

## Hate Crime Dossier

The following dossier offers information on the subject of hate-motivated crime. The concept of hate-motivated crime originates in the United States, where the term ‘hate crime’ is used. In a German-speaking context, the terms ‘hate crime’ (*Hasskriminalität*) and ‘hate-motivated crime’ (*hassmotivierte Kriminalität*) are used. We have opted for the expression ‘hate-motivated crime’ for the purposes of this dossier.

In September 2013 CERD published a [general recommendation](#) on racist hate.

This dossier will offer you some insights into the phenomenon of hate-motivated crime. We will present a definition of hate-motivated crime and describe the phenomenon of hate-motivated crimes. Moreover, you will find information about relevant legislation and the role played by the police and the courts in sanctioning hate-motivated crimes. We will also present examples and experiences from efforts to combat hate-motivated crimes by way of litigation in the United States and Britain, as well as at the European Court of Human Rights.

### A. Definition of Hate-Motivated Crime

According to the Office for Democratic Institutions and Human Rights (ODIHR), hate-motivated crimes exhibit two components: they are criminal offences, which are motivated by prejudice. The first element of a hate-motivated crime is the perpetration of an act classified by statute as a criminal offence. The second element is the specific motive for which the crime is committed, i.e. the perpetrator chooses the target of the crime deliberately on the basis of a characteristic exhibited by the victim(s).

These crimes range from property damage and assault, to murder.

Identifying characteristics recognised in connection with hate-motivated crimes include language, religion, ethnicity, nationality and other factors. Depending on the national legislation in question, sexual orientation, transsexuality, disability, political views, homelessness and social status may also be protected by law.

### B. The Phenomenon of Hate Motivated Crime

In a German-speaking context, the terms ‘hate crime’ (*Hasskriminalität*) and ‘hate-motivated crime’ (*hassmotivierte Kriminalität*) are used. The English term ‘hate crime’ is also prevalent. ‘Hate crime’ (*Hasskriminalität*) does not always convey the motivation for a crime (in this case, hatred of or aversion towards certain groups), whereas ‘hate-motivated crime’ (*hassmotivierte Kriminalität*) refers clearly to both elements of the definition of this phenomenon as presented above.

A criminological overview on the subject of hate crime can be found in a [paper](#) (German) published by the by the German Forum for Crime Prevention in 2006.

In Germany, there is no way of knowing exactly how many hate-motivated crimes are committed. German legislation places racist hate crime in the category of ‘politically motivated crime’, with the result that statistics are only collected for that, much broader, category. Other hate-motivated crimes only appear in the statistics corresponding to existing statutes; the crimes’ motivation is not taken into account.

Hate crimes are not easy to define as criminal offences. They can be cases of intimidation, threats, property damage, physical attacks, murder or other crimes.

When a hate crime is committed, the perpetrator intends to harm the victim not only as an individual, but as a member of a group which the perpetrator hates and perceives as being inferior. This kind of crime is not individual; it concerns society as a whole, as such, entails a responsibility to prosecute instances of such acts.

A [study](#) conducted by the European Union Agency for Fundamental Rights indicates that in the EU, many hate-motivated crimes are neither reported nor followed up on, and thus remain hidden from the public. The reason for this seems to be the limited willingness of victims and witnesses to report them to the police.

Hate-motivated crimes target an identifying feature over which the victim usually has no control. Physically handicapped persons, to name an example, do not choose their disability. This type of crime is traumatic for its victims. The effects can negatively influence their quality of life.

To the same extent, this type of crime can come to possess a symbolic meaning; hate-motivated violence sends the message that any other person in the group could have been the victim.

### **C. Legislation against Hate Crimes**

As early as 1966, the United Nations passed the International Convention on the Elimination of All Forms of Racial Discrimination, which addresses racially motivated violence in addition to ethnic discrimination. In 2008, the European Union created a legal instrument against hate crime, the Framework Decision on Combating Racism and Xenophobia. In Germany, a revision of section 130 of the Criminal Code was undertaken in March 2008. A debate on the effect of hate-motivated crime on fixing penalties in Germany, as suggested by a draft amendment to section 46 of the Criminal Code, has not yet been wrapped up.

You can view the ODIHR [guidelines](#) on ‘Hate crime laws’ here.

#### **C.I. Framework Decision on Combatting Racism and Xenophobia**

The European Framework Decision on Combating Racism and Xenophobia (2008/913/JHA) was prepared by the Council based on a proposal from the European Commission and an opinion expressed by the Parliament.

Click here to access ODIHR’s [‘Tandis’](#) database, where you can find comprehensive material regarding hate crime.

The primary goal of the framework decision is to counter racism and xenophobia in all member states with effective, appropriate and preventative penalties.

European Commission recommendation for the framework decision:

The draft of the [framework decision](#) is based on the analysis that ‘Racism and xenophobia are a direct violation of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles upon which the European Union is founded and which are common to the Member States’.

After lengthy negotiations, the Council of the European Union passed the Framework Decision on Combating Racism and Xenophobia ([2008/913/JHA](#)) on 28 November 2008. It stipulates that the member states must synchronise their legal and administrative regulations on crimes with a racist or xenophobic background. It demands that racist or xenophobic acts be considered criminal offences in all member states, punishable by a prison sentence of one to three years.

It calls for the criminalisation of incitement to violence or hatred on the basis of attribution to an ethnic or religious group; the public dissemination or distribution of writings, images or other materials with racist or xenophobic content; and the public endorsement, denial or gross down-playing of genocide or crimes against humanity, if committed in a way likely to incite violence or hatred towards such a group or individual. Inciting or participating in such an act is also to be considered an offence.

When fixing penalties for a conventional offence, racist or xenophobic motives are to be classified as an aggravating factor, and they are to be taken into account during sentencing.

The initiation of police investigations and criminal prosecution of racist and xenophobic offences cannot be dependent on the victim’s willingness to press charges or take legal action.

## **C.II. Revising section 130 of the Criminal Code in accordance with the EU framework decision**

In Germany, the framework decision of the Council of the European Union was implemented in 2010. In order to do so, it was necessary to change the wording of section 130 of the Criminal Code (*StGB*). According to the original version of section 130 subsection 1, ‘whosoever, in a manner that is capable of disturbing the public peace, incites hatred against segments of the population or calls for violent or arbitrary measures against them’ is guilty of an offence. The law also makes it a crime to ‘assault[...] the human dignity of others by insulting, maliciously maligning, or defaming segments of the population’.

In 2010 a group of experts took part in a discussion on the implementation of the EU Framework Decision on Combating Racism and Xenophobia, at the German Police University.

Nevertheless, section 130 subsection 1 of the Criminal Code only explicitly refers to ‘*segments of the population*’, but not to *individual persons*. The framework decision, on the other hand, demands that the relevant penal provisions cover the incitement to hatred and violence towards *individual members of groups* as well, rather than simply towards the groups as a whole.

The new version of section 130 subsection 1, and subsection 2 paragraph 1, of the Criminal Code has been phrased as follows:

Subsection 1:

‘(1) Whosoever, in a manner that is capable of disturbing the public peace,

‘1. incites hatred against a national, racial or religious group; against a group characterised by its ethnic origin; against segments of the population **or against an individual** on the basis of his belonging to any of the abovementioned groups or to a segment of the population or calls for violent or arbitrary measures against them, or

‘2. assaults the human dignity of others by insulting, maliciously maligning, or defaming any of the abovementioned groups, segments of the population **or an individual** on the basis of his belonging to any of the abovementioned groups or to a segment of the population,

‘shall be liable to imprisonment for three months to five years.’

Subsection 2 paragraph 1 has been changed as follows:

‘Whosoever,

‘1. with respect to written materials (s. 11 (3)) which incite hatred against any of the abovementioned groups, against segments of the population **or against an individual** on the basis of his belonging to any of the abovementioned groups or to a segment of the population, or call for violent or arbitrary measures against them or assault their human dignity by insulting, maliciously maligning, or defaming them,

‘(a) disseminates such written materials;

‘(b) publicly displays, posts, presents or otherwise makes them accessible;

‘(c) offers, supplies or makes them accessible to a person under eighteen years of age or

‘(d) produces, obtains, supplies, stocks, offers, announces, commends or undertakes to import or export them, in order to use them or copies obtained from them within the meaning of subparagraphs (a) to (c) or facilitate such use by another; or [...]

### **C.III. Amending Section 46 of the Criminal Code**

A debate has been ongoing in Germany since 2010 regarding whether or not racist and otherwise inhuman motives should be investigated in criminal proceedings and explicitly incorporated into section 46 subsection 2 of the Criminal Code as grounds for sentencing.

Many countries in the European Union already have provisions for explicit penalties for hate crime in their criminal justice systems. In some countries, a more severe sentence is provided for in cases where the crime was motivated by hatred. In Germany, however, there exists neither a separate category of offence for hate crime, nor an explicit provision for more severe penalties.

In December 2011, SPD members of parliament published a draft amendment to this effect. In February 2012, the Green Party put forward a motion in the Bundestag (Federal Diet, or lower house of parliament) regarding the effective prosecution of crimes motivated by prejudice. In April 2012, the Bundesrat (Federal Council, or upper house), in turn, presented a draft bill.

As a result of differing political and legal assessments within the Bundestag, no legislative proposal has been decided upon yet.

The law firm ‘Menschen und Rechte’ submitted an [opinion](#) (German) on the draft law amending section 46 of the Criminal Code in 2012.

### **C.IIIa) SPD draft bill to amend section 46 of the Criminal Code**

In their draft bill (German), the SPD suggest that the words ‘in particular, racist, xenophobic or any other inhuman offences’ be added to section 46 subsection 2 paragraph 2 of the Criminal Code.

Response to the [interpellation](#) (German) on the criminal prosecution of hate crimes in Bremen.

### **C.IIIb) Draft law presented by the Green Party**

In a motion (17/8796) (German) put forward in February 2012, the Green Party requested the federal government to present a draft bill, whereby section 130 of the Criminal Code (incitement of popular hatred) would be expanded to include all groups whose members should be protected from becoming victims of acts motivated by popular hatred, in particular on the basis of their sexual identity, gender, beliefs, disabilities or age. Moreover, they suggested that a study be commissioned to examine the applicability of section 46 subsection 2 of the Criminal Code with respect to offences motivated by hostility towards certain groups.

Here you can find a [summary](#) (German) of a hearing of the Committee on Legal Affairs of the Bundestag on the subject of increasing penalties for hate crimes.

### **C.IIIc) The Bundesrat’s draft bill to amend section 46 of the Criminal Code**

In its 2012 draft bill (German) concerning the toughening of criminal law to combat hate-motivated crime, the Bundesrat argues that the situation described above is particularly likely to disrupt social peace.

### **C.IIIId) Assessments of a possible amendment to section 46 of the Criminal Code**

The federal government has come out in opposition against an addendum to section 46 of the Criminal Code several times since 2011. In their view, a change would be redundant, since they claim that as a result of relevant court decisions, motivation by hatred is already sufficiently taken into account in legal practice.

In 2007, a symposium was held in Brandenburg on the subject of hate crime. You can read a short documentation of the session [here](#) (German).

All of the draft bills mentioned above have been discussed at second and third reading in plenary sessions of the Bundestag, only to be rejected in the end by the opposition of the

ruling coalition and the abstention of the Left Party. The SPD abstained from voting on the Green Party's motion, while the Greens did the same with respect to that of the SPD.

Here, you can find further assessments, which do not necessarily correspond to the views of BUG:

[Article by Jerzy Montag, member of parliament for the Green Party](#) (German).

[Article by Halina Wawzyniac, member of parliament for the Left Party](#) (German)

On 27.08.2014, the Federal Government decided to amend § 46 of the Criminal Code. In the future, racist, xenophobic or other inhuman factual circumstances are taken into account in the actual sentencing.

#### **D. Measures Taken against Hate Crimes in Other Countries**

In international comparison, the United States and the United Kingdom are two examples of countries which target hate crime in a focused manner.

The European Court of Human Rights has expressed a firm opinion in numerous verdicts concerning hate-motivated crimes.

##### **D.I. United States and Great Britain**

In the US, the term 'hate crime' was coined in the context of the civil rights movement in the 1980s. The movement supported equal rights for African-Americans and the goal of overcoming racism. The term itself was politically suitable for publicly denouncing discrimination and violence against segments of the population.

The Hate Crime Statistics Act has regulated the collection of statistics on hate-motivated crimes since 1990. It differentiates between crime motives relating to ethnicity, religion, disability and sexual orientation.

In 1994, the Violent Crime Control and Law Enforcement Act was passed, thereby raising penalties for hate-motivated crimes. In 2009, the law was expanded by the Matthew Shepard Act, thus incorporating gender and gender identity as identifying characteristics for hate-motivated crimes.

'Matthew Wayne Shepard was an American student at the University of Wyoming who was tortured and murdered near Laramie, Wyoming in October 1998. [...] During the trial it was widely reported that Shepard was targeted because he was gay. [Shepard's murder](#) brought national and international attention to hate crime legislation at the state and federal levels.'

In the United Kingdom, the recommendations of the Macpherson inquiry into the racially motivated murder of Stephen Lawrence in 1993 had a profound effect on the development of hate-crime legislation. You can read about the implementation of the inquiry's recommendations in the UK in BUG's dossier 'Police investigation of racially motivated crimes'. In 1998, the Crime and Disorder Act was passed. This law raises the penalties for crimes motivated by prejudice and hatred towards members of ethnic and religious minorities. It was expanded by the Criminal Justice Act in 2003, which further compels judicial institutions to punish hate crimes against persons with disabilities, as well as those committed because of the victim's (actual or supposed) sexual orientation

## **D.Ia) Police Investigation of Racially Motivated Crimes**

This dossier gives an insight into how the British police force failed to investigate the racist murder of Stephen Lawrence. On 22nd April 1993 the 18 year old black teenager was murdered in Eltham, South-East London. Police were severely criticized for their conduct during this murder investigation which resulted in no one being prosecuted for the murder until 2012. Only due to the parents of Stephen Lawrence and the huge public pressure which formed around this case that it led to an in-depth inquiry into the misconduct and institutional racism of the police force; the so called The Macpherson Report. This inquiry resulted in the police acknowledging their faults and flaws and accepting seventy recommendations to improve their future services and to work towards ending institutional racism.

### **Institutional Racism as defined in the Macpherson Report:**

“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”

## **D.II. ECHR**

The European Court of Human Rights (ECHR) of the Council of Europe constitutes the central judicial authority with the power to assess human rights violations in Council of Europe member states. The court’s legal basis is the European Convention on Human Rights, which guarantees the right to life, the freedom from torture and forced labour, the right to marriage and family life and the freedom of assembly, amongst other protections. In accordance with article 14, all of these rights must be applied in a non-discriminatory manner. The following ECHR verdicts illustrate the duty of the police and the judiciary to investigate offences, paying special attention to any possible motivation by hatred.

In 2012, the European Union Agency for Fundamental Rights published a [paper](#) on the subject collecting statistics on hate-motivated crimes and Europe and making the issue more visible

### **D.IIa) Šečić v. Croatia**

In this verdict the ECHR considered the case of a Roma with Croatian citizenship who became the victim of an act of racially motivated violence in 1999. Despite the fact that Šečić had gone to the police and to the courts, the authorities neglected to solve and prosecute the case appropriately.

The judges of the European Court of Human Rights stated that ‘when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events’.

### **D.IIb) Nachova v. Bulgaria**

This verdict analyses the murder of two Roma men in Bulgaria who were shot in the back by police constables. Witnesses stated that the constables had made racist remarks to the men before the incident.

The offenders' racist motivation was not recognised until the European Court of Human Rights acknowledged it in their verdict.

'[T]he [Bulgarian] authorities failed in their duty under Article 14 of the Convention taken together with Article 2 to take all possible steps to investigate whether or not discrimination may have played a role in the events.'

### **D.IIc) Stoica v. Romania**

This incident took place in 2001, when a young Roma man was severely injured by police constables in a violent attack, which resulted in a permanent disability. His suit was rejected by courts at the national level. Subsequently, he submitted his case to the European Court of Human Rights. They held that the Romanian courts had ignored the perpetrators' discriminatory and racist motives.

The verdict emphasises that '[r]acial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence'.

### **E. Materials**

Human Rights Watch Study: '[Die Reaktion des Staates auf "Hasskriminalität" in Deutschland](#)' (German)

Report by the Office for Democratic Institutions and Human Rights: '[Hate Crimes in the OSCE Region – Incidents and responses](#)'

OSCE guide: '[Hate crime laws](#)'

Office for Democratic Institutions and Human Rights: '[Tandis \(Tolerance and Information System of the OSCE\)](#)'

Another publication of the Office for Democratic Institutions and Human Rights: '[Preventing and Responding to Hate Crimes: A resource guide for NGOs in the OSCE Region](#)'

OSCE background paper on transnational threats in the OSCE region: '[Addressing Transnational Threats and Challenges in the OSCE Region: The Human Dimension](#)'

Overview of the phenomenon of hate-motivated crimes by the German Forum for Crime Prevention: '[Materialsammlung Hasskriminalität: Ein Überblick aus kriminologischer Sicht](#)' (German)

Study on hate crime by the European Union Agency for Fundamental Rights:

- [Factsheet](#)

- [Study](#)

<p>The tolerance and non-discrimination department of the Office for Democratic Institutions and Human Rights works on a <a href="#">great variety of topics</a> in the field of discrimination.</p>
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