

Disability Hate Crime

A guide for disabled people's organisations, law enforcement agencies, national human rights institutions, media and other stakeholders

European Network on Independent Living
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Guide author and official partners

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The European Network on Independent Living (ENIL) is a Europe-wide network of disabled people, with members throughout Europe. ENIL is a forum for all disabled people, Independent Living organisations and their non-disabled allies on the issues of Independent Living. ENIL represents the disability movement for human rights and social inclusion based on solidarity, peer support, deinstitutionalisation, democracy, self-representation, cross disability and self-determination. For additional information, see: www.enil.eu

In official partnership with:

The Office of the Ombudsman for Persons with Disabilities of the Republic of Croatia (www.posi.hr)

The scope and manner of work of the Office is based on the Act on the Ombudsman for Persons with Disabilities. Priority tasks of the Office are monitoring the implementation of measures stated in the National Strategy of Equalization of Possibilities for Persons with Disabilities 2007 - 2015, the Council of Europe Action Plan to promote the Rights and Full Participation of People with Disabilities in Society: Improving the Quality of Life of People with Disabilities in Europe 2006 - 2015 and in the UN Convention on the Rights of Persons with Disabilities.

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Foreword

On the day when the seminar on disability hate crime took place in Zagreb, a person with intellectual disabilities was beaten up by his neighbour and ended up with a concussion and a broken bone. Fortunately, we are not aware of many cases like that, but we are aware of a lot of cases of hostility towards persons with disabilities, which take the form of calling names, making fun of them on the Internet or in public transport, or subjecting them to long term harassment and abuse, which amount to criminal offences and cause a great deal of suffering. So far, we have not had proper tools and mechanisms to respond to such occurrences and we saw how interventions by authorities would fail to stop such forms of violence, leaving persons with disabilities unwilling to report them. Although the law envisages sanctioning of criminal offences based on disability, the authorities and persons with disabilities know very little about it. While listening to examples of disability hate crime – and in particular hate incidences – at the seminar, we could recognise a lot of the situations that persons with disabilities simply put up with. I believe that the seminar on disability hate crime was a starting point in empowering not only persons with disabilities, but the whole society in Croatia, to stop tolerating various forms of hostility towards persons with disabilities, without waiting for them to turn into more serious forms of violence.

Anka Slošnjak

Ombudswoman for Persons with Disabilities, Croatia

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Chapter 1: Introduction

According to the European Union Agency for Fundamental Rights¹, efforts to combat discrimination, especially hate crime, have not been successful. Whilst official monitoring of disability hate crime is limited, the Organisation for Security and Co-operation in Europe (OSCE) - Office for Democratic Institutions and Human Rights (ODIHR) have recognised it as a prevalent issue facing our communities. There is evidence suggesting that crimes motivated by the perceived or actual disability attributed to an individual are occurring in various countries across Europe. Research shows that victims of hate crime are reluctant to report it, as a result of which many crimes remain unreported and unprosecuted². Considering that the reality facing many disabled people³ is one of exclusion, isolation and marginalisation – reinforced by the devastating cuts to our Independent Living services (see Definitions) – the European Network on Independent Living (ENIL) believes that decision makers in the EU Member States, community leaders and law enforcement agencies must counter the prejudice and extreme hostility and violence experienced by disabled people.

By increasing awareness of disability hate crime, as well as fostering positive dialogue with key stakeholders to combat it, we can improve disabled people's inclusion within the community, portray disabled people as valued contributors to society and help support those who are affected by disability hate crime. It is important that disabled people's organisations (DPOs), their allies, law enforcement agencies

¹ EU Fundamental Agency for Human Rights (2012) *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012, available at:

http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf

² OSCE ODIHR (2013) *Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2012*, available at:

http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf

³ ENIL use the term 'disabled people' in line with the Social Model of Disability. The Social Model argues that someone with an impairment is 'disabled' by external societal factors. In other words, we are disabled by the way society is constructed and the disabling barriers we encounter have been imposed upon us by others.

and others with influence are aware of and are able to tackle this form of hate crime.

1.1 Background

The fight to end discrimination against disabled people is one of ENIL's main objectives and the organisation is undertaking a number of actions in order to highlight and identify measures to tackle discrimination⁴. In 2012, ENIL, together with the OSCE - ODIHR, organised a workshop on "Hate Crimes against People with Disabilities" in Dublin, Ireland. The workshop provided those attending with the opportunity to share their experiences of hate crime and gave them skills to be able to provide training to relevant bodies in their countries about how to effectively respond to disability hate crime. The workshop also looked at the situation across Europe in regard to disability hate crime.

Following the Dublin workshop, ENIL included hate crime among its priority areas and decided to organise similar awareness-raising and training events in different countries. Whilst some countries have produced guidance on disability hate crime and victims can access support, there is not enough awareness and positive action taking place across the whole of Europe.

This guide was produced as training material for the seminar on disability hate crime in Zagreb, Croatia, with a view to being finalised based on participants' feedback. The seminar was held in October 2014, in cooperation with the OSCE-ODIHR and the Office of the Ombudsman for Persons with Disabilities in Croatia. It brought together disabled people and disabled people's organisations (DPOs), law enforcement agencies, government officials, national human rights institutions, education and social care professionals.

⁴ European Network on Independent Living (2014) Manifesto 2014, available at: <http://www.enil.eu/wp-content/uploads/2014/03/ENIL-Manifesto.pdf>

1.2 Purpose of the guide

This guide has a number of different objectives:

- It explains –
 - How to distinguish between crime, disability hate crime, hate incidents and hate speech
 - How hate crime can affect victims
 - How to report disability hate crime, with recommendations on how to combat hate crime and improve the life chances of disabled people.
- This guide is not country-specific, and the information and guidance it provides can be used by anyone, regardless of their background or geographical location. It aspires to be an easy to understand guide, covering the most important aspects with a simple vocabulary, mainly directed to individuals with no existing or extensive knowledge of hate crime.
- The guide references research and statistics into this area and is based on the information publicly available from Governmental, Inter-Governmental and Non-Governmental Organisations, such as the OSCE-ODIHR, Disability Rights UK, the UK's Crown Prosecution Service, Interights and others. It also draws on information provided by ENIL's members, many of whom are experts-by-experience and have direct experience of the issues outlined in the guide.
- The guide will be of relevance to disabled people, their families and allies, law enforcement agencies, local and national authorities, national human rights institutions, education and social care professionals, community groups (see Definitions) and journalists.

We encourage you to share this document with your networks, promote it among decision and policy makers at the local and national level and use it as a tool to facilitate positive change, with an expectation that it will reduce hate crime and improve the life chances of disabled people.

Chapter 2: What is disability hate crime?

2.1 What is a crime?

“Crime” refers to an action which, according to the law (contained in the Criminal Code), is classed as a criminal offence and can lead to punishment. The action, sometimes referred to as a criminal offence, can cause harm to an individual, community or even a State. There are many different types of offences, which can be considered a crime. These include:

- Destroying or damaging property or possessions (Criminal Damage and Vandalism)
- Taking something that belongs to someone else and keeping it without their permission (Theft)
- Intending to or acting out an act of violence which causes physical injury to someone (Physical Assault)
- Threatening or harassing someone (Threats)

Every crime has the potential to be a hate crime; whether it is depends on the reason why the individual or the group committed the offence; in other words, their motivation (please see Section 2.2). There are many types of offences that can be considered a hate crime, including the examples above, but also:

- Sexual abuse and assault (Sexual Assault)
- Using offensive language (using words or gestures which ridicule, insult, threaten or intimidate)
- Financial exploitation (Financial Abuse)

When someone commits a crime, whether you know them or not, it should be reported; understandably, individuals may not feel safe enough to report an offence, but it is advisable to inform someone you trust. Also, if someone is a witness to a crime, then they too should be encouraged to report it to the police.

2.2 Understanding hate crime

*Hate crime is a criminal offence committed with a bias motivation.*⁵

Some have observed that the term “hate crime” can be misleading, in the sense that it is not necessary to prove “hate” in order to investigate and prosecute. Hate is an emotional state. A crime where the perpetrator does not feel “hate” towards the victim can still be considered a hate crime⁶.

If a crime is committed with a bias motive (see Definitions), based on hostility or prejudice because of the victim(s) characteristics or background, then it can be recorded and investigated as a hate crime.

The following “protected characteristics” can often be found in the EU Member States’ Criminal Codes: disability, race, gender, language, religion or belief, national or social origin, sexual orientation or other similar grounds.

Hate crimes have the potential to reinforce the marginalisation, exclusion and isolation of disempowered groups and consequently damage relationships within communities.⁷ This is because hate

⁵ A definition of hate crime recognised by the OSCE Participating States, and set out in the OSCE Ministerial Council Decision 9/09. The OSCE Participating States include: Albania, Austria, Belgium, Canada, Czech Republic, Finland, Germany, Hungary, Italy, Latvia, Luxembourg, Monaco, Norway, Romania, Serbia, Spain, Tajikistan, Turkmenistan, United States, Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia, Denmark, France, Greece, Iceland, Kazakhstan, Liechtenstein, Malta, Montenegro, Poland, Russian Federation, Slovakia, Sweden, the former Yugoslav Republic of Macedonia, Ukraine, Uzbekistan, Armenia, Belarus, Bulgaria, Cyprus, Estonia, Georgia, Holy See, Ireland, Kyrgyzstan, Lithuania, Moldova, Mongolia, Netherlands, Portugal, San Marino, Slovenia, Switzerland, Turkey and the United Kingdom.

⁶ OSCE ODIHR (2009) *Hate Crime Laws – A Practical Guide*, available at: <http://www.osce.org/odihr/36426?download=true>

⁷ Scheppe, Haynes and Carr (2014), *A Life Free From Fear – Legislating for Hate Crime in Ireland: An NGO Perspective*, available at:

crimes intimidate the victim and those associated with the victim's community or background.

Some of the reasons why perpetrators commit hate crimes have already been outlined, but it is important to recognise that such crimes can be motivated by multiple motives (sometimes referred to as biases). This happens when two or more characteristics intersect, for example, somebody is assaulted on the basis of their perceived disability and sexual orientation.

By 2012, the 57 OSCE Participating States indicated that they collect data on the following bias categories:⁸

Bias category	Number of countries
Ethnicity/origin/minority	35
Religion	34
Race/colour	35
Sexual orientation	21
Citizenship	16
Gender	17
Disability	16
Language	14
Transgender	11
Other	13

The countries that recorded hate crimes against disabled people between 2008-2012 included: Belgium, Canada, Croatia, Cyprus, Finland, Georgia, Germany, Latvia, Lithuania, Moldova, Serbia, Slovakia, United Kingdom and Uzbekistan.

Whilst the research evidently shows that only 16 out of 57 countries are recording data on hate crime towards disabled people, it is clear that disability hate crime exists as a global issue – affecting the lives

<http://ul.ie/emotions/sites/default/files/docs/Life%20Free%20From%20Fear%20-%20Reprint%20Aug28%202014%20-%20web%20version.pdf>

⁸ OSCE ODIHR (2013) *Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2012*, available at:

http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf

of many, irrespective of their geographical location. Furthermore, where data is limited or non-existent, it raises questions over reporting and victim support. ODIHR point out that under-reporting is a significant problem across Europe⁹, reinforcing the lack of trust in authorities by victims and an acceptance that hate crime should be endured. Another concerning aspect of under-reporting is how it distorts statistics and creates the impression that hate crime, regardless of motivation, is less prevalent than it actually is. For this reason, ODIHR have produced an accessible and informative online resource - the Hate Crime Reporting Website at www.hatecrime.osce.org - to collect data and promote understanding. They have also published a guide on data collection and monitoring.¹⁰

2.3 Hate crime and disability

There is no universal legal definition of a **disability hate crime** but ENIL recommends using the OSCE definition cited above. If someone commits a crime that is motivated by hostility or prejudice, because the victim is a disabled person or is perceived to be disabled, then the crime can be classed as a disability hate crime. In the United Kingdom, the Crown Prosecution Service and Association of Chief Police Officers state that if a criminal offence is perceived by the victim or anyone else to be motivated by a person's perceived or actual disability, then the incident will be defined as a disability hate crime.¹¹

It is important to be aware that not all crimes targeted towards disabled people are disability hate crimes. In order to define the type of crime, it is important to determine the motivation for committing the

⁹ *Ibid*

¹⁰ The guide is available at: <http://www.osce.org/odihr/datacollectionguide>

¹¹ Crown Prosecution Service (2007) *Policy for Prosecuting Cases of Disability Hate Crime*, available at:

http://www.cps.gov.uk/publications/docs/disability_hate_crime_policy.pdf and Association of Chief Police Officers (2014) *Disability Hate Crime*, available at: <http://www.acpo.presscentre.com/Press-Releases/ACPO-response-to-the-Criminal-Justice-Joint-Inspectorate-review-of-disability-hate-crime-202.aspx>

crime. For example, if an individual is convicted of damaging property and is unaware that the owner is a disabled person, then this would not be considered a disability hate crime, as the perpetrator was not motivated by bias against the victim's characteristics.

Hate incidents

Furthermore, it is considered important to recognise **disability hate incidents**, with strategies for monitoring and combating such behaviour suggested by disabled people and their organisations.¹²

Hate incidents refer to actions that could be similar to a hate crime. However, the action falls below the threshold of a crime and therefore is classed as an incident. Hate incidents can become a hate crime, once the incident is considered and classed as a criminal offence. Examples of hate incidents include:

- Distributing discriminatory literature
- Making offensive gestures at someone

It is extremely important to report or encourage others to report hate incidents, as such instances can lead to more serious hate crimes¹³. If attention is focused on preventing hate incidents from occurring, then it could have a positive impact on tackling hate crime.

Disability hate crimes may be one-off incidents, or systematic abuse that may continue over periods of weeks, months or even years. It can happen between strangers who have never met, between friends or within the family.

¹² Disability Rights UK (2012) *Let's Stop Disability Hate Crime – A guide for setting up third party reporting centres*, available at: http://www.disabilityrightsuk.org/sites/default/files/pdf/LSDHC_A_guide_for_setting_up_third_party_reporting_centres_final_200212.pdf

¹³ OSCE ODIHR (2009) *Preventing and responding to hate crimes – A resource for NGOs in the OSCE region*, available at: <http://www.osce.org/odihr/39821>

Hate speech

Similarly, **hate speech** and the impact it can have should also be taken seriously. Hate speech covers all forms of expression which spread, incite, promote or attempt to justify any form of hostility or “hatred” based behaviour/expressed views towards a specific group. The expressions could be considered abusive, insulting or intimidating; equally, hate speech could – deliberately or unintentionally – incite violence or discrimination. Organisations have worked to highlight this issue and attempt to address it at national and international level, for example, the No Hate Speech Movement has created the Hate Speech Watch to identify, monitor and discuss hate content across Europe.¹⁴

Reporting

It is extremely important to report disability hate crimes, as it may improve the chances of identifying the person who committed the crime and arresting them for their actions; it should also encourage police, support groups and victims to work together to gather evidence and understand what support victims need. It must also be acknowledged that there are many reasons why disabled people will not report a hate crime, including:

- It may be unclear who to report to
- An assumption that the police or other authorities will not believe them
- A fear of negative consequences once they have reported the crime

By recognising a disability hate crime and reporting it, we can gather data and improve the situation for victims, as well as identify collaborative ways of working to reduce and eliminate hate crime. For

¹⁴ For more information, see: <http://www.nohatespeechmovement.org/hate-speech-watch/instructions>

example, the local law enforcement agencies can be tasked with understanding crime in the area and preventing future offences. This will hopefully lead to local and national government working collaboratively with communities to ensure the provision of support for victims and reduce disability hate crime.

2.4 Hate crime and Independent Living

As set out in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”), disabled people have the right to make their own choices and are entitled to independence and autonomy within all aspects of their lives.

The current situation facing many disabled people is one of exclusion, isolation and reduced life chances. The majority of disabled people and their families are unaware of the CRPD and are not provided with adequate support, which is tailored to their needs, in order to achieve Independent Living. As a result, societal attitudes are changing very slowly and disabled people are still perceived as invaluable members of their community, with no or few roles and responsibilities to actively participate in society.

Disability hate crime and living independently are closely interlinked. As long as disabled people experience abuse, hostility and discrimination, this will undoubtedly impact on their aspirations and inclusion within their community. If a disabled person is continually harassed or is a victim of hate crime, then this will restrict their opportunities to participate in aspects of daily life: to go to their local supermarket, to use public transport, to leave their apartment. Furthermore, if the law enforcement agencies do not have appropriate and satisfactory methods to support and protect disabled people from such crime, then this will further marginalise and isolate them.

The Independent Living Movement has identified 12 pillars of Independent Living - the areas it believed to be the preconditions for independent living. These include: an adequate income, appropriate

and accessible health and social care provisions, full access to the environment, availability of inclusive education and training, and equal opportunities for employment. All of these areas are or can be negatively affected when a person is a victim of a hate crime or incident.

If the issue of hate crime is not addressed, it will continue to have a negative impact on disabled people's opportunities to live independently and to enjoy the full benefits of the society. For this reason, more research and awareness is needed to highlight the connection between hate crime and the right of disabled people to live independently.

Case study: Croatia

Croatia has ratified all anti-discrimination treaties that are part of international law with the exception of the Revised European Social Charter, which has been signed and is in the process of ratification (as of October 2014).¹⁵ Croatia signed and ratified the United Nations Convention on the Rights of Persons with Disabilities in 2007.¹⁶

The Constitution of the Republic of Croatia guarantees rights and freedoms to everyone in the Republic of Croatia regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics. Other grounds, such as disability, age and sexual orientation, are covered implicitly as 'other characteristics' but have yet to be interpreted.¹⁷

¹⁵ European Network of Legal Experts in the Non-Discrimination Field (2012) *Croatia Report*, available at: <http://www.non-discrimination.net/de/countries/croatia>

¹⁶ United Nations Enable (2014) Convention and Optional Protocol Signatures and Ratifications, available at: <http://www.un.org/disabilities/countries.asp?navid=12&pid=166>

¹⁷ European Network of Legal Experts in the Non-Discrimination Field (2009) *Report on Measures to Combat Discrimination – Croatia Report*, available at: http://www.non-discrimination.net/content/media/2009%20-HR-%20Country%20Report%20LN_final.pdf

The main legislation focusing on discrimination includes: the Anti-discrimination Act, the Sex Equality Act and the Employment Act. The Anti-discrimination Act grants the Ombudsperson powers as the central body for the elimination of discrimination and promotion of equal treatment; however, for disability issues, the duty falls upon the Ombudsman for Persons with Disabilities.

A new Criminal Code introducing new provisions on hate crime was adopted by the Parliament in October 2011, and came into force on 1 January 2012. While the previous provisions only included a general definition of hate crime that was applied to convictions for bias-motivated crimes, the new provisions specifically cite bias motivation as an aggravating circumstance for all crimes (except for specific crimes that already provide for bias motivation in its aggravated form).¹⁸

The case of *Đorđević v. Croatia* (see page 20), decided by the European Court of Human Rights in 2012, is the most publicised case of disability hate crime in Croatia and can be used to raise awareness and promote action needed to tackle hate crime.

¹⁸ OSCE ODIHR (2011) *Hate Crime Reporting – Report Data Croatia 2011*, available at: <http://www.hatecrime.osce.org/report-data/croatia/2011>

Chapter 3: Recognising disability hate crime

All forms of discrimination must be eradicated by improving the inclusion of disabled people within society, enacting adequate policies to prevent and deal with discriminatory practices, and by working to protect disabled people when encountering discrimination. This also includes disability hate crime, which infringes the human rights of those affected, stopping them from being able to enjoy the full benefits of living in the community.

3.1 Hate crime and the effect on victims

Hate crimes can have a major impact on victims' health and wellbeing,¹⁹ as a result of the emotional distress associated with becoming a victim of crime – regardless of the type of offence. Victims of hate crimes may experience higher levels of anxiety, anger, intense fear, further isolation and feelings of vulnerability and depression. It is extremely important to be aware of the emotional impact of a crime, in order to be able to provide appropriate support to the victims. Law enforcement agencies, NGOs and other community groups must work to ensure appropriate support initiatives exist for when victims are reporting and reflecting on their experience of disability hate crime.

The fear and anxiety caused by a disability hate crime can have a substantial negative effect on an individual's wellbeing, their interaction within the community and with their peers – reducing their overall quality of life. It can also extend beyond individuals and affect the family and wider community to which the individual belongs. Members of the same group could potentially live in fear of a similar attack taking place on them, while members of other commonly targeted groups could also be reminded of their vulnerability to similar

¹⁹ Latvian Centre for Human Rights (2008) *Psychological Effects of Hate Crime – Individual Experience and Impact on Community*, available at: http://cilvektiesibas.org.lv/site/attachments/30/01/2012/Naida_noziegums_ENG_cietusajiem_Internetam.pdf

attacks. The behaviour and actions of victims and their communities may also be impacted. Victims of hate crimes, and the groups to which they belong, may avoid particular businesses or streets and adjust their daily routines, clothing, and appearance for fear of being targeted.²⁰

Case study: Đorđević case

The case of Dalibor Đorđević²¹ and his mother Radmila can help demonstrate how disability hate crime affects victims. Both were Croatian nationals of Serbian ethnicity, living together in social housing provided by the Zagreb Municipality. Dalibor was born in 1977 and had a physical impairment and a learning disability. From 2006, Dalibor and Radmila were subjected to ongoing abuse and harassment from children and young people in their neighbourhood. Most harassment consisted of anti-social behaviour, including: name-calling, spitting, lewd comments, yelling, insulting drawings on the pavement in front of the Dalibor and Radmila's flat and causing damage to the pairs' balcony, windows and door. From 2009, the harassment sometimes escalated into serious acts of physical violence. The harassment mostly occurred at the same time of the day, sometimes even daily – in the afternoon when children returned from school, and in the evening when they congregated around a bench situated in front of the Đorđević's ground floor flat. Sometimes, the anti-social behaviour persisted into the night. Harassment was

²⁰ Journal of the Institute of Justice and International Studies (2003) *Papers from the March 2003 - Counter-Terrorism and Civil Liberties Conference*, available at: <http://www.ucmo.edu/cjinst/issue3.pdf>; Beadle-Brown, Richardson, Guest, Malovic, Bradshaw and Himmerich (2014) *Living in Fear: Better outcomes for people with learning disabilities and autism – Main Research Report – January 2014*, available at: http://www.mcch.org.uk/pages/multimedia/db_document.document?id=8009; Equality and Human Rights Commission (2012) *Hidden in Plain Sight: Inquiry into disability-related harassment*, available at: <http://www.equalityhumanrights.com/sites/default/files/documents/disabilityfi/dhfinmain.pdf>

²¹ Interights (2014) *Dordevic V Croatia*, available at: <http://www.interights.org/dordevic/index.html>

provoked by a combination of factors, including Dalibor's disability, both the pairs' ethnicity and their marginal social status (i.e. poverty).

As a result of the ongoing harassment and abuse, Dalibor experienced a high degree of anxiety and fear, as well as missed opportunities in terms of developing an independent and inclusive lifestyle. Radmila and Dalibor had to change their daily routines, by avoiding going out at certain times of the day, by taking alternative, longer routes to local amenities, and by taking walks in a park situated far from their neighbourhood.²²

3.2 Monitoring of disability hate crime

The OSCE participating States have agreed to work towards ensuring “the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”²³. In addition, the 57 countries have committed to ensuring human rights and fundamental freedoms to their citizens “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”.²⁴

There is no agreement among the OSCE participating States as to which groups should be included within the “**protected characteristics**” of hate crime laws. “Race”, religion and ethnicity are commonly understood as being characteristics that should be protected under hate crime laws but, otherwise, there is a divergence of opinion among countries and policymakers on this issue. For this reason, it is vital that groups of disabled people work with other grassroots community groups, local and national human rights

²² Interights (2012) *Dordevic V Croatia Judgement*, available at:

<http://www.interights.org/files/230/DORDEVIC%20v%20CROATIA.docx>

²³ People's Movement for Human Rights Education (2014) *Human Right to Freedom from Discrimination*, available at: <http://www.pdhre.org/rights/discrimination.html>

²⁴ United Nations (2014) *The Universal Declaration of Human Rights*, available at: <http://www.un.org/en/documents/udhr/>

organisations and local and national policy makers, to ensure that disability is recognised as one of the “protected characteristics” in the relevant legislation.

Official monitoring of disability hate crimes and incidents, carried out by the OSCE participating States, non-governmental organisations and other civil society groups, has produced some interesting data. In 2012, a select number of countries reported about the collection of data on crimes and incidents motivated by bias against disabled people²⁵. These are presented in the box below.

The data reflects some efforts made to identify, record and – hopefully – tackle disability hate crime. The OSCE participating States that monitor disability hate crime can use the data collected to improve protections in their national legal systems and to develop tools to tackle and prevent future hate crimes. Where States have not provided data, it raises concerns about their willingness and/or capacity to tackle hate crime towards disabled people.

Box: Data on crimes and incidents motivated by bias against disabled people

Finland

Official law-enforcement figures recorded 19 cases of crimes based on bias towards disabled people, including eight physical assaults, four cases of disturbance of the peace, and one case of damage to property.

²⁵ OSCE ODIHR (2013) *Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2012*, available at:

http://tandis.odihhr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf

Germany

Official law-enforcement figures recorded 29 crimes based on bias against disabled people, two of which involved violence. The NGO RAA Saxony reported the murder of an older man perceived to have mental health problems. The NGO Amadeu Antonio Foundation reported two physical assaults against homeless men.

Hungary

A case was reported in which a homeless person was attacked by a group of three people that was investigated as an attempted murder.²⁶

Russian Federation

No official data on hate crimes against disabled people or against people from other groups were reported to ODIHR.

Spain

No official data on hate crimes against disabled people or against people from other groups were reported to ODIHR.

Switzerland

No official data on hate crimes against disabled people or against people from other groups were reported to ODIHR. The Foundation against Racism and Anti-Semitism reported a physical assault against a male wheelchair user causing him to fall out of his chair and inflicting serious injury.

United Kingdom

Official law-enforcement figures in England, Wales and Northern Ireland recorded 1,853 crimes motivated by bias against people with disabilities in 2012. No information was provided by NGOs.

²⁶ Hungary submitted a case example based on homelessness. In some instances, individuals may experience hate crime linked to one or more of the protected characteristics, i.e. an individual is homeless and has a mental health condition. The data collected could indicate that the individual was homeless and disabled.

Chapter 4: Reporting a disability hate crime

“Hate incidents often lead to a serious crime. Report them and take them seriously”

Senada Halilčević, Association for Self-advocacy and President of the European Platform of Self-advocates (EPSA)

Whilst the route to reporting and following up on disability hate crime is specific to the law and procedures within each country, there are general principles associated with reporting a disability hate crime that can be applied anywhere.

Key advice for disabled people who would like to report hate crime or hate incidents:

- Ensure you are in a safe position to report;
- If you or anyone else is seriously hurt then seek medical attention first;
- Request support if you feel it would help you – this could be advocacy, emotional support or guidance on informing you of the process for reporting the crime or incident;
- When reporting the hate crime to someone you trust, explain your access needs, so the right level of support can be identified and provided – this will help ensure that you are fully included within the process;
- Inform the person writing the crime or incident report if you know of any witnesses. Incidents should always be reported; this could be to:
 - Law Enforcement Agencies;
 - Disabled People’s Organisations;
 - An individual you trust.

4.1 How to report a disability hate crime

Anyone should be supported and encouraged to report a hate crime – whether you are a victim, a witness or someone who has subsequently been informed about a hate crime taking place. In most instances, you should directly inform the police if you are aware of a crime taking place.

If you or someone else's life is in danger, you must contact the emergency services using the country-specific number.

4.2 Role of the law enforcement and other services

In many countries, there is very little information and public awareness produced by the law enforcement and other authorities on how to report hate crime. In addition, there tends to be lack of communication and information sharing between police and prosecution services on how hate crimes and incidents are reviewed.

If you have been a victim of disability hate crime, there are several routes you can take. Whilst it is best to report a disability hate crime to the police, if you feel that this is not an option, then you should tell someone – possibly a friend, family member or somebody who can advocate on your behalf. By doing this, they can support you or inform the local law enforcement personnel on your behalf about the crime.

4.3 Role of disabled people's organisations

It is useful to determine if there are any local or national Disabled People's Organisations that support individuals with hate crime-related issues. There may be a dedicated disability hate crime reporting or information site,²⁷ operated by a community or civil society group. These reporting sites may have an agreed way to pass on information straight to the police, keeping your identity a secret in

²⁷ See, for example: <http://disabilityhatecrime.org.uk/>

the process. They may also have links to support organisations that can offer further guidance to victims of disability hate crimes.

It is also advisable to inform such organisations if you feel your report is not being taken seriously, as well as following the appropriate procedure for making a complaint.

4.4 The importance of evidence

When reporting a disability hate crime, it is important to provide as much information as possible. Initially, it can be useful to adopt the “What, How and Why” method, as proposed by this guide:

What	<ul style="list-style-type: none">• What happened?
How (Further Information)	<ul style="list-style-type: none">• When did it happen?• Where did it happen?• Was the victim injured?• Details of property affected or witnesses present?
Why	<ul style="list-style-type: none">• Why is it considered a disability hate crime?

“Let’s Stop Disability Hate Crime” guide²⁸, published by Disability Rights UK, suggests taking the following three steps when reporting a hate crime:

- Keep a diary of all the incidents and crimes that you have experienced and record as much information about how and when they happened.
- Print and keep copies of any messages that are relevant to the crime or incident.
- Photograph any damage inflicted to your property or possessions.

²⁸ Disability Rights UK (2012) *Let’s Stop Disability Hate Crime – A guide for disabled people*, available at:
http://www.disabilityrightsuk.org/sites/default/files/pdf/LSDHC_A_guide_for_disabled_people_final_2002121.pdf

Chapter 5: Reducing disability hate crime

ENIL's goal is to ensure that all disabled people, regardless of their impairment or background, have the opportunity to exercise choice and control over all aspects of their lives. Ensuring that our lives are void of any harassment, discrimination and abuse is an important part of that goal.²⁹

ENIL has identified a number of actions that should be taken by disabled people's organisations, law enforcement agencies and others in order to tackle disability hate crime.

5.1 Recommendations for action

Positive action from disabled people's organisations

DPOs have an important role to play in supporting measures to combat hate crime, including **offering guidance to victims** and **facilitating dialogue** between local services and communities.

Organisations of disabled people must have a fair and realistic opportunity to work with those involved in disability hate crime processes and systems. They should be encouraged to design, develop and deliver services and support initiatives for victims of hate crime – in the spirit of 'co-production' (see Definitions) - as this can help reduce tensions in the disability community and foster positive dialogue with local governmental and police services.

Positive action from law enforcement agencies

OSCE – ODIHR produced a set of recommendations, based on their findings.³⁰ With regards to criminal justice and law enforcement

²⁹ European Network on Independent Living (2014), available at:

<http://www.enil.eu/about-enil/>

³⁰ OSCE ODIHR (2013) Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2012, available at:

http://tandis.odihhr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf

agencies, ODIHR recommended that countries should consider taking further **measures** to ensure that law-enforcement officials, prosecutors and judges are well equipped to prevent and respond effectively to hate crimes.

- This could include **conducting awareness-raising and education activities**, particularly with law enforcement authorities, as well as establishing **positive and sustainable relationships** between criminal-justice agencies and victim groups, with a view to encouraging victims to report hate crimes and witnesses to contribute to solving and prosecuting hate crimes.
- There is also the need to create **local partnerships** between community groups and law-enforcement agencies, in order to report regularly on issues of concern and follow up on incidents. This can also serve as an early warning of rising tensions and enable proper resource allocation.
- One of the most important actions to be taken is raising awareness amongst **children and young people** of what disability hate crime is. It is vital that they understand not only the hurt, pain and anguish that disability hate crime could cause to victims, but also the impact that having a criminal conviction could have upon the perpetrator. This has been achieved in the UK with a number of stakeholders, including local police and prosecution services, collaborating together to develop student lesson plans which raise awareness and challenge current thinking about disability hate crime.

The proposed measures should lead to efforts from the community and younger generations to challenge hate crime attempts and, in co-operation with civil society, counter incitement to imminent violence and hate crimes, including through the Internet and social media.

Positive action from governments

Governments can use their power and influence to help ensure police are democratically accountable to the communities they serve, as well as provide resources and support to local areas to develop hate crime strategies that reflect local needs. Their role, at a national level, can be to establish **national initiatives to combat hate crime**, record **data** from across the country and **set commitments and objectives**.

From a national perspective, the focus can be on:

- **Preventing hate crime** – by challenging the attitudes that reinforce it and outlining early intervention strategies to prevent it from escalating;
- Creating **accessible reporting mechanisms** and **providing holistic support services** for victims – which will hopefully increase victim confidence and foster proactive local partnerships.

Governments can promote the importance of protecting the human rights of all citizens and residents, with a particular focus on those considered marginalised and isolated from the mainstream society.

Finally, those in decision-making positions need to recognise the wealth of knowledge and skills that disabled people have when recognised as experts by experience. DPOs can ensure that disabled people have their voices heard at every level and that practical improvements are being made in the lives of disabled people and their communities. Authorities should therefore **provide funding to organisations of disabled people** to provide services or advocate on behalf of victims of disability hate crime.

5.2 Recommendations from the Disability Hate Crime Seminar in Croatia

Training and awareness raising: Training was highlighted as a viable method to raise awareness of and tackle disability hate crime. There needs to be a holistic approach to awareness raising about disability hate crime, which considers all aspects of societal life – from kindergarten to courts. Disabled People’s Organisations, school staff working with children and parents should be provided with suitable training to identify such crime and be aware of appropriate methods to report it and provide support. Trainings should be tailored to different target groups, depending on their level of awareness. For example: on the terminology and the difference between hate incidences, hate crime etc. Good practice needs to be shared, for example: cooperation between various bodies and how the media can portray hate crime.

Working with user-led groups: As communities, there is a responsibility on everyone to consider their role in tackling disability hate crime. This includes having a better understanding of disabled people’s rights, which includes acknowledging the principles of Independent Living, choice and control. Local and regional governments should use financial resources for trainings and apply for projects in collaboration with user-led groups. Additional resources, including the employment of staff overseeing the implementation of the UN CRPD would also be needed.

Data collection: A framework and accessible process should be established to collect and share data about incidents, crimes, and practice – this could be similar to the United Kingdom’s True Vision tool: <http://www.report-it.org.uk/home>.

Legal reform: Adequate provisions to address hate crime, such as the inclusion of hate incidence, should be incorporated in the legislation.

Working with the media: There is a need for more cases to be highlighted, as this can support the police in identifying future cases involving hate crime.

Definitions

Independent Living

Independent Living is the daily demonstration of human rights-based disability policies. Independent Living is possible through the combination of various environmental and individual factors that allow disabled people to have control over their own lives. This includes the opportunity to make choices and decisions regarding where to live, with whom to live and how to live. Services must be accessible to all and provided on the basis of equal opportunity, allowing disabled people flexibility in our daily life. Independent Living requires that the built environment and transport are accessible, that there is availability of technical aids, access to personal assistance and/or community-based services. It is necessary to point out that Independent Living is for all disabled persons, regardless of the level of their support needs.

Community groups

This term refers to people who live in the same neighbourhood and who come together because of a shared interest. Community groups can be powerful in influencing decisions on local matters.

Bias motive

Bias motive is the prejudged negative attitude towards an individual or group that is based on a real or perceived characteristic, which can lead to the victim or victims being attacked based on that attitude.

Co-production

This term refers to inclusive working practices between experts by experience and organisations. It is about equal partnership and collaboration between parties passionate about improving service

provision; every person involved in the process of co-production is valued, respected and listened to, with everyone involved in designing, developing and delivering. Co-production improves services, improves communities and can help make Independent Living a reality for all.

Annex: Agenda from Seminar in Croatia

Seminar on Hate Crimes against People with Disabilities in Croatia (Zagreb, Hotel Aristos, 13-14 October)

OSCE participating States agree that hate crimes violate core values of tolerance, mutual respect and understanding, and pose a serious danger to the security of targeted groups, threatening to create long-lasting experiences of isolation, exclusion and fear. In Moscow OSCE participating States committed themselves, 'to ensure the protection of people with disabilities'. Participating States specifically committed themselves to combat hate crimes in Maastricht (2003). A comprehensive approach to responding to hate crime was set out in Athens (2009), where governments acknowledged the need to "take appropriate measures to encourage victims to report hate crimes", and committed themselves to enact hate crime legislation, to report sufficiently detailed hate crime statistics to ODIHR, and to develop the capacity of criminal justice agencies to respond to hate crime.

However, hate crime against people with disabilities is particularly underreported, with successive annual hate crime reports published by ODIHR revealing that only a small number of participating States collect data on disability hate crime, and that disabled people's organizations have very limited capacity for monitoring activities.

National Human Rights Institutions can play a key role in improving the recognition of and responses to disability hate crime. Ministerial Council Decision No. 10/07, adopted in Madrid (2007) encouraged participating States to establish national institutions or specialized bodies to combat intolerance and discrimination as well as to develop and implement national strategies and action plans in this field.

In November 2012 the Ombudsperson for Norway hosted a workshop in partnership with ODIHR involving people with disabilities from Denmark, Finland, Norway and Sweden. Participants relayed personal experiences of hate crime ranging from verbal threats to physical assaults. They agreed that the issue should be brought to

the attention of senior police and those involved in criminal justice policy in the region, in order to raise awareness of the problem and to identify steps that can be taken to measure and effectively respond to it. The event was preceded by a workshop co-hosted by ODIHR and the European Network for Independent Living (ENIL) in Dublin in May 2012, which identified similar issues experienced by people with disabilities in other European countries.

This seminar offers a forum for disabled people, the Office of the Ombudsperson for Croatia, government officials, political representatives, law enforcement practitioners to learn about the prevalence, impact and challenges of disability hate crime in Croatia, and to identify good practices and ways forward to effectively respond to it. Specifically, it aims to:

- Raise awareness about the concept and nature of disability hate crime, and to share experiences from Croatia;
- Present effective responses to disability hate crime at the national level, and;
- Identify ways forward for criminal justice officials, national human rights institutions, and disabled people's organizations.

AGENDA

Day one: 13 October

10.30-11.00 Arrival and coffee

11.00 – 11.15 Opening of the conference and review of aims and objectives

Disability Ombudsman for Croatia Anka Slonjsak and Jamie Bolling, Director of ENIL open the conference and explain the aims and objectives of the event.

11.15 – 12.00 Legal and conceptual approaches to disability hate crime in the OSCE region

Moderated by Jamie Bolling

Joanna Perry, hate crime officer, Office for Democratic Institutions and Human Rights gives an overview of approaches to disability hate crime and examples of how it has been defined and addressed in different countries in the OSCE region. Available international data on disability hate crime is shared.

12.00 – 13.30 Focus groups with refreshments

Participants are divided into two groups. One group is for disabled people and the second group is for practitioners. The purpose of focus group one is for disabled participants to share their experiences of disability hate crime and hostility in a safe and confidential space. Participants will be asked for their permission to share their experiences with the larger group in order to raise awareness about disability hate crime and hostility with professionals.

The purpose of group two is for professionals to discuss their understanding and knowledge of disability hate crime and to begin to explore their role in finding out more and taking action.

13:30 - 14.45 Networking lunch and coffee

14.45- 15.45 Setting the scene - experiences of disability hate crime in Croatia

Miro Griffiths, Policy Officer, ENIL gives an overview of personal experiences shared with participants

15.45-17.00 Disability hate crime, the situation in Croatia

Moderated by Joanna Perry

Davor Derencinovic, head of department for criminal law, Faculty of Law, University of Zagreb and Anka Slonjsak give an overview of the legal and policy situation in Croatia.

17.00 Close of day one and networking dinner

Day two: 14 October

9.00-9.15 Recap of day one and objectives of day two

9.15-9.45 Case study: Violation of rights of a person with disability found by the European Court of Human Rights: Case Djordjevic v Croatia

Presenter: Ines Bojic, lawyer

9.45 – 10.30 Case study: The United Kingdom approach to disability hate crime: on the journey towards improving understanding and responses to disability hate crime

Moderated by Joanna Perry

Presented by: Paul Giannasi, Ministry of Justice, United Kingdom lead on hate crime policy.

10.30-10.45 Coffee break

10.45 - 11.45 What is my role and what can I do in Croatia?

Moderated by Jamie Bolling

Participants work together with colleagues from different agencies and organizations to identify key actions that can be taken to improve information about, awareness of and responses to disability hate crime.

11.45 - 12.45 *Examples and ideas from small groups are shared in plenary. Participants agree actions for next steps.*

12:45 – 13:00 Ways forward and next steps: Branka Meic Salie, *Office of the Disability Ombudsman for Croatia*

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