (ECRI) into consideration when drafting hate crime legislation.



II. POLICIES AND PRACTICES

While the solutions listed above are all positive and feasible ways forward to combat hate crime more effectively, legislation and guidelines can only be said to have achieved their purpose when they are implemented. The practical application of these proposals is therefore the main challenge that still lies before us.

3. INTERINSTITUTIONAL COORDINATION

- 3.1. Greater coordination and cooperation between EU Institutions (Commission, Council, Parliament), EU agencies (CEPOL, Eurojust, Europol, Eurostat, FRA) and intergovernmental organisations (Council of Europe, ECRI, OSCE/ODIHR) is needed on hate crime to create synergies and fight bias-motivated offences more effectively.
- 3.2. Member States should set up structures to monitor hate crime and draft policies that make use of all relevant actors in addressing hate crime, including law enforcement agencies, the organs of criminal justice, statutory human rights bodies, civil society organisations, and academia.
- 3.3. Multi-agency partnerships, including between national authorities, statutory human rights bodies, law enforcement agencies, the criminal justice system and civil society organisations should be encouraged and strengthened.
- 3.4. Member States should consider establishing national action plans to fight hate crime, involving civil society in the process.
- 3.5. There is a need to improve the exchange of information between organisations focused on equality and non-discrimination on the one hand and the criminal justice system and victim support on the other.
- 3.6. The EU Agency for Fundamental Rights should work together with Member States to facilitate good practice exchange and assist the Member States in their effort to develop effective methods to encourage reporting and ensure appropriate and adequate recording of hate crimes.

4. POLICE

- 4.1. Specialised units and/or focal points dealing with hate crime within law enforcement agencies and public prosecution services should be established, including focal points dealing specifically with cyberhate.
- 4.2. Police liaison/contact officers responsible for reaching out to minorities are needed.
- 4.3. Models of community policing to build trust are necessary, including cooperation with civil society.
- 4.4. Law enforcement agencies need to review their practices of racial profiling, taking into account the message these practices send to communities.
- 4.5. Police services need to develop and subsequently periodically review routines established specifically to respond to hate crime incidents, protect the rights of victims and investigate cases of hate crime.
- 4.6. Victims and witnesses of hate crime must be given the opportunity of reporting the incident to the police and access to redress without fear of deportation.



- 4.7. Police training is needed to increase understanding for and recognition of hate crime and to raise inter-cultural awareness on hate crime as part of entry-level training for police officers.
- 4.8. Police services must develop a culture based on transparency and accountability that also entails greater engagement of the police in the community. This would increase trust among victims, their families, and support services in the police's ability to deal with hate crime.
- 4.9. To prevent or counteract institutional forms of discrimination in law enforcement agencies, effective and independent complaint mechanisms about police conduct or hate incidents perpetrated by law enforcement officials must be established.

5. CRIMINAL JUSTICE / COURTS

- 5.1. The application of penalty enhancement should be considered to ensure that bias motives are taken into account in a timely fashion and throughout criminal proceedings.
- 5.2. Court decisions must be publicised.
- 5.3. Specific training should be provided to the judiciary.
- 5.4. Redress mechanisms, including the provision of compensation and restitution, must be strengthened.

6. VICTIM SUPPORT

- 6.1. Victims of hate crime need targeted and specialised support services that can also be provided by peers and should include legal advice, legal aid, psycho-social assistance, and interpretation.
- 6.2. Victim support services need to be adequately funded and staffed.
- 6.3. Victims of hate crimes must be sufficiently informed and made aware of their rights.
- 6.4. It must be ensured that the victim does not need to see perpetrator again.
- 6.5. Low threshold reporting (online reporting, reporting to a contact officer, third party reporting including civil society and National Human Rights Organisations etc.) should be established.
- 6.6. Staff working in victim support services should receive external supervision on a regular basis.

7. INSTITUTIONS WITH A HUMAN RIGHTS REMIT

- 7.1. All institutions with a human rights remit need to raise awareness on hate crime and on access to justice for victims of hate crime.

8. CIVIL SOCIETY AND OTHER ACTORS

- 8.1. Civil society organisations should promote an understanding of what hate crime is among the groups with whom they work, and should serve to build bridges between minority groups and the police.
- 8.2. Advocacy work should be undertaken to change the legal framework, creating a more comprehensive recognition of different bias motivations.



- 8.3. Training and awareness raising should be established for those who form the first point of contact with victims. Rules on confidentiality should also be reviewed in order to enable medical institutions to report to the police.
- 8.4. Social media platforms should be obliged to report discriminatory content to the police.
- 8.5. Private industry should consider establishing an ombudsman mechanism to monitor and report on cyberhate.
- 8.6. Systems could be established to ensure the anonymity of internet users is not abused by those who post discriminatory or hateful content.
- 8.7. Media literacy must be promoted in schools and elsewhere to give users the ability read online content with a critical eye.
- 8.8. EU institutions should support Member States in their efforts to preserve the memory of the crimes of authoritarian and totalitarian regimes. Without relativising existing remembrance, it should be discussed how to broaden the historical basis of remembrance, with consideration to how more recent history can be integrated and how remembrance can be linked to today's diverse societies, also in view of combating hate crime today.
- 8.9. EU institutions and Member States should provide funding and resources for commemorating events, maintaining memorial sites and museums, making use of the testimonies of survivors, and establishing programmes of human rights education and training, for networking as well as exchanging knowledge and ideas at European level.

III. DATA COLLECTION

- 9.1 A group of experts needs to be established at EU level to exchange expertise and to review systems of data collection so as to increase the comparability of the data that are collected at Member State level as well as to enhance the effectiveness of data collection systems.
- 9.2 Statistical data on hate crimes must cover all of the grounds protected under Article 21 of the Charter of the EU.
- 9.3 Law enforcement agencies must collect and publish data annually on hate crime incidents that are reported to them and on the number of cases they refer to public prosecutors.
- 9.4 Public prosecutors must publish data annually on the number of indictments in relation to hate crime, always specifying the number of defendants.
- 9.5 Criminal courts must publish data annually on the number of convictions and acquittals in relation to hate crime, as well as the number of persons that were convicted or acquitted.
- 9.6 Criminal courts must publicise cases where convictions were made for hate crimes, highlighting the base offence, the grounds motivating the offence, and the sentence served.
- 9.7 Where relevant, victimisation surveys should be conducted to gain more detailed knowledge of the experiences of hate crime victims with law enforcement agencies.
- 9.8 The EU Agency for Fundamental Rights should continue assessing the extent of racism, xenophobia, antisemitism and other forms of hate crime through EU-wide surveys.