



**Categorizing and Investigating
Hate Crimes in Ukraine:
A Practical Guide**

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Published by the OSCE Office for Democratic Institutions and
Human Rights (ODIHR)

Ul. Miodowa 10

00-251 Warsaw

Poland

www.osce.org/odihr

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ISBN 978-83-66089-71-6

Cover and interior pages designed by Homework

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Introduction

Crimes motivated by bias (hate crimes) have a severe impact on individuals and communities and can escalate into broader conflict. The Ukrainian authorities have, therefore, recognized that hate crimes, while relatively limited in volume, present a special threat to stability and societal cohesion. Hate crimes have been designated *control crimes*, which are under the constant review of the National Police Main Investigation Department.

In Ukraine – as everywhere else – hate crimes are severely under-reported.¹ While there are many reasons for this lack of reporting, the correct recognition, legal qualification, investigation and prosecution of hate crimes that are reported can strengthen the trust of victims in the authorities and, thus, contribute to raising the reporting rates. Absent this, shortcomings in categorization and investigation can lead to later changes in legal qualification, including returning the indictment, wasting time and resources, and most importantly, can have an adverse effect on the authorities' rapport with the victims and their communities.

This Guide provides practical advice on recognizing, recording and investigating hate crimes in Ukraine. As a brief and practical reference tool, it complements the efforts of the National Police Main Investigation Department, which drafted a detailed *Methodological Recommendation on Investigating Hate Crimes*,² and will assist prosecutors overseeing the investigation process.

The use and implementation of this Guide will increase the awareness and understanding on the part of the authorities of the specifics of hate crimes and will contribute to increased recording of hate crimes. Appropriate classification of hate crimes and sensitive treatment of hate crime victims, recognizing their specific needs, as well as guidance on the types of evidence used in hate crime cases, will facilitate the effective prosecution and punishment of perpetrators.

1 Victimization surveys conducted across the OSCE region, in combination with available research, suggest that the non-reporting rate is around 80 per cent of all hate crimes.

2 Methodological Guidelines – Main Department of Investigations, National Police of Ukraine / Lviv University of Internal Affairs, 2017.

To these ends, this publication builds on international standards related to hate crime and that are binding on the Ukrainian police and prosecutors. In particular, the case law of the European Court of Human Rights (ECHR) is referenced throughout this text. The Guide also includes examples from the Ukrainian context, checklists for different stages of response to hate crimes and a list of useful contacts.

The Guide is intended for all police officers, including patrol police, criminal police, inquiry officers and other investigators, prevention officers, as well as other National Police authorities and prosecutors overseeing investigations. It is also a resource for all others interested in the topic, including representatives of victim communities and civil society and criminal justice policymakers.

This publication was developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) through a consultative process involving experts from the National Police, the Ministry of Internal Affairs, the Prosecutor General's Office and civil society organizations monitoring hate crimes in Ukraine. Olena Bondarenko of the Social Action Center NGO was involved in adapting this Guide to the Ukrainian context.

1.

Introducing hate crimes

Hate crime concept

A hate crime is a criminal offence committed with a bias motivation.³ Hate crimes always comprise two elements.

The first element of a hate crime is that the act that is committed is a crime. Hate crimes always require a base offence to have occurred. If there is no underlying crime, there is no hate crime. Hate crimes could include murder, acts of intimidation, threats, property damage, physical assaults, arson, robbery or any other criminal offence whose commission requires intent.

The second element of a hate crime is that the perpetrator must commit the criminal act with a particular motive – a bias. This bias motive separates hate crimes from ordinary crimes.

A hate crime does not require that the perpetrator feel hatred. Bias motivation means that a person holds prejudiced ideas about a group and criminally acts on them. Because hate crimes are committed based on what the targeted person, people or property are perceived to represent, the perpetrator may have no feelings at all about an individual victim.

Practically, the bias motive means that:

- the perpetrator intentionally chose the *target* of the crime because of some *protected characteristic* (discriminatory selection of the target); or
- while committing an ordinary crime, immediately before or after, the perpetrator *expressed hostility* towards the protected characteristics of the targeted person, group or property (ordinary crime aggravated by hostility).

3 OSCE MC Decision 9/09, agreed to by all OSCE participating States, states that “hate crimes are criminal offences committed with a bias motive.”

The target may be one person or more people, or may be property associated with a group that shares a particular characteristic. The perpetrator might target the victim because of actual or even perceived membership in, or association with, a group. For example, a perpetrator may attack someone because they think the victim is Jewish. The attack can still be prosecuted as a hate crime even if the victim was not a Jew, simply because the perpetrator selected the victim because of her or his perceived religion.

A protected characteristic is a common feature shared by a group, such as race, ethnicity, language, religion, nationality, sexual orientation, gender or any other similar common factor that is fundamental to their identity. As all people have protected characteristics, anyone – both members of majority and minority groups – can become targets of a hate crime.

Hostility can cover a wide range of emotions and its defining threshold should, therefore, be set relatively low. For example, the everyday understanding of a word could be used, which includes “ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.”⁴

Hate speech is a harmful phenomenon, linked to but distinct from hate crimes. Investigators and prosecutors should be aware of these differences when selecting the most appropriate charges. The main differences include:

- criminal law is not the only means to address hate speech, and OSCE commitments do not address whether speech should be criminalized; in Ukraine, some forms of hate speech are criminalized, while others are not; for hate crimes, on the other hand, criminality of the base offence is a defining element and criminal law, thus, the main tool to address hate crimes;

4 United Kingdom Crown Prosecution Service information on prosecuting hate crimes; <https://www.cps.gov.uk/hate-crime>

- hate speech crimes lack the first element defining hate crimes (base offence): without “harmful”, for example racist, content, the speech itself is not a crime;
- the motivation of an offender is irrelevant in hate speech cases; instead, most hate speech provisions require *public conduct* (the broad public is the addressee of hate speech offences, not the targeted community) and often the *inciting* effect (the potential to lead to acts by the incited public); and
- hate speech offences often do not have a direct victim – an individual that suffered harm as a result of the crime.

Hate speech often accompanies hate crimes. Abuse, utterances, insults, symbols and graffiti can be indications of bias underlying the base offence.

Hate crime impact

Hate crimes are high-impact crimes. Their impact on individual victims is more severe than that of ordinary crimes. Hate crimes present greater psychological distress for their victims because an aspect or multiple aspects of their identity have been targeted.

Hate crimes are message crimes. The offenders choose the individual victim or property as a representative of a group, in order to send a message of rejection or superiority to that group. Their impact thus reaches beyond individual victims, to family and friends, and to all other members of community who share the same protected characteristic as the victim, as well as to broader society.

This mechanism explains the danger hate crimes pose to societies. Hate crimes pit one group against another and can easily escalate, leading to retaliatory violence, civil unrest or even conflict on a wider scale.

In order to minimize these risks, the authorities need to work to prevent hate crimes, and a strong response is key. Authorities need to act swiftly against hate crimes and acknowledge their biased nature, to send a message back to the targeted community that hate crimes will not be tolerated by the authorities.

Hate crime victims

Hate crimes usually have a victim⁵ – a person who is harmed. Victims can be harmed physically or emotionally, or suffer material damage, for example as owners of vandalized property. Due to the discriminatory nature of hate crimes, victims have different needs than victims of other crimes.

The main needs of hate crime victims:

- They need to have their experience acknowledged and validated by law enforcement and criminal justice agents. They need to be believed and have their experiences recorded in the case file. Authorities should use impact statements in court. Victims should see the bias motivation addressed in the proceedings and in public statements;
- They should not be exposed to re-victimization. Authorities should avoid manifesting the same biased attitudes that the victim experienced in the incident;
- Their needs have to be assessed on a case-by-case basis to identify appropriate support measures. The victim's identity, including gender and the corresponding differences in support needs of men and women, should be considered in this process;

5 The term “victim” refers to a person harmed as a result of a crime. Under article 55 of the Criminal Procedure Code of Ukraine, the status of a victim (потерпілий) can be obtained at different stages of criminal proceedings. The principles of respectful treatment should apply regardless of the formal procedural status of the person.

- Their personal security, safety and well-being have to be guaranteed. Authorities should ensure protection from the offender, including by minimizing contact between the victim and the suspect or providing shelter, as required. Psychological counseling for victims and others affected, such as family members, should be provided;
- Victims should be treated sensitively and with respect. Principles of sensitive interviewing, taking into account the identity of the victim, should apply. Victims should not be over-interviewed;
- The language needs of victims have to be met, including through the use of interpreters, easy-to-read language, intermediaries or having important documents translated into the language they speak and understand;
- Victims must have access to the proceedings, both procedurally and in physical terms. Authorities should define the participation rights of victims of hate crime, ensure access for victims with disabilities, and make funds available for their travel to court;
- The privacy needs of victims must be met. In particular, authorities should not, for example, reveal the victim's religion, ethnicity, immigration status, or sexual orientation, without informed and explicit consent; and
- Victims need to be informed and involved. Authorities should inform victims of the main developments in their case and consult them on certain decisions, for example, when entering plea bargaining, resorting to restorative justice processes or when bias motivation is to be dropped.

The authorities need to take these needs and the harm suffered by victims and their communities into consideration, and address them in the process of receiving complaints, as well as in recording, investigating, prosecuting and in court.

In Ukraine, representatives of various groups are the targets of hate crimes. These include violent attacks against Roma communities where perpetrators commit arson, assault and even murder. There have also been numerous attacks on participants in public events dedicated to equality and non-discrimination in different regions of Ukraine.

Vandalism of religious sites, such as mosques, memorials and synagogues, is another widespread form of hate crime in Ukraine. Representatives of visible minorities have also suffered from hate crimes based on prejudice against ethnic, often simply “non-Slavic” – in the view of the perpetrators – groups. These victims have included both citizens of Ukraine and other states, as well as asylum seekers and refugees. The National Police and civil society organizations have recorded crimes against representatives of religious communities (Christians, Muslims and Jews), people with disabilities and other groups.

Hate crime offenders

Some hate crimes are committed by members of extremist groups that promote intolerance and deny the right to equal treatment, under the guise of one or another political agenda. Such “political” activity also often manifests itself in the organization of rallies or counter-protests, which can turn violent and provide the context for the commission of hate crimes. The fact that a hate crime has taken the form of an attack by an organized extremist group on a peaceful assembly or event represents further aggravation or an additional qualification of the offence,⁶ but should not lead the investigating officers to dismiss the biased nature of such an action.

6 For instance, under article 293 of the Criminal Code of Ukraine a “group violation of public order” or other offences may also be a hate crime. In these cases, the indictment should include all relevant offences in conjunction.

Most hate crimes, however, are carried out by people who have no links to extremist groups. The assumption that all the perpetrators of hate crimes are extremists can lead to the bias element being overlooked or minimized because the suspect does not fit into this category.

Annex I indicates types of hate crime offenders, with the aim to assist investigators in profiling and uncovering characteristic features of various types of hate crimes.

2.

Understanding hate crimes
under the Criminal Code of
Ukraine

The term “hate crime” or “bias crime” describes a type of crime, rather than a specific offence within the Criminal Code of Ukraine (CCU). However, the National Police collects data on and monitors “hate crimes” that can be qualified under different provisions of the CCU as one category of offences.

This category of crimes in CCU could be indicated by the use of terms “hostility” («ворожнеча»), “hate” («ненависть») and “intolerance” («нетерпимість»). In addition, the legislation includes an outdated term inherited from the period of the Soviet Union, “discord” («розбрат»). Other articles do not include any of the above terms, but would still consider certain acts hate crimes if assessed through the simple test for the two components of a hate crime:

- The act constitutes a criminal offence under the criminal code; and
- The act is committed with a “bias” motive.

While the first element presents no interpretational problems (only a criminal offence included in the CCU, which can be committed with intent, can be a hate crime), the second requires interpretation. The motive of “bias”, “hostility”, “hate” or “intolerance” is established when:

- The perpetrator has selected the target (person or property) of the attack based on a protected characteristic (race, nationality, religious views, etc.);⁷ or
- An otherwise ordinary offence is aggravated in its course, or immediately before or after, by expressions of hostility towards the victim’s or target’s protected characteristic.

7 Methodological Guidelines – Main Department of Investigations, National Police of Ukraine / Lviv University of Internal Affairs, 2017, p. 4, available to police through intranet.

Victims of hate crimes themselves do not have to be members of the group defined by the targeted protected characteristic – people and property can be targeted for association with the group that is being attacked.⁸ For instance, perpetrators of attacks on participants of the Equality March in Kyiv were motivated by bias against lesbian, gay, bisexual and transgender people (hereinafter abbreviated as LGBTI people or community) while individual victims were not necessarily representatives of the community, but simply supporting the cause. In addition, human rights defenders, lawyers and property of organizations that have a connection to the targeted group can, by association, also be targets of hate crimes.

Similarly, mistakes in the perpetrator's perception do not exculpate them from having committed hate crimes. For instance, an attack on a Ukrainian citizen with a non-Slavic name and/or ethnic background (such as a Ukrainian child of a local woman and a father of Arab descent), which features anti-migrant slurs, will constitute a xenophobic hate crime despite the perpetrator's mistaken perception of the victim's citizenship. Here, the perpetrator assumes the victim must be a migrant because their name and/or appearance does not meet the stereotypes about "Ukrainians" held by the perpetrator.

Direct proof of the emotional or mental state of the perpetrator (such as feelings of "hate", "hostility" or "intolerance") cannot usually be obtained. Moreover, provided the aggravating effect of bias motivation, similar to other offences with aggravating circumstances, the perpetrator is unlikely to provide a direct admission. For example, in case of grave bodily injury (art. 121), it is in the interest of the criminal to deny that the attack was motivated by intolerance, since the sentencing range increases by two years. Investigators will therefore be required to gather evidence of manifestations of an intolerant motive in order to establish that a hate crime has been committed. Here, investigators can refer to the bias indicators (see Chapter 3 below), which point to the bias motivation and provide guidance on the types of circumstantial evidence they can use to prove the motive.

8 ECHR case *Škorjanec v. Croatia* (application no. 25536/14, judgment of 28 March 2017), <<http://hudoc.echr.coe.int/eng?i=001-172327>>.

Qualification of hate crimes under the CCU

Hate crimes can be addressed under several provisions of the CCU, where bias motive is represented in different formats. The relevant provisions are analysed below. These articles cover crimes where the target is either an individual (physical integrity, life and health) or property. As mentioned above, they include varying terms, such as “hostility” («ворожнеча»), “hate” («ненависть»), “intolerance” («нетерпимість») and “discord” («розбрат»).

Importantly, state authorities have expressed the intention to unify the terminology related to hate crime across the CCU⁹ – amendments to the CCU should address these differences and replace the variations with the term “intolerance” (нетерпимість). Until then, for practical purposes, it is useful to understand different terms as synonyms indicating bias motive.

The following articles should be used in relevant cases for the qualification of offences when entered into the Unified Register Journal («Журнал ЄО»), Integrated Register of Pre-Trial Investigations («ЄРДР»), or in submitted police reports about criminal offences («рапорт»).

In line with the principles of criminal law, the bias motivation can only be attributed to the perpetrator’s action once. Therefore, combinations of the provisions listed below are not allowed. Officers should only select the provision most accurately describing the act before them.

9 Action Plan for the Implementation of the National Human Rights Strategy Until 2020, adopted as Annex to Decision of Government No. 1393-r, of 23 November 2015. Expected result 105/3, pp. 157-158. <<http://hro.org.ua/files/docs/1468264193.doc>>.

Specific penalty enhancement provisions in the CCU

These are aggravated forms of specific offences, such as murder (art. 115[2][14]), intended grievous bodily injury (art. 121[2]), intended bodily injury of medium gravity (art. 122[2]), battery and torture (art. 126[2]), torture (art. 127[2]) and threat to kill (art. 129). In other words, “bias” or “intolerance” are aggravating factors and affect the choice of the penalty.

EXAMPLE of Legal Qualification 1: A student from Morocco was attacked while walking in the evening with his friend from Ukraine. The perpetrator used a knife and stabbed the student in the head and his friend in the chest before running away. The victims survived the injuries. Investigation found that the perpetrator was also suspected of committing crimes against other international students in Ukraine. The suspect’s neighbors and classmates testified that he expressed racist ideas and talked negatively about people of other ethnic backgrounds. The suspect was charged with and convicted of attempted murder on the grounds of national, racial and religious intolerance (article 115[2] [14]).

In this case, the base offence was attempted murder. The bias motive was supported by witness testimonies, and the police took into account other attacks on people of different ethnicities. Here, the perpetrator was also charged with attempted murder in relation to the Ukrainian citizen, who was associated with the Moroccan student – since the perpetrator attacked based on his bias and her affiliation with the group (in this case, friendship with the person from that group).

These offences have a common denominator: The aggravation is triggered when the crime is committed on the grounds of “racial, national, or religious intolerance”. At the time of writing, these articles do not explicitly cover other vulnerable groups mentioned previously. However, there is recognition that these groups should be included. Namely, the Action Plan for the Implementation of the National Human Rights Strategy¹⁰ provides for an expansion of the list of characteristics in these articles that would include “sexual orientation, transsexuality, disability and language”. Until these changes are made, the application of specific penalty enhancements is limited in scope.

The National Police, in their reporting on hate crime, recognizes that sexual orientation and gender identity, disability and language are characteristics that perpetrators use in selecting victims and targets of offences in Ukraine, and incidents with corresponding bias motivations should, therefore, be recorded as potential hate crimes, following the procedures explained in Chapter 3.

EXAMPLE of Legal Qualification 2: Two Jehovah’s Witnesses were disseminating religious literature. A man started an argument, insulting them and demanding that they stop their religious activities. One of the Jehovah’s Witnesses turned around and started walking away. The perpetrator ran after him, hit him in the back and then began kicking him. The victim sustained bodily injuries of medium gravity. The perpetrator was charged with infliction of bodily injuries aggravated by racial, national and religious intolerance (article 122[2]).

In this case, the base offence was assault with infliction of bodily injuries of medium gravity, and the bias motive was identified through statements of the perpetrator in relation to the religious activities of the victim.

10 Ibid.

Substantive offences in the CCU

The second group of provisions refers to crimes where bias is a defining element of the offence. In these cases, existence of bias will determine the nature of the offence itself. These include articles 161 (violation of citizens' equality based on their race, nationality or religious preferences), 178 (damage of religious architecture or houses of worship), 179 (illegal retention, desecration or destruction of religious sanctities), and 180 (preclusion of religious ceremonies).

Article 161¹¹ has been widely used by the police in Ukraine in hate crime qualification. The list of protected characteristics in this provision is open-ended and broader than in other hate crime provisions in the CCU, and explicitly includes, for example, sex, disability or place of origin. Art. 161 addresses primarily hate speech and discrimination.¹² Until changes are introduced to expand the lists in aggravating clauses of other articles, however, using article 161 in conjunction with the provisions defining the "base offences" enables prosecuting a broader range of hate crimes. The rules of article 70 (determination of sanctions for a combination of crimes) should be followed.

11 All references to Art. 161 in this Guide are to be understood as pointing to the provision of art. 161(2), which at the time of writing covers violent acts. Current legislative plans envisage turning the current art. 161(1) into a new stand-alone offence. If such plans materialize, the references to art. 161 throughout this Guide would have to be reinterpreted accordingly.

12 This provision does not require proof of bias motive of the perpetrator – a definitional element of a hate crime according to the OSCE definition – and crimes defined in art. 161 can be "victimless" crimes, unlike most hate crimes. From the OSCE's point of view, this provision was neither originally intended, nor is it optimal, for prosecution of violent hate crimes.

General penalty enhancement provision in the CCU

All other crimes committed intentionally can also include the intolerant motive¹³ – the aggravating circumstances under article 67(1)(3) can be applied. However, at the moment, article 67 includes a limited list of characteristics and is not mandatory for the courts to apply. For proper prosecution of cases and to give the prosecution a stronger stance in court, it is important to ensure that pre-trial investigation takes into account the motive and collects all relevant evidence, and that prosecutors request the application of this provision by the court at sentencing.

Understanding protected characteristics under the CCU

A protected characteristic is a fundamental or core characteristic shared by a group.¹⁴ Ukrainian legislation includes several lists of protected characteristics including article 161 of the CCU, article 1 of the Law on Preventing and Combating Discrimination in Ukraine, article 7 of the Law on National Police, etc. The protected characteristics in these provisions vary slightly, but none of them is exhaustive. In its current version, article 161 explicitly lists the following protected characteristics:

- race;
- skin colour;
- political, religious and other beliefs;
- sex;
- age;
- ethnic and social origin;

13 Methodological Guidelines, op. cit, note 7, p. 7.

14 *Understanding Hate Crimes: A Handbook for Ukraine*, (Warsaw: OSCE/ODIHR, 2015). p. 7. <<https://www.osce.org/uk/odihhr/208186>>.

- disability;¹⁵
- citizenship;
- property and family status;
- place of residence;
- language; and
- other characteristics.

In the context of criminal investigation, protected characteristics in other laws, such as the anti-discrimination law, as well as in ECHR case law, should be considered in addition to article 161 of the CCU to interpret the meaning of “other characteristics”. “Other characteristics” should be similar to the explicitly listed protected characteristics in their significance as part of the person’s core identity. “Other characteristics” usually include sexual orientation and gender identity,¹⁶ health status and others. For instance, the High Specialized Court of Ukraine recognized that “sexual orientation” falls within protection from discrimination as one of the “other characteristics.”¹⁷ ECHR case law likewise has established a duty for states to unmask and investigate bias motivation on the grounds of sexual orientation, even in the absence of explicit mention of this protected characteristic in the law.¹⁸

15 Disability should be understood as an evolving concept rather than a legal definition referring to a medical condition. Disability results from the interaction between people with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

16 Perpetrators of crimes motivated by bias against sexual orientation and gender identity target persons because of their actual or perceived belonging or connection with the LGBTI community.

17 “Circular on ensuring equality of labor rights of citizens in considering disputes in the field of labor relations”, p. 14, <<http://zakon2.rada.gov.ua/laws/show/v-644740-14>>.

18 ECHR case M.C. and A.C. v. Romania (application no. 12060/12, judgment of 12 April 2016), <<http://hudoc.echr.coe.int/eng?i=001-161982>>.

EXAMPLE of Legal Qualification 3: A group of people attacked a public LGBT rights event in Ukraine. During the attack, a person was hit by an unknown object and sustained minor bodily injuries. The perpetrator belonged to a group that was protesting the event and accompanied his actions with homophobic statements and insults. The perpetrator was charged with a homophobic physical assault under article 161(2).

While sexual orientation is not explicitly mentioned in the CCU as a protected characteristic, interpreting the meaning of “other characteristics” in line with the relevant ECHR case law, article 161(2) should be invoked in conjunction with the provision governing the base offence – physical assault. While provisions of articles 125 and 161(2) both describe physical assault, article 161(2) better corresponds to violent hate crimes because it also addresses the homophobic motives of the offender and provides for a higher penalty.

3.

Determining and recording
bias motive

As the bias motivation of a perpetrator defines a hate crime, determining and documenting it is a prerequisite for successfully prosecuting hate crimes. Proving motive in hate crimes does not require a proof of hostility against a group or the belonging of the victim to this group. Instead, the investigation should show that the perpetrator was acting on a bias against a specific group, and accordingly selected the person or property object as a target.¹⁹

The perpetrator's bias motive, like other aspects of intent to commit a crime, is a subjective element of a crime. Like other subjective elements, the presence of the bias motive can be inferred from its observable manifestations in the outside world.²⁰ Many such manifestations of the potential bias motive can be observed in a case independently of the suspect, and are referred to as *bias indicators*.

It is important that police officers understand and take into account these factors at all stages of dealing with a (potential) hate crime. The police have the general duty to identify the motives behind criminal offences. Additionally, the ECHR has established a specific duty to take all reasonable steps to unmask bias motivation when investigating crimes.²¹

Police officers are, therefore, under an obligation to identify the following bias indicators in all criminal offences where they may be present. Moreover, some of the following indicators may support police officers in identifying potential conflict and preventing crime. Understanding the nature of confrontation in public areas and immediate responses can lead to improved ability to ensure public order.

19 Methodological Guidelines, *op.cit.*, note 7, p. 20.

20 This is a standard approach in criminal theory and practice. For example, a perpetrator hitting the victim strongly on the head with a metal bar leads to the conclusion that the intent was to kill, whereas using a newspaper to hit would not lead to such a conclusion.

21 See, for example, the ECHR case *Angelova and Iliev v. Bulgaria* (application no. 55523/00, judgment of 26 July 2007), <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-2072690-2194631&file_name=003-2072690-2194631.pdf>.

Bias indicators

Bias indicators²² are “a fact or several facts that suggest that a crime was committed on the basis of prejudice. [...] Bias indicators are based on objective factors, circumstances and actions that point to the fact that it was a bias-motivated crime”.²³

The checklist below presents a comprehensive but not exhaustive list of the main types of bias indicators, including questions that investigators can ask to draw out evidence of bias motivation.²⁴

Types of bias indicators:

Victim or witness perception

- Do the victim or witnesses perceive that the criminal act that occurred was motivated by bias?

Comments, written statements, gestures or graffiti

- Did the suspect make comments, written statements or gestures regarding the victim’s membership or perceived membership in a group?
- Were drawings, markings, symbols or graffiti left at the scene of the incident?

22 Bias indicators are objective facts, circumstances or patterns attending a criminal act(s), which, standing alone or in conjunction with other facts or circumstances, suggest that the offender’s actions were motivated, in whole or in part, by any form of bias. Massachusetts Model Protocol For Bias Crime Investigation. Cited in: Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide, OSCE/ODIHR, 2014, p. 15, < <https://www.osce.org/odihr/datacollectionguide> >.

23 Methodological Guidelines, *op.cit.*, note 7, p. 16.

24 More details and practical examples of bias indicators documented in incidents recorded by civil society organizations in Ukraine between 2015 and 2018 can be found in *Using Bias Indicators: a practical tool for police*, published in 2019 alongside and complementing this Guide.

Differences between perpetrator and victim on ethnic, religious or cultural grounds

- Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?
- Is there a history of animosity between the victim's group and the suspect's group?
- Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
- Was the victim engaged in activities promoting her/his group at the time of the incident?
- Was the victim visibly identifiable as a member of a minority group?

Organized hate groups

- Is there evidence that such a group is active in the neighbourhood (e.g., posters, graffiti or leaflets)?
- Did the offender use behaviour associated with membership in a hate organization, such as using Nazi salutes?
- Did the offender have clothing, tattoos or other insignia associated with a particular extremist or hate group?
- Did the incident occur during or shortly after a rally of such a group?
- Did a hate group recently make public threats towards a particular group?
- Does the suspect's background or online presence indicate possible links with a hate group?

Location and timing

- Did the incident occur on a date of particular significance (e.g., a religious holiday or national day)?
- Did the incident occur during a specific part of the day, when other members associated with the victim group frequent the area when the incident occurred (e.g., during prayers, etc.)?
- Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church, synagogue or other place of worship)?
- If the target was property, was it an object, facility or place with religious or cultural significance, or a community facility, such as a cultural centre or a historical monument?
- Did the incident occur only a short time after a change in a minority's presence in the area (e.g., the first minority family to move into the area, the opening of a refugee center)?

Patterns/frequency of previous crimes or incidents

- Have there been similar incidents in the same area against the same group?
- Has there been a recent escalation of incidents against the same group, beginning with low-level harassment and non-criminal activity to more serious criminal conduct, such as vandalism or assault?
- Was there a previous incident that may have sparked a retaliatory response against the targeted group?
- Has the victim or community recently received threats or other forms of intimidation in the form of phone calls or mail?

Nature of attack

- Did the incident involve unprovoked and extreme violence or degrading treatment?
- Was the incident carried out publicly and in a way to make it public, such as the recording and posting on the internet?
- Did the violence involve mutilation of racist symbols or did the property damage involve symbols meant to defile or desecrate, such as excrement or animal parts?

Lack of other motives

- Considering other potential bias indicators, such as the nature of the violence or the difference between the victim and the perpetrator, was there no other apparent motive for the crime?

Bias indicators are the main tool available to determine the presence of a bias motive. The existence of bias indicators does not automatically prove the criminal act was a hate crime, although some may be used in court as circumstantial evidence.

Bias indicators should be analysed and understood in context and in relation to each other. The behaviour displayed by the perpetrators, the words used and other indicators differ vastly depending on the group that is targeted in a given case, and bias indicators can also be region-specific. It may also be difficult for a police officer to understand the meaning of certain words or phrases used by the perpetrators. That should not be a reason for dismissing them; consultation with the relevant group or civil society organization may shed light on it.

Examples of group-specific bias indicators are included in Annex II.

Recording and reporting of hate crimes

The registration of hate crimes should: (i) clearly identify a case as a potential hate crime; (ii) record – in the incident description or other designated fields – the victim perception and other bias indicators; (iii) correctly characterize the bias motivation involved; and (iv) provide appropriate preliminary legal qualification.

The proper recording of hate crimes is also important with regard to their status as control crimes. Offences aggravated by intolerance are reported to and monitored by the Main Department of Investigations of the National Police. This practice enables a better understanding of the current hate crime situation at the regional or local level, but also develops standards and practices in investigation, thus facilitating the work of police officers.

Considering the importance of bias indicators and their potential use as criminal evidence, bias indicators need to be documented and recorded in registration documents («Журнал ЄО») and entered in the Integrated Register of Pre-trial Investigations («ЄРДР»), as well as in other procedural documents in the case file.

When registering statements and reports on criminal offences and other events, the competent officer (dispatch officer or officer-on-duty at the police station) who receives information about a criminal offence should be aware of bias indicators and list the relevant circumstances under the column “Contents of a statement and report” (time, place, circumstances) of the Unified Register.

If the offence is reported in person by an applicant, the Protocol on Recording a Crime Report provides specific space for recording these facts: Question 5 states “[...] indicating circumstances of the criminal offence that may indicate the motive of intolerance”.²⁵

The officer responsible for filling out the form (the officer on duty at the police unit) should be aware of bias indicators, as the victim (applicant) may not be familiar with specific legislation and may be experiencing stress following the offence. Recording a detailed answer to question five will support the work of investigators and detectives in proving the bias motive during pre-trial investigation and provide useful information for prompt identification of perpetrators.

25 Protocol on Recording a Crime Report, adopted as Annex 3 to the *Instruction on the procedure for keeping unified records in police on reports of criminal offenses*, and amended by the Order of the Minister of the Interior of Ukraine No. 438 of 30 May 2016, <<https://zakon.rada.gov.ua/laws/show/z0864-16#n6>>.

For investigators, it is important to verify information provided by the victim or other police officers at the initial stage and look for bias indicators – circumstances that suggest a bias motive for the crime. These should be reflected in the Criminal Offence Record in the Integrated Register of Pre-Trial Investigations («Картка кримінального правопорушення»), at a minimum, in the description of the offence («фабула») and preliminary qualification of the crime if qualifying clauses («кваліфікуючі ознаки») are apparent when information is being entered. Police and prosecution authorities should take into account bias indicators to determine the motive and the further course of investigation.²⁶

Importantly, a perpetrator may hold several motives for the commission of a crime. For example, a crime based on sexual orientation can also be accompanied by robbery. In Ukraine, perpetrators often select gay men as targets for robbery. During the crime, they often express homophobic statements and threaten to out victims if they go to the police. The perpetrators do intend to receive financial gain from the crime; however, they select victims based on a protected characteristic (namely, sexual orientation in this example) and express their bias against the victims. With the underlying offence of a robbery, the crime can constitute a hate crime based on sexual orientation.

The following examples illustrate what type of information should be collected and how it should be recorded, in order to implement the principles outlined above.

26 Methodological Guidelines – Main Department of Investigations, National Police of Ukraine / Lviv University of Internal Affairs, 2017, p. 16.

EXAMPLE of recording hate crimes 1:

A police officer receives information about an attack on a group of Roma from an online source. Upon consideration of the video showing an assault by a group of people on a Roma person, the officer submits a report (panopt) describing the nature of offence and reflecting bias indicators (reports about the events on social media of radical right groups, comments and statements heard in the video, etc.). The investigator assigned to the case should reflect the anti-Roma bias motive (intolerance towards an ethnic group) in the case description in the Integrated Register of Pre-Trial Investigations.

EXAMPLE of recording hate crimes 2:

An applicant who was attacked after participating in an equality march is at the police station reporting the crime. The victim has sustained injuries of medium gravity. The police officer on duty, filling out the Protocol form, should indicate under Question 5 whether the person considers that their participation in the equality march motivated the perpetrators, and any other indicators there were to support the statement (e.g., banners, slogans, insults used by the perpetrators). The investigator assigned to the case should reflect the bias motive (in this case, homophobic motive) in the case description in the Integrated Register of Pre-Trial Investigations and select the relevant qualification of “homophobic aggravation.”

4.

Effective investigation of
hate crimes

Effective investigation into hate crimes means (i) understanding that a case might be a potential hate crime by using bias indicators,²⁷ and (ii) taking the necessary investigative steps to secure and uncover evidence supporting this conclusion.

The presence of bias indicators should prompt investigators to ask the necessary follow-up questions and further investigate all potential bias motivations to enable and support a hate crime prosecution. Uncovering a bias motivation by using bias indicators is not a one-time exercise, but rather a continuous process. Bias indicators can be categorized as linked to (i) the victim, (ii) the perpetrator, or (iii) the circumstances of the incident. While apprehension of the suspect is important as their statements and background can provide further indication of bias motive, a case can and needs to be classified as a potential hate crime even with the suspect still not identified or at large.

Police officers and investigators are likely to encounter bias indicators when recording in the following sequence:

- When taking statements from the victims and witnesses;
- When observing and assessing the circumstances of the crime, such as the location, timing or patterns of previous attacks; and
- When questioning the suspect.

The nature of evidence and its available sources determine the investigative steps required when uncovering bias motives.²⁸ The checklist below illustrates the main steps involved in first response, preliminary and follow-up investigations. This checklist can be understood as establishing minimum standards when responding to and investigating hate crime cases.

27 As referred to in ECHR case *Balázs v. Hungary* (application no. 15529/12, judgment of 20 October 2015). <http://hudoc.echr.coe.int/fre/?i=001-158033>

28 See the Chapter 6 of this Guide.

First Response:

Police officers arriving on the scene should act immediately to:

- Secure the scene;
- Stabilize the victim(s) and request medical attention when necessary;
- Ensure the safety of victims, witnesses and perpetrators;
- Preserve the crime scene, collect and photograph physical evidence, such as:
 - Hate literature;
 - Spray paint cans;
 - Threatening letters; and
 - Symbolic objects used by hate groups (e.g., swastikas, crosses);
- Identify criminal evidence on the victim;
- Request the assistance of translators when needed;
- Conduct a preliminary investigation, record information on:
 - Identity of suspected perpetrator(s);
 - Identity of witnesses, including those no longer at the scene;
 - Prior occurrences, in this area or with this victim; and
 - Statements made by suspects – exact wording is critical; and
- Arrest the perpetrator(s) if probable cause exists.

Note: In the presence of the victim, the officer should neither confirm nor deny that the incident is a hate crime; that determination will be made later in the investigative process.

Follow-up Action:

After taking immediate action, police officers should:

- Assign only one officer to interview the victim(s), whenever practical, in order to minimize trauma;
- Protect the anonymity of the victim, whenever possible;
- Explain to the victim and witnesses the likely sequence of upcoming events, including contact with investigators and the possibility of media coverage;
- Refer the victim to support services in the community, providing written resource lists when possible;
- Tell the victim how to contact the police department to obtain further information on the case;
- Report the suspected hate crime to the supervisor on duty;
- Depending on department policy, refer media representatives to the supervisor on duty or public information officer;
- Document the incident thoroughly on department report forms, noting any particular hate crime indicators and quoting the exact wording of statements made by perpetrators; and
- Assist investigators in making any other reports that may be required under police guidelines and laws.

Investigation:

When conducting a thorough follow-up investigation, officers should:

- Interview the victim(s) and witnesses thoroughly and respectfully;
- Secure evidence by taking photos of offensive graffiti or other symbols of bias;
- Document the circumstances and apparent motives surrounding the event;
- Locate and arrest any suspected perpetrators not apprehended at the scene;
- Provide police supervisors or public information officers with information that can be responsibly reported to the media;
- Inform the victim of what is likely to happen during the continuing investigation;
- Appeal to witnesses to come forward, by canvassing the community;
- Offer rewards for information about the incident, when possible;
- Co-ordinate with other law enforcement agencies in the area to assess patterns of hate crimes and determine if organized hate groups are involved; and
- Collaborate with the responding officers to complete any written reports required by their department and state agencies.

Suspects may assume that police have the same biased views that they have. Consequently, when asked “Why did you attack those people?” some suspects will explain not only that they committed the crime, but also express their biases to the police. Such comments by suspects are persuasive evidence of bias motivation.

Interviewing people living or working in the area near the location of the hate crime is important for several reasons. Neighbours may have seen or heard the incident or may have heard the perpetrators use slurs toward the victims or their group either before or after the attack. Perpetrators often commit hate crimes because they believe that the community supports their biased views. Consequently, they may frequently express their biases openly.

Interviewing people in the area near the attack also sends the message that the police are taking the matter seriously. This will be very reassuring and calming to others in the community who belong to the same group as the victim. Additionally, these interviews may deter others from engaging in similar bias-motivated crimes.

5.

Working with victims of
hate crime

Principles of victim treatment

Victims of hate crimes are vulnerable to secondary victimization – reliving the trauma of the attack – including due to treatment by the police. While all treatment of crime victims should be respectful, professional, individualized and non-discriminatory at all stages, dealing with hate crime victims requires increased sensitivity in order to avoid re-victimizing and to ensure that the victims can provide their best evidence. Victim-blaming and the use of inappropriate language should be avoided under all circumstances.

While Annex III provides detailed guidance on interviewing victims, the following principles should be adhered to when interacting with probable victims of hate crimes.

Principles for engagement with the victims of hate crime:

- Remain calm, objective and professional;
- Express your regret to the victim that he or she was the target of a crime;
- Request the assistance of translators when needed;
- Let the victim defer answering questions if they are too distraught;
- Ask the victim if they have any idea why this happened to them;
- Reassure the victim that they are not to blame for what happened;
- Voice support of any actions the victim took to protect themselves and defuse the situation;

- Allow the victim to vent feelings about the incident or crime;
- Encourage the victim to tell the story in her or his own words;
- Ask the victim to recall, to the best of their ability, the exact words of the perpetrator(s);
- Ask the victim if they have family members or friends who can support them;
- Inform the victim of what efforts can be made to enhance their safety;
- Reassure the victim that every effort will be made to ensure the confidentiality of the investigation;
- Tell the victim about the probable sequence of events in the investigation; and
- Provide information about agencies and organizations that can provide protection and support for victims, their families and members of the community.

Specific needs of targeted groups

While all hate crime victims are particularly vulnerable to deep and long-lasting trauma, victims from specific groups can have different needs. For example:

- Victims from particular religious communities might have some distinct faith and cultural needs, and these needs might differ according to gender;
- Some people with disabilities who have suffered hate crimes and who have restricted mobility will need accessible premises;
- Those who suffer hate crimes because of their sexual orientation or gender identity may potentially face a number of additional issues. Being accepted and not having their sexual orientation or gender identity questioned is paramount. They may also face the fear of having their sexual orientation or gender identity made public, sometimes referred to as “outing”. They may also face repeated victimization due to conscious or unconscious bias, use of incorrect or hurtful terminology, as well as questioning of the experience;
- Refugees, asylum seekers and migrants may also have additional needs and might require specialist legal support in relation to concerns they have about their legal status or residency rights if they report their experience of hate crime to the police or other authorities. In these cases, refer victims to specialized refugee support agencies (such as the UNHCR or its partners in Ukraine);
- Roma communities are often stigmatized and generally socially excluded. Public authorities can have a negative view of Roma people and, consequently, ignore or not believe their complaints of a hate crime. There is often little empathy towards them.²⁹

29 *Hate Crime Victim Support in Europe: A Practical Guide*, RAA Sachsen, 2016, <https://www.raa-sachsen.de/tl_files/raa_sachsen/Guidelines/RAA_Saxony>, Ukrainian version: <https://issuu.com/socialactioncentre/docs/support_guide_ua>, p. 29.

- Roma and Sinti communities have been subject to collective retribution in retaliation for delinquencies of individuals. Majority population groups have sometimes forcibly expelled (or tried to expel) entire Roma families or communities. At times, tensions between Roma and local majority populations have escalated into collective violence or attacks, including cases of killings.³⁰ The most immediate concern for many Roma victims is, therefore, their lack of personal security and the need to be believed and have complaints taken seriously.

Chapter 7 provides selected information about civil society organizations working with and/or for the victims from some of these targeted communities.

30 *Police and Roma and Sinti: Good Practices in Building Trust and Understanding*, OSCE Strategic Police Matters Unit and ODIHR Contact Point for Roma and Sinti, (Warsaw: OSCE/ODIHR, 2010) <<https://www.osce.org/odihr/67843?download=true>>.

6.

Evidence of bias motive

Bias and prejudice are the drivers of hate crimes. Evidence will be required to establish motive, regardless of the criminal code provision used to qualify the act in question, and whether it requires proof of “intolerance,” “hate” or “hostility”.

Bias motive can be inferred from the words, actions and circumstances surrounding the incident. Because hate crimes are message crimes, perpetrators often leave clear indications of their motives, which can be identified by looking in the right places. Hate crime prosecutions often rely on the defendant’s statements or admissions. In the absence of admissions, the prosecution can rely on inferences drawn from circumstantial evidence within the totality of the evidence.³¹

The main types and sources of evidence that can be used to prove bias motivation are listed in the table below.

Type of evidence	Sources
Offensive statements towards the victim during the incident	<ul style="list-style-type: none"> • Victim, witnesses to the incident
Statements before the event that indicate planning	<ul style="list-style-type: none"> • Suspect’s associates, friends, family or other witnesses present at location of statement • Search of the suspect’s cell phone, camera phone, computer and Internet usage

31 For detailed discussion of direct and circumstantial evidence and its use in hate crime prosecutions, please refer to ODIHR’s *Prosecuting Hate Crimes: A Practical Guide* available here: <<https://www.osce.org/odihr/prosecutorsguide>>.

Statements of admission after the event	<ul style="list-style-type: none"> • Suspect’s associates, friends, family, or other witnesses present at location of statement • Search of the suspect’s cell phone, camera phone, computer and Internet usage • Statements made in public or overheard in public settings
Statements of direct admission	<ul style="list-style-type: none"> • First responders to scene, witnesses, police or prosecution investigators
Connections to an organized hate group	<ul style="list-style-type: none"> • Search of the suspect’s house for magazines, posters, books, leaflets, etc. • Search of the suspect’s cell phone, camera phone, computer and Internet usage
Circumstances of the crime.	<ul style="list-style-type: none"> • Time, place with significant relevance for the offender or for the victim • Brutality of the attack and manner of commission • Patterns of similar incidents that have same manner of commission

The actual identity of the victim is not critical to proving a hate crime and cannot serve as evidence of bias motivation on the part of the perpetrator. Firstly, the law does not require that the victim possess a protected characteristic, merely that the perpetrator acted because of it. Secondly, attempts to prove the victim’s membership in a certain group might not be possible, as there are no legal standards for doing so. Lastly, the protection of the victim’s privacy requires that the authorities work only with information victims share voluntarily about their identity. Publicizing the victim’s identity, be it their religion, belief or sexual orientation, without their informed and explicit consent would be unethical and in some cases illegal.

7.

Whom to call for advice

Resources within the National Police

The Main Investigation Department of the National Police of Ukraine has the primary responsibility for investigating hate crime cases, co-ordinating and providing methodological support to investigating officers. Where investigators specialized in hate crime have been appointed at the regional or local level, they can be consulted and should be able to receive reports from victims or others.

The Human Rights Department of the National Police of Ukraine is responsible for monitoring the observance of human rights in the work of the National Police of Ukraine. The Department has established a network of regional human rights co-ordinators.³²

Specialized civil society organizations

When receiving a crime report or speaking to a victim, it is important to remember that they have just suffered a traumatizing experience and will require time to heal. To help them in this process, as well as to build rapport enabling the victim to provide their best evidence, police officers might require additional support or advice.

Police officers should first ask the victim if they have a preference or positive experience with a civil society group or their representatives. If not, the following list of organizations that provide support to different groups can be contacted depending on the needs of the victim, as well as the specialization of the organization:

- Chirikli Foundation works on Roma rights and can be contacted through their website <<http://www.chirikli.com.ua/index.php/en/>>, (044)221-58-92, email: fond.chirikli@gmail.com;

³² Contact information for the main and regional departments of the Human Rights Department of the National Police of Ukraine is available online, at <<http://old.npu.gov.ua/mvs/control/main/uk/publish/article/1998717>>.

- Insight NGO describe themselves as an LGBT organization that does consultations for victims of hate crimes and can connect victims to shelter services. Visit their website at <<http://www.insight-ukraine.org/uk/page/dopomoga>>;
- LGBT LIGA provides assistance to LGBTI people, email: ligalgbtkiev@gmail.com;
- Nash Svit provides assistance to LGBTI victims. Contact through the website <<http://gay.org.ua/>>, +38 (095) 273-03-09; email: shuraz@gay.org.ua;
- Social Action Centre provides support for victims of hate crime and can be contacted through their website <<http://socialaction.org.ua/>>, +38 093 035 1515, email: info@socialaction.org.ua;
- The Right to Protection provides support to asylum seekers, refugees and IDPs and can be contacted through their website <<http://r2p.org.ua/uk/>>, +38 044 337 1762;
- Ukrainian Helsinki Union provides legal assistance related to human rights violations, a list of their offices is available on their website <<https://helsinki.org.ua/advice-centres/>>, +38 (044) 485 17 92.

Free legal aid centres

In addition, legal aid centres provide free consultations related to criminal procedures, for everyone, including the victims of crime. This also includes counselling on actions that can be taken in the case of a crime. Moreover, according to the Law on Free Legal Aid, vulnerable categories of the population, as well as foreign citizens of certain countries, are entitled to free legal aid, including the support of a lawyer.³³

33 The list of regional legal aid centers and hotline numbers is here: <<http://legalaid.gov.ua/ua/tsentry-z-nadannia-bezoplatnoi-vtorynnoi-pravovoi-dopomohy>>.

Human Rights Commissioner's Office

Victims can also contact the Ukrainian Parliament Commissioner for Human Rights, as the Office of the Commissioner is monitoring and recording hate crime cases. Complaints and reports can be sent to hotline@ombudsman.gov.ua, tel. 0800-50-17-20.

Annex I:
Hate crime offender
“typology”

Being “low volume” (and high impact) crimes, comprehensive and reliable data on hate crime offenders are hard to come by across the OSCE region. This annex uses a typology, originally developed in 1993 on the basis of research into a large number of hate crime case files from the Boston Police Department, and confirmed and expanded upon by both academics and practitioners in the following decades.³⁴

A surprisingly large number of perpetrators of hate crimes may be youthful “**thrill-seekers**”, rather than hard-core offenders on a mission. Often, perpetrators had hoped their acts of violence would provide them with respect from their friends, a feeling that explains why so many hate crimes are committed by groups of young men.

The second most common perpetrator of hate crimes is the “**defensive offender**” who feels that they are answering an attack by their victim. This can include a perceived insult, interracial dating, the integration of their neighbourhood, or a partner’s decision to leave. Often, male “defensive offenders” imagine that the very existence of lesbians and gay men, women rejecting their advances or having equal status, is an assault upon their values or their own identity.

The least common offender is the “**mission offender**”, who is a hard-core fanatic, imbued with the ideology of racial, religious or ethnic bigotry and often a member of, or a potential recruit for, an extremist organization. While the oldest organized hate groups appear to be on the decline, new strategies are emerging where organized hate groups incite impressionable individuals to commit acts of violence against targeted minorities.

34 McDevitt, J., Levin, J., & Bennett, S, “Hate crime offenders: An expanded typology”, *Journal of Social Issues*, 2002, 58(2), pp. 303-317.

A fourth category of hate crime offenders are the “**retaliatory offenders**”. Retaliatory hate crimes are incidents in which offenders act in response to an ordinary crime or hate crime perpetrated by “others”: an individual or a group sharing protected characteristics. The crime, or perceived crime, that triggers a retaliatory hate crime could have been committed in another part of the country, or sometimes even in a different state (for example, a series of anti-Semitic hate crimes in the United Kingdom and France were triggered by conflict in Gaza, or anti-Muslim hate crimes following a terror attack committed by a Muslim). Sometimes, retaliatory hate crimes are triggered by rumours of crimes attributed to a particular group by the media.

Retaliatory attacks based on revenge tend to have the greatest potential for fuelling additional hate offences.

Annex II: Examples of group- specific bias indicators

Disability hate crime:

- Was the perpetrator a “friend,” care-giver, acquaintance or neighbour? Studies show that most hate crimes against a person with a disability are perpetrated by someone that the victim knows (“mate crime”);
- Have the incidents escalated in severity and frequency?
- Have there been previous incidents? For example, financial or sexual exploitation; making the victim commit minor criminal offences such as shoplifting; using or selling the victim’s medication; taking over the victim’s accommodation to commit further offences such as taking or selling drugs, handling stolen goods; encouraging under-age drinking and sexual behaviour;
- Has prior opportunistic criminal behaviour become systematic? Has there been regular targeting, either of the individual victim or of their family/friends, or of other people with disabilities?
- Have multiple perpetrators been involved in incidents condoning and encouraging the main offender(s)? Have they filmed on their mobile phones and/or sent pictures to friends/social networking sites, YouTube, etc.?
- Has the victim been falsely accused of being a paedophile, “informer” or “fun spoiler”?
- Have sustained attacks or excessive violence been involved?
- Have cruelty, humiliation or degrading treatment been involved, often related to the nature of the disability, for example, blindfolding someone who is profoundly deaf, destroying mobility aids, etc.?

- The absence of derogatory words (commonly heard as part of racist and other hate crimes) can make gathering of evidence more difficult. However, where such evidence is not available, but there is evidence of the offender targeting a vulnerable victim because of their disability, or causing greater harm to a disabled person, this should be presented to the court as it is relevant to the seriousness of the offence; and
- People with disabilities are more likely to report incidents to a third party rather than to the police.³⁵

Hate crime based on sexual orientation or gender identity:

- Was the victim with a same-sex partner at the time of the event? Were they holding hands or kissing? Were they wearing LGBTI or “pride”³⁶ badges/ribbons/clothing (rainbow/pink or black triangles)?
- Was the victim engaged in activities promoting LGBTI/rights/services/issues at the time of the incident? Is the victim a public figure who is known as being LGBTI or for advocating LGBTI issues (the victim may be openly heterosexual, but support LGBTI causes and, thus, become a victim of a LGBTI-bias motivated hate crime)?
- Did the perpetrator use homophobic/transphobic language or terminology such as “faggot” or “pederast”? Did the perpetrator refer to the perceived sexual orientation, transgender status or gender identity of the victim?

35 *Guidance on Prosecuting Cases of Disability Hate Crime*, United Kingdom Crown Prosecution Service <http://www.cps.gov.uk/legal/d_to_g/disability_hate_crime/>.

36 “Pride” refers to the stance against discrimination and violence toward LGBTI people to promote their dignity and equality rights. As such, the term has been used throughout the world to mark symbols and events aimed at advancing these ideas, including the so called “Pride marches”, often organized on or around the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT) on 17 May.

- Did the perpetrator use hand gestures that would indicate perceived sexual orientation?
- Did the attack happen at a time of an event addressing LGBTI issues (e.g., a pride festival)?
- Did the attack happen at a time of political significance in the area for LGBTI people (e.g., marriage equality laws being passed, opening of a new LGBTI bar for the first time in a city)?
- Did the offence happen near an LGBTI premises/bar/centre? Did the offence happen in an area that is known as a meeting place for LGBTI people? Did the offence happen at a location that is known as a public sex environment/cruising area?
- Did the offence happen at a location/time where previous events have happened or at similar times? Does the perpetrator have a history of committing this type of offence?
- Was there an unusual level of violence/brutality or sexual violence associated with the attack that would appear inappropriate given in the facts of the case? Did the violence concentrate on genital or sexual organs?³⁷

Anti-Muslim hate crime:

- Were anti-Muslim speech or symbols involved, such as references to:
 - 9/11: this is an anti-Muslim hate graffiti symbol which is used to associate Muslims with terrorism; or
 - Crusade Cross: this symbol is also spray-painted in the form of graffiti following attacks against Muslim property, especially mosques.

37 Based on material from the European Gay Police Association (EGPA). Available at <http://gay-police.eu/files/9214/1640/2884/Bias_Indicators_for_Transphobic_and_Homophobic_Crimes_Including_Learning_Exercise.pdf>.

- Was the victim visibly identifiable as a Muslim (such as a woman with headscarf)? Was the victim a Muslim community leader, imam or a human rights defender dealing with the protection and safety of Muslims?
- Was the target a Mosque, Muslim cemetery, Islamic cultural centre, school/madrassa or monument to a Muslim personality?
- If the target was a place with religious or cultural significance, was an object offensive to Muslims (such as pork flesh or blood) left at the scene or a religiously important item, such as a copy of the Quran, desecrated?
- Did the incident take place during an Islamic religious holiday, Friday prayers or on the anniversary of some terrorist attacks, in particular 9/11? Did the incident take place in the aftermath of an attack attributed to a Muslim perpetrator?
- Mixed motives: were racial slurs used targeting Asians, people from the Middle East or immigrants, such as an attack on local imam involving the shouts of “Turks out!”?
- Mistaken identity: was the victim confused for a Muslim, such as an attack on a Sikh man, wearing a turban, with shouts of “terrorists out!”

Anti-Semitic hate crime:

- Did the suspect make comments or written statements about Jews, Israel and the Holocaust, or about the victim being Jewish (such as “Zhyd”)? Were slurs that display anti-Semitic stereotypes involved (suggesting, for example, that Jews are rich and greedy)?
- Have statements been made attributing to the individual victim or Jews collectively the responsibility for actions of the government of Israel?

- Were drawings or graffiti of symbols, such as the Star of David, or Nazi-era symbols, such as the Swastika, left at the scene of the incident?
- Was the victim visibly identifiable as a Jew, for example, by wearing a *kippah/yarmulke*, by wearing a necklace with the Star of David or a football jersey of a team perceived to be Jewish? Was the victim engaged in activities organized by the Jewish community, an organization affiliated with the Jewish community or an organization that could be perceived as being linked to Israel or the Jewish community at the time of the incident?
- Were objects or items left at the scene that suggest the crime was the work of a neo-Nazi or another extremist nationalist organization?
- Did the offender use behaviour associated with membership in a hate organization, such as, using Nazi salutes, shouting Nazi slogans and making statements that deny or trivialize the Holocaust?
- Did the incident occur on a date of particular significance, such as:
 - Religious holidays (*Yom Kippur, Rosh Hashana, Pesach*, etc.);
 - Holocaust Memorial Days, such as, 27 January, 19 April or 9 November; or
 - An anniversary of a pogrom of local or national significance?
- Did the incident occur on the eve of *Shabbat*, i.e., on Friday evening, when members of the Jewish community frequent the area when the incident occurred or are on their way to prayer?
- Was the victim in or near a synagogue, a Jewish school, a Jewish cemetery or a Jewish community building when the incident occurred? Was the victim attacked close to a place associated with Jews, such as, a Jewish Museum, a Jewish restaurant, the Israeli Embassy or the site of a Jewish culture festival?

- Was property damage inflicted on an object of religious or cultural significance to Jews, such as, a Menorah? Was a pilgrimage site (such as Rabbi Nachman of Breslev's grave in Uman or surrounding facilities) the target of the attack?
- If the target was a place with religious or cultural significance, was an object offensive to Jews (such as pork flesh or blood) left at the scene?
- Have there been other anti-Semitic incidents in the same area? Has the victim or the Jewish community or a victim's organization recently received threats or other forms of intimidation in the form of phone calls or mail?

Hate crime targeting Christians and members of other religions:

- Do the victims or witnesses perceive the incident to have been motivated by bias towards Christians or Christianity?
- Did the perpetrator make comments, written statements, gestures or draw graffiti that indicate bias? This may include anti-Christian, anti-religious (such as Satanist or anarchist) symbols, or messages attacking church structures or doctrine;
- Is there a history or pattern of prior violence, such as conflicts between members of different Orthodox Christian communities in Ukraine?
- Was the target a place with religious or cultural significance, such as a church, Christian school, Kingdom Hall (Jehovah's Witnesses) or a cemetery? Was the property attacked in a previous anti-Christian incident? Attacks on property can involve damage to religious statues, objects, stained glass and or nativity scenes;
- Was the victim visibly identifiable as a Christian, for instance a person wearing a cross or clerical attire?

- Was the target a member of the clergy, such as a priest or a nun? Were the victims targeted while evangelizing, propagating their faith or distributing religious materials? Was the victim a convert to Christianity?
- What was the nature of the attack? For example, did the attacker set religious items on fire or defecate inside a church? Anti-Christian hate crimes may also target symbolic objects, such as consecrated hosts that represent the body of Christ for some denominations of Christianity; or
- Did the incident occur on a significant date, whether for religious (such as Christmas or Easter), historical or political reasons?

Hate crime against Roma and Sinti:

- Did the suspect use hate speech (such as “death to crows”, “Gypsy criminals, we will set your homes on fire, you will burn inside your houses!”, or “Maybe Hitler didn’t kill enough of them”)?
- Did the suspect use denigrating and stigmatizing language, directly categorizing Roma as less than or non-human making reference to animals (such as “rats”, “parasites”, “cockroaches”, “dogs”)?
- Were drawings or graffiti that depict and demonize Roma left at the scene of the incident?
- Were Nazi-era symbols left at the scene (e.g., a swastika)? Was there any Nazi-related gesture by the suspect (e.g., the Nazi salute)?
- Was the victim in or near their community, village, settlement, camp, neighbourhood or residential area?
- Was Roma property attacked in an arson attack?

- Does the offender support a group that is known to be hostile to Roma? Did the offender have clothing, tattoos or other insignia associating her or him with an extremist hate group (e.g., paramilitary, skinheads, neo-Nazi)?
- Was the incident carried out publicly or in a way to make it public, such as recording and posting on the Internet?

Racist and xenophobic hate crime (selected indicators):

- Did the suspect make monkey chants, comment or make racist written statements about “Africans”, “blacks”, “Roma”, “gypsies”, “Arabs”, etc.?
- Were drawings or graffiti of symbols (e.g., a swastika or Celtic Cross) found at the scene of the crime or incident?
- In case of violence, did the violence involve racist and/or xenophobic symbols, or was it accompanied by racist, xenophobic chants or comments, pejoratives, etc.? In the case of property damage, did the property damage involve racist epithets (e.g., monkey, bananas, swastikas)?
- Was the victim an immigrant, refugee or asylum seeker?
- Was the victim a prominent figure (such as a football player, artist or politician), who was known for their specific race, ethnicity or national identity?
- Did the incident occur following or amidst political campaigns that scapegoated particular groups and blame them for various social ills such as crime, unemployment, lack of social or economic opportunities?

- Was the victim in or near an area or institution identified with a specific group (e.g., Roma neighbourhood, African/immigrant area, Chinese market), when the incident occurred? Was the victim attacked close to another place associated with their group (African, Roma, immigrants), such as a community centre, administrative offices dealing with the group's specific needs (immigration assistance offices), cultural centres or clubs/bars, restaurants, shops or specific embassies representing targeted groups and/or nationalities?
- Was the target associated with accommodating or providing for migrants, refugees or asylum seekers, such as a shelter?

Annex III:
Guidance on interviewing
victims of hate crimes

Move fast

It is important to meet with victims soon after the hate crime occurs:

- Victims may need immediate assistance, including medical treatment, repair for damaged property and new housing;
- Victims' memories about the details of hate crimes will be clearer if they are interviewed sooner; and
- Some perpetrators of hate crimes continue to commit hate crimes and increase the level of violence if they are not identified and apprehended. Beginning an investigation soon after a hate crime is committed increases the chances that the perpetrators can be stopped before they attack again.

Explain and refer

The investigating officer should explain at the outset of the first meeting who they are, what they can and cannot do, and what others can do. Being clear about the limits of what can be done and not raising false expectations is essential to building trust:

- Explain the purpose of the interview and how what is learned will be used on behalf of the victim;
- Explain that the interviewee's name and other identifying details will be kept confidential unless the interviewee agrees otherwise, such as for use in an official complaint;
- Explain the various forms of support that are available;
- Refer the victim of a hate crime to appropriate resources, which may include support from civil society organizations, counselling and medical care;
- If information gathered from the interview will be used to combat hate crimes more broadly, explain how this will be done; and

- Tell victims that you will update them on the progress in the investigation. However, do not make this statement if you do not think you will be able to provide them with this information because you will not continue to be working on the case. The anxiety of hate crime victims rises and the reputation of the police decreases when victims go weeks or even months without receiving updates from police.

Listen

In meeting with victims, it is important to provide a safe space, a trained interviewer and, above all, to *listen* to the victim. Describing a hate crime is often difficult and upsetting for the victim, so trained interviewers should conduct the interviews. Interviewers should ensure that they are in a space in which victims will feel safe and confident that they will not be overheard. If the person with whom the victim makes initial contact is unable to conduct an interview (or if the victim does not want to be interviewed by that person), then that person can suggest alternatives and, if possible, assist the victim in contacting the appropriate person. Where possible, victims should be interviewed by a person of the same gender.

The most effective way to conduct an interview is to listen to the victim's story without offering advice and telling the victim that you know how they feel. It is, however, completely appropriate to offer verbal support, such as: "I'm sorry this happened to you" or "No one should have to feel like this." Document the details of the incident as the victim reports them (see below "Taking Notes").

Validate

Those involved in interviewing victims should take into account that one of the victim's biggest fears is that he or she will not be believed. The response from the first person a victim reports to may be very important in determining whether the victim continues seeking the assistance he or she needs. Police officers – as well as civil society organizations and others – can respond to victim accounts by saying that they are sorry about what happened. This validates the victim's feelings without prejudging the results of further investigation and reassures the victim that he or she is valued as a person.

Taking notes

A record of the interview is important for subsequent action. It is important to take handwritten notes of interviews with victims of hate crimes or hate-motivated incidents. Standard formats for interviews can facilitate note-taking, as well as ensure that basic information is covered. It is very difficult to help a victim if there is no clear record of what occurred.

Interviewers should keep in mind that it can sometimes be important to record direct quotations precisely in their notes. These may include particular descriptive phrases used by the interviewee to describe the attack or her or his feelings during or after the attack. Similarly, the interviewee's memory of the precise words used by her or his attackers before, during or after an attack may be important to record as a direct quote, without summarizing or paraphrasing. Such quotes can provide a key indication of whether the victim was the target of a hate crime. Moreover, if the interviewee decides to make a complaint to police or other public authorities, or decides that elements of the case can be used in media or campaign action, these statements may be important to have on record.

After interviewing the victim, it is important to prepare a typed interview summary. This avoids the difficulty that others may have in reading handwritten notes.

Critical details to obtain

Interviewers of hate crime victims should elicit detailed information about the incident. The basic elements of who did what to whom, when, where and why are important parts of the victim's account. Interview records should be kept secure. Basic details to obtain in an interview include:

- The victim's name and how to contact her or him (this may include an address and telephone number, or an institution or person in the local community who can contact the victim);
- The date, time and location of the incident;
- A clear description of what happened and what was said. It is particularly important to include the victim's memory of exactly what the perpetrators said, including any offensive or degrading language or slurs. Write the language used by the perpetrator in your official report. The exact language that the victim heard the perpetrator use may be the strongest evidence of the bias motivation for the crime;
- The impact on the victim, including any physical injuries, loss or destruction of property and emotional distress;
- The names, addresses and telephone numbers and description of any witnesses to the incident; and
- Details of any prior contact made with local government or (other official bodies) in order to report the incident or in order to seek medical or other attention, as well as the responses of such bodies.

Overcome language barriers

Interviewing victims or witnesses who do not speak the same language as the interviewer presents special challenges. It is important to have competent interpreters who have been trained in the sensitivities of the interview process and can be trusted to translate the actual words of the interviewee. Interpreters should have the confidence of interviewees. The contact details of interpreters need to be kept in case of a future trial.

If using bilingual members of the community with no training as interpreters, the interviewer should ensure they understand beforehand what the process entails and that they are to interpret faithfully what the interviewee says (without explanation or other interruption). In some cases, members of the victim's family may prefer to interpret for them. In such cases, the interviewer should make clear that they should carefully interpret the interviewee's own words without interruption, and that if they wish to add information they can do so in a separate interview.

Having children interpret for their own family members should be avoided, if possible. Children who may already be traumatized by an incident may suffer renewed trauma in translating family members' accounts of abuse and the interviewer's questions. They may also make significant errors when interpreting, such as omitting graphic or uncomfortable details.

Cultural awareness

Police officers, civil society organizations and others who deal with the victims of hate crimes must be able to work effectively and appropriately with culturally diverse communities and take into account issues of gender within these communities. Competence in dealing with cultural differences (sometimes called "cultural competence") is particularly important when addressing hate-motivated crimes.

Those working with victims of hate crimes should have a basic understanding of the cultural differences that affect how or whether a victim reports a hate crime and whether he or she seeks access to support services. When dealing with hate crimes, law enforcement and other criminal justice personnel should take into account the cultural and gender differences within groups facing discrimination.