



unierī

United Nations
Interregional Crime and Justice
Research Institute

LIGHT ON: Investigating and Reporting Online Hate Speech

TRAINING MANUAL *SUMMARISED VERSION*

LIGHT ON
your turn to **stop racism**



LIGHT ON is a project co-financed by the Fundamental Rights and
Citizenship Programme of the European Union



LIGHT ON: Investigating and Reporting Online Hate Speech

TRAINING MANUAL SUMMARISED VERSION

Cover & layout design: Cristina Micheletti

DISCLAIMER

This manual has been produced with the financial support of the Fundamental Rights and Citizenship Programme of the European Commission.

The contents of this manual are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

The views expressed are those of the authors and do not necessarily reflect the views of the United Nations or the organizations with which the authors are affiliated.

Contents of this publication may be quoted or reproduced, provided that the source of information is acknowledged.

UNICRI would like to receive a copy of the document in which this publication is used or quoted.

The designation employed and presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area of its authorities, or concerning the delimitation of its frontiers or boundaries.



LIGHT ON is a project co-financed by the Fundamental Rights and Citizenship Programme of the European Union

Index

ACKNOWLEDGMENTS	2
THE LIGHT ON PROJECT: CONCEPT, ACTIVITIES AND PURPOSE	3
PURPOSE OF THE TRAINING MANUAL AND HOW TO USE IT	3
General information on the training content	4
Target group	4
Purpose of the Course.....	4
Content of the Course.....	4
General information on the training methodology	5
Tips for trainers.....	5
OUTLINE OF THE TRAINING CURRICULUM	6
SUMMARY OF THE REFERENCE TEXT FOR THE TRAINER	7
SECTION 1	7
Setting the Framework: Racist Hate Crime, definitions and legislation - A focus on racist hate speech online	7
1.1 Introduction.....	7
1.2 Defining hate crime	8
1.2.1 Which are the bias-motivation categories?	8
1.2.2 The normalisation of hate and its consequences	9
1.2.3 A focus on racism	10
1.3 Hate Crimes and Anti-Discrimination Laws: Treaties, agreements and conventions at international level	10
1.3.1 Main international anti-discrimination laws	10
1.3.2 Main international agreements on hate speech.....	11
1.3.3 Regional instruments in Europe	11
1.4 Implementation of the EU anti-discrimination law in the Member States	12
1.4.1 Examples of ECtHR case-law on racial discrimination in the EU	13
1.5 Our focus: Hate speech online	13
1.5.1 Defining Hate Speech	13
1.5.2 The Borders between Controversial Humour, Freedom of Speech and Hate Speech.....	14
1.5.3 Hate speech online.....	15
SECTION 2	16
Identifying and reporting hate speech online	16
2.1 Responding to hate crime	16
2.2 Main reasons for not reporting.....	16
2.3 How to investigate hate speech online	17
2.3.1 A victim-centred approach.....	17
2.3.2 Bias indicators.....	18
2.4 Legal challenges linked to hate speech online	19
2.4.1 Proving a case.....	19
2.4.2 Determining legal liability	20
2.4.3 Quantifying the harm	20
2.5 The role of Equality Bodies in providing assistance and advice to victims.....	21
2.6 The role of NGOs and associations	21
2.7 General tips for online reporting	22
2.7.1 How to report an incident.....	22
2.8 Steps for reporting incidents on most used social media.....	23

ACKNOWLEDGMENTS

This publication is a **summary** of the main issues covered in the Training Manual “LIGHT ON: Investigating and Reporting Online Hate Speech” prepared within the framework of the project “*LIGHT ON - Cross-community actions for combating the modern symbolism and languages of racism and discrimination*”, co-funded by the Fundamental Rights and Citizenship Programme of the European Commission.

The manual has been drafted by a team from the Emerging Crimes Unit of the United Nations Interregional Crime and Justice Research Institute (UNICRI), coordinated by Vittoria Luda di Cortemiglia, including Francesca Bosco, Elena D’Angelo, and Georgiana Ward-Booth and under the supervision of Angela Patrignani from the Emerging Crimes Unit. The manual has been further proofread by Greer Mulcahey Banks.

Special thanks goes to: Google and YouTube representatives, Mr. Guy Chapman (Wikipedia Information Team), Ms. Patricia Cartes and her team (Twitter Trust & Safety), Mr. Rui Gomes (Youth Department of the Council of Europe) who have all provided precious inputs in the conceptualization of the part of the manual related to the online reporting of incidents of hate speech.

Last but not least, we wish to express our appreciation to the group of high-level experts who participated at the Meeting of Experts held in Turin in April 2013 to discuss and finalise the training manual’s content, methodology and materials: Isis Amlak (Delegate for Migrant and Refugee Communities Forum, England); Zsigmond Boross (Police Headquarters, Hungary); Paola Capozzi (Ministry of Interior, Department of Public Security - Police for Postal Services and Communications, Italy); Erna Csokas (Equal Treatment Authority, Hungary); Gabriele Di Marcantonio (Progetti Sociali, Italy); Lucia Gori (Ministry of Interior, Department of Public

Security - Observatory for the Security against Discriminatory Acts, Italy); Giovanna Langela (Ministry of Interior, Department of Public Security - Police for Postal Services and Communications, Italy); Tina Lesar; Carmine Massarelli (Ministry of Interior, Department of Public Security - General Investigations and Special Operations, Italy); Robi Ribic; Claudia Santoro (Progetti Sociali, Italy); Lillian Seenoi (North West Migrants forum, Northern Ireland); Maria Swanlijung (Office of the Ombudsman for Minorities, Finland); Beatrice Vozzella (Ministry of Interior, Department of Public Security - General Investigations and Special Operations, Italy).

THE LIGHT ON PROJECT: CONCEPT, ACTIVITIES AND PURPOSE¹

The project “LIGHT ON - Cross-community actions for combating the modern symbolism and languages of racism and discrimination”, funded by the Fundamental Rights and Citizenship Programme of the European Commission, aims to tackle racism and its related images and habits, providing a set of tools for the community and law enforcement professionals, through a preventive and participatory approach.

Hate speech, especially hate speech online, is the core of the LIGHT ON project as it conveys meaning, intent and significance in a compact and immediately recognisable form and it greatly influences personal and collective behaviors.

LIGHT ON is carried out by a consortium of European actors engaged at different levels in activities countering discrimination. The consortium consists of: Regione Abruzzo (Italy), which is the leading partner; the Ombudsman for Minorities (Finland); the United Nations Interregional Crime and Justice Research Institute, UNICRI; the Eötvös Loránd University, ELTE (Hungary); the International Institute of Sociology of Gorizia, ISIG (Italy); the Peace Institute (Slovenia); the European Network Against Racism ENAR (Belgium); the Migrant and Refugee community forum (UK); Progetti Sociali (Italy).



¹ More information on the project is available at: <http://www.lighton-project.eu> and http://www.unicri.it/special_topics/hate_crimes/

LIGHT ON aims to:

- Challenge the normalisation of racism and xenophobia and their acceptance in the dialogue and social dynamics of everyday life, through scientific research that identifies the images that explicitly and implicitly express racism while at the same time analyses how communities perceive them;
- Strengthen the capacity of professionals and authorities against hate crimes and discriminatory behaviours, through a highly specialised training model and a toolbox;
- Encourage citizens to report if they become victims or witness an incident of discrimination.

PURPOSE OF THE TRAINING MANUAL AND HOW TO USE IT

UNICRI has developed this **Training Manual** to strengthen professionals’ capacities in investigating and reporting **racist hate speech** and, in the specific, **online racist hate speech**. The Manual has been designed to cover both theoretical and practical areas of the training course and provides information on methodological, technical, logistical and organizational training-related aspects. As such it can also be used as a manual for end-users.

The Training Manual is organized in four parts: the **Training Curriculum**; the **Reference Text for the Trainer**; the **Handouts** section; and the suggested **Power Point Slides**.

The **Training Curriculum** is a tool for the trainer(s) delivering the Course and it describes the proposed training methodology, the objectives and some related activities and exercises; it can be specifically adapted to different target audiences and country contexts.

The **Reference Text for the Trainer** includes information and readings to be referred to by the trainer(s) in the delivery of the course. It is comprised of two main sections, the first being theoretical and setting the framework of hate crimes and hate speech, and the second more practical oriented on how to investigate and report online hate speech.

The **Handouts** section includes the material that the trainer(s), as suggested in the Training Curriculum, might distribute to the participants to deliver the various learning objectives and related activities of the Training Course.

The **PowerPoint Slides** section, as suggested in the Training Curriculum, provides the trainer(s) a discretionary and adjustable tool to deliver the insights of the Reference Text for Trainer to the participants.

The present publication is a summarised version of the Training Manual and as such contains an outline of the suggested Training Curriculum and a summary of the contents expressed in the Reference Text for the Trainer. The Handouts and Power Point Slides sections are omitted from this summary and are available on the project website (www.lighton-project.eu).

The Manual builds upon the national information and examples provided by the LIGHT ON partners during the project execution and includes information on the project countries, namely: **Finland, Hungary, Italy, Slovenia**, and the **United Kingdom**. Additional country profiles can be used as further reference, and these are available on the project website. The **Training Manual** is however conceived as being ready to be used at the European level and tailored to the national context of any of the 28 EU Member States.

General information on the training content

Target group

As racism is a multifaceted problem that requires a **multidisciplinary approach**, participants in the training course can be trainers or professionals belonging to different target groups with institutional or operational competencies against racism, including: LEA officials and lawyers and legal professionals working with associations operating to support victims. As the training methodology relies on active participation and interaction with trainees, the number of participants should not exceed 20/25. The training can be delivered both to participants coming from the same country or from different countries.

Purpose of the Course

The course is designed to provide solid knowledge and to further develop participants' skills on: identification of racists hate speech, operational practices on how to investigate and report incidents of online hate speech and establishment of a rapport with the victims or witnesses. The purpose of the training is also to provide an insight on the existing online reporting tools on a few of the most used social media and social network sites.

Content of the Course

The content of the Course is based on the insights outlined in the **Reference Text for the Trainer**. The trainer(s) can decide whether to deliver all the insights of the Reference Text, part of them, or even integrate them according to the nature of the target group and their expertise.

The trainer(s) is advised to deliver the course's contents following a proposed training strategy outlined in the **Training Curriculum**.

The Training Curriculum comprises:

- an opening session;
- a theoretical introductory section, which

reflects SECTION 1 of the Reference Text for the Trainer, aimed at introducing the issues of hate crime and hate speech with related learning objectives and suggested activities;

- a practical section, which reflects SECTION 2 of the Reference Text for the Trainer, aimed at supporting professionals in investigating and reporting hate speech online with related learning objectives and suggested activities;
- a concluding session accompanied by a final evaluation of the training by the participants;
- a follow-up evaluation.

Institutions delivering the Training Course should ensure that participants completing the Training Course are provided with an official Certificate of Attendance.

General information on the training methodology

Tips for trainers

This course is meant to build upon the practical experience of the participants, who – being professional trainers, law enforcement officials, legal practitioners or experts in the field of discrimination – will make an essential contribution to its content. It is therefore designed to remove the “barriers” of the classroom so as to put the skills that participants acquire into effect.

The material for the Course is presented in a suggested sequential order in the **Training Curriculum**. The Handouts and the PowerPoint Slides sections are the tools provided to the trainer(s) to deliver the proposed training strategy and the insights of the Reference Text for the Trainer. The trainer(s) can choose whether to follow and how to adapt the proposed Training Strategy.

The suggested activities are intended to open the door to discussion and discovery. The “right”

answer is not provided because solutions are often context-specific. Rather, participants are to be encouraged to share their own experiences and ideas, and to adopt a creative problem solving approach. If necessary, trainers can make reference to the Reference Text for the Trainer when resolving the proposed activities and they may want to distribute the **Bibliography** and **Further Readings** sections to the participants.

The course is designed to be completed in 2 days. Time should be planned on the basis of the proposed training strategy (each lecture and activity suggested in the Training Curriculum comes with an approximate suggested duration). However, the trainer(s) should take into consideration the characteristics of the specific target group, the objectives of the training, the overall time constraints, and the trainer's own assessment of priorities.

It is important for the trainer(s) to be well-versed in the subject matter. Trainer(s) should:

- a. be well prepared on the contents of the Reference Text for the Trainer that they aim to deliver to the participants;
- b. make sure that the suggested objectives, content, structure, methods and training media of the Training Curriculum/ Handouts/PowerPoint Slides are fully grasped.

OUTLINE OF THE TRAINING CURRICULUM

LIGHT ON
your turn to stop racism



Below an outline of the Training Curriculum, highlighting the learning objectives and training activities described in details in the full version of the Training Curriculum, available at www.lighton-project.eu

Opening of the Course

- ▷ Presentation of participants and definition of objectives
- ▷ Registration of participants
- ▷ Full introduction of the trainer(s)
- ▷ Roundtable presentation of participants
- ▷ Setting of the Guidelines and Ground Rules
- ▷ Outline of the scheduled course activities
- ▷ Expectations and definition of objectives.

- ▷ Activity 5 – Hate Speech vs. Freedom of Speech.
- ▷ Activity 6 - Which are the specificities of online hate speech?

Section 1: Setting the Framework: Racist Hate Crime, definitions and legislation - A focus on racist hate speech online

Learning Objectives

- ✓ Understand and define hate crime;
- ✓ Identify and describe the elements constituting hate crime;
- ✓ Have an overview of International, European and National legal instruments on the topic;
- ✓ Consolidate knowledge on online hate speech.

Activities:

- ▷ Activity 1 – Introduction to the concept of hate crimes and definition.
- ▷ Activity 2 – How does hate crime manifest itself?
- ▷ Activity 3 – Racism in Europe today.
- ▷ Activity 4 – Understanding the legal framework on hate speech.

Section 2: Identifying and reporting hate speech online

Learning Objectives

- ✓ Outline the main methods to identify hate speech;
- ✓ Understand how to investigate online hate speech;
- ✓ Appreciate the legal challenges linked to online hate speech;
- ✓ Gain knowledge on the online reporting.

Activities:

- ▷ Activity 1 – Why do victims of online hate crime not report?
- ▷ Activity 2 – How to investigate online hate speech: a victim-centred approach
- ▷ Activity 3 – How to identify bias indicators
- ▷ Activity 4 – How to prove a case of online hate speech
- ▷ Activity 5 – How to report a case of online hate speech.

Closing Session

- ▷ Self Examination.
- ▷ Conclusion of the Course.
- ▷ Closing remarks by the trainer.
- ▷ Evaluation of the training by participants.
- ▷ Follow-up evaluation.

SUMMARY OF THE REFERENCE TEXT FOR THE TRAINER

LIGHT ON
your turn to stop racism



This summary offers a concise version of some of the contents of the full Reference Text for the Trainer. Some of the topics have been omitted from this version. The individual legal frameworks on hate crime and hate speech in the countries involved in the LIGHT ON project (Finland, Hungary, Italy, Slovenia, Hungary and the United Kingdom), the full description of the progressive steps for reporting incidents of online hate speech on the most used social media (Facebook, Twitter, Youtube, Wikipedia) and some related case studies of the online reporting of incidents of racist hate speech are available on the full version of the Reference Text available at: www.lighton-project.eu

SECTION 1

Setting the Framework: Racist Hate Crime, definitions and legislation - A focus on racist hate speech online

1.1 Introduction

Discrimination in Europe is still considered to be common by many institutions and organizations working in the field of human rights' protection. In 2012, upon the request of the European Commission (EC), the Special Eurobarometer 393 produced the report *Discrimination in the EU*.² This survey was fielded in the 27 Member States of the European Union, by some 26,622 respondents from different social and demographic groups interviewed face-to-face. The report shows that the experience of direct discrimination remains high in the EU:

“Almost a fifth of Europeans (17%) report that they have personally experienced discrimination or harassment: 13% have experienced discrimination on the basis of one of the grounds analysed in the survey, and 4% on multiple grounds”.

Not only discrimination and hate are widespread, but they have also been progressively “normalised” in the public opinion, public discourse and in the society at large. History teaches us that the worst economic crises in the past have led to an increase in racism, xenophobia and different forms of discrimination. The concern for an economic downturn can provoke and amplify the fear of the “other”, and cause an escalation in hate both in the private sphere and in the public discourse. Of course the economic crisis is only one of the factors behind this escalation: the deep roots of discrimination are sunk in the history and in the local context of each region and country. It is important not to underestimate these warring trends as intolerance and discrimination lay at the basis of hate and hate crimes.

² European Commission (EC), “Special Eurobarometer 393. Discrimination in the EU in 2012. Report”, (November 2012), available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf

1.2 Defining hate crime

The concept of hate crime firstly emerged in Europe in the year 1990. In the *Copenhagen Document*, States participating in the Conference on Security and Co-operation in Europe (CSCE) pledged to take effective measures to provide adequate defence against acts that can constitute incitement to violence against individuals or groups based on national, racial, ethnic or religious discrimination, hostility or hate.³

But the term *hate crime* was officially used for the first time in 2003 by the Organization for Security and Cooperation in Europe (OSCE), at the Ministerial Council Meeting in Maastricht, when States underlined the key role that hate crime legislation plays in ensuring that the criminal-justice system has the authority to investigate, prosecute and impose sentences for crimes fuelled by intolerance and discrimination.⁴

Regardless of the different countries' commitments on the topic, hate crimes continue to be an issue of concern. In 2010, the *Astana Declaration*⁵ issued at the end of the *OSCE High-Level Conference on Tolerance and Non-discrimination* reiterated commitments and concerns about hate crimes, including those based on racism or xenophobia.

The term "hate crime" does **not** refer to a specific offence. It can be any criminal offence, such as murder, acts of threat or intimidation, assault or property damage, but its **motivation** makes hate crime different from any other form of crime. Hate crime is also known as **bias-motivated crime**. As reported by *Legislation Online*, for a criminal act to qualify as hate crime, it must meet two criteria:

- The act must be a **crime** under the criminal code of the legal jurisdiction in which it is committed;
- The crime must have been committed with

a **bias motivation**.

Crime + Bias Motivation = HATE CRIME

Committing a crime under a **bias motivation** means that the perpetrator chooses the target of the crime on the basis of specific protected characteristics. A **protected characteristic** is a fundamental or core characteristic that is shared by a group, such as race, religion, ethnicity, language or sexual orientation.

The target of a hate crime may be a person, a group of people or even properties associated with a collective of individuals sharing a protected characteristic. The feeling of hate towards the individual victim is **not** a prerequisite of the perpetrator.⁶

1.2.1 Which are the bias-motivation categories?

Every year, since 2008, the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE receives information on this topic through a "Questionnaire for National Points of Contact on Combating Hate Crime". The questionnaire aims at seeking information on three different levels: data collection, developments in the legislation, and institutional responses to hate crimes. The most common types of bias motivations in hate crimes can be derived from the statistics summarising information provided by the participating countries.

According to the 2013 OSCE/ODHIR report, States in the region recorded hate crime incidents based on the following bias categories:⁷

- Ethnicity/origin/minority (35 states)
- Religion (34 states)
- "Race"/colour of skin (35 states)

⁶ OSCE / Office for Democratic Institutions and Human Rights (ODIHR), "Understanding Hate Crimes: A Handbook for Albania", (2012), p.7, available at: <<http://www.osce.org/odihr/104164?download=true>>

⁷ For more detailed information on the relevant states reporting each category please check OSCE / ODIHR, "Annual report for 2012. Hate crimes in the OSCE region: Incidents and responses", (November 2013), pp. 18-19, available at: <http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf>

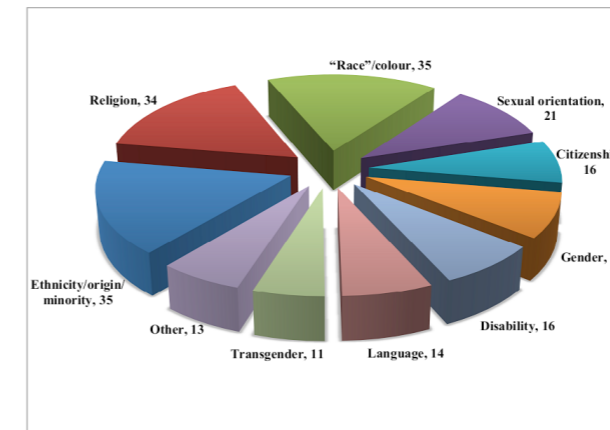
³ Organization for Security and Co-operation in Europe (OSCE), "Document of the Copenhagen meeting of the conference on the human dimension of the Conference on Security and Co-operation in Europe (CSCE)", (29 June 1990), available at: <<http://www.osce.org/node/14304>>

⁴ OSCE, "Document of the Eleventh Meeting of the OSCE Ministerial Council, Maastricht", (2 December 2003), available at: <<http://www.osce.org/mc/40533?download=true>>

⁵ For more information see: <http://www.osce.org/event/summit_2010>

- Sexual orientation (21 states)
- Citizenship (21 states)
- Gender (17 states)
- Disability (16 states)
- Language (14 states)
- Transgender (11 states)
- Other (13 states).

Fig. 1
Bias categories recorded by countries in OSCE region



Source: OSCE/ODIHR (2013), p.19

In particular, 22 States recorded anti-Semitic crimes; 21 recorded anti-Muslim crimes; 16 recorded crimes motivated by bias against Christians and members of other religions; and 14 recorded anti-Roma crimes. However, the data submitted on hate crimes with specific bias motivations remain scarce.

1.2.2 The normalisation of hate and its consequences⁸

The **normalisation** of hate can be understood as the tendency of regarding visual and verbal discriminatory and racist manifestations as a normal element of daily interactions and social relations.

Nowadays, even though explicit and violent forms of hatred still exist, a series of more subtle ways of disseminating discriminative and racist ideas have gained the upper hand. These practices

⁸ This paragraph, including quotations, is based on the considerations put forward in: Bajit, V., (2014), "Contemporary racism across Europe", *Freedom From Fear Magazine*, 9: pp. 36-41, available at: <http://f3magazine.unicri.it/wp-content/uploads/F3_09.pdf>

range from more private statements, for example tattoo and pictures, to publicly shared ones such as public speeches, slogans and web content.

A worrying trend, for example, is generally observed in regard to the media: "*media reporting has been shown to contribute to a perpetuated degrading and exclusion of minority groups, [...] because sensationalist media reporting tends to represent racist outbreaks of the majority population as a 'normal' reaction of the state and the people*". Furthermore, these "newer" forms of discrimination and racism have become so embedded in social processes and structures that the normalisation of hate has also affected the realm of politics, as the increasing diffusion of populist and radical right-wing political parties prove.

The diffusion of this "*exclusionary racist logic perceiv[ing] the supposed cultural characteristics of minorities and immigrant communities as a 'problem' or 'threat'*", particularly in the current situation of the global social and economic crisis, is a process that needs to be seriously addressed by institutions at a national, regional and international level, together with civil society.

If "minor" discriminative attitudes, instead of being limited and stigmatized, are perceived as normal by the rest of the community, there is a likelihood of triggering an increasingly violent escalation in the manifestation of hate. Discriminative behaviours, such as stereotyping attitudes and belittling jokes, when widely accepted as normal by the society, can step up to more serious actions and events, such as biased violent acts, and even result in life-threatening incidents.

Therefore, addressing and dismantling the "newer" forms of discrimination and racism should be taken seriously in order to halt the normalisation of hate and avoid an escalation of violence. In order to do so, a successful strategy will also encompass a commitment of raising awareness on the importance of reporting episodes of hate crime and discriminatory behaviours amongst **witnesses**.

1.2.3 A focus on racism

Race and ethnicity are the **most frequent bias-motivation categories** reported by OSCE/ODHIR. The significant number of daily manifestations of racism is a constant reminder of the continuing importance of this social and political issue in the contemporary global environment. Recurrent incidents in a number of countries worldwide show that the power of racist ideas remains strong, forging ideological movements and even political parties, which sometimes have deadly consequences. After the experience of the Holocaust and the heavy moral burden of the Second World War, a number of definitions were developed in order to recognise and fight racism. According to Art. 1 of the [UN Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#): “[...] the term **‘racial discrimination’** shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic 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”.

The European Union explicitly banned racism along with many other forms of social discrimination in Art. 21 of the [Charter of Fundamental Rights of the European Union](#),⁹ which states that: “[...] any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.

Both definitions make no distinction among different forms of personal/individual or social/common characteristics, thus making the definition of racism applicable in a wider context.

Expressions of racism differ from one national context to the other. According to the LIGHT ON project research, for instance, Italy and the United Kingdom are countries with large immigration,

⁹ European Union (EU), “Charter of Fundamental Rights of the European Union”, (7 December 2000), Official Journal of the European Communities, OJ C 364/01, available at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>>

from Muslim/Arab countries as well as from Africa, Middle East and Far East/Asia. The Muslim communities are one of the most vulnerable victims of racist prejudice and discrimination. Even in Hungary and Slovenia, not currently affected by mass immigration, migrants are frequently discriminated against. Moreover, in these two countries Roma people are by far the most frequent victims of racist discrimination, but there are also other communities, like the *Izbrisani* (or “erased” of the former Yugoslav Republic) and Muslims in Slovenia, and Jews in Hungary. Religious and ethnic characteristics seem to reinforce the inequality and discrimination of these communities in an intersectional manner.

1.3 Hate Crimes and Anti-Discrimination Laws: Treaties, agreements and conventions at international level

Over the years, the International Community has adopted a large number of instruments (legally binding instruments such as treaties, agreements, conventions, but also soft law tools as declarations and recommendations) addressing the issue of discrimination and hate crime. The following sub-paragraphs provide an outline of these legal tools. More in-depth information on the topic can be found on the full version of the Reference Text for the Trainer.

1.3.1 Main international anti-discrimination laws

- ▷ [UDHR Universal Declaration on Human Rights](#) (1948) (Art. 2);
- ▷ [Convention on the Prevention and Punishment of the Crime of Genocide](#) (1951) (Art. 2);
- ▷ [Convention Relating to the Status of Refugees](#) (1951) (Art.3);
- ▷ [Convention Relating to the Status of Stateless Persons](#) (1954) (Art.3);
- ▷ [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD)

(1965) (Art.1 & Art.4);

- ▷ [International Covenant on Civil and Political Rights](#) (ICCPR) (1966) (Art. 2, Art. 6 and Art. 9);
- ▷ [International Convention on the Suppression and Punishment of the Crime Apartheid](#) (1976);
- ▷ [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) (1979);
- ▷ [UN Convention on the Rights of the Child](#) (1989) (Art. 2).

A number of declarations have also been adopted, among which:

- ▷ [UNESCO Declaration on Race and Racial Prejudice](#) (1978);
- ▷ [UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#) (1981);
- ▷ [Durban Declaration and Program of Action](#) (2001), and the [Outcome Document of the Durban Review Conference](#) (2009).

1.3.2 Main international agreements on hate speech¹⁰

The foundational principle of international human rights is the equality and dignity of every human being. On this basis, international law condemns statements that refuse to recognise the equality of all individuals. In particular:

- ▷ [International Covenant on Civil and Political Rights](#) (ICCPR) (1966) (Art. 19 - 20);
- ▷ [International Convention on the Elimination of All Forms of Racial Discrimination](#) (1965) (Art. 4);
- ▷ [Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems](#) (2003).

In 2001, the UN Special Rapporteur on

¹⁰ Main source of this paragraph: ARTICLE 19 website, section on hate speech. Refer to: <<http://www.article19.org/pages/en/hate-speech-more.html>>

Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression released a [Joint Statement on Racism and the Media](#),¹¹ which sets a number of conditions which hate speech law should respect. Such as:

- No one should be penalised for statements which are true;
- No one should be penalised for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence;
- The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;
- No one should be subject to prior censorship;
- Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

One of the main obstacles in the development of a harmonised international legal framework on hate speech online is a jurisdictional matter. Often online hate speech originates in one jurisdiction, but its effects are felt elsewhere. The [“Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems”](#) (2003) represents probably the most important effort to overcome such difficulty. The Protocol is aimed at harmonising the way local judicial systems regulate computer-related offences in order to promote cooperation in prosecuting hate crimes in the cyberspace.

1.3.3 Regional instruments in Europe

Among the major European instruments on the topic there are:

¹¹ The Representative on Freedom of the Media Organization for Security and Co-operation in Europe, (Ed. by Hulin, A.), (2013), “Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression”, Vienna, available at: <<http://www.osce.org/fom/99558?download=true>>

- ▷ [European Convention on Human Rights \(ECHR\) \(1950\) \(Art. 14\);](#)
- ▷ [Charter of Fundamental Rights of the EU \(2000\) \(Art. 21\);](#)
- ▷ [EU Directive \(2012/29/EU\) Establishing minimum standards on the rights, support and protection of victims of crime \(25 October 2012\);](#)
- ▷ [Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law \(2008\);](#)
- ▷ [Additional Protocol to the Council of Europe Convention on cyber crime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems \(2003\);](#)
- ▷ [Recommendation CM/Rec \(2010\)5 on measures to combat discrimination on grounds of sexual orientation or gender identity \(2010\).](#)

Other soft law international instruments on the increasing necessity of tackling hate speech online are:

- [CoE Recommendation \(97\)20 on Hate Speech;](#)
- [European Commission against Racism and Intolerance \(ECRI\) General Policy Recommendation n.6 on Combating Dissemination of Racist, Xenophobic, Anti-Semitic material via the Internet.](#)

1.4 Implementation of the EU anti-discrimination law in the Member States¹²

Since the adoption of the EU Anti-Discrimination Directives, a landmark for the promotion and protection of equality and non-discrimination in the EU, more than 10 years

¹² Main source of this paragraph: Chopin, I., (2011), "Implementation of EU anti-discrimination law in the Member States: a comparative approach", in Academy of European Law (ERA), "Anti-Discrimination Documentation", available at: <http://www.era-comm.eu/oldoku/Adiskri/01/Overview/2011_04%20Chopin_EN.pdf>

have passed. Some of the key-concepts of these directives and other European equality law include: the definition of direct and indirect discrimination, harassment, victimisation and instruction to discriminate; the reversal of the burden of proof; the defence of victim's rights by non-governmental organizations; and effective, proportionate and dissuasive sanctions including compensation.¹³

The degree of implementation varies greatly between countries. Two EU Anti-Discrimination Directives are particularly relevant:

- [Directive 2000/43/EC "Racial Equality"](#) (Racial and ethnic origin for employment, education, social protection and social advantages, goods and services including housing);
- [Directive 2000/78/EC "Employment Equality"](#) (Age, disability, sexual orientation, religion or belief in employment).

These Directives require Member States to prohibit discrimination on the grounds of racial or ethnic origins, religion or belief, disability, age and sexual orientation. But the Directives do not contain any specific definition of these grounds. EU laws take precedence over domestic law within its field of competence; this implies that national courts must give priority to the former over the latter. However, their application in domestic courts is slightly more complicated: it is up to Member States to establish how these directives are to be implemented, i.e. transposed, in their national legal systems.¹⁴

Further information is available in the full Reference Text for the Trainer.

¹³ Farkas, L., (2011), "How to Present a Discrimination Claim. Handbook on seeking remedies under the EU Non-discrimination Directives", European Commission Directorate-General for Justice, available at: <http://ec.europa.eu/justice/discrimination/files/present_a_discrimination_claim_handbook_en.pdf>. For an in-depth analysis of the concept of indirect discrimination see: Tobler, C., (2008), "Limits and potential of the concept of indirect discrimination", European Network of Legal Experts in the non-discrimination field for the European Commission, available at: <http://www.non-discrimination.net/content/media/limpot08_en.pdf>

¹⁴ Farkas, L., (2011), op. cit.

1.4.1 Examples of ECtHR case-law on racial discrimination in the EU

"Over the last decade, the European Court of Human Rights (ECtHR) has consistently argued that hate crime victims have the right not only to be generally acknowledged as victims of crime, but also as having suffered victimization specifically because of the biased attitudes of an offender or, very often, offenders".¹⁵

Guidelines annexed to Warsaw Declaration of 2005¹⁶ commit to "greater complementarity between European Union and Council of Europe legal text."¹⁷ The EU Member States are therefore committed to bring their national legislation in line with the obligations coming from the ECtHR. Hereunder a list of cases of discrimination and bias-motivated crimes judged by the ECtHR:

- ▷ [European Court of Human Rights - Case of Nachova and Others v. Bulgaria \(2004\);](#)
- ▷ [European Court of Human Rights - Case of Angelova and Illiev v. Bulgaria \(2007\);](#)
- ▷ [European Court of Human Rights - Case of Šečić v Croatia \(2007\);](#)
- ▷ [European Court of Human Rights - Case of Muñoz Díaz vs. Spain \(2009\);](#)
- ▷ [European Court of Human Rights - Case of Milanović v. Serbia \(2010\).](#)

The full version of the Reference Text for the Trainer offers a description of each case.

1.5 Our focus: Hate speech online

Hate speech is a specific form of hate crime. The term **hate speech** usually refers to those expressions which are abusing, threatening or harassing, and which can incite to discrimination or violence against groups or individuals on the basis of their specific characteristics.

¹⁵ FRA, (2012), op. cit., p.15

¹⁶ CoE, (2005), "Warsaw Summit, Council of Europe, Declaration and Action Plan", available at: <http://web.bf.uni-lj.si/students/vnd/knjiznica/Skoberne_literatura/gradiva/deklaracije/coe_WARSAW%20SUMMIT.pdf>

¹⁷ Ibid.

The Manual focuses in particular on a specific form of hate speech, **hate speech online**, and on its diffusion on some of the most commonly used social networks. Indeed, the borderless, interactive and instantaneous nature of the Internet holds far-reaching consequences in the dissemination of hate speech: "[...] The Internet was heralded by first generation Internet critics for its ability to cross borders, destroy distance and break down real world barriers [...] Yet the anonymity, immediacy and global nature of the Internet has also made it an ideal tool for extremists and hatemonger to promote hate. Alongside the globalization of technology, there has been an incremental rise in the number of online hate groups and hate related activities taking place in the cyberspace".¹⁸

1.5.1 Defining Hate Speech

At present there is no universally accepted definition of the term 'hate speech', despite its frequent usage.¹⁹ In general, definitions of hate speech make reference to a number of the following components: the **content** of speech; the (written or oral) **tone** of speech; an evaluation of the **nature** of that speech; the (individual and collective) targets of that speech; and the potential **consequences** or **implications** of the speech act.²⁰ The Training Manual makes reference to the definition of hate speech offered by Recommendation (97)20 of the CoE:

"the term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"

¹⁸ Banks, (2010), op. cit., p.233

¹⁹ CoE, "Hate Speech and the Media", available at: <<http://www.coe.int/t/dghl/cooperation/media/Meetings/Hate%20Speech%20Background%20Paper.pdf>>

²⁰ Titely, G., British Institute of Human Rights, Földi, L. (2012), "Starting Points for Combating Hate Speech Online", Council of Europe, Youth Department, available at: <<http://www.theewc.org/uploads/files/Starting%20points%20for%20Combating%20Hate%20Speech%20Online.pdf>>

1.5.2 The Borders between Controversial Humour, Freedom of Speech and Hate Speech²¹

Reconciling rights which are at the core of democracy, such as freedom of belief and religion and freedom from discrimination, with the right to freedom of expression represents a significant challenge.

When comedy and dark humour are included in the picture, establishing clear boundaries between what constitutes freedom of expression and what falls under the category of hate speech becomes an ever more complex challenge. It goes without saying that the Web could not possibly have remained immune to the diffusion of *controversial humour*²² and thus not be subjected to heated public debates.

How is it then possible to establish and define the limits to freedom of expression? Where do we draw the line? First of all, it is important to understand what comedy and satirical jokes are. Comedy and satirical jokes, fall under the category of expression and are therefore protected by those laws dealing with the right to freedom of expression. Nonetheless, this right also comes with duties and responsibilities and it is, therefore, subjected to specific legal limits. As result, also comedy, by law, encounters specific restrictions.

Art. 19 of the United Nations Universal Declaration of Human Rights (1947) is the most widely accepted formulation of the **right of free expression**. The Article states that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” It would however be misleading to read and discuss Art. 19 in isolation from the other human rights protected by the

²¹ Main source of this paragraph is CoE (2012) “Mapping study on projects against hate speech online”, paragraph 3: Cyberhate and freedom of expression, available at: http://www.coe.int/t/dg4/youth/Source/Training/Training_courses/2012_Mapping_projects_against_Hate_Speech.pdf

²² For the purpose of this Manual, with controversial humour we intend those communicative materials, in this case disseminated on the Internet, which are thought by the author to be amusing or comic (such as statements and pictures), but that are likely to be perceived as offensive and thus spur debates and controversies on their contents.

Declaration such as for example **Art. 29** or **Art. 30** which **limit the exercise of individual rights and freedoms to the respect for the rights and freedoms of others** and “the requirements of morality, public order and the general welfare in a democratic society”.

At a European level, instead, **Art. 10** of the ECHR stands as the centrepiece of the protection for the right to **freedom of expression**. Limits to the right of freedom of expression are allowed where the case met the requirements of **Art. 17 (Prohibition of Abuse of Rights)**, i.e. when a person or group is engaged in activities aimed at the destruction, or limitation of the rights protected by the Convention. Additionally, even if the test for Art. 17 is not met, Art. 10 in itself represents a qualified right. The Art., in its second section, clearly states that freedom of speech implies duties and responsibilities and, as such, may be subjected to restrictions or penalties as prescribed by law. This implies that in democratic societies, governments may limit freedom of expression where necessary in order to pursue one of the aims referred to in Art. 10 (2), but only in so far as they are provided for by law and in a manner which is proportionate. The test against which such limitations are evaluated is a strict one.

The **content** of the expression is not the deciding factor used to determine whether a speech has crossed the boundary of freedom of expression; this is rather the **impact** of the expression, i.e. whether a particular instance is likely to incite violent or hatred, or affect the rights of others. Another deciding factor lies in the **intent or purpose** backing the speech. According to the 2009 CoE Manual on hate speech,²³ factors considered by the Court when assessing if freedom of expression can be restricted are:

- The objective of the person whose freedom of speech was restricted;
- The content of the expression;
- The context, e.g. whether the person who made the statement is a journalist or politician;
- The profile of the people who are targets of opinions and expressions;

²³ CoE, (2008), “Factsheet on hate speech”, p.3, available at: www.coe.int/t/DC/Files/Source/FS_hate_en.doc

- The publicity and potential impact of the expression, e.g. whether the statement was made in a widely distributed newspaper or in a poem;
- The nature and gravity of the restriction.

1.5.3 Hate speech online

In 2011, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information joined their forces and prepared a [Joint Declaration on Freedom of Expression and the Internet](#) (2011). The declaration specifically deals with the issue of freedom of expression and its restrictions on the Internet:

“a. Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognized under international law...

b. When assessing the proportionality of a restriction on freedom of expression on the Internet, the impact of that restriction on the ability of the Internet to deliver positive freedom of expression outcomes must be weighed against its benefits in terms of protecting other interests.”

The **main methods** used to spread hate on the Internet are:²⁴

- Websites;
- blogs and online fora;
- emails and personal messages;
- online news portal;
- social networking sites;
- gaming;
- videos and music;
- automated content, astroturfing²⁵ and fictitious identities.

²⁴ This distinction is reported in COE (2012), op. cit., pp. 20-28.

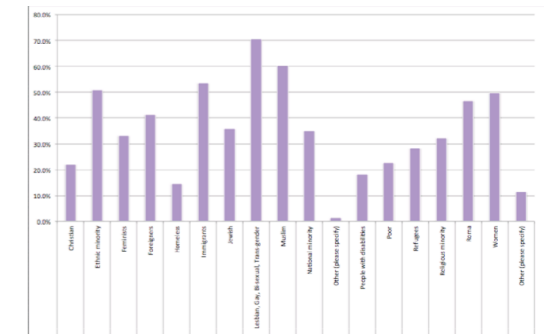
²⁵ “Astroturfing” is defined as the practice of masking the sponsors of a message (e.g. political, advertising, religious or public relations) to give the appearance of it coming from a disinterested, grassroots participant.

Several empirical studies proved that the **online diffusion of hate speech is an increasing trend**.²⁶ Statistics confirm the extent of the problem. In 2012 the Youth Department of the Council of Europe launched a survey on young people’s experience of online hate speech.²⁷ **The survey most revealing data** is that:

78% of the participants in the survey have encountered online hate speech

The survey also reveals that the discriminative categories mostly targeted by online hate speech are: “Gay, lesbian, trans-gender and bisexual”, followed by “Muslim”, “Immigrants”, and “Ethnic minorities” (fig. 2).

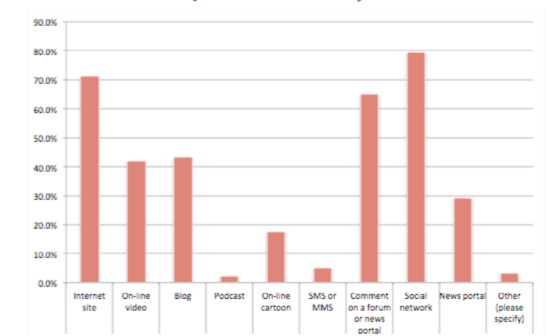
Fig. 2 Discriminatory categories targeted by online hate speech



Source: CoE (2012), “Survey on young people’s attitudes and experience of online hate speech”

According to the CoE survey on young people’s experience of online hate speech, **hate speech online is mostly disseminated** on social networks, websites; on forums or news portals.

Fig. 3 Where hate speech is mostly disseminated



Source: CoE (2012), “Survey on young people’s experience of online hate speech”

²⁶ See: Perry, B., Olsson, P. (2009), “Cyberhate: The Globalization of Hate”, in *Information & Communications Technology Law*, 18(2), pp. 185-199; Banks, J. (2010), op. cit.; Akdeniz, Y. (2009), “Racism on the Internet”, Strasbourg, Council of Europe Publishing.

²⁷ CoE (2012), “Young people’s experience and attitude towards hate speech online”, survey results available at: http://www.beznenavisti.sk/wp-content/themes/beznenavisti/podklady-a-materialy/vyskum_CoE.pdf

SECTION 2

Identifying and reporting hate speech online

2.1 Responding to hate crime

Police officers and investigators have a key role in responding to hate crimes. By addressing the case efficiently and carefully, police can reinforce the message that all hate crimes, including hate speech online, will be investigated, thus enhancing the likelihood of a successful prosecution.

- Why should law enforcement institutions care particularly about hate crime?
- If a person abuses another, why does it make a difference whether the offence was motivated by prejudice, as is the case of hate crimes?

As stated in the 2012 FRA Report on “Making hate crime visible in the European Union: acknowledging victims’ rights”,²⁸ it is the responsibility of criminal justice systems to identify cases of hate crime. Moreover, hate crimes retains some specificities in their negative effects on **victims** and on the **community** at large:

- Hate crimes are often brutal and injurious.
- Victim(s) usually feel traumatised and frightened.
- Families of victims often feel frustrated and powerless.
- Other members of the community who share the victim’s characteristics may also feel victimised and vulnerable.
- Hate incidents can escalate and prompt retaliatory action.
- Hate crimes and hate incidents create communitywide unrest.²⁹

28 FRA, “Making hate crime visible in the European Union: acknowledging victims’ rights”, (2012), available at: <http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf>

29 Turner, N. “Responding to Hate Crimes: A Police Officer’s Guide to Investigation and Prevention”, (2001), International Association of Chiefs of Police, available at:

Failure to respond to hate crime may jeopardise public safety, decrease the social legitimacy of law enforcement agencies and leave officers and departments open to possible liabilities.

2.2 Main reasons for not reporting

Research has shown that hate crime often goes **unreported** and is only reported when things have reached a crisis point. It is therefore crucial to understand the **reasons for not reporting** in order to be able to overcome such challenge. Such reasons include:

- Lack of confidence in the police. Minority groups have historically had strained relations with law enforcement and fear that crimes against them will not be taken seriously or that the police reaction will be unsympathetic or even hostile.
- Concern about revenge attacks or fear of retaliation
- Acceptance of violence and abuse: nothing will change anyway!

Many hate crime survivors suffer the trauma of victimization in silence rather than to expose themselves to these forms of “secondary victimization”.³⁰ This specific form of victimization has been defined by criminologists to describe the process in which a victim seeking assistance from the authorities (in general, the police and people working in the judicial system) is blamed as a result.³¹

Other reasons why victims may be reluctant to report or participating in investigation of a hate

<<http://instructor.mstc.edu/instructor/mbessett/Intro%20to%20CJ/Hate%20Crimes%20Reading%20Assignment.doc>>

30 The Council of Europe defines secondary victimisation as ‘the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim’, see: CoE, “Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims”, available at: <<https://wcd.coe.int/ViewDoc.jsp?id=1011109&>>

31 UNODC, “Manual on victimization surveys”, (2010), p. 55, available at: <http://www.unodc.org/documents/data-and-analysis/Crime-statistics/Manual_on_Victimization_surveys_2009_web.pdf>

crime might be:³²

- fear of re-victimisation or retaliation;
- fear of having privacy compromised;
- fear of jeopardising immigration status, being reported or deportation (if applicable);
- humiliation or shame about being victimised;
- lack of a victim support system;
- cultural and language barriers.

2.3 How to investigate hate speech online

Law enforcement’s response to an alleged crime of hate speech online should begin no differently than to any other crime. First of all, law enforcement officials must rapidly evaluate what has happened and take any necessary action to stabilize the situation and avoid any escalation. Two are the areas of concern which should be recognized by an officer responding to an alleged hate crime:

1. **Sensitivity to the needs of the victim**, and
2. the identification of **elements of a bias crime**.³³

2.3.1 A victim-centred approach

A victim of any crime may feel isolated from others, fearful that the occurrence will happen again, and angry that he or she has become a victim. In the case of hate crime such impacts are often more far-reaching. Evidence shows that hate crime has a strong impact on victims, mainly because they are abused for what they are perceived to be. They are forced to accept that their identity was targeted and that, for that reason, they remain at risk of falling victims of other similar crimes. Victims of hate crime may, therefore, experience symptoms of trauma.

32 Turner, N., op. cit.

33 FBI, “Hate Crime Data Collection Guidelines and Training Manual”, 19 December 2012, p. 24, available at: <<http://www.fbi.gov/about-us/cjis/ucr/data-collection-manual>>

It is in the intensity of their feelings of fear, anxiety and loss of confidence in others that their experiences can most significantly differ from those of the victims of other crimes not motivated by bias. Even in cases of violent crimes, the physical harm is often less significant than the accompanying sense of violation and humiliation.³⁴ The person has been chosen to be victimised for no other reason than his or her race, ethnicity, or religion. There is nothing that this person can do to prevent becoming victimised again. This type of personal experience can result, many times, in a feeling of loss of control over one’s life. Also, if left untreated, hate speech can fuel a cycle of hate where anger, resentment and fear escalate. This may have a destructive impact on society as a whole.

A ‘**victim-centred approach**’ needs to be adopted to respond to hate crime and hate speech. This means:

- ascribing a positive value to a person’s complaint of harassment;
- respecting his or her wishes as to how matters should proceed;
- agreeing a course of action with the victim and delivering results;
- keeping the victim informed of progress on the action being taken.³⁵

During the interview with a victim of hate speech online, the aim must be to get a clear picture of what happened, but at the same time the interviewer should remember that the victim has to reconstruct distressing events or talk about very sensitive issues. Herby some useful tips for the police to support the victim while investigating the crime:

- remain calm, objective and professional;
- conduct the interview in a suitable and quiet environment;

34 FRA (2013), “Opinion of European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime”, p. 5, available at: <http://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia_en.pdf>. Refer also to: FRA (2012), op. cit., p. 20

35 For further information see: Viridian, “Hate Crimes procedure”, available at: <<http://www.viridianhousing.org.uk/Resources/Viridian/Documents/ASB/Hate%20Crimes%20procedure.approved.doc>>

- ask victim how he or she wants you to help him/her;
- request the assistance of translators when needed;
- let victims defer answering questions if they are too distraught and allow breaks in the interview;
- reassure victim that he or she is not to be blamed for what happened;
- voice your support of the actions the victim took to protect himself or herself and defuse the situation;
- show empathy and allow the victim to voice feelings about what happened;
- encourage victim to tell the story in his or her own words;
- ask the victim to recall, the best of his or her ability, the exact words of the perpetrator(s);
- ask the victim if he/she have family members or friends who can support him or her;
- inform the victim of what efforts can be made to enhance their safety;
- reassure the victim that every effort will be made to protect anonymity during the investigation;
- tell victim about the probable sequence of events in the investigation;
- provide information about community and department resources available to protect and support victim, their families and members of the community;
- in the case of online hate speech, ask the victim if he or she has managed to backup the online content of the hateful speech.

Avoid:

- being abrupt or rushed;
- tell victim that you know how he or she feel;
- asking the victim whether he or she thinks this was a bias or hate crime;
- criticizing the victim's behaviour;
- making assumptions about the victim's

culture, religion, sexual orientation or lifestyle choices;

- allowing personal value judgments about the victim's behaviour, lifestyle or culture to affect your objectivity;
- using stereotyped or biased terms;
- belittling the seriousness of the incident, especially if the perpetrator is a juvenile;
- in the case of online hate speech, downplaying the seriousness of the crime because of its online nature.³⁶

When the **victim** or the **witness** of an incident of online hate speech is a **minor** or a **child**, the professional(s) investigating the case, beyond adopting a victim-centred approach, should specifically uphold child-sensitive and empathetic manners following the *Guidelines on Justice for Child Victims and Witnesses of Crime*.³⁷

2.3.2 Bias indicators

As mentioned, hate speech online is committed out of **bias motivation**. Therefore, after having adopted a victim-centred approach, an officer investigating the perpetration of an alleged hate crime should focus his/her attention on the identification of bias motivations.

"Due to the difficulty of ascertaining the offender's subjective motivation, bias is to be reported only if investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias".³⁸

On this regards, it must be once more underlined that the mere fact the offender has a prejudice against the victim's actual or perceived race, ethnicity, or religion does not necessarily imply that a hate crime was involved. Rather, the offender's criminal act must have been

³⁶ UNICRI elaboration of: Turner, N., op. cit., pp. 5-6; Danish Institute for Human Rights (DIHR) (2009-2011), "Tracing and Tackling crime Against LGBT Persons".

³⁷ International Bureau for Children's Right (IBCR) (2003), adopted by ECOSOC with Res. 2004/27 of 21 July 2004, "Guidelines on Justice for Child Victims and Witnesses of Crime", available at: <http://www.un.org/en/pseataaskforce/docs/guidelines_on_justice_in_matters_involving_child_victims_and.pdf>

³⁸ FBI (2012), op. cit., p. 4.

motivated, in whole or in part, by bias. Often single facts may be not decisive as indicators of the bias motivation, but a combination of facts may support an objective determination of biased motivation.

Some indicators can be identified to make it easier for the police to **objectively determine the existence of a bias motivation** in a specific case.³⁹ In the case of racist hate speech online they are, for instance:

1. The offender and the victim belong to different race, ethnicity, and/or religion.
2. Bias-related comments or statements were made by the offender indicating the offender's bias.
3. Bias-related drawings, symbols, images or memes were posted on the Internet or sent to the victim by the offender.
4. The victim was visiting an online website, blog, social network where previous hate crimes had been committed because of race, ethnicity, and/or religion, and where tensions remained high against the victim's group.
5. Several incidents occurred in the considered online platform, at or about the same time, and the victims were all of the same race, ethnicity, and/or religion.
6. A substantial portion of the users of the specific online platform where the crime occurred perceived that the incident was motivated by bias.
7. The victim was engaged in activities related to his or her race, ethnicity, and/or religion. For example, the victim posted a video denouncing slavery or ethnic discrimination.
8. The incident coincided with a holiday or a date of particular significance relating to a race, ethnicity, or religion, e.g. during the Ramadam month or the Yom Kippur.
9. The offender was previously involved in a

³⁹ Among others, refer to: OSCE/ODIHR (2010), "Understanding Hate Crimes: A Handbook for Bosnia and Herzegovina", p. 9, available at: <http://www.oscebih.org/documents/osce_bih_doc_2010122712342149eng.pdf> and FBI (2012), op. cit.

similar racist hate crime or is a racist hate group member.

10. There were indications that a racist hate group was involved. For example, a racist hate group claimed responsibility for the crime or was active in the specific website/blog/social network.
11. A historically-established animosity existed between the victim's and the offender's groups.
12. The victim, although not a member of the targeted racial, ethnicity, or religious group, was a member of an advocacy group supporting the victim group.

2.4 Legal challenges linked to hate speech online

2.4.1 Proving a case

Establishing the facts lies at the heart of any legal proceedings. When a legal professional is approached by a client claiming to be a victim of racist hate speech online there are three core matters to establish:

1. what facts can support the claim;
2. how to access these facts;
3. how to collect evidence to substantiate these facts.⁴⁰

It is important to bear in mind that a case of hate speech online might be established in different legal proceedings. In civil cases "the general rule is that a complaint must be proven to be more probable than not"⁴¹ In criminal cases, as well as in administrative ones, it is usually the duty of local authorities to investigate and establish the facts. Particularly, in criminal proceedings the standard of proof is the highest, as offenders might face severer sentences. Indeed, in criminal cases a

⁴⁰ Farkas, L., (2011), "How to Present a Discrimination Claim: Handbook on seeking remedies under the EU Non-discrimination Directives", European Network of Legal Experts in the non-discrimination field, The European Commission Directorate-General for Justice, p. 110, available at: <http://ec.europa.eu/justice/discrimination/files/present_a_discrimination_claim_handbook_en.pdf>

⁴¹ Ibid, p. 46

complaint “must be proven beyond reasonable doubts”.⁴²

2.4.2 Determining legal liability⁴³

One of the greatest challenges arising from the diffusion of hate speech online is assessing the legal liability of the offenders. This difficulty derives from some of the main features of the Internet, such as its virtuality, anonymity and worldwide extension. First of all, several different actors may be involved in the creation and distribution of hateful content online by:

- a. creating or sourcing it;
- b. publishing it; developing it;
- c. hosting it;
- d. facilitating its dissemination, accessibility or retrievability.

Thus, various degrees of liability could be attributed to numerous actors, as each one may retain a different relationship with the hateful content. In general, relevant legal distinctions can be advanced in reference to different types of the so-called *User Generated Content* (UGC). When assessing different levels of liability/responsibility it is useful to account for the different levels of editorial involvement/control. Therefore, it is useful to evaluate if the hateful UGC is:

1. prepared by users and then incorporated into otherwise professionally-produced and editorially-controlled content;
2. a stand-alone episode, i.e. UGC that exists alongside professionally-produced and editorially-controlled content;
3. the product of co-creation by media professionals and users;
4. created via and maintained on purpose-built fora and networks and is not incorporated into professional media content.

Moreover, determining liability for hate speech online is a complicated matter from a jurisdictional perspective. Hate speech can be propagated via

⁴² Ibid.

⁴³ This sup-paragraph, including quotations, is mainly based on McConagle (2013) “The Council of Europe against online hate speech: Conundrums and challenges”

Internet Service Providers (ISPs) based in different jurisdictions. As previously explained, there is little consistency between national legislations on the matter. Above all, this becomes apparent if we consider the substantially different legal and cultural approach that the various European and the American jurisdictions ascribe to the protection/regulation of free speech.

Forum-shopping is very common among people actively involved in the distribution of hate content on the Internet: it means “the practice of strategically choosing favourable jurisdictions in which to host a site”. Hate websites are often built so that they are hosted in jurisdictions more tolerant of hate speech. Websites that have been blocked or banned in one country are sometimes relocated to another, more favourable, jurisdiction.⁴⁴ The issue is further complicated when considering that different ISPs, even within a single jurisdiction, often have different policies on hate speech. The same can be said about Social Networking options, such as Twitter and Facebook. Therefore, legal professionals assisting victims of hate speech online need to be fully aware of both the characteristics of the jurisdiction of the ISP or Social Network service hosting the racist content, and its hate speech policies. Specifically since the policies and practices on hate speech of many ISP and Social Networking sites are evolving to meet national legal standards.

2.4.3 Quantifying the harm⁴⁵

Also as a lawyer, embracing and understanding the perspective of the victim is fundamental. The suffering of the victim can deepen when the medium for the creation and diffusion of the offensive content is the Internet. **Anonymity** is considered to be a cornerstone of the Internet as it is supposed to protect privacy and foster the right to freedom of speech. However, in some

⁴⁴ For example the website of the Holocaust denier Ernst Zündel. See: Akdeniz, Y., (9 January 2006) “Stocktaking on Efforts to Combat Racism on the Internet”, Background Paper for the High Level Seminar of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, Fourth Session, United Nations Commission on Human Rights Doc. No. E/CN.4/2006/WG.21/BP.1, 16-27 January 2006, pp.16-18.

⁴⁵ This sub-paragraph, including quotations, is mainly based on McConagle (2013) “The Council of Europe against online hate speech: Conundrums and challenges”, op. cit.

circumstances, the results of such anonymity may be greater than its advantages. In the case of hate speech online, hate offenders gather a sort of “Dutch courage” from anonymity by detaching themselves from the consequences of their actions and words. On the other side, victims may feel powerless and profoundly threatened by this anonymity. For instance, the very suspicion that the anonymous offender might be a person known is likely to increase the victim distress.

A victim of online hate speech might also be overwhelmed by the perception that the dissemination of hate speech on the Internet is **uncontrollable**, and potentially **long-lasting**. Online content is generally more durable than its offline equivalent, and this is equally true for racist hate speech. Its persistence is mainly linked to multi- or cross-posting, extensive hyper-linking and modification of meta tags that increase its online searchability. This means that: “there is a danger that victims of hate speech will continuously, or at least repeatedly, be confronted by the same instances of hate speech after their original articulation”.

Another extremely distressful effect that victims of hate speech might experience results from the alleged “**social validity**” attributed by other users to the content of those hate messages circulating on social networks (large number of likes, shares, followers, favourites, mentions etc...).

Therefore, even though quantifying the harm in cases of hate speech online is not a straightforward process, legal professionals in charge of assisting the victim must take into consideration the above-described repercussions caused by the medium of Internet that as an overall enhanced the distress suffered by the victim. Seeking advice from specialized equality bodies, NGOs and experts in the field can be very useful.

2.5 The role of Equality Bodies in providing assistance and advice to victims

Art. 13 of the EU Racial Equality Directive

established as minimum requirement that Member States should have one or more **specialised bodies** that, amongst other duties, provide independent assistance to victims of discrimination in pursuing their complaints.⁴⁶ As highlighted by the European Commission, “Equality bodies are the most specialized, accessible and cheapest providers of advice, assistance and more on discrimination.” The full version of the Reference Text for Trainers provides further information on the various roles and functioning of equality bodies. For information on individual national equality bodies visit: <http://www.equineteurope.org/-Member-organisations->

2.6 The role of NGOs and associations

Local NGOs and other relevant organizations can also be very helpful in positively supporting and assisting victims of hate speech online. Indeed, the EU Non-discrimination Directives made it incumbent on Member States to ensure that NGOs or other organizations/foundations/charities with a legitimate interest in guarantying the effectiveness of the directives may engage, either on behalf or in support of the victim, and granted his/her previous approval, in any judicial and/or administrative procedure in which equal treatment can be enforced.⁴⁷

Few Member States allow these types of organizations to represent victims of discrimination in legal proceedings, whether in most European countries local NGOs have **the right to intervene** in court proceedings to support the cause of one party. The full version of the Reference Text for the Trainer contains a table providing the details of the most relevant NGOs in the five project countries that should be contacted with regard to hate crime and hate speech online.

2.7 General tips for online

⁴⁶ Farkas, L. (2011), op. cit., p. 68

⁴⁷ Farkas, L. (2011), op. cit., p.66

reporting

2.7.1 How to report an incident⁴⁸

Due to the fluidity of the online content, the reporting needs to be as specific as possible. When reporting an incident, include as much information as possible:

- When did this happen? Noting the time and date is important because some online content, such as discussion threads in chatrooms, can quickly disappear.
- How was the content delivered? Was the victim sent something directly through email, SMS, text message, instant message, or private messaging? Did the victim come across something while browsing the Web?
- If the message was sent directly to the victim, make sure the victim keeps the original email or save the chat/text log. If possible, save the username or email address of the person sending the hateful message.
- If the victim has encountered the content on a website copy and paste the address of the site. Take a screenshot of the content in question to give to police.

The report elaborated by UNITED and the Council of Europe, "Step in!" suggests five different strategies to report hate speech online, which can be different according to the content of the attack.⁴⁹ The first step to be undertaken is therefore to evaluate the content of the speech and then select one of the main strategies accordingly:

1. Criminal complaint;
2. Request for removal of content to the author;
3. Notification of illegal/hateful content to Administrator of site;
4. Notification of illegal/hateful content to internet service provider;

⁴⁸ The main source of this paragraph is: Media Awareness Network (MNet), (2012), "Responding to Online Hate", available at: <http://mediasmarts.ca/sites/default/files/pdfs/Responding_Online_Hate_Guide.pdf>

⁴⁹ CoE: UNITED, (2012), op. cit., p. 16-19

5. Notification of complaints bureau – INACH – INHOPE.⁵⁰

The most appropriate option is dependant on whether the content in question is on the Internet as a web page, blog, audiovisual recording or a post on the social network and if it is on a domain hosted in your national state or abroad. If the content is hosted on your national server (the domain ends with a country code) this makes its content subjected to national legislation and the procedure both to identify the author and to communicate with all stakeholders is easier.

However, authors are usually aware of this and therefore content that violates applicable legislation is often placed on servers located abroad. Regardless of where the content is located, it must be documented and saved it for future reference. **Always have a backup of the content of the hate speech incident!**

1. Criminal complaint

Criminal complaint is the appropriate course of action when dealing with cases that: store extensive materials (website), is a repeated action of individuals (blogs), or the activity of an organised group.

2. Request for removal of content to the author

The second option is to contact the author and ask him/her to remove his/her comments, posts and statements. It is worth stating what criminal law was violated in their statements and warn them of the potential legal consequences of their actions. This approach can be effective in the case of persons, whose ideology is not clear-cut and the threat of prosecution is intimidating. The anonymous nature of the Internet, however, reduces the real impact of such action.

3. Notification of objectionable content to administrator

In the event that the notice does not bring the desired effect, it is advisable to contact the website administrator. It is essential to restate the quote, provide a link to the actual incident of hate

⁵⁰ INACH is the International Network Against CyberHate; INHOPE is the International Association of Internet Hotlines

speech (or a screenshot) and make reference to the internal legislation or terms of service that was breached.

4. Reporting content to ISPs⁵¹

If the website administrator does not respond, you can contact the provider. In most cases however, administrators fulfil requests for content removal if it is illegal. In case of foreign domains, follow this procedure:

1. Find who the registrar is on <http://whois.domaintools.com/> and where a particular page is hosted.
2. If the registrar of domain is a real person, this information is very important for possible criminal prosecution as well as the next steps.
3. Given that registrars often prefer to protect their anonymity, they use companies that register domains instead of them. Sometimes it is therefore impossible to ascertain the individual registrar that way.
4. Check whether the provider's rules contain references to the nature of content, such as if inciting hatred is illegal. These rules are often called Terms of Service (ToS), or Acceptable Use Policy (AUP). It is necessary to locate the word "hate" within these Terms or policies.
5. Next step is to write an email to the provider, stating breach of ToS by the author of that content.

More information on how to report to ISPs is available on the full Reference Text for the Trainer.

6. Report to complaints bureau

INACH⁵²/ INHOPE⁵³ has a network of national offices tasked with collecting and dealing with complaints related to hate-inciting or illegal content on the Internet.

⁵¹ CEJI – A Jewish Contribution to an Inclusive Europe, (2012), "Facing Facts! Guidelines for monitoring hate crimes and hate motivated incidents", available at: <<http://www.ceji.org/media/Guidelines-for-monitoring-of-hate-crimes-and-hate-motivated-incidents-PROTECTED.pdf>>

⁵² See: <<http://inach.net/>>

⁵³ See: <<http://www.inhope.org/gns/home.aspx>>

2.8 Steps for reporting incidents on most used social media

All the main social networking sites as well as the platforms for posting online videos have their specific policies and rules of functioning which define what content can be posted and spread online and, on the other side, how illicit contents can be reported by users and eventually removed. In the full version of the Reference Text for the Trainer, one paragraph is fully dedicated to an in-depth description of the steps for the online reporting of hate speech incidents on the most used social media, whilst another paragraph analyses in details some practical case studies.

The Anti-Defamation League compiled a list of the policies and reporting options of the main companies acting online. The full list is accessible at: <http://www.adl.org/combating-hate/cyber-safety/c/cyber-safety-action-guide.html>.

It is important that legal authorities, law enforcement agents and other professionals assisting victims of online hate speech are aware of these steps. Firstly, acquiring this knowledge makes it easier to adopt a victim-centred approach and effectively help victims by pointing them to the right path of reporting online. Secondly, even when the online reporting of the victims doesn't go through, there are increasing possibilities that ISPs and Social Networking companies may have established policies to collaborate more efficiently with law enforcement and national authorities on the regulation and removal of hateful contents.

More detailed information in the full Reference Text available at:

www.lighton-project.eu



unieri

United Nations
Interregional Crime and Justice
Research Institute



LIGHT ON is a project co-financed by the Fundamental Rights and
Citizenship Programme of the European Union