



NATIONAL COMPILATION PAPER – GREECE

DEVELOPING INTERAGENCY CO-OPERATION AND CAPACITY-BUILDING ACTIVITIES TO ADDRESS HATE CRIMES IN GREECE

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Introduction

This National Compilation Paper (NCP) provides information on the implementation in Greece of activities conducted as part of a project to build a comprehensive criminal justice response to hate crime, developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in partnership with the Ministry of Justice of Greece. The project was designed to foster interagency co-operation on combating hate crime, including on issues such as data collection, and to strengthen institutional capacity to implement an integrated response to hate crime.

This paper presents general hate crime trends in Greece, provides practical examples of institutional co-operation to address hate crimes, describes project's implementation and presents the lessons learned from the project. Its aim is to encourage further ideas on how to strengthen institutional efforts in effectively addressing hate crime, and how to support the work of law enforcement agencies and prosecutors in ensuring victims' access to redress, while dissuading potential perpetrators from committing hate crimes.

Scope and methodology

This NCP is an overview of the experience in Greece of initiating, with the support of ODIHR, a process of interagency co-operation aimed at unifying the criminal justice system's response to hate crime in terms of identifying, reporting and recording hate crime, collecting and sharing data, and building the capacity of criminal justice professionals, including in collaboration with civil society organizations. This NCP also reflects on the experience of conducting capacity-building activities for prosecutors held for the first time with the practical involvement of high-level representatives of the prosecutor's office.

The purpose of this NCP is to present how national actors in Greece – together with their international partners – have taken a comprehensive approach to addressing hate crime, and by what means. The aim is to provide information on how an agreement on inter-institutional co-operation on identifying and recording hate crime was reached. The NCP also seeks to highlight the achievements of capacity-building efforts undertaken under the leadership of the Prosecutor of the Supreme Court. It seeks to extract good practices and lessons learned by stakeholders, including project partners, through their participation in the process. In doing so, it focuses on the issues that criminal justice agencies and civil society can expect to encounter when seeking to develop goal-oriented policies and practices to address hate crime. The experience of establishing inter-institutional co-operation in Greece can be used to develop methodological tools that can be applied to similar efforts in Greece and across the OSCE area. Drawing on this experience, a Standard Methodology on Interagency Co-operation on Hate Crime was developed, to be used as a model by OSCE participating States seeking to strengthen institutional cohesion in responding to hate crime.

The NCP provides an overview of the stakeholders in Greece, their involvement in the process, the creation of a working group to develop an agreement on institutional co-operation in addressing hate crime, and the process of drafting, editing and approving the agreement, including how consensus was reached within the working group. It also outlines the value of the process and its legacy, including risk factors for follow-up activities. In addition, the NCP details the process of preparing and conducting a capacity-building exercise for prosecutors, held in Athens in December 2017.

This NCP was prepared based on a review of project documents and extensive interviews with representatives of the project partners (ODIHR and the Greek Ministry of Justice), as well as with other members of the working group. The project was made possible owing to the involvement of representatives of the Ministry of Justice, the Prosecutor of the Supreme Court of Greece, the National Point of Contact on Hate Crimes, the Racist Violence Recording Network and the Ministry of the Interior, as well as ODIHR staff and the national focal point for the project, as outlined below.

Hate crime trends and response gaps in Greece

The UN Committee on the Elimination of Racial Discrimination (CERD) has recently expressed concern about an increase of racist and xenophobic attacks in Greece, particularly against asylum-seekers and refugees, noting that the situation appears to have been exacerbated by the country's economic crisis.¹ In the same report, CERD highlighted the under-reporting of hate crimes in Greece. The Committee has urged Greece to effectively prevent, combat and punish racist hate crimes, in particular by increasing the human, financial and technical resources allocated to law enforcement authorities responsible for investigating such crimes, with particular reference to special prosecutors and police units, and to ensure these bodies' outreach throughout the country. CERD has also called on Greece to conduct regular mandatory pre-service and in-service training for police, prosecutors and judiciary on investigating complaints of hate crimes. Furthermore, Greece has been urged to strengthen training on identifying, registering, preventing and combating hate crimes, hate speech and bias motivation, particularly for the judiciary, police and prosecutors. The Committee has expressly recommended that co-ordination among those institutions be improved. A further recommendation calls on Greece to adopt concrete measures – in consultation with affected groups – to increase the reporting of racist hate crimes by ensuring that reporting mechanisms are transparent and accessible and by strengthening victims' trust in the police and the justice

¹ UN Committee on the Elimination of Racial Discrimination (CERD), "Concluding observations on the twentieth to twenty-second periodic reports of Greece", 3 October 2016, CERD/C/GRC/CO/20-22, available at: <<http://www.refworld.org/docid/597b1a584.html>>.

system. Finally, CERD has called for the improvement of Greece's data collection system for hate crime complaints.

The European Commission on Racism and Intolerance (ECRI) has also recommended that the Greek police are trained in line with programmes proposed by international organizations.² The ECRI further recommends that the Greek authorities provide training programmes to judges and prosecutors on the application of the relevant domestic criminal law.³ In a report published in 2015, the ECRI found that Greece experienced a surge of racist violence, and that the measures taken to tackle such violence remained largely insufficient.⁴ According to the ECRI findings, a fear of arrest and deportation discourages victims of racist violence who do not have a regular residence status from reporting incidents to the police. Negative attitudes among police towards migrants, and unwillingness to investigate cases of racist violence against them, has added to a general atmosphere of impunity. The same report concluded that there is inadequate support for victims of such violence. The ECRI further found that there is no comprehensive and multisectoral strategy in place to address the root causes of hate crime and to involve civil society partners in the fight against racism.⁵

The Racist Violence Recording Network (RVRN) – an extensive coalition of non-governmental organizations (NGOs) that includes the representation of the National Commission on Human Rights and the UN High Commissioner for Refugees, and which has been recognized by both the ECRI and CERD as a relevant and useful partner for the Greek authorities – documented 102 incidents of racist violence involving more than 120 victims in 2017.⁶

Existing good practices

In terms of positive measures to combat hate crime in Greece, CERD has noted the establishment by law of the National Council against Racism and Intolerance (NCRI), the enhanced relationship with the RVRN on recording incidents of racist violence, as well as the

² European Commission against Racism and Intolerance (ECRI), “Conclusions on the Implementation of the Recommendations in Respect of Greece Subject to Interim Follow-Up”, 5 December 2017, available at: <<https://rm.coe.int/interim-follow-up-conclusions-on-greece-5th-monitoring-cycle/16808b57a7>>.

³ Ibid.

⁴ ECRI, “Report on Greece (Fifth Monitoring Cycle)”, 10 December 2014, available at: <<https://rm.coe.int/fifth-report-on-greece/16808b5796>>.

⁵ Ibid.

⁶ The Racist Violence Reporting Network (RVRN), “Annual Report 2017”, available at: <<http://www.unhcr.org/gr/en/6711-racist-violence-reporting-network-annual-report-2017.html>>.

appointment of special prosecutors to investigate racist crimes⁷ and the creation of special police units to assist victims of racist violence and other xenophobic crimes.⁸

The ECRI has also welcomed the establishment of the NCRI as an inter-ministerial body tasked with developing policies on preventing and combating racism and intolerance with the co-operation and co-ordination of relevant stakeholders, including civil society actors.⁹ The ECRI has emphasized the solid legal foundations of the NCRI (established by Articles 15 to 19 of law number 4356 of 2015), as well as its broad and representative composition, encompassing relevant ministries, the Hellenic Police, the National Commission for Human Rights, the Greek Ombudsman, the Migrants Integration Council of the City of Athens, the UNHCR and the RVRN, as well as media institutions, trade unions and research organizations. The ECRI has also noted the regular sessions of the NCRI held since 21 April 2016, as well as the creation of three working groups, including one on combating hate crime, as further positive developments.¹⁰

The ECRI has also welcomed the fact that, following a dramatic increase in the number of incidents of racist violence in recent years linked to the rise of the neo-Nazi party Golden Dawn, in late 2012 the Ministry of Public Order and Citizen Protection introduced special units within the police to tackle racist violence.¹¹ The ECRI has noted that these units are mandated to carry out in-depth investigations into racist attacks, and can also open an investigation *ex officio* and receive anonymous complaints.¹² A further positive trend highlighted by the ECRI has been the appointment in October 2013 of a Public Prosecutor for the prosecution of acts of racist violence.¹³

The need for interagency co-operation on hate crime in Greece

To build upon the good practices of the NCRI, both the ECRI and CERD have called for enhanced co-operation among Greek institutions, in particular the judiciary and civil society organizations, in order to address hate crime more effectively. Better co-ordination is particularly necessary in the field of criminal justice. Existing inter-institutional communication among relevant institutions was found to be insufficient and did not allow for an integrated approach in identifying and collecting data on hate crimes. As the judiciary was

⁷ According to the the Criminal code of Greece a “racist crime” is any criminal act where the victim (person or property) is targeted due to his/her race, colour, national or ethnic origin, descent, religion, disability, sexual orientation, gender identity or gender characteristics.

⁸ CERD, op. cit.

⁹ ECRI 2017, op. cit.

¹⁰ Ibid.

¹¹ Ibid.

¹² ECRI 2014, op. cit.

¹³ Ibid.

not included in the NCRI owing to legislative hurdles, there was no means of benefiting from direct exchanges between the judiciary and civil society organizations.

Good examples from other jurisdictions, including the Republic of Croatia, have shown that co-operation among criminal justice institutions can be established through an agreement whereby the relevant institutions undertake to both jointly and separately prioritize information sharing and capacity building with respect to hate crime investigation and prosecution.¹⁴

About the project

ODIHR was awarded funding for a project titled “Building a Comprehensive Criminal Justice Response to Hate Crime”,¹⁵ which began in February 2017. The project is co-financed by the European Commission and the government of the United States of America. European Commission financing for the project was provided under the Rights, Equality and Citizenship Programme which, among other priorities, provides training and capacity building to strengthen criminal justice responses to hate crime and hate speech. The project was conducted in four OSCE participating States: Bulgaria, Greece, Italy and Poland. In Greece, the project has included a capacity-building exercise for prosecutors from across the country, as well as the creation of an inter-institutional agreement to improve co-operation in dealing with hate crimes and sharing hate crime data. ODIHR’s implementing partner in Greece is the Ministry of Justice.

The lessons learned from the project activities in Greece were presented at a national workshop in June 2018, where participants discussed an outline of the NCP before the document was finalized. The final product of the project – a Standard Methodology on Interagency Co-operation on Hate Crime – was then developed based on the project’s implementation in Greece. The Standard Methodology is to be presented at a final EU-level conference in November 2018 and shared through peer-to-peer exchange among practitioners and policymakers in the OSCE region. The experience of implementing the project in Greece is intended as a model for strengthening the criminal justice response to hate crime in OSCE participating States.

¹⁴ Human Rights Office of the Government of Croatia, Working Group for Monitoring Hate, “Protocol for Procedure in Cases of Hate Crimes”, March 2011, available in English at: <<https://pravamanjina.gov.hr/UserDocsImages/arhiva/protokoli/Protocol%20on%20procedure%20in%20cases%20of%20hate%20crime.pdf>>

¹⁵ See: OSCE/ODIHR website, “Building a Comprehensive Criminal Justice Response to Hate Crime”, <<https://www.osce.org/projects/criminal-justice-response-hate-crime>>.

Project development

In order to initiate co-operation on hate crime, in particular with a view to standardizing hate crime data collection, ODIHR held a series of meetings with Greek officials and other partners. ODIHR also attended an NCRI session on what the focus of hate crime co-operation should be. In addition, ODIHR discussed the organization of capacity-building activities for prosecutors with the Director of the National School for Judges. Consequently, a training-of-trainers (ToT) for prosecutors was planned that would follow ODIHR's Prosecutors and Hate Crimes Training (PAHCT) programme.¹⁶

The centrepiece of project activities in Greece was the development of an interagency agreement on addressing hate crime. To develop this agreement, a cross-government working group was established that consisted of representatives of the executive, judiciary and 42 civil society organizations (represented by the RVRN) engaged in documenting and reporting hate crimes.

With the help of international experts and after consulting various domestic actors, ODIHR, together with the Ministry of Justice, conducted a needs assessment mission to identify the content of the ToT for prosecutors and to formulate proposed standards for interagency co-operation.

Needs assessment

ODIHR's needs assessment effort consisted of desk research and a needs assessment mission (NAM) in Greece. The desk research focused on recent reports documenting hate crime incidence and the official responses to such crimes in Greece, including reports by international organizations such as the ECRI, CERD and the OHCHR Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. ODIHR experts also studied hate crime reports by Greek civil society organizations, including RVRN, the Greek Helsinki Monitor and Minority Rights Group – Greece.

The NAM was conducted in June 2017. Consultations were held with representatives of the public authorities, including the following: the Ministry of Justice; the Hellenic Police's Department of Social Issues and Combating Racism; the Prosecutor of the Supreme Court; the Special Hate Crime Prosecutor of Athens; the National Point of Contact on Hate Crimes; and a judge of the Court of First Instance of Athens, as well as staff from the court's information

¹⁶ *Prosecutors and Hate Crimes Training (PAHCT): Programme Description* (Warsaw: OSCE/ODIHR 2014), <<https://www.osce.org/odihr/pahct>>.

technology department. Meetings were also conducted with the RVRN and other human rights NGOs.

ODIHR presented the objectives of the project and the activities planned in Greece, in particular the development of an agreement on inter-institutional co-operation to address hate crime, including through improvements to response systems and data collection mechanisms, as well as capacity-building activities for prosecutors in line with the ODIHR PAHCT programme. Discussions encompassed the mapping of stakeholders, the structure of the co-operation agreement and the designation of a body responsible for its implementation. As agreed at the proposal phase of the project, the Ministry of Justice took the lead in the process and committed to produce, with expert support from ODIHR, a draft of the agreement, which would be shared with stakeholders for discussion and contributions.

The central NAM finding was that, in the experience of hate crime activists, specialized legal professionals and officials, communication between criminal justice actors, including civil society organizations, needed improvement. The system was fragmented and conceptual and practical approaches needed to be integrated. Where it did exist, interagency co-operation on criminal justice data collection was rudimentary. In particular, there was a significant disconnect between the institutions' conceptual and technological approaches regarding hate crime identification and recording. There was evidence of some co-operation between the Ministry of Justice and the police on data exchange, while the Public Prosecutor's Office of the First Instance of Athens had introduced the good practice of flagging potential hate crime cases in the case management system.

Co-operation between the police and Ministry of Justice consisted of one excel file containing data extracted from a special police database (POL) that was shared with the Ministry. However, the database is designed for the exclusive use of the police, and in order to maintain the validity of the excel file, the Regional Police Directorates are required to confirm and update cases every six months. The Ministry of Justice must then request information on the status of each hate crime case from every Office of the Public Prosecutor and court in the country, and add this to the excel file. The file is then sent to the National Point of Contact on Hate Crimes, who compiles Greece's annual hate crime report for ODIHR. In sum, there was no common hate crime database, and aggregating the data was a cumbersome process.

The NAM laid the foundations for the WG by identifying the gaps it would endeavour to fill.

Establishing the working group and drawing up a specialized interagency co-operation agreement

Securing political will

The establishment of the working group was preceded by inter-institutional dialogue aimed at securing stakeholders' commitment to the process. Discussions with high-ranking ministerial officials (the Secretary-General of Ministry of Justice and counterparts) who were part of the administration's political leadership were considered critical by key actors in the process, including the Ministry of Justice and ODIHR. Securing the necessary political will in advance was found to be crucial for a meaningful working group process.

It was at this stage that the scope of the co-operation model to be applied within the working group was agreed. On a procedural level, only actors directly involved in the criminal justice response to hate crime were to be engaged, including relevant public institutions and civil society organizations. This targeted approach derived from the project's specific criminal justice scope and was intended to facilitate the streamlining of project activities.

Purpose of the working group

The main objective of the working group was to develop a framework agreement on how institutions identify hate crime, co-operate to record and aggregate hate crime data, share information and conduct relevant training activities. At a later stage, the working group was to develop a sub-agreement specifically on data collection. Procedurally, the working group was to serve as a specific forum for criminal justice stakeholders to engage in direct exchanges, thus meeting the principal challenge of improving communication among criminal justice actors in order to build a comprehensive approach to combating hate crime. The working group's objective was not to make collective decisions that would bind individual actors, but to serve as a dialogue forum for in-person information exchanges and discussions.

The resulting co-operation agreement was intended to be "soft", and based on each actor's good will rather than on the imposition of formal duties. The working group itself was not formally established as an administrative entity within the framework of the Ministry of Justice since that would have precluded the participation of judges and prosecutors by law. In addition, within the NCRI there already existed a working group on hate crime, and the project partners sought to avoid overlap. It was also important that the commitments the working group was to forge would be strictly within the limits of participating bodies' existing competencies under the legislation. The independence of the judiciary, including the

courts and the prosecutorial service, should not be negatively impacted by (perceptions of) input by external organizations. Equally, the legitimacy of the working group's outcomes should not be undermined by participants' mandate. In other words, the working group would avoid agreeing on any rules that the participating institutions would be unable to establish, especially bearing in mind that working group participants from the judiciary and civil society have no legislative powers. While the Ministry of Justice and other ministers can make secondary legislation, the working group was not expected to draft any new rules. No new duties for the institutions involved would be created or transferred under the co-operation agreement, except those relating to mutual information sharing and co-ordination duties. The process was to be a balancing exercise that acknowledged the independence of the judiciary and civil society organizations while motivating all sides to both jointly and separately undertake measures within their competencies to enhance their co-operation on addressing hate crime. As a matter of course, the prosecution and sentencing of perpetrators in individual cases would not be discussed, although the working group would cover the identification of hate crimes by prosecutors. To ensure ownership and commitment, the agreements would be shaped by each institution, including the RVRN as a nation-wide umbrella of civil society organizations, so that each would take on obligations of its own accord. As a collective, the working group would be unable to impose measures on any one of its members.

Composition of the working group

After formulating the objective of the working group, the next step was to identify the stakeholders. To determine the optimal working group composition, the Ministry of Justice mapped out the relevant institutions and civil society organizations, listing their competencies and providing justifications for their involvement. In light of the findings from the ODIHR NAM, the project partners discussed and adjusted the list of working group participants. In line with the project proposal submitted by ODIHR and the Ministry of Justice (based on the European Commission's call for proposals), the project partners' main consideration was to keep the working group focused on specific criminal justice response issues. Accordingly, only actors directly involved in criminal justice work were included. Thus, the working group was made up of representatives of the President of the Supreme Court, the National School of Judges, the Prosecutor of the Supreme Court, the Ministry of Justice, the Ministry of Interior, the Ministry of Migration Policy, the Ministry of Health, the National Point of Contact on Hate Crimes, and the RVRN.

The Ministry of Migration Policy was included on the basis that migrants in Greece are often targets of hate crime. The Ministry of Health was involved so as to enhance hate crime reporting by victims seeking medical assistance through training for medical personnel to provide appropriate assistance to victims while avoiding their re-victimization. The Ministry

of Health was also included in the process to raise awareness among employees of social care institutions regarding the vulnerability to hate crime of elderly persons and those with disabilities.

While some institutions dealing with racism and discrimination, such as the Greek Ombudsman and the National Commission on Human Rights (NCHR), were not formally included in the working group, some of those institutions, such as the NCHR and the NCRI, were nevertheless represented by members who participated in the working group (such as representatives of the RVRN, which was co-founded by the NCHR). All NCRI members involved in hate crime were included in the working group.

As mentioned, 42 civil society organizations were represented in the working group by the RVRN. The RVRN is experienced in hate crime recording and reporting, as well as in victim assistance, and was included on the basis of its significant potential to contribute to fact-based policy-making, including on data collection and facilitating victim reporting, as well as to complement the actions of the government institutions. Civil society presence in the working group process was essential for ensuring procedural soundness, the value of its work and its overall legitimacy. The RVRN later significantly contributed to optimizing the scope of the agreement and the roles of other actors.

During the NAM, ODIHR consulted various civil society organizations besides the RVRN. While most provided useful information, none were found to have the RVRN's focus on, or knowledge of, hate crime. Non-governmental organizations that contribute to the ODIHR Annual Hate Crime Report were also considered, as were organizations mentioned in the reports of inter-governmental organizations, civil society organizations, OSCE field missions and other OSCE institutions. The project partners decided to take a more selective approach to the working group's composition as, in their experience, excessively large consultative bodies can struggle to function.

The Ministry of Justice decided against an open call for the participation of non-governmental organizations, owing to lack of time and resources to administer it. Furthermore, the Ministry considered an open call unnecessary given the participation of the well-organized and professional RVRN which, with its broad membership base, was considered representative of civil society organizations and victim groups.

After deciding on the composition of the working group, the project partners set about selecting an external legal consultant that would help mediate among the working group members, while also assisting the project partners to co-ordinate tasks and customize ODIHR proposals to Greek procedural laws and institutional practices.

Appointing a national focal point and co-ordinator

From ODIHR's point of view, a domestic legal expert was needed to act as a local focal point for ODIHR in order to make best use of ODIHR's involvement, secure the timeliness of the works and to help customize ODIHR's international expertise to Greek legal, institutional and practical realities. The consultant also served as a facilitator of the working group proceedings, chairing sessions (jointly with ODIHR staff member) and steering discussions with a view to ensuring efficiency. The Ministry of Justice selected a practicing domestic lawyer with experience in criminal litigation and knowledge of criminal procedural law to serve as a consultant on the evolving drafts of the co-operation agreement and to facilitate working group proceedings. It was necessary to appoint a lawyer who was external to the administration in order to secure neutrality vis-à-vis other working group institutions and civil society organizations. In terms of the Ministry's human resources, it was not possible to dedicate a staff member exclusively to the handling of working group proceedings and agreement drafting. Furthermore, the Ministry preferred to appoint an external professional to this role to avoid the potential conflict of interest that could in expert's subjectivity. The Ministry considered that the role would have legitimacy only if participants saw the consultant as impartial and independent of all other actors.

In practical terms, the consultant modified the initial draft of the agreement (as developed by ODIHR and based on comparative good practices) to ensure its consistency with Greek law and institutional practice. After receiving comments from working group participants on the initial draft, the consultant compiled specific terminology with which to amend further drafts, enabling a compromise between stakeholders and securing their agreement on the text.

Working group proceedings

Working group proceedings lasted from September 2017 to January 2018, when a final draft of the co-operation agreement was produced. The working group met three times.

At its first session, the working group was presented with a proposed initial draft of the co-operation agreement for discussion. The initial draft – a product of the Ministry of Justice's office of the Secretary General for Human Rights and ODIHR – was based on a proposal presented by ODIHR to the Ministry prior to the working group's creation. In addition to that initial draft, and in order to facilitate a discussion, ODIHR provided the Ministry of Justice with comparative examples from other jurisdictions, including Croatia's hate crime co-

operation protocol,¹⁷ the relevant policy in the United Kingdom,¹⁸ and Spain's co-operation protocol.¹⁹

The initial draft, developed through substantial discussions and a joint review by ODIHR and the external legal consultant, provided a good starting point for the working group's efforts. From the perspective of the Ministry of Justice, ODIHR's ownership of the initial draft provided legitimacy and neutrality in the eyes of working group participants, making the document easier to approve. At the same time, the external legal consultant's role in customizing the draft according to the Greek context helped to ensure the document's relevance and prevent concerns that it had been imposed from outside. The Ministry of Justice maintained a leading role in overseeing the development of the draft. This was logical, as it was the Justice Ministry's political will that had made the initiative possible, while other state institutions represented in the working group committed to its works to different degrees.

In the first working group session, participants were given time to study the draft and then to offer their remarks on its content and language. They then had an opportunity to introduce further comments via group emails. A modified draft then was presented at the next working group session for further discussion. The external consultant was responsible for amending the draft agreement in line with participants' comments.

Overall, working group participants found it beneficial and productive to work with a draft text proposal. They did not have an issue with being presented with a draft prepared outside of the working group and considered this approach to be less time consuming than developing a document from scratch through an extensive consultation process within the group.

The decision-making process

Working group decision-making was based on reaching consensus through round-table discussions, which resulted in agreement on most issues. Participants reported that they had adequate opportunities to express their opinions and to be heard by their counterparts. Civil society representatives reported that they were adequately integrated into the decision-making process and that their views were not marginalized.

¹⁷ Human Rights Office of the Government of Croatia, op. cit.

¹⁸ *Action Against Hate: The UK Government's Plan to Tackle Hate Crime*, United Kingdom Home Office, 2016, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543679/Action_Against_Hate_-_UK_Government_s_Plan_to_Tackle_Hate_Crime_2016.pdf.

¹⁹ European Union Agency for Fundamental Rights, "Action Protocol for the Security Forces for Hate Crimes and Behaviours Breaching Legal Regulations on Discrimination (Spain)", available at:

<http://fra.europa.eu/en/promising-practices/action-protocol-security-forces-hate-crimes-and-behaviours-breaching-legal>.

The underlying principle applied to negotiating the agreement was voluntary commitment on all sides, free from pressure from other participants. Every participant had the final say on what their institution or organization was prepared to commit to, and other participants respected those limits. On specific points, participants deferred the decision to a higher level within their institutions. Internal consultations would then ensue and the inter-institutional consensus would be reflected in subsequent working group exchanges.

Some working group participants already knew each other professionally, including from their co-operation within the NCRI. This helped to ensure mutual understanding and realistic expectations while preventing discord. The decision-making process encountered no obstacles, and key actors reported that participants' willingness to compromise and reach consensus stemmed from their commitment to participate in the working group. Participants' commitment was based on the political will of the leadership of represented institutions. As such, the success of the decision-making process was founded on the higher-level political agreements secured by the Ministry of Justice's Secretary General for Human Rights, as well as the judicial leadership's interest in the process. The ODIHR NAM findings also played a part, as participants accepted the NAM findings on gaps in institutional practice and co-operation.

The role of ODIHR

From the point of view of working group participants, including Ministry of Justice representatives, the process was guided by ODIHR. ODIHR's role in giving structure to the process by providing a timeframe, steering its implementation and providing expertise and knowledge of international practices while respecting the national institutions' ownership of the outcomes. In this respect, ODIHR's role was considered constructive by the working group..

ODIHR's approach to running the process helped to build trust within the institutions and organizations involved, which saw ODIHR as a neutral actor specializing in hate crime and with experience and expertise in international good practices. Working group sessions were chaired jointly by the external consultant and ODIHR staff.

ODIHR's activities were aimed at supporting the national authorities, in particular the Ministry of Justice. As mentioned above, the respective roles of ODIHR and the Ministry were laid out in the implementing partner agreement and therefore ODIHR co-ordinated all its activities with the Ministry. ODIHR offered no ready-made solutions, and focused on developing the solutions through consultations and discussions. At times, providing expert input while maintaining the working group's autonomy in producing their own agreement

proved difficult. To ODIHR, working group autonomy was of paramount importance. While expert support was considered essential to producing the co-operation agreement, especially as the Ministry of Justice had requested assistance, it was vital that the national authorities reach their own understanding of the issue before seeking external support. Therefore, while ODIHR helped to steer the process, it made sure to foster the national authorities' leadership on and commitment to the issues, making this a prerequisite for future implementation.

Overall, the involvement of an international organization had a favourable impact on the national authorities' implementation of the project, generating considerable added value.

The value of the process

Project partners and working group participants highly valued the unique opportunity for criminal justice actors to come together with civil society organizations and government ministries and to engage in joint, in-person discussions on building a collective response to hate crime. By discussing common issues in addressing hate crime data collection and other issues, working group participants were better placed to understand the challenges they face and to co-ordinate their activities. They particularly appreciated the unprecedented opportunity presented by the working group to involve civil society representatives and high-ranking magistrates in a direct and open exchange of information, including on good practices and examples from other jurisdictions. Participants reported that this helped to legitimize the work of civil society organizations, putting them on an equal footing with institutions and highlighting their relevance for hate crime policy-making.

Participants considered achieving a common understanding of key concepts as critical to the process. In the past, different approaches by criminal justice institutions and civil society had resulted in diverging definitions of hate crime. While an explicit definition of hate crime exists under Article 81A of the Criminal Code, different interpretations had emerged as to whether the definition included hate crimes by association and by perception. The working group process helped to clarify that such hate crimes are indeed covered by the law. Developing a commonly accepted definition was seen by participants as essential for data collection, among other activities, as well as a stepping stone to ensuring more productive co-operation. In addition, working group participants appreciated having the opportunity to better understand the functioning of other institutions and organizations, thereby gaining insight into their proposals, actions and rationale.

Magistrates participating in the working group demonstrated readiness to engage in dialogue and a recognition of the need for enhanced, joint action – something that was especially valued by other participants. Working group facilitators were particularly encouraged by the

quick feedback provided by representatives of the judiciary on drafts of the co-operation agreement.

Bringing key actors together helped them build trust and overcome difficulties in information sharing that resulted from real and perceived institutional/organizational limitations. The working group process prompted participants to recognize the difficulties that other actors face in their work and the means they have developed to overcome those difficulties. This knowledge accrual was seen by participants as a prerequisite for co-ordinating the existing systems for processing hate crimes and making them more compatible with one another.

The working group process raised the profile of hate crime as an issue within the criminal justice system. While already high on the agenda of the Ministry of Justice, the problem of hate crime achieved greater visibility among the justice system's leadership. The ensuing high-level commitment by the judiciary to advance institutional practices on data collection (among other aspects), including via circulars issued by the President and Prosecutor of the Supreme Court and other internal guidance mechanisms, indicates the potential to transform hate crime into a human rights concern for magistrates. The working group served as a catalyst for realigning institutional priorities, allowing for greater efforts to tackle hate crime.

The internal institutional change established by the co-operation agreement is seen by project partners as a key outcome of the working group process. In particular, the commitment to optimize internal procedures relating to hate crime identification, recording and reporting, as well as the commitment to interagency co-ordination, is seen as a guarantee of lasting system reform beyond the scope or timeline of the project or the working group itself. While the agreement did not create new responsibilities for the institutions involved, its benefit lies in the co-ordination duties that institutions have committed to undertake.

Overall, the working group process was participatory, and its dynamic was positive and constructive. The opportunity to engage directly with national human rights defenders and international experts reportedly contributed to strengthening the authorities' will to prioritize victim rights and the rule of law.

A key legacy of the working group was arguably its ability to bring together the distinct perspectives and insights of international and domestic institutions and civil society organizations engaged in tackling hate crime.

The way forward

Working group facilitators shared concurring views, hopes and concerns regarding the sustainability of working group's effort. One of the options to secure continuous engagement

of all the institutions would be to turn the working group into a permanent coordination body. However, financial constraints and a shortage of the human resources are likely to become major roadblocks. More importantly, there is uncertainty regarding whether future governments will have the political will needed to sustain the existence of such a body. For that reason, it is crucial to ensure the follow-up on what the working group has achieved.

To overcome these challenges, it is important to have a single actor responsible for coordinating the future process. As neither, the working group was, nor the new coordinating body would be formally established by law or secondary legislation, the continuation of works, as envisaged under Article 13 of the Co-operation Agreement, depends on the Ministry of Justice's sustained commitment.

At the workshop on "Building a Comprehensive Criminal Justice Response to Hate Crime", held as part of project activities on 6 June 2018 in Athens, Maria Giannakaki, General Secretary for Human Rights at the Ministry of Justice, Transparency and Human Rights of Greece, together with the President of the NCRI, pointed out the particular significance of Article 13 of the Agreement, which provides for the Ministry of Justice's role in ensuring that the coordinating body continues to function and meet at regular intervals (once a month) to monitor the implementation of the Agreement's provisions and take corrective measures if needed.

ODIHR welcomed the commitment of the Ministry of Justice to become the secretariat of the working group, and reconfirmed ODIHR's continued efforts to ensure the sustainability of the agreement.

There is a shared commitment to safeguard one of the most important achievements of the working group process: the creation of a forum for judges and prosecutors to engage in direct and regular discussions with civil society organizations and the country's executive branch, including law enforcement.

The Ministry of Justice has itself acknowledged that the working group depends on the future political leadership of the Ministry, including in terms of securing the implementation of the co-operation agreement. The focus, therefore, is to ensure the agreement's implementation without delay.

Working group participants from other institutions all voiced an interest in holding regular meetings to effectively evaluate the progress being made. They argued for the continuous assessment of institutional co-operation as an important goal for the future.

Some participants called for the creation of a new institution responsible for co-ordinating the follow-up process and future co-operation. They argued that the Ministry of Justice may lack the necessary resources and commitment in the future.

At the June 2018 workshop mentioned above, Tina Stavrinaki, RVRN'S Assistant Co-ordinator, expressed her belief that the working group needed to be transformed into a task force on combating hate crime. At the same event, Paul Giannasi, Head of the United Kingdom's Cross-Government Hate Crime Programme and the country's National Point of Contact on Hate Crimes for the OSCE, offered the Greek authorities the United Kingdom's bilateral support, including study visits of criminal justice professionals to London, professional pairing and the exchange of policies and practices.

From ODIHR's perspective, the working group is itself an asset, as it provides a forum for discussions on issues that require a uniform approach and enables the optimal distribution of funds. Moreover, the working group makes it possible for civil society organizations to participate in a permanent way in interagency consultations on hate crime policy. It is expected that the working group will continue to operate, producing further agreements governing interagency co-operation in more detail, while allowing for those agreements to be customized during implementation. ODIHR sees the co-operation agreement as a leading document that enables future interagency co-operation and expects it to lead to sub-protocols on a range of issues, with the first one being a forthcoming protocol on data collection. ODIHR deems it very important that the judiciary continues to participate in the future activity of the working group.

ODIHR sees the working group and the co-operation agreement as living instruments that will evolve over time. In line with the agreement, which has been officially signed and entered into force, ODIHR sees the Ministry of Justice as responsible for convening the working group at least once per month for discussions on priority issues, including the collection, registration and retaining of hate crime data, as well as on awareness raising and capacity building.

In the context of plans to establish a unified criminal justice computer system, ODIHR sees the working group as the ideal forum for positioning the issue of hate crime within the criminal justice system. In addition, it is expected that the working group will provide relevant data on bias motivations to the judiciary quickly and efficiently in order to secure aggravated sentences for hate crime perpetrators. It is hoped that the RVRN will be able to use its working group standing to raise policy concerns based on their findings on hate crime and trends in the institutional response to such crimes.

In sum, while the working group process has created the conditions for measurable system-wide improvements in hate crime policies and practices, potential risks to its continued existence need to be overcome. Efforts to build the hate crime capacity of prosecutors are one way to ensure the continued positive impact of the working group process.

Training-of-trainers: customizing ODIHR's PAHCT programme to build prosecutors' capacity

The second major component of the project was a training-of-trainers (ToT) session held for 24 prosecutors, including five specialized hate crime prosecutors from across the country and one judge. The event maintained gender balance with 14 women and 11 men taking part. The session aimed to prepare prosecutors to train other prosecutors in subsequent training events held across Greece. This ToT session for prosecutors was the first such hate crime training event held in Greece.

Institutional preparation for PAHCT

After implementing an initial PAHCT programme for prosecutors in Greece in 2014 and 2015, ODIHR conducted follow-up work with the aim of establishing a memorandum of understanding with the National School of Judges (NSJ) to implement the PAHCT programme across the country. Initial discussions about the ToT for prosecutors were held with the NSJ authorities. ODIHR reached out to the Prosecutor of the Supreme Court of Greece, who was committed to pursuing the implementation of the PAHCT programme. The initiative was subsequently approved with the co-operation of the Prosecutor of the Supreme Court.

Preparing the PAHCT programme

Based on the abovementioned needs assessment mission (NAM) and desk research, ODIHR customized the standard PAHCT curriculum and training materials to the legal and local context and translated the materials into Greek. The Prosecutor of the Supreme Court was consulted at all stages of the training programme preparation to ensure proper co-operation. Once drafted, the customized learning materials were delivered to the Prosecutor of the Supreme Court for review and approval of the legal terminology, and to share ownership of the training. The Supreme Court Prosecutor also provided practical support in terms of selecting and inviting participants, while ODIHR covered expenses for trainers, interpreters and participants, among other costs.

Delivering the PAHCT training

The two-day PAHCT training-of-trainers (ToT) took place 1 to 3 December 2017 in Athens. The course topics included understanding and identifying hate crimes using bias indicators, as well as understanding the experiences of different target communities and the

impact of hate crime on them. Information was provided on the applicable international, regional and domestic legal standards. Participants explored barriers to prosecuting hate crimes and helped to identify solutions. Participants also learned about effective training methods to enable them to train other prosecutors. ODIHR trainers and an external consultant conducted the ToT.

The Prosecutor of the Supreme Court attended the training sessions, taking an active part in exercises. This rare, high-level involvement helped to impart a strong message to prosecutors concerning the training's relevance and significance, and represented a good practice. ODIHR has concluded that the Supreme Court Prosecutor's personal participation was due largely to the effective customization of the training programme, rendering it relevant to Greek prosecutors' work, as well as the overall quality of the training.

ToT participants expressed their satisfaction with the training exercises in their evaluation forms. The results of an evaluation and feedback session conducted at the end of the training will be used to amend the training curriculum and agenda to ensure their optimal use by the national training institutions as the training is cascaded across the country.

Participants were also tested on the topics covered during the training events. The test results indicated that all participants had understood the concept of a hate crime, the types of protected characteristics and who can be a victim of hate crime. 87 per cent of participants were able to recognize a potential hate crime and differentiate between hate crime and hate speech or discrimination.

In a letter to ODIHR, the Prosecutor of the Supreme Court expressed her satisfaction with the training event. In particular, she valued its interactive nature and the opportunity for all participants to comfortably express their views. She noted that the distinction between hate crimes and other crimes was clearly explained. She signalled her support for similar training events to be held for judges and investigating officers.

As noted by the Supreme Court Prosecutor, the training event strengthened her own awareness of the seriousness of hate crime cases and it will positively affect the prosecutorial service's future treatment of such cases. She expressed her will to have such cases treated as a priority and their investigation expedited.

On 23 November 2017, the Prosecutor of the Supreme Court was given all of the PAHCT materials in Greek, including PowerPoint presentations, case studies and videos. These materials will be used by the prosecutors who participated in the ToT to replicate the training throughout Greece. ODIHR offered assistance in designing the cascade training plan.

The Greek authorities have yet to decide on the further implementation of the PAHCT programme in Greece. The Prosecutor of the Supreme Court has demonstrated an interest in

taking a lead in the hate crime training of prosecutors as part of the Prosecutor's Office own training mandate.

Over the coming year, ODIHR will monitor the use of the PAHCT curriculum across Greece by gathering information on the number of training sessions, the number, background of trained participants, the training materials used and the feedback and suggestions provided in evaluation questionnaires. ODIHR will require that all data is disaggregated by gender.

The importance of continuing the PAHCT training programme

A consistent finding of ODIHR's NAM consultations with Greek institutions and civil society is that comprehensive criminal justice capacity building is urgently needed. The importance of continuing and cascading the PAHCT training programme is paramount. Indeed, delaying its implementation could undermine the interagency co-operation effort, since only those prosecutors who have participated in the PAHCT programme can effectively implement the data collection and share duties established in the agreement. Prosecutors must receive relevant training in order to maximize the co-operation agreement's potential to enhance hate crime identification and recording.

At the "Building a Comprehensive Criminal Justice Response to Hate Crime" workshop in Athens on 6 June 2018, the Prosecutor of the Supreme Court stated that her office had already begun implementing the duties specified in the co-operation agreement. In particular, the number of specialized hate crime prosecutors in Greece had increased from five to 18, and she has instructed all prosecutorial offices to mark hate crimes as racist violence (RV) in the case management system.

At the same event, Stamatios Daskalopoulos, Prosecutor of the Court of Appeal of Larissa and a lecturer at the NSJ, announced that he had delivered two PAHCT training sessions since participating in the ToT event in December 2017. He highlighted the importance of delivering the following key messages during future training events:

- Prejudice can lead people to commit hate crimes.
- The difference between hate crime and ordinary crimes must be clearly explained.
- All potential bias indicators are to be investigated and any evidence of bias motivation should be included in the indictment.
- Article 81A of the Criminal Code is to be included in the indictment as a basis for aggravated sentencing.

- Real-life cases should be used for group work.

Lampros Tsogas, Head of the Prosecutor's Office in Thessaloniki and Head of the NSJ, announced that he had undertaken to train 20 law professors on addressing hate crimes. He pointed out that the idea originated from the Prosecutor of the Supreme Court.

ODIHR confirmed its support for continuing the PAHCT programme in Greece, and further proposed implementing the Training Against Hate Crime for Law Enforcement (TAHCLE) programme,²⁰ also recommending to hold joint training events police and prosecutors.

It is essential that training programmes continue to be implemented. It is not enough to hold ToT sessions. Rather, a training plan is needed to ensure that the knowledge is disseminated throughout the country. It is important that the Prosecutor of the Supreme Court and the NSJ co-operate to ensure that candidates for the position of prosecutor also benefit from the PAHCT programme, along with acting magistrates. For its part, the NSJ operates an existing training course on racism that could be supplemented with the PAHCT programme for the benefit of judges and prospective judges.

It is also important that training events are held in other cities besides Athens or Thessaloniki, so as to maximize attendance and reduce travel costs.

Although financial constraints could potentially compromise the dissemination of the PAHCT programme throughout Greece, the costs of organizing training events should not be excessive since the training materials are already available in Greek and in electronic format, while such events can be held at prosecutors' work spaces at no extra cost.

The project's achievement in obtaining the active involvement of the Prosecutor of the Supreme Court in both the ToT and the working group has helped to bridge the two strands of the project focusing on capacity building and data collection.

The ToT has helped to overcome misconceptions among prosecutors regarding the theoretical and practical boundaries of hate crime and hate speech as well as the definitions of certain protected characteristics, such as race and sexual orientation. During the training event, prosecutors and experts explored how hate crimes are not limited to attacks on persons but can also be bias-motivated attacks on property. They discussed how spontaneous, bias-motivated violence can also constitute hate crimes. Participants examined prosecutors' tendency to neglect hate crimes that are not politically-driven and/or organized. They explored the conceptual boundaries of domestic violence and hate crime, and the role of gender in certain hate crime scenarios. Participants also addressed all gaps in understanding

²⁰ *Training Against Hate Crimes for Law Enforcement (TAHCLE): Programme Description* (Warsaw: OSCE/ODIHR, 2012), <<https://www.osce.org/odihr/tahcle>>.

identified during the NAM. In practice, any interagency co-operation on data collection should be accompanied by hate crime training for prosecutors to enable them to properly maintain data on hate crime cases and indictments.

In parallel, representatives of other institutions should also be trained on hate crimes to avoid possible undermining of the final effect, that is successful and efficient policy implementation.

The forthcoming internal guidelines of the Supreme Court Prosecutor on prosecuting hate crimes and hate crime data collection are expected to incorporate knowledge from the ToT. It is essential that the specialized hate crime prosecutors appointed as part of the co-operation agreement are trained by colleagues who have already receiving training under the PAHCT programme. The police force is also expected to benefit indirectly from the incorporation of PAHCT programme knowledge into the forthcoming Supreme Court Prosecutor's guidelines, as these will also apply to the police.

Lessons Learned

Interagency co-operation and institutional capacity building are mutually dependent efforts that must be pursued in parallel if they are to be effective. Institutions with no capacity-building activities will struggle to co-operate. The continued training of prosecutors from across Greece is a prerequisite for ensuring the successful implementation of both the co-operation agreement and the institutional guidelines prepared by the Supreme Court Prosecutor.

Capacity building is a vital condition for sustaining the interagency co-operation process that began with the working group. Any effective follow-up on the working group's outcomes depends on continuing to provide PAHCT programme training events and, if at all possible, providing similar training opportunities for judges, as well as for police through the TAHCLE programme. Such capacity building creates a transformative process among rank-and-file magistrates and police, and can help the institutional leadership sustain its commitment to pursuing effective hate crime reforms.

While the sustainability of reform activities introduced by this project is a priority, the importance of continued inter-organizational communication cannot be overstated. If the new coordination mechanism fails, the heads of institutions will lose focus on the issues and the momentum gained through this process might be lost.

One of the central lessons learned under this project has been the prime importance of direct exchange among institutions, including civil society organizations. Such exchanges lead to greater mutual understanding and acceptance of each institution's objectives and limitations. Creating and sustaining a forum for such exchanges and nurturing a mutual awareness of institutions' capacities are key conditions for advancing a meaningful hate crime policy that is firmly grounded in facts. While social and political realities are prone to change, inter-institutional dialogue must retain its favourable momentum for finding responses to hate crime.

Another key lesson of this project is the unique value of the immediate, personal involvement of the institutional leadership at the highest level in advancing hate crime policies and practices. The project's pivotal achievement was its engagement with the Prosecutor of the Supreme Court of Greece, as it enabled this prominent figure to commit to addressing hate crime as a prosecutorial priority. As a result, prosecutors now understand that hate crime is a primary concern at the highest level, and this is expected to lead to greater public awareness of such crimes.

Involving the high-level leadership of institutions in efforts to address hate crime requires national ownership of all processes from start to finish. It is important to recognize and respect that ownership, and to adjust assistance to national needs and expectations, in order to

ensure the positive impact of international expertise and knowledge of comparative good practices.

As this project has demonstrated, institutional ownership and ministerial-level commitment – in particular that of the Ministry of Justice in leading the negotiations, as well as that of the Prosecutor and President of the Supreme Court – are indispensable. Sustainability requires that the heads of institutions actively ensure the continued value of the co-operation and training processes begun under this project. While it is inevitable that political priorities shift, pursuing protection and justice for hate crime victims is recognised by the OSCE participating States as a major human rights issue, crucial for security and stability in the region.

It is the responsibility of concerned leaders in the executive and judicial branches of the respective governments to uphold it against transitory competing interests.

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