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DEVELOPING A REGIONAL APPROACH TO ADDRESSING HATE CRIME

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Introduction

This national compilation paper provides an overview of activities conducted in Lombardy, Italy, as part of the project “Building a Comprehensive Criminal Justice Response to Hate Crime” developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with funding from the European Union and the United States.

About the project

Launched on 13 February 2017, the two-year project aimed to ensure a comprehensive criminal justice approach to addressing bias-motivated crimes in four OSCE participating States (Bulgaria, Greece, Italy and Poland). Project activities had the following objectives:

1. To enhance the capacity of the criminal justice system to comprehensively address hate crime.
2. To strengthen awareness among key national stakeholders of the importance of inter-agency co-operation in addressing hate crime.
3. To equip criminal justice agencies with the tools needed to take a comprehensive approach to addressing hate crime.

These objectives were consistent across the project, however, specific activities with distinct outputs and outcomes were conducted in each country. In line with the project proposal, activities in Italy aimed to build the capacity of the criminal justice system to address hate crime by training police, prosecutors, judges, lawyers and relevant civil society actors, while also improving hate crime data collection.

The activities in Italy focused on identifying local stakeholders and actors to strengthen the criminal justice response to hate crime at the regional level. The region of Lombardy was selected, primarily due to ODIHR’s experience of working with the Catholic University of the Sacred Heart (UCSC), which agreed to liaise with relevant actors in the region. These included the Observatory for Security against Acts of Discrimination of the Ministry of Interior of Italy (OSCAD), the Milan Bar Association (MBA), the Regional Training Centre of the Superior School for Magistrates (SSM) and the National Anti-Racial Discrimination Office (*L’Ufficio Nazionale Antidiscriminazioni Razziali*, or UNAR).

On 11 April 2017, ODIHR signed an Implementing Partner Agreement with the UCSC, according to which the UCSC committed to engage five experts to assist the project’s implementation. On its part, ODIHR took responsibility for project management and providing logistical support in order to promote the efficient and effective delivery of project activities. ODIHR and the UCSC conducted all project activities in consultation with other stakeholders to ensure compliance with their needs.

Project activities

The project design provided that project activities would focus on training criminal justice and relevant civil society actors using ODIHR training programmes, including the Prosecutors and Hate Crimes Training (PAHCT) and the Training Against Hate Crimes for Law Enforcement

(TAHCLE).¹ Project activities also included research on modalities of processing hate crime through a review of legal judgements of the Court of Milan, as well as the production of guidelines on addressing hate crime at the regional level and a comparison with the national-level approach.

Project timeline in Lombardy

- May 2017: PAHCT training in Milan for magistrates working in Lombardy.
- June 2017: Review of hate crime judgements of the Court of Milan.
- September 2017: TAHCLE training in Milan for law enforcement officers working in Lombardy.
- November 2017: Training in Milan for lawyers and civil society working with victims of hate crime.
- April 2018: (second) Training in Milan for lawyers and civil society working with victims of hate crime.
- October 2018: Developing a *Guide to Addressing Hate Crime at the Regional Level*.
- November 2018: Developing the present national compilation paper for Italy.
- January 2019: National workshop in Milan.

Activity 1: Prosecutors and Hate Crimes Training (PAHCT)

Implementing the PAHCT training programme in Italy

The implementation of the PAHCT training programme built on ODIHR's previous work in Italy, including workshops held in Rome in 2015 and in Milan in 2016, resulting in official interest for ODIHR's support in implementing the PAHCT programme by the President of the School for the Judiciary. To follow up, ODIHR sent letters to the Vice President of the Supreme Council of Magistracy (SCM) as the competent body for introduction of training programmes for the magistrates and Italy's Ministry of Justice.

In September 2017, ODIHR secured support for the PAHCT programme from the Delegation of Italy to the OSCE. The Delegation however highlighted that, as an independent body, the SCM selects its own training programmes.

To encourage the PAHCT programme's swift adoption, the ODIHR Director wrote to the Vice President of the SCM on 23 October 2017 proposing the development of a Memorandum of Understanding (MoU) that would allow the delivery of PAHCT across Italy.

¹ See: *Prosecutors and Hate Crimes Training (PAHCT): Programme Description* (Warsaw: OSCE/ODIHR 2014), <<https://www.osce.org/odihr/pahct>>; and *Training Against Hate Crimes for Law Enforcement (TAHCLE): Programme Description* (Warsaw: OSCE/ODIHR 2012), <<https://www.osce.org/odihr/tahcle>>.

The USCS sent a similar letter and the Delegation of Italy to the OSCE also endorsing the effort, although highlighting that the SCM is an independent body that selects its own training programmes. On 12 December 2017, the SCM replied to say that it would analyse the proposal and reply in due course. Despite an initial positive response received in July 2018, the SCM cancelled the initiative in December 2018 declaring that they are not able to organize trainings but will forward the invitation to the High School for the Judiciary for an evaluation.

The cancellation of the PAHCT programme in Italy became a major obstacle in completing all planned project activities. ODIHR remains committed to implementing the PAHCT programme in Italy and continues its efforts to offer the programme to the Italian authorities beyond the project implementation period.

PAHCT training courses in Lombardy

Developing the curriculum

ODIHR based the curriculum used in Lombardy on a customized version of its PAHCT methodology for Italy. This methodology encourages the use of regional case studies identified with the help of regional and/or national bodies and organizations during pre-training meetings and workshops. ODIHR drafted the curriculum structure and general content including standardized sections, such as those on identifying hate crimes using bias indicators, as well as sections customized to the local context, such as on applying national legislation. ODIHR provided the draft curriculum to national counterparts in order to validate the accuracy and relevance and allow collecting additional materials (such as case studies and local impact statements).

Delivering and evaluating the training

The training was held in Milan on 5 and 19 May 2017. ODIHR co-organized the event together with the UCSC, which invited magistrates through the Regional Training Centre of the Superior School of Magistrates. Thirty participants (15 men and 15 women) attended the first training session and 22 attended the second training session (3 men and 19 women). ODIHR trainers and a specialized hate crime prosecutor from Malaga, Spain as an external trainer delivered the sessions.

During the regional PAHCT training session, participants learned about the concept of hate crimes, international and regional standards, national legislation and how to design the indictment in a hate crime case. Participants expressed particular interest in the legal distinction between hate crime and hate speech. Trainers drew on case law from Lombardy to provide tailored practical exercises. The participants evaluated both training sessions. Ninety-four per cent reported that their understanding of hate crimes had changed, and 70 per cent stated that the training had met their expectations and was relevant to their day-to-day work. Participants also suggested providing more detail on national law and European Union jurisprudence, as well as on the theoretical framework. In particular, they suggested that more

time should be devoted to delineating the legal differences between hate speech and hate crime. All respondents recommended integrating the training into the national curriculum for magistrates.

The training course demonstrated how regional actors could pro-actively engage with members of national institutions to drive relevant activities. Moreover, the regional approach can serve as a platform for developing ideas at the national level – a key reason for selecting Lombardy as the pilot region for the PAHCT training programme. Provided that regional-level project activities succeed, it may be possible to replicate that success at the national level. Additionally, regional partners may be able to invite national colleagues or those from different regions to relevant project activities.

The training session held on 19 May 2018 was followed by a workshop organized in co-operation with the Regional Training Centre of the Superior School for Magistrates. During the workshop, ODIHR presented the project activities with a particular focus on Lombardy. The aim of the workshop was to inform magistrates of planned project activities and to obtain their support and participation.

Activity 2: Training Against Hate Crimes for Law Enforcement (TAHCLE)

Preparations

ODIHR launched the TAHCLE training programme in Italy in 2014: conducted a needs assessment and designed a customized curriculum for police officers. ODIHR presented the curriculum at a training-of-trainers session in Italy, and the training programme has since been cascaded by the local partner in Italy, OSCAD. For these reasons, this training session for law enforcement officers in Lombardy was both a segment in the comprehensive regional approach to hate crimes, as well as a continuation of the training activities by OSCAD.

In addition to utilizing its existing co-operation with the UCSC, ODIHR also fostered links with OSCAD for this project. These links provided ODIHR with access to the State Police and Carabinieri in Lombardy, while allowing for an informed discussion on whether municipal and regional police should be included in future training programmes. Since municipal police do not have the mandate to deal with hate crimes, ODIHR and OSCAD decided not to include them in the training programme. The possibility of providing municipal police with an information session on identifying bias indicators was discussed between project partners, with the aim of enabling them to provide an “early warning” of a possible escalation in hate crimes.

Developing the curriculum

ODIHR tailored the standard TAHCLE curriculum to regional dynamics through close collaboration with OSCAD and their knowledge of real-life hate crime cases in Lombardy, as well as the experience of UNAR.

ODIHR and OSCAD customized the training to the needs and reality of Lombardy region and covered topics on the concept of hate crime, bias indicators and international and national legislation. The training was supplemented by examples of hate crimes committed in the region, as well as information gleaned from previous TAHCLE work in Italy through focus group meetings with the police (including the immigration police and units dealing with web crimes, anti-Semitic and religious crimes and crimes against women, minors and LGBT people) and the Carabinieri (including the investigation and forensic units). Information about intolerance, discrimination, bias, hate incidents, and the police response to hate crime was also collected from communities regularly targeted by hate crime, including LGBT people, Roma, people of African descent, refugees and asylum seekers, and Jewish and Muslim groups.

Delivering and evaluating the training

On 12 and 13 September 2017, a training session based on ODIHR's TAHCLE curriculum was organized by ODIHR in co-operation with OSCAD in Milan. Twenty-five representatives of the Lombardy State Police and Carabinieri (17 men and 8 women) participated in the training session, which was delivered by four trainers: one ODIHR representative, two trainers from OSCAD and one from UNAR.

Engaging with the appropriate regional partners proved to be of crucial importance for the success of the training. The UCSC's established links to regional and national institutions working on hate crimes proved invaluable in securing the high-level endorsement of the project and its activities. The USCS also provided the venue for the training event.

The training event focused on helping participants identify and investigate hate crimes. Topics included the concept of hate crime, bias indicators and their identification, good practices for police in responding to and investigating hate crime, and developing a case file to effectively investigate hate crimes.

In the post-training evaluation, participants stated that it had met their expectations, with 87 per cent noting that the content had been appropriate to their daily work. Sixty-six per cent of participants reported that they were now better aware of the role of police in preventing and responding to hate crime. Sixty-two per cent also appreciated their own role in preventing and responding to hate crime. Participants expressed particular satisfaction with the competences of the trainers, the use of real-life examples and the topics covered.

Participants suggested that future training sessions could benefit from including more details on national law and European jurisprudence in the training curriculum, deepening the theoretical discussions, and devoting more time to the distinction between hate crime and hate speech.

Participants' proposed changes centred not only on the content of the training course but also on other, broader issues. For example, many stated that the two-day training course was too short and noted that it may be necessary to train other relevant stakeholders (such as magistrates) to address hate crime more effectively. Moreover, some participants expressed an interest in receiving further training on the subject matter. To facilitate the TAHCLE

programme's continued implementation, ODIHR handed over the training materials to OSCAD.

Activity 3: Training for lawyers and civil society representatives working on hate crime

First training course

In co-operation with the Milan Bar Association (MBA), ODIHR and the UCSC organized a training course for civil society and lawyers working with hate crime victims. Nineteen participants (13 women and 6 men) attended the course, held on 9 and 10 November 2017 at the Palace of Justice in Milan. University staff and external experts designed and developed the curriculum using ODIHR's materials for training civil society representatives. Efforts were made to ensure that the curriculum encompassed issues specific to Italy's legal context, such as assistance to vulnerable victims (as envisaged in the national Law No. 212/2015), hate speech provisions and the implementation of the European Union Victims' Directive.

Participants' evaluation of the training course demonstrated that the event succeeded in conveying the concept of hate crime. In their feedback, participants suggested that the MBA (or an academic institution, such as the UCSC) should follow up on the subject with participants and produce practical tips for lawyers on working on hate crime cases.

Second training course

The second training course for lawyers and civil society representatives was held in Milan on 11 and 12 April 2018. Seventeen participants (14 women and 3 men) attended. ODIHR organized the course together with the UCSC and the MBA. The course covered the available legislative provisions for securing the legal protection of hate crime victims in Italy. The team of five trainers was composed of two ODIHR representatives who supported the three teaching assistants from the UCSC.

In their evaluation, participants expressed special appreciation for the format and content of the course, and in particular, the comparative/international perspective it provided. They proposed the following changes to the course:

- Expand the duration of the course and dedicate more time to case studies.
- Provide annual follow-up activities for participants.
- Develop tips for lawyers.
- Adopt an interdisciplinary approach.

Follow-up

Following the training course held in November 2017, the MBA requested additional training courses aimed at creating a pool of qualified lawyers that could later provide pro bono legal

(and other) aid to hate crime victims. Consequently, part of the second training course was dedicated to equipping local lawyers with the skills to support the creation by the MBA of a helpdesk for hate crime victims. This request was based on the experience of the already existing helpdesk for victims of other crimes established in 2007.

The main helpdesk is located at the Palace of Justice in Milan. It has one operator and provides victims with a list of lawyers specializing in different areas, based on their completion of particular professional training courses. Another nine helpdesks are located across Milan and are open on alternate days and offer legal advice on specific subjects. Following a request by some local municipalities, the MBA has established helpdesks to provide counselling on specific issues, such as domestic violence and gambling. The MBA is supported in its activities by civil society, which offers other kinds of on-the-spot advice. Helpdesks are also located in each of the three main jails in Milan, and provide legal support related to inmates, trial procedures and Italian law. As part of the initiative to include hate crime in this helpdesk, trained hate crime lawyers will provide legal aid to hate crime victims. Thus, project activities have inspired the creation of a platform that requires multi-agency engagement and co-operation on the issue of hate crime.

Activity 4: Review of hate crime judgements of the Court of Milan

In order to take a comprehensive regional-level approach to addressing hate crime, it is necessary to understand the region's hate crime context, including the type and number of hate crimes committed. A simple examination of hate crime statistics cannot reveal the specific hate crime problems of a country or region, and more detailed research must be conducted to understand the true scale of the problem. Therefore, a review of the legal judgements of the Court of Milan was conducted with the aim of understanding the actual scale of hate crime in the region, as well as any potential distortions that may exist in official hate crime data.

As part of the project, the USCS hired an expert to review the hate crime data collected by the Court of Milan. It also secured the Court's permission to access decisions on all criminal matters issued in 2016. The expert studied approximately 13,000 decisions on criminal cases to identify potential hate crimes. Data was collected from an electronic folder containing all the decisions of the Court and provided by its Office for Innovation. The research did not consider judgements issued by the Court of Assizes in 2016, since its decisions deal with organized crime and were neither accessible nor deemed relevant.

The research found that bias motivations were identified in very few cases (just 54 cases were found to contain a possible bias motivation out of more than 13,000 judgments, or 0.42 per cent). In most of these 54 decisions, the possible bias motivation is not mentioned in the Court's judgements, while in almost all cases the possible bias motivation was not referenced in prosecutors' indictments. Consequently, the judgements did not include an increased penalty owing to the bias motivation.

It should be noted that the research also set out to identify how magistrates process hate crimes. Reasons for the low number of bias-motivated cases in official data included the hate

crime under-reporting, the failure by prosecutors to include a bias motivation in the indictment, the inability among police to recognize and/or investigate potential hate incidents as well as record them as such in the case file. In order to examine the results of the study and determine the next steps to ensure that bias-motivated crimes are accurately recorded the UCSC conducted a series of focus groups with legal academia and practitioners. The focus groups resulted in recommendations that were included in the review of the hate crime judgements.

Activity 5: National workshop

The outcomes and experiences of the project activities were presented and discussed at a workshop held in Milan on 15 January 2019. ODIHR organized the event in co-operation with the MBA and the UCSC, which was divided in two sessions. The plenary session brought together some 150 participants, of which 129 signed the attendance list (42 men and 87 women), representing different Italian criminal justice agencies. The second session consisted of three thematic workshops and gathered a smaller group of 25 participants. The aim of the workshop was to provide a platform for in-depth discussions on the policies pursued by the Italian authorities to address hate crime.

Workshop participants agreed on a number of issues and proposed several activities to better address hate crimes in Italy. The main topics of discussion included the provision of quality support to hate crime victims, the need for the continuous hate crime training for criminal justice system actors and improving the hate crime data collection system in Italy. Participants also highlighted systemic deficiencies in Italy's response to hate crimes and the efforts needed to implement fully the European Union Victim's Directive.²

The workshop participants underlined the need to improve Italy's legislation to cover all possible bias motivations, including those motivated by a bias against the victim's sexual orientation.

The event also served as platform for the exchange of experience and transfer of good practices. In particular, a representative of the Athens Bar Association participated in the event to learn about the practical aspects of running the free legal helpdesks established by the MBA. Consequently, issues related to hate crime were included in the activities of the helpdesks, which provide information and counselling to hate crime victims. ODIHR suggested expanding the operations of the helpdesks to allow them to perform needs assessments for individual hate crime victims.

Activity 6: Guide to Addressing Hate Crime at the Regional Level

ODIHR drafted the *Guide to Addressing Hate Crime at the Regional Level* in October 2018 and launched it at the project's final conference on 14 November 2018.³ It compiles the good

² European Union: Council of the European Union, "Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA", 4 November 2012, L 315./57, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>>.

³ *Guide to Addressing Hate Crime at the Regional Level* (Warsaw: OSCE/ODIHR, 2018), <<https://www.osce.org/odihr/402536>>.

practices and lessons learned from the project activities on addressing hate crimes at the regional level in Lombardy, Italy. After a general overview of the concept of hate crime, the guide presents both the advantages and the challenges associated with the national and regional-level approaches to addressing such crimes. It then presents a step-by-step guide to conducting a regional baseline assessment, including the mapping of relevant local stakeholders. It continues by offering a spectrum of activities that can be implemented by criminal justice agencies and civil society organizations, as well as suggestions on how to establish partnerships and strengthen co-operation. Ultimately, the guide offers a set of recommendations for monitoring and evaluation, in order to sustain the results of efforts to address hate crimes in the region.

Next steps

As a result of the project, the MBA intends to hold mandatory hate crime training courses for lawyers each year as well as incorporate hate crime into the activities of the MBA's free legal helpdesk. This good practice of a pro-active approach of embedding hate crime training and associated activities into regional and national bodies was found appealing to other legal professional bodies such as the Athens Bar Association.

Although the delivery of the PAHCT training programme occurred only in Lombardy, ODIHR continues to pursue the programme's full adoption nationwide across Italy.

The review of legal judgements of the Court of Milan identified hate crime under-reporting as a potential barrier to recording and prosecuting such crimes. Therefore, ODIHR will support the USCS in reaching agreement with the appropriate actors in order to improve the processes and procedures for identifying and recording hate crimes.

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