

# Everyday Fears

## A Survey of Violent Hate Crimes in Europe and North America

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**WEB-FRIENDLY FORMAT**

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# Foreword

In Belfast, Northern Ireland, young men attack a family of Bangladeshi origin, breaking their windows, smashing their front door, and ultimately setting their home on fire. In Moscow, Russian skinheads follow a rabbi from a Jewish community center into a subway underpass to attack him, breaking his bones. In Noeud-les-Mines, France, teenagers repeatedly harass a gay man with homophobic epithets, until one day they douse him with gasoline and set him on fire. In Roisel, France, young men with shaved heads assault two workers of North African origin with baseball bats and iron bars.

These are some of the accounts of individual attacks described in this book. The attacks that reach the international headlines are generally more dramatic: bombings and arson attacks on synagogues, mosques, schools, Jewish or Muslim community centers, and other communal property. But the everyday violence that plagues whole populations occurs largely below the news media's threshold.

This book focuses primarily on hate crimes and the fear they generate in Europe and North America—and the role of governments, inter-governmental bodies, and civil society organizations in combating these crimes. Human Rights First examines the factors that encourage bias-based violence, and the way governments and community organizations react to the violence. In particular, the book analyzes the legislation and associated anti-discrimination measures that some governments use to effectively monitor, respond to, and prevent hate crimes. Only a handful of European governments have taken these measures. Most European governments are contributing to the climate of escalating violence by failing to monitor these crimes or to enact and enforce laws punishing them.

The range of discrimination in much of Europe is dominated both by the ancient hatreds, slurs, and

violence of antisemitism and by a powerful new trend of anti-immigrant violence. These hatreds are fueled by political rhetoric portraying immigrants, refugees, and minority populations as security threats, cultural interlopers, and economic encumbrances. The threat of terrorism and a new extremist political discourse of antipathy toward Muslims and Islam itself has increasingly been given expression through attacks in the streets, the burning of mosques and Islamic schools, and, in an eerie echo of Europe's not-so-distant past, calls for Muslim citizens to be deported.

In what we call “an assault on identity,” Human Rights First describes the large-scale random attacks on members of minority communities who are singled out because of outward displays of their religious or ethnic identity, and the resulting pressure to conceal their identities. Jews are attacked for wearing *yarmulkes* on the street or in the subway; Sikhs are beaten for wearing turbans or *keskis*; and Muslim women are harassed or physically assaulted for wearing headscarves, or *hijabs*. In addressing a Europe of escalating xenophobia, this book documents the rise of anti-immigrant violence and anti-Muslim polemic in countries such as Denmark, France, and the Netherlands, despite their formal commitments to equal rights.

This book builds upon the findings of Human Rights First's report *Antisemitism in Europe: Challenging Official Indifference*, published in conjunction with the April 2004 conference on antisemitism in Berlin organized by the Organization for Security and Cooperation in Europe (OSCE). That report, which built on our 2002 report, *Fire and Broken Glass: The Rise of Antisemitism in Europe*, responded to a staggering wave of anti-Jewish violence, and was intended to put antisemitism firmly on the human rights agenda. As we stressed at that time, our recommendations to governments on monitoring, reporting, and law enforcement apply equally to racist violence affecting many of Europe's minority

communities, from Roma to people of African, Middle Eastern, or South Asian origin.

This book places the continuing fight against antisemitism within that broader context, while also stressing the need for special measures to combat antisemitism. As we concluded in *Fire and Broken Glass*,

[t]he rise in violence against Jewish communities across Europe is part of a broader pattern of racist violence—but the severity, pan-European scope, and historical roots of this violence require particularly urgent attention as a part of this larger effort to combat racism. In view of the calamitous record of antisemitism in Europe, every effort must be made to ensure that this scourge is not permitted to gather momentum again.<sup>1</sup>

Since we published *Fire and Broken Glass* nearly three years ago, anti-immigrant and anti-Muslim discourse in Europe has proliferated in public life, driving new waves of racist violence, while antisemitic violence has shown no sign of dissipating. To the contrary, the findings of both official bodies and community-based monitors show a shocking rise in anti-Jewish violence in both France and the United Kingdom, two of the countries in which monitoring has reached a fairly high standard. Moreover, in these and other countries, there has been a disturbing increase in the proportion of hate crimes targeting people, as opposed to those involving only property.

In the Russian Federation, elsewhere in the former Soviet Union, and in Eastern Europe, antisemitism continues to be a potent force. In Russia antisemitic violence is part of an undercurrent of extremism that exposes those who stand out as different to a constant threat of physical attack. The same current of fear that surrounds the routine window-breaking and antisemitic graffiti at the lonely synagogues of Russia's cities extends also to periodic attacks on members of "non-traditional religions," including Baptists, Jehovah's Witnesses, and Roman Catholics. The rampages of members of extreme nationalist movements through the marketplaces of Russia's northern cities, beating and slashing ethnic Chechens, Dagestanis, and Tajiks, bring a chilling echo of the pogroms of the past into an uncertain present.

In examining government responses to hate crimes, this book surveys 53 European and Central Asian countries that are part of the OSCE, as well as the United States and Canada. We address antisemitic and other racist violence as well as violence motivated by biases based on gender, disability, and sexual orientation. As in our previous reports, our particular focus is upon the importance of improved monitoring and reporting, in conjunction with appropriate legislation and effective criminal justice systems.

Since 2002, Human Rights First has focused on the OSCE in part because it brings together these 55 countries in Europe, Central Asia and North America. In the past three years, the OSCE has significantly increased its own focus on antisemitic violence and other forms of racist hate crimes through its Warsaw-based Office of Democratic Institutions and Human Rights (ODIHR).

Human Rights First attended the OSCE's first special conference on antisemitism in Vienna, Austria, in June 2003, and a follow-up conference in Berlin in April 2004. Both conferences provided useful venues to highlight the enormous cost of government indifference to antisemitic and other racist violence. At these meetings Human Rights First urged governments to introduce effective monitoring and reporting to fill what we have termed the "information deficit."

Human Rights First attended the Berlin conference, as well as a conference on racism and intolerance held in Brussels in September 2004, as part of a delegation of the Leadership Conference on Civil Rights. The Leadership Conference is the oldest, largest, and most diverse coalition of civil rights and human rights organizations in the United States, with 185 member organizations.

Its delegations in Berlin and in Brussels included representatives of the American-Arab Anti-Discrimination Committee, the American Association of Persons with Disabilities, the Anti-Defamation League, Global Rights, the Jewish Council for Public Affairs, the National Asian Pacific American Legal Consortium, the National Council of La Raza, the Leadership Conference on Civil Rights Education Fund, National Partnership for Women and Families, the Lawyers' Committee for Civil Rights Under Law,

the National Women's Law Center, and other organizations.

We jointly advocated for the appointment of OSCE special representatives on racism and on antisemitism. This goal was achieved in December 2004 when the OSCE's Council of Ministers created a hate crimes program within the OSCE and three personal representatives of the OSCE chairman in office were appointed, tasked with addressing, respectively, antisemitism; anti-Muslim discrimination; and racism, xenophobia, and anti-Christian (and other religious) bias. ODIHR, the OSCE human rights secretariat, received a clear mandate, albeit with limited resources, to develop a program around the collection of data on hate crimes from member states with a view to using this data to better combat them.

In June 2005, Human Rights First attended the OSCE's follow-up conference on antisemitism and other forms of intolerance in Cordoba, Spain, again as part of a Leadership Conference delegation. This meeting examined the implementation of the commitments made by member states for the fight against hate crimes and discrimination: what had been accomplished and what challenges remained largely unmet. This report was first distributed in a Cordoba Conference edition.

The Cordoba conference held a measure both of disappointment and encouragement. It brought into the open the work still to be done in the participant states of the OSCE, starkly laid out in both this book and in the first report on hate crimes of the ODIHR, also released at the conference.

The ODIHR report provided delegates with the hard facts of their own nations' failures to meet commitments made in Vienna, Berlin, and Brussels to work with the new institutions of the OSCE to fight hate crimes. It showed that most OSCE states had not compiled and submitted to the OSCE reliable statistics on hate crimes; did not have a strong basis in criminal law to combat hate crimes; and that just 17 of the 55 states had designated an authority responsible for interaction with the ODIHR on discrimination and intolerance.

ODIHR's report also made recommendations on data collection, legislation, law enforcement, and

specialized anti-discrimination bodies that are very much consistent with those long advocated by Human Rights First.

The Cordoba conference provided an important initial platform for the three new personal representatives of the OSCE chairman in office. And it made it clear that for these high-level representatives to take the lead in the fight against racism, antisemitism, and anti-Muslim bias, they needed strong mandates, increased resources, and the cooperation of OSCE participant states.

In charting a way forward, this book makes a series of recommendations. These are centered on the importance of improved monitoring, reporting, and effective law enforcement at the national level that ensures equal and effective protection to all those threatened with harassment and violence. Internationally, we urge the participant states of the OSCE to fulfill the commitments they have made to work with OSCE institutions in the fight against racism, antisemitism, and other intolerance.

Michael Posner  
Executive Director  
September 2005





# Executive Summary

The dramatic rise in racist and antisemitic violence in much of Europe lends new urgency to the issue of combating discrimination and racist violence. It is the principal reason for this book. In the last several years there have been extraordinary outbreaks of antisemitic violence and a parallel surge in hate crimes against immigrants in the region. Citizens and non-citizens alike who are identified as Muslims have been singled out for particularly virulent attacks.

Assailants in many towns and cities in Western Europe attack minority schoolchildren with racist slurs, beatings, or a hail of stones. They force those wearing a Jewish *yarmulke*, a Sikh turban, or a Muslim headscarf, or those who look different only because of the color of their skin or the shape of their eyes, to run a gauntlet of menace just to get to school. Even there, safety is illusory. Attackers pelt school windows and children on playgrounds with stones. Racists smash the windows, cover desks and walls with excrement or offensive graffiti, or even set Muslim and Jewish schools on fire in arson attacks.

The violence comes from many quarters, from majority and minority populations alike, with extreme nationalists and Neo-Nazis in many countries prepared to express hatred against minorities of all kinds. A man who a week later desecrates Jewish graves in a cemetery in Lyon, France, attacks a man of North African origin with a hatchet in Paris, saying he wanted to “split the skull” of a Muslim. Extremists deface with swastikas the graves of both Muslim and Jewish soldiers who died for France in World War II.

In Europe and North America high levels of discriminatory violence take place outside of public view. Hate crimes in schools, neighborhoods, and workplaces victimize targets because they are gay, black, or physically or mentally disabled, or because of a combination of these attributes. These everyday acts of violence are no less serious and no less pervasive.

This book is about threats and violence against ordinary people who stand out as being different from their neighbors—and, just as importantly, what should and can be done about it. These hate crimes or bias crimes, driven by racist, antisemitic, and other discriminatory animus, are an extreme aspect of discrimination, adding to everyday injustice a new constant of fear for those under threat.

Since September 11, 2001, an increasingly strident message of xenophobia has permeated both fringe and mainstream political movements. This new climate has made immigrants and those of immigrant origin particular targets. A result has been heightened anxiety and rising violence against racial, ethnic, and religious minorities and a new climate of exclusion. In this climate, violence toward those who are deemed outsiders because of their sexual orientation, gender, or disability may be less visible, but it is no less threatening.

In this book *Human Rights First* addresses the broad panorama of discriminatory violence, with a particular emphasis on the new trends promoting exclusion, stigmatization, and the denial of fundamental rights to minorities. We focus particular attention to antisemitic and other racist violence, including the way anti-immigrant and anti-Muslim bias and violence has been fueled by both government policies and practices and by partisan politics. Our book also addresses hate crimes motivated by sexual orientation, gender, and disability bias, including a review of legislation and current legislative initiatives, recent cases, and the continuing information deficit.

This book is intended to identify practical measures by which every government, supported by civil society organizations, can build safeguards against racist and discriminatory violence. It also is designed to raise an alarm where measures to combat discrimination have been too little and too late. In doing so, *Human*

Rights First asserts that government inaction in the fight against discriminatory violence ultimately represents a threat not just to vulnerable minorities but to the security of society as a whole.

Human Rights First is focused on three areas where governments need to do more. The first is to establish systems of timely **monitoring and reporting** on racist, antisemitic, and other bias crimes. This is an essential means to assess and respond to patterns of discrimination affecting particular population groups. To this end, we discuss standards for monitoring, data collection, and statistical analysis and the practical and political obstacles these often pose. We also consider the quality of data collection as an indicator of the level of commitment to addressing discriminatory violence.

Drawing on European Union, Council of Europe, and other sources, we conclude that just a handful of the OSCE's fifty-five member states to date have produced reliable statistics on hate crimes, and we identify gaps in the systems of data collection and analysis of governments that were otherwise reliable. To cite one example, the data on hate crimes from the United States' Uniform Crime Reporting system, while reliable, is hardly comprehensive. Almost 90 percent of the 17,000 state and local law enforcement agencies participating in the last survey either reported that no hate crimes occurred or opted out of reporting altogether.

Human Rights First is calling on governments to strengthen **criminal law** and **law enforcement procedures**. Stronger laws and law enforcement will allow governments to more effectively deter, detect, and punish hate crimes. To this end, we look at legislation that provides for enhanced penalties for crimes motivated by bias. We also look at various models of guidelines and procedures employed by law enforcement bodies and prosecutors to distinguish racist and other bias-based motivations when assessing ordinary crimes—and find that enforcement of hate crime statutes often fails at the level of the beat cop.

The anti-racism bodies of both the Council of Europe and the European Union have recommended that all member states enact legislation allowing racist motivation in crimes to be considered an aggravating circumstance in

sentencing. In this regard, we found that only **19 of the 55 OSCE member states surveyed have done so**. Those that have not include **Ireland, Germany, Greece, and the Netherlands**.

We find further that **just 5 national governments within the OSCE—Belgium, Canada, France, Spain, and the United Kingdom**—provide for sexual orientation and disability bias to be considered an aggravating circumstance. In the **United States**, the laws of 29 states and the District of Columbia punish hate crimes motivated by sexual orientation or disability bias. Hate crimes motivated by gender bias are addressed in the laws of **Belgium, Canada, France, Spain**, and, in the **United States**, 26 states and the District of Columbia.

Finally, Human Rights First is calling on governments to establish and strengthen **specialized anti-discrimination bodies** at the national level. The mandate of these official bodies should be to monitor hate crimes, cooperate with law enforcement efforts, and serve as effective advocates for justice. Where such bodies take a lead in combating hate crimes, data collection improves, criminal investigations are assisted, and minority communities gain confidence in public authorities.

We found that the work of specialized anti-discrimination bodies to combat hate crimes stood out as highly effective only in **France, the Netherlands, Sweden, and the United Kingdom**. Sixteen European countries have some kind of anti-discrimination body, with most having only limited functions and prerogatives.

This book covers the 55 member states of the OSCE, whose membership includes the United States and Canada, all members of the Council of Europe, and five Central Asian states—a sweeping geographical expanse extending from Vancouver to Vladivostok. It includes country reports on each of the 55 OSCE states.

In each country report we summarize the legal provisions available to combat hate crimes, drawing upon the resources of specialized anti-racism bodies of the European Union, the Council of Europe, and the United Nations. More detailed reporting on the situation of hate crimes and the response by governments and nongovernmental organizations is included on ten countries.

# Recommendations to Governments

1. Define “hate crimes” broadly to include those motivated by animus on the basis of the victim’s race, religion, ethnicity, gender, sexual orientation, mental and physical disabilities, or other similar forms of discrimination. This definition should be inclusive, consistent with the prevailing trend in international human rights law.<sup>2</sup>

2. Address the “information deficit” by:

- Enacting legislation to require national justice authorities to collect, analyze, and make public data from law enforcement agencies concerning bias crimes or hate crimes, to include crimes that may be motivated in whole or in part by the offender’s bias. This should coincide with measures to include:
  - Acknowledging the extraordinary dangers posed by racism, xenophobia, and other forms of discrimination, and the need for governments to report on it.
  - Enabling community-based organizations to liaise closely with official national and local bodies engaged in data collection and analysis on hate crimes.
  - Establishing clear criteria for registering and reporting crimes motivated by racist or other discriminatory motives.
  - Establishing systems for the registering and reporting of incidents involving acts motivated by racial and other animus that may fall short of crimes.
  - Disaggregating data on hate crimes to distinguish which target group or groups are affected.
  - Publishing and widely disseminating regular public reports on the incidence of hate crimes.

3. Strengthen enforcement by:

- Enacting legislation that punishes hate crimes by establishing that racist or other similar intent is an aggravating factor in criminal prosecutions.
- Facilitating closer collaboration between community-based organizations concerned with issues of discrimination and law enforcement bodies.
- Ensuring that law enforcement agents, including police, criminal investigators and prosecutors are properly trained to combat hate crimes most effectively.
- Providing adequate resources and directives to law enforcement agencies to investigate and prosecute hate crimes.

4. Create specialized anti-discrimination bodies to monitor hate crimes and support law enforcement efforts.

- These bodies should cooperate with nongovernmental human rights and anti-racism and other anti-bias organizations, with community groups, and with others working on these issues.
- They should also cooperate with special anti-discrimination mechanisms in inter-governmental organizations.

5. Support the institutions of the OSCE established to combat intolerance and discrimination, in particular by:

- Providing political support for the extension beyond one year of the mandate of the three personal representatives of the chairman in office, on antisemitism, anti-Muslim discrimination, and racism, xenophobia, and anti-Christian and other religious bias.
- Providing political support for a clear mandate for the three personal representatives of the chair in office concerning hate crimes, to ensure each the operational space required to conduct

adequately resourced independent investigations, and to publish findings, including through such media as annual reports.

- Opposing any proposal to merge the mandates of the three personal representatives into a single position.
- Providing political and financial support to ensure that staffing and operations of the Tolerance and Non-Discrimination Program of ODIHR is funded from the regular budget of OSCE.
- Providing support for the ODIHR Law Enforcement Officer Training Program for Combating Hate Crimes.
- Providing support for the proposed establishment by ODIHR of a Task Force on Combating Hate Crimes.

# A Time of Increasing Intolerance

On November 2, 2004, Theo Van Gogh, a Dutch filmmaker, was murdered in Amsterdam. Van Gogh was shot and stabbed; a knife pinned to his chest a hand-written letter that included an antisemitic diatribe claiming responsibility for the murder in the name of Islam. It also contained death threats against the Somali-born member of parliament Ayaan Hirsi Ali, a collaborator on Van Gogh's short film about the treatment of women under Islam. Van Gogh had become notorious for a series of offensive published and broadcast slurs against Muslims and had also been successfully prosecuted for antisemitic remarks. A young Dutch citizen of Moroccan origin charged with the crime was described as an Islamic fundamentalist.<sup>3</sup>

The backlash was almost immediate, with both acts of violence and unprecedented attacks through the mass media on the Netherlands' Muslim community, including outraged calls for harsh anti-immigrant measures from liberal and conservative quarters alike. The violence repeated a pattern of attacks on Muslims and other minorities in the Netherlands and elsewhere in Western Europe following the September 11, 2001 attacks on the United States. However, no attacks were reported in Amsterdam itself, the scene of the crime, a tribute in part to effective measures to control passions by the mayor and city council there.

Within eight days of Van Gogh's murder, arsonists attacked nine mosques and four Islamic schools were bombed, vandalized, or set on fire.<sup>4</sup> On the morning of November 8, a powerful bomb exploded outside the Tarieq Ibnu Zyad Islamic school in Eindhoven, blowing out the elementary school's windows and knocking its front doors off their hinges. The school had not yet opened for the day and no one was injured, but the attack was just the most recent in a series; firebombs had been thrown through windows of the same school a year before, damaging the interior.<sup>5</sup> On November 10, arsonists burned the Badr Islamic

School, in Uden, to the ground. (On March 28, 2005, after the school had resumed classes in new premises, it was again firebombed.)<sup>6</sup>

The monitoring team of the Anne Frank Foundation and the University of Leiden, the lead agencies of the Dutch Monitoring Center on Racism and Xenophobia, produced a special report on the backlash.<sup>7</sup> From November 2 to 30, 2004, the team recorded a total of 174 incidents of racist violence (the center had recorded 252 racist acts for all of 2003, including 73 threats).<sup>8</sup> The monitors recorded incidents almost equal in number over those four weeks in November to the 190 recorded by the same authors in their earlier study of the two-and-a-half months of racist backlash that followed September 11. They observed also that "[a]s in 2001 there [have] been a strikingly large number of cases of arson."<sup>9</sup>

The actions registered in November 2004 included threatening graffiti on mosques, churches, and homes; direct threats; bombings and bomb scares; confrontations involving violence or threats of violence between groups; vandalism; arson; personal assaults; and murder. In 61 percent of the cases, the incidents were specifically anti-Muslim and 19 percent of the incidents were aimed at ethnic minorities. There were 47 incidents in which mosques were damaged and 13 in which churches were the object of attacks of some kind. In 15 percent of the total cases there was a link to the extreme right, one and a half times higher than the number of cases involving the extreme right in 2003.<sup>10</sup>

As anti-Muslim, anti-immigrant violence flared in the Netherlands, levels of racist and antisemitic violence across Europe showed no decline, even where governments had acknowledged the challenge of hate crimes and introduced legislative and procedural reforms to address them. High levels of anti-immigrant violence, fueled by partisan political rhetoric portraying immigrants and asylum seekers as security

threats and an economic burden, seemed to be inextricably linked to more generalized threats and to violence against minorities in many countries.

Neo-Nazi and other traditional movements of the extreme right were reportedly responsible for racist attacks across Europe. On August 5, 2004, a man of North African origin was attacked by a man with a hatchet at a Paris train station; the suspect was subsequently arrested and charged both with that assault and with desecrating Jewish graves at a cemetery in Lyon. Police told the press that he admitted to loitering at the station with the express intention of attacking a Muslim at random in order to “split his skull in two.”<sup>11</sup>

In both east and west, antisemitism found expression through both violence and the recycling of ancient slurs and hatreds. While sympathizers of Neo-Nazi and other extremist groups targeted Muslims and Jews and members of other minorities in a spirit of equal opportunity racism, solidarity in the fight against racism remained a distant aspiration. There was also disturbing evidence from some E.U. countries that young people of Muslim background, themselves victims of marginalization in their own European societies, were involved in a significant proportion of antisemitic incidents.

In the United Kingdom, threats and crimes of violence against the Jewish community rose dramatically in 2004, with violent assaults on individuals more than doubling. The U.K.’s Community Security Trust (CST) recorded 532 antisemitic incidents in 2004, a 42 percent rise on the 2003 total of 375 incidents and the highest annual total since records began in 1984.<sup>12</sup> There were 53 incidents of damage or desecration of Jewish property, including arson attacks on two North London synagogues, the toppling or destruction of some 60 Jewish gravestones at a Birmingham cemetery, and the desecration of graves at an Aldershot Jewish cemetery. But in a disturbing new pattern, assaults on *people* in 2004 were more numerous than incidents causing property damage: 83 assaults were registered, a 54 percent rise from 2003, including four incidents in which there was a serious risk of death.

Extreme antisemitic violence in the United Kingdom included an assault on an Orthodox Jewish man whose skull was nearly fractured by a

group of young men after leaving a synagogue; a woman who was attacked and seriously beaten by neighbors as an “Israeli” because they saw Hebrew writing on her mail; a teenager in Southampton whose jaw was broken in three places by members of a gang while shouting antisemitic abuse; and a man who was stabbed in his home by an attacker screaming “I’m going to kill you, you fucking yid.” Twelve of the registered assaults were on Jewish schoolchildren. One 12-year-old who was apparently attacked for wearing a *kippah* required 90 minutes of medical attention to suture facial cuts; another boy was kicked and subjected to an antisemitic harangue by a middle-aged man on a London bus.<sup>13</sup>

In France, official statistics on antisemitic incidents, validated by Jewish community organizations, presented a similar picture of rising violence. Ministry of Interior statistics on antisemitic incidents for the first six months of 2004 represented almost double the level reported in the previous six months or in the same period in the previous year (see below).

Antisemitism found renewed expression even in parliamentary fora in Council of Europe member states in 2004 and early 2005. In January 2005, a seven-page letter signed by 20 members of the Russian Duma was published that restated many of the most ancient and venomous of antisemitic slanders, including the “blood libel”—the claim that Jews practice ritual murder.<sup>14</sup> The document, issued on Duma stationery on the occasion of the 60<sup>th</sup> anniversary of the liberation of Auschwitz, denounced Judaism as “anti-Christian and inhumane, whose practices extend even to ritual murders,” and called on Russia’s prosecutor general to “open a legal investigation into banning all Jewish religious and community groups” on the grounds of “defense of the homeland.” It also accused Jews of staging attacks against their own community. A Russian Foreign Ministry press notice, issued as President Putin was preparing to attend the Auschwitz memorial ceremony, declared simply that “the statement has nothing to do with the official position of the Russian leadership.”<sup>15</sup>

Meanwhile, terrorist attacks, particularly when undertaken by groups claiming to act under the banner of Islam, continue to spur a generalized condemnation of Islam and suspicion of Muslims,

and to fuel xenophobia and generalized discrimination against immigrants and minorities. In the Russian Federation, terrorist attacks on civilians by Chechen insurgents caused hundreds of civilian deaths in 2004. The single terrorist act that most traumatized and enraged the Russian people was the September 1–3 takeover of the Beslan school, in North Ossetia, as 1,200 children, their parents, and teachers gathered to celebrate the beginning of the school year. The assailants, under the command of Chechen rebel leader Shamil Basayev, rigged the school with explosives. At least 335 of the hostages, mostly children, were killed.<sup>16</sup>

Racist attacks on “dark-skinned people” of the Caucasus, in particular people identified as Chechens or Dagestanis, have been reported in Moscow and other major Russian cities since the first Chechen war (1994-1996), but have escalated as the conflict continued.<sup>17</sup>

Discriminatory treatment by local authorities and police of people of Caucasian origin, including random police round-ups and beatings, provided the backdrop for assaults by ordinary citizens and members of Russia’s growing Neo-Nazi, skinhead, and extreme nationalist movements. The political climate in 2004, particularly after the atrocities at the Beslan school, became increasingly xenophobic. Police round-ups of members of suspect minority groups, in particular people of the Caucasus, coincided with random assaults in the streets of Russia’s cities.

Attacks that are directly tied to the Middle East conflict are a further part of the range of rising intolerance and the everyday fears of minority and majority populations alike. The train bombings in Madrid on March 11, 2004, when ten coordinated bombs went off in two commuter trains, killing 191 people, fed into both national and European debates on policies towards migrants and minorities that were increasingly dominated by generalized fears of terrorism.<sup>18</sup>

Evidence from Spanish police that the perpetrators of the Madrid bombings had considered bombing a Jewish community center appeared further to reflect a new dimension to antisemitic violence in Europe.<sup>19</sup> For the Jewish community in Europe, the car bomb attacks on two synagogues in Istanbul in November 2003, killing 23 and wounding 303,<sup>20</sup> had already shown

the potential for terror attacks to take antisemitic violence to extraordinary levels, as organized political groups targeted Jews as such for racist attacks as if proxy enemies in their conflicts with Israel.





# The Violence of the Everyday

The most pervasive racist violence in Europe and North America is also perhaps the most banal and unorganized: the low-level violence of the broken window, the excrement through the letter box, late night banging on doors, and the pushes, kicks, and blows delivered to the passerby on the sidewalk. The accompanying epithets and threats, the frequent repetition, the threats that are both random and constant, and the likelihood of a blow becoming a beating, a beating becoming a stabbing or a shooting, adds to a pervasive terror.

In many cities, attacks on minorities, immigrants, and asylum seekers have become almost routine. In a Scottish court, Sheriff Michael O’Grady denounced attacks on asylum seekers in Glasgow as “utterly endemic” and concluded they are “committed for sport.” He made the comments at a sentencing hearing for six teenagers, who were condemned to eight and a half years in prison for assaulting a group of Iranian men.<sup>21</sup> Similarly, a Glasgow physician who regularly treats victims of hate crimes said asylum seekers were regularly in and out of hospital after attacks and were clearly living in fear: “They come to me with bruises and injuries to their eyes where they have been hit, and sometimes even bigger injuries.”<sup>22</sup> A two-year study of hate crimes in the Strathclyde area, which includes Glasgow, concluded in June 2004 that despite a high number of registered hate crimes, only 20 percent of incidents were reported to the police, due to a lack of confidence in local law enforcement by vulnerable minorities.<sup>23</sup> The study, which was commissioned by the Strathclyde police, considered the patterns of attacks, and found that most attacks were not politically charged or orchestrated, but were casual acts of racism against people whose jobs obliged them to meet with the public:

[A] high proportion of recorded incidents are perpetrated against frontline staff in small businesses, the overwhelming majority of the perpetrators white. The great majority of the people targeted were men from Asian

backgrounds. Around three-quarters of those targets worked in small shops and mini-markets, and another sixth worked in takeaways and restaurants. The typical incident was face-to-face, involving verbal abuse, often accompanied by threats or assault. Criminal damage was also common.<sup>24</sup>

A similar pattern appears to hold true elsewhere. In Northern Ireland, where long-standing Catholic/Protestant sectarian violence has diminished, immigrants distinguished by their language, the color of their skin, or their manner of dress are increasingly abused verbally, beaten, or firebombed in their homes.<sup>25</sup> On July 22, 2004, the home of a Bangladeshi family was firebombed in Belfast—in what the head of the family said was about the twentieth such attack: “They tried to burn my house, they broke my windows, they smashed my door with a baseball bat—I don’t know why they are doing this to me.”<sup>26</sup> Belfast police at that time warned of further threats and said 89 racist incidents had been reported there so far in 2004.<sup>27</sup>

This kind of pervasive, low-level (but still potentially lethal) violence is the form of racism that is arguably the most threatening to the largest groups of people, whether in the United Kingdom, Moscow, the Paris suburbs, or in mini-marts or motels in Arkansas or Southern California. There is no single political overseer of or inspiration behind much of this violence, although many voices may join in the chorus of political hatred and incitement that provides its backdrop. There is no direct tie to international events, although the conflict in the Middle East or the fears raised by September 11 may play a part in some of the attacks.

## Organized and Ordinary

This emphasis on the ordinary is not to overlook the threat posed by organized hate groups and the extraordinary violence attributed to skinheads and ideological extremists in Europe. The

intersection between the ideological extreme and the ordinary is perhaps the most chilling aspect of the current fight against racism. The casual violence of skinheads at a football match or on their own block may be part of something more organized, or organized extremist acts may set a template for the violence of others.

This “ordinary” violence in Europe affects nationals and immigrants without distinction—particularly those of African origin. Attacks on people of sub-Saharan African origin in Europe are both frequent and poorly documented—a particular blind spot in both official statistics on hate crimes and in monitoring and reporting by nongovernmental organizations.

Some of the most horrific incidents involving African students in Europe have been reported in the Russian Federation, particularly since November 2003, when 42 mostly African and Asian students burned to death in a fire in their dormitory at Moscow’s Friendship University (the former Patrice Lumumba University). According to students who survived, firefighters made little effort to help and students are convinced the fire was set by arsonists—although the official inquest blamed electrical problems.<sup>28</sup>

African students in Moscow have described living in fear in their dormitories, on the campus, and, particularly, on the way to classes off-campus which require them to travel on public transportation. Students band together, wherever possible traveling on the Moscow metro only in groups, explaining that racist attacks are otherwise almost inevitable.<sup>29</sup> Attacks on African students were so constant that in 2002 a group of 37 ambassadors from African countries addressed a petition to Russian President Vladimir Putin demanding protection.<sup>30</sup> A former president of the Association of African Students told Human Rights First that he and his fellow students warn their newly arrived countrymen about the dangers. “We tell them . . . after about 5 pm, going to clubs and discos—no. We are thinking, ‘When can I finish up my studies and get out of here?’”<sup>31</sup>

The scope of the problem can be seen from a survey conducted by Amnesty International from May 2001 to April 2002, in which a community of Africans living in Moscow were questioned about

violent crimes against them. Over the course of the year, the 180 respondents reported 204 attacks, most of them by groups of young adults.<sup>32</sup> When asked about the frequency of hate crimes among refugees in Moscow, a human rights activist told Human Rights First, “A day doesn’t go by without a complaint.”<sup>33</sup> The international and, indeed, transcontinental dimensions of the Neo-Nazi and related movements are an indicator of the potency of the ideology of racism and exclusion. The emergence of nationalist youth gangs in the Russian Federation, many adopting the regalia of Nazi Germany, may be an extreme example. However, in many Russian cities, racist violence by skinheads is an everyday routine. To some extent this violence is organized. The Organized Crime Unit of the Ministry of Internal Affairs (MVD) now states that there are 453 extremist organizations in the country, of which 147 are “skinheads.”<sup>34</sup>

In what has come to be an almost typical, everyday incident in Moscow, a group of armed skinheads attacked an ethnic Tajik family on February 9, 2004, as they entered the courtyard of their apartment house. The assailants stabbed nine-year-old Khursheda Sultonova to death, and severely injured her father and eleven-year-old cousin.<sup>35</sup>

According to Alexander Brod, Director of the independent Moscow Bureau for Human Rights, the number of “skinheads” is estimated at roughly 50,000.<sup>36</sup> An official estimate given by the MVD, by contrast, was about 20,000 “extremists.”<sup>37</sup>

The role of organized extremist groups among fans of professional football (soccer) in Europe is also cause for concern. Despite the recognition of the seriousness of the problem, and important actions to combat racism, black, Jewish, and other minority players continue to be subjected to both verbal and physical abuse, and attacks on minorities in and around football grounds continue to be a major law enforcement issue.<sup>38</sup>

British football star David Beckham has joined other sports professionals in the anti-racism battle, telling fans, “We need to kick this stuff out,” as part of an ongoing campaign.<sup>39</sup> Racism at football games is addressed by a range of organizations are supported by professional players’ associations and unions, team owners,

and governments. The European “Football Against Racism” (FARE), a network of organizations from thirteen countries, monitors and reports incidents of racist abuse by spectators, coaches, and players in Europe. FARE and its national affiliates, like the British Kick It Out, have a hotline for fans to report racist incidents and seek action through football associations to stop racist chanting and violence on the spot.<sup>40</sup>

In June 2004, the football team FC Moscow began the first-ever anti-racism campaign in Russian football, with its team wearing “Moscow Against Racism” t-shirts. Team secretary Youri Belous explained that “For Russia and especially for Moscow racism is a great problem . . . Fanatics and racists are . . . ready to attack or even kill everybody who doesn’t bear resemblance to them. In the last years the number of black players in Russian football clubs increased and most of them suffer from racist abuses. FC Moscow struggles against this social evil.”<sup>41</sup>

Those who oppose racism in football seem to be striking a chord, as some recent attacks have been reported *on* anti-racism campaigns. In Sheffield, England, the offices of the organization “Football Unites, Racism Divides” were ransacked in late July 2004, and a store of anti-racist leaflets was set on fire.<sup>42</sup> But despite this setback, Football Unites is now planning to celebrate its tenth anniversary as an antiracist monitoring and campaigning organization, and continues to recruit football stars to support its efforts.<sup>43</sup>

## Desecration

Racist violence also takes the form of desecration of cemeteries and monuments to the dead, a means to both dishonor and to intimidate a community and to seek to erase its identity within a multicultural society. Like the special injury and pain caused by attacks on a place of worship to a community bound together by religion, the desecration of the graves of ancestors and monuments to past atrocities is an injury both communal and personal and a threat both abstract and real.

The desecration of cemeteries and monuments to victims of racism continues to be reported across

a wide swath of Europe and North America. In the United Kingdom, some 60 gravestones were reported smashed or toppled at the Jewish cemetery in Birmingham on August 22, 2004. In French military cemeteries, attackers defaced both Muslim and Jewish graves, spraying swastikas, other Nazi symbols, and antisemitic and anti-Muslim slogans on walls and tombs in orgies of equal opportunity racism. In Strasbourg, in France’s Alsace region, more than 50 Muslim gravestones were desecrated with swastikas and other neo-Nazi graffiti on June 13, 2004.<sup>44</sup>

The desecration of cemeteries, in particular Jewish cemeteries, and of monuments to victims of the Holocaust was reported in many countries, from Canada to the Russian Federation.<sup>45</sup>

- On July 25, 2004, in Bohumin, Czech Republic, vandals poured paint on a memorial to Holocaust victims just two days after it had been dedicated.
- In June, 2004, vandals toppled or shattered most of an estimated 80 grave markers in the Jewish cemetery of the Czech town of Hranice.
- In Romania, on August 20, 2004, antisemitic graffiti was reportedly sprayed on the wall of the Jewish cemetery in the village of Camaras.
- In the Russian Federation, in April and again on July 15, 2004, vandals attacked the Jewish cemetery in Petrozavodsk, painting swastikas and other antisemitic graffiti on tombstones.
- In Spain, a monument to Catalan Holocaust victims at Barcelona’s Montjuic, which was damaged and repaired in early June 2004, was again defaced on June 26, 2004.
- On June 3, 2004, 20 Jewish graves were desecrated in Quebec City, Canada, in the cemetery of Saint-Foy.

As noted, vandals in the United States in May 2004 desecrated the Jasper, Texas grave of James Byrd Jr., the young African-American who was killed in 1988 when three white men dragged him with a pickup truck. Byrd’s murder received international attention and led to Texas hate crimes legislation bearing Byrd’s name. The tomb was vandalized with racist epithets and the granite tombstone broken. In March 2004, on the occasion of the passage of the James Byrd Jr. Hate Crimes Act, the Byrd’s parents told the press

that the grave was continually vandalized; members of the Ku Klux Klan were reported to pose for photographs there, and on one occasion left a placard saying “we’ve been here.”<sup>46</sup>

Hate crimes and the resulting climate of fear and intimidation can blight all aspects of life for communities under threat while also disrupting the larger society. Academic studies in the United States have found that hate crimes are often more excessively brutal than similar crimes in which bias is absent, “especially in the case of bias against persons due to their sexual orientation, race, or gender.”<sup>47</sup> These crimes also are “more likely than other crimes to be committed by multiple perpetrators, a feature contributing to their severity and brutality.”<sup>48</sup> Perpetrators’ targeting of victims as members of a group makes the violence resonate far beyond the individual—posing a threat to anyone who may be perceived to be a part of the group under threat.

When unknown assailants threw a Molotov cocktail at a Jewish community center that houses a synagogue in Toulon on the night of March 22, 2004, the attack was on the broader Jewish community. Graffiti also aims to intimidate and terrorize, as when on August 14, 2004, in the heart of Paris, swastikas and the words “Death to the Jews!” were spray-painted on a wall near Notre Dame Cathedral.

The drum beat of racist violence is often heard only by those most immediately under threat. The high-profile attacks on places of worship, community centers, schools, and other venues that become the subject of newspaper headlines are the exception. So, too, is the organized violence of skinheads, neo-Nazis, and other extremist political groups, which often deliberately aim to publicize their actions with slogans and public claims of responsibility. But the day-to-day rhythm of racist and bias violence is no less dramatic in kind for the individuals and communities living in fear—and sometimes all the more threatening precisely because the perpetrators are indistinguishable from the ordinary “mainstream” populace.

## Bias Crimes Based on Discrimination Other than Racism

Bias crimes may be motivated by racist or religious hatred, or by discrimination on the basis of gender, sexual orientation, or disability—or some combination of these factors. A woman may be singled out because she is perceived to be a member of a particular ethnic group and in turn subjected to more intense abuse because she is a woman.

Marinus Schöberl, age 16, was murdered in Germany in July 2002. Schöberl, who was learning-disabled, was killed because his assailants thought he was a Jew (although he was not). His three young assailants shouted antisemitic epithets and then repeatedly kicked and beat him. They then dragged him to an abandoned farm where they beat his head repeatedly against a stone pig trough. Schöberl’s murderers, members of a right-wing organization, later confessed to the crime.<sup>49</sup>

In Europe, hate crimes motivated by gender, sexual orientation, and disability, like other bias crimes, have antecedents in the Holocaust. Campaigns to exterminate Jews and the Roma and Sinti (“Gypsies”)<sup>50</sup> and to enslave or murder Slavs were accompanied by a program called “Operation T4,” designed to eliminate the disabled, and by the persecution and murder of tens of thousands of Europeans identified as homosexuals.

More recently, reporting on the most serious human rights crimes, from abuses against civilian populations in times of war to “ethnic cleansing” and genocide, has shown how racist violence is often compounded by violence based on gender, with rape and sexual mutilation used as a weapon of war and genocide. This has been reflected in the jurisprudence of the International Tribunals on Rwanda and the Former Yugoslavia and in the statute of the International Criminal Court. These factors are also present in many of the racist attacks on members of minority groups in the streets of Europe and North America, where rape and sexual humiliation may be aspects of hate crimes driven by multiple factors. Women who do

not conform to stereotypically feminine behavior, whether due to their sexual orientation or other factors, may be victims of sexual and other violence—because they are women.

Notwithstanding the intersection of racism and other biases, hate crimes legislation and monitoring systems often exclude crimes motivated by sexual orientation, gender, or disability. At the same time, European intergovernmental agencies that have express mandates to fight racism and xenophobia may not address other forms of intolerance—particularly as other agencies have express mandates to address women’s rights (based on regional treaty law) and the rights of the disabled. Detailed statistics may exist on violence against women, for example, but often these are not correlated with statistics on other bias crimes. European Union and Council of Europe efforts to combat racism have been distinct from parallel efforts to promote gender equality, in part because a distinct framework of international law and regional mechanisms provides protection for women’s rights.

International standards require governments to protect all people within their jurisdictions against discriminatory treatment—and to progressively realize the equal enjoyment of economic, social, and cultural rights. Hate crimes have a special immediacy for those suffering broader systemic discrimination: living in constant fear can add seemingly insuperable obstacles to the exercise of basic human rights by denying whole populations a right to security in their homes, schools, workplaces, and communities.



# The New Politics of Racism and Xenophobia

*Far from undermining integration, the respect for the differences of new ethnic minorities is rather an essential stimulus to it, encouraging a sense of belonging, equal worth and a reciprocal respect in turn. This is nowhere more important than in the enjoyment of the right to freely practise one's religion—without, however, transforming it, through the prism of fanaticism, into a tool of social conflict and exclusion.*

European Commissioner of Human Rights Alvaro Gil-Robles, December 2004<sup>51</sup>

## An Assault on Identity

Attacks on Muslims and people mistaken for Muslims in the aftermath of September 11 heightened the levels of violence and fear across both Europe and North America. A study by the European Union's anti-racism body, the European Monitoring Center on Racism and Xenophobia (EUMC), found that “visual identifiers” associated with Islam—from turbans to women's headscarves—were prime triggers for many of the racist attacks.

A rise in anti-Jewish violence that began in late 2000 was also accompanied by many random attacks on individuals as well as on institutions of the Jewish community. Outward displays of identity were also triggering factors in these brutal attacks. For example, in France, men wearing yarmulkes (skull caps) were particularly susceptible to attack. This became so serious a threat that in 2002 one Paris rabbi went so far as to advise young men to conceal their Jewish identity by wearing baseball caps over their yarmulkes.<sup>52</sup>

Concealing one's religious identity (or race, or national origin) is not always possible—or desirable—even if an individual could overcome the wrenching contradictions of self-denial this might involve.<sup>53</sup> A decision not to wear a headscarf, a yarmulke, or a turban is more than a matter of fashion. At the same time, for many a change of attire, a shedding of religious symbols,

or a setting aside of religious obligations of decorum will offer no protection against racist attacks. They will still look, or sound, or be presumed to be “foreign” or different.

Assimilation or being European- or North American-born may offer no particular protection from everyday racism. Those with disabilities or others singled out for their race, ethnicity, sexual orientation, or gender nonconformity may also face problems of “visual identifiers” that are similarly an integral part of their identities.

It is the everyday acts of racism and other bias crimes that often fall off the radar of official monitoring and reporting and even outside the net of nongovernmental human rights monitors. As both the perpetrators and the victims are often poor and uneducated, they are less visible in societies that relegate them to the periphery of national life. As much of the violence is widely dispersed, affecting individuals and families in isolation, its scope is not immediately apparent to those not facing day-to-day threats from their neighbors. When those attacked are not supported by strong organizations based in their own ethnic or religious communities, their situation is particularly unlikely to be noticed or reported, or to become the object of high-level attention from political leaders or others.

Even before the September 11 attacks, the transformation of racist, anti-immigrant bias toward Europe's Muslim populations into something more pervasive and extreme was an object of concern. In a 1997 report, the then British Home Secretary, Jack Straw, presented a report of the Commission on British Muslims and Islamophobia that concluded that "unfounded hostility towards Islam, and therefore fear or dislike of all or most Muslims," had been on the rise in recent years and had led to "unfair discrimination against Muslim individuals and communities, and the exclusion of Muslims from mainstream social and political affairs."<sup>54</sup> Since September 11, the fusion of racism, religious intolerance, and anti-immigrant bias has become an increasingly potent discriminatory force.

## Immigrants and Muslims in a New Europe

The rise in attacks on Muslims, and on members of minorities often mistakenly believed to be Muslims, comes in the context of broad political campaigns through much of Europe to portray immigrants and minorities as threats on a broad array of fronts. Appeals to nationalism and traditional cultural and religious sentiments are often fueled by economic grievances; in addition, Muslim minorities have faced new levels of fear and distrust in the wake of incidents involving terrorism and religious extremism in the name of Islam.

The "old racism" confronted by immigrants and minorities in Europe has traditionally been founded on multiple factors, including skin color, language, religion, culture, economics, and, of course, history. This multi-layered framework of exclusion has traditionally become more acute in economic hard times, when minorities are readily made scapegoats even as immigrants are subjected to extraordinary control measures.

In much of Western Europe, the September 11 attacks on the United States were followed by a wave of attacks on minorities believed to be Muslim, with people wearing distinctive clothing such as headscarves particularly singled out for abuse. In addition to the firebombing of Muslim schools, mosques, shops, and community centers in many countries, non-Muslims—particularly

Sikhs—got caught up in the violence. As in the United States after September 11, Sikhs wearing turbans were attacked in Europe because their attackers believed that they were Arab and Muslim. An EUMC report described Sikh communities under siege in Belgium, Finland, the Netherlands, Portugal, and Spain.<sup>55</sup> Increased hostility toward Sikh communities was also reported in Austria, Germany, Ireland, Portugal, and Spain.

Muslim communities have borne the brunt of the violence since September 11. While the level of violence diminished in most countries, high levels of violence against Muslim immigrants and nationals continued in some countries, including France and the United Kingdom.<sup>56</sup> In the Netherlands, where strong institutions exist to fight discrimination and to monitor hate crimes and there is a strong anti-racism tradition, an unprecedented level of violence and threats was reported as a direct consequence of a new anti-immigrant and anti-Muslim hysteria. Opinion polls cited in a report on post-September 11 Islamophobia by the EUMC found that "[l]arge numbers of the population were in favour of the deportation of Muslims whilst others were keen to see asylum seekers from Muslim backgrounds being refused entry to the country." Political parties including the Populist Party and the New National Party used anti-Muslim messages in the Netherlands to advance their own agendas.<sup>57</sup>

The attacks on mosques, an Islamic school, and women wearing Muslim headscarves (*hijabs*) reported in the Netherlands in the aftermath of September 11 shocked a society that traditionally viewed itself as tolerant and multicultural. While rapid action was taken to halt the violence in 2001, the September 2004 murder of Theo Van Gogh by an assailant claiming to act in the name of political Islam triggered a similar violent backlash—which this time had far more resonance in the political mainstream. Whereas the backlash in 2001 came predominantly from the extremist fringe, the murder of Van Gogh pushed broad sectors of society into a visceral and vocal new fear of immigrants and marked a new level of uncertainty about policies toward minorities.

The new realities of international terrorism have added an overlay of religious fear and incitement



that brings an increased volatility to anti-Muslim, anti-immigrant bias in Europe. One recent report notes:

As governments have stepped up their efforts to enhance national security, and the threat of religious extremism has featured prominently in public debate, pre-existing prejudices against Muslims have been reinforced. . . . In Denmark and Austria, for example, Muslim groups have observed that it has become more “legitimate” to openly express hostility against Muslims . . . and that it is now possible to publicly use intolerant language against Muslims in a way that was not previously acceptable.<sup>58</sup>

Long-standing anti-immigrant bias has exploded into a racist clamor in some parts of Europe for mass round-ups and expulsions and even for naturalized citizens of long-established communities to be stripped of their European citizenship. Preexisting racist treatment has found new legitimacy beyond the extremist parties of the radical right, with new measures to limit the rights of immigrants, including asylum seekers, advanced in the name of security and calls for the assimilation—or expulsion—or minorities gaining acceptance in new quarters.

In France, the nongovernmental Collective Against Islamophobia in France (Collectif Contre l’Islamophobie en France, CCIF), gathers information on anti-Islamic acts, which it distinguishes from generalized racist attacks on people of North African (Maghreb) origin. Founded in 2003, it reports on its website that it received information between October 2003 and August 2004 about 64 acts against Islamic institutions in France, ranging from arson and the throwing of Molotov Cocktails at mosques to graffiti, including swastikas used as part of an anti-Islamic message. It said 50 percent of the incidents were concentrated in the northern department of Alsace and in Ile de France.<sup>59</sup>

Attacks on individuals that CCIF characterized as Islamophobic were largely upon people distinguished as Muslims by their dress, with a majority of incidents reported by women wearing the *hijab*. Examples included: an August 2004 assault on a bearded man in a *djellaba* in Paris; a January 2004 assault in Venissieux (in the Rhône region) in a marketplace, when a woman was

struck and her headscarf was torn off as a policeman stood by; and an incident in the Paris Metro in March 2004, when a woman walked up to a Muslim woman wearing a headscarf and spit directly in her face.<sup>60</sup>

Attacks on Muslims and Muslim institutions show little sign of abating, and even where large Muslim minorities are nationals of European countries the anti-immigrant policies of their governments continue to sow fear and hostility toward Muslim communities. In France, unknown assailants in Castillon-la-Bataille fired a shotgun at the door of a mosque on January 14, 2005, much as in a similar attack on a mosque in Agen on December 31, 2004.<sup>61</sup> In a January 4, 2005 attack in Strasbourg, the seat of the Council of Europe, the home of the spokesman for the Regional Council of the Muslim Faith (CRCM) was covered in racist graffiti and its front set on fire.<sup>62</sup>

Fear of Islamic extremism has also generated new levels of criticism of Muslim immigrants and European nationals for failing to integrate—sweeping aside consideration of the obstacles thrown up by European governments and dominant societies to their doing so on a foundation of equality and respect. Discrimination in the areas of housing, employment, education, and access to public services are part of the backdrop to this failure of integration that applies to many Muslims regardless of their status as European citizens or immigrants. The denial of permits by public authorities for the construction of mosques or even for Muslim cemeteries may be a further factor by which Muslim minorities are kept at the margin of society in Europe, even while being criticized for remaining apart from the broader community.<sup>63</sup>

European Commissioner of Human Rights Alvaro Gil-Robles, in his December 2004 annual report, addressed the marginalization of European Muslims in his 2004 annual report:

Freedom to practise one’s religion entails, in particular, a place in which to do so. It is particularly worrying, therefore, to note the difficulties that Muslim communities in many European countries face in obtaining permission to construct public mosques; worrying not only from the perspective of the denial of basic rights, but also because the pushing underground of perfectly licit religious

activity can only breed yet greater exclusion and risks fostering radicalism. It is to be hoped, in this context, that the creation in some countries of National Councils for Muslim clerics might serve as a positive example to others, permitting greater dialogue between Muslim communities and state authorities on such issues.<sup>64</sup>

Now, in the wake of new concerns about terrorism, European society has turned around and condemned Muslim Europeans for refusing to integrate—citing the example of some who indeed reject European norms, while turning a blind eye to European policies and practices of exclusion that have long marginalized this minority and made full and equal incorporation into the mainstream an often insurmountable challenge.

Some European politicians have increasingly come to demand not integration but assimilation, which to many implies the adoption of the religion and culture of the majority. For most immigrants and Muslims, however, even assimilation would provide little protection against the underlying racism which fuels today's anti-Muslim violence, discrimination, and xenophobia. A recent Dutch government study estimated that just 20 percent of the estimated 900,000 Muslims in the Netherlands actively practice their religion (an estimate that may well be disputed).<sup>65</sup> Yet this had little bearing on the discriminatory challenges faced by Dutch Muslims to integration even before terrorism and fear of Islam entered the political lexicon of the Netherlands.

## The Debate on Headscarves

Measures in response to fears of Islamic fundamentalism have affected Muslim populations as a whole in some countries, and may arguably have led to the further isolation of these communities from society even when justified as measures to better integrate minorities. This further isolation, in turn, may create the conditions for continued high levels of racist violence.

While potentially positive steps have been taken to address racist violence and discrimination toward Muslim minorities in France, these have coincided with other measures tending to limit the expression of Islamic faith. The most dramatic debate around these measures has centered

upon a ban on wearing the Muslim headscarf (*hijab*) in public schools.

An obligatory ban on wearing the Muslim headscarf in public schools was imposed by law in March 2004 and took effect in September 2004, culminating months of debate in what was known as "l'affaire du voile,"—the question of the Muslim headscarf, also known as "the veil."<sup>66</sup> The law bans the "conspicuous display of religious symbols or dress," and so applies also to Jewish skull caps (*kippas* or *yarmulkes*), Sikh turbans, and other religious head coverings, as well as religious symbols defined to include "large" crucifixes. Banning the wearing of the Muslim headscarf, however, was generally understood as the principal purpose of the law.

Advocates of the ban held that wearing the headscarf in public schools was an outward display of religious conviction that was inappropriate and incompatible with the secular framework of French government and society. Other factors raised included the rights of women and the rights of the child—from both sides of the debate. Charges that a religious duty to wear the headscarf was a form of oppression of women, and incidents of real-world violence against Muslim women and girls in France who were victimized for refusing to conform with these religious norms dominated the news media.

Counter-arguments were made that Muslim women and girls have the right to choose to observe a religious requirement to cover their heads, and can feel empowered by their decision to do so. In addition to Muslim leaders, leaders of the Jewish and Sikh faiths, among others, spoke out against the law as a fundamental infringement of freedom of conscience and religion. The Gurdwara Singh Sabha Association, representing Sikhs in France, wrote in January 2004 to the French Minister of Education to explain the injustice the ban would represent for observant Sikhs—and the basis for the Sikh requirement that the hair of boys and men be covered.<sup>67</sup> And in a letter the same month to President Chirac, the U.S.-based Sikh Coalition explained simply that "[f]or Sikhs the turban is a mandatory article of faith . . . it is an act of conscience, not as you may perceive, an act of proselytism."<sup>68</sup>

Although promulgated in the name of secular education, the measure provides a legitimizing backdrop to the harassment and physical assaults on women and girls wearing headscarves that are part of the everyday panorama of racist violence in France. Muslim organizations, significantly, reported “that discrimination against Muslim women [in France] who wear the headscarf peaked during those months when the most intense discussions about the new law took place.”<sup>69</sup>

A ban on wearing the headscarf (or *yarmulke* or *kippa* or turban) as a religious statement or symbol, is on its face a violation of the right to exercise one’s freedom of conscience and religion. By enacting into the law the notion that a student wears a headscarf as a religious statement or symbol, as opposed to a religious requirement denoting modesty and decorum, state officials now exercise the power to exclude young Muslim women and girls from public education, leaving them no alternative but private Muslim schools if they are to continue their educations.

Compliance with religious codes of dress and decorum does not itself deny a student the exercise of other rights or obstruct the rights of others, but bans on compliance with these religious requirements discriminates against the individual and the broader minority community on multiple levels. While international standards may permit limited restrictions on freedom of expression in state institutions, including public schools, bans on clothing that for members of certain confessions is required to meet religious obligations and is objected to only for its symbolic value are not justifiable.<sup>70</sup>

Arguments that the ban on “the conspicuous display of religious symbols or dress” is applied even-handedly, against students of all faiths, also fail to address its disparate impact on the right to education and the freedom of conscience and religion of members of religious minorities—and that the measures were introduced expressly to suppress the wearing of the Muslim headscarf.<sup>71</sup> This is in part because the headscarves ban applies to ordinary items of clothing that, unlike a nun’s habit, a crucifix, or a religious medallion, are identified as conspicuous religious displays solely based on the identity of those wearing them. A

Gucci scarf worn by a Muslim girl may justify her expulsion, as a banner of defiance by a member of a suspect minority.

The first five school expulsions—of Muslim girls—occurred in October 2004, the month after the ban took effect. Two of the girls, twelve-year-olds in a junior school in Mulhouse, in eastern France, had agreed to replace their traditional headscarves with bandanas, but still faced expulsion.<sup>72</sup> Another Muslim girl, 15-year-old Cennet Doganay, had been banned from classrooms with other students at her Strasbourg school since September, despite trying to maintain religious norms of modesty concerning her hair without headgear that was “ostentatiously” religious. According to her mother, she had tried “a beret, a bandana—but they still refused to let her into class.”<sup>73</sup> She was allowed back into class only after shaving her head.

In Bobigny, northeast of Paris, nine Sikh pupils were barred from class in September 2004 and supervised in a separate classroom.<sup>74</sup> Three of these students, all of whom had agreed to replace their turbans with simple cloth head coverings (known as *keski*), were later expelled from school by the school disciplinary council in November.<sup>75</sup> A French court ruled on April 19, 2005 that the three boys “wore attire that made them instantly recognizable as members of the Sikh religion” and therefore the boys had violated the law. The boys’ lawyer has stated that they will appeal and go the European Court of Human Rights if necessary.<sup>76</sup>

As the dispute in France revolves around headscarves, it does not involve arguments concerning the legitimacy of prohibitions of other items of clothing from the Muslim world that might conceal the faces, obstruct communications or movement, or otherwise limit the educational development of girls and young women, all of which would be legitimate concerns of a system of public education.<sup>77</sup> (International human rights law allows for restrictions of the freedom to manifest one’s religion only to the extent necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.)<sup>78</sup> While it has been suggested that banning the headscarf, as a symbol of Muslim identity, will reduce sectarian violence in schools, alternatives to the ban that respect the right to religious freedom, including safeguards so that girls and

young women in public schools are not intimidated and coerced by their peers and communities into wearing the headscarf, have not been adequately explored.

In banning headscarves from public schools, the state potentially denies girls and young women who are observant members of the Muslim community a secular education, and indirectly legitimates the stigmatization of those who wear the headscarf in the society at large.<sup>79</sup> Just as attacks on Jews wearing skull caps in public are routinely reported in Western Europe, a large number of the racist attacks reported in France and neighboring countries involve assaults on women and girls who appear in public wearing headscarves presumed to indicate their Islamic faith.

CCIF has reported that in its monitoring of complaints between October 2003 and August 2004, it found that 76 percent of the individual assaults registered were against women wearing headscarves. (As noted, CCIF distinguishes between “Islamophobic violence,” which it has found to be focused on the symbol of the headscarf, and racist and xenophobic attacks, which tend to be against men of North African origin.<sup>80</sup>) Moreover, the complaints registered by the CCIF do not include the everyday insults women endure, which the League of French Muslim Women (LFFM) reports have increased significantly since the debates about the headscarves law began.<sup>81</sup> In a recent example of violent abuse, a woman who was accused of “making a fuss” by wearing a headscarf was attacked and badly beaten in Mulhouse, in northeastern France, in December 2004.<sup>82</sup>

In effect, the ban on headscarves and religious attire has responded to a climate of discriminatory violence by obliging members of minorities to *conceal* their religious identities, even when for many their minority status can never be concealed. It thus places new burdens and blame for discriminatory treatment on those most severely discriminated against. The consequence, particularly in the most extreme case where observant members of religious minorities may be excluded from public schools, will be to further marginalize these minorities.

When a French court upheld the expulsion of three Sikh students from a public school in April 2005 on the grounds that their head coverings made them “instantly recognizable” as Sikhs, the French principle of *égalité* was turned on its head: to oblige minority citizens to conceal their identity and deny their diversity. In effect, the policy denies equality by quashing identity and stigmatizing diversity and, as such, can translate in the broader society into generalized discrimination and violence.

Beyond its impact in France itself, the headscarf ban has resonated outside the country: harassment of women wearing the headscarf continues to be widely reported elsewhere in the European Union. Even though there is currently no law in Belgium comparable to the French ban (although one has been proposed), discriminatory treatment of women in Islamic dress is also widely reported in Belgium. In a recent incident, religious intolerance led to threats against a non-Muslim factory owner for employing a Muslim woman; he received a package containing bullets and a death threat.<sup>83</sup> After a great deal of coverage in the press, the employee eventually quit when a second package arrived with two bullets—even though she had stopped wearing her headscarf to work. There has been little reported progress in the criminal investigation of the case—although she was subsequently welcomed back to her job.<sup>84</sup>

# Monitoring and Reporting

## The Information Deficit

A first step in dealing with the larger phenomenon of violent hate crimes is to fill the information deficit about its full extent, the gaps in states' responses, and the protection required for those under threat. The response to the proliferation of hate crimes has been a mix of public and private outcry—often set against either official indifference or, worse, the continued use of xenophobia, prejudice, and racism as a political tool by some government officials. Too little attention has been paid to establishing official monitoring mechanisms and channels for public reporting on hate crime violence. Even as whole communities live in fear of their neighbors, daily incidents of threats and violence against people and property go unregistered, unnoticed, and unremedied by public authorities.

When a distinct group is targeted for discrimination, governments have an affirmative obligation to challenge discriminatory conduct through broad-based preventive action. When discrimination takes the form of threats of imminent violence—the focus of this book—governments must take prompt action to safeguard against such threats, prosecute crimes, and ensure that similar crimes do not recur.

Most European governments, however, still do not provide even basic reporting on the crimes of violence motivated by bias—even though timely, accurate, and public information on racist violence is an essential first step in developing effective actions to suppress it.

In addition, even where governments have agreed to monitor hate crimes there are a range of problems that limit the effectiveness of such reports. Much of this problem is the result of the restrictive terms of procedural guidelines that govern such reporting. Procedures may exclude particular groups from identification in formal reports, subsume coverage of their situation into

broader categories of disaggregated statistics, or cover only a narrowly circumscribed subset of crimes motivated by bias. Hate crimes statutes also may apply only to discriminatory acts in narrowly defined circumstances (for example, if an attack motivated by bias occurs while the victim is exercising a federal right to vote), or to particular grounds for discrimination (for example, punishing discrimination by reason of race or ethnic origin, but not bias based on religion, gender, sexual identity, or disability).

Often, reporting by community-based organizations provides more comprehensive coverage of incidents affecting community members even when this reporting is not reflected in public reports or in official statistics issued by government bodies. The contrast between nongovernmental reporting, media reports, and reports available from official bodies is frequently stark, with government sources often either unavailable, highly misleading, or years out of date.

The use of statistics has been a tried and tested part of the fight against discrimination for many years, and is increasingly part of the effort by governments and civil society to combat hate crimes. The regular compilation and publication of statistics on hate crimes and incidents, disaggregated to identify the particular groups affected, has become an acknowledged standard, although a majority of members of the Council of Europe and the OSCE still do not meet this standard.

In 2002, the EUMC called upon member states to “install a reporting and monitoring system for racist crimes that is clear, consistent and accessible; maintain statistics on the treatment of racist crimes in the criminal justice system, from the police to the courts; ensure that monitoring categories for victims are disaggregated by race

and religion; and publish annual reports on racist crimes.”<sup>85</sup>

Similarly, the Council of Europe’s anti-racism body, the European Commission against Racism and Intolerance (ECRI), in its “General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance,” called on governments to “[e]nsure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted.”<sup>86</sup> ECRI has also consistently pressed for improved data collection in its periodic country reports.<sup>87</sup>

The EUMC’s March 2004 report on antisemitism in Europe, while focusing on government responses to anti-Jewish threats and violence, provides a good summary of the mechanisms now in place in the then-fifteen E.U. states for monitoring, reporting, preventing, and punishing hate crimes more broadly. In a detailed analysis of the shortcomings of monitoring and reporting in the E.U., the report highlights “the great differences between countries in the quality and quantity of the data.” The EUMC report found that most E.U. governments conduct no systematic monitoring of antisemitic incidents at all. It noted the inadequacy of the coverage of hate crimes in general in certain countries, including Austria, Belgium, Greece, Spain, Ireland, Luxembourg, Italy, Portugal, and Finland.

In contrast, reliable official or semi-official data on antisemitic incidents was collected and published, with some qualifications, in Germany (with reports on “extreme right wing and antisemitic offenses” produced by the Federal Ministries of the Interior and of Justice), France (by the National Consultative Commission on Human Rights), the Netherlands, Sweden (by the police), and the United Kingdom (by the Greater London police, and some other police authorities).

French law still prohibits the publication of hate crime statistics disaggregated by the racial or other characteristics of the victims, but its reporting on hate crimes has circumvented this restriction to some extent, distinguishing crimes that reflect antisemitic bias and bias against

France’s largely Muslim population of North African (Maghreb) origin. Annual hate crime reports do not distinguish the *victims* as members of a particular ethnic or similarly discrete group; in their public iterations the reports simply distinguish these two categories of hate crimes based on the nature of the bias—as antisemitic or racist.<sup>88</sup> (See section on France.)

Official statistics and documentation on antisemitic violence in France today appear to provide a fairly accurate picture, a dramatic change since 2002, and the severity of anti-Muslim violence is well reflected, despite a general consensus that this is underreported. There is, however, virtually no official data publicly available on bias-motivated violence against the Roma, people of Sub-Saharan African origin, and members of other minorities. (See section on France.)

The report of a January 2003 seminar of the E.U.’s specialized anti-racism bodies, hosted by Belgium’s Centre for Equal Opportunities and Opposition to Racism, highlighted the importance of statistics and monitoring under the EC Racial Equality Directive. It expressed “major concerns” still present in some jurisdictions concerning its implementation. “In France for example it is argued that ethnic monitoring, and thus labeling citizens under certain categories, would infringe the constitutional guarantee that citizens are ‘one and indivisible.’” On the other hand, “[i]n Denmark, the Netherlands, Sweden and the United Kingdom, statistics are collected on the basis of voluntary self-identification of minorities.”<sup>89</sup> The ten countries that acceded to the E.U. in April 2004 are now bound by the same norms as the original member states, but few of them have adequate hate crimes and reporting systems in place.

In general, the approaches taken on the need for improved monitoring and data collection on hate crimes in ECRI’s country specific recommendations, the EUMC’s recommendations on improving data collection, and the recommendations made in the October 2000 European Conference Against Racism are complementary. At the October 2000 meeting in Strasbourg, European governments made a strong commitment to improving efforts to document patterns of racist violence. The

conference recommended the collection and publication of data on the number and nature of racist, xenophobic, or related incidents or offenses or suspected “bias crimes,” as well as information on prosecutions. Data were to be broken down to include information on the race, ethnicity, or descent (and gender) of the persons reported harmed, while being collected in accordance with human rights principles, and protected against abuse through data protection and privacy guarantees.<sup>90</sup>

The management of data collected by governments and private organizations concerning hate and bias crime requires meticulous and enforced safeguards.<sup>91</sup> The recommendations of the United Nations World Conference against Racism, like those of the Strasbourg Conference, reflect special concern for safeguards against the misuse of data in line with the highest standards of data protection and privacy guarantees.<sup>92</sup> ECRI’s 2004 recommendations in its third country report on Bulgaria, for example, reflect this balance:

ECRI strongly encourages the Bulgarian authorities to consider ways of establishing a coherent, comprehensive data collection system in order to assess the situation of the various minority groups living in Bulgaria and the scale of manifestations of racism and racial discrimination. Such a data collection system should comply with national law and European regulations and recommendations on data protection and the protection of privacy, as stated in ECRI General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. When collecting data, the Bulgarian authorities should, in particular, make sure to respect the anonymity and dignity of the people questioned and the principle of full consent.<sup>93</sup>

## Underreported and Unrecorded

The nature of the group under attack and its relation with local and national authorities goes some way into determining whether threats and abuses will be reported—and how the details of what is reported are recorded and acted upon. Members of immigrant communities, whether lawful permanent residents or those with either temporary or no lawful immigration status, may be more reluctant to report threats and abuse than

members of other established minority groups. Because of their general distrust of authorities or real fears of deportation they often may fail to report even common crimes against themselves or their families. Members of other vulnerable groups—in particular members of sexual minorities—may also be less likely to have full confidence in either law enforcement or local political authorities, and thus may report only the most serious crimes.

Some groups may face cultural or social obstacles to reporting attacks and threats. Hate crimes that include sexual abuse of women may remain in the shadows because of cultural taboos, and attacks motivated by hatred or bias against lesbian, gay, bisexual, or transgender people may go unreported because to do so would bring into the light an individual’s sexual orientation. A groundbreaking 1995 study done for the Canadian Department of Justice addressed the issue of underreporting in this regard:

A central deficiency of all criminal justice statistics is that a proportion of incidents are never reported to the police. This proportion (known as the “Dark Figure” of crime) varies from offence to offence, and may run as high as 95 percent for certain crimes. There are several reasons to believe that the percentage of offences that are not reported to the police may be particularly high for hate crimes. First, victims may fear additional victimization. Second, victims of racially-motivated hate crimes may well be apprehensive that the criminal justice system will not take their reports seriously enough. Third, the sensitive nature of hate crimes directed at gays or lesbians may result in the victim staying away from the police for fear of stigmatization on the basis of homophobia.<sup>94</sup>

Beyond these reasons for underreporting are shortcomings in the quality of data collection by governments. In researching antisemitic violence in Europe, Human Rights First, for example, found that the absence of systematic government data collection can offer a dangerously misleading picture of anti-Jewish violence—and other hate crimes. While the highest levels of violence were found where there was increasingly effective monitoring and reporting (in Germany and France), lack of information from many other countries obviously cannot be taken as evidence

of a lack of problems there. Similarly, the EUMC's report on antisemitism found that it was not the *absence of anything to report* that led officials to refuse to collect data systematically, but rather "the official denial of the phenomenon of antisemitism."<sup>95</sup>

The issue of denial applies more generally to all hate crimes. One striking example is found in ECRI's April 2002 report on the Republic of Georgia. ECRI notes blandly that while legislation is in place to punish racist violence in Georgia, ECRI could find no single case "where the provisions of the Criminal Code referred to in this Section have been applied." It stated the Georgian government's response as follows: "The Georgian authorities have stated that this situation reflects the absence of manifestations of racism, racial discrimination and intolerance in Georgian society."<sup>96</sup>

A similar denial may come into play in the acknowledgment of racist and bias-motivated violence in other countries, including a tendency to write off even pervasive abuse as low-level harassment or seemingly inconsequential common crimes.

Even when criminal justice systems maintain fairly effective record systems, crimes motivated by bias may not figure in the overall crime reports. This may be because violent bias crimes appear in the data, but are uniformly classified as common crimes and are so indistinguishable, or because they are simply not recorded. Crime reports in themselves, however sophisticated their formal framework, are not necessarily credible. The EUMC's report on trends in the year 2000, for example, had noted that racist crimes registered by police are often "minimal in comparison with statistics collected by NGOs":

Italian NGOs recorded 259 racist murders between 1995 and 2000, whereas the Italian police authorities recorded not a single case. For statistics on racist attacks, the Italian NGO records show more than ten times as many crimes as the official figures. In Germany the NGOs recorded five times as many racist murders as the police.<sup>97</sup>

In contrast with racist crimes of violence, the EUMC noted: "Racist propaganda or 'incitement to hatred towards ethnic minorities' is well

documented by the police authorities in some of the Member States."<sup>98</sup>

The EUMC was no less concerned, or blunt, in its 2002 trends report. This found that police authorities in most member states registered racist crimes and most governments make police statistics public in yearly reports, of varying accuracy—"with the exceptions of Belgium, Greece, and Portugal." The mechanisms available to seek redress may themselves either deter or encourage reporting. In many countries, the only channel of redress is through a formal complaint to the local police. Even where official anti-racism bodies exist, factors such as facility of access, transparency of procedures, the nature of interaction with community-based organizations, and perhaps above all the confidence established by such organizations with minority communities may mean that such bodies received reports of only a small percentage of actual incidents. The victimized communities' lack of familiarity with official procedures also constitutes a barrier to formal reporting, which is compounded by fear or distrust of public authorities.

The study of policing in Scotland's Strathclyde district cited above explains why only a fraction of incidents are formally reported:

A great many racist incidents are never reported. Not all of those which are reported to a landlord, concierge, doctor, teacher or employer etc. end up being reported to the police. Many serious incidents are dealt with by civil means. People find it hard to identify and report racist incidents when they have never done so formally before.<sup>99</sup>

Obstacles to data collection posed by police attitudes are also reflected in some of the country reports of ECRI. In its June 2004 report on the Czech Republic, ECRI described problems at all levels of the criminal justice system.

Complaints of racially motivated crimes are sometimes refused by police, and, when accepted, are frequently misclassified. Investigations are often not followed up or are inadequate. Furthermore, the police themselves continue to be accused of committing acts of racially motivated violence impacting upon the willingness of victims to report crimes to police.<sup>100</sup>



Where the community under threat feels threatened by the police and local authorities themselves, this lack of confidence that they will win further protection—and not renewed abuse or even retaliation for their complaints—often results in official silence on the large numbers of serious crimes against such communities. Specialized government agencies created to promote tolerance and protect against discrimination may offer an alternative or a parallel channel to pursuing justice through the criminal justice system. Hotlines for reporting hate crimes may be maintained by such agencies with systems in place to protect the identity of the complainant pending assurance that special protection measures can be taken.

Cooperation among official and unofficial reporting bodies can help overcome these and other problems of underreporting. This can also provide the level of cooperation needed to apply methodologies to avoid *overreporting* through inclusion of multiple counts of the same incidents.

The varying goals of distinct monitoring and reporting systems will also influence the way complaints and incident reports are handled. A community-based organization's records of reported hate crimes may include both those formally reported to the police as well as those on which, for various reasons, complainants choose to remain anonymous. Such organizations may employ a rigorous methodology in assessing incident reports and reflect their significance in reporting on the aggregate picture of threats and violence against the particular community.

These incidents, however, will be largely invisible in monitoring systems based solely on the criminal justice system—even when hate crimes are practically and comprehensively defined by law. They may also be overlooked even in the reports of official civil rights bodies that focus only on the most egregious or representative cases with a view to seeking civil remedies or criminal prosecutions. Civil rights bodies that focus on cases with which to establish precedents may offer little as an alternative to monitoring and reporting through the criminal justice system, and be an unlikely source of remedy for all but the most high-profile victims of racial abuse.

A broader reporting system, to be useful, would reflect both actions that are punishable by law and abusive actions that fall into a grey area of intimidation that falls short of a punishable act or a direct and immediate threat of violence.<sup>101</sup> Civil rights commissions and other bodies established at the local level that address discrimination in the United States do so in different ways. For example, the Los Angeles County Human Relations Commission, appointed by the county government, distinguishes bias crimes and incidents and reports on both categories. It compiles and publishes detailed statistical information concerning these incidents, disaggregated by the groups affected, using the following definitions:

A hate crime is a crime in which bias, hatred, or prejudice based on the victim's real or perceived race, religion, ancestry, national origin, disability, gender, or sexual orientation are substantial factors in the commission of the crime. When the evidence of bias is based on speech alone, the speech must have threatened violence against a specific person or group of persons.

A hate incident is when, for example, derogatory words or epithets are directed against a member of a protected class, but no violence is threatened and there is no apparent ability to harm the person targeted. These hate incidents are not criminal offenses. They are however important indicators of intergroup tensions.<sup>102</sup>

Nongovernmental organizations also generally record both racist incidents and hate crimes. Some usefully define their methodologies in public information documenting hate crimes. The U.S.-based Anti-Defamation League (ADL), for example, in describing its methodology, notes that its ongoing *Audit* of antisemitism “identifies both criminal and non-criminal acts of harassment and intimidation, including distribution of hate propaganda, threats and slurs”<sup>103</sup>—a distinction of particular importance in the United States, where a high threshold must be met to make threatening speech punishable. To this end, ADL draws upon official crime statistics, reports from victims compiled by its 30 regional offices, and information from law enforcement officers and community leaders for what it calls “an annual

snapshot” that helps identify “possible trends or changes in the types of activity reported.”<sup>104</sup>

The recommendations of the International Association of Chiefs of Police also stress that monitoring should cover *all* bias incidents—and not only those that clearly constitute crimes. People are to be encouraged:

- To report all bias-related incidents to the police, even if these incidents do not constitute hate crimes, so high-risk situations can be tracked and appropriate problem-solving actions can be taken.
- To always report hate crimes to the police; other hate incidents may be reported to community organizations and kept in some central repository or database.
- To ensure that protocols for reporting are clearly stated and widely disseminated to community groups.

Guidelines for classifying crimes in Denmark as bias crimes, issued to local police forces by the Chief Superintendent of the Danish Civil Security Service (PET) in 1992 (and updated in 2001), set out fairly simple criteria.

Suspicion of a racist motive could rest with any of the following: (1) the victim’s, perpetrator’s or witnesses’ statements; (2) the presence of racist/xenophobic symbols or graffiti; (3) whether the victim or perpetrator knew each other; or (4) whether the crime was planned.<sup>105</sup>

In 2001, a revised circular was issued to local police forces setting out procedures for reporting racially motivated crime to PET. This requires registration of incidents considered to be 1) a criminal offense; and (2) motivated by race, color, national or ethnic origin, or religious beliefs. Each police district is also required to appoint an officer “with the overall responsibility of reporting racist crime to PET.”<sup>106</sup>

In the United States, the Federal Bureau of Investigation (FBI) provides detailed guidelines on data collection for hate crimes reporting in its system of Uniform Crime Reporting (UCR).<sup>107</sup> The FBI defines a bias crime or hate crime as “a criminal offense committed against a person, property, or society that is motivated, in whole or in part, by the offender’s bias against a race, religion, disability, sexual orientation, or

ethnicity/national origin.” This concept extends also to crimes committed where “the offender was mistaken in his/her perception that the victim was a member of the group he or she was acting against, the offense is still a bias crime because the offender was motivated by bias against the group.”<sup>108</sup>

## The United States FBI’s Guidelines for Assessing Bias Motivation

The FBI guidelines set out useful criteria for assessing bias motivation and identifying objective evidence that a crime was motivated by bias, while at the same time affording cautions concerning the nature of the facts in considering bias.<sup>109</sup> A baseline for the crime reporting system is that bias is to be reported “*only if* investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender’s actions were motivated, in whole or in part, by bias.” To determine that the *criminal act* itself was motivated by bias, the analyst can take into account a range of factors. These include factors related to the *identities* of the victims and the offenders, including that: they were of different races, religions, etc.; the victim was a member of a minority within the neighborhood in which he or she lived and in which the incident took place; or the victim was visiting a neighborhood where members of the minority to which he or she belonged had previously been attacked.<sup>110</sup>

Similarly, the activism of the victim may be a factor: “The victim was engaged in activities promoting his/her race, religion, disability, sexual orientation, or ethnicity/national origin. For example, the victim was a member of the NAACP (National Association for the Advancement of Colored People) or participated in gay rights demonstrations.” Here the FBI guidelines are a clear reflection of the origins of U.S. federal hate crimes legislation as a response to the crimes committed against civil rights workers who were murdered because they stood up for human rights. A hate crime may also be identified when the victims are not members of the targeted groups, but rather are members of “an advocacy group supporting the precepts of the victim group.”<sup>111</sup> Human rights defenders who are attacked for fighting discrimination may themselves become victims of hate crimes.

A reported pattern of similar incidents is a further factor to be taken into account:

- “The victim was visiting a neighborhood where previous hate crimes were committed against other members of his/her racial, religious, disability, sexual-orientation, or ethnic/national origin group and where tensions remained high against his/her group.”
- “Several incidents occurred in the same locality, at or about the same time, and the victims were all of the same race, religion, disability, sexual orientation, or ethnicity/national origin.”
- “The offender was previously involved in a similar hate crime or is a hate group member.”<sup>112</sup>

Another factor, the *timing* of the incident, is one familiar to Europeans monitoring and combating hate crimes. The 60<sup>th</sup> anniversary of the Normandy landings coincided with a rash of Neo-Nazi desecrations of French military cemeteries, where the graves of both Jewish and Muslim soldiers were toppled or defaced with swastikas and racist graffiti. Anniversaries such as Hitler’s birthday are similarly the occasion for antisemitic and other racist assaults in many parts of Europe. In the United States, the FBI guidelines refer generally to incidents that coincide “with a holiday or a date of particular significance relating to a race, religion, disability, sexual orientation, or ethnicity/national origin, e.g., Martin Luther King Day, Rosh Hashanah.”<sup>113</sup>

Finally, the FBI’s guidelines identify a number of factors in which the perpetrators of an act or the nature of the act itself betrays its racist or other bias motivation. As Human Rights First described in its 2002 report on antisemitism, “the self-identification of the attackers with neo-Nazi extremist groups, assailants’ statements at the time of an attack, expressly anti-Jewish graffiti, or other elements” may in themselves be evidence of racist and religious bias.<sup>114</sup>

The FBI criteria include the following:

- Bias-related oral comments, written statements, or gestures were made by the offender which indicate his/her bias. For

example, the offender shouted a racial epithet at the victim.

- Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.
- Certain objects, items, or things were used which indicate bias. For example, the offenders wore white sheets with hoods covering their faces or a burning cross was left in front of the victim’s residence.<sup>115</sup>
- There were indications that a hate group was involved. For example, such a group claimed responsibility for the crime or was active in the neighborhood.<sup>116</sup>

Norms for the compilation of statistics on hate crimes can be more inclusive than provisions in criminal law, particularly in federal systems. In the United States, federal law and the laws of 46 states use various definitions for hate crimes. The Hate Crime Statistics Act (28 U.S.C. § 534), enacted in 1990, requires the U.S. Department of Justice to collect data from local law enforcement agencies on crimes that “manifest prejudice based on race, religion, sexual orientation or ethnicity.” This was amended by the Violent Crime Control and Law Enforcement Act of 1994 to cover disabilities, both physical and mental, as factors that could be considered a basis for hate crimes.<sup>117</sup>

The definition of hate crimes in the statute covering the collection of hate crime statistics is more comprehensive than that in other U.S. federal laws—in part because that statute is intended to ensure that Congress receives the information it needs to determine whether existing laws are being enforced, as well as whether further legislation is required to ensure equal protection against hate crimes. The principal federal statutes providing criminal sanctions for hate crimes are more limited in scope both as to the basis for discrimination and the circumstances in which the act occurs.

## The FBI's Uniform Crime Reporting Program— A Mixed Record

Although the FBI's guidelines on reporting hate crimes provide an excellent framework for monitoring and reporting, the implementation of the crime reporting by the 17,000 law enforcement agencies participating in the UCR program remains strikingly uneven. Some 5,000 UCR participants have opted out of hate crimes reporting altogether—taking advantage of the fact that reporting is still optional. Of the 12,073 agencies in 49 states and the District of Columbia that participated in the reporting program in 2002, 84.5 percent reported a hate crime incidence of zero. This represented what could become a trend toward non-reporting: in 2001, 83 percent of participating agencies reported zero hate crimes.

For example, the state of Arkansas participated in hate crimes reporting—but reported zero hate crimes for 2002. Hawaii did not report in the program, while five other states each reported fewer than ten incidents: Alabama (2), Alaska (7), Mississippi (3), South Dakota (4), and Wyoming (5). Many major cities did not participate in the hate crime reporting at all in 2002, including Milwaukee, Wisconsin, and Toledo, Ohio.<sup>118</sup>

Those places that did report hate crimes provided valuable information using the FBI guidelines as a very useful framework for data collection and analysis. In the 2002 report, 1,868 agencies reported a total of 7,462 incidents, which were broken down by bias motivation and by crime. Clearly, the system accounts for only a fraction of the crimes within its mandate to report. Yet on balance, the system is both a “best practice,” a model in many ways for other national systems, and a candidate for urgent action to realize its true potential.

## The Lawrence Inquiry in the United Kingdom

A high-level inquiry into the 1993 murder of black teenager Stephen Lawrence in Greenwich, England, marked a watershed in the United Kingdom's response to hate crimes. It resulted in wide-ranging recommendations for police reform. A new model introduced in 2000 establishes a broad definition of racist incidents, requires the collection of data on both hate crimes and

incidents, and integrates information from both law enforcement and civil society.

Lawrence was set upon, beaten, and stabbed to death in what the inquiry found was clearly a racist attack. The inquiry found that London's Metropolitan Police was riddled with “institutional racism” and that this had played a significant role in the indifference and incompetence displayed by police assigned to investigate the case.<sup>119</sup> The 1999 report took as a point of departure that there was significant underreporting of “racial incidents” throughout the country, and concluded that this was “occasioned largely by a lack of confidence in the police and their perceived unwillingness to take such incidents seriously.”<sup>120</sup> This perception, it concluded, was well founded: the inquiry concluded that “a core cause of under-reporting is the inadequate response of the Police Services.”<sup>121</sup> No one was ever convicted of Lawrence's murder.

The Lawrence inquiry recommendations that were adopted included detailed proposals for better monitoring and reporting of hate crimes, including performance indicators in relation to: “strategies for the prevention, recording, investigation and prosecution of racist incidents; measures to encourage reporting of racist incidents; [and] the number of recorded racist incidents and related detection levels,” as well as monitoring and reporting of “levels of complaint of racist behaviour or attitude and their outcomes.”<sup>122</sup> The report further recommended, in a section on definitions, “[t]hat the term ‘racist incident’ must be understood to include crimes and non-crimes in policing terms; both must be reported, recorded and investigated with equal commitment”; and this definition “should be universally adopted by the Police, local Government and other relevant agencies.”

Implementation of the recommendations of the Lawrence inquiry was to be done through Codes of Practice to be established by the Home Office, through which police, other relevant agencies (including housing authorities, departments of education, and local government authorities), would take part in a comprehensive system to report and record racist incidents and crimes. A goal was to allow hate crimes to be reported around the clock through various channels—and not solely through local police stations. The

government committed to implement the recommendations, and to produce periodic progress reports.

In 2000 a Code of Practice implementing the recommendations of the Lawrence Inquiry Report was adopted by the Home Office for use by all statutory, voluntary and community groups involved in the multi-agency reporting and recording of racist incidents.<sup>123</sup> The Code of Practice explained that the new procedures *should* capture “all incidents with racist elements” despite historical “under-reporting and under-recording.” It noted, however, that “[m]any incidents are still not reported to the police” and “[e]ven if crimes are reported, the racist element may not be mentioned.”<sup>124</sup> Even when a complainant describes racist or other bias elements, the record may not reflect this—whatever the guidelines. The Code of Practice contrasts, for example, the findings of the census-style surveys conducted by the annual British Crime Survey, which are considered to have a high level of confidence with minority respondents, with British police reports:

The BCS estimates that in 1995 382,000 offences were considered by the victim to be motivated by racism. Of these, 143,000 were committed against ethnic minorities. Only 12,222 racial incidents were recorded by the police for 1995/96. In his work, “Ethnicity and Victimization: Findings from the 1996 British Crime Survey,” Andrew Percy offered a number of reasons why police figures do not match the BCS—not all incidents are reported to the police; when reporting to the police, victims may fail to mention evidence or perceptions of racism; even when racist allegations are made, some incidents may not be recorded by the police, or not recorded as racist incidents.<sup>125</sup>

## Monitoring and Law Enforcement

The reliance solely upon the criminal justice system to compile data on hate crimes, even in the absence of bias within the system, can result in many incidents being screened out. Even well-documented bias-motivated crimes may be recorded or prosecuted as common crimes—either because there is a lesser burden of proof or less paperwork, or through a simple lack of understanding or a reluctance to accept the

importance of full implementation of the system. But the issue of institutional culture, in which deeply engrained racism or other bias may play some part, can be a determining factor wherever there is a large discretionary element in whether elements of bias are recorded when complaints are made. The nature of the reporting and recording system itself may be central to the way bias crimes are reflected in public reporting, prosecutions, and periodic crime report statistics.

Another factor related to, but distinct from, such institutional bias is what studies of hate crimes monitoring in the United States have termed “departmental culture”—the responsible agency’s “organizational commitment and general sensitivity toward bias crime.”<sup>126</sup> This concerns the “level of priority” given to addressing bias crimes—a matter of resources, the orientation toward the community in question, and the perspective of leadership.<sup>127</sup>

The perspectives of public officials may come into play in the following sense: where superiors downplay the severity of a bias-motivated threat or an act, subordinates are unlikely to take the initiative to investigate bias elements of crimes or to reflect these in their reports. Other factors may include a perception that “a crime is a crime,”<sup>128</sup>—taking issue, for example, with the very principle that an assault or a murder motivated by bias should be distinguished from other similar crimes. At the same time, the severity of the criminal act has also been identified as a factor in the failure of police to recognize the elements of a hate crime.

A U.S. Department of Justice-sponsored study of national bias crime reporting noted that officers in some police departments simply do not recognize that “less serious crime types” can be bias crimes. Some departments were found to define bias crimes to include only crimes such as murder or aggravated assault:

[I]n one interview, an officer relayed a story of “little crosses” burned on an African American family’s lawn, an event that he did not interpret as a bias crime. A large burning cross, he reported would be immediately identified as a bias crime. . . . Harassing phone calls, minor assaults, or even “small crosses” were often overlooked when considering motivation.<sup>129</sup>

Resistance to reporting crimes as hate crimes is also attributable to strictly practical factors: the additional time and effort required to investigate and document bias elements. A Moscow-based expert in hate crimes told Human Rights First that pressures in the criminal justice system for convictions discourage prosecutions for hate crimes—which require a higher threshold of evidence. The Russian Ministry of Internal Affairs’ emphasis on “numbers of crimes solved” and “numbers of convictions” provides a disincentive to registering complaints or starting cases that are less likely to be solved and result in a conviction.<sup>130</sup>

The United Kingdom’s Code of Practice addresses the possibility of police skepticism as to the utility of recording elements of bias in relatively minor incidents by providing practical examples, such as the following:

An Asian man calls the police because white youths are hanging around outside his house. He perceives their presence as racist and the police therefore fill in a racist incident form. Some time later his windows are smashed. The earlier information about racist incidents may provide useful intelligence to the police in solving the crime.<sup>131</sup>

In Belgium, Ministry of Justice hate crime statistics are based upon the registration of crimes by the Public Prosecutors’ office. If the principal offense is considered to have been a crime of “racism” or “xenophobia,” the offense will be registered in a manner that will appear in subsequent statistics on hate crimes, although there will be no clear distinction between those involving violence and other offenses. Most hate crimes involving violence, however, will, if prosecuted at all, be registered as common crimes, with the element of bias considered either as a secondary factor or disregarded altogether. The Belgian Centre for Equal Opportunities and Opposition to Racism (CEOOR) illustrated the difficulty of proving racist motivation—or even registering an incident—under current norms:

Let us illustrate this problem with a case that was registered by the CEOOR. A young African woman filed a complaint because she was chased by a group of minors who were talking all kinds of racist nonsense. After a while the minors got hold of her and they beat

her with a leash. There were no witnesses, so nobody could testify that the woman was attacked because of racist motives. This offence was registered by the police as assault and battery. After investigation, it was shown that the minors themselves had admitted the facts and, moreover, had admitted their racist utterances. On the basis of these findings the lawyer asked the Prosecution Council to requalify the case. The initial charge of “assault and battery” was changed to an “offence against article 1 of the anti-racism law.” However, if the minors had not confessed their racist statements it would have been very difficult to prove the racist motives of the perpetrators.<sup>132</sup>

The testimony of the victim herself regarding racist epithets appears to have been disregarded. While the Belgian anti-discrimination law now provides for “reprehensible motives” to be considered an aggravating circumstance in sentencing for certain Penal Code offences, including murder, indecent assault, arson, and destruction of property, the EUMC’s April 2005 report concludes that “to date, no data is available” on the implementation of the provisions, and that “it remains to be seen whether the charge of ‘aggravating circumstances’ will be applied in practice.”<sup>133</sup>

## Bias on Bias

Bias is often present in the criminal justice system in much the same way it exists in the broader society. Political or social discomfort on the part of officials in the investigation or prosecution of a hate crime (which may involve prejudice against the victim or sympathies with the perpetrator) may be decisive either in a decision to suspend or limit an investigation or to reduce the charges in a prosecution. A further factor may be a belief by public authorities that to publicly recognize racist acts will, to their own prejudice, raise a local issue to a higher level. Others may believe that to do so will be seen as undercutting their political support from members of the perpetrators’ community—by being seen to side with the community under attack.

The response to the toppling of 28 tombstones in the Muslim section of the municipal cemetery in Linz, Austria in late September 2001 illustrates such political factors in hate crime reporting. The

EUMC's Austrian correspondent noted that police had found an extremist flyer near the scene and subsequently arrested a young man who characterized himself as a "skinhead" and confessed to the crime. The Upper Austria security chief, however, subsequently declared that despite this, "the state security police in Linz did not assume the crime to be politically motivated, since the young offender is just a single perpetrator and not an organised group," and no documentation had been confiscated "that would prove an ideological motivation."<sup>134</sup>

Hate crimes against particular minorities may also be accompanied by racist violence by public officials against the same vulnerable populations. When reports are regularly received of police assaults on minorities, there is little reason for confidence that the same forces will vigorously pursue racist skinheads for similar assaults. In reports of violent attacks on Roma communities in many countries, police are said to have stood by as attacks were carried out, or even to have taken part in the attacks. Bias within the criminal justice system and by local officials can be overcome only with action at the highest level.

### **Hate Crimes under the Radar**

The monitoring and reporting of hate crimes may also reflect both the low profile of the crimes and the limited standing (or visibility) of the victims within the society itself. The everyday crimes of violence against the least powerful may find less resonance either in official reporting or in expressions of public concern as a simple matter of priorities. Alternatively, evenhanded measures to provide protection to all may simply not find reflection in disaggregated statistics or in public reporting on the situation of particular minorities and the public response to hate crimes of which they are victims. In an August 24, 2004 communication, the French National Consultative Human Rights Commission (Commission Nationale Consultative des Droits de l'Homme, or CNCDH) responded to a Human Rights First request for up-to-date statistics on hate crimes by forwarding Ministry of Interior data for the first six months of 2004.<sup>135</sup> For that period, the Ministry of Interior reported 766 "racist, xenophobic, and antisemitic incidents," including "threats and acts." Of these, 510 were identified as antisemitic in

nature (including "135 acts against people and property and 375 threats"). Other groups—which were not identified—were the object of 256 incidents, including 95 acts and 161 threats.<sup>136</sup> In follow-up telephone conversations, Commission officials told Human Rights First that most of these 256 recorded incidents victimized people of North African origin—although France still refuses to disaggregate its statistics by the particular groups facing discrimination (for example, by race, ethnicity, or national origin). The government's official statistics provide no disaggregated data even indirectly concerning other groups facing discrimination.

The CNCDH's 2003 report followed the same lines, with coverage of hate crimes that focuses almost exclusively on the threats and violence that afflict France's Jewish community and people of North African origin. The 2003 report found that the proportion of the incidents that were "antisemitic" rose from 60 percent of the total in 2002 to 72 percent in 2003. The 2003 statistics covered 817 recorded incidents, with almost three quarters—588—described as antisemitic acts (figures community-based organizations believe to be fairly accurate). These included 463 threats and 125 acts of violence (70 physical assaults, 46 cases of vandalism, and six cases of arson).<sup>137</sup>

The CNCDH's report also found that four-fifths of the attacks and threats that were not antisemitic were against Muslims; it records 229 racist acts (81 percent) affecting people of North African (Maghreb) origin. These included 92 acts of violence (56 of which occurred on the island of Corsica). The head of the CNCDH, Joel Thoraval, told the press the figures showed a shift since the 1990s, when "the dominant trend was hostility to North African immigration," to a new situation of "hostility against Islam, against Muslims" combined with other factors.<sup>138</sup> CNCDH did not provide any other disaggregation by groups affected. These figures showed an overall decrease of 23 percent compared to 2002, as well as a decrease in the severity of the incidents (eleven hurt in 2003 compared to twenty-one hurt and one killed in 2002).<sup>139</sup>

The CNCDH reports make a valuable contribution to the monitoring and reporting process. Even so, they are limited by their reliance on Ministry of Interior information. For example, anecdotal

information suggests the situation of violence affecting France's minorities of Maghreb origin may be seriously underreported—in part because the community-based organizations best placed to report hate crimes lack confidence in the state agencies that compile incident reports.

Other French minorities appear statistically invisible in periodic CNCDH reports: there are, for example, no disaggregated statistics from which to assess the situation of black, Asian, Roma, or other significant minorities.<sup>140</sup> Nor does coverage of racist violence distinguish incidents affecting immigrants, including those from the Balkans or Eastern Europe, all of whom are likely to face discrimination in a Europe of increased xenophobia and new barriers to immigration.



# The Legal Framework: Hate Crimes Laws

*[I]t is but reasonable that among crimes of different natures those should be most severely punished, which are the most destructive of the public safety and happiness.*

Justice William Blackstone, the famous 18<sup>th</sup> century authority on English Common Law.

Blackstone’s dictum, that crimes causing the greatest harm “to the public safety and happiness” should be the most severely punished, was cited in *Wisconsin v. Mitchell*, a unanimous 1993 opinion of the U.S. Supreme Court written by Chief Justice William Rehnquist, upholding the constitutionality of the State of Wisconsin’s hate crime statute. The Court held that statute singled out bias-inspired conduct for penalty enhancement “because this conduct is thought to inflict greater individual and societal harm. For example, according to the State and its *amici*, bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest.”<sup>141</sup>

The case involved an incident in which four young black men (including one named Mitchell), angry after seeing the film *Mississippi Burning*, which dealt with racist violence in the American South, assaulted a passing boy at random—because he was white. Mitchell’s sentence for aggravated battery was enhanced because he intentionally selected his victim on account of the victim’s race.<sup>142</sup>

An inventory of the laws and guidelines by which hate crimes are defined and punished can be a first step to considering ways in which such standards can be made more effective in deterring and punishing hate crimes.<sup>143</sup> Some statutes define specific forms of threats and acts of violence motivated by bias as distinct crimes; other laws, often in the same criminal justice systems, establish bias as an aggravating factor in the punishment of any crime. The law can define the categories of discrimination in a bias crime strictly in terms of racist intent, or make the

concept of a hate crime more inclusive, to also cover bias by reason of gender, sexual orientation, or disability. Or, laws can be enacted to punish, on the one hand, hate crimes motivated by racist bias, and separately, crimes motivated by sexual orientation bias (often referred to as homophobia), gender bias, or bias on the basis of disability.

Civil remedies for discriminatory acts, including hate crimes, are also available through a broad range of laws, although a recent EUMC report notes that in many countries criminal law has long been the primary means to address discrimination.<sup>144</sup> Discrimination by state agents, in turn, may be susceptible to remedy under international human rights law and through intergovernmental bodies such as the European Court of Human Rights—as well as at the national level.

National legislation to address hate crimes through the criminal justice system can provide fundamental tools to combat hate crimes. But laws are only as good as their implementation. As noted, the disparity between official statistics on the incidence of hate crimes and reports from nongovernmental sources is significant. Yet the number of crimes prosecuted as hate crimes represents only a very small fraction of officially registered hate crimes even in those countries that make some effort to monitor and report such crimes.

## Enforcing the Law

The guidelines applied for the interpretation of criminal law punishing hate crimes, or establishing

bias as an aggravating factor, may also limit the visibility of hate crimes in both periodic statistics and actual prosecutions. If an incident report does not record elements of bias, an offense is unlikely to be registered as a hate crime. The failure of a criminal investigation to record evidence of bias, from the nature of graffiti left at the scene where property damage occurred to the spoken epithets described by witnesses, will make it unlikely that prosecutors will seek enhanced penalties on the grounds that a crime was racially motivated.

The 1995 Canadian Department of Justice study, cited above, described the then-widely different standards applied across Canada in the classification of offenses as hate crimes. Some police forces, including the largest force in Toronto, used “an exclusive definition”: crimes were classified as hate crimes only when, “in the opinion of the investigating officer, the act was ‘based solely upon the victim’s race, religion, nationality, ethnic origin, sexual orientation, gender or disability.’” Other police agencies defined a hate-motivated crime “as one that was motivated ‘in whole or in part, by a bias’”—a critical difference.<sup>145</sup>

In contrast to systems in which incidents can be prosecuted as “hate crimes” if they are motivated in whole or in part by bias, the law in the Russian Federation defines hate crimes as crimes in which bias is the *dominant* motivation.<sup>146</sup> According to one Moscow-based lawyer familiar with such cases, there are three reasons perpetrators are rarely charged with hate crimes: the difficulty of proving that bias is the “dominant factor” motivating the crime; the desire to avoid “airing the dirty linen” of prejudice in a community; and “agreement with the prejudices and actions of the suspects.”<sup>147</sup>

For all of the reasons cited above, law enforcement agencies in many countries may regard (or at least portray) hate crimes as simple vandalism or assault—or what in such legal systems are classed as acts of hooliganism. Prosecutors and other law enforcement personnel may be quick to ignore bias elements, conveying a disinterest in aggressively combating racial violence and downplaying the gravity of the situation.

In recent years, the Russian Federation has been heavily criticized by human rights organizations and others for its tendency to classify overtly racist crimes as acts of hooliganism. In 2004, Alexander Vershbow, U.S. Ambassador to Russia, remarked:

Hooliganism does not adequately capture the message of hate put forth by these criminals. Dismissing them as simply “youthful hooligans” sends a chilling signal to the racists and xenophobes. It tells them that their views and actions are but a minor offense against the social order, when in fact they undermine the very fabric of Russian society. It also demeans the victim and breeds a cynicism in society that only encourages further racist acts, keeping alive the cycle of violence and hatred.<sup>148</sup>

An Amnesty International report cited several extreme, but typical examples:

When Adefers Dessu, an Ethiopian refugee, and his wife Sarah were beaten by 20-year-olds armed with chains in Moscow in February 2001, the medical report stated that her injuries were the result of a “fall,” while the attackers were registered by the police officer on duty as being minors. Similarly, in October 2001 when a crowd of 300 youths brandishing iron bars attacked a Moscow market staffed by ethnic minorities and left an Armenian, an Indian and a Tajik dead, initial police statements referred to the perpetrators as “football hooligans.” In the Siberian city of Tiumen, a series of seven attacks on a synagogue last year were termed “young people’s hooliganism.”<sup>149</sup>

All of the Council of Europe’s 45 member states are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which in article 14 guarantees the enjoyment of the rights and freedoms it sets forth “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” In its 2004 annual report, ECRI expressed some satisfaction that “most member States are in the process of revising their anti-discrimination legislation and that new provisions have been introduced at the national level to combat racism and racial discrimination.”

In the past decade, many countries have enacted laws that impose stricter penalties if a crime is motivated by bias. The European Union and the Council of Europe have directives or guidelines concerning the protection of vulnerable populations from hate crimes as part of their anti-discrimination policies, including criminal justice measures to combat hate crimes.

The Council of Europe's policies in this regard are set out in ECRI's "General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination," adopted in February 2003. This defines in detail acts "against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin."<sup>150</sup> Recommendation No. 7 states further that "[t]he law should provide that, for all criminal offences not specified . . . racist motivation constitutes an aggravating circumstance."<sup>151</sup> (ECRI's recommendations also extend to provisions for remedy in civil law.<sup>152</sup>)

While many countries allow for prosecutors to take racist or other bias motivation into account, the implementation of such provisions is in many cases limited. Generally, prosecutors are less likely to take a bias motivation into account if this element of an act is not abundantly clear. Prosecutors are more likely to prosecute offenders under regular criminal provisions if the bias element may make gaining a conviction more difficult. At the same time, both prosecutors and judges may be reluctant to apply provisions in law establishing more severe penalties for crimes motivated by bias.<sup>153</sup>

In recent years, a number of OSCE countries have developed hate crimes legislation or expanded the scope of legislation establishing bias motivation as an aggravating factor in prosecuting crime. (Basic information is set out country-by-country below.)

While encouraging governments to use General Policy Recommendation No. 7 "as a source of inspiration for legislative reforms in this field," ECRI cautioned that laws criminalizing hate crimes alone are not enough—and returned to the theme of a national body mandated to fight discrimination and oversee anti-racism initiatives:

[I]f these provisions are to be fully effective, it is essential that the authorities, in particular the police and the courts, implement them. They should on no account remain a dead letter, which means it is necessary not only to inform the public and potential victims, but also to provide training to relevant staff. This is why ECRI stresses the need to establish a national specialised body, with local branches, to combat racism and racial discrimination.<sup>154</sup>

This is addressed further below.

The Council of Europe's Framework Convention for the Protection of National Minorities, which entered into force in 1998, provides specific protection against discrimination, expressly including acts or threats of violence.<sup>155</sup> Article 4(1) requires states parties to guarantee the right of equality before the law and of equal protection of the law, prohibiting any discrimination based on belonging to a national minority.<sup>156</sup> Under article 6 (2), states parties "undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."<sup>157</sup>

The Framework Convention establishes reporting requirements for states party, to cover all legislative and other measures taken to give effect to the principles established in the Convention. (There were 36 states party to the Convention as of April 2005; France, as a non-state party, was the notable exception among the E.U. member states.)

Although the Framework Convention provides useful standards and a practical monitoring system, implementation is limited by each state's interpretation of the "national minorities" within its scope. Although state reports are in accord with a common format, addressing each article of the Convention, they range dramatically in their coverage of the situation of minorities under articles 4(1) and 6(2), which require protection against discriminatory threats and violence.

For example, the initial report of the United Kingdom, which followed the reforms introduced in the wake of the Stephen Lawrence inquiry, addressed the broad issues of racist violence in the country, providing detailed statistical information by administrative jurisdiction and

outlining the legislative and policy measures introduced to provide safeguards against hate crimes against minorities in general.<sup>158</sup> The Advisory Committee's Opinion on the report of the Russian Federation similarly welcomed the "inclusive approach" taken as to the personal scope of application of the Convention, although it found that its implementation in terms of legislation and practice lagged. It found further that Russian authorities apparently prepared "to apply [the convention] also to minorities that have arrived relatively recently to the Russian Federation and to provide also non-citizens belonging to these groups the possibility to rely on the protection of the Framework Convention."<sup>159</sup>

The report of Denmark, in contrast, stressed a single group as a national minority within the sense of the Convention: a German minority traditionally living in a border area.<sup>160</sup> There was no reference to other long-standing minorities, such as the Roma, much less to minorities of immigrant origin in its commentary on article 6(2), despite the high levels of racist violence against those minorities in recent years. The Advisory Committee criticized the report, finding that "the personal scope of application of the Framework Convention in Denmark, limited to the German minority in Southern Jutland, has not been satisfactorily addressed."<sup>161</sup> It further expressed concern about "intolerant attitudes in Danish society," in particular "reports of discrimination against foreigners and naturalised Danes," and called upon Danish authorities "to take measures to counteract the spreading of intolerant attitudes."<sup>162</sup>

The first German report, in turn, also focused upon population groups considered to have deep historical roots in the country, including the Roma and the Sinti, while referring both to national minorities and "ethnic groups" as within the scope of the Convention.<sup>163</sup> Only oblique reference is made to the minority communities established through World War II immigration, but the German report did usefully address measures to work with associations of migrants and refugees as part of measures to promote tolerance. The report also outlined federal and regional measures to advance anti-racism and anti-extremism campaigns, including public education programs.<sup>164</sup>

In its second periodic report, dated April 14, 2005, Germany clarified its interpretation of the scope of the Convention, declaring that "in Germany only the following national minorities are protected under the Framework Convention: the Danish minority, the Sorbian people, the Frisians in Germany, and the German Sinti and Roma."<sup>165</sup> It rejected the Advisory Committee's suggestion that Germany consider other groups within the scope of the Convention on an article-by-article base, stating that the restrictive definition of national minorities adopted for legal application in Germany precluded extending its protection to ethnic groups not meeting its criteria, including migrants and non-citizens.<sup>166</sup> In justifying this, Germany cited Denmark's similar approach.

Despite its varying interpretations, the potential for the Framework Convention's periodic reporting requirements to elicit useful information and constructive critiques and recommendations is also illustrated by Germany's second report. Detailed statistical information is provided concerning "politically motivated offences" in 2003, including a breakdown of the numbers of violent offenses and those attributed to right-wing extremism. The report observed that the national minorities protected under the Convention were not as a rule the object of these offenses, with the exception of "German Roma and Sinti."<sup>167</sup> Detailed information is provided on provisions in German criminal law that define and punish offensive speech and incitement to hatred and extremist violence.<sup>168</sup>

The role of the Advisory Committee in offering constructive critiques and recommendations to states parties is illustrated by its 2002 opinion on the Russian Federation. In commentary on article 6, it expressed concern that research studies have found "extremely negative" societal attitudes toward minorities, and in particular Chechens, other minorities from the Caucasus and Central Asia, and the Roma. It identified similar problems confronting members of "more recent minorities," in particular those of African and Asian origin. In this regard, the Committee recalled that article 6 of the Convention "has a wide personal scope of application, covering also asylum-seekers and persons belonging to other groups that have not traditionally inhabited the country concerned."<sup>169</sup>

The Committee found further that the actual violence reflected these broader societal attitudes:

The Advisory Committee is particularly concerned about the violent attacks on persons belonging to the aforementioned minorities at markets and other public places by persons belonging to racist and extremist groups. While these incidents have been denounced by certain political authorities, the number of investigations and prosecution of such cases appears low when compared to the reports of human rights groups and other independent bodies monitoring developments in this sphere.

This, it concluded, indicated that many cases are not reported to law-enforcement officials, in part reflecting a “lack of confidence” in the work of the police, fueled by reports that the police themselves harass minorities.<sup>170</sup>

## National Specialized Anti-Discrimination Bodies

A specialized regional body, the European Commission Against Racism and Intolerance, ECRI, performs much the same function for the Council of Europe as does the EUMC for the European Union. While the European Union can issue directives that are binding on its members, Council of Europe bodies can play an important role in standard setting and implementation through recommendations.

European Union anti-racism directives require member states to establish specialized anti-discrimination bodies with significant powers to initiate investigations and make findings public, to have access to official information, and to act on behalf of victims of racist violence. Council Directive 2000/43/EC of June 29, 2000, the Racial Equality Directive, was intended to implement the principle of equal treatment between persons irrespective of racial or ethnic origin. Its article 13 requires member states to designate a specialized body (or bodies) for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.<sup>171</sup>

The specialized anti-discrimination bodies required by the E.U. may cover both racism and other forms of discrimination—the scope of Belgium’s CEOOM, for example, was extended by

law, in February 2003, “to cover other grounds of discrimination such as marital status, sexual orientation, birth, fortune, age, religion or belief, current or future state of health, a disability or other physical characteristics.”<sup>172</sup>

All Council of Europe members are encouraged to establish specialized anti-racism bodies in line with ECRI’s General Policy Recommendations No. 2, adopted in June 1997, and No. 7, adopted in December 2002. The former called on member states to consider “setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist,” and included a body of principles to serve as guidelines for such a body. These bodies are to be tasked with providing assistance to victims and mandated by law with investigative powers, the right to initiate and participate in court proceedings, monitoring legislation, and providing advice to legislative and executive authorities, as well as to raise awareness of issues concerning racism and racial discrimination.<sup>173</sup>

ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism, reaffirms the recommendation for an effective specialized anti-racism body in every member state:

The law should provide for the establishment of an independent specialised body to combat racism and racial discrimination at a national level (henceforth: national specialised body). The law should include within the competence of such a body: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment.<sup>174</sup>

In Recommendation No. 7, the ECRI reaffirms the standing of the guiding principles for specialized bodies that formed an appendix to Recommendation No. 2 while elaborating on the prerogatives required by law for its investigative and reporting function to be effective. This is an important framing of the issues arising in many countries where monitoring and reporting by official or semi-official bodies is obstructed or inadequate:

As concerns investigation powers, in order that a national specialised body may conduct these effectively, it is essential that the law provides the latter with the requisite powers, subject to the rules of procedure of the national legal order. This includes powers granted in the framework of an investigation, such as requesting the production for inspection and examination of documents and other elements; seizure of documents and other elements for the purpose of making copies or extracts; and questioning persons. The national specialised body should also be entitled to bring cases before the courts and to intervene in legal proceedings as an expert.<sup>175</sup>

The implementation of recommendations concerning specialized anti-racism bodies figures

in the periodic assessments of states' practices by ECRI. As of April 2004, 16 of the 45 Council of Europe countries had some kind of specialized body. Only those in the Netherlands, Sweden, and the United Kingdom have the kind of extensive functions and prerogatives set out in the Council of Europe guidelines. These national bodies, in addition to the French specialized agency CNCDH, also stand out as the most effective in addressing the problem of hate crimes. The following chart gives provides a general picture of specialized anti-racism bodies in Council of Europe member states, assessed against EUMC and ECRI standards, based on EUMC and ECRI sources.<sup>176</sup>

### Specialized Anti-Racism Bodies

Specialized Anti-Racism Bodies Meeting Council of Europe or European Union Criteria	<ul style="list-style-type: none"> <li>• Belgium (Centre for Equal Opportunities and the Fight against Racism)</li> <li>• Denmark (Danish Institute for Human Rights)</li> <li>• France (National Consultative Commission for Human Rights)</li> <li>• Netherlands (Equal Treatment Commission)</li> <li>• Sweden (Ombudsman against Ethnic Discrimination)</li> <li>• United Kingdom (Commission for Racial Equality)</li> </ul>
Specialized Anti-racism Bodies Meeting Some Council of Europe or European Union Criteria	<ul style="list-style-type: none"> <li>• Finland (Office of the Ombudsman for Minorities)</li> <li>• Hungary (Parliamentary Commissioner for the Rights of National and Ethnic Minorities)</li> <li>• Ireland (Equality Authority)</li> <li>• Portugal (Commission for Equality and against Racial Discrimination)</li> <li>• Romania (National Council for Combating Discrimination)</li> <li>• Switzerland (Federal Commission against Racism)</li> <li>• Luxembourg (Permanent Special Commission against Racial Discrimination)</li> </ul>
Specialized Anti-racism Bodies Created by Law Only (not apparently functioning)	<ul style="list-style-type: none"> <li>• Bulgaria, Cyprus, Italy, and Spain</li> </ul>
Specialized Bodies Subject to Pending Legislation or Under Review for Mandate Expansion	<ul style="list-style-type: none"> <li>• Austria, Czech Republic, Germany, Greece</li> <li>• Norway (Centre for Combating Ethnic Discrimination)</li> <li>• Poland and Slovak Republic.</li> </ul>
General Human Rights Institutions Performing Some Functions of Specialized Bodies (Ombudsmen, Human Rights Commissioners)	<ul style="list-style-type: none"> <li>• Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Russian Federation, San Marino, Serbia and Montenegro, Slovenia, Macedonia, Turkey, and Ukraine</li> </ul>

# Country Reports

## Albania

In its second report on Albania, released in April 2001, ECRI recommended “defining racially motivated offences as specific offences or explicitly providing for racial motivation to be taken into account as an aggravating factor by the courts.” ECRI at that time said Albanian authorities were considering provisions to that end.<sup>177</sup>

There is no systematic official collection of data on racist and other discriminatory violence in Albania, and there has been no recent census registering ethnic identity. ECRI has encouraged Albanian authorities “to consider ways of establishing a coherent and comprehensive means of data collection to enable the situation of the various minority groups living in Albania and the extent of manifestations of racism and discrimination to be assessed.”<sup>178</sup>

## Andorra

Article 313 of the Penal Code punishes with up to one year’s imprisonment any act of discrimination that constitutes harassment or the infringement of the dignity of a person on the basis or origin, religion, race or sex.<sup>179</sup>

In its June 2002 report on Andorra, ECRI notes the Andorran courts have interpreted the ground of “origin” mentioned within this article as including the citizenship of the victim.

The courts have also considered racial motivation to be a factor to be taken into account for imposing a heavier sanction under article 53 of the Criminal Code, which, in ECRI’s summary, “stipulates that in determining the sentence, the court shall take into account, among other things, the seriousness and the degree of danger to society of the offensive act as well as the aggravating circumstances surrounding the case.” ECRI encouraged Andorran authorities “to

consider mentioning expressly racial motivation as an aggravating circumstance in the Criminal Code, because this would be a symbol of the commitments of Andorra to combating racism and intolerance.”<sup>180</sup>

ECRI noted that while aware of “the relative low rate of racist incidents in Andorra,” that there is “a lack of statistics on cases of such incidents,” and encouraged the creation of “a system of monitoring, classification and recording of racist incidents which are brought to their attention and of the follow-up and outcome accorded to such incidents.”<sup>181</sup>

## Armenia

A new Criminal Code came into force in August 2003.<sup>182</sup> Article 63 defines the commission of crimes for “ethnic, racial or religious motives, for religious fanaticism, [or] as revenge for other people’s legitimate actions” as among the circumstances “aggravating the liability and punishment.” Murder and willful bodily harm when motivated by “national, race or religious hate or fanaticism” is to be punished with additional severity, respectively, by articles 104 (2)(13) and 112 (2)(12).<sup>183</sup> Article 226 punishes “[i]nciting national, racial or religious hatred.”

The draft criminal code was under preparation at the time of ECRI’s December 2002 report and, after a first reading in Parliament, had been transmitted to the Council of Europe for expert comment. ECRI observed that the new draft contained a provision on incitement to national, racial or religious hatred and a provision prohibiting the curtailment of citizens’ human rights and freedom for reasons of, *inter alia*, nationality, race, language and religion. ECRI welcomed this and provisions for increased penalties for crimes such as murder or bodily harm when committed for racist motives and provisions for allowing the racist motivation of an

offender to be taken into account as an aggravating circumstance when sentencing.<sup>184</sup>

## Austria

Under section 33(5) of the Austrian Penal Code, racist or xenophobic motivation is to be taken into account as a particular aggravating circumstance of any crime by courts in sentencing.<sup>185</sup> A series of others provisions punish offensive speech.

Section 283.1 punishes incitement to hostile action against a church or religious community established in the country or a group determined by their affiliation to such a church or religious community, or to a race, nation, ethnic group or state. Section 283.2 punishes publicly agitating against such a group or insulting or disparaging it in a manner violating human dignity.<sup>186</sup>

Finally, the Prohibition Statute “penalises the establishment, support and promotion of National Socialist organisations which aim to undermine the sovereignty of the State or jeopardise public order; participation in such organisations; and acts committed as a means towards furthering the aims of such organisations, including the denial or trivialisation of National Socialist crimes using means which are accessible to many people.”<sup>187</sup>

In practice, statistics on the implementation of criminal law provide little information on the response to racist crimes of violence. In its second report on Austria in 2000, ECRI had already urged that official statistics cover the use in the court system of Section 33(5) of the Criminal Code, which establishes racist and xenophobic motivation as an aggravating circumstance for all crimes. In its third report in 2004, ECRI observed that the only statistics now available concern the implementation of the Prohibition Statute and Section 283 of the Criminal Code. Section 33(5) data are not yet collected. Although Austrian authorities have informed ECRI that a new system has been introduced, ECRI is not aware of reporting of specific cases in which racist motivation was considered an aggravating factor:

[T]he Austrian authorities have pointed out that, as a follow-up to ECRI’s recommendation, they have instructed all Public Prosecutor’s Offices to explicitly report

on all offences related to racism and xenophobia (including the application of Section 33.5 of the Criminal Code) in their annual observation report. Although ECRI understands that a fuller picture of the results of this initiative will be available shortly, it has not been made aware of Public Prosecutors reporting cases of application of these provisions so far.<sup>188</sup>

ECRI recommended collection of statistical data on the implementation of all criminal law provisions against racism and xenophobia, including Section 33(5), to include information on complaints filed, charges brought, convictions, and acquittals.<sup>189</sup> Reports to the Public Prosecutors could provide an interim system for non-statistical monitoring of these provisions, with remedial action to improve their implementation, backed by enhanced training in anti-racist measures throughout the criminal justice system.<sup>190</sup>

Official statistics on the number of criminal offenses with extreme right wing, xenophobic, or antisemitic motivation reveal 336 such incidents in 2000 (including 27 cases of hate speech) and 335 in 2001 (including 39 cases of hate speech). Unresolved racist crimes from 2001 included three cases of arson and the desecration of one Muslim and two Jewish cemeteries.<sup>191</sup> (Data on antisemitism are collected by the Federal Ministry of Interior and published under the heading “right-wing extremism” in its annual reports on the protection of the Constitution.)<sup>192</sup>

A report by the International Helsinki Federation for Human Rights described a situation of “everyday harassment” of Muslims:

Muslims are reportedly often faced with harassment in daily life. While physical attacks are rare, many Muslims have experienced verbal assaults in public transportation means and other public places. Muslim women who wear the headscarf and Muslim men who travel with women dressed this way are particularly frequent targets of offensive comments, which sometimes involve sexual insinuations or are of a threatening character. Muslim women have also experienced that they are demonstratively ignored, for example when requesting assistance to lift baby carriages into trams.<sup>193</sup>



In a section on particularly vulnerable groups, ECRI highlights what this book calls the everyday fears of members of minorities, not just from organized racist groups, but from broader trends in society that are encouraged by the behavior of state agents and discriminatory attitudes and practices across the society. “Black Africans living in Austria, and particularly in Vienna,” ECRI reports, are “reported to be especially vulnerable”—a situation “closely connected with hostile attitudes being displayed in public opinion, political and media discourse, but also in the behaviour of officials, notably the police.”<sup>194</sup> “Muslims are particularly vulnerable to harassment and discrimination when displaying visible signs of their faith,” and since ECRI’s second report, “the climate around Muslim women wearing the headscarf has deteriorated,” with incidents of harassment and insults in the streets. Roma, the third group singled out for particular concern, “face prejudice and discrimination in their relations with law enforcement officers.”<sup>195</sup>

ECRI reports that manifestations of antisemitism have not decreased since its second report, with both official statistics and reporting by nongovernmental organizations showing a rise in the number of physical attacks in 2003. While the Prohibition Statute has been employed to combat some forms of antisemitism, “Representatives of the Jewish communities in Austria have underlined, however, that current manifestations of antisemitism in Austria are wider than those connected with National Socialist ideology that the Prohibition Statute is designed to address.”<sup>196</sup>

Hate crimes in Austria occur in the context of broader patterns of discrimination, exacerbated by many of the same political trends present elsewhere in Europe. As elsewhere, the September 11 attacks on the United States provided a catalyst for widespread anti-Muslim and anti-immigrant polemic and violence. Political campaigns in which anti-immigrant policies were central set the tone for increased violence and intimidation of immigrants, refugees, and asylum-seekers that affected all of Austria’s minorities. To address this, ECRI’s reports press for a reassessment of an approach that focuses overwhelmingly on the suppression of traditional extremist groups:

ECRI notes that there is still a prevailing approach in Austria to consider racist behaviour as deriving essentially from extreme right-wing groups or groups inspired by National Socialist ideology. While it welcomes the determination in countering racist behaviour coming from these groups, ECRI stresses that such behaviour in Austria is not the exclusive resort of these groups and that legislation should be geared towards pursuing all types of racist behaviour effectively.<sup>197</sup>

ECRI’s 2004 report further characterizes the political exploitation of racism and xenophobia in Austria as a major factor to be addressed.

Members of [vulnerable] groups are typically portrayed as being responsible for a deterioration of security conditions in Austria, particularly on the basis of generalisations concerning their involvement in drug trafficking and organised crime, for unemployment and increased public expenditure, or as posing a threat to the preservation of Austrian national or local identity. ECRI expresses its concern at the negative consequences that this type of discourse has on the perception of asylum seekers, refugees, non-EU immigrants and other minority groups by the majority population and at the climate of general intolerance and xenophobia that it fosters.<sup>198</sup>

In its previous report, ECRI had singled out the Austrian Freedom Party (FPÖ) for having resorted to racist and xenophobic propaganda. In 2004 it remained concerned that local exponents and youth groups affiliated with the FPÖ used the language of Nationalist Socialism: “An illustration of this is the use made of the notion of ‘re-peopling’ or ‘population supplantation’ (*Umvolkung*), for instance in the context of the naturalisation of long-term residents of non-Austrian origin.”<sup>199</sup>

## Azerbaijan

Azerbaijan adopted a new Criminal Code in 1999. Article 61 of the Code stipulates that in sentencing the motivation of an offence by racial, national, or religious hatred is considered an aggravating circumstance. Article 111 defines as specific offences premeditated murder and the infliction of serious injuries motivated by racial, religious, national or ethnic intolerance.<sup>200</sup>

## Belarus

The Belarusian Criminal Code specifies that “racial, national, [and] religious hatred and discord,” when a motivation for a crime, will be considered an aggravating circumstance in sentencing.<sup>201</sup> Sections 344 and 347 prohibit the destruction of historical and cultural monuments and the desecration of cemeteries, respectively.<sup>202</sup>

The Belarusian government does not have a specialized body to monitor and report racist violence and xenophobia within the country. However, the Committee of Religious and Nationalities Affairs of the Council of Ministers (CRNA) reportedly responds to public acts of xenophobia by notifying the appropriate government agencies.<sup>203</sup>

The Union of Councils for Jews in the Former Soviet Union (UCSJ) noted a general unwillingness on the part of local authorities and prosecutors to investigate the desecration of Jewish cemeteries, Holocaust memorials in Minsk and Lida, and other Jewish sites.<sup>204</sup> The United States Commission on International Religious Freedom notes, too, that, while President Lukashenko openly condemned desecrations and other antisemitic acts in 2003, the perpetrators of such crimes were “not pursued.”<sup>205</sup>

In March of 2004, the country’s leading newspaper documented a sharp increase in skinhead attacks against foreigners. In February 2004, a mob of nearly 70 students reportedly attacked 3 Chinese students in Minsk, 15 of whom were arrested and charged with “hooliganism.” Another Chinese student was attacked in Minsk on March 20; two days later, a mob of fifteen assaulted a Jordanian student. The UCSJ has reported that post-Soviet Union Belarusian prosecutors have only once tried criminal defendants under hate crimes laws when in late 2002, four members of the neo-Nazi organization RNU were convicted for attacking foreign students in Vitebsk.<sup>206</sup>

Measures including the 2002 law, “About the Freedom of Confessions and Religious Organizations,” have contributed to a social climate of increasing hostility and xenophobia towards minority religious communities, including Jews, Hindus, and Protestant confessions. The

2002 regulation prohibits the worship of religious communities not registered with the government, and members of minority religious communities have been “subject to detention, oppressive fines, and even violence.”<sup>207</sup> Members of Belarus’s small Hindu community, which has repeatedly been denied official recognition by the government, have been the targets of state harassment, fines, arrests, and physical assaults.<sup>208</sup>

Antisemitism in Belarus frequently takes the form of attacks on Jewish cemeteries, monuments, and community structures. Incidents documented by the Stephen Roth Institute include:

- The Holocaust memorial in Brest, unveiled in 1992 on the 50th anniversary of the murder of 34 thousand local Jews by the Nazis, was defaced for the fifth time (November 5, 2004).
- A Holocaust memorial in Pinsk, one of four, was painted with a swastika and antisemitic slogans (early April 2004).
- Unidentified persons broke 20 tombstones in the Jewish cemetery in Mikashevich, Brest region; a complaint was filed but no arrests were made (late April 2005).
- The Jewish Community House in Novopolotsk was defaced with graffiti showing knives piercing stars of David; weeks later its walls were vandalized with slogans such as “Death to the Kikes” (January 22, 2004).<sup>209</sup>

Belarus is not known to systematically monitor or report the incidence of hate crimes or to produce reliable hate crime statistics. In its June 2005 report, *Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation and National Initiatives*, the ODIHR reported on the outcome of its request for information on hate crimes from OSCE participant states. It said Belarus had responded to its request, providing “statistics for anti-Semitic bias-motivated offenses in relation to property damage including monument and graveyard desecration.” The substance of the information was not reported, although the report said that Belarus was among those countries that had provided information “on the *outcomes* of reported hate crime cases such

as the numbers of recorded convictions and sentences handed out.”<sup>210</sup>

A representative of the Embassy of Belarus to the United States, in response to a communication from Human Rights First in June 2005, noted that government agencies that report, monitor, or document crimes motivated by racial, ethnic, or religious animus include the Ministry of Internal Affairs; the Committee of State Security; the State Security Council; the Committee on Religious and Nationalities Affairs, under the Council of Ministers; the Office of the General Prosecutor; and the Ministry of Justice of the Republic of Belarus.<sup>211</sup> According to the representative, hate crime provisions have not, however, been widely used by prosecutors

because the problem of racial, national or religious hatred or hostility is not . . . the issue in Belarus. All the nationalities who live on the territory of Belarus (including foreigners and persons without any citizenship) enjoy equal rights which are guaranteed by our Government. . . . So there is no basis for racial, national or religious hatred or hostility in Belarus, and, correspondingly, no big practice of criminal cases of the kind.<sup>212</sup>

## Belgium

The Act of 25 February 2003 (“aimed at combating discrimination and modifying the Act of 15 February 1993 which establishes the Centre for Equal Opportunities and the Fight against Racism”), expands the definition of hate crimes with an inclusive approach. Under the 2003 law, “the grounds for discrimination covered by the bill are sex, supposed race, colour, descent, national or ethnic origin, sexual orientation, civil status, birth, fortune, age, religious or philosophical beliefs, current or future state of health and handicap or physical features.”<sup>213</sup> In addition to making racist motivation an aggravating factor in the punishment of crimes, “the ban on discrimination on other grounds is supported by the same protective arrangements as that established in the Racial Discrimination Act, with discrimination serving as an aggravating circumstance.” The law also provides for a civil remedy to address discrimination.<sup>214</sup>

The Act of 25 February 2003 and a companion measure, the Act of 20 January 2003 (“on

strengthening legislation against racism”), together provide for improved monitoring of hate crimes, by expressly mandating the Centre for Equal Opportunities and Opposition to Racism (CEOOR) to receive and make public information on the fight against racism:

To collect and publish statistical data and courts’ decisions as necessary for the evaluation of the implementation of the laws against racism and discrimination; receive information from the competent authorities on facts which may point at possible breaches of the laws against racism and discrimination and be informed by the authorities on the follow-up given; receive a yearly communication by the Ministry of Justice of judicial statistics on the implementation of the laws against racism and discrimination and of the relative decisions.<sup>215</sup>

According to ECRI, the new measures also include provisions for “new statistical tools” within the Belgian Ministry of Justice that will enable it to collect “qualitative data from different levels of the criminal justice system, statistical analyses concerning the prosecution of racism and xenophobia in Belgium and, thus, an overview of the way the criminal justice system deals with these cases.”<sup>216</sup>

CEOOR has itself pressed for better systems to record incidents of racial violence over several years, and in a recent report described a 2002 meeting with Federal Police, the college of public prosecutors, and Ministry of Interior and Justice officials to address this. The report considered both the importance of data registration and a basis for statistical analysis of the data on racial violence. An electronic information system, known as known the Phoenix Project, has been planned to address this need, but is not expected to be in operation until 2008.<sup>217</sup>

This should eventually provide CEOOR a firm basis for an increasingly effective relationship with criminal justice authorities, including access to timely information from law enforcement bodies concerning bias incidents, updated information from the prosecution service and the courts, and a firm basis to compile statistics on hate crimes and other aspects of discrimination. ECRI’s report stresses, however, the need to ensure that CEOOR be provided with the resources necessary to carry out the additional

responsibilities. It called in particular for further concerted efforts to respond to the “increase in manifestations of antisemitism and islamophobia.”

It remains to be seen whether CEOOR will be empowered to take the initiative needed to play the full role envisioned in ECRI recommendations for specialized agencies of its kind, such as the right to initiate investigations, to provide assistance to victims, and to initiate and participate in court proceedings. Access to government information, including criminal justice data and statistics, is an important requisite for specialized anti-racism bodies. So, too, is a capacity to exchange information with the nongovernmental sector and to test the state’s implementation of the anti-discrimination safeguards provided for by law.

CEOOR’s annual report for 2003, which summarizes developments before the implementation of the February 2003 law, provides detailed statistics of its areas of action and its measures to address many aspects of discrimination—including the work of separate divisions addressing racism and other forms of discrimination. The report summarizes cases in which CEOOR has become a party to civil action to address acts of discrimination, including some crimes of violence.

However, hate crimes are not addressed as a general category in the report, and there are no overall statistics on specific crimes motivated by bias.<sup>218</sup> While there are charts breaking down such factors as motive of discrimination (origin, skin color, religion, immigration status, nationality, other), and the nature of the complaints considered by the centre, hate crimes are not identified as a specific category and the particular groups facing discrimination are not identified.

Despite CEOOR’s limited capacity, the Belgian government has to a large extent delegated its own responsibilities to address the problems of hate crimes and discrimination to the autonomous agency. When Human Rights First wrote the Belgian Foreign Minister in August 2004, for example, concerning the official response to hate crimes and requesting the most recent statistics, the response to our detailed questionnaire was a one-sentence referral to CEOOR’s website.<sup>219</sup>

In its contribution to the EUMC’s 2004 antisemitism report, CEOOR observed that “Neither complaints that are filed by organizations as the CEOOR, nor the racial violence acts that are registered by the police provide a representative image of the real amount of racial violence.”<sup>220</sup> Data on hate crimes in Belgium are limited in part by the failure of law enforcement agencies to adopt effective procedures to assess and register crimes with a racist or other bias motivation.

The April 2005 EUMC report on racist violence in the E.U. notes that Belgian police may register information on the characteristics of those suspected of *committing* crimes. “The police do not keep systematic statistics on racist violence or antisemitic activities/violence. However, as is common in most jurisdictions’ police practices, they can record relevant details about the alleged *perpetrator*—such as skin colour” (italics added).<sup>221</sup>

Official statistics, as a consequence, are based on complaints and charges that are considered by the Public Prosecutor’s office, with data produced on charges brought and cases dismissed. The EUMC has noted, however, that only cases in which the primary charge is characterized as racism or as xenophobia are identifiable as bias offenses in the statistical record; crimes of violence in which bias is a secondary factor are not readily identified in the system, as they are registered under the respective crimes of violence.<sup>222</sup>

While neither the Ministry of Justice nor CEOOR can currently provide meaningful data on hate crimes, CEOOR has recommended that all court decisions concerning violations of the anti-racism law, Holocaust denial, and pending general anti-discrimination laws “should be transmitted to the CEOOR for monitoring purposes” until a comprehensive system to register hate crimes is introduced.<sup>223</sup> CEOOR has also been involved in setting up a pilot project to monitor and register racial violence in two medium-sized police zones. The project is to be limited to discrimination founded on racism and religion. The monitoring will cover crimes under the 1981 anti-racism law, as well as common crimes in which a racist motive can be considered an aggravating circumstance. A form prepared by CEOOR is to

be distributed both to the police and civil society organizations, including immigrants' organizations. CEOOR will periodically collect forms from both official and nongovernmental sources and assess the data produced.<sup>224</sup>

Belgium signed the Framework Convention for the Protection of National Minorities in July 2001, with the following reservation:

The Kingdom of Belgium declares that the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy.<sup>225</sup>

On September 26, 2002, the Parliamentary Assembly of the Council of Europe adopted Resolution 1301, in which it “regrets that the Belgian authorities deemed it necessary to accompany the signature of the framework convention by such a broad reservation that it risks undermining most of the convention’s provisions. If the Kingdom of Belgium decided to uphold upon ratification of the convention the reservation it made upon signature, it might be considered as a violation of the Vienna Conventions on the Law of Treaties which do not allow countries to enter reservations upon ratification of treaties which void them of their meaning.”<sup>226</sup>

## Bosnia and Herzegovina

In its June 2004 report on Bosnia and Herzegovina, ECRI notes that the Criminal Code of Bosnia and Herzegovina, enacted by decision of the High Representative and entered into force in March 2003, “contains provisions prohibiting discrimination by public officials on grounds, inter alia, of race, skin colour, national or ethnic background, religion and language and prohibiting the restriction by public officials of the language rights of the citizens in their relations with the authorities (Article 145/1 and 145/2).” The code includes detailed provisions punishing the crime of genocide, crimes against humanity, and war crimes against civilians.

The Criminal Code, article 48, sets out the general principles of meting out punishments:

The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.<sup>227</sup>

In its 2004 report, ECRI recommends that the authorities of Bosnia and Herzegovina review the effectiveness of their criminal law provisions against racism and racial discrimination and complement them, taking into account ECRI’s General Policy Recommendation No. 7, that national laws explicitly provide for racist motivation to constitute an aggravating circumstance in respect of all offences.<sup>228</sup>

ECRI further comments that:

NGOs report that racially motivated offences are much more numerous than shown by Federation figures. It has been reported to ECRI, in particular, that ordinary offences committed for racist (including ethnic or religious) motives are often not prosecuted and that, when they are, prosecution takes place on the basis of the ordinary offence and that the racist motivation is consequently overlooked.<sup>229</sup>

## Bulgaria

In its second periodic report on Bulgaria, released in 2000, ECRI identified provisions in criminal law defining a range of crimes motivated by racism, although this did not include a general provision making bias motivation an aggravating factor in crimes.<sup>230</sup> The general conclusion was, however, that provisions to punish crimes of incitement or of racist violence against a person or property were simply not applied. The report concluded bluntly:

It does not appear that the above-mentioned provisions covering racist and xenophobic crimes have ever resulted in convictions before the courts in Bulgaria. ECRI is concerned that this is likely to point to a failure in the implementation of the legislation in force, since there is clear evidence that racist attacks do occur in Bulgaria, perpetrated particularly against members of the Roma/Gypsy population.<sup>231</sup>

ECRI noted that one explanation for the lack of action was “the fact that such attacks are not considered as racially-motivated and are not followed up by the police and prosecuting authorities.” ECRI recommended, in this regard, that Bulgarian authorities “ensure that criminal law provisions fully allow for the racist motivation of offenders to be taken into account and to be considered as an aggravating circumstance in the case of common offences.”<sup>232</sup>

In addition to recommending that a high priority be given to the investigation and prosecution of racist crimes, ECRI stressed the importance of monitoring and reporting:

[G]iven the lack of clear information as regards the implementation of such provisions, the Bulgarian authorities should also follow the proposal made in the same ECRI General Policy Recommendation No. 1 to ensure that “accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted.”<sup>233</sup>

In a third report on Bulgaria, published in January 2004, ECRI reiterated its recommendations for action to combat discriminatory violence, including the development of a specialized anti-discrimination body and a capacity to compile accurate statistics, with due safeguards for data protection and privacy.<sup>234</sup>

## Canada

Canada’s Criminal Code, Section 718.2(a)(i) provides for a court to increase a sentence in the light of an aggravating factor, to include “evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or

physical disability, sexual orientation, or any other similar factor . . . .”<sup>235</sup>

The Criminal Code’s Section 318 punishes anyone who “advocates or promotes genocide,” with genocide defined to require that acts be committed “with the intent to destroy in whole or in part any identifiable group.” “Identifiable group,” in turn, is defined to mean “any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.” Section 319, adopting the same definition of “identifiable group,” punishes the incitement or expression of hatred against such a group.<sup>236</sup>

Under the Anti-Terrorism Act, introduced in 2001, a new provision was enacted under section 430(4.1) of the Criminal Code criminalizing “mischief” against places of religious worship or religious property motivated by “bias, prejudice or hate based on religion, race, colour or national or ethnic origin.”<sup>237</sup> Civil law in Canada, both federal and provincial, also provides remedies to discriminatory actions.

Although the Canadian Centre for Justice Statistics (CCJS), in collaboration with law enforcement agencies, compiles detailed annual statistics on crimes through a Uniform Crime Reporting Survey, systematic data on hate crimes is not compiled nationally.<sup>238</sup>

A pilot study of data from 2000 and 2001 was undertaken by the Canadian Centre for Justice Statistics, with a view to enhancing the understanding of hate crimes in Canada and “to assess the feasibility of collecting national police-reported hate crime statistics.”<sup>239</sup> The results of the pilot study, drawing on data from twelve major Canadian police forces, were published in June 2004, and included an analysis of a total of 928 hate crime incidents during 2001 and 2002, with a single bias motivation recorded in most cases. More than half of the incidents were motivated by race or ethnicity (57 percent), while 43 percent were recorded as based on religious bias. Bias based on sexual orientation accounted for about 10 percent of the total.<sup>240</sup>

Of the total, 447 were considered violent crimes, with 34 percent involving actual physical force and 49 percent involving the threat of force. “A weapon, most often a knife or other piercing or cutting object, was present in about 17% of violent

crime incidents.” There were two deaths from the sample examined and about 7 percent of victims suffered “major injuries.” Overall, 25 percent of the victims of violent crime suffered physical injuries; but the report found that 46 percent of gay and lesbian victims of violent hate crimes were physically injured.

The survey identified the groups from which victims of hate crimes were drawn, establishing that Blacks and South Asians were the most frequent victims of racist violence, and Jews and Muslims were most frequently targeted under the category of religious bias. In the overall ranking of incidents by group, Jews were targeted in the highest number of cases: “Jewish: 25%; Black: 17%; Muslim (Islam): 11%; South Asian: 10%; Gay and Lesbian: 9%; Multi-ethnic/multi-Race: 9%; East and Southeast Asian: 9%; Arab/West Asian: 8%.”<sup>241</sup>

Police departments with hate crimes units in some major cities compile statistics. The League for Human Rights of B’Nai Brith Canada, which produces an annual national audit of antisemitic hate crimes, describes the “tracking mechanisms for hate crimes and outreach to community groups” of the Toronto and York Region police services as providing a good model for other police services.<sup>242</sup> The Toronto Police Service produces “a highly detailed Hate/Bias Crime Statistical Report through its Hate Crimes Unit, with considerable attention given to differentiating between victim groups.” A different model is used in Calgary:

The Calgary Police Service, through its Community and Youth Services Section, reports on Criminal Offences by type of Hate/Bias. It plans in the future to identify the motivation of offences as they relate to persons with disabilities, ethnicity, gender, nationality, race, religion, sexual offences and age. However, the criteria are broad and the statistics provided do not specify details within the categories of ethnicity, nationality, race or religion.<sup>243</sup>

In Montreal, in contrast, “there is at present no official classification process for delineating hate crimes when reporting harassment, vandalism, assault or threats.”<sup>244</sup> Other police services, in Hamilton, Peel, and Ottawa reportedly compile statistics but do not make them public. There is no

standard definition of hate crimes in use within Canadian law enforcement jurisdictions; the national body, the Royal Canadian Mounted Police (RCMP), “does not use the category ‘hate crime’ as a set definition” although the National Security Investigation Sections on “criminal, political or religious extremism,” comes close to such a category.<sup>245</sup>

In its audit covering 2003, the League for Human Rights of B’Nai Brith Canada presented data on 584 incidents, representing an increase of 27.2 percent over the number of incident reports received the previous year. Of this total, two-thirds (389) were classified as harassment (including 111 cases in which violence was threatened), 180 (30.8 percent) were classed as vandalism, and 15 were classed as acts of violence.<sup>246</sup> There were 23 incidents in which synagogues were vandalized or desecrated and 22 other incidents involving Jewish communal buildings.

The number of violent antisemitic incidents in 2003 went down from the previous year (when 29 were reported), but serious assaults were cited. These included an attack on a visibly Orthodox Jew, leaving a Toronto synagogue late at night, who was assaulted with a hammer, suffering severe head injuries. Other incidents included a brick being thrown through an apartment window accompanied by an antisemitic note (Toronto); a fire set in a Jewish Youth Library and nursery school (Ottawa); windows smashed in a building in a Jewish cemetery (Hamilton); tombstones toppled in a Jewish cemetery (Montreal); and windows broken in a synagogue (Glace Bay, Nova Scotia).<sup>247</sup>

In its latest audit, covering 2004, reported incidents nearly doubled over the previous year, to 847, with dramatic rises in the incidents of violence and vandalism.<sup>248</sup> There were 457 cases classed as harassment (53.3 percent of the total), 369 of vandalism (43.1 percent), and 31 of violence. One third of the cases of harassment involved threats of physical harm, including death threats. There were 40 incidents targeting synagogues, including synagogues in Montreal, Winnipeg, Ottawa, Toronto, Edmonton, Mississauga, St. John’s and Windsor, and 25 involving Jewish communal buildings. There were 10 cases of cemetery desecration, up from three in 2003. A particularly disturbing phenomenon

highlighted in the report was an increasing number of attacks on Jewish homes: up to 151 cases, from 95 in 2003.

Examples of antisemitic violence in 2004 included: the defacing of Oshawa's only synagogue with antisemitic graffiti and Nazi symbols; an attack on a non-Jewish musician after a performance in Saint John, New Brunswick, by two individuals who thought he was Jewish; a firebomb attack on the United Talmud Torah Jewish school in Montreal on the eve of Passover, setting fire to the library of the school and causing serious damage; the desecration of twenty Jewish graves at the cemetery of Saint-Foy, in Quebec City; and the daubing of a Jewish home in Calgary with the graffiti "Hitler Rules."<sup>249</sup>

The Canadian Race Relations Foundation, an autonomous body with a mandate to combat racism and racial discrimination, addresses hate crimes and racism in the justice system, and has produced a fact sheet on recognizing and responding to hate crimes in Canada. The foundation's website includes a monthly summary of news concerning discrimination in Canada.<sup>250</sup>

## Croatia

Although Croatian law allows the courts to take into account any extenuating or aggravating circumstances in sentencing, there is no express provision identifying racist or other bias motivations as aggravating factors. In its second report on Croatia, in July 2001, ECRI recommended that Croatia define racially motivated offences as specific offenses or explicitly provide for racial motivation to be taken into account as an aggravating factor by the courts.<sup>251</sup>

## Cyprus

In its December 2000 report, ECRI notes that there is no provision in Cypriot criminal law punishing common offences with racist motivations as specific offences, or explicitly enabling the racist motives of the offender to be taken into account as an aggravating factor in sentencing. In line with its General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance, ECRI

encourages the Cypriot authorities to consider the introduction of such provisions.<sup>252</sup>

## Czech Republic

The Czech Criminal Code defines racist motivation as a specific aggravating circumstance that judges are required to take into account in sentencing, as well as defining specific racist acts as crimes. Section 196 punishes "violence against a group of inhabitants and against individuals on the basis of race, nationality, political conviction or religion."<sup>253</sup>

ECRI's second report on the Czech Republic, in June 1999, notes that amendments to the Criminal Code in 1995 that increased sentences for all crimes with racial motives followed a major increase in racially motivated violence, "affecting Roma/Gypsies particularly but also other visible minorities."

ECRI expressed concern at the absence of reliable information on minority groups, while observing that "the collection of data on ethnic origin is prohibited in the Czech Republic out of concern for data protection and privacy." ECRI reaffirmed the importance of monitoring, "with due attention to the need for protection of data and of privacy."<sup>254</sup>

In its third report in June 2004, ECRI noted as an encouraging development the establishment of a Commission for Combating Extremism, Racism, and Xenophobia to bring together relevant state actors. "An Advisory Body to the Minister of the Interior, this Commission collects information and develops a co-ordinated approach by the state administrative bodies to the struggle against extremism, racism and xenophobia."<sup>255</sup>

## Denmark

Danish criminal law does not define offenses with racist motivations as specific offenses or explicitly make racist or other bias motivation an aggravating factor in prosecutions.<sup>256</sup> The courts have, however, reportedly considered racist motivation an aggravating factor in sentencing in a number of cases in recent years.<sup>257</sup> Copenhagen's Metropolitan Police Force has issued an instruction that in all cases of violence with a possible racist motive, the prosecutor must ask



the court to consider this as an aggravating circumstance, according to section 80 of the Penal Code.<sup>258</sup>

Statistics on crimes with an apparent racist motivation have been produced by the Danish Civil Security Service (PET) since 1992. In addition, the Director of Public Prosecution is reportedly notified of cases of “racist/hate speech in violation of section 266b of the Penal Code, and keeps records of charges and convictions,” but does not make public information based on these records. Statistics for 2002 from PET (the latest publicly available) included a total of 63 incidents, consisting of 4 cases of arson, 6 physical attacks, 20 threats, and 18 of graffiti and property damage.<sup>259</sup> The Danish police in 2002 registered the receipt of 36 hate speech complaints under Criminal Code section 266b, compared to 65 cases in 2001.<sup>260</sup>

In ECRI’s second report on Denmark, it reiterated previous recommendations that statistics be recorded relating to *complaints* concerning racial discrimination, including “detailed information about the number of complaints relating to racism and discrimination in various spheres of life, the subsequent investigation by police and prosecutors where relevant, the judicial assessment of such complaints and the redress or compensation awarded to victims.”<sup>261</sup>

In Denmark, as in other European countries, the “war against terrorism” was seized upon by some political leaders to win partisan support by inciting fear of those portrayed as threatening to national values and racial and cultural homogeneity. Foreigners, immigrants, and minorities, not limited to Muslims, were the targets of new broadsides launched in the name of tightening immigration controls and imposing new measures on minority populations, while calls for forced assimilation—and new tests for the loyalty of minority nationals—were openly voiced.

An EUMC survey of the post-September 11 backlash found that Danish political leaders had indulged in appalling manipulation of the fears generated by the attacks in the national election campaign then underway. “Throughout the election campaign, the issue of ‘foreigners’ was central,” it observed. It found that most political parties had seized on the events of September

11, with “the Danish People’s Party explicitly portraying Muslims as ‘our enemy,’ so much so that the party leadership was reported to the police for violation of laws against hate speech.” While Prime Minister Poul Nyrup Rasmussen and some other leaders were credited with more positive statements, the dominant message was that foreigners and minority Danish nationals were under suspicion.<sup>262</sup>

The issue of religion also rose to the fore, with the EUMC highlighting that “Danish Muslims were called upon to affirm that the Danish constitution is above the Qur’an.” The far right, in turn, called for direct action, with Dansk Forum advocating a boycott of Muslim businesses.<sup>263</sup> The anti-foreigner campaign was accompanied by a rise in hate crimes against “ethnic minorities of all backgrounds.” While this drew upon pre-existing political trends to portray immigrants as a threat to Danish homogeneity, it also involved even more overtly racist appeals. In its May 2002 hearing to discuss Denmark’s report on its compliance with the Convention on the Elimination on All Forms of Racial Discrimination (CERD), the CERD Committee expressed concern over “reports of a considerable increase in reported cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001.”<sup>264</sup>

The new government introduced draconian anti-immigrant and anti-refugee measures as a backdrop to ongoing social polarization and rising racist violence. Harsh measures against refugees and immigrants were accompanied by action to cripple or eliminate the special mechanisms established to confront intolerance and racial violence in Denmark. By June 2002, the new government had closed the Danish Board for Ethnic Equality, the only official body mandated to counter racial discrimination in Denmark, while cutting the budget of the Danish Centre for Human Rights and forcing the dismissal of its director.<sup>265</sup>

In its concluding observations on Denmark’s report on its treaty obligations, the CERD Committee in March 2002 responded to “reports of an increase in hate speech in Denmark,” and while acknowledging “the need for balance between freedom of expression and measures to eradicate racist abuse and stereotyping,”

recommended careful monitoring of such speech, with particular attention to the role of politicians and political parties. The Committee also acknowledged the ongoing “restructuring” of the Board for Ethnic Equality and the Centre for Human Rights, and the withdrawal of funding from some NGOs, while pressing the government to strengthen the protection of the rights of ethnic minorities. (After dissolving the Board for Ethnic Equality soon after the CERD committee reviewed its report, the government established a committee to explore the creation of an alternative national specialized body to address racism and intolerance, as required by the European Racial Equality Directive.)<sup>266</sup>

While the Danish Institute for Human Rights, a part of the Centre, continued to play an important role in the defense of the rights of minorities in Denmark, it has not played a significant role in monitoring or fighting hate crimes. Act No. 374 of May 28, 2003 on Ethnic Equal Treatment extended the mandate of the Institute, creating a Complaints Committee empowered to receive individual complaints of discriminatory treatment, but it is too early to tell whether efforts will be made to address hate crimes within this mandate.<sup>267</sup> The Committee can issue opinions on whether individual cases constitute violations and recommend free legal aid for judicial proceedings, but “cannot itself order any sanctions or other remedies.”<sup>268</sup> The Committee’s mandate does, however, leave scope for the receipt of complaints of bias-motivated harassment and crimes, and for systematic monitoring and reporting on the follow-up to such complaints.<sup>269</sup>

Denmark’s reputation for anti-immigrant policies and indifference to anti-racism measures persisted in 2004 and into 2005, despite some legislative reforms in 2003. European Commissioner for Human Rights Alvaro Gil-Robles, who conducted a site visit to Denmark in April 2004, expressed concern at “the frequent expressions of strong anti-immigrant statements” in political discourse.<sup>270</sup>

In Denmark’s 1999 compliance report as a party to the Council of Europe’s Framework Convention for the Protection of National Minorities, responses tend to interpret the scope of the convention as limited almost exclusively to the treatment of the small German minority there, to

the exclusion of others. Denmark’s summary response under article 6(2), which concerns protection of national minorities against threats and attacks, declares there is no gap in Danish legislative protection and no problem of discriminatory violence.<sup>271</sup>

## Estonia

In ECRI’s second report on Estonia (April 2002), it found that “[n]o criminal provisions exist defining ordinary crimes with a racist element as racist crimes, and there is no scope for racist motivation to be taken into account by the courts as an aggravating circumstance when sentencing.”<sup>272</sup>

## Finland

An amendment to the Penal Code adopted by parliament on January 31, 2003 came into force on January 1, 2004 (Penal Code 515/2003), to make “committing a crime against a person, because of his national, racial, ethnical or equivalent group” an aggravating circumstance in sentencing.<sup>273</sup>

A December 2004 EUMC report, on migrants and minorities, notes that in Finland, “the most typical racially motivated crime is physical violence, an assault in a public place. In most cases the aggressor is unknown.”<sup>274</sup> Although “there is no systematic monitoring of how cases proceed,” the same report cites members of the legal profession who maintain that “the number of racist crimes handled in courts has risen in recent years.”<sup>275</sup>

## France

France amended its criminal code in 2003 to make a racist motive an aggravating factor in punishing crimes. The Loi Lellouche, passed unanimously by the French Parliament on February 3, 2003, mandates more severe penalties for crimes of violence where racist expression founded on the victim’s real or perceived identity precedes, accompanies, or follows the offense.<sup>276</sup> Criteria for determining the motivation of the offense include the use of “spoken or written words, images, items, or acts of any kind that are injurious to the honour or esteem of the victim, or group of persons including the victim, by virtue of their actual or supposed

membership or non-membership of a particular ethnic group, nation, race or religion.”<sup>277</sup>

A similar law against violent crimes motivated by bias founded on sexual orientation, real or supposed, was enacted on March 18, 2003, providing the same penalties as for racist motives.<sup>278</sup> In March 2004 this law was also extended to apply to threats, theft, and extortion motivated by bias.<sup>279</sup> The aggravated penalties for both racist and homophobic crimes include life imprisonment instead of 30 years for murder, and fifteen rather than ten years of imprisonment for violent attacks leading to permanent disability.<sup>280</sup>

The moves to enact tough new legislation to punish hate crimes motivated by anti-homosexual bias followed the attempted murder in January 2004 of Sebastian Nouchet, a young gay man who nearly died after being set alight with gasoline at his home in Noeud-les-Mines. Nouchet, who had suffered months of harassment by a gang of teenagers before the near-fatal attack, was honored by the sponsor of the bill, Minister of Justice Dominique Perben, who proposed it be known as the “Nouchet Law.”<sup>281</sup> Violent acts against gay men in France reportedly more than doubled from 41 in 2002 to 86 in 2003.<sup>282</sup> The March 2003 law provides enhanced penalties for violent crimes motivated by bias founded on sexual orientation.<sup>283</sup> In December 2004, companion legislation was enacted outlawing hate speech motivated by gender, sexual orientation, or disability bias.<sup>284</sup>

French legal initiatives to combat discrimination more broadly have included measures to bring French law more closely into line with the E.U.’s 2000 Racial Equality Directive and companion Employment Equality Directive.<sup>285</sup> In November 2001, the French Parliament passed an Anti-Discrimination Bill (*Loi relative à la lutte contre les discriminations no. 2001-1066*), which prohibits both direct and indirect discrimination with respect to a broad range of situations. For the first time in French law this identified as unlawful grounds for discrimination real or ascribed ethnic origin, physical appearance, name, age, and sexual orientation. (Previous unlawful grounds for discrimination had included gender, origin, race, nationality, and political opinion.)<sup>286</sup>

In December 2004, further anti-discrimination legislation was enacted that created a new public authority charged with combating discrimination, the High Authority against Discrimination and for Equality.<sup>287</sup> This Authority has been given a wide mandate covering all matters concerning discrimination, direct and indirect; it will be able to hear individual or collective complaints, will have wide-reaching powers of investigation, will be empowered to recommend legislative or regulatory reform, and is to be consulted by the government on all questions tied to discrimination.<sup>288</sup> The president and members of the Authority were named on March 3, 2005.<sup>289</sup>

Presidential action has included the creation by decree in December 2003 of an Inter-Ministerial Committee on discrimination—grouping ministers from the ministries of Interior, Justice, Foreign Affairs, Social Affairs, Education, and Youth.<sup>290</sup> Its mandate is to formulate policy to stop acts motivated by racial or antisemitic bias. By February 2005, the Committee had met six times and put into place several measures regarding bias crimes, including the increased mobilization of police to investigate offenses and the drafting of a practical guide for police as well as a booklet for victims.<sup>291</sup>

At the ministerial level, measures were also reported requiring action against racist and antisemitic violence. These included two instructions sent by the Minister of Justice, on April 2 and April 18, 2002, to all public prosecutors “to remind them of the necessity of a firm and dissuasive response directed at known perpetrators of racist/anti-Semitic offences,” and to requests reports to be made of the legal outcomes of such cases “to the victims and to local Jewish organisations.”<sup>292</sup>

ECRI’s third report on France, in June 2004, cites further high-level instructions to public prosecutors on racist, antisemitic, and xenophobic offences. Prosecutors are to seek tough sentences commensurate with the seriousness of the crimes and to inform victims of the outcomes. In addition, a magistrate is to be appointed in each office of the prosecution with responsibility for relations “with anti-racism associations and ensuring an appropriate response by the criminal justice system in this area.”<sup>293</sup>

After the enactment of the Lellouche law, the Ministry of Justice sent an official dispatch on March 21, 2003 calling for greater vigilance within the prosecutor's office towards racist and antisemitic acts. It followed this up on November 18, 2003, advising that it should be informed of all antisemitic offenses known by the judicial authorities and that public prosecutors keep victims informed of the progress of cases through the justice system. In addition, the instruction required each office to assign a particular magistrate to monitor the consistency of the penalties—and to assume responsibility for promoting relations with local associations that work against antisemitism. In order to improve the reporting mechanism an electronic mail account was set up in the intranet of the public prosecutor's office to transmit reports on antisemitic acts, in accord with the following format:

Memorandum of particulars

Date of acts:

Place of acts:

Identity of author:

Identity of victim:

Nature of act and succinct resume:

Designated investigating commissioner:

Chosen judicial procedure:

Result of hearing (coercive measures?):

Observations (impact of public order, media):

Next update:

The implementation of the new procedure seems to have begun effectively. According to the Ligue Internationale Contre le Racisme et l'Antisémitisme (LICRA), prosecutors have been sensitized to the system by the Ministry of Justice and there are specialist magistrates in each jurisdiction whose role is to inform the ministry as soon as they know there has been a racist act.<sup>294</sup> According to the Ministry of Justice, prosecutions were brought in 20 cases from January through June 2004 under provisions enabling racist motives to be considered aggravating circumstances.<sup>295</sup>

Minister of Interior Dominique de Villepin also took a series of initiatives to put racist and antisemitic

violence higher on the government agenda in 2004 as one of six top "project" areas,<sup>296</sup> and appointed Jean-Christophe Rufin, President of *Action Contre la Faim*, to produce a White Paper on the issue. The final report was released in October 2004, with a series of recommendations which were endorsed by Minister Villepin. These included the development of statistical tools to improve the recording of reported crimes (although Rufin fervently reaffirmed France's aversion to disaggregating data in a manner that would recognize France's minorities). The stated goal was a system of reports every six months or annually with the precise total of bias-motivated crimes and the progress of criminal prosecutions. Also endorsed was a proposal for the police to distribute a practical guide for the public explaining the legislation and procedures.<sup>297</sup>

At the end of 2004 the Ministry of the Interior released annual figures for racist and antisemitic violence (recording them as one total), breaking them down into violent acts and threats. It also announced at that time that Departmental Prefects would each assign an official with responsibility for addressing hate crimes in their jurisdiction and to liaise with the communities involved, as well as to monitor the safety of places of worship.<sup>298</sup> Procedures for registering complaints were also revised in 2004, with a memorandum instructing all police and gendarmerie that a statement with an antisemitic or racist aspect must be recorded as a complaint and not merely entered in an incident book. The memorandum also outlined the methodology needed to gather enough information for prosecution.<sup>299</sup>

Even more concerted efforts may be required, however, to overcome the general concern among nongovernmental organizations working to combat racism that police still often lack training in dealing with discrimination and bias crimes. Police reportedly often refuse to take complaints of people who have been victims of racist violence on the grounds that there are no witnesses (discounting the victim's own testimony). In addition, a perception remains that racist crimes may complicate evidence collection, making police work more difficult. Where an individual is facing difficulty in registering a complaint with police, staff in LICRA's legal department

frequently advise victims of racist abuse to send their complaints directly to the public prosecutor's office.<sup>300</sup>

In addition, memoranda have gone out from the Ministry of the Interior to the Prefectures to address the problem of desecration of cemeteries and burial places,<sup>301</sup> and to prefects, police, and public prosecutors regarding measures to prevent and punish racist and antisemitic acts in school environments.<sup>302</sup>

Anti-racism measures have also concentrated on extremist groups. Citing a January 2005 report by the Central Intelligence Service Directorate (DCRG), which stated that there were between 2,500 and 3,500 militant extreme right group members in France, Interior Minister Villepin declared that these groups were responsible for 65 violent acts in 2004. Authorities announced measures to curb the influence of these groups, including bans on public meetings and new powers by which mayors could break up meetings held under false pretenses, as well as banning neo-Nazi internet sites.<sup>303</sup> Public statements have also been made highlighting successes in the fight against hate crimes. Examples from 2004 include statements on the jailing for anti-*maghrébin* attacks in Corsica of twelve suspects tied to the group Clandestini Corse, arrests in Douaumont in eastern France for desecrating a cemetery,<sup>304</sup> and arrests in Lyon in February 2005 for arson attacks on two mosques.<sup>305</sup>

In December 2004, Minister Villepin issued a press release summarizing the available statistics on incidents since January 1 of that year.<sup>306</sup> These included 194 "acts" and 711 "threats," over 70 percent of them in the Ile-de-France region, highlighting the desecration of Christian, Jewish, and Muslim places of worship, and expressing concern at the rise in racist violence in Corsica, where incidents had risen sharply from fifteen in 2003 to 107 a year later.<sup>307</sup>

Despite the above important measures to improve the government response to hate crimes in France, major obstacles remain even to establishing a clear official foundation of information on the extent of racist violence. The difficulties posed for monitors in France, where government agencies by law do not distinguish between ethnic or racial groups in their records,

remain much as described by ECRI in its second report on France, published in June 2000:

As noted in ECRI's first report, due to the French Republican egalitarian approach, there is officially no categorization of ethnic or racial groups in statistics. The main categories used are therefore "foreigners" and "citizens," while ethnic monitoring is contrary to the Constitution and expressly prohibited by the Criminal Code. ECRI emphasizes that, given the consequent difficulties to the collection of accurate data on the incidence of racial discrimination as well as on social indicators concerning parts of the French population, a reconsideration of this approach would be beneficial.<sup>308</sup>

In its third report (June 2004), ECRI notes that in the matter of disaggregated statistics, "no real progress has been made, as the idea of collecting data on the basis of ethnic identity is still not readily accepted in France."<sup>309</sup> In its March 2005 concluding observations on France's 15<sup>th</sup> and 16<sup>th</sup> periodic reports as a party to the CERD Convention, the CERD Committee observed "that efforts to combat discrimination have suffered and continue to suffer from inadequate statistical information."<sup>310</sup>

In ECRI's view, current statistical norms do not give the French authorities sufficient information to plan a national strategy to combat discrimination.<sup>311</sup> ECRI therefore made the recommendation that religion, language, national, or ethnic origin should be recorded following voluntary self-identification, with gender also to be taken into account.<sup>312</sup> The French government, however, continues to reject this.<sup>313</sup>

Notwithstanding the reality of discrimination against distinct groups of French citizens, the government has held firmly to the principle that it cannot consider discrimination and violence against minorities on a statistical basis because the concept of "minority" does not exist in French law. The government also pointed out that "there is no intention of 'recognizing rights connected with the identity of minority groups.'"<sup>314</sup>

An explanation of the background of French policy, in a December 2004 EUMC report, notes that because the ideology of the French revolution does not *allow* "inequality based on 'origin,' the use of the criteria 'origin' for policy purposes was

being refused.”<sup>315</sup> As a consequence, the state could be accused of turning a blind eye to discrimination. Little data is acknowledged to exist on ethnic or immigrant minorities, and “[i]ndirect and institutionalised forms of discrimination are therefore hardly recognised.”<sup>316</sup> While under this egalitarian ideal distinctions were ostensibly drawn only between French citizens and foreigners, new distinctions have in fact been drawn when, “from the 1990 census onwards, a new category of ‘immigrants’ (*issue d’immigration*) was introduced. It refers to persons born abroad and with a foreign citizenship at birth (including people who were born in the overseas territories [DOM-TOM]).”<sup>317</sup> And police reports, as reflected in the hate crimes reporting of the CNCDH, do contain the real or perceived ethnic or other origins of both victims and perpetrators of crimes. (See below.)

Although only limited data is made public, statistical information on hate crimes is in fact compiled by the Ministry of Interior, based on complaints and police reports; the Ministry of Justice, which tracks proceedings before the courts; and the Ministry of Education, which has introduced an innovative system to monitor racist violence in the schools.

The police record complaints or statements as well as observations from patrols (such as graffiti) and evidence that comes to light from other investigations. These complaints are processed, with information then sent to the Central Intelligence Service Directorate (DCRG). The DCRG adds cases from the Gendarmerie, the national police body, and then classifies and analyses the overall body of data. The data is then sent to the General National Police Directorate for publication.<sup>318</sup> At the end of December 2004, the Ministry announced that it had centralized the figures gathered by the police and gendarmerie concerning racist and antisemitic acts.<sup>319</sup>

The Ministry of Education produces monthly statistics and yearly reports on violent incidents in schools, and since January 2004 distinguishes acts motivated by antisemitism or racism. The Ministry also records whether the victims are students, teachers, or “others.” The acts are categorized as insults and threats; physical

violence without a weapon; graffiti; and other serious acts.<sup>320</sup>

## The CNCDH Reports

Statistics on crimes of racist and antisemitic violence produced by the Ministry of the Interior are made available to the CNCDH. The annual reports of the CNCDH have, since 2002, provided increasingly strong coverage of antisemitic and anti-Muslim violence, in a direct reflection of the high priority given by the French government to improving the monitoring and reporting of hate crimes.

In its 2002 report *Fire and Broken Glass*, Human Rights First observed that the CNCDH’s own 2002 report covered just 29 incidents of antisemitism in 2001—all of them high-profile cases. In our report, we concluded, “the commission stresses the gravity of antisemitic violence in France, while apparently reflecting the weakness of the Ministry of Interior’s data collection.”<sup>321</sup> The incidents registered included fifteen assaults on synagogues and other places of prayer—most involving firebombs—and arson attacks on four Jewish schools: attacks that could hardly be left out of an annual report on human rights in France.

Coverage of antisemitic violence in annual Ministry of Interior statistics and in the CNCDH’s reports since then has improved dramatically, with significant advances also in the coverage of violence and threats directed at France’s Muslim population. However, as noted, much of the spectrum of discrimination and bias-driven violence against France’s minorities—both citizens and non-citizens—remains statistically invisible as a consequence of problematic government policies on data collection and analysis.

In its report covering racism in 2002, the CNCDH recorded 1,313 racist and antisemitic incidents, identifying the victims of racist acts as overwhelmingly of North African (Maghreb) origin. The report cited 193 violent antisemitic incidents, a six fold increase over 2001. In its 2003 report, released in April 2004, CNCDH coverage of hate crimes continued to focus almost exclusively upon the threats and violence that afflict France’s Jewish community and people of North African origin.

The 2003 statistics covered 817 recorded incidents, with almost three quarters—588—described as antisemitic acts (figures community-based organizations believed to be generally accurate). These included 463 threats and 125 acts of violence (70 physical assaults, 46 cases of vandalism, and six cases of arson).<sup>322</sup> Of the 229 racist attacks and threats that were not antisemitic, 81 percent targeted people of North African (Maghreb) origin. These included 92 acts of violence—56 of which occurred on the island of Corsica. The head of the CNDCH, Joel Thoraval, told the press the figures showed a shift from the 1990s, when “the dominant trend was hostility to North African immigration,” to a new situation of “hostility against Islam, against Muslims,” combined with other factors.<sup>323</sup>

The CNCDH report for 2004 shows a dramatic escalation in antisemitic and racist acts over the previous year, with the combined total reaching 1,564: a 133 percent increase over the previous year’s total of 833.<sup>324</sup> Of these, 369 were classified as violent acts and 1,196 as lesser offenses.<sup>325</sup> Violent acts against people and property doubled, from 189 in 2003 to 369 in 2004, with 56 individuals suffering serious injuries (36 of them victims of antisemitic acts). The report summarized what it called a “paroxysm of violence” “affecting the Jewish (970 acts) and immigrant (595 acts) communities.”<sup>326</sup>

As noted, antisemitic acts rose in 2004 to 970, compared to a total of 588 registered in 2003, a 62 percent increase.<sup>327</sup> Of 200 violent antisemitic incidents, 117 were classified as assaults. There were also six arson attacks and sixteen acts of desecration of synagogues; six schools vandalized; fifteen cemeteries and monuments desecrated; one Jewish home bombed, another attacked by arson, and twelve vandalized; and three Jewish shops and two Jewish community centers vandalized.<sup>328</sup>

Attacks classified as acts of “racism and xenophobia,” largely against targets described as “North African,” also rose dramatically, more than doubling from 232 in 2003 to 595 in 2004.<sup>329</sup> The 169 violent acts registered, as noted, included 38 bombings, 44 arson attacks, and 45 acts of vandalism and desecration.<sup>330</sup> Ten mosques were set alight in arson attacks; two were vandalized and desecrated. One Muslim school was

vandalized, another set on fire. Muslim graves were desecrated in eight cemeteries. Arsonists set fire to nine Muslim shops and five Muslim homes (three in Corsica). Bombings in Corsica destroyed eleven shops, eighteen homes, and nine private vehicles.<sup>331</sup>

The 2004 report also analyzes the available data on the *perpetrators* of the incidents registered. In the case of antisemitic violence, the report’s statistical analysis finds that of the universe of 200 cases, 119 (60 percent) cannot be attributable to any particular sector; 14 (6 percent) can be attributed to the extreme right; and 67 (34 percent) can be attributed to the community of “Arab-Muslim origin.”<sup>332</sup> In a breakdown of the overall figure of 970 antisemitic “threats and acts” registered in 2004, the report identifies 260 as having been linked to the “Arab-Muslim” community (27 percent).

The analysis of the total of 169 violent “racist/xenophobic” (“anti-immigrant”) acts, in turn, attributes 23 percent to “the extreme right,” 48 percent to Corsican extremists, and 5 percent to “Ultra-Zionists” (with 24 percent “other”).<sup>333</sup>

This categorization is clearest in the 2004 report’s extensive appendix that summarizes the most serious incidents, with each entry giving the date, place, and nature of the incident, and, notwithstanding the principle of non-identification of ethnic or other minorities, a description of both the victims and the suspected perpetrators. When the victims or the perpetrators are members of a minority, this is in fact identified. Examples from cases of anti-*maghrébin* and anti-Jewish incidents (concerning French citizens unless stated otherwise) show the methodology and the level of detail even in the published summaries of cases.

The “[n]on-exhaustive list of the most serious cases” of violence appears to cite directly from police reports, identifying both victims and perpetrators by their perceived origins (and without reference to any of the victims or perpetrators having been foreign nationals). Examples from the section on antisemitic violence in which members of minorities are identified as the perpetrators include the following:

- On January 17, in Boulogne-Billancourt, a minor “of Jewish confession,” was assaulted in a municipal skating rink, by

four minors of Maghreb origin proffering antisemitic insults.

- On February 2, in Creteil, stones were thrown at the playground of the lycee-college Israelite Ozar Hatorah, shortly after the director was the object of “threats from a student of African origin from a nearby public school.”
- On February 5, in Bagnolet, a Jewish student “who was threatened and insulted repeatedly, was the object of an attempted assault, by two “former students of Maghreb origin.”
- On February 26, in Paris, a man sitting in a sidewalk café was punched and insulted with antisemitic slurs, “by three individuals of Maghreb origin.”
- On March 3, in Lyon, four students “of Jewish confession” of the Georges-Clemenceau college were pursued by “some fifty young people of Maghreb origin who threw stones and fire-crackers at them.”
- On March 8, a man wearing a *kippa* was assaulted with antisemitic slurs and stones by two individuals, “one of African origin, the other of Maghreb origin.”
- On March 20, a family leaving a synagogue was struck with tear gas “by a group of individuals of African origin”; fourteen people were questioned.
- On March 26, a bottle was thrown from a car at a family’s first floor apartment window, accompanied by antisemitic slurs, “by three or four individuals of Maghreb type.”

Similarly, in the summary accounts of 165 incidents defined as “racist and xenophobic” (in contrast to “antisemitic”), victims and perpetrators were categorized loosely by origin, when distinct from the French majority, while details about any imputed ties of the perpetrators to extremist groups were spelled out:

- On January 21 in Paris, a young man of Maghreb origin was struck in the head by a member of a group of “some twenty

young ultra-Zionists”; five were questioned.

- On February 20, in Paris, two young men of Maghreb origin were attacked by young men of the Jewish community.
- On February 29, in Nice, an individual of Maghreb origin was assaulted; a militant of the extreme right *Jeunesses Identitaires*, was convicted of the crime.
- On March 18, in Longuenesse, a student of Maghreb origin was assaulted in the lycee Blaise-Pascal by “five hooded individuals . . . proffering racist insults.” The suspects include two students of the lycee.
- On May 15, in Villeurbanne, a young man of Maghreb origin was assaulted by young Jewish men (“*des jeunes Israelites*”).
- On May 24, in Sainte-Croix-en-Plaine, two *maghrébins* were assaulted, shot with a pistol by “a skinhead.”
- On September 7, in Valenciennes, a young woman of Maghreb origin was assaulted by three young men who hit her, spat on her, and proffered racist insults.
- On October 5, in Beaucourt, a vehicle was set on fire with the legend “Arabs Out” written next to it.
- On November 12, in Roisel, there was an assault on two workers of Maghreb origin “with blows from baseball bats and iron bars carried by five young men with shaved heads.”

There are no cases involving Roma in the 2004 report, and just six concerning assaults on people of African origin, including a Congolese citizen:

- On February 21, in Boulogne-Billancourt, three young people of African origin were assaulted. “Five ‘skinheads’ are under investigation, two of them close to the extreme right movement *Jeunesses Identitaires*.”
- On February 25, in Paris, young people (*jeunes*) of African origin were assaulted



- by “some twenty young people from the Jewish community.”
- On April 23, in Lyon, an individual of African origin was “beaten by two waiters who refused him entrance to a bar because of the color of his skin.”
  - On November 18, a college student of African origin was subjected to “[b]lows and racist insults by five young men, on the school bus.”
  - On August 25, a young Congolese man was beaten with a metal belt; two skinheads were charged and convicted of the crime.
  - On June 5, 2004, two individuals were assaulted with an edged weapon, one of Guinean origin, the other Portuguese; “an individual was questioned for multiple racist and antisemitic assaults.”

The CNCDH report for 2004 shows that detailed police reports are, in fact, compiled on complaints of racist violence in France; these include details on both the complainant’s own identity and the perceived identity of the perpetrator. The basis for this is unclear, both as to whether the complainant’s own self-identification is taken into account and whether general assertions that perpetrators were “Arabs,” “Africans,” or “*maghrébins*” (or, in a small number of cases, Jews), are registered without question. The identification of perpetrators may reflect observations by the victims of crimes or the presumptions of law enforcement personnel, particularly when no arrests are made.

The ready characterization of perpetrators as *maghrébin*—or, in a number of cases, of African origin, or as “young Jewish men”—in a police complaints system without clear safeguards against racial profiling could exacerbate discriminatory practices, particularly when French policy bars statistical analysis based on ethnic and related categorizations by which discriminatory patterns and practices in policing could be discerned. The guidelines for police reports of this kind might offer further insights into ways to accurately record information on hate crimes while providing safeguards against discriminatory police practices.

In describing “[t]he Balance of Racist and Antisemitic Acts in 2004,” the report divides its presentation of the overall situation of racist violence into two distinct categories: antisemitic acts and acts against “the immigrant community.”<sup>334</sup> There is a natural logic to the narrative and statistical analysis of the data on antisemitism. The second category, that of racist and xenophobic acts, however, is framed in a way that circumvents constraints on identifying France’s minorities as distinct population groups while adopting an umbrella designation that ultimately may prove far more harmful to the egalitarian ideal. Racism and xenophobia, in this analysis, apply to discrimination against “immigrants” (*les immigrées*, or “*la Communauté ‘immigrée’*”).

In practice, the racist and xenophobic offenses registered almost exclusively concern people described as “of North African origin”—the vast majority native-born French citizens. But under the “racism/xenophobia” heading, France’s minorities as a group are in effect described as *immigrants*, regardless of their French citizenship—a categorization suggesting less than the French ideal of *égalité*. A third- or fourth-generation French citizen who is the victim of discrimination because of the color of his skin might well prefer to have his French heritage acknowledged—to be characterized as an immigrant is to suffer another form of discrimination.

The methodology employed, while apparently responding to constraints on categorization based on race and other similarities, may inadvertently present the discriminatory treatment of French minorities as a response to a questionable status. Although most of the victims of racism in the case studies appear to be French citizens, use of the term *immigrée* implies that their status is less than that of other full-fledged French citizens, or that they are not French at all. While the racist violence documented in the CNCDH report affects members of ethnic, racial, and religious minorities who are long-time French citizens, recent immigrants, and foreigners, describing those affected by racist and xenophobic violence generically as the immigrant community introduces the ambiguity of immigration status as a new discriminatory factor.<sup>335</sup>

The CNCDH is clearly also aware of the broader dimensions of discrimination in France and has taken a number of steps to address this problem. The 2004 report includes, for example, the findings of a survey undertaken on its behalf by the BVA-Opinion Institute and co-sponsored by the government Information Service (Service d'Information du Gouvernement).<sup>336</sup> Using face-to-face interviews, the survey sought to identify the principal victims of racism and discrimination in France today. In a ranking of forms of discrimination, the survey found an overwhelming majority of respondents placed discrimination against ethnic, racial, or national minorities at the top; others, in declining order, included the poor, the handicapped, women, and homosexuals. A ranking based on perceptions of particular groups that are victims of racism put Muslims and North Africans at the top, followed by "Africans/Blacks," "Foreigners/Immigrants," "The 'Jews,'" "People of 'another skin color,'" "French/Whites/Europeans," "Europeans of Countries of the East," and "The Tziganes, Roms, and travelers."<sup>337</sup>

In its third report on France, ECRI expressed concern about antisemitism and discrimination against immigrants and people of immigrant origin as well as Roma and Travellers. Specifically, ECRI expressed concern at the continuing high levels of antisemitic violence, with recorded acts including "physical assaults; arson; desecration of synagogues; vandalism of shops and denominational schools, threats; insults; as well as an increase of negationist contentions."<sup>338</sup> Representatives of the Jewish community, it said, were concerned both at the level of violence, and "a change of the general climate of public opinion towards members of the Jewish community. This climate has worsened, arousing a sense of unease and anxiety within the Jewish community." ECRI cited several sources that attributed the major increase in recent years to "acts committed by youth from difficult neighbourhoods, of Arab origin and Muslim religion, who also engage in delinquent activity against everything which stands for law and order as a reaction to the social exclusion from which they suffer."<sup>339</sup>

The CERD Committee, in its March 2005 concluding observations, said it "shares the concerns expressed by the delegation [of the government of France] relating to the increase in

racist, anti-Semitic and xenophobic acts," and encouraged the government to apply more effectively "existing provisions designed to combat such acts; to grant adequate compensation to victims; to create greater awareness on the part of law enforcement personnel; and to intensify its efforts in the field of education and training of teachers in tolerance and cultural diversity."<sup>340</sup>

## Georgia

There is no general provision in Georgian law for racist motivation to be considered an aggravating circumstance in prosecutions of ordinary offenses. Certain crimes involving racist motivation are, however, defined as specific offenses in the Georgian Criminal Code of 1999, including murder motivated by racial, religious, national or ethnic intolerance (article 109); infliction of serious injuries motivated by racial, religious, national or ethnic intolerance (article 117); and torture motivated by racial, religious, national or ethnic intolerance (article 126).<sup>341</sup> ECRI reported no knowledge of cases in which this law has been enforced.

There is no systematic monitoring or data collection on discrimination in Georgia.<sup>342</sup>

## Germany

Under German criminal law, racist motives can be taken into account as aggravating factors in sentencing, although racially-motivated attacks are not defined as distinct crimes.<sup>343</sup> In its third report on Germany, issued in 2004, ECRI observed that

Section 46 of the Criminal Code contains a list of circumstances to be taken into account in determining punishment, which includes, in a general way, the motives and the aims of the offender. The racist motivation of an offence may therefore be taken into account in this context and the German authorities have reported that there are cases where stricter sentences have been handed down in consideration of the racist motivation of the offenders.<sup>344</sup>

However, "German criminal law does not explicitly provide for the racist motivation to be taken into account as a specific aggravating circumstance in sentencing."<sup>345</sup> As a consequence ECRI repeated

the recommendation made in its second report, in line with its General Policy Recommendation No. 7, that “the German authorities explicitly provide in law that racist motivation constitutes an aggravating circumstance of all offences.”<sup>346</sup> This was most recently rejected by German authorities in their April 2005 report under the Framework Convention on National Minorities.<sup>347</sup>

In considering the importance of training law enforcement officials, prosecutors, judges and lawyers on measures to combat racist, xenophobic and antisemitic crimes, ECRI noted some progress, but also set out information that training in the use of the criminal justice system in this way lagged in certain regions of the country. ECRI also made recommendations for improving monitoring systems “by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin . . . with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group,” with systems also to take into account gender and discrimination on other grounds.

The German Penal Code includes a number of provisions through which hate speech and propaganda can be prosecuted, including by defining such crimes as criminal agitation (article 130), which includes attacking human dignity by arousing hatred against segments of the population in a manner likely to disturb the public peace; inciting racial hatred (article 131); insulting (article 185); and Holocaust denial (article 194).<sup>348</sup>

A source of statistical analysis is the State Security Division of the Federal Office of Criminal Police, which compiles nationwide statistics on politically motivated crimes, defined since January 2001 to include racist, xenophobic and antisemitic offenses.<sup>349</sup> In Germany official police statistics on criminal offenses with a “right-extremist” background showed a yearly increase from 1995 until 2001, when there was a significant decline in registered offenses, followed by a rise in 2002. Of these, crimes of violence were an estimated 6 to 8 percent of the total, while some two-thirds of all offenses were described as “propaganda crimes.”<sup>350</sup>

In 2002 offenses registered in the category “politically motivated criminality—right wing,” totaled 10,902 (rising from 10,054 in 2001)—of which 772 (709 in 2001) were violent crimes. This included eight cases of attempted manslaughter). The offenses registered in 2002 involved injuries to 319 persons.<sup>351</sup>

ECRI’s third report on Germany found “a marked increase in antisemitic propaganda cases,” with a rise also in “[a]ntisemitic violence against individuals and against property.”<sup>352</sup> “Antisemitic letters, telephone calls and threats directed toward members of the Jewish communities and their organisations are also reported to have increased.”<sup>353</sup> ECRI attributed the development of antisemitic attitudes in Germany in part to “perceptions with respect to contemporary events in the Middle East . . . sometimes linked with inappropriate associations and expectations placed upon Jewish communities living in Germany concerning events in the Middle East.”<sup>354</sup>

The EUMC’s December 2004 report on migrants and minorities discussed the distinction between attacks on foreign nationals and minorities who were German citizens: two-thirds of the victims of all bias offenses were foreign nationals; of the total, almost half of the victims of racist violence were asylum seekers.

The EUMC report also stressed

that persons who, because of their outward appearance, are “easily identifiable” as non-Germans (e.g. Turks, people of African origin, Sinti and Roma, or Vietnamese nationals, particularly in Eastern Germany) are more likely to fall victim to right wing extremist violence. Another 10% of victims are *Spätaussiedler* (ethnic German immigrants), who are often labeled as foreigners (“Russians”). Almost one fifth of the victims of racist violence were German nationals (excluding *Spätaussiedler*).<sup>355</sup>

Discrimination against Germany’s Muslim population, estimated at some 3.2 million, including 500,000 German citizens, is reported by nongovernmental monitors to have remained at a high level since September 2001. In its third report last year, ECRI described aspects of public policy that have encouraged the marginalization of

Muslims, creating the conditions for discriminatory violence:

Organisations working within civil society to promote integration of Muslims report that they face suspicious attitudes and discrimination by *Länder* authorities with respect to issues such as opening of places of worship and *kindergartens* or provision of religious instruction in schools. Muslim women who wear the headscarf are reported to be particularly vulnerable to racism and discrimination, as reflected in reports of insults and harassment and in reports of harassment and discrimination in employment. . . . More generally, Muslim organisations report that efforts by Muslims to integrate into German society are often met with reticence, notably by public authorities and the media.<sup>356</sup>

ECRI expressed concern in its third report that members of “visible minorities,” “notably black, minority groups are especially vulnerable to certain particularly serious manifestations of racism, such as racially motivated violence and harassment, and to racial discrimination.” Discriminatory treatment by private citizens is encouraged by the treatment of members of these groups by public authorities: “This group of persons is reported to be disproportionately subject to checks carried out by the police and disproportionately singled out for controls in railway stations and in airports.” Although members of such minorities are particularly vulnerable if they are non-citizens, the report stressed that “Germans of ethnic minority background are also victims of these phenomena.”<sup>357</sup>

In its first compliance report as a party to the Council of Europe’s Framework Convention for the Protection of National Minorities, in 2000, Germany provided significant information on government policies toward the German Roma and Sinti, estimating the total population of these minorities at that time at around 70,000.<sup>358</sup> In its 2004 report, ECRI highlighted the continued high level of discrimination against Roma and Sinti, despite their having been recognized as a national minority. Roma and Sinti who are not German citizens “appear even more vulnerable” to discrimination. They “continued to be the victims of racist attacks and harassment, and the subject of racist propaganda,” while their memorial sites

have been desecrated by extreme-right wing groups.<sup>359</sup>

In summary, ECRI considered racist, xenophobic, and antisemitic violence among the “most dangerous” expressions of racism in Germany today, with continuing reports of “attacks, some resulting in death, against members of minority groups, including asylum seekers, members of Jewish communities, Roma and Sinti”:

there are areas in Germany where persons belonging to these groups are afraid to appear in public. Non-governmental organisations and representatives of minority groups report that racist, xenophobic and antisemitic violence constitute a concrete threat for these persons in many regions of the Eastern *Länder*, but also in a growing number of areas in the Western *Länder*.<sup>360</sup>

Although the data were incomplete, ECRI found that the attacks were increasing, and that racist violence was “a priority area for action in Germany.”<sup>361</sup>

## Greece

In Greece racist offenses are not defined as specific offenses and racist and other bias motivation is not expressly established in law as an aggravating circumstance in common offenses.<sup>362</sup> In both its second (December 1999) and third reports on Greece (December 2003), ECRI encouraged Greek authorities to make express provision in law for racist motivation to be considered as an aggravating circumstance in the case of all common offenses.<sup>363</sup> Article Law 927/1979 makes punishable incitement to racial discrimination, hatred, or violence.<sup>364</sup> A procedural reform introduced after ECRI’s second report allows the public prosecutor to press charges under the law even when the victim has not filed a complaint. No successful prosecutions, however, have been brought under law 927/1979.<sup>365</sup>

ECRI in its December 2003 report said it had been informed by the Greek authorities that since the adoption of its second report, “there have been very few prosecutions and convictions” under criminal law provisions addressing racist offenses, “although a few exemplary penalties have been imposed.”<sup>366</sup> It challenged an explanation given by the authorities to account for

this situation, “that such offences only constitute isolated cases in Greek society,” noting reports that racist incidents have in fact occurred in Greece, “including racist statements made in public or reported in the press, and acts of racist violence—and that such incidents have not been prosecuted or indeed given all due attention by the Greek authorities.” It found that the problem “may not necessarily be the result of a deficiency in terms of criminal law provision, but rather of an interpretation of the notion of racism by certain judicial authorities, leading to either no charges being brought, or charges being dropped in these cases.”<sup>367</sup>

The EUMC, in its December 2004 report on migrants and minorities in the E.U., notes that despite failing to apply anti-racism legislation, some cases involving racist motives were prosecuted on the basis of other provisions of criminal law. A notorious case is cited, concerning a man convicted for the murder of two and the serious injury of seven immigrants in October 1999, who was sentenced to serve two consecutive life sentences by the Appeal Criminal Court of Athens in November 2002. “Even in this case, though, he was not charged with violation of the anti-racist law 927/1979, although the Court, described him as a ‘racist murderer.’”<sup>368</sup>

In another pending case, two men were charged with the murder of an Albanian on September 4, 2004, on the island of Zante (*Zakynthos*), during a night of nationwide anti-Albanian violence following the defeat of the Greek football team in Tirana. In a case in which the family of the victim was represented by the Greek Helsinki Monitor, a nongovernmental human rights group, the two were charged with multiple common crimes, including homicide, but no charges were brought under Law 927/79.<sup>369</sup>

The EUMC noted in December 2004 that “no official institutions that register and record complaints are in place.”<sup>370</sup> This “complete absence of public monitoring or complaints mechanisms,” in turn, is held to obstruct “both the collection of data on racial discrimination, and efforts to combat it.”<sup>371</sup> In its second report, ECRI encouraged Greek authorities

to consider ways of establishing a coherent and comprehensive means of data collection

to enable the situation of the various minority groups living in Greece and the extent of manifestations of racism and discrimination to be assessed. Such a system of data collection should be based on the voluntary self-registration of the persons involved, and be designed with due respect paid to the right to privacy and to standards of data protection.<sup>372</sup>

ECRI has repeated its past recommendations that Greek authorities create an independent body specialized in combating racism and racial discrimination, in line with Council of Europe guidelines.<sup>373</sup> Article 13.2 of the E.U.’s Racial Equality Directive (2000/43) also requires such specialized bodies. A bill transposing the terms of the Racial Equality Directive was introduced in February 2003, which included relevant provisions of the Directive.<sup>374</sup> The law subsequently enacted to supersede the Race Directives, Law 3304/27-1-2005, provided for three anti-discrimination bodies to fulfill the requirements of the directive. At the time of writing, however, no progress had been made in implementing the terms of the law regarding these specialized bodies.<sup>375</sup>

The EUMC’s December 2004 report on migrants and minorities found the Roma population among the principal victims of incidents of racist violence and harassment primarily at the hands of the police and local authorities. In addition, it found that ethnic Greeks from the former Eastern Block and Albania and the immigrant and refugee population in general suffers racist violence, harassment and discrimination, in particular by “indifferent public authorities and particularly by the police.”<sup>376</sup>

Police abuse of members of Greek minorities and immigrants had been addressed previously by ECRI in its second report, which had expressed particular concern at the situation of Roma and people of Albanian origin. Roma, in particular, were targeted for police abuse, with the excessive use of force “in some cases leading to death,” in most cases without serious investigations ensuing. Abuse of Roma often occurred when they were expelled from communities where they sought to settle: “These expulsions were sometimes accompanied, apparently unhindered by the police, by the destruction and arson of houses, and by threats and humiliating treatment by local authorities and municipal employees.”<sup>377</sup>

Others facing particular threats included Albanians, estimated to comprise some half the immigrant population in the country, and the small Greek Muslim minority in Western Thrace.<sup>378</sup>

Advocacy against discrimination on the basis of sexual orientation in Greece was a factor leading to a violent assault in 2005 in at least one case. One of the best known advocates of gay rights in Greece, Gregory Vallianatos, was attacked and severely beaten on April 11, 2005, in Athens' central Kolonaki Square while his assailant shouted anti-gay slurs. Vallianatos is also the chairman of the Greek Helsinki Monitor. Charges were filed against an Athens lawyer who was well known for his repeated public attacks on gays and lesbians through the news media, and for attacking Vallianatos specifically because of his advocacy of gay rights. The accused later repeatedly justified the beating on the grounds that he was driven to the act by "reasonable indignation" at Vallianatos' public statements.<sup>379</sup> At the time of this writing, no progress had been reported in the case, although the Athens Bar Association on May 10, 2005, reportedly suspended the attackers' membership for six months.<sup>380</sup>

## Holy See

The Holy See is a party to the International Convention on the Elimination of All Forms of Racial Discrimination.

In its concluding observations on the periodic report of the Holy See on its implementation of the convention, the CERD Committee recommends "that the State party implement, as appropriate, the Convention, and invites it to provide in its next periodic report information on the relationship of article 4 to Canon Law and Penal Law in Vatican City State."<sup>381</sup>

## Hungary

Acts of violence, cruelty, or coercion by threats because of the victim's membership or supposed membership in a national, ethnic or religious group are punishable under article 174/B of the Criminal Code. In its second report on Hungary (March 2000), ECRI expressed concern that implementation of these provisions was insufficient, "[g]iven the extent of racially-

motivated violence and threats in Hungary, particularly directed against members of the Roma/Gypsy community, but also targeting non-citizens." It found that as a rule "authorities have . . . been unwilling to admit the racial or antisemitic motivation of attacks" and that attacks "are infrequently prosecuted, or are not prosecuted as racial attacks."<sup>382</sup>

ECRI recommended that authorities

closely monitor the application of criminal law in this field through the collection and publication of data on the number of offences reported to the police, the number of cases prosecuted, the reasons for non-prosecution and on the outcome of cases prosecuted. In particular, the police should be instructed to consider as a matter of course whether cases of violence are of a racist nature and to class them as such, rather than simply to class such cases as physical injury as is now often the practice.<sup>383</sup>

## Iceland

Iceland does not have laws providing expressly for racist or other bias motivations to be considered aggravating circumstances in criminal sentencing.

In its December 2002 report on Iceland, ECRI recommended the introduction of criminal laws "providing that the racist motivation of crimes be taken into account by the courts as an aggravating circumstance when sentencing," or defining ordinary crimes with a racist motive as specific crimes.<sup>384</sup>

## Ireland

Irish criminal law does not define common offenses of a racist or xenophobic nature as specific offenses nor does it expressly provide for the courts to take into account racist motivation as an aggravating circumstance when sentencing.<sup>385</sup>

The Prohibition of Incitement to Hatred Act 1989 makes it an offense to incite hatred against any group of persons on account of their race, color, nationality, religion, ethnic or national origins, or membership of the Traveller community, an indigenous minority group.

There is no systematic monitoring or data collection on racist or other bias incidents or crimes in Ireland. In its second report on Ireland (2002), ECRI notes that “the police do not record the possible racist element of crimes in a systematic fashion, partly due to the lack of laws defining crimes as racist.” It urges police to adopt “a systematic and country-wide system of data collection concerning racist crimes as swiftly as possible.”<sup>386</sup>

ECRI identified several groups that are vulnerable to discrimination in Ireland, including Muslims, “visible minority groups,” and Irish Travellers. Ireland’s approximately 12,000 Muslims have reportedly faced discrimination including “harassment and even one case in which a mosque was firebombed,” while Muslim girls wearing the *hijab* have been refused entry in schools. Members of “visible minorities” are subject to “verbal harassment and even physical attacks on the streets,” and “a tendency to perceive all members of such minorities as asylum seekers and to treat them in a negative fashion as a result, and to reject the concept that a person might be both black and Irish.”<sup>387</sup>

Members of the Traveller community, which has traditionally faced discrimination in all areas, have also been “victims of violence and harassment, including arson attacks against their property.”<sup>388</sup> ECRI also notes reports of discriminatory behavior by law enforcement towards members of minority groups, “including raids on Traveller sites on suspicion of criminal activity, and ill-treatment of black detainees,” and recommends the creation of an investigative mechanism to address such incidents that is independent of the police.<sup>389</sup>

## Italy

In its second report on Italy, made public in April 2002, ECRI notes that Italy has made racist intent an aggravating circumstance in its criminal law: “Section 3 of the Law No. 205/1993 introduces a general aggravating circumstance for all offences committed with a view to discrimination on racial, ethnic, national or religious ground or in order to help organisations with such purposes. The Law also provides that any racially aggravated offence is prosecuted *ex officio*.”<sup>390</sup>

Statistics on racist crimes in Italy are produced by the Ministry of Interior, based on cases presented to the courts, and, according to an EUMC survey, have varied greatly, declining from 50 cases in 1996 to just 3 in 1999, then rising to 85 in 2000 and 75 in 2001. Of the 2001 cases, just over half (52 percent) were classified as threats and insults. Thirty percent were physical assaults, 10 percent arson, and 8 percent involved other material damage. The official characterization of the motives of the “ordinary citizens” responsible for most of the assaults, as cited in the EUMC report, can be read as putting the blame in part on provocative behavior of the victims:

Physical attacks are attributed to “ordinary citizens without any particular ideological inclinations” who are said to “act in such ways because irritated by certain behaviour of non-EU citizens, who are often considered as the main causes of crime in the country.”<sup>391</sup>

In contrast, arson is reported generally to have been carried out using Molotov cocktails, “for the most part, by groups of persons linked to extremist groups and acting collectively and with some planning.”

One successful prosecution of a ruling coalition politician for the 2002 arson attack on a hostel for migrants illustrated both the political backdrop to racist violence in Italy and the leniency with which potentially lethal racist violence has been dealt with by the courts:

A Member of the European Parliament from the Northern League Party was sentenced to a 5 months jail term with a conditional suspension in October 2002, because he had been found guilty of involvement in a case of arson that destroyed the temporary shelter of some undocumented migrants in the city of Turin in the summer of the same year.<sup>392</sup>

Threats expressed through letters or graffiti are said to target places of worship, reception centers, Roma camps, or businesses owned by either members of Jewish communities or non-E.U. citizens. These acts are attributed, for the most part, to young people between 18 and 25 years old who paint Nazi symbols on their targets or display them during sports events.

According to government sources, all cases of racist crimes recorded in the year 2001 occurred

in the central and northern regions of the country, with Lazio, the province where Rome is situated, registering the highest number of cases, followed by Veneto, Tuscany, and Emilia Romagna, respectively.

In the aftermath of the September 11 attacks, the level of anti-immigrant and anti-Muslim rhetoric in public discourse in Italy, as well as the level of actual violence against minorities, rose significantly. An EUMC report on the anti-Muslim backlash throughout the European Union found an “upsurge in acts of aggression” and concluded that by early 2002, “public expressions of hate, Islamophobia and ethnic xenophobia became legitimized.”<sup>393</sup>

In its September 2001 comment on Italy’s implementation of the Framework Convention on National Minorities, the Advisory Committee expressed particular concern about the Roma as a minority that is both socially and economically disadvantaged; in conditions that “strengthen negative stereotypes”; and “isolated from the rest of the population by being assembled in camps where living conditions and standards of hygiene are very harsh.”<sup>394</sup> Societal attitudes toward Roma and the distrust of authorities by Roma communities result in racist assaults on Roma being underreported; these may be exacerbated by the extent to which Roma are also victims of racist violence by law enforcement personnel.

According to certain credible allegations, the conditions under which the police forces operate in the camps sometimes lead to excesses: frisking, search of premises and interrogations surrounded by a disproportionate show of force are said to be frequently extended to the entire camp and to occasional acts of police brutality including insults with racist connotations. It also emerges that some police officers refuse to state the reasons for the measures taken and to show those concerned the warrants authorising them to proceed.<sup>395</sup>

Discriminatory treatment of Roma in Italy also extends to the right to nationality, described by some jurists as “the right to have rights”: the foundation from which civil and political rights are most effectively defended. The Advisory Committee expressed concern at information that many Roma meet “with severe difficulties in their

attempts to acquire Italian citizenship,” including “individuals who have resided in Italy for some decades or were even born there.”<sup>396</sup> The Committee set out its views that the Italian authorities should ensure that the legislation on granting of citizenship is applied in a fair and non-discriminatory manner to all applicants—and especially to the Roma living in camps.<sup>397</sup>

## Kazakhstan

Kazakhstan is a party to the International Convention on the Elimination of All Forms of Racial Discrimination.

In its December 2004 concluding observations on the periodic reports of Kazakhstan under the convention, the CERD committee noted that “there is no specific legislation in the State party regarding racial discrimination,” and recommended the enactment of “law regarding racial discrimination, implementing the provisions of the Convention, as well as a legal definition of racial discrimination that complies with the provisions of the Convention . . . .”<sup>398</sup>

The committee acknowledged constitutional and other provisions prohibiting propaganda regarding racial or ethnic superiority, but expressed concern about “the insufficiency of specific penal provisions concerning article 4(a) of the Convention in the domestic legislation of the State party,” which requires that the State

declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

The committee recommended that Kazakhstan adopt such legislation.<sup>399</sup>

Reporting on the situation of ethnic minorities in Kazakhstan was described by the CERD committee as incomplete, and the committee accordingly requested that the government “include information in its next periodic report on the situation of all minority groups, in particular the Roma, and in this connection draws the attention



of the State party to its general recommendation XXVII on discrimination against Roma.<sup>400</sup>

## Kyrgyzstan

Kyrgyzstan is a party to the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>401</sup>

In its 1999 concluding observations on Kyrgyzstan's periodic report, the CERD committee, noted in 1999 that

the Constitution of the State party prohibits any kind of discrimination on grounds of origin, sex, race, nationality, language, faith, political or religious convictions or any other personal or social trait or circumstance, and that the prohibition against racial discrimination is also included in other legislation, such as the Civil, Penal and Labour Codes.<sup>402</sup>

The committee requested that the state provide further information on “the measures taken to resolve the underlying problems which resulted in clashes and unrest between ethnic Kyrgyz and Uzbek inhabitants in Osh Oblasty so as to prevent the recurrence of such incidents.” The committee also requested further information “related to the criminal proceedings brought against individuals involved in the incidents, and to what extent convictions were directly linked to acts of racial discrimination.”<sup>403</sup>

According to the International Helsinki Federation, article 299 of Criminal Code punishes incitement to national, racist, or religious hatred, and has been invoked in political trials of suspected members of the banned organization Hizb-ut-Tahrir.<sup>404</sup>

## Latvia

There are no provisions in Latvian law that explicitly enable the racist or other bias motives of the offender to be taken into account by the courts as an aggravating circumstance when sentencing.

The Criminal Code's article 78 prohibits “incitement to national or ethnic hatred or enmity as well as the direct or indirect restriction of economic, political or social rights of—and the direct and indirect creation of privileges for—individuals on the basis of their racial or national origin.” But, according to ECRI's July 2002

country report, the Latvian authorities “rarely identify the intention to incite to racial hatred. Very few prosecutions and convictions have been secured under Article 78.”<sup>405</sup>

ECRI encouraged Latvia to create a specialized body to combat racism and intolerance, or to provide the funds and personnel that would be required for the National Human Rights Office (NHRO) to assume this function. This was proposed in the context of a parallel recommendation for adoption “of a comprehensive framework of anti-discrimination legislation.” Similarly, in noting the absence of reliable data on the situation of minority groups and incidents of discrimination, ECRI found that “it is necessary to set up a system of data collection and monitoring, in order to uncover and remedy any problems, including differences related to direct or indirect discrimination.”<sup>406</sup>

## Liechtenstein

Article 33(5) of the Criminal Code of Liechtenstein, as amended in December 1999, specifies that racism, xenophobia and similar motives are aggravating circumstances for a criminal offence.<sup>407</sup> Article 283 publishes a range of other crimes involving racist motivation. ECRI, in its second report (2003) notes, however, that criminal proceedings have been initiated in a few cases “concerning incitement to hatred and in one case for the offence of racial discrimination and other punishable offences of a violent nature,” but that few judgments have been handed down.

ECRI's second report also found “a lack of statistics on cases of racist incidents” and encouraged Liechtenstein to adopt of a system of monitoring, classifying and recording racist incidents and to follow up and record measures taken to address them.<sup>408</sup>

## Lithuania

Lithuania's Criminal Code does not provide for the racist or other bias motivation of common offenses to be taken into account as a specific aggravating circumstance in sentencing.<sup>409</sup>

There is no specialized anti-discrimination body in Lithuania, although there are three Ombudsmen's Offices: the Parliamentary Ombudsmen, the Equal

Opportunities Ombudsman and the Children's Rights Ombudsman.<sup>410</sup>

## Luxembourg

There is no law in Luxembourg providing that racist or other bias motivation constitutes an aggravating circumstance for any offense.

ECRI's July 2003 report noted that criminal law provisions aimed at combating racism and racial discrimination "have rarely been applied and have given rise to very few sanctions by the courts" in Luxembourg.

A report prepared by the police at the request of the Office of the Attorney of the Court of Luxembourg, covering 1999, 2000, and 2001, described "a small number of cases (three in 1999, ten in 2000 and fourteen in 2001), mainly involving racist or antisemitic insults or graffiti," with no incidents of violence. ECRI cautioned that the general presumption that little in the way of hate crimes was reported because conditions were generally good required further testing—a cautionary note that could apply wherever strong monitoring and reporting systems are not in place:

One of the reasons often given for the scarce implementation of criminal provisions aimed at combating racism and discrimination is the small size of the country and the resulting close community relationships. It is suggested that criminal prosecution is rarely considered the best way of resolving these cases. It has also been mentioned that the victims of racist acts are often vulnerable people who, fearing reprisals if they go to the courts, choose not to do so. ECRI considers that the members of the police and the prosecuting authorities should continue to pay due attention to the racial aspects of certain cases and should not hesitate to instigate proceedings on the basis of the relevant criminal law provisions.<sup>411</sup>

## Macedonia

There is no law in Macedonia expressly providing for the racist or other bias motivations of common offenses to be taken into account as a specific aggravating circumstance in sentencing. It is, however, within the scope of a judge's discretion to consider a crime involving racial motivation as more serious and, therefore, deserving of a higher

penalty.<sup>412</sup> ECRI, in its second report on Macedonia (April 2001), recommended an express recognition in law that racist motivation represents an aggravating circumstance, while noting that "few, if any, cases involving racism or discrimination have been brought to court under the above listed criminal law provisions."<sup>413</sup>

## Malta

Malta does not have laws providing expressly for racist or other bias motivations for crimes to be considered aggravating circumstances in sentencing.

In its December 2001 report on Malta, ECRI encouraged authorities to introduce criminal law provisions allowing for the racist motives of offenders to be taken into consideration as an aggravating circumstance when sentencing and defining ordinary crimes with racist motives as specific crimes. ECRI reported that it was "pleased to learn that the Office of the Attorney General is currently examining the possibility of penalizing discrimination on racial grounds and of introducing the concept of racism as an aggravating circumstance."<sup>414</sup>

## Moldova

Article 38 of the Criminal Code of Moldova stipulates that grounds of national or racial hostility constitute aggravating circumstances in relation to a crime. According to the Moldovan authorities, very few cases involving racist acts have so far been brought before the courts.<sup>415</sup>

## Monaco

Monaco has been a party to the International Convention on the Elimination of All Forms of Racial Discrimination since 1995. Monaco joined the Council of Europe on October 5, 2004.

Monaco's criminal law does not expressly provide for racist or other bias motivations to be considered aggravating circumstances in sentencing, nor does it define common offenses motivated by racism or other bias as specific crimes.<sup>416</sup> In 2005, Monaco informed the ODIHR that hate crime statistics were not available.<sup>417</sup>

## Netherlands

There is no provision in Dutch criminal law to punish common offenses with a racist motivation as specific offenses, or explicitly providing for the racist motives of the offender to be taken into account as an aggravating factor in sentencing.<sup>418</sup> In its second report on the Netherlands in 2001, ECRI noted that “the police tend to treat these cases as offences under general law, and that the racist element is often neglected.” However, “the guidelines for discrimination cases for the police and public prosecution service stipulate that, in such cases, the prosecution must emphasize the racist motivation in its closing remarks and take it into account when deciding what sentence to demand.”<sup>419</sup>

The Criminal Code of Netherlands expressly punishes discrimination in several provisions:

insults expressed publicly for the purpose of discriminating on racial and other grounds (Article 137c); incitement to hatred, discrimination and violence on grounds of, *inter alia*, race (Article 137d); and publicising or disseminating these expressions, other than for objective publication (Article 137e). Article 137f penalises the participation in or support of activities with the purpose of discriminating on racial or other grounds. The Criminal Code furthermore penalises racial discrimination in the exercise of a public service, profession or trade (Article 137g) and discrimination in the exercise of one’s office, profession or business (429quater).<sup>420</sup>

According to ECRI, however, relatively few cases are brought before the courts on these charges.

ECRI also reports on guidelines for discrimination cases that have been produced for the police and public prosecution service, “instructing law enforcement officials to improve preliminary investigation in discrimination cases and to deal more effectively with allegations of racial discrimination.” There have been, however, complaints that these are often not adhered to and cases are dropped because of the perceived difficulty of investigating. ECRI notes that: “Although the parties whose interests are at stake can request the district court to order the Public Prosecutor to continue prosecution, it has been suggested that the Public Prosecutor should

initiate legal proceedings in all discrimination cases and provide an explanation in cases where it decides not to prosecute.”<sup>421</sup>

The Board of Prosecutors General, which provides guidelines to police and prosecutors, issued instructions that became effective in April 2003 concerning the registration of complaints of racist violence. Those require “all reports and complaints concerning discrimination [to be] recorded by the police,” with the police “to periodically report cases of discrimination that have come to their attention to the public prosecutor.”<sup>422</sup> The National Discrimination Expertise Centre (LECD), which is part of the Public Prosecution Service, is charged with creating a central registry of discrimination cases, including cases of racist violence, and to produce annual statistics.<sup>423</sup>

The Dutch Intelligence Service, in turn, requests information on violence attributed to the extreme right from the country’s 25 police regions, which it processes and also makes available to the Dutch Monitoring Centre on Racism and Xenophobia.<sup>424</sup>

Monitoring and reporting is undertaken on a decentralized basis by both governmental and nongovernmental bodies. The Dutch Monitoring Centre itself is a collaboration between the Anne Frank Foundation and Leiden University and the National Bureau against Racial Discrimination (LBR) and National Association of Anti-Discrimination Bureaus and Agencies. (The latter is a network of local anti-discrimination centers throughout the Netherlands, funded by local government, that takes action in individual cases.) The Monitoring Centre produces an annual report on hate crimes and extremist groups in the Netherlands. Nationwide monitoring and anti-racism action is also conducted by the Dutch Complaints Bureau for Discrimination on the Internet (Meldpunt Discriminatie Internet, or MDI), and by the Israel Information and Documentation Center, which produces detailed reports on antisemitic violence.

The EUMC’s December 2004 report on migrants and minorities cited statistics of the Dutch Monitoring Centre that showed an increase in racist acts from 1996 to 2000, with the majority of incidents registered consisting of racist graffiti and threats. After 2001, other categories of abuse

increased significantly, with violence by the extreme right becoming more prominent and more incidents targeting asylum seekers and the centers providing them with assistance.<sup>425</sup>

Statistics from official and unofficial sources have differed significantly. The EUMC's April 2005 report on racist violence in the EU provided some basic numbers from the National Discrimination Expertise Centre for 2001-2003, including the number from each total that represented discriminatory or racist "oral utterances" under section 137c of the Criminal Code: 198 offenses in 2001 (with 167 founded on the spoken word); 242 in 2002 (191 under section 137c); and 204 in 2003 (154 under section 137c).<sup>426</sup>

The Monitoring Centre, in contrast, provided higher figures year by year, with more useful breakdowns of the categories of offenses covered:

- In 2001, of 317 acts registered, 88 were threats, 52 were vandalism, 46 were assault, 37 were arson, and 1 was manslaughter. Eighteen antisemitic acts were registered.
- In 2002, of 264 acts registered, 83 were threats, 38 were vandalism, 75 were assault, and 10 were arson. In a change from the past, 139 of the attacks were against persons, not property. Thirty-one antisemitic, 68 anti-Islamic, and 46 anti-refugee attacks were registered.
- In 2003, of 252 acts registered, 73 were threats, 35 were vandalism, 60 were assault, 10 were arson, and 1 was a bomb scare. Thirty-nine were antisemitic, 59 anti-Islamic, and 15 anti-refugee.<sup>427</sup>

The 2004 report of the Monitoring Centre found that while violent incidents remained at about the same level as in 2002, there was a marked increase in violent acts involving groups of young people who identified themselves with right-wing ideologies. At the same time, the report found the police response to racist violence increasingly inadequate: "we established that the readiness of the police to register racist and right-wing extremist violence has fallen further. The clear-up rate has been extremely low for years, and that turns out to have been the case again in 2003."<sup>428</sup>

The statistics from the criminal justice system offer little reason for confidence in the light of independent evidence of a continued increasing level of racist violence:

The research into investigation and prosecution shows that the number of offences of discrimination reported to the public prosecutor fell by 16%. What is more remarkable, however, is the decrease in settlements of discrimination cases by almost 40%, while for all forms of criminal offences in 2003 there was actually a rise of 12%. The number of dismissals—17%—also stands in contrast to the national figure of 11%. In more than half of the cases, summonses turn out not to have led to court proceedings. The figures for convictions are disturbing. The number of cases brought before the courts have more than halved, and the percentage of acquittals has never before been so high: 7%. Here too there are marked deviations from the national pattern. In the chain of criminal justice the police—as also stated in previous reports—are the weakest link.<sup>429</sup>

The Centre's report also addressed discrimination against the Roma and Sinti population, while noting that a major ongoing issue is that population's lack of confidence in available complaints mechanisms. Few complaints are made to the Anti-Discrimination Bureaus or police. "Mutual suspicion between Roma and Sinti and the wider Dutch society plays an important role in this."<sup>430</sup> In its coverage of antisemitic incidents, the report concluded that violent acts declined in 2003.

The Centre's report highlights the weakness of systems currently employed by the police and prosecution services to register racist offenses. While acknowledging the stated intent of the Public Prosecution Service to introduce changes in the system in 2005, it concludes that "[a] standardised system of registration among police force . . . still seems to belong in the future. Furthermore, research into racist and right-wing extremist violence has shown that the willingness of the police to cooperate on this issue continues to decline." This police indifference or obstruction in turn is identified as the primary obstacle to monitoring not only by state agencies but by nongovernmental organizations, which describe it as posing an "acute threat" to ongoing monitoring

and making likely that detailed statistics for 2004 will be unavailable.<sup>431</sup>

The murder of Theo Van Gogh in September 2004 set off a firestorm of racist violence and a more insidious reappraisal of traditional Dutch views on their multicultural society. This trend had received a boost two years earlier, in May 2002, by another political murder when Pim Fortuyn, an outspoken critic of immigration and leader of a rabidly anti-immigrant party, Liveable Netherlands (and then of his independent List Pim Fortuyn (LPF)), was shot dead in the lead-up to parliamentary elections. The arrest of a native Dutch animal rights activist for the murder dispelled initial speculation that he had been murdered by a Muslim immigrant, but his death led to his supporters gaining 26 seats in the elections and a wave of sympathy for anti-immigrant and openly racist and anti-minority views.<sup>432</sup>

The EUMC's April 2005 report on racist violence cites Dutch opinion surveys in the aftermath of the Pim Fortuyn murder as revealing "a steady deterioration in majority attitudes towards ethnic minorities in the Netherlands." The murder of Theo Van Gogh, in turn, is seen as an example of the violent racism that can be readily sparked by individual incidents, "which in turn are a reflection of wider global conflicts." The Dutch monitors' findings used for the EUMC report in turn showed the disturbing fragility of constraints on racist violence:

[T]he majority of violent incidents in the wake of van Gogh's murder were against "Muslim" targets (106 cases were identified as anti-Muslim)—including schools and mosques—but there were also a number of incidents against "native Dutch" targets (34 cases)—mainly churches. Van Gogh's murder and the reaction to his murder, in terms of both attitudes and actions, deeply shocked Dutch society, which has typically been held up as a model of successful multiculturalism.<sup>433</sup>

## Norway

In ECRI's third country report on Norway (January 2004), it reiterated its recommendation that Norway "explicitly provide in law that racist motivation constitutes a specific aggravating circumstance for all offences," even while finding

that "Norwegian case law indicates that the racist motivation may be considered as an aggravating circumstance of all offences."<sup>434</sup> Specifically, the Norwegian Criminal Code provides for racist motivation to be considered an aggravating circumstance with regard to the specific offenses of "bodily harm, vandalism and some felonies against personal liberty."<sup>435</sup>

## Poland

Article 119 of Poland's criminal code punishes the use of violence or threats towards a group of persons or an individual because of their national, ethnic, political or religious affiliation.<sup>436</sup> In addition, article 256 punishes the public propagation of fascist or totalitarian systems and the incitement of hatred based on national, ethnic, racial or religious differences, while article 257 punishes the public insulting of a group or person because of national, ethnic, racial, or religious affiliation.<sup>437</sup>

According to ECRI's Third report on Poland, released June, 2005,

some 28 to 30 cases have been brought under articles 118, 119, 256 and 257. According to the Ministry of Justice, in 2003, 4 cases were brought to court under article 119-1 (use of violence or threats) of the Criminal Code and 1 case under 119-2 (incitement to violence or threats). All four cases resulted in convictions and imprisonment for the culprits.<sup>438</sup>

ECRI's December 1999 report concluded that official statistics on racist and discriminatory violence are inadequate and made recommendations for new systems of monitoring and reporting:

Since many cases of racist attacks and violence may not be considered as such by the authorities, ECRI also encourages the setting-up of a system of data collection by which the ethnic origin of victims of crimes may be voluntarily given and recorded: this may allow the scope of any problems to be more clearly identified.<sup>439</sup>

ECRI's Third Report welcomes the "Public Prosecutor's decision to establish a system for registering offences which will take into account the reasons given by the victim as to why he has been the victim of a crime."<sup>440</sup> While expecting the

number of registered hate crimes to increase once the system is put into practice, ECRI cites the following concerns:

At the moment, the racist motive of a crime is not taken into account by the police and hate crimes are therefore treated as any other crime. One of the reasons given for this is that the police are reluctant to take the racist motive of a crime into account as they consider that they should be blind to a person's race. Therefore, for the time being, the racist motive of a crime can only be ascertained if the perpetrator confesses or the victim indicates so in his/her statement.<sup>441</sup>

## Portugal

Under the Portuguese Penal Code's article 132.2(f), on homicide, and article 146, on assault causing bodily harm, motives of racial, religious, or political hatred are regarded as aggravating circumstances resulting in a heavier penalty. There is no general rule, however, providing that racist motives constitute an aggravating circumstance for all offences.<sup>442</sup> Article 240 of the Criminal Code punishes discrimination on grounds of race or religion, including incitement to racial hatred, defamation, insult and discriminatory practices.

ECRI's second report on Portugal welcomes provisions in Portuguese law by which immigrant associations and anti-racist and human rights organizations may "join the proceedings as *assistente* without being requested to do so by the victim, except where he or she formally objects," when a prosecution is brought for a racist or xenophobic offenses.<sup>443</sup>

Portugal has no monitoring system for bias crimes. ECRI has expressed concern at "the lack of reliable information about the situation of the various minority groups which live in the country," and the resulting difficulty of assessing both the situation of racist violence and discrimination faced by these communities and the effectiveness of the anti-racism measures.<sup>444</sup> It encourages authorities

to consider how they could introduce a comprehensive, coherent system of data collection, in order to assess the situation of the various minority groups living in Portugal and gauge the scale of racism and

discrimination. Such a system should comply with domestic law and European regulations and recommendations concerning data protection and privacy, as stated in ECRI general policy recommendation no. 1 on combating racism, xenophobia, antisemitism and intolerance. When collecting data, the Portuguese authorities should take particular care to respect the anonymity and dignity of the respondents and to obtain their full consent.<sup>445</sup>

Groups particularly vulnerable to racist violence in Portugal include immigrants, particularly those of African origin, and Roma. ECRI's second report places racism against Roma within the context of discriminatory treatment by local public authorities, as well as widespread police abuse. In response to racist acts against Roma, for example, it found that while some measures had been taken, "the Portuguese authorities do not always appear to have taken such acts as seriously as they ought." Roma have also suffered frequent spot-checks, humiliating treatment, and ill-treatment by police, who have acted with virtual impunity.<sup>446</sup>

The EUMC, in its December 2004 report on migrants and refugees, reported that in 2002 there was one court case in Portugal in which racial discrimination was the indicted crime. This involved a speech by the governor of the village of Gandra-Paredes in which "he described Roma people, and their activities, as mainly and naturally criminal." In what EUMC described as an exception to the tendency of the Portuguese legal system, he was sentenced to nine months in prison, as a violation of article 240 of the Penal Code, and barred from holding public office for two years.<sup>447</sup>

## Romania

Romania does not have law providing expressly for racist or other bias motivations for crimes to be considered aggravating circumstances in sentencing. No ordinary crimes with racist motives are defined as specific racist crimes.

In its June 2001 report on Romania, ECRI recommended the introduction of legislation establishing racist motivation as an aggravating circumstance in sentencing and identifying grave crimes motivated by racism as specific crimes "in

order to complete the body of criminal legislation in this field.”<sup>448</sup>

In addressing the situation of particularly vulnerable groups in Romania, ECRI recognizes some progress with regard to the Roma, including the development of a National Strategy for the Improvement of the Condition of the Roma, prepared “in close collaboration with Roma/Gypsy organisations.” However, the report highlights continuing discriminatory treatment by public authorities, in particular the police, that tend to reinforce discriminatory societal attitudes toward the Roma:

[G]rave problems . . . persist throughout the country as regards police attitudes and behaviour towards members of the Roma/Gypsy community. ECRI deplores in particular that cases of police violence against members of the Roma/Gypsy community, including the use of firearms, continue to occur, and have led to serious and sometimes lethal injuries. Police raids on areas where Roma/Gypsy communities are living, often at night and with no authorisation, are also relatively common: persons thus apprehended, including women and children, are then taken to the police station for questioning. Such raids, which are often violent, are reported in the press and on the television as an example of police action against criminality: no measures are taken by the media to conceal the identity of the persons affected by such raids. On the contrary, the fact that Roma are involved is often stressed and exploited to feed the general prejudices and stereotypes mentioned elsewhere in this report.<sup>449</sup>

Although abuses against Roma are well documented by nongovernmental organizations, ECRI observes that they “do not appear to be thoroughly investigated or sanctioned,” and “cases which are investigated are usually dismissed.”<sup>450</sup> Data concerning Roma that is available to police, in turn, is reportedly misused to compound ethnic stereotypes and promote fear and distrust among the majority population.

ECRI is most concerned to learn of the practice on the part of the police of passing on to the press information about the ethnic origin of suspected perpetrators of crime. Such data have been widely misused, for example in newspaper reports which focus on the ethnic

origin of alleged perpetrators, and have contributed to maintaining prejudices and stereotypes within society against the Roma/Gypsy community. It has also been reported that the police at local level tend to record the ethnic origin of alleged perpetrators based on their own suppositions.<sup>451</sup>

## Russian Federation

Article 63, section 1(f) of the Penal Code of the Russian Federation stipulates that “national, racial, or religious hatred or enmity” when committing a crime is considered an aggravating circumstance and gives rise to more severe penalties.

The Penal Code also provides for enhanced penalties for ordinary crimes when motivated by national, racial, or religious hatred or enmity through article 105 (homicide), article 111 (deliberate infliction of grievous bodily harm), article 112 (deliberate infliction of moderate bodily harm), article 117 (torture), and article 244 (desecration of mortal remains or places of burial).<sup>452</sup>

Chapter 19, article 136 of the Penal Code prohibits violations of the equality of human and citizens’ rights and freedoms. Article 282 states that “efforts to incite hatred based on nationality, racial or religious grounds, to demean national dignity, or to propagate the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, nationality or race shall, if committed in public or through the mass media, be punishable by a fine of between 500 and 800 times the minimum wage or to the wages or other income of the perpetrator for a period of between five and eight months, or by restrictions on the perpetrator’s freedom for a period of up to three years, or by imprisonment for between two and four years.”

The Penal Code was amended in July 2002 to establish “liability for organization of or participation in an extremist group, i.e., a group organized by committing crimes motivated by ethnic, racial and other kinds of hatred.” A further 2002 amendment entails liability for the organization of or participation in an extremist organization that has been, disbanded and banned by a court.<sup>453</sup>

In its 2001 report on the Russian Federation, ECRI observed that despite criminal code provisions punishing discriminatory acts, “these provisions are very rarely applied.” It noted that very few cases had been brought under article 136 and “none of these has led to a court’s sentence.” Similarly, while the law provided for racist motives to be considered an aggravating circumstance, the report concluded that “is not clear to ECRI to what extent the provisions contained in Article 63(1) are applied in practice.”<sup>454</sup>

ECRI found further that article 282 of the Penal Code, which punishes hate speech, had in turn been applied in only “a limited number of cases,” despite “the widely reported presence of hate speech in public life generally and in the media in the Russian Federation.” The report indicated it was aware of “initiatives on the part of the Office of the Procurator General to improve prosecution of hate speech, including the preparation of methodological instructions for prosecution of this type of cases in 1998 and of further guidelines in July 1999,” and stressed that the effectiveness of any such initiatives should be “regularly and thoroughly monitored.”<sup>455</sup>

The Russian executive branch has issued a number of decrees on political extremism and terrorism since the 1990s which relate both to hate crimes and to separatist propaganda and violence. On March 23, 1995, President Boris Yeltsin issued Decree No. 310, “On Measures to Ensure Coordination of Actions by State Bodies to Combat Manifestations of Fascism and Other Forms of Political Extremism.”<sup>456</sup> It notes, in part, that

State organizations and local governments have shown practically no response to these processes [of extremism] that threaten the constitutional system. . . . The work of the Prosecutor’s Office of the Russian Federation, the Ministry of Internal Affairs of the Russian Federation, and the Federal Counterintelligence Service of the Russian Federation have been extremely unsatisfactory and uncoordinated, although they are tasked with halting illegal, anti-constitutional activities and countering extremist, nationalistic and chauvinistic manifestations. The work of the Ministry of Justice of the Russian Federation and the Russian Federation Committee for

Press has also been unsatisfactory and uncoordinated.

The decree called upon relevant agencies to increase oversight, strictly monitor investigations of extremist criminal activities to ensure that they are comprehensive, and actively coordinate with the human rights ombudsman and other state agencies as well as with nongovernmental organizations and the mass media.

On August 2, 2001 the government launched a five-year federal program on “forming an attitude of tolerance and preventing extremism in Russian society.” The program envisaged training of specialists and largely school-based programs. According to a 2004 study carried out by the Towards a Civil Society Foundation, the program was in its initial phase in the regions under study. Programs funded by independent donor organizations are also being implemented in some schools throughout the country (usually on an elective, rather than obligatory, basis).<sup>457</sup>

The nongovernmental media has also supported television, radio, and press reporting on issues of racial, national, and religious discrimination, as well as other media materials that would improve the “atmosphere of tolerance” in the country. While these measures are welcome, they are clearly insufficient. As one respondent in the “Towards a Civil Society” study noted, “to counter manifestations of ethnic enmity—[the federal program is] not sufficient . . . it should be carried out in combination with other normative acts regulating the fight against xenophobia and extremism.”<sup>458</sup> Another commentator in St. Petersburg was more direct: “It will be possible to observe all the provisions of the Convention to Eliminate all Forms of Racial Discrimination only when the state admits the fact of ethnic discrimination, especially of people from the Caucasus, which is carried out by state organs.”<sup>459</sup>

The law “On Countering Extremist Activities” went into effect in August 2002. It defines “extremist activity” broadly as violent actions against the state and any actions aimed at inciting national, racial, religious and social enmity in connection with violence or threats of violence; humiliation of national dignity; vandalism and mass disorders; propaganda of the exclusivity, superiority or



inferiority of people on the ground of their social, racial, religious, national and linguistic group; propaganda and public demonstration of Nazi or similar symbols.” The courts can suspend broadcasts or the issuance of printed materials during legal proceedings, and the Ministry of Internal Affairs (MVD) is required to maintain a list of banned materials.

Human rights defenders have criticized the 2002 law on the grounds that the broad definition of extremism (both political and religious) could be applied at the discretion of the prosecutors to many organizations, including, for example, the Russian Orthodox Church. While the Orthodox Church is unlikely to be discomfited by the law, its broad terms may in practice be applied to restrict the actions of many other organizations and, indeed, to the human rights organizations in the vanguard of reporting on situations of racist and extremist violence—and even to shut them down.

The law prohibits the establishment of associations with extremist goals or activities, adding to existing measures that have regulated civil society organizations since the 1990s. The government has the power to suspend the activities of any nongovernmental organization whose activities are viewed as a “humiliation of national dignity,” as threatening “the constitutional order,” violating “the territorial integrity of the Russian Federation,” or undermining “the security of the Russian Federation.”<sup>460</sup>

The broad formulation has been an invitation to abuse—finding its first application against some of Russia’s nongovernmental human rights that were addressing precisely the problems of racist extremism the law might have been expected to address.<sup>461</sup> In 2004 the Krasnodar School for Peace, which works to defend the rights of the Meshketian Turkish minority in Russia, faced suspension under the law; the Krasnodar Human Rights Center was summarily suspended for six months.<sup>462</sup>

In April 2002, Prosecutor General Vladimir Ustinov issued a decree “On strengthening prosecution oversight of the implementation of legislation to counter manifestations of fascism and other forms of extremism.” The decree provides for instructions to produce regular reports to higher bodies within the Prosecutor’s

Office, analyze conditions facilitating the growth of extremist organizations, and work with local nongovernmental organizations.<sup>463</sup>

Although there have been no comprehensive studies of hate crimes in the Russian Federation, both governmental and nongovernmental organizations that monitor discrimination, violations of human rights, and the judicial system have noted an increase in crimes against individuals based on racial, national, or religious grounds in the past several years. In particular, the increased number of pogroms carried out by “skinheads” and extremist groups against non-ethnic Russians since 2000 has brought the issue of hate crimes to the attention of the public and the highest levels of government.

Senior government leaders have periodically spoken out against hate crimes. In a speech before the State Duma in October 2002, Prosecutor General Ustinov illustrated his concern with reference to more than 2,000 cases of desecrations of burial places and historical monuments (violations of article 244) in 2001 and said there had been almost as many in the first ten months of 2002.<sup>464</sup> In April 2004, President Vladimir Putin ordered Minister of Internal Affairs Rashid Nurgaliev to personally oversee investigations of crimes motivated by bias: “Do not let up your attention to this problem and do not allow cases of this kind to go ‘to the bottom of the stack.’”<sup>465</sup>

Some public officials have in fact worked diligently to improve the investigation and prosecution of hate crimes. In a collaborative effort, staff of the Judicial Institute of the Russian Prosecutor General worked with St. Petersburg hate crimes expert Nikolai Girenko and the Ethnic Minority Rights Group of the Academy of Sciences to develop a handbook on investigative methods for offenses linked to political activities. Entitled “Methods for Investigating Crimes of Ethnic Enmity and Hate,” the handbook was sent to all prosecutors’ offices in 2003.<sup>466</sup>

Dr. Girenko was the best-known authority on hate crimes in the Russian Federation and worked intensively with public prosecutors and law enforcement officials to develop and enforce standards in an extraordinary example of constructive engagement. A colleague described

his role: “Law-enforcers often tried to reduce the crimes of Nazis to ordinary hooliganism, common crime, saying they have no methodology for investigating ethnic crimes. So we worked on this, and this methodology appeared thanks to Nikolai Girenko.”<sup>467</sup> Girenko’s murder at his home in June 2004, which has been attributed to his work to combat extremist violence, is still unsolved (see above).

Statistics on hate crimes are maintained by the Ministry of Internal Affairs and the Prosecutor’s Office, but statistics on complaints and cases under investigation, and the outcomes of cases, are not regularly published. Official statements occasionally provide information concerning particular aspects of the problem of discriminatory violence; for example, in the Prosecutor’s General speech to the State Duma in October 2002, he stated that, “In Russia every year about 7,000 crimes are committed against foreigners,” but also noted that “not every crime against foreigners should be considered bias-motivated.”<sup>468</sup>

In any case, the numbers of complaints brought or people charged with hate crimes are not reliable indicators of the actual numbers of incidents; the majority of incidents are simply not reported. As Amnesty International noted in its survey of racist incidents in Moscow, cited above, of the 204 attacks reported by its survey group, only 61 were reported to the militia, which in turn only actively investigated one-fourth of those 61 cases, “for example, questioning the victims or witnesses.” Actual charges were brought in just 7 percent of the cases.<sup>469</sup>

Victims of ethnic or religious hate crimes—foreigners, refugees, and migrants from other parts of Russia in particular—do not as a rule file complaints with the militia. Many may be reluctant to do so because they fear further ill-treatment or putting their residency status at risk. Or they believe the cases will not be pursued in any case. The tendency of Russian law enforcement to respond to racist violence as ordinary crime, or with indifference, is supported by the testimony of victims and by anecdotal evidence. As one perpetrator told, the police tend to deal with racist violence as simple “hooliganism”:

Why would I want to be a skinhead in the eyes of the cops? Then they would apply entirely

different sanctions against me. We all end up at the precinct for fights pretty often, but most of us say that we attacked a black or *churka* [derogatory slang for a person from Central Asia] after drinking too much beer, or because of personal dislike. The cops are happy; they write us up a misdemeanor (like swearing or urinating in a public place), take a fine and let us go. And then they don’t have to write any long reports.<sup>470</sup>

Russia’s report to the CERD Committee on the Elimination of All Forms of Racial Discrimination in March 2003 provides an official accounting of bias-motivated crimes within the criminal justice system. According to the report, just 44 cases were opened in 1999, of which nine were brought to trial.<sup>471</sup> In 2004, a report by the President’s Commission on Human Rights stated that charges were brought in seven cases under article 282 in 2001, sixteen in 2002, and fifteen in 2003.

Statistics gathered by a number of organizations from official sources on cases in different stages of the criminal justice process present a confusing picture with little comparative value—apart from making clear that very few cases result in formal investigations, fewer yet in prosecutions, and only a handful in convictions.

Monitoring by a joint project of the Moscow Bureau for Human Rights, Moscow Helsinki Group, and the Union of Councils for Jews of the Former Soviet Union, for example, found that of 32 cases registered as “hate crimes” in 2001, just six reached the trial stage in the courts. Of these, three defendants received suspended sentences and just one, a purported member of an Islamic underground organization, was sentenced to imprisonment. Their statistics for 2002 and 2003 show a similar pattern of suspended sentences and fines.<sup>472</sup> Confirming this, the organization Civic Support’s monitoring in 2002 found that 85 cases were under investigation, with charges brought against sixteen people in cases involving racist violence; in 2003, it found 88 cases under investigation, and fifteen individuals charged.<sup>473</sup>

In its March 2001 report, ECRI expressed deep concern at “the widespread sentiments of hostility and high levels of prejudice vis-à-vis members of certain ethnic groups, often resulting in acts of discrimination and violence on the part of private individuals and law enforcement officials against

members of such groups.”<sup>474</sup> It attributed this to “actions and attitudes held both by public bodies at federal and regional level, and by the media and social actors often supporting them,” and identified particular groups of internal migrants that were subject to particular abuse:

Particularly since 1999, immigrants from the Caucasian region in Moscow, and Chechens in various regions of the Russian Federation including the city of Moscow, Moscow Oblast, Stavropol Krai, the Republic of North Ossetia/Alania, Dagestan, Kabardin-Balkarian Republic have been regular targets of such actions and attitudes. The same can be said of Meskhetian Turks residing in the Krasnodar Krai.<sup>475</sup>

Amnesty International’s 2003 report on racism in Russia, “*Dokumenty!*” *Discrimination on Grounds of Race in the Russian Federation*, describes the everyday reality of discrimination against members of ethnic or national minorities. The report noted that the cases that have come to its attention are “predominantly students, asylum-seekers and refugees from Africa, but also include citizens of the Russian Federation (including ethnic Chechens and Jews), as well as people from the south Caucasus, from South, Southeast and Central Asia, from the Middle East and from Latin America.”<sup>476</sup>

The Amnesty report addresses both the direct role of law enforcement as agents of abuse and the discriminatory effect of the police response to racist violence:

[L]aw enforcement agencies in the Russian Federation often reflect rather than challenge discriminatory attitudes in society at large. Amnesty International’s research indicates that many racist attacks are not reported to the police because the victims fear further abuses by the police themselves. Racist attacks are often dismissed as the actions of drunken teenagers which the police then fail to register as racially motivated or to investigate. The result is that victims of racist crime rarely see justice done, that police and members of the public feel that racism is tolerated, and that members of ethnic minorities feel that they have no one to turn to.<sup>477</sup>

Reports by Human Rights Watch, in turn, have provided detailed documentation of discriminatory treatment of ethnic Chechens and other minorities

and migrants in Moscow.<sup>478</sup> In a 2003 briefing prepared for CERD, the organization cites specific cases to illustrate a pattern of routine abuses that is periodically exacerbated by intensive abusive police action in the wake of security scares, when Chechens face arbitrary round-ups and interrogations.<sup>479</sup>

In September 2004, in the aftermath of the Beslan school massacre, racist attacks by ordinary Russians and skinhead extremists alike occurred in the context of massive roundups of ethnic Chechens—during which the security services detained at least 11,000 in Moscow alone.<sup>480</sup> Militia demanded identity papers from anyone who looked “Caucasian,” and thousands were detained on the grounds of irregularities in the residency permits still required in Russian cities, a hold-over of the Soviet *propiska* system. Moscow authorities subsequently announced that during a police operation on September 15-16 they had carried out 33,000 identity checks, including 377 in hotels, 356 on marketplaces, and 714 in hostels.<sup>481</sup>

A *Los Angeles Times* report, acknowledging the “special scrutiny” given people from the Caucasus in Moscow in recent years, described the police approach in Moscow in the weeks after Beslan:

Some said they try to stop nearly everyone of Caucasian appearance—meaning dark-haired and dark-skinned.

“I look for faces of people from the Caucasus. Dagestanis, Chechens, people like that. First of all, I stop him and check his ID. If his ID looks basically OK on the spot, I still take him [to the subway police office] for further questioning,” said Danila Kuliyeu, a junior police sergeant in north Moscow whose father is from the Caucasus. Some said they try to stop nearly everyone of Caucasian appearance—meaning dark-haired and dark-skinned.

Kuliyeu said it would be a “good idea” to evict Caucasians from Moscow—though he didn’t mention his own family. “If you take them away from the markets and everywhere, it will make the work of the police easier and much more reliable,” he said.

While police checked identity documents at the entry of metro stations, gangs of young extremists, many of them with shaved heads, roamed the trains and platforms looking for and

assaulting people who looked like Chechens. In one widely reported incident “about 30 young men entered a subway car and attacked three Caucasians, beating them severely.” An Armenian refugee, who was stabbed, said “[t]hey were picking out the dark-skinned people.” “The way they entered the car, the way they ran away, the way they were obeying orders of the leaders, they were very well-organized.”<sup>482</sup>

The role of state agents in discriminatory violence, in conjunction with paramilitary movements acting under color of law (notably Cossack organizations), received particular attention in the 2001 ECRI report, which expressed concern at reports that

in the Southern regions of the Russian Federation (e.g. the Krasnodar and Stavropol Krai, Rostov and Volgograd Oblasts), many of the acts of violence and harassment against persons belonging to ethnic minorities, are committed by members of organisations referring to themselves as Cossacks, whose members actively participate in law enforcement, both together with and separately from local police forces. These acts are in some cases carried out without hindrance on the part of the authorities. The law enforcement bodies have either refrained from prosecuting the persons responsible, or brought to account only separate individuals. ECRI notes that the presidential Human Rights Commission has stressed the dangers of the legalisation of the activity of extremists on the part of certain local authorities and law-enforcement agencies under the pretext of providing assistance in restoring law and order. ECRI strongly urges the Russian authorities to ensure that law enforcement functions are carried out exclusively by persons officially qualified for carrying out these tasks and that all acts of harassment and violence committed by members of the Cossack movement are properly investigated and prosecuted as necessary.<sup>483</sup>

According to ECRI, abuses by law enforcement personnel, in particular by those associated with the enforcement of residency permit requirements in major Russian cities, were “disturbingly frequent,” affecting “mainly, but not exclusively, persons from the Caucasus region and Central Asia,” while “Chechens, Ingush, Azerbaijanis, [and] Tajiks appear to be particularly susceptible

to such treatment on the part of law enforcement officials in Moscow.” In other regions, “Armenians, Georgians, Meskhetian Turks, Kurds, Dargins, Nogais and others are particularly subject to discriminatory behaviour.” At the same time, the report found that police did not provide support for minorities threatened during “episodes of violence.”<sup>484</sup>

In March 2003, the U.N. CERD Committee reviewed the periodic report of the Russian Federation on its compliance as a state party with the CERD Convention. The Committee noted the continuing absence of a definition of racial discrimination in domestic legislation, in contravention of article 1 of the Convention, and expressed concerns about “the incidence of violent racist attacks against ethnic minorities by, among others, skinheads and neo-Nazis.” It also noted concerns about “reports that racist materials targeting minority groups and perpetuating negative stereotypes are disseminated in the national media.” The Committee recommended that the government “strengthen its efforts to prevent racist violence and protect members of ethnic minorities and foreigners, including refugees and asylum-seekers.”<sup>485</sup>

The CERD Committee’s comments recognized little or no improvement regarding the political and paramilitary groups known as Cossacks, and the toleration of them by the state:

While appreciating the particular history of Cossacks in the Russian Federation, the Committee is concerned at reports that some Cossack organizations have engaged in acts of intimidation and violence against ethnic groups. According to information received by the Committee, these organizations, which function as paramilitary units and are used by local authorities to carry out law enforcement functions, enjoy special privileges, including State funding. In this regard, the Committee recommends . . . that the State party ensure that no support is provided to organizations which promote racial discrimination and that it prevent Cossack paramilitary units from carrying out law enforcement functions against ethnic groups.<sup>486</sup>

The inadequacy of the government response to antisemitic discrimination and violence has received particular attention from

intergovernmental monitoring agencies. In 2001, ECRI reported its concern at the “persistent presence of prejudice vis-à-vis the members of the Jewish community as well as widespread manifestations of antisemitism, including episodes of violence targeting Jews, in Russian society.”<sup>487</sup> According to ECRI, the latter included “bombings of synagogues in different regions of Russia and racial violent attacks against individuals or groups of individuals belonging to the Jewish community—but also circulation of antisemitic leaflets and other material.”<sup>488</sup>

Antisemitism as a political force in Russia received international resonance at the time of the 60<sup>th</sup> anniversary of the liberation of the Auschwitz death camp in January 2005 when 20 Duma members, among some 500 others, signed a virulently antisemitic open letter calling for the banning of all Jewish organizations in Russia.<sup>489</sup> In ECRI’s report, it noted that “[d]erogatory racial slurs and exploitation of antisemitic feelings continue to be resorted to routinely by exponents of political parties at the federal and regional level and by the leadership of some regional authorities.”<sup>490</sup>

International monitors of antisemitic violence and vandalism reported a rise from 37 reported incidents in 2001 to 73 in 2002, although the true numbers were probably far higher.<sup>491</sup> Incident reports from 2003 through early 2005 show a high level of continuing threats and violence. The Union of Councils for Jews of the Former Soviet Union produces a weekly bulletin that collates information on all forms of racist hate crimes from the Russian news media and nongovernmental monitors, and works closely with human rights groups there. These bulletins regularly report threats and physical assaults on people because they are thought to be Jewish, attacks on synagogues, cemeteries, and schools, and antisemitic diatribes by nationalist political leaders of Russia’s extremist political movements.

In September 2003, the European Union announced its support for a joint project by Russian human rights organizations and the Union of Councils for Jews in the Former Soviet Union, “to monitor cases of racism, antisemitism, and ethnic discrimination that have flourished in Russia.” The project, which deploys monitors in 89 Russian regions, is to involve work by the

Moscow Bureau on Human Rights and UCSJ in collaboration with the Moscow Helsinki Group, the Krasnodar-based School of Peace, and government bodies.<sup>492</sup>

While legislation punishing hate speech and racist violence is rarely enforced against those attacking Russia’s ethnic, racial, and religious minorities, a disturbing new trend has seen the application of legislation banning “extremist” organizations and hate speech laws to attack independent human rights leaders and organizations. In one extraordinary case, a human rights leader was prosecuted—and convicted—for “inciting religious hatred” after a violent attack on the center he directed in the name of religious orthodoxy.

The director of Moscow’s Sakharov Museum and Public Center, Yuri Samodurov, and two colleagues were charged with “inciting religious hatred” and offending Orthodox believers for hosting an art show—“Caution! Religion”—considered offensive to the Russian Orthodox Church.<sup>493</sup> The charges were brought after a group of young acolytes from the Russian Orthodox Church of St. Nicholas in Pyzhi attacked the exhibit on January 18, 2003, destroying art works and painting slogans charging blasphemy on the part of the exhibitors.<sup>494</sup> The show included painting and other art examining—and parodying—the intersection of religion with commercial interests, corruption, politics, and popular culture.

A Moscow court declined to proceed with charges of “hooliganism” brought against the attackers—on the grounds that the exhibition had provoked their actions. In a reversal of roles, the victims of the attack were indicted in December 2003, charged with organizing an exhibition described as “insulting and offensive to Christianity in general and to Orthodox Christianity and the Russian Orthodox Church in particular.” Sakharov Center Director Yuri Samodurov and exhibition curator Ludmila Vasilovskaya were each fined 100,000 rubles—about 3,570 U.S. dollars—in a verdict handed down by Moscow’s Taganskaya District Court on March 28 on charges of “incitement to religious hatred.” Painter Anna Mikhailchuk, who was also charged, was acquitted. Samodurov and Vasilovskaya have stated that they will appeal the verdict.

Ironically, these prosecutions were based on hate crimes legislation enacted to protect minorities' freedom of expression and religion, and provide safeguards against the kind of physical attack launched on the Sakharov Center. In this case, the seldom-enforced hate crimes law was used instead to advance religious intolerance by targeting those outside of and critical of the Russian Orthodox Church. It came in the context of a rising tide of hate crimes by extremist nationalist, religious, and racist groups, and attacks on those investigating these crimes.

There is no specialized anti-discrimination body in Russia with a specific mandate or program to monitor and report on hate crimes as a distinct form of discrimination. The Prosecutor's Office and the Ministry of Internal Affairs are responsible for investigating and prosecuting all crimes, including those motivated by bias. Two other state agencies have had oversight of matters of human rights, including hate crimes: the office of the Human Rights Ombudsman and the Presidential Commission on Human Rights. As noted in the Russian Federation's report to CERD, federal laws provide the Ombudsman with the right to review investigations and cases, request documentation, and issue queries; legislation also protects the Ombudsman from interference with his work or from outside influences on his positions. The Ombudsman's authority, however, is limited to a largely advisory function.

The Presidential Commission on Human Rights, headed by Ella Pamfilova, had also expressed concern over racist violence and discrimination. In an April 2004 statement, the Commission had noted that "law-enforcement agencies have begun to more actively charge and bring before the courts crimes having an outright racial motivation." The Commission also welcomed a statement by Minister of MVD Nurgaliev "that the criminal actions of fascist groups, in particular, skinheads, must be stopped."<sup>495</sup> More concretely, it had proposed a number of measures to combat racist violence on the legislative and policy fronts. These included calls for:

- New legislation in the State Duma to facilitate prosecution of crimes committed on racist grounds;

- Requirements that *all* racist crimes be carefully investigated;
- Publicity concerning the investigation of racist crimes in the mass media;
- Harsh measures against political leaders and officials at every level "who make statements that incite ethnic and religious intolerance";
- The creation of "public advisory councils under the MVD departments at all levels to draft an integrated position of the militia and society with regard to public demonstrations of racism";
- Enforcement of requirements that local prosecutors' offices carry out the instructions of the Prosecutor General to establish contacts with local human rights organizations (requirements "which have been virtually ignored to date"); and
- The development and implementation of educational programs to enhance tolerance.<sup>496</sup>

The Presidential Human Rights Commission, which had worked closely with independent human rights organizations, was in November 2004 replaced by a new presidential Council for Developing Civil Society Institutions and Human Rights.<sup>497</sup> It is too early, however, to assess the role of the new structure, particularly as it concerns recommendations for measures to combat racist violence.

The Russian Federation is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

It has signed but not yet ratified Protocol No. 12 to the European Convention on Human Rights, adopted in November 2000 by the Council of Europe, which prohibits discrimination by any public authority on grounds including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## San Marino

There are no provisions in San Marino law defining common offenses with a racist motive as specific offenses or expressly enabling the racist motive of an offender to be taken into account as an aggravating circumstance in sentencing.

In its March 2003 report on San Marino, ECRI notes that San Marino authorities have stated that, “even if there have been no cases where this has been necessary, certain types of racist behaviour could be addressed through existing provisions establishing common offences, such as injury and defamation.” ECRI concludes, however, “that specific legislation against racism would ensure better protection should the need arise.”<sup>498</sup>

## Serbia and Montenegro

Criminal law in Serbia and Montenegro does not provide explicitly for racist motives to be taken into account as an aggravating factor in sentencing, or defining ordinary offenses motivated by racism or other forms of discrimination as specific offenses. International humanitarian law provisions barring genocide, war crimes, and crimes against humanity have, however, been incorporated into criminal law.<sup>499</sup>

The 2003 Constitutional Charter of Serbia and Montenegro and the criminal laws of each state of the union of the two federated states provide general protection against ethnic, racial and religious discrimination, but do not directly address crimes motivated by discriminatory bias.

Serbia and Montenegro ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in March 2004, in line with the obligations and commitments that Serbia and Montenegro undertook upon joining the Council of Europe in April 2003. Instruments of ratification were also deposited for Protocols No. 1, 4, 6, 7, 12 (concerning discrimination) and 13 (which abolishes the use of the death penalty in all circumstances) to the convention, as well as to the European Convention for the Prevention of Torture. Serbia and Montenegro is also a party to the Framework Convention for Protection of National Minorities.

Serbia and Montenegro is a state party to the Convention on the Elimination of All Forms of

Racial Discrimination. As the then-Federal Republic of Yugoslavia, it last reported on compliance with its treaty obligations in 1997.<sup>500</sup>

## Slovak Republic

Sections 219 (f) and 221/2 (b) of the Slovak Republic’s criminal code provide for a sentencing enhancement for the crimes of murder and serious bodily harm, respectively, when committed because of the victim’s race, ethnicity, nationality, political conviction, or belief.<sup>501</sup> Article 196 of the criminal code makes it a crime to commit violent acts against persons or groups because of their race, nationality, political convictions, religion, or, under a recent amendment, their ethnicity.<sup>502</sup>

However, little has been done to implement these provisions. In its January 2004 report on the Slovak Republic ECRI describes a “problematic” situation of a consistently high level of violence and inertia in the criminal justice system:

ECRI notes that governmental statistics show that the number of persons convicted of racially-motivated crimes has decreased over the period 1996-2001. At the same time, numerous sources continue to report acts of violence, committed mainly against members of the Roma minority but also against members of other groups, on the part of skinheads and others, and, most alarmingly, on the part of police officers. It is widely-reported that the number of cases brought, and the small number of successful outcomes in court, is greatly under-representative of the real scale of racist crime in the country today.<sup>503</sup>

## Slovenia

There is no law in Slovenia expressly providing for racist motivation to constitute an aggravating circumstance in sentencing, nor defining common offenses with a racist motive as specific offenses.

In its December 2002 report on Slovenia, ECRI urged further legislation, “for example defining ordinary crimes with a racist motive as racist crimes, or expressly providing that the racist motivation of crimes be taken into account by the courts as an aggravating circumstance when sentencing.”<sup>504</sup>

## Spain

Article 22(4) of the Penal Code, which sets out the circumstances that heighten criminal responsibility, includes a detailed provision concerning bias. Aggravating circumstances are to include:

Commission of a crime for motives that are racist, antisemitic or another form of discrimination referring to the ideology, religion, or beliefs of the victim, the ethnicity, race, or nationality to which they belong, their gender or sexual orientation, or any illness or disability they may suffer.<sup>505</sup>

Offenses “aggravated by a racist purpose” are prosecuted *ex officio*.<sup>506</sup>

Spanish criminal law also addresses many other aspects of discrimination, though provisions punishing genocide, and prohibiting associations that promote discrimination, hatred, or violence against persons or groups by reason of their religion, race, ethnicity, national origin or other attributes. Article 510(1) punishes incitement to discrimination, hatred, or violence in much the same terms, while other provisions punish hate speech.<sup>507</sup>

The EUMC’s April 2005 report on racist violence in the European Union stated that “[t]here is no readily available public information on the extent and nature of racist violence in Spain.”<sup>508</sup> The EUMC’s Spanish Focal Point on racist violence, which gathered information for the study, was, however, able to receive some basic information from the Civil Guard covering the years 2000-2001 on acts defined as xenophobic or racist. The total for 2000 of just 61 “acts” consisted of thirty-three cases of physical violence, twelve of property damage, and sixteen involving threats or insults. The reporting for 2001 was much the same, with a total of sixty-six acts registered: thirty-seven of physical violence; fourteen property damages; and fifteen threats and insults.<sup>509</sup>

In its second report on Spain, released in December 2002, ECRI noted that despite having been unable to obtain figures on the application of anti-racism provisions in Spanish criminal law, it was concerned by reports that such provisions “are currently rarely applied and that the cases brought before the courts do not reflect the actual

numbers of racist or discriminatory acts occurring in Spain.”<sup>510</sup> In a section addressing racist violence, ECRI noted that when prosecuted, acts of violence are generally treated as ordinary offenses such as assault or battery, and that the overall situation of racist violence continues to be underreported. It expressed particular concern about “instances of violence against members of minority communities by the local majority population,” citing in particular attacks on North African immigrants.

It noted further that ill-treatment of minority populations by law enforcement personnel both contributes to discriminatory attitudes in the broader society and affords members of vulnerable groups little reason to trust official complaint mechanisms:

An increase over the last few years has been reported in the number of allegations of police misbehaviour vis-à-vis ethnic minorities or persons of non-Spanish origin. Such allegations include discriminatory checks, insulting and abusive speech, but also ill-treatment and violence, in some cases resulting in death. ECRI is concerned that certain groups of persons, including foreigners, Roma/Gypsies, and Spanish citizens of immigrant background, are particularly likely to become victims of this behaviour as, in spite of the existence of laws and codes that attempt to guard against discriminatory or arbitrary conduct by state agents, racial profiling is reportedly common.<sup>511</sup>

While limited by the availability of data, the EUMC’s 2005 survey of racist violence concludes that reports from its Spanish Focal Point “suggest . . . evidence of increased numbers of racist attacks organised by the extreme right, with most of these incidents taking place in large urban areas and also in towns on the outskirts of Madrid, Barcelona and Valencia.” The Focal Point also points to evidence of “increased numbers of ‘spontaneous’ racist attacks that cannot be attributed to organised groups”<sup>512</sup>—thus highlighting the “ordinary” racist attacks that are increasingly a part of the everyday fears in Spain.

Finally, no national specialized body exists in Spain that can “effectively and independently monitor the situation as concerns racism and racial discrimination . . . and assist in providing



effective means of redress to victims.” To address this gap, ECRI encouraged Spanish authorities to establish a national specialised institution in line with its General Policy Recommendation No. 2 (described above).<sup>513</sup>

## Sweden

Sweden’s Penal Code, article 29, provides for bias to be taken into account as an aggravating factor in sentencing when a crime was motivated by the race, color, national or ethnic origin, religion, “or other circumstance” of the victim or victims.<sup>514</sup>

Records kept by the Security Police distinguish four categories of crimes: “crimes with racist/xenophobic motives, crimes with anti-Semitic motives, homophobic motives and crimes connected to the so called ‘white power world.’”<sup>515</sup> According to ECRI’s Third Report on Sweden, released in June 2005, 3,600 racist, xenophobic, and anti-Semitic crimes were reported to Swedish police in 2003, of which roughly 40 percent were related to the White-power movement.<sup>516</sup>

As the December 2004 EUMC report on migrants and minorities describes,

[t]he trend is not linear, but over a ten year period there has been a steady growth of “racially motivated crimes.” In the last five years, the number of racist/xenophobic crimes has increased, the number of reported cases under the incitement legislation has increased markedly, and the number of crimes with anti-Semitic motives did increase every year from 1997 to 2000. However for 2001, the total number of recorded anti-Semitic crimes has slightly decreased.<sup>517</sup>

## Switzerland

Article 63 of the Swiss Criminal Code increases the penalty for offenses motivated by racism.<sup>518</sup>

Article 261bis of the Criminal Code defines the crime of racial discrimination, but does not cover crimes of violence or direct incitement to violence:

Whoever publicly incites hatred or discrimination against a person or group of persons because of their race, ethnic group or religion;

whoever publicly spreads ideologies which are directed at systematically belittling or slandering members of a race, ethnic group or religion;

whoever, with the same goal organizes, encourages or participates in propaganda actions;

whoever publicly, by word, in writing, by pictures, by gesture, by actions or in any other way, belittles or slanders a person or group of persons because of their race, ethnic group or religion in a way contrary to human dignity or, for one of these reasons, denies, grossly minimizes, or seeks to justify a genocide or other crime against humanity;

whoever refuses a service offered to the public to a person or group of persons because of their race, ethnic group or religion;

shall be punished by imprisonment or a fine.

In a September 3, 2004 response to a letter from Human Rights First requesting information on hate crimes legislation and monitoring, the Swiss Foreign Ministry provided information on legislation, official and nongovernmental specialized anti-racism bodies, examples of condemnation at the highest level of government of hate crimes, and available statistics.<sup>519</sup>

Materials provided included statistics from the Federal Commission against Racism (FCR) on all sentences under Article 261bis of the Swiss Criminal Code between 1995 and 2002, distributed according to victim groups, perpetrator groups, and type of crime, including written and verbal abuse, distributing Nazi and other extremist propaganda, and racist expression in the media and on the Internet. The statistics come from a compilation of all of the sentences pronounced by the cantonal courts and by the Federal Supreme Court.

The government’s response noted that the nongovernmental Gesellschaft Minderheiten Schweiz (Society of Minorities in Switzerland) and the Stiftung gegen Rassismus und Antisemitismus (Foundation Against Racism and Anti-Semitism) compile statistics on hate crimes and publish an annual report. The official Federal Commission against Racism (FCR) “has some access to government information and can publish

recommendations,” but has no authority to conduct investigations.<sup>520</sup>

In its third periodic report on Switzerland, ECRI reported on the implementation of article 261bis at the federal and cantonal level. Cases brought included prosecutions for “expressions inciting to racial hatred on the Internet, compact disc recordings, graffiti, election posters, holocaust denial, statements by politicians, letters to the editor published in newspapers, the wearing of symbols, and the publication of books with racist content. Many of the cases concern antisemitic material. It is estimated that around half of the cases brought ended in a conviction.”<sup>521</sup>

The ECRI report did not refer to the implementation of article 63 of the criminal code, and raised concerns about the continuing problem of discrimination in Switzerland:

The incidence of police misbehaviour and discriminatory treatment towards members of certain minority groups, notably black Africans, is a matter of concern, as is the general climate of opinion in society towards this group. The issue of asylum seekers and refugees is also the subject of negative and hostile debate in the public and political sphere.<sup>522</sup>

## Tajikistan

Tajikistan is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In its 2004 concluding observations on Tajikistan's period report as a state party, the CERD committee noted that “the State party's legislation appears to be generally in conformity with article 4 of the Convention and that under article 62 of the Penal Code, racial discrimination is an aggravating circumstance in the commission of criminal offences.” While no definition of racial discrimination was set out in domestic law, it added, “the definition provided in the Convention may be directly invoked before tribunals.”<sup>523</sup>

Nonetheless, the committee recommended “the elaboration of legislation on racial discrimination, including all elements provided in article 1 of the Convention,” as “a useful tool for combating racial discrimination.”<sup>524</sup>

In its 2004 annual report, the International Helsinki Federation noted that the Tajik government “closely monitored the exercise of Islam,” while “[r]eferring to the need to counteract ‘religious extremism.’”<sup>525</sup> Restrictions on discriminatory speech were reportedly used as a pretext to limit freedom of expression:

While the Tajik Constitution generally guaranteed freedom of expression and the media, other laws however restricted it. It was prohibited to write on “state or otherwise protected secrets,” to libel the “honor and dignity” of the state and the president, to spread war propaganda or racial or ethnic hatred. In practice these—formally reasonable—restrictions were often used as a pretext against journalists who expressed undesired political views.<sup>526</sup>

Charges against hundreds of imprisoned members of the banned Hizb-ut-Tahrir movement, one of whose goals was to establish an Islamic State, typically included inciting religious hatred. Members of the Jehovah's Witness and Baptist faiths were reportedly detained, harassed, and fined under restrictive interpretations of the Law on Religious Associations, for holding gatherings and providing religious instruction.<sup>527</sup>

## Turkey

Turkish criminal law does not explicitly provide for racist motives to be taken into account as an aggravating factor in sentencing, nor does it define offenses motivated by racism as specific offenses.<sup>528</sup>

Article 312 of the Criminal Code punishes the public incitement of hatred based on class, race, religion, belief, or political ideology, while providing more severe penalties if such incitement jeopardizes public security. ECRI, in its second report on Turkey (July 2001), noted, however, that this law has only been applied in charges directed at those accused of advocating separatism or fundamentalist views. In contrast, ECRI expressed concern that “there are frequent reported instances of oral, written and other expressions, notably of antisemitic character, targeting minority groups in Turkey, which may fall under the scope of the provisions prohibiting incitement to hatred, and that Article 312 does not appear to be used in such cases.”<sup>529</sup>

## Turkmenistan

Turkmenistan is a party to the International Convention on the Elimination of All Forms of Discrimination, but has never submitted a report to the convention's treaty body.

In its concluding observations of May 2002 on Turkmenistan's compliance with its treaty observations, the CERD committee expressed regret that the government was unable either to respond to its invitations to attend the commission meetings or to furnish the information required by the committee.<sup>530</sup> In stressing that compliance with the reporting requirement was an obligation under article nine of the convention, the committee added its concern regarding Turkmenistan's general default on its international human rights obligations:

Although Turkmenistan has ratified the main international instruments in the field of human rights, it has not reported to any United Nations treaty body. The State party, moreover, has not responded to communications sent by special rapporteurs of the Commission on Human Rights.

The committee proceeded to express "deep concern about grave allegations of human rights violations in Turkmenistan, both in the civil and political, as well as social, economic and cultural domains." Particular concern was expressed at "the State party's present policy of promotion of Turkmen identity leads to discrimination against persons not of Turkmen ethnicity."<sup>531</sup>

In its 2004 annual report, the International Helsinki Federation describes Turkmenistan as among the world's most restrictive countries in terms of freedom of religion. A new, restrictive law, "On Freedom of Conscience and Religious Organizations" took effect in November 2004, prohibiting unregistered religious activity—effectively all activity not sanctioned by the Sunni Muslim Board or the Russian Orthodox Church, the only registered religious bodies.<sup>532</sup> Worship by members of unofficial faiths was disrupted, their members beaten, threatened, arrested, and imprisoned:

Authorities routinely broke up worship services and other religious meetings of non-registered communities, condemning them as "illegal." Baptist, Pentecostal, Adventist, Lutheran and

other Protestants communities, as well as Shia Muslims, the Armenian Apostolic Church, and Jewish, Baha'i, Jehovah's Witnesses and Hare Krishna communities were de facto banned and their activity punishable under administrative or criminal laws. In 2003, there was a spate of raids on Protestants and Hare Krishnas. Adherents of non-registered communities were threatened, detained, beaten, fined and sacked from their jobs, while homes used for worship and study of religious literature were confiscated.<sup>533</sup>

Abuse of independent Muslims is also carried out through the system of neighborhood committees called the Mahalla, which stage public rallies "at which pious Muslims are abused, threatened, and demonized," and act as "the government's eyes and ears"—exercising close control over the population at the local level.<sup>534</sup>

Discriminatory treatment was also reported against major national minorities, including Russians, Uzbeks, Kazakhs, and Germans and members of smaller groups, the Turks, Kurds, and Beludzhi.<sup>535</sup>

## Ukraine

In its second report on the Ukraine, made public in July 2002, ECRI described several legislative initiatives to combat discrimination and hate crimes, but cited a "lack of reliable data" on discrimination.<sup>536</sup> The 1991 Declaration on the Rights of the Nationalities of Ukraine was amended to extend the scope of article 18 of the law, which prohibited discrimination on the basis of nationality, "to cover discrimination on the basis of race as well as actions intended to incite to inter-ethnic, racial or religious strife."<sup>537</sup>

Article 161 of the Ukraine's Criminal Code, which became effective in September 2001, punishes "wilful actions inciting national, racial or religious enmity and hatred; humiliation of national honour and dignity, or the insult of citizens' feelings in respect of their religious convictions; and any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based, *inter alia*, on 'race,' color of skin, political, religious and other convictions, ethnic and social origin, linguistic or other characteristics."<sup>538</sup> (Among ECRI's recommendations was that the code be amended to ensure that the law protected *all*

persons against unlawful behavior, and not just citizens).<sup>539</sup> Although these provisions existed in the previous penal code, ECRI noted that “prosecutions on the basis of these provisions are extremely rare.”

While article 67 of the code identifies racial, national or religious enmity and hostility as specific aggravating circumstances for the purposes of imposing a punishment, ECRI noted that the terms of article 67 are not included in the list of circumstances which a judge is bound to consider as aggravating. In considering such circumstances, special procedures apply: “when finding such motivation not to be aggravating, the judge has to provide the reasons for this decision in the judgment.”

Official views on the availability of statistics concerning discrimination in the Ukraine are confusing, according to the ECRI report, as “Ukrainian authorities have stated that ethnic background is not taken into account when collecting data in different areas of life, such as education, employment, relations with the police etc.” Despite this, authorities said that “monitoring of the situation of national minorities and relevant data collection are regularly performed by the regional divisions of the State Department of Nationalities and Migration,” although the groups covered by this data are not identified. In conclusion, ECRI observed “that an improvement of the system of data collection and monitoring would be desirable in order to evaluate the evolving situation of minority groups in Ukraine and to uncover and remedy any problems, including differences related to direct or indirect discrimination.”

## United Kingdom

The Anti-Terrorism, Crime and Security Act 2001 was amended in response to the anti-Muslim backlash after September 11 to extend the category of racially aggravated offences to include “racially or religiously aggravated offenses.”<sup>540</sup>

The 2001 act also amended the 1986 Public Order Act to increase the maximum penalty for these offenses to from two to seven years.<sup>541</sup>

Section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 imposes a duty on sentencing courts to treat evidence of racial

motivation as an aggravating factor, “increasing the seriousness of the offence and the sentence to be imposed, in cases where offences are not specifically charged under the 1998 [Crime and Disorder] Act.”<sup>542</sup>

Laws criminalizing specific offenses defined under the Crime and Disorder Act as “racially aggravated,” and so set out as distinct offenses subject to enhanced penalties, include Section 29(1a) (racially aggravated malicious wounding or racially aggravated grievous bodily harm); Section 29(1b) (racially aggravated actual bodily harm); and Section 29(1c), (racially aggravated common assault).<sup>543</sup>

Under the Criminal Justice Act of 2003, sexual orientation or disability bias could be considered an aggravating circumstance in sentencing for all offences, although the Act did not become effective immediately. The act also provided for sentencing enhancements where racist or religious bias is present. These provisions came into force in England and Wales on April 4, 2005.<sup>544</sup>

Section 145 concerns racist or religious bias crimes. It applies where a court considers the seriousness of an offence not expressly punished as a racially or religiously aggravated assault, or other crime expressly punishable under sections 29 to 32 of the Crime and Disorder Act 1998. If the offense is found to have been racially or religiously aggravated, the court:

- (a) must treat that fact as an aggravating factor, and
- (b) must state in open court that the offence was so aggravated.<sup>545</sup>

Section 146 requires increases in sentences where disability or sexual orientation bias is an aggravating factor:

- (1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).
- (2) Those circumstances are:
  - (a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

- (i) the sexual orientation (or presumed sexual orientation) of the victim, or
- (ii) a disability (or presumed disability) of the victim, or

(b) that the offence is motivated (wholly or partly)—

- (i) by hostility towards persons who are of a particular sexual orientation, or
- (ii) by hostility towards persons who have a disability or a particular disability.

(3) The court—

- (a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and
- (b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section "disability" means any physical or mental impairment.<sup>546</sup>

In Northern Ireland, which fell outside the scope of the Criminal Justice Act 2003, consultations took place in 2002 and 2003 regarding racist and sectarian crime legislation, with further consultation following the publication of the draft Criminal Justice (NI Order 2004).<sup>547</sup> An explanatory document issued with the draft legislation provided background to the government's proposals for legislative "to deal with crimes based on hostility of race, sectarianism and sexual orientation," with a particular emphasis on the rise in racist violence:

"Hate Crime"

Northern Ireland has increasingly seen widespread public concern about the levels of "hate crime," most recently in the area of racially motivated crime. Police statistics show that reports of racial prejudice and racially motivated crime have been on the increase at a significant rate. Figures show that the total number of racially motivated incidents rose

from 93 in 1998/99 to 226 in 2002/03. There were 296 incidents between 1 April 2003 and 31 December 2003. Although seemingly low in absolute terms when set against the totality of the total number of crimes recorded each year, the figures present a disturbing picture. Not only do they show a tripling in numbers over only a couple of years but, behind them lies a higher pro-rata level per head of the population than is the case in England and Wales. The rate of racial incidents in Northern Ireland has been estimated at 12.9 per 1,000 minority ethnic population compared to 6.7 in England and Wales.<sup>548</sup>

In hearings before the Northern Ireland Affairs Committee on hate crimes, the Police Service of Northern Ireland (PSNI) provided official statistics on both the rise of racist violence and increased hate crimes motivated by sexual orientation bias.<sup>549</sup> Data on homophobic hate crimes was summarized as follows:

A homophobic incident is defined by the police using the same approach as for a racial incident, namely, as being "any incident which is perceived to be homophobic by the victim or any other person." The PSNI implemented a homophobic incident monitoring policy in July 2000. The police figures show that from 2002/03 to 2003/04 recorded homophobic violence doubled from 35 to 71. The highest number of incidents of homophobic crime in 2003/04 took place in Londonderry with 17 incidents, followed by South Belfast with 15 incidents. The most common types of incident were physical assaults (35), verbal abuse/threats (14), attacks on homes (10), and attacks on property (10).<sup>550</sup>

Organizations representing the disabled also took part in the Northern Ireland hearings and advocated strongly for amendments to the draft legislation to address hate crimes motivated by disability bias.<sup>551</sup> A statement by the Royal National Institute of the Blind and the Guide Dogs for the Blind Association noted that "[m]ost studies on hate crime do not include hate crime committed against disabled people and the lack of statistics hampers work on this issue." However, according to the statement, the DRC's 2002 Disability Awareness Survey had found that 25 percent of disabled people "experienced harassment related to their disability and one in 20 disabled people experience harassment on a

regular basis.” In a specific incident cited from Northern Ireland, a guide-dog owner was persistently taunted for being blind and her dog was attacked with fire-crackers.<sup>552</sup>

Recommendations included the collection of statistics “for all forms of hate crime and that these are used to inform policing strategies and campaigns against hate crimes,” and that “the draft Order in Council on Hate Crime in Northern Ireland be extended to cover disabled people.”<sup>553</sup> The draft legislation was subsequently amended to cover disability bias.<sup>554</sup>

The Criminal Justice (No. 2) (Northern Ireland) Order 2004 came into force on September 28, 2004, making a statutory requirement for judges to treat racist, sectarian, sexual orientation, and disability bias as an aggravating factor in sentencing.

In Scotland, despite high levels of violence motivated by racism, homophobia, and bias against the disabled, hate crimes legislation still lags. There is no statutory provision for sentence enhancement when crimes are motivated by disability or sexual orientation bias.<sup>555</sup>

A 2003–04 survey undertaken by Great Britain’s Disability Rights Commission (DRC) and Capability Scotland, Scotland’s leading disability organization, found a high incidence of hate crimes targeting the disabled ranging from “physical attacks to verbal abuse and intimidation”:

- Almost half of those who took part in the survey had experienced verbal abuse, intimidation and/or physical attacks because of their disability. Just over a third of incidents were physical attacks, with the main type of attack being verbal abuse and intimidation.
- Almost a third of respondents were experiencing attacks at least once a month. Strangers were the most likely people to be carrying out the attacks and they were most likely to happen in public places, such as in the street and park, in shops or on public transport.
- Only 40 percent of respondents had told the police about attacks and in general

the police were perceived as unable to help.

- The attacks had a major impact on people’s lives: around a third had to avoid specific places and change their routine and one in four had changed homes as a result.<sup>556</sup>

The survey was cited in recommendations made jointly by the DRC and Capability Scotland for changes in Scotland’s criminal law to protect disabled people from hate crimes. The Scottish Director of the DRC, Bob Benson, noted that “[t]he DRC has consistently called for changes in the law to recognise hate crime against disabled people and tougher penalties for convicted offenders, to bring Scotland into line with what is already happening in England and Wales.”<sup>557</sup>

A Working Group on Hate Crime was set up by the Scottish Executive in June 2003 “to consider the most appropriate measures needed to combat crime based on hatred towards social groups.” In its July 6, 2005 report, it recommended that

[t]he Scottish Executive . . . introduce a statutory aggravation as soon as possible for crimes motivated by malice or ill-will towards an individual based on their sexual orientation, transgender identity or disability. The legislation should be framed in such a way as to allow this protection to be extended to other groups by statutory instrument over time if appropriate evidence emerges that such other groups are subject to a significant level of hate crime. The legislation should ensure the recording of hate-motivated incidents (by the police), and reports and decisions of proceedings (by Crown Office and Procurator Fiscal Service) and convictions (by Scottish Criminal Records Office).<sup>558</sup>

The Crown Prosecution Service (CPS) monitors prosecution decisions and outcomes in all cases identified by the police or the CPS as racist incidents.<sup>559</sup> In its third report on the United Kingdom, ECRI noted that

in the year 2002/2003, the number of defendants dealt with by the CPS for racially motivated crime rose by 12.4%. This latest increase follows a 20% increase from the year 2000/2001. At the same time, ECRI notes that during the year 2002/2003, the number of racist incidents recorded by the police fell by

11% to 48,525 and that racially aggravated offences recorded by the police remained more or less stable (31,034).<sup>560</sup>

ECRI further noted that “[n]on-governmental organisations have registered progress in the reporting, recording and prosecution of racially and religiously aggravated offences,” including through measures against religiously aggravated offenses in the Anti-Terrorism, Crime and Security Act 2001. ECRI added, however, that concern had been expressed “that convictions do not always reflect the number and gravity of the offences committed.”<sup>561</sup>

## United States of America

U.S. law prohibits intentional acts that by force or threat of force interfere with the enjoyment of federal rights or benefits, such as voting or going to school or work, on the basis of race, color, religion, or national origin.<sup>562</sup> This creates a high standard for prosecuting such acts. As the U.S.-based Anti-Defamation League explains: “Under the current statute, the government must prove both that the crime occurred because of a person’s membership in a protected group, such as race or religion, and because (not while) he or she was engaging in a Federally protected activity.”<sup>563</sup> Crimes motivated by bias founded on sexual orientation, gender, or disability cannot be prosecuted under the federal statute.

In addition, the Fair Housing Act of 1968 prohibits “housing-related violence on the basis of race, color, religion, sex, handicap, familial status, or national origin.” The Church Arson Prevention Act of 1996 makes it a crime to commit attacks on religious property or to obstruct persons in the exercise of their religious beliefs. This law covers racially-motivated church burnings and bombings as well as acts of desecration motivated by religious animus “when the defendant has traveled in interstate commerce or has used a facility or instrumentality of interstate commerce.”<sup>564</sup>

In its September 2000 report to the Committee on the Elimination of Racial Discrimination (CERD), the United States described the Civil Rights Division of the Department of Justice as “the chief civil rights enforcement agency for the Federal Government, charged with the effective

enforcement of federal civil rights laws,” with the authority “to prosecute criminally those who use force or threat of force to violate a person’s rights to non-discrimination (so called ‘hate crimes’).” The report also outlined federal legislation concerning hate crimes and provided a very summary account of state statutes.<sup>565</sup>

Legislation pending before Congress would amend existing law to bridge some of the gaps in the criminal justice system’s response to hate crimes. The Local Law Enforcement Enhancement Act received majority support in both the House and the Senate in 2000, and again in late 2004 but was not enacted into law.<sup>566</sup> The legislation was reintroduced in May 2005.

If enacted, the legislation would bring under federal jurisdiction the most serious hate crimes, while providing federal support for state investigations and prosecutions—the level at which most hate crimes are most effectively addressed. The current statute would be amended to bring under federal purview hate crimes motivated by the victim’s real or perceived sexual orientation, gender, or disability (in addition to race, color, religion, or national origin), and existing requirements that prosecutions go forward only where the victim was attacked because he or she was engaged in a specific federally protected activity would be lifted.<sup>567</sup>

In addition to federal hate crime laws, 45 of the 50 states and the District of Columbia have legislation enabling racist and other discriminatory motives to be taken into account as an aggravating factor in sentencing.<sup>568</sup> All states except for Arkansas, Indiana, South Carolina, and Wyoming have passed some form of criminal law addressing hate crimes, although Utah law on bias-motivated violence makes no reference to race, religion, ethnicity or other specific grounds of discrimination.<sup>569</sup> A Georgia state law that referred only to “bias or prejudice” was struck down by the state supreme court in October 2004.<sup>570</sup> With these five exceptions, all states (and the District of Columbia) identify bias motivated by race, religion, or ethnicity in their respective hate crime statutes.

State legislation differs in the discriminatory motives taken into account in definitions of hate crimes, but the incorporation of provisions that

address bias by reason of sexual orientation, gender, or disability as well as race, religion, or ethnicity is increasingly becoming the norm:

- The laws of 44 states and the District of Columbia expressly punish crimes motivated by race, religion, or ethnicity. (See chart in App. 10.)
- The laws of 21 states and the District of Columbia cover bias motivated by *race, religion, ethnicity and sexual orientation, gender, and disability*. Some of them also include other grounds for bias, including age and political affiliation.<sup>571</sup>
- The laws of 31 states and the District of Columbia punish bias crimes based on sexual orientation.<sup>572</sup>
- The laws of 27 states and the District of Columbia punish bias crimes based on gender.<sup>573</sup>
- The laws of 31 states and the District of Columbia punish bias crimes based on disability.<sup>574</sup>

The trend has been to amend some of the earliest legislation, which referred only to race, religion, or ethnicity, to include sexual orientation, disability, and gender. While in many states new legislation has been adopted as a package to address these multiple forms of discriminatory bias, as in the 2002 hate crime law adopted in Nebraska, others have lagged.<sup>575</sup> For example, the laws of six states—Delaware, Florida, Kansas, Massachusetts, Nevada, and Wisconsin—that punish crimes motivated by race, religion, ethnicity, sexual orientation, and disability still exclude gender bias. Others include most, but not all, discriminatory motives for violence, in a pattern that may reflect both the slow process of legislative reform at the state level and continued resistance to measures to combat hate crimes as an extraordinary category of offense.<sup>576</sup>

Among states that cover race, religion, and ethnicity bias, Tennessee and Oregon exclude disability and gender bias (but cover sexual orientation bias); Michigan and Mississippi exclude disability and sexual orientation bias (but cover gender bias); Nevada excludes gender bias (but covers sexual orientation and disability bias); West Virginia excludes sexual orientation and

disability bias (but covers gender bias); and Wisconsin excludes gender bias (but covers sexual orientation and disability bias).<sup>577</sup>

In addition to hate crime statutes providing enhanced penalties for bias-motivated crimes of violence and laws providing general protection against the violation of civil rights, many states have enacted statutes addressing specific aspects of the hate crimes problem. The Leadership Conference on Civil Rights Education Fund, in its comprehensive 2004 report *Cause for Concern*, has summarized some of the more common aims of these statutes as: criminalizing vandalism of religious institutions; requiring law enforcement personnel to receive training in identifying and investigating hate crimes; and requiring states to compile statistics on hate crimes.<sup>578</sup>

Statistics on hate crimes and incidents are collected at both the state and national level in the United States, by state and federal government authorities and by nongovernmental organizations. Twenty-four states and the District of Columbia have data collection statutes that complement criminal justice measures combating hate crimes; 14 of these require the collection of data concerning bias based on sexual orientation, while just 7 cover gender bias.<sup>579</sup>

At the federal level, the Hate Crime Statistics Act of 1990 (28 U.S.C. 534) requires the Department of Justice to collect data from local law enforcement agencies on crimes that “manifest prejudice based on race, religion, sexual orientation or ethnicity.” This was amended by the Violent Crime Control and Law Enforcement Act of 1994 to cover bias on the basis of disabilities, both physical and mental, as a factor in determining whether a crime is a hate crime.<sup>580</sup>

The principal executor of the mandate for data collection and analysis is the Federal Bureau of Investigation (FBI), which establishes guidelines to distinguish hate crimes from ordinary offenses (see above) and prepares annual reports on the incidence of hate crimes, disaggregated by the groups affected. The FBI’s Uniform Crime Reporting (UCR) system provides a window into the severity and nature of hate crimes in the United States. Its utility, however, is limited by the data provided by local law enforcement agencies, and reflects the uneven implementation of



procedures to register hate crime incidents in different states and localities.

The FBI system's greatest failure is the non-participation of law enforcement agencies in many states. Most of the 17,000 local law enforcement jurisdictions that participate in UCR either opt out of its hate crime dimension altogether (5,000 jurisdictions) or, while technically participating, report zero as the tally of incidents motivated by bias (10,205).

Just 1,869 law enforcement jurisdictions of the 17,000 in the UCR program accounted for the 7,642 incidents analyzed in the 2002 report. In total, 15,135 law enforcement agencies that provide annual crime reports to the Department had nothing to report on hate crimes—or turned a blind eye.

The results of the survey nevertheless provide some important insights into the nature of discriminatory violence in the United States. The UCR system distinguishes hate crimes reports by the nature of the bias (including whether there are multiple biases), identifies the criminal offenses involved in each incident, and classifies each offense in accord with one of three categories: as a crime against persons; crime against property; or crime against society (which is not defined). The 2002 report looks at 7,462 incidents, of which 7,459 are defined as “single bias incidents,” involving 8,825 identified offenses. There were 9,222 victims of the incidents on record.<sup>581</sup>

In 2002, 67.5 percent of the 8,825 identified offenses from single-bias incidents were crimes against persons and 32 percent were crimes against property (just 0.2 percent were crimes against society). Of these, the most common offenses reported were intimidation (35.2 percent of the cases); destruction/damage/vandalism (26.6 percent); simple assault (20.3 percent); and aggravated assault (11.7 percent). There were eleven homicides and eight rapes (“Three forcible rapes resulted for a sexual-orientation bias . . . one from a disability bias.”)<sup>582</sup>

In its analysis of the motivation for the offenses examined, the survey found that 48.8 percent concerned racial bias. Other categories of bias, and the percentage of incidents, were:

- Religious bias: 19.1 percent;

- Sexual-orientation bias: 16.7 percent;
- Ethnicity or national origin bias: 14.8 percent;
- Physical or mental disability bias: 0.6 percent.

The breakdown of racist violence found that of 4,394 offenses, 67.5 percent resulted from “an anti-black” bias, and 6.1 percent resulted from bias against Asians or Pacific Islanders. Other groups of varying races were the object of 4.6 percent of offenses, while 1.5 percent “targeted American Indians or Alaskan Natives.”<sup>583</sup>

A statistical distinction between “racial bias” and bias based on “ethnicity or national origin” is also drawn in the survey, with 1,345 classified under the latter category. The report notes “that investigators determined . . . that 44.7 percent were associated with anti-Hispanic prejudice.” The remaining 55.3 percent were classified as “anti-other ethnicity/national origin bias.” There is no express reference to bias against Arab-Americans or people of Middle East or South Asian origin, although hate crimes against Muslims were classified as “anti-Islamic bias.”<sup>584</sup>

Antisemitism is addressed under “anti-religious” bias. The breakdown of 1,576 total offenses classified as based on religious bias found 65.9 percent based on “anti-Jewish bias.” Anti-Islamic bias accounted for 10.8 percent of these offenses, and bias against “other, unspecified religious groups” made up 13.8 percent. Anti-Catholic (3.7 percent) and anti-Protestant (2.0 percent) offenses also figured in the data.<sup>585</sup>

Figures on bias based on sexual orientation covered 1,464 offenses: “Of these, male homosexuals were the targets of 65.4 percent of the attacks. Law enforcement attributed the remaining offenses to anti-homosexual bias, 17.7 percent; anti-female homosexual bias, 14.1 percent; anti-heterosexual bias, 1.8 percent; and anti-bisexual bias, 1.0 percent.”<sup>586</sup>

The FBI's 2003 report documents 7,489 bias-motivated incidents, with 8,715 separate offenses and 9,100 victims.<sup>587</sup> The breakdown by motive is similar to that of previous years, with 51.4 percent motivated by racism; 13.7 percent by bias based on ethnicity or national origin; 17.9 percent by religious intolerance; and 16.6 percent the result

of a sexual orientation bias. Of fourteen reported murders, six were reportedly motivated by sexual orientation bias.<sup>588</sup>

The ADL, a leading nongovernmental organization working to monitor and stop hate crimes, welcomed the 2003 report, but called for increased education and training for police and improved coordination between state and federal authorities to investigate and prosecute hate crimes. It stressed the continuing decline in participation by U.S. law enforcement agencies in the UCR system's hate crime survey, from 12,073 in 2002 to 11,909 agencies in 2003. It also highlighted the nominal participation of most agencies—with just 16.5 percent of participating agencies reporting even a single hate crime. The ADL noted that, as in previous years, over 5,000 police jurisdictions of the total of some 17,000 providing crime reports to the FBI “did not participate in the FBI [hate crime] reporting program at all.”<sup>589</sup>

Community-based organizations and other nongovernmental organizations, like the ADL, have been increasingly resourceful and effective in gathering hate crime incident reports on their own and advocating for more aggressive public policy to address crimes. They include many of the 185 member organizations of the Leadership Conference for Civil Rights, the oldest, largest, and most diverse civil and human rights coalition in the United States. These organizations, in addition to scores of municipal, county, and state human rights, civil rights, and anti-discrimination commissions, help fill some of the information deficit on hate crimes in the United States.

Nongovernmental organizations that are actively engaged in monitoring and campaigning against hate crimes include the Council on American-Islamic Relations (CAIR), the American-Arab Anti-Discrimination Committee, the American Association of Persons with Disabilities, the Anti-Defamation League, the Simon Wiesenthal Center, the Human Rights Campaign, the National Asian Pacific American Legal Consortium, the National Council of La Raza, the Leadership Conference on Civil Rights Education Fund, the National Partnership for Women, the Sikh Coalition, and the Southern Poverty Law Center. All have been instrumental in gathering and publishing reports of hate crimes and pressing for

tougher standards in U.S. law and policy for combating hate crimes.

Community-based organizations in particular have been successful in gathering hate crimes data based on their direct access to members of their communities. Victims of verbal harassment and threats are often more likely to lodge complaints with their own community organizations than with the police. In addition, immigrants whose legal status is in question and who are fearful of reporting incidents to the police are more willing to file complaints with community groups. Given the extensive underreporting by official state and local agencies, these organizations play a major role—including as an important bridge to state law enforcement and other government agencies.

A 2004 report by the Leadership Conference on Civil Rights Education Fund, *Cause for Concern: Hate Crimes in America*, provides an overview of the impact of hate crimes in the United States, declaring that “in this most diverse society on earth, each of us is a member of one or more minority—racial, religious, ethnic, cultural, national origin, or sexual.”<sup>590</sup> In showing the human face of “[v]iolence motivated by bigotry,” the report examines the sweep of hate crimes across American society and the targeting of “African Americans, Hispanic Americans, and Asian Americans; Jewish Americans and Arab Americans; Native Americans; recent immigrants; women; and gay, lesbian, bisexual, and transgender people, to name just a few.” The report includes sections addressing the situation of hate crimes affecting each of these groups.

In its review of groups targeted by violence, the report highlights the finding of the Uniform Crime Reports that the greatest number of hate crimes of any kind are perpetrated against African-Americans. “From lynching to cross-burning and church-burning, anti-black violence has been and still remains the prototypical hate crime—an action intended not only to injure individuals but to intimidate an entire group of people. Hate crimes against African Americans have an impact upon society not only for the hurt they cause but for the history they recall, and perpetuate.”<sup>591</sup> The report cites a series of examples, drawing from data compiled by the Southern Poverty Law Center, which monitors hate crimes and extremist movements, in particular in the American South:

- “Louis J. Giannola was charged with a felony hate crime in Pinellas Park, Fla., for allegedly throwing a noose around a black teenager’s neck while yelling a racial slur (January 14, 2004).”
- “Two 16-year-old teenage boys in Arlington, Wash., were charged with malicious harassment for allegedly burning a cross in an African-American man’s yard (March 27, 2004).”
- “Thaddeus R. Carroll was sentenced to 18 months in prison for burning a cross in a black woman’s yard in April 1999 in Phoenix, Ariz. (November 3, 2003).”
- “Jesus A. Gomez, 20, a suspected gang member, was charged with murder, two counts of attempted murder and other charges in Riverside, Calif., after he allegedly targeted and killed a 13-year-old boy because he was black (May 27, 2003).”<sup>592</sup>
- The March 2002 sending of letters with racial epithets, some of which contained white powder, to more than forty Latino advocacy groups, attorneys, community activists, and students throughout the San Francisco Bay Area.<sup>594</sup>
- The beating in May 2004 of a 55-year old Guatemalan immigrant, in Canton, Georgia, by a group of white teenagers who had first offered him a job and driven him to a remote site. There he was beaten and robbed.<sup>595</sup>
- The beating in Reno, Nevada, in September 2001 of a man by two skinheads who accused him of “messing up the white race” by having a child with a Hispanic woman.<sup>596</sup>
- The discovery of the bodies near the Mexican border in late 2002 and 2003 of nine immigrant men, some of them shot at close range, in a 20-square-mile area in Maricopa County, Arizona, possibly murdered by extremist anti-immigrant groups active there.<sup>597</sup>

The report profiles the June 1998 murder of James Byrd, Jr., an African-American resident of Jasper, Texas, who was dragged to his death by a pickup truck, and the aftermath of the case: “His assailants had beaten Byrd severely and sprayed black paint on his face before attaching chains to his legs and dragging him 2.5 miles behind their truck. Autopsy evidence indicated that Byrd was still alive while being dragged and apparently tried to prop his head up with his elbows during the last moments of his life. As a result of the dragging, Byrd’s head and arm were severed from his body and strewn along the road. His murderers left his torso in front of an African-American cemetery.” Two of Byrd’s attackers were arrested and sentenced to death; a third was sentenced to life imprisonment.<sup>593</sup>

*Cause for Concern* also addresses the particular problem of underreporting of hate crimes concerning people of Hispanic origin in the United States, in particular when involving recent immigrants: “As with attacks upon African Americans and Jews, attacks upon Hispanics are part of a history of hatred,” with recurring periods in particular in California and the Southwest “when not only newcomers but longtime U.S. citizens of Mexican descent have been blamed for social and economic problems.” Examples include:

The Leadership Conference report also profiles the murder of gay man Mathew Shephard in October 1998 outside Laramie, Wyoming, and includes a section focusing on hate crimes against gay, lesbian, bisexual and transgender (GLBT) people. It cites the National Coalition of Anti-Violence Programs (NCAVP), a network of over twenty anti-violence organizations, that documented incidents involving 2,051 members of the GLBT community in 2003—an 8 percent increase overall from 2002 and a 27 percent rise in attacks on transgender victims.<sup>598</sup> A particular concern highlighted there was a rise in the number of violent assaults, which NCAVP reported rose 4 percent to 705 in 2003, with those causing serious injury rising 3 percent. “A total of 203—almost one in three—assault victims, 5 percent more than in 2002, required some level of hospital care. Of those requiring hospital care, 2003 saw an 8 percent increase of victims requiring in-patient care.”<sup>599</sup> NCAVP’s report on 2003 documented 1,792 incidents, involving 2,131 victims. Crimes included 20 murders, a rise from 18 murders in 2003.<sup>600</sup>

NCAVP in 2003 also described the rate of reporting to the police of hate crimes motivated by sexual orientation or against transgender people as lower than the reporting of other hate crimes. It found also that despite a 3 percent increase in its own registry of such hate crimes in 2003, incidents reported to the police had declined by 2 percent, in part due to “the difficult relationship between their communities and many police departments.”<sup>601</sup> In 2004, it reported a continuation of this trend, and a new finding “that the number of people of transgender experience reporting incidents decreased (11%) for the first time in recent memory”—possibly as “an unfortunate byproduct of the transgender community’s attempt to remain ‘under the radar.’”<sup>602</sup>

Four killings motivated by gender bias known as the “Yosemite Murders” are also profiled in *Cause for Concern*. A California man in February 1999 strangled Carole Sund, 43, and visiting Argentine exchange student Silvina Pelosso, 16, and then sexually assaulted and murdered Sund’s daughter Juli, 15, and returned in July to murder Joie Ruth Armstrong, 26. When arrested, he reportedly said he had “fantasized about killing women for the last 30 years.”<sup>603</sup>

Hate crimes motivated because of bias towards those with physical or mental disabilities are statistically the least likely to be reported by victims in the United States. As reflected in the low number in the FBI’s annual crime reports, these hate crimes are rarely reported to law enforcement agencies. According to the Leadership Conference, “[t]he victim may be ashamed, afraid of retaliation, or afraid of not being believed. The victim may be reliant on a caregiver or other third party to report the crime, who in fact never does so. Or, the crime may be reported, but there may be no reporting of the victim’s disability, especially in cases where the victim has an invisible disability that they themselves do not divulge.”<sup>604</sup>

In 1999, in one of the first cases of its kind to be prosecuted, Middletown, New Jersey resident Eric Krochmaluk, a man with cognitive disabilities, “was kidnapped, choked, beaten, burned with cigarettes, taped to a chair, his eyebrows shaved, and ultimately abandoned in a forest.” Eight people were subsequently indicted for hate crimes

in one of the first prosecutions of a disability-based hate crime in America.<sup>605</sup> Physical and mental disabilities had been added to New Jersey’s hate crimes laws just months before the attack. In July 2001 two of the assailants were sentenced to twenty years’ imprisonment for conspiracy, kidnapping, and aggravated assault; five others also received prison sentences for bias assault. The prosecutor opened the case by declaring that the accused had “tormented this mentally disabled man because of his disability.”<sup>606</sup>

The ADL is among the most effective U.S.-based organizations working to combat hate crimes. Although founded nearly a century ago to combat antisemitism, the ADL has created model legislation covering *all* hate crimes that has been widely adopted at the state level and works with law enforcement agencies and prosecutors to combat hate crimes. It works in partnership with the Leadership Conference Education Fund (LCEF) and the Center for the Prevention of Hate Violence (CPHV) on programs addressing juvenile hate crime. The ADL also continues to monitor and respond to antisemitism in the United States and internationally, and produces an annual survey of antisemitic hate crimes in the United States<sup>607</sup>—an essential contribution as anti-Jewish threats and violence still account for the largest number of hate crimes documented in the FBI’s annual reports of religious bias crimes.

In its report on antisemitism in 2004, the ADL reported 1,821 antisemitic incidents, an increase of 17 percent over the 1,557 reported during 2003.<sup>608</sup> These included 1,177 incidents of harassment, threats, and assaults, and 644 of vandalism, including property damage, cemetery desecration, and antisemitic graffiti. Specific cases cited in the report included:

- an arson attack on the entrance to a Jewish cemetery in West Roxbury, Massachusetts;
- the smearing of the windows of a Jewish school in North Miami with excrement; the disruption of a religious service for young children at a synagogue in Eureka, California, where attackers broke furniture and left antisemitic graffiti; and

- the defacing of a Houston synagogue with swastikas and the slogan “Death to Jews.”<sup>609</sup>

Incidents reported in 2003 included the firebombing of a synagogue in Allentown, Pennsylvania, in July and an arson attack in Indiana in November that destroyed a museum commemorating children who were victims of medical experimentation in the Holocaust.<sup>610</sup>

## The Backlash to the September 11 Attacks

Hate crimes in the United States rose sharply after September 11, 2001, with a rash of violence directed at Arabs, Muslims, and South Asians in the immediate aftermath of the attacks. According to the FBI’s official hate crime statistics, the number of hate crimes against Muslims rose from 28 in 2000 to 481 in 2001, an increase of over 1,700 percent.<sup>611</sup>

The incidents included a series of violent assaults and murders targeting Muslims and people mistaken for Muslim, including members of the Sikh faith. On September 15, 2001, Balbir Singh Sodhi, a 49-year old turban-wearing Sikh, was shot and killed while planting flowers at his gas station in Mesa, Arizona. His killer had bragged earlier at a local bar of wanting to kill “those responsible for September 11.”<sup>612</sup>

In late September, Abdo Ali Ahmed, a Yemeni grocer, was shot to death in his shop in Reedley, California, after anti-Arab statements were placed on his car; and in Fresno, California, Rien Said Ahmed was shot dead while at work in a store.<sup>613</sup> On October 4, 2001, Vasudev Patel, an Indian immigrant and father of two, was shot and killed at his convenience store in Mesquite, Texas. His killer later confessed also to the murder of Waqar Hassan on September 15, 2001, near Dallas, claiming both murders were in “vengeance” for the 9/11 terrorist attacks.<sup>614</sup>

Public officials issued statements quickly in an effort to halt the attacks. On September 12, President George W. Bush told New York Mayor Rudolph Giuliani in a message for publication that: “[o]ur nation should be mindful that there are thousands of Arab-Americans who live in New York City, who love their flag just as much as [we] do, and . . . that as we seek to win the war, that

we treat Arab-Americans and Muslims with the respect they deserve.”<sup>615</sup> President Bush followed up less than a week later with a highly visible visit to the Islamic Cultural Center in Washington, D.C., and in a speech there gave a very public vote of confidence to threatened minorities in the United States and an exhortation for tolerance:

I’ve been told that some fear to leave; some don’t want to go shopping for their families; some don’t want to go about their ordinary daily routines because, by wearing cover, they’re afraid they’ll be intimidated. That should not and that will not stand in America.

Those who feel like they can intimidate our fellow citizens to take out their anger don’t represent the best of America, they represent the worst of humankind, and they should be ashamed of that kind of behavior.<sup>616</sup>

President Bush’s calls for civility were echoed by strong statements by Mayor Giuliani and U.S. Attorney General John Ashcroft. At the same time, harsh anti-immigrant policies instituted in the wake of September 11, including a massive round-up of Muslim men and the prolonged incommunicado detention of many without charge or trial, contributed to a climate of fear within the Muslim community while further exacerbating discriminatory fears and suspicions about Muslims among the broader public.<sup>617</sup>

The level of hate crimes directly tied to the September 11 attacks diminished within a matter of months, but the subsequent initiation of military campaigns overseas contributed to an ongoing sense of unease and vulnerability to discriminatory violence within minority communities in the United States. The week before the start of Operation Iraqi Freedom on March 19, 2003, the Department of Justice warned law enforcement agencies that hate crimes against Arabs and Muslims could increase should the United States go to war with Iraq or in the event of another terrorist attack.<sup>618</sup> The concerns proved prescient: in one incident, just two days after the U.S. invasion of Iraq, a bomb was thrown into the van of Muslim family in Burbank, Illinois, punching a hole in its floor and blowing off its door.<sup>619</sup>

The Council on American-Islamic Relations, in its annual report on Muslim civil rights in the United States for 2004, reported that the number of anti-

Muslim incidents involving physical violence more than doubled in 2003 as compared with 2002 levels, rising from 42 to 93 cases, including vandalism of Muslim community institutions and physical assaults on individuals and murders. In one case, an attacker was charged with four counts of murder after he reportedly confessed to a series of attacks against individuals he perceived to be Arab or Muslim in Brooklyn, New York. In confessing, he reportedly claimed to be a “patriotic assassin” who sought revenge for the September 11 attacks by targeting men he perceived to be of Arab descent. In fact, only one of those he killed, Mohammed Abdul Nasser Ali, was from the Middle East—the others were of Guyanese, Ukrainian, and Indian origin.<sup>620</sup>

In other incidents reported in 2003, teenager Rashid Alam was beaten with baseball bats and golf clubs and then stabbed on February 23 in a park in Yorba Linda, California, by some twenty people shouting racial slurs; on March 4, in Falls Church, Virginia, the front window of a *halal* meat market was smashed; on August 24, weeks after gunfire hit an outer building of the mosque there, arsonists burned the Islamic Center of Savannah, Georgia, to the ground; on October 25, in Weldon Spring, Missouri, the door of a day-care center run by a U.S. citizen of Egyptian descent was smeared with excrement, leaflets from a white supremacist group were scattered, and the front porch was set on fire; and on December 9, the office of the *Arab American News* in Dearborn, Michigan, was firebombed. Numerous cases of threats and physical assaults on individuals were also reported.<sup>621</sup>

These problems have persisted over the past year. In its 2004 report CAIR revealed another considerable rise in anti-Muslim discrimination and violence, including 141 threats and acts of violence, a rise of 52 percent over the 2003 level.

The 2002 annual hate crime audit of the Asian-Pacific American Legal Consortium (NAPALC) further documented the September 11 backlash, as well as the broader situation of hate crimes confronting the population of Asian and Pacific origin in the United States.<sup>622</sup> NAPALC reported 275 hate crimes against Asian-Pacific Americans in 2002, down from 507 in 2001 (including the immediate aftermath of September 11), drawing on data from the UCR system, state law

enforcement bodies (including 400 California police departments), the organization’s own hate crimes surveys and internet hotline, and incidents “either reported directly to us or forwarded from community-based organizations that assisted the victims directly.”<sup>623</sup>

NAPALC applies the FBI guidelines to defining hate crimes, and in assessing incident reports distinguishes racial animus through:

the presence of one of the following factors: (1) racial slurs or racial graffiti; (2) the perpetrator is a known or affiliated member of a hate group; (3) the timing of the incident coincides with key dates in U.S. history that create an anti-APA [Asian-Pacific American] bias (e.g., many APAs report attacks occurring on December 7th, the anniversary of the attack on Pearl Harbor during WWII); (4) a reported gang related incident with strong indications of racial bias or targeting; (5) instances where APAs appear to be the sole and deliberate targets for a crime; (6) e-mail messages specifically sent to harass or intimidate members of one ethnic group; or (7) incidents of police abuse where racial animus, bias, or insensitivity is evident.<sup>624</sup>

In its 2002 survey, NAPALC found that 29 percent of the 275 crimes registered were violent assaults. The incidents included 43 cases of assault; 40 of vandalism; 23 of threats; 31 of harassment; 1 involving racial slurs; 7 of robbery; 2 of criminal mischief; and 1 rape. Individual cases included the murder of two Bangladeshi immigrants in separate incidents a few blocks apart in Brooklyn, New York: Mijanur Rahman, a photojournalist, was beaten to death with baseball bats and iron rods in August 2002, while Mohammed Sakawat Hossain, a college student, was beaten and stabbed to death in November 2002. Police reportedly declined to investigate the murders as hate crimes.<sup>625</sup> Other incidents reported by NAPALC included an attack in May 2003 on members of three Chinese families at a Harrah’s casino in Lake Tahoe, Nevada, by a man shouting racial slurs; and a March 2003 attack in Huntington, California, on a Filipino-American man by teenagers wielding lengths of pipe and shouting “white power” and ethnic slurs.

Many factors contribute to underreporting and under-recording of hate crimes in the United

States, both to and by local law enforcement agencies. They include a lack of confidence by members of minority groups, and in particular immigrants, in government mechanisms for receiving complaints, and a failure of police and other public authorities to record the elements of bias in criminal complaints.

An example of the latter was reported in the New York news media in May 2005, when a disabled, wheelchair-bound man was attacked on a public bus in New York City: teenagers set fire to a bag suspended from the back of his chair, which quickly spread to the victim's clothing. Although FBI guidelines call for reporting of offenses when it is reasonable to believe they were motivated "in whole or in part" by bias, and it is reasonable to conclude that the victim was targeted because he was disabled, when arrests were made New York police said it would not be considered a hate crime but just a crime of "stupidity" (even though New York does include anti-disability bias in its hate crime law).<sup>626</sup>

NAPALC's 2002 audit raises the possibility that a reduction in the number of reported incidents in 2002 from the high levels in 2001 may be attributable to these and other obstacles to reporting. While greater public awareness of hate crimes may in fact have led to a reduction nationwide, it notes that "[t]he decrease in reported anti-Asian violence may be attributable to the decrease in resources devoted to local hate crimes investigation." At the same time, the report notes that underreporting may be attributable "to community members not reporting incidents for fear of falling into the wide dragnet . . . under the name of anti-terrorism measures." "Even when there is no legal cause for being detained or deported, victims choose to endure the violence rather than report it and risk being questioned about their legal status."<sup>627</sup>

More generally, outside the context of September 11, underreporting and under-recording for Asian and Pacific Americans has involved a range of factors, many of which apply equally to other minorities under threat:

Many individuals who do not go to the police cite language barriers or mistrust of the police as reasons for not filing reports. In some cases, individuals may have attempted to report cases to the police but were

dismissed. . . . The Audit [includes] incidents that are not classified or prosecuted by law enforcement as hate crimes. In some cases, the reported hate incidents may fall within what is legally defined as a hate crime but may not have been reported by the police as such.<sup>628</sup>

The Leadership Conference, in its 2004 report, sums up obstacles to comprehensive coverage of the hate crimes that victimize minorities in the United States:

[S]tudies by the National Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the most likely targets of hate violence are the least likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or deportation if incidents are reported. Many new Americans come from countries in which residents would never call the police, especially if they were in trouble. Gay, lesbian, bisexual, and transgender victims, facing hostility, discrimination, and, possibly family pressures because of their sexual orientation or identity, may also be reluctant to come forward to report these crimes.<sup>629</sup>

## Uzbekistan

Uzbekistan is a party to the International Convention on the Elimination of All Forms of Racial Discrimination.

In a 2000 report, the CERD committee takes note that "articles 141, 153 and 156 of the State party's Criminal Code establish measures according to article 4(a) of the Convention," but that it was unable to determine whether the legislation of the State party fully conforms with the provisions of article 4(b) and (c) of the Convention. As a consequence, it requests the texts of relevant laws in Uzbekistan's next periodic report, in 2001.<sup>630</sup>

The committee similarly acknowledges receiving statistics on complaints related to human rights violations received by the Office of the Parliamentary Commissioner for Human Rights (Ombudsman), and requests that the next periodic report include information on "the practical implementation and monitoring of articles 4, 5 and

6 of the Convention, *including statistics on racially motivated complaints*" (italics added).

In its 2004 annual report, the International Helsinki Federation observed that "[i]ndependent Muslims were regarded as "religious extremists," a definition which warranted persecution by authorities. In addition, non-traditional religious minority groups, such as Protestants, Jehovah's Witnesses and members of the Hare Krishna movement faced harassment."<sup>631</sup>



# Appendices

## Appendix 1

### **Extracts on Human Rights, Discrimination, and Antisemitism from the CSCE “Copenhagen Declaration”**

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Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Cooperation in Europe (CSCE; the predecessor of the Organization for Security and Cooperation in Europe) (1990)

IV

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

(31) Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

(32) To belong to a national minority is a matter of a persons individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right—

(32.1)—to use freely their mother tongue in private as well as in public;

(32.2)—to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3)—to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(32.4)—to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

(32.5)—to disseminate, have access to and exchange information in their mother tongue;

(32.6)—to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(36) The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

(37) None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.

(38) The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other

relevant international instruments and consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.

(39) The participating States will co-operate closely in the competent international organizations to which they belong, including the United Nations and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities.

They will consider convening a meeting of experts for a thorough discussion of the issue of national minorities.

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

(40.1)—take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2)—commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

(40.3)—take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

(40.4)—endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;

(40.5)—recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts;

(40.6)—consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;

(40.7)—consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

V

(41) The participating States reaffirm their commitment to the human dimension of the CSCE and emphasize its importance as an integral part of a balanced approach to security and co-operation in Europe. They agree that the Conference on the Human Dimension of the CSCE and the human dimension mechanism described in the section on the human dimension of the CSCE of the Vienna Concluding Document have demonstrated their value as methods of furthering their dialogue and co-operation and assisting in the resolution of relevant specific questions. They express their conviction that these should be continued and developed as part of an expanding CSCE process.

(42) The participating States recognize the need to enhance further the effectiveness of the procedures described in paragraphs 1 to 4 of the section on the human dimension of the CSCE of the Vienna Concluding Document and with this aim decide

(42.1)—to provide in as short a time as possible, but no later than four weeks, a written response to requests for information and to representations made to them in writing by other participating States under paragraph 1;

(42.2)—that the bilateral meetings, as contained in paragraph 2, will take place as soon as possible, as a rule within three weeks of the date of the request;

(42.3)—to refrain, in the course of a bilateral meeting held under paragraph 2, from raising situations and cases not connected with the subject of the meeting, unless both sides have agreed to do so.

(43) The participating States examined practical proposals for new measures aimed at improving the implementation of the commitments relating to the human dimension of the CSCE. In this regard, they considered proposals related to the sending of observers to examine situations and specific cases, the appointment of rapporteurs to investigate and suggest appropriate solutions, the setting up of a Committee on the Human Dimension of the CSCE, greater involvement of persons, organizations and institutions in the human dimension mechanism and further bilateral and multilateral efforts to promote the resolution of relevant issues.

They decide to continue to discuss thoroughly in subsequent relevant CSCE fora these and other proposals designed to strengthen the human dimension mechanism, and to consider adopting, in the context of the further development of the CSCE process, appropriate new measures. They agree that these measures should contribute to achieving further effective progress, enhance conflict prevention and confidence in the field of the human dimension of the CSCE.

## Appendix 2

### OSCE Decision No. 12/04 (Tolerance and Non-Discrimination)

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	MC.DEC/12/04
<b>Organization for Security and Co-operation in Europe</b>	7 December 2004
<b>Ministerial Council</b>	
<b>Sofia 2004</b>	Original: ENGLISH

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#### 2nd day of the Twelfth Meeting

MC(12) Journal No. 2, Agenda item 8

#### DECISION No. 12/04

#### TOLERANCE AND NON-DISCRIMINATION

The Ministerial Council,

Recognizing that respect for human rights and fundamental freedoms, democracy and the rule of law are at the core of the OSCE comprehensive concept of security,

Recalling its commitments in the field of the human dimension, enshrined in the Helsinki Final Act, the Charter of Paris for a New Europe, the Charter for European Security (Istanbul Summit, 1999) and all other relevant OSCE documents and decisions,

Recalling Decision No. 4/03 on Tolerance and Non-Discrimination, adopted at the Eleventh Meeting of the Ministerial Council in Maastricht on 2 December 2003,

Welcoming the work done by the OSCE during 2004 in promoting tolerance and non-discrimination,

1. Appreciates the Declaration made by the OSCE Chairman-in-Office at the OSCE Conference on Anti-Semitism held in Berlin on 28 and 29 April 2004 — “Berlin Declaration” and the Declaration made by the OSCE Chairman-in-Office at the OSCE Conference on Tolerance and the Fight Against Racism, Xenophobia and Discrimination held in Brussels on 13 and 14 September 2004 — “Brussels Declaration”;
2. Endorses the Permanent Council Decisions on Combating Anti-Semitism (PC.DEC/607) and on Tolerance and the Fight against Racism, Xenophobia and Discrimination (PC.DEC/621) and the Permanent Council Decision on Promoting Tolerance and Media Freedom on the Internet (PC.DEC/633), annexed to this decision;
3. Further decides to intensify efforts for the implementation of these three decisions, which include commitments in the fields of, inter alia, education, media, legislation, law enforcement, migration and religious freedom;
4. Decides to follow up the work started in 2003 and continued with the OSCE Conference on Anti-Semitism, (Berlin on 28 and 29 April 2004), the OSCE Meeting on the Relationship Between Racism, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes, held in Paris on 16 and 17 June 2004, and the OSCE Conference on Tolerance and the Fight against Racism, Xenophobia and Discrimination, (Brussels on 13 and 14 September 2004). Also welcomes the offer by Spain to host in Cordoba in June 2005 the OSCE Conference on anti-Semitism and on Other Forms of Intolerance;

5. Welcomes the intention of the Chairman-in-Office to appoint, in accordance with Porto Ministerial Council Decision No. 8, three personal representatives as part of the overall fight of the OSCE in combating discrimination and promoting tolerance. The personal representatives will have their costs covered by extra-budgetary contributions.

## Appendix 3

### OSCE Decision No. 607 (Combating Anti-Semitism)

MC.DEC/12/04  
7 December 2004  
Annex

PC.DEC/607  
22 April 2004

**Organization for Security and Co-operation in Europe  
Permanent Council**

Original: ENGLISH

#### 504th Plenary Meeting

PC Journal No. 504, Agenda item 4

#### **DECISION No. 607 COMBATING ANTI-SEMITISM**

The Permanent Council,

Taking into account the forthcoming OSCE Conference on Anti-Semitism in Berlin on 28 and 29 April 2004,

Reaffirming the participating States' existing commitments related to combating anti-Semitism, and

In order to reinforce our common efforts to combat anti-Semitism across the OSCE region,  
Decides,

1. The participating States commit to:
  - Strive to ensure that their legal systems foster a safe environment free from anti-Semitic harassment, violence or discrimination in all fields of life;
  - Promote, as appropriate, educational programmes for combating anti-Semitism;
  - Promote remembrance of and, as appropriate, education about the tragedy of the Holocaust, and the importance of respect for all ethnic and religious groups;
  - Combat hate crimes, which can be fuelled by racist, xenophobic and anti-Semitic propaganda in the media and on the Internet;
  - Encourage and support international organization and NGO efforts in these areas;
  - Collect and maintain reliable information and statistics about anti-Semitic crimes, and other hate crimes, committed within their territory, report such information periodically to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), and make this information available to the public;
  - Endeavour to provide the ODIHR with the appropriate resources to accomplish the tasks agreed upon in the Maastricht Ministerial Decision on Tolerance and Non-Discrimination;

- Work with the OSCE Parliamentary Assembly to determine appropriate ways to review periodically the problem of anti-Semitism;
  - Encourage development of informal exchanges among experts in appropriate fora on best practices and experiences in law enforcement and education;
2. To task the ODIHR to:
- Follow closely, in full co-operation with other OSCE institutions as well as the United Nations Committee on the Elimination of Racial Discrimination (UNCERD), the European Commission against Racism and Intolerance (ECRI), the European Monitoring Centre on Racism and Xenophobia (EUMC) and other relevant international institutions and NGOs, anti-Semitic incidents in the OSCE area making use of all reliable information available;
  - Report its findings to the Permanent Council and to the Human Dimension Implementation Meeting and make these findings public. These reports should also be taken into account in deciding on priorities for the work of the OSCE in the area of intolerance;
  - Systematically collect and disseminate information throughout the OSCE area on best practices for preventing and responding to anti-Semitism and, if requested, offer advice to participating States in their efforts to fight anti-Semitism;
3. To ask the Chairman-in-Office to bring this decision to the attention of the participants of the upcoming Conference in Berlin and to incorporate it into his declaration concluding the Conference;
4. To forward this decision to the Ministerial Council for endorsement at its Twelfth Meeting.



## Appendix 4

### **OSCE Decision No. 621 (Tolerance and the Fight against Racism, Xenophobia, and Discrimination)**

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MC.DEC/12/04

7 December 2004

Annex

PC.DEC/621

**Organization for Security and Co-operation in Europe  
Permanent Council**

29 July 2004

Original: ENGLISH

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#### **520th Plenary Meeting**

PC Journal No. 520, Agenda item 3

#### **DECISION No. 621**

#### **TOLERANCE AND THE FIGHT AGAINST RACISM, XENOPHOBIA AND DISCRIMINATION**

The Permanent Council,

Taking into account the forthcoming OSCE Conference on Tolerance and the Fight against Racism, Xenophobia and Discrimination in Brussels on 13 and 14 September 2004,

Recalling the Maastricht Ministerial Council Decision on Tolerance and Non-Discrimination (MC.DEC/4/03), the OSCE Conference on anti-Semitism in Berlin on 28 and 29 April 2004 as well as the OSCE Meeting on the Relationship between Racist, Xenophobic and anti-Semitic Propaganda on the Internet and Hate Crimes in Paris on 16 and 17 June 2004 and their results,

Reaffirming the participating States' existing commitments related to the promotion of tolerance and non-discrimination, and

In order to reinforce our common efforts to fight manifestations of intolerance across the OSCE region,

Decides,

1. The participating States commit to:

- Consider enacting or strengthening, where appropriate, legislation that prohibits discrimination based on, or incitement to hate crimes motivated by, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- Promote and enhance, as appropriate, educational programmes for fostering tolerance and combating racism, xenophobia and discrimination;

- Promote and facilitate open and transparent interfaith and intercultural dialogue and partnerships towards tolerance, respect and mutual understanding and ensure and facilitate the freedom of the individual to profess and practice a religion or belief, alone or in community with others, including through transparent and non-discriminatory laws, regulations, practices and policies;
- Take steps to combat acts of discrimination and violence against Muslims in the OSCE area;
- Take steps, in conformity with their domestic law and international obligations, against discrimination, intolerance and xenophobia against migrants and migrant workers;
- Consider undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers to society;
- Combat hate crimes, which can be fuelled by racist, xenophobic and anti-Semitic propaganda in the media and on the Internet, and appropriately denounce such crimes publicly when they occur;
- Consider establishing training programmes for law enforcement and judicial officials on legislation and enforcement of legislation relating to hate crimes;
- Encourage the promotion of tolerance, dialogue, respect and mutual understanding through the Media, including the Internet;
- Encourage and support international organization and NGO efforts in these areas;
- Collect and maintain reliable information and statistics about hate crimes motivated by racism, xenophobia and related discrimination and intolerance, committed within their territory, report such information periodically to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and make this information available to the public;
- Examine the possibility of establishing within countries appropriate bodies to promote tolerance and to combat racism, xenophobia, discrimination or related intolerance, including against Muslims, and anti-Semitism;
- Endeavour to provide the ODIHR with the appropriate resources to accomplish the tasks agreed upon in the Maastricht Ministerial Decision on Tolerance and Non-Discrimination;
- Work with the OSCE Parliamentary Assembly to determine appropriate ways to review periodically the problems of racism, xenophobia and discrimination;
- Encourage development of informal exchanges among experts in appropriate fora on best practices and experiences in law enforcement and education;

2. To task the ODIHR to:

- Follow closely, in full co-operation with other OSCE institutions as well as the United Nations Committee on the Elimination of Racial Discrimination (UNCERD), the United Nations Office of the High Commissioner for Human Rights (UNHCHR), the European Commission against Racism and Intolerance (ECRI), the European Monitoring Centre on Racism and Xenophobia (EUMC) and other relevant international institutions and NGOs, incidents motivated by racism, xenophobia, or related intolerance, including against Muslims, and anti-Semitism in the OSCE area making use of all reliable information available;
- Report its findings to the Permanent Council and to the Human Dimension Implementation Meeting and make these findings public. These reports should also be taken into account in deciding on priorities for the work of the OSCE in the area of intolerance;
- Systematically collect and disseminate information throughout the OSCE area on best practices for preventing and responding to racism, xenophobia and discrimination and, if requested, offer advice to participating States in their efforts to fight racism, xenophobia and discrimination;

- Support the ability of civil society and the development of partnerships to address racism, xenophobia, discrimination or related intolerance, including against Muslims, and anti-Semitism;
- 3. To ask the Chairman-in-Office to bring this decision to the attention of the participants of the upcoming Conference in Brussels and to incorporate it into his declaration concluding the Conference;
- 4. To forward this decision to the Ministerial Council for endorsement at its Twelfth Meeting.



## Appendix 5

### **ECRI General Policy Recommendation No. 2 (Specialized Bodies to Combat Racism, Xenophobia, Antisemitism, and Intolerance at National Level)**

Adopted by ECRI on 13 June 1997

The European Commission against Racism and Intolerance (ECRI):

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, inter alia, to formulate general policy recommendations to member States;

Taking into account Resolution 48/134 adopted by the General Assembly of the United Nations on 20 December 1993 on National Institutions for the Promotion and Protection of Human Rights;

Taking into account also the fundamental principles laid down at the first International Meeting of the National Institutions for the Promotion and Protection of Human Rights held in Paris from 7–9 October 1991 (known as the “Paris Principles”);

Recalling the different Resolutions adopted at the first and second European meetings of National Institutions for the Promotion and Protection of Human Rights, held respectively in Strasbourg on 7–9 November 1994 and in Copenhagen on 20–22 January 1997;

Taking into account Recommendation No. R (85) 13 of the Committee of Ministers on the institution of the Ombudsman;

Taking also into account work carried out by the Steering Committee for Human Rights (CDDH) relating to the establishment of Independent National Human Rights Institutions;

Emphasising that combating racism, xenophobia, antisemitism and intolerance forms an integral part of the protection and promotion of fundamental human rights;

Recalling the proposal of ECRI to reinforce the non-discrimination clause (Article 14) of the European Convention on Human Rights;

Profoundly convinced that everyone must be protected against discrimination based on race, colour, language, religion or national or ethnic origin or against discrimination which might stem indirectly from the application of the law in these areas;

Convinced of the necessity of according the highest priority to measures aiming at the full implementation of legislation and policies intended to combat racism, xenophobia, antisemitism and intolerance;

Recalling that an effective strategy against racism, xenophobia, antisemitism and intolerance resides to a large extent on awareness-raising, information and education of the public as well as on the protection and promotion of the rights of individuals belonging to minority groups;

Convinced that specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level can make a concrete contribution in a variety of ways to strengthening the effectiveness of the range of measures taken in this field and to providing advice and information to national authorities;

Welcoming the fact that such specialised bodies have already been set up and are functioning in several member States;

Recognising that the form such bodies might take may vary according to the circumstances of member States and may form part of a body with wider objectives in the field of human rights generally;

Recognising also the need for governments themselves to provide information and to be accessible to specialised bodies and to consult them on matters relevant to their functions;

—recommends to the governments of member States:

1. to consider carefully the possibility of setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist;
2. in examining this question, to make use of the basic principles set out as an appendix to this recommendation as guidelines and a source of inspiration presenting a number of options for discussion at national level.

#### Appendix to ECRI general policy recommendation No. 2

Basic principles concerning specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level

#### Chapter A: The statutes establishing specialised bodies

##### Principle 1

###### Terms of reference

1. Specialised bodies should be given terms of reference which are clearly set out in a constitutional or other legislative text.
2. The terms of reference of specialised bodies should determine their composition, areas of competence, statutory powers, accountability and funding.

#### Chapter B: Alternative forms of specialised bodies

##### Principle 2

1. According to the legal and administrative traditions of the countries in which they are set up, specialised bodies may take different forms.
2. The role and functions set out in the above principles should be fulfilled by bodies which may take the form of, for example, national commissions for racial equality, ombudsmen against ethnic discrimination, Centres/Offices for combating racism and promoting equal opportunities, or other forms, including bodies with wider objectives in the field of human rights generally.

#### Chapter C: Functions and responsibilities of specialised bodies

##### Principle 3

Subject to national circumstances, law and practice, specialised bodies should possess as many as possible of the following functions and responsibilities:

- a. to work towards the elimination of the various forms of discrimination set out in the preamble and to promote equality of opportunity and good relations between persons belonging to all the different groups in society;
- b. to monitor the content and effect of legislation and executive acts with respect to their relevance to the aim of combating racism, xenophobia, antisemitism and intolerance and to make proposals, if necessary, for possible modifications to such legislation;
- c. to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields;

- d. to provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts;
- e. subject to the legal framework of the country concerned, to have recourse to the courts or other judicial authorities as appropriate if and when necessary;
- f. to hear and consider complaints and petitions concerning specific cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;
- g. to have appropriate powers to obtain evidence and information in pursuance of its functions under f. above;
- h. to provide information and advice to relevant bodies and institutions, including State bodies and institutions;
- i. to issue advice on standards of anti-discriminatory practice in specific areas which might either have the force of law or be voluntary in their application;
- j. to promote and contribute to the training of certain key groups without prejudice to the primary training role of the professional organisations involved;
- k. to promote the awareness of the general public to issues of discrimination and to produce and publish pertinent information and documents;
- l. to support and encourage organisations with similar objectives to those of the specialised body;
- m. to take account of and reflect as appropriate the concerns of such organisations;

#### Chapter D: Administration and functioning of specialised bodies

##### Principle 4

###### Composition

The composition of specialised bodies taking the form of commissions and the like should reflect society at large and its diversity.

##### Principle 5

###### Independence and accountability

1. Specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively, and the funding should be subject annually to the approval of parliament.
2. Specialised bodies should function without interference from the State and with all the guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources as they think fit and to express their views publicly.
3. Specialised bodies should independently provide reports of their actions on the basis of clear and where possible measurable objectives for debate in parliament.
4. The terms of reference of specialised bodies should set out clearly the provisions for the appointment of their members and should contain appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm.

##### Principle 6

###### Accessibility

1. Specialised bodies should be easily accessible to those whose rights they are intended to protect.

2. Specialised bodies should consider, where appropriate, setting up local offices in order to increase their accessibility and to improve the effectiveness of their education and training functions.

#### Chapter E: Style of operation of specialised bodies

##### Principle 7

1. Specialised bodies should operate in such a way as to maximise the quality of their research and advice and thereby their credibility both with national authorities and the communities whose rights they seek to preserve and enhance.
2. In setting up specialised bodies, member States should ensure that they have appropriate access to governments, are provided by governments with sufficient information to enable them to carry out their functions and are fully consulted on matters which concern them.
3. Specialised bodies should ensure that they operate in a way which is clearly politically independent.



## Appendix 6

### **ECRI General Policy Recommendation No. 3 (Combating Racism and Intolerance against Roma/Gypsies)**

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Strasbourg, 6 March 1998

The European Commission against Racism and Intolerance:

Recalling the decision adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, inter alia, to formulate general policy recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Stressing that this Final Declaration confirms that the goal of the member States of the Council of Europe is to build a freer, more tolerant and just European society and that it calls for the intensification of the fight against racism, xenophobia, antisemitism and intolerance;

Noting the proposal concerning the nomination of a European mediator for Roma/Gypsies contained in Recommendation No. 1203 (1993) of the Parliamentary Assembly of the Council of Europe;

Bearing in mind the conclusions of the human dimension seminar on Roma in the CSCE (OSCE) region organised on 20-23 September 1994 by the Organisation for Security and Co-operation in Europe (OSCE), in close consultation with the Council of Europe and the continuing co-operation between the two Organisations in this field;

Welcoming the nomination by the Secretary General in 1994 of a Co-ordinator of Council of Europe Activities on Roma/Gypsies;

Bearing in mind the work of the Specialist Group on Roma/Gypsies (MG-S-ROM);

Recalling Recommendation No. R (97) 21 of the Committee of Ministers to member States on the media and the promotion of a climate of tolerance;

Recalling the provisions contained in ECRI's general policy recommendation No. 1, which sought to assist member States in combating racism, xenophobia, antisemitism and intolerance effectively, by proposing concrete and specific measures in a limited number of particularly pertinent areas;

Profoundly convinced that Europe is a community of shared values, including that of the equal dignity of all human beings, and that respect for this equal dignity is the cornerstone of all democratic societies;

Recalling that the legacy of Europe's history is a duty to remember the past by remaining vigilant and actively opposing any manifestations of racism, xenophobia, antisemitism and intolerance;

Paying homage to the memory of all the victims of policies of racist persecution and extermination during the Second World War and remembering that a considerable number of Roma/Gypsies perished as a result of such policies;

Stressing in this respect that the Council of Europe is the embodiment and guardian of the founding values—in particular the protection and promotion of human rights—around which Europe was rebuilt after the horrors of the Second World War;

Recalling that combating racism, xenophobia, antisemitism and intolerance forms an integral part of the protection and promotion of human rights, that these rights are universal and indivisible, and that all human beings, without any distinction whatsoever, are entitled to these rights;

Stressing that combating racism, xenophobia, antisemitism and intolerance is above all a matter of protecting the rights of vulnerable members of society;

Convinced that in any action to combat racism and discrimination, emphasis should be placed on the victim and the improvement of his or her situation;

Noting that Roma/Gypsies suffer throughout Europe from persisting prejudices, are victims of a racism which is deeply-rooted in society, are the target of sometimes violent demonstrations of racism and intolerance and that their fundamental rights are regularly violated or threatened;

Noting also that the persisting prejudices against Roma/Gypsies lead to discrimination against them in many fields of social and economic life, and that such discrimination is a major factor in the process of social exclusion affecting many Roma/Gypsies;

Convinced that the promotion of the principle of tolerance is a guarantee of the preservation of open and pluralistic societies allowing for a peaceful co-existence;

recommends the following to Governments of member States:

- to sign and ratify the relevant international legal instruments in the field of combating racism, xenophobia, antisemitism and intolerance, particularly the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;
- to ensure that the name used officially for the various Roma/Gypsy communities should be the name by which the community in question wishes to be known;
- bearing in mind the manifestations of racism and intolerance of which Roma/Gypsies are victims, to give a high priority to the effective implementation of the provisions contained in ECRI's general policy recommendation No. 1, which requests that the necessary measures should be taken to ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-semitism and intolerance;
- to ensure that discrimination as such, as well as discriminatory practices, are combated through adequate legislation and to introduce into civil law specific provisions to this end, particularly in the fields of employment, housing and education;
- to render illegal any discrimination on the part of public authorities in the exercise of their duties;
- to ensure that suitable legal aid be provided for Roma/Gypsies who have been victims of discrimination and who wish to take legal action;
- to take the appropriate measures to ensure that justice is fully and promptly done in cases concerning violations of the fundamental rights of Roma/Gypsies;
- to ensure in particular that no degree of impunity is tolerated as regards crimes committed against Roma/Gypsies and to let this be clearly known among the general public;
- to set up and support specific training schemes for persons involved at all levels in the various components of the administration of justice, with a view to promoting cultural understanding and an awareness of prejudice;
- to encourage the development of appropriate arrangements for dialogue between the police, local authorities and Roma/Gypsy communities;
- to encourage awareness-raising among media professionals, both in the audiovisual field and in the written press, of the particular responsibility they bear in not transmitting prejudices when practising their

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profession, and in particular in avoiding reporting incidents involving individuals who happen to be members of the Roma/Gypsy community in a way which blames the Roma/Gypsy community as a whole;

—to take the necessary steps to ensure that rules concerning the issue of de jure and de facto access to citizenship and the right to asylum are drawn up and applied so as not to lead to particular discrimination against Roma/Gypsies;

—to ensure that the questions relating to “travelling” within a country, in particular regulations concerning residence and town planning, are solved in a way which does not hinder the way of life of the persons concerned;

—to develop institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing;

—to take specific measures to encourage the training of Roma/Gypsies, to ensure full knowledge and implementation of their rights and of the functioning of the legal system;

—to pay particular attention to the situation of Roma/Gypsy women, who are often the subject of double discrimination, as women and as Roma/Gypsies;

—to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education;

—to introduce into the curricula of all schools information on the history and culture of Roma/Gypsies and to provide training programmes in this subject for teachers;

—to support the activities of non-governmental organisations, which play an important role in combating racism and intolerance against Roma/Gypsies and which provide them in particular with appropriate legal assistance;

—to encourage Roma/Gypsy organisations to play an active role, with a view to strengthening civil society;

—to develop confidence-building measures to preserve and strengthen an open and pluralistic society with a view to a peaceful co-existence.



## Appendix 7

### **ECRI General Policy Recommendation No. 5 (Combating Intolerance and Discrimination against Muslims)**

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Strasbourg, 27 April 2000

The European Commission against Racism and Intolerance:

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8–9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate general policy recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10–11 October 1997;

Stressing that this Final Declaration confirms that the goal of the member States of the Council of Europe is to build a freer, more tolerant and just European society and that it calls for the intensification of the fight against racism, xenophobia, antisemitism and intolerance;

Recalling that Article 9 of the European Convention on Human Rights protects the right to freedom of thought, conscience and religion;

Recalling also the principle of non-discrimination embodied in Article 14 of the European Convention on Human Rights;

Bearing in mind the proposals contained in Recommendation No. 1162 on the contribution of the Islamic civilisation to European culture adopted by the Parliamentary Assembly on 19 September 1991;

Taking note of the conclusions of the Seminar on religion and the integration of immigrants organised by the European Committee on Migration in Strasbourg on 24–26 November 1998;

Stressing that institutional arrangements governing relations between the State and religion vary greatly between member States of the Council of Europe;

Convinced that the peaceful co-existence of religions in a pluralistic society is founded upon respect for equality and for non-discrimination between religions in a democratic state with a clear separation between the laws of the State and religious precepts;

Recalling that Judaism, Christianity and Islam have mutually influenced each other and influenced European civilisation for centuries and recalling in this context Islam's positive contribution to the continuing development of European societies of which it is an integral part;

Concerned at signs that religious intolerance towards Islam and Muslim communities is increasing in countries where this religion is not observed by the majority of the population;

Strongly regretting that Islam is sometimes portrayed inaccurately on the basis of hostile stereotyping the effect of which is to make this religion seem a threat;

Rejecting all deterministic views of Islam and recognising the great diversity intrinsic in the practice of this religion;

Firmly convinced of the need to combat the prejudice suffered by Muslim communities and stressing that this prejudice may manifest itself in different guises, in particular through negative general attitudes but also, to varying degrees, through discriminatory acts and through violence and harassment;

Recalling that, notwithstanding the signs of religious intolerance referred to above, one of the characteristics of present-day Europe is a trend towards a diversity of beliefs within pluralistic societies;

Rejecting all manifestations of religious extremism;

Emphasising that the principle of a multi-faith and multicultural society goes hand in hand with the willingness of religions to co-exist within the context of the society of which they form part;

recommends that the governments of member States, where Muslim communities are settled and live in a minority situation in their countries:

—ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion;

—impose, in accordance with the national context, appropriate sanctions in cases of discrimination on grounds of religion;

—take the necessary measures to ensure that the freedom of religious practice is fully guaranteed; in this context particular attention should be directed towards removing unnecessary legal or administrative obstacles to both the construction of sufficient numbers of appropriate places of worship for the practice of Islam and to its funeral rites;

—ensure that public institutions are made aware of the need to make provision in their everyday practice for legitimate cultural and other requirements arising from the multi-faith nature of society;

—ascertain whether discrimination on religious grounds is practised in connection with access to citizenship and, if so, take the necessary measures to put an end to it;

—take the necessary measures to eliminate any manifestation of discrimination on grounds of religious belief in access to education;

—take measures, including legislation if necessary, to combat religious discrimination in access to employment and at the workplace;

—encourage employers to devise and implement “codes of conduct” in order to combat religious discrimination in access to employment and at the workplace and, where appropriate, to work towards the goal of workplaces representative of the diversity of the society in question;

—assess whether members of Muslim communities suffer from discrimination connected with social exclusion and, if so, take all necessary steps to combat these phenomena;

—pay particular attention to the situation of Muslim women, who may suffer both from discrimination against women in general and from discrimination against Muslims;

—ensure that curricula in schools and higher education – especially in the field of history teaching – do not present distorted interpretations of religious and cultural history and do not base their portrayal of Islam on perceptions of hostility and menace;

—ensure that religious instruction in schools respects cultural pluralism and make provision for teacher training to this effect;

—exchange views with local Muslim communities about ways to facilitate their selection and training of Imams with knowledge of, and if possible experience in, the society in which they will work;

—support voluntary dialogue at the local and national level which will raise awareness among the population of those areas where particular care is needed to avoid social and cultural conflict;

- encourage debate within the media and advertising professions on the image which they convey of Islam and Muslim communities and on their responsibility in this respect to avoid perpetuating prejudice and biased information;
- provide for the monitoring and evaluation of the effectiveness of all measures taken for the purpose of combating intolerance and discrimination against Muslims.





## Appendix 8

### **ECRI General Policy Recommendation No. 9 on the Fight against Antisemitism**

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Adopted by ECRI on 25 June 2004

The European Commission against Racism and Intolerance:

Having regard to Article 14 of the European Convention on Human Rights;

Having regard to Protocol No. 12 to the European Convention on Human Rights which contains a general clause prohibiting discrimination;

Having regard to the case-law of the European Court of Human Rights and recalling that the Court held that disputing the existence of crimes against humanity committed under the National-Socialist regime was one of the most severe forms of racial defamation and of incitement to hatred of Jews and that the denial of such crimes against humanity and the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10 of the European Convention on Human Rights;

Having regard to the Additional Protocol to the Convention on Cybercrime concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems;

Recalling ECRI's General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance and ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level;

Recalling also ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which contains the key elements of appropriate legal measures in combating racism and racial discrimination effectively;

Bearing in mind the Declaration of Concern and Intent on "Antisemitism in Europe today" adopted on 27 March 2000 by the participants in the Strasbourg "Consultation on Antisemitism in Europe today", convened by the Secretary General of the Council of Europe;

Having regard to Recommendation (2001) 15 of the Committee of Ministers to member States on history teaching in twenty-first century Europe, which was confirmed by Ministers of Education at the ministerial seminar held in Strasbourg in October 2002;

Recalling the principles contained in the Charter of European political parties for a non-racist society;

Taking note of the conclusions of the OSCE Conferences on Antisemitism held in Vienna on 19–20 June 2003 and in Berlin on 28–29 April 2004;

Recalling the work of the European Union in combating racism and discrimination and taking note of the conclusions of the seminar on "Europe against antisemitism, for a Union of Diversity" organised in Brussels on 19 February 2004;

Recalling that the legacy of Europe's history is a duty to remember the past by remaining vigilant and actively opposing any manifestations of racism, xenophobia, antisemitism and intolerance;

Paying homage to the memory of the victims of the systematic persecution and extermination of Jews in the Shoah, as well as of the other victims of policies of racist persecution and extermination during the Second World War;

Paying homage to the Jewish victims of killings and systematic persecution under totalitarian regimes following the Second World War, as well as other victims of these policies;

Stressing in this respect that the Council of Europe was precisely founded in order to defend and promote common and just values—in particular the protection and promotion of human rights—around which Europe was rebuilt after the horrors of the Second World War;

Recalling that combating racism, xenophobia, antisemitism and intolerance is rooted in and forms part of the protection and promotion of human rights;

Profoundly convinced that combating antisemitism, while requiring actions taking into account its specificities, is an integral and intrinsic component of the fight against racism;

Stressing that antisemitism has persisted for centuries across Europe;

Observing the current increase of antisemitism in many European countries, and stressing that this increase is also characterised by new manifestations of antisemitism;

Noting that these manifestations have often closely followed contemporary world developments such as the situation in the Middle East;

Underlining that these manifestations are not exclusively the actions of marginal or radical groups, but are often mainstream phenomena, including in schools, that are becoming increasingly perceived as commonplace occurrences;

Observing the frequent use of symbols from the Nazi era and references to the Shoah in current manifestations of antisemitism;

Stressing that these manifestations originate in different social groups and different sectors of society;

Observing that the victims of racism and exclusion in some European societies, themselves sometimes become perpetrators of antisemitism;

Noting that in a number of countries, antisemitism, including in its new forms, continues to be promoted, openly or in a coded manner, by some political parties and leaders, including not only extremist parties, but also certain mainstream parties;

Believing that an adequate response to these phenomena can only be developed through the concerted efforts of all relevant actors in European societies, including representatives of different communities, religious leaders, civil society organisations and other key institutions;

Stressing that efforts to counter antisemitism should include the thorough implementation of legal provisions against racism and racial discrimination in respect of all perpetrators and for the benefit of all victims, with special emphasis on the provisions against incitement to racial violence, hatred and discrimination;

Convinced furthermore that these efforts should also include the promotion of dialogue and cooperation between the different segments of society on the local and national levels, including dialogue and cooperation between different cultural, ethnic and religious communities;

Emphasising strongly the role of education in the promotion of tolerance and respect for human rights, thereby against antisemitism;

Recommends that the governments of the member States:

—give a high priority to the fight against antisemitism, taking all necessary measures to combat all of its manifestations, regardless of their origin;

—ensure that actions aimed at countering antisemitism are consistently given their due place amongst actions aimed at countering racism;

—ensure that the fight against antisemitism is carried out at all administrative levels (national, regional, local) and facilitate the involvement of a wide range of actors from different sectors of society (political, legal, economic, social, religious, educational) in these efforts;

—enact legislation aimed at combating antisemitism taking into account ECRI’s suggestions in its General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination;

—ensure that the law provides that, for all criminal offences, racist motivation constitutes an aggravating circumstance, and that such motivation covers antisemitic motivation;

—ensure that criminal law in the field of combating racism covers antisemitism and penalises the following antisemitic acts when committed intentionally:

a. public incitement to violence, hatred or discrimination against a person or a grouping of persons on the grounds of their Jewish identity or origin;

b. public insults and defamation of a person or a grouping of persons on the grounds of their actual or presumed Jewish identity or origin;

c. threats against a person or a grouping of persons on the grounds of their actual or presumed Jewish identity or origin;

d. the public expression, with an antisemitic aim, of an ideology which depreciates or denigrates a grouping of persons on the grounds of their Jewish identity or origin;

e. the public denial, trivialisation, justification or condoning of the Shoah;

f. the public denial, trivialisation, justification or condoning, with an antisemitic aim, of crimes of genocide, crimes against humanity or war crimes committed against persons on the grounds of their Jewish identity or origin;

g. the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with an antisemitic aim, of written, pictorial or other material containing manifestations covered by points a), b), c), d), e), f) above;

h. desecration and profanation, with an antisemitic aim, of Jewish property and monuments;

i. the creation or the leadership of a group which promotes antisemitism; support for such a group (such as providing financing to the group, providing for other material needs, producing or obtaining documents); participation in its activities with the intention of contributing to the offences covered by points a), b), c), d), e), f), g), h) above;

—ensure that criminal legislation covers antisemitic crimes committed via the internet, satellite television and other modern means of information and communication;

—ensure that the law provides for an obligation to suppress public financing of organisations which promote antisemitism, including political parties;

—ensure that the law provides for the possibility of disbanding organisations that promote antisemitism;

—take the appropriate measures to ensure that legislation aimed at preventing and sanctioning antisemitism is effectively implemented;

—offer targeted training to persons involved at all levels of the criminal justice system – police, prosecutors, judges – with a view to increasing knowledge about antisemitic crimes and how such acts can be effectively prosecuted;

—take steps to encourage victims of antisemitic acts to come forward with complaints of antisemitic acts, and put in place an effective system of data collection to thoroughly monitor the follow-up given to such complaints;

—establish and support the functioning of an independent specialised body along the lines set out in ECRI’s General Policy Recommendation No. 2 on Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and ensure that the actions carried out by this organ cover all forms of antisemitism;

- introduce anti-racist education into the school curriculum at all levels and in an integrated manner, including content that builds awareness about antisemitism, its occurrences through centuries and the importance of combating its various manifestations, ensuring that teachers are provided with the necessary training;
- promote learning about Jewish history as well as about the positive contribution of Jewish persons, communities and culture to European societies;
- promote learning about the Shoah, and the developments leading up to it, within schools and ensure that teachers are adequately trained in order to address this issue in a manner whereby children also reflect upon current dangers and how the recurrence of such an event can be prevented;
- promote learning and research into the killings and systematic persecution of Jewish and other persons under totalitarian regimes following the Second World War;
- where antisemitic acts take place in a school context, ensure that, through targeted training and materials, school directors, teachers and other personnel are adequately prepared to effectively address this problem;
- encourage debate within the media professions on their role in fighting antisemitism, and on the particular responsibility of media professionals to seek to, in this connection, report on all world events in a manner that avoids perpetuating prejudices;
- support the positive role the media can play in promoting mutual respect and countering antisemitic stereotypes and prejudices;
- support and encourage research projects and independent monitoring of manifestations of antisemitism;
- support the activities of non-governmental organisations, which play an important role in fighting antisemitism, promoting appreciation of diversity, and developing dialogue and common anti-racist actions between different cultural, ethnic and religious communities;
- take the necessary measures to ensure that the freedom of religion is fully guaranteed, and that public institutions make provision in their everyday practice for the reasonable accommodation of cultural and other requirements;
- support dialogue between different religious communities at local and national levels in order to counter racist stereotypes and prejudices, including through providing financing and establishing institutional fora for multifaith dialogue;
- ensure that religious leaders at all levels avoid fueling antisemitism, and encourage religious leaders to take responsibility for the teachings spread at the grassroots level;
- encourage political actors and opinion leaders to take a firm public stand against antisemitism, regularly speaking out against its various manifestations, including all its contemporary forms, and making clear that antisemitism will not be tolerated.

## Appendix 9

### Hate Crime Laws in the OSCE Countries: Statutory Provisions Making Bias Motivations an Aggravating Circumstance for General Criminal Offenses

COUNTRY	Race/National Origin/Ethnicity	Religion	Sexual Orientation	Gender	Disability
Albania					
Andorra					
Armenia					
Austria	Yes				
Azerbaijan	Yes	Yes			
Belarus	Yes	Yes			
Belgium	Yes	Yes	Yes	Yes	Yes
Bosnia and Herzegovina					
Bulgaria					
Canada	Yes	Yes	Yes	Yes	Yes
Croatia					
Cyprus					
Czech Republic	Yes	Yes			
Denmark					
Estonia					
Finland	Yes				
France	Yes	Yes	Yes	Yes	Yes
Georgia					
Germany					
Greece					
Holy See					
Hungary	Yes	Yes			
Iceland					
Ireland					
Italy	Yes	Yes			
Kazakhstan					
Kyrgyzstan					
Latvia					
Liechtenstein	Yes				
Lithuania					
Luxembourg					
Macedonia					
Malta					
Moldova	Yes				
Monaco					
Netherlands					
Norway					
Poland					
Portugal					
Romania					
Russian Federation	Yes	Yes			
San Marino					
Serbia and Montenegro					
Slovak Republic	Yes	Yes			
Slovenia					
Spain	Yes	Yes	Yes	Yes	Yes
Sweden	Yes	Yes			
Switzerland	Yes				
Tajikistan	Yes				
Turkey					
Turkmenistan					
Ukraine					
United Kingdom*	Yes	Yes	Yes		Yes
United States of America **	Yes	Yes	Yes	Yes	Yes
Uzbekistan					

\* Scotland has no provisions regarding sexual orientation and disability bias crimes.  
\*\*See Appendix 10 for information on hate crime laws on a state level

# Appendix 10

## State Hate Crime Statutory Provisions (Anti-Defamation League)

		ANTI-DEFAMATION LEAGUE STATE HATE CRIME STATUTORY PROVISIONS																										
		AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	
Bias-Motivated Violence and Intimidation -- Criminal Penalty *1	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Civil Action				✓						✓				✓						✓				✓				✓
Race, Religion, Ethnicity	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sexual Orientation			✓		✓	✓	✓	✓	✓	✓		✓	✓		✓					✓			✓					✓
Gender		✓	✓		✓		✓	✓	✓			✓	✓		✓					✓			✓					✓
Disability	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓		✓					✓			✓					✓
Other *2					✓	✓	✓	✓	✓	✓		✓	✓		✓					✓			✓					✓
Institutional Vandalism	✓		✓		✓	✓	✓	✓	✓	✓		✓	✓		✓					✓			✓					✓
Data Collection *3			✓		✓	✓	✓	✓	✓	✓		✓	✓		✓					✓			✓					✓
Training for Law Enforcement Personnel *4			✓		✓	✓	✓	✓	✓	✓		✓	✓		✓					✓			✓					✓

\*1. The following states also have statutes criminalizing interference with religious worship: AR, CA, DC, FL, ID, MD, MA, MI, MN, MS, MO, NV, NM, NY, NC, OK, RI, SC, SD, TN, VA, WV.

\*2. "Other" includes political affiliation ( CA, DC, IA, LA, WV), age ( CA, DC, FL, IA, HI, KS, LA, ME, MN, NE, NM, NY, VT) and transgender/gender identity (CA, CO, CT, DC, HI, MD, MN, MO, NM, PA, RI, VT).

\*3. States with data collection statutes which include sexual orientation are AZ, CA, CT, DC, FL, HI, IA, MD, MI, MN, NY, OR, TX and WA; those which include gender are AZ, DC, HI, IL, IA, MI, MN, TX, WA.

\*4. Some other states have administrative regulations mandating such training.

State Hate Crime Statutory Provisions (Anti-Defamation League)

ANTI-DEFAMATION LEAGUE STATE HATE CRIME STATUTORY PROVISIONS		MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT <sup>*5</sup>	VT	VA	WA	WV	WI	WY
Bias-Motivated Violence and Intimidation – Criminal Penalty *1		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	
Civil Action			✓	✓		✓			✓		✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	
Race, Religion, Ethnicity		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	
Sexual Orientation			✓	✓	✓	✓	✓	✓					✓	✓	✓			✓	✓		✓	✓	✓	✓	✓	
Gender			✓		✓	✓	✓	✓	✓	✓				✓	✓			✓	✓		✓	✓	✓	✓	✓	
Disability			✓	✓	✓	✓	✓	✓				✓		✓	✓			✓	✓		✓	✓	✓	✓	✓	
Other *2			✓				✓							✓	✓						✓		✓			
Institutional Vandalism		✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓	✓			✓	✓	✓	✓	
Data Collection *3			✓				✓					✓	✓	✓	✓				✓			✓	✓			
Training for Law Enforcement Personnel *4													✓		✓										✓	


\*5 The Utah statute ties penalties for hate crimes to violations of the victim's constitutional or civil rights





## Appendix 11

### Extracts from FBI Hate Crime Data Collection Guidelines

<p>U.S. Department of Justice Federal Bureau of Investigation <i>Criminal Justice Information Services Division</i></p> 
<hr/> <p>Summary Reporting System</p> <hr/> <hr/>
<p>National Incident-Based Reporting System</p> <hr/>
<p><b>Hate Crime Data Collection Guidelines</b></p>
<p><b>Uniform Crime Reporting</b></p>
<p>Revised October 1999</p>

## FBI Hate Crime Data Collection Guidelines

### III. CRITERIA OF HATE CRIME

#### A. Bias Motivation

The object of the data collection is to indicate whether the offender was motivated to commit the offense because of his/her bias against a racial, religious, disability, sexual-orientation, or ethnic/national origin group. Because of the difficulty of ascertaining the offender's subjective motivation, bias is to be reported *only if* investigation reveals sufficient objective facts to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. [Types of bias omitted.]

#### B. Objective Evidence that the Crime was Motivated by Bias

An important distinction must be made when reporting a hate crime. The mere fact that the offender is biased against the victim's race, religion, disability, sexual orientation, and/or ethnicity/national origin does not mean that a hate crime was involved. Rather, the offender's criminal act must have been motivated, in whole or in part, by his/her bias. Because motivation is subjective, it is difficult to know with certainty whether a crime was the result of the offender's bias. Therefore, before an incident can be reported as a hate crime, sufficient objective facts must be present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:

1. The offender and the victim were of different race, religion, disability, sexual orientation, and/or ethnicity/national origin. For example, the victim was black and the offender was white.
2. Bias-related oral comments, written statements, or gestures were made by the offender which indicate his/her bias. For example, the offender shouted a racial epithet at the victim.
3. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.
4. Certain objects, items, or things which indicate bias were used. For example, the offenders wore white sheets with hoods covering their faces or a burning cross was left in front of the victim's residence.
5. The victim is a member of a racial, religious, disability, sexual-orientation, or ethnic/national origin group which is overwhelmingly outnumbered by other residents in the neighborhood where the victim lives and the incident took place. This factor loses significance with the passage of time; i.e., it is most significant when the victim first moved into the neighborhood and becomes less and less significant as time passes without incident.

## FBI Hate Crime Data Collection Guidelines

6. The victim was visiting a neighborhood where previous hate crimes were committed against other members of his/her racial, religious, disability, sexual-orientation, or ethnic/national origin group and where tensions remained high against his/her group.

7. Several incidents occurred in the same locality, at or about the same time, and the victims were all of the same race, religion, disability, sexual orientation, or ethnicity/national origin.

8. A substantial portion of the community where the crime occurred perceived that the incident was motivated by bias.

9. The victim was engaged in activities promoting his/her race, religion, disability, sexual orientation, or ethnicity/national origin. For example, the victim was a member of the NAACP or participated in gay rights demonstrations.

10. The incident coincided with a holiday or a date of particular significance relating to a race, religion, disability, sexual orientation, or ethnicity/national origin, e.g., Martin Luther King Day, Rosh Hashanah.

11. The offender was previously involved in a similar hate crime or is a hategroup member.

12. There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active in the neighborhood.

13. A historically established animosity existed between the victim's and the offender's groups.

14. The victim, although not a member of the targeted racial, religious, disability, sexual-orientation, or ethnic/national origin group, was a member of an advocacy group supporting the precepts of the victim group.

### C. Cautions

**1. Need for Case-by-Case Assessment of the Facts** — The aforementioned factors are not all-inclusive of the types of objective facts which evidence bias motivation. Therefore, reporting agencies must examine each case for facts which clearly provide evidence that the offender's bias motivated him/her to commit the crime.

**2. Misleading Facts** — Agencies must be alert to misleading facts. For example, the offender used an epithet to refer to the victim's race, but the offender and victim were of the same race.

## FBI Hate Crime Data Collection Guidelines

**D.** A 29-year-old Japanese-American male was attacked by a 51-year-old white male wielding a tire iron. The victim suffered severe lacerations and a broken arm. The incident took place in a parking lot next to a bar. Investigation revealed that the offender and victim had previously exchanged racial insults in the bar, the offender having initiated the exchange by calling the victim by a well-known and recognized epithet used against the Japanese and complaining that the Japanese were taking away jobs from Americans. An Anti-Asian/Pacific Islander offense would be reported based on the difference in race of the victim and offender, the exchange of racial insults, and the absence of other reasons for the attack.

**E.** An adult white male was approached by four white teenagers who requested money for the bus. When he refused, one of the youths said to the others, “Let’s teach this [epithet for a gay person] a lesson.” The victim was punched in the face, knocked to the ground, kicked several times, and robbed of his wristwatch, ring, and wallet. When he reported the crime, the victim advised he did not know the offenders and that he was not gay. The facts are ambiguous. Although an epithet for a gay person was used by one of the offenders, the victim was not gay. Such epithets are sometimes used as general insults regardless of the target person’s sexual orientation, and in this case the offenders’ motivation appeared to be limited to obtaining money from the victim. Therefore, the incident would not be designated bias motivated.

**F.** A small neighborhood bar frequented by gays burned down after being closed for the night. Investigation revealed that the fire was deliberately set, but there were no witnesses or suspects. Although the fire was deliberately set, the fact that the bar was frequented by gays may have been coincidental. Therefore, the incident should not be reported as bias motivated. Two weeks later, three white adult males were arrested on a tip from an informant. They admitted burning down the bar, saying they did it to keep gays out of the neighborhood. As a result, this incident should now be reported as a bias crime.

**G.** Six black men assaulted and seriously injured a white man and his Asian male friend as they were walking through a residential neighborhood. Witnesses said that the victims were attacked because they were trespassing in a “black” neighborhood. An Anti-Multi-Racial Group bias incident should be reported because the victims and offenders were of different races, and witnesses reported that the victims were attacked because they were not black.

**H.** Overnight, an auditorium which was being used by representatives of several religious denominations to hold an ecumenical conference was vandalized by unknown subjects. Extensive damage was caused and statements, such as “There is but one true religion” and “Down with the nonbelievers,” were spray painted onto the walls. An Anti-Multi-Religious Group incident should be reported because the offenders clearly evidenced their hostility against a group representing more than one religion.

## FBI Hate Crime Data Collection Guidelines

I. A group home for persons with psychiatric disabilities who were in transition back into the community was the site of a reported arson. Apparently, neighbors had expressed many concerns about the group home and were angry that the house was located in their community. Shortly before the fire was reported, a witness heard a white male state, "I'll get rid of those 'crazies.' I'll burn them out." An Anti-Mental Disability incident should be reported because the suspect apparently committed the crime because of his bias against persons with psychiatric disabilities.



# Endnotes

<sup>1</sup> In our previous reports, as in this one, we defined antisemitism as hatred or hostility toward or discrimination against Jews as a religious, ethnic or racial group. We described antisemitism as a form of racism—and as a human rights violation. Lawyers Committee for Human Rights (now Human Rights First), *Fire and Broken Glass: The Rise of Antisemitism in Europe* (New York: LCHR, 2002), p. 2.

<sup>2</sup> Article 2 of the International Covenant on Civil and Political Rights requires states to respect and ensure rights to all “without distinction of any kind, *such as* race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*” (emphasis added). The same language appears in article 2 of the Universal Declaration of Human Rights.

<sup>3</sup> The note also threatened Amsterdam Mayor Job Cohen, Member of Parliament Geert Wilders, and Amsterdam Alderman Ahmed Aboutaleb, himself a Muslim of Moroccan descent.

<sup>4</sup> Five Christian churches were also attacked by arsonists in the weeks after the killing, in what was initially thought to be retaliation for attacks on Muslim targets. Agence France-Presse, “List of Attacks since Dutch Filmmaker Killed,” November 10, 2004; see also Hans de Vreij, “Behind the Dutch Crisis,” *Radio Netherlands*, November 10, 2004, available at <http://www2.rnw.nl/rnw/en/currentaffairs/dutchaffairs/dut041110?view=Standard> (accessed March 20, 2005). Extreme right-wing youth were subsequently arrested for one of the church arsons, and Dutch human rights monitors have reported that it is generally thought that this and other attacks on churches were carried out as provocations by the extreme right. Internet Centre Anti-Racism Europe (ICARE), electronic mail to Human Rights First, May 4, 2005.

<sup>5</sup> Craig S. Smith, “Dutch Muslim School Bombed; Link to Killing Suspected,” *New York Times*, November 8, 2004.

<sup>6</sup> Nasreddine Djebbi, “Dutch Islamic School Attacked Again,” *IslamOnline.net*, March 29, 2005, available at <http://islamonline.net/English/News/2005-03/29/article03.shtml> (accessed April 20, 2005).

<sup>7</sup> Jaap van Donselaar and Peter R. Rodrigues, “Annex, Monitoring Racism and the Extreme Right, Sixth Report: Developments Following the Murder of Theo van Gogh,” December 2004, p. 2, available at <http://www.annefrank.org/upload/downloads/ANNEXengelsdec04.doc> (accessed April 25, 2004).

<sup>8</sup> *Ibid.*, p. 3; European Monitoring Center on Racism and Xenophobia (EUMC), *Racist Violence in 15 EU Member States: A Comparative Overview of Findings from the RAXEN National Focal Points Reports 2001-2004*, April 2005, p. 121, available at <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-RV-main.pdf> (accessed June 21, 2005).

<sup>9</sup> *Ibid.*, p. 2.

<sup>10</sup> *Ibid.*, p. 5.

<sup>11</sup> “Phineas’ mis en examen,” *Libération*, August 16, 2004, available at <http://www.liberation.fr/page.php?Article=230975> (accessed March 20, 2005).

<sup>12</sup> Community Security Trust, *Antisemitic Incidents Report 2004*, p. 2.

<sup>13</sup> *Ibid.*

<sup>14</sup> National Conference on Soviet Jewry (NCSJ), “NCSJ Calls on Russian Government to Condemn Extremist Parliament Members” (press release), January 25, 2005.

<sup>15</sup> The *Duma* subsequently voted 306 to 58 to condemn the letter: “The Communist Party called for the vote to be removed from the *Duma*’s agenda . . . , saying, ‘There is no anti-Semitism in Russia.’ Some Communist legislators openly defended the letter; one said the views did not come out of nowhere.” Sophia Kishkovsky, “Anti-Semitic Letter Embroils *Duma*,” *International Herald Tribune*, February 5, 2005. See also “Orthodox Group Repeats Demand to Ban Russia’s Jewish Organizations—Russian MP,” *MosNews.com*, March 3, 2005.

<sup>16</sup> On February 6, 2004, for example, a bomb on a train near the *Avtozavodskaya* metro station in Moscow killed 39 and injured 7; while another metro station bombing on August 31, 2004, killed 10 and wounded 51. On August 26, 2004, two civilian airliners were destroyed by suicide bombers in mid-air explosions, killing 89 passengers and crew. Human Rights First, *Russia: The New Dissidents* (New York: Human Rights First, 2005), available at <http://www.humanrightsfirst.org/defenders/pdf/new-dis-russia-021605.pdf> (accessed April 28, 2005).

<sup>17</sup> Human Rights Watch, “Briefing Paper on the Situation of Ethnic Chechens in Moscow,” February 24, 2003, available at <http://www.hrw.org/backgrounder/eca/russia032003.htm> (accessed March 20, 2005).

<sup>18</sup> “Madrid Remembers Train Bombings,” *BBC News*, March 11, 2005, available at <http://news.bbc.co.uk/1/hi/world/europe/4338727.stm> (accessed May 2, 2005). For a discussion of the “new antisemitism,” see

Michael McClintock and Judith Sunderland, *Antisemitism in Europe: Challenging Official Indifference* (New York: Human Rights First, 2004), pp. x, 67–76.

<sup>19</sup> *Ibid.*, p. 3.

<sup>20</sup> Associated Press, “Bombings at Istanbul Synagogues Kill 23,” November 16, 2003.

<sup>21</sup> Grant McCabe, “Sheriff Slams ‘Sport’ Race Attacks,” *Scotsman*, August 10, 2004, available at <http://thescotsmen.scotsman.com/scotland.cfm?id=918472004> (accessed March 22, 2004). The previous year, a race relations review conducted at the request of Strathclyde Police (which covers Glasgow) found extensive underreporting of racist attacks, because members of minority groups were afraid to go to the police for help. The Strathclyde Police annual report for 2003 reported 1,495 race-related crimes, including the murder of Firsat Dag, a Turkish asylum seeker. Dan McDougall, “Victims of Racial Crime Are Scared to Contact Police, Warns Adviser,” *Scotsman*, February 1, 2003, available at <http://thescotsmen.scotsman.com/scotland.cfm?id=126352003> (accessed August 22, 2004).

<sup>22</sup> “‘I probably see every second day a casualty sheet saying that someone has been assaulted and has attended a hospital in Glasgow.’ He said local people were subjecting refugees to terrifying victimisation, including banging on their doors in the middle of the night.” McDougall, “Victims of Racial Crime” (quoting Dr. Peter von Kaehne of Fernbank clinic in Sighthill).

<sup>23</sup> Strathclyde Police, “Strathclyde Police Publish Report into Racist Incidents,” available at <http://www.strathclyde.police.uk/index.asp?docId=576> (accessed August 22, 2004).

<sup>24</sup> A similar pattern was found by an informal BBC News survey of minority owners and employees of take-out food services in England’s South East in August 2004. The BBC found that many had suffered both verbal and physical assaults. “Takeaway Staff Suffer Race Abuse,” *BBC News*, August 17, 2004, available at <http://news.bbc.co.uk/1/hi/england/3571254.stm> (accessed August 24, 2004).

<sup>25</sup> On August 16, 2004, the home of a Lithuanian immigrant, who had been hospitalized after being beaten in a bias attack, was burned out with a gasoline bomb. “Racial Attacks ‘on Increase,’” *BBC News*, August 17, 2004, available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/3572048.stm](http://news.bbc.co.uk/1/hi/northern_ireland/3572048.stm) (accessed August 22, 2004).

<sup>26</sup> “Racial Motive Probed in Attack,” *BBC News*, July 22, 2004, available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/3915851.stm](http://news.bbc.co.uk/1/hi/northern_ireland/3915851.stm) (accessed August 22, 2004).

<sup>27</sup> “Race Hate Attack Warning,” *BBC News*, July 31, 2004, available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/3941929.stm](http://news.bbc.co.uk/1/hi/northern_ireland/3941929.stm) (accessed August 24, 2004).

<sup>28</sup> See, for example, Seth Mydans, “African Students’ Harsh Lesson: Racism is Astir in Russia,” *New York Times*, December 18, 2003; Sophie Lambroschini, “Russia: For African Students, Affordable Education Still Comes at a Price,” *Radio Free Europe*, January 2, 2004, available at <http://www.rferl.org/featuresarticle/2004/01/fe445544-755e-42f7-b8d4-3ce52ff4bd4e.html> (accessed August 20, 2004).

<sup>29</sup> *Ibid.*

<sup>30</sup> Mydans, “African Students.”

<sup>31</sup> Human Rights First interview, Moscow, August 2004.

<sup>32</sup> Amnesty International, “*Dokumenty!*” *Discrimination on Grounds of Race in the Russian Federation* (London: Amnesty International, 2003), p. 43.

<sup>33</sup> Svetlana Gannushkina, Human Rights First interview, Moscow, August 2004.

<sup>34</sup> Human Rights in Russia, “Экстремизм и национализм: чисто российская история” (Extremism and nationalism: Pure Russian history), August 20, 2004, available at [www.hro.org/actions/nazi/2004/08/20.php](http://www.hro.org/actions/nazi/2004/08/20.php) (accessed August 24, 2004).

<sup>35</sup> Amnesty International, “Khursheda Sultanova, Russian Federation”, June 1, 2004, available at <http://web.amnesty.org/library/Index/ENGEUR460222004> (accessed July 10, 2004). The attackers, who reportedly shouted “Russia for the Russians,” were armed with brass knuckles, chains, sticks, and knives.

<sup>36</sup> Human Rights in Russia, “Extremism and nationalism.”

<sup>37</sup> *Ibid.*

<sup>38</sup> The background to racism in European football is set out in Peter Marsh et al., *Football Violence in Europe* (The Amsterdam Group, 1996), available at [http://www.sirc.org/publik/football\\_violence.html](http://www.sirc.org/publik/football_violence.html) (accessed July 20, 2004).

<sup>39</sup> “Beckham Backs Streetkick,” *The FA.com*, June 23, 2004, available at <http://www.thefa.com/TheFA/EthicsAndSportsEquity/NewsAndFeatures/Postings/2004/06/BECKHAM+BACKS+STREETKICK.htm> (accessed August 14, 2004).

<sup>40</sup> See, for example, Football Against Racism in Europe (FARE), “Racist Incidents Mar Croatia versus France Match,” June 18, 2004 (detailing racist and homophobic incidents in a European Championships match in Portugal, and singling out Croatian white-supremacists, neo-Nazi Spanish fans, and German and Italian fans who gave Nazi salutes), available at <http://mailman.no-racism.net/pipermail/football/2004-June/000121.html> (accessed August 24, 2004).



<sup>41</sup> FARE, "Anti-Racism Event in Moscow," July 9, 2004, available at [http://www.farenet.org/news\\_article.asp?NewsID=225](http://www.farenet.org/news_article.asp?NewsID=225) (accessed August 22, 2004).

<sup>42</sup> Let's Kick Racism Out of Football, "FURD Counts Cost of Arson Attack," July 28, 2004, available at <http://www.kickitout.org/index.php?id=9&StoryID=2452> (accessed August 4, 2004).

<sup>43</sup> Football Unites, Racism Divides (FURD), "FURD Set to Celebrate Ten Years of Campaigning," April 13, 2005, available at <http://www.furd.org/newsdetail.asp?ID=124> (accessed June 23, 2005).

<sup>44</sup> "Racist Vandals Strike in France," *BBC News*, June 14, 2004, available at <http://news.bbc.co.uk/1/hi/world/europe/3806973.stm> (accessed August 4, 2004).

<sup>45</sup> Coordinating Forum for Countering Antisemitism, "The Forum Report," [updated regularly], available at <http://www.antisemitism.org.il/frontend/english/ForumReport.asp> (accessed August 23, 2004).

<sup>46</sup> The two accused, aged 18 and 19, were said to have confessed to the crime. Criminal mischief at a burial site is a felony under state law. The penalty can be enhanced under Texas' James Byrd Jr. Hate Crimes Act, which increases the charge to a third-degree felony. Three men were convicted of Byrd's murder: two were sentenced to death and are on Texas' death row and another was sentenced to life imprisonment. Associated Press, "Two Held in Gravesite Desecration," May 11, 2004, available at <http://www.chron.com/cs/CDA/ssistory.mpl/special/jasper/latestnews/2562298> (accessed August 23, 2004); Associated Press, "Byrd Family Relieved Act Passed; His Mother Says 'Something Good Came out of This Tragedy,'" March 10, 2004, available at <http://www.chron.com/cs/CDA/ssistory.mpl/special/jasper/latestnews/907487> (accessed August 23, 2004).

<sup>47</sup> *Ibid.*

<sup>48</sup> Karen Umemoto and C. Kimi Mikami, "A Profile of Race-Bias Hate Crime in Los Angeles County," *Western Criminology Review* 2 (2) (2000), available at <http://wcr.sonoma.edu/v2n2/umemoto.html> (accessed March 24, 2004).

<sup>49</sup> "Neo-Nazis Admit Killing," *Frankfurter Allgemeine Zeitung*, May 30, 2003, available at <http://www.faz.com> (accessed March 15, 2004); Liz Fekete, "Youth Killed Because They Thought He Was Jewish," *IRR News*, February 1, 2003, available at [www.irr.org.uk/cgi-bin/news/open.pl?id=5453](http://www.irr.org.uk/cgi-bin/news/open.pl?id=5453) (accessed March 15, 2004).

<sup>50</sup> In the Holocaust that the Roma called the *Parajmos* (in Romani, the "devouring"), scholars estimate that between 500,000 and 1.5 million Roma and Sinti were murdered. Dimitrina Petrova, "The Roma: Between a Myth and the Future," *Roma Rights Quarterly*, no. 1 (2004): p.18. The principal groups then living in Germany called themselves the Sinti.

<sup>51</sup> Council of Europe, Commissioner for Human Rights, *4th Annual Report, January to December 2003, to the Committee of Ministers and the Parliamentary Assembly* (Strasbourg: 2004), p. 30, available at [http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/CommDH%282004%2910\\_E.doc](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/CommDH%282004%2910_E.doc) (accessed March 20, 2004).

<sup>52</sup> In a November 2003 comment on a radio program, France's chief rabbi, Joseph Sitruk, reportedly advised Jews to wear baseball caps instead of yarmulkes to avoid anti-Jewish attacks. Eric Fottorino, "La chronique d'Eric Fottorino, Cachez cette *kippa* . . .," *Le Monde*, November 20, 2003.

<sup>53</sup> See, for example, Umemoto and Mikami, "Race-Bias Hate Crime in Los Angeles" ("Due to their very nature hate crimes engender a particularly high level of psychological stress, fear, and anxiety. There is no way for potential victims to protect themselves since it is difficult or undesirable to disguise their inherent identities.").

<sup>54</sup> Commission on British Muslims and Islamophobia, *Islamophobia: A Challenge for Us All* (London: Runnymede Trust, 1997); see also Anja Rudiger, "Crisis, or More of the Same? Commission on Racial Equality," *Connections*, Autumn 2001, available at [http://www.cre.gov.uk/publs/connections/conn\\_01au.html](http://www.cre.gov.uk/publs/connections/conn_01au.html) (accessed August 10, 2004).

<sup>55</sup> Christopher Allen and Jorgen S. Nielsen, *Summary Report on Islamophobia in the EU after 11 September 2001* (Vienna: EUMC, 2002), p. 35, available at [http://eumc.eu.int/eumc/material/pub/112001/Synthesis\\_report-en.pdf](http://eumc.eu.int/eumc/material/pub/112001/Synthesis_report-en.pdf) (accessed March 22, 2004); International Helsinki Federation for Human Rights, *Intolerance and Discrimination against Muslims in the EU: Developments since September 11* (Vienna: IHF, 2005), pp. 14–15, available at [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=4029](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4029) (accessed March 20, 2005).

<sup>56</sup> Allen and Nielsen, *Islamophobia in the EU*, pp. 36–37; International Helsinki Federation, *Discrimination against Muslims*, pp. 14–15.

<sup>57</sup> Allen and Nielsen, *Islamophobia in the EU*, p. 26.

<sup>58</sup> International Helsinki Federation, *Discrimination against Muslims*, p. 15.

<sup>59</sup> Collectif Contre l'Islamophobie en France (CCIF), "Rapport d'étape du CCIF sur l'Islamophobie en France 2003/2004," available at <http://www.islamophobie.net/rapport04.pdf> (accessed March 20, 2005).

<sup>60</sup> *Ibid.*

<sup>61</sup> Ligue Internationale Contre le Racisme et l'Antisémitisme (LICRA), "Marche silencieuse en Gironde après les coups de feu tirés sur une mosquée," January 22, 2005, available at <http://www.licra.org/index.php?section=news&id=1341> (accessed March 20, 2005).

<sup>62</sup> Agence France-Presse, January 4, 2005.

<sup>63</sup> On difficulties concerning building permits for mosques, and access to Muslim cemeteries, see International Helsinki Federation, *Discrimination against Muslims*, pp. 20–21.

<sup>64</sup> Council of Europe, *4th Annual Report*, p. 30. Restrictions on building permits for mosques have been reported in European anti-racism monitoring reports in a wide range of countries. See also International Helsinki Federation, *Discrimination against Muslims*, p. 16.

<sup>65</sup> Craig S. Smith, “In Mourning Slain Filmmaker, Dutch Confront Limitations of Their Tolerance,” *New York Times*, November 10, 2004.

<sup>66</sup> Law no. 2004-228, March 15, 2004, available at <http://www.legifrance.gouv.fr/texteconsolide/PEEA8.htm> (accessed March 20, 2005).

<sup>67</sup> The letter explained the basis for the Sikh requirement that the hair of men and boys not be cut and remain covered in public: “The Sikh religion calls for the respect of nature and therefore of hair and the beard. We must protect our hair and cover our head to demonstrate our respect for all beings. Consequently the turban is in no way the symbol of an extremist or of a fundamentalist.” Agence France-Presse, “Law on Religious Symbols Will Create ‘Injustice’—France’s Sikhs” (FBIS translated text), January 21, 2004.

<sup>68</sup> “We see no reason for France to adopt a law that will ultimately relegate those who express their conscience through the adoption of religious articles of faith to second class status.” Sikh Coalition, letter to President Chirac, January 19, 2004, available at <http://www.sikhcoalition.org/ChiracLetter.asp> (accessed April 29, 2005).

<sup>69</sup> International Helsinki Federation, *Discrimination against Muslims*, p. 18.

<sup>70</sup> For an authoritative discussion of norms in U.S. schools and principles of freedom of expression and religious freedom, see Anti-Defamation League (ADL), *Religion in Public Schools*, 2004–2005 ed., available at [http://www.adl.org/religion\\_ps\\_2004/rps\\_2004.pdf](http://www.adl.org/religion_ps_2004/rps_2004.pdf) (accessed April 29, 2005). Chapter XIII (“Dress Codes”) considers regulations barring the wearing of religious attire or symbols.

<sup>71</sup> “Most of those who have been subjected to disciplinary measures under the law are Muslim girls wearing the headscarf, some of whom have been expelled from their schools although they have replaced their headscarves with fashionable bandanas. The number of expulsions under the new law has, however, been lower than feared.” International Helsinki Federation, *Discrimination against Muslims*, p. 18.

<sup>72</sup> These included four girls expelled from schools in Mulhouse (in eastern France) and a girl in Caen. Charles Bremner, “First Girls Expelled over Headscarf Ban,” *Times*, October 21, 2004, available at <http://www.timesonline.co.uk/article/0,,3-1321027,00.html> (accessed April 20, 2005).

<sup>73</sup> “Muslim Girl Shaves Head over Ban,” *BBC News, World Edition*, October 1, 2004, available at <http://news.bbc.co.uk/2/hi/europe/3708444.stm> (accessed April 20, 2005).

<sup>74</sup> Agence France-Presse, “Nine Sikh Pupils Barred from Class in Paris Suburb under French Headscarf Law” (FBIS Translated Text), September 8, 2004.

<sup>75</sup> “Trois élèves Sikhs exclus d’un lycée,” *Le Nouvel Observateur*, November 6, 2004, available at <http://archquo.nouvelobs.com/cgi/articles?ad=societe/20041106.OBS0860.html&datebase=20041106> (accessed April 19, 2005); “French School Expels 3 Sikh Students for Wearing Turban,” *NNN*, November 6, 2004, available at [http://www.unitedsikh.org/news/French\\_school\\_expels\\_sikhboys.htm](http://www.unitedsikh.org/news/French_school_expels_sikhboys.htm) (accessed April 20, 2005). The expulsions were confirmed a month later by the education authority responsible for the high school. Laetitia Van Eeckhout, “L’exclusion de trois élèves sikhs devant le tribunal administratif,” *Le Monde*, March 13, 2005, available at <http://www.lemonde.fr/web/article/0,1-0@2-3226,36-638472@51-638601,0.html> (accessed April 19, 2005).

<sup>76</sup> “Court Upholds Expulsion over Turbans at School,” *International Herald Tribune*, April 20, 2005, available at <http://www.iht.com/articles/2005/04/19/news/briefs.html> (accessed April 29, 2005).

<sup>77</sup> Most E.U. countries permit students to wear headscarves. This is in contrast to policies concerning “veils that cover a major part of the face—such as the *niqab* (covers the lower part of the face, up to the eyes) and the *burqa* (covers all of the face but has holes for the eyes).” The Dutch Equal Treatment Commission, for example, has found it lawful “to prohibit students from wearing the *niqab* in public schools for communication and identification purposes.” International Helsinki Federation, *Discrimination against Muslims*, p. 22.

<sup>78</sup> See, for example, the International Covenant on Civil and Political Rights, of which France is a state party, article 19:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 9 of the European Convention on Human Rights guarantees the freedom to manifest one's religion or beliefs, subject "only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

<sup>79</sup> In its third report on France, produced only months after the ban was imposed, the European Commission against Racism and Intolerance (ECRI) expressed concern primarily about its *potential* discriminatory effect—and the need to monitor its consequences. In its Recommendation no. 84, ECRI "urge[d] the French authorities to closely monitor the implementation of the law on the display of visible signs of religious belief at school, and to ensure that dialogue is favoured in order to avoid any exclusion, stigmatisation or radicalisation of the pupils concerned." In its commentary on the measure, it noted:

ECRI hopes that there will be no negative consequences for young Muslim females wearing the veil, who form the majority of the population concerned. In this connection, ECRI encourages the French authorities to assess this measure from the perspective of indirect discrimination, particularly at the time of carrying out an evaluation of the law's implementation as provided for in the law.

ECRI, "Third Report on France," adopted on June 25, 2004, and made public on February 15, 2005, paras. 79 and 84.

All of ECRI's country reports can be found on the publications portion of its website at <http://www.coe.int/T/E/human%5Frights/Ecri/4%2DPublications/> (accessed June 30, 2005).

<sup>80</sup> CCIF, "L'Islamophobie en France," p. 17.

<sup>81</sup> Ligue Francaise de la Femme Musulmane (LFFM) [French League of the Muslim Woman], correspondence with Human Rights First, February 25, 2005.

<sup>82</sup> Agence France-Presse, "Woman Attacked in Northeast France 'for Wearing Islamic Headscarf'" (FBIS translated text), December 16, 2004. The victim was briefly hospitalized and a formal complaint was filed. Two men reportedly beat the woman severely and threatened her with death; police confirmed facial swelling and injuries to her left arm.

<sup>83</sup> Alan Quarty, "Headscarf Hate Mail Shocks Belgium," *BBC News*, January 31, 2005, available at <http://news.bbc.co.uk/1/hi/world/europe/4223307.stm> (accessed April 29, 2005).

<sup>84</sup> Chris Morris, "Muslim Woman Quits after Threats," *BBC News*, March 3, 2005, available at <http://news.bbc.co.uk/1/hi/world/europe/4315837.stm> (accessed April 29, 2005); "Naima Amzil a repris le chemin du travail," *La Libre*, March 11, 2005, available at [http://www.lalibre.be/article.phtml?id=10&subid=90&art\\_id=214923](http://www.lalibre.be/article.phtml?id=10&subid=90&art_id=214923) (accessed April 29, 2005).

<sup>85</sup> EUMC, "Racism and Xenophobia in the E.U. Member States: Trends, Developments and Good Practice in 2002," Annual report—Part 2, p. 89.

<sup>86</sup> ECRI, "General Policy Recommendation No. 1: Combating Racism, Xenophobia, Antisemitism and Intolerance," adopted on October 4, 1996, available at [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/3-General\\_themes/1-Policy\\_Recommendations/Recommendation\\_N%01/1-Recommendation\\_n%01.asp#TopOfPage](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/3-General_themes/1-Policy_Recommendations/Recommendation_N%01/1-Recommendation_n%01.asp#TopOfPage) (accessed August 24, 2004).

<sup>87</sup> See, for example, ECRI, Third Country Reports, June 27, 2003 (including reports on Belgium, Norway and Switzerland); Second Reports on Denmark (June 16, 2000), Finland (December 14, 2001), Greece (December 10, 1999), Portugal (March 20, 2002), Ireland (June 22, 2001), Luxembourg (December 13, 2002), and Spain (December 13, 2002).

<sup>88</sup> Two years before, when Human Rights First (then the Lawyers Committee for Human Rights) published *Fire and Broken Glass*, we highlighted France's policy of withholding disaggregated statistics on hate crimes on the grounds that no distinction could be made on the basis of ethnic or racial groups, as a major factor in the government's failure to adequately reflect the scale and nature of antisemitic violence in France. Official reporting on antisemitic violence since then has significantly improved. (See section on France.)

<sup>89</sup> European Union, *Proving Discrimination: The Dynamic Implementation of EU Antidiscrimination Law: The Role of Specialised Bodies*, Report of the First Experts' Meeting, January 14–15, 2003, available at [http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/pdf/pubst/mpg\\_be03\\_en.pdf](http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/mpg_be03_en.pdf) (accessed June 24, 2004).

<sup>90</sup> Council of Europe, "General Conclusions of the European Conference Against Racism," Strasbourg, October 16, 2000, para. 12.

<sup>91</sup> United Nations, "Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, August 31–September 8, 2001," available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/215/43/PDF/N0221543.pdf?OpenElement> (accessed August 2002). For a discussion of the role of statistics in the fight against discrimination in the particular case of the Roma and Sinti, see the special issue of *Roma Rights*, "Ethnic Statistics," no. 2 (2004), and in particular Dimitrina Petrova, "Ethnic Statistics," pp. 5–6, concerning the application of depersonalized data disaggregated by race or ethnicity in identifying discrimination.

<sup>92</sup> The World Conference Plan of Action urges states:

to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance;

(a) Such statistical data should be disaggregated in accordance with national legislation. Any such information shall, as appropriate, be collected with the explicit consent of the victims, based on their self-identification and in accordance with provisions on human rights and fundamental freedoms, such as data protection regulations and privacy guarantees. This information must not be misused.

(b) The statistical data and information should be collected with the objective of monitoring the situation of marginalized groups, and the development and evaluation of legislation, policies, practices and other measures aimed at preventing and combating racism, racial discrimination, xenophobia and related intolerance, as well as for the purpose of determining whether any measures have an unintentional disparate impact on victims. To that end, it recommends the development of voluntary, consensual and participatory strategies in process of collecting, designing and using information.

Ibid.

<sup>93</sup> ECRI, "Third Report on Bulgaria," adopted on June 27, 2003, and made public on January 27, 2004, para. 73.

<sup>94</sup> Julian V. Roberts, *Disproportionate Harm: Hate Crime in Canada: An Analysis of Recent Statistics* (University of Ottawa, 1995), available at <http://www.justice.gc.ca/en/ps/rs/rep/wd95-11a-e.html> (accessed March 12, 2004).

<sup>95</sup> EUMC, "Manifestations of Antisemitism in the E.U. 2002-2003," p. 23, available at <http://eumc.eu.int/eumc/as/PDF04/AS-Main-report-PDF04.pdf> (accessed April 20, 2004).

<sup>96</sup> ECRI, "Report on Georgia," adopted on June 22, 2001, and made public on April 23, 2002, para. 14.

<sup>97</sup> EUMC, "Annual Report 2000—Summary," available at [http://eumc.eu.int/eumc/material/pub/ar00/AR\\_2000\\_Summary-EN.pdf](http://eumc.eu.int/eumc/material/pub/ar00/AR_2000_Summary-EN.pdf) (accessed March 2002).

<sup>98</sup> Ibid.

<sup>99</sup> University of Glasgow, "Policing of Racist Incidents," Executive Summary, p. 1.

<sup>100</sup> ECRI, "Third Report on the Czech Republic," adopted on December 5, 2003, and made public on June 8, 2004, para. 17.

<sup>101</sup> The International Association of Chiefs of Police (IACP) notes that "[p]rejudicial behavior exists along a continuum including negative speech, discriminatory practices, property damage, physical assault, and murder," and distinguishes between hate crimes, which are punishable by statute, and "subject to an enhanced penalty if the crime was motivated by bias." Hate incidents "involve behaviors that, though motivated by bias against a victim's race, religion, ethnic/national origin, gender, age, disability, or sexual orientation, are not criminal acts." IACP, "Hate Crime in America Summit Recommendations," 1998, available at [http://www.theiacp.org/documents/index.cfm?fuseaction=document&document\\_id=160#measure](http://www.theiacp.org/documents/index.cfm?fuseaction=document&document_id=160#measure) (accessed August 10, 2004).

<sup>102</sup> Los Angeles County Human Relations Commission, "What is a Hate Crime?" 2004, available at <http://lahumanrelations.org/hatecrime/index.htm> (accessed August 10, 2004).

<sup>103</sup> ADL, "ADL Audit Finds Anti-Semitic Incidents Remain Constant; More Than 1,500 Incidents Reported Across U.S. in 2003" (press release), March 24, 2004, available at [http://www.adl.org/PresRele/ASUS\\_12/4464\\_12.htm](http://www.adl.org/PresRele/ASUS_12/4464_12.htm) (accessed August 24, 2004).

<sup>104</sup> Ibid.

<sup>105</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 76.

<sup>106</sup> The previous circular, issued in 1992 by the Chief Superintendent of PET, required that

all criminal incidents with a suspected racist motive must be reported to the PET. According to the circular, suspicion of a racist motive could rest with any of the following: (1) the victim's, perpetrator's or witnesses' statements; (2) the presence of racist/xenophobic symbols or graffiti; (3) whether the victim or perpetrator knew each other; or (4) whether the crime was planned.

Ibid., p. 47.

<sup>107</sup> U.S. Department of Justice, Federal Bureau of Investigation (FBI), "Hate Crime Data Collection Guidelines," *Uniform Crime Reporting*, October 1999 (revised), available at <http://www.fbi.gov/ucr/hatecrime.pdf> (accessed March 10, 2004).

<sup>108</sup> Ibid., p. 2.

<sup>109</sup> Ibid., pp. 4–6. Fourteen factors are identified, followed by a series of practical examples.

<sup>110</sup> Ibid., nos. 1, 5, and 6.

<sup>111</sup> *Ibid.*, nos. 9 and 14.

<sup>112</sup> *Ibid.*, nos. 6, 7, and 11.

<sup>113</sup> *Ibid.*, no. 10.

<sup>114</sup> Lawyers Committee for Human Rights, *Fire and Broken Glass*, p. 4.

<sup>115</sup> FBI, "Hate Crime Data Collection," nos. 2–4.

<sup>116</sup> *Ibid.*, no. 14.

<sup>117</sup> *Ibid.*

<sup>118</sup> FBI, *Hate Crime Statistics 2002* (Washington, D.C.: U.S. Government Printing Office, 2003), available at <http://www.fbi.gov/ucr/hatecrime2002.pdf> (accessed June 27, 2005).

<sup>119</sup> The Inquiry used a working definition of "institutional racism": "[t]he collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people." The emphasis here is on the systems and procedures employed to monitor, report, and provide redress for hate crimes. Home Office, "The Stephen Lawrence Inquiry," February 1999, available at <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm> (accessed June 10, 2003).

<sup>120</sup> *Ibid.*, section 6,45.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*, "Recommendations." For a review of government measures in the wake of the Lawrence inquiry and an assessment of hate crimes in the United Kingdom, see also Council of Europe, "Report Submitted by the United Kingdom Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities," July 26, 1999, available at [http://www.coe.int/T/e/human\\_rights/Minorities/2.\\_FRAMEWORK\\_CONVENTION\\_\(MONITORING\)/2.\\_Monitoring\\_mechanism/3.\\_State\\_reports/1.\\_First\\_cycle/1st\\_SR\\_United\\_Kingdom.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/1._First_cycle/1st_SR_United_Kingdom.asp#TopOfPage) (accessed April 10, 2005).

<sup>123</sup> Home Office, "Code of Practice on Reporting and Recording Racist Incidents in Response to Recommendation 15 of the Stephen Lawrence Inquiry Report," May 25, 2000, available at <http://www.homeoffice.gov.uk/docs/code.html> (accessed August 10, 2004).

<sup>124</sup> Home Office, "Code of Practice," p. 5.

<sup>125</sup> *Ibid.*, n. 3.

<sup>126</sup> Jack McDevitt et al., *Bridging the Information Disconnect in National Bias Crime Reporting* (Boston: Northeastern University, Institute on Race and Justice, 2003), p. 104, available at [http://www.cj.neu.edu/pdf/executive\\_summary\\_BJS\\_II.pdf](http://www.cj.neu.edu/pdf/executive_summary_BJS_II.pdf) (accessed July 12, 2004).

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*, p. 123.

<sup>129</sup> *Ibid.*, p. 129.

<sup>130</sup> Alexander Verkhovsky, Human Rights First interview, Moscow, August 2004.

<sup>131</sup> Home Office, "Code of Practice."

<sup>132</sup> CEOOR is an autonomous public agency established by law and with ties to the Prime Minister's office that is mandated to combat discrimination in Belgium. EUMC, *National Analytical Study on Racist Violence and Crime*, p. 25, available at <http://eumc.eu.int/eumc/material/pub/RAXEN/4/RV/CS-RV-NR-BE.pdf> (accessed March 20, 2005).

<sup>133</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 74.

<sup>134</sup> EUMC, "Anti-Islamic Reactions in the EU after the Terrorist Acts against the USA," November 29, 2001, p. 4, available at <http://eumc.eu.int/eumc/material/pub/anti-islam/Nat-Report-291101.pdf> (accessed July 22, 2004). The report adds, "As for the facts of crime, the young culprit devastated most of graves in the night from September 28 to September 29. A week later, he allegedly returned to the scene of the crime after a brawl with a 'foreigner' and demolished two further graves." Another account of the incident, and of anti-Muslim discourse at the time, is in Zivilcourage und Anti-Rassismus-Arbeit (ZARA), *Racism Report 2001: Case Reports on Racist Excesses and Structures in Austria*, p. 14, available at <http://www.enar-eu.org/en/national/Austrian%20report%202001.pdf> (accessed March 12, 2004).

<sup>135</sup> Stéphanie Djian, Chargée de mission, Commission Nationale Consultative des Droits de l'Homme (CNCDH), electronic mail to Human Rights First, August 24, 2004.

<sup>136</sup> This represented more than double the rate of antisemitic incidents in the preceding six months and in the same period in 2003 ("a strong increase relative to the preceding 6 months where we counted 60 acts (+125% change) and 231 threats (+62% change), and also relative to the same period last year, where we counted 67 acts (+101% change) and 238 threats (57.5% change).") A

significant increase was also observed in other racist incidents: “Among these we count 95 acts and 161 threats, while in the same period last year we counted 51 acts (meaning an increase of 86%) and 86 threats (indicating an 87% increase).” An “act” was defined as “an attack or attempted attack, fire, defacement, and act of violence,” and a “threat” as a threatening remark or gesture, pamphlet or tract, abusive display or demonstration, or other act of intimidation. *Ibid.*

<sup>137</sup> LICRA, CNCDH’s Report, April 1, 2004, available at [http://www.licra.org/actualite/actu\\_une\\_new.php?id\\_type\\_actu=6&id\\_actu=685&langue=2](http://www.licra.org/actualite/actu_une_new.php?id_type_actu=6&id_actu=685&langue=2) (accessed May 2004). See also “Les trois quarts des actes racistes liés à l’antisémitisme,” *Libération*, April 1, 2004, available at <http://www.liberation.fr/page.php?Article=190983&AG> (accessed April 6, 2004); Sylvia Zappi, “Le nombre des agressions racistes et antisémites a diminué en 2003, mais demeure élevé,” *Le Monde*, April 1, 2004.

<sup>138</sup> Reuters, “Hatred of Jews and Muslims Takes Root in France,” April 2, 2004.

<sup>139</sup> *Ibid.*

<sup>140</sup> The newspaper *Libération* noted that the statistic of 29 violent hate crimes against people of North African origin was “evidently an underestimate,” while total figures are given “without distinguishing either blacks or Asians.” Catherine Coroller, “Le racisme perdure et se transforme,” *Libération*, April 2, 2004.

<sup>141</sup> *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

<sup>142</sup> *Ibid.*

<sup>143</sup> A 2000-2001 survey by the EUMC, “Study on the Comparison of the Adopted Article 13 Council Directives with Existing National Legislation in the EU Member States,” provides detailed country-by-country information as of September 2001. EUMC, “Anti-Discrimination Legislation in EU Member States: A Comparison of National Anti-Discrimination Legislation on the Grounds of Racial or Religious Origin, Religion or Belief with the Council Directives,” available at [http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp\\_cat\\_content&catid=3fb38ad3e22bb&contentid=3fb4f71bc1790](http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3fb38ad3e22bb&contentid=3fb4f71bc1790) (accessed March 20, 2004).

<sup>144</sup> At the same time, “since these penal cases represent areas where victims do not have much power to act during the proceedings and are depending on the police and Prosecutor, this remedy has weaknesses, especially considering that the compensation aspect to be received by the victim is often marginal.” Haleh Chahrokh, Wolfgang Klug, and Veronika Bilger, *Migrants, Minorities, and Legislation: Documenting Legal Measures and Remedies against Discrimination in 15 Member States of the European Union* (Luxembourg: EUMC, 2004), p. 108, available at <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-Legislation-en.pdf> (accessed April 15, 2005).

<sup>145</sup> Roberts, *Disproportionate Harm*.

<sup>146</sup> Official commentary to the Criminal Code’s article 105 (on homicide) notes that “it is necessary to establish this specific special motive among those cited in the law (national, racial, or religious hatred or enmity or a blood feud). This motive may be in combination with other motives (revenge, gain, hooliganism), at the same time it must dominate among them.” A human rights lawyer familiar with prosecution of such cases notes that the need to establish racial, national or religious hatred/enmity as the dominant motive makes it almost impossible to apply. Sergei Nanosov, Human Rights First interview, Moscow, August 2004.

<sup>147</sup> *Ibid.*

<sup>148</sup> Alexander Vershbow, U.S. Ambassador to Russia, “Ending Discrimination in Russia” (remarks at the Conference “Ways for Overcoming Xenophobia, Racial Discrimination, and Anti-Semitism in the Multinational Russian Federation”), March 29, 2004, available at [http://moscow.usembassy.gov/embassy/statement.php?record\\_id=85](http://moscow.usembassy.gov/embassy/statement.php?record_id=85) (accessed August 5 2004).

<sup>149</sup> Amnesty International, “Russian Federation: Indifference to Racism Must Be Addressed,” April 19, 2002, available at <http://web.amnesty.org/ai.nsf/Index/EUR460202002?OpenDocument&of=COUNTRIES\RUSSIAN+FEDERATION> (accessed August 26, 2005).

<sup>150</sup> ECRI, “General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination,” adopted on December 13, 2002, paras. 18–21, available at [http://www.coe.int/T/E/Human\\_Rights/Ecri/1-ECRI/3-General\\_themes/1-Policy\\_Recommendations/Recommendation\\_N%B07/3-Recommendation\\_7.asp#P128\\_11460](http://www.coe.int/T/E/Human_Rights/Ecri/1-ECRI/3-General_themes/1-Policy_Recommendations/Recommendation_N%B07/3-Recommendation_7.asp#P128_11460) (accessed March 5, 2004).

<sup>151</sup> *Ibid.*

<sup>152</sup> ECRI believes that appropriate legislation to combat racism and racial discrimination should include provisions in all branches of the law, i.e. constitutional, civil, administrative and criminal law. Only such an integrated approach will enable member States to address these problems in a manner which is as exhaustive, effective and satisfactory from the point of view of the victim as possible. In the field of combating racism and racial discrimination, civil and administrative law often provides for flexible legal means, which may facilitate the victims’ recourse to legal action. Criminal law has a symbolic effect which raises the awareness of society of the seriousness of racism and racial discrimination and has a strong dissuasive effect, provided it is implemented effectively. *Ibid.*, “Explanatory Memorandum.”

<sup>153</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 108; Haleh Chahrokh, Wolfgang Klug, and Veronika Bilger, “Penal Cases/Racial Crimes,” December 2004, available at <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-Legislation-en.pdf> (accessed April 15, 2005).

<sup>154</sup> ECRI, “Annual Report on ECRI’s Activities Covering the Period from 1 January to 31,” June 8, 2004, available at [http://www.coe.int/T/E/human\\_rights/Ecri/1-ECRI/1-Presentation\\_of\\_ECRI/4-Annual\\_Report\\_2003/Annual\\_Report\\_2003.asp#P46\\_2770](http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/1-Presentation_of_ECRI/4-Annual_Report_2003/Annual_Report_2003.asp#P46_2770) (accessed August 24, 2004).

<sup>155</sup> Council of Europe, “Framework Convention for the Protection of National Minorities,” 1995, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm> (accessed April 12, 2005).

<sup>156</sup> The convention does not define national minority in a prescriptive manner, but reflects an approach that respects the self-identification of the individual or the community. Its preamble notes that “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity.” Article 3 guarantees that “[e]very person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.” *Ibid.*

<sup>157</sup> An explanatory note published with the convention explains that article 6(2) was inspired by paragraph 40.2 of the 1990 Copenhagen Document of the CSCE, the predecessor of the Organization for Security and Cooperation in Europe (OSCE), to make clear that the obligation of protection of all persons applies irrespective of the source of such threats or acts. *Ibid.*, “Explanatory Report,” para. 50.

<sup>158</sup> For a review of government measures in the wake of the Lawrence inquiry and an assessment of hate crimes in the United Kingdom, see Council of Europe, “Report Submitted by the United Kingdom Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities,” July 26, 1999, available at [http://www.coe.int/T/e/human\\_rights/Minorities/2.\\_FRAMEWORK\\_CONVENTION\\_\(MONITORING\)/2.\\_Monitoring\\_mechanism/3.\\_State\\_reports/1.\\_First\\_cycle/1st\\_SR\\_United\\_Kingdom.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/1._First_cycle/1st_SR_United_Kingdom.asp#TopOfPage) (accessed April 10, 2005). The generous interpretation of the terms of the convention were acknowledged in the conclusions and recommendations of the Committee of Ministers on the United Kingdom’s report:

The United Kingdom has made particularly commendable efforts in opening up the personal scope of the Convention to a wide range of minorities. Furthermore, commendable efforts have been made to establish a legal and institutional framework for the protection of national minorities through the application of the Race Relations Act (1976) and its Amendment Act (2000).

Council of Europe, “Resolution ResCMN(2002)9 on the Implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom,” adopted on June 13, 2002, available at [http://www.coe.int/T/e/human\\_rights/Minorities/2.\\_FRAMEWORK\\_CONVENTION\\_\(MONITORING\)/2.\\_Monitoring\\_mechanism/6.\\_Resolutions\\_of\\_the\\_Committee\\_of\\_Ministers/1.\\_Country-specific\\_resolutions/1.\\_First\\_cycle/CM\\_Resolution\\_UK.asp](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/6._Resolutions_of_the_Committee_of_Ministers/1._Country-specific_resolutions/1._First_cycle/CM_Resolution_UK.asp) (accessed June 27, 2005).

<sup>159</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities Opinion on the Russian Federation*, September 13, 2002, available at [http://www.coe.int/T/E/human\\_rights/minorities/2.\\_FRAMEWORK\\_CONVENTION\\_%28MONITORING%29/2.\\_Monitoring\\_mechanism/4.\\_Opinions\\_of\\_the\\_Advisory\\_Committee/1.\\_Country\\_specific\\_opinions/1.\\_First\\_cycle/1st\\_OP\\_Russian\\_Federation.asp#TopOfPage](http://www.coe.int/T/E/human_rights/minorities/2._FRAMEWORK_CONVENTION_%28MONITORING%29/2._Monitoring_mechanism/4._Opinions_of_the_Advisory_Committee/1._Country_specific_opinions/1._First_cycle/1st_OP_Russian_Federation.asp#TopOfPage) (accessed March 20, 2005).

<sup>160</sup> Council of Europe, “Report Submitted by Denmark Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities,” May 6, 1999, available at [http://www.coe.int/T/e/human\\_rights/Minorities/2.\\_FRAMEWORK\\_CONVENTION\\_\(MONITORING\)/2.\\_Monitoring\\_mechanism/3.\\_State\\_reports/1.\\_First\\_cycle/1st\\_SR\\_Denmark.asp#P452\\_64597](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/1._First_cycle/1st_SR_Denmark.asp#P452_64597) (accessed March 20, 2005).

<sup>161</sup> *Ibid.* The report continued:

In particular, it notes that persons belonging to groups with long historic ties to Denmark such as Far-Oese and Greenlanders appear to have been excluded a priori from protection under the Framework Convention. Similarly, despite the historic presence of Roma in Denmark, they appear to have been a priori excluded from the protection of the Convention. This approach is not compatible with the Framework Convention. Furthermore, the Advisory Committee considers a limited territorial application, leading to the a priori exclusion of persons no longer residing in the traditional area of settlement, not to be compatible with the Framework Convention.

*Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> Council of Europe, “Report Submitted by Germany Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities,” February 24, 2000, available at [http://www.coe.int/T/e/human\\_rights/Minorities/2.\\_FRAMEWORK\\_CONVENTION\\_\(MONITORING\)/2.\\_Monitoring\\_mechanism/3.\\_State\\_reports/1.\\_First\\_cycle/1st\\_SR\\_Germany.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/1._First_cycle/1st_SR_Germany.asp#TopOfPage) (accessed March 20, 2005).

<sup>164</sup> “In Germany, national minorities are those groups of German citizens who are traditionally resident in the Federal Republic of Germany and live in their traditional/ancestral settlement areas, but who differ from the majority population through their own language, culture and history—*i.e.* an identity of their own—and who wish to preserve that identity. . . . The Danes, the members of the Sorbian people, and the German Sinti and Roma are designated as national minorities, while the term of ‘Frisian ethnic group’

reflects the wish of the large majority of Frisians *not* to be classed as a national minority, but as a Frisian ethnic group . . . . (The Jewish Community in Germany do not consider themselves a minority, but a religious community.)” Ibid.

<sup>165</sup> Council of Europe, “Second Report Submitted by Germany Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities,” April 13, 2005, available at [http://www.coe.int/T/E/human\\_rights/minorities/2.\\_FRAMEWORK\\_CONVENTION\\_%28MONITORING%29/2.\\_Monitoring\\_mechanism/3.\\_State\\_reports/2.\\_Second\\_cycle/PDF\\_2nd\\_SR\\_Germany.pdf](http://www.coe.int/T/E/human_rights/minorities/2._FRAMEWORK_CONVENTION_%28MONITORING%29/2._Monitoring_mechanism/3._State_reports/2._Second_cycle/PDF_2nd_SR_Germany.pdf) (accessed April 22, 2005).

<sup>166</sup> The five criteria are that:

- their members are German nationals;
- they differ from the majority population insofar as they have their own language, culture and history—in other words, they have their own identity;
- they wish to maintain this identity;
- they are traditionally resident in Germany; and
- they live in the traditional settlement areas.

An exception is made concerning settlement areas for the Roma-Sinti. Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

<sup>169</sup> Council of Europe, *Advisory Committee*.

<sup>170</sup> Ibid. The report expresses regret at the apparent reluctance within law enforcement “to acknowledge and examine these problems . . . and to recognize racist motivations behind attacks . . . .” Recommendations include efforts to energize investigations and prosecutions, and to increase human rights training in this sphere for law enforcement officers. Ibid.

<sup>171</sup> These bodies may form parts of agencies whose mandates cover more than solely racial and ethnic discrimination—dealing, for example, with other forms of discrimination as well. Article 7 of Directive 2002/73/EC requires the designation of a similar body to address discrimination on the grounds of sex: to provide independent assistance to victims of discrimination, conduct independent surveys on discrimination, and publish independent reports and make recommendations on any issue relating to such discrimination.

<sup>172</sup> This was the Law on Discrimination of February 25, 2003. It is unclear that CEOOM has received the additional funding and staffing required to effectively perform its expanded role. ECRI, *Good Practices: Specialised Bodies to Combat Racism, Xenophobia, Antisemitism and Intolerance at National Level* (2004), available at [http://www.coe.int/T/E/human\\_rights/Ecri/1%2DECRI/3%2DGeneral%5Fthemes/2%2DExamples%5Fof%5Fgood%5Fpractices/1-Specialised\\_Bodies/SB\\_table.asp#TopOfPage](http://www.coe.int/T/E/human_rights/Ecri/1%2DECRI/3%2DGeneral%5Fthemes/2%2DExamples%5Fof%5Fgood%5Fpractices/1-Specialised_Bodies/SB_table.asp#TopOfPage) (accessed May 10, 2005).

<sup>173</sup> ECRI, “General Policy Recommendation No. 2: Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance at National Level,” adopted June 13, 1997 (see Appendix 5); ECRI, “General Policy Recommendation No. 7,” para. 24.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid., para. 52.

<sup>176</sup> See, for example, ECRI, *Good Practices*.

<sup>177</sup> ECRI, “Second Report on Albania,” adopted on June 16, 2000, and made public on April 3, 2001, para. 6.

<sup>178</sup> “Such a system of data collection should be based on the voluntary self-registration of the persons involved, and be designed with due respect paid to the right to privacy and to standards of data protection and free and informed consent of the persons in question.” Ibid., para. 30.

<sup>179</sup> ECRI, “Second Report on Andorra,” adopted on June 28, 2002, and made public on April 15, 2003, para. 5.

<sup>180</sup> Ibid., para. 6.

<sup>181</sup> Ibid., para. 9.

<sup>182</sup> The National Assembly adopted the new law on April 18, 2003. Republic of Armenia Criminal Code, available at <http://www.legislationline.org/view.php?document=62156&ref=true> (accessed April 20, 2005).

<sup>183</sup> Ibid.

<sup>184</sup> ECRI, “Report on Armenia,” adopted on December 13, 2002, and made public on July 8, 2003, para. 19.

<sup>185</sup> EUMC, “Racism and Xenophobia,” p. 50.

<sup>186</sup> ECRI, “Third Report on Austria,” adopted on June 25, 2004, and made public on February 15, 2005, para. 15.



- <sup>187</sup> ECRI, “Second Report on Austria,” adopted on June 16, 2000, and made public on April 3, 2001, para. 4.
- <sup>188</sup> ECRI, “Third Report on Austria,” para. 17.
- <sup>189</sup> *Ibid.*
- <sup>190</sup> *Ibid.*
- <sup>191</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 110.
- <sup>192</sup> *Ibid.*, n. 23.
- <sup>193</sup> International Helsinki Federation, *Discrimination against Muslims*, p. 30.
- <sup>194</sup> ECRI, “Third Report on Austria,” para. 57.
- <sup>195</sup> *Ibid.*, paras. 58, 59.
- <sup>196</sup> *Ibid.*, para. 69.
- <sup>197</sup> *Ibid.*, para. 130.
- <sup>198</sup> *Ibid.*, para. 92.
- <sup>199</sup> *Ibid.*, para. 94.
- <sup>200</sup> ECRI, “Report on Azerbaijan,” adopted on June 28, 2002, and made public on April 15, 2003, para 14.
- <sup>201</sup> Criminal Code of the Republic of Belarus, § 64 (1), para. 9, June 9, 1999, available at <http://www.pravo.by/webnpa/text.asp?RN=HK9900275> (accessed July 7, 2005) (translated from the Russian).
- <sup>202</sup> OSCE/ODIHR, *Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives* (Warsaw: ODIHR, 2005), p. 103.
- <sup>203</sup> U.S. Department of State, Belarus Report, 2003.
- <sup>204</sup> Yakov Basin, Union of Councils for Jews in the Former Soviet Union (UCSJ), “Problems of Xenophobia and Anti-Semitism in Modern Belarus,” July 22, 2004, available at <http://www.fsmonitor.com/stories/072304BelarusReport.shtml> (accessed June 22, 2005).
- <sup>205</sup> U.S. Commission on International Religious Freedom (USCIRF), *Report on Belarus* (2003), p. 8.
- <sup>206</sup> UCSJ, “Belarus Skinheads Attack Foreign Students, Foreign Students Retaliate,” March 31, 2004, available at: <http://www.fsmonitor.com/stories/033104Belarus.shtml> (accessed June 22, 2005).
- <sup>207</sup> USCIRF, *Report on Belarus*, p. 7.
- <sup>208</sup> *Ibid.*, p. 7.
- <sup>209</sup> Stephen Roth Institute, “Antisemitism Worldwide 2003/4,” 2004 and 2005 updates, available at <http://www.tau.ac.il/Anti-Semitism/asw2003-4/cis.htm> (accessed June 30, 2005).
- <sup>210</sup> OSCE/ODIHR, *Combating Hate Crimes*, pp. 21, 24.
- <sup>211</sup> Dmitry Poladenko, First Secretary of the Embassy of Belarus to the United States, electronic mail to Jaideep Dargan, Human Rights First, June 23, 2005.
- <sup>212</sup> *Ibid.*
- <sup>213</sup> The bill against discrimination, which amended the Act of 15 February 1993 establishing the Centre for Equal Opportunity and Action to Combat Racism, was passed by the Chamber of Representatives on October 17, 2002, and by the Senate on December 12, 2002. United Nations, Human Rights Committee, “Fourth Periodic Report: Belgium,” May 16, 2003, section 2.3, available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c585f132b683b056c1256daa002c0385/\\$FILE/G0341909.DOC](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c585f132b683b056c1256daa002c0385/$FILE/G0341909.DOC) (accessed August 23, 2004).
- <sup>214</sup> *Ibid.*
- <sup>215</sup> ECRI, “Third Report on Belgium,” adopted on June 27, 2003, and made public on January 27, 2004, para. 22.
- <sup>216</sup> *Ibid.*, para. 52.
- <sup>217</sup> EUMC, *Racist Violence and Crime*, p. 35; Conseil des Ministres, “Une base légale pour Phenix, le projet d’informatisation des tribunaux,” March 18, 2005, available at <http://www.belgium.be/eportal/application?languageParameter=fr&pageid=contentPage&docId=37274> (accessed June 27, 2005).
- <sup>218</sup> The annual report on the CEOOR website includes sections on both “Islamophobia” and antisemitism. In addressing Islamophobia, it discusses anti-Islamic bias, and propaganda against people of North African and, to a lesser extent, Turkish origin, but makes no reference to related incidents of harassment or violence. The section on antisemitism reviews the rise of antisemitic speech and violence in Belgium since October 2000, the beginning of the Second Intifada, and cites some of the most serious incidents reported in 2003. It also cites “security services” statistics on antisemitic acts as evidence of improvement: “Despite an obvious resurgence in antisemitic acts since 2000, a substantial decrease in such acts (greater than 50%) was recorded in 2003 as compared with the previous year. Indeed, organizations dedicated to community safety counted 26 antisemitic acts in 2003, as

compared to 62 for 2002.” Centre Pour l’Egalite des Chances et la Lutte Contre le Racism, “Annual Report 2003,” available at [http://www.antiracisme.be/fr/cadre\\_fr.htm](http://www.antiracisme.be/fr/cadre_fr.htm) (accessed August 22, 2004) (translated from the French).

<sup>219</sup> Specifically, the response stated: “The information you requested concerning the Belgian Government’s measures to monitor and respond to hate crimes-threats and violence motivated by discriminatory bias is available on the website [www.antiracisme.be](http://www.antiracisme.be) of the Belgian Centre pour l’Egalité des Chances et la Lutte contre le Racisme.” François del Marmol, electronic mail to Michael McClintock, Human Rights First, August 27, 2004.

<sup>220</sup> EUMC, “Manifestations of Antisemitism,” pp. 244, 248.

<sup>221</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 71.

<sup>222</sup> Ibid. The EUMC, in its *Analytical Study on Racist Violence and Crime*, notes that “the Belgian police do not have systematic statistics on different forms of racial violence (as in the case of the Netherlands for instance): Relevant cases are merely coded in the general terms of racism (code 56A) or xenophobia (code 56B).” EUMC, *Racist Violence and Crime*, p. 25.

<sup>223</sup> Ibid.

<sup>224</sup> “They are asked to fill out these forms each time they are confronted with a complaint concerning racial discrimination/racial violence. Once a month an employee of the CEOOR will pick up the forms that are filled out. After a period of about 6 months the data are analysed. The partners of the project get a copy of the end report of the project.” Ibid., p. 40.

<sup>225</sup> ECRI, “Third Report on Belgium,” para. 3.

<sup>226</sup> Parliamentary Assembly, Resolution 1301, “Protection of Minorities in Belgium,” 2002, available at <http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FAdoptedText%2Fta02%2FERES1301.htm> (accessed May 23, 2005).

<sup>227</sup> Office of the High Representative, Criminal Code of Bosnia and Herzegovina, January 2003, available at <http://www.ohr.int/decisions/judicialrdec/doc/HiRep-dec-101-law-crim-code-bih.doc> (accessed April 20, 2005).

<sup>228</sup> ECRI, “Report on Bosnia and Herzegovina,” adopted on June 25, 2004, and made public on February 15, 2005, para. 11.

<sup>229</sup> Ibid., para. 12.

<sup>230</sup> ECRI, “Second Report on Bulgaria,” adopted on June 18, 1999, and made public on March 21, 2000.

<sup>231</sup> Ibid., para. 12.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid., para. 13.

<sup>234</sup> “ECRI recommends to the Bulgarian authorities to establish the Commission for the protection against discrimination as swiftly as possible and to provide it with the necessary financial and human resources so that it can carry out its work in the best possible conditions. It also encourages the authorities to set up local offices of the Commission in order to ensure that it is able to cover the whole territory of the country and be easily accessible for victims of discrimination wherever they are located.” ECRI, “Third Report on Bulgaria,” para. 30.

<sup>235</sup> Subparagraph 718.2(a)(i) of the Canadian Criminal Code states that “evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor” shall be deemed an aggravating circumstance. That law went into effect in September 1966.

<sup>236</sup> Criminal Code of Canada, “Hate Propaganda,” Section 318, available at <http://laws.justice.gc.ca/en/c-46/42972.html> (accessed May 10, 2004). The meaning of “group” was extended to include sexual orientation through Bill C-250, which became law in April 2004. “What is a hate crime?” *CBC News Online*, June 2004, available at <http://www.cbc.ca/news/background/hatecrimes/> (accessed May 10, 2005).

<sup>237</sup> Section 430(1) of the Criminal Code of Canada provides that “[e]very one commits mischief who willfully (a) destroys or damages property; (b) renders property dangerous, useless, inoperative or ineffective; (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.”

<sup>238</sup> Statistics Canada, “Uniform Crime Reporting Survey (UCR),” available at <http://www.statcan.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=3302&lang=en&db=IMDB&dbg=f&adm=8&dis=2> (accessed May 10, 2005).

<sup>239</sup> Statistics Canada, “Pilot survey of hate crime, 2001 and 2002,” *Daily*, June 1, 2004, available at <http://www.statcan.ca/Daily/English/040601/d040601a.htm> (accessed May 10, 2005).

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

<sup>242</sup> League for Human Rights of B’nai Brith Canada, “2002 Audit of Antisemitic Incidents,” App. C, available at <http://www.bnaibrith.ca/publications/audit2002/audit2002-06.html> (accessed May 10, 2005).

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> “This figure is all the more startling when it is recalled that the 459 reported incidents in 2002 represented a 60% increase over the previous year (2001). The total number of incidents per year has been steadily increasing over the last decade. From 2001 to 2003, the number of reported incidents has doubled.” Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> B’Nai Brith Canada, “Audit of Antisemitic Incidents 2004—Patterns of Prejudice in Canada,” available at <http://www.bnaibrith.ca/audit2004.html> (accessed May 10, 2005).

<sup>249</sup> A letter was attached to the wall of the Montreal school by the perpetrators claiming the attack was “revenge for the assassination of Sheikh Ahmed Yasin.” The Coordination Forum for Countering Antisemitism, “Canada—The Torching of a Jewish School in Montreal,” April 6, 2004, available at <http://www.antisemitism.org.il/frontend/english/viewarticle.asp?id=8656&itemtype=1> (accessed May 10, 2004).

<sup>250</sup> Canadian Race Relations Foundation, “CRRF Newscan,” available at <http://www.crr.ca/Load.do?section=4&subSection=56&type=3&d=2005-07-06> (accessed May 30, 2005).

<sup>251</sup> ECRI, “Second Report on Croatia,” adopted on December 15, 2000, and made public on July 3, 2001.

<sup>252</sup> ECRI, “Second Report on Cyprus,” adopted on December 15, 2000, and made public on July 3, 2001, para. 6.

<sup>253</sup> ECRI, “Second Report on the Czech Republic,” adopted on June 18, 1999, and made public on March 21, 2000, para. 7.

<sup>254</sup> Ibid., para. 15.

<sup>255</sup> ECRI, “Third Report on the Czech Republic,” para. 14.

<sup>256</sup> In its second report on Denmark, ECRI notes that while existing law could permit motivation to be taken into account, the standard sought is higher:

[S]ection 80(1) of the Criminal Code instructs courts to take into account the gravity of the offence and the offender’s motive when meting out penalty, and therefore to attach importance to the racist motive of crimes in determining sentence. While ECRI appreciates this judicial latitude, it favours a more systematic and consistent approach toward combating racist and xenophobic crime, and therefore encourages the Danish authorities to consider the introduction of a provision in this sense.

ECRI, “Second Report on Denmark,” adopted on June 16, 2000, and made public on April 3, 2001, para. 9.

<sup>257</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*.

<sup>258</sup> Ibid.

<sup>259</sup> European Network against Racism (ENAR), *Racism and Discriminatory Practices in Denmark*, ENAR Shadow Report 2002, available at <http://www.enar-eu.org/en/national/Denmark%20Shadow%20Report%202002%20EN.pdf> (accessed March 20, 2005).

<sup>260</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 108.

<sup>261</sup> ECRI, “Second Report on Denmark,” para. 33

<sup>262</sup> Allen and Nielsen, *Islamophobia in the EU*, pp. 16–17.

<sup>263</sup> Ibid.

<sup>264</sup> Convention on the Elimination on All Forms of Racial Discrimination (CERD), *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: Denmark*, 60<sup>th</sup> sess., 2002, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/cfd5ac8f261d5f88c1256be9004e3f5a?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/cfd5ac8f261d5f88c1256be9004e3f5a?Opendocument) (accessed April 21, 2005).

<sup>265</sup> ENAR, *Discriminatory Practices in Denmark*. The Board was established in 1997 with a mandate to combat racism and related discrimination. It was empowered to advise authorities, issue opinions on differential treatment in the public or private sphere, and recommend courses of action; however, it could not address individual complaints. The Danish Institute for Human Rights became part of the Danish Centre for International Studies and Human Rights in January 2003.

<sup>266</sup> Ibid. The directive is: Council Directive 2000/43/EC of June 29, 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l\\_180/l\\_18020000719en00220026.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/l_180/l_18020000719en00220026.pdf) (accessed March 20, 2005).

<sup>267</sup> The mandate was extended to cover discriminatory employment practices by Act no. 40 of March 30, 2004. Danish Institute for Human Rights, “The Complaints Committee for Ethnic Equal Treatment,” available at <http://www.humanrights.dk/departments/complaint/> (accessed April 28, 2005).

<sup>268</sup> Council of Europe, "Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on His Visit to Denmark, 13th–16th April 2004," July 8, 2004, available at [http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/CommDH%282004%2912\\_E.doc](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/CommDH%282004%2912_E.doc) (accessed March 20, 2005).

<sup>269</sup> The web page on the Complaints Committee notes that

[t]he prohibition against discrimination also includes harassment on grounds of race or ethnic origin. Harassment is deemed as discrimination when an unwanted conduct related to race or ethnic origin takes place with the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Danish Institute, "Complaints Committee."

<sup>270</sup> He added that he was informed that in 2003, 10 out of 15 convictions for the public expression of racist views concerned politicians of the Danish People's Party and the Progress Party. Council of Europe, "Report by Alvaro Gil-Robles."

<sup>271</sup> Council of Europe, "Report Submitted by Denmark."

<sup>272</sup> ECRI, "Second Report on Estonia," adopted on June 22, 2001, and made public on April 23, 2002, para. 20.

<sup>273</sup> EUMC, "Racism and xenophobia in the E.U.," p. 51.

<sup>274</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 111.

<sup>275</sup> *Ibid.*

<sup>276</sup> The crimes are willful homicide, torture and barbarous acts, violence inadvertently resulting in death, violence resulting in permanent disfigurement or disability, violence entailing nine or more days' sick leave from work, violence entailing up to eight or fewer days sick leave or no sick leave, damage to private property, and damage to private property caused by dangerous means. In March 2004, the law was extended to apply to threats, thefts, and extortion motivated by racial bias, through Law 2004-204 of March 9, 2004.

<sup>277</sup> Senate of France no. 61, "Aggravation des peines punissant les infractions à caractère raciste, antisémite ou xénophobe" (Aggravation of penalties for infractions with a racist, antisemitic or xenophobic character), adopted January 23, 2003, available at <http://www.senat.fr/leg/tas02-061.html> (accessed August 25, 2004).

<sup>278</sup> Law 2003-239 of March 18, 2003. "This circumstance is fulfilled if the offence is preceded, accompanied or followed by spoken or written words, images, items or acts of any kind that are injurious to the honour or esteem of the victim, or group of persons including the victim, by virtue of their actual or supposed sexual orientation." *Ibid.*

<sup>279</sup> Law 2004-204 of March 9, 2004.

<sup>280</sup> Ministry of Justice, "Les dispositions pénales en matière de lutte contre le racisme, l'antisémitisme et les discriminations," April 2004, available at <http://www.justice.gouv.fr/publicat/guideracisme.pdf> (accessed April 22, 2005); Ministry of Justice, "Les lois antiracistes" (Anti-racist laws), April 2003, available at <http://www.justice.gouv.fr/publicat/antirac.htm> (accessed April 22, 2005).

<sup>281</sup> Minister of Justice Dominique Perben met with Nouchet's mother and partner to express his sympathy over the attack. "Dominique PERBEN, Garde des Sceaux Ministre de la Justice, recevra le jeudi 12 février prochain, la mère et le compagnon de Sébastien NOUCHET" (press statement), February 9, 2004, available at <http://www.justice.gouv.fr/presse/com090204.htm> (accessed April 22, 2005). One of the attackers was arrested for attempted homicide with the aggravated circumstance of homophobic motive (which he denies that he had), while two others have evaded arrest. The investigation is ongoing, and as of January 2005 the trial had not yet begun. Haydee Saberan, "Depuis mon réveil, je suis dans le passe," *Libération*, January 15, 2005, available at [www.liberation.fr/imprimer.php?Article=268330](http://www.liberation.fr/imprimer.php?Article=268330) (accessed March 20, 2005).

<sup>282</sup> Jon Henley, "Jail sentence for sexist insults under new French law," *Guardian*, June 24, 2004.

<sup>283</sup> Loi no. 2003-239 du 18 mars 2003 pour la sécurité intérieure, p. 4761, available at <http://www.france.qrd.org/texts/discrimination/loi2003-239.html> (accessed August 21, 2004).

<sup>284</sup> Loi no. 2004-1486 du 30 décembre 2004 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité, available at <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0400130L> (accessed April 20, 2005). Title Three ("Reinforcing the Fight Against Discriminatory Speech of a Sexist or Homophobic Nature") in article 20 provides sanctions for offenses motivated by the victim's gender, sexual orientation, or disability:

The penalties prescribed by the preceding paragraph will be applicable to those who, by the same means, incite hatred or violence against a person or group of persons because of their sex, their sexual orientation or their disability, or cause these same persons to be treated in a discriminatory manner as defined in articles 225-2 and 432-7 of the penal code.

(Translated from the French.)

<sup>285</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*.

<sup>286</sup> *Ibid.*, p. 32.

- <sup>287</sup> The authority is to be a high-level eleven-member panel. Loi no. 2004-1486.
- <sup>288</sup> Groupe d'Etude et de Lutte contre les Discriminations (GELD), "France—High Authority against Discriminations and for Equality," March 9, 2005, available at [http://www.le114.com/contenu.php?dossier=o&id\\_rubrique=2&id\\_thematique=&id\\_theme\\_fiche=&cns\\_mode=read&id\\_fiche=95](http://www.le114.com/contenu.php?dossier=o&id_rubrique=2&id_thematique=&id_theme_fiche=&cns_mode=read&id_fiche=95) (accessed April 20, 2005).
- <sup>289</sup> Office of the Prime Minister, "Lutte contre les discriminations: Louis Schweitzer nommé à la présidence de la Halde" (press release), April 3, 2005, available at [http://www.premierministre.gouv.fr/information/actualites\\_20/lutte\\_les\\_discriminations\\_louis\\_52451.html](http://www.premierministre.gouv.fr/information/actualites_20/lutte_les_discriminations_louis_52451.html) (accessed May 3, 2005).
- <sup>290</sup> Office of the Prime Minister, "6e comité interministériel de lutte contre le racisme et l'antisémitisme" (press release), January 17, 2005, available at [http://www.premier-ministre.gouv.fr/information/ressources/dossiers\\_presse\\_13/6e\\_comite\\_interministeriel\\_lutte\\_52071.html](http://www.premier-ministre.gouv.fr/information/ressources/dossiers_presse_13/6e_comite_interministeriel_lutte_52071.html) (accessed May 4, 2005).
- <sup>291</sup> Office of the Prime Minister, "Le Comité Interministériel de lutte contre le racisme et l'antisémitisme" (press release), January 17, 2005, available at [http://www.premier-ministre.gouv.fr/IMG/pdf/DP\\_-\\_CILRA\\_-\\_17\\_01\\_2005.pdf](http://www.premier-ministre.gouv.fr/IMG/pdf/DP_-_CILRA_-_17_01_2005.pdf) (accessed May 4, 2005).
- <sup>292</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 115 (citing CNCDH, "Rapport annuel—La lutte contre le racisme 2002," pp. 61–62).
- <sup>293</sup> ECRI, "Third Report on France," para. 23.
- <sup>294</sup> LICRA, communication with Human Rights First, February 21, 2005.
- <sup>295</sup> Ministry of Justice, "Communication en Conseil des Ministres sur l'application de la législation réprimant le racisme et l'antisémitisme" (press release), June 30, 2004, available at <http://www.justice.gouv.fr/presse/com300604b.htm> (accessed May 4, 2005).
- <sup>296</sup> Dominique de Villepin, Minister of the Interior, "Voeux à la presse" (speech) January 14, 2005, available at [http://www.interieur.gouv.fr/rubriques/c/c1\\_le\\_ministre/c13\\_discours/2005\\_01\\_14\\_voeux](http://www.interieur.gouv.fr/rubriques/c/c1_le_ministre/c13_discours/2005_01_14_voeux) (accessed May 4, 2005).
- <sup>297</sup> Ministry of the Interior, "La lutte contre le racisme et l'antisémitisme: Le rapport Rufin," October 20, 2004, available at [http://www.interieur.gouv.fr/rubriques/c/c2\\_le\\_ministere/c21\\_actualite/2004\\_10\\_19\\_rufin](http://www.interieur.gouv.fr/rubriques/c/c2_le_ministere/c21_actualite/2004_10_19_rufin) (accessed May 4, 2005).
- <sup>298</sup> Ministry of the Interior, "Violences racistes et antisémites: Bilan et mesures" (press release), December 29, 2004, available at [http://www.interieur.gouv.fr/rubriques/a/a5\\_communique/2004\\_12\\_28\\_violences\\_racistes\\_cp](http://www.interieur.gouv.fr/rubriques/a/a5_communique/2004_12_28_violences_racistes_cp) (accessed May 4, 2005).
- <sup>299</sup> Ministry of the Interior, "Mémento procédural de lutte contre le racisme et l'antisémitisme," October 10, 2004, available at [http://www.interieur.gouv.fr/rubriques/c/c2\\_le\\_ministere/c21\\_actualite/2004\\_10\\_19\\_rufin/memento.pdf](http://www.interieur.gouv.fr/rubriques/c/c2_le_ministere/c21_actualite/2004_10_19_rufin/memento.pdf) (accessed May 4, 2005).
- <sup>300</sup> Human Rights First correspondence with staff of LICRA, which has branches in all French departments, February 21, 2005, and the Center of Research and Action on All Forms of Racism (AVER), February 19, 2005.
- <sup>301</sup> Ministry of the Interior, "Circulaire du 11 Janvier sur la protection des cimetières et des lieux de sépulture" (circular), January 11, 2005, available at [http://www.interieur.gouv.fr/rubriques/c/c1\\_le\\_ministre/c13\\_discours/2005\\_01\\_14\\_voeux/voeux\\_2005.pdf](http://www.interieur.gouv.fr/rubriques/c/c1_le_ministre/c13_discours/2005_01_14_voeux/voeux_2005.pdf) (accessed May 4, 2005).
- <sup>302</sup> Ministry of the Interior, "Mesures visant à prévenir, signaler les actes à caractère raciste ou antisémite en milieu scolaire et sanctionner les infractions" (circular), September 13, 2004, available at [http://www.interieur.gouv.fr/rubriques/b/b5\\_lois\\_decrets/04-00126/INTK0400126C.pdf](http://www.interieur.gouv.fr/rubriques/b/b5_lois_decrets/04-00126/INTK0400126C.pdf) (accessed May 4, 2005).
- <sup>303</sup> Dominique de Villepin, Minister of the Interior, Response to Parliamentary Question, February 1, 2005, available at [http://www.interieur.gouv.fr/rubriques/c/c1\\_le\\_ministre/c13\\_discours/2005\\_02\\_01\\_question\\_bessig](http://www.interieur.gouv.fr/rubriques/c/c1_le_ministre/c13_discours/2005_02_01_question_bessig) (accessed April 20, 2005). Villepin was also reportedly seeking authorization in February 2005 to break up neo-Nazi groups using a January 1936 law that authorizes the disbanding of associations seen as a threat to public order and democracy. "France plans to ban Neo-Nazi groups," *Deutsche Welle*, March 2, 2005, available at <http://www.dw-world.de/dw/article/0,1564,1476883,00.html> (accessed April 20, 2005).
- <sup>304</sup> Ministry of the Interior, "Présentation des résultats de la délinquance et de l'action des forces de sécurité intérieure en 2004" (press release), January 14, 2005, p. 19, available at [http://www.interieur.gouv.fr/rubriques/c/c1\\_le\\_ministre/c13\\_discours/2005\\_01\\_14\\_voeux/voeux\\_2005.pdf](http://www.interieur.gouv.fr/rubriques/c/c1_le_ministre/c13_discours/2005_01_14_voeux/voeux_2005.pdf) (accessed May 4, 2005).
- <sup>305</sup> Ministry of the Interior, "Interpellations d'auteurs présumés des incendies de deux lieux de prière musulmans" (press release), February 8, 2005, available at [http://www.interieur.gouv.fr/rubriques/a/a5\\_communique/2005\\_02\\_08\\_interpellations\\_auteurs\\_incendie](http://www.interieur.gouv.fr/rubriques/a/a5_communique/2005_02_08_interpellations_auteurs_incendie) (accessed May 4, 2005).
- <sup>306</sup> Ministry of the Interior, "Violences racistes et antisémites."
- <sup>307</sup> *Ibid.*
- <sup>308</sup> ECRI, "Second Report on France," adopted on December 10, 1999, and made public on June 27, 2000, para. 28.
- <sup>309</sup> ECRI, "Third Report on France," para. 113.

<sup>310</sup> CERD, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: France*, 66<sup>th</sup> sess., 2005, para. 10, available at [http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.FRA.CO.16\\_En.pdf](http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.FRA.CO.16_En.pdf) (accessed May 1, 2005).

<sup>311</sup> ECRI, “Third Report on France,” para. 113.

<sup>312</sup> *Ibid.*, para. 114.

<sup>313</sup> In its response to ECRI, the government cited French law and tradition:

The compiling of statistics broken down by the ethnicity of the French population is inconceivable in the light of the indivisibility of the nation and the equality of all citizens before the law, which form the basis of French republican principles.

The collection of statistics on the basis of ethnic identity, implying that there is a concept of citizenship which distinguishes between individuals according to the specific ethnic group to which they belong, is therefore impossible in France.

The prohibition on gathering or using personal data which either directly or indirectly reveals racial or ethnic origin is set out in Law No. 78-17 of 6 January 1978 on data processing, personal data files and freedoms, the founding text concerning personal files.

*Ibid.*, “Appendix to ECRI’s Third Report on France: Observations by the French Authorities,” para. 15.

<sup>314</sup> *Ibid.*, para. 4.

<sup>315</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 22.

<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.* This is described as a measure reflecting concerns at the integration of migrants:

The developments of France’s anti-discrimination policy as well as its legislation directed against racism and xenophobia, namely in penal law, dates back to the 1972 Anti-racism Act (Pleven Law). From the 1980s onwards, public controversies surrounding immigration have become more and more concerned with the integration of longstanding migrants, including naturalised ones.

*Ibid.*

<sup>318</sup> Jean-Christophe Rufin, “Action in the Fight against Racism and Anti-Semitism” (report presented to the Minister of the Interior, Internal Security and Local Freedoms), October 19, 2004, p. 9, available in English at [http://www.consulfrance-newyork.org/us/news/coverstories/antisemitist\\_racism/action\\_fight\\_racism\\_antisem.pdf](http://www.consulfrance-newyork.org/us/news/coverstories/antisemitist_racism/action_fight_racism_antisem.pdf) (accessed May 4, 2005) and in French at [http://www.interieur.gouv.fr/rubriques/c/c2\\_le\\_ministere/c21\\_actualite/2004\\_10\\_19\\_rufin/rapport\\_Rufin.pdf](http://www.interieur.gouv.fr/rubriques/c/c2_le_ministere/c21_actualite/2004_10_19_rufin/rapport_Rufin.pdf) (accessed May 4, 2005).

<sup>319</sup> Ministry of the Interior, “Violences racistes et antisémites.”

<sup>320</sup> Ministry of Education, “Les actes de violence à l’école recensés dans SIGNA en 2003/2004” (Information Notice No. 4.25), October 2004, available at <ftp://trf.education.gouv.fr/pub/edutel/dpd/ni0425.pdf> (accessed April 10, 2005).

<sup>321</sup> Lawyers Committee for Human Rights, *Fire and Broken Glass*.

<sup>322</sup> The overall level of racist threats and violence had gone down, from 1,313 reports in 2002 to 817 in 2003. The proportion directed at the Jewish community, however, had risen, from 60 percent of the total in 2002 to 72 percent in 2003. CNCDH, “La lutte contre le racisme et la xénophobie: Rapport d’activité 2003,” available at <http://lesrapports.ladocumentationfrancaise.fr/BRP/044000129/0000.pdf> (accessed June 29, 2005). For reviews of the findings of the CNCDH, see “Les trois quarts des actes racistes”; Zappi, “Le nombre des agressions racistes.”

<sup>323</sup> Reuters, “Hatred of Jews and Muslims.”

<sup>324</sup> In the previous peak year, 1,313 racist and antisemitic acts were registered. CNCDH, “La Lutte contre le racisme et la xénophobie: Rapport d’activité 2004,” 2005, available at <http://www.ladocumentationfrancaise.fr/brp/notices/054000193.shtml> (accessed May 6, 2005).

<sup>325</sup> *Ibid.*, pp. 21–24.

<sup>326</sup> *Ibid.*, p. 24.

<sup>327</sup> *Ibid.*, p. 21.

<sup>328</sup> *Ibid.*

<sup>329</sup> However, there was a 56 percent increase over the previous high of 381 registered in 2002. *Ibid.*

<sup>330</sup> *Ibid.*, p. 35.

<sup>331</sup> *Ibid.*, pp. 38–41. The CNCDH report breaks violent acts down into three categories: (1) those attributed to the extreme right, (2) those not attributed to a particular movement, and (3) “[v]iolent [r]acist [a]ctions in Corsica.”

<sup>332</sup> Ibid., pp. 51–54.

<sup>333</sup> Ibid., pp. 34, 39. Eight actions were attributed to “young people of the Jewish community” who, responding to antisemitic attacks, have joined “the ranks of Ultra-Zionist movements to lend a strong arm for ‘muscular’ actions” (“pour preter main forte lors d’operations ‘musclees”), leading to eight suspects being questioned.

<sup>334</sup> Ibid., pp. 21–58.

<sup>335</sup> Ibid. The report does not distinguish between cases involving citizens and non-citizens. Nor does it cover racist violence affecting recent immigrants from the Balkans and Eastern Europe.

<sup>336</sup> Ibid., p. 114.

<sup>337</sup> Ibid.

<sup>338</sup> ECRI, “Third Report on France,” para. 100.

<sup>339</sup> Ibid.

<sup>340</sup> CERD, *Concluding Observations: France*, para.17.

<sup>341</sup> ECRI, “First Report on Georgia.”

<sup>342</sup> Ibid., para. 40.

<sup>343</sup> Council of Europe, “Second Report Submitted by Germany.” See also Glenn A. Gilmour, Department of Justice (Canada), “Hate Motivated Violence,” May 1994 (citing a 1993 correspondence with the German Ministry of Justice).

<sup>344</sup> ECRI, “Third Report on Germany,” adopted on December 5, 2003, and made public on June 8, 2004, para. 10.

<sup>345</sup> Ibid.

<sup>346</sup> Ibid., para. 13

<sup>347</sup> Germany’s second report on implementation of the Framework Convention on National Minorities, para. 337, states that “[i]n the Federal Government’s view, application of the provisions of Section 46, subsection 2, of the Criminal Code governing aggravation of sentence, to racist and xenophobic motives adequately provides for effective prosecution of such crimes.”

<sup>348</sup> Ibid.; see also EUMC, “Manifestations of Antisemitism,” for a review of German hate crimes legislation.

<sup>349</sup> “More specifically, according to the new definition . . . an offence is also considered as politically motivated if the circumstances of the offence or the attitude of the perpetrator indicate that it was committed against an individual on the basis, inter alia, of the victim’s nationality, ethnicity, race, skin colour or religion and that the offence is causally connected to these factors or directed for such reasons against an institution or an object.” ECRI, “Third Report on Germany,” para. 104.

<sup>350</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 108.

<sup>351</sup> “Violent crimes in 2001 comprised 9 attempted manslaughter incidences and 626 cases of grievous bodily harm. In contrast to the general trend on racist violence, anti-Semitic offences continued to increase also in 2001, with the exception of the violent acts of anti-Semitism. In total 1,424 offences were registered as anti-Semitic in 2001. However it cannot be ruled out that this increase was due to the new registration system. The number of anti-Semitic crimes of violence, on the other hand, fell from 29 in 2000 to 18 in 2001.” Ibid.

<sup>352</sup> ECRI, “Third Report on Germany.”

<sup>353</sup> Ibid., para. 65.

<sup>354</sup> Ibid.

<sup>355</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 123.

<sup>356</sup> ECRI, “Third Report on Germany,” para. 67. The report adds that “although the German authorities have underlined that no ban exists on the wearing of headscarves in public schools, it has been reported to ECRI that the enforcement of strict policies against the wearing of headscarves by some schools is effectively preventing Muslim girls from pursuing certain types of education.”

<sup>357</sup> Ibid.

<sup>358</sup> Council of Europe, “Report Submitted by Germany.”

<sup>359</sup> ECRI, “Third Report on Germany,” para. 68.

<sup>360</sup> Ibid.

<sup>361</sup> Ibid.

<sup>362</sup> ECRI, “Second Report on Greece,” adopted on December 10, 1999, and made public on June 27, 2000.

<sup>363</sup> The report added that “[t]he Greek authorities have informed ECRI that, according to the Criminal Code, the motives of the crime are taken into account when determining the sentence so that racist motives can be considered as aggravating circumstances.

However, ECRI notes that the law does not expressly stipulate that for all ordinary offences, racist motivation constitutes an aggravating circumstance." ECRI, "Third Report on Greece," adopted on December 5, 2003, and made public on June 8, 2004.

<sup>364</sup> ECRI, "Second Report on Greece," para. 6.

Section 1,1 penalises incitement to discrimination, hatred or violence towards individuals or groups because of their racial, national or religious origin, through public written or oral expressions; Section 1,2 prohibits the establishment of, and membership in, organisations which organise propaganda and activities aimed at racial discrimination; Section 2 punishes public expression of offensive ideas; Section 3 penalises the act of refusing, in the exercise of one's occupation, to sell a commodity or to supply a service on racial grounds.

Ibid.

<sup>365</sup> Nicholas Sitaropoulos, "Executive Summary on Race Equality Directive, State of Play in Greece, October 12, 2003," section 5, available at [http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/pdf/legisl/mracequality/greece.pdf](http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisl/mracequality/greece.pdf) (accessed May 2, 2005). The EUMC observed flatly that "[i]n Greece, there has never been a prosecution on the basis of the anti-racist criminal law 927/1979 for any reason." Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 112.

<sup>366</sup> ECRI, "Third Report on Greece," para. 16.

<sup>367</sup> Ibid.

<sup>368</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*.

<sup>369</sup> Greek Helsinki Monitor, electronic mail to Human Rights First, May 12, 2005.

<sup>370</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 119.

<sup>371</sup> Ibid., p. 116.

<sup>372</sup> ECRI, "Second Report on Greece," para. 25.

<sup>373</sup> ECRI, "Third Report on Greece."

<sup>374</sup> Sitaropoulos, "Executive Summary."

<sup>375</sup> Greek Helsinki Monitor, electronic mail to Human Rights First, May 16, 2005.

<sup>376</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 119.

<sup>377</sup> ECRI, "Second Report on Greece," para. 32.

<sup>378</sup> Ibid., paras. 37–45.

<sup>379</sup> Greek Helsinki Monitor, "Leading Greek Human Rights Defender and Independent Journalist Beaten by Homophobic Lawyer" (press release), April 13, 2005.

<sup>380</sup> Greek Helsinki Monitor, electronic mail, May 16, 2005.

<sup>381</sup> CERD, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: Holy See*, 57<sup>th</sup> sess., 2001, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.89.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.89.En?Opendocument) (accessed May 3, 2005).

<sup>382</sup> ECRI, "Second Report on Hungary," adopted on June 18, 1999, and made public on March 21, 2000.

<sup>383</sup> Ibid.

<sup>384</sup> ECRI, "Second Report on Iceland," adopted on December 13, 2002, and made public on July 8, 2003, para. 12.

<sup>385</sup> ECRI, "Second report on Ireland," adopted on June 22, 2001, and made public on April 23, 2002, para. 13.

<sup>386</sup> Ibid., para. 61.

<sup>387</sup> Ibid., para. 55.

<sup>388</sup> Ibid., para. 64.

<sup>389</sup> Ibid., para. 57. ECRI also reports that the initial training of police recruits includes training in race relations.

<sup>390</sup> ECRI, "Second Report on Italy," adopted on June 22, 2001, and made public on April 23, 2002.

<sup>391</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 113.

<sup>392</sup> Ibid.

<sup>393</sup> Allen and Nielsen, *Islamophobia in the EU*, p. 21.

<sup>394</sup> Council of Europe, "Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Italy," adopted on September 14, 2001, paras. 24–25, available at [http://www.coe.int/T/E/human\\_rights/minorities/2.\\_FRAMEWORK\\_CONVENTION\\_%28MONITORING%29/2.\\_Monitoring\\_mechanis](http://www.coe.int/T/E/human_rights/minorities/2._FRAMEWORK_CONVENTION_%28MONITORING%29/2._Monitoring_mechanis)



m/4.\_Opinions\_of\_the\_Advisory\_Committee/1.\_Country\_specific\_opinions/1.\_First\_cycle/1st\_OP\_Italy.asp#TopOfPage (accessed March 20, 2005).

<sup>395</sup> Ibid., para. 38.

<sup>396</sup> Ibid., para. 26.

<sup>397</sup> Ibid.

<sup>398</sup> CERD, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: Kazakhstan*, 65<sup>th</sup> sess., 2004, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.65.CO.3.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.65.CO.3.En?Opendocument) (accessed May 3, 2005).

<sup>399</sup> Ibid.

<sup>400</sup> Ibid.

<sup>401</sup> CERD, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: Kyrgyzstan*, 1999, available at <http://www.unhcr.ch/tbs/DOC.NSF/8e9c603f486cdf83802566f8003870e7/1b14be971da31f368025686a00522889?OpenDocument#A%2F54%2F18E> (accessed May 3, 2005).

<sup>402</sup> Ibid.

<sup>403</sup> Ibid.

<sup>404</sup> International Helsinki Federation, "Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003)," June 23, 2004, Kyrgyzstan, available at [http://www.ihf-hr.org/documents/doc\\_summary.php?sec\\_id=3&d\\_id=3860](http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860) (accessed March 20, 2005).

<sup>405</sup> ECRI, "Second Report on Latvia," adopted on December 14, 2001, and made public on July 23, 2002.

<sup>406</sup> Ibid.

<sup>407</sup> ECRI, "Second Report on Liechtenstein," adopted on June 28, 2002, and made public on April 15, 2003.

<sup>408</sup> Ibid.

<sup>409</sup> ECRI, "Second Report on Lithuania," adopted on June 28, 2002, and made public on April 15, 2003.

<sup>410</sup> Ibid.

<sup>411</sup> ECRI, "Second Report on Luxembourg," adopted on December 13, 2002, and made public on July 8, 2003.

<sup>412</sup> ECRI, "Second Report on the Former Yugoslav Republic of Macedonia," adopted on June 16, 2000, and made public on April 3, 2001.

<sup>413</sup> Ibid.

<sup>414</sup> ECRI, "Second Report on Malta," adopted on December 14, 2001, and made public on July 23, 2002, para. 7.

<sup>415</sup> ECRI, "Second Report on Moldova," adopted on June 28, 2002, and made public on April 15, 2003, para. 9.

<sup>416</sup> OSCE/ODIHR, *Combating Hate Crimes*, p. 126.

<sup>417</sup> Ibid., p. 7.

<sup>418</sup> ECRI, "Second Report on the Netherlands," adopted on December 15, 2000, and made public on November 13, 2001, para. 8.

<sup>419</sup> Ibid.

<sup>420</sup> Ibid., para. 4.

<sup>421</sup> Ibid., para. 6.

<sup>422</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 119.

<sup>423</sup> Ibid.

<sup>424</sup> Ibid.

<sup>425</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 110.

<sup>426</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 120, art. 137c. Article 137c provides:

A person who publicly, either orally, or in writing, or by image, intentionally makes a defamatory statement about a group of persons on the grounds of their race, religion or personal beliefs, or their hetero- or homosexual orientation, is liable to a term of imprisonment of a period of not more than one year or a fine of the third category.

<sup>427</sup> Ibid., p. 121.

<sup>428</sup> Jaap van Donselaar and Peter R. Rodrigues, "Right-Wing Extremism on the Increase," *Sixth Monitor on Racism and Right-Wing Extremism*, Conclusion, available at <http://www.annefrank.org/upload/downloads/ConclusionMonitor6.doc> (accessed May 2, 2005).

<sup>429</sup> Ibid.

<sup>430</sup> Ibid.

<sup>431</sup> Ibid.

<sup>432</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 117.

<sup>433</sup> EUMC, "Racism and xenophobia in the E.U.," p. 50.

<sup>434</sup> ECRI, "Third Report on Norway," adopted on June 27, 2003, and made public on January 27, 2004.

<sup>435</sup> Ibid.

<sup>436</sup> ECRI, "Second Report on Poland," adopted on December 10, 1999, and made public on June 27, 2000, para. 10.

<sup>437</sup> Ibid., para. 11.

<sup>438</sup> ECRI, "Third Report on Poland," adopted December 17, 2004, and made public on June 15, 2005, para. 20.

<sup>439</sup> Ibid.

<sup>440</sup> Ibid., para. 19.

<sup>441</sup> Ibid.

<sup>442</sup> ECRI, "Second Report on Portugal," adopted on March 20, 2002, and made public on November 4, 2002, para. 11.

<sup>443</sup> This is provided under Law No. 20/96. Ibid., para. 12.

<sup>444</sup> Ibid., para. 44.

<sup>445</sup> Ibid., para. 45.

<sup>446</sup> Ibid., para. 63.

<sup>447</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 113.

<sup>448</sup> ECRI, "Second Report on Romania," adopted on June 22, 2001, and made public on April 23, 2002, para. 10.

<sup>449</sup> Ibid., para. 46.

<sup>450</sup> Ibid., para. 47.

<sup>451</sup> Ibid., para. 44. The broader issue of concern among Roma over the misuse of ethnic categorizations and statistical information as means to perpetuate discriminatory practices, as well as the potential for disaggregated statistical data as a powerful tool to confirm and combat discrimination, is addressed above, and in the special issue of *Roma Rights*, "Ethnic Statistics."

<sup>452</sup> ECRI, "Second Report on the Russian Federation," adopted on March 16, 2001, and made public on November 13, 2001, para. 8.

<sup>453</sup> Human Rights Center "Memorial" and the Russian NGO Network Against Racism, *Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination: An NGO report to the UN Committee on Elimination of Racial Discrimination (62<sup>nd</sup> Session, March 2003)*, section 117 (Moscow: Human Rights Center "Memorial," 2002).

<sup>454</sup> Ibid., para. 9.

<sup>455</sup> Ibid., para. 10.

<sup>456</sup> See CERD, "Reports Submitted by States Parties Under Article 9 of the Convention," April 10, 2002, Addendum: Russian Federation, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/dc7278843b2ed801c1256c7600558c91/\\$FILE/G0243789.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/dc7278843b2ed801c1256c7600558c91/$FILE/G0243789.doc) (accessed March 20, 2005).

<sup>457</sup> Julia Bashinova and Natalia Taubina, eds., *Fond Za grazhdanskoye obshchestvo, Monitoring diskriminatsii i natsional-ekstremizma v Rossii* (Monitoring of discrimination and nationalist-extremism in Russia), (Moscow: *Fond Za grazhdanskoye obshchestvo*, 2004), p. 20.

<sup>458</sup> Ibid., p. 20.

<sup>459</sup> Ibid., p. 21.

<sup>460</sup> Human Rights First, *New Dissidents*, p. 17. The broad language of the law was criticized by both the U.N. Human Rights Committee and the U.N. Committee on the Elimination of Racial Discrimination. See Covenant on Civil and Political Rights (CCPR), *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant; Concluding Observations of the Human Rights Committee: Russian Federation*, 79<sup>th</sup> sess., 2003, available at <http://www.unhchr.ch/tbs/doc.nsf/0/622c5ddc8c476dc4c1256e0c003c9758?Opendocument> (accessed June 30, 2005); CERD,

*Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: Russian Federation*, 66<sup>th</sup> sess., 2003, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/08a9408084499c9ac1256d01003766d3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/08a9408084499c9ac1256d01003766d3?Opendocument) (accessed February 23, 2004).

<sup>461</sup> Ibid. For more details, see Alexander Verkhovsky, "The Most Recent Legislative Initiatives: Draft Law 'on Countering Extremist Activities,'" in *Nationalism, Xenophobia and Intolerance in Contemporary Russia* (Moscow Helsinki Group, 2002), pp. 124–30, available at <http://www.mhg.ru/english/1FB9294> (accessed February 22, 2004).

<sup>462</sup> Human Rights First, *New Dissidents*, p. 17.

<sup>463</sup> Прокурорский НАДЗОР, "ПОИСК ДОКУМЕНТОВ," available at [www.nadzor.pk.ru/orders/showord.php?id=12](http://www.nadzor.pk.ru/orders/showord.php?id=12) (accessed August, 2004).

<sup>464</sup> Vladimir Ustinov, Doklad "O merakh po predotvrashcheniyu ekstremistskoi deyatel'nosti v Rossiiskoi Federatsii" (On measures to counter extremist activity in the Russian Federation) (speech), available at [www.strana.ru/print/16860.html](http://www.strana.ru/print/16860.html) (accessed August 2004).

<sup>465</sup> "Путин попросил Нургалиева не забывать о преступлениях на расовой почве." *Страна Ru*, April 8, 2004, available at [www.strana.ru/stories/01/10/31/1920/212339.html](http://www.strana.ru/stories/01/10/31/1920/212339.html) (accessed June 30, 2005) (translated from the Russian).

<sup>466</sup> "Petitioners seek thorough investigation into slaying of racism and xenophobia expert Girenko," (*Un*)*Civil Societies* 5, no. 15 (2004), available at [http://search.rferl.org/65001\\_searchobject.asp](http://search.rferl.org/65001_searchobject.asp) (accessed March 20, 2005).

<sup>467</sup> Ibid. (citing Aleksandr Vinnikov, a colleague of the Ethnic Minority Rights Group of the Academy of Sciences).

<sup>468</sup> Ustinov, "On measures to counter extremist activity."

<sup>469</sup> Amnesty International, "Dokumenty!" p. 45.

<sup>470</sup> Alexander Bogomolov and Andrei Pankov, "Skinhedov vzyaly na karandash" (Counting up the skinheads), *Novyye Izvetsiya*, July 1, 2003 (translated from the Russian).

<sup>471</sup> CERD, *Reports Submitted by States Parties under Article 9 of the Convention: Seventh Periodic Reports of States parties Due in 2001*, Addendum (Russian Federation).

<sup>472</sup> "Статистика уголовных дел по ст.282 УК РФ (2000-2003 гг.)" (Statistics on felonies under Article 282 of the Penal Code of the Russian Federation (2000-2003)), *Antirasizm.ru*, available at [www.antirasizm.ru/publ\\_012.php](http://www.antirasizm.ru/publ_012.php) (accessed August 15, 2004).

<sup>473</sup> Table provided by Civic Support (translated from the Russian).

<sup>474</sup> ECRI, "Second Report on the Russian Federation," para. 36.

<sup>475</sup> Ibid., para. 37.

<sup>476</sup> Amnesty International, "Dokumenty!" p. 2.

<sup>477</sup> Ibid., p. 12.

<sup>478</sup> See Human Rights Watch, "Crime or Simply Punishment? Racist Attacks by Moscow Law Enforcement," September 1995; Human Rights Watch, "Moscow: Open Season, Closed City," September 1997.

<sup>479</sup> Human Rights Watch, "On the Situation of Ethnic Chechens in Moscow" (briefing paper), February 24, 2003, available at <http://www.hrw.org/backgroundunder/eca/russia032003.htm> (accessed March 20, 2005).

<sup>480</sup> Kim Murphy, "Civil Rights Suffer as Fear, Anger Grow in Russia," *Los Angeles Times*, September 23, 2004. The actual number of detainees and the number of citizens and non-citizens is unclear in press reports of official statements.

According to the Information and Public Relations Department of the Moscow Main Interior Affairs Department, 11,316 people were detained for non-compliance with passport regulations. 12,404 people were detained for violating the Administrative Code of the Russian Federation, including 7,000 Russians. 840 people were deported from Russia; they will be barred from entering the country for the next few years.

RosBusinessConsulting, "5,000 foreigners detained in Moscow," September 20, 2004.

<sup>481</sup> Ibid.

<sup>482</sup> Murphy, "Civil Rights Suffer." In other press accounts, four were reportedly seriously injured in the attack, and the assailants were reported to have shouted, "This is what you get for terrorist attacks." Associated Press, "Four Severely Injured in Metro Attack," *Moscow Times*, September 20, 2004.

<sup>483</sup> ECRI, "Second Report on the Russian Federation," para. 62.

<sup>484</sup> Ibid.

<sup>485</sup> CERD, *Concluding observations: Russian Federation*.

<sup>486</sup> Ibid.

<sup>487</sup> ECRI, "Second Report on the Russian Federation," para. 44.

<sup>488</sup> Ibid., para. 46.

<sup>489</sup> NCSJ, “Condemn Extremist Parliament Members”; Kishkovsky, “Anti-Semitic Letter Embroils Duma.” See also “Orthodox Group Repeats Demand.”

<sup>490</sup> ECRI, “Second Report on the Russian Federation,” para. 45.

<sup>491</sup> McClintock and Sunderland, *Antisemitism in Europe*, p. 53 (citing Stephen Roth Institute, “Annual Report: Antisemitism Worldwide 2002/3,” available at <http://www.tau.ac.il/Anti-Semitism/asw2002-3/CIS.html> (accessed March 10, 2004)).

<sup>492</sup> Associated Press, “Human rights groups launch racism monitoring project,” September 18, 2003.

<sup>493</sup> Also charged and facing imprisonment were the museum’s curator, Ludmila Vasilovskaya, and artist Anna Mikhailchuk. The prosecution requested the court to issue bans on Samodurov and Vasilovskaya holding office in organizations and to order the destruction of all of the works of art shown in the exhibition. Human Rights First, “Sakharov Center Director Yuri Samodurov Sentencing Imminent: Hate Crime Targets Charged with ‘Incitement’” and “Sakharov Center Director Convicted, Fined” (press releases), available at [http://www.humanrightsfirst.org/media/2005\\_alerts/hrd\\_0324\\_yuri.htm](http://www.humanrightsfirst.org/media/2005_alerts/hrd_0324_yuri.htm) (accessed April 20, 2005).

<sup>494</sup> In a letter to President Vladimir Putin of February 2, 2003, the Public Committee for the Moral Revival of the Fatherland, chaired by Alexander Shargunov, archpriest of St. Nicholas in Pyzhi, placed the attack on the Sakharov Center in a framework of both religion and extreme nationalist politics. In calling for Putin to close the center, it said the Sakharov Center had

[f]or the entire period of its existence . . . promoted anti-social values and defended bandits and criminals, especially Chechens. Its activities were “clearly aimed at corrupting the morals of Russian society and the Russian army,” while the peak of this “anti-social activity was the blasphemous exhibition ‘Caution! Religion.’”

Human Rights First concluded that the three were being prosecuted solely for exercising their rights to freedom of expression, and for their leadership of one of the only human rights institutions in Russia that provided a public forum for discussion of the Chechen war and other sensitive human rights issues. Human Rights First, “Samodurov Sentencing Imminent,” and “Sakharov Center Director Convicted.”

<sup>495</sup> Presidential Commission on Human Rights, “Statement of the Presidential Commission on Human Rights on the Inadmissibility of the Spread of the Ideology of Neo-Fascism, Racism and Xenophobia,” April 27, 2004.

<sup>496</sup> Ibid.

<sup>497</sup> Ella Pamfilova, former head of the presidential human rights commission, and an effective champion of human rights, became the chair of the new presidential Council for the Support of Civil Society Institutions and Human Rights. The change was ordered by Presidential Decree of November 6, 2004.

<sup>498</sup> ECRI, “Second Report on San Marino,” adopted on March 20, 2003, and made public on November 4, 2003, para. 11.

<sup>499</sup> Montenegro’s 2003 Criminal Code, for example, in its article 42 on the general principle of sentencing provides for courts to take into account “all circumstance that have bearing on magnitude of the punishment (mitigating and aggravating circumstances), which may include the motives from which the offence was committed.” Criminal Code of the Republic of Montenegro, *Official Gazette of the Republic of Montenegro*, no. 70/2003, and Correction, no. 13/2004, available at <http://www.legislationline.org/> (accessed April 29, 2005).

<sup>500</sup> CERD, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding observations: Yugoslavia*, 52<sup>nd</sup> sess., 1998, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.50.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.50.En?Opendocument) (accessed May 6, 2005).

<sup>501</sup> OSCE/ODIHR, *Combating Hate Crimes*, p. 132.

<sup>502</sup> The addition of “ethnic group” was described as a measure “to ensure that attacks against Roma would be taken into account as racially-motivated by the courts, as some judges had previously considered that Roma, as a part of the Slovak population, were not covered by the provision.” ECRI, “Third Report on Slovakia,” adopted on June 27, 2003, and made public on January 27, 2004.

<sup>503</sup> Ibid.

<sup>504</sup> ECRI, “Second Report on Slovenia,” adopted on December 13, 2002, and made public on July 8, 2003, para. 9.

<sup>505</sup> Código Penal, Ley Orgánica 10/1995 (“Cometer el delito por motivos racistas, antisemitas u otra clase de discriminación referente a la ideología, religión o creencias de la víctima, la etnia, raza o nación a la que pertenezca, su sexo u orientación sexual, o la enfermedad o minusvalía que padezca.” (Committing a crime for racist, antisemitic, or other forms of discriminatory motives based on the ideology, religion, or beliefs of the victim, his or her ethnicity, race, or nationality, gender or sexual orientation, or any illness or handicap he or she suffers from.)), available at <http://2ni2.com/juridico/penal/codigopenal.htm> (accessed August 10, 2004).

<sup>506</sup> ECRI, “Second Report on Spain,” adopted on December 13, 2002, and made public on July 8, 2003, para. 12.

<sup>507</sup> Ibid., para. 7.

<sup>508</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 91.

<sup>509</sup> Ibid., p. 92.

<sup>510</sup> ECRI, “Second Report on Spain,” para. 7.

<sup>511</sup> Ibid., para. 38.

<sup>512</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 94.

<sup>513</sup> ECRI, “Second Report on Spain,” para. 18.

<sup>514</sup> EUMC, “Racism and xenophobia in the E.U.,” p. 50.

<sup>515</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 125.

<sup>516</sup> ECRI, “Third Report on Sweden,” adopted on December 17, 2004, and made public on June 14, 2005.

<sup>517</sup> Ibid.

<sup>518</sup> ECRI, “Second Report on Switzerland,” adopted on June 18, 1999, and made public on March 21, 2000, para. 6.

<sup>519</sup> Marion Weichelt Krupski, Counselor, Legal & Political Affairs, Embassy of Switzerland, electronic mail to Human Rights First, September 3, 2004, with attachments.

<sup>520</sup> Ibid.

<sup>521</sup> ECRI, “Third Report on Switzerland,” adopted on June 27, 2003, and made public on January 27, 2004.

<sup>522</sup> Ibid.

<sup>523</sup> CERD, *Consideration of Reports Submitted by State Parties under Article 9 of the Convention; Concluding Observations: Tajikistan*, 65<sup>th</sup> sess., 2004, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.65.CO.8.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.65.CO.8.En?Opendocument) (accessed May 3, 2005).

<sup>524</sup> Ibid.

<sup>525</sup> International Helsinki Federation, “Human Rights in the OSCE,” Tajikistan.

<sup>526</sup> Ibid.

<sup>527</sup> Ibid.

<sup>528</sup> ECRI, “Second Report on Turkey,” adopted on December 15, 2000, and made public on July 3, 2001.

<sup>529</sup> Ibid.

<sup>530</sup> CERD, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention; Concluding Observations: Turkmenistan*, 60<sup>th</sup> sess., 2002, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.60.CO.15.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.60.CO.15.En?Opendocument) (accessed May 3, 2005).

<sup>531</sup> Ibid.

<sup>532</sup> International Helsinki Federation, “Human Rights in the OSCE,” Turkmenistan.

<sup>533</sup> Ibid.

<sup>534</sup> Human Rights Watch, “From House to House: Abuses by Mahalla Committees,” September 2003, available at <http://hrw.org/reports/2003/uzbekistan0903/> (accessed March 20, 2005).

<sup>535</sup> International Helsinki Federation, “Human Rights in the OSCE.”

<sup>536</sup> “The number of publications denouncing antisemitism is reported to have increased and politicians and opinion leaders have increasingly taken stands against antisemitism. In spite of these improvements, ECRI encourages the Ukrainian authorities to continue to keep the situation as concerns antisemitism closely under review.” ECRI, “Second Report on Ukraine,” adopted on December 14, 2001, and made public on July 23, 2002, section K.

<sup>537</sup> Ibid.

<sup>538</sup> Ibid.

<sup>539</sup> The code provides for heavier penalties for these crimes “if they involve violence or threat of violence or fraud or if they are committed by a public official. The penalties are further increased if they are committed by a group of persons or if the prohibited acts have caused loss of life or other grave consequences.” Ibid., section 16.

<sup>540</sup> EUMC, “Racism and xenophobia in the E.U.,” p. 50.

<sup>541</sup> EUMC, *Racist Violence in 15 EU Member States*, p. 47, Table 1.

<sup>542</sup> Ibid.

<sup>543</sup> Ibid.

<sup>544</sup> Criminal Justice Act of 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (SI 950 of 2005). See also *Criminal Justice Reforms Update*, Issue 4 (April 2005), available at <http://www.jsboard.co.uk/downloads/cjrupdate4.doc>

(accessed May 25, 2005). The Update notes that “Section 146 (increase in sentences for aggravation related to disability or sexual orientation) applies only to post-commencement offences.”

<sup>545</sup> United Kingdom, Criminal Justice Act 2003, available at the website of the Home Office, “Justice and Victims,” <http://www.opsi.gov.uk/acts/acts2003/30044--o.htm#145> (accessed May 25, 2005). Section 145 (3) declares that the meaning of “racially or religiously aggravated” is that provided in Section 28 of the Crime and Disorder Act 1998:

An offence is racially aggravated for the purposes of sections 29 to 32 below if—

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

<sup>546</sup> United Kingdom, Criminal Justice Act 2003, Section 146.

<sup>547</sup> See, for example, Committee on the Administration of Justice (CAJ), “Submission to the Northern Ireland Affairs Committee: Inquiry into Hate Crime in Northern Ireland,” March 2004.

<sup>548</sup> United Kingdom, Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament, The Criminal Justice (Northern Ireland) Order 2004, available at <http://www.nio.gov.uk/draft-hate2004.pdf> (accessed June 22, 2005).

<sup>549</sup> The PSNI defined “racial incidents,” as “any incident which is perceived to be racial by the victim or any other person,” and has registered dramatic increases since monitoring began:

The police implemented a racial incident monitoring policy in 1997 which demonstrates that the level of reported racial incidents was five times higher in 2003/04 than in 1998/99. The worst record of racial incidents in 2003-04 in any urban area in Northern Ireland was in South Belfast, which experienced 147 incidents. Over the same period Ballymena had the worst record of any rural area, with 37 incidents. The most common types of incident reported were attacks on homes (148), followed by verbal abuse or threats (109), and physical assault (103).

United Kingdom Parliament, Select Committee on Northern Ireland Affairs, Ninth Report, ordered to be published April 6, 2005, para. 9 (footnotes omitted), available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/548/54802.htm> (accessed June 22, 2005).

<sup>550</sup> *Ibid.*, para. 10 (footnotes omitted).

<sup>551</sup> See for example, United Kingdom Parliament, Select Committee on Northern Ireland Affairs, “Minutes of Evidence: Memorandum Submitted by the Royal National Institute of the Blind and the Guide Dogs for the Blind Association,” April 14, 2004, available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/548/4051202.htm> (accessed June 22, 2005).

<sup>552</sup> *Ibid.*

<sup>553</sup> *Ibid.*

<sup>554</sup> In the Ninth Report of the Select Committee, the importance of the consultation process as regards disability bias, and the evidence presented, is acknowledged:

We scrutinised the proposed new legislation as part of this inquiry and recommended the inclusion of disability. While the Government accepted this recommendation, officials initially took the line that “violence against people with disabilities can more often be motivated by opportunism occasioned by the individual’s vulnerability than by hate as such.” However, the evidence provided to us contradicted this. As noted earlier, the Government accepted the recommendation made in our interim report.

*Ibid.*, para. 95.

<sup>555</sup> Scottish police statistics showed a dramatic rise in anti-gay hate crimes in several Scottish regions in 2004. Paul Hutcheon, “Gay Hate Crime Soars across Scotland: New Statistics Reveal Shock Rise in Attacks Spurred by Prejudice,” *Sunday Herald*, November 14, 2004, available at <http://www.sundayherald.com/46059> (accessed June 20, 2005).

<sup>556</sup> Disability Rights Commission, “Research Reveals Impact of Hate Crime on Disabled Scots,” April 5, 2004, available at [http://www.drc-gb.org/scotland/newsroom/news\\_details.asp?id=631&section=1](http://www.drc-gb.org/scotland/newsroom/news_details.asp?id=631&section=1) (accessed June 22, 2005). The Disability Rights Commission (DRC) is an independent body established by an Act of Parliament in April 2000 to enforce the rights of disabled people.”

<sup>557</sup> *Ibid.* The same source notes that the DRC’s 2003 Attitudes and Awareness Survey had shown “that 1 in 5 disabled Scots had experienced harassment because of their disability and over a third of people who knew someone who was disabled had witnessed that person being harassed.” The 2003 survey, which had covered England, Wales, and Scotland, was instrumental in the sentencing reforms of the Criminal Justice Act of 2003. The DRC, in October 2003, highlighted the findings of the survey throughout Britain and welcomed the amendments, while noting that the new provisions concerning hate crimes would apply only to England and Wales:

The DRC’s Attitudes and Awareness Survey (2003) revealed that 22% of disabled respondents had experienced harassment in public because of their impairment. Incidents of harassment were more acute among 15-34 year olds with 33% of disabled people experiencing harassment. Crime and Justice are devolved matters, and the current amendment referred to in the Criminal Justice Bill applies only in England and Wales.

DRC, “Government moves to outlaw disability hate crimes welcomed by DRC,” October 30, 2003, available at <http://www.drc-gb.org/newsroom/newsdetails.asp?id=585&section=1> (accessed June 22, 2005).

<sup>558</sup> Scottish Executive, Working Group on Hate Crime, “Working Group on Hate Crime Report,” July 6, 2005, Recommendation 1, available at <http://www.scotland.gov.uk/library5/justice/wgohcr-00.asp> (accessed July 7, 2005).

<sup>559</sup> Chahrokh, Klug, and Bilger, *Migrants, Minorities, and Legislation*, p. 114, includes a detailed breakdown of statistics for 2001–2002.

<sup>560</sup> ECRI, “Third Report on the United Kingdom,” adopted on December 17, 2004, and made public on June 14, 2005, para. 12.

<sup>561</sup> *Ibid.*

<sup>562</sup> For a discussion of this and other provisions on U.S. law concerning hate crimes, see ADL, “Hate Crimes Laws,” available at <http://www.adl.org/99hatecrime/federal.asp> (accessed February 20, 2004).

<sup>563</sup> *Ibid.*

<sup>564</sup> See Michael Lieberman, “Federal Action to Confront Hate Violence in the Bush Administration: A Firm Foundation on Which to Build or a Struggle to Maintain the Status Quo?” in *Rights at Risk: Equality in an Age of Terrorism*, eds. Dianne M. Piche, William L. Taylor, and Robin A. Reed (Washington, D.C.: Citizens Commission on Civil Rights, 2002), ch. 13.

<sup>565</sup> CERD, *Reports Submitted by States Parties under Article 9 of the Convention; Third Periodic Reports of States Parties Due in 1999: Addendum, United States of America*, 2000, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4c02eba071d735f4c1256a1700588ba0?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4c02eba071d735f4c1256a1700588ba0?Opendocument) (accessed August 20, 2004) (“The present report brings together in a single document the initial, second and third periodic reports of the United States of America, which were due on 20 November 1995, 1997 and 1999 respectively.”).

<sup>566</sup> The Senate approved the provisions of the LLEEA on June 15, 2004, by a vote of 65 to 33. Anti-hate crime campaigners expected a bipartisan majority for the bill in a House vote. Stacy Burdett and Michael Lieberman, ADL, electronic mail to Human Rights First, September 9, 2004; Rob Randhava and Julie Fernandes, Leadership Conference on Civil Rights, electronic mail to Human Rights First, September 9, 2004. Leading sponsors of the bill were Senators Edward M. Kennedy (D.- Mass.) and Gordon Smith (R.-Ore.). Senate sponsors had attached the bill to the 2005 Defense Authorization Bill

because the Senate GOP [Republican] leaders would not schedule a vote on the hate-crimes initiative and the defense measure was the only vehicle available at the time to force a vote on the issue. The House voted 213 to 186 last month to instruct its negotiators to support the proposal, but the vote was nonbinding and the House conferees did not follow the instructions.

Helen Dewar, “Initiative on Hate Crimes Scrapped,” *Washington Post*, October 8, 2004.

<sup>567</sup> The issue of gender-based hate crimes was addressed by the Violence Against Women Act of 1994, which provides for education and training for police and prosecutors, and declares that “[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender.” See ADL, “Hate Crimes Laws.”

<sup>568</sup> The constitutionality of these statutes was established in the landmark decision, *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), in which the U.S. Supreme Court unanimously upheld the constitutionality of the Wisconsin penalty enhancement statute. Leadership Conference on Civil Rights Education Fund (LCCREF), “Statutory Responses to Hate Crimes,” April 2004, available at [www.civilrights.org](http://www.civilrights.org) (accessed August 20, 2004).

<sup>569</sup> Utah’s hate crimes law “ties penalties to violations of the victim’s constitutional or civil rights.” ADL, *How to Combat Bias and Hate Crimes: An ADL Blueprint for Action* (ADL, 2004), App. II, pp. 56–57. Arkansas has no criminal statute providing for enhanced penalties for bias-motivated crimes, but has several statutes providing civil remedies for bias-motivated acts, including for damages or injunctive relief for victims of intimidation, harassment, violence, or property damage “where such acts are motivated by racial, religious, or ethnic animosity,” Ark. Stat. Ann. § 16-123-106, and civil actions “for damages and injunctive relief for deprivation of constitutional rights,” Ark. Stat. Ann. § 16-123-105. See Partners Against Hate, “Hate Crimes Laws,” Arkansas, available at [http://www.partnersagainsthate.org/hate\\_response\\_database/laws\\_search.cfm?region\\_id=4](http://www.partnersagainsthate.org/hate_response_database/laws_search.cfm?region_id=4) (accessed May 4, 2005).

<sup>570</sup> ADL, “ADL Disappointed in GA Supreme Court Ruling Striking Down State Hate Crime Law” (press release), available at [http://www.adl.org/PresRele/HatCr\\_51/4580\\_51.htm](http://www.adl.org/PresRele/HatCr_51/4580_51.htm) (accessed April 20, 2005). Georgia’s law enhanced penalties for crimes “in which the defendant ‘intentionally selected’ the victim or property ‘because of bias or prejudice.’”

<sup>571</sup> They are Arizona, California, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, and Washington. (See App. 10.)

<sup>572</sup> They are Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin. (See *ibid.*) Up-to-date information on legislative initiatives regarding hate crimes based on sexual orientation and gender identity is available at the website of the Human Rights Campaign, “Hate Crimes Laws—State by State,” available at [http://www.hrc.org/Template.cfm?Section=Get\\_Informed3&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=66&ContentID=19987](http://www.hrc.org/Template.cfm?Section=Get_Informed3&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=66&ContentID=19987) (accessed May 2, 2005).

<sup>573</sup> They are Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and West Virginia. (See App. 10.)

<sup>574</sup> They are Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin. (See *ibid.*)

- <sup>575</sup> Nebraska's statute provides for enhanced penalties on specified crimes "because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability . . ." R.R.S. Neb. § 28-111, available at Partners Against Hate, "Hate Crimes Laws," Nebraska.
- <sup>576</sup> ADL, *How to Combat Bias*, pp. 56–57 (based on 2004 data).
- <sup>577</sup> *Ibid.*
- <sup>578</sup> LCCREF, *Cause for Concern: Hate Crimes in America* (2004), available at [http://www.civilrights.org/publications/reports/cause\\_for\\_concern\\_2004/ch4p1.html](http://www.civilrights.org/publications/reports/cause_for_concern_2004/ch4p1.html) (accessed September 22, 2004).
- <sup>579</sup> ADL, *How to Combat Bias*, pp. 56–57.
- <sup>580</sup> FBI, "Hate Crime Data Collection," p. 3.
- <sup>581</sup> FBI, *Hate Crime Statistics 2002*, p. 6.
- <sup>582</sup> *Ibid.*
- <sup>583</sup> *Ibid.*
- <sup>584</sup> *Ibid.*
- <sup>585</sup> *Ibid.*
- <sup>586</sup> *Ibid.*
- <sup>587</sup> FBI, *Hate Crime Statistics 2003* (Washington, D.C.: U.S. Government Printing Office, 2004), available at <http://www.fbi.gov/ucr/03hc.pdf> (accessed July 1, 2005).
- <sup>588</sup> "FBI Releases 2003 Hate Crime Statistics," *About.com*, available at <http://usgovinfo.about.com/od/defenseandsecurity/a/hatecrimes03.htm> (accessed May 16, 2005); see also FBI, "FBI Releases Hate Crime Statistics for 2003" (press release), November 22, 2004, available at <http://www.fbi.gov/pressrel/pressrel04/pressrel112204.htm> (accessed July 1, 2005).
- <sup>589</sup> ADL, "ADL Praises FBI Report on Hate Crimes; Calls for Improved Local Reporting" (press release), November 22, 2004, available at [http://www.adl.org/PresRele/HatCr\\_51/4591\\_51.htm](http://www.adl.org/PresRele/HatCr_51/4591_51.htm) (accessed December 22, 2004).
- <sup>590</sup> LCCREF, *Cause for Concern*.
- <sup>591</sup> *Ibid.*
- <sup>592</sup> *Ibid.*; see also Southern Poverty Law Center, "Hatewatch for the Record," available at <http://www.splcenter.org/intel/hatewatch/fortherecord.jsp> (accessed May 10, 2005).
- <sup>593</sup> As noted, Byrd's grave "has been desecrated numerous times since his burial, including as recently as May 2004, when the tombstone was broken and defaced with a racial epithet." LCCREF, *Cause for Concern* (citing U.S. Department of Justice, "1998 Annual Report of the Community Relations Service," available at <http://www.usdoj.gov/crs-/pubs/fy98/p17.htm>; ADL, "ADL Appalled by Desecration of James Byrd Jr.'s Grave Site" (press release), available at [http://adl.org/PresRele/HatCr\\_51/4491\\_51.htm](http://adl.org/PresRele/HatCr_51/4491_51.htm) (accessed July 1, 2005)).
- <sup>594</sup> *Ibid.* (citing Southern Poverty Law Center, "Terrorism: Latest Anthrax Hoax Targets Latinos," available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=97> (accessed July 1, 2005)). This incident occurred at the height of the U.S. scare over anthrax.
- <sup>595</sup> *Ibid.* (citing Associated Press, "Attack Raises Racism Worries: Georgia Teens Accused of Beating Man," *Columbia (Mo.) Daily Tribune*, May 11, 2004, available at <http://archive.columbiatribune.com/2004/may/20040511news017.asp> (accessed July 1, 2005)).
- <sup>596</sup> *Ibid.*
- <sup>597</sup> *Ibid.* (citing ADL, *Border Disputes: Armed Vigilantes in Arizona* (ADL, 2003), available at <http://www.adl.org/extremism/arizona/arizonaborder.pdf> (accessed July 1, 2005)).
- <sup>598</sup> *Ibid.* (citing National Coalition of Anti-Violence Programs (NCAVP), *Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2003* (New York: NCAVP, 2004), available at <http://www.avp.org> (accessed July 1, 2005)).
- <sup>599</sup> *Ibid.*
- <sup>600</sup> "Notable trends in the incident data collected for 2004 included significant increases in assaults with weapons (14%), harassment (13%), the number of incidents perpetrated by organized hate groups (273%), the number of LGBT organizations targeted for incidents during the year—67, a 92% increase over 2003 and a not coincidental 50% rise in the number of cases of vandalism and 200% rise in cases of arson." NCAVP, *Anti-Lesbian, Gay, Bisexual and Transgender Violence in 2004* (New York: NCAVP, 2005), available at <http://www.avp.org/> (accessed May 16, 2005).
- <sup>601</sup> LCCREF, *Cause for Concern* (citing NCAVP, *Anti-LGBT Violence in 2003*).
- <sup>602</sup> NCAVP, *Anti-LGBT Violence in 2004*.
- <sup>603</sup> "Despite the pleas of his parents and arguments from his defense attorneys claiming that he is mentally disturbed, Stayner was sentenced to death by lethal injection in 2002." LCCREF, *Cause for Concern* ("The Yosemite Murders").
- <sup>604</sup> "Perhaps the biggest reason for underreporting of disability-based hate crimes is that disability-based bias crimes are all too frequently mislabeled as 'abuse' and never directed from the social service or education systems to the criminal justice system. Even very serious crimes—including rape, assault, and vandalism—are too-frequently labeled 'abuse.'" *Ibid.* ("Attacks upon Individuals with Disabilities").
- <sup>605</sup> *Ibid.*; Dave Reynolds, "Judge Upholds Anti-Bias Law in Disabled Man's Torture," *Inclusion Daily Express*, March 17, 2000, available at <http://www.inclusiondaily.com/news/crime/krochmaluk.htm> (accessed May 16, 2005).



- <sup>606</sup> Dave Reynolds, “Tormentors to Serve Time in Prison,” *Inclusion Daily Express*, July 9, 2001, available at <http://www.inclusiondaily.com/news/crime/krochmaluk.htm> (accessed May 16, 2005).
- <sup>607</sup> See ADL, “About ADL” (“Hate Crimes”), at [http://www.adl.org/focus\\_sheets/focus\\_hate\\_crimes.asp](http://www.adl.org/focus_sheets/focus_hate_crimes.asp) (accessed May 10, 2005).
- <sup>608</sup> Incidents “comprise physical and verbal assaults, harassment, property defacement, vandalism or other expressions of anti-Jewish sentiment.” ADL, “ADL Audit: Anti-Semitic Incidents at Highest Level in Nine Years” (press release), April 4, 2004, available at [http://www.adl.org/PresRele/ASUS\\_12/4671\\_12.htm](http://www.adl.org/PresRele/ASUS_12/4671_12.htm) (accessed May 4, 2005).
- <sup>609</sup> *Ibid.*
- <sup>610</sup> ADL, “ADL Audit Finds Anti-Semitic Incidents Remain Constant; More Than 1,500 Incidents Reported across U.S. in 2003” (press release), March 24, 2004, available at [http://www.adl.org/PresRele/ASUS\\_12/4464\\_12.htm](http://www.adl.org/PresRele/ASUS_12/4464_12.htm) (accessed August 23, 2004).
- <sup>611</sup> FBI, *Hate Crime Statistics 2001* (Washington, D.C.: U.S. Government Printing Office, 2002), available at <http://www.fbi.gov/ucr/01hate.pdf> (accessed July 1, 2005). In February 2004, the Department of Justice’s Civil Rights Division issued an update on 546 post-September 11 hate crime investigations, stating that federal charges had been brought in 13 cases and that 18 defendants had been convicted of hate crimes. Council on American-Islamic Relations (CAIR), *The Status of Muslim Civil Rights in the United States 2004: Unpatriotic Acts* (Washington, D.C.: CAIR, 2004), p. 13.
- <sup>612</sup> Human Rights Watch, “*We are Not the Enemy*: Hate Crimes Against Arabs, Muslims, and Those Perceived to be Arab or Muslim after September 11,” Vol. 14 (No. 6 (G)) (November 2002), p. 15, available at <http://www.hrw.org/reports/2002/usahate/> (accessed August 20, 2004).
- <sup>613</sup> Arab American Institute (AAI), *Healing the Nation: The Arab American Experience after September 11* (New York: AAI, 2002), available at [http://www.aaiusa.org/PDF/healing\\_the\\_nation.pdf](http://www.aaiusa.org/PDF/healing_the_nation.pdf) (accessed August 20, 2004).
- <sup>614</sup> Human Rights Watch, “*We are Not the Enemy*,” p. 18.
- <sup>615</sup> AAI, *Healing the Nation*.
- <sup>616</sup> *Ibid.*
- <sup>617</sup> See, for example, Lawyers Committee for Human Rights (now Human Rights First), “Treatment of Immigrants, Refugees, and Minorities,” in *A Year of Loss: Reexamining Civil Liberties since September 11* (New York: LCHR, 2002), pp. 13–24, available at [http://www.humanrightsfirst.org/pubs/descriptions/loss\\_report.pdf](http://www.humanrightsfirst.org/pubs/descriptions/loss_report.pdf) (accessed August 20, 2004).
- <sup>618</sup> “FBI Says War with Iraq Could Lead to Hate Crimes,” Reuters, March 12, 2003.
- <sup>619</sup> The attacker, who had previously served a 30-day sentence for breaking the window of an Arab-owned store, was arrested and convicted, but sentenced to two years probation and to attend an anger management class. CAIR, *Muslim Civil Rights*, p. 12; Dina Rashed, “Muslim Leaders Irked by Light Sentence of Hate Crime,” IslamOnline.net, September 24, 2003, available at <http://www.islamonline.net/English/News/2003-09/24/article03.shtml> (accessed July 1, 2005).
- <sup>620</sup> CAIR, *Muslim Civil Rights*, p. 10.
- <sup>621</sup> *Ibid.*, pp. 12–13, 21–22.
- <sup>622</sup> National Asian Pacific American Legal Consortium (NAPALC), *Remembering: A Ten Year Retrospective, 2002 Audit of Violence Against Asian Pacific Americans* (2003), available at [http://www.napalc.org/files/2002\\_Audit.pdf](http://www.napalc.org/files/2002_Audit.pdf) (accessed August 12, 2004).
- <sup>623</sup> *Ibid.*, p. 2.
- <sup>624</sup> *Ibid.*, p. 7.
- <sup>625</sup> *Ibid.*, p. 10.
- <sup>626</sup> Daryl Khan, “Man in Wheelchair Nearly Set on Fire,” *Newsday*, May 18, 2005.
- <sup>627</sup> On the resources question, the report adds that “some local law enforcement agencies have acknowledged that the increased attention to anti-terrorism activities has adversely affected the ability of such agencies to devote resources to hate crimes. Moreover, in several localities, the recent placement of hate crime units within counter-terrorism departments has only compounded the problem of victim underreporting.” NAPALC, *Remembering*, p. 2.
- <sup>628</sup> *Ibid.*, p. 7.
- <sup>629</sup> LCCREF, *Cause for Concern*, “Bias Crimes in America, the Nature and Magnitude of the Problem.”
- <sup>630</sup> CERD, Annual Report, 56<sup>th</sup> and 57<sup>th</sup> sessions, October 17, 2000, available at <http://www.unhcr.ch/tbs/DOC.NSF/0/30f3a4bce34f3c125698800578e88?OpenDocument> (accessed May 3, 2005).
- <sup>631</sup> International Helsinki Federation, “Human Rights in the OSCE,” Uzbekistan.