



**HATE
CRIME**

Hate Crime in Austria
Pilot Report

Pilot Report - Hate crime in Austria

English Summary of Key points

Vienna, 2021

This English Summary is derived from the German short version of the pilot report of the Institute for the Sociology of Law and Criminology (IRKS) entitled “Hate Crime in Austria. Concept, legal framework, underlying data, spread and effects of prejudice-motivated crimes” dated June 2021, which concluded the project entitled “Expanded, systematic hate crime data collection and reporting of the Austrian Police “.

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Summary

Bias-motivated crimes or “hate crimes” are judicially criminal offences that are intentionally committed due to the actual or supposed belonging of a victim to a group that the perpetrator rejects (see Chapter 1). Bias-motivated crimes have stronger repercussions than other crimes do (waves of harm). In addition to the victim, these crimes affect all bearers of the same identity and possibly society as a whole. Thereby, victims of bias-motivated crimes have an increased feeling of insecurity and the willingness to report crimes to the police is often lower than for offences without prejudice motives.

Austria has sufficient legal foundations for the investigation and recognition of hate crime (see Chapter 2). However, in order to meet international standards fully, there was the following need for improvement: Creation of a victim-centred access through the comprehensive identification of prejudice motives and their systematic recognition, targeted education and training of the law enforcement authorities on prejudice crime and the provision of adequate and official data.

For this reason, the BMI worked on improving the systematic recognition of bias motives in criminal charges as part of the two-year EU-co-funded project with scientific support of the Institute for the Sociology of Law and Criminology (IRKS) (see Chapter 3).

During the development phase, four study trips, 17 consultations with civil society organisations and 15 criminal and sociological field interviews were conducted. For training approximately 30,000 police officers nationwide, a comprehensive e-learning seminar was developed and face-to-face trainings were carried out by specially trained multipliers.

On 1 November 2020, the “Motive” tab was activated in the police data processing system to recognise “bias motives by victim groups”. Since then, the data are transmitted to the judicial system via a specially created interface using “E-Justice”.

The nine categories of prejudice motives are age, disability, gender, skin colour, national/ethnic origin, religion, sexual orientation, social status and ideology/political views.

Bias indicators were formulated for the investigatory work of the police. These indicators are represented by the acronym “ERNST” (see Chapter 3).

The identification and recognition of bias motives has become an integral part of the work routine of the Austrian police since November 2020.

The **first half year of police recognition** (November 2020 to April 2021) was statistically evaluated by the IRKS. As usual with official police criminal statistics, only completed crimes investigations have been included. The key results are:

- In **1,936 bias-motivated crimes, 2,401 bias motives** were registered. With respect to the resident population, hate crimes were recorded most in Salzburg, Upper Austria and Vorarlberg. The criminal prosecution rate is well above the 2020 official criminal statistic average.
- The categories **“national/ethnic origin”, “ideology/ political views” and “religion”** were the ones most frequently assigned to the offences. In terms of bias motivations, “gender”, “sexual orientation”, Muslim faith and “disability” dominated in offences against life and limb, freedom, honour or sexual integrity and self-determination. On the other hand, offences against public peace, in particular hate speech and those under the (Anti-Nazi) Prohibition Act, prevailed in the categories of “skin colour” and the Jewish faith.
- Compared with the 2020 police criminal statistics, the suspects recognised in hate crimes were more often young males with Austrian citizenship, not residing in Vienna, excepting prejudice offences due to “gender” or the Christian faith. This was even more the case with hate speech and Nazi agitation.
- With regard to the sites of the crimes, as an example it may be stated that in hate crimes the high proportion of online crimes detected was conspicuous due to “skin colour” or Jewish affiliation. Prejudice offences against “Muslims”, on the other hand, were more often committed in the (semi) private sector and in institutions. A particularly large number of offences against other people’s assets, especially property damage, was observed in relation to “old age”, “social status” and the Christian faith.

By the start of 2021, the **survey on unreported cases** “Prevalence of bias-motivated crimes in the Austrian population” was carried out with 2,325 telephone interviews for the Mol/BMI and also analysed by the IRKS:

- Nearly four percent of those surveyed stated that they had been the victim of a hate crime. 98 bias motives were given in absolute numbers, first “gender” (especially women), then “social status” (especially men), “origin”, “age” and “religion”. The perception of security of hate crime victims (29 percent unsure) was significantly worse than those of other respondents who suffered a crime without prejudice motives (18.5 percent) or who reported no experience of victimisation (11.5 percent). Simultaneously, the likelihood of victims reporting hate crimes was far lower than for offences without prejudice motives (44 vs. 62 percent).
- These values are in the same range as those of international study results and they confirm the “hate crime” phenomenon, as it is known from civil society information and the available police data: Bias-motivated criminality is an everyday, common phenomenon that goes well beyond the realm of politically motivated, extremist crime.

That is why the core message for Police trainings runs as follows: **Hate crimes are SERIOUS and we take them SERIOUSLY. We identify and record them.**

1. Definition of hate crime

As part of the project for the systematic recognition of bias motives in criminal charges, a monitoring definition was developed that is based on the internationally established definition of ODIHR¹ (Hate Crime = criminal offence + bias motivation). This definition has been both adapted to the domestic legal situation and directly with the Federal Ministry of Justice:

Bias-motivated crimes, also known as hate crimes, are judicially criminal offenses that are intentionally committed due to the actual or supposed belonging of a victim or the object of the crime to a group that the perpetrators reject. They may be directed against life and limb, other people's property, honour or other legal interests. The key for hate crimes is that the victim or the object of the crime was selected, because from the perpetrator's point of view they represent a group against which they harbour derogatory prejudices or which they consider to be "undeservedly preferred".

Indications for recognising hate crimes arise from a comprehensive assessment of all the circumstances of the crime. Therefore, the attitudes of the perpetrators as well as the perspectives of victims and witnesses must be given special consideration.² Consequently, the phenomenon of "hate crime" must be understood much more broadly than that of "politically motivated" or "extremist" criminality, since the mostly discriminatory incidents in everyday life cannot be attributed to any "ideological" motivations³.

¹ The Office for Democratic Institutions and Human Rights (English abbreviation: ODIHR) is an institution of the Organisation for Security and Cooperation in Europe (OSCE).

² The selection of a victim for the mere purpose of committing a crime is by itself not a prejudice, especially when it comes to sexual or financial motives in individual cases.

³ This is proven by numerous studies, upon which the relevant international legal situation (see Chapter 2) is based. Hate crime is much more common than extremism because it largely overlaps with "discrimination", which, however, is not always (judicially) punishable. Initial evaluations of the new police recognition of bias motivations also confirm this approach.

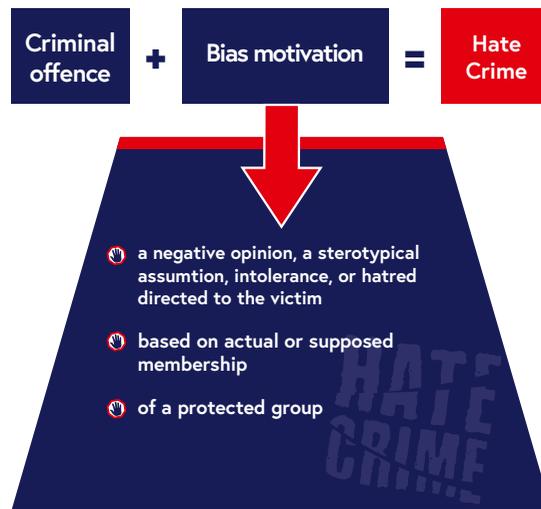


Figure 1: Monitoring-Definition of Hate Crime.

The groups rejected crime are defined by characteristics of identity (gender, ethnic/national origin, sexual orientation, religion, political views/ideology), body (age, disability, skin colour) or social status (e.g. homelessness)⁴ and are particularly protected under criminal law – especially by listing them in the offence of Hate speech (s 283 of the Criminal Code). However, the victim may also belong to several groups (“Intersectionality”), so that they may be even more affected (see Figure 2).

The act often sends an intimidating message of hatred to all those who have the same characteristics, so that they are also known as “message crimes”. Not only relatives, friends or neighbours could be affected, but also people who do not even know the victim but find out about the crime from the media, for example. Prejudice-motivated crimes trigger waves of harm.

⁴ The social position typically relates to marginalised segments of the population that have no lobby to represent their interests. It is essential that the negatively valued group affiliation is supposed by the perpetrators, so that basically anyone may be affected by prejudice crime. Occupational groups or other characteristics that are relatively easy to change in personal terms – at least to the perception of third parties – are not recognised or prosecuted by criminal law according to other stipulations (e.g. police officers).

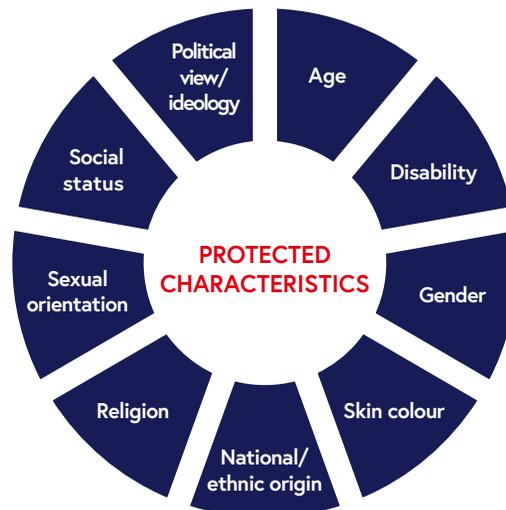


Figure 2: Victim groups – Protected Characteristics.

Based on this definition, police officers have been trained since August 2020 to recognise bias-motivated crimes and to record them in police data processing systems.⁵

2. Criminal law foundations

In addition to relevant fundamental, substantive and procedural law provisions in Austria, binding international and European law sources are applicable for the unbiased identification, sanctioning and statistical recognition of prejudice motives and for victim support.

The international legal framework comprises in particular the EU Council Framework Decision 2008/913/JHA on the criminal law fight against certain forms of racism and xenophobia, the prohibition of discrimination in the EU Charter of Fundamental Rights, the OSCE Ministerial Council Decision 9/09, and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on minimum standards for the rights, support and protection of victims of crime and the relevant case law of the European Court of Human Rights (ECHR), which has been applicable since 2003.⁶

⁵ The training programme of the Federal Ministry of Justice has also adopted this definition as of mid-2021.

⁶ This refers to the case of *Menson et al. vs. UK* (47.916/99; 6.5.2003). The case *Nachova et al. vs. Bulgaria* (43.577/98; 6.7.2005; Grand Chamber), established a broad and detailed judiciary line to this day.

Hate crimes in Austria, in addition to specific offences such as hate speech and those in the (Anti-Nazi) Prohibition Act, are generally recognised by aggravating circumstances as of sect. 33 para. 1 (5) of the Criminal Code. The most important relevant provisions in the Criminal Code (StGB) and in the Code of Criminal Procedure (StPO) have been successively developed and recently adapted:

- **Incitement (Sect. 283 Criminal Code)**

Hate speech is committed by anyone who incites violence in public or in front of many people or who calls for hatred against one of the protected groups, whose list was expanded in 2015 precisely because of the international obligations mentioned above (see Chapter 1). This also applies, if these groups or one of their members are pejoratively insulted and/or disparaged in public. The Hate-on-the-Internet-Control Act (HiNBG) 2021 introduced improved protection so that these offences may be prosecuted officially,⁷ if the additional requirements are met.⁸

- **Aggravating circumstances (sect. 33 para. 1, pt. 5 Criminal Code)**

In addition to hate speech and the Prohibition Act, this provision is central to prejudice crime, since it is applicable to any deliberate crime. When determining the sentence, racist, xenophobic or other particularly reprehensible motives can be weighted as aggravating. The term “particularly reprehensible” means that bias motivations targeted against one of the groups protected by sect. 283 Criminal Code or one of their members are particularly recognised. But this list is not formulated exhaustively.

- **Criminal offences against honour**

The core area of the phenomenon of “bias crime” includes especially Defamation (sect. 111 Criminal Code) and Slander (sect. 115 Criminal Code). A Slander is committed if someone insults, mocks, abuses or threatens to abuse someone in public or in front of at least three people. Honour crimes are generally offences subject to private charges, but here these cases become officially pursued as prosecutable offences if primarily motivated by the affiliation of the victim with a group (sect. 283 para. 1 Criminal Code) and the if victim authorises the police to prosecute (sect. 117 para. 3 Criminal Code, sect. 92 Code of Criminal Procedure).

⁷ Quote from s 283 para. 1, pt. 1 Criminal Code: “Groups of people defined by a church, religious community or others, according to the existing or missing criteria of race, skin colour, language, religion or belief, nationality, descent or national or ethnic origin, gender, disability, age or sexual orientation, or against a member of any such group.”

⁸ Judgements of the Supreme Court (OGH) since 2015 are summarised in the pilot report of the IRKS.

- **Victims in need of special protection (s 66a Code of Criminal Procedure)**

In 2016, the legal definition of “victim” was expanded (sect. 65 Code of Criminal Procedure, StPO). The procedural rights (sect. 66 Code of Criminal Procedure) were also extended at that time and the obligatory examination of the need for special protection was introduced. Accordingly, certain victims are considered automatically in “need of special protection”. In addition, according to sect. 66a para. 1 Code of Criminal Procedure, all victims have the right to the earliest possible assessment of their need for special protection by the police according to the criteria of age, physical or mental health, nature, severity and specific circumstances of the offense. In an internal decree of the Ministry of Justice victims of “hate crime” are specifically mentioned as a possible example. This status is associated with special procedural rights in accordance with sect. 66a para. 2 Code of Criminal Procedure.⁹

- **Process support (§ 66b Code of Criminal Procedure)**

The HiNBSG also extended the possibility of psychosocial and legal process support, if a “personal consternation” was determined by means of an individual case assessment. Victims notably of incitement, defamation committed online or insults are also entitled to claims if it is “necessary to safeguard their procedural rights” (para. 1).¹⁰

3. Systematic recognition of prejudice motives in criminal charges

3.1. Starting position and project

As of 2019, Austria had sufficient legal bases to identify and recognise hate crime. Nevertheless, the following needs for improvement were identified according to international standards: to comprehensively identify and sanction prejudice motives, to provide targeted training and further education to the law enforcement authorities on prejudice crime, to provide adequate official data as well as to recognise and meet the needs for special protection of these victims as best as possible.¹¹

⁹ Introductory decree of the Federal Ministry of Justice dated 30/5/2016 on the Amendment to Criminal Procedure Law I 2016 (BMJ-S578.029/0006-IV 3/2016). On this occasion, the judiciary is not bound by the assessment of the police.

¹⁰ Commentary to the Government Bill 481, Supplement (s) to the stenographic minutes of the National Council 27. Legislative period 26; See also the decree of the Federal Ministry of Justice dated 24 December 2020 on the criminal and media law regulations of the federal law, on taking action to combat hate on the Internet (Hate-on-the-Internet-Control Act - HiNBSG).

¹¹ Since 2012, the BVT has annually and regularly reported the following information from the statistics of the annual report for the protection of the constitution to the ODIHR to the European Union on “Hate crime”: Data from the phenomenon category “Right-wing extremism”, subdivided into xenophobic/racist, antisemitic and antimuslim.

During a 25-month EU co-financed project the BMI has been working on improving the systematic recognition of prejudice motives in criminal charges starting on 1 July 2019 and the Institute for the Sociology of Law and Criminology (IRKS) has been providing continuous scientific support as a project partner.¹²

One of the project goals is to train public security service offices through continuous education and training on prejudice crime and to support them with a practical method of recognition. The analysis results should also enable a data-based foundation for the assessment of risk situations and for the development of prevention strategies and measures locally, regionally and nationally. The direct, electronic transmission of bias motives to the judiciary makes police activity more visible and further criminal prosecution qualified and facilitated. Therefore, the key target groups of the project are the enforcement body of the Federal Police, victims, witnesses and the entire population. The implementation of these goals should ultimately increase social trust in law enforcement authorities.

3.2. Implementation in police work

In the development phase, four scientifically supported fact-finding missions (Slovakia, Netherlands, Denmark and Germany) were carried out,¹³ 17 consultations were held with Austrian civil society organisations¹⁴ and 15 criminal-sociological field interviews conducted with carefully selected law enforcement officers. Five vignettes (model examples) of hate crimes were applied to test whether the definition is understandable and whether the categorisation system developed was sufficiently practicable. The discussions with the reporting offices and victim support facilities were used to clarify the content of the data analysis and training activities, in particular to be able to best address these dimensions of diversity¹⁵ which are also specially protected under criminal law (see Chapters 1 and 2).

¹² The appeal from the programme “REC- Rights, Equality and Citizenship” was REC-RRAC-HATE-AG-2018 – “Restricted call for proposals for public authorities on preventing and combatting racism, xenophobia and other forms of intolerance, and in particular hate crime and hate speech”. The EU project title is “Expanded, systematic hate crime data collection and reporting of the Austrian Police” [Working title: Extended, systematic data recognition and collection on Hate crime by the Austrian police].

¹³ Bratislava was visited on 15 October 2019, The Hague on 19-20 November 2019, Copenhagen on 27-28 November 2019 and Berlin as well as LKA Saxony on 21-21 January 2020.

¹⁴ In particular, the following NGOs were involved in the development process: Styria Anti-Discrimination Agency, Afro Rainbow Austria, Austrian Disability Council, Documentation and Advisory Centre on Islamophobia and Anti-Muslim Racism, Gay Cops Austria, Israelite religious community in Vienna, Lambda Legal Committee, Observatory Intolerance and Discrimination against Christians in Europe, Romano Centro, Weißer Ring Austria, ZARA - Civil courage and anti-racism work and Caritas P7 – Vienna Service for the Homeless.

¹⁵ Religion / Church / Political View / Ideology, Race / Skin Colour / Language, Nationality / Origin / Descent / Disability / Sexual Orientation / Gender / Age and Other (e.g. Social Status).

To provide the approximately 30,000 Austrian police officers with comprehensive knowledge of the phenomenon of hate crime and its new technical recognition, a three-module e-learning seminar and a two-day multipliers` training course were designed based on the blended learning methodology.¹⁶ Starting from August 2020, this training strategy was implemented in three phases. It is still in progress, as COVID-19 protective measures prevented an earlier completion (see Figure 3).¹⁷

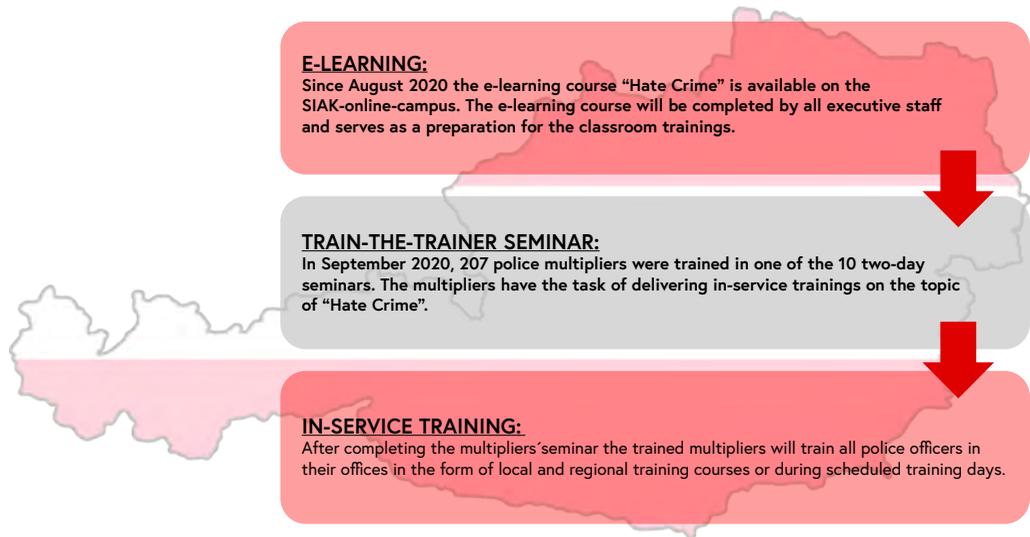


Figure 3: 3 levels of training strategy.

On 1 November 2020, hate crime recognition was activated in the police logging program “PAD” as a separate “Motive” tab with the translated title “Bias motives (hate crime) by victim groups”. The data entered since that point is being transmitted to the judiciary via a specially created interface using E-Justice (ERV).

¹⁶ This strategy was designed by Dept. III/10 and II/1 together with training experts from SIAK, in particular the Centre for Resource Management and Corporate Quality.

¹⁷ As of 10 May 2021, the online course had already been completed by 22,788 participants who were awarded certificates after completion. In this context, statistics by provinces (Bundesländer) and regional capitals (Landeshauptstädte) are not kept.

Entering one or more bias motives via tick boxes is compulsory for some offences (e.g. incitement), possible for most deliberate offenses and not possible for individual offenses (e.g. negligence). There are nine categories of bias motives, six have additional characteristics to choose from. Furthermore, explanations of terms are offered, which appear on the screen by hovering the mouse over an information symbol (“Mouse over texts”/ “Tooltips”). If the sub-term “Other” is selected, the affected group must be described in detail. At the end, there is a free text field in which more detailed information on the bias indicators determined can be provided, without entering personal data. If there is no motive, the box “No bias motive available” must be ticked (see Figure 4).

The nine categories of prejudice motives are:

- Age¹⁸
- Disability¹⁹
- Gender²⁰
- Skin colour²¹
- National / Ethnic origin
- Religion²²
- Sexual orientation²³
- Social status²⁴
- Ideology / Political views²⁵

¹⁸ Tooltip: “Age” includes people of all ages – such as seniors, children, adolescents or adults.

¹⁹ Characteristics: Physical impairment/Sensory impairment and Mental/Cognitive impairment. Tooltip: “Disability” involves people who have a physical, mental or cognitive disability and/or a sensory impairment that makes it difficult to participate in life in society in the long term.

²⁰ Characteristics: Various/Inter, Woman, Man and Others. Tooltip: “Gender” includes the official civil status as well as non-traditional appearance and demeanour (e.g. for “Other”: Transgender, Transvestite, Drag Queen / King).

²¹ Tooltip: “Skin colour” describes the classification of people on the basis of external, supra-individual characteristics (e.g. pigmentation of the skin, facial features) without designating a specific national or ethnic origin (e.g. continents, not citizenship).

²² Characteristics: Christians, Jews, Muslims and Others. Tooltip: These three groups may be selected separately because of the assumed frequency of occurrence. For “Other” please specify in detail.

²³ Characteristics: Bisexuals, Heterosexuals and Homosexuals.

²⁴ Characteristics: Homeless and Others. Tooltip: “Homeless” may be selected separately because of the assumed frequency of occurrence. For “Other” please specify in detail.

²⁵ Characteristics: Parties, Western Democracies and Others.

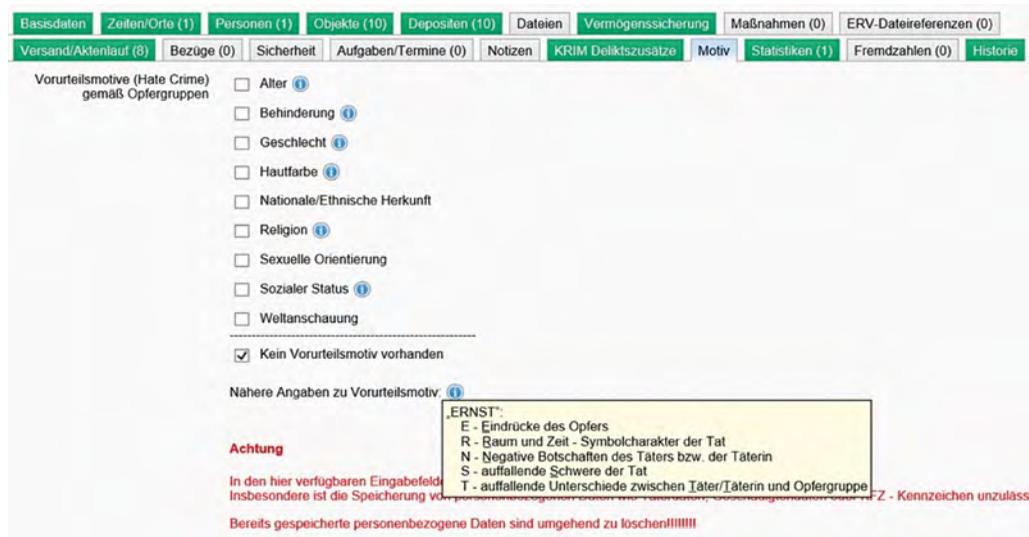


Figure 4: Screenshot - PAD recognition of prejudice motives.

Based on the state of international research and the practical experience of NGOs concerning bias indicators, specific indicators have been developed to help law enforcement officers identify hate crimes. A positive assessment of just one or more prejudice indicators could establish a bias-motivated offense. In case of doubt, the police officers are required to record the bias motivations that qualify the offense so that the public prosecutor and court may take them into account if necessary. These indicators were encapsulated as the acronym “ERNST” (German: “serious”) and comprehensibly summarised: “Hate crime are SERIOUS and we take them SERIOUSLY. We identify and record them.”²⁶

The five letters “ERNST” are:

- E ... stands for impressions of the victim (“Empfindung”).
- R ... stands for Space and time (“Raum und Zeit”).
- N ... stands for negative messages by the perpetrator (“Negative Botschaften der Täter”).
- S ... stands for seriousness of the act (“Schwere der Tat”).
- T ... stands for perpetrator (“Täter”).

²⁶ The Federal Ministry of the Interior created a logo for this topic, which is protected by trademark.

This test scheme was and is the subject of the mandatory training courses. The training manual developed by the project team contains test questions, which if answered positively, indicate the presence of a hate crime. Moreover, other internal information channels are utilised in order to provide the police with practical support.²⁷

Since all victims have the right to the earliest possible assessment and determination of their need for special protection (see Chapter 2), in the interrogation tool, an application integrated in the PAD, an appropriate clarifying note regarding the victims of hate crime was also implemented under “Need for special protection” – “Additional information”.

To ensure data quality, 5 levels of quality control are provided and have been regulated by decree:

1. Professional training
2. Quality control at the Police station level
3. Quality control at the level of the urban and rural Police districts
4. Quality control at the level of the Police Provinces (Landespolizeidirektionen)
5. Quality control at the level of the Federal Ministry of the Interior and the Federal Crime Intelligence Agency (Bundeskriminalamt)

In addition to this general quality assurance mentioned above, since November 2020 all entries have been fully reviewed by the project team as an additional level 5 review, and, if necessary, amendment requests were sent to the officials in charge. Based on this monitoring a targeted keyword search was carried out in the free text fields in order to identify unmarked bias-motivated offenses where amendment requests were sent out as well. These quality assurance methods are continuously improved and they are made available to support all control levels.

To conclude, the systematic recognition of bias motivations in criminal charges has been fully implemented since 1 November 2020 and this system is now being continued by the police in addition to training and evaluation activities.

²⁷ The primary purpose of the introduction of the decree is the systematic recognition and evaluation of prejudice motives in criminal charges and the publication of teaching content on “Hate Crime” on the intranet pages of the LPDs of Dept. II/1 dated 29 October 2020 (GZ 2020-0.670.485) to all LPDs and federal authorities of the BMI for internal guidance. In addition, practical and detailed information may be found in PAD online help, in the KLF Criminal Guidelines and on the internal websites of the LPDs.



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