

Country-by-Country

Hate Crime Report Card

December 2007

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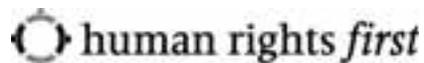
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About Us

Human Rights First is a leading human rights advocacy organization based in New York City and Washington, DC. Since 1978, we have worked in the United States and abroad to create a secure and humane world – advancing justice, human dignity, and respect for the rule of law. All of our activities are supported by private contributions. We accept no government funds.

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Preface

The Human Rights First *2007 Hate Crime Report Card* is a review of the implementation of commitments undertaken by the 56 participating states of the Organization for Security and Cooperation in Europe (OSCE) to combat the rising tide of violent hate crimes.

Six months ago, Human Rights First released the *2007 Hate Crime Survey*, in which we documented and analyzed the reality of racist violence and other forms of intolerance in Europe, Central Asia, and North America. In that report, we reviewed available reports on violence motivated by prejudice and hatred, including the findings of the handful of official monitoring systems that provide meaningful statistical information. This data, combined with the findings of nongovernmental monitoring organizations, provided important insights into the nature and incidence of violent hate crimes. Our findings showed that hate crimes, including those motivated by antisemitism, homophobia, and Islamophobia, were on the rise—in some cases reaching record highs—in many parts of Europe and North America.

We concluded that report with a series of recommendations to governments to combat hate crimes. In particular, we called on governments to establish systems of official monitoring and data collection to fill the hate crime information gap. We likewise urged governments to strengthen criminal law and law enforcement procedures required to combat hate crimes. These are not new recommendations: since 2002, Human Rights First has consistently called on states to undertake these measures. Furthermore, the need for states to take these steps is increasingly rooted in the agreements and directives of intergovernmental organizations with which these states have binding political and legal commitments.

The *2007 Hate Crime Report Card* is a companion and follow-up to the survey. It assesses the extent to which governments have responded to the increasing threat violent hate crimes pose to their societies by fulfilling their commitments to establish hate crime monitoring systems and to adopt strong hate crime laws and enforce them. This country-by-country section is accompanied by an overview section that provides comparative analysis of the countries under review.

This report card builds upon the findings of Human Rights First's 2005 report *Everyday Fears: A Survey of Violent Hate Crimes in Europe and North America*, which was our first effort to examine government responses to the full range of hate crimes in each of the OSCE participating states. At the time we found that only a handful of governments had taken concrete measures to effectively monitor, respond to, and prevent hate crimes.

While there has been some progress since then, this report card makes clear that governments still have a long way to go. We hope that this report contributes to establishing a baseline of steps states have been taken until now to combat hate crimes and a roadmap of what remains to be done.

Albania

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Albanian Criminal Code does not contain provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance in sentencing. In its Third Report on Albania, the European Commission against Racism and Intolerance (ECRI) notes that Albanian authorities maintained that a provision treating bias-crime as a separate offense would be “problematic in the Albanian legal system” and stated that they were taking steps to allow the racist motivation of a crime to be considered an aggravating factor in sentencing.¹

ECRI reiterated its previous recommendation that Albania “explicitly provide in criminal law that racist motivation constitutes a specific aggravating circumstance for all offences,” yet praised Albanian Authorities for carrying out “a range of measures aimed at improving the functioning of the judicial system” which included improved training of police officers, prosecutors, and judges in areas relating to “issues of racism, discrimination and intolerance.”²

Andorra

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X		X	X

Bias as an Express General Aggravating Factor

The Criminal Code of Andorra contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 30.6 of Criminal Code considers crimes to have been committed with aggravating circumstances when committed for racist and xenophobic motives or reasons related to ideology, religion, nationality, ethnic origin, sexual orientation, disease or physical or mental disability of the victim.³

Armenia

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Armenia, which entered into force on August 1, 2003, contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 63 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(f) “a motive of ethnic, racial, or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Several other Criminal Code articles provide specific penalty enhancements for crimes committed with those same motives. Article 104 punishes murder with incarceration ranging from six to twelve years. Article 104(2)(m) defines murder “with a motive of national, racial, or religious hatred...” as punishable “by incarceration for eight to fifteen years, or by life imprisonment.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 112 (Deliberate infliction of grievous bodily harm), article 113 (Deliberate infliction of moderate bodily harm), article 119 (Torture), and article 185 (Willful destruction of property). Higher penalties are established for each of these crimes when committed “with a motive of national, racial, or religious hatred.”

The Criminal Code also provides in article 265 for more severe punishment for the desecration of cemeteries when motivated by national, racial or religious animus.”⁴

Austria

Systems of Monitoring and Reporting

What Data is Collected?

The Austrian Government monitors the activities of right-wing extremists and provides information about extreme right-wing acts, including acts of racist violence. The government does not collect information expressly about racist and related bias crimes when perpetrators are not tied to extreme right-wing groups. Nor does the government collect data about victims of “racist violence” in general. Because of this, the Austrian statistics are skewed towards monitoring the activities of only these politically defined perpetrators of bias crimes. The Fundamental Rights Agency (FRA) reports that “[w]hile the administration, through the Ministry of the Interior, puts a lot of resources into monitoring the activities of these *organized* groups, there is a comparative lack of focus on ‘everyday’ examples of racism and racist violence.”⁵

The Ministry of the Interior, in its annual report on the protection of the constitution, provides information on the criminal activities of various groups which prove a threat to the stability of the country. These include right-wing and left-wing extremists, as well as extremism and terrorism as it relates to foreigners. The limited statistics that are available on crimes perpetrated by right-wing extremists are categorized according to the violation of the applicable criminal code.

In 2006, the government reported a total of 240 criminal incidents or acts (as compared with 209 in 2005) recorded with extremist right-wing, xenophobic or antisemitic motivation.⁶ These 240 acts represented a total of 419 registered criminal offenses in 2006 (as compared with 406 in 2005).⁷ The largest number of registrations (186) involved violations of the Prohibition Statute—which criminalizes certain acts linked to National Socialist ideology.⁸ Another 150 criminal offenses involved the violation of other penal code offenses. As no further breakdown is provided, it is unclear to what extent those other offenses relate to violent acts.⁹

What Does the Data Say about the Bias Motivations and/or Victim Groups?

In its annual reporting, the government publishes general information on the groups most at risk of becoming victims of hate crimes. In the public data available, the government does not, however, provide a breakdown of crime data as it affects particular victim groups. It does record bias motivations and reported in 2006 data 8 cases motivated by antisemitism (as compared with 8 cases in 2005) and 28 offenses motivated by xenophobia (more than doubling the 13 reported cases in 2005).

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					

The Austrian legal system views racial discrimination and violence as “...acts deriving from extreme right-wing or National-Socialist ideology” and focuses therefore on subsumed under the Prohibition Statute, which banned the National Socialist movement. Racist crimes not linked to right-wing extremism are not covered by the Prohibition Statute.¹⁰

In its Third Report on Austria, the European Commission against Racism and Intolerance (ECRI) notes that “while it welcomes the determination in countering racist behavior coming from these [extremist] groups, ECRI stresses that such behavior in Austria is not the exclusive resort of these groups and that legislation should be geared towards pursuing all types of racist behavior effectively.”¹¹

Bias as an Express General Aggravating Factor

The Criminal Code of Austria contains provisions that expressly enable the xenophobic or racist bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Section 33.5 deals with cases in which the offender acted out of “racist, xenophobic or other particularly reprehensible motives,” considering those motives to be aggravating circumstances that could entail enhanced penalties.¹²

With regard to these provisions, ECRI recommended in particular:

that official statistics distinguish between general insults and racist insults and that they cover the use made by the courts of Section 33.5 of the Criminal code, which establishes racist and xenophobic motivation as an aggravating circumstance for allcrimes...

While observing that statistical data on the implementation of the provisions against racist insults and of Section 33.5 of the Criminal Code are not yet collected, ECRI notes that Austrian authorities have said that in following up ECRI’s 2004 recommendation, “they have instructed all public prosecutor’s offices to explicitly report on all offences related to racism and xenophobia (including the application of Section 33.5 of the Criminal Code) in their annual observation report.”¹³

Azerbaijan

Systems of Monitoring and Reporting

Human Rights First is unaware of any public reporting on the incidence of violent hate crimes. In response to a questionnaire from Human Rights First requesting information on the government response to violent hate crimes, the government responded that neither the Prosecutor General nor the Justice Ministry reported a single crime motivated by bias during the period from 2003 through mid-2006.¹⁴

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Azerbaijan, which entered into force on September 1, 2000, contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 61 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(f) “a motive of national, racial, or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Specific penalty enhancements are also available in the case of murder committed with bias motives. Article 120 punishes murder with incarceration ranging from seven to twelve years. Article 120(2)(l) defines murder “with a motive of national, racial, or religious hatred...” as punishable “by incarceration for twelve to fifteen years, or by life imprisonment.”¹⁵

The legislation, while fairly complete, is apparently not applied. In its Second Report on Azerbaijan, the European Commission against Racism and Intolerance (ECRI) reported that “there have been no cases of application of these provisions to date” and further suggested that “it is essential that specific training on the relevant provisions against racism and racial discrimination be provided to all actors involved in the criminal justice system, from the police to the prosecuting authorities and the judges.”¹⁶

Belarus

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Belarus contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 64 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(i) “a motive of racial, national, or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Several other Criminal Code articles provide specific penalty enhancements for crimes committed with those same motives. Article 139 punishes murder with incarceration ranging from six to fifteen years. Article 97(2)(p) defines murder “with a motive of racial, national, or religious hatred...” as punishable “by incarceration for eight to twenty years, or by life imprisonment, or by the death penalty...”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 147 (Deliberate infliction of grievous bodily harm). Higher penalties are established for this crime when committed “with a motive of racial, national, or religious hatred...”¹⁷

Although legislation in Belarus to combat hate crimes is fairly comprehensive, there is little indication that it is ever used. As concerns reported cases of antisemitic violence and destruction of property, the Stephen Roth Institute for the Study of Contemporary Antisemitism and Racism reported that “since 1998, no antisemitic incident in Belarus has been seriously investigated, no perpetrator punished and most cases go unpublicized.”¹⁸

Belgium

Systems of Monitoring and Reporting

What Data is Collected?

In Belgium, specific criminal justice data relating to racist crime is collected by the following bodies: the Directorate of the National Database of the Federal Police Service; the Statistical Analysts of the College of Procurators General; the Unit on Criminal Policy of the Federal Public Justice Service. However, information from these sources is not readily available to the public (for example, through a website or an annual print publication).¹⁹

On March 21, 2006 the College of Procurators General of the Ministry of Justice issued an *Omzendbrief*, a formal and binding document emphasizing the need for police services and the courts to recognize and identify racist and xenophobic violence. The *Omzendbrief* entered into force on April 3, 2006. The police are now required to register common crimes with a racist or xenophobic motive in a separate section of the crime reports form that will alert the courts to the hate crime element in the offense. A pilot project in two police zones to register racist and xenophobic crimes has been initiated, although no data from the project had been made public as of the end of 2007.

Violent hate incidents reported to the police can be registered as either common crimes (assault, injury, arson, etc.) or as general crimes of racism or xenophobia. The cases classified by justice ministry authorities as racism and xenophobia offenses are generally less serious crimes not involving actual violence, but may include such offenses as threats, minor assaults, damage to property, etc. Serious cases of assault with injury, arson, and other violent crimes, even when motivated by racism, are recorded under the penal code provision for the ordinary crime in question. For such a serious crime to be designated a racist or xenophobic crime, the racist or xenophobic motivation would have to also be recorded in the context section of the police report. However, as such motivations are still not systematically recorded, the result is that the racist or xenophobic motivations in assaults or injuries remain statistically invisible.

According to Belgium's specialized antidiscrimination body, the Center for Equal Opportunities and Opposition to Racism (CEOOR), police now compile statistics on violent acts motivated by racism and xenophobia, although statistics on such crimes are not currently released to the public on a regular basis.²⁰

In April 2006 the Ministry of Justice introduced new registration codes for incidents involving racism and xenophobia. Offenses can now be categorized into (general) racism and xenophobia, incitement to discrimination, hate or violence against a person or group, publicly promoting discrimination, hate or violence, discrimination during the provision of services and discrimination by a civil servant.²¹

As a result of this new registration system, the federal police have since 2006 been able to provide statistics on violations of the anti-discrimination legislation (the 1981 Anti-Racism Law and the 1995 Negationism Law) dealing with racism and xenophobia. Among these violations are incitement to discrimination, hate or violence against an individual or a group. For example, the Belgian authorities informed the Fundamental Rights Agency (FRA) that in 2005 the federal police recorded 1,264 such offenses.²² In 2006, the federal police reported 1,355 offenses.²³

The Center for Equal Opportunities and Opposition to Racism (CEOOR)

The Center for Equal Opportunities and Opposition to Racism (CEOOR) is an autonomous federal public service linked to the Prime Minister's Office and tasked with the implementation of the provisions of the Anti-Racism Law. It has jurisdiction to deal with a wide range of forms of discrimination. Through a network of 18 decentralized offices throughout the country the organization provides services to victims of discrimination, including violent hate crimes.

The CEOOR produces an annual report which provides information on cases of discrimination and racism handled by the organization. While they provide accounts of specific cases of violence in their annual report, the aggregated data provided in their annual reports does not always distinguish cases of violent hate crimes from other cases of discrimination—violent hate crimes may be addressed in different sections in their annual report.²⁴ The section of the annual report on "society" (*maatschappij*) included a number of serious offences, including the racist murder of a Malian au-pair and her Belgian charge. The most serious cases of violence (resulting in injuries or manslaughter) represent 9 percent of the complaints registered in that section.²⁵

The CEOOR collects unofficial data (that might be incomplete) on the number of cases in which racism and xenophobia were brought before the courts as an aggravating circumstance. Since 2003, the CEOOR has registered the following number of cases: 1 (2003), 5 (2004), 5 (2005), 10 (2006). All are cases of violence involving assaults that resulted in injury.²⁶

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X	X	X	X

Bias as an Aggravating Factor in Specific Common Crimes

The criminal code of Belgium contains provisions that enable the racist or other bias motives to be taken into account as an aggravating circumstance in the commission of a wide range of specifically-defined violent criminal acts.

The Anti-Discrimination Act of February 25, 2003 contains a provision that addresses specific aggravating circumstances in the commission of a crime. Articles 7-14 of the Act provide that "... hatred against, contempt for, or hostility to a person on the grounds of his so-called race, color, descent, national or ethnic origin, sex, sexual orientation, marital status, birth, fortune, age, beliefs or philosophy of life, current and future state of health, a disability or physical characteristic" are aggravating circumstances in respect of a certain number of offences.²⁷

These offences are: indecent assault and rape (Art. 7); manslaughter and intentional injury (Art. 8); non-assistance to a person in danger (Art. 9); violation of the personal liberty and of the inviolability of private property (Art. 10); ambush or lying in wait (Art. 11); libel (Art. 12); arson (Art. 13) and destruction of personal possessions or property (Art. 14).²⁸ Articles 7—14 of the Anti-Discrimination Act of 2003 allow the judge to double the minimum of a correctional sentence and impose an increase of two years to a prison sentence.²⁹

Provisions for penalty enhancement under the Anti-Discrimination Act for bias crimes have been used in only a limited number of cases, and comprehensive information on the courts' use of these provisions is unavailable.³⁰ The Centre for Equal Opportunity and Opposition to Racism (CEOOR), a specialized antidiscrimination body whose mandate was expanded to address hate crimes on the basis of the 2003 law, reported in mid-2006 that nine hate crime cases have been introduced in Belgian courts (of which, two were still under investigation). Seven cases resulted in recognition of the aggravating circumstances.³¹ It is not however, clear to what extent the penalties were enhanced as a result of this determination. In the first ever conviction in Belgium for a murder acknowledged by the courts as a "racist murder," Hans Van Themsche was given a life sentence in October 2007 for the murder of a Malian au-pair, her two-year-old Belgian charge and the attempted murder of a Turkish woman in May the previous year.

Since the middle of 2006, a magistrate (*Referentiemagistraat*) has been appointed to each judicial district to serve as a central point for all files in which there is an element of discrimination, follow the processing of the discrimination files through the system, and liaise with the CEOOR. On November 27, 2006 a conference was held involving the magistrates from all judicial districts and the Minister of Justice. According to an official from the Ministry of Justice, "all parties involved were positive over the role of the judicial magistrate and believe that it is beginning to function well."³²

Bosnia and Herzegovina

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any regular public reporting specifically on the incidence of violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

The Criminal Code of Bosnia and Herzegovina, which entered into force in March 2003, does not contain general provisions that explicitly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

The criminal code does however provide for enhanced penalties in the case of murder. Article 166(1) punishes murder “by imprisonment for a minimum term of five years,” where article 166(2) stipulates that murder committed on “racial, national, or religious grounds” is punishable by a minimum term of ten years imprisonment.³³

In its last report on Bosnia and Herzegovina, the European Commission against Racism and Intolerance (ECRI) points out that “offences committed for racist (including ethnic or religious) motives are often not prosecuted and that, when they are, prosecution takes place on the basis of the ordinary offence and that the racist motivation is consequently overlooked.”³⁴ ECRI further recommends that the law should “explicitly provide that racist motivation constitutes an aggravating circumstance in respect of all offences.”³⁵

Bulgaria

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), in 2006 the Supreme Prosecution Office of Bulgaria reported the initiation of three pre-trial proceedings for incitement of racial or national hostility, hatred or racial discrimination. FRA reported that data of this kind is only available upon request.³⁶

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
X		

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				X

The Criminal Code of Bulgaria does not contain general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. According to the European Commission against Racism and Intolerance (ECRI), however, “the Bulgarian authorities draw attention to the fact that Article 54(1) provides that judges are to take into account the motives and aggravating circumstances of a crime when making sentencing decisions. Although this article does not specifically mention racist motivation, a judge may make use of it in order to take such a motivation into account and thus hand down a more severe penalty.”³⁷

Bias-motivated Violent Crimes as Specific Offenses

In Chapter 3 of the Criminal Code, on “Crimes against the rights of citizens,” there are several articles that deal with bias-motivated violence as a specific offense. Article 162(2) punishes those “who apply violence against another or damages his property because of his nationality, race, religion, or political conviction” by imprisonment of up to three years and by public reprobation.

Article 163(1) punishes “those persons who participate in a crowd for attack on groups of the population, individual citizens or their property in connection with their national or racial belonging” in which case the instigators and leaders face a punishment of imprisonment of up to five years, while other participants face punishment of up to one year imprisonment or corrective labor. Article 163(2) extends to cases in which “the crowd or some of the participants are armed” in which case the instigators and leaders face a punishment of imprisonment of one to six years, while other participants face punishment of up to three years. Article 163(3) extends to cases in which “an attack is carried out and as a result of it a serious bodily harm or death has followed” in which case the instigators and leaders face a punishment of imprisonment of three to fifteen years, while other participants face punishment of imprisonment of up to five years.³⁸

Canada

Systems of Monitoring and Reporting

What Data is Collected?

National Data

Canada does not currently have a nationwide system for monitoring and reporting on hate crimes, but the national statistics agency Statistics Canada is conducting training and promoting national data collection standards with a view to national statistics.

In the spring of 2005, the Government of Canada launched a program called “A Canada for All: Canada’s Action Plan Against Racism.” The action plan includes efforts to collect Canada-wide hate crime statistics, described as follows:

The Multicultural Program of Canadian Heritage, in collaboration with Statistics Canada’s Canadian Center for Justice Statistics will enhance the collection of data related to crimes and incidents motivated by hate. The CCJS is developing a nationally standardized data-collection strategy on hate-motivated crime and a training and assistance program for police to support collection and reporting. Once implemented, annual data will include: police-reported incidents of hate-motivated crime; offender characteristics and repeat offender patterns; details on the nature of the crime and its hate motivation; association with criminal networks and sentencing outcomes; and analysis of victimization data.³⁹

The federal Statistics Act (1985) requires all police jurisdictions to report their crime statistics to the Canadian Centre for Justice Statistics (CCJS), a part of Statistics Canada, the national statistics bureau.

Criteria for inclusion of hate crime data in Canada’s Uniform Crime Report (UCR) system are set out in a March 2006 manual, with police advised to “use the UCR violation codes (e.g., assault, criminal harassment, vandalism); and, in addition...flag whether or not the incident was motivated by hate.” In considering the latter, they are to consider in particular whether “[t]he perpetrator’s actions and/or words may demonstrate that their reason for committing the crime was based on hatred for an identifiable group.”⁴⁰

These statistics are submitted monthly by local police to Statistics Canada and go through “rigorous verification,” with edits and errors flagged and sent back for corrections. According to an official from the CCJS, “we place a flag on any file, any criminal offence that has a hate motivation, so you can have an assault that is hate motivated, a murder that is hate motivated, a sexual assault, a robbery...” CCJS began collecting hate crime data on a national level as of January 2005, although data is still only submitted by a limited number of police departments.⁴¹ The first national statistics on hate crimes are expected to be released in early 2008. This notwithstanding, the absence of national legislation mandating the collection of hate crime data at the local level and outlining uniform criteria for what constitutes a hate crime and how to report such crimes hinders the collection of statistics on a national level.

Data from Individual Police Services

In the absence of national hate crime statistics, several police services in metropolitan areas have for a number of years provided public data on the hate crimes in their jurisdictions.

The Toronto Police reported a total of 162 hate/bias crimes in 2006, a 23 percent increase over 2005, although still the fourth-lowest number recorded since the police Hate Crime Unit began collecting these statistics in 1993. Of the 162 hate crimes reported, the most common were classified as “mischief” (72 incidents), “assault” (42), and “threats” (19). The number of registered assaults almost doubled from 23 in 2005 to 42 in 2006. The police note in their annual report that hate/bias crimes are likely underreported.⁴²

The Calgary Police Service, in its 2006 Annual Statistical Report, reported on 129 hate/bias crimes, compared with 96 in 2005. After a low of 96 hate crime offenses for 2005 (representing the lowest recorded during the period of 2001-2005), the 2006 figures reflect the second highest registration in the period 2002-2006. This report also notes that “these types of offenses are particularly susceptible to underreporting given the sensitive nature of motivations of some of the crimes.”⁴³

The Edmonton Police Service, though it does not publish hate crime statistics in its annual crime statistics reporting, did provide information in its 2005 *Report to the Community* on its Hate and Bias Crime Initiative, which “continues

to build a framework to manage issues, respond to hate crime and disorder and prevent such instances from occurring in the first place.” The HBCI has also created Community Liaison Officer Partnership with representatives from the different communities living in Edmonton.⁴⁴

Other police services in metropolitan areas have similarly established hate/bias crimes units and in some cases do collect and report on hate crimes in their jurisdictions. As part of a study conducted by the Canadian Centre for Justice Statistics, a part of Statistics Canada, out of the 36 police agencies contacted, 24 had express hate crime policies and three had some type of related policy. The strategies of the various police forces were categorized as follows: 1) department-wide approaches; 2) designated hate/bias crime officers; 3) hate/bias units; 4) joint forces initiatives.⁴⁵

Crime Victimization Surveys

Beyond the data coming from individual police services, more general information on hate crimes nationwide comes from the General Social Survey (GSS)—a representative victimization survey conducted every five years. The Survey goes out to the general public and interviews roughly 250,000 people representing all provinces, all age groups, visible and non-visible minorities, all incomes, and education levels. The survey asks about police reported and non-reported hate motivated crimes, and why they were not reported, as well as the fear of becoming a victim of hate motivated crime. The last such Survey was carried out in 2001 and the results released to the public in 2004.

What Does the Data Say about the Bias Motivations and/or Victim Groups?

The CCJS has developed a registration system that will eventually be used by all police forces in Canada. Data will thus eventually be made available on the basis of the following categories:

- Race/ethnicity (Aboriginals, Arab/West Asian, Black, East and South Asian, White, Multiple Races/Ethnicities, Other race/ethnicity, Unknown race/ethnicity),
- Religion (Catholic, Jewish, Muslim, Other religion, Unknown religion),
- Sexual Orientation (Bisexual, Heterosexual, Homosexual, Other Sexual Orientation, Unknown sexual orientation),
- Language, Disability, Sex, Age, Other factor, Unknown.⁴⁶

Currently, in the absence of nationwide data based on these criteria, the data collected and reported by individual police jurisdictions offers some insight in the victim groups affected.

In Toronto, for example, of the 162 hate crimes reported, the victim group most targeted in 2006 was the Black community (48). Jews (28) were the next most targeted, followed by gays and lesbians (18), Muslims (15), people of Pakistani origin (13), and people of Chinese origin (6). There were 15 offenses categorized as “multiple-bias.”⁴⁷

The Calgary Police Service, in its 2006 Annual Statistical Report, reported on 129 hate/bias crimes. Their statistics are broken down by motivation: in 2006, there were 81 hate/bias crimes motivated by race, 16 by ethnicity, 13 by sexual orientation, 13 by religion, and 6 by other motivations including age, gender, nationality and disability.⁴⁸

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X	X	X	

Bias as an Express General Aggravating Factor

Canada's Criminal Code was amended in 1996 to include penalty enhancements for crimes committed with a bias motivation. Section 718.2(a)(i) of the code provides for a court to increase a sentence in the light of an aggravating factor, to include "evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, color, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor."⁴⁹

According to the report on "Addressing Hate Crime in Ontario," published in 2006 by a Hate Crimes Community Working Group appointed by the Attorney General, this provision is applied only at the sentencing stage, after the person has been found guilty of a crime. The bias motivation thus plays no role in determining a person's guilt, but may enhance the sentence once guilt has been proven. Even then, the bias motivation is only one of several factors a judge may consider in determining the sentence, and it may thus not always result in an enhanced sentence. Even when it does play a role in the sentencing, a judge rarely specifies the extent to which a sentence is increased on account of the bias motivation.⁵⁰

The report further finds that "statistical data about the impact of these sentencing arrangements are, again, rare to non-existent. The Working Group is aware of 28 judicial decisions, twelve from Ontario, in which sentencing courts have considered evidence that hate, bias, or prejudice constituted the whole or some part of the offender's motivation. In seventeen of those decisions (five from Ontario), the court concluded for sentencing purposes that hate had been a motivating factor in the offense."⁵¹

Bias as an Aggravating Factor in Specific Common Crimes

Under the Anti-Terrorism Act, introduced in 2001, a new provision was enacted under section 430(4.1) of the Criminal Code providing enhanced penalties for the specific crime of "mischief" when committed "in relation to property that is a building used for religious worship, including a church, mosque, synagogue or temple, or an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery, if the commission of the mischief is motivated by bias, prejudice or hate based on religion, race, color or national or ethnic origin."⁵²

B'Nai Brith Canada argued in public testimony to the Senate of Canada, however, that "the current wording is too narrow to combat the harm it was designed to prevent." As an example, the organization cites the April 2004 case of a firebombing of the United Talmud Torah elementary school in Montreal, in which the prosecutor responsible for this case was not of the view that the school fit the description of a building that was used primarily for religious worship. B'Nai Brith Canada proposed to the Senate that the legislation be amended so as to ensure that future such attacks can be prosecuted under this legislation. They also recommended that the reference to bias in this section be expanded to include "gender and sexual orientation."

Croatia

Systems of Monitoring and Reporting

What Data is Collected?

The Croatian authorities monitor and report on violations of criminal code provisions on racial and other forms of discrimination (article 174). In 2006, there were 23 criminal charges filed in response to violations of this article.

In October 2006, the criminal code was amended to define a “hate crime,” and since then the Croatian authorities have begun to collect data on crimes that meet these criteria. No such cases were registered before the end of 2006.⁵³

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X	X		X

Bias as an Express General Aggravating Factor

On June 9, 2006, the Croatian parliament adopted amendments to the criminal code. The amendment to article 89, which entered into force on October 1, 2006, defines hate crimes as “any criminal act according to the Criminal Code, committed by reasons of hatred towards a person on the basis of his/her race, skin colour, sex, sexual orientation, language, religion, political or other belief, national or social background, property, birth, education, social status, age, medical status or any other attribute.”⁵⁴ According to Croatian officials, this provision allows for enhanced penalties in all crimes that meet the definition of a hate crime.⁵⁵

Bias as an Aggravating Factor in Specific Common Crimes

The law additionally provides specifically for enhanced sentences in the case of murder. A murder that meets the definition of a hate crime is considered to be an aggravated murder, with a punishment of imprisonment of not less than ten years.⁵⁶

Croatian law enforcement officers have been actively involved in police training programs of the Organization for Security and Cooperation in Europe. In June 2006, Croatian police officers took part in an OSCE Law Enforcement Officers’ Program on Combating Hate Crime. For three days in June, nine Croatian police officers were trained by experts with support from the United Kingdom and the United States. They were instructed in effective first response, investigation, intelligence-gathering and information-sharing, as well as successful management of relations with victims, witnesses, and affected communities.⁵⁷

Cyprus

Systems of Monitoring and Reporting

What Data is Collected?

The Fundamental Rights Agency (FRA), has reported that the authorities in Cyprus do not provide any data on hate crimes.⁵⁸

The European Network Against Racism (ENAR) similarly draws attention to the lack of data on racist violence, noting that “under the circumstances, it is impossible to evaluate the dimensions and extent of this particular problem since the police are not in a position or, rather, they have not taken the political decision to actually identify, monitor, collect, analyse and evaluate data on racist crime. This is the situation despite the fact that it introduced a bureau for the monitoring of racist incidents and crime which has been in operation since 2005.”⁵⁹

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Cyprus does not expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.⁶⁰

In its Third Report on Cyprus, the European Commission against Racism and Intolerance (ECRI) recommended that Cyprus introduce provisions that allow the racist motivation of offenses to be considered as aggravating factors in sentencing and noted that at the time of writing (end 2005) that “the Cypriot authorities have reported that legislation to this effect is being prepared and will be tabled in Parliament shortly.”⁶¹

Similarly, the European Network Against Racism (ENAR) reached similar conclusions: “There is no provision penalizing common offences with a racist nature as specific offenses, or explicitly enabling the racist motives of the offender to be taken into account as an aggravating factor in sentencing. Racism as such is not penalized.”⁶²

Czech Republic

Systems of Monitoring and Reporting

What Data is Collected?

The Interior Ministry and the Justice Ministry regularly report on bias-motivated violence and crime in the Czech Republic. The Security Police Department of the Interior Ministry publishes an annual report on the issue of extremism in the Czech Republic, including data on the incidence of a wide range of crimes that fall with the category of “extremism.” These include both violent and nonviolent crimes motivated by hatred.⁶³

Crimes are registered and reported as violations of particular articles of the criminal code. In 2006 the Interior Ministry registered 248 crimes with an extremist context (as compared with 253 crimes in 2005), accounting for 0.07 percent of total criminal activities recorded in 2006.

In 2006, there were 46 crimes of violence against a group of people or an individual (registered under Section 196 of the criminal code). There were 15 further instances of intentional serious physical injury motivated by bias (registered under section 221 and 222 of the Criminal Code). No murders or attempted homicides with a racial or other bias context were reported in 2006.⁶⁴

Prosecution Data

The Prosecution Service also contributes to the annual report on extremism. In 2006, 242 persons (as compared with 269 persons in 2005) were prosecuted for extremist crimes. Police resolved 196 of these crimes, or 79 percent of the cases of extremism recorded by the police.⁶⁵ The report also includes statistics on the dismissal of charges and the outcome of other cases handled by the Prosecution Service.

What Does the Data Say about the Bias Motivations and/or Victim Groups?

The data itself is not disaggregated to reveal the characteristics of the victims of hate crimes, although the report does indicate that Roma were the principal targets of attacks on persons and that in two cases foreign nationals were assaulted (a citizen of Guinea and a citizen of the Slovak Republic).⁶⁶

The Interior Ministry also reports on the motivations of hate crimes, referring to three broad categories: right-wing extremism, antisemitism, and those with an anti-Islamic motivation. In 2006, crimes motivated by right-wing extremism constituted the largest percentage of extremist crimes. No serious antisemitic attacks on persons were reported, although there were 14 registered crimes with an antisemitic context, including the desecration of Jewish cemeteries.⁶⁷ Police recorded just three anti-Islamic crimes in 2006.⁶⁸

The Framework of Criminal Law

Legislation on Bias-motivated Violence:

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
X		X

Bias Types Covered by Provisions on Aggravating Circumstances:

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				X

The Criminal Code of the Czech Republic defines specific bias-motivated acts as separate offenses and contains provisions by which racist or other bias motivations can be taken into consideration as a specific aggravating

circumstance that judges are required to take into account in sentencing. The European Commission against Racism and Intolerance's (ECRI's) second report on the Czech Republic, in June 1999, notes that amendments to the Criminal Code in 1995 that increased sentences for certain crimes with racial motives followed a major increase in racially motivated violence, "affecting Roma/Gypsies particularly but also other visible minorities."⁶⁹

Bias-motivated Violent Crime as a Specific Offense

Article 196 creates a separate offense punishing bias-motivated violence against a group of inhabitants or individuals. Article 196(2) provides for punishments ranging from six months to three years imprisonment for "using violence against a group of inhabitants or against an individual, or to threaten them with death, injury to health or infliction of serious injury because of their political conviction, nationality, race, creed, or lack of creed."

Bias as an Aggravating Factor in Specific Common Crimes

There are also a number of crimes in which a bias motivation can be considered an aggravating factor. In article 219 (Murder), article 221 (Injury to health), article 222 (Serious injury to health) and article 235 (Extortion), penalties are enhanced when the act is committed against an individual because of race, nationality, political conviction, creed, or lack of creed.⁷⁰

As reported by ECRI in its Third Report on the Czech Republic, some efforts have been made by the Czech authorities to better implement this legislation, including the creation of a Commission for Combating Extremism, Racism, and Xenophobia, which includes relevant state actors and acts as an advisory body to the interior minister, collecting information and developing a coordinated approach by the state administrative bodies to the struggle against extremism, racism, and xenophobia.⁷¹ Most recently, in October 2006, the Supreme State Prosecutor's General Instruction No. 4/2006, on the punishment of criminal offenses motivated by racial, national, political, or religious hatred, made these crimes a priority for public prosecutors.⁷²

ECRI notes however that the "implementation of criminal law provisions devoted to racially-motivated crimes remains inadequate," and that "reports of racially-motivated violence continue unabated."⁷³ This conclusion is shared by the League for Human Rights, a Czech human rights organization in its report in February 2007 to the Committee for the Elimination of Racial Discrimination for the Czech Republic. This observes that "cases of racially motivated violence persist. Unfortunately, the cases are not always vigorously pursued by the relevant authorities. Sometimes the police play down the gravity of the violence."⁷⁴

Denmark

Systems of Monitoring and Reporting

What Data is Collected?

Criminal incidents with a suspected racist motive are reported by the police to the Danish Security Intelligence Service (*Politiets Efterretningstjeneste* or PET).⁷⁵ This follows from a directive in 2001 from the Chief Superintendent of the PET notifying police that criminal incidents with a racist or religious motivation should be reported to the Security Service. Since then PET has reported annually on such criminal incidents recorded by the police.⁷⁶

Suspicion of bias motivation can be based on statements by the victim, perpetrator, or witnesses, the presence of racist or xenophobic graffiti, whether the victim and perpetrator knew one another, or whether the crime was a planned action.⁷⁷

The number of officially recorded incidents of violence has fluctuated from a high of 116 in 2001 to a low of 37 in 2004. In 2005, PET reported 81 cases of crimes with a suspected racial or religious motivation.⁷⁸ In 2006, there were 85 cases, including attacks on Muslim and Jewish graveyards, pizza restaurants, kiosks, and individuals. According to Niels-Eric Hansen, director of the nongovernmental Documentation and Advisory Center on Racial Discrimination, not only has the number of racist crimes increased, but they have also become much more organized. Hansen claims that many episodes are simply not registered and that the number of cases would dramatically increase if people would be more willing to come forward with their cases and if the police were more helpful.⁷⁹

In light of the worsening hate crime situation, Minister of Justice Lene Jespersen instructed the State Advocate to collect information and material as of January 1, 2007 on cases of hate crimes currently before the courts and the court's decisions in these cases. At the end of 2007, the State Advocate will present findings of its review.⁸⁰

What Does the Data Say about the Bias Motivations and/or Victim Groups?

PET provides a breakdown of data that distinguishes crimes that are Islamophobic, antisemitic, xenophobic, or "targeting the majority."⁸¹ The largest percentage of hate crimes are those motivated by xenophobia. Hate crime data is further disaggregated into the following categories: arson, harassment, vandalism, propaganda, threats, unrest and physical attacks.⁸²

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X			

Bias as an Express General Aggravating Factor

The Criminal Code of Denmark contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

On March 16, 2004 the Danish Parliament adopted new provisions on aggravating circumstances which entered into force on April 2, 2004. In particular, part (vi) of Section 81 of the Criminal Code states: "in determining the penalty it

shall generally be considered as an aggravating circumstance ... that the offense is based on others' ethnic origin, faith, sexual orientation or the like..."

Although Danish criminal law provides a firm basis for action to combat violent hate crimes, nongovernmental organizations have reported a tendency among police to register cases of bias-motivated violence simply as common crimes and claimed that police have not been helpful in assisting victims lodging complaints of bias-motivated violence or harassment.⁸³

Estonia

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the Police Board in 2005 reported ten offenses under criminal code articles relating to incitement of social hatred, violation of equality, or violation of freedom of religion. In 2006, the Police Board did not report any such offenses.

The Security Police reported two investigations into incitement of social hatred in 2005, and one in 2006.⁸⁴

The Estonian authorities do not report on bias motivations in violent common crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Estonia was enacted on September 1, 2005.⁸⁵ The code does not contain specific provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

The criminal code does contain provisions which define a “base motive” as an aggravating circumstance. In its Third Report on Estonia, the European Commission against Racism and Intolerance (ECRI) reported that the Estonian authorities maintain that “base motives” may include racist motives. The report further noted, however, that the “base motives” provisions had yet to be reflected in the actions of the courts.⁸⁶

Finland

Systems of Monitoring and Reporting

What Data is Collected?

Police who receive a report of a crime are required to use a standardized reporting form if the report concerns a racist crime. All police reports become part of a national electronic information system. The standard operating procedure in force since 1997 is as follows:

The police officer is required to make the entry in the RIKI System indicating a racist case when a crime is committed against a member of a minority either completely or at least partially because he or she differs from the perpetrator with regard to race, color of the skin, nationality, or ethnic background. Any racist characteristics or motives related to the alleged crime may be disclosed by the victim or some other party, or the police officer may independently arrive at such a conclusion. In case of doubt, the case must be recorded as a racist case.⁸⁷

This instruction was modified in 2005, “to the effect that the victim no longer needs to be to a member of an ethnic minority; now it is enough that the perpetrator differs from the victim in terms of race, color of the skin, ethnic background, or nationality.” A critique from the Police College of Finland, however, has noted that this instruction continues to assume that “only a member of a minority group may become the victim of a racist crime.” To this end, it excludes those cases in which an individual was victimized because of his or her *perceived* membership in a minority group, as well as those incidents involving attacks on individuals or groups motivated by their association with or support for members of minorities.⁸⁸

At the same time, implementation of the system is uneven. The Police College report, based on a study of crimes with a suspected racist motive that were entered into the police data system, finds that the coding system might in fact be an effective tool, “if the police actually entered said code in all the reports involving an (alleged) racist crime.” In practice, however, the study concludes that only a little more than half of all “suspected hate crimes” are in fact entered into the system. While noting that there is no research that explains this, the authors suggest simple carelessness, with officers failing to input the code; an emphasis on other aspects of the crime that leads racist motivation to be overlooked; and the fact that racist motivation often emerges only at a later stage of an investigation (although the appropriate coding can also be added at later stages, this may not always be done).

The Ministry of Interior publishes annual reports on crimes reported to the police, including crimes involving racist violence. In 2006, a total of 748 suspected racist crimes were filed. The most common offence was assault—a total of 40 percent of all cases were assaults or attempted assaults.⁸⁹ Other common headings of racist offences in 2006 were discrimination, breach of honour, unlawful threats, and damage to property. These figures represent an increase over 2005 figures in which police registered 669 crimes with a suspected racist motive.⁹⁰ In 2004, the police registered 558 incidents of racist violence, of which 110 were assault and battery.⁹¹

In a response to a questionnaire submitted by Human Rights First to the Permanent Mission of Finland to the OSCE, the Finnish government reports that training of the police has been increased in order to enable officers to better recognise racially motivated offences and to carry out pre-trial investigations in an effective way. The number of courses on ethnic questions and prevention of discrimination have been increased both in the basic and additional training of the police. National and local training courses have been organized together with different partners such as human rights organisations.⁹²

Court Data

The Fundamental Rights Agency (FRA) reports that the most significant deficiency in monitoring racist violence and crime in Finland is that there is no monitoring mechanism in place that enables incidents to be followed through the criminal justice system.⁹³ The Finnish League for Human Rights also reported that the most obvious problem in the monitoring of racist crime is that the treatment of racist crime cases as they proceed from the police to the Prosecutor-General is not systematically monitored.⁹⁴

Similarly, researchers at the Police College in Finland revealed that what happens beyond the initial classification by police of a crime as “racist” is difficult to determine and the researchers concluded that “we are forced to admit that

we have no idea of how many incidents involving a report of a racist crime are actually determined to be racist offenses by the police, prosecution and a court of law.⁹⁵ They further state that:

A key question is whether crimes, in which the perpetrator has a clear racist motive, are systematically processed differently from other crimes by the police, the prosecution and the courts of law. To be able to give a satisfactory answer to this question, it should be possible to study the progression of individual cases through the system that involves several authorities. The problem with this approach is that the individual authorities have their own computer systems with bleak prospects for integration. Additionally, any perception of the performance of the system based on records only would remain flimsy: what would probably be required is a combination of individual monitoring and interviews with the authorities and parties involved.⁹⁶

In one effort to better understand of prosecutions in these cases, Statistics Finland was commissioned by the newspaper Helsingin Sanomat to compile a list of all the convictions of crimes of a racist character in 2005, based on articles of the Penal Code dealing with inciting hatred against other ethnicities, discrimination on the grounds of race or color, and handing down a harsher sentence because of the crime's racist nature. It found that 25 individuals were convicted in 17 separate cases on charges under these articles.⁹⁷ In a total of thirteen cases the sentence meted out were harsher because of the crime's racist nature.⁹⁸

The Finnish Government reported that the collection of data on racist crimes by prosecutors and the courts is being improved with an aim toward making the statistics collected by the police and those collected by the prosecutors and courts more compatible.⁹⁹

What Does the Data Say about the Bias Motivations and/or Victim Groups?

According to the Fundamental Rights Agency (FRA), detailed information is recorded on characteristics of the victim and the nature of the crime, including the type of offense and when and where it occurred, the victim's immigrant or non-immigrant status, the victim's nationality, ethnicity, gender, age, and whether the victim was previously victimized.¹⁰⁰

On the basis of figures from 2005, the majority (over 70 percent) of racist crime targets foreigners or persons of foreign origin. Yet almost half of the victims of racist crime were citizens of Finland, while immigrant Somalis, Russians, and Turks are also vulnerable groups. Five percent of the victims were Roma, although the number of Roma victims in the previous year represented 10 percent in 2004. Most commonly, the victim of racist crime is a young man (aged 15-44 years) and the crime takes place in the County of South-Finland. The suspects in racist crimes were most often male.¹⁰¹

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					

Bias as an Express General Aggravating Factor

The Criminal Code of Finland contains provisions, which entered into force on January 1, 2004, that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Chapter 6, Section 5 (Grounds Increasing the Punishment) lists the grounds for which punishments can be increased. Among the grounds are that “the offense has been directed at a person belonging to a national, racial, ethnic or other population group due to his/her membership in such a group.”¹⁰²

In its Third Report on Finland from 2007, the European Commission against Racism and Intolerance (ECRI) makes the following comment regarding the use of these provisions:

the Finnish authorities have reported that this provision was applied in 10 cases in 2004 and in 14 cases in 2005. The authorities underline that these figures may in part reflect the fact that judges do not always explicitly state in their decisions that the aggravating circumstance has been applied. Even taking this factor into account however, ECRI notes that these figures are far from reflecting the situation concerning racially-motivated offences as reported by civil society organizations. In this respect, it has been highlighted that the police sometimes fail to take the racist motivation of offences reported to them into account or to duly investigate any such motivations. ECRI notes that the Ombudsman for Minorities has raised this issue with the Ministry of Interior. The Finnish authorities have underlined that as recommended by ECRI in its second report, work has been carried out since then to improve police recording and investigation of racist incidents. This work has included specific police training on how to identify racially motivated offences and carry out pre-trial investigations effectively and more general training on racism and racial discrimination. It has also included activities to improve relations and mutual knowledge between the police and minority groups and initiatives to raise awareness among potential victims of racist incidents of their rights.¹⁰³

France

Systems of Monitoring and Reporting

What Data is Collected?

Statistics on crimes of racist and antisemitic violence produced by the Ministry of the Interior are made available to the National Consultative Commission on Human Rights (CNCDH). The annual reports of the CNCDH have, since 2002, provided increasingly strong coverage of antisemitic and anti-Muslim violence, in a direct reflection of the high priority given by the French government to improving the monitoring and reporting of hate crimes.

In 2006, French authorities reported a decrease by 10 percent in the overall number of hate crimes in comparison with 2005, although crimes were increasingly of a violent character. Antisemitic offenses, a subset of the hate crimes monitored, rose by 6.6 percent in 2006, after a 48 percent decline the previous year.

Individuals were targeted in a larger proportion of the total cases, increasing from 4.9 percent in 2005 to 5.7 percent in 2006. As in past years, bias crimes were characterized as either acts (sometimes described as violent acts) or threats (*menaces*—defined to include graffiti and “minor vandalism”). There were 64 offences registered as acts in 2006, down from 88 in 2005 while there were 280 registered threats, down from 383.¹⁰⁴ These offences, in turn, were broken down into antisemitic offenses and racist and xenophobic offences.

The proportion of incidents involving violence (which includes violence against individuals and property) increased from 19 percent in 2005 to 22 percent in 2006 within the total number of racist, xenophobic, and antisemitic threats and acts. Attacks upon persons as a proportion of violent acts rose 9 percent, from 44 percent in 2005 to 53 percent in 2006.¹⁰⁵ Statistics on racist threats similarly showed an increase by 15 percent (from 29 percent to 45 percent in 2006) in threats “that directly affect persons (spoken threats and written and telephone threats).”¹⁰⁶

As a measure of the gravity of the incidents, there were 22 cases in 2005 in which people described as “of immigrant origin” were wounded, while 26 from the Jewish community were wounded. In 2006, there were 20 wounded of immigrant origin and 30 “of or perceived to be of the Jewish confession.” In addition, the report highlighted the kidnapping, torture and murder of Ilan Halimi, a member of the Jewish community. Halimi was the only person reported killed in a bias crime in France in 2006, and the only individual victim named in the report.¹⁰⁷

What Does the Data Say about the Bias Motivations and/or Victim Groups?

Statistics are broken down into two main categories based on the bias motivation: antisemitic offenses and racist and xenophobic offences.

While antisemitic threats and acts rose 6.6 percent in the year, the more significant finding was that the expression of antisemitism was increasingly violent. Violent antisemitic acts increased with a rise of 35 percent, from 99 in 2005 to 134 in 2006, as did attacks on persons. The statistics show that the number of attacks against persons practically doubled, from 53 in 2005 to 94 in 2006. In addition, threats against persons doubled over the year, from 69 of a total of 409 threats in 2005 to 135 of a total of 407 threats in 2006.¹⁰⁸

Statistics on racist and xenophobic offences that exclude those motivated by antisemitism experienced a significant decline in total numbers in 2006, with a 27 percent reduction in numbers of violent acts: from 88 acts in 2005 to 64 in 2006.

As in past reports, the National Consultative Commission on Human Rights (CNCDH), the official human rights body, continued to avoid the word minority in its reporting on hate crimes, indiscriminately substituting the term “*immigré*” to describe the targets of “racist or xenophobic” offences.¹⁰⁹ The findings identify people of North African origin (“*maghrébines*”) as the most affected by racist acts, accounting for 66 percent of racist acts, as well as racist threats, with 69 percent of the total.¹¹⁰ No other groups that are victims of racist violence are identified, and as in past reports, victims of racist violence are in most charts and narrative sections described as “immigrants” or “of immigrant origin”—a generalization that blurs the distinction between foreigners and immigrant newcomers and France’s large minority population of citizens.¹¹¹

Sections of the CNCDH report concerning hate crimes and hate crime statistics omit any reference to such minority groups as Roma or people of sub-Saharan African origins, nor is there any express reference to violence and

discrimination against foreigners, as contrasted to citizens. Although reporting on the findings of an annual public opinion survey for 2006 does refer to *attitudes* towards specific minority groups, including homosexuals, no reference is made to crimes based on sexual orientation bias, disability bias, or racism other than anti North African bias.

Statistics for 2006 indicate just 42 violent acts described as “*anti-maghrebines*” and 22 described as “other.”¹¹² There were 280 offences of “lesser gravity,” classified as threats, of which 192 were *anti-maghrebines*, with 88 motivated by other forms of racism or xenophobia.

Case information in the 2004 report (the last report in which a range of specific cases was summarized), as well as the statistical data in the 2005 and 2006 reports, suggests an emphasis by the criminal justice system—the source of the CNCDH data—on the major problems of antisemitic violence and violence against France’s large minority of North African origin, and little attention to the victims of other forms of hate crime—at least in the area of monitoring and statistical reporting. The French government’s policy to ban the collection and disaggregation of data based on a person’s ethnicity, religion or national background, while data breakdowns distinguishes most minorities as “immigrants,” continues to perpetuate the concept that one’s ancestral origin outside of France renders a person permanently “foreign” regardless of citizenship.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X			

Bias as an Aggravating Factor in Specific Common Crimes

Several laws have been passed in recent years that allow for the racist and other bias motives to be taken into account for a wide range of specifically-defined violent criminal acts.

In 2003, France amended its criminal code to make a racist motive an aggravating factor in punishing certain specific crimes. The *Loi Lellouche* (Law 2003-88 of February 3, 2003), passed unanimously by the French Parliament on February 3, 2003, created article 132-76 of the criminal code which mandates more severe penalties for crimes of violence committed by virtue of the victim’s actual or supposed membership or non-membership of a particular ethnic group, nation, race, or religion. Criteria for determining the motivation of the offense include the use of “spoken or written words, images, items, or acts of any kind that are injurious to the honor or esteem of the victim, or group of persons including the victim, by virtue of their actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion.”¹¹³

Following the adoption of Law 2003-239 of March 18, 2003, a new article 132-77 was added to the criminal code that extended the provisions on aggravating circumstances to include bias founded on sexual orientation, real or supposed.¹¹⁴

The crimes to which these provisions apply include willful homicide, torture and barbarous acts, violence inadvertently resulting in death, violence resulting in permanent disfigurement or disability, violence entailing nine or more days’ sick leave from work, violence entailing up to eight or fewer days sick leave or no sick leave, damage to private property, and damage to private property caused by dangerous means. In March 2004, these provisions were extended to apply to threats, thefts, and extortion motivated by racial bias, through Law 2004-204 of March 9, 2004.

Specific penalty enhancements are stipulated in the criminal code provisions dealing with these specific crimes. For example, the aggravated penalties for both racist and homophobic crimes include life imprisonment instead of 30 years for murder, and fifteen rather than ten years of imprisonment for violent attacks leading to permanent disability.¹¹⁵

Subsequent to the adoption of the legislation, the French authorities took several measures to direct and spur its implementation. In its Third Report on France, the European Commission on Racism and Intolerance (ECRI) reported that the Ministry of Justice “published two circulars, one on March 21, 2003 and the other on November 18, 2003, reminding prosecutors of the importance of combating racist, antisemitic or xenophobic acts committed on the national territory. Prosecutors are to request penalties that reflect the seriousness of these crimes, and they are to scrupulously ensure that victims are informed of the judicial outcome of the proceedings. In addition, each office of the prosecution is to appoint a referent magistrate responsible for overseeing relations with anti-racism associations and ensuring an appropriate response by the criminal justice system in this area. Handbooks on legal ways to combat racism have been made available to prosecutors.”¹¹⁶

Despite these positive steps, ECRI noted that “victims often hesitate to lodge complaints of racist acts and statements concerning them, but especially of acts of racial discrimination. ECRI notes that in the opinion of nongovernmental organizations, the law enforcement officers and justice officials to whom complaints are referred are not always sufficiently aware of the racist aspect of the offences, and the victims are not always adequately informed about avenues available to pursue complaints or supported in doing so, which can have the effect of discouraging them.”¹¹⁷

Georgia

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

The Criminal Code of Georgia, adopted in 1999 and amended in 2003, does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Bias as an Aggravating Factor in Specific Common Crimes

Several articles provide specific penalty enhancements for certain crimes committed with bias motives. Article 108 punishes pre-meditated murder with incarceration ranging from seven to fifteen years, while article 109 deals with pre-meditated murder with aggravating factors. Article 109(l) punishes pre-meditated murder “as a consequence of racial, religious, national or ethnic intolerance” by incarceration for ten to twenty years, or by life imprisonment.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 117 (Deliberate infliction of grievous bodily harm), article 126 (Torture), and article 258 (Desecration). Higher penalties are established for each of these crimes when committed “as a consequence of racial, religious, national or ethnic intolerance...”¹¹⁸

Germany

Systems of Monitoring and Reporting

What Data is Collected?

Hate crimes in Germany are viewed through the prism of “politically motivated crime,” which is defined as an offense “that it is directed against individuals due to their political beliefs, nationality, ethnic origin, race, color, religion, ideology, origin, sexual orientation, disability, appearance or social status.”¹¹⁹ The concept of “politically-motivated crime” has become “an integral element of the police registration and definition system.”¹²⁰ Central to the classification of a crime as a hate crime within this framework is the police’s assessment of circumstances of the offense and the perpetrator’s motivation.¹²¹

An annual report on the Protection of the Constitution (*Verfassungsschutzbericht*) is published each year by the State Security Division of the Federal Office for the Protection of the Constitution (Interior Ministry), based upon data provided by the Federal Criminal Police Office (*Bundeskriminalamt* or BKA). Crimes are categorized first by the political motivation of the perpetrator into crimes perpetrated by right-wing, left-wing or foreign perpetrators.

Both politically motivated crimes and a subset of those crimes defined as *extremist* crimes have climbed steadily between 2003 and 2006.¹²² In the year 2006, the Federal Criminal Police Office registered 29,050 politically motivated crimes, of which, 20,611 were categorized as extremist.

The majority of politically motivated crimes are perpetrated by those linked with the political right, and in particular, with right-wing extremism. The most thorough statistics are published on right-wing politically motivated crimes. In 2006, of the 18,142 crimes registered as “politically motivated right-wing criminality,” 17,597 were “extremist,” of which 1,047 were violent crimes (whereas others were propaganda offenses).¹²³ Between 2003 and 2006 violent right-wing extremist crimes increased steadily from a low of 759 in 2003 to 1,047 in 2006.

Within this category, no homicides were reported over the past 4 years (2003-2006) and attempted homicides decreased from 6 cases in 2004 to 2 cases in 2005. In 2006, no attempted homicides were registered, although at least one potentially lethal assault with racial elements—the near killing of Ermyas Mulugeta—became a national scandal in 2006.¹²⁴ Bodily injury, which remained stable from 2003 to 2004, increased by more than 25 percent (from 640 to 816) in 2005 and then by another 12.6 percent in 2006.

Such crimes are not evenly distributed across Germany, occurring far more frequently in the eastern part of the country. In terms of absolute numbers, the greatest number of politically right-wing violent crimes were registered in the state of North Rhine Westphalia (145 incidents), followed by Lower Saxony (138) and Saxony-Anhalt (111). In proportion to the total number of inhabitants, Saxony-Anhalt and Brandenburg are the two states (followed by Berlin) in which the most right-wing violent offenses were reported in 2006.¹²⁵

What Does the Data Say about the Bias Motivations and/or Victim Groups?

While police departments collect statistics on crimes perpetrated against victims based upon sexual orientation, disability, social status, race and religion, this information is not made public. The Minister of Justice of the 16 Federal States determines what statistics will be released in formal reports. Only limited data on the victim groups is available in the annual report on the Protection of the Constitution (*Verfassungsschutzbericht*).

In public statistics, within the category of right-wing political crimes, the annual report provides data on antisemitic and xenophobic crimes as well as crimes against left-wing opponents and “other.”¹²⁶

Violent “xenophobic” crimes increased from 355 to 484 offenses between 2005 and 2006. Of the 484 violent xenophobic offenses, 455 (94 percent) involved bodily injury. Antisemitic crimes of violence remain low and declined from 49 offences in 2005 to 43 offenses in 2006. Violent crimes with an extremist and antisemitic background represent 4.1 percent of all politically motivated rightwing violent crimes. Anti-fascist/left wing youths or those opposed to right-wing extremists are often the victims of serious assaults and bodily injuries. Two hundred and sixty-six (88 percent) of the 302 acts of violence against victims associated with the left involved bodily injury.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Germany does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

The code does provide sentencing guidelines on mitigating and aggravating circumstances, although there is no explicit mention of racist or other bias motives as a factor which would enhance the punishment. Under paragraph 2 of Section 46 (Principles for determining punishment), the court, in determining a sentence, "...shall counterbalance the circumstances which speak for and against the perpetrator. In doing so consideration shall be given in particular to:

- the motives and aims of the perpetrator;
- the state of mind reflected in the act and the willfulness involved in its commission;
- the extent of breach of any duties;
- the manner of execution and the culpable consequences of the act;
- the perpetrator's prior history, his personal and financial circumstances; as well as
- his conduct after the act, particularly his efforts to make restitution for the harm caused as well as the perpetrator's efforts to achieve mediation with the aggrieved party.¹²⁷

According to a report of the European Commission against Racism and Intolerance (ECRI), the German authorities have reported that there are cases where these provisions have been used to hand down stricter sentences in consideration of the racist motivation of the offenders, although no specific cases of this kind have been cited.¹²⁸

In the specific case of homicide, the Criminal Code of Germany defines a murder as a killing perpetrated with "base motives."¹²⁹ The Federal Supreme Court (*Bundesgerichtshof*) issued a decision in 1993 in which racist motives are considered base motives and are thus treated as an aggravating circumstance.¹³⁰ This jurisprudence obliges the courts to consider racist motives as an aggravating circumstance in homicide and attempted homicide cases. If base motives are established, a homicide will be treated as a murder rather than as manslaughter and will incur enhanced penalties.¹³¹ This practice however, has not resulted in a legislative change more explicitly defining racist motives as an aggravating circumstance.

Greece

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the authorities in Greece do not provide any data on hate crimes.¹³²

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Greece does not contain provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

The Greek authorities have claimed that, according to the Criminal Code, the motives of the crime are taken into account when determining the sentence, and thus that racist motives can be considered as aggravating circumstances. However, the law does not expressly stipulate that, for all ordinary offences, racist motivation constitutes an aggravating circumstance.¹³³

Holy See

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The legislation of the Holy See does not contain any provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Hungary

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the Chief Prosecutor's Office reported in 2005 on 11 cases identified as violations of criminal law provisions on violence against a member of a national, ethnic, racial, or religious group or incitement against a community. In 2006, the Chief Prosecutor's Office reported on 13 such cases.¹³⁴

The Hungarian authorities do not report on bias motivations in violent common crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
X		

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

The Criminal Code of Hungary does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Bias-motivated Violent Crime as a Specific Offense

The Criminal Code defines one bias-motivated offense as a specific crime. Section 174/B comes under the heading of "Violence Against a Member of a National, Ethnic, Racial or Religious Group" and punishes persons "who assault somebody else because he belongs or is believed to belong to a national, ethnic, racial, or religious group, or coerce him with violence or menace into doing or not doing or into enduring something..."¹³⁵

In its Third Report on Hungary, the European Commission against Racism and Intolerance (ECRI) describes some positive steps taken, in particular efforts to train police officers, prosecutors and judges on the implementation of these criminal law provisions. ECRI also notes, however, "that numerous sources continue to report acts of violence, committed mainly against members of the Roma community, but also against members of other groups, such as non-citizens, by members of the majority population, and, most alarmingly, by police officers. It has been observed that the police and the prosecutors fail to take into account the racist motive of offences, preferring to consider such offences as common offences. In some cases, the police and the prosecutors encounter a difficulty in proving the racist motive of offences."¹³⁶

The European Network Against Racism (ENAR) concludes in its 2005 Shadow Report on Hungary that "racist motivation and identification are rarely investigated or checked when attacks are committed against Roma and/or people of color."¹³⁷

Iceland

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Iceland does not contain provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Ireland

Systems of Monitoring and Reporting

What Data is Collected?

The Irish police introduced a new data collection system, PULSE, in 1999. This system allows the police to classify crimes as “racially motivated” and to include data on court proceedings and sentencing for racially motivated incidents. In March 2002, the police approved the definition of a “racist incident” which allowed for consistency in registration across the country.¹³⁸

According to the police annual reports, police registered 174 racist incidents in 2006 (as compared with 94 in 2005 and 84 in 2004).¹³⁹

What Does the Data Say about the Bias Motivations and/or Victim Groups?

According to data provided to the National Consultative Committee on Racism and Interculturalism, racially motivated incidents reported by the police are categorized as antisemitic, xenophobic, and racist.¹⁴⁰ The Fundamental Rights Agency (FRA) reports that visible minorities, including people of African descent and Muslim women, are most targeted.¹⁴¹

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Ireland does not contain provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

On December 10, 2005, the Minister of State at the Department of Justice announced the awarding of a contract to the School of Law of the University of Limerick to assist the Ministry of Justice and the National Action Plan Against Racism (NPAR) to assess the effectiveness of national legislation in Ireland to combat racially-motivated crime.¹⁴² The research was commissioned in order to determine whether separate hate crime offenses or aggravated circumstance provisions should be introduced into law in Ireland.¹⁴³

On March 21, 2007, the NPAR organized a seminar entitled “Combating Racially-Motivated Violence: Is our legislation adequate?”¹⁴⁴ In connection with the seminar, the researchers issued a paper on “Combating Racism through the Criminal Law.” With regard to violent criminal acts, the authors consider the introduction of new racially-aggravated criminal offenses in the law, although they ultimately conclude by writing that “while it is clear that some measure has to be introduced whereby a sentencing court can increase the penalty imposed where the offense is racially motivated, it is suggested that the introduction of a new range of offenses is not the most appropriate way to do this.” Among the justification given for this position, they state that:

Due to the social stigma attached to being convicted of a “hate crime” or a “race crime”, defendants are unlikely to plead guilty to such an offence, thus leading to lengthy and expensive court proceedings. Proving that an offence was committed with a racist motivation or on the grounds of hostility to a standard satisfactory to the criminal law can also prove problematic. While it is important for the

legislature to make it clear through the law that racism will not be tolerated, that message will lose much of its impact if there are very few convictions under the Act.

The authors believe that a better criminal law approach, in consideration of Ireland's current legal system, would be the introduction of provisions prescribing enhanced sentences for offenses committed with a racist motive. On this point they recommend the introduction of a new provision to "provide that where a court is determining the sentence to be imposed for any offender, and it appears to the court that the offence was one which was committed with racial or religious hostility, then the court must treat that hostility as an aggravating factor. This then ensures that a clear message is sent out that racist attacks are not tolerated by either society or the law, and that such attacks are punished accordingly without compromising the criminal law in any way."¹⁴⁵

Italy

Systems of Monitoring and Reporting

What Data is Collected?

The Fundamental Rights Agency (FRA), in its 2007 report on racism and xenophobia in the European Union, reported that Italy had provided no data on hate crimes.¹⁴⁶

Italian authorities told Human Rights First in September 2006, in response to a questionnaire on the response to violent hate crimes, that Italy had since 2004 provided information on criminal cases “of racist nature” to the human rights office of the OSCE, the Office of Democratic Institutions and Human Rights (ODIHR). Statistics on crimes registered in the first four months of 2006 provided to Human Rights First included 1 incident of assault, battery, or bodily harm; 9 cases of insults or threats; 4 offenses under Law 205/1993, which punishes a wide range of violent and nonviolent bias crimes; 29 incidents involving graffiti; and 4 incidents involving criminal damage. This information was broken down into incidents of antisemitism (25 offenses), racism (12 offenses), and xenophobia (12 offenses).¹⁴⁷

Italian national police reportedly employ specific guidelines for the compilation of statistics on crimes, with reports of each incident and related information centralized in an inter-force data bank (identified as SDI) that is accessible to all police forces.¹⁴⁸ Data collection is undertaken within the criminal justice system by the Interior Ministry, which monitors police action, and the Justice Ministry, which compiles data “on judicial sentences.” The National Institute of Statistics (ISTAT), in turn, publishes data on definitive sentences handed down by the courts, broken down by specific criminal offenses, as well as data on crimes reported by the police to the judiciary.¹⁴⁹

A national specialized agency on discrimination, the Italian Office Against Racial Discrimination (UNAR), began operations in September 2004. In response to a Human Right First questionnaire, UNAR responded that it does not at this time “address the specific problem of hate crimes...” although declared that the organization “is aware that it is essential to understand the connections between discrimination and hate crimes for a concrete strategy to prevent violence.”¹⁵⁰

UNAR has developed a complaints hot line through which the public can make direct contact regarding incidents of discriminatory treatment. Detailed statistics on the use of this mechanism and on follow up are included in UNAR’s annual reports, but do not refer expressly to violent hate crimes. Measures undertaken by UNAR to encourage timely and appropriate statistical data on discrimination have been undertaken since July 2005 in collaboration with the statistics section of the Ministry of Justice, with a view to generating statistics on both criminal and civil judicial action concerning discrimination.¹⁵¹

At UNAR’s suggestion, a directive was sent by the Ministry of Justice “to all the attorneys at the Courts of Appeal on the necessity of systematic [data] collection with quarterly deadlines by the relevant judicial offices,” to include data on criminal cases under laws punishing discriminatory action, including No. 205/1993, which as amended provides for bias motivations to be considered a general aggravating circumstance in all crimes.¹⁵²

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Italy contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. In particular, Section 3(1)b of Law 654/1975, as amended by Section 3 of the Law 205/1993 introduces a general aggravating circumstance for all offences committed with a view to discrimination on racial, ethnic, national or religious ground or in order to help organizations with such purposes.¹⁵³

In its Third Report on Italy, the European Commission against Racism and Intolerance (ECRI) noted that “the Italian authorities have reported that racist, xenophobic and antisemitic incidents are relatively rare in Italy and have been characterized by a generally decreasing trend in recent years.”¹⁵⁴ The Italian authorities have in some cases prosecuted offences as racially-motivated and final sentences for such offenses were handed down in three cases in 2001, four cases in 2002, and two cases in 2003. There were no such sentences in 2004.¹⁵⁵

ECRI further reports, however, that “while civil society organizations generally agree that serious offences motivated by racism, xenophobia and antisemitism are not prevalent in Italy, they have also consistently highlighted that these offences, including violence motivated by racism or xenophobia, are under-reported. In particular, they stress that the racist or xenophobic dimension of offences is often neglected by the criminal justice system, and notably the police, and that such offences are therefore, as a rule, dealt with as ordinary offences. This appears to be the case particularly when racism or xenophobia is not the only identifiable motive for the offence.”¹⁵⁶

Kazakhstan

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Kazakhstan contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 54 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(f) “a motive of national, racial, religious hate or enmity...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Several articles provide specific penalty enhancements for crimes committed with motives of national, racial, or religious hate or enmity. Article 96 punishes murder with incarceration ranging from six to fifteen years. Article 97(2)(k) defines murder “with a motive of social, national, racial, or religious hatred or enmity...” as punishable “by incarceration for ten to twenty years, with or without property confiscation, or by life imprisonment, with or without property confiscation or by the death penalty, with or without property confiscation.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 103 (Deliberate infliction of grievous bodily harm), article 104 (Deliberate infliction of moderate bodily harm), article 107 (Torture), article 187 (Intentional destruction or damage of property). Higher penalties are established for each of these crimes when committed “with a motive of social, national, racial, or religious hatred or enmity.”¹⁵⁷

Kyrgyzstan

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

The Criminal Code of Kyrgyzstan does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Bias as an Aggravating Factor in Specific Common Crimes

One provision of the Criminal Code provides for more severe, specific penalties when bias motivation is shown to have accompanied the crime. Article 97 punishes murder with incarceration ranging from eight to fifteen years. Article 97(2)(i) defines murder “with a motive of national, racial, religious hatred or enmity” as punishable “by incarceration for twelve to twenty years, with or without property confiscation, or by the death penalty, with or without property confiscation.”¹⁵⁸

Latvia

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), in 2005, the State Security Police reported on 13 criminal cases initiated for incitement to ethnic and racial hatred. In 2006, the State Security Police initiated 14 such criminal cases. The Latvian authorities do not currently report on bias motivations in violent common crimes.¹⁵⁹

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					

Bias as an Express General Aggravating Factor

The Criminal Code of Latvia contains specific provisions that expressly enable the racist motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

On October 12, 2006, the Latvian Parliament amended section 48 of the criminal code dealing with aggravating circumstances in the commission of a crime. According to the newly amended part 14 of that section, a “racist motivation” now constitutes an aggravating circumstance.

In its 2007 report (for events in 2006), the International Helsinki Federation for Human Rights described this amendment as a “surprise development,” but one that “should pave the way for a clearer division between incitement to hatred and violent hate crimes.”¹⁶⁰

Liechtenstein

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					X

Bias as an Express General Aggravating Factor

The Criminal Code of Liechtenstein contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

In particular, article 33(5) stipulates that “racist, xenophobic, or other particularly reprehensible motives” are to be considered as aggravating circumstances.¹⁶¹

These provisions have been used infrequently. The European Commission against Racism and Intolerance (ECRI) noted in its Second Report on Liechtenstein that “criminal proceedings have been initiated by the Office of the Prosecutor in a few cases concerning incitement to hatred and in one case for the offence of racial discrimination and other punishable offences of a violent nature.” ECRI further recommended that the authorities “ensure in particular that the police, prosecuting authorities and courts are made aware of [the laws’] contents and are encouraged to make use of them to combat acts of racism and crimes involving racist motives.”¹⁶²

Lithuania

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the Ministry of Interior reported in 2006 on 17 crimes related to incitement to national, racial, ethnic, or religious hatred. The ministry reported on 2 such cases in 2005.¹⁶³ The Lithuanian authorities do not report on bias motivations in violent common crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

A new Criminal Code entered into force on 1 January 2003. The code does not provide for racist or other bias motivation of common offenses to be taken into account as a specific aggravating circumstance in sentencing, although Article 54.2 of the Criminal Code stipulates that a court must take into account the motives of the offender when imposing a sentence. Article 60, which lists specific aggravating circumstances, does not include racial or other bias motivations.¹⁶⁴

In its concluding observations to Lithuania's Second and Third Periodic Reports to the United Nations Committee for the Elimination of Racial Discrimination, the committee recommends that Lithuania "introduce into its criminal law a provision that makes committing an offense with racist motivation or aim an aggravating circumstance allowing for a more severe punishment."¹⁶⁵

Bias as an Aggravating Factor in Specific Common Crimes

Article 312 of the Criminal Code punishes the desecration of graves by reason of race, ethnic background, or religion. According to the European Network Against Racism (ENAR), this provision is rarely applied in practice.¹⁶⁶

Luxembourg

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the Ministry of Justice reports only on cases of discrimination, as defined in the Criminal Code.¹⁶⁷ The authorities do not report on bias motivations in violent common crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					

The Criminal Code of Luxembourg does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Bias as an Aggravating Factor in Specific Common Crimes

Bias motivations can be considered aggravating circumstances in cases of desecration. Article 453 punishes attacks on the integrity of a corpse or desecration of a tomb, and article 457(2) provides for the enhanced sanctions for such an offence if committed on racial grounds.¹⁶⁸

In its 2003 Second Report on Luxembourg, the European Commission against Racism and Intolerance (ECRI) recommended that Luxembourg adopt a “criminal law provision that racist motivation constitutes an aggravating circumstance for any offence.” At the time of ECRI’s 2006 Third Report on Luxembourg, no such specific provisions had yet been adopted. Nonetheless, the government of Luxembourg did report that “the racist motivation of criminal offenses has been considered in 22 cases, but that in some of these the proceedings have been discontinued.”¹⁶⁹

Macedonia

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Macedonia does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

While changes have been made to the Macedonian criminal code with respect to discrimination broadly, the European Commission against Racism and Intolerance's (ECRI) Third Report on Macedonia states that no amendments have been implemented that allow courts to explicitly consider the racist motivations of crimes as aggravating factors. Although the Macedonian authorities have claimed that it is currently within the judge's discretion to consider a crime with racist motivation as more serious, and therefore, deserving of a higher penalty, ECRI reports that "there do not, however, seem to be many, if any, examples of judges having used their discretion in this manner."¹⁷⁰

ECRI's report also points out that a general level of unawareness exists in Macedonia with respect to the nation's criminal statutes. ECRI states that "civil society organizations report that victims of discrimination, and often their lawyers, are generally unaware of relevant legislation, and, at any rate, are not very likely to lodge a complaint due to lack of confidence in the justice system."¹⁷¹

Malta

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the police in 2006 reported on three offenses of incitement to racial hatred. No data was available on such cases in 2005.¹⁷² The authorities do not report on bias motivations in violent common crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

The Criminal Code of Malta does not contain general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Bias as an Express General Aggravating Factor

The Criminal Code contains provisions that enable the racist or other bias motives to be taken into account as an aggravating circumstance in the commission of a wide range of specifically defined violent criminal acts.

In August 2006, the Parliament of Malta approved Act No. XVI of 2006 which provided for amendments to the Criminal Code, including an amendment to article 222A of the criminal code stipulating that the punishments for certain crimes “shall be increased by one to two degrees when the offense is racially or religiously aggravated...” Under this amendment:

An offense is racially or religiously aggravated if:

- a. at the time of committing the offense, or immediately before or after the commission of the offense, the offender demonstrates towards the victim of the offense hostility based on the victim’s membership (or presumed membership) of a racial or religious group; or
- b. the offense is motivated, wholly or partly, by hostility towards members of a racial group based on their membership of that group.

The article defines “racial group” as “a group of persons defined by reference to race, color, nationality (including citizenship) or ethnic or national origins. A “religious group” is defined as “a group of persons defined by reference to religious belief or lack of religious belief.”

This penalty enhancement amendment applies to a wide range of offenses including bodily harm, trafficking of human beings, threats, blackmail, arson and destruction of property.¹⁷³

Moldova

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Moldova contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 77 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(d) “a motive of social, national, racial or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Several articles provide specific penalty enhancements for crimes committed with bias motives. Article 145 punishes murder with incarceration ranging from twelve to twenty years. Article 145(3)(j) defines murder “with a motive of social, national, racial, or religious hatred...” as punishable “by incarceration for twenty to twenty-five years, or by life sentence.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 151 (Deliberate infliction of grievous bodily harm), and article 152 (Deliberate infliction of moderate bodily harm). Higher penalties are established for each of these crimes when committed “with a motive of social, national, racial, or religious hatred...”

The Criminal Code also provides in article 222 for more severe punishment for the desecration of cemeteries when motivated by ethnic, racist or religious animus.¹⁷⁴

Monaco

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Monaco does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.¹⁷⁵

In its most recent report on Monaco (2007), the European Commission against Racism and Intolerance (ECRI) stated that “the Monegasque authorities have assured ECRI that the Code of Criminal Procedure is currently being revised and they have specified that in practice, racist acts are punished on the basis of offences covered by common law and that the racist nature would justify the pronouncement of an aggravated sentence.” Nonetheless ECRI reiterated its recommendation that legislation be updated so that racist motivation can be considered an aggravating factor in the commission of a violent crime.¹⁷⁶

Montenegro

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

Montenegro announced its independence from Serbia following the results of a referendum on May 21, 2006. On June 3, 2006, the Parliament of Montenegro formally declared its independence. Shortly afterwards, Serbia as well as the Organization for Security and Cooperation in Europe (OSCE), member states of the European Union, and the permanent member states of the United Nations Security Council officially recognized the government of Montenegro.

The Criminal Code of Montenegro does not explicitly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.¹⁷⁷

Netherlands

Systems of Monitoring and Reporting

Statistics on the incidence of hate crimes and prosecutions of these crimes are not regularly reported by the criminal justice system or national authorities.

Police and prosecutors collect information on the violation of Criminal Code articles pertaining expressly to discrimination (articles 137c, 137d, 137e, 137f 137g and 429quater), although these do not expressly apply to violent hate crimes.¹⁷⁸ The National Bureau of Discrimination Affairs (*Landelijk Bureau Discriminatiezaken* or LBD) was established by the Council of Police Chiefs in September 2001 to serve as the discrimination focal point for the 25 regional police departments.

Most violent hate crimes are thought to be reported directly to the police, while other forms of discrimination are more often reported to the Antidiscrimination Bureaus (ADBs) established in cities around the country.¹⁷⁹ Hate crimes reported to the police are registered under the criminal code classification of the offense—as assault, threat, arson, destruction of property, etc. There is an annotation in the police system to distinguish those criminal code offenses in which bias was reported to have been an element, although this annotation is not generally used. As a consequence, these cases are not registered as hate crimes or reflected in reporting by the police on hate crime incidents.¹⁸⁰ Some police department registration systems permit recognition of the element of discrimination in these offenses, but this does not always occur. It is also difficult to retrieve records concerning crimes from the police registry unless specifics of the case are known or they are also registered by the ADB and the police registration number (*PV-nummer*) is available. The police have developed a search system—Blue View—which allows them to search for records of hate crimes using particular key words (e.g. Muslim, Jew, mosque, synagogue, gay, lesbian, etc.).¹⁸¹ The system is operational in a number of police jurisdictions, but no national hate crime statistics are available. The fact that the police in the Netherlands have different business operating systems makes the extraction and comparison of hate crime data at the national level extremely difficult.¹⁸²

Beginning in 2008, discrimination will be jointly addressed through regional consultations by representatives from the police, the Public Prosecution Service, municipal governments and antidiscrimination bureaus.¹⁸³ The police in two regions will launch a pilot project aimed at increasing contact with minority communities for the purpose of encouraging victims to report cases of hate crimes and discrimination. The National Expertise Center on Discrimination of the Public Prosecution Service will phase in the use of a single registration form for all 25 police regions. Categories included in the registration form are race, religious convictions, gender, sexual orientation, physical or mental handicap. Incidents will be registered in an Excel program allowing for the publication of national data dealing with hate crimes and discrimination. In 2008, the Military Police (*Koninklijke Marechaussee*) (responsible for the Dutch borders) and the National Train Police will begin registering incidents of discrimination. Police statistics on hate crimes are expected to be available in 2009.¹⁸⁴

In 2009 a single business operating system will be introduced in all 25 regional police departments. A separate incident code for discrimination will allow the police using this new system to register discrimination or bias-motivation in incidents of violence. While this introduces more uniformity into police registration, the reliability of the statistics will depend upon the front line officers and intake personnel recognizing the bias motivation in a common crime. This is being incorporated into police training. Increasingly, officers are working with “reaction protocols” so that victims filing reports are properly interviewed to determine if a hate crime occurred or if the incident was a common crime.¹⁸⁵

Unofficial Statistics

Notwithstanding the lack of public information from the official data collection system, the Monitoring Racism and Extreme Right Violence project of the Anne Frank House and the University of Leiden (the Monitor), is able to obtain some national data on hate crime registrations from the Dutch Intelligence and Security Service (*Algemeen Inlichting en Veiligheidsdienst* or AIVD), and from regional police.¹⁸⁶ Statistics from the AIVD combined with reports from other sources by the project provide a fairly comprehensive picture of hate crimes in the Netherlands.

Data pulled together by the Monitor team from the AIVD and the regional police provide a picture of the scale of hate crimes known to the police and security services. In its survey of 2006 data, the Monitor team registered 265 violent

incidents. These incidents included targeted graffiti (59), threats (56), bomb threats (0), physical confrontations (41), vandalism (31), arson (11), assault (60), weapon possession (6) and homicide (1).¹⁸⁷ It must, however, be noted here that the Monitor project registers only racist crimes and those attributed to the extreme right and does not include, for instance, assaults against gays or lesbians that are not attributed to the perpetrators linked to the extreme right.¹⁸⁸

The findings of the Monitor project appear to show a downward trend in violent offenses registered by the police since the year 2000, when registrations peaked with 406. Since then, there has been a decline and leveling off of incident reports, with 317 registered in 2001, 264 in 2002, and 260 in 2003 and a slight upward increase in 2005 to 291 offenses.¹⁸⁹ An exception to this was the surge of incidents experienced after the murder of Theo van Gogh on November 2, 2004. Bomb threats and arson attacks rose dramatically, with mosques and Islamic schools the targets of threats and attacks. The Anne Frank House and the University of Leiden registered 174 incidents in the course of the November 2004 alone.

The Monitor disaggregates offenses by type of offense as well as the “ethnic characteristics” of the victim, providing data on incidents described as antisemitic, anti-Islam, anti-immigrant/asylum-seeker, and “anti-white.” In 2005, the Monitor reported 41 cases of antisemitic violence, 70 cases of anti-Islam violence, 6 cases of violence against asylum-seekers and 11 cases of violence against ethnic “white” Dutch.¹⁹⁰

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of the Netherlands does not explicitly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

The Discrimination Directive

Although there are no provisions that establish bias motivations as aggravating circumstances in law, a Board of Procurators General Discrimination Directive (*Aanwijzing Discriminatie*) establishes guidelines for the investigation, prosecution, and sentencing of violations of laws involving acts of discrimination, including cases in which common crimes are committed with a discriminatory motive.¹⁹¹ A new Discrimination Directive entered into force on December 1, 2007.

Dutch law extends protection against discrimination on grounds including, but not limited to race, religion, nationality, personal beliefs, gender, sexual orientation, handicap, or age.¹⁹² The police are required to register and investigate all complaints of discrimination and to report on their findings as quickly as possible to the Public Prosecution Service. The prosecutor is required in less serious cases to settle the case with a transaction (*transactie*), an administrative procedure providing for a fine in lieu of a court hearing, or to bring the case to trial in more serious cases. When a case does go to trial, the directive requires a 25 percent increase in the penalty for common crimes that are motivated by discrimination or hatred. The directive also requires that the discriminatory background of the crime be announced in the prosecutor’s closing statement.¹⁹³

The Discrimination Directive, issued and updated every four years, establishes important norms for the detection and prosecution of hate crimes. Its effectiveness varies from one police region to the next. In an interview in 2005, the director of one of the larger Antidiscrimination Bureaus told Human Rights First that the directive had little impact

on the practices of police and prosecutors as a result of a lack of concerted implementation. The Directive at that time was seen as limited in its application with respect to discrimination. A common complaint at that time was that the police were either unaware of the directive or not interested in enforcing it. Persons appearing at police stations to file complaints of discrimination were often sent away; offenses were registered as reports for information only (*melding*) instead of being filed as official complaints (*aangifte*): and cases were not adequately investigated.¹⁹⁴

Enforcement of the Discrimination Directive

A Review of Select Arson Cases

Human Rights First reviewed judicial decisions in cases of arson and attempted arson posted on the Public Prosecution Service's website and compiled by researchers at the Anne Frank House. In addition, the organization observed the trials of two suspects in an arson attack on a Muslim school after the Theo Van Gogh murder.

Of the 36 cases of arson registered by the police and other sources and independently identified as hate crimes in November 2004, just ten cases resulted in arrests and prosecution, with a total of 21 defendants.¹⁹⁵ The cases leading to prosecutions included incidents in which Molotov cocktails were thrown through Islamic school or mosque windows, but resulted in little or no serious damage. In these cases suspects were charged with attempted arson. In two other cases, suspects were arrested at the scene in possession of explosives or incendiary materials, prior to carrying out an attack and were charged with acts preparatory to the commission of arson. (Because of the social unrest and frequency of attacks directly following Van Gogh's murder, many mosques and Islamic schools had posted guards at the buildings, resulting in limited damage to the buildings and the almost immediate arrest of a number of the suspects.)

Two arson attacks resulted in the destruction of a mosque and an Islamic elementary school. In one of those attacks, committed on November 13, 2004, the mosque in Helden was completely destroyed in an arson attack. Although the police arrested a suspect, he was later released due to lack of evidence. No one was ever convicted for this offense. In a separate incident, four months after the original spate of violence, an Islamic primary school in Uden was totally destroyed by fire.¹⁹⁶

Sentences in the ten post-Van Gogh arson cases resulting in convictions ranged from suspended prison sentences under probationary supervision—the prison sentence was generally equal to the time the suspect had spent in pretrial detention—to community service. In each of the post-Van Gogh cases, the courts upon sentencing took into account that all of the suspects had spent time in pre-trial detention; on average, three months.¹⁹⁷

Sentences varied depending upon whether or not injuries occurred, the potential threat to life or property, and the amount of damage that was done to physical structures. These are the most important variables in the courts' determination of a particular sentence.¹⁹⁸ Other factors taken into account in the cases reviewed included the offender's mental state and degree of criminal responsibility: status as a juvenile, first time offender or previous convictions: and association with right-wing extremist groups. A frequent mitigating factor was the age of the defendant, and their having been found to have played a secondary role in the offense. Finally, the courts considered whether or not other crimes were perpetrated during the commission of the arson attack. In one case, involving possession of large amounts of explosives and drugs, the defendant was sentenced to prison for three years (of which 6 months was conditional).¹⁹⁹

In the cases against 18 of the 21 defendants, information is available to show that sentences referred specifically to the fact that the attacks had targeted Islamic schools and mosques having been an aggravating factor. Specifically, the courts found that the offense contributed to the political and social unrest in the Netherlands following the murder of Van Gogh and added to the already stressful and threatening situation of Muslims in the Netherlands during that time.²⁰⁰

This notwithstanding, it is unclear even in these cases whether prosecutors requested the 25 percent increase in penalties required by the Discrimination Directive, or whether the sentences handed down were in fact more severe than they would have been without the element of discrimination motivation. In each case, in accordance with established criminal procedure, the courts considered both mitigating and aggravating factors in handing down sentences. These were elaborated in detail in the verdicts, and although there was a clear recognition of the element of discrimination against the Muslim community and the psychological impact that these crimes had on this community, it is not clearly stated that this led to a 25 percent penalty enhancement. Researchers and authors of the Monitor Racism and the Extreme Right report told Human Rights First that that they were unaware of any cases in

which public prosecutors or the courts had made an express reference to an enhanced penalty as a result of discrimination—although this is required by the Discrimination Directive.²⁰¹

Despite what appear to have been relatively light sentences in many of the arson attacks perpetrated in November 2004, human rights monitors in the Netherlands have observed that these sentences were not out of line with traditional sentencing policy in the Netherlands for serious crimes. A considerably more severe sentence was handed down in the case of another arson attack on a mosque the following year, in large part because of the threat to life occasioned in that attack.

- In Rotterdam on June 15, 2005, according to the verdict in the case, 31-year-old B. van der K. set fire to the Surinamese Djama Mahid Shaan-e-Islam mosque. He wrote epithets on the walls of the mosque including “Theo rest in peace,” “no moSques in the south,” and “Lonsdale.”²⁰² The suspect was described as a fanatical follower of various extreme right organizations. As requested by the public prosecutor, the court sentenced the defendant to 30 months imprisonment.

The sentence held that “this is an extraordinarily serious case. The defendant’s actions not only caused material damage to the mosque, but the mosque was located in a building attached to other buildings in which apartments were located (increasing the chances of injury or death to occupants of the building). Additionally, the suspect intentionally wanted to offend (Muslim) citizens in their religious convictions. Extremist ideas, regardless of their nature, corrode the roots of the legal order. That the suspect did not refrain from his actions thereby creating a life-threatening situation for the local residents exceeds all bounds.”

The courts clearly recognize the serious consequences of hate crime offenses for society, and their psychological impact upon the communities targeted, even where actual injury or damage to property is absent. At the same time, there is little evidence on which to conclude that the Discrimination Directive’s requirement of 25 percent penalty enhancement is being enforced.

In a May 22, 2006 interview, Dilia van der Heem, Rotterdam’s Discrimination Prosecutor, told Human Rights First that courts will generally hand down a three-year sentence for attempted arson. This may have been born out in the trial for the June 2005 burning of the Djama Mahid Shaan-e-Islam mosque. The actual sentence of four years imprisonment in that case may in fact reflect the 25 percent penalty enhancement, although other aggravating factors were also present in that crime. Yet the sentences in the arson cases in the aftermath of the Van Gogh murder fell far short of this norm, with most resulting in prison sentences of no more than six months, with three months suspended (the prison sentence in [most] cases was limited to the time already served in pretrial detention), and community service. The implication is that far from enforcing more severe penalties for even these most serious crimes, the prosecution and the courts viewed outrageous acts against the Muslim community as somehow mitigated by the fact that most of the offenses involved attempted arson of empty buildings at night which resulted in little or no damage and no threat to life. The serious nature of the hate crime appears to have been overlooked.

Renewed Enforcement Efforts

With an increasing number of reported attacks on lesbian, gay, bisexual and transgender (LGBT) persons in the Netherlands in 2007, the Criminal Justice system seems poised to take a more serious stance on the sentences handed down to hate crime offenders, as illustrated by a recent court case:

- During the night of August 29, 2007, a 19-year-old man insulted, spat on, and assaulted a gay couple. The prosecutor was particularly disturbed by the fact that the defendant singled out gay men. “If you’re only slightly different and walk hand in hand down the street, you could be a victim.” In an almost unprecedented move, the court in Amsterdam handed down a sentence of 6 months incarceration and 180 hours of community service.²⁰³ The court admitted that the sentence was harsh, but was of the opinion that discrimination on the basis of sexual orientation must be weighed heavily in sentencing. According to the court, the entire case file “reeked of unfriendliness towards homosexuals.”²⁰⁴

In another strong signal to suspects involved in racist and religious violence, the courts sentenced five right-wing extremists (age 17 to 21 years) involved in arson attacks on a synagogue and an Islamic supermarket in Amsterdam and Almere to prison sentences of two years.²⁰⁵ Observers report that it is becoming more common to prosecute those involved in nationalistic activities and that the justice system is taking a more firm stance in sentencing.²⁰⁶

Norway

Systems of Monitoring and Reporting

What Data is Collected?

The Norwegian government does not currently publicly report expressly on violent hate crimes, although data collection systems in this regard are in the process of development.

In its second report on Norway (1998), the European Commission on Racism and Intolerance (ECRI) recommended that the Norwegian authorities “develop a registration system enabling the government to monitor racially motivated incidents.” In its third report (2004), ECRI observed that the government had undertaken “to improve the system for the registration of instances of racist and discriminatory behavior in the police criminal records,” and that work had begun in this regard.²⁰⁷ ECRI encouraged authorities to ensure the availability of comprehensive data “on the way the different levels of the criminal justice system, from the police to the prosecuting authorities and the courts, deal with racist and discriminatory acts,” to include racially motivated offenses.²⁰⁸

In Norway’s September 2005 periodic report as a state party to the Convention for the Eradication of All Forms of Discrimination (CERD), no express reference is made to the incidence of violent hate crimes or to monitoring or to data collection on such crimes. In an oral response to the CERD committee on consideration of the report, the government said Norwegian law “restricted the collection of data disaggregated by ethnicity, partly in response to relevant requests by ethnic minorities,” but that detailed statistics were collected on immigrants and those of immigrant origin:²⁰⁹

...statistics on immigrant populations, which included information on the country of birth, allowed for limited conclusions concerning the ethnic, linguistic and religious background of any population group. Immigrants accounted for approximately 8.3 per cent of the total population. A distinction was drawn between different generations of immigrants and the nature of their immigrant status according to their place of birth and their parents’ nationality.

In a separate intervention, another representative of Norway acknowledged that there was continuing debate “on classification of persons as immigrants for statistical purposes,” including those present in Norway for generations, as well as past practices of distinguishing between those of “Western” and “non-Western” immigrant origin.²¹⁰ Members of the committee questioned the reluctance of Norway to provide statistics disaggregated by ethnic origin while at the same time distinguishing those of non-Western immigrant origin in statistical reporting.²¹¹

Norway’s 2005 CERD report also refers to the initiation in 2000 of bi-annual reports “on the nature and extent of racism and discrimination,” undertaken as a function of the Directorate of Immigration—tending to reinforce a view that discrimination and minority rights are considered largely an immigration issue. A summary of conclusions of the 2005 report include, among others, that “[v]erbal harassment is experienced in all arenas”; that “[c]ertain individuals make the everyday life of ethnic minorities miserable”; that “[t]he term ‘racism’ is used extremely rarely, even when reference is made to serious incidents of harassment, omission, disparagement or exclusion.”²¹²

In an independent submission to the CERD Committee, Norway’s Anti-Racism Center criticized the government’s reference to the bi-annual reports of the Directorate of Immigration, describing these as “based on interviews with immigrant representatives and representatives of the municipal authorities,” and providing little information on the real extent of racism and discrimination.²¹³ The government statement, in turn, masked a “lack of systematic, reliable, accumulated data of the extent and nature of the discrimination data.”²¹⁴

... the Antiracist Center maintain the criticism voiced for more than 15 years, about lack of representative, systematic, comparable and reliable data and documentation of racial discrimination in Norway, and urge the Norwegian authorities to start the work on better documentation and monitoring of racism and discrimination. In particular we urge the development of a transparent system with which the police accumulate statistics of the incidents reported to them. This request has been put forward to authorities on all levels for several years. We are therefore very disappointed in what seem to be a refusal to systematize and make this data available.

Until December 2005, Norway’s specialized antiracism body, the Centre for Combating Ethnic Discrimination, had a mandate to “document and monitor the situation with respect to the nature and scope of discrimination,” and to this end record inquiries and follow-up, seek documentation on discrimination, maintain contacts with other bodies, and promote initiatives to combat discrimination.²¹⁵ The organization’s annual reports, *Moving Toward Better Protection*,

documented cases brought to its attention, but did not, however, deal with the problem of violent hate crime. In January 2006, the Center's mandate was folded into two new governmental structures, the Equality and Anti-Discrimination Ombudsman and an Equality and Anti-Discrimination Tribunal.²¹⁶

According to the Equality and Antidiscrimination Ombudsman, the Norwegian government has recently taken new steps against hate crime, with a decision by the Department of Justice and Police in March 2007 that all incidences of hate crime will be registered by the police. The Ombudsman's Office further informed Human Rights First that it has been cooperating with the police in this matter, that registration of hate crimes has been discussed, and that police will begin recording bias motivations based on ethnic origin, sexual orientation, and religion.²¹⁷

In September 2007, Minister of Justice Knut Storberget told the press that "Norwegian police have begun registering all episodes of so-called 'hate crimes,' involving violence against certain groups of people," and cited findings of a recent survey conducted by the ministry indicating a rise in violence of this kind. This reportedly identified as particularly vulnerable to bias attacks people targeted because of racial differences, gay men, and the elderly.²¹⁸

Hate crimes expert Henrik Lunde, of the Antiracism Centre, observed that "police have no common understanding of what a hate crime is, and there is no training for police officers on how to register—and certainly not how to investigate—hate crimes. It remains to be seen whether the new measures result in reliable statistics, but as long as there are no proper guidelines on the subject of hate crimes, my hopes are not very high."²¹⁹

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					

Bias as an Aggravating Factor in Specific Common Crimes

The Criminal Code of Norway contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. Although this is not a general provision covering all crimes, Section 232 of the Criminal Code extends to felonies against another person's life, body, and health in which the offence has been committed with a racist motive.²²⁰

In its Third Report on Norway (2004), the European Commission against Racism and Intolerance (ECRI) noted that additionally "the Norwegian case law indicates that the racist motivation may be considered as an aggravating circumstance of all offences." ECRI notes however that "the number of cases tried in court might not genuinely reflect the extent of the phenomenon of racially-motivated offences in Norway. In this respect, the absence of data on the number of cases in respect of which the racist motivation has been invoked by the victims constitutes a particular obstacle."²²¹

Section 292 of the Criminal Code deals with vandalism, punishable as a more "serious" crime subject to more severe penalties in a number of circumstances, including vandalism with a racial motive or that damages a public monument or other object that has historical, national or religious significance for the public or a large number of people.²²²

Poland

Systems of Monitoring and Reporting

What Data is Collected?

The Fundamental Rights Agency (FRA) reports that a “good” system exists to register racist incidents/ and racist crimes in Poland.²²³ Official criminal justice data (police data provided by the Ministry of Justice) on hate crimes indicates fluctuations over the last five years, with no single year reflecting reaching the high of 208 incidents registered in 2000.²²⁴ The FRA reports that the increases in recent years since the low of 94 reported crimes in 2002 may partly be a reflection of the “improved detection and reporting of acts as having a racial basis.”²²⁵ In 2005, police reported 172 racist crimes.²²⁶

What Does the Data Say about the Bias Motivations and/or Victim Groups?

No official data is collected on the bias motivations and/or the victim groups. However, according to the FRA, available data regarding racist violence indicate that people of darker skin tone color are subjected to acts of physical violence. This includes the Roma and people of African and Arab origins.²²⁷

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
X		

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				X

Poland’s Criminal Code does not contain any general penalty enhancement provisions for crimes committed with bias motivations as an aggravating circumstance. In its Third Report, released in June 2005, the European Commission against racism and Intolerance (ECRI) strongly encouraged the Polish authorities to enact such legislation.²²⁸

Bias-motivated Violent Crime as a Specific Offense

In Chapter 16 of the Criminal Code on “Offenses against peace, humanity, and war crimes,” two articles of the Criminal Code treat bias-motivated violence as a separate offense.

Article 118(1). Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

Article 119(1). Whoever uses violence or makes unlawful threats toward a group of persons or a particular individual because of their national, ethnic, political, or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.²²⁹

According to ECRI’s Third Report, crimes committed in breach of these articles are rarely prosecuted. “[S]ome 28 to 30 cases have been brought under articles 118, 119, 256 and 257.²³⁰ According to the Ministry of Justice, in 2003, four cases were brought to court under article 119(1) (use of violence or threats) of the Criminal Code and one under 119(2) (incitement to violence or threats). All four cases resulted in convictions and imprisonment for the accused.”²³¹

Portugal

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the authorities in Portugal do not provide any data on hate crimes.²³²

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				X

The Criminal Code of Portugal does not contain any general penalty enhancement provisions for crimes committed with bias motivations as an aggravating circumstance. Article 71(2)(c) is a general sentencing provision that allows for the aims and motivations of the offender to be considered in sentencing, although there is no explicit reference to racist or other bias motives.

Bias as an Aggravating Factor in Specific Common Crimes

Two articles of the Criminal Code deal with bias motivations in specific crimes. Part 2(e) of Article 132 of the Criminal Code (aggravated homicide) stipulates that motives of racial, religious or political hatred are regarded as aggravating circumstances resulting in a heavier penalty. Whereas homicide is punishable by imprisonment for a period of between 8 to 16 years, aggravated homicide is punishable by imprisonment for a period of between 12 to 25 years.

Similarly, aggravating circumstances may also apply in cases of assault causing bodily harm motivated by bias under Article 146(2) of the Criminal Code.²³³

In its Third Report on Portugal (2007), the European Commission against Racism and Intolerance (ECRI) notes that provisions in Article 132(2)(e) and 142(2) have been used infrequently, explaining that this is partly due to the fact that “the police tend not to give sufficient emphasis to the racist nature of offences, in some cases because the victims themselves fail to draw their attention to it. There is also a view that the police sometimes refuse to consider the racist aspect of an offence even when the victim or witnesses insist that it was racially motivated. Prosecutors, for their part, are said to be insufficiently aware of the potentially racist aspect of certain offences and so fail to target their investigations accordingly.”²³⁴

Romania

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the authorities in Romania provide limited court data on cases of discrimination, but do not provide any data on the incidence of hate crimes.²³⁵

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X	X	X	X

A new Criminal Code was adopted in 2005. It was amended in 2006 on the basis of Law No. 278/2006 to include provisions on bias as an express general aggravating factor.

According to Article 75(1)(c), the commission of a crime by reason of race, nationality, ethnicity, language, religion, sex, sexual orientation, opinion, political belonging, convictions, wealth, social origin, age, disability, chronic diseases or HIV/AIDS, is considered to be an aggravating circumstance.

Russian Federation

Systems of Monitoring and Reporting

What Data is Collected?

The Russian Interior Ministry publishes annual figures on crimes in the Russian Federation. There is, however, no separate reporting on crimes carried out with a bias or hate motivation or break down of data on particular crimes in order to distinguish victims from different population groups. The Interior Ministry's annual report includes data on crimes "of an extremist nature" that to some extent overlaps with the concept of hate crime. The 2006 report registered 263 such crimes, up from 152 in 2005.²³⁶

While the published statistics do not provide a breakdown by specific crimes considered to be of an extremist nature, inter-ministerial instructions provide a list of the articles of the criminal code that fall within that category. These include common crimes defined in articles 105, 111, 112, 117, 214, 243, 244 when they have been determined to have been aggravated by "national, racial, or religious hatred." For the purposes of the statistics, an extremist crime also includes any crime in which enhanced penalties were sought under article 63, according to which national, racial, or religious hatred is considered an aggravating circumstance.²³⁷

The Interior Ministry reports on statistics nationwide, although some local prosecutors have begun to publicly release figures on bias-motivated crimes in their jurisdictions. On June 15, 2007, the public prosecutor of the Nizhny Novgorod region reported that since the beginning of 2007, 14 crimes had been committed "on the grounds of interethnic hatred." The prosecutor announced that charges had been brought in all of the cases and that one had already been sent to trial.²³⁸

On June 19, 2007, the General Prosecutor's Office of the Far East Federal District and the public prosecutor of the Sverdlov region reported on crimes of an extremist nature that had been recorded in those jurisdictions. Among other crimes falling within the framework of "extremist," they reported on three murders and two acts of vandalism aggravated by bias.²³⁹

On June 21, 2007, at a press conference in Rostov-on-the-Don, the deputy General Prosecutor of the Russian Federation, Ivan Sydoruk, released statistics on the number of crimes "of an extremist nature" committed in the Southern Federal District. Sydoruk reported that since the beginning of 2007, there had been 11 extremist crimes, up 20 percent from the same period one year earlier.²⁴⁰

Despite some improvements, including more frequent public reporting by some public prosecutors, the continued absence of detailed and systematic monitoring and statistical reporting on hate crimes, including data distinguishing the groups targeted for violence, echoes the lack of a concerted political response to these crimes. It denies the public and policy-makers needed information and hinders a better understanding of the weaknesses of the criminal justice system in the prosecution of hate crimes.

A more serious effort by the Ministry of the Interior or other official bodies to collect and regularly publish statistics on hate crimes registered within the criminal justice system would constitute an important step forward. Such statistics would remain incomplete, however, as long as the violent bias incidents that could be prosecuted themselves remain underreported by victims. Even when victims report such crimes, the bias motive is all too infrequently recorded by the police.²⁴¹

Anecdotal evidence strongly suggests that victims of hate crimes from vulnerable minorities are often reluctant to report an attack for fear that they may suffer further at the hands of law enforcement officials or out of a feeling that the attack will not be treated seriously or properly investigated. Victims who lack residency permits—or identity papers as Russian citizens—may be especially reluctant to risk further problems by taking their case to the police. There may also be reluctance on the part of law enforcement officials to register crimes reported to them or to record the elements of bias in complaints. The registration of crimes in which the victim believes there is a bias motivation—even if these do not lead to an investigation—is important if statistics are to serve to alert the authorities to worrying trends in the frequency of hate crimes.

The inadequacy of the police response to complaints of bias crimes is in part a consequence of a lack of appreciation among many law enforcement officials for the importance of treating hate crimes as particularly serious crimes.

A further common obstacle to the registration of complaints and effective investigation is bias on the part of law enforcement personnel themselves toward a particular minority group.

Unofficial Statistics

The SOVA Center for Information and Analysis, a Moscow-based nongovernmental organization that monitors hate crimes in Russia, documented 541 victims of hate-based attacks in 2006, including 55 racist murders. This compares with 462 overall victims, including 47 murders, documented by the organization using the same criteria in 2005.²⁴² In the first seven months of 2007, the organization documented 310 hate based attacks on individuals (among those 37 racist murders), a 22 percent increase over the same time period in 2006.²⁴³ Because these figures come largely from a tabulation of press reports and analysis by local sources, the actual number of hate crimes is likely to be much higher.

The SOVA Center also disaggregates its statistics on the basis of the following victim group categories: “dark-skinned” people, people from Central Asia, people from the Caucasus, people from the Middle East and North Africa, people from the Asia-Pacific region, other people of “non-Slav appearance,” members of youth subcultures and leftist youth, others, or not known. People from Central Asia and the Caucasus are the victims in the largest percentage of the most serious attacks.²⁴⁴

The SOVA Center has also monitored and reported on prosecutions in cases of violent bias crime. It found just nine guilty verdicts reported with a bias motive in 2004, 17 in 2005, and 33 in 2006. The 33 guilty verdicts in 2006 led to sentences of about 109 defendants.²⁴⁵

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				X

Recent Amendments to Criminal Law

In 2007, several parallel legislative initiatives resulted in the adoption of new and amended provisions to deal with violent hate crimes. On May 10, 2007, bias motivations were added to article 214 of the criminal code dealing with vandalism. As with other articles of the criminal code dealing with aggravating circumstances, this article was amended to include an enhanced punishment when the act of vandalism is accompanied “with a motive of ideological, political, racial, national, or religious hatred.” This amendment marked the first time that the notions of “ideological” and “political” had been added to the other forms of hatred (racial, national, religious) as aggravating circumstances stipulated in other articles of the criminal code. Article 244 was also amended so that an act of desecration motivated by bias can be punished by a maximum sentence of five years (up from three years previously).

On August 10, 2007, amendments to anti-extremist legislation were also passed, resulting in a number of changes to provisions addressing bias-motivated violence. These amendments expanded the concept of bias motivations in the terms similar to those of the amended article 214. Whereas Russian law previously addressed bias motivations based on “national, racial and religious hatred,” the amendments expanded this definition to include motivations based on “*ideological, political, racial, national, and religious hatred and enmity or hatred and enmity toward some social group.*” (Emphasis added.)

Similar changes regarding bias motivations were introduced to article 63 on general aggravating circumstances for all crimes, as well as to six other articles of the criminal code dealing with specific offenses where bias motivations provided for sentence enhancement.²⁴⁶ Bias motivations as aggravating circumstances in the same terms were also extended to five new articles of the criminal code.²⁴⁷

Some observers have argued that these provisions will now allow prosecutors to seek enhanced penalties in cases of neo-Nazi violence against anti-fascists and other youth subcultures (which might now be prosecuted as “ideological” hate crimes). Some have also argued, however, that the new range of “hatred” is too broad and opens the way to arbitrary application of the law, especially given the fact that what constitutes a “social group” is not currently defined in Russian criminal law.²⁴⁸

Bias as an Express General Aggravating Factor

The Criminal Code of the Russian Federation contains provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 63 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(f) “a motive of political, ideological, national, racial, religious hate or enmity or a motive of hate or enmity towards a certain social group...” in the commission of crimes. It does not set out the scope of these enhanced penalties. While article 63 would appear to provide a basis for enhanced penalties for bias attacks charged as common crime, there is no evidence that prosecutors regularly seek enhanced penalties under this provision or that courts hand down such sentences.

In one rare case—the October 2005 murder of Peruvian student Enrique Hurtado in the city of Voronezh—enhanced penalties under article 63 were sought by prosecutors against all thirteen defendants, although charges were subsequently modified to disregard racism as an aggravating circumstance under this provision. In the verdict, the defendant was found guilty of murder motivated by racial hatred (a crime expressly defined in the Criminal Code). The other defendants were convicted on lesser charges, with no consideration of motive as an aggravating circumstance.

Bias as an Aggravating Factor in Specific Common Crimes

Other provisions of the Criminal Code provide for more severe, specific penalties when bias motivation is shown in particular crimes. Article 105 punishes murder with incarceration ranging from six to fifteen years. Article 105(2)(k) defines murder “with a motive of political, ideological, national, racial, religious hatred or enmity or a motive of hate or enmity towards a certain social group” as punishable “by incarceration for eight to twenty years, or by a life term of incarceration or by the death penalty.”²⁴⁹

Among the recent cases in which such circumstances were considered are the following:

- On August 9, 2005, a group of young men attacked and beat to death Samvel Tadevosyan, a 52-year-old man of Armenian origin, on a local commuter rail returning to Moscow. Six young men ranging in ages from 17 to 26 were reportedly directly involved in the attack and a seventh filmed it on a cell phone camera for the purpose of selling the recording to a neo-Nazi group. On November 9, 2006, a Moscow court found six men guilty of various charges, including murder motivated by racial and ethnic hatred (article 105(2)(k)), deliberate infliction of moderate bodily harm, also motivated by racial and ethnic hatred (article 112(2)(f)), as well as robbery. They were sentenced to from 2 to 12 years imprisonment. The defendant who was found to have filmed the attack was acquitted. The verdict was appealed and on January 30, 2007, the Russian Supreme Court upheld the sentences.²⁵⁰
- On October 1, 2005, in Yekaterinburg, a group of skinheads shouted racist epithets at 21-year old Jewish man and chased him into a cemetery where they attacked him, knocked him to the ground, and using a metal cross from a grave as a weapon, stabbed and killed him. His body was found the next day. On February 9, 2006, the Yekaterinburg Regional Court found four of the defendants guilty of murder motivated by racial and ethnic hatred (article 105(2)(k)), and the fifth of attempted murder. The defendants—all of whom were minors at the time of the attack—were given sentences ranging from 5 to 10 years imprisonment.²⁵¹
- On October 4, 2004, a man of Azerbaijani descent was stopped in his car on a highway near Moscow and murdered. He was shot in the back and then his throat was slit. Later in 2004, another person of non-Slavic descent was killed in similar circumstances, while in January 2005, in the city of Ivanovo, a third similar murder

was reported. In a routine traffic stop in the summer of 2005, police conducted a search of the car and reportedly found the weapon used in the three murders. Two men—Andrei Shishkin and Aleksei Kuznetsov—were subsequently arrested and charged, and on June 18, 2006, a jury found the two men guilty of a range of charges in connection with the three murders. Shishkin was found guilty of two accounts of murder aggravated by hatred based on ethnicity (article 105(2)(k)), among other charges including robbery and illegal possession of weapons. He was sentenced to 22 years imprisonment. Kuznetsov was sentenced to four and a half years imprisonment for robbery and illegal possession of weapons.²⁵²

- On January 11, 2006, Alexander Kopstev entered a Moscow synagogue shouting antisemitic epithets and attacked worshippers during evening prayer, leaving nine people seriously injured. Koptsev was subsequently detained and charged with attempted murder with a motive of religious hatred, deliberate infliction of grievous bodily harm, and with inciting hatred.²⁵³ On March 27, 2006, a judge found Kopstev guilty on the first two charges, but acquitted him of inciting hatred. He was sentenced to 13 years in prison.²⁵⁴ On June 20, Russia's Supreme Court overturned the conviction on the basis of appeals by both the prosecution and the defense and sent it back for a second trial. The defense had appealed the original sentence on the grounds that it was excessively harsh. The prosecution appealed the judge's decision to throw out the incitement charges in the verdict.²⁵⁵ On September 15, 2006, the Moscow City Court again convicted Koptsev on the charges of attempted racist murder and grievous bodily harm as well as on the charge of incitement of religious hatred (article 282). He was sentenced to 16 years in a high security prison.²⁵⁶

While these cases illustrate that prosecutors have managed in some cases to successfully bring charges based on bias motivations as aggravating circumstances, it remains unclear the extent to which sentences have been enhanced as a result.

On the other hand, there have also been a number of acquittals in high-profile racist murder cases that have raised questions about the preparedness of prosecutors to vigorously try these cases.

On October 17, 2006, for example, all thirteen of the defendants in the case of the murder of 20-year-old Vu An Tuan were acquitted by a jury. Tuan, a Vietnamese student, was murdered in St. Petersburg in October 2004. Prosecutors in the case had determined that the murder was motivated by ethnic hatred and were prosecuting the case on that basis.

Other provisions of the Criminal Code that can be applied to violent hate crimes include article 111 (Deliberate infliction of grievous bodily harm), article 112 (Deliberate infliction of moderate bodily harm), article 115 (Deliberate infliction of mild bodily harm), article 116 (Assault), article 117 (Torture), defined as “the causing of physical or psychological suffering through systematic beatings or other violent actions...”, article 119 (Threatening murder or the infliction of serious bodily harm), and article 150 (Involving a minor in the commission of a crime). Higher penalties are established for each of these crimes when committed “with a motive of ideological, political, national, racial, religious hatred or enmity or with a motive of hatred or enmity towards a certain social group.”

In one recent case, prosecutors pressed for the court to recognize the racist motive in a case of assault:

- On April 1, 2006, Zaur Tutov, the Minister of Culture of the Kabardino-Balkaria region of Russia was among several people attacked outside a Moscow theater by a group of skinheads shouting “Russia for Russians” and “Moscow for Moscovites.” Police were reportedly slow to arrive at the scene and then initially brought charges that excluded a racist motive to the attack. On April 3, however, aggravating circumstances were added to the charges. On November 20, a district court found three persons guilty of inflicting moderate bodily harm with a racist motive. They were sentenced to between 12 and 18 months imprisonment. The verdict was upheld in February 2007 by the Moscow City Court.²⁵⁷

As a result of the August 2007 amendments to the criminal code, bias motivations as an aggravating circumstance are also included in article 213 (Hooliganism). Even minor acts of hooliganism are now subject to a maximum punishment of five years imprisonment if accompanied by a bias motivation. Observers have expressed concern however that such provisions can also now be used against members of political opposition groups.

The criminal code also punishes violent acts against property, with more serious punishments now available in the event that an act of vandalism (article 214) or desecration (article 244) is accompanied by a bias motivation. For example, whereas the desecration of human remains or places of burial without the aggravating factor can be punished with up to three months imprisonment, prosecution as a hate crime can result in up to 5 years imprisonment.

Nongovernmental monitors have indicated an increase in the use by Russian criminal justice officials of provisions identifying bias as an aggravating circumstance and allowing for enhanced penalties to be sought. The SOVA Center for Information and Analysis, for example, reported that in 2006 there were 31 convictions (involving not less than 96 persons) in which hate crime provisions were applied. This was up considerably from figures in 2005 (17 convictions involving 56 persons) and 2004 (9 convictions involving 26 persons), suggesting that prosecutors have become more inclined to use these provisions.²⁵⁸

This progress is overshadowed, however, by the fact that convictions remain all too infrequent in view of the scale of racist violence in Russia. The SOVA Center reported on 541 victims of violent hate crimes in 2006, including 55 murders, sustaining a steady trend of rising violence over the past several years. Despite this worrying trend, there appears to be a strong tendency among law enforcement officers to continue to downplay any bias motives in most crimes, although this approach appears to be changing slowly. Proper training in dealing with racist violence could contribute to a more systematic application of hate crimes legislation. In its Third Report on the Russian Federation, the European Commission against Racism and Intolerance (ECRI) “recommends that the Russian authorities considerably strengthen their efforts to train police, prosecutors, judges, and judicial candidates on issues pertaining to the implementation of legislation concerning racist offenses.”²⁵⁹

Before the adoption of August 2007 amendments, prosecutors often used to bring charges of hooliganism, defined in article 213 as the “gross violation of social order, expressed in clear disrespect for society, committed with the use of weapons or objects used as weapons,” when arrests were made after racist attacks perpetrated by skinheads and members of other extremist groups. Some Criminal Code articles on distinct forms of violence, including murder, contain clauses dealing with “a motive of hooliganism,” which is also commonly cited by prosecutors in such cases.

There is a general perception by Russian human rights monitors and other sectors of the public that charges of hooliganism are routinely pressed by prosecution authorities as an alternative to more serious charges even when more serious bodily harm occurs.

In the case of the 2004 murder of nine-year-old Khursheda Sultonova, for example, in which there were eight defendants, prosecutors charged only one of them with racist murder and hooliganism, whereas the other seven were charged with simple hooliganism. The jury acquitted on the charge of murder, but found all the defendants guilty of hooliganism, resulting in relatively lenient sentences. In cases in which a group was alleged responsible for a criminal assault that results in murder, Russian prosecutors have tended to charge only one of the group with murder while charging others with lesser charges of hooliganism or assault; no cases of racist murder are known in which charges were brought for both racist murder and abetting racist murder.

In the case of Khursheda Sultonova, prosecutors might have requested more severe sentences under article 63, or brought charges on “inflicting bodily harm” (for which higher sentences can be requested when motivated by bias). In addition to a higher sentence, such a decision might have sent out a stronger signal that prosecutors are serious about tackling racist violence.

Similarly, in the case of the murder of Enrique Hurtado, only one of the thirteen defendants in that case—the one charged with murder—was sentenced for a crime motivated by bias (or for complicity in the murder). Although the prosecutors did in this case seek penalty enhancements for the other defendants under article 63, the court ultimately sentenced those defendants on assault and hooliganism charges, without any consideration for the bias motives.

Article 282: Incitement to Hatred

Article 282, on incitement, is generally applied with regard to “hate propaganda,” such as verbal and written attacks in publications or in public statements, although part 2 of the article has also been invoked to prosecute incitement accompanied by violence.²⁶⁰ In practice, article 282 is used for a wide range of different types of crime in Russia, including in cases of violence.

For example, law enforcement officials have brought charges of incitement (article 282) in place of or in addition to violations of articles 214 (vandalism) or 244 (desecration), as two recent examples show:

- On March 16, 2006, in the city of Muravlenko in the northern Yamalo-Nenetsky autonomous district, the facades of six buildings, a store and a restaurant were spray-painted with anti-Caucasus epithets. The city is home to a large number of people originally from the Caucasus who came to the city to work in the oil industry. On March

17, the local prosecutor opened a criminal incitement (article 282) investigation and began the search for the vandals.²⁶¹

- On October 3, 2006, approximately 150 Jewish and Tatar gravestones were desecrated in a cemetery in the Tver region. On the same day, the Tver regional prosecutor's office opened a criminal case on the basis of bias-motivated desecration (article 244(2)(b)) and incitement (article 282). On October 10, six members of an extremist organization were arrested in connection with the investigation.²⁶²

Incitement charges have also been applied in conjunction with cases of assault. A few examples include the following cases:

- On February 2, 2007, a court in the city of Tambov sentenced a 23-year-old man to 18 months imprisonment for assault (article 112 on "infliction of moderate bodily harm") and for incitement accompanied by violence (article 282(2)). In December 2005, the defendant was accused of taking part in a brawl in a bar in which he shouted racist insults and attacked four students from Palestine and Jordan, injuring one of them when he stabbed him in the shoulder with a knife.²⁶³
- On December 14, 2006, a court in Yekaterinburg sentenced two men to three and a half and three years imprisonment, respectively, for an attack on a Somali journalist. They were sentenced for inciting racial hatred under article 282. In September 2003, a group of people, including the two defendants, encountered the journalist, shouted racist slogans and epithets, and then assaulted him.²⁶⁴
- On April 2, 2006, Elkhan Mirzoev, an ethnic Azerbaijani and a producer at the NTV television station, was attacked while riding on the metro. He was approached by a young skinhead who had entered the train with a group of young men. According to Mirzoev, the skinhead sat down next to him and began explaining to him why people like him should not be living in Russia. When another young man from the group came over and began pouring a bottle of beer over his head, Mirzoev hit him and was then attacked by the whole group, who broke the bottle over his head and threw him off at the next station, shouting nationalist slogans in the process. Prosecutors brought charges under article 115 on deliberate infliction of light bodily harm together with article 282(2) on incitement accompanied by violence. On July 12, 2006, a Moscow court sentenced two men—Vitaly Golikov and Vladislav Berketov—to one and half years imprisonment for violation of article 282(2). The court dropped the charges brought under article 115, which were determined to be covered by the incitement provisions.²⁶⁵

San Marino

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any regular public reporting specifically on the incidence of violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of San Marino does not contain any general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Serbia

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Serbia does not explicitly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Slovak Republic

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the police in 2006 reported on 188 registered criminal offenses motivated by racial, ethnic, or other intolerance. The police reported on 121 such offenses in 2005.²⁶⁶

Despite the fact that legal and administrative provisions are in place for police to record the racial motivation as a factor in crimes, the FRA reports that there is often unwillingness to qualify crimes as racially motivated crimes, especially at lower levels of the police.²⁶⁷

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X					

Bias as an Aggravating Factor in Specific Common Crimes

The Criminal Code of the Slovak Republic, which entered into force on January 1, 2006, contains provisions on aggravating circumstances in the commission of certain crimes determined by law. Section 140 of the code deals with “special biases” and stipulates that crimes committed with such biases result in the imposition of higher penalties. Section 140(d) refers to motives based on “national, ethnic or racial hatred or hatred because of skin color.” These special bias provisions apply to the following sections of the Criminal Code.

Section 144(2)(e)—premeditated murder;

Section 145(2)(d)—murder;

Section 147(2)(d)—manslaughter;

Section 155(2)(c)—serious bodily injury;

Section 156(2)(b)—moderate bodily injury;

Section 359—violence against a group of inhabitants and against an individual. More specifically, this section deals with persons who threaten a group of inhabitants with death, serious bodily harm, or other serious harm or with causing of extensive damage, or who use violence against a group of inhabitants.

Section 360(2)(d)—serious threats. This section deals with persons who threaten others with death, serious bodily harm or other serious harm, or with causing extensive damage to an extent which may raise justifiable fears.

Section 365(2)(b)—desecration of a place of eternal rest. This section deal with persons who destroy, damage or desecrate a grave, an urn with the ashes of a deceased person, a memorial or a gravestone, or who destroy or damage a burial site or other place of eternal rest, or persons who commits other abusive or dishonoring, indecent act.

Section 366(2)(b)—Desecration of a dead body. This section deals with persons who abuse or desecrate a dead body, or without lawful authority carry out the exhumation of ashes, take ashes away from the burial site, or dispose with ashes against a generally binding legal act.²⁶⁸

Little was done to implement criminal code provisions concerning bias-motivated violence before 2006, and it remains to be seen how these new provisions will be implemented. In its Third Report on Slovakia, the European Commission against Racism and Intolerance (ECRI) describes a “problematic” situation of a consistently high level of violence and inertia in the criminal justice system:

ECRI notes that governmental statistics show that the number of persons convicted of racially-motivated crimes has decreased over the period 1996-2001. At the same time, numerous sources continue to report acts of violence, committed mainly against members of the Roma minority but also against members of other groups, on the part of skinheads and others, and, most alarmingly, on the part of police officers. It is widely-reported that the number of cases brought, and the small number of successful outcomes in court, is greatly under-representative of the real scale of racist crime in the country today.²⁶⁹

Slovenia

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the police in 2006 reported on 13 investigations into alleged violations of incitement to ethnic, racial, or religious hate, discord or intolerance. The police reported on 8 such investigations in 2005.²⁷⁰ The Slovenian authorities do not report on bias motivations in violent common crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Slovenian Criminal Code does not expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Although there is no express mention of racism or other forms of bias as an express aggravating circumstance, a racist motive can be considered by a judge in the determination of a sentence. According to the September 2006 official response of the Slovenian government to Human Rights First's hate crime questionnaire, general provisions on aggravating circumstances as stipulated in Article 41 of the criminal code can be used in cases of bias-motivated violence, even though there is no express reference to such motives in those provisions.²⁷¹

While this may be the case in principle, these provisions do not appear to be applied in practice in cases of bias-motivated violence. In its Third Report on Slovenia released in February 2007, the European Commission against Racism and Intolerance (ECRI) noted that "data on whether and to what extent racial motivation is taken into account by courts pursuant to Article 41 is not available at present," but that "ECRI has been informed of a very limited number of cases since its last report where the criminal justice system has dealt with racially-motivated offences. ECRI notes that in none of these cases was the offence finally found to have been committed on racist grounds..."²⁷²

Instead of relying on these general provisions, ECRI recommends the introduction of provisions "establishing racist motivation as a specific aggravating circumstance in sentencing" on the grounds that such provisions "would not only allow for racist offences to be better recognized and punished, but also enable better monitoring of the response of the criminal justice to racially-motivated offences."²⁷³

Spain

Systems of Monitoring and Reporting

What Data is Collected?

According to the Fundamental Rights Agency (FRA), the authorities in Spain do not provide any data on hate crimes.²⁷⁴

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X	X	X	X

Bias as an Express General Aggravating Factor

The Criminal Code of Spain contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. In particular, article 22.4 defines as aggravating circumstances situations in which a crime is committed on racist, antisemitic, or other discriminatory grounds related to the victim's ideology, religion, or beliefs or his/her belonging to an ethnic group, race, nation, gender or sexual orientation or his/her suffering from an illness or handicap.²⁷⁵

In its Third Report on Spain, the European Commission against Racism and Intolerance (ECRI) expressed concern that these criminal law provisions were rarely applied.²⁷⁶ ECRI reported that

In particular, civil society organizations have expressed concern at the non-application of Article 22(4) of the criminal code even in cases when such motivation was reportedly easily detectable. It has been pointed out that problems in the implementation of these provisions can be found at all stages of the criminal justice system: from the police, who reportedly sometimes fail to record the racist dimension of the offences reported to them by the alleged victims, to the prosecutors and judges. In this respect, ECRI understands that there are no specialized units within the police and the Office of the Prosecutor to deal with racially-motivated crime, incitement to racial discrimination, hatred and violence and associations promoting racism, as there are for other types of crimes. More generally, ECRI has not been made aware of particular initiatives undertaken by the Spanish authorities since its second report aimed at improving the implementation of the criminal provisions mentioned above, although it notes that some civil society organizations plan on training law enforcement officials on these issues. The Spanish authorities have also reported that specific training sessions on hate crimes are being introduced for professors and students at training centers for law enforcement officials.²⁷⁷

As a result, ECRI recommends that the Spanish authorities provide further training on this subject to all actors involved in the criminal justice system and raise awareness of the need to actively counter racially-motivated crime.²⁷⁸

Sweden

Systems of Monitoring and Reporting

What Data is Collected?

The Swedish Security Police (Säpo) collect data on racially motivated/xenophobic crimes, antisemitic crimes, homophobic crimes, and on what is described as the “White Power” scene.²⁷⁹ Data is collected from local police districts, and reported through a computerized reporting system (RAR). Although there are no special codes to register hate crimes on police forms, the data is “put through a computer program that checks for key words related to racist/extreme rightwing activity,” and then published in an annual report.²⁸⁰ The Fundamental Rights Agency (FRA) has noted that “it is possible for local police to make their own notes about crimes in RAR, and if there is suspicion of racial motivation this should be noted, as it could influence the sentencing.”²⁸¹

Statistics for 2005 included 2,383 reported incidents with xenophobic or antisemitic motives.²⁸² In 2006, the Swedish National Council for Crime Prevention (Brå) took over the publication of hate crime statistics from the Swedish Security Service (Säpo). Statistics continued to be released to the public on an annual basis, with 3,259 hate crimes reported in 2006. The Swedish National Council has itself cautioned, however, that hate crimes are very much under-reported and that for this reason statistics do not reflect actual number of hate crime offences in Sweden.²⁸³

The Fundamental Rights Agency (FRA) reports that the number of reported incidents related to racist crime has been somewhat stable in Sweden during the years 2000 to 2005. At the same time, in the period from 2002 to 2004 the number of verdicts involving racially related crimes increased by 40 per cent. This could indicate a firmer response to racist crime by the criminal justice authorities.²⁸⁴

What Does the Data Say about the Bias Motivations and/or Victim Groups?

Hate crimes are divided into four categories: crimes with a xenophobic, antisemitic, homophobic, or “White Power” ideological motivation. In 2006, out of a total of 3,259 reported hate crimes, the motive was xenophobia in 2,189 reports. There were 134 reports with an antisemitic motive, 684 reports with a homophobic motive, and 252 reports with an Islamophobic motive.²⁸⁵ According to a 2005 FRA report, “police do not routinely record the ethnicity or nationality of a victim. However, the computerized recording system asks whether the offender is Swedish or not, and the ethnicity of the victim may also be entered at the discretion of the police if it is of significance in describing a crime.”²⁸⁶

The Swedish National Council for Crime Prevention was commissioned in July 2006 by the government to chart violence against individuals with physical disabilities, in consultation with the Swedish Disability Ombudsman and the Authority for the Co-ordination of Disability Policy. The purpose of the assignment is to provide increased knowledge about the problem of violence against people with disabilities. Preliminary results are expected to be made available in November 2007.²⁸⁷

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
		X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X			X

Bias as an Aggravating Factor in Specific Common Crimes

The Criminal Code of Sweden expressly enables the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing. Although this is not a general provision covering all crimes, section 2(7) of chapter 29 of the Criminal Code provides for the racist motives of offenders to be taken into account as an aggravating circumstance when sentencing in cases of criminal acts such as assault, unlawful threat, molestation, and inflicting damage.

The aggravating circumstances provisions apply when “a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, color, national or ethnic origin, religious belief or other similar circumstance.” As of January 1, 2003, these provisions have been amended to include bias due to sexual orientation.²⁸⁸

The European Commission against Racism and Intolerance (ECRI) stated in its Third Report on Sweden that “although ECRI has been informed that judges use this provision in practice, and that, when they do so, they are under an obligation to state it in the sentence, it is not clear to ECRI the extent to which these provisions have been used since ECRI’s second report.”²⁸⁹

The Office of the Ombudsman against Discrimination on the grounds of sexual orientation has engaged in monitoring of cases in which enhanced penalties have been handed down on the basis of chapter 29, section 2(7) for crimes committed with a homophobic motive. Examples of some of the cases profiled on the website include the following:

- Two men, 22 and 26 years old, were charged with two accounts of arson, consisting in throwing fire bombs into a building used by the local branch of the Swedish Federation for Lesbian, Gay and Transgender Rights (RFSL) in the town of Piteå in northern Sweden. They were both convicted of arson and were sentenced to 4 ½ years in prison, the Court taking into special account the homophobic motives of the perpetrators as an aggravating circumstance. (District Court of Luleå, ruling 31 January 2006 in case no B 2737-05.)
- A young man was accused of having attacked, together with another unidentified perpetrator, another man in a Stockholm suburb. Shouting homophobic slurs the attacker allegedly had knocked the man over from behind, beating him hard at the back of his head and then continuing to kick him while he was laying defenseless on the ground, causing him unconsciousness, bruises and fractures to his facial bones. The man denied the allegations but the court found him guilty and took into account the homophobic motive as an aggravating circumstance. Because of his youth the perpetrator was sentenced to 2 months in prison followed by probation under surveillance. (District Court of Huddinge, ruling 29 November 2005 in case no B 2263-05.)
- An openly gay student was assaulted and hit in the face several times by another student while acting as host at a student party. The perpetrator, who was found guilty also of other crimes, was sentenced to three months in prison. The court specifically took into account the homophobic nature of the assault as a statutory aggravating circumstance. (District Court of Kalmar, ruling 26 May 2005 in Case No. B 1621-05.)
- A lesbian couple was violently attacked in the street by three young men. All three men were convicted of assault and battery and sentenced to prison. Two of the men had their prison sentences increased by the Court of Appeal. The court specifically took into account the homophobic nature of the assault as a statutory aggravating circumstance. (Court of Appeal for the Regions of Skåne and Blekinge, ruling 25 April 2005 in Case No. B 463-04.)²⁹⁰

Switzerland

Systems of Monitoring and Reporting

What Data is Collected?

The Swiss authorities report on criminal code offenses of hate speech and discrimination as well as their prosecution, but do not provide data expressly on violent hate crimes.

In response to a Human Rights First survey on hate crime statistics in 2004, Swiss authorities responded with detailed information on crimes prosecuted under Article 261bis of the Criminal Code, which defines the crime of racial discrimination, but does not cover crimes of violence or direct incitement to violence. These statistics were provided for the 1995-2002 period that were broken down according to victim groups, perpetrator groups, and type of crime, accompanied by a compilation of all of the sentences pronounced.²⁹¹

As violent hate crimes are not defined as specific penal code offenses, such crimes are not differentiated in overall statistics on common crimes such as assault or threatening behavior.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Switzerland does not explicitly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Tajikistan

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Tajikistan contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 62 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(f) “a motive of locality, national, racial, or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Several other articles provide specific penalty enhancements for crimes committed with those same motives. Article 96 punishes murder with incarceration ranging from eight to fifteen years. Article 97(2)(k) defines murder “with a motive of locality, national, racial, or religious hatred...” as punishable “by incarceration for fifteen to twenty years, with property confiscation, or by life imprisonment, or by the death penalty.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 110 (Deliberate infliction of grievous bodily harm), article 111 (Deliberate infliction of moderate bodily harm) and article 117 (Torture). Higher penalties are established for each of these crimes when committed “with a motive of locality, national, racial, or religious hatred...”

The Criminal Code also provides in article 243 for more severe punishment for the desecration of cemeteries when motivated by ethnic, racist or religious animus.²⁹²

Turkey

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence: None

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes

Bias Types Covered by Provisions on Aggravating Circumstances: N/A

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other

The Criminal Code of Turkey, newly adopted in September 2004, does not expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.²⁹³

Turkmenistan

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Turkmenistan contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 58 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(f) “a motive of national, or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.

Bias as an Aggravating Factor in Specific Common Crimes

Several other articles provide specific penalty enhancements for crimes committed with those same motives. Article 101 punishes murder with incarceration ranging from eight to fifteen years. Article 101(2)(1) defines murder “with a motive of social, national, racial, or religious hatred...” as punishable “by incarceration for ten to twenty years, or by the death penalty.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 107 (Deliberate infliction of grievous bodily harm), article 108 (Deliberate infliction of moderate bodily harm) and article 113 (Torture). Higher penalties are established for each of these crimes when committed “with a motive of social, national, racial, or religious hatred...”¹²⁹⁴

Ukraine

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Ukraine contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 67 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(c) “a motive of racial, national, or religious hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties.²⁹⁵

In its Second Report on Ukraine, the European Commission against Racism and Intolerance (ECRI) noted that the terms of article 67 are not included in the list of circumstances that a judge is bound to consider as aggravating. In considering such circumstances, special procedures apply: “when finding such motivation not to be aggravating, the judge has to provide the reasons for this decision in the judgment.”²⁹⁶

According to the Union of Council of Jews in the former Soviet Union (UCSJ), there has been only one conviction in a hate crime case in the Ukraine’s post-Soviet history. In that case, which involved an attack by a group of neo-Nazis on a synagogue, the main organizer of the attack was released early from prison.²⁹⁷

As concerns the Roma, a minority group particularly vulnerable to racist violence, the European Roma Rights Center (ERRC) concluded in its December 2006 report that “police throughout Ukraine have failed to protect Roma from extreme forms of violence, including pogroms. When such acts have taken place, police and prosecutors and judicial authorities have failed to provide due remedy to victims. These failures are long-standing.”²⁹⁸

More generally, the ERRC attributes violence against Roma to a combination of factors, including: an inactive administrative and governing sector tolerant of expressions of hatred, a public promoting racist discourse, police officials demonstratively involved in human rights abuses of Roma, and impunity for perpetrators.²⁹⁹

On September 13-14, 2007, over 30 Ukrainian police officers took part in a course on recognizing and responding to hate-motivated crimes as part of the OSCE Office for Democratic Institutions and Human Rights’ Law Enforcement Officer Program on Combating Hate Crime.³⁰⁰

United Kingdom

Systems of Monitoring and Reporting

What Data is Collected?

There are three main official sources of statistics providing data on the incidence and prevalence of hate crimes. The Home Office publishes police data on incidents reported to and recorded by the police in England and Wales. The Crown Prosecution Service (CPS) produces an annual report on “racist incident monitoring data,” also limited to England and Wales. These systems disaggregate offenses based upon the self-identified characteristics of the victim and cover racist, religious-based (“faith-based”), and homophobic crimes. Coverage is not equal across police jurisdictions, with the most detailed information coming from London’s Metropolitan Police Service. The Crown Prosecution Service provides statistics on prosecution decisions and outcomes in cases of racist and faith-based hate crimes, and has also recently published data on hate crimes perpetrated against lesbian, gay, bisexual and transgender (LGBT) persons. Additionally, the British Crime Survey, a national victimization survey, registers incidents of hate crimes in England and Wales that may not have been reported to the police.³⁰¹

Hate crimes in Northern Ireland and Scotland are documented independently.

National Police Data

The Home Office reports systematically on police statistics covering racist incidents and offenses—a requirement under Section 95 of the Criminal Justice Act of 1991.³⁰² The Home Office reported that during the 2004/2005 reporting year, 57,902 racist incidents were recorded by police (there were 54,286 recorded cases in 2003/2004) in England and Wales, indicating a 7 percent increase over the previous year.³⁰³ Recorded *racist incidents* have been rising continuously between 1997/1998 and the years 2001/2002, at which point there was a slight decrease. There were 37,028 *racially aggravated offenses* recorded in 2004/2005. This is a 6 percent increase over the 34,996 racially aggravated offenses registered in the year 2003/2004. Sixty-one percent (61 percent) of these were cases of harassment.³⁰⁴

The (London) Metropolitan Police Service Data

Detailed statistics are available from the (London) Metropolitan Police Service. The Metropolitan Police alone reported 11,799 incidents of racist and religious hate crime and 1,359 incidents of homophobic hate crime in the 12 months to January 2006.³⁰⁵ Of the racist crimes recorded in London, 926 were cases of common assault, 782 were woundings, and 1,291 cases involved criminal damage.³⁰⁶ A decline in registered hate crimes—those reported to and registered by the police—appears to be a trend in the capital.³⁰⁷ For the sixth year in a row, the number of racist incidents reported to the police declined. According to the Metropolitan Police, racist crime in the capital fell 11.7 percent from 12,816 in the April 2004/March 2005 period to 11,322 from April 2005 to March 2006. Since 2000 there has been a decline of more than 37 percent in the number of racially motivated incidents in London that were reported to the police.³⁰⁸

Prosecution Data

The Crown Prosecution Service (CPS) publishes an annual report on racially and religiously aggravated crime providing both local and national statistics.³⁰⁹ The CPS has kept records since 1996. Since that time the number of cases of racist crimes that have been prosecuted has more than doubled and there continues to be a steady increase every year.³¹⁰

In the Crown Prosecution Service’s latest Racist and Religious Incident Monitoring Report 2005—2006, the number of cases received from the police in which an arrest was made has steadily increased: 4,728 in 2003-2004, 5,788 in 2004-2005, and 7,430 in the period ending March 2006, a 28 percent rise over the previous year. The total number of charges increased by 26 percent from 2004-2005 (8,706) to 2005-2006 (10,940). There was sufficient evidence to prosecute 82 percent or 6,123 cases in 2005-2006.³¹¹

The British Crime Survey

The British Crime Survey (BCS), is based on interviews with a wide sample of people and identifies patterns of victimization and crimes, including incidents and crimes that may not have been reported to police. The numbers of racist incidents reported in the British Crime Survey are therefore much higher than the incidents reported to and recorded by the police. The Survey asks respondents if they or a member of their household over 16 years of age have been the victim of a crime in the previous year, including racially motivated crimes. The most recent survey found that one in six of all incidents of criminal victimization against those of Asian and Afro-Caribbean origin was believed by the victim to be racially motivated.³¹² In 2004/2005 the British Crime Survey revealed that racist incidents fell to 179,000 from a high of 206,000 in 2003/2004.

What Does the Data Say about the Bias Motivations and/or Victim Groups?

While the authorities have made greater efforts in recent years to disaggregate national statistics to provide a breakdown of the victim groups, reporting is still most comprehensive on “racist” incidents and offenses.

The statistics of the London Metropolitan Police Service offer a clearer picture of the nature of hate crimes that do those of other regions. Antisemitic offenses and incidents are considered to be racist hate crimes and are registered separately from other crimes of bias. In the years 2005-2006 and 2006-2007, the Metropolitan Police reported stability in the number of antisemitic hate crimes and incidents. Antisemitic incidents registered decreased 3.5 percent from 259 (2005/2006) to 250 in (2006/2007), while more serious antisemitic offenses increased 1.5 percent from 197 in 2005/2006 to 200 (2006/2007).

Hate crimes against the lesbian, gay, bisexual and transgender (LGBT) population occur or are reported less frequently than racist hate crimes. While the police registered a 7.5 percent increase from 1,245 to 1,346 homophobic crimes between 2003/2004 and 2004/2005, there was a 3.9 percent decline, from 1,346 to 1,294 crimes, in 2005/2006.³¹³

In March 2006, the Metropolitan Police began registering Islamophobic crimes separately from religiously motivated hate crimes (termed “faith-based” hate crimes). If the figures for 2006/2007 from these two groups are combined (188 Islamophobic hate crimes and 417 faith hate crimes), the total number of registered faith and Islamophobic hate crimes (605) is slightly lower than that recorded in the 2005/2006 (829).³¹⁴

With respect to prosecutions nationwide of specific types of hate crimes, the number remains small in cases of religious-based hate crimes. During the reporting year 2005—2006, 43 cases were recorded and prosecuted as religiously aggravated incidents. This reflects a 26.5 percent increase over the 2004-2005 data. Of these 43 cases, 41 defendants (95.3 percent) were prosecuted—an increase over the 79.4 percent prosecuted the previous year. In spite of progress made by the Crown Prosecution Service, there is a large discrepancy between figures recorded by the police and those cases actually prosecuted by the CPS. Police figures suggest that hundreds of religion-based hate crimes are being committed, yet few ever reach the courts. This may be due to the fact that victims or witnesses report the crimes but those responsible are never identified, so that many crimes such as the desecration of cemeteries or attacks on mosques go unsolved. It is also possible that acts recorded initially as hate incidents are prosecuted as ordinary offences.

The CPS issued a public policy statement on homophobic crime in 2002 spelling out how the Service would subsequently deal with crimes with a homophobic element.³¹⁵ Since then, CPS statistics on the prosecution of homophobic crimes have shown a steady rise from 103 in 2003/2004 to 317 in 2004/2005, with numbers doubling yearly in 2005/2006 to 600. For three years in a row the conviction rate remained at 71 percent.

Northern Ireland

The Police Service of Northern Ireland in its latest annual survey reported 746 crimes of racist violence there between April 1, 2005 and March 31, 2006, a 17.7 percent rise over the same period the previous reporting year. Nearly half of the incidents registered (47 percent) were crimes of violence against individuals, including 25 crimes of threat or conspiracy to murder, 238 assaults, 69 cases of intimidation or harassment, and 351 incidents of criminal damage.³¹⁶

The Northern Ireland statistics also for the first time provided a measure of religion-based crimes, recording 78 offences (57 percent of them violent crimes), and sectarian offences, recording 1,470 offences (with 47.6 violent offences). Sectarian crimes relate to ongoing tensions between the majority Protestant communities and the

Catholic minority.³¹⁷ A report by the anti-racism magazine *Searchlight* highlighted the new statistics, while stressing both the rise in the number of incidents and “the growing ferocity and systematic nature of these hate crime” in the same areas previously torn by violence between Protestant and Catholic communities.³¹⁸

Hate crime statistics published by the Police Services of Northern Ireland for the 2005/2006 monitoring year covered 38 incidents of disability-based hate crime, including 21 assaults and woundings.³¹⁹ The proportion of violent crime in disability-based offenses, 63.2 percent, was higher than in crimes classed as racist (45.7 percent of 746), faith/religion (57.7 percent of 78 crimes), or in crimes classed as sectarian (47 percent of 1,470 offences), and exceeded only in homophobic crimes (68.2 percent of 148 offences). There were 33 offences of wounding or assault, 4 of threat or conspiracy to murder, and 27 of criminal damage.³²⁰

Scotland

In Scotland in 2005/2006, 5,124 racist crimes were recorded by police. This indicates an increase of 588 incidents from fiscal year 2004/05. Two specific crimes—racially aggravated harassment and racially aggravated conduct—accounted for over half of all racist related crimes.³²¹ In 2005/06, there were 6,439 registered incidents, which encompassed racist related crimes. This is as compared with 4,556 in 2003/2004 and 5,732 in 2004/2005.³²²

The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
X	X	

Bias Types Covered by Provisions on Aggravating Circumstances

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X		X	

Definition of Hate Crime

The British Home Office defines hate crime as an incident, constituting a criminal offence, which is perceived by the victim or any other person as being motivated by the offender’s prejudice or hatred based on the victim’s race, color, ethnic origin, nationality or national origins, religion, sexual orientation or disability. Hate crimes include assaults, criminal damage, public order offenses, and harassment and can take any of the following forms:

- “physical attacks—such as physical assault, damage to property, offensive graffiti, neighbor disputes and arson”;
- “threat of attack—including offensive letters, abusive or obscene telephone calls, groups hanging around to intimidate and unfounded, malicious complaints”;
- “verbal abuse or insults—offensive leaflets and posters, abusive gestures, dumping of rubbish outside homes or through letterboxes, and bullying at school or in the workplace.”³²³

United Kingdom law defines some forms of bias-motivated violence as a separate offense and includes provisions by which prosecutors can request an enhanced penalty in cases where common crimes have been motivated by bias.

Bias-motivated Violence as a Specific Offense

The development of hate crime legislation can trace its roots to the Crime and Disorder Act 1998 which created racially-aggravated offences in England and Wales.³²⁴ The Anti-Terrorism, Crime and Security Act 2001 amended the Crime and Disorder Act to expand the range of offenses to include “religiously aggravated offenses.”³²⁵

On the basis of these two acts, the new offenses in England and Wales are as follows: racially or religiously aggravated assault, racially or religiously aggravated criminal damage, racially or religiously aggravated public order offenses, and racially or religiously aggravated harassment. In Scotland, the Act created the new offense of racially-motivated harassment.

For each of these new offences, the maximum penalty is higher than the maximum for the same basic offence without the element of racial or religious aggravation. Where the maximum sentence is life imprisonment, there is no racially or religiously aggravated alternative. The court is, however, required to state openly that the offense was so aggravated.³²⁶

Bias-motivated Violence as a General Aggravating Factor

The Criminal Justice Act 2003 contains provisions stipulating enhanced penalties for offenses that are racially or religiously aggravated, with the exception of racially or religiously aggravated assaults, criminal damage, public order offences, which are treated as separate offenses. Article 145 states that “if the offense was racially or religiously aggravated, the court a) must treat that fact as an aggravating factor, and b) must state in open court that the offense was so aggravated.”³²⁷

The Criminal Justice Act similarly provides for enhanced penalties for aggravation related to disability or sexual orientation. Article 146 states that if the offense is “motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation, or by hostility towards persons who have a disability or a particular disability, then the court must treat the fact that the offense was committed in any of those circumstances as an aggravating factor, and must state in open court that the offense was committed in such circumstances.”³²⁸

For example, for the biased-motivated murder of a young gay man in London in 2005, the judge handed down a sentence of life imprisonment to two defendants.

- Thomas Pickford and Scott Walker were sentenced to life imprisonment with a minimum tariff of 28 years for the murder of Jody Dobrowski on Clapham Common, South London, on October 15, 2005. They had pleaded guilty at an earlier hearing. It is believed that this is the first instance where a judge has been able to use motivation on the basis of sexual orientation as an aggravating factor when sentencing for murder. Jaswant Narwal, District Crown Prosecutor at the Old Bailey Trials Unit said: “This was a truly shocking crime. Jody was beaten to death for no other reason than being gay. Pickford and Walker have taken the life of a young man who we were told was gentle and enthusiastic about life, loved by friends and family... [They] were determined to attack a gay man. There was no doubt that this was a homophobic killing and we treated it as such from the outset. If the defendants had not pleaded guilty we had ample evidence to show this motive.”³²⁹

The prosecution of disability hate crimes is relatively new. In February 2007, the Crown Prosecution Service developed and published a policy to explain how it will prosecute cases of disability hate crimes. In drawing up the policy, the CPS invited representatives of disability organizations to join a steering group, where they could offer their expertise and views, and also consulted with disabled people. Courts can pass higher sentences when the CPS prosecutes an offense as a disability hate crime.³³⁰

- On July 5, 2006, two men and three adolescents humiliated, tortured, and killed Steven Hoskin, a 39-year old mentally-disabled man. Hoskin had an IQ in the bottom 0.4 per cent of the population and was described as being “a child in a man’s body.” After having beaten and burned him with cigarettes, the perpetrators forced Hoskins to swallow 70 paracetamol tablets, subjected him to verbal abuse and forced him to fall 100 feet to his death from a viaduct. This followed months of physical and mental torture. Three persons were sentenced for Hoskin’s death. Darren Stewart was sentenced to life with a minimum of 25 years for murder, 17-year old Sarah Bullock was sentenced to a minimum 10 year prison sentence for murder and Martin Pollard, 21, convicted of manslaughter, was sentenced to a minimum of eight years. The court recognized that Hoskin was a vulnerable victim, and found the behavior of the defendants abhorrent, but it is unclear if the penalty was enhanced as a result of the hate crime bias.³³¹

Northern Ireland

Article 2 of the Criminal Justice (No. 2) Northern Ireland Order 2004 on “increase in sentence for offenses aggravated by hostility” states that “if the offense was aggravated by hostility, the court shall treat that fact as an aggravating factor (that is to say, a factor that increases the seriousness of the offense) and shall state in open court

that the offense was so aggravated.” This article deals with offenses that are aggravated by hostility based on the victim’s race, religion, sexual orientation, or disability.³³²

Scotland

Article 74 of the Criminal Justice (Scotland) Act 2003 on “offenses aggravated by religious prejudice” states that “an offense is aggravated by religious prejudice if ... the offense is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group. Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.” The act further states that “where the sentence in respect of the offense is different from that which the court would have imposed had the offense not been aggravated by religious prejudice, the court must state the extent of and reasons for that difference.”³³³

Prosecution of Hate Crimes

The Crown Prosecution Service (CPS) is a national organization consisting of 42 areas, each of which is headed by a Chief Crown Prosecutor and corresponds to a single police force area. One area covers the Metropolitan Police Service and the City of London.³³⁴ Within each CPS area there is a racism specialist. A more recent development has been to introduce also coordinators to deal with homophobic crimes, and there is now at least one in each CPS area.³³⁵ The CPS has made a commitment to prosecute hate crimes.³³⁶

Duty prosecutors are stationed in police stations and are responsible for deciding the charges against an accused. Weighing upon the decision to file a charge, a prosecutor will examine if there is enough evidence and if the charge is in the public interest. It is the responsibility of the duty prosecutor to uncover whether or not evidence points to a bias-motivated crime. For the Crown Prosecution Service to successfully prosecute a case as a racially or religiously aggravated offense, it must first prove that the offender committed one of the basic offenses of assault or wounding, harassment, damage, or public order offenses (such as causing people to fear harassment or violence) and then prove that the offense was racially or religiously aggravated. This can be done in one of two ways: by proving that “the accused person either demonstrated hostility to the victim because the victim belonged to or was thought to belong to a particular racial or religious group—e.g. using racist or religiously abusive language when assaulting someone; or was motivated by hostility towards the victim for the same reasons—e.g. the accused admitting to the police that he threw a brick through an Asian shopkeeper’s window because he disliked Asians.”³³⁷

Witness Care Units, serviced by the police and CPS, have been introduced in police stations. Their goal is twofold—to keep victims informed of the specifics of their case and the whereabouts of the defendant—and to provide victims and witnesses with better information in order to increase the likelihood that they will appear for trial.³³⁸

In order to engage minority communities and increase the likelihood of reports and successful prosecutions, the CPS introduced an initiative to meet with Muslim communities in eight areas in England and Wales during 2006. The first meeting took place in London in February 2006 and was followed by meetings in Birmingham, Cardiff, and Batley (West Yorkshire). These “Listening, Reassurance and Information” evenings consisted of presentations from CPS prosecutors dealing with incitement to racial hatred, racially and religiously-aggravated crime, and counterterrorism. The meetings concluded with a discussion on the issues raised.³³⁹

The CPS has the authority to continue a case in the public interest even if the victim does not want the case to be prosecuted. In cases where the victim has withdrawn support for the prosecution of a racially or religiously aggravated offense, the CPS will determine whether or not it has sufficient evidence, the crime is serious, and/or there is risk that the accused will re-offend.³⁴⁰

While plea bargaining does not officially exist, it does happen in practice.³⁴¹ In such an event, cases which should be prosecuted as hate crimes (with its aggravated element) may be prosecuted only as common offenses (battery, wounding, arson). This may be due to a number of reasons, including the fact that it is easier to get a conviction for a common crime than for a hate-motivated crime. The director of the Community Security Trust, for example, has observed that prosecutors and judges are often inclined to drop the aggravating element and prosecute as a simple crime as a matter of expediency. A case of ordinary battery may take a few hours to prosecute whereas a racial crime may take on average one to three days.³⁴² Another reason for prosecuting cases as common crimes rather than hate crimes is that victims are often unwilling to testify at trial for fear of reprisal from the offender or exposure of their sexual orientation (if that is at issue in the case). In these cases, the CPS may introduce special measures to protect the victim’s or witness’ identity.³⁴³ If the aggravated element is dropped, the CPS must contact the victim to

explain the rationale and the victim, if dissatisfied, may request a meeting with the prosecutor. Although decisions not to prosecute or reduce a charge are rarely overturned, letters sent to and meetings with victims are intended to fully explain the CPS' reasons for not proceeding.³⁴⁴ Such a decision can be disappointing in light of the fact that victims have indicated that they would rather see a crime prosecuted as a hate crime—even if it results in an acquittal—than to see the case downgraded to a common crime without the aggravated (racial, faith hate or homophobic) element—even with a conviction.³⁴⁵

United States

Systems of Monitoring and Reporting

What Data is Collected?

Statistics on hate crimes and incidents are collected at both the state and federal levels in the United States, by law enforcement authorities and by nongovernmental organizations.

Federal Hate Crime Statistics

The Hate Crime Statistics Act of 1990 (28 U.S.C. 534) requires the Attorney General of the Department of Justice to collect data “about crimes that manifest prejudice based on race, religion, sexual orientation, or ethnicity.”³⁴⁶ The director of the Federal Bureau of Investigation is the principal executor of the mandate for data collection; the FBI director is ultimately responsible for “developing the procedures for implementing, collecting, and managing hate crime data” and the official program falls within the purview of the Uniform Crime Reporting (UCR) program.³⁴⁷

The Hate Crime Statistics Act (HCSA) was amended in 1994 with the passage of the Violent Crime and Law Enforcement Act, which obliged the FBI to collect statistics on bias crime based on “disabilities,” both physical and mental. The FBI’s collection of data on the latter crimes commenced on Jan 1, 1997. The Church Arson Prevention Act of 1996 removed the clause of the 1990 HCSA by which it was to lapse in 1995 and made the collection of hate crime data a permanent part of the FBI’s Uniform Crime Reports program.³⁴⁸

The FBI establishes guidelines to distinguish hate crimes from ordinary offenses and prepares annual reports on the incidence of hate crimes. The last annual report on Hate Crime Statistics was released in November 2007 and covers hate crime data in 2006.

Additionally, the United States Department of Education collects and publishes statistics on bias crimes occurring on college and university campuses. Since 1998, after a congressional amendment to the Higher Education Act, the Department of Education has been collecting information on campus crime motivated by bias towards a person’s race, religion, sexual orientation, national origin, and disability from the country’s 6,000 post-secondary institutions.³⁴⁹

Participation of Law Enforcement Agencies in Reporting

As concerns data collection on hate crimes, the FBI Uniform Crime Reports program’s greatest weakness is the non-participation of law enforcement agencies in many states, since the participation in the UCR hate crime data collection program is voluntary. Of the 17,546 agencies that participate in the Uniform Crime Reports program, 12,620 participated in the UCR hate crime reporting system in 2006.³⁵⁰ 16.7 percent of participating agencies—2,105—reported hate crimes totaling up to the 7,722 incidents reported to the FBI in 2006. The remaining 83.3 percent of participating agencies reported zero hate crimes occurring in their jurisdictions during the 2006 reporting year.³⁵¹

State Profiles

Twenty-eight states and the District of Columbia are mandated to collect and publish annual hate crime statistics. State authorities in California, for example, have published annual reports on bias crimes since 1995. Section 13023 of the California Penal Code obliges the state’s Attorney General to submit an annual report to the state legislature on bias crimes. The 2006 report “Hate Crimes in California” includes data from “all police agencies and district attorney offices.”³⁵² The report tabulates data on hate crime “events” and hate crime “offenses,” defining events as: “an occurrence where a hate crime is involved. There may be one or more suspects involved, one or more victims targeted, and one or more offenses involved for each event.”³⁵³ The Attorney General also requests all state and city district attorneys to report on the number of hate crime complaints filed and prosecutions secured. In 2006, out of the 1,036 reported hate crimes, 363 cases were referred to prosecutors and 140 hate crime convictions occurred.³⁵⁴

The state of Florida also collects comprehensive statistics on hate crimes and releases an annual report on its findings. The office of the Attorney General has released such reports since 1994. Under the Hate Crimes Reporting Act (section 877.19 of Florida Statutes), law enforcement agencies are obliged to “report hate crimes to the Florida Department of Law Enforcement (FDLE).”³⁵⁵ While the annual hate crimes report tabulates data on bias offenses on the basis of race, religion, national origin/ethnicity, sexual orientation, age, and disability, it does not further disag-

gregate the data to identify the specific racial, ethnic, national origin, or sexual orientation bias motivating reported crimes. Of the 427 police agencies in Florida participating in the Uniform Crime Reporting program, 96 agencies reported hate crimes in 2005.³⁵⁶

What Does the Data Say about the Bias Motivations and/or Victim Groups?

Federal Hate Crime Statistics

The FBI disaggregates hate crime statistics to include incident, offense type, victim type, number of offenders, race of offenders, and location type. Of the 7,720 single-bias incidents reported to the FBI in 2006, 51.8 percent were motivated by a racial bias, 18.9 percent were a result of a religious bias, 15.5 percent were a result of a sexual-orientation bias, 12.7 percent were motivated by an ethnicity/national origin bias, and just 1 percent was motivated by a bias towards a victim's disability³⁵⁷ (see Table 1).

State Statistics

At the state level, twenty-eight states and the District of Columbia have data collection statutes, with most providing for detailed statistics on crimes motivated by race, religion, or ethnicity. Of the twenty-eight states plus the District of Columbia that have statutory requirements to collect data, sixteen states and the District of Columbia produce statistics on bias crimes based on sexual orientation, while nine states including the District of Columbia include statistics on bias crimes based on gender.

In Florida, for example, hate crime data is disaggregated to include offense type, location, bias motivation, victim type, number of offenders, and the apparent race of the offenders. The "incidents and offenses" category is further broken down to included crimes motivated by bias towards a person's race, religion, sexual orientation, ethnicity/national origin, and disability. In the offenders category, state and local authorities providing the data to the FBI can further identify the "number of offenders, and, when possible, the apparent race of the offender or the offenders as a group."³⁵⁸

In California, hate crime data is disaggregated to include events, offenses, offense type, bias motivation, type of crime, location, and type of victim.³⁵⁹

Monitoring by Nongovernmental Organizations

In the past, hate crime statistics have been compiled by a range of nongovernmental organizations in the United States. Among those that have compiled independent data are: the American-Arab Anti-Discrimination Committee, Anti-Defamation League, the American Association of Persons with Disabilities, the Council on American-Islamic Relations (CAIR), the Human Rights Campaign, the Leadership Conference on Civil Rights Education Fund, the National Asian Pacific American Legal Consortium, the National Council of La Raza, the National Partnership for Women, the Sikh Coalition, the Simon Wiesenthal Center, and the Southern Poverty Law Center.

The Southern Poverty Law Center, a civil rights organization based in Alabama, monitors reports of hate crime and extremist activity through its Intelligence Project. The Center releases a weekly bulletin that details media reports on hate crime activity from around the country.

The Anti-Defamation League is among the most effective U.S.-based organizations working to combat hate crimes. Although founded nearly a century ago to combat antisemitism, the ADL has created model legislation covering all hate crimes that has been widely adopted at the state level and works with law enforcement agencies and prosecutors to combat hate crimes. It works in partnership with the Leadership Conference on Civil Rights Education Fund (LCCREF) and the Center for the Prevention of Hate Violence (CPHV) on programs addressing juvenile hate crime. The ADL also continues to monitor and respond to antisemitism in the United States and internationally, and produces an annual audit of antisemitic hate crimes in the United States—an essential contribution as anti-Jewish threats and violence still account for the largest number of religious bias hate crimes documented in the FBI's annual reports.

In its annual "Audit of Antisemitic Incidents," ADL documented a total of 1,554 antisemitic incidents in 2006, a 12 percent decline from the 1,757 reported in the previous year. The 2006 audit comprised information from 44 states and the District of Columbia and included information on "both criminal acts, such as vandalism, violence and threats of violence; and non-criminal incidents of harassment and intimidation, including hate propaganda leafleting and verbal slurs."³⁶⁰ The ADL has been collecting annual information on antisemitic incidents since 1986 (see Table 2).

Table 1: 2006 FBI Hate Crime Statistics				
Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2006				
Bias motivation	Incidents	Offenses	Victims¹	Known offenders²
Total	7,722	9,080	9,652	7,330
Single-Bias Incidents	7,720	9,076	9,642	7,324
Race:	4,000	4,737	5,020	3,957
Anti-White	890	1,008	1,054	1,074
Anti-Black	2,640	3,136	3,332	2,437
Anti-American Indian/Alaskan Native	60	72	75	72
Anti-Asian/Pacific Islander	181	230	239	181
Anti-Multiple Races, Group	229	291	320	193
Religion:	1,462	1,597	1,750	705
Anti-Jewish	967	1,027	1,144	362
Anti-Catholic	76	81	86	44
Anti-Protestant	59	62	65	35
Anti-Islamic	156	191	208	147
Anti-Other Religion	124	140	147	63
Anti-Multiple Religions, Group	73	88	92	49
Anti-Atheism/Agnosticism/etc.	7	8	8	5
Sexual Orientation:	1,195	1,415	1,472	1,380
Anti-Male Homosexual	747	881	913	914
Anti-Female Homosexual	163	192	202	154
Anti-Homosexual	238	293	307	268
Anti-Heterosexual	26	28	29	26
Anti-Bisexual	21	21	21	18
Ethnicity/National Origin:	984	1,233	1,305	1,209
Anti-Hispanic	576	770	819	802
Anti-Other Ethnicity/National Origin	408	463	486	407
Disability:	79	94	95	73
Anti-Physical	17	20	21	17
Anti-Mental	62	74	74	56
Multiple-Bias Incidents³	2	4	10	6

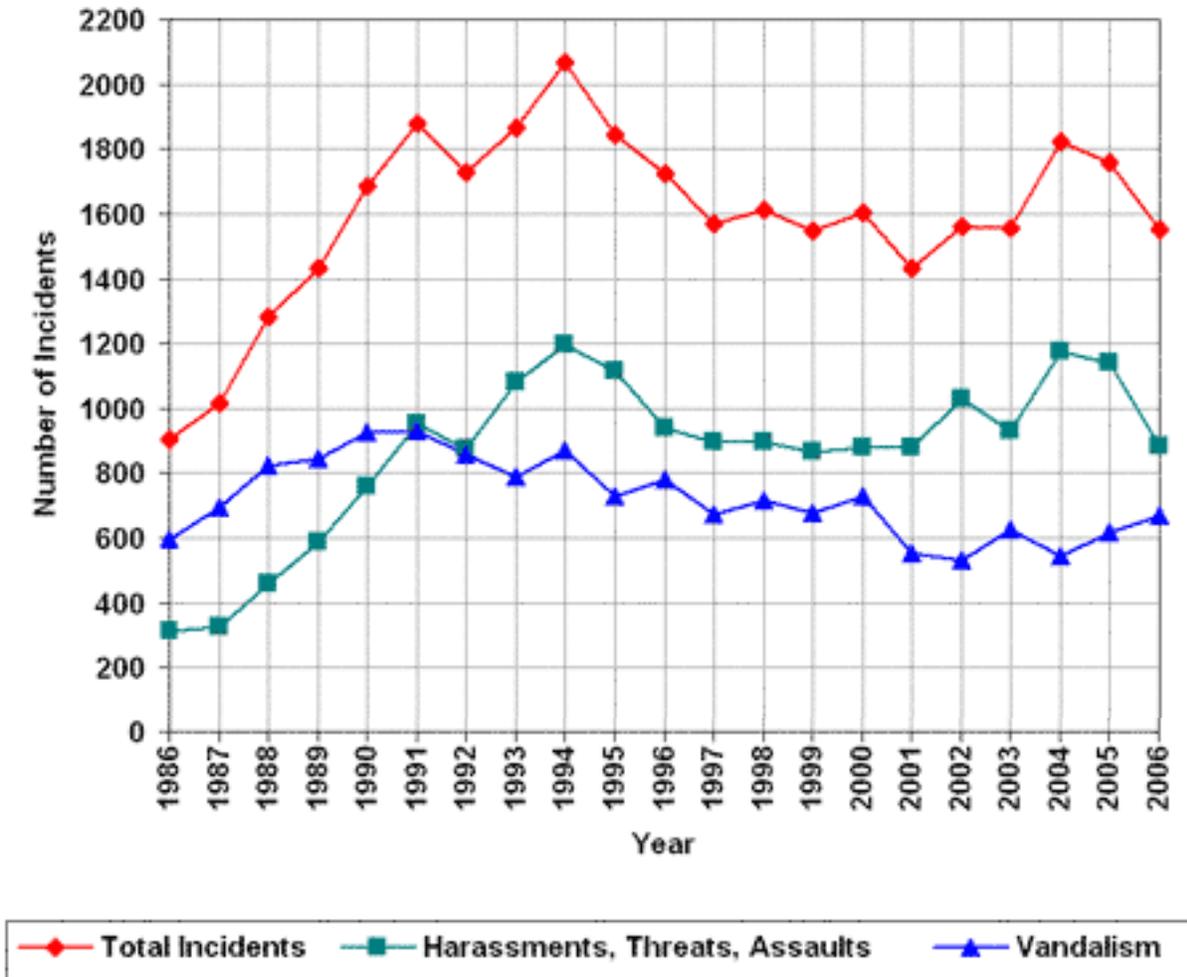
¹The term *victim* may refer to a person, business, institution, or society as a whole.

²The term *known offender* does not imply that the identity of the suspect is known, but only that an attribute of the suspect has been identified, which distinguishes him/her from an unknown offender.

³In a *multiple-bias incident*, two conditions must be met: (a) more than one offense type must occur in the incident and (b) at least two offense types must be motivated by different biases.³⁶¹

Table 2

Audit of Anti-Semitic Incidents, 1986-2006 (National)



The Framework of Criminal Law

Legislation on Bias-motivated Violence

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
X	X	X

Bias Types Covered by Provisions on Aggravating Circumstances³⁶²

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X	X	X	X	X

Federal Hate Crime Laws

The Criminal Code of the United States Federal Government treats bias motivated crimes as specific offenses. Federal hate crimes legislation, 18 USC 245, was first adopted in 1968 and allows federal authorities to investigate and punish crimes motivated by bias towards a person's race, religion, or national origin *and* because of a person's participation in one of six federally protected activities.³⁶³ The dual requirement of the federal statute, which obliges federal prosecutors to demonstrate that a hate crime was committed both because of bias and because of the victim's participation in a federally-protected activity, limits the scope for federal prosecutions of hate crimes.

Since 2001, the Civil Rights Division of the United States Department of Justice has prosecuted 165 defendants in 105 cases of bias-motivated crimes.³⁶⁴ A few recent convictions include the following:

- In April, 2007, in Utah, three men were convicted of violating federal hate crime laws in an assault against a Mexican-American in 2002. On December 31, 2002, Shaun Walker, Travis D. Massey, and Eric Egbert assaulted James Ballesteros, a Mexican-American, inside the O'Shucks bar in Salt Lake City. The three men shouted racial epithets at bar patrons and the victim. As Ballesteros tried to leave the establishment, the three assailants beat and kicked him to the ground. The three men were convicted for the assault under the provision of 18 USC 245, for "violating the victims' federally protected right to enjoy a place of public accommodation free from violence based on their race."³⁶⁵
- In January, 2007, a gang member was sentenced to life in prison for violating federal hate crime laws stemming from two racially-motivated murders of African-Americans in 1999 and 2000. The conviction of Porfirio Avila, a member of the Los Angeles Avenues Gang, marked the first time the federal hate crime statute had been used to combat racially-motivated gang violence. In August, 2006, a federal jury found Avila and three other defendants, guilty of murder of two African-Americans in separate incidents back in 1999 and 2000.³⁶⁶

Federal investigations and prosecutions of hate crimes have occurred sparingly within the context of 18 USC 245, in part because of the higher evidentiary threshold that federal prosecutors must demonstrate: that a victim was targeted because of his or her race, religion, or national origin, and because of the victim's participation in one of six federally protected activities. In more than one instance, federal prosecutors have been unable or unwilling to charge bias crime suspects at the federal level because of this statutory provision. In 1994, a federal jury in Texas acquitted three white supremacists under the federal hate crime law on "charges arising from unprovoked assaults upon African-Americans." After the trial, some of the jurors remarked that while the "assaults were motivated by racial animus, there was no apparent intent to deprive the victims of the right to participate in any 'federally protected activity.'" The government was therefore unable to satisfy the second requirement of the federal hate crime statute.³⁶⁷

The Local Law Enforcement Hate Crime Prevention Act of 2007 (LLEHCPA), a federal measure that would expand the scope of hate crime legislation, was passed before the House of Representatives on May 3, 2007. The bill was passed in the Senate on September 27, 2007. The proposed law would eliminate the requirement that prosecutors must demonstrate that a victim was targeted expressly because of that person's participation in one of the six federally protected categories. The bill would also extend the bias categories under federal protection to include gender identity, sexual orientation, and disability. On December 10, 2007, the bill was detached from the Department of Defense Authorization Bill (FY2009). President George W. Bush indicated he would veto the bill if it was sent to his desk as a stand-alone bill, and Congressional leadership indicated their intention to suspend any further action until 2008 at the earliest.

In 1994, the United States Congress passed the Hate Crimes Sentencing Enhancement Act (28 USC 994), which required the U.S. Sentencing Commission to increase penalties for crimes committed because of animus towards a person's "actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."³⁶⁸

While 18 USC 245 deals with a wide range of violent crime, separate legislation was passed to specifically address destruction of property of religious institutions. The Church Arson Prevention Act of 1996, 18 USC 247, prohibits the intentional "defacement damage, or destruction" of religious property and institutions because of the "religious, racial, or ethnic characteristics of that property" and the "intentional obstruction" by force of a person's "free exercise of religious belief."³⁶⁹

In 1996, President Clinton established the National Church Arson Task Force—a coordinated effort of federal and local law enforcement authorities, with input from religious organizations and citizens—to investigate and punish

perpetrators of church arsons. According to a Senate Judiciary Committee study, thirty-four percent of joint Federal-State investigations into church arsons resulted in arrests—a “figure more than double the 16 percent rate of arrests in all arson cases nationwide, most of which are investigated by local officials without Federal Assistance.”³⁷⁰

State Hate Crime Laws

A large majority of all hate crime investigations and prosecutions are conducted at the state and local levels. Concurrent Federal-State jurisdiction over hate crime cases can occur when the “state lacks jurisdiction or declines to assume jurisdiction, where the state requests the Federal Government assume jurisdiction, or where actions by state and local law enforcement officials have left demonstrably unvindicated the federal interest in eradicating bias-motivated violence.”³⁷¹

Forty-five of the fifty states and the District of Columbia either have separate hate crime legislation or allow bias motivation in ordinary criminal offenses to be taken into account as aggravating circumstances in sentencing. These provisions all cover crimes committed out of bias against the victim’s race, ethnicity, or religion. Arkansas, Georgia, Indiana, South Carolina, and Wyoming do not have any form of hate crime legislation.

- The laws of 32 states including the District of Columbia punish bias crimes based on Sexual Orientation.
- The laws of 32 states including the District of Columbia punish bias crimes based on disability.
- The laws of 28 states and the District of Columbia punish bias crimes based on gender.
- The laws of 10 states and the District of Columbia currently punish bias crimes based on transgender/gender identity.³⁷²
- The laws of California, Connecticut, Washington D.C., Missouri, New Mexico, Pennsylvania, and Vermont punish bias crimes on the basis of all of the above-mentioned categories: race, religion, ethnicity, sexual orientation, disability, gender, and gender identity.³⁷³

Forty-three states and the District of Columbia have either general or specific statutory provisions that criminalize institutional vandalism.

Bias-motivated Violent Crimes as Separate Offenses

Many states have legislation that treats hate crimes as specific offences. For example, in the state of Washington, Malicious Harassment (RCW 9A.36.080) is the sole state law punishing specific hate crimes as a separate offense. A person is guilty of malicious harassment if one, motivated by bias towards one’s race, religion, national origin, sexual orientation, gender, or handicap, causes (a) physical injury to another person, (b) physical damage to property, or (c) “threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property.”³⁷⁴

- In August, 2006, a King County prosecutor charged Naveed Haq with aggravated first-degree murder, kidnapping, and malicious harassment (amongst other charges) for killing a Jewish hostage and wounding four others during his break-in of the Seattle-area Jewish Federation Building. During the incident Haq allegedly said, “I am a Muslim-American angry at Israel” after he gained access by demanding entry and pointing his gun at the back of a young Jewish girl. In August, Haq declared his intention to plead guilty to all the charges.³⁷⁵

In the state of New York, when a person commits a hate crime “he or she commits a specified offense and either: (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.”³⁷⁶ Section 485.10 of the New York State law outlines sentencing provisions, including minimum and maximum sentences in the commission of felony hate crimes and penalty enhancements for certain misdemeanor classes of hate crimes.³⁷⁷

- In June 2007, a New York State Supreme Court Justice found that state hate crime charges could be brought against three defendants who lured a twenty-nine-year-old gay man via the internet site “My Space,” to an abandoned parking area, where the victim, Michael Sandy, was beaten and robbed. Sandy tried to escape, but was hit by a car when he ran into traffic and taken to the hospital in critical condition. His family took him off life support a few days later. The defendants contend that they sought only to rob the victim, and that they did not

intentionally choose him out of “hate” but rather of “opportunity” whereas prosecutors argue that the assailants deliberately chose the gay man out of the belief that he’d be unable to put up a fight, and less likely to report the crime itself. The judge, affirming the merits of the hate crime application, found that the penalty enhancement was consistent with the intent of the New York State Hate Crime Statistics Act of 2000: “The grand jury evidence shows that this is not a case where hate crimes are charged simply because the victim just happened to be of a particular sexual orientation. Rather, this is a case where the defendants deliberately set out to commit a violent crime against a man whom they intentionally selected because of his sexual orientation. Thus, the hate crimes charges in this case are consistent with the intent of the Legislature.”³⁷⁸

Similarly, in the state of Massachusetts, there is a separate offense of assault or battery for the purpose of intimidation (chapter 265, section 39 of the criminal code). This provides for punishment of a person “who commits an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person’s race, color, religion, national origin, sexual orientation, or disability.”

In addition to facing punishment involving a fine and/or imprisonment, a person found guilty of this charge must also “complete a diversity awareness program designed by the secretary of the executive office of public safety in consultation with the Massachusetts commission against discrimination and approved by the chief justice for administration and management of the trial court. A person so convicted shall complete such program prior to release from incarceration or prior to completion of the terms of probation, whichever is applicable.”³⁷⁹

Bias as an Aggravating Factor

A number of states have legislation that allow for bias motivations in the commission of a crime to be considered aggravating circumstances, and thus allow for enhanced penalties, during the sentencing phase of trial.

In the state of Arizona, for example, a court may consider as an aggravating circumstance during the sentencing phase of trial any “evidence that the defendant committed the crime out of malice toward a victim because of the victim’s identity in a group....or because of the defendant’s perception of the victim’s identity in a group...”³⁸⁰

Similarly in the state of Florida, section 775.085 of the 2007 Florida Statutes provides for enhanced penalties if the commission of a felony or misdemeanor evidences prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.³⁸¹

Although penalty enhancement provisions generally apply to a wide range of violent acts, they are in some states limited to specific crimes, such as assault and battery. Penalty enhancement provisions in cases of the most serious crimes of violence, such as murder, are not available in many states, on the grounds that the punishment for such crimes, even without penalty enhancements, is already severe.³⁸²

Uzbekistan

Systems of Monitoring and Reporting

What Data is Collected?

Human Rights First is unaware of any government data collection or regular public reporting expressly on violent hate crimes.

The Framework of Criminal Law

Legislation on Bias-motivated Violence:

Bias-motivated Violent Crimes as Specific Offenses	Bias as an Express General Aggravating Factor	Bias as an Aggravating Factor in Specific Common Crimes
	X	X

Bias Types Covered by Provisions on Aggravating Circumstances:

Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability	Other
X	X				

Bias as an Express General Aggravating Factor

The Criminal Code of Uzbekistan contains general provisions that expressly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

Article 56 of the Criminal Code is a general sentencing provision that identifies aggravating circumstances that give rise to more serious penalties, including under part (1)(k) “a motive of racial or national hatred...” in the commission of crimes. It does not set out the scope of these enhanced penalties

Bias as an Aggravating Factor in Specific Common Crimes

Several articles of the criminal code provide for specific penalty enhancements for crimes committed with the motive of racial or national hatred. Article 97 punishes murder with incarceration ranging from ten to fifteen years. Article 97(2)(j) punishes murder “with a motive of ethnic or racial hatred...” and article 97(2)(l) punishes murder “committed with religious prejudice” as punishable “by incarceration for fifteen to twenty years, or by the death penalty.”

Other provisions of the Criminal Code that could be applied to violent hate crimes include article 104 (Deliberate infliction of grievous bodily harm), article 105 (Deliberate infliction of moderate bodily harm) and article 117 (Torture). Higher penalties are established for each of these crimes when committed “with a motive of ethnic or racial hatred...” or “with religious prejudice...”³⁸³

Endnotes

- ¹ ECRI, “Third Report on Albania,” adopted on December 17, 2004 and made public on June 14, 2005, para. 11.
- ² ECRI, “Third Report on Albania,” para. 10.
- ³ OSCE/ODIHR, “Andorra: Hate Crimes,” Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=3&less=false>.
- ⁴ Criminal Code of the Republic of Armenia, April 18, 2003, available at: <http://www.legislationline.org/legislations.php?jid=4<id=15>; ECRI, “Second Report on Armenia,” adopted on June 30, 2006 and made public on February 13, 2007, para. 23.
- ⁵ EUMC, “Racist Violence in 15 E.U. Member States,” Vienna, 2005, p. 123
- ⁶ Interior Ministry, “Report on the Protection of the Constitution (*Verfassungsschutzbericht*),” 2007, available at: <http://www.bmi.gv.at/downloadarea/staatsschutz/BVT%20VSB%202007%2020070724%20Onlineversion.pdf>.
- ⁷ An incident or act may comprise violations of numerous laws. If, for instance right-wing extremists are wearing Nazi uniforms or insignia and physically assault a foreigner, this one act would include a violation of the Prohibition Statute, the Insignia Act, and physical assault as part of a xenophobic attack.
- ⁸ The constitutional act prohibiting the National-Socialist German Workers' Party (NSDAP), known as the Prohibition Statute (*Verbotsgesetz*), which was enacted in order to comply with the international obligation resulting from art 9 of the Treaty of Vienna forms the legal basis for sanctions against racist actions and incitements within the context of (neo-) Nazi ideology. Other racist crimes, however, that are not linked to National-Socialist ideology cannot be subsumed under the Prohibition Statute.
- ⁹ In addition to breaches of the Prohibition Statute, other crimes included in the report are violations of Section 283 of the penal code (hostile incitement), the Insignia Act, Art. IX para. 1 no. 4 EGVG (spreading National Socialist ideology), and the Media Act.
- ¹⁰ EUMC, RAXEN Report on Austria, 2002, page 22, available at: <http://eumc.europa.eu/eumc/material/pub/RAXEN/4/RV/CS-RV-NR-AT.pdf>
- ¹¹ ECRI, “Third Report on Austria,” adopted on June 25, 2004 and published on February 15, 2005, para. 13.
- ¹² OSCE/ODIHR, “Austria: Hate Crimes,” Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=5&less=false>.
- ¹³ ECRI, “Third Report on Austria,” para. 15.
- ¹⁴ Official submission of the government of Azerbaijan to a Human Rights First questionnaire, received on September 1, 2006.
- ¹⁵ Criminal Code of the Republic of Azerbaijan, January 31, 2005, available at: <http://www.legislationline.org/legislations.php?jid=6<id=15>.
- ¹⁶ ECRI, “Report on Azerbaijan,” adopted on June 22, 2002 and made public on April 15, 2003, para. 15.
- ¹⁷ Criminal Code of the Republic of Belarus, available at: <http://www.legislationline.org/legislations.php?jid=7<id=15>.
- ¹⁸ The Stephen Roth Institute for the Study of Contemporary Antisemitism and Racism, “Annual Report 2005— Belarus,” available at: <http://www.tau.ac.il/Anti-Semitism/asw2005/belarus.htm>.
- ¹⁹ FRA, Infobase, Belgium, Racist Violence, accessed on August 17, 2007 available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=46&year=2007>.
- ²⁰ Human Rights First email correspondence with Séverin de Potter, CEOOR, August 29, 2007.
- ²¹ Information obtained by fax from the Federale Politie, Commissariaat-generaal, Directie van de operationele politionele Informatie, August 6, 2007.
- ²² Fundamental Rights Agency, Report on Racism and Xenophobia in the Member States of the EU, 2007, page 115.
- ²³ Information obtained by fax from the *Federale Politie, Commissariaat-generaal, Directie van de operationele politionele Informatie*, August 6, 2007.
- ²⁴ Housing, employment, education, public services, private services, propaganda/media, society, enforcement services. See CEOOR, “*Jaarverslag 2006*,” June 2007, available at: <http://www.diversiteit.be/images/jaarverslag-2006-nl.pdf> (accessed on November 5, 2007).
- ²⁵ The majority of complaints were related to insults or harassment. See CEOOR, “*Jaarverslag 2006*,” June 2007, page 15.
- ²⁶ Human Rights First email correspondence with Séverine de Potter, CEOOR, November 5, 2007. See also CEOOR, “*Jaarverslag 2006*,” June 2007.
- ²⁷ Anti-Discrimination Act of February 25, 2003, available at: <http://www.nhri.net/Ni/Files/70/BE%20Act%20of%20February%202003%20pertaining%20to%20the%20combat%20of%20discrimination.pdf>.
- ²⁸ Anti-Discrimination Act of February 25, 2003.
- ²⁹ A correctional sentence is one ranging from 8 days up to five years in a correctional facility. “*Opsluiting*” or incarceration is a sentence between 5 and 30 years or a lifetime sentence.
- ³⁰ CEOOR, “*Jaarverslag 2005*,” May 2006; page 20, available at: http://www.diversiteit.be/NR/rdonlyres/CCAB46F8-997F-44FE-B9AF-A566CEFB25C1/0/05_JaarverslagCentrumfull.pdf
- ³¹ Information provided by CEOOR by e-mail to Human Rights First on August 9, 2006.
- ³² Human Rights First telephone interview with Yves Goldstein, Ministry of Justice, January 26, 2007.
- ³³ Criminal Code of the Federation of Bosnia and Herzegovina, Legislationline, OSCE/ODIHR.
- ³⁴ ECRI, “Report on Bosnia and Herzegovina,” adopted on June 25, 2004, and made public on February 15, 2005, para. 12.
- ³⁵ ECRI, “Report on Bosnia and Herzegovina,” para 12.

- ³⁶ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 115.
- ³⁷ ECRI, "Third Report on Bulgaria," adopted on June 27, 2003 and made public on January 27, 2004," para. 14.
- ³⁸ Criminal Code of the Republic of Bulgaria, Chapter 3: Crime against the rights of citizens, available at: <http://www.legislationline.org/upload/legislations/d7/8d/c1519b43d701a2f3976b312d2993.pdf>.
- ³⁹ Canadian Heritage, "Canada's Action Plan Against Racism," available at: http://www.pch.gc.ca/multi/plan_action_plan/tous_all/index_e.cfm. The action plan is also designed to promote partnerships between government departments and agencies and civil society and involves working with the police in the following areas: provide racially and culturally sensitive police services and tackle priority issues such as hate-motivated crime; enable a more consistent approach by law enforcement officers across Canada to better serve Aboriginal, ethno-racial and ethno-cultural communities; enable policing authorities to collect consistent data on hate-motivated crimes; work with Internet service providers and stakeholders to counter the distribution of hate propaganda; and conduct research on hate-motivated crimes to identify victims' needs along with interventions to reduce the number of repeat offenders.
- ⁴⁰ Statistics Canada, Canadian Centre for Justice Statistics (CCJS), Policing Services Program, "Uniform Crime Reporting Incident-Based Survey Reporting Manual," March 2006, p. 86, available at: http://www.statcan.ca/english/sdds/instrument/3302_Q7_V2_E.pdf (accessed August 18, 2007).
- ⁴¹ Human Rights First email correspondence with Warren Silver, Policing Services Program, CCJS, December 4, 2006.
- ⁴² Toronto Police Service, Hate Crime Unit, "2006 Annual Hate/Bias Crime Statistical Report, available at: <http://www.torontopolice.on.ca/publications/files/reports/2006hatecrimereport.pdf>.
- ⁴³ Calgary Police Service, "Annual Statistical Report 2002-2006," p. 16, available at: http://www.calgarypolice.ca/news/pdf/Annual_Statistical_Report_2006.pdf; p. 16
- ⁴⁴ Edmonton Police Service, "Report to the Community 2005," p. 25, available at: <http://www.police.edmonton.ab.ca/Pages/Publications/AnnualReports/EPS%20Report%20To%20The%20Community%202005.pdf>.
- ⁴⁵ CCJS, "Hate Crimes in Canada: An Overview of Issues and Data Sources," p. 20, January 2001.
- ⁴⁶ Human Rights First email correspondence with Warren Silver, Policing Services Program, CCJS, November 14, 2007. The extent to which national data will be broken down on the basis of each of these categories will be dependent upon the data submitted by individual police services.
- ⁴⁷ Toronto Police Service, Hate Crime Unit, "2006 Annual Hate/Bias Crime Statistical Report, available at: <http://www.torontopolice.on.ca/publications/files/reports/2006hatecrimereport.pdf>.
- ⁴⁸ Calgary Police Service, "Annual Statistical Report 2002-2006," available at: http://www.calgarypolice.ca/news/pdf/Annual_Statistical_Report_2006.pdf;
- ⁴⁹ Criminal Code of Canada, "Purpose and Principles of Sentencing," Section 718, available at: <http://laws.justice.gc.ca/en/C-46/fulltoc.html>.
- ⁵⁰ "Addressing Hate Crimes in Ontario: Background Documentation and Resources," Final Report of the Hate Crimes Community Working Group to the Attorney General (2006), Part 4: Justice System, p. 4.
- ⁵¹ "Addressing Hate Crimes in Ontario: Background Documentation and Resources," Final Report of the Hate Crimes Community Working Group to the Attorney General (2006). Part 4: Justice System, pp. 4-5.
- ⁵² Section 430(1) of the Criminal Code of Canada provides that "[e]very one commits mischief who willfully (a) destroys or damages property; (b) renders property dangerous, useless, inoperative or ineffective; (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property."
- ⁵³ Official submission of the government of Croatia's Office for Human Rights to a Human Rights First questionnaire, received on October 10, 2007.
- ⁵⁴ Criminal Code of Croatia, Article 89, Paragraph 36.
- ⁵⁵ Human Rights First Interview with Tatjana Kralj, Counsellor, Ministry of Foreign Affairs and European Integration, December 6, 2007.
- ⁵⁶ Remarks by Daniela Petkovic, Ministry of Interior of the Republic of Croatia, OSCE Expert Meeting on Best Practices in Combatting Antisemitism, Berlin, November 20-21, 2006.
- ⁵⁷ "OSCE/ODIHR Director Commends Croatia's Efforts to Fight Hate Crimes," OSCE/ODIHR, June 30, 2006, available at: http://www.osce.org/odihr/item_1_19741.html.
- ⁵⁸ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 116.
- ⁵⁹ ENAR, "Shadow Report 2006: Racism in Cyprus," p. 27, available at: http://www.enar-eu.org/en/national/cyprus/Cyprus_2006.pdf.
- ⁶⁰ OSCE/ODIHR, "Cyprus: Hate Crimes," Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=13&less=false>.
- ⁶¹ ECRI, "Third Report on Cyprus," adopted on December 16, 2005 and made public on June 16, 2006, para. 12.
- ⁶² ENAR, "Shadow Report 2005: Racism in Cyprus," p. 10, available at: http://www.enar-eu.org/en/national/cyprus/Cyprus_2005.pdf.
- ⁶³ Interior Ministry, "Information on the Issue of Extremism in the Czech Republic in 2006," Prague, 2007; available at <http://www.mvcr.cz/dokument/2007/extrem06en.pdf> (accessed on August 29, 2007). Among the criminal code offenses which are included within the framework of "extremism" are: infringement of copyright (article 152); assault against a public official (article 155); violence against a group of people or individual (article 196); dangerous threats (article 197a); defamation of an ethnic group, race or conviction (article 198); inciting hatred (article 198a); hooliganism (article 202); injury to health (article 221); serious injury to health (article 222); extortion (article 235); theft (article 247); support and propagation of extremist movements (article 260, 261).

- ⁶⁴ Interior Ministry, "Information on the Issue of Extremism in the Czech Republic In 2006," Prague, 2007, page 7.
- ⁶⁵ Interior Ministry, "Information on the Issue of Extremism in The Czech Republic in 2006," Prague, 2007.
- ⁶⁶ Interior Ministry, "Information on the Issue of Extremism in The Czech Republic in 2006," Prague, 2007, pp. 9-10.
- ⁶⁷ Six of these crimes were violations of Sec. 261 of the Criminal Code (support and propagation of movements suppressing human rights and freedoms) while four other crimes fell under Sec. 198(1)(a) of the Criminal Code (defamation of a nation, ethnic group, race or conviction). Cases included the painting of swastikas and other symbols propagating fascism in Ostrava (in the North Moravian Region) in March 2006, damaging eight graves in the Jewish cemetery in Prague 3 (where an unknown offender stole copper and bronze embossing from tomb slabs (October 2003)), and damaging graves in the Jewish cemetery in Zamberk (in the East Bohemian Region) by displacing approximately 55 marble, granite, and sandstone tombstones, also in October 2006.
- ⁶⁸ Interior Ministry, "Information on the Issue of Extremism in The Czech Republic in 2006," Prague, 2007.
- ⁶⁹ ECRI, "Second Report on the Czech Republic," adopted on June 18, 1999, and made public on March 21, 2000, para. 7.
- ⁷⁰ Criminal Code of the Czech Republic, available at: <http://sppc.prf.cuni.cz/lex/140-61.htm>.
- ⁷¹ ECRI, "Third Report on the Czech Republic," adopted on December 5, 2003, and made public on June 8, 2004, para. 14.
- ⁷² Interior Ministry, "Information on the Issue of Extremism in the Czech Republic in 2006," Section 3.3.2 Supreme State Prosecutor's Office, p. 28.
- ⁷³ ECRI, "Third Report on the Czech Republic," para. 16.
- ⁷⁴ League for Human Rights, Shadow Report to the Committee on the Elimination of Racial Discrimination for the Czech Republic, February 5, 2007, available at: <http://www.fidh.org/IMG/pdf/LIGA.pdf>.
- ⁷⁵ FRA, Infobase, Denmark, Racist Violence, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=39&year=2007> (accessed on August 19, 2007).
- ⁷⁶ While the data are not disaggregated in the PET's annual report for 2004— 2005, the last year in which the publication was made available in English, (available at: <http://www.pet.dk/upload/annualreport2004-2005.pdf>), the RAXEN Focal Point for Denmark does provide a breakdown of data (available at: <http://fra.europa.eu/fra/material/pub/RAXEN/4/RV/CS-RV-NR-DA.pdf>).
- ⁷⁷ Documentation and Advisory Centre on Racial Discrimination (DACoRD), "National Analytical Study on Racist Violence and Crime," 2003, available at: <http://fra.europa.eu/fra/material/pub/RAXEN/4/RV/CS-RV-NR-DA.pdf>.
- ⁷⁸ The Danish Security Intelligence Service, Annual Report 2004-2005, available at: <http://www.pet.dk/upload/annualreport2004-2005.pdf>. FRA reports that the peaks in recorded incidents in 2001 and 2005 can be attributed to general elections and aggressive pre-election debates/campaigns (complaints of hate *speech* also peaked in 2001 and 2005); and to the terrorist attacks of September 11, 2001 in the United States and in London on July 7, 2005 that had a direct impact on inter-community tensions. See FRA, Infobase, Denmark, Racist Violence, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=39&year=2007> (accessed on August 18, 2007).
- ⁷⁹ ENAR "Shadow Report 2006: Racism in Denmark," p. 20, available at: http://www.enar-eu.org/en/national/denmark/Denmark_2006.pdf (accessed on October 21, 2007).
- ⁸⁰ ENAR, "Shadow Report 2006: Racism in Denmark," p. 30.
- ⁸¹ DACoRD, "National Analytical Study on Racist Violence and Crime," available at: <http://fra.europa.eu/fra/material/pub/RAXEN/4/RV/CS-RV-NR-DA.pdf>. (accessed on October 21, 2007). While this information is provided in the FRA's RAXEN report on Denmark, the data is not made public by PET in their English language annual report.
- ⁸² DACoRD, "National Analytical Study on Racist Violence and Crime," 2003, pp. 25-26.
- ⁸³ ENAR, "Shadow Report 2005: Racism in Denmark," p. 20.
- ⁸⁴ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, p. 115.
- ⁸⁵ ENAR, "Shadow Report 2005: Racism in Estonia," p. 6, available at: http://www.enar-eu.org/en/national/estonia/Estonia_2005.pdf.
- ⁸⁶ ECRI, "Third Report on Estonia," adopted on June 24, 2005 and made public on February 21, 2006, para. 36.
- ⁸⁷ Juha Kaariainen and Noora Ellonen, "The Finnish Racist Crime Monitoring System," Unpublished manuscript, The Police College of Finland, 2006.
- ⁸⁸ The study found that one-fifth of the victims identified through the Police College methodology "represented the mainstream population. Most of these were cases in which a native Finn had been in the company of a person of foreign extraction or his or her married spouse was of foreign extraction."
- ⁸⁹ Tanja Noponen, Police College of Finland, "*Poliisin tietoon tullut rasistinen rikollisuus Suomessa 2006* (Racist Crime that Came to the Attention of the Police in Finland in 2006)," available in Finnish at: [http://www.poliisiammattikorkeakoulu.fi/poliisi/pakk/home.nsf/files/Tiedotteita%2062/\\$file/Tiedotteita%2062.pdf](http://www.poliisiammattikorkeakoulu.fi/poliisi/pakk/home.nsf/files/Tiedotteita%2062/$file/Tiedotteita%2062.pdf) (accessed August 24, 2007). See also "Racist Crimes Continue to Increase," YLE, July 31, 2007, available at: <http://www.yle.fi/news/left/id66215.html> (accessed August 24, 2007).
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- ⁹¹ EUMC, "Report on the Situation regarding Racism and Xenophobia in the Member States of the E.U.," 2006, Vienna; available at: <http://www.ihmisoikeusliitto.fi/AR06-P2-EN.pdf>.
- ⁹² Letter submitted to Human Rights First by the Permanent Mission of Finland to the OSCE, September 19, 2006.
- ⁹³ FRA, Infobase, Finland, Racist Violence, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=38&year=2007> (Accessed on August 21, 2007).

- ⁹⁴ ENAR, "Shadow Report 2006: Racism in Finland," p. 15, available at: http://www.enar-eu.org/en/national/finland/Finland_2006.pdf (accessed on October 19, 2007).
- ⁹⁵ Kääriäinen and Ellonen, "The Finnish Racist Crime Monitoring System," 2006.
- ⁹⁶ Kääriäinen and Ellonen, "The Finnish Racist Crime Monitoring System," 2006.
- ⁹⁷ Twelve of them received fines because of discrimination in some shape or form. Five charges of discrimination were dismissed.
- ⁹⁸ "Racist crime rarely leads to conviction in Finland; 175 racist crimes in Helsinki, but only six convictions," *Helsingin Sanomat*, April 26, 2007, available at <http://www.hs.fi/english/article/Racist+crime+rarely+leads+to+conviction+in+Finland/1135226835748> (accessed August 22, 2007).
- ⁹⁹ Letter submitted to Human Rights First by the Permanent Mission of Finland to the OSCE, September 19, 2006.
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- ¹⁰¹ ENAR, "Shadow Report 2006: Racism in Finland," page 15, available at: http://www.enar-eu.org/en/national/finland/Finland_2006.pdf (accessed on October 19, 2007).
- ¹⁰² The Penal Code of Finland, available at: <http://www.legislationline.org/legislations.php?jid=17<id=15>.
- ¹⁰³ ECRI, "Third Report on Finland," adopted on December 15, 2006 and made public on May 24, 2007, para. 13.
- ¹⁰⁴ Commission Nationale Consultative des Droits de l'Homme (CNCDDH), "*La Lutte Contre le Racisme et la Xénophobie: Rapport d'activité 2006*," Section I, p. 12, 34, available at: <http://lesrapports.ladocumentationfrancaise.fr/BRP/074000226/0001.pdf> (accessed on March 27, 2007).
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- ¹⁰⁶ CNCDDH, "*La Lutte Contre le Racisme et la Xénophobie: Rapport d'activité 2006*," Section I, p. 12.
- ¹⁰⁷ CNCDDH, "*La Lutte Contre le Racisme et la Xénophobie: Rapport d'activité 2006*," Section I, p. 35.
- ¹⁰⁸ CNCDDH, "*La Lutte Contre le Racisme et la Xénophobie: Rapport d'activité 2006*," Section I, p. 13.
- ¹⁰⁹ CNCDDH, "*La Lutte Contre le Racisme et la Xénophobie: Rapport d'activité 2006*," Section I, p. 32.
- ¹¹⁰ CNCDDH, "*La Lutte Contre le Racisme et la Xénophobie: Rapport d'activité 2006*," Section I, p. 12.
- ¹¹¹ For a critique of this terminology, see Human Rights First, "Everyday Fears," pp. 74-81.
- ¹¹² CNCDDH "*Évolution de la violence raciste visant les immigrés d'origine maghrébine depuis 1996*" (chart), p. 37.
- ¹¹³ Criminal Code of France, Article 132-76, available at: <http://www.legislationline.org/upload/legislations/cd/1b/f05864013134135c992550ab7c98.htm> (accessed on August 23, 2007).
- ¹¹⁴ Criminal Code of France, Article 132-77. "This circumstance is fulfilled if the offence is preceded, accompanied or followed by spoken or written words, images, items or acts of any kind that are injurious to the honor or esteem of the victim, or group of persons including the victim, by virtue of their actual or supposed sexual orientation."
- ¹¹⁵ Criminal Code of France, Articles 221-4, 222-10.
- ¹¹⁶ ECRI, "Third Report on France," adopted on June 25, 2004 and made available on February 15, 2005, para. 23.
- ¹¹⁷ ECRI, "Third Report on France," para. 23.
- ¹¹⁸ OSCE/ODIHR, "Georgia: Hate Crimes," Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=20&less=false>.
- ¹¹⁹ Definition obtained from the "Annual Report 2005 on the Protection of the Constitution," 2006, p. 18.
- ¹²⁰ Mario Peucker, "The Hate Crime Concept in Germany and How to Improve the Knowledge on the Extent of Hate Crimes," OSCE Tolerance Implementation Meeting, Vienna, November 9-10, 2006, available at http://web.uni-bamberg.de/~ba6ef3/pdf/Hate_crime_concept_final.pdf.
- ¹²¹ Peucker, "The Hate Crime Concept in Germany," p. 2.
- ¹²² The Federal Government reported 20,477 politically motivated crimes in 2003, 21,178 in 2004, 26,401 in 2005, and 29,050 in 2006. Federal Interior Ministry, "Annual Report 2004 on the Protection of the Constitution," and "Annual Report 2005 on the Protection of the Constitution."
- ¹²³ Federal Interior Ministry, "Annual Report 2006 on the Protection of the Constitution," 2007, p. 23, available at: http://www.bmi.bund.de/nn_122688/Internet/Content/Broschueren/2007/Verfassungsschutzbericht__2006__de.htm (accessed on May 15, 2007).
- ¹²⁴ Ermyas Mulugeta, a 37 year-old German citizen of Ethiopian descent was attacked on Easter Sunday 2006 in the city of Potsdam. Mulugeta was beaten with a bottle and robbed of €200 by assailants screaming racial epithets and suspected of having ties to the right. He sustained life-threatening injuries and remained for several weeks in a medically induced coma. Apparently this case, if registered at all as a right-wing politically motivated hate crime, was only registered as an assault and not an attempted murder.
- ¹²⁵ Federal Interior Ministry, "Annual Report 2006 on the Protection of the Constitution," 2007, p. 23.
- ¹²⁶ While data is collected on crimes perpetrated against the lesbian, gay, bisexual and transgender (LGBT) community, data on crimes against homosexuals as a distinct category is not published by the Federal Interior Ministry in its Annual Report on the Protection of the Constitution.
- ¹²⁷ Criminal Code (*Strafgesetzbuch, StGB*) as promulgated on November 13, 1998 (Federal Law Gazette I, p. 945, p. 3322), available at: <http://www.iuscomp.org/gla/statutes/StGB.htm#46> (accessed on October 10, 2006).
- ¹²⁸ ECRI, "Third Report on Germany," adopted on December 5, 2003 and made public on June 8, 2004, para 10.
- ¹²⁹ ECRI, "Third Report on Germany," para 10.
- ¹³⁰ Decision of the Federal Supreme Court, BGH 5 StR 359/93 from July 7, 1993.

- ¹³¹ According to the German penal code, Section 211, a murderer is whoever kills a human being out of murderous lust, to satisfy his sexual desires, from greed or otherwise base motives, treacherously or cruelly or with means dangerous to the public or in order to make another crime possible or cover it up. Racism is considered a “base motive” which would allow the Public Prosecution Department to charge a criminal defendant with murder rather than with manslaughter.
- ¹³² FRA, “Report on Racism and Xenophobia in the Member States of the E.U.,” 2007, page 115.
- ¹³³ ECRI, “Third Report on Greece,” adopted on December 5, 2003 and made public on June 8, 2004, para 13.
- ¹³⁴ FRA, “Report on Racism and Xenophobia in the Member States of the E.U.,” 2007, p. 116.
- ¹³⁵ Criminal Code of the Republic of Hungary, Chapter 12, Title 1: Crimes Against Life, Limbs, and Health, Article 170, Legislationline, OSCE/ODIHR, available at: <http://www.legislationline.org/upload/legislations/15/ef/84d98ff3242b74e606dcb1da83aa.pdf>.
- ¹³⁶ ECRI, “Third Report on Hungary,” adopted on December 5, 2003 and made public on June 8, 2004,” para 18.
- ¹³⁷ ENAR, Racism in Hungary: 2005,” page 6, available at: http://www.enar-eu.org/en/national/hungary/Hungary_2005.pdf.
- ¹³⁸ EUMC, Racist Violence in 15 Member States, 2005.
- ¹³⁹ “Annual Report of *An Garda Síochána* 2006,” available at: <http://www.garda.ie/angarda/statistics/Report2006/annualreport2006.pdf> (accessed on November 20, 2007); FRA, “Report on Racism and Xenophobia in the Member States of the E.U.,” 2007, page 116.
- ¹⁴⁰ National Consultative Committee on Racism and Interculturalism, “National Analytical Study on Racist Violence and Crime,” See tables in Annex 1; <http://fra.europa.eu/fra/material/pub/RAXEN/4/RV/CS-RV-NR-IE.pdf>.
- ¹⁴¹ FRA, Infobase, Ireland, Racist Violence, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=33&year=2007>.
- ¹⁴² The team of researchers included Professors Dermot Walsh and Jennifer Scheppe from the University of Limerick’s Center for Criminal Justice.
- ¹⁴³ “International Human Rights Day,” National Action Plan Against Racism (NAPR), December 10, 2005, available at: http://www.diversityireland.ie/News/Current/International_Human_Rights_Day.html.
- ¹⁴⁴ Professors Walsh and Scheppe presented their interim findings. The seminar was chaired by Lucy Gaffner, the Chair of the NPAR, and included Dr. Robin Oakley, an E.U. specialist in combating hate crime and policing issues, and Brendan McGuigan, the Deputy Chief Inspector of the Northern Ireland Criminal Justice Inspectorate. “Seminar Held on 21/03/07 on research into the effectiveness of our legislation,” NAPR, March 21, 2007, available at: http://www.diversityireland.ie/News/Current/Seminar_on_combating_Racially_motivated_crime_in_Ireland.html.
- ¹⁴⁵ Jennifer Scheppe and Dermot Walsh, “Combating Racism through the Criminal Law,” School of Law, University of Limerick, March 2007.
- ¹⁴⁶ “In 2006 (or 2005 where more recent data is unavailable) five of the EU’s 27 Member States did not report any national criminal justice data on racist crime, namely Greece, Spain, Italy, Cyprus and Portugal.” FRA, “Report on Racism and Xenophobia in the Member States of the E.U.,” 2007, p. 14.
- ¹⁴⁷ The same document reports that “so called ‘hate crimes’ are included in the statistics without any distinction for reasons of nationality, ethnicity, race, religion, sex, sexual orientation or other. Such data can be made available to institutions or to those ones who have an interest protected by law, through appropriate request to the attention of the Public Security Authority or through preventive authorization by the Judicial Authority, for information concerning investigations in progress of the Judicial Police.” Italy, Ministry of Foreign Affairs/Interministerial Committee on Human Rights, Reply to Questionnaire of Human Rights First, September 21, 2007.
- ¹⁴⁸ Italy, Ministry of Foreign Affairs/Interministerial Committee on Human Rights, Reply to Questionnaire of Human Rights First, September 21, 2007. It is not known whether these guidelines are publicly available, and how racist and other bias crimes may be distinguished from other common offenses
- ¹⁴⁹ Most recent statistics cover 2005. See ISTAT Italia, Aggiornamento sistema informativo giustizia, available at http://www.istat.it/salastampa/comunicati/non_calendario/20070918_00/ (accessed November 14, 2007).
- ¹⁵⁰ Official response of the Italian Office Against Racial Discrimination (UNAR) to a questionnaire submitted by Human Rights First, September 30, 2007.
- ¹⁵¹ Official response of the Italian Office Against Racial Discrimination (UNAR) to a questionnaire submitted by Human Rights First, September 30, 2007. UNAR recognizes in this response the importance of this data by stating that “we are also interested in maintaining regular information on racial crimes. These statistics related to acts of racial discrimination that, from the penal point of view, build a specific criminal legal paradigm, are reported to the public security authorities and in turn are reported to the judicial authorities. The statistical surveys mentioned above are necessary for UNAR also because the knowledge of this phenomenon is gained through statistical analysis and represents a fundamental tool for proposing policies that prevent and restrict a factor which seriously risks compromising social cohesion.”
- ¹⁵² Official response of the Italian Office Against Racial Discrimination (UNAR) to a questionnaire submitted by Human Rights First, September 30, 2007. The reporting requirement is to include crimes defined in laws No. 38/2001, No. 205/1993, No. 654/1975, and Legislative Decree No. 122/1993, as well as “information on [civil] proceedings related to the laws contained within the Unique Text on immigration in Legislative Decree No. 286/1998, Legislative Decree No. 215/2003 and in Legislative Decree No. 216/2003.”
- ¹⁵³ ECRI, “Third Report on Italy,” adopted on December 16, 2005 and made public on May 16, 2006, para. 8.
- ¹⁵⁴ ECRI, “Third Report on Italy,” para. 60.
- ¹⁵⁵ ECRI, “Third Report on Italy,” para. 9.
- ¹⁵⁶ ECRI, “Third Report on Italy,” para. 61.
- ¹⁵⁷ Criminal Code of the Republic of Kazakhstan, available at: <http://www.legislationline.org/legislations.php?jid=28<id=15>.
- ¹⁵⁸ Criminal Code of the Republic of Kyrgyzstan, available at: <http://www.legislationline.org/legislations.php?jid=29<id=15>.

- ¹⁵⁹ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 116.
- ¹⁶⁰ International Helsinki Federation for Human Rights, "Human Rights in the OSCE Region: Report 2007 (Events of 2006), p. 106.
- ¹⁶¹ OSCE/ODIHR, "Liechtenstein: Hate Crimes," Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=31&less=false>.
- ¹⁶² ECRI, "Second Report on Liechtenstein," adopted on June 28, 2002 and made public on April 15, 2003, para. 14.
- ¹⁶³ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, p. 116.
- ¹⁶⁴ ECRI, "Third Report on Lithuania," adopted on June 24, 2005 and made public on February 21, 2006," para. 16.
- ¹⁶⁵ United Nations, "Concluding observations of the Committee for the Elimination of Racial Discrimination: Lithuania," Sixty-eighth session, made public on April 11, 2006.
- ¹⁶⁶ ENAR, "Shadow Report 2005: Racism in Lithuania," p. 7, available at http://www.enar-eu.org/en/national/lithuania/Lithuania_2005.pdf
- ¹⁶⁷ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, p. 116.
- ¹⁶⁸ OSCE/ODIHR, "Luxembourg: Hate Crimes," Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=33&less=false>.
- ¹⁶⁹ ECRI, "Third Report on Luxembourg," Adopted on 16 December 2005 made public on 16 May 2006, para. 13, 14.
- ¹⁷⁰ ECRI, "Third Report on The Former Yugoslav Republic of Macedonia," para. 27, adopted on June 25, 2004 and released on February 15, 2005.
- ¹⁷¹ ECRI, "Third Report on The Former Yugoslav Republic of Macedonia," para. 28.
- ¹⁷² FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 116.
- ¹⁷³ Act No. XVI of 2006, August 8, 2006, available at: <http://www.doi.gov.mt/EN/parliamentacts/2006/ActXVI.pdf>.
- ¹⁷⁴ Criminal Code of the Republic of Moldova, available at: <http://www.legislationline.org/legislations.php?jid=35<id=15>.
- ¹⁷⁵ OSCE/ODIHR, "Monaco: Hate Crimes," Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=36&less=false>.
- ¹⁷⁶ ECRI, "Report on Monaco," para. 15, 16, adopted on December 15, 2006 and released on May 24, 2007.
- ¹⁷⁷ Criminal Code, "Official Gazette of the Republic of Montenegro," available at: <http://www.gom.cg.yu/files/1100614130.doc>
- ¹⁷⁸ Article 137d deals with public incitement to hate, discrimination or violence against a person because of race, religious convictions, gender, sexual orientation, physical or mental handicap.
- ¹⁷⁹ There are 34 Antidiscrimination Bureaus or ADBs (some of them called discrimination "Complaints Bureaus") which together form the National Association of ADBs and Complaints Bureaus (*Landelijke Vereniging ADBs en Meldpunten*).
- ¹⁸⁰ Even when a hate crime is registered as an official complaint, the bias elements of the crime may drop out of the formal report. In general, police practice is to register only the most serious crime when receiving incident reports. These are registered under the criminal code classification of the offense—as assault, threat, arson, destruction of property, etc. In dealing with hate crimes, police who record the reported details of a crime often fail to register information showing racism or other bias as a motivation of the common crime.
- ¹⁸¹ This system is already operational in the Amsterdam-Amstelland police department. Interview with Monique Tabak, Regional Police Project Discrimination, May 30, 2006.
- ¹⁸² Currently, BPS and X-Pol are the police systems most frequently used by the 25 regional police departments in the Netherlands. X-Pol allows an officer to register an act of discrimination within a common crime (a code of F50) whereas the code differs within regions that use BPS.
- ¹⁸³ The Regional Discrimination Consultations should take place 2 to 4 times a year.
- ¹⁸⁴ Human Rights First telephone interview with Floris Tas, National Expertise Center on Discrimination, November 20, 2007.
- ¹⁸⁵ Human Rights First email correspondence with Floris Tas, National Expertise Center on Discrimination, Dutch Police Academy, November 30, 2007.
- ¹⁸⁶ The AIVD obtains data from the 25 regional police departments on racist and extreme-right violence.
- ¹⁸⁷ While the Monitor team registered a homicide in 2006, the facts surrounding this case do not support the definition of a typical hate crime. A number of Dutch youths began harassing an Iraqi asylum seeker. The incident eventually escalated into physical violence. The Iraqi man was punched in the face. In response to this assault, he stabbed one of his attackers who later died. The death of this young Dutch man was registered as a homicide in the 2006 Monitor. Anne Frank House and the University of Leiden, "Monitoring Racism and Extreme Right Violence in 2006," available at: http://194.134.18.186/ond_upload/Downloads/RacistischGeweld2006.pdf (accessed on November 16, 2007).
- ¹⁸⁸ Anne Frank House and the University of Leiden, "Monitoring Racism and Extreme Right Violence in 2006."
- ¹⁸⁹ The data in 2005 include for the first time the offense of illegal possession of a weapon bringing the total number of offenses in that year to 296.
- ¹⁹⁰ Anne Frank House and the University of Leiden, "Monitoring Racism and Extreme Right Violence," 2006.
- ¹⁹¹ The Board of Procurators General is the highest authority within the Public Prosecution Service and makes policy decisions for the Public Prosecution Service and police with respect to the investigation and prosecution of crimes and misdemeanors.
- ¹⁹² Protection from discrimination is outlined in the constitution (Article 1) and in the antidiscrimination norms of the penal code (Articles 137c, 137d, 137e, 137f, 137g and 429 quarter).
- ¹⁹³ ENAR, "Shadow Report 2005: Racism in the Netherlands," page 25, available at: http://www.enar-eu.org/en/national/netherlands/Netherlands_2005.pdf.
- ¹⁹⁴ Human Rights First interview with Cyriel Triesscheijn, the Rotterdam Antidiscrimination Action Council, November 2005.
- ¹⁹⁵ A list of registrations was provided to Human Rights First by researchers at the Anne Frank House. The Human Rights First research concentrated only on (attempted) arson attacks. Other serious crimes, including assaults with knives and automobiles or violent confrontations between Dutch and foreign youths resulting in injury to the victims also occurred. A number of (attempted) arson attacks on churches were never cleared up and no suspects were ever brought to trial in these offenses.

- ¹⁹⁶ This second arson attack on the Islamic school in Uden was perpetrated on March 27, 2005. Four young men were arrested. Three were sentenced to between seven and nine months of juvenile detention— part of which was conditional— and community service. The adult was sentenced to 6 months in prison (more than four and a half months conditional) and community service. The defendants were required to pay €3000 in damages to the school.
- ¹⁹⁷ Two of the remaining defendants were minors and no court transcript was available.
- ¹⁹⁸ Human Rights First interview with Paul Velleman, the Director of the National Expertise Center on Discrimination, Amsterdam, March 24, 2006.
- ¹⁹⁹ In this case the suspect was in possession of 220 pounds of explosives and was found to have planned to use this material to destroy a mosque. He was also charged with possession of large amounts of amphetamines, LSD, and the drug GHB (GammaHydroxyButyraat).
- ²⁰⁰ In the case of two other defendants, both juveniles, no court records were available.
- ²⁰¹ Human Rights First interview with Peter Rodrigues and Jaap van Donselaar, Anne Frank House, Amsterdam, June 9, 2006.
- ²⁰² The reference is to the southern part of Rotterdam, where the suspect lived. Lonsdale is a reference to “Lonsdale Youth” for their choice of clothing from this British brand. Lonsdale youth are associated with rightwing extremism, although studies have shown that many are not politically organized or motivated.
- ²⁰³ Three of the 6 months were conditional. The defendant was further sentenced to a 180 hour “*taakstraf*”. The *taakstraf* comprises unpaid work, an educational program or a combination of both.
- ²⁰⁴ “*A. had niets tegen homos,*” *Spits*, August 14, 2007, p. 2.
- ²⁰⁵ The accused were sentenced to two years prison of which 8 months is conditional.
- ²⁰⁶ “*Justitie vervolgt racistische jeugd,*” *Metro*, September 5, 2007, pp. 2, 3.
- ²⁰⁷ ECRI, “Third Report on Norway,” adopted on June 27, 2003 and released on January 27, 2004, para. 8.
- ²⁰⁸ ECRI, “Third Report on Norway,” para. 8.
- ²⁰⁹ Statement of Mr. Wille (Norway), Committee on the Elimination of Racial Discrimination, Consideration of Reports, Comments and Information Submitted by Article 9 of the Convention, Eighteenth periodic reports of States parties due in 2005, Addendum Norway, September 5, 2006, CERD/C/SR.1775, available at: [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c5957f6d4d7e5c39c12571e70031e639/\\$FILE/G0643703.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c5957f6d4d7e5c39c12571e70031e639/$FILE/G0643703.doc) (accessed November 15, 2007).
- ²¹⁰ “Opinions diverged, for example, on the generations that should be termed “immigrant.” Data collection was hampered by the absence of a system of self-identification. Immigrants had been categorized as either “Western” and “non-Western”, since the immigrant population was small and individual groups were too insignificant in numbers for any meaningful data collection.” Statement of Ms. Bakken (Norway), Committee on the Elimination of Racial Discrimination, Consideration of Reports, Addendum Norway, September 5, 2006, para. 21.
- ²¹¹ See, for example, the intervention of CERD member Mario Jorge Yutzis (Argentina), who said that “the State party was wrong to argue that collecting data on and identifying minority and ethnic groups might contribute to racism. That very attitude could be taken to imply that there was some stigma attached to being a member of a minority or ethnic group. He stressed that, on the contrary, in a truly free and tolerant society, no one should fear or hesitate to identify himself with a particular group. He also cautioned against categorizing peoples or groups according to civilization or origin, for example Western and non-Western. At a time of growing globalization and cultural and commercial exchange, interaction among the peoples of the world would continue to increase in spite of the persistence of discriminatory attitudes.” Committee on the Elimination of Racial Discrimination, Consideration of Reports, Addendum Norway, September 5, 2006, para. 50.
- ²¹² Committee on the Elimination of Racial Discrimination, Reports Submitted by States Parties Under Article 9 of the Convention, Eighteenth periodic reports of States parties due in 2005, Addendum Norway, CERD/C/497/Add.1 September 21, 2005 (available at <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.497.Add.1.pdf> (accessed November 15, 2007)).
- ²¹³ Antiracism Center (Norway), “A Commentary on Norway’s Combined Seventeenth and Eighteenth Periodic Report Submitted by Norway under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination,” September 2006, pp. 2-2, available at <http://www.ohchr.org/english/bodies/cerd/docs/ngos/ARC.pdf> (accessed November 15, 2007).
- ²¹⁴ Antiracism Center (Norway), “A Commentary on Norway’s Combined Seventeenth and Eighteenth Periodic Report Submitted by Norway under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination,” September 2006, pp. 2-3.
- ²¹⁵ ECRI, “Examples of Good Practices: Specialized bodies to combat racism, xenophobia, antisemitism and intolerance at national level,” January 2006, p. 61, available at http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/3-General_themes/2-Examples_of_good_practices/1-Specialised_Bodies/ecri06-5%20Good%20practices%20specialised%20bodies%202005.pdf (accessed November 15, 2007).
- ²¹⁶ ECRI, “Examples of Good Practices: Specialized bodies to combat racism, xenophobia, antisemitism and intolerance at national level,” January 2006.
- ²¹⁷ Response of the Equality and Antidiscrimination Ombudsman to a Human Rights First questionnaire, received on October 2, 2007.
- ²¹⁸ “Justice Ministry urges crackdown on hate crimes,” *Aftenposten*, September 17, 2007, available at <http://www.aftenposten.no/english/local/article1998761.ece> (accessed November 15, 2007).
- ²¹⁹ Human Rights First email correspondence with Henrik Lunde, the Antiracism Center, November 26, 2007.
- ²²⁰ OSCE/ODIHR, “Norway: Hate Crimes,” Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=38&less=false>.
- ²²¹ ECRI, “Third Report on Norway,” adopted on June 27, 2003 and released on January 27, 2004, para. 8.

- ²²² OSCE/ODIHR, "Norway: Hate Crimes," Legislationline.
- ²²³ FRA has four categories on data collection: comprehensive, good, limited, none.
- ²²⁴ In 2000, 206 crimes were registered; followed by 97 (2001), 85 (2002), 108 (2003), 107 (2004) and 156 (2005). EUMC, "Annual Report 2006," Table C; p. 99. Available at: <http://www.eumc.europa.eu/eumc/material/pub/ar06/AR06-P2-EN.pdf>; The FRA website providing data on racist crimes in Poland provides different figures: 215 (2000); 103 (2001), 94 (2002), 111 (2003), 113 (2004), 172 (2005); FRA; Poland: Racist Violence Overview, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=28&year=2007>.
- ²²⁵ FRA, Infobase, Poland, Racist Violence, available at: <http://www.fra.europa.eu/factsheets/front/factSheetPage.php?category=1091&country=28&year=2007>.
- ²²⁶ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 116.
- ²²⁷ FRA, Infobase, Poland, Racist Violence.
- ²²⁸ ECRI, "Third Report on Poland," adopted on December 17, 2004 and made public on June 15, 2005, para. 22.
- ²²⁹ Criminal Code of Poland, Lexadin: The World Law Guide, available at: http://www.era.int/domains/corpus-juris/public_pdf/polish_penal_code2.pdf.
- ²³⁰ Articles 256 and 257 of the Criminal Code respectively punish incitement to racial hatred and the public insult of a group or a person on the basis of their national, ethnic, racial or religious origin.
- ²³¹ ECRI, "Third Report on Poland," para. 20.
- ²³² FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 117.
- ²³³ OSCE/ODIHR, "Portugal: Hate Crimes," Legislationline, available at: <http://www.legislationline.org/?tid=218&jid=38&less=false>; see also Criminal Code of Portugal, available at: <http://www.unifr.ch/derechopenal/legislacion/pt/CPPortugal.pdf>.
- ²³⁴ ECRI, "Third Report on Portugal," 30 June 2006 made public on 13 February 2007, para. 12.
- ²³⁵ FRA, "Report on Racism and Xenophobia in the Member States of the E.U.," 2007, page 117.
- ²³⁶ "Obshchie svedenie o sostoyanie prestupnosti - 2006," Interior Ministry, available at: <http://www.mvdrf.ru/files/oX0.HjeEnTMwA9d.pdf>; "Obshchie svedenie o sostoyanie prestupnosti - 2005," Ministry of the Interior, available at <http://www.mvdrf.ru/files/4001.pdf>.
- ²³⁷ Also included as crimes "of an extremist nature" are those qualified under the following articles of the criminal code: article 136 (violation of the equality of rights and freedoms of citizens by virtue of their sex, race, nationality, language, origins, social or official status, place of residence, relationship to religion, convictions, relationship to public organizations or to some other social groups), article 141 (interference in the carrying out of electoral rights or in the work of electoral commissions), article 149 (interference in the conducting of gatherings, public meetings, demonstrations, marches, pickets or participation in them), article 208 (organization of an illegal armed formation or participation in one), article 212 (mass disorder), article 213 (hooliganism), article 239 (organization of associations infringing upon the individual or the rights of citizens), article 277 (attempt on the life of a state or public figure), article 278 (violent overthrow of the government or violently holding onto power), article 280 (public calls for the carrying out of extremist activity), article 282 (incitement to hatred), article 282-1 (creation of an extremist society), article 282-2 (organization of the activity of an extremist organization).
- ²³⁸ "V Nizhegorodskoj oblasti v 2007 godu soversheno 13 prestuplenij v otoshenii inostrannyh studentov," NTA-Privolzhje, June 15, 2007, available at: <http://www.nta-nn.ru/news/item/?ID=113596>.
- ²³⁹ "Prokuratura ob ekstremizme na Dalnem Vostoke i v Sverdlovskoj oblasti," SOVA Center for Information and Analysis, July 19, 2007, available at: <http://www.xeno.sova-center.ru/45A2A1E/9873990>.
- ²⁴⁰ "Zamestitel genprokurora Rossii schitaet obstanovku v UFO slozhnoj," Gosurastvenny internet-canal "Rossia," Vesti-Severny Kavkaz, June 21, 2007, available at: <http://skavkaz.rfn.ru/rnews.html?id=78535&cid=8>.
- ²⁴¹ Galina Kozhevnikova, "Prestupleniya est'— statistiki net," Nezavisimaya Gazeta, August 30, 2007, available at: http://www.ng.ru/politics/2007-08-30/3_kartblansh.html.
- ²⁴² SOVA Center, "Radical Nationalism in Russia and Efforts to Counteract it in 2006," May 22, 2007, available at: <http://www.xeno.sova-center.ru/6BA2468/6BB4208/93A572E> (accessed on August 29, 2007).
- ²⁴³ SOVA Center, "Statistics on racist and neo-Nazi crimes in Russia," August 3, 2007, available at: <http://www.xeno.sova-center.ru/6BA2468/6BB41EE/99ACB05>.
- ²⁴⁴ SOVA Center, "Radical Nationalism in Russia and Efforts to Counteract it in 2006," May 22, 2007, available at: <http://www.xeno.sova-center.ru/6BA2468/6BB4208/93A572E> (accessed on August 29, 2007).
- ²⁴⁵ SOVA Center, "Radical Nationalism in Russia and Efforts to Counteract it in 2006," May 22, 2007, available at: <http://www.xeno.sova-center.ru/6BA2468/6BB4208/93A572E> (accessed on August 29, 2007).
- ²⁴⁶ These include article 105 (Murder), article 111 (Deliberate infliction of grievous bodily harm), article 112 (Deliberate infliction of moderate bodily harm), article 117 (Torture), article 214 (Vandalism), article 244 (Desecration).
- ²⁴⁷ These include article 115 (Deliberate infliction of mild bodily harm), article 116 (Assault), article 119 (Threatening murder or the infliction of serious bodily harm), article 150 (Involving a minor in the commission of a crime), article 213 (Hooliganism).
- ²⁴⁸ "Antiekstremistkie popravki prinyati v tret'em chtenii: Kratky komentarii," SOVA Center, July 6, 2007, available at: <http://xeno.sova-center.ru/89CCE27/89CD14E/975C903> (accessed on September 9, 2007).
- ²⁴⁹ Although the Criminal Code provides for the death penalty, there is currently a moratorium on its use, in line with policies of the Council of Europe, of which the Russian Federation is a member. Russian law allows for jury trials in "especially grave" crimes, which are those punishable by imprisonment of more than 15 years, life imprisonment, or the death penalty. Because murder aggravated by a motive of national, racial, or religious hatred is among those crimes that can be considered "especially grave," the defendant in such cases has the right to call for a trial by jury.
- ²⁵⁰ "Russian Supreme Court sustained a verdict to a group of people accused of murder with a bias motive," SOVA Center for Information and Analysis, February 2, 2007, available at: <http://xeno.sova-center.ru/6BA2468/6BB41EE/8AEFB6B>.

- ²⁵¹ “Five Teenagers Jailed for Killing Jewish Man,” UCSJ, Bigotry Monitor, Volume 7, Number 6, February 9, 2007, citing Associated Press.
- ²⁵² “*Prigovor za rasizm i razboj*,” SOVA Center, July 18, 2006, available at: <http://xeno.sova-center.ru/45A2A1E/86D1743>.
- ²⁵³ Article 105 (Murder), which contains a bias motivation penalty enhancement provision, was used together with article 30 (Preparation to commit a crime or attempt to commit a crime).
- ²⁵⁴ “*Mosgorsud prigovoril Alexandra Koptseva k 13 godam*,” Lenta.ru, March 27, 2006, available at <http://lenta.ru/news/2006/03/27/koptsev1/>.
- ²⁵⁵ “Supreme Court Overturns Conviction of Synagogue Slasher,” UCSJ, Bigotry Monitor, Volume 6, Number 22, June 23, 2006, citing Itar-Tass.
- ²⁵⁶ “*Koptsev priznan vinovnym v razzhiganii mezhnatsional'noi roznSrok nakazaniya uvelichen do 16 let*,” NEWSru.com, September 15, 2006, available at: <http://www.newsru.com/russia/15sep2006/koptsev.html>.
- ²⁵⁷ “*Mosgorsud priznal zakonnyim prigovor po delu o napadenii na ministra kultury Kabardino-Blakarii*,” SOVA Center, February 21, 2007, available at: <http://xeno.sova-center.ru/45A2A1E/8C41C42>.
- ²⁵⁸ Galina Kozhevnikova, “Radical Nationalism in Russia and Efforts to Oppose it in 2006,” SOVA Center, March 2007.
- ²⁵⁹ ECRI, “Third Report on the Russian Federation,” adopted on December 16, 2005 and made available on May 16, 2006, para. 21.
- ²⁶⁰ Article 282. Inciting hatred or enmity, as well as demeaning human dignity
1. Actions, designed to incite hate or enmity as well as demean the dignity of a person or group of persons on the basis of sex, race, nationality, language, origin, relationship to religion as well as the affiliation to any social group, committed publicly or with the use of the mass media - are punishable by a fine in the amount of one hundred to three hundred thousand rubles or in the amount of the salary or other income of the perpetrator of one to two years, or in the loss of the right to occupy certain positions or engage in certain activities for a period of up to three years, or by mandatory work for a period of up to one hundred eighty hours, or by corrective work for a period up to one year, or by incarceration for a period of up to two years.
 2. The same actions, committed:
 - a. with the use of violence or with the threat to use it
 - b. by a person using his/her official position
 - c. by an organized group
 are punishable by a fine in the amount of one hundred to five hundred thousand rubles or in the amount of a salary or other income of the perpetrator for the period of one to three years, or by the loss of right to occupy certain positions or engage in certain activities for a period of up to five years or by mandatory work for the period of one hundred twenty to two hundred forty hours, or by corrective labor for a period of one to two years, or by incarceration for a period of up to five years.
- ²⁶¹ Anastasia Berseneva, “*Graffiti ot natsi*,” *Novye Izvestiya*, October 19, 2006, available at: <http://www.newizv.ru/news/2006-10-19/56379/> (accessed on February 26, 2007).
- ²⁶² “*V Tveri zaderzhany chleny RNE, podozrevaemyi v vandalizme v kladbyshche*,” SOVA Center, October 11, 2006, available at: <http://xeno.sova-center.ru/45A2A1E/8148771>.
- ²⁶³ “Court Sentences Racist for Hate Crime,” UCSJ, Bigotry Monitor, Volume 7, Number 6, February 9, 2007, citing Regnum news agency.
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