



Workshop concept note (European Case Studies)

Objective: The purpose of this concept note is to formulate, based on the findings of the training needs assessment from all countries, a first draft of the workshop modules and approach.

Target group: Judges/Prosecutors

1. MAIN TRAINING NEEDS AND PROPOSED OBJECTIVE OF THE WORKSHOP

Highlight common /diverging points in the identified training needs among countries

Based on the TNA what should be the main objective of the workshop?

Results of the needs assessment confirmed our preliminary assumption that international law and particularly the European normative framework applicable to the prosecution of hate crimes shall be subject to a module. The TNA conducted in Italy led to a conclusion that attention should be given not only to the domestic legal norms but also to the European normative framework.¹

The TNA conducted in the target group of judges and prosecutors in Greece reflects that time should be dedicated not only to international instruments but also to a comparative analysis of different national legislations on hate crime and relevant national jurisprudence.²

An additional conclusion that can be drawn from the TNA Reports is that within the European normative framework, the analysis of the case law of the European Court of Human Rights (hereinafter, ECtHR) should be the primary focus of the module on international law. Even though the subject of the jurisdiction of the ECtHR is part of the official curricula in legal education, hate crime related cases are not subject to thorough analysis. It is important to discuss when the Court held a state responsible for violating the Convention even if a criminal investigation was conducted but the bias indicators were not revealed. This can point to the necessity of correct qualification of hate crime incidents and to the fact that bringing the case to the court and pressing charges is not enough for complying with international standards.³ As regards the workshop on the case law of the Strasbourg Court, interviewees in Hungary raised the concern that even basics of the jurisdiction of the Court (such as

¹ TNA Report, Italy, Judges/Prosecutors, p 2

² TNA Report, Greece, Judges/Prosecutors, p 4

³ TNA Report, Judges/Prosecutors, Greece, p 3-5; Hungary, p 6





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the admissibility criteria or the rules of procedure) might not be an obvious knowledge of judges and prosecutors.⁴ Therefore, the integration of a brief introduction of the ECtHR may be considered which could precede the case study exercises.

With regard to the method of the workshop on the case law of the ECtHR, a Hungarian interviewee recommended that an ideal approach could be to adapt Strasbourg cases to the domestic legal context and create a hypothetical case study in analogy with the ECtHR adjudicated case. As part of the assessment of the case study exercise, the conclusions of the ECtHR can be then compared with the outcome of the participants' analysis.⁵

Based on the above recommendations deriving from the TNA Reports, a general conclusion can be drawn that the **main objectives of the workshop** on the European normative framework should be:

- 1) to provide a brief introduction to international norms, with particular attention to the European normative framework,
- 2) to provide potentially a brief, comparative introduction of the different domestic legal solutions addressing the issue of hate crimes,
- 3) to provide potentially a brief introduction to the jurisdiction of the ECtHR, and
- 4) first and foremost to provide interactive case study exercises on the case law of the ECtHR.

2. PROPOSED STRUCTURE AND MODULES OF THE WORKSHOP

Based on the findings what would be the best possible structure and modules for this target group?

The following ideas are structured in a way to address the above indicated main objectives taking into account the aim to make the module as interactive as possible.

A) Introduction – Group Discussion on the European normative framework

(max. 45 min)

- 1) **Brief introduction to the European normative framework** (max. 15 min)

⁴ TNA Report, Judges/Prosecutors, Hungary, p 6

⁵ Id.





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The European norms should be put into a broader international legal context by quickly referring to the basic international legal documents relevant to the prosecution of hate crimes:

- Universal Declaration on Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966, Art 6-7, 26 (Human Rights Committee)
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Art 4, 6. (CERD Committee)
- EU: [Council Framework Decision No 2008/913/JHA](#), Art 4, [Directive 2012/29/EU](#), Art 22, [Implementation Report](#)
- ECRI: [General Policy Recommendation No. 11](#), [General Policy Recommendation No. 1](#), [General Policy Recommendation No. 7](#)
- Council of Europe – European Convention on Human Rights, Art 2-3, 14

This section should not be too detailed and should be conducted in a Q&A form (clarifying the basics involving the participants immediately into interaction).

2) **Comparative analysis of different domestic hate crime laws** (max. 20 min)

First, the possible legislative solutions should be quickly introduced based on the OSCE ODIHR: [Hate Crime Laws – A Practical Guide](#).

Second, the participants should identify which normative approach is followed by their domestic law.

3) **Brief introduction to the ECHR/ECtHR** (max. 10 min)

This section largely depends on the composition of the audience. In case the list of participants of the training is available, their general knowledge on the ECtHR might be checked through the national judicial/prosecutorial authorities who facilitated the training and recruited the participants. In case the participants were directly recruited by the project partner organization, the participants might be asked directly whether they need an introduction to the ECtHR.

If there is a need, the CoE HELP training platform might be useful: <http://helpcoe.org/training-resources/help-training-platform>

(Relevant topic: Introduction to the ECHR)

Another and probably more ideal solution might be (so that the well educated and experienced participants do not feel offended in their professional pride) to have a very short (max. 10 min) group discussion with leading questions so that the well



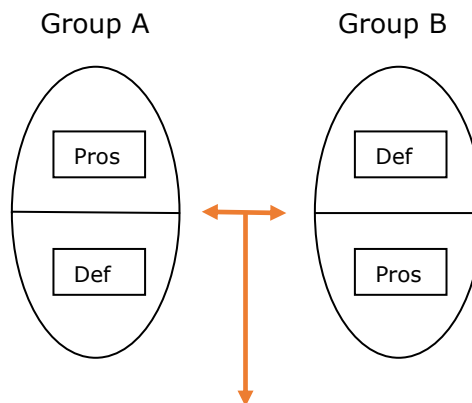
informed participants clarify the basics for those who are not familiar with the ECHR/ECtHR.

B) Case Study Exercise

(min. 2 hrs, the rest of the module)

Groups:

Two groups can be composed out of the whole audience. Each of these two groups would be cut to two further smaller groups (playing defence and prosecution). The two bigger groups would be given two different cases. When one group presents its prosecution/defence arguments about one case, the other bigger group would be the court and adjudicate upon these arguments. Then in return, the same rule applied to the second case.



Group A/B adjudicating the case presented by Group B/A

Cases:

Two hypothetical/real domestic cases. If the latter solution is chosen, such cases should be selected where all the details of the case are available. The disadvantage of this solution might be that the participants have a strong opinion about the judgment delivered by the domestic courts in the specific case or simply about the facts of the case. If hypothetical cases are created, this risk is avoided. The facts of a case adjudicated by the ECtHR might be taken as a basis for the creation of the facts of the hypothetical case.

ECtHR standards:

During the assessment of the two "courts" conclusions, the trainer should refer to the ECtHR adjudicated cases and point out the standards given by the case law of the ECtHR. (See relevant cases under Point 4)



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3. PROPOSED WAYS TO USE THE EXPERIENTIAL METHOD

Based on the findings what would be the best way to use the experiential method?

Based on the findings of the TNA, the European normative framework can be best addressed through **case study exercises** providing an interactive analysis of the jurisdiction of the ECtHR.

4. PROPOSED CASE STUDIES

Please mention cases that were mentioned in the interviews. If you identified relevant case studies in existing training material, please replicate them and indicate the source.

The **major hate crime related cases adjudicated by the ECtHR** can provide a basis for the preparation of the module and the discussions on the following Strasbourg standards:

- obligation to conduct efficient investigation, in general
[Angelova and Iliev v. Bulgaria](#)
- obligation to unmask racist motives
[Nachova and Others v. Bulgaria](#)
[Šečić v. Croatia](#)
- racist crimes demand special vigilance
[Stoica v. Romania](#)
- obligation to unmask anti-religious motives
[Milanović v. Serbia](#)
[Begheluri and Others v. Georgia](#)
- duty to respond to hate crimes motivated by other biases
[Dordevic v. Croatia](#)





Target group: Legal Professionals

1. MAIN TRAINING NEEDS AND PROPOSED OBJECTIVE OF THE WORKSHOP

International standards as available legal tools for the improvement of argumentation of legal professionals as representatives of victims of hate crimes should be one of the primary focus of the training. Needs assessment conducted in this target group of legal professionals confirmed this presumption of the project partners. According to the TNA Reports, significance of referring to the European Convention on Human Rights during a complaint procedure (eg. in case of incorrect qualification of the hate crime incident) – and also due to its relevance to the admissibility of a complaint at the ECtHR - should be emphasized. Therefore, the relevant case law of the ECtHR should be a significant focus of the training.⁶

One respondent expressed the interest in the EU Equality Directives.⁷ This opinion might be subject to a discussion about the design of the training modules. However, one sole interviewee's opinion should not be taken as a sufficient basis for a rule. The reasonable timeframe of the module might rule out a broader perspective on EU law (apart from the directly relevant EU legislation indicated above under Judges/Prosecutors, 2. A) 1).

As regards the ideal training method, the Greek interviewees pointed out the primary significance of case study exercises and group discussions, and their preference in real case studies instead of hypothetical ones.⁸

Based on the above opinions expressed by the interviewees, a general conclusion can be drawn that the **main objectives of the workshop** on the European normative framework should be:

- 1) to provide potentially a brief introduction to international norms, with particular attention to the European normative framework,
- 2) to provide potentially a brief introduction to the admissibility criteria of the ECtHR, and
- 3) first and foremost to provide interactive case study exercises on the case law of the ECtHR.

⁶ TNA Report, Legal Professionals, Greece, p 3; Hungary, p 9; Italy, p 2

⁷ TNA Report, Legal Professionals, Greece, p 2

⁸ TNA Report, Legal Professionals, Greece, p 3-4





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2. PROPOSED STRUCTURE AND MODULES OF THE WORKSHOP

Thorough knowledge of the case law of the ECtHR is essential for legal professional both for referring to them in case of a domestic complaint procedure related to the inaction/failures of the investigative authorities and for lodging a successful application at the ECtHR. Therefore, it is reasonable to dedicate a separate module to international standards.

This might include the following sessions:

A) Introduction – Group Discussion on the European normative framework

(max. 25 min)

1) **Brief introduction to the European normative framework** (max. 15 min)

See above Judges/Prosecutors, 2. A) 1)

2) **Brief introduction to the ECHR/ECtHR** (max. 10 min)

This section largely depends on the composition of the audience. The participants will probably be recruited directly by the project partner organization hence their general knowledge on the ECtHR might be checked, and they might be easily asked in advance whether they need an introduction to the ECtHR.

If there is a need, the CoE HELP training platform might be useful:
<http://helpcoe.org/training-resources/help-training-platform>

(Relevant topics: Introduction to the ECHR; Admissibility criteria) or

the following ECtHR short video:

<http://www.echr.coe.int/Pages/home.aspx?p=court/video/application>

In the case of this target group as well as in the case of judges/prosecutors, an ideal solution might be to address the present issue through a very short (max. 10 min) group discussion with leading questions so that the well informed participants clarify the basics for those who are not familiar with the ECHR/ECtHR.

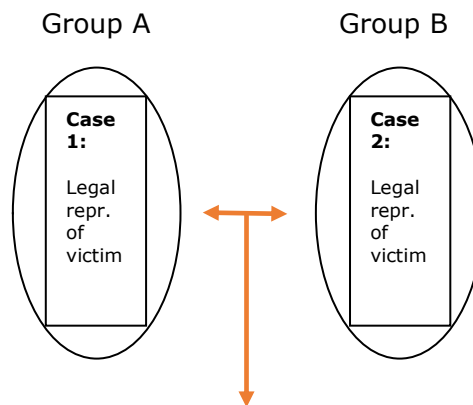


B) Case Study Exercise

(min. 2 hrs, the rest of the module)

Groups:

Two groups can be composed out of the whole audience. The two groups would be provided by the facts of two different cases, and they would have the same task: to prepare a line of argumentation which could be the basis of an application to be lodged at the ECtHR. When one group presents its arguments, the other group would play the role of a ECtHR Chamber deciding upon the admissibility and the merits of the case. Then in return, the same rule applied to the second case.



Group A/B deciding on the admissibility and merits of the application presented by Group B/A

Cases:

Two real domestic cases. Such cases should be selected where all the details of the case are available. In the present target group the risk is lower that the exercise would be undermined by the strong opinion of a participant on the facts of the case, more efficient solution might be even triggered by the strong opinion on the acts/failures of the authorities.

(In case of hypotetical cases, the facts of a case adjudicated by the ECtHR might be taken as starting points.)

ECtHR standards:

During the assessment of the two "ECtHR Chambers'" conclusions, the trainer should refer to the ECtHR adjudicated cases and point out the standards given by the case law of the ECtHR. (See relevant cases under Point Judges/Prosecutors, 4.)



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3. PROPOSED WAYS TO USE THE EXPERIENTIAL METHOD

Based on the findings of the TNA, the European normative framework can be best addressed through **case study exercises** providing an interactive analysis of the jurisdiction of the ECtHR.

4. PROPOSED CASE STUDIES

Real case studies should be based on domestic cases, which then can be analyzed from the perspective of ECtHR case law. (See relevant major cases from the case law of the ECtHR above under Judges/Prosecutors, 4.)





Target group: Police officers

1. MAIN TRAINING NEEDS AND PROPOSED OBJECTIVE OF THE WORKSHOP

The majority of respondents in the three project countries expressed their opinion that international legal standards or case law of the ECtHR do not have such a high significance in their everyday work which would make it necessary to dedicate a separate module or session on these topics.

The needs assessment conducted in Hungary resulted in a conclusion that international standards might not be of high interest in the circle of police officers. They are interested in how the evidences collected by them can be used by the prosecution services and not so much the question of which international norms were violated if they fail to collect evidences proving bias motivation. If at all, international obligations should not be mentioned as pressure coming from the outside, but rather as an enhancing factor in cases of correct qualification and efficient investigation. If participants arrive to a correct conclusion while analyzing a domestic or hypothetical case, then international standards might be raised as ones that they complied with in the moot investigation. (Another possible reference to Strasbourg might be when dealing with a highly problematic case, and mention just briefly that the failed investigation would not be acceptable by the ECtHR either.)⁹

The TNA Report of Italy indicates that emphasis should be put rather on national than international cases.¹⁰

According to the TNA Report of Greece presenting the outcome of the needs assessment conducted in the target group of police officers, only 2 out of the 10 respondents expressed the need for familiarity with the case law of the ECtHR (or national courts...)¹¹.

The above opinions expressed by the interviewees might lead to a general conclusion that international case study exercises should not be given high significance or dedicated significant time to during the training. The theoretical argument that hate crimes are breach of human rights is not sufficient if the potential module on international standards would probably have no practical impact.

⁹ TNA Report, Police, Hungary, p 3

¹⁰ TNA Report, Police, Italy, p 3

¹¹ TNA Report, Police, Greece, p 3





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The following general questions are N/A to the present concept note.

2. PROPOSALS ON TRAINING MATERIAL

Based on the TNA what training material should be available for the workshops?

3. PROPOSALS ON LOCATION/TIMING OF THE TRAINING

Based on the TNA what would be an ideal time/location for the workshops?

4. PROPOSALS ON FACILITATORS/TRAINERS

Based on the TNA who should be selected to facilitate the workshops?

5. OVERALL COMMENTS

Please mention any other information you consider relevant.

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