

Presentation to Jo Cox Committee 9 March 2017



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Overview of questions

- What is a hate/bias crime?
- What is the fundamental rights issue raised by hate/bias crimes?
- Is there an EU dimension?
- What is the approach of FRA?

1rst question

- What is a hate/bias crime?

‘hate or bias crime’ = a crime committed with a discriminatory motive

Persons are victims of bias crimes if they are **victimised for being X**, where X means any ground of discrimination under Art. 21 FRC

A person was victimised for being X if

- the offender perceived the victim to be X and
- if the victim’s (perceived) being X motivated the commission of the offence.



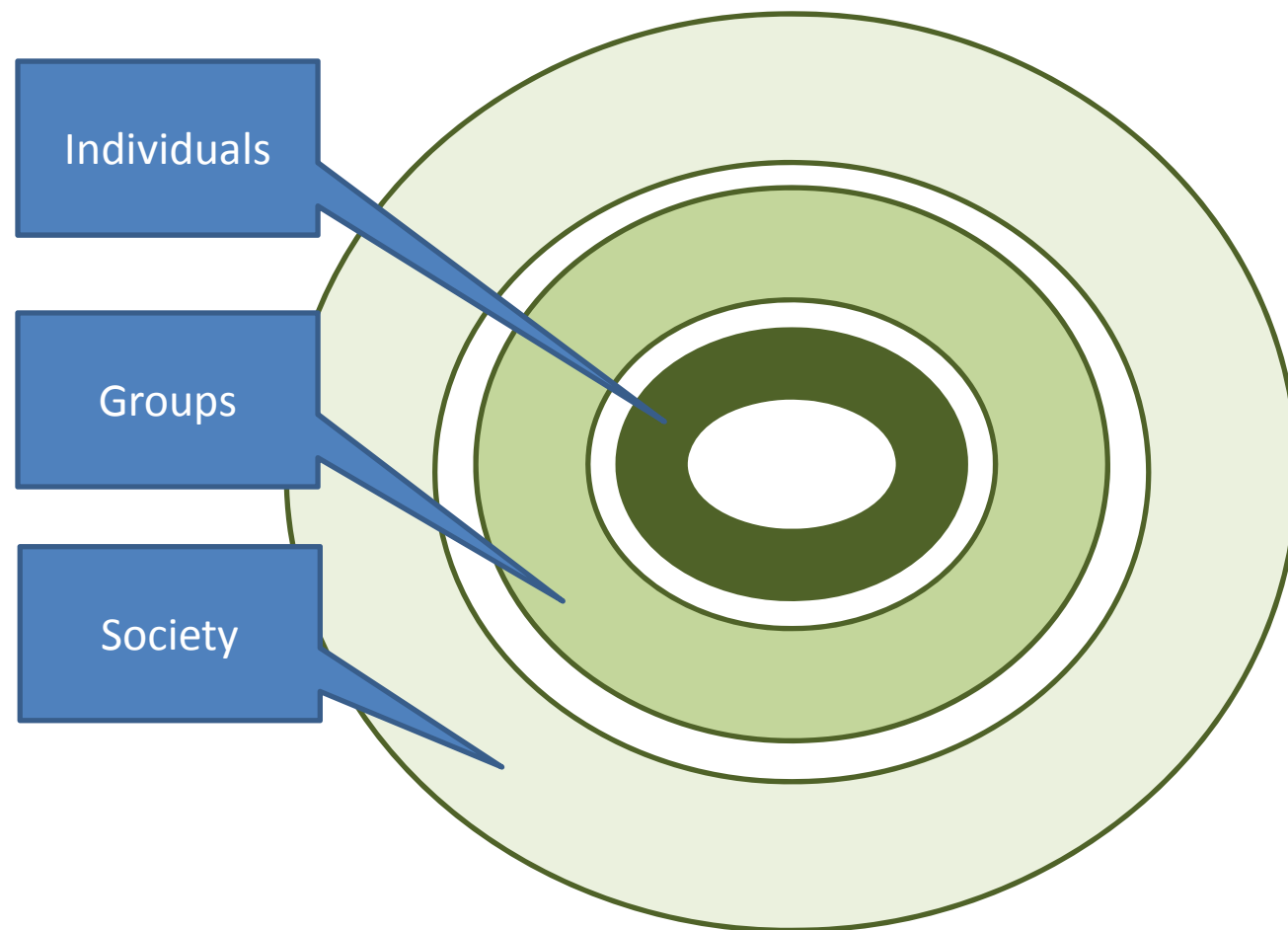
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graph TD; A[Bias crime] --- B[A crime]; A --- C[A discriminatory motive];
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Bias crime

A crime

A
discriminatory
motive

Hate or bias crimes impact at three levels



2nd question

- What is the fundamental rights issue raised by hate/bias crimes?

Jurisprudence ECtHR (1)

- **Alex Menson and Others v UK, 6 May 2003**
 - Death of a person of African descent by private individuals due to racist attack: inadmissible
 - Article 2 ECHR: positive duty to conduct an effective investigation
 - The Court reasoned in the inadmissibility decision that severe prison sentences had been imposed on the perpetrators. There was no special need to investigate the racist motivation.

Jurisprudence ECtHR (2)

- **Grand Chamber, Nachova and other v Bulgaria, 6 July 2005**
 - Death of Roma persons due to racist attack by police officers
 - Article 2 ECHR: positive duty to conduct an effective investigation
 - Article 14 ECHR: positive duty to investigate possible racist motives

A fundamental rights-based approach to hate crime

- Article 2,3 ECHR: positive duty to conduct an effective investigation
- Article 14: positive duty to investigate possible bias motives (line of cases starting with *Nachova v Bulgaria*, 2005)
- ECtHR has recognised a variety of bias motivations in this context:
 - Race and ethnicity (*Nachova v Bulgaria*, 2005)
 - Religion (*Milanovic v Serbia*, 2010)
 - Disability (*Dordevic v Croatia*, 2012)
 - Sexual orientation (*Identoba and Others v Georgia*, 2015)

3rd question

- Is there an EU dimension?

EU legal sources

- **EU Framework decision on combatting racism and xenophobia, 28 November 2008:**

Article 4 (Racist and xenophobic motivation)

- “...Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.”
- Implementation date: 28 November 2010

EU legal sources (2)

- **Victims Directive 2012/29/EU, 25 October 2012:**

Article 4(Right to receive information from the first contact with a competent authority)

- 1. Member States shall ensure that victims are offered basic information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive
- 2. The extent or detail of information may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime.

EU legal sources (3)

- **Victims Directive 2012/29/EU, 25 October 2012:**

Art 22 (Individual assessment of victims to identify specific protection needs)

- 1. Member States shall ensure that victims receive a timely and individual assessment...
- 3. In the context of the individual assessment, particular attention shall be paid to ...victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics... In this regard, victims of... hate crime...shall be duly considered.

Art 28: provision of data and statistics

- Commission has issued guidance and recommends systematic registration and handling of complaints

- **Implementation date: 16 November 2015.**

The standing of victims in criminal law?

Paradigms	Role in criminal proceedings
A) The victim as witness	Witness
B) The harmed victim	Witness + impact statement
C) The damaged victim	1) Civil party or even 2) Civil party and subsidiary prosecutor
D) V: the one whose rights are protected by criminal law and were violated by the offence	Party to the criminal proceedings

What is defining is the rights-violation suffered, not harm or damage

EU legal sources (4)

- **Council conclusions on combating hate crime in the European Union, Dec 2013:**

STRESSING the need for an effective and systematic collection of **reliable and comparable** data on hate crimes, including, as far as possible, the **number of such incidents reported by the public and recorded by the authorities**; the number of convictions; the bias motives behind these crimes; and the punishments handed down to offenders;

4th question

- What is the approach of FRA?

Wider context of FRA's research

- Four large surveys
 - EU-MIDIS, including Data in Focus report 6: Minorities as victims of crime;
 - Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism;
 - European Union lesbian, gay, bisexual and transgender survey – Main results;
 - Violence against women: an EU-wide survey
- FRA (2012): Making hate crime visible in the European Union: acknowledging victims' rights
- FRA (2016): Ensuring justice for hate crime victims: professional perspectives
- FRA FOCUS-paper 03/2015 on Equal protection for all victims of hate crime: The case of people with disabilities

Wider context of FRA's research: results of large scale surveys

- **Extent of hate crime**

- 1 in 5 Roma and Sub-Saharan African (18%) was a victim of at least 1 racially motivated crime over the past year
- 1 in 5 Jewish person (21%) had experienced physical attacks, serious harassment or verbal insults, because he/she was Jewish, over the past year
- 26% of the LGBT respondents had been attacked or threatened with violence

- **Non-reporting**

- 57 % to 74 % of incidents of assault or threat suffered by members of minority or migrant groups in the EU were not reported to the police by their victims (EU-MIDIS)
- 75 % to 90 % of incidents of serious harassment were not reported to the police (EU-MIDIS)
- three quarters of Jewish people did not report antisemitic harassment to the police

- **Consequences of hate crime** (Jewish people experiences)

- around half of the respondents worry about themselves, their family or their friends becoming a victim of hate crime
- 76 % avoid wearing, carrying or displaying in public anything that might identify them as Jewish
- 23 % avoid visiting Jewish events at least occasionally, because, as a Jew, they do not feel safe there, or on the way there
- 27 % avoid certain places because they do not feel safe there

The approach of FRA

- Based on fundamental rights
- Compliant with EU law
- Focused on victims rights
- Emphasis on reliable and comparable statistics for evidence based policy development
- make incidents more visible
- hold perpetrators to account
- support the victims

FRA`s initiatives on hate crime

- Working party on improving reporting and recording of hate crime in the EU
- Subgroup on methodologies for recording and collecting data on hate crime

Compendium of Good Practices

- Compendium of Good Practices:
<http://fra.europa.eu/en/theme/hate-crime/compendium-practices>
- Elaborated by Working party on improving reporting and recording of hate crime in the EU 2013-2016

Subgroup on methodologies for recording and collecting data on hate crime

- The European Commission launched the EU High Level Group to combat racism, xenophobia and other forms of intolerance on 14 June 2016, following up on the conclusions of the 2015 Annual Colloquium on Fundamental Rights on "Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe".
- Commissioner Věra Jourová called for the High Level Group to “develop, under the guidance of the Fundamental Rights Agency, a common methodology to record incidents and collect comparable data on hate crimes”.

Subgroup on methodologies for recording and collecting data on hate crime (2)

- All Member States are represented at technical level
- Commission, ECRI, ODIHR participate
- Civil society organisations participate
- FRA has a coordinating role
- Objective: to suggest **core common elements** for a methodology that can record and collect data on hate crime incidents improving data comparability across the Member States.
- Victim perspective: focus on police recording because police officers are typically the points of first contact for victims

The Problem

The lack of comparability of hate crime statistics in the EU, 2016 statistics:

	Racism	Anti-Roma	Antisemitism	Anti-Muslim hatred	Religion	Extremism	Sexual orientation	Gender identity	Disability
AT	323		41	31		523			
BE	1,028		8				169		
CY	5		0		0		0	0	
CZ	54	33	47	5		175			
DE	1,214		1,366		1,112		222		19
DK	104		13	41	6		26	5	
ES	505		9		70		169	24	226
FI	991				133		61		65
FR	797		808	429					
HR	15 ^a	1 ^a	2 ^a	1 ^a			5 ^a		
IE	105								
IT	369 ^a						45 ^a		141 ^a
LT	8				1		32		
NL	2,215		428	439	21		1,574	109	61
PL	133 ^a	26 ^a	50 ^a	42 ^a	12 ^a				
SE	4,765	239	277	558	719		602	62	
UK – EN, WAL & NI	40,744 ^b		629 ^b		3,177 ^b		5,553 ^b	607 ^b	2,350 ^b
UK – EN & WAL	49,419 ^c				4,400 ^c		7,194 ^c	858 ^c	3,629 ^c
UK – NI	853 ^c				19 ^c		210 ^c	12 ^c	74 ^c
UK – SCO	3,712 ^c				581 ^c		1,020 ^c	30 ^c	201 ^c

The Problem (2)

- Reasons for statistical differences:
 - Existing legal differences (focus on extremist crime or politically motivated crime, hate speech, discrimination)
 - Bias motivations (racism, homophobia, religion, disability etc.) covered differ
 - What is counted (police reports about incidents, convictions etc.)
 - How it is reported (special form, general form, IT solution)

Boundary conditions

- The subgroup does not deal with legal approximation (differences in definitions of hate crime and of bias motivations covered persist) : sphere of High Level Group

Common Methodology (1)

- Focus on police recording (1):
 - First point of contact with criminal law system:
 - Victims Directive: Right to receive information from the **first contact** with a competent authority (Article 4); this includes an individual assessment of protection needs, where special attention should be paid to victims of hate crime (Article 22)

Common Methodology (2)

- Focus on police recording (2):
 - **Grand Chamber ECtHR, Nachova and other v Bulgaria, 6 July 2005 :**
 - ... [W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to **unmask any racist motive** and to establish whether or not ethnic hatred or prejudice may have played a role in the events...(para 160)
 - In order to maintain public confidence in their law enforcement machinery, Contracting States must ensure that **in the investigation of incidents** involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing. (para 160)
 - The respondent State's obligation to **investigate** possible racist overtones to a violent act is an obligation to use best endeavours and not absolute (...). The authorities must do what is **reasonable in the circumstances** to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, **without omitting suspicious facts** that may be indicative of racially induced violence.” (para 160)

Thank you!



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