Krassimir Kanev

WHITE PAPER: MEASURES TO COMBAT BIAS-MOTIVATED CRIMES AND HATE SPEECH

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INTRODUCTION

This publication has been prepared as part of the project ***"Scaling up the Role of Civil Society of Vulnerable Communities in Bulgaria to Respond to Discrimination, Intolerance, Hate Speech and Hate Crimes (EQUALTOGETHER)"***. The project is co-financed by the European Union under the ***"Citizens, Equality, Rights and Values"*** Programme. The leading partner is the Bulgarian Helsinki Committee. Other partners include Association "Organisation DROM" from Vidin, Association "Association INTEGRO" from Razgrad, Liberal Alternative for Roma Civic Union from Kyustendil, Roma Academy for Culture and Education from Sliven, and Youth LGBTI organisation "Deystvie" from Sofia.

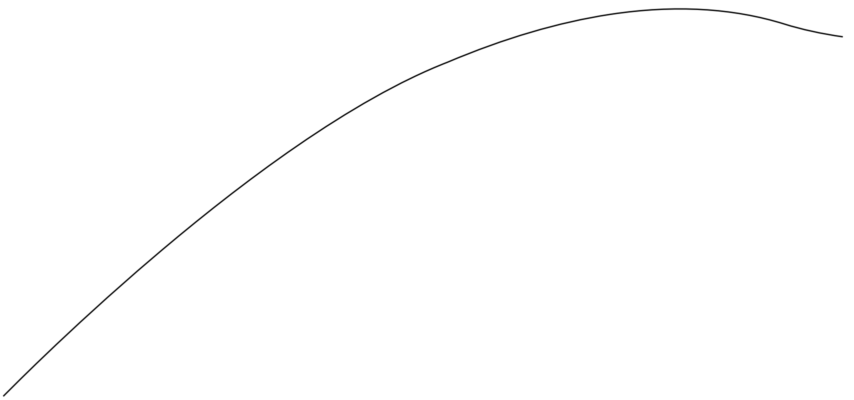
The project produced five regional assessments of the specific challenges faced by vulnerable groups and communities in relation to discrimination, intolerance, hate speech and hate crime. These assessments have been presented at a series of advocacy initiatives at the local level, involving representatives of local authorities as well as local representatives of state authorities. In May and June 2024, within the framework of the project, advocacy meetings were held with MPs, representatives of the judiciary, representatives of several ministries and the National Statistical Institute. During the meetings, a number of issues and measures to combat discrimination, hate crime and hate speech were discussed. The project materials are available on the specially created website.[1]

This publication sets out the problems and measures to combat hate crime and hate speech in Bulgaria based on the findings, discussions and recommendations made during the regional and national advocacy meetings. It is structured in three parts:

1 https://nohate.bghelsinki.org/za-proekta-equaltogether/#reports

- The **first part** discusses the basic concepts of 'hate crimes' and 'hate speech'.
- The **second part** sets out the main problems created by the Bulgarian legislation and practice in combating hate crimes and hate speech, and formulates recommendations for legislative reform.
- The **third part** sets out recommendations for practical measures in a number of areas for the effective combating of discrimination, hate crime and hate speech.

Although the conclusions and recommendations presented in this publication are the result of discussions with a wide range of representatives of state institutions and local authorities, as well as representatives of civil society, they are not binding upon these institutions and organisations. The conclusions and recommendations engage only the partner organisations of the project.



1. BIAS-MOTIVATED CRIMES AND HATE SPEECH

Within the framework of this project, a training package was created containing five manuals intended to serve for the implementation of the training activities envisaged in the project. Two of the manuals are dedicated to hate speech and combating it, and bias-motivated crimes.[2] They set out in detail the main concepts and their definitions; international standards for combating bias-motivated crimes; problems created by the Bulgarian legislation and practice, as well as measures for effective social control directed against bias-motivated crimes and hate speech. This part of the ***White Paper*** briefly summarizes these texts in order to outline the essence of the phenomena which are subject to such measures.

2 All materials from the training package are available at https://nohate.bghelsinki.org/za-proekta-equaltogether/#reports

1.1. Bias-motivated crimes

Bias-motivated crimes are intentional acts committed with a specific motive related to prejudice against a certain protected characteristic of the victim. They are also a form of discrimination — the most severe one, which affects both the personal integrity of the victim and the system of social relations. For the purposes of this paper, we can define prejudice as an unlawful generalisation which attributes negative characteristics to a group or a particular person who belongs to it.[3]

Bias-motivated crimes are a phenomenon as old as the human race. Since ancient times, history has witnessed severe attacks on individuals and groups because of their ethnicity, race, religion, gender, disability, sexual orientation or other characteristic. These forms of violence were perpetrated both during military conflicts and in peacetime. In more recent times, the worst and the most severe of these crimes was the genocide perpetrated against the Jews during World War II.

European history, as well as the history of the Balkan peoples, abounds with mass killings of people because of their nationality and/or religion. In Europe, ethnicity/nationality and religion are key factors in the formation of nation states and are therefore the most common causes of the violence which invariably accompanies these processes. Therefore, the first post-World War II international treaties within the framework of the UN were dedicated to the protection of individuals and groups from violence based on race, nationality and religion. These are the ***1948 Convention on the Prevention and Punishment of the Crime of Genocide***, the ***1966 International Convention on the Elimination of All Forms of Racial Discrimination*** (CERD) and the ***1973 International Convention on the Prevention and Punishment of the Crime of Apartheid***. At the

3 In theory, both negative and positive prejudices are known. Here only the negative are included in the general concept of prejudice.

national level, and especially in the United States of America, the movement to protect African Americans from racial discrimination forms the largest part of the civil rights movement.

At the root of the bias-motivated crimes related to race, nationality and religion lies hatred. They have therefore been primarily referred to as "hate crimes". Under this name, they formed essential part of the doctrines of criminal law of the countries of Europe and North America. Gradually, however, these doctrines are beginning to justify the need combat through criminal law violence based on other characteristics as well. This process has been developing in parallel with the development of the civil rights movements of other discriminated communities – LGBTI, women, and people with disabilities. International treaties have been drafted aiming at protecting such groups: the UN ***Convention on the Elimination of All Forms of Discrimination against Women*** of 1979; the ***Convention on the Rights of the Child*** of 1989; the ***Convention on the Rights of Persons with Disabilities*** of 2006; the Council of Europe ***Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*** of 2011.

Research and experience in law enforcement has shown that while attacks based on other protected characteristics are sometimes associated with hatred, this is not so in all cases, not even in most of them. Much more frequently, when, for example, they are directed against women and children, the dominant motive is not hatred, but the need to "put the victims in their place". In other words, the perpetrator is driven not by hatred towards his/her children and partner, whether male or female, but rather by the vision of some social role that he/she sees fit for them and requires the victim to adhere to: for example, for the wife to cook her partner dinner after work and if she bulks, to force her to perform that role. Such an attitude on the part of the perpetrator is also based on prejudice. It can be based on a false generalisation of the role of the woman or the child, as well as on an intention to secure role conformity through violence. In its definition of the concept of "gender" and "gender-based violence", the Istanbul Convention refers precisely to this type of social relations and aims to combat

violence based on the notion of a role, rather than hatred.[4] In a similar way, according to a widespread belief in Bulgaria, children can and should be beaten "for their own good". This means forcing them to perform a role we believe is suitable for them at the present time, or would be suitable for them in the future.

For this reason, modern criminal law doctrine, as well as legislation, progressively use the term "bias-motivated crimes" rather than "hate crimes". The former is the more accurate generic term covering all hypotheses, and the latter is subordinated to it. [5]However, the two terms are often used as synonyms (including in this paper). Because bias-motivated crimes constitute an extreme form of discrimination, they are sometimes referred to as "crimes with discriminatory motives".

The victims of bias-motivated crimes are most often representatives of the group possessing the relevant protected characteristic. However, victims can also be persons who are in some way associated to representatives of such a group, for example, their intimate partners, as well as persons and organisations which protect their rights.

Two concepts of bias-motivated crime have emerged in theory and in law enforcement. According to the first of these, bias-motivated crimes are only those acts which have a parallel among ordinary crimes. This means that in such a case there must be an ordinary ("parallel") crime (murder, bodily harm, arson, or other) plus a bias motive. This concept excludes hate speech from the scope of bias-motivated crimes. Such a concept prevails in the United States and in some international organisations where the United States is an active participant, such as the Organisation for Security and Cooperation in Europe (OSCE).

According to the second concept, bias-motivated crimes can be acts which have parallels among ordinary crimes, as well as certain forms of hate speech. This applies primarily to those forms

4 In Art. 3c, the ***Istanbul Convention*** defines "gender" as "socially constructed roles, behaviours, activities and attributes that a particular society considers appropriate for women and men".

5 Frederick M. Lawrence. The Punishment of Hate: Toward a Normative Theory of Bias-Motivated Crimes. ***Mich. Law Rev.***, Vol. 93, No. 2 (Nov., 1994), pp. 320-321.

of hate speech for which there is an international legal obligation to criminalise. This second, broader concept prevails in the vast majority of European countries, as well as among regional European organisations such as the Council of Europe and the European Union.

States have an obligation to investigate more energetically and to punish crimes incited by prejudice more severely. These obligations derive from the more destructive effect on the individual and on the system of social relations which they cause when compared to ordinary crimes.

In particular, according to the dominant theory, the victim of a hate crime experiences the injury more severely than the victim of an ordinary crime due to an affront to their key identity.[6] A hate crime is directed not only against the individual representative of a particular social group, but also against the group as a whole, whereby each member of the group feels affected. Furthermore, other vulnerable groups may also feel victimised without being directly affected by the crime. Finally, society as a whole is affected since hate crime sows division and discord.[7]

The trend in modern criminal law, as well as in anti-discrimination law, is towards expanding the scope of protected characteristics and hence — of the crimes included in the scope of the concept of "bias-motivated crimes". Some protected characteristics are more closely related to personal identity; others are less so. Characteristics closely related to personal identity are usually ethnicity, gender, religion, sexual orientation. These are characteristics which form the human personality from an early age and, as a rule, remain with it throughout life. Any affront to such key identities is usually experienced in a more painful way and affects other members of the relevant group to a greater extent.

However, this division should not be taken to extremes. Legislation should be able to allow law enforcement to assess the effects of any attack motivated by bias depending on the specific

6 Iganski, P. ***'Hate crime' and the city***, Bristol, Policy Press, 2008, pp. 81-82.

7 Perry, B. ***In the Name of Hate: Understanding Hate Crimes***, New York/London, Routledge, 2001, p. 7.

circumstances. In cannot in principle be ruled out that the affiliation of a football fan to their team's fan club is more key to the formation and expression of personal identity than, for example, religion or ethnic affiliation.

International human rights bodies have established a series of positive obligations on the part of states in relation to combating bias-motivated crimes. Some of these positive obligations are set out in the provisions of international treaties. Such obligations to investigate and punish certain crimes — such as genocide and apartheid — are set forth in the ***Convention on the Prevention and Punishment of the Crime of Genocide*** and in the ***International Convention on the Prevention and Punishment of the Crime of Apartheid***. Obligations to criminalise certain acts motivated by racist prejudice are also provided for in the ***International Convention on the Elimination of All Forms of Racial Discrimination***.

In other cases, positive obligations of the states are formulated by bodies established to supervise the implementation of the relevant international treaty. For example, the Committee on the Elimination of Discrimination against Women (CEDAW), established by the ***Convention on the Elimination of All Forms of Discrimination against Women***, envisages two types of obligations of states: obligations arising as a result of acts or omissions of state bodies and institutions, and obligations arising in relation to non-state actors. The first type of obligations requires not only the adoption of laws, strategies and programmes aimed at preventing gender-based violence, but also effective investigation and punishment of perpetrators. With regard to the second type of obligations, the Committee outlines those cases which may lead to the international responsibility of the state for the actions of non-state actors.[8] ***The Istanbul Convention*** also provides for a number of positive obligations on the part of states to combat bias-motivated violence against women.

In its case law, the European Court of Human Rights (ECtHR) has established three positive obligations to investigate bias-mo-

8 CEDAW, ***General Recommendation No. 19: Violence against women***, UN GAOR, 1992, Doc. No. A/47/38.

tivated crimes. These obligations apply to such crimes in the narrow sense of the word, i.e. to situations where there is a "parallel crime". They do not apply to hate speech even where certain forms of it are declared crimes under national law.

First of all, states are obliged to investigate all forms of physical violence against persons under their jurisdiction, even when committed by private individuals and irrespective of whether the perpetrators had discriminatory motives. If states fail to fulfil this obligation, this would be a violation of Article 2 or Article 3 of the ***European Convention on Human Rights*** (ECHR). In its 2003 admissibility decision in ***Manson and Others v. United Kingdom***, the Court found that the responsibility of the state to investigate energetically and impartially is even greater when it comes to racially motivated crimes.[9]

The second positive obligation of states when investigating bias-motivated crimes is the unmasking of the specific discriminatory motive. In its judgment in the case of ***Nachova and Others v. Bulgaria*** of 2005, the ECtHR stressed that when investigating cases of violence, and in particular deaths at the hands of public officials, the state authorities have an additional obligation to take all reasonable action to uncover any racist motive and to establish whether ethnic hatred or prejudice may have played a role in the events.[10] The ECtHR subsequently established an obligation to unmask the discriminatory motive also for crimes motivated by other type of prejudice.[11]

The third obligation is that of prevention. States may be held liable for a bias-motivated crime even where they have arrested and punished the perpetrator but have not taken appropriate measures to prevent violence when it affects vulnerable groups.[12]

9 ECtHR, ***Manson and Others v. the United Kingdom***, No. 47916/99), Decision of 6 May 2003.

10 ECtHR, ***Nachova and others v. Bulgaria***, Nos. 43577/98 and 43579/98), Grand Chamber judgment of 6 July 2005, § 160.

11 See, for example: ECtHR, ***Identoba and Others v. Georgia***, No. 73235/12 Judgment of 12 May 2015, § 67.

12 See, for example: ECtHR, ***Opuz v. Turkey***, No. 33401/02 , Judgment of 9 June 2009, § 200.

1.2. Hate speech

Unlike hate crimes, hate speech is subject to both formal and informal social control. This arises from the nature of this act. Although aggressive speech in some of its varieties can have very painful and even a destructive effect on those against whom it is directed, as well as on social relations in general, its effects are much weaker than those of physical violence. Moreover, speech is protected by international human rights law – in particular by Article 10 of the ECHR, as well as by a number of other provisions of treaty law.

Since hate speech in a democratic society is sanctioned through both formal and informal social control, it is defined in a broad and in a narrow sense. One of the broad definitions of hate speech is that of the European Commission against Racism and Intolerance (ECRI), a body of the Council of Europe. The ECRI recommends the application of a number of measures of varying scope and severity, in order to control hate speech. According to this definition, "hate speech" is:

> *"[...] advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status".*[13]

13 ECRI, ***General policy recommendation no. 15 on combating hate speech***, CRI(2016)15, Strasbourg, 2016.

Such a broad definition cannot be used unconditionally for the purposes of the formal social control, that is, for imposing administrative or judicial sanctions, much less for criminal prosecution of the perpetrator.

A narrower definition, which can be derived from the texts of some international treaties as well as from the practice of international human rights bodies, and which is more suitable for use for the purposes of the formal social control, would be the following: **hate speech is the advocacy of hatred on the basis of a protected characteristic, which constitutes incitement to discrimination, hostility or violence**. It should be borne in mind that while all protected characteristics are appropriate for the implementation of formal social control, when it comes to hate crimes, this would not be the case when using legal means to control hate speech. In particular, it would be impossible to justify the need for their use in cases of advocating hate based on "political opinion", especially with regard to extremist political ideologies.

As in the case of bias-motivated crimes, the first provisions at the international level, requiring the prohibition of hate speech were formulated on racial, ethnic or religious grounds. Article 4 of the CERD (***Convention on the Elimination of Racial Discrimination***) requires states to declare the dissemination of ideas of racial superiority or hatred, as well as incitement to racial discrimination and racist violence to be punishable by law; not to provide any assistance for racist activities, including financial; prohibit organisations, as well as organised and all other propaganda activities which promote and incite racial discrimination, and sanction participation in them; not to allow public authorities and institutions to promote or incite racial discrimination. Article 20 of the ***International Covenant on Civil and Political Rights*** of 1966, (Covenant) requires that any advocacy of national, racial or religious hatred which incites discrimination, hostility or violence shall be prohibited by law.

Within the European Union, the 2008 ***EU Council Framework Decision on combating certain forms and expressions of racism***

and xenophobia by means of criminal law (Framework Decision) is key to combating hate speech. The decision requires Member States to criminalise public incitement to violence and hatred against groups and persons defined by reference to their race, colour, religion, descent or national or ethnic origin; such incitement by public dissemination or distribution of tracts, pictures or other material; the public condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes; the incitement and complicity in such crimes.

The difference between the standards established by the Covenant, on the one hand, and the Framework Decision, on the other, is primarily in the latter's requirement to criminalise certain types of speech. The Covenant only requires "prohibition by law", but does not determine the nature of this legal prohibition – criminal or civil. In this regard, the question arises regarding the criteria for the application of criminal law in cases of hate speech.

An attempt to answer this question is made in the ***Rabat Plan of Action*** on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence of January 2013, developed by an expert group convened by the UN.[14] This document recommends that States make a clear distinction in their legislation and practice between expressions which constitute crimes; expressions not punishable under criminal law but capable of justifying a civil action or administrative sanction; expressions, which do not lead to criminal, civil or administrative sanctions, but nevertheless raise concerns regarding tolerance, civility and respect for the rights of others. In the latter case, the appropriate means of sanctioning them is the informal social control.

14 United Nations/United Nations Human Rights, Office of the High Commissioner, ***Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence***. A/HRC/22/17/Add.4, 11 January 2013.

The main contribution of the ***Rabat Plan of Action*** to the development of anti-hate speech standards is the test which it provides, in order to assess the need to apply criminal sanctions in such situations. It includes an assessment of six factors: **context** of the speech, the **position of the speaker**, **intent**, **content and form** of the speech, **extent** of the speech act, and the **likelihood of action**.

In their case law, the organs of the ***European Convention on Human Rights*** have rejected complaints by racists claiming a violation of Article 10 of the ECHR (freedom of expression) because their racist speech was in one way or another restricted at the national level. The rejection is based on Article 17 of the Convention.[15]

In recent years, the case law of the Court has undergone rapid development relating to the positive obligations of States to combat hate speech. The first leading judgment of the ECtHR on this subject matter is the Grand Chamber judgment in the case of ***Aksu v. Turkey*** of 2012. For the first time in the Court's case law, the Grand Chamber held that insulting and degrading epithets not directed personally at a certain person, but at a certain ethnic group, may become grounds for individual members of this group to claim victim status, as well as a violation of the Convention. According to the Court, in this case the applicant was entitled to claim a violation of Article 8 (right to respect for private and family life) of the Convention, but not of Article 14 (prohibition of discrimination). It would be legitimate on the part of the applicant to claim a violation of Article 14 in conjunction with Article 8 only if "[...] the impugned publications had a discriminatory intent and effect".[16] In this case, the Court found no violation of Article 8. It

15 Article 17 (Prohibition of Abuse of Rights) of the ECHR states: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." The provision of Article 5 (1) of the International Covenant on Civil and Political Rights is similar.

16 ECtHR, ***Aksu v. Turkey***, Nos. 4149/04 and 41029/04, Grand Chamber judgment of 15 March 2012, § 45.

held that the authorities at the national level had taken sufficient measures and that the applicant's private life had not been affected to the extent that there had been a violation of that provision. The ***Aksu*** judgment does not provide comprehensive and detailed criteria for assessing when Article 8 or Article 14 in conjunction with Article 8 would be violated in the event that an individual complains of hate speech directed at the group to which he/she belongs or to which he/she is associated. As a first decision on this key issue, it is important for two things: 1) with the justification of the possibility of an individual to be a victim of impersonal hate speech; 2) with the indication of when, along with a violation of Article 8, a violation of Article 14 could be alleged in such cases.

Another Grand Chamber judgment in the case of ***Perincek v. Switzerland*** of 2015 concerned a criminal charge and conviction of a Turkish politician and intellectual for denying the Armenian genocide at three public events organised with his participation in various cities in Switzerland. He complained of a violation of Article 10 of the Convention. The ECtHR affirmed both the applicability of this provision and, following the Aksu case, the applicability of Article 8 in cases of hate speech. The ECtHR held that, for this reason, the conviction, which was a serious restriction on the applicant's right to freedom of expression, pursued the legitimate aim of protecting the dignity and the rights of the contemporary Armenians, as well as of their ancestors, who were victims of the mass killings in 1915 and subsequent years.[17] The important contribution of the Court in this case with regard to this particular point is in its attempt to formulate a balancing test between the right to freedom of expression and the right to private life of persons who may be affected by hate speech. The Court focused on the relative importance of the specific aspects of the right to freedom of expression and the right to private life, the need to limit or protect each of them, and the proportionality between the means used and the objective to be achieved. For the purposes

17 ECtHR, ***Perinchek v. Switzerland***, No. 27510/08, Grand Chamber judgment of 15 October 2015, § 156.

of balancing in the context of the particular case, the Court examined the nature of the assertions made; the context in which restrictions are imposed on them; the extent to which the assertions affect the rights of Armenians; the existence or absence of consensus among Member States on the need to resort to criminal sanctions in respect of such assertions; the existence of rules of international law relevant to such assertions; the manner in which the judicial authorities of the respondent state have justified the conviction; and the severity of the sanction imposed.

Eventually, after a process of balancing, the Court found a violation of Article 10 of the Convention. It held that the applicant's allegations concerned matters of public interest and did not incite hatred and intolerance; that the context in which they were made was not characterised by heightened tensions and special historical grounds relevant to Switzerland; that the allegations could not be assessed as affecting the dignity of members of the Armenian community to the extent that a criminal law sanction was required; that there was no international legal obligation for Switzerland to criminalise such statements; that the Swiss courts had in practice punished the applicant for expressing opinions which differed from those generally accepted in that country; that the restriction of the applicant's right to freedom of expression took the form of a criminal sanction, which, given the particular circumstances of the case, was excessive.

The ECtHR's decision in the case of ***Panayotova and Others v. Bulgaria*** of May 2019 is key to understanding the Court's approach to criminalising hate speech. In this case, the applicants — three Roma activists — filed a complaint with the Prosecutor's Office against a brochure published and distributed by the "Ataka" political party before the local elections in 2011. It was entitled "Gypsy Crime — A Danger to the State". It contained articles already published in the media and texts by the authors of the brochure, as well as by the "Ataka" leader Volen Siderov, discussing what they call "Gypsy criminality". The articles bore blatantly racist headlines. In the articles and speeches by Volen Siderov, the

government and the media were accused of large-scale cover-up of "Gypsy criminality" for a political purpose.

The Prosecutor's Office refused to bring charges against the authors and distributors of the brochure on the grounds that its production and distribution did not contain the elements of the crime under Article 162, para. 1 of the ***Criminal Code***. The ECtHR held that the content, structure and presentation of the articles in the brochure were openly intended to portray the Roma in Bulgaria as extremely inclined towards crime and perversion and thus stigmatised and vilified them. The Court acknowledged that "the assertions in the brochure were way stronger than the statements at issue in ***Aksu***".[18] It also held that in cases of verbal threats and other serious attacks against the psychological integrity of the victim, similar to the threats and personal insults in the cases of ***R.B. v. Hungary*** and ***Kiraly and Dömötör v. Hungary***, the state has a positive obligation to apply criminal sanctions.

However, according to the Court, "[...] the situation in this case is different. The applicants do not suggest that they have been directly confronted with verbal abuse, or that the brochure itself produced an atmosphere of intolerance or racial strife which specifically affected them in some way."[19] In the absence of evidence as to how exactly the brochure affected the applicants personally, the Court in this case refused to accept that the state had a positive obligation to impose criminal sanctions on the persons who produced and distributed the brochure. The Court pointed out that for such cases Bulgaria has established another procedure for holding the applicants accountable — the one set out in the Protection against Discrimination Act, which the applicants had not used. For these reasons, the Court declared the complaint manifestly ill-founded.

Nine years after the ***Aksu*** case, the ECtHR found violations of Article 14 in conjunction with Article 8 in two cases of impersonal

18 ECtHR, ***Panayotova and Others v. Bulgaria***, No. 12509/13, Decision of 7 May 2019, § 56.

19 ***Ibid.***, § 60.

hate speech against Roma and Jews. This happened on 16 February 2021 with the judgments in the cases of ***Budinova and Chaprazov v. Bulgaria*** (anti-Roma hate speech)[20] and ***Behar and Gutmann v. Bulgaria*** (anti-Semitic hate speech)[21]. These landmark judgments established standards which have pan-European significance and are expected to have important effects on the Bulgarian, and perhaps also on other systems for combating discrimination and hate speech in relation not only to the Roma, but also to other vulnerable groups. Both cases were subsequently selected by the Bureau of the Court as "key cases". In the above-mentioned cases, the Court gave clear guidance on the substantive standards and on the use of remedies under the ***Protection against Discrimination Act*** for combating hate speech. The cases concern the fierce anti-Roma and anti-Semitic statements of the Bulgarian politician Volen Siderov, and the attempts by four persons (two Roma and two Jews) to use the ***Bulgarian Protection against Discrimination Act***. In both cases, proceedings were initiated in civil courts and the claims were dismissed. The Government argued before the Court that the impugned statements were a legitimate exercise of the right to freedom of expression in matters of public interest.

The ECtHR did not share such a view. It found that the disputed statements affected the private lives of the applicants under Article 8, since they were capable of having a sufficiently strong impact on their sense of identity, as well as on their feelings of self-worth and self-confidence beyond the "threshold of severity" required by that provision. The Court also found that the disputed statements were ***prima facie*** discriminatory and that the state therefore had a positive obligation arising from Article 14 to combat racial discrimination. This positive obligation cannot be annulled by the fact that the author of the statements is a politician. The Bulgarian courts gave considerable weight to Siderov's

20 ECtHR, ***Budinova and Chaprazov v. Bulgaria***, No. 12567/13, Judgment of 16 February 2021.

21 ECtHR, ***Behar and Gutmann v. Bulgaria***, No. 29335/13, Judgment of 16 February 2021.

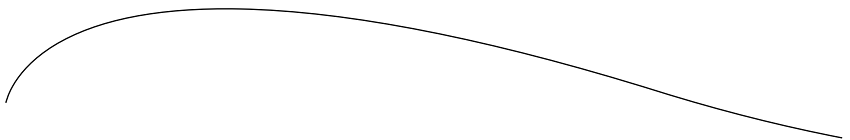
right to freedom of expression and downplayed the effect of his statements on the applicants.

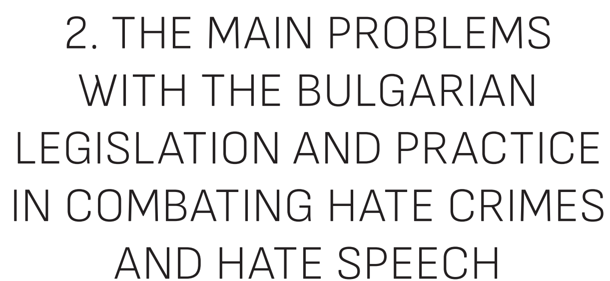
In later case law relating to this subject matter in the case of ***Association ACCEPT and Others v. Romania*** of June 2021, the ECtHR found a violation of Article 14 in conjunction with Article 8 in a hate speech case against LGBTI people, concerning a demonstration by far-right activists during a screening of a film about a same-sex family in a cinema in the centre of Bucharest. The protesters broke into the cinema and shouted homophobic slogans. The applicants who were attending the screening complained to the Prosecutor's Office and did not use any other remedy at the national level. The Prosecutor's Office refused to press charges. In this case, the Court found that the State had a positive obligation to apply the criminal law. In particular, the State was obliged "[...] to investigate in an effective manner whether the verbal abuse directed towards the individual applicants constituted a criminal offence motivated by homophobia".[22] The Court also found that "[...] the necessity of conducting a meaningful inquiry into the possibility that discriminatory motives had lain behind the abuse was absolute, given the hostility against the LGBT community in the respondent State and in the light of the evidence that homophobic slurs had been uttered by the intruders during the incident".[23] The Court in this case did not require the applicants to use another remedy at the national level. What seems to be decisive for the Court in distinguishing this case from ***Panayotova and Others v. Bulgaria*** lies in the fact that the applicants would have had difficulty identifying the attackers in civil proceedings and that the homophobic hate speech was uttered in the presence of the victims. The judgment does not specify how aggressive and how offensive it actually was. On the other hand, it is clear that its scope was much narrower and the public status of the speakers was much lower than in the case of ***Panayotova***. Why, then, would certain factors prevail over oth-

22 ECtHR, ***Association ACCEPT and Others v. Romania***, No. 19237/16, Judgment of 1 June 2021, § 126.

23 ***Ibid.***, § 123.

ers when deciding whether the application of criminal law is justified? The judgments of the Court create uncertainty regarding the circumstances in which the respondent state has a positive obligation to apply criminal sanctions to hate speech. Given this uncertainty, for potential applicants it would be advisable at this stage to seek recourse to civil and administrative remedies.





2. THE MAIN PROBLEMS WITH THE BULGARIAN LEGISLATION AND PRACTICE IN COMBATING HATE CRIMES AND HATE SPEECH

2.1. Bulgarian legislation and practice and hate crimes

The fulfilment by the state of the positive obligations to combat hate crimes through criminal law requires the adoption and implementation of legislation which allows for their prosecution, as well as to determine punishments relevant to their highly injurious nature both for victims and for the system of social relations. This is achieved in two ways in the legislation of the European countries:

- By including discriminatory motives among aggravating circumstances in the general part of the criminal laws;
- By formulating of qualified provisions envisaging heavier punishments for hate crimes to the definitions of the respective parallel crimes.

For many years, Bulgarian criminal law has suffered from serious gaps in its framework for combating bias-motivated crimes. Prior to the Grand Chamber judgment in the case of ***Nachova and Others v. Bulgaria***, the Bulgarian ***Criminal Code*** (CC) contained provisions which went no further than introducing the relevant norms of international treaty law. This applies to the specific criminal provisions for genocide, apartheid, use of violence against another person or damage to their property due to their race, nationality, ethnicity or religion, as well as criminal provisions punishing hate speech on racist and religious grounds. Since the beginning of the democratic changes, a number of criminal provisions have also been introduced for bias-motivated crimes on political grounds. Something that was entirely absent from both the legislation and the Bulgarian criminal law doctrine was the idea that, if not all, then a large part of the crimes in the ***Criminal Code*** could be com-

mitted with discriminatory motives, as well as the notion that they needed to be punished more severely than the respective parallel crimes. Thus, the criminal law did not support efforts to unmask the motives associated with prejudice.

In the criminal justice systems of the European countries, the possibilities for unmasking discriminatory motives and the more severe punishment of bias-motivated crimes, when compared to the corresponding parallel crimes, is resolved mainly by including discriminatory motives among the aggravating circumstances in the general part of the criminal laws. Thus, for each crime with a relevant provision formulated in the special part, the punishment is determined with regard to the aggravating circumstances after the discriminatory motive has been unmasked. This is fully in line with the international standard. This approach enables a large number of protected characteristics to be included in the list of aggravating circumstances. An example of good practice in this regard is the ***Criminal Code*** of Spain, which in Art. 22, item 4 reads: "The following constitute aggravating circumstances: the commission of the crime with racist or anti-Semitic motives or due to any other type of discrimination related to the ideology, religion or belief of the victim, ethnicity, race or nation to which he or she belongs, their sex, sexual orientation or gender identity, illness or disability." There are similar provisions in the general part of the criminal laws of many European countries, among which are also former socialist countries, including the Russian Federation.

However, the 1968 Bulgarian ***Criminal Code*** contains no provision in its general part which sets out, even as examples, any aggravating and mitigating circumstances. Since this was one of the few points where the Bulgarian criminal legislation during the communist era differed from the legislation in the former Soviet Union, the Bulgarian criminal law doctrine was neither unanimous nor categorical in its justification. Some authors, including Prof. Ivan Nenov in his textbook on criminal law, only note this differ-

ence.[24] Others such as Prof. Kostadin Lyutov were more aggressive in defending the Bulgarian approach. According to Prof. Lyutov, the idea of formulating a list of examples of aggravating and mitigating circumstances in the general part of the ***Criminal Code*** is unacceptable since it "[...] does not correspond to the nature of a code (or law) that should resolve issues and not provide examples". [25]Such a view, brought to its logical conclusion, would deny the very existence of a special part of the ***Criminal Code***, the provisions of which abound with "examples". Furthermore, it presents Bulgaria as the only country in Europe which has a true criminal law. Unfortunately, however, such justifications of the inadmissibility of including mitigating and aggravating circumstances in the general part of the ***Criminal Code***, with reference to K. Lyutov, are still not uncommon in the Bulgarian criminal law doctrine.[26]

Due to such reluctance to formulate, even as examples, aggravating and mitigating circumstances in the general part of the ***Criminal Code***, the Bulgarian legislature has been left only with the possibility of formulating qualified provisions envisaging heavier punishments for hate crimes to the definitions of the respective parallel crimes. This happened for the first time in 2011 after the Grand Chamber judgment in the case of ***Nachova and Others v. Bulgaria***. At that time, amendments were made to the qualified sections adding provisions for murder and bodily injury, according to which intentional murder and bodily injury are more severely punished if committed "with hooligan, racist or xenophobic motives". These provisions which quite absurdly confuse motives targeted towards vulnerable groups (racist or xenophobic), with those

24 Ненов, И. ***Наказателно право на Народна Република България: обща част***, Второ издание, София, Наука и изкуство, 1972 (Nenov, I. Criminal Law of the People's Republic of Bulgaria: General Part. Second Edition, 1972, Sofia, Science and Art, 1972), p. 486.

25 Лютов, К. ***Нови положения относно наказанията в НК на НРБ***, София, Изд. на БАН, 1972 (Lyutov, K. New Provisions on Penalties in the Criminal Code of the People's Republic of Bulgaria, Sofia, Publishing House of the Bulgarian Academy of Sciences, 1972), p. 85.

26 See, for example, Марков, Р. и др. ***Наказателно право на Република България: обща част***, София, Сиела, 2022 (Markov, R. et al. Criminal law of the Republic of Bulgaria: General Part. Sofia, Ciela, 2022) p. 576.

expressing disrespect for society and its values in general, were a cumbersome first step in complying with the ECtHR standard. However, their introduction revealed further potential problems with criminal law protection against bias-motivated crimes. One of them was the lack of protection with regard to the other protected characteristics. The victims of crimes committed because of their gender, disability, age, religion, sexual orientation and other protected characteristics also need protection through criminal law. The ECtHR standard requires the unmasking of discriminatory motives in such cases as well.

The other problem with the criminal law protection of victims of hate crimes introduced in 2011 is the lack of qualified provisions in the case of other parallel crimes. Arson, rape, threats and other attacks against the person and property can also be carried out with discriminatory motives in a similar way as murder and bodily harm. In such cases, there is no reason for not formulating qualified provisions similar to those for murder and bodily injury.

The third problem with the criminal law protection of victims of hate crimes introduced in 2011 is the mixing of hooligan and racist/xenophobic motives in the enforcement of the law. The very formulations of the provisions create the prerequisites for this. For a long period of time after 2011, crimes committed with racist motives, especially those committed in public, were prosecuted as crimes committed with hooligan motives without the racist motive being appropriately unmasked. In a similar way, the statistics on crimes and convicted persons collected by the National Statistical Institute did not and still do not report the number of convicted persons separately for the two types of crimes.

Part of these problems led to the judgment of the ECtHR in the case of ***Stoyanova v. Bulgaria*** in 2022. This case concerned an attack and murder carried out in a park in Sofia of a student – Mihail Stoyanov – by three young men who had decided to "cleanse" the park of people of a different sexual orientation. The perpetrators were apprehended and two of them were punished. Although the homophobic motives with which the crime was committed were

unmasked, in the absence of a qualified provision requiring more severe punishment for a crime committed with such motives, the perpetrators were punished pursuant to other texts of the ***Criminal Code***. The ECtHR found a violation of Article 14 in conjunction with Article 2 of the Convention. According to the Court, "[…] although the Bulgarian courts clearly established that the attack on the applicant's son had been motivated by the attackers' hostility towards people whom they perceived to be homosexuals […], they did not attach to that finding any tangible legal consequences".[27] According to the Court, this omission is mainly due to the fact that Bulgarian criminal law has not "properly equipped" these courts for this.

The ***Stoyanova*** case required the introduction of another protected characteristic among the qualified provisions of the ***Criminal Code*** – sexual orientation. This took place with the reform of the ***Criminal Code*** in 2023. This reform was much broader in scope than that of 2011. It introduced qualified provisions for hate crimes, perpetrated with racist, xenophobic and homophobic motives, in a number of sections in the special part of the ***Criminal Code***. They envisage heavier punishments than the respective parallel crimes. After their adoption, the ***Criminal Code*** currently includes:

- Murder with hooligan, racist, xenophobic or sexual orientation motives – Art. 116, para. 1, item 11;
- Causing bodily harm with hooligan, racist, xenophobic or sexual orientation motives – Art. 131, para. 1, item 12;
- Abduction with racist, xenophobic or sexual orientation motives – Art. 142, para. 1, item 9;
- Unlawful imprisonment with racist, xenophobic or sexual orientation motives – Art. 142a;
- Coercion with racist or xenophobic motives – Art. 143, para. 3, item 2;

27 ECtHR, ***Stoyanova v. Bulgaria***, No. 56070/18, Judgment of 14 June 2022, § 73.

- Threat of crime with racist or xenophobic motives – Art. 144, para. 3, item 4;
- Systematic following (stalking) which can excite fear for life and health with racist or xenophobic motives – Art. 144a, para. 3;
- Insult and defamation with racist or xenophobic motives – Art. 148, para.1, item 5 and para. 2;
- Use of violence against another person or damage to their property due to their race, nationality, ethnicity, religion, political beliefs or sexual orientation – Art. 162, para. 2;
- Participation in a crowd gathered to attack groups of the population, individual citizens or their property in connection with their race, skin colour, origin, nationality, ethnicity or sexual orientation – Art. 163, para. 1;
- Desecration of a religious temple, a prayer house, a sanctuary, graves or tombstones with racist or xenophobic motives – Art. 164, para. 3;
- Destruction of property with racist, xenophobic or sexual orientation motives – Art. 216, para. 5, item 4;
- Incitement to a crime based with racist, xenophobic or sexual orientation motives – Art. 320, para. 3;
- Arson with racist or xenophobic motives – Art. 330, para. 2, item 6;
- Genocide – Art. 416;
- Apartheid – Art. 417 and Art. 418.

The additional provisions concerning hate speech referred to below should be added to these provisions. Despite such significant expansion of the scope of protection against bias-motivated crimes, the Bulgarian legal framework continues to contain serious gaps. **First of all**, there is a lack of qualified provisions for certain parallel crimes which can be committed with discriminatory motives. An obvious example of such a gap are attacks on sexual inviolability – rape, fornication and other crimes under Section VIII of the Special Part of the ***Criminal Code***.

Secondly, a serious shortcoming is the limited scope of protected characteristics. Racist, xenophobic, religious, homophobic and (to a limited extent) political motives of a crime do not exhaust the discriminatory motives which the Bulgarian state has the positive obligation to unmask, and punish the perpetrators more severely than those guilty of committing the respective parallel crimes. Victims of bias-motivated based on gender, gender identity, disability, age, origin and other protected characteristics also require enhanced protection by means of criminal law.

Thirdly, it is not clear why the 2023 reform introduced qualified provisions related to racist, xenophobic and homophobic motives in some parallel crimes, but in others – only those related to racist and xenophobic motives. Examples include systematic following, insult and defamation, and arson. Could not such crimes also be carried out with homophobic motives? Despite its wide scope, the 2023 reform gives some impression of arbitrariness.

All these gaps can be easily and elegantly overcome with a provision in the general part of the ***Criminal Code***. This provision would formulate examples of aggravating circumstances, including the commission of any crime with discriminatory motives, the characteristics of which would be listed in this provision. However, to this end, Bulgarian criminal law doctrine needs to overcome its sense of exclusivity and adopt the established European approaches to the formulation of aggravating and mitigating circumstances.

2.2. Bulgarian legislation and practice and hate speech

Bulgarian legislation provides for two types of protection against hate speech – civil-law and criminal-law. Civil-law protection is in accordance with the ***Protection against Discrimination Act*** (PADA). Article 5 of this act prohibits, ***inter alia***, harassment on the basis of the grounds referred to in Art. 4, para. 1, sexual harassment and incitement to discrimination. The protected characteristics referred to in Art. 4, para. 1 include gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, beliefs, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status and any other features established by law or by an international treaty to which the Republic of Bulgaria is a party. Pursuant to § 1 of the additional provisions of the PADA, "harassment" is any undesirable behaviour on the basis of the characteristics referred to in Art. 4, para. 1, expressed physically, verbally or otherwise, which has the purpose or effect of harming the dignity of the person and creating a hostile, degrading, humiliating, offensive or threatening environment. "Sexual harassment" is any undesirable conduct of a sexual nature, expressed physically, verbally or otherwise, which violates the dignity and honour and creates a hostile, degrading, offensive, belittling or threatening environment and, in particular, when the refusal to accept such behaviour or the coercion to such behaviour may affect the taking of decisions affecting such a person. "Incitement to discrimination" means direct and intentional encouragement, guidance, pressure or solicitation to discriminate.

The PADA provides for the possibility of protection before the specialized body established by law – the Protection against Discrimination Commission (PADC), as well as before the court. Pursuant to Art. 47, the PADC may order the prevention and ces-

sation of the violation and the restoration of the original situation; impose sanctions and apply coercive administrative measures; give mandatory prescriptions for compliance with the law and make proposals and recommendations to the state and municipal authorities for the cessation of discriminatory practices and for the revocation of their acts issued in violation of this or other laws governing equal treatment. The PADC cannot award compensation to the person concerned. This can be obtained if the other protection procedure provided for in the PADA is used – the judicial procedure. Its operation is subject to the general rules of civil procedure. Under this procedure, in addition to compensation, the court may order the respondent to cease the violation and restore the situation prior to the violation, as well as to refrain in the future from further violations. Separately, any person whose rights are affected by an administrative act issued in violation of the PADA or other laws governing equality of treatment may appeal to the court pursuant to the ***Administrative Procedure Code***.

The practice of the PADC and the courts related to hate speech is contradictory. While in a number of cases, individuals belonging to vulnerable groups have managed to obtain protection against group libel, the practice of both bodies tends to privilege hate speech generated by politicians. This is an issue related to both their independence and the inadequate balance between the right to freedom of expression of politicians and the right to privacy of the individuals concerned. The judgments of the ECtHR in the cases ***Budinova and Chaprazov*** and ***Behar and Gutman*** discussed above are clear evidence of this.

The criminal law protection against hate speech underwent reform with the 2023 amendments of the ***Criminal Code***. Sexual orientation was added to the protected characteristics in some of the existing provisions of the ***Criminal Code*** and new provisions were adopted. After the 2023 reform, the framework of criminal law protection against hate speech currently includes the following sections in the ***Criminal Code***:

- Preaching or incitement to discrimination, violence or hatred based on race, nationality, ethnicity or sexual orientation – Art. 162, para. 1;
- Formation or leadership of an organisation or group that aims to incite discrimination, violence or hatred on the basis of race, nationality, ethnicity or sexual orientation – Art. 162, para. 3;
- Preaching or incitement to discrimination, violence or hatred on religious grounds – Art. 164, para. 1;
- Insult and libel with racist or xenophobic motives – Art. 148, para. 1, item 5 and para. 2;
- Public incitement to commit a crime by preaching to a multitude of people through the mass media or in a similar way, committed with racist, xenophobic or sexual orientation motives – Art. 320, para. 3;
- Public justification, denial or gross trivialisation of a crime against peace and humanity – Art. 419a.

Some of these provisions (insult and libel, public incitement) are qualified with respect to the corresponding parallel crimes.

The main problems with the protection against hate speech by means of criminal law in Bulgaria is the lack of such protection against certain forms of hate speech aimed at the gender, gender identity, disability, age and other characteristics of the victim; the lack of clear criteria in practice to distinguish between different forms of social control over hate speech, as well as the lack of capacity of the law enforcement authorities to combat hate speech in cyberspace.

The criminal law protection referred to in Art. 162, para. 1, Art. 162, para. 3 and Art. 164, para. 1 of the ***Criminal Code*** is applied very rarely in Bulgaria. According to information provided by the NSI during the advocacy meetings in the framework of this project, the number of persons charged and convicted in relation to these provisions in the period between 2018 – 2022 is as follows:

PERSONS CHARGED

Provisions of the Penal Code	2018	2019	2020	2021	2022
Art. 162, para. 1	2	1	1	1	–
Art. 162, para. 3	–	–	–	–	–
Art. 164, para. 1	–	1	–	–	–

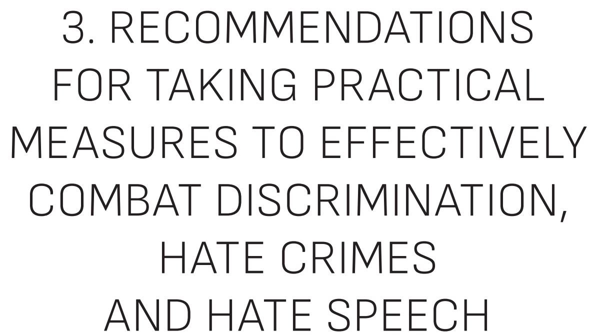
EPERSONS EFFECTIVELY SENTENCED

Provisions of the Penal Code	2018	2019	2020	2021	2022
Art. 162, para. 1	–	–	–	–	–
Art. 162, para. 3	–	–	–	–	–
Art. 164, para. 1	–	1	–	–	–

PERSONS CONDITIONALLY SENTENCED

Provisions of the Penal Code	2018	2019	2020	2021	2022
Art. 162, para. 1	2	1	1	1	–
Art. 162, para. 3	–	–	–	–	–
Art. 164, para. 1	–	–	–	–	–

As can be seen, the total number of persons charged amounts to six for the entire five-year period. The number of persons convicted is the same, and in only one case was an effective sentence handed down.



3. RECOMMENDATIONS FOR TAKING PRACTICAL MEASURES TO EFFECTIVELY COMBAT DISCRIMINATION, HATE CRIMES AND HATE SPEECH

In this ***White Paper***, we have summarised the recommendations for taking practical measures to effectively combat discrimination, hate crime and hate speech. They are both general, formulated by international bodies and institutions, and specific, formulated by experts and representatives of the communities involved in the project.

3.1. Bias-motivated crimes

With regard to bias-motivated crimes, some of the inconsistencies of the Bulgarian legislation and practice with international legal standards for combating these crimes were revealed by the judgments of the ECtHR on Bulgarian cases. Other recommendations in this regard were made by bodies and institutions of the Council of Europe and the United Nations.

There are several key measures that need to be undertaken in order to harmonise Bulgarian legislation and practice with the positive obligations of the State arising from international standards:

- First of all, the **introduction into the substantive criminal law of norms which allow for adequate investigation and punishment of bias-motivated crimes on the basis of all protected characteristics**. The best approach would be to adopt a provision in the general part of the Criminal Code, which defines discriminatory motives for committing the crime as aggravating circumstances.
- The practice of investigating bias-motivated crimes should take into account the need for their **prompt, comprehensive and effective investigation, unmasking discriminatory motives**.
- Victims of bias-motivated crimes **should be adequately protected, including from secondary victimisation and public stigmatisation**.
- The law enforcement agencies need **systematic training in the recognition, timely response and adequate investigation of bias-motivated crimes**.
- There needs to be strict **control over any manifestation of racism, homophobia and other prejudicial behaviour among**

the staff of the law enforcement agencies. Such manifestations should be promptly exposed and sanctioned.
- Non-governmental organisations — representatives of vulnerable groups, should be **consulted and involved in the reform of the legislative framework, as well as in the training of law enforcement authorities** to combat bias-motivated crimes.

In addition to the above measures, the ratification by Bulgaria of the ***Convention on the Prevention and Combating of Violence against Women and Domestic Violence*** of the Council of Europe and the introduction of its standards in Bulgarian legislation and practice should be revisited. This convention offers a comprehensive approach to combating gender-based violence, including a wide range of related crimes.

3.2. Hate speech

A number of documents issued by international organisations at both global and regional level set out recommendations for effectively combating hate speech. ***Recommendation No. R (97) 20*** of the Committee of Ministers of the Council of Europe focuses on the behaviour of public authorities which should:

- refrain from using hate speech;
- establish and maintain an appropriate legal framework which enables an adequate response to hate speech;
- examine the specific cases in light of the elements identified as relevant to the assessment of hate speech in the context of the balancing of rights.[28]

ECRI ***General Policy Recommendation No. 7***, in turn, sets out a number of recommendations to national legislation on combating racism and racial discrimination, as well as on the establishment of specialised bodies to combat racism and racial discrimination. Particularly important are recommendations regarding the provisions of criminal law related to the control of hate speech.[29]

ECRI ***General Policy Recommendation No. 10*** sets out recommendations to Member States in the field of education. In particular, they should ensure that standards regarding human rights are included in their general education programmes. Teachers and lecturers in higher education institutions should also receive appropriate training and the necessary teaching aids.[30] The recom-

28 Council of Europe Committee of Ministers, ***Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'hate speech'***, Annex – Scope of application. Strasbourg, 1997.

29 ECRI, ***General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination***. CRI(2003)8 REV, Strasbourg, 2018.

30 ECRI, ***General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education***. CRI(2007)6, Strasbourg, 2007.

mendations to governments from ECRI ***General Policy Recommendation No. 15*** are also valuable.[31]

In 2019, the Parliamentary Assembly of the Council of Europe adopted a resolution on the role and responsibilities of political leaders in combating hate speech and intolerance. The more important recommendations to Member States set out in this resolution include: to monitor the situation regarding hate speech, including in political discourse, and to collect accurate, comparable data on its nature and dissemination, broken down by grounds of discrimination, target groups, types of perpetrators and channels used; to encourage political movements and parties to adopt self-regulatory tools – such as codes of conduct and ethical charters that prohibit and sanction the use of hate speech by their members; to encourage the media to provide accurate, impartial and responsible information on issues related to individuals or groups which are vulnerable to discrimination and hatred; engage in dialogue and cooperation with internet intermediaries, in particular social media, to encourage them to adopt and implement self-regulatory rules to prevent and sanction the use of hate speech and engage in the removal of offensive content; provide training to government officials on fundamental rights, equality and non-discrimination, especially in educational institutions and in contexts where there may be institutional discrimination, including in police forces and the judiciary, armed forces, legal services and the medical profession; to promote awareness-raising activities targeting the general public on racism and intolerance, and in particular hate speech; to encourage politicians to spread, including on social media, positive messages regarding minorities in their countries.

The PACE resolution speaks of self-regulation in certain areas. Self-regulation by both public and private institutions and organisations may be the most appropriate and effective means of combating hate speech. It involves the adoption of ethical codes

31 See the translated recommendations in the annex to: Kanev, K. ***Hate speech and the fight against it***, Sofia, BHC, 2023, p. 49–55.

of conduct in which prohibited behaviour should be clearly defined. They must provide for effective reporting channels as well as mechanisms for submitting and handling complaints.

Equality bodies play a special role in the fight against hate speech. European Commission ***Recommendation (EU) 2018/951*** on the standards for equality bodies recommends that Member States should consider extending the mandate of equality bodies to cover all prohibited types of discrimination, employment and occupation areas, access to goods and services and the provision of goods and services, education, social protection and social benefits, including hate speech related to these types of discrimination in these areas.[32] The ECRI recommendation in the revised ***General Policy Recommendation No. 2*** on equality bodies to combat racism and intolerance at the national level is in a similar vein.[33]

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32 European Commission, ***Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies***, OJ L 167/28, 4.7.2018.

33 ECRI, ***General Policy Recommendation No. 2: equality bodies to combat racism and intolerance at the national level***, CRI(2018)06, Strasbourg, 2018.

3.3. Recommendations of partner organisations to combat discrimination, hate speech and hate crimes

Within the framework of this project, regional assessments of the specific challenges faced by vulnerable groups and communities in relation to discrimination, intolerance, hate speech and hate crimes, as well as advocacy initiatives at a local and national level, were undertaken. They made a number of findings and recommendations for practical measures to effectively combat discrimination, hate crimes and hate speech. Such recommendations with regard to Bulgaria have also been formulated by a number of international human rights bodies and institutions. Here we summarise the most important of them.

Some of the regional assessments noted an improvement in the attitude in recent years towards some of the vulnerable groups. This is the case, for example, with the Roma as seen in the regional assessment of Vidin. The partner organisation points **to the educational integration of Roma through desegregation projects, as well as improving their socio-economic situation** as decisive factors for improving inter-ethnic relations and reducing hate speech.

Similar findings are contained in the regional assessment of Razgrad. It also notes the role of increasing the educational status of Roma and improving their socio-economic situation as decisive factors for improving inter-ethnic relations. On the other hand, this assessment notes that in certain cases the improvement of the material situation of the Roma has begun to "irritate" some of their neighbours in the majority groups (Bulgarian and Turkish), creating feelings of envy and sustaining negative attitudes.

The role of socio-economic status in the treatment of Roma is also discussed in the regional assessment of Kyustendil. It shares the observations of some participants in the study about the negative attitude of wealthier Roma towards poorer Roma, which in their opinion is much stronger than that of Bulgarians towards Roma as a whole. This, of course, does not mean that the better educated and better-off Roma are immune to any hate incidents. The regional assessment of Kyustendil also emphasises **the role of social contacts in reducing prejudices and tensions** towards all vulnerable groups. The participants in the study were unanimous that when attitudes and opinions towards different groups subject to hate incidents (ethnicity, sexual orientation, material status, education, etc.) are based on stereotypes and prejudices, the more difficult it is to overcome such social tensions. Conversely, when there are personal relationships and direct friendships with representatives of such groups, the likelihood of hate incidents and the (re)creation of negative and generalising stereotypes and prejudices is greatly reduced.

Regional assessments note the presence of anti-minority (mainly anti-Roma), as well as homophobic attitudes in a number of areas. These include the state and municipal administration, the education system, party politics, business, the media and especially the internet. The regional assessments from Kyustendil, Razgrad and Sliven pay particular attention to discrimination and hate speech in the field of education. In Kyustendil, education experts insisted that it is very important **for teachers to also undergo training to work in a multicultural environment and to develop digital skills**, because "their generation simply does not live in the dimension of modern school pupils, whether they are Bulgarian, Roma, Turkish or Ukrainian". In Sliven, experts recommended that in order for people to be better informed about the mechanism of protection under the PADA, **preventive activities for tolerance need to be affirmed through systematic training together with non-governmental organisations, representatives of regional departments of education and school principals.**

Some of the partner organisations drew attention to the ineffective procedure for reporting discrimination and hate speech. They think that it is cumbersome, requires a lot of effort, and the result is often not satisfactory for the victims. The system needs to be made **easier for persons affected by such actions**, including through providing for an extension of the scope of legal assistance in reporting and handling complaints.

The regional assessment from Burgas set out a number of recommendations for practical measures for the effective combating of discrimination, hate crimes and hate speech, which are broadly supported by partner organisations from other regions. These measures include:

- **Improving anti-discrimination legislation and practice**

Improvements are needed to the PADA and in the work of the PADC. The procedure needs to be simplified, applicants need to receive legal aid, and sanctions need to be increased, because they do not have a deterrent effect as they stand in their current amounts.

- **Improving legislation to protect against domestic violence**

The circle of persons protected by the law needs to be expanded, in order to include persons who cohabit in same-sex relationships. The police need to have greater powers to take protective measures, and the process as a whole should be speeded up.

- **Further reform of criminal legislation**

Representatives of the civil sector active in the field of LGBTI issues, as well as some members of vulnerable communities who took part in the interviews, advocated for amendments to criminal legislation, in order to provide even broader coverage of hate crimes on grounds such as sexual orientation and gender identi-

ty. This means introducing qualified criminal provisions related to parallel crimes where such currently do not exist, or a provision in the general part of the ***Criminal Code*** which will define aggravating circumstances, including discriminatory motives when committing the crime.

- Reforming legislation to combat hate speech on social networks and cyberbullying

The legislation needs to provide for protection of affected persons against hate speech, as well as providing regulation for online communication, especially on social networks.

- Training of law enforcement agencies

Training of the staff of the law enforcement agencies to prepare them to deal more effectively with hate incidents is a commonly encountered recommendation from a number of representatives of Roma and LGBTI communities. This is provoked by problems with police control of such incidents, as well as the reluctance of representatives of persons affected by hate incidents to turn to the police due to the lack of trust.

- Awareness raising campaigns

According to many of the experts interviewed, awareness raising measures need to be continued and strengthened, in order to change public attitudes.

- Reporting and possibilities for protection

Various experts and stakeholders have identified the need for better communication: the importance of reporting incidents, as well as guidance on what institutions and platforms the report should be directed to.

- Specialized ombudspersons

Consideration should be given to setting up ombudspersons specialised in different areas who can better support the rights of different vulnerable groups. An example is Sweden, where there are five ombudspersons.

CONCLUSION

Bulgaria has a serious problem with combating discrimination, bias-motivated crimes and hate speech. Inadequate regulation of these phenomena has already led to a significant number of condemnatory judgments by the European Court of Human Rights, as well as a number of recommendations by international human rights bodies and institutions.

Anti-discrimination, bias-motivated crimes and hate speech legislation has been amended several times. These amendments were as a rule made after condemnatory judgments by the ECtHR or in fulfilment of commitments to implement secondary EU law. So far, the Bulgarian authorities have not undertaken a systematic review of the legislation and practice on their own initiative.

In general, the serious problem of discrimination, bias-motivated crimes and hate speech have not received due public attention and discussion in Bulgaria. The Bulgarian parliament, executive and the judiciary still have a long way to go to bring national legislation and practice in line with international standards and good practices in this complex and rapidly developing area of law.