



Office for Democratic Institutions
and Human Rights

Question of ideal hate crime legislation: Substantive offences versus penalty enhancement provisions

Defining Hate Crime: Towards a common European Definition

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osce.org/odihr

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Outline

- OSCE hate crime definition, concept and commitments
- Three ways of legislating against hate crime
 - Substantive offence
 - General penalty enhancement
 - Specific penalty enhancement
- Conclusion

ODIHR's approach to hate crimes

Hate crime = Criminal offence committed with a bias motive

(OSCE Ministerial Council Decision 9/09, Athens)

A. Criminal Offence:

- Any crime in the criminal code, which can be committed intentionally
- Incidents which are not crimes, such as misdemeanors, administrative offence: monitoring, legislative considerations
- Including verbally committed crimes, if criminal even without the BM (incitement to violence, threats..)

ODIHR's approach to hate crimes

Hate crime = Criminal offence committed with a bias motive

B. Bias motivation:

- Hatred not required, rather underlying bias/prejudice, which can be manifested through:
 - Target selected because of a protected characteristic OR
 - Hostility towards group demonstrated during the attack

OSCE commitments on hate crime

- Law
- Recording and data collection
- Investigation
- Outreach
- Victims

Three ways of legislating against hate crime

- 1. Substantive offence
- 2. Penalty enhancement
 - A. General penalty enhancement
 - B. Specific penalty enhancement

1. Substantive offence (SO)

- 21 states
- BM as a constitutive element of an offence
- Strong evidence may be needed
- Visibility

2. Penalty enhancements:

A. GENERAL PENALTY ENHANCEMENTS (GPEs)

- 38 states
 - Aggravating circumstances applicable to all crimes
 - Sentencing provision (need to prove guilt first)
 - A: easier to incorporate, BM not proven does not hinder condemning
- x D: invisible; easier to go without; can be outweighed

2. Penalty enhancements:

B. SPECIFIC PENALTY ENHANCEMENTS (SPEs)

- 30 states
- Attached to some offences, usually as their qualified forms
- BM as constitutive element of a crime (as SOs)
- A: symbolic value; better visible

x D: without BM the offence “falls” – easier to apply just the base offence

Conclusion:

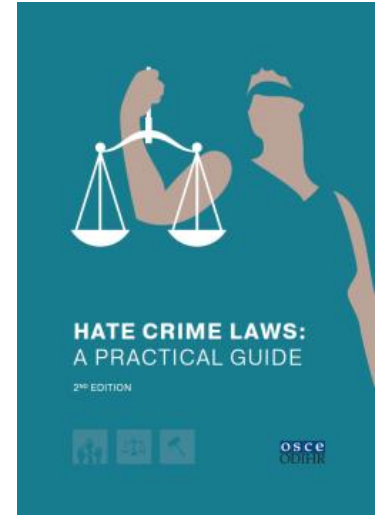
- SOs/SPEs – which offences? – big impact (homicides, assaults; threats); not an extensive list
- Combination of approaches desirable: SOs + GPEs + SPEs
- Police/prosecution: recording is essential + training + guidance
- Courts: consider sentencing guidelines
- Alignment of all the provisions

Resources:

- [Hate Crimes Laws: A Practical Guide, 2nd edition](#)

- Tailored legislative advice

<https://hatecrime.osce.org/odihr-tools/assisting-law-makers>



ODIHR's Resources on Hate Crime

- Police: <http://www.osce.org/odihr/tahcle>
<https://www.osce.org/odihr/419897>
- Prosecutors: <http://www.osce.org/odihr/pahct>
<http://www.osce.org/odihr/prosecutorsguide>
- Civil society: <http://www.osce.org/odihr/39821>
<https://www.osce.org/odihr/385017>
- Recording and data: <http://www.osce.org/odihr/datacollectionguide>
<https://www.osce.org/odihr/INFAHCT>
- Victims: <https://www.osce.org/odihr/hate-crime-victim-support>



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