



Understanding Hate Crimes

A Handbook for Ukraine

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INTRODUCTION

Hate crimes are crimes based on prejudice. They happen everywhere; no society is immune to the effects of prejudice and intolerance. Hate crimes send a message of rejection to whole communities and carry the seeds of potential conflicts, as they can escalate both in terms of numbers and levels of violence. The cycle of violence can be stopped if this is understood and firm measures taken.

This booklet aims to help local authorities, police and prosecutors, legislators and civil society groups better understand the problem of hate crime. It explains the significance of hate crimes and suggests how authorities and communities can prevent and better respond to them. The booklet is not a comprehensive guide or manual, but aims to introduce the concept of hate crime and the main aspects of the application of the concept in Ukraine.

This booklet was prepared by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). For additional information on hate crime, as well as a number of training tools and specialized guides in various languages, consult ODIHR's Tolerance and Non-Discrimination Information System (<http://tandis.odihr.pl/>) and its Hate Crime Reporting website (<http://hatecrime.osce.org/>).

What is a HATE CRIME?

Crimes motivated by intolerance towards certain groups in society are described as hate crimes.

Hate crimes consist of two elements:

- *The act must be a crime under the Criminal Code.*
- *The crime must have been committed with a bias motivation.*

Most crimes in the Criminal Code can be the base *offences* for hate crimes.

“Bias motivation” means that the perpetrator chose the *target* of the crime based on *protected characteristics*.

- *The target may be a person, people or property associated with a group that shares a protected characteristic.*
- *A protected characteristic is a fundamental or core characteristic shared by a group, such as “race”, religion, ethnicity, language, sexual orientation or gender identity.¹*

Crime + bias motivation = HATE CRIME

A hate crime does not require that perpetrators feel hatred towards their targets. Bias means that a person holds prejudiced ideas about a person or a group. The perpetrators’ prejudices are then reflected in the selection of the target or otherwise demonstrated throughout the attack. Hate crimes can target people who are merely associated with the targeted group, such as human rights activists. Because hate crimes are committed based on what the targeted person, people or property represent, the perpetrator may have no feelings at all about their actual, individual, victim.²

Case Example:

A man of Chadian origin was walking along Korolyova street in Odessa with his wife and son when they were approached by six people who started calling them “monkeys” and “blacks.” The group shouted “Ukraine is for Ukrainians” and asked why the family had come to Ukraine. After that, the group attacked the man, punching and kicking him.

¹ Ukrainian law mentions “racial, national or religious intolerance” in its hate crime provisions. The provision of art. 161 of the Criminal Code (primarily addressing hate speech and discrimination crimes) includes a broader and open-ended list of protected characteristics: “race, color of skin, political, religious and other convictions, disability, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics”.

² This broad and inclusive construction of bias motive is based on the definition of hate crimes adopted by all OSCE states. Ukrainian law uses the more restrictive concept of “hate motive”, which enables courts to require proof of hostility, rather than proving mere selection of the target based on protected characteristics.

This is a hate crime. The xenophobic statement and racist insults that preceded and accompanied the attack are indications of bias motivation. Prior to the incident, there were no other disagreements or quarrels between the two groups, further indicating that a bias motivation was behind the attack.

It is important to note the concept of *mixed motives*. Bias does not necessarily have to be the sole motivation for a crime. Seeking financial gain can combine with bias in a robbery of a disabled person who is perceived as an easy target because of their disability. Perpetrators can also target the victim because of more than one protected characteristic: a Muslim woman can have her headscarf ripped off, while sexist, anti-Arab and anti-Muslim abuses are used.

The victims of hate crime

Anyone can be the victim of hate crime, although members of minority communities are the most frequent targets. Hate crimes also affect property belonging to, or associated with, a community, such as places of worship.

All hate crimes must be treated with equal seriousness, regardless of who the victim and perpetrator are. Members of a majority population group can also be targeted.

VICTIMS OF HATE CRIMES IN UKRAINE

Hate crimes in Ukraine often target:

- *Foreigners and members of different ethnic communities in the country.*
- *Members of minority religious groups, their communal property, such as churches, synagogues, mosques and graveyards, as well as private property.*
- *Roma people.*
- *Members of the lesbian, gay, bisexual and transgender community are extremely vulnerable to hate crimes. This is particularly true when legal protection is missing; attacks frequently occur in public places and target activists.*

Why treat **HATE CRIMES** differently: The impact of **HATE CRIMES**

Hate crimes tend to increase in numbers: Perpetrators often feel morally justified in their acts. If their respective community does not effectively punish and repudiate hate crimes, these and other potential perpetrators are encouraged to continue their activities, and the number of hate crimes will increase.

Hate crimes tend to escalate: Offenders who start by committing minor crimes often go on to commit increasingly violent acts if they are not caught and stopped. Therefore, even minor offences committed with bias motivation are dangerous and require firm responses.

Hate crimes tend to spiral: Hate crimes are crimes that send powerful messages. The individual victims are directly harmed and the message of rejection resonates through their whole community. If victims and their communities feel unsafe and unprotected by state authorities, they are likely to retaliate against members of the community blamed for attacking them. This can lead to further attacks, creating a spiral of violence that leads to serious social breakdown. Strong responses by the authorities are needed to break this cycle and reassure the victim's community.

How to identify a **HATE CRIME**

Bias indicators are one or more facts that suggest that a crime may have been committed with a bias motivation. They provide objective criteria by which to judge the probable motive. Bias indicators are a tool for the initial identification of potential hate crime cases. They should be used by the police and prosecutors to decide whether and how to further investigate the perpetrator's motives. Bias indicators alone do not prove that the offender's actions were motivated by bias: For that, evidence needs to be presented in court.

A number of bias indicators may be present in a case, including many in this non-exhaustive list:

Victim/Witness Perception

→ *Does the victim, or do witnesses perceive the incident to have been motivated by bias?*

Comments, Written Statements, Gestures or Graffiti

→ *Did the suspect make comments, written statements or gestures about the victim's community?*

→ *Were drawings, markings, symbols or graffiti left at the scene of the incident?*

Racial, Ethnic, Gender, and Cultural Differences

- Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?
- Is there a history of animosity between the victim's group and the suspect's group?
- Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
- Was the victim engaged in activities promoting 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 nationalist organization or hate group?
- Is there evidence that such a group is active in the neighbourhood (e.g. posters, graffiti or leaflets)?

Previous Bias Crimes/Incidents

- Have there been similar incidents in the same area? Who were the victims?
- Has the victim received harassing mail, phone calls or been the victim of verbal abuse based on their affiliation or membership of a targeted group?

Location and Timing

- Was the victim in or near an area commonly associated with, or frequented by, a particular group (e.g., a community centre, mosque, church or other place of worship)?
- If property was targeted, was it an object or place with religious or cultural significance, such as a historical monument or a cemetery?
- Did the incident occur on a date of particular significance (e.g. a religious holiday or national day)?

BIAS INDICATORS: CASE STUDY

A local mosque in Crimea was set on fire. The fire started around 6 a.m. Unidentified perpetrators broke into the building, set fire to religious literature, including six copies of the Qur'an, the walls and the floor of the mosque. No one was present at the time of the attack. The imam of the mosque was questioned by the police and mentioned that this stream of attacks was meant to scare his community into leaving. Two weeks earlier, another mosque was set on fire, and several other attacks on Crimean Tatars were reported in the same area. Both arson incidents happened on the eve of an important Muslim holiday.

This is a case of hate crime, where arson has been committed with an underlying anti-Muslim, possibly racist, bias.

Bias indicators are:

- *the victims' perception: in this case, the imam's account;*
- *the location and target of the attack: religious building and literature were selected;*
- *timing: the attack occurred on a significant date for the targeted community, in order to strengthen the "message";*
- *there is a pattern of previous attacks in the same area and time period;*
- *the ethnic and religious differences: the Crimean Tatar minority in predominantly Slavic and Christian Crimea; and*
- *the lack of other reasons explaining the attack.*

HATE CRIME Laws

A hate crime law is a provision that takes into consideration the bias motivation of the perpetrator and provides for an increased sentence when the perpetrator is convicted of a crime.

CRIMINAL CODE OF UKRAINE

The Criminal Code of Ukraine contains a sentencing provision that allows more severe punishment to be imposed for any crime that is committed with a bias motivation.³ In addition, the code specifically includes aggravated forms of some offences, such as murder, physical assault or threats, when these are motivated by bias.⁴

These provisions include the following protected characteristics: race, nationality and religion.

This means that most crimes can receive an increased sentence if the judge determines that they were committed on the basis of racial, national or religious intolerance.

³ Criminal Code art. 67, paragraph 3.

⁴ Criminal Code art. 115, paragraph 14 (murder), art. 121, paragraph 2 (intended grievous bodily injury), art. 122, paragraph 2 (intended bodily injury of medium gravity), art. 126, paragraph 2 (battery and torture), art. 127, paragraph 2 (torture), art. 129, paragraph 2 (threat to kill).

Other related laws

There are also other provisions in the Criminal Code that impose sanctions for related behaviours, such as the violation of citizens' equality by inciting hatred and insulting or discriminating on the bases of protected characteristics.⁵ These provisions are presently predominantly used in Ukraine to prosecute hate crimes. The full text of these provisions is presented in the Annex.

In addition, the *hooliganism* provision – which addresses the motive of the perpetrator, but not the protected characteristics – is often invoked in hate crime cases. This cannot be considered an adequate response to hate crimes, as such a qualification ignores bias motivation and annuls the difference between a simple base offence and a hate crime.

HATE CRIMES AND CONFLICT

Hate crimes can be committed – sometimes on a mass scale – during an armed conflict or occupation. When further specific conditions set out in international law (such as the context of ongoing broad attack on civilians, or intent to destroy a group in whole or in part) are met, these can sometimes be classified as *war crimes*, *crimes against humanity* or *a crime of genocide*. These international crimes are also in the Criminal Code of Ukraine.

Political tensions and armed conflicts can pit communities, defined by ethnicity, origin, language or religion, against one another. Sometimes, political divides can copy inter-ethnic or inter-religious boundaries. In such contexts, hate crimes and politically motivated crimes can overlap. Each such case has to be assessed individually.

Hate crimes can be committed even in the midst of conflict. It is important to always note the existence of a bias motive and to assess its relevance. The perception of the targeted community should inform the decision on the classification of a particular case as a hate crime – or not. For monitoring purposes, these cases can either be handled as *mixed motive* situations or listed as hate crimes and monitored under a special category.

Yet another challenge is the issue of jurisdiction and accountability. In territories that are not under control of the recognized government, official state authorities cannot be held accountable for their failure to protect hate crime victims. This responsibility rests with the *de facto* authorities acting in the area. It is for the relevant tribunal – national or international – to decide on the applicable legal regime.

⁵ Criminal Code art. 161.

International and Regional Standards

There is a comprehensive body of international and regional instruments that impose clear duties on states to respond to hate crimes.

The UN Convention on the Elimination of All Forms of Racial Discrimination requires states to implement laws punishing crimes motivated by racism. The European Union's Framework Decision on Racist and Xenophobic Crime and the EU Victims Directive are also of relevance to all EU member countries or to those seeking membership. The Framework Decision, adopted in 2008, aims to establish a common criminal law approach to hate crimes, including aggravated penalties for bias motivation.

In relation to law enforcement, the European Court of Human Rights has held that states have a duty to properly investigate the potential racial motivations of crimes. OSCE participating States have committed themselves to ensuring that their legislation is adequate, and that they are collecting statistics, ensuring that hate crimes are thoroughly investigated and prosecuted, and implementing training programmes where necessary.

RESPONDING TO HATE CRIMES

Hate crimes can increase in numbers and escalate into broader conflicts if authorities do not intervene in a timely and forceful manner. There are many benefits to improving responses to hate crimes:

- *Early warning: Serious violent unrest is often sparked by one small, bias-motivated incident catching authorities by surprise. Recognizing and tracking hate crimes allows law-enforcement agencies to anticipate a wave of serious incidents.*
- *Stronger communities: The identification and punishment of hate crimes raises the confidence of affected communities, as trust in the criminal justice system increases and communities feel safer.*
- *Enhanced intelligence: As confidence in police increases, so does information and co-operation received from those communities affected by hate crimes. Improved community relations and interaction lead to more successful investigations, not only in cases of hate crimes but also in other matters in which police require community assistance.*

HATE CRIME DATA COLLECTION

Authorities can only respond effectively if the nature and prevalence of the problem is known. Collecting data on hate crimes is crucial to detecting where trouble is building, which locations may require greater protection to prevent future crimes, and which communities need extra reassurance and protection. Data collection provides improved intelligence and helps determine where resources can best be allocated.

In Ukraine, the Prosecutor General's Office, the Ministry of Internal Affairs, the State Department on Sentence Execution and the State Statistics Committee collect data on hate crimes. However, the disparity between information collected officially and that available through civil society and media monitoring indicate that many hate crimes are not recognized as such and addressed by the authorities.⁶

Law Enforcement and Justice Agencies' Responses

In most cases, proving motive in a crime is not necessary. Because motive is a complex issue and there are limits to the kind of evidence that can be used to prove it, hate crime cases demand a different approach by police, prosecutors and judges.

Proving bias motive and enhancing the penalty of the perpetrator is the desired outcome of the criminal justice process. Equally important is restoring, as much as possible, the rights of the victims and compensating them for the harm caused. To that end, it is essential to ensure communications between the authorities and the victims and their communities about ongoing and concluded proceedings.

In order to fulfil their role, law enforcement and judicial officials should undergo specialized training. This will enable them to better understand underlying social phenomena, recognize hate crimes and acquire skills to respond.

⁶ Visit Ukraine's country page on ODIHR's Hate Crime Reporting website at <http://hatecrime.osce.org/ukraine>, as well as the section below discussing the civil society efforts.

THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights has held that states have positive obligations to thoroughly investigate potential racial motivation behind crimes. It stated, in the case of *Šečić v Croatia* (2007):

...State authorities have the additional duty 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 footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."

Police:

In order to effectively investigate hate crimes and collect data, police must be able to identify hate crimes, in which bias indicators are an essential tool. When interviewing perpetrators, motives should be explored—many perpetrators openly admit their motivation, as they can feel their behaviour is justified and approved of by the rest of the community.

The police play an essential role in recording hate crimes, as important circumstances of the case – including those pointing to the bias motive – can be lost if not correctly recorded when the crime is committed or reported.

Prosecutors:

Prosecutors should pursue indictments under hate crimes provisions in the Criminal Code, where possible. In every case, however minor, prosecutors should treat the offence as aggravated if a bias motive is present. This should result in gathering and presenting evidence of motive to the court, even if no aggravated form of the crime is contained in the code. In the absence of admissions, a prosecutor can consider indirect circumstantial evidence:

- *Hate crimes are often accompanied by verbal insults or graffiti at the scene of the crime - crucial evidence of motive.*
- *If the perpetrator's music, literature, web-postings, clothing, jewellery or tattoos show membership in or support for hate groups, this is relevant evidence of her or his general views.*
- *Some of the other facts, listed earlier as bias indicators, can be used as evidence of motive.*
- *There may have been previous similar conduct by the perpetrator, whether against this victim or others.*

Prosecuting hate crimes under other provisions, such as *hooliganism* or *violation of equality*, as has been the practice in Ukraine, limits the possibility of hearing the evidence of bias motive in court and, thus, the effectiveness of the response.

Courts:

Where a hate crime is proven, the punishment should be increased to recognize the potential impact of the crime on the community, beyond the victim, according to Article 67, paragraph 3 of the Criminal Code or the specific penalty enhancement clauses listed in the Annex. To maximize the impact, judges should state in open court and in the written verdict that the motive has resulted in an increased sentence.

Angelova and Iliev v Bulgaria (2007)

In 1996, Mr. Angel Iliev died after being beaten and stabbed by a group of teenagers. The attackers were arrested within hours; they admitted that they had been looking for Roma to attack and expressed their hatred of Roma and other minorities. Five of the attackers were indicted for “hooliganism of exceptional cynicism and impudence” but, for nine years, nothing further was done to bring them to justice. The European Court of Human Rights held that Bulgaria was in breach of its obligations and that it was “completely unacceptable” that, being aware of the racist motives of the perpetrators, there had been a failure to bring the case to justice promptly.

This case has added relevance in Ukraine, where many hate crimes have also been decided as cases of hooliganism, under Article 296 of the Criminal Code.

Role of civil society

Civil society plays an indispensable role in raising awareness about hate crime, in supporting victims and in advocating for more effective responses by the authorities. Monitoring activities conducted by civil society often yield valuable information about the prevalence and impact of hate crimes, especially in situations where there are no official or specific hate crime data-collection systems. The relevant authorities can work with civil society to improve the identification, registration and monitoring of hate crimes/incidents and support assistance to victims of hate crimes.

RESPONDING TO HATE CRIMES AT THE LOCAL LEVEL

There are a number of good practices that local authorities can support:

- *Quickly removing offensive graffiti. This is a small but important step to improving community confidence.*
- *Creating community partnership panels to enable municipalities and local law-enforcement agencies to meet with civil society and religious community representatives to exchange information and concerns.*
- *When suspected bias-motivated incidents occur, ensuring that mayors and local politicians can reassure the community that a thorough investigation will take place and make positive public statements. It is important to recognize community concerns and explain what actions are being taken. Such statements are taken more seriously if there is a record of engaging and working with community organizations.*
- *Promoting school projects to educate students about hate crimes and counter possible bias-motivated bullying. This can form a component of civic education classes, or be part of “twinning” with other schools locally or in a more ethnically diverse area to organize joint activities to explore mutual prejudices and experiences.*
- *Systematically educating all students about prejudice and intolerance. This can be achieved if education authorities ensure that the subject is mainstreamed into school curricula and teacher-training faculties.*
- *Local leaders should not exploit intolerant sentiments for political gain, and media should promote tolerance in the coverage of events, not propagate intolerance. Media also have an important role in exposing inaction by the authorities in investigating hate crimes. In addition, they can use their voice to forcefully denounce hate crimes and other manifestations of intolerance when they happen.*

ANNEX:

Ukrainian Hate Crime Laws and other related legislation

Article 67. [Circumstances aggravating punishment]

1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating:
 - (1), (2)
 - (3) the commission of an offense based on racial, national or religious enmity and hostility;
 - (4) – (13) ...
2. Depending on the nature of an offense committed, a court may find any of the circumstances specified in paragraph 1 of this Article, other than those defined in subparagraphs 2, 6, 7, 9, 10, and 12, not to be aggravating, and should provide the reasons for this decision in its judgment.
3. When imposing a punishment, a court may not find any circumstances, other than those defined in paragraph 1 of this Article, to be aggravating.
4. If any of the aggravating circumstances is specified in an article of the Special Part of this Code as an element of an offense, that affects its treatment, a court shall not take it into consideration again as an aggravating circumstance when imposing a punishment.

...

Article 115. [Murder]

1. Murder, that is willful unlawful causing death of another person, - shall be punishable by imprisonment for a term of seven to fifteen years.
2. Murder:
 - (1)-(13) ...
 - (14) based on racial, national or religious intolerance.- shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment with forfeiture of property in the case provided for by subparagraph 6 of paragraph 2 of this Article.

Article 121. [Intended grievous bodily injury]

1. Intended grievous bodily injury, that is a willful bodily injury which is dangerous to life at the time of infliction, or resulted in a loss of any organ or its functions, or caused a mental disease or any other health disorder attended with a persisting loss of not less than one-third of working capability, or interruption of pregnancy, or permanent disfigurement of face, - shall be punishable by imprisonment for a term of five to eight years.

2. Intended grievous bodily injury committed by a method characterized by significant torture, or by a group of persons, and also for the purpose of intimidating the victim or other persons, or based on racial, national and religious intolerance, or committed as a contracted offense, or which caused death of the victim, - shall be punishable by imprisonment for a term of seven to ten years.

Article 122. [Intended bodily injury of medium gravity]

1. Intended bodily injury of medium gravity, that is a willful bodily injury which is not dangerous to life and does not result in the consequences provided for by Article 121 of this Code, but which caused a lasting health disorder or a significant and persisting loss of not less than one-third of working capability,- shall be punishable by correctional labor for a term up to two years, or restraint of liberty for a term up to three years, or imprisonment for a term up to three years.
2. The same actions committed for the purpose of intimidating the victim or his/her relatives, or coercion to certain actions, or based on racial, national or religious intolerance, - shall be punishable by imprisonment for a term of three to five years.

Article 126. [Battery and torture]

1. Intended blows, battery or other violent acts which caused physical pain but no bodily injury, - shall be punishable by a fine up to 50 tax-free minimum incomes, or community service for a term up to 200 hours, or correctional labor for a term up to one year.
2. The same acts characterized by torture, committed by a group of persons or for the purpose of intimidating the victim or his relatives, or based on racial, national or religious intolerance, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term.

Article 127. [Torture]

1. Torture, that is an willful causing of severe physical pain or physical or mental suffering by way of battery, martyrizing or other violent actions for the purpose of inducing the victim or any other person to commit involuntary actions, including receiving from him/her or any other person information or confession, or for the purpose of punishing him/her or any other person for the actions committed by him/her or any other person or for committing of which he/she or any other person is suspected of, as well as for the purpose of intimidation and discrimination of him/her of other persons, - shall be punishable by imprisonment for a term of three to five years.

2. The same actions repeated or committed by a group of persons upon prior conspiracy, or based on racial, national or religious intolerance, - shall be punishable by imprisonment for a term of five to ten years.

Article 129. [Threat to kill]

1. Any threat to kill, if there was a reasonable cause to believe that this threat may be fulfilled, - shall be punishable by arrest for a term up to six months, or restraint of liberty for a term up to two years.
2. The same act committed by a member of an organized group or based on racial, national or religious intolerance, - shall be punishable by imprisonment for a term of three to five years.

Other related laws

Article 161. [Violation of citizens' equality based on their race, nationality, religious preferences or disability]

1. Wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, color of skin, political, religious and other convictions, disability, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, - shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.
2. The same actions accompanied with violence, deception or threats, and also committed by an official, - shall be punishable by a fine of 500 to 1000 tax-free minimum incomes, or restraint of liberty for a term of two to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.
3. ...



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