

SUPPLEMENTARY HUMAN DIMENSION MEETING

**HATE CRIMES – EFFECTIVE IMPLEMENTATION OF
LEGISLATION**

**4 – 5 May 2009,
Hofburg, Vienna**

ANNOTATED AGENDA

At the 2003 Maastricht Ministerial Council Meeting, OSCE participating States recognized the importance of legislation to combat hate crimes and made commitments to "inform the ODIHR about existing legislation regarding crimes fuelled by intolerance and discrimination," and, where appropriate, to "seek the ODIHR's assistance in the drafting and review of such legislation."¹ Moreover states have committed to consider strengthening legislation relating to hate crimes.

In line with its mandate to support states in their efforts to combat hate crimes,² ODIHR has provided comments and reviews of draft legislation, through training of law enforcement personnel, and through its publication "*Hate Crime Laws: A Practical Guide*".³ This guide is designed to be a resource for policy-makers, legislators and civil society in the review and implementation of hate crime laws. In the guide the OSCE describes the two essential elements of a hate crime:

The first element of a hate crime is that an act is committed which is an offence under the ordinary criminal law. The second element of a hate crime is that the criminal act is committed with a bias motive. This means that the perpetrator intentionally chose the *target* of the crime because of some *protected characteristic*.

- The *target* may be one or more people, or it may be property associated with a group that shares a particular characteristic.
- A *protected characteristic* is a characteristic shared by a group, such as their "race", language, religion, ethnicity, nationality, or other similar ground.

¹ OSCE Ministerial Council Decision No. 4/03, Maastricht, 2 December 2003

² OSCE Ministerial Council Decision No. 12/04, "Tolerance and Non-Discrimination", Sofia, 7 December 2004; Permanent Council Decisions No. 607, "Combating Anti-Semitism" and No. 621 "Tolerance and the Fight Against Racism, Xenophobia and Discrimination."

³ http://www.osce.org/publications/odihhr/2009/03/36671_1263_en.pdf

This explanation makes clear that hate crimes comprise a *crime* plus a *bias motive*.

Hate crime laws explicitly provide for increased penalties for crimes motivated by prejudice or bias towards the victim based on their membership of a racial, ethnic, religious, sexual or other minority. While hate crimes can, in principle, be dealt with under ordinary criminal law, experience strongly suggests that specific hate crime laws are more effective than the general criminal law.

However, laws are only effective where they are implemented by the responsible authorities. There are a number of steps that states can take to ensure their laws are given effect; the ODIHR's tools are designed to support such steps.

The need to combat organized hate groups who incite or use violence is a particular challenge for law enforcement. A human rights approach to regulation of these groups requires allowing their freedom of expression within the scope allowed for under national and international law.

This SHDM will explore how states differ in their legal approaches; which laws are most effective at combating hate crimes; the obstacles faced by police and prosecutors in bringing offenders to justice and the specific challenges posed by violent organized hate groups.

Session I: Legislation on Hate Crime

There is a diversity of legal approaches by which hate crimes may be prosecuted. While many states have no hate crime laws, they can always use the ordinary criminal law. However, in such states, hate crimes are not recognized as a separate category of crime. This has meant a deficit in data collection which in turn has negative implications for law enforcement recognition of the problem, lack of training and inadequate resourcing. But there are strong arguments that specific laws which increase the penalty for hate crimes are necessary. First, because the bias motive apparent in hate crimes impact more deeply on the victim than a crime without the bias motive. Second, because such crimes have a destructive impact on the community to which the victim belongs. And third, because hate crimes tend to escalate, and without effective interventions, may lead eventually to widespread social disorder.

Where states have well-drafted laws which respond to the specific manifestations of hate crimes in their community, there is a greater chance of improving the response and of preventing escalation of individual crimes into a major social problem. Such laws serve a number of purposes. First, they indicate social condemnation of crimes motivated by prejudice; second they indicate to the victim that their experience has been recognised by the state.

This session will consider how legislators can create laws that can be used and understood by prosecutors and police. The discussion will focus on the different legal approaches taken in OSCE States and how those approaches impact on the implementation by law enforcement. The session will provide an opportunity to hear about the experience of States that have recently introduced specific hate crime laws and what impact that has had. Finally the session will discuss how to incorporate the

perspectives of communities that suffer most from hate crimes in the process of law-making.

Issues to be discussed:

- The different legislative responses to hate crimes in the OSCE region;
- Advantages to creating specific laws tailored to the problem;
- Including the victim's perspective;
- The necessity for data collection;
- Co-operation with civil society.

Session II: Improving the Policing and Prosecution of Hate Crimes

Hate crimes are a complex phenomenon requiring special investigation and prosecution techniques. Hate crimes are unusual in that they require investigation and proof of motive. This can be difficult, especially as motive can only be proven by reliance on inferences and circumstantial evidence. Thus, police and prosecution need to be trained to recognise these cases, and learn specific skills to prove motive.

Additionally, there is an observable reluctance to accept racism and intolerance as a possible motive for violent attacks. Where law enforcement agencies tend to deny the existence of such motives, despite evidence to the contrary, victims and affected communities lose trust in the capacity of state authorities to adequately respond to hate crimes. And where communities that are targets of hate crimes have a record of mistrust or poor communication with law enforcement, hate crime cases are less likely to be reported.

The session will discuss concrete challenges encountered when policing and prosecuting hate crimes, and exchange information on good practices in this regard. The session will discuss organizational issues, such as the creation of specialized hate crime units, the inclusion of specific training in police academies, and the imposition of appropriate targets which encourage proper recording of hate crimes. Finally, the positive benefits of working with civil society especially those representing excluded and marginalized communities will be discussed with specific examples of how this can transform relationships to the benefit of law enforcement as well as affected communities.

Issues to be discussed:

- Challenges in correctly identifying hate crimes;
- Ways to enhance the capacity of police and prosecutors to prove motive;
- Organizational issues for improving law enforcement;
- Problems in proving motive, and examples of solutions;
- The role of civil society as a partner and as an accountability mechanism.

Session III: Special Challenges posed by Violent Hate Groups

Violent hate groups advocate hostility or violence towards members of a racial group, ethnicity, religion, gender, sexual orientation or other similar groups. These hate groups are particularly difficult for states to combat. Whilst some groups can clearly be linked to violent attacks, and the perpetrators be prosecuted, many appear simply to foment and propagate hatred against other communities based on race, nationality, sexuality or other similar characteristic. They often exploit the differences in legal regulation in different countries to operate across borders, and this can pose a significant challenge to interrupting their activities.

Violent hate groups represent a sub-culture which actively seeks to recruit new members, often targeting young people. Their music, symbols and dress codes are often very distinctive, and are a signal of their views. These must be understood by law enforcement, in order to properly investigate hate crimes, and to prove bias motives.

The session will discuss the challenges posed by the need to respect lawful freedom of expression and assembly whilst simultaneously taking action against groups which foment hatred and violence. The session will also discuss how these groups use the internet, music and other cultural tools to reach new audiences. It will also explore the connection between intolerant and violent speech of such groups and actual acts of violence. The session will focus on the various tools which have been effective in combating these groups, whilst respecting human rights, especially cross-border co-operation.

Issues to be discussed:

- How violent hate groups operate and recruit members, including through the Internet;
- The connection between violent organized hate groups and acts of violence;
- Law enforcement co-operation across borders;
- Use of technological, legal and regulatory means to combat hate groups;
- Good practice examples.