

Training concept note for Legal Practitioners

Objective: The purpose of this concept note is to formulate, based on the findings of the training needs assessment from three partner countries (Hungary, Italy and Greece), the approach, methodology and content of the training module specifically targeted to the needs of legal practitioners. The concept note will serve as basis for the design of the specific training material for the workshops.

Target group: legal practitioners who want to acquire knowledge and skills for dealing with racist crime, hate crime and homophobic crime

1. MAIN TRAINING NEEDS AND PROPOSED OBJECTIVE OF THE WORKSHOP

Training needs

The needs assessments in three countries highlighted two major starting points which are common in the three countries where the trainings will be held (Greece, Italy and Hungary): firstly, the lack of specialised training on hate crime for legal practitioners and secondly the urgent need for raising awareness and transferring knowledge and skills within this specific group. No training or educational programmes concerning specifically hate crimes were identified in the three countries. Few examples of seminars concerned anti-discrimination and immigration issues¹. Hate crime seems to be a rare subject of training for legal practitioners. Although legal practitioners who handle such cases are by default aware of the significance of the issue and are sensitized towards victims of hate crimes, the common need for relevant training responds to three main training needs: a) to sensitize legal practitioners on the special features of hate crimes b) to inform legal practitioners on the existence of (international and national) legislation and case law and c) to transfer practical skills that will help adjudicate cases effectively.

Main objectives of the course

Based on the training needs identified, the main objectives of the proposed training for legal practitioners are the following:

- a) to raise awareness of legal practitioners on the features of hate crimes and relevant legislative instruments
- b) to transfer knowledge on existing provisions and case law
- c) to transfer practical skills on how to recognize and adjudicate hate crimes and formulate defense strategies

¹ Centre for European Constitutional Law, Legal professionals in Greece - Needs Assessment Report, April 2015; COSPE, Needs Assessment Report, 2015.



Based on the training needs assessments, important elements with regard to this target group include:

- it must be ensured that participants will be actively involved in disseminating the training results;
- the training should focus on national and international legislation and on technical-procedural instruments;
- the trainings should be adapted to the national context in each country
- the training should refer to competent authorities and independent institutional bodies, on organizations and bodies active in reporting hate crimes and on ways to network with other relevant legal professionals;
- the training should promote networking and should result in all participating legal practitioners being promoters of anti-racist ethos and multipliers of information;
- the training should be as interactive as possible

2. PROPOSED STRUCTURE AND MODULES OF THE WORKSHOP

Regarding the content of the trainings, one main objective is to familiarize participants with national legislation and international law related to hate crimes. It is proposed that the workshops are structured in **three distinct modules** that deal with: a) the concept and features of hate crimes b) international and European law and c) national legislation and case law. Topics to be covered in the each workshop module include:

A. Concept and features of hate crimes

- What is a hate crime? The history and main features of hate crimes. Examples of hate crimes - cases, documentaries, news clippings – interactive session
- Reference to protected groups and acts that would qualify as hate crime against them, with special reference to extremist organizations.
- Identifying the main elements of a hate crime - work in groups based on case studies

B. International and European law

- Presentation of data on hate crime in Europe (through FRA reports)
- Presentation of international standards and European legislation - work in groups on way to use these as legal tools in argumentation before national courts
- case-law of the ECtHR - the significance of referring to ECtHR during the complaint procedure and its relevance to the admissibility of the case at the ECtHR



C. National law

- I. The legal framework and national case law – selection and presentation of important cases
- II. Recognizing hate crime
 - Types of criminal offenses that qualify as hate crime
 - Categorizing an offense and establishing motivation
- III. Defending hate crime
 - investigatory stage of the procedure – bias and impediments created by police questioning and means to minimize the impact
 - complaint procedure - motion for correct qualification and referral of the case to the competent level
 - procedural guarantees for victims
 - collateral damages and the framework in which these could be defended.
- IV. Dealing with hate crime outside the courts
 - competent authorities and independent institutional bodies and ways to address them
 - networking with other competent legal professionals
 - the media
 - Open Discussion: Good practices in dealing with hate crimes

Method

The workshops should address small groups (not above 20 participants).

The trainings should be as interactive as possible following the principles of adult learning. Participatory working methods, including team work and case analysis are well suited to the purpose of this training. Case study exercises (real or fictional) should feature at the core of the course.

Proposed sequence of methods:

- General introductory lecture on the main topic of each module (lecture should start from facts and data, should address central topics and should not last longer than 35-40 minutes)
- Q & A session (10-15 minutes)
- Break
- Work in groups based on case studies included in the course material (1 hour)
- Group presentations on the case studies (30 min)
- Break
- Group discussions (30 min)



Although role playing in general met with diverse reactions in the TNAs, one very specific suggestion included a specific proposal for such a game:

- i. Presentation of events - crime and objective of offender – identification of applicable law
- ii. Role playing - handling of case by authorities at police level and at judicial level –impediments faced at each level
- iii. Alternative steps that could have been taken (address national authorities/ institutions)
- iv. Alternative legal actions at national and international level.
- v. Practical ways to overcome impediments

3. PROPOSED WAYS TO USE THE EXPERIENTIAL METHOD

Sensitization is necessary for a legal professional who has opted to work with hate crime cases. The best way to use the experiential method for this particular target group includes the following:

- exposure to the reality of hate crimes through data (FRA report on hate crime, FRA reports on victims of hate crime, FRA report on homophobia and transgender, data on Roma issues)
- exposure to real hate crimes (recent or older ones) through documentaries and the use of audiovisual methods
- examples of hate crimes with distinct features for work in groups

4. PROPOSED CASE STUDIES

Real life case studies should feature prominently in the workshop, since the conclusion on the usefulness of this method was unanimous. Case studies would be dealt with in small groups that would argue on a hate crime case utilizing legal terminology.

Specific cases were mentioned in the Hungarian training needs assessment: Sajóbáony, Muszkás sor, Bicske, MILLA Szász Barna, Balaton incident 2014, Gyöngyöspata, Devecser². These cases could be used in all countries, if relevant. Alternatively, one case study from each country could be used.

Further suggestions on case studies include³:

- Case study of assault against immigrants or refugees from Africa or Asia–main discussion points:
 - the right to judicial protection of the victim, which becomes particularly problematic if the victim is deprived of legal residence, is devoid of economic resources and belongs to a vulnerable group;

²Hungarian Helsinki Committee, NeedsAssessment Report - Hungary, April 2015

³Centre for European Constitutional Law, Legal professionals in Greece - Needs Assessment Report, April 2015



“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/FRAC/AG/6185

- the possible legal action that can be taken
- impediments that may ultimately render access to justice impossible
- Case study of assault against bisexual person – discussion points:
 - impediments during the filling of the case by authorities
 - the possible further abuse and victimization of the assaulted by the state authorities in their usual tolerance towards the offender;
 - the best approach the defense lawyer can adopt towards their client
- Case study of assault against persons considered homosexuals on the basis of their appearance – discussion points could serve as basis to distinguish between homophobic crime, hate crime and bullying, which at present seem to encounter wide spread confusion.

5. PROPOSALS ON TRAINING MATERIAL

Training material should include:

- International instruments and case law
- European legislation
- National legislation
- National case law
- Case study materials

Further suggestions include:

- list of bibliography
- list of relevant audiovisual material
- relevant media material

Material required for group work should be provided in hard copy. All other material should be provided in CD. Pen drive was indicated as a medium preferable to the use of paper based materials. The material will also be uploaded on the website.

6. PROPOSALS ON LOCATION/TIMING OF THE TRAINING

The ideal timing for the workshops seems to be: after the summer holiday, ideally in October, or in March/April.

Trainings could be held on a Friday plus potentially a half day of Saturday.

Regarding their overall duration, workshops should be one and a half day, structured in three sessions. Each session should have a 3-hour duration.



Regarding the location, alternative solutions include a) a location outside the capital cities; b) the bar association itself.

7. PROPOSALS ON FACILITATORS/TRAINERS

It seems to be a unanimous conclusion that the ideal trainer or facilitator, who will ensure interaction with the participants, presumes the coexistence of an experienced, professional lawyer with hands-on experience in the field, and no other trainer, suggestions on whom include:

- an academic
- a clinical social worker and/or psychologist to communicate the consequences of dealing with such cases, both on the victims and on the legal professionals.
- volunteers or members of NGOs active in protecting vulnerable groups rights
- judges and police officers who have worked on such cases
- trainers from international or regional bodies. The Council of Europe would be one suggestion, as well as the United Nations, particularly the Commission of the UN Convention to Combat Discrimination, which considers individual complaints.

An option would be to use four different trainers, to debate the subject from different points of view: a sociologist of immigration; an experienced lawyer; a legal practitioner experienced on debating procedural aspects and a public prosecutor. The trainer/s should be experienced moderators.

8. OVERALL COMMENTS

The TNAs suggest that a high level of interest is expected from legal practitioners and willingness to be actively involved. An additional motivation for encouraging lawyers' participation, could be to grant course credits to the training in cooperation with the Professional Association of Lawyers.

A secondary outcome of the training should be to encourage networking. In this light, encouraging the presence of other groups (judges, prosecutors and police officers) was recommended.

The importance of mutual understanding between professionals involved in hate crime was noted and it was proposed that any training would have maximum efficacy if it addressed simultaneously legal professionals, police offices and judges and prosecutors.

The involvement/active role of Bar Associations in the training would be a way to enhance the effectiveness and sustainability of the training.



"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/FRAC/AG/6185

Active participation in the training is a decisive indicator of its success.

Suggestions that pertain mostly to the champions' transnational training include the necessity of English language skills, which should be somehow tested during the training. A potential solution is to hold the module on ECtHR case-law in English. Selection criteria should be transparent. If there is a test, it should not be an essay type.

"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, ART.1, the Greek Council for Refugees, Antigone and Cooperazione per lo Sviluppo dei Paesi Emergenti and can in no way be taken to reflect the views of the European Commission."

