

Hate Crimes against LGBTI Persons

**TRAINING ON
REPORTING AND
VICTIM SUPPORT**

**Lambda Warszawa
&
Galop UK**



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Preface: Why this training manual?

HATE CRIMES spread fear, anger and the feeling of vulnerability among targeted communities. They impact how people live their lives and perceive the criminal justice system. If unaddressed, bias-motivated violence may lead to heightened security risks and community tensions. Violence targeting LGBTI (lesbians, gay men, bisexual, trans and intersex people) remain a problem across Europe. Multiple sources, including the EU-wide FRA LGBT survey¹ and various national studies² show that members of the LGBTI community are victimized more often than members of the general population; that victims tend to not report attacks; and that some hate crimes hurt more than similar, non-bias crimes.

Depending on the country, if LGBTI victims choose to report crimes and seek support, they may contact law enforcement agencies, equality bodies, social services, hospitals, general victim support services, LGBTI rights groups or other bodies. These front-line 'reporting centres' and victim support service providers are in a good position to gather information about the scale of the problem and specific features of anti-LGBTI hate crimes, the impact this type of violence has on victims, and information about the barriers to reporting and getting help. 'Reporting centres' and victim support service providers should be able to offer holistic support, with a menu of support options, such as legal advice, housing and therapeutic support and psychosocial assistance. To avoid secondary victimization, it is crucial that the personnel of these services have the necessary knowledge, skills and experience working with victims of anti-LGBTI violence.

While there is no international legal obligation to treat sexual orientation, gender identity, gender expression or sex characteristics as protected grounds in national criminal legislation, the rights of the victims of anti-LGBTI hate crimes are addressed in the EU Victims' Directive.³ Specifically, when implementing the Directive, member states should pay particular attention to the support and protection needs of victims who are vulnerable because of their personal characteristic or because they experienced a hate crime.

Considering the above, the Come Forward project aims to build the capacity of professionals working at public institutions and non-governmental organizations which may

¹ FRA, *EU LGBT Survey - European Union Lesbian, Gay, Bisexual and Transgender Survey - Main Results* (Luxembourg: FRA, 2014), <http://fra.europa.eu/en/publication/2014/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-main>.

² To mention just a few: Jenny Paterson et al., 'The Sussex Hate Crime Project', 2018, <https://www.sussex.ac.uk/webteam/gateway/file.php?name=sussex-hate-crime-project-report.pdf&site=430>; Paulina Górska et al., *Raport o Polsce [Report on Poland]* (KPH, 2016), <http://kph.org.pl/wp-content/uploads/2016/08/hnm-raport-pl-www.pdf>; Marina Milković, *Brutal Reality: A Research Study Investigating Anti-LGBTIQ Violence, Discrimination, and Hate Crime in Croatia* (Zagreb: Zagreb Pride, 2013), http://www.zagreb-pride.net/new/wp-content/uploads/2016/01/brutalna_stvarnost_en_web.pdf; Plataforma de ONG de Acción Social and FELGBT, 'NETWORKS AGAINST HATE', 2015, https://www.google.pl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjNju6cls3KAhUpJnlKHb2FCkYQFggeMAA&url=http%3A%2F%2Fwww.plataformaong.org%2Fconferencia%2Fwp-content%2Fuploads%2F2014%2F11%2FdossierRCOenglish.pdf&usq=AFQjCNfI8T-lZrnxP8YpuASZS7_4UcOAw&sig2=0ymTom8cEBw7HIO3-ztnWg&bvm=bv.112766941,d.bGQ.

³ European Parliament and Council of the European Union, 'Directive 2012/29/EU of the European Parliament and the Council of the European Union of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA', OJ L 315, p. 57–73 § (2012), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>.

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come in contact with LGBTI victims in 10 EU countries: Belgium, Bulgaria, Croatia, Greece, Hungary, Italy, Lithuania, Poland, Spain and the United Kingdom. The project encompasses, *inter alia*, research and capacity-building activities. Considering research, a study on the barriers in access to justice for LGBTI victims of hate crimes, involving 200 interviews and 661 surveys, was conducted in 2017. The resulting comparative report *Professionals and anti-LGBT Hate Crimes*⁴ identifies gaps in the knowledge, skills and experience of personnel at 'reporting centres' and victim support service providers across all of 10 project countries.

Considering capacity building efforts, by the end of 2018, over 1000 professionals – police officers, NGOs, social workers and others – from 10 EU countries will have received tools and knowledge to work with LGBTI victims of hate crimes. To support their work, a practical handbook *Working with victims of anti-LGBT hate crimes*⁵ and the collection of good practices on reporting anti-LGBTI hate crimes and supporting victims⁶ have been developed and published. In addition to that, an info-pack on hate crimes for the LGBTI communities is being prepared.

While no training programme is perfect, the strength of this particular manual is in its specificity and versatility. It is the only training curriculum that currently exists in Europe which covers the topic of working with anti-LGBTI hate crime victims to such extent. As such, it complements the existing materials on identifying, reporting, policing and prosecuting hate crimes. The training curriculum can be easily adapted depending on the type and needs of participants as well as the length of the training event (one or one-and-a-half day).

I believe that this manual has a great potential to help organizations and institutions across Europe to work with victims of anti-LGBTI hate crimes, respecting their identity and responding to their needs.

Dr Piotr Godzisz

Scientific leader of the Come Forward Project

⁴ Jose Antonio Langarita Adiego et al., 'Professionals and Anti-LGBT Hate Crimes: Comparative Analysis of Training Needs for Reporting Centres and Support Service Providers' (University of Girona, 2017).

⁵ Marko Jurčić, 'Working with Victims of Anti-LGBT Hate Crimes. A Practical Handbook', ed. Mia Gonan (GALOP UK, 2018), www.lgbthatecrime.eu.

⁶ Mia Gonan and Katarina Jaklin, *Countering Underreporting and Supporting Victims of Anti-LGBT Hate Crime. Good Practices Report* (Zagreb: Zagreb Pride, 2018), www.lgbthatecrime.eu.

Introduction

LGBTI persons are disproportionately selected by offenders to be the victims of crime. LGBTI persons are often hesitant to report hate crimes to the police and when they do report them, the police often fail to record these crimes adequately or even record them at all. At the same time, LGBTI victims are often reluctant to seek psychological help after a hate incident and if they do so, it is critical that supporting institutions recognize the specific needs of LGBTI victims. This handbook is prepared in order to help to change that situation.

The purpose of this training handbook is to provide information and tools that will support trainers in developing and delivering training for NGOs, victim support services and criminal justice agencies on hate crime against LGBTI people. The learning objectives are to:

- Increase the awareness of the need to use appropriate language and terminology in the context of working with and supporting LGBTI victims;
- Increase the understanding of what makes hate crime different from any other crime;
- Identify barriers in access to services faced by LGBTI victims and discuss how NGOs, victim support service providers and CJS agencies can respond to these barriers;
- Improve understanding of the role NGOs, victim support service providers and CJS have in the reporting/supporting process;
- Become familiar with participatory training methods that can be utilised during hate crime training.

The content of the training builds on the European Convention on Human Rights and relevant case law from the European Court of Human Rights, as well as other international human rights standards, particularly the Victims' Rights Directive. It is informed by and complements already existing training materials for civil society and CJS officials, particularly the publications *Policing Hate Crime against LGBTI persons: Training for a Professional Police Response*⁷ and *Guidelines for monitoring of hate crimes and hate motivated incidents*,⁸ as well as hate crime training materials produced by the OSCE Office for Democratic Institutions and Human Rights.

The methodology in this manual is based on many years of training experience of the authors (Ewa Stoecker and Dr. Jasna Magic), hate crime experts (Dr. Piotr Godzisz, Nick Antjoulle and Melanie Stray), as well as representatives of partner organizations who took part in the training-of-trainers event in Warsaw in April 2018. Thanks to our fruitful cooperation and openness, we have developed a training resource that is rich in both content and training methodology.

⁷ Joanna Perry and Paul Franey, 'Policing Hate Crime against LGBTI Persons: Training for a Professional Police Response', ed. Yuri de Boer and Evgenia Giakoumopoulou (Council of Europe, 2017), <https://rm.coe.int/prems-030717-gbr-2575-hate-crimes-against-lgbti-web-a4/1680723b1d>.

⁸ CEJI, 'Guidelines-for-Monitoring-of-Hate-Crimes-and-Hate-Motivated-Incidents', 2012, <http://www.ceji.org/media/Guidelines-for-monitoring-of-hate-crimes-and-hate-motivated-incidents-PROTECTED.pdf>.

Overview

This manual comprises six chapters covering different training modules. The modules are made up of course material and practical activities that are broken down into clear steps, including specific timing indications and instructions about any preparation work that needs to be undertaken.

Chapter 1: Opening of the workshop contains guidance on building trust and a learning atmosphere by allowing participants to get to know each other and refer to their expectations and fears in the context of the prepared training program.

Chapter 2: Definitions and nature of hate crime contains activities on understanding LGBTI identities and current terms connected with sexual and gender diversity, as well as understanding of hate crime and its impact.

Chapter 3: Barriers to reporting anti-LGBTI hate crimes covers reasons why hate crime is underreported, and best practice in responding to hate crime reports in order to reduce these barriers.

Chapter 4: What can we do to fight underreporting? covers organisational barriers and how to address them. It explores the responsibilities of all parties in the process of reporting and support for hate crime victims and the role of cooperation between organizations and institutions.

Chapter 5: International standards and national legislation covers the international sources of the concept hate crime, understanding bias indicators, and national legislation.

Chapter 6: Training programme and methods provides advice on adapting material to the participants' prior knowledge and training goals, explores the experiential learning process, and methods for leading group discussion.

Chapter 1: Opening of the workshop

This is a standard module, which is often undermined or even omitted due to time constraints and the willingness to spend more time on 'real learning', which supposedly starts in following modules, which focus on particular learning content. Such time-saving is unfortunate as this module aims to build trust and learning atmosphere mainly by allowing participants to get to know each other and refer to their expectations and fears in the context of prepared training program.

Activities:

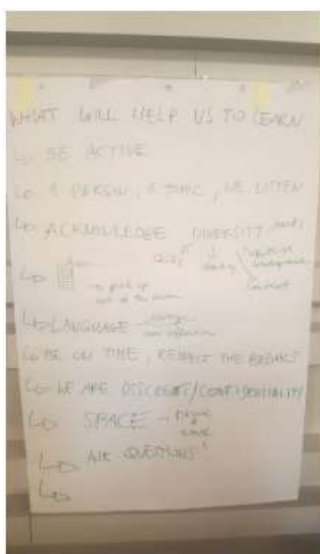
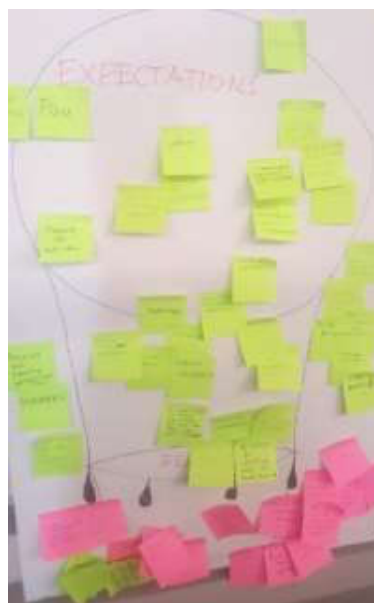
- A) **Balloon of expectations and fears** (20-25 minutes in about 20-people group).

Draw a balloon on flipchart paper, distribute post-its among participants. Ask them to write one expectation on a post-it and one fear on another post-it. Invite participants to place expectations inside the balloon (they will rise us up) and fears into ballast bags (they are holding us down). The trainer should narrate the expectations written by the group, followed by the fears. Finally, draw conclusions between the group expectations and the planned content.

- B) **Presentation of the programme** (5 – 7 minutes).

This is also a key element of opening module.

Remember that people need to know what is going to happen both in terms of timetable and content.



equally valid.

- C) **Learning agreement** (10-20 minutes)

Last but not least, a learning agreement, is the element that sets the atmosphere of the learning process but is also a tool for discipline if needed.

Ask people to think what helps them to learn. Collect ideas and collectively agree on each that you as a group want to make a role for the training. Examples are as follows:

- English is not everyone's first language and that should be respected and should not be a barrier in our conversations.
- Respect when people talk, meaning listen and do not interrupt.
- We all work in different environments and settings. All experiences count and matter and should be considered

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- If you choose to share information from hate crime cases, remind participants to omit any personal information to protect the privacy of those involved.
- Discretion, meaning participants are welcome to spread gained knowledge but not information about people or events.
- Use "I" language which allows the person to more fully express themselves, is not judgmental and helps to communicate openly.
- All questions are welcomed, though not all will necessarily receive answers.

Chapter 2: Definitions and nature of hate crime

There is no one way to start a training session but beginning with a discussion of is an optimal solution as this is easy to adjust to training content and participants needs.

A key starting point is to present the importance of understanding and using correct terms connected with sexual and gender diversity, for example:

- to be able to understand and explain the difference between sexual orientations and gender identity, namely that people have both sexual orientation and gender identity and how / where they intersect
- building trust in the victims and providing them sense of security
- encouraging the aggrieved party to cooperate

Remember, that when explaining concepts in your home setting, you should consult and use definitions that are established, used and accepted in your cultural environment. Look into resources that are being used and policies, where common concepts such as 'discrimination', 'equality and injustice', 'hate crime' and 'hate speech' might already be defined. It is not due to give the only possible definition but to be aware of existing possibilities and variety.

Terminology exercises not only let us highlight the area of our interest in the given training but also enable understanding of the spectrum of sexual orientations and gender identities that LGBTI people bring to interactions with the authorities and public services. What is needed from the authorities and public services is to accept that this diversity is not 'made up' but a 'real' part of people's identities and if they are not willing to accept that and include it in their communication with the victim, this will create an insurmountable barrier and might cause the victim to disengage from either reporting or support system.

Activity: Definitions' puzzle (35-45 minutes)

The goals are:

- To get to know vocabulary and definitions of basic concepts that are often used in the subject;
- To understand those concepts;
- To build a ground for cooperation with training participants;
- To share knowledge and experiences;
- To feel safe in learning environment.

Divide participants into 4-6 groups and hand them out an envelope with 'definitions' (Attachment: learning material no 1), their task is to build definitions out of the pieces of papers in the envelope.

Give groups 7-10 minutes to conduct the activity and then ask them to present the outcomes: one definition by one group (ask if any other group has a different meaning, if yes – let them explain) if not proceed further clockwise till every definition is set.

The aim is to get to know the proper vocabulary and clear out all doubts connected with it. Mind that this group-work procedure enables to build on participants' knowledge,

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which is more engaging and also limits situations when the trainer is directly delivering the content to the participants. However, don't forget that you are responsible for the learning process of participants so in case of disagreement or doubts you need to take a lead and clarify situation.

Language is important in this topic; participants need to know definitions before it is possible to proceed further, but it is also a rather safe activity, where people can "hide behind a dictionary" – you don't have to share your personal thoughts - it is good to start with it.

Activity: Hate crime (45 minutes)

The goals are:

- To assess participants' knowledge and understanding of hate crime;
- To provide a common framework and definition of hate crime for use throughout the training;
- To establish why hate crime is different than other crimes;

The importance of hate crime prosecutions as well as support for hate crime victims.

Write a question on a flipchart: Hate crime – how is it different from any other crime?

Ask participants to talk for a few minutes in threes or 4-people groups:

- What is a definition of a hate crime?
- What forms of hate crime do we know?
- What makes it different from any other criminal act?

Lead a moderated discussion, with that aim of coming up with a definition of hate crime, such as the following:

Hate crimes always comprise two elements: a criminal offence committed with a bias motive. The first element of a hate crime is that an act is committed that constitutes an offence under ordinary criminal law. The second is that the crime is committed because of a prejudicial bias against a particular group. This bias motive does not need to involve extreme 'hatred' toward the victim. Instead most hate crimes are driven by more everyday feeling such as hostility, resentment or jealousy toward the target group. To be a hate crime, this bias must be directed toward a victim because they possess a 'protected characteristic'. Which characteristics included are determined by national laws, but may include grounds such as age, sex, sexual orientation, gender identity, disability, race, nationality, language, national origin, social status, belief, religion etc.

Hate crime can affect not only individuals with protected characteristics, but also individuals who are believed to belong to that group regardless of their actual status.

They are also a "message" to the whole community, that they are unwelcome and cannot feel safe.

Hate crimes on grounds of sexual orientation and/or gender identity are called anti-LGBTI hate crimes.

Hate crimes can take different **forms**:

- physical violence;

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- sexual violence;
- encouraging others to commit crimes against LGBTI people;
- bullying, harassment, intimidation, threats;
- vandalism or damage of property;
- offensive letters or messages;
- verbal abuse (e.g. abusive nicknames)
- stalking (e.g. persistent calls or messaging).

These offences are the most common forms of hate crime. Hate crimes may also include any other criminal offence which is committed with the aim of expressing prejudicial feelings towards an individual or group of people with a protected characteristic.

Anti-LGBTI hate crimes may not only affect people who are lesbian, gay, bisexual, transgender or intersex (LGBTI) themselves. It can be directed against LGBTI allies, human rights defenders or anyone, who is believed to belong to the LGBT community. The most important here are the motives of the person who committed a criminal act and not the actual sexual orientation and (or) gender identity of a victim.

How hate crimes are different from other crimes?

The **impact of hate crime** is greater than just the physical and material harm, as it targets a person's core identity, and so carries an increased emotional and psychological harm. It can also increase feelings of vulnerability, because the individual cannot change who they are and the characteristic that made them a target. Furthermore, hate crimes are directed not only towards a particular individual, but also towards all people who belong to the same group or community. Homophobic, biphobic and transphobic hate crimes send a negative message to the whole LGBTI community.

Impact of hate crime

Emotional	Fear, anger, self-blame, hypervigilance in online and physical spaces
Social	Damaged confidence, social isolation, withdrawal from sources of support
Health	Depression, anxiety, eating disorders, insomnia, stress-induced physical illness
Economic	Missing work, damaged educational or work prospects
Self-expression	Self-censorship, fear of speaking out, fear of being open about identity
Community	Harm and feeling of vulnerability for friends, family and LGBTI community

How do we know it is a hate crime? Ask for indicators of homophobic, transphobic or biphobic motivation. Let people talk in groups for no more than ten minutes while monitoring the dynamics of discussions in small groups, then open the floor for discussion and make a list on the basis of it.

A debriefing hand out is included as learning material no 2. '**indicators** of homophobic or transphobic motivation'. Use it to check with the group if everything is there or we can include other things to the material.

Conclude by asking if there are further questions connected to the topic or if any further explanation is needed.

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In moderated discussion it is important to rely on participants' knowledge and experiences, while encouraging those who speak less. Correcting the messages if necessary but doing it rather with participants voice – support and strengthen desired voices.

Chapter 3.

Barriers to reporting anti-LGBTI hate crimes

The goal of this module is to get to understand the **problem of underreporting** and measures to minimize it.

We know what a hate crime is and how harmful it might be, so why is hate crime underreported?

Lead discussion in pairs, small group or the whole group, depending on the energy and time. Ask for the collect reasons on flipchart. These may include:

- Worry that not serious enough to report, or nothing can be done
- Worry that won't be taken seriously
- Normalized as a part of everyday life for LGBTI people
- Minimization of event as a way to cope
- Unaware or unsure it is a crime
- Afraid of escalation
- Don't want to out themselves by reporting
- Poor previous experience of reporting
- Worry about prejudicial response: historic and current problems
- Embarrassment/ fear of being outed/ judged for the context, e.g. in dating and hook-up sites.

How to **support the reporting** process?

Finding the courage to report a hate crime is not easy for the victim. Not only have they gone through an event that might have been traumatic, but they will also most probably be in the position of disclosing some aspects of their personal lives and identity to unknown people. This unwanted exposure can cause in the victim the feeling of not being in control of their lives. For these reasons, it is important to take into consideration many issues which aim to reassure the victim that their person and perspective are acknowledged and respected.

Activity: group presentations and discussion on: (60 minutes)

- A) General guidance for responding to a hate crime report
- B) Removing barriers for individuals
- C) Victim's perspective: What to do after a hate crime?

Divide participants into three new groups, then hand out learning materials no 3, 4 and 5 (one per group – included at the end of the handbook) and ask them to prepare a short presentation for the other groups.

After each presentation run a questions session, where all participants (including those from presenting group) can ask questions of for clarification.

Next give participants the opportunity to apply gained knowledge, and the most effective way for this is through case studies.

Case studies – a way to learn and understand

There are multiple ways of working with **case studies**, you can start with proposed one but when leading the same program again, with confidence, you can modify the activity.

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Divide participants into small groups (new ones, different than before), give each group two case studies and ask them to apply already gained knowledge by preparing a plan for support of the hate crime victim (for a particular case study they will receive). As a modification, you can ask participants to prepare a scene, in which they will act out a reporting victim and an police officer or supporting person from an NGO.

Technicalities: the time for this activity depends on the size of the group and numbers of case studies you want to be used. To enable flexibility, you can make groups smaller or bigger (though remember that in a group bigger than six people, social idleness usually appears). Distribute one, two or even three case studies per group. Groups can work on all case studies, but then decide to present only one or two; it is up to you and the circumstances e.g. how much time left.

Proposed structure for the roleplay:

1. A group reads out their case study from the wider group.
2. They clarify issues if anything is not clear or giving a deeper context, if they decide to.
3. Two members of the group act out a scene
4. Ask for feedback from the actors.
5. Encourage feedback and reflections from observers (the rest of the group).

Regardless of the form you choose to work with case studies, the debriefing should focus on collecting hints and tips (do's and don'ts) for the future. Make sure, that all three perspectives are present: (the victim's, supporting person's and the one that takes report). This is again a factor, which can be adjusted to group's needs: e.g. if you have only NGO representatives, you may focus on their perspective etc.

Never forget to mention a key issue: Always ask questions about the context of the event and not about the victim's identity and private life (unless it is necessary because of the nature of the crime).

Remember the **victim's perspective**:

Reactions to hate-crime and violence in general can be different depending on the person. Victims of hate-based abuse and violence often experience trauma and extreme anxiety even if no physical harm was involved. Unlike an ordinary crime, hate crimes can affect victim's deeply because it targets their identity or personality. Combining that with trauma and anxiety caused by the violence itself, a victim might be left feeling helpless and losing a sense of security and have a constant feeling of danger as their identity is something they carry with them constantly. Ongoing criminal procedures can be another great stressor for victims, sometimes so powerful that the victim does not want to cooperate with any party involved, even if they are doing all that is in the interest of the victim and the society as a whole. The victims in a criminal procedure are under stress because they are expected to talk about the experienced violence and to be challenged on their account of events (often repeatedly during the criminal procedure), leading to a feeling of secondary victimization.

Experiencing a traumatic event can cause physical, emotional, or psychological harm, regardless if bodily injuries occurred during the attack. In more serious situations, an acute stress disorder can be developed. Even though victims' reactions to traumatic experiences are individual and therefore can be different, they can be grouped into several categories.

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Most of the **victims' reactions** are combinations of these categories:

Emotional reactions – fear, shame, anxiety, helplessness, insecurity, sadness, depression, a feeling of losing control, panic attacks, feeling guilty, distrust in other people, oversensitivity, constant changes of mood, and other intense emotional reactions

Physical reactions – dizziness, body tremors, muscle tensions, psychomotor disturbances, sweating (particularly palms), headaches, high sensitivity to light exposure, feeling cold in lower body (particularly in feet), heart palpitations, high blood pressure, low blood sugar, digestive problems, hyperarousal, difficulty speaking, difficulty breathing, various stages of shock.

Behavioural reactions – reticence: refusing communication, isolation, crying, aggression, verbal outbursts, impatience, drug or alcohol abuse, self-harm, suicide attempt.

Cognitive reactions – disorientation, confusion, difficulty with concentration, difficulty speaking, forgetfulness, distraction.

Chapter 4.

What can we do to fight underreporting?

Goals of that module are:

- To show the necessity to support hate crime victims and to see our own role in that process.
- To realize the responsibility of all parties in the process of reporting and support for hate crime victims.
- To perceive the role of cooperation between organizations and institutions

Why do people report?

In thinking about how to remove barriers it is easy to become side-tracked by thinking only about how to encourage people to report. However, it is also necessary to think about the service they get once they have reported. To inform this it can be productive to consider why people report. Reasons can include:

- To be told what happened was wrong
- To get practical assistance
- To get emotional assistance
- To be believed and respected
- To make it stop

Assistance to report

For many people facing hate crime, reporting can seem like an uncertain or risky option. Common worries include fear of wasting police time, the potential for a prejudicial response from authorities or risk retribution from a perpetrator. Assisted reporting services provided by community-based organisations allow people to tell the police about a hate crime or incident (in a named or anonymous manner) with the backing of someone who has an understanding of LGBTI experiences and can give them emotional or practical backing to get what they need from police and other agencies.

Other types of assistance

Many people feel dissatisfied after reporting, choose not to report, or have needs that criminal justice agencies are not designed to fulfil. You may want to explore the range of needs that can be met by voluntary and community's organisation services, including:

- Emotional support
- Independent advice and assistance
- Restorative justice
- State compensation for crime victims
- Police complaints
- Assistance moving home
- Non-criminal legal measures
- Complaining about harassment from a goods or services provider

Removing organisation barriers

Apart from individual barrier, which are discussed earlier, it is crucial to underline **cultural barriers** in various aspects.

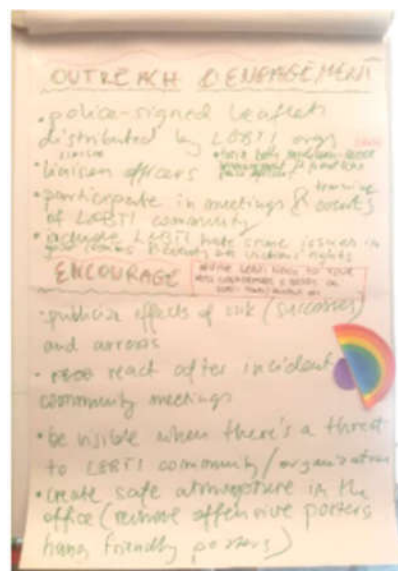
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Knowledge and skills of service providers:

- Lack of understanding of how experiences of hate crime victimisation impact LGBTI people and communities
- Minimising / trivialising the risk (of) / experience of victimisation
- Victim blaming
- Lack of awareness on spectrum of LGBTI identities.

Organisational structure and outreach:

- Lack of visibility and representation of LGBTI issues:
 - In internal materials (policies, guidelines, training)
 - In publicity materials (websites and information leaflets) or within organisational space
- Lack of established partnerships with LGBTI support services:
 - Lack of referral pathways
 - Lack of knowledge around the availability and resources of LGBTI organisations that might support the service delivery



It may also be useful to help participants think about ways of improving wider organisational responses. Some examples might include:

- Challenge anti-LGBTI language and behaviour when you see them
- Have an inclusion statement on your website that mentions LGBTI people
- Leave LGBTI literature or posters in communal areas
- Pass on LGBTI resources to colleagues
- Build referral relationships with LGBTI organisations
- Use social media to say you aim to be an LGBTI inclusive service
- Have an LGBTI champion who colleagues can call on for advice
- Consult with LGBTI communities about changes to your service.
- Be an LGBTI friendly employer

This module should focus on planning how the participants will apply the knowledge and skills they gained during the workshop. It has to be adjusted to a particular training's goals and local circumstances: if you work with police officers, prepare together a list of possible actions, then divide participants into small groups and ask each group to deal with planning of a different activity. Remember that your task is to plan for yourself not others!

Chapter 5.

International standards and national legislation

The goals of this module are:

- Exploring the international foundations for anti-hate crime work
- Understanding and applying bias indicators
- Discussion of national standards and how to use them.

Activity 1: International and Regional Framework

Time: 15 minutes

Discuss which international and regional bodies are relevant in their jurisdiction.

Establish that the concept of hate crimes is rooted in internationally recognized principles of equality and non-discrimination and is not about 'special rights' for 'special groups' but ensuring access to justice.

Refer to Learning Material 9 for relevant international and regional sources.

Activity 2: ECtHR case law

Time: 15 minutes

Ask to what extent ECtHR rulings are binding on individual prosecutors in their everyday work. The likely result of the discussion is that participants are bound by the Court decisions, but in reality, they don't even know the decisions.

Discuss the summaries of ECtHR cases in Learning Material no. 9. Explain the main principles and focus on those which are the most relevant in the trainees' jurisdiction. See Learning Material no. 10 for more complete case summaries and more ECtHR case examples.

Conclude this session with presenting ECRI's policy recommendation No. 11 on a broad definition of recording hate crimes:

ECRI policy recommendation No. 11

"11. To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;

(...)

14. To these ends, to adopt a broad definition of racist incident;

For the purposes of this Recommendation, a racist incident shall be:

"any incident which is perceived to be racist by the victim or any other person";

Emphasize that by using this approach, you are more likely detect hate crimes and gain objective evidence by making sure the right questions are asked during investigation and obligations under ECHR to pursue obvious leads would be met.

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Activity 3: What are bias indicators?

Time: (10 min)

Ask participants, to give a definition of what a 'bias indicator' is. Emphasize you are looking for a definition, not examples at this point.

Definition of bias indicator:

"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)

Activity 4: Applying bias indicators

Time: (20 min)

Now introduce a video clip or a hate crime case example and tell the participants you will be asking them what they think might be the bias indicators in the case, based on the definition provided. After sharing the example, asking participants to identify bias indicators.

Review the list created by the group to make sure all points are covered:

Bias indicators can include:

- Victim/witness perception;
- Comments, written statements, gestures or graffiti;
- Differences between perpetrator and victim on cultural grounds;
- Previous bias crimes/incidents;
- Organized hate groups;
- Location and timing;
- Patterns/frequency of crimes/incidents;
- Nature of the violence;
- Lack of other motives.

Activity 5: Exploring local legislation and identifying gaps

Time: 45 minutes

This section must be adapted to the local jurisdiction. Lead a discussion identifying sources of applicable national legislation in prosecuting hate crime. Ask the group to identify potential gaps in local legislation in upholding international principles covered in activity one and two. Highlight possible interpretations of the legislation, with strengths and weaknesses. Help the group to identify strategies for dealing with any potential shortcomings.

Potential questions to explore:

- Which bias motivations are covered and are there major gaps of protected groups? (e.g., LGBTI persons)?
- Explore the bias indicators identified in activity 4 in the national context.
- What type of motive is required under the legislation: hostility or bias?

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- Does the law allow for mixed motive- is it enough that an offence is committed wholly or partly due to bias, or is bias motivation required to be the substantial motive in the crime?
- Would the legislation protect those targeted because of their (wrongly assumed) association with a protected group?

Chapter 6.

Training programme and methods

Needs assessment

If you can contact your training participants prior to training for needs assessment to prepare (or adjust) the training program, do not hesitate to do so.

The more you know about your participants and their needs, the better. However, experience shows that usually we have less time that we would like to spend on particular topics or issues. This is why it is worthwhile to put effort into preparing the training program particularly for each group. It does not mean you design the program from the scratch every time, but content and method revision is essential. Even if it is not always possible to drastically adjust the program according to outcomes of the assessment, the information you gain can be used during the training in various moments. The knowledge drawn from the questionnaires can be used as a compass that will lead us to achieve the goals of the training. Thanks to it we know where to put more emphasis, and which topics are more familiar, so we can arrange the learning process in a way that participants can learn mostly from each other.

Remember to prepare the needs assessment in the context of training goals. It is not helpful to know everything. but the aim is to get to know what people already understand about the content and what they consider important or useful.

An example needs assessment is included as learning material no. 8. Use it as an inspiration and adjust to your local context, content and training group.

Experiential learning

Example agendas for 1.5-day training sessions are provided below to ensure sufficient time and engagement for the key learning outcomes to be achieved. It is strongly recommended that trainers review the manual before they finalise the agenda in order to ensure that the most appropriate content and methods are chosen for their context.

Keep in mind that the agenda is a way to communicate what and when will happen, but do not let it rule the training. Use it with flexibility, but responsibly. If there is a crucial need to change it during the training (e.g. swap modules between first and second day), do it if it helps participants to achieve learning goals. Treat it as a tool, not a cage.

Design your own agenda accordingly to the goals of the training and needs assessment. Do not hesitate to swap whole modules if you find them inadequate, but remember to keep the basic rules of **experiential learning**:

- 1) Experience – Give participants a chance to be involved, to put their hands on the content of the training e.g. to play with the definitions, discuss and explain how they understand them.
- 2) Reflection – Refer to participants' thoughts, ideas and experiences e.g. ask if they learnt something new on the basis of the knowledge they already had.
- 3) Content – Deliver the knowledge, but mind that it is always best if you can build that knowledge on the basis of participants input e.g. present the definition of discrimination with links to participants statements and shared experiences.

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- 4) Implementation - Lead the process in which participants will be able to show how they will use the knowledge and skills they gained e.g. revise the procedures at the Victim Support Centre in order to check if they reinforce antidiscrimination.

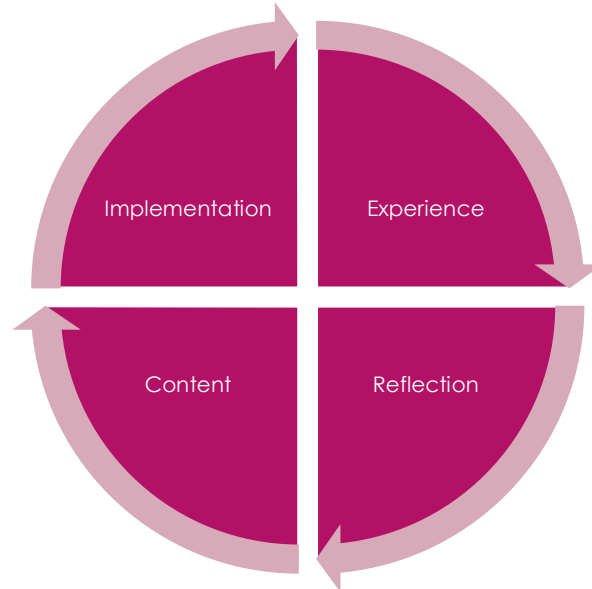


Figure 1 Elements of experiential learning.

In terms of **chronological preparations**, first you set training **goals**, then you pick the **content** (accordingly to the needs assessment and local context) and only then you choose **methods**. Namely, first you decide what do you want to achieve with this training; then what participants need to learn and only then you decide how they will do that.

This is why below proposed programs are only possible examples, but you should prepare your own agenda for every particular training and adjust it for every new group you will deal with.

Model agendas for 1.5-day training events⁹

Victim support service providers

Day 1	
1h 30 min:	Opening session: Welcome, introductions and practicalities
15 min:	Comfort Break
2h 30 min:	LGBTI language and terminology
1h 30 min:	Lunch break
1h 45 min:	National and international law
15 min:	Comfort Break
1h 45 min:	Identifying anti-LGBTI hate crime
Day 2	
1h 45 min:	Supporting LGBTI victims
15 min:	Comfort Break
1h 45 min:	Addressing barriers
15 min:	Comfort Break
1h:	Evaluation and closing of the workshop

Reporting centres

Day 1	
1h 30 min:	Opening session: Welcome, introductions and practicalities
15 min:	Comfort Break
2h 30 min:	LGBTI language and terminology
1h 30 min:	Lunch break
1h 45 min:	National and international law ¹⁰
15 min:	Comfort Break
1h 45 min:	Barriers to reporting / understanding underreporting ¹¹
Day 2	
1h 45 min:	Identifying and investigating anti-LGBTI hate crime
15 min:	Comfort Break
1h 45 min:	Working with civil society organisations ¹²
15 min:	Comfort Break
1h:	Evaluation and closing of the workshop

⁹ For model agendas for one and two-day training events for police officers, see Perry and Franey (op. cit.).

¹⁰ You can find a training module on this topic in "PROSECUTORS AND HATE CRIME TRAINING (PAHCT)"

¹¹ You can find a training module on this topic in Perry and Franey (op. cit.).

¹² *Ibidem*.

Methods

Considering methods, it is crucial to feel confident enough to face the group and lead it through the program. It is highly recommended to take part in long-term trainings, which enable to acquire skills and knowledge on group dynamics as well as appropriate tools and techniques.

Among them one of the most important is to get to know some **techniques** that help leading a **group discussion**:

1. **Speakers order**

Setting a list of people who want to speak saves a lot of time. Ask that people who want to speak in the discussion raise their hand. Select a few of them and determine in what order they will respond. Then give the floor to the first speaker. The rest of the people who came forward know the order of the speech and know that they will also be able to speak. The other participants (who did not apply) do not have to worry that someone will unexpectedly call them to answer and they can follow the discussion with greater attention. Specifying speaker order avoids repeatedly speaking by the same people. In addition, it makes it easier for the trainer to see the hesitating participants who need help in making decisions. You could say, for example: "Maybe some new people want to speak?"

2. **Round without coercion**

To speed up the discussion, you can also use the method, "round without coercion", sometimes in relation to one row, sometimes towards the entire group participating in the meeting. In order to avoid the same people speaking regularly, the facilitator can make an appointment with the participants that in a moment they will get some time to think about it and then ask people one by one to summarize, for example, a one-sentence meeting. People who do not want to speak in a wider group setting can refuse by nodding or saying "pass".

3. **Organizing discussions that begin to take place in groups**

Organizing discussions means controlling many of the topics that appear during the discussion. For example, the group talks about the possibility of using teamwork to upgrade a website for reporting hate crime. Two people talk about technical possibilities, two about the division of roles, and someone else about the missing resources. In this situation, it is necessary to organize the discussion, because everyone wants to concentrate on the issue that matters to them.

When do we use that technique?

- People often behave as if the issue that interests them most was also the most important for others. Organizing helps the group to see various aspects of the topic and address everyone with equal attention.
- Organizing prevents the anxiety of people who feel the group is not interested in their ideas and issues they would like to discuss
- What is the purpose of that technique?
- To allow you to hear all opinions on a given topic
- To connect different parts from the discussion in order to generalize opinions or draw conclusions

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How to do it?

Organizing a discussion may happen in three steps: First, you show that you want to interrupt the discussion for a moment to summarize the previous statements.

Step 1. "It looks like we have three parallel conversations here. I would like to make sure that I understood everything well. "

Then you describe the various sub-discussions that have taken place.

Step 2. "One discussion concerns technical conditions, the second is division of roles and assignment of tasks, and the third is missing resources for the implementation of the project."

At the end, you check to see if you gave the group's thoughts well.

Step 3. "Did I omit something or misinterpret it?"

People usually answer these questions. If someone tries to explain the essence of your expression, be supportive. Ask other people to explain.

4. Encouraging expression

Encouragement is a technique that helps participants to explain and clarify their statement. You show that you are interested in what they say and want to learn more, more accurately.

When do we use that technique?

- When someone speaks not very clearly
- Participant's statement is short, laconic, and you want to know more
- So far quiet participant took the floor

What is the purpose of that technique?

- To better understand
- To get more information
- To strengthen the involvement of a little active participants

How to do it?

Begin with a participant's paraphrase.

Then ask an open question, e.g. "What do you mean?", "How do you see it?", "what do you mean when you say ..."

You can also paraphrase a statement, use links like: "so ...", "because ..." or "and ..." and put the voice on hold.

Examples:

Participant: "I think that most of our projects do not fully respond to the needs of young people, which is why they are so low rated by them"

Trainer: "If I understood you correctly, you think that your actions are not adapted to the needs of young people and therefore their evaluation of your activities falls out low (paraphrase). Could you give an example of what you mean? (encouragement) "

Participant: "I think we should ask young people more questions about their choice of project topics."

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Trainer: "Are you talking about studying deeper the expectations of young people?
(paraphrase)

5. Balancing

This is a technique to express views and opinions not yet disclosed. The discussion often takes the direction given to it by the first few people speaking. By applying balancing, the facilitator helps the group to get out of this limitation.

When do we use that technique?

- Balancing opposes the common belief that "silence means consent." By balancing people who do not feel safe enough to express their views as unpopular, they can do so with the help of a trainer.
- Balancing not only helps individual participants who need support at any given time. It also positively affects the norms of the group as a whole.

What is the purpose of that technique?

- To show more perspectives than one
- To reveal all views represented by group members

How to do it?

Here are some examples of balancing:

"We already know the position of three people. Will anyone suggest a different way of looking at this?"

"What do other people think?"

"Do all agree with it?"

"We've seen the point of view" x "and the point of view" y ". Is there a third point of view? "

Second important tool is **feedback**.

To use the feedback as a tool, there must be some ground rules and circumstances established:

Open communication: I do not hide my intentions, I do not manipulate, I want to be heard

Active listening:

Active listening techniques are tools that help you understand other's point of view. They support the process of agreement between participants.

To understand, you have heard. Hearing it without comment, interpretation, evaluation of what our interlocutor says. The purpose of using these techniques is to build an atmosphere of trust, security and openness that favours honest conversation.

Message in "I - Language":

This involves talking about myself and my emotions, my perception of what is happening, not about the second person, event or "revealed truth". Such a case, especially in the case of a different opinion or conflict, helps to hear and get along, because it is an invitation to cooperate and not an accusation.

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Assertiveness in communication:

This is an attitude of realizing one's own rights and needs while respecting the rights and needs of others.

Keep in mind that:

Feedback is not meant to be open or hidden criticism. It aims to help us to do better. We can use it in order to point at a situation or behaviour that needs to be improved, but also when we want to appreciate someone's actions.

Both sides, giver and receiver, needs to agree on the feedback session. The time and place cannot be random, as it is important that people feel safe. It is usually a stressful situation, especially for the receiver. If we don't limit the level of stress, our message will not be received. One of the ways of building safety is to agree specifically on the area in which the feedback will be given.

Be specific. Describe the exact situation, refer to particular behaviours, use simple language.

Be sure your feedback includes three aspects:

Facts: Describe which specific behaviour you refer to.

Consequences: Name the consequences of that behaviour.

Expectations: Specify what changes in attitudes and behaviours you expect. For example, when you make homophobic jokes during breaks (fact),

it seems to me you don't treat the topic of the training seriously (consequence),

I want you to stop doing it (expectation).

Annexes

Needs assessment questionnaire

This short questionnaire aims to establish a general competency level in the topic of anti-LGBTI hate crime in order to adjust the training program to fit best into your personal and group needs.

Please select answers to questions below.

On a scale from 1 to 6 - 1 means: no; never; rarely; I don't know and 6 - definitely yes; always; often; I agree;

1. I know a lot about LGBTI related issues e.g. terminology

[1---2---3---4---5---6]

2. I am aware of challenges LGBTI people face in contemporary society

[1---2---3---4---5---6]

3. I am familiar with legislation related to LGBTI issues

[1---2---3---4---5---6]

4. Do you work in a place where hate crime victims/survivors seek for help or support?

Yes

No

If YES, indicate what kind of facility is that?

.....

5. Does your work include hate crime victims support?

Yes

No

If YES, indicate what kind of job is that?

.....

6. Have you ever taken part in a training on hate crime?

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Yes

No

7. Have you ever taken part in a training on LGBTI related hate crime?

Yes

No

8. I am aware of barriers to reporting

[1---2---3---4---5---6]

9. I am acquainted with identifying and investigating anti-LGBTI hate crime

[1---2---3---4---5---6]

10. I know how to support LGBTI victims

[1---2---3---4---5---6]

11. I know where to refer LGBTI victims for support

[1---2---3---4---5---6]

12. I cooperate with LGBTI civil society organizations (for criminal justice service agencies)

[1---2---3---4---5---6]

13. What do you want to get to know/learn during training?

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Evaluation questionnaire¹³

Training:				
Date:				
Statement:	1 – agree 4 – disagree			Comment:
1. The objectives of the training were clearly defined	1	2	3	4
2. The training was interactive and encouraged participation.	1	2	3	4
3. The training used and demonstrated different methods of learning.	1	2	3	4
4. The topics covered were relevant to me.	1	2	3	4
5. The topics covered were relevant to the organisation I work for.	1	2	3	4
6. The structure and content were easy to follow.	1	2	3	4
7. The learning materials were helpful and in line with the training objectives.	1	2	3	4
8. The trainer(s) had appropriate delivery skills.	1	2	3	4
9. The trainer(s) had sufficient knowledge about the training topics.	1	2	3	4
10. The training objectives were met.	1	2	3	4
11. The time allotted for the training was sufficient.	1	2	3	4
12. How useful do you think what you've learned will be?				
13. What was the most useful element for you?				
14. How would you suggest improving the training?				
15. How do you hope to change your practice as a result of this training?				
16. Do you think your colleagues could benefit from this type of training?				

¹³ Attention: For training events conducted as part of the Come Forward project, partners should use the questionnaire prepared and circulated by the external evaluator.

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Learning material no. 1. Key concepts and definitions

Instruction: One set per group. Cut along the dotted lines. Groups match each term to its correct definition.

Key Concept	Definition
Pronouns	Words that can be used to refer to a person in place of their name, e.g. he/she, him/her, they
Sexual orientation	A person's capacity for profound emotional, affectional and sexual attraction to and intimate and sexual relations with others
Homophobia	An irrational fear of/aversion to homosexuality and to LGB persons based on prejudice
Transgender	Persons who have a gender identity which does not correspond to the sex assigned at birth and who modify their bodily appearance or their bodily functions (also by undergoing gender reassignment surgery) sex assigned at birth and who modify their bodily appearance or their
Gay	A man whose primary romantic, emotional, physical and sexual attractions are to men
Gender expression	The choices we make on a daily basis regarding what we wear and how we dress and behave that indicate our gender
Transitioning	A process of social, legal and/or medical change involving physical appearance, clothing and social relationships, among other things
Discrimination	Unjustified, less favourable treatment based on personal characteristic such as gender, gender identity or expression, sexual orientation, religion, age, disability, national or ethnic origins or similar categories
Heterosexual	Persons emotionally, romantically, or sexually attracted/committed to the opposite sex.
Transphobia	An irrational fear of/aversion to transgender persons' gender non-conformity based on prejudice.

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Trans	An umbrella term used to cover the multitude of diverse ways in which individuals can identify their gender as being distinctive from the main-stream population
Gender identity	An individual's internal sense of being male, female, or another gender
Stereotype	A preconceived or oversimplified generalisation about an entire group of persons without regard for their individual differences
Lesbian	A woman whose primary romantic, emotional, physical and sexual attractions are to women
Gender marker	Designations such as male/female or Mr/Mrs which are found regularly on ID documents
Intersex	A person born with physical, hormonal or genetic features that are neither wholly female nor wholly male; a combination of female and male; or neither female nor male

Learning material no 2.

Indicators of homophobic or transphobic motivation¹⁴

Perception of the event by the victim or witness:

- According to the victim or witness of the crime, was it motivated by prejudice towards LGBTI people?
- During the attack, was the victim involved in activities promoting the LGBT community / LGBT rights / services addressed to LGBT people, etc.?
- Was during the attack victim of the crime staying with their same-sex partner? Were these people holding hands or kissing? Did they wear cufflinks / bands / bracelets or other symbols of LGBT community (e.g. rainbow symbols, unicorns, LGBT organization logos, pink triangles)?
- Could the victim of the crime be identified as LGBT because of their dress, appearance or behaviour?
- Is the victim of the crime a public figure known for their affiliation to the LGBT community or activities for LGBT rights? A person may be openly heterosexual, but due to his support for LGBT cases, become a detention persecutor of a crime motivated by transphobia, homophobia or biphobia.

Comments, subtitles, gestures

- Did the perpetrator during the crime use homophobic, transphobic or biphobic expressions, comments or words?
- Whether the perpetrator during the crime referred to the perceived sexual orientation or gender identity of the victim of the crime?
- Whether the perpetrator used homophobic, transphobic or biphobic phrases or referred to the perceived sexual orientation or gender identity of the victim of the crime in writing (e.g. in e-mail correspondence, social media, letters)?
- Did the perpetrator perform gestures that related to the perceived sexual orientation or gender identity of the victim of the crime?
- Is homophobic, transphobic or biphobic graffiti left at the crime scene?

The participation of organized hatred groups or their members

- Did the perpetrator identify themselves as a member of an organized group that promotes hatred?
- Did the clothes, tattoos or other elements of the perpetrator's appearance indicate his participation in the group that promoted hatred?
- Has the offender identified with any hatred group on social media or on the internet?
- Is the perpetrator known for the preaching of hate speech or homophobic / transphobic speeches and comments (written or spoken)?

¹⁴ Prepared on the basis of the material developed by the European Gay Police Association, available at http://gay-police.eu/files/9214/1640/2884/Bias_Indicators_for_Transphobic_and_Homophobic_Crimes_Including_Learning_Exercise.pdf.

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- Did the incident occur during or shortly after the public meeting / assembly of such a group?
- Has the hate group recently publicly threatened LGBT people?

Place and time of crime

- Did the attack take place during an important LGBTI event, such as LGBTI Pride?
- Has the attack occurred at an important moment for the LGBTI community (e.g. voting on the law on partnerships, opening of the first LGBTI premises in a given locality)?
- Did the attack take place near the headquarters of the LGBTI organization, the premises for LGBTI persons, etc.?
- Did the attack take place in a neighbourhood / place known for meeting LGBTI people?
- Did the attack take place in a neighbourhood known as a meeting place for people seeking sex?
- Did the attack take place in an area where extremist or hate groups operate?

Pattern of behaviour and frequency of previous crimes or incidents

- Has the attack occurred in the area or time where similar events have already occurred?
- Is there a certain pattern of behaviour or tendency regarding the type of crime?
- Has the perpetrator committed such crimes in the past?

The nature of violence

- Is the offense characterized by an extremely high level of brutality or the use of sexual violence?
- Did physical violence focus on: primary and/or secondary sex characteristics and/or prosthetics (this includes wigs)?

No other reason

- You cannot find another crime motive (e.g. financial)?

Learning material no 3.

General guidance for responding to a hate crime report

1. Always introduce yourself by your full name and your role in the procedure. Make sure that the victim has your contact information and that they can reach out to you after the interview.
2. Ask what the victim prefers to be called (What is your name? How would you like me to address you?)
3. Ask the victim if they have any physical injuries and make sure that medical assistance is available.
4. If possible, inform the victim about their rights according to the national legislation and/or the Victims' Rights Directive (2012/29/EU). Make sure that the victim receives all the relevant information in a way that is simple, accessible, and understandable for them. The information should be given in different ways: verbally, on a handout that they can take home, etc.
5. Always make sure that the victim feels safe and confident and that they can always ask you questions if something is not understandable. The victim should share only the information they want to share. This is particularly important if your initial contact with the victim is immediately after they experienced violence or in public.
6. Ask the victim to tell you briefly what has happened. Use simple conversation starters so the victim can feel that they are regaining control of their situation (e.g. What would you like now? Do you need water?).
7. Make an individual assessment: Does the victim have any specific support or protection needs? Is the victim particularly vulnerable to repeated violence or secondary victimization?
8. Acknowledge the victim's experience by thanking them for sharing it with you. Ensure the victim about confidentiality during the interview.
9. If possible, inform the victim about further steps and your role in them. It is important that the victim is always accompanied by a person familiar to them.

Learning material no 4. Removing barriers for individuals

What can we do to provide a good service to people facing hate incidents and crime. The detail of good practices will be different for each organisation, but might include:

- Maintain confidentiality to build trust
- Ask open questions about potential hate motivation
- Don't assume that everyone you deal with is cisgender or straight
- Don't assume that everyone who reports homophobia is gay
- Its ok to ask what name or gender pronoun someone prefers you to use. If you get it wrong, just apologise briefly and move on
- Refer to or tell people about LGBTI services
- Give victims regular updates so they know you haven't forgotten them
- Respect people's right to have an incident recorded as hate crime, even if you disagree
- Be clear that a targeted person is never responsible for the violence they receive.
- LGBTI people often think they will not be taken seriously if they report. Prove them wrong.
- Choose interpreters wisely. They can often be part of the same community networks as a reporting person, risking outing them.
- Safeguard personal information. Family members perpetrating anti-LGBTI domestic abuse, 'honour'-based violence or forced marriage sometimes use creative ways to get services to reveal information.
- Do not assume that everyone has the same level of literacy.
- Be responsive to requests by service users who feel more comfortable talking to a staff member of a certain gender.
- Offer service information in large print or easy read formats.
- Consider the possibility that domestic abuse or a sexual assault may have an element of hate motivation.
- Prosecution is not a realistic prospect for everyone so helping them explore a range of additional options beside court can be helpful (support or assistance by an NGO, anti-social behaviour, restorative justice, mediation, etc.)

Learning material no 5.

Victim's perspective: What to do after the incident?

- Take care of your safety.
- If you have been attacked or you think that you are in imminent danger, take care of your safety first. If you need immediate police assistance, call the emergency number 112 and inform the police. If you are a witness to a crime, try to help without jeopardizing your own safety. Shout out loud and do other actions in order to attract other people's attention and, if necessary, call emergency number 112 and inform the police.
- In case a perpetrator was a law enforcement officer or any other person in their official capacity, special procedures might apply. Please contact the local LGBT organization for further information.
- If an incident has happened online (for example, you receive threatening messages on Facebook), do not engage with a perpetrator. Make print screens of illegal content and block the perpetrator (if necessary). In case there is a URL, note the URL
- If an incident has happened at your school or other educational institution, talk to teacher (professor) whom you trust or with a children rights' org service. Some schools and educational institutions might also have psychologist's service available.
- If necessary – seek medical assistance
- If you have been seriously injured during the attack or you are concerned you have internal injuries, you should report this by calling the emergency number 112. In this case, not only the police, but also an ambulance will arrive to the place of the incident.
- In the absence of serious injury it is still recommended to seek and receive medical assistance. Visit the nearest admissions department or emergency room at a local hospital.
- If possible, take a photo of any visible injuries. Later it may be used as evidence. After reporting the incident to the police, it is possible that they will want to take pictures of these injuries as well. If you received medical assistance, ask an official document from the hospital which should include information on date and time you were examined, description of injuries, identity of a medical professional, who examined you, and any additional treatment needed.
- Record details and store relevant data
- Record your memory of the event and any observations as soon as possible after the incident. As well as the exact location and time of the incident, it is important to write down a description of the attacker(s). What did they look like? What clothes were they wearing? Did they have any special features that could distinguish them? If a vehicle was involved, record the registration number and the direction in which the attacker(s) escaped. Also write down the contact information of any potential witnesses. As well as people who were there during the attack and directly witnessed the incident, residents of the surrounding houses may have seen the incident through their windows. Were there any safety cameras nearby? If there were immediate witnesses to the incident, ask for their contact information and, if possible, ask them to write down what they have seen, to sign it and specify the date.

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- It is particularly important to write down what the attacker(s) said or did, i.e. why you think that the incident was motivated by homophobic, biphobic or transphobic prejudice. For example, they used an anti-LGBTI slur, the attacker(s) knew about your sexual orientation and (or) gender identity, you were beaten up next to the LGBT community centre, etc.
- Take a picture of any damage to your property or items that the attacker(s) did, for example, your car has been keyed or damaged.
- Store any available evidence safely, such as clothes, photos, letters, SMS or MMS messages. If the attacker(s) could have left their fingertips somewhere, do not touch the surface and draw the investigating police officer's attention to it.
- All collected data and notes should be forwarded to the investigating police officer or prosecutor. Remember that you can do this not only during the initial questioning, but also at the later stages of investigation.
- Tell someone
- When it comes to any hate crime, it is important to understand that this is not your fault. In this situation, you are the one who has suffered, and you are not responsible for the behaviour of those who, in violation of the law, have made an attempt on your dignity and security.
- Experiencing hate crime may leave you feeling traumatised and frightened. This, in turn, can lead to serious psychological consequences – intense feelings of fear, anxiety and insecurity. It is important not to remain alone when you feel this way. Talk to your loved ones. It can be a friend, a family member or another person close to you. You can also call a helpline for emotional support. Having a conversation and sharing feelings can sometimes make you feel better. If you feel that the incident has severely affected you and conversation with your loved ones does not help and you continue to feel bad, consider contacting a therapeutic counselling service.

Learning material no 6. Case studies

Case study 1 (Neighbour harassment) - NGO

X and Y live in state housing with their teenage daughter, Z. Over the last six months they have experienced homophobic abuse from their neighbours. The harassment started with hateful looks and muttering as they walked past and has recently escalated. The words 'lez house' have been sprayed across their front door, and trash keeps being emptied in front of it. The wing mirrors of their car have been smashed, which left Y unable to leave the house as she has mobility problems and cannot walk far. They also learned that a neighbour has alleged that they were abusing their daughter and that Y is lying about her mobility problem to claim government financial assistance. They have tried reporting to the police several times, but no action was taken. Despite this the harassment is still ongoing. Since the harassment began, X and Y have been arguing a lot, and Z's marks in school are suffering. She blames X & Y for attracting the abuse by being too visible.

Case study 2 (Anti-LGBT abuse in school) - NGO

D recently came out at school as a transgender girl and bisexual. Since then she has been called transphobic slurs and assaulted four times by class mates. On the last time, her injuries were so bad she had to go to hospital. One boy threatened with her sexual violence saying that she must "want it from everyone" because she is bisexual. She is also facing transphobia at home from her parents and so feels she cannot talk to them about what is happening. She does not want to go to the police as she thinks it will make everything worse. Her attendance record has plummeted since the abuse started, and she is now in trouble at school for truancy. She has been trying to meet friends through an LGBT dating app and mentions an older man that she has been spending time with when not at school. She tells you that she is feeling very low and some days she feels like just giving up.

Case study 3 (Verbal abuse from strangers) - NGO

J and S were walking down the street holding hands when a group of men sped past in a car and threw some screwed-up paper out the window at them. J called out to challenge them, the car stopped, and the men shouted 'fags' at them repeatedly. They drove toward them threateningly, before driving off. This happened near their home and they recognise one of the men as the son of a neighbour.

They haven't told the police about what happened. J is angry about what happened and generally suspicious of authorities. He is worried about E as he has a history of depression and won't talk about what happened. He feels E blames him for challenging the men. Both now feel under threat while walking in their neighbourhood.

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Case study 4 (Neighbour harassment) - NGO

E is a 32-year-old man who is suffering homophobic harassment from his neighbour in an apartment block. On the day of LGBT Pride E hung a rainbow flag in his window, which a neighbour challenged him about, saying that he should be ashamed and stop forcing his lifestyle onto others. The following day the same neighbour approached E in the communal corridor and said, 'where I'm from we shoot people like you', he then threw a bottle at E's head, narrowly missing. In the following days he has avoided leaving his home and takes the threat made by his neighbour seriously. He faced homophobic violence several years ago, which traumatised him and left him with a limp. He was unhappy with the response of the police to that attack and is nervous that reporting may open him to further prejudice from officers. Despite this he chose to report the incident several days later. Since this he has almost totally avoided leaving the house and has gone onto sick leave from work due to stress. He is feeling depressed, constantly afraid and he has been thinking about suicide. The police have tried to visit him at home, but he did not answer the door as he was panicked by the doorbell.

Case study 5 (Attack in cruising ground) – NGO

M is a bisexual man who sometimes visits a cruising ground in a local wooded area (an outdoor space where people meet each other for sex). He goes there mainly to socialise and sometimes to meet other men. One evening he was stopped by a man who asked him for a cigarette lighter before asking if he was 'queer' and telling him to hand over his phone and wallet. M gave them to him, before the man punched him in the face causing a serious injury. He felt very shaken but did not call the police as he is afraid what their reaction may be, instead going straight to hospital for treatment of a broken nose.

M says he has heard of the same person attacking other men in the past, but he is unsure whether to tell the police. He feels that he would face questions about why he was there and that he may get into trouble. He is also not out at work or to his family who are conservative Muslims. He is afraid that reporting may mean information about his sexuality somehow reaching his family or colleagues. He says he might feel able to tell the police about it without giving his name and would like advice about what could be done if he made a formal report.

Case study 6 (Harassment by local young people) - CJS

J is a transgender man living in state housing. He recently made a police report about some young men who have been hanging around the buildings front door, playing loud music late at night and leaving rubbish in communal areas. The housing officer says he will speak to them about it.

Several days later, two of the young men come to J's door and confront him about the complaint in a threatening way, saying he is 'really a girl' and asking intrusive questions about his genitals. He is shocked and thinks the housing officer must have told them that he is trans.

Over the following weeks he is harassed by the men when he enters and leaves his home. They call him 'disgusting' and throw things at him, and on one occasion someone tries to take his bag. He has rubbish pushed through his letter box, along with a sexually

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threatening note. The young men repeatedly push the buzzer on his intercom during the night.

J has some history of mental health issues caused by trauma from previous transphobic attacks. He also has a learning disability and feels a lack of confidence about his ability to tell authorities about the abuse and be believed. He becomes very anxious about the prospect of violence from the men and has begun self-harming and over-using medication as a means of coping. He has stopped inviting people to his home and now avoids going out when he can avoid it.

Case study 7 (Assault in public) - CJS

F and G were attacked on a night out in the city centre. A group of men were walking past them, and one asked for a kiss, saying "Don't worry, I like lesbians." They ignored him and continued to walk in the opposite direction. He got angry and shouted "fat black dykes" after them. The group started to follow them, and the man grabbed G's arm. She pushed him away and another of the men stepped forward and punched her. The whole group piled in and F & G were pushed to the ground, where they were kicked repeatedly. They both sustained serious injuries. After a few minutes the men ran off. A bystander called the police and they gave an initial report but didn't take it any further because the police officer asked them why they had been holding hands in public. The following day F called the police upset at the response to the incident and asks for the attack to be dealt with.

Case study 8 (Online harassment) - CJS

T's is a gay man whose Facebook page was hacked by someone who used it to send offensive and sexually explicit messages. He changed his password which stopped the messages, but other profiles were set up in his name. Facebook removed these profiles when T flagged them, but new ones were continually set up in their place. Messages such as "I have gay HIV and I'm going to rape you" were sent to work colleagues and family members, outing T and causing the breakdown of several family and working relationships. He started receiving messages too, calling him a 'faggot' and threatening to make intimate images of him public unless he paid money to the sender. T had no idea who was targeting him, though a colleague at work disclosed that she'd heard another colleague making homophobic comments and bragging that it was him he was sending the messages. He wants the abuse to stop but says he is too scared to confront the person and is not sure whether a crime has been committed. T found he was constantly checking for messages and became extremely anxious about what they would do next. T's ability to work was greatly impaired and he was prescribed anti-depressants. He finally decided to report the incidents to the police after being encouraged to by his manager.

Case study 9 (Harassment of older man) - CJS

M is a gay man in his sixties. He has been subject to abuse from teenagers in his street who call him 'paedophile', 'pervert' and other abusive terms. He is known to be gay by some of his neighbours and thinks his sexuality may have become known to people generally in the area. On more than one occasion, he has noticed that the mother of

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one of the teenagers looks as if she is encouraging the abuse. One occasion he heard her say 'go on, give the old bastard what he deserves'. On one occasion, the front lights on his car were smashed. On another occasion his dustbin was emptied over his front doorstep. He has reported it on several occasions and has become disillusioned about the value of reporting new incidents as the harassment has now lasted two years. Despite this he has now made a new police report of a threatening note put through his letter box telling him to leave, along with burnt matches. M states that he regards it as homophobic, despite there being no explicitly homophobic language used in the note.

Case study 10 (Transphobic sexual violence) - CJS

N is a transgender woman who is currently homeless. She has been staying on a variety of friends' sofas. She went to the home of a man she met on a night out. The man started to sexually assault her, at which point he discovered she is transgender. He repeatedly hit her in the head with an object until she lost consciousness. N escaped when she regained consciousness and called the police. The perpetrator was arrested at the scene and N was taken to hospital.

N was left feeling very distressed. Police officers soon lost contact with her and she would not answer her mobile phone. Several days later an LGBT NGO called saying they have been supporting N and that they would like to support her to engage with the police. However, the worker says she is very distrustful of authorities and has many other needs around her health, housing and finances that make it difficult for her to engage.

Learning material no 7. Documenting and recording hate crimes

What to document during the interview?

- Does the victim believe that the crime was motivated by a bias against LGBTI people? If so, document why they think they are a victim of a homophobic, transphobic or biphobic hate crime.
- If the victim is a trans person whose documents do not reflect their gender identity, be sure to record their gender in a way that reflects the way they identify.
- Document what kind of injuries, if any, the victim has suffered, including how the victim feels emotionally.
- Document a detailed description of the violence and the perpetrator(s). Does the victim know the perpetrator(s) or did they have any encounter before?
- Document if the place where the crime took place has any significance to the community the victim belongs to. If so (a bar, public event related to LGBTIQ people, a cruising area), explain its significance.
- Was the victim alone when they were attacked?
- Were there any witnesses around? Can you reach out to them?

Recording Bias Indicators¹⁵

Remember to record any potential bias indicators. For example:

- Time, place and location of the offence: Did the incident take place during or near a significant event or venue, such as a pride parade or an LGBT bar?
- Victim/Witness Perception: Do victims or witnesses perceive that the incident was motivated by bias?
- Comments, Written Statements, Gestures, and Graffiti: Did the suspect make comments, written statements or gestures regarding the victim's sexual orientation or gender identity? Were drawings, markings, symbols or graffiti left at the scene of the incident? If the target was property, was it significant to the LGBT community, such as an LGBT venue?
- Cultural Differences: Do the suspect/s and victim/s differ in terms of their sexual orientation and transgender status? 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 his/her group at the time of the incident?
- Organized Hate Groups: Were objects or items left at the scene that suggest the crime was the work of a hate group? Is there evidence of such a group being active in the neighbourhood (e.g., posters, graffiti or leaflets?).
- Previous Bias Crimes/Incidents: Have there been similar previous incidents in the same area? Who were the victims? Has the victim received harassing mail or phone calls or been the victim of verbal abuse based on his/her affiliation or membership of a targeted group? - In cases of attacks against property, the

¹⁵ Adapted from ODIHR recording guidelines:

http://hatecrime.osce.org/sites/default/files/documents/Civil%20Society/CS%20factsheet/2018_HC_fact_sheet_CS_eng.pdf

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significance of a particular structure or location to communities that face discrimination can be an indicator.

- Remember, it is still a hate incident even if there are other motives involved. For example, individuals who have been targeted because of prejudice or bias may have also had items of value, like money or mobile phones, stolen from them in the course of these attacks. If bias indicators are present, then these incidents can also be recorded as hate incidents.

How to record - example

OSCE Office for Democratic Institutions and Human Rights (ODIHR) - Call for submissions, 2017 Hate Incidents

Below are examples of the information ODIHR needs to include your submissions in our annual reporting on hate crimes and incidents. These examples are for reference only. You can find more information about ODIHR's categories on the second sheet.

Date	Source	Country, Location	Type of incident	Place of incident	Description	Bias indicators	Bias motivation
2017-05-12	News story, hyperlink.	Country A, City Y	Physical assault	Outside place of worship	A teenage boy was attacked and injured outside a mosque.	Location next to a mosque, the teenager was called "Paki" before the attack began.	Bias against Muslims
cze-17	Victim testimony	Country B, Region X	Attack on property	Private home	Following harassment by neighbours, the victim's door was painted with "Jews leave".	Anti-Semitic language used in the graffiti.	Anti-Semitism
2017-02-15	Witness testimony	Country C, City U	Threats	Community centre	A child with a disability is approached and told "You're a genetic flaw, you should have been killed at birth."	Use of threatening language, clearly referencing the disability. Witnesses' perception.	Bias against people with disabilities

Diary Sheets

- For on-going hate crime incidents, encourage individuals to keep a diary sheet to keep a record of the details of each incident. An example of a diary sheet can be found here: <http://www.galop.org.uk/wp-content/uploads/A-Guide-To-Diary-Sheets.pdf>. Include the following:
 - Date and time of incident
 - Duration of incident
 - What happened? What words were used? Where? Who? Any witnesses? Car registration?
 - How did it affect you? (Practical or emotional)
 - Did you report it? (How and who to? Reference number?)

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NGOs: Internal Recording systems

- Make sure that the data you collect about hate crimes is stored securely and in a way that ensures confidentiality.
- Create a database of the reports you receive in order that you can search by different fields, more easily identify trends, and provide anonymous statistics about the nature and scale of hate crime reported to you.
- As well as assisting the individual at hand, think about how you will take the reports made to you forward. Can you submit the data anonymously to national, regional and international statistics gathering initiatives? If you identify a particular hotspot or emerging issue, can you pass this intelligence anonymously to the police?

Police: Recording systems

- Create a flag or recording category to mark all hate crimes reported, in order that you can gather statistics on the prevalence of hate crime in your country.

Learning material no 8.

National law and policing or prosecutor guidelines¹⁶

Law

If there are any laws covering anti-LGBTI hate crimes in the national legislation, provide extracts.

If the law does not recognize sexual orientation, gender identity, gender expression or sex characteristics as protected grounds, provide information about provisions pertaining to other types of hate crimes (e.g. racist and xenophobic) and **general sentencing principles**. You may also choose to discuss provisions proscribing the most common types of crimes targeting LGBTI communities (e.g. physical assault) even if they do not specifically mention the bias motivation.

How to work with general sentencing provisions?

- when supervising investigation, always have the investigators gather relevant facts pointing to bias motivation (even if bias motivation is not explicitly mentioned in the provision you intend to use);
- Include the intention to invoke these provisions as early as possible (in the indictment – part of circumstances of the case) to give the defendant a chance to oppose it and have the facts pointing to bias motivation discussed in court as broadly as possible;
- using it for other groups (such as LGBT);
- using it for uncovered types of crime (damage to property);
- have the motivation included in the sentencing judgment, not just presented orally – otherwise, no visibility.

Policing/prosecuting guidelines:

If there are any policing or prosecuting guidelines pertaining to anti-LGBTI hate crimes, provide a summary or extracts.

If there are no guidelines relevant to anti-LGBTI hate crimes, but guidelines on other hate crimes (e.g. racist and xenophobic) exist, discuss them here.

Types of crimes covered

List types of crimes (e.g. homicide, theft) covered by the hate crime legislation.

Bias motivations covered

List victim categories (e.g. race, religion, sexual orientation) recognized in the legislation.

Association and perception

Say whether wording does not preclude the prosecution on the basis of a mistaken perception of the perpetrator.

Say whether victims by association would or would not be covered.

¹⁶ Based on PAHCT programme (ODIHR 2016).

Learning material no. 9. International and Regional Legal References

Where does the hate crime concept come from?

The hate crime concept is grounded in the fundamental human rights' principles of equality and non-discrimination that are recognized in a number of different international instruments. A few notable instruments are mentioned below.

Universal Declaration of Human Rights

- "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family";
- "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."; <<http://www.un.org/en/documents/udhr/>>

International Covenant on Civil and Political Rights (ICCPR)

- Reading the provisions as a whole obligates states to investigate violence committed against individuals and to discharge these duties without discrimination.
- Articles 6 & 7 obligate states to investigate violations of right to life & inhumane treatment committed by public or private actors;¹⁷
- Article 2 echoes same principle of equality of UNDHR; "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- Article 26 requires equality before the law, equal protection of the law and protection from discrimination: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Convention on the Elimination of all Forms of Discrimination (CERD)

Obligation to punish racist violence:

ARTICLE 4 (a): Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

ARTICLE 1: defines the related term, "racial discrimination", as:

"[T]he term 'racial discrimination' shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic

¹⁷ UNHRC "General Comment 31: The Nature of the General Legal Obligations Imposed by the Covenant" Human Rights Committee, Eightieth Session, adopted on 29 March 2004, UN Doc CCPR/C/21/Rev.1/Add.13, para. 6-8.

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origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

OSCE commitments on hate crime: 2003-2009

The OSCE’s Ministerial Council has repeatedly asserted that hate crimes not only affect individual human rights to equality and non-discrimination but have the potential to lead to conflict and violence on a wider scale. As, the OSCE requires consensus for any decisions or commitments, every participating State has actively agreed to abide by these commitments. While OSCE commitments are not legally binding, they form a set of principles which have moral weight on states.

The Ministerial Council Decision in 2009 on Combating Hate Crime remains one of the most comprehensive commitments by the international community concerning state obligations to address hate crime. <http://www.osce.org/cio/40702>

Participating States, inter alia, committed themselves to:

- Collect, and make public, data on hate crimes;
- Enact, where appropriate, specific, tailored legislation to combat hate crimes;
- Take appropriate measures to encourage victims;
- Develop professional training and capacity-building activities for law-enforcement; prosecution and judicial officials dealing with hate crimes;
- Promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership.

European Convention on Human Rights

- Article 14 prohibits discrimination of the rights and freedoms contained in the Convention on specific grounds:
“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
- http://www.echr.coe.int/NR/rdonlyres/EA13181C-D74A-47F9-A4E5-8A3AF5092938/0/BIH_CONV.pdf

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Jurisprudence from the CERD Committee

The jurisprudence from the CERD Committee is instructive on what these duties mean in actual case application for investigating and prosecuting racist hate crime. In **Mahali Dawas and Yousef Shava v. Denmark**,¹⁸ the Committee believed when investigating and prosecuting crimes with a potential bias motivation, the prosecution has a duty to ensure that racist motivation is fully investigated through the criminal proceedings. Failure to do so when there is *prima facie* evidence of bias motivation in connection with a serious crime is considered a violation of Article 6 (effective remedies) and Article 2, paragraph 1(d) (bringing an end to racial discrimination by all appropriate means).

European Court of Human Rights' Jurisprudence

- Duty to investigate and uncover racially and religiously (and homophobic, where relevant) motivated crime, conduct prompt and effective investigations
- Duty to assess bias indicators (including speech accompanying violence and social media posts).
- Evaluation of evidence must be done without prejudice;
- Investigation cannot exclude bias motivation because other motives are present;
- Specific hate crime laws not required; criminal justice system must be able to adequately investigate, prosecute and adequately punish hate crimes;

See separate learning material for specific case law.

European Commission on Racism and Intolerance (ECRI)

The Council of Europe's body dedicated to addressing issues of racism and intolerance, have issued a number of recommendations relating to combating hate crime.

In "ECRI General Policy Recommendation No. 11: Combating racism and racial discrimination in policing", Adopted by ECRI on 29 June 2007, it encourages the investigation of racist incidents, recording them, and using a broad definition for the purposes of recording racist incidents: "any incident which is perceived to be racist by the victim or any other person."

The relevant excerpt from the recommendation is below:

11. To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;

12. To establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences;

13. To encourage victims and witnesses of racist incidents to report such incidents;

14. To these ends, to adopt a broad definition of racist incident;

For the purposes of this Recommendation, a racist incident shall be:

"any incident which is perceived to be racist by the victim or any other person";

¹⁸ Committee on the Elimination of Racial Discrimination, Communication No. 46/2009, Opinion adopted by the Committee at its eightieth session, 13 February to 9 March 2012, CERD /C/80/D/46/2009

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http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N11/Recommendation_11_en.asp#TopOfPage

Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of a criminal law
Art 4: "shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, may be taken into consideration by the courts in the determination of the penalties.

Victims' Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime)
(56) to recognize possible hate or bias motivation of the crime;

(57) to assess whether hate crime victims are at risk of secondary victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures

Art. 22: individual assessments of victims and protection needs should take into account whether someone is a hate crime victim.

Learning material no. 10.

European Court of Human Rights case law on hate crimes¹⁹

The Court has considered states' obligations under the ECHR in relation to crimes based on bias motives on a number of occasions. These all involve Article 14 of the Convention, which can only be invoked if another, substantive right under the Convention is in issue.

A number of key principles have emerged from these cases. These principles build upon each other for a coherent jurisprudence on the obligation of states to promptly and effectively investigate bias-motivated crimes, by either state actors or private individuals, and to ensure that bias-motivation is uncovered and appropriately addressed by the criminal justice system. While there is a more detailed jurisprudence in this area for the ECHR, it echoes the same legal interpretations of the international standards relating to the ICCPR and CERD.

Here are the core holdings from the Court with regards to investigating hate crime and a short synopsis of the cases that support those holdings.

States have the obligation to conduct prompt and effective investigations into violent crimes involving violations of the right to life and the right to be free from ill-treatment.

In **Nachova v. Bulgaria**, the Court explained that to give meaning to the right to life (Article 2) and the right to be free from ill-treatment (Article 3) under the Convention, States have a "positive obligation" to undertake effective investigations into crimes which interfere with those rights.²⁰ This has two aspects: the first is that States are required to take measures to ensure that individuals within their jurisdictions are not subjected to ill treatment, whether by state actors or by private individuals. The second aspect is that States are required to conduct an official investigation that is reasonably expeditious.

Prosecution and investigation authorities must be impartial in their assessment of the evidence before them.

In the case of **Stoica v Romania**, where the alleged ill-treatment by police of a 14 year old Roma boy left him with permanent disabilities, the Court found that the military prosecutors had premised their findings on the statements of the police officials who clearly had every reason to wish to exonerate themselves and their colleagues from any liability. At the same time, the prosecutors had dismissed all statements by villagers, all of whom were of Romani ethnicity, on the grounds of an alleged bias in favour of the applicant. Additionally, the prosecutors had ignored statements by police officials that the villagers' behaviour was "purely Gypsy", a statement that in the eyes of the Court demonstrated the stereotypical views of the police.²¹

¹⁹ Based on PAHCT programme (ODIHR 2016).

²⁰ ECtHR, *Nachova and Others v. Bulgaria*, No. 43577/98 and 43579/98 (ECtHR 6 July 2005).

²¹ *Stoica v. Romania*, Judgement of the European Court of Human Rights, 4 March 2008.

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While states do not need to pass specific hate crime legislation, the criminal justice system must be able to identify, recognize and appropriately punish racist-motivated crime.

In the case of **Angelova and Iliev v. Bulgaria**,²² the applicants alleged that the state had failed in its obligation to conduct an effective and prompt investigation into the death of a Roma man, and that the lack of legislation for racially-motivated murder failed to provide adequate legal protection against such crimes. The Court held that a lack of direct hate crime laws did not hinder their ability to pursue the racist motivation during the criminal process and that the general legal framework could allow for appropriate and enhanced punishment for these types of crimes. This underscores that although states do not need specific hate crime laws, crimes that are particularly egregious, such as the increased harm to individuals and society that are caused by hate crimes, require proportionate punishment under the law.

State authorities have the duty to conduct effective and prompt investigations into cases of deprivation of life and ill-treatment without discrimination, which demands that any racist or anti-religious motivation must also be effectively and promptly investigated under reasonable circumstances.

In **Angelova and Iliev v. Bulgaria**, the Court also examined the role of authorities in specifically uncovering racist motivation. The police had identified the alleged assailants in the death of Roma man, one of whom directly admitted the racial motivation for the crime. However, the police failed to conduct the necessary investigative proceedings within the statute of limitations for prosecutions against most of the suspects. The Court held that the domestic authorities had failed to conduct a prompt and effective investigation into the incident, especially “considering the racial motives of the attack and the need to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racial violence.”²³ Consequently, the Court found Bulgaria to be in breach of the procedural aspect of the right to life (Article 2) in connection with the principle of non-discrimination (Article 14) because the authorities failed to make the “required distinction from other, non-racially motivated offences, which constitutes unjustified treatment irreconcilable with Article 14.”²⁴

In **Šečić v. Croatia**, the Court extended that same reasoning to violations of the investigative procedural aspect of the right to be free from ill-treatment (Article 3) in connection with Article 14. The applicant was a Roma man who was severely beaten by two individuals with wooden bats while they shouted racial abuse. Despite several leads, police failed to take reasonable investigative measures to find the perpetrators and bring them to justice. The Court held that state authorities have the duty, when investigating violent incidents, “to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal

²² ECtHR, *Angelova and Iliev v. Bulgaria*, No. 55523/00 (ECtHR 26 July 2007).

²³ *Ibid.* at para. 105.

²⁴ *Ibid.* at para. 117.

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footing with cases that have non-racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."²⁵

In **Milanović v. Serbia**, the Court extended the same principles concerning crimes motivated by racism to crimes motivated by an anti-religious bias.²⁶ The applicant, a member of the Vaishnava Hindu, or Hare Krishna, religious community was subjected to numerous physical attacks around the time of major Serbian Orthodox religious holidays. The State was held in breach of the procedural aspect of Article 3 (prevention of ill-treatment) in conjunction with Article 14 (non-discrimination principle) for failing to effectively and promptly investigate the religious bias motivation of the crimes. The Court especially took note that the police failed to take the victim's case seriously, even though there was a pattern of targeting around religious holidays. Instead, the police referred to the victim's religion and "strange appearance", which suggested that any investigative steps were pro forma and inadequately addressed the seriousness of the anti-religious bias motivation presented in the case.

In **Identoba and Others v. Georgia**, the Court extended the same principles to homophobic hate crimes, in cases where national law includes sexual orientation among protected characteristics.²⁷ In this specific Georgian context, the Court considered that it was essential for the relevant domestic authorities to take all reasonable steps with the aim of unmasking the role of possible homophobic motives for the events in question. The Court considered that without such a strict approach from the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes.

Bias motivation may not be a sole motivation. Prosecutors and investigators need to unmask bias motivation even when other motives exist. Duty to take all reasonable steps to unmask bias motivation requires considering the bias indicators.

In **Balázs v. Hungary**, the Court pointed out that not only acts based solely on a victim's characteristic can be classified as hate crimes, perpetrators may have mixed motives.²⁸ The prosecuting authorities' insistence on identifying an exclusive racist motive, their reluctance to link the perpetrator's posts to the incident despite remarkable concordances, and their failure to identify the racist motive in the face of powerful hate crime indicators such as the racist social network posts resulted from a manifestly unreasonable assessment of the circumstances. These failures amounted to a violation of Article 14 read in conjunction with Article 3 of the ECHR.

The Court has therefore made clear that in crimes involving bias on the grounds of race or religion, the state will be held to a very high standard. Where national law says so, the same reasoning applies also to cases of homophobic violence. Investigators and prosecutors must recognize and give additional weight to the bias element of crimes and take all reasonable steps to collect evidence of motive and bring offenders to justice. Prosecutors must therefore assess the evidence in a fair and unbiased way and

²⁵ ECtHR, *Šečić v. Croatia*, No. 40116/02 (ECtHR 31 May 2007).

²⁶ ECtHR, *Milanović v. Serbia*, No. 44614/07 (ECtHR 14 December 2010).

²⁷ ECtHR, *Identoba and Others v. Georgia*, No. 73235/12 (ECtHR 12 May 2015).

²⁸ ECtHR, *Balázs v. Hungary*, No. 15529/12 (ECtHR 1 September 2014).

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ensure that witness evidence is not dismissed based on stereotypes. Where investigators appear to have applied stereotypes, prosecutors must be aware of the responsibility to challenge these and to question whether the investigation was thorough and effective.

In **MC and AC v. Romania**, the ECtHR found that the Romanian authorities' failure to properly investigate a hate crime incident, relating to physical and verbal attacks which followed Bucharest Pride, and its potential discriminatory motive, breached Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention.²⁹ The Court found that the criminal investigation conducted was far from satisfactory, in terms of the identification and punishment of the perpetrators and use of the available evidence. Importantly the Court noted that the LGBTI community in Romania were in a precarious situation, given they are subject to very negative attitudes (since 2006 sexual orientation has been added as a hate crime in Romania). This meant that it was "indispensable" for State authorities in Romania to consider whether the attack was motivated by discrimination. Without such a rigorous approach, there was a real danger that prejudice-motivated crimes would inevitably be treated by law-enforcement authorities on an equal footing with cases involving no such overtones. This resultant "indifference" would be tantamount to official acquiescence to, or even connivance with, hate.

²⁹ ECtHR, MC and AC v. Romania, No. 12060/12 (ECtHR 12 April 2016).