



"INCREASING THE CAPACITY OF LAW ENFORCEMENT AUTHORITIES TO TACKLE RACIST CRIME, HATE CRIME AND HOMOPHOBIC CRIME THROUGH EXPERIENTIAL LEARNING (EXPERIENCE CRIME)"
Agreement Number - JUST/2013/FAC/AG/6185

Workshop concept note for Judges and Prosecutors In Greece

Objective: The purpose of this concept note is to formulate, based on the findings of the training needs assessment from 3 countries (Hungary, Italy and Greece), a first draft of the workshop modules and approach. The concept note refers to all three dimensions of the workshops (i.e. 1st Experiential, 2nd European and 3rd National), including them all within this single draft.

Target group: Judges/Prosecutors

1. MAIN TRAINING NEEDS AND PROPOSED OBJECTIVE OF THE WORKSHOP

Common identified training needs

Based on the findings from all TNA reports,¹ there is indeed a need of a training course that will focus exclusively on the topic of hate crimes. Training programs or seminars on equality and diversity issues are generally carried out on a national basis, yet rarely on the topic of hate crimes. One TNA indicated that a training course will be launched in September through the HELP program of the Council of Europe. However, it will only be available through distance training.² The necessity of training/educational programs on hate crimes was clearly indicated by the other two TNA reports.³

On the other hand, all TNAs demonstrated the need to approach judges and prosecutors in a manner that will respect their knowledge of the law, while introducing challenging issues which will successfully stimulate their interest. Thus, discussion topics or case-studies that will be selected as training materials should not be characterized as “easy” topics. In other

¹ TNA Report of Judges/Prosecutors in Hungary, TNA Report of Judges/Prosecutors in Italy, TNA Report of Judges/Prosecutors in Greece.

² TNA Report of Judges/Prosecutors in Hungary.

³ TNA Report of Judges/Prosecutors in Greece and TNA Report of Judges/Prosecutors in Italy.



words, the quality of the training should match the knowledge level of the attendants. This is why trainers should be highly qualified.

Main objectives

From the information provided in the TNAs, it is clear that the workshop should mainly teach the attendants how to clearly identify hate crimes. They should be provided with all the necessary knowledge and tools in order to detect and identify crimes that may have a bias character. For this reason, a list of bias indicators should be distributed, preferably one that will be specifically addressed to each State (the TNAs showed that the national-specific nature of a list of indicators would be much more tailored to their needs⁴).

Participants should be familiarized with all important tools and recommendations provided by international and European organizations, courts and bodies, such as OSCE-ODIHR, ECRI, ECHR, FRA and CERD. Prosecutors and judges should realize that they have a specific obligation based on international conventions as well as European legislation and jurisprudence to “unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events”.⁵ In order to better understand which criteria the incident should fulfill so that it is treated as a racist incident, both definitions provided by ECRI Recommendation No. 11 and national legislation should be presented and analyzed in a comparative and complementary way. Moreover, FRA reports on hate crime as well as on prejudice against groups such as Roma, LGBT, Muslims, and migrant communities could help the facilitators/trainers demonstrate the nature and the extent of the problem.

The goals of the seminars should also include the prevention of hate crime instead of the mere suppression, as well as the examination of all possible measure that may be taken by the State in order to protect victims of hate crime. Within this content and given the target group of the training, that is, judges and prosecutors, seminars should make clear -through examples of States with successful policies in combating hate crime (i.e. United Kingdom) that an adequate prosecution as well as the punishment of hate crime have both deterring and preventive impact. Furthermore, FRA

⁴ A national specific list of bias indicators could perhaps be prepared in light of country reports on racist violence issued by the FRA, HRW, ECRI or by Ombudsman Offices in each State. See for example: FRA, Thematic Situation Report, *Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary*, 2013, available at: < http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf>; HRW, *Everyday Intolerance Racist and Xenophobic Violence in Italy*, 2011, available at: < <http://www.hrw.org/sites/default/files/reports/italy0311WebRevised.pdf>>.

⁵ ECHR, *Nachova and Others v. Bulgaria*, 6 July 2005, par. 160.



recommendations should be used in order to illustrate that participants, under their capacity as prosecutors and judges, have an important role to play in tackling racist violence effectively, through both preventative as well as punitive action⁶.

Finally, all TNAs pointed out the practicality of the experiential method for delivering the workshop on hate crime. They all highlighted the need for interaction between the participants and, in the same vein, the need for a small group participation, as well as for an examination of case-studies through role playing, as opposed to lecture type presentations. Therefore, the experiential methodology should also constitute an objective of the training workshop.

2. PROPOSED STRUCTURE AND MODULES OF THE WORKSHOP

This part of the concept note deals with and proposes the best possible structures and modules for the workshops, tailored to the specific target group of judges and prosecutors, taking into account the needs assessment findings.

The findings show that the workshop should ideally be carried out in small groups, allowing for an interactive approach between the participants. Small-group case-study exercises may provide the most ideal training method. According to this method, one representative from each group could present the views and solutions of the group to the plenary session of the training (similar to OSCE-ODHIR training on hate crime).

Generally, all respondents seemed to be open to the use of various methodological tools for the seminars, including role-playing actions, or the use of case-studies or even personal communication of the participants themselves with hate crime victims as well as with NGOs offering support to the latter. In case documentaries and films are used, they should not be broadcasted during the sessions but, instead, they should be merely suggested to the attendants, in order to be possible to hold substantial discussion during the sessions. It is important that the use of the above mentioned case study exercises together with the interactive methods will be clarified in the call for the training,⁷ so that the participants will not be unpleasantly surprised during the seminars and therefore resistant to actively participate.

⁶ FRA, Thematic Situation Report, *Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary*, 2013, pp. 18 et seq.

⁷ This was proposed in the TNA Report for Prosecutors/Judges in Hungary.



A more specific illustration of the seminar sessions follows: one session should introduce the history of hate crime including the time when the notion of hate crime first appeared as well as the way in which it initially appeared and was evaluated. Then the law as well jurisprudence on hate crime should be analyzed, including both a *de lege ferenda* and a *de lege lata* approach.⁸ OSCE – Office for Democratic institutions and Human Rights guide on legislation should be used in order to clarify the difference between national penal codes providing for a substantive offense and those, using penalty enhancement to punish hate crimes. Specific reference should be to the EU Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. National legislation should be analyzed in the light of the above legislation taking into account national jurisprudence and other national specificities in order to give to the participants the opportunity to debate on all available choices.

Furthermore a session on bias indicators should be held at the beginning of the workshop. It is necessary also non-obvious bias indicators, symbols and characteristics of radical organizations to be examined (for example, a swastika has a meaning obvious for everyone, but the number of 88 or red lace Martens boats might not be that obvious⁹). In this respect, extensive reference should be made to ECHR case-law on the obligation of domestic courts to take into account any obvious indicators, such as racist remarks and attitudes by the police or any other public authority involved as well as the particular status of the victim which could establish his/her particular vulnerability¹⁰. Timely identification of bias motivation assures successful prosecution, victim protection, data collection and prevention programs. In this respect, multiple-bias incidents should be analyzed taking into account national and international reports on the situation of the State concerned. Nonetheless, prosecutors and judges should know that identification of bias motivation is based on the facts of the case. ECHR case-law could show that although bias indicators could be present in a particular case, in depth examination of the evidence could lead the prosecutors and the domestic courts to conclude that the attack or the crime was not racially motivated.¹¹

A workshop based on real case facts and a discussion of court decisions could also be very useful. Namely, the trainers may present cases in which investigative authorities failed to collect evidence or failed to correctly qualify

⁸ This was highlighted in the TNA Report for Prosecutors/Judges in Greece.

⁹ This was indicated in the TNA Report for Prosecutors/Judges in Hungary.

¹⁰ ECHR, *B.S. v. Spain*, 24 July 2012, pars. 60-63.

¹¹ ECHR, *Beganović v. Croatia*, 25 June 2009, pars. 96-98.



the incident. Participants may, then, try to provide a proper solution to these cases and correct them. Familiarity with ECtHR case-law,¹² as well as international jurisprudence, is indispensable for the seminar. Specific hate crime related ECtHR cases (including a brief introduction of the Court) could thus be the subject of the case study exercises. Strasbourg cases could also be the basis for hypothetical case study exercises. Participants may first prepare their own approach to these hypothetical cases and then compare it to the conclusions drawn by the ECtHR. ECtHR case-law could help the participants clarify all aspects of their obligations in identifying and combating hate crime: first, the obligation to investigate the possible causal link between alleged racist attitudes and the crime. The content of this obligation will be illustrated by the examination of specific cases. Although it is admitted that proving racial motivation is often challenging in practice, prosecutors and judges are responsible to do "what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence".¹³ In other words, prosecutors and domestic courts should be able to prove that bias indicators were effectively examined and evaluated. Participants in this training should be familiarized with their obligation to motivate their decisions after the racist motive is excluded. In this context, ECHR case-law could help the participants better understand the elements that they should take into account, while examining a case of ill-treatment by the police with racial motivation. It is important to highlight through case-law that prosecutors and domestic courts should examine whether, for instance, the victim's ethnic origin or sexual orientation was the decisive reason for being subjected to ill-treatment.¹⁴

Moreover, the seminar should highlight the necessity of a correct qualification of hate crime incidents and to stress out that bringing the case to the court or imposing charges alone, is not enough for the compliance with international standards.¹⁵ In this respect, the case *Dawas et Shava v. Denmark* should be presented. In this case, the UN Committee on the Elimination of Racial Discrimination found that because of the summary proceedings and the revised charges, the possibly racist nature of the offense

¹² In this regard it is useful to see the thematic factsheets issued by the ECtHR on hate speech (<http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf>), sexual orientation (<http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf>) and racial discrimination (<http://www.echr.coe.int/Documents/FS_Racial_discrimination_ENG.pdf>).

¹³ ECHR, *Bekos and Koutropoulos v. Greece*, 13 December 2005, pars. 69 et seq.

¹⁴ ECHR, *Ciorcan and Others v. Roumania*, 27 January 2015, par. 127; *Antayev and Others v. Russia*, 3 July 2014, par. 127.

¹⁵ This was proposed in the TNA Report for Prosecutors/Judges in Hungary.



was set aside at the level of the criminal investigation, and was not adjudicated at trial¹⁶.

Another session could include a discussion on how to provide support to victims of hate crimes. A list of services and NGOs providing aid to victims of hate should be given to the participants of the seminars (especially prosecutors), and a plan of referrals should be arranged for such cases in which victims need help.¹⁷ Good practices of cooperation between NGOs as well as police and prosecuting authorities should be presented and also discussed. In the context, prosecutors and judges should be familiarized with EU legislative framework, especially Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. National legislative measures should be presented and examined in the light of the State's obligations under European and international law.

3. PROPOSED WAYS TO USE THE EXPERIENTIAL METHOD

This part of the concept note deals with and proposes the best way to use the experiential method.

Based on the TNA reports, sensitization seems to be the best experiential method to be used. Sensitization might have a long-term effect on criminal investigation in hate crime incidents. Interviews with victims, life stories, documentaries, and role play could help the sensitization of the participants while enhancing the learning experience. More specifically, role-playing through placing the participants in the position of the victim could successfully transpose the experience to them and thus sensitize them. Furthermore, people who deal with victims of hate crime should be invited to the seminars in order to share their experience and discuss it with the attendants. Bringing the attendants in contact with victims or victim support organizations, in order to listen to their own personal thoughts on biased crimes, would be very useful as well. Finally one of the TNA reports indicated that instead of sensitization, a more successful training approach would be to try to have an impact on prosecutors' emotions through the invocation of their professional pride, putting emphasis on what they should do in order to gain success in the courtroom.¹⁸

¹⁶ Communication No. 46/2009, opinion adopted 9 March 2012.

¹⁷ For example, in Greece this could be accomplished through the Racist Violence Recording Network.

¹⁸ This was proposed in the TNA Report for Prosecutors/Judges in Hungary.



4. PROPOSED CASE STUDIES

The TNAs made no specific reference to case-studies other than how they should be carried out. In this context, the training methodology followed by the OSCE-ODHIR was mentioned, which, in fact, is a good point to begin with. On February 18-19, 2014, the OSCE Office for Democratic institutions and Human Rights organized a Training Workshop on Hate Crimes for members of the Greek Racist Violence Recording Network in Athens.¹⁹ During this workshop, facts of real cases of racist violence which had been recorded by the Racist Violence Recording Network, were distributed to the participants, who, in turn had to distinguish the bias indicators, the perpetrators, etc. (any personal data was omitted from the case-studies). The participants would split into groups, assume the role of investigator and then present their findings. The trainers would then inform them on what had followed after the recording of the incidents (prosecution, examination by the Court or no further action). Something similar to this examination of case-studies could prove useful and would enhance the experiential character of the workshop. Given also, that the latter workshop should be tailored to the needs of prosecutors and judges, further investigation into procedural law, together with its application as well as the final conclusions of the Court or the Prosecutor in each case, may be even more thought provoking.

5. PROPOSALS ON TRAINING MATERIAL

This part of the concept note proposes certain training materials for the workshops taking into account the findings of the TNA.

The TNAs all indicated various types of training material. One report indicated that the use of paper material might be problematic, as papers and files are easily forgotten and lost.²⁰ For this reason they proposed the use of a flash-drive which will contain all the necessary distributed material. Another TNA was open to any form of training material, whereas the use of documentaries or films may be preferable in the sense of better providing food for thought.²¹ The same TNA report also proposed an in advance distribution of articles and links on topics which will be addressed in group discussions and which will be open for debate.

¹⁹ More information on the training workshop can be found at: < <http://www.osce.org/odihhr/111503>>.

²⁰ TNA Report of Judges/Prosecutors in Hungary.

²¹ TNA Report of Judges/Prosecutors in Greece.



As for the content of the training material, one TNA report proposed the inclusion of a national-based list of bias indicators (one which will specify the bias indicators of each State and not one of a generalized approach).²² The need to include less obvious bias indicators was also highlighted. Moreover, the same report indicated the importance of including material on cases related to cumulative crime and aggravated forms of violent offences.

One TNA did not refer specifically to any training material.²³ However, it proposed as a training method, the discussions in small groups, the exchange of personal experience between lawyers and judges and the examination of hate crime from all different points of view.

6. PROPOSALS ON LOCATION/TIMING OF THE TRAINING

This part of the concept note proposes the ideal time and location for the workshops based on the TNA findings.

All TNA Reports gave different responses as to the time and location of the workshops. They are all listed below:

Hungary: The location of the workshops should be in Budapest. The exact place should be determined by the outcome of negotiations with the Judicial Academy and the Chief Prosecutor's Office. Regarding the time of the workshops, September or January should not be an option; October, November, April or May would be ideal months (the exact time also depends on the ongoing negotiations with the authorities). Probable ideal day for the trainings would be Thursday and half day of Friday.

Italy: Lessons should last 6/7 hours for two consecutive days, choosing one from Monday to Friday. Currently there are two different proposals for the location of the training seminars. One training addressed to judges and prosecutors coming from the whole country (an estimated number of people that could reach up to ninety persons) should take place at the National Training School of Judiciary. A second one addressed to judges, lawyers and police officers should be done in a different location, lasting two consecutive days of 6/8 hours each.

Greece: The ideal time for the trainings addressed to judges/prosecutors would be the beginning of October. Athens and Salonika would be the ideal places.

²² TNA Report of Judges/Prosecutors in Hungary.

²³ TNA Report of Judges/Prosecutors in Italy.



The National School of Judges was proposed by one respondent as an ideal place and audience as well.

7. PROPOSALS ON FACILITATORS/TRAINERS

This part of the concept note proposes the ideal facilitation for the workshops taking into account the TNA findings.

Two TNAs indicated that the trainers/facilitators should be experts on the topic of hate crimes.²⁴ They both highlighted the necessity of a sociological/judicial background, as well as being familiar with the psychological/anthropological aspects connected to hate crimes.²⁵ Two TNAs stressed out the need to include trainers with a legal background for purely legal topics, such as Judges, Prosecutors or lawyers with a theoretical background and a rich practice of working with victims of hate crime.²⁶ This may even include academics.

One TNA indicated the need to employ trainers/facilitators with a solid experience in moderating case-study exercises.²⁷ A trainer from a non-judicial, non-prosecutorial, non-civil-society background is not a problem. On the other hand, the same TNA stated that the trainer/prosecutor should not be appointed by the authorities in order to avoid long presentation sessions with no interaction. Moreover, the perspective trainer should not be a “prophet” of the topic pushing the message in an aggressive way.²⁸

8. OVERALL COMMENTS

Trainers/facilitators should try to make use of good practices which were used in similar training workshops such as those carried out by the OSCE-ODHIR, ILGA and FRA. All three organizations have published toolkits and manuals which are listed below:

- FRA: *Fundamental rights-based police training: A manual for police trainers*, 2013, available at: <http://fra.europa.eu/sites/default/files/fra-2013-fundamental-rights-based-police-training_en_0.pdf> and *Fundamental rights-based police training A manual for police trainers, Annex 4 Compilation of practices*, 2013 available at:

²⁴ TNA Report of Judges/Prosecutors in Greece and TNA Report of Judges/Prosecutors in Italy.

²⁵ TNA Report for Prosecutors/Judges in Greece.

²⁶ TNA Report of Judges/Prosecutors in Greece and TNA Report of Judges/Prosecutors in Hungary.

²⁷ TNA Report of Judges/Prosecutors in Hungary.

²⁸ *Ibid.*



- <http://fra.europa.eu/sites/default/files/fra-2013-fundamental-rights-based-police-training-annex-4_en_0.pdf>
- OSCE-ODHIR: *Hate Crime Laws: A Practical Guide*, 2009, available at: <<http://www.osce.org/odihr/36426?download=true>>
 - ILGA-Europe: *ILGA-Europe toolkit for training police officers on tackling LGBTI-phobic crime*, 2011, available at: <http://www.ilga-europe.org/sites/default/files/Attachments/toolkit_lgbtiphobic_crimes.pdf> and *Handbook on monitoring and reporting homophobic and transphobic incidents*, 2007, available at: [http://www.ilga-europe.org/sites/default/files/Attachments/handbook_monitoring report ing_homo-transphobic_crimes.pdf](http://www.ilga-europe.org/sites/default/files/Attachments/handbook_monitoring_report_ing_homo-transphobic_crimes.pdf)

Trainers/facilitators should have the right to invite and involve persons having an inside experience with gaps and flows in the implementation of national legislation on hate crime (i.e. lawyers, NGOs, law enforcement officials). In the context of the training, prosecutors and judges should be able to exchange views with other stakeholders.

"This publication has been produced with the financial support of the Fundamental Rights & Citizenship Programme of the European Union. The contents of this publication are the sole responsibility of the Centre for European Constitutional Law, the Hungarian Helsinki Committee, the ART.1, the Greek Council for Refugees, the Antigone and the Cooperazione per lo Sviluppo dei Paesi Emergenti and can in no way be taken to reflect the views of the European Commission."

