LIFECYCLE OF A HATE CRIME

NATIONAL REPORT: CZECH REPUBLIC

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1. RESEARCH METHODOLOGY

1.1 RESEARCH PROJECT AND DETAILS OF DATA CONSTRUCTION

The objective of this research was to determine how hate crimes are investigated and punished in the Czech Republic (CR). This was achieved by analysing the experiences of individual actors in the criminal proceedings for this type of crime. Our corpus of data included the following categories of informants: offenders, victims, defense attorneys, public prosecutors, and judges. Additional sources of data consisted primarily of secondary literature (legislation, by-laws, concept documents, legal analyses, etc.).

The project focus suggested a specific approach to the data construction. It is relatively difficult to gain access to the population for each of the categories in the hate crime research corpus. Informants within the justice system (public prosecutors and judges) are small in number and, additionally, are restricted by regulations imposed by superior bodies. In practice, this meant that potential informants could not be contacted directly, but only by submitting a formal request to individual courts and public prosecutors' offices. Access to these people was further complicated by the fact that, in the CR, hate crimes constitute a relatively narrow slice of criminal activity,[1] and particular informants who deal with this activity are difficult to identify in advance (see below). To target these individuals, then, we relied upon help from the institutions representing individual categories of informants.

Attorneys who had represented hate crime offenders or their victims in the past were also difficult to gain access to. Because no records are kept of these individuals, we were forced to identify potential informants in advance using our prior experience, or by analysing court judgments or media content. This already reduced sample size shrank further with the frequent refusal of those contacted to take part in the research for a number of reasons.

It was similarly difficult to gain access to offenders and victims of hate crime. Data protection laws, which mandate that personal data concerning offenders and victims be anonymized in judicial records provided to the public, have rendered the population in these two categories invisible. It was therefore necessary to approach these individuals via the prisons and probation institutions responsible for monitoring the offenders, along with organizations focused on helping hate crime victims.

1 In 2016, 77 people were convicted of hate crime; 54 people in 2015. Overall, in the last eight years, the number of persons convicted has ranged from 50 to 100 each year. In 2016, 109 persons were charged with hate crime (30 of whom were subject to accelerated proceedings) and in 2015, 137 persons (22 of whom faced accelerated proceedings). Over the past eight years, the number of people charged has oscillated between 109 and 271. See: Ministerstvo vnitra ČR. 2017. Zpráva o extremismu na území České republiky v roce 2016. Praha: Ministerstvo vnitra, Odbor bezpečnostní politiky a prevence kriminality. Available at: http://www.mvcr.cz/soubor/zprava-o-extremismu-na-uzemi-ceske-republiky-v-roce-2016.aspx.

1.2 IDENTIFYING AND CONTACTING INFORMANTS

Informants were identified and contacted in two phases. During the first phase, we contacted the lead organizations for the justice system, legal representation, and the prisons—the Czech Judicial Union (CJU), the Supreme Public Prosecutor's Office (SPPO), the Judicial Academy (JA), the Czech Bar Association (CBA) and the General Directorate of the Prison Service (GDPS). We anticipated that they would provide access to experts in the justice system, legal profession, and to offenders. But with the exception of the GDPS, none of these institutions mediated contact with any of the informants officially. Also unsuccessful was an attempt to make mass contact with all lawyers via the CBA. There was no response to requests posted on the CBA's website[2] or in their official magazine, *Bulletin Advokacie*.[3]

For this reason, we embarked upon the second phase of contact and identification, this time primarily employing personal contacts, along with an analysis of court decisions in hate crime cases and a media analysis of cases in which hate crime was mentioned. The task of identifying appropriate informants, however, clearly differed based upon the type of actor being contacted.

1.2.1 JUDGES AND PUBLIC PROSECUTORS

During the first phase of identifying potential informants from among judges and public prosecutors, we contacted the CJU and the SPPO, who supported the research in principle, for recommendations as to which individual agencies (municipal, district, and regional prosecutors and courts) to address, in each case sending to the chief judge and the district or regional public prosecutor. We asked them to pass our request to whichever individual was in charge of or had experiences with hate crime at that agency. This was typically a judge or public prosecutor specializing in crime with an extremist subtext, or violent crime.

Because of a low response rate, after six months had elapsed we resubmitted the requests for cooperation to those judges and public prosecutors who had not responded. A substantially greater number of responses were received from public prosecutors, but more than half of the institutions contacted refused to take part. The chief reason given was the relative rarity of this type of crime, which meant that the institutions felt less than competent to provide potential informants in the area. Participation was also refused because of heavy work schedules. The same held true with judges. They declined to take part because of inadequate experience with hate crime, or simply because individual judges concerned with this type of crime were not interested in participating in the research. A substantial number of requests remained unanswered. The table below summarizes the attempts made to contact individual judges and public prosecutors.

2 http://www.cak.cz/scripts/detail.php?id=16032.

3 http://www.cak.cz/scripts/detail.php?id=16032.

Table 1: Results of the first and second phases in contacting judges and public prosecutors to participate

Institution	Number of requests sent	Number of positive responses	Number of negative responses	Number of unanswered requests
District Courts	87	6	21	60
Regional Courts	8	0	3	5
District Prosecutors	87	8	52	27
Regional Prosecutors	8	2	5	1

In the third phase of identifying appropriate informants, we made either telephone or written contact with particular judges and public prosecutors selected on the basis of their experience with hate crime. To select them, we analysed several types of documents:

- court rulings and statements of charges in which hate motivation was proven or detailed;
- annual reports of criminal justice agencies that provide information about events in which hate crime played a role;
- media reports on hate crime cases.

During this phase, we attempted to make use as well of informal contacts obtained by individual team members in other research projects. The main reasons given for refusal were once again a lack of experience with the issue, a heavy workload, change of job description, conflict of interest, or confidentiality restrictions. 8 judges in all refused outright to take part. Another 24 failed to respond to our request. 19 public prosecutors refused to take part, another 5 did not respond.

An attempt to acquire additional informants via the snowball sampling, in which informants who had already agreed to take part were asked to recommend other individuals with experience in the area of hate crime, proved ineffective from a practical standpoint. They generally had no information about experts from other courts or prosecutors' offices.

Utilizing this approach, over the course of 18 months we were able to conduct 10 interviews with judges and 19 interviews with public prosecutors. In two cases, a pair of public prosecutors took part in a single interview.

1.2.2 ATTORNEYS

The identification of attorneys who had defended hate crime offenders (hereinafter defence attorneys) and legal representatives for the victims of these crimes (hereinafter representatives) was conducted in a different manner. In the first phase, we contacted the Bar Association, which supported us by placing a request for participation directed at all attorneys on its website. Although this brought no response, it did at least serve as a symbolic element that could be pointed to when we contacted individual attorneys. These were identified on the following basis:

- prior experience with team members in other, similarly oriented research;
- personal contact with defense attorneys and representatives based on team members' prior work experience;
- analysis of media reports on hate crime.

Using this approach, we put together a list of 42 defense attorneys and representatives whom we then contacted in writing and by telephone. Roughly half of the defense attorneys refused participation, their main justification being a lack of interest in participating in the research, and a heavy workload. Those defense attorneys who did agree to take part, however, often had to be contacted more than once because of their workload. It was therefore not unusual for six months to elapse between the time contact was first made and the date of the actual interview. In one case, the informant failed to appear at the agreed-upon location. With representatives, by contrast, the process was much smoother—the return rate was almost 100%.

Using the approach described above, we were finally able to conduct 20 interviews. Of these, 10 were with defense attorneys and 10 were with victims' representatives. It should be noted, though, that at least 3 defense attorneys had also had experience in representing hate crime victims. In one instance, two attorneys took part in a single interview.

1.2.3 OFFENDERS

With the previous categories, we have been able to utilize both the mediation of superior bodies within the criminal justice system and complementary techniques. In selecting hate crime offenders, however, we were fully dependent upon the institutions in charge of carrying out the offenders' sentence. During the first phase, we officially contacted GDPS with a request for help in the research project. On the basis of these requests, we gained access to a single prison, where a single offender was selected for an interview.

Afterwards, we addressed every prison in the CR with a similar request. 21 out of the 25 prisons we contacted to take part in the research responded, 4 did not. 16 of the 21 responses we received were positive.[4] But the authorized representatives of only a few of these prisons were able to identify offenders who had been sentenced for hate crimes. In the end, 12 hate crime offenders were selected for potential participation in our interviews. 4 offenders agreed to the interview, 8 did not. The reasons for their refusal are unknown.

4 Refusals were made for security or organizational reasons, or no justification was offered.

Table 2: Results for Czech prisons contacted to take part in the research

Number of requests sent to prisons	Number of responses	Number of prisons willing to participate	Number of HC offenders identified in prisons	Number of HC offenders willing to take part	Number of interviews recorded on Dictaphone
25	21	16	12	4	3

Once we had exhausted possible choices within the prison system, we proceeded to the second phase of our selection process, this time with the help of Probation and Mediation Services (PMS). First, informants were selected who fulfilled two basic criteria: 1) they had been sentenced for hate crime sometime within the last five years, and 2) they were clients of Probation Services during the period in which we made contact. These individuals were then acquainted with the research by their probation officers, who asked whether they would agree to take part in the research. If they agreed, we were provided with their telephone number, and a member of the research team subsequently contacted them. Six PMS clients agreed to take part in interviews. Interviews were actually conducted with five of them. For the sixth interviewee, we were unable to mutually agree a time for the interview to take place.

Using the approach described, in the end we conducted 10 interviews with hate crime offenders. Four of these were still serving their sentences; the remaining Five were free on probation.

1.2.4 VICTIMS

The final category of actors in hate crime proceedings comprises victims. We encountered difficulties in selecting and contacting potential informants in this category, as well. The victims were mostly selected with help from the organization In IUSTITIA on the basis of legal aid that was either currently being provided or had been provided earlier. The victims were initially contacted by In IUSTITIA specialists, who asked whether they would take part in the research interviews. If they agreed, the researchers made personal contact with them. In this way, a total of 14 victims were selected, 9 of whom agreed to take part. Additional victims were identified on the basis of publicly available information on criminal cases with a hate motivation. Four victims were selected in this manner, only one of whom agreed to be interviewed.

Using this approach, we were finally able to conduct 10 interviews with victims of hate crime.

1.3 TOTAL NUMBER OF INTERVIEWS

Across categories, we conducted 68 interviews. We employed a purposive, unrepresentative sample constructed to reflect the research objective: to gain insight into hate crime criminal proceedings from the standpoint of selected actors. Also visible in the sample, however, was the difficulty we faced in obtaining informants who are part of a population that is either difficult to access or completely hidden from view.

The following table summarizes interview numbers for each individual category of informant, further broken down by gender and age. More interviews were conducted overall with males—women comprised less than one-third of informants. The lowest numbers of women were found among offenders (none) and public prosecutors (three). In terms of age, judges comprised the oldest category. The other categories ranked by age from oldest to youngest as follows: public prosecutors, victims, attorneys, and offenders. The average age in the offender category was 33, 17 years younger than the average age of judges, at 50. The oldest informant was 65 at the time of the interview, the youngest 23. For more detailed information, see Table 3.

Table 3: Number of interviews by role and sociodemographic characteristics

Informant Category	Number of interviews	Gender		Age				
		M	F	18-25	26-35	36-45	46-55	56-65
Judges	9	5	5	0	0	3	5	2
Public Prosecutors*	19	16	3	0	1	9	4	3
Attorneys	20	12	8	0	6	11	3	0
Offenders	9	9	0	3	3	2	1	0
Victims	10	6	4	0	3	5	0	2
Total	68	48	20	3	13	30	13	7

* Two prosecutors refused to state the date of birth.

1.4 CONDUCTING AND TRANSCRIBING INTERVIEWS

The informants were interviewed about their experience with hate crime criminal proceedings on the basis of a structured set of questions, some of which were prepared by the project investigator. In addition to this mandatory section, there were questions that reflected the Czech context. Three semi-structured interview variants were used in all. One variant was jointly employed for attorneys, public prosecutors, and judges, with specific questions tailored to each category. Two further variants were designed for offenders and victims.

With two exceptions (one offender and one public prosecutor), the interviews were recorded using a Dictaphone. In almost every case, the choice of the location and time of the interview was left up to the informant or the pertinent institution. All

interviews with judges and public prosecutors were conducted at their places of work. Interviews with attorneys took place for the most part in their offices or in adjacent cafés. Interviews with offenders took place either in prison, at their place of residence or in cafés or pubs, and those with victims at work, in cafés, or at In IUSTITIA.

In total, we recorded almost 72 hours of interviews. Their average length was approximately 60 minutes, with a range of 24 to 132 minutes. In no case was the interview interrupted prematurely. Transcripts of the interviews totalled 1913.6 normed pages. More detailed information on the interviews is given in the annex to this research report.

Word-for-word transcripts were made of the interviews, each of which was then gone over by another editor to rule out any sort of inaccuracy in the transcription or the resulting interpretation. The transcripts attempt to preserve the language used by the interviewer and the informant as closely as possible, including any pauses or expressions of emotion such as laughter or sighs. In those cases where part of an interview was used for purposes of illustration in the analysis, we edited the language to make it more formal.

1.5 ANALYSIS OF INTERVIEWS

We subjected the transcripts to analysis in two phases. During the first phase, we coded the interviews using preselected themes (professional experience, concrete experience with hate crime, the role played by informants in various phases of the criminal proceedings). This was done in such a way as to enable systematic analysis and mutual comparisons. Coding was done using MAXQDA software by a single researcher in the interest of keeping the codes consistent. During the course of the analysis, the individual codes chosen were then discussed with other team members. Further codes and subcodes came to light during the interview coding process, and these were used to complement the original themes. Thus, a combination of deductive and inductive analytical techniques were employed, resulting in the identification of approximately 190 codes in the final phase.

During the second phase, the interviews thus coded were analysed, with each category of informants treated separately (judges, public prosecutors, attorneys, offenders, and victims). Dominant themes and thoughts that arose in the interviews were identified in the course of these analyses, dependent upon the professional and local context and the research objectives. We subsequently compared the results of the thematic analyses in order to foreground specific views and approaches to the problem taken by individual groups.

1.6 RESEARCH ETHICS

Because of the theme of the research and the data gathering techniques chosen, we placed greater than usual emphasis on research ethics. With this in mind, we created an ethics commission comprised of social scientists who provided comments

on the wording of the interview questions and on data handling. They were: Kateřina Nedbálková, Kateřina Sidiropulu Janků, Kateřina Tvrdá, Petra Lupták Burzová and Petr Krčál. We took all of their suggested changes into account.

Before each interview, an explanation was offered both in writing and in person of the research objective, the content of the interview, the role of the participant in the research and the participant's rights, and how the data gathered would be handled. Almost none of the informants expressed any interest in having a copy of the interview recording or transcript. A substantial number were, however, interested in the results of the research. All of the informants confirmed their participation by granting informed consent. Two public prosecutors refused to sign the informed consent document (appended to this report) or to provide any of their own personal data. They did, however, agree to take part in the research both before and after the interviews with them were conducted. For this reason, we decided to include these interviews in the analysis. In some cases, participation was conditioned upon informal permission from the informant's superior.

We requested that each informant grant consent to the use of a Dictaphone in advance of the interview. As noted above, two informants refused to allow Dictaphone recording but agreed that notes could be taken. Interviewees were allowed to request that recording be stopped or that the interview be aborted at any time. At the end of the interview, we requested that interviewees bring up any themes they considered pertinent to the issue that had not already been raised.

The interviews were transcribed either by team members or by professional transcriptionists working under contract. The confidential nature of the information being transcribed was explained to the transcriptionists, and they were asked to erase the interview recordings and their transcripts once the final version had been submitted.

All informants were guaranteed anonymity. Judges and attorneys were additionally offered the option of making the fact of their participation publicly available, but none elected to do so.

1.7 HOW SHOULD THE FINDINGS IN THIS RESEARCH REPORT BE READ?

This research report is based exclusively on interviews with actors who have personal or professional experience with hate crime. The research design was mainly built around the semi-structured interview. This means that while all informants in individual categories were questioned about some themes, other themes regularly emerged only during the course of the interview. If these themes came up a significant number of times or if they were of adequate intrinsic interest, they were included in the analysis. No other data techniques, such as media analysis, decision analysis, statistical analysis, etc., were used. The chief investigator on the project decided on interviews with subsequent analysis as the main research design.

The chief investigator also designated the categories of informants to be explored—offenders, victims, attorneys, public prosecutors, and judges. On our own initiative during the course of the project, we also conducted interviews with representatives of the Police of the CR, who in our opinion play a key role in the life cycle of hate crime. However we elected not to include these interviews in the resulting analysis. The main reason was the project's orientation towards selected categories of informants. To add a new category would mean conducting at least another 10 interviews, and this was not possible for financial reasons.

For this research report, the interviews were used chiefly as a source of information on a theme that has not yet been well-mapped, a "verbalized record of life experience"[5]. We did not analyse their structure, their meaning, nor even the situational context in which the interviews took place.

Such an approach understandably has its limits. Three points will serve to illustrate the importance of this for the status of this research. They should be kept in mind as the report is read.

First, the interviews were arranged and conducted under the auspices of the non-governmental organization In IUSTITIA, which offers assistance to victims of violent hate crime. The research team was composed of two permanent employees of the organization, along with two researchers hired expressly to implement the project. It is likely that this influenced not only decisions about which actors to contact for participation, it also influenced the character of the information provided during individual interviews. Our informants may have adapted what they said to what they believed we wished to hear or, contrarily, what we wished not to hear.[6] This is, however, an unavoidable occurrence in any research project that utilizes an interview-based methodology.

Second, information provided as part of interviews whose goal is to capture practical experience and opinions is always of limited reliability. Interviewees may not remember all their experiences clearly, and the events they recount may contain details that actually come from other unrelated events. Alternatively, informants may emphasize some events, moments, or aspects at the expense of others, etc. In addition, the informant categories used in the research, from the standpoint of the court proceedings, are related to each other in various—and sometimes competing—ways. In interpreting court decisions, it is therefore always essential to take into account the position from which they speak.

Finally, it should be noted that, as a rule, neither the judges, public prosecutors, nor the attorneys were actively questioned about their knowledge of the law. For this reason it was possible that their understanding of it would contain pronounced misinterpretations, and indeed this sometimes turned out to be the case. We accordingly faced the dilemma of what to do about these inaccuracies. On the one hand, we were interested in the informants' opinions whether or not they reflected a correct understanding of the law on hate crime. On the other, we did not wish to propagate

5 Hájek, M., Havlík, M., Nekvapil, J. 2012. "Narativní analýza v sociologickém výzkumu: přístupy a jednotící rámec." Sociologický časopis/ Czech Sociological Review 48 (2): 203.

6 Some informants took a direct part in cases in which attorneys who were working through In IUSTITA represented victims, and more than once used the interviews as a forum to talk about their work.

these incorrect notions further. In the end, we decided on a solution as follows: we presented the informants' opinions, but appended to them a disclaimer.[7]

Despite these limitations, the findings contained here offer unique insight into criminal proceedings concerned with hate crime in the CR. These findings are based upon the opinions of pertinent actors within the process, with whom we conducted a substantial number of interviews. Although the findings cannot be generalized to include all judges, public prosecutors, attorneys, offenders, or victims, taken together they offer important testimony about the phenomenon whose relevance is likely to grow. This, at least, was the opinion of some of our informants.

7 We decided to take a similar approach to statements that were intrinsically prejudiced. Here, too, we decided to use them when they were central to the argument being made. But in this case, we appended no comment, because we do not see it as our role to pass moral judgement on the informants.

2. HATE VIOLENCE AND CZECH LAW

In this chapter we briefly focus on the introduction of the legal norms demarcating the substantive framework for hate violence, the procedural position of hate crime victims, and rights of the victims over and above that process. The prosecution of hate violence rests on three pillars: Criminal Code, Misdemeanour Act, and Civil Code.

2.1 CRIMINAL CODE

Hate crimes in the CR are defined by the individual merits of a case as prescribed by Act No. 40/2009, Criminal Code.[8]

Historically, the law protects only few groups at risk of hate violence. Only persons attacked on the grounds of their race, ethnicity, faith (or lack thereof) nationality or political beliefs/affilitiation. Aside from these five protected characteristics, the crime per section 356 of Instigation of Hatred towards a Group of People or of Suppression their Rights and Freedoms also protects any other group from attack. This regulation covers groups defined by health status, lifestyle, sexual orientation, etc. The provision for considering such motivation as a general aggravating circumstance (see below) also counts on the notion of any other group. At the level of qualified substantive merits, however, we do not find the concept of "any other group" mentioned. This gives rise to an obvious disproportion between the protection afforded to persons attacked on the basis of their real or perceived ethnicity, faith, nationality or political beliefs and the lack of protection for persons attacked on the basis of their real or perceived health status, sexual orientation or social position.

The structure of the Criminal Code is a bit complicated and needs some explanation. Theoretically, the Criminal Code works with three categories important for understanding the hate crime conceptualization:

- basic substantive merit,
- qualified substantive merit,
- general aggravating circumstance.

Basic substantive merit is an abstract description of a crime as it is defined in the Criminal Code. The Criminal Code recognizes basic merits involving bias motivation to be an essential, condition of the definition of specific crimes. This means that

8 www.ejtn.eu/PageFiles/6533/Criminal Code of the Czech Republic.pdf.

unless the bias motivation is recognized and proven in such cases, no crime is considered to have been committed. Bias motivation is, in other words, the condition sine qua non for finding somebody guilty of such a crime. There are two basic substantive merits where bias motivation constitutes a substantial part of the definition:

Section 355 Defamation of a Nation, Race, or Ethnic or other Group of People

(1) Whoever publically defames

a) any nation, its language, any race of ethnic group, or

b) a group of people for their actual or presupposed race, their membership in an ethnic group, their nationality, their political or religious beliefs or because they are actually or supposedly without religion, shall be sentenced to imprisonment for up to two years (…)

The crime of Defamation of a Nation, Race, or Ethnic or other Group of People may be committed only when the exclusively-defined groups of people mentioned have been wronged. Defamation of any other group or individual is not criminalized. Similarly, Section 356 of the Criminal Code bans instigation to hatred:

Section 356 Instigation to Hatred towards a Group of People or Instigation of Suppression of their Rights and Freedoms

(1) Whoever publically instigates hatred towards any nation, race, ethnic group, religion, class or other group of people, or instigates the suppression of the rights and freedoms of members of said group shall be sentenced to imprisonment for up to two years (…)

From the perspective of ODIHR´s definition of a hate crime, both of these basic substantive merits may be considered hate speech, since without bias motivation, no criminal offence is considered committed.[9]

The second concept is that of a qualified substantive merit. For certain crimes (e.g., the crimes of Murder, Grievous Bodily Harm, Abuse of Competence of Public Official, Extortion etc. – see below), hate motivation is considered a qualified aggravating circumstance which obligatorily shifts the length of sentencing. Similarly, the qualified substantive merit may consist, for other criminal merits (i.e., non-hate crimes), of an attack against a child or elderly person, usage of a weapon, recurrence of the crime, the inhumanity of the act, etc. In such situations, we generally speak about qualified substantive merits. The court is obliged to sentence the convict within that increased sentencing range and no judiciary discretion is permitted. Should bias motivation not be proven, the defendant can only be convicted of the substantive crime (basic substantive merit).

9 http://hatecrime.osce.org/what-hate-crime.

Section 140 Murder

> *(1) Whoever intentionally kills another person shall be sentenced to imprisonment for 10 to 18 years. (…)*
>
> *(3) An offender shall be sentenced to imprisonment for 15 to 20 years or to an exceptional sentence of imprisonment if he/she commits the act referred to in Sub-section (1) (…)*
>
> *g) on another person because of that person's actual or presupposed race, membership in an ethnicl group, his/her nationality, political beliefs, religion or because of his/her actual or presupposed lack of religious faith (…)*

In a case of bias-motivated murder the court is obliged to impose a sentence of between 15 to 20 years. If the bias motivation is not proven beyond any reasonable doubt, the court imposes the sentence within the range of 10 to 18 years. Qualified substantive merit applies, however, to just few crimes (see the table below).

Having said all this about basic and qualified merit, we should also mention the specific crime of Violence against a Group of People and Individuals because of its confusing framing within the Criminal Code.

At first sight this section seems to establish a basic substantive matter as an individual section within the law. However, a closer look reveals that Section 352 para 2 is in fact the qualified substantive matter of Section 352 para 1 and Disorderly Conduct (Section 358). In other words, Section 352 para 2 complies with ODIHR´s definition of a hate crime – even without bias motivation, the conduct establishes a crime as defined by Section 352 para 1, or rather Section 358.

Section 352 Violence against a Group of People and Individuals

> *(1) Whoever threatens a group of people with death, bodily harm or extensive damage shall be sentenced to imprisonment for up to one year.*
>
> *(2) Whoever uses violence against a group of people or against an individual or threatens them with death, bodily harm or causing extensive damage because of their actual or presupposed race, membership in an ethnic group, their nationality, thier political or religious beliefs or because they are actually or supposedly without religion, shall be sentenced to imprisonment for six months to three years.*

The last concept we will review here is that of a general aggravating circumstance, which plays an important role in judiciary discretion during sentencing. The court considers both mitigating and aggravating circumstances to individualize the sentence in accordance with the individual crime, the individual perpetrator and other factors unique to the case.

Section 42 subsection b)

The Court may consider the following circumstances as aggravating, particularly when the offender:

(...) b) committed the criminal offence out of greed, for revenge, due to hatred relating to nationality, ethnicitu, racial, religious, class or another similar hatred, or out of another particularly condemnable motive (...)

The court, however, is obliged to impose the sentence within the basic criminal merit range of sentencing. For example, bias motivation for the crime of Rape is not recognized by law and therefore there is no qualified substantive merit for that crime, but the court may apply Section 42 to aggravate the sentence.

Section 185 Rape

(1) Whoever forces another person to have sexual intercourse by violence or by a threat of violence, or a threat of other serious detriment, or whoever exploits the person's vulnerability for such an act, shall be sentenced to imprisonment for six months to five years.

(2) An offender shall be sentenced to imprisonment for two to 10 years, if he/she commits the act referred to in Sub-section (1) a) by sexual intercourse or other sexual contact performed in a manner comparable with intercourse, b) on a child, or c) with a weapon.

Section 185 para 1 is the basic substantive merit and Section 185 para 2 is the qualified substantive merit, but the actual wording of the law does not provide for bias motivation. The sentence is automatically shifted only when the crime is committed within the circumstances defined under subpara a)-c) and will be imposed within the range of two to 10 years. In the case of a bias-motivated rape, the court applies the general aggravating circumstance defined in section 42 subpara b), but the sentence will not be automatically shifted as in the above-mentioned circumstances. The court only considers bias motivation when imposing a sentence within the basic criminal merit (six months – five years). Bias motivation, therefore, just affects discretion within the predetermined range of sentencing.

To avoid double sentencing the general aggravating circumstance applies only where no qualified substantial merit is applicable. Hate motivation cannot be attributed to the perpetrator more than once. The application of a general aggravating circumstance involves the court sentencing the defendant to the full extent of the basic criminal sanctions allowed.

For the situation in the Czech Republic, as well as for some other CEE countries, Germany and Russia, it is typical that hate crime legislation and the practice of law enforcement bodies are deeply influenced by an "anti-extremism" policy. This policy puts forward the collective identity of an "extremist" perpetrator as somebody who actively participates in some far-right or far-left movement, instead of the actual motivation of the perpetrator. As a consequence, extremists are more likely to be identified as perpetrators of bias-motivated crimes, while non-extremist citizens are less likely to be found guilty of bias-motivated crimes. The "extremist" perspective is deeply rooted within the practice and understanding of what hate crime actually is and how it should be identified, investigated and sentenced (see below).

There is a close relationship between the above-mentioned hate crimes and so-called extremist hate crimes – the group of three crimes under Sections 403-404 of the Criminal Code. Those sections criminalize active participation in a hateful movement (Section 403) or public sympathizing with such a movement (Section 404) or denial of genocide (Section 405). Sections 403 and 404 are especially preferably applied by law enforcement to criminalize verbal threats, defamation and incitement to hatred instead of the more suitable Section 355, 356 or even 352 para 2.

Conceptualization of Hate Crimes and related crimes in the Czech Criminal Code (Act 40/2009 Coll.)	
A. Basic Criminal Merits (bias motivation is a substantial part of the crime)	
Chapter X. Criminal Offences against Order in Public Matters, Division 5 Criminal Acts Disturbing Cohabitation of People	
Defamation of Nation, Race, Ethnic or other Group of People	Section 355
Instigation of Hatred towards a Group of People or of Suppression their Rights and Freedoms	Section 356
B. Qualified Criminal Merits (proven bias motivation obligatorily shifts the sentencing)	
Chapter I. Crimes against Life and Health	
Murder	Section 140 para 1 a 2, 3 subpara g)
Grievous Bodily Harm	Section 145 para 1, 2 subpara f)
Bodily Harm	Section 146 para 1, 2 subpara e)
Torture and other Cruel and Inhumane Treatment	Section 149 para 1, 2 subpara c)

Chapter II. Criminal offences against Freedom, Personal and Pricacy Rights and Confidentiality of Correspondence	
Illegal Confinement	Section 170 para 1, 2 subpara b)
Illegal Restraint	Section 171 para 1, 2 subpara b)
Abduction	Section 172 para 1 a 2, 3 subpara b)
Extortion	Section 175 para 1, 2 subpara f)
Breach of Confidentiality of Files and other Private Documents	Section 183 para 1, 3 subpara b)
Chapter V. Crimes against Property	
Damage to a Thing of Another	Section 228 para 1 a 3 subpara b)
Chapter VI. Economical Criminal Offenses	
Abuse of Competence of Public Official	Section 329 para 1, 2 subpara b)
Chapter X. Criminal Offences against Order in Public Matters, Division 5 Criminal Acts Disturbing Cohabitation of People	
Violence Against Group of People and Individuals	Section 352 para 2
Chapter XII. Military Criminal Offences	
Insult between Soldiers	Section 378 para 1, 2
Insult between Soldiers by Violence or by Threat of Violence	Section 379 para 1, 2 subpara d)
Insult of a Soldier of Equal Rank by Violence or by Threat of Violence	Section 380 para 1, 2 subpara c)
Violence against Superior Officer	Section 382 para 1, 2 subpara c)
Breach of Rights and Protected Interests of Soldiers of Equal Rank	Section 383 para 1, 2 subpara c)

C. Aggravating Circumstance § 42 písm. b) (bias motivation is part of judiciary discretion)	
The Court may consider following circumstances as aggravating, particularly when the offender: (...) b) committed the criminal offence out of greed, for revenge, due to hatred relating to nationality, ethnic, racial, religious, class or another similar hatred or out of another particularly condemnable motive (...)	
D. Related Crimes („anti-extremism“ crimes)	
Chapter XIII. Criminal Offences Against Humanity, Peace and War Crimes, Division 1 Criminal Offences Against Humanity	
Establishment, Support and Promotion of Movements Aimed at Suppression of Human Rights and Freedoms	Section 403
Expressing Sympathies for Movements Seeking to Suppress Human Rights and Freedoms	Section 404
Denial, Impugnation, Approval and Justification of Genocide	Section 405

2.2 MISDEMEANOUR ACT

Less serious illegal action motivated by hate can be investigated as misdemeanours against civil coexistence. Act No. 251/2016 Coll., "on some misdemeanours",[10] facilitates the assessing of a fine of up to CZK 20 000 against a person who causes someone else harm on the basis of the victim's real or perceived affiliation with a national minority, his or her ethnic origin, race, skin colour, sex, sexual orientation, language, faith or religion, political or other sensibility, membership or activity in political parties or movements, labour organizations or other associations, social origins, wealth, family background, health status, marital or family status.

2.3 CIVIL CODE

Victims of hate violence can also seek legal protection through a civil procedure. As of 1 January 2014, Act No. 89/2012, Coll. of the Civil Code took effect. The victims may, according to this new legislation, take advantage of the protections afford for their natural rights to personality, life, health, dignity and freedom to decide to live as they choose. Everyone has the right to make sure that unauthorized interference with his or life is stopped and that the consequences of such interference are redressed.

The scope for suing for protection of personality and compensation for non-pecuniary damages caused by an interference with personality rights is defined by section 2956. The amount and payment method of adequate compensation must be designated so as to expiate any circumstances worthy of special consideration

10 Zákon č. 251/2016 Sb., o některých přestupcích (Act 251/2016 Coll., on some misdemeanours), available at: https://www.zakonyprolidi.cz/cs/2016-251#p7.

(section 2957 NOZ). In relation to victims of hate violence, intention to cause that particular harm is primarily considered such a circumstance, as is the causing of harm as a consequence of discrimination against the victim because of his or her actual or perceived sex, health status, ethnic origin, faith, or other similarly serious reasons.

Through the adoption of this new civil code, the position of victims whose health has been damaged as a result of a crime has deteriorated. According to the original legislation, damage to one's health and the harm caused by social impairment were established through the so-called "points decree" (Decree on compensation for pain and social impairment)[11], which set a certain number of "points" for various injuries and health restrictions. The number of points was defined by the treating physician. As of 31 December 2013 each point was worth CZK 120. The "points decree" was abolished with the old civil code. The main motivation for doing this was to make it possible for victims to claim compensation for harm to their health and non-pecuniary harm in the form of social impairment above and beyond the framework of the "points" limits, essentially unrestrictedly (Section 2958 NOZ). This freedom of victims to apply for compensation for damages of any extent, however, was soon limited by the justice system.

In the Supreme Court's Methodology on Compensation for Non-Pecuniary Harm to Health,[12] which is, unlike the previous decree, binding only because of the decision-making powers of the Supreme Court, newly establishes a mechanism for calculating the points when assessing non-pecuniary damages. This mechanism is much more complex than the original concept, and as a consequence the victim must always arrange for a court expert's assessment to prove the extent of the damage arising. The victim is forced to pay for this assessment (see below). There are very few court experts in the Czech Republic and there are some regions where there is no court expert. This lack of experts has a negative impact on victims. The benefit of the new Methodology is solely that the value of a single point was increased in 2014 to CZK 251.28 and is derived from the average wage, i.e., it is subject to valorisation.

2.4 ACT ON VICTIMS OF CRIME

The rights of hate crime victims are set forth in Act No. 45/2013, Coll., on victims of crime. The victims of hate crime in the sense of Section 2, paragraph 4, letter d) are considered particularly vulnerable victims, i.e., persons who, given their personal disposition and the nature of the crime, are more at risk of secondary harm. **Secondary victimization** arises during the work of the various institutions and organizations a victim comes into contact with after a crime is committed. Secondary victimization can arise as a consequence of the work of police, the state prosecutor, the courts, the media, attorneys, social service providers, health care workers, etc.[13]

11 http://www.mpsv.cz/ppropo.php?ID=v440_2001.

12 http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/Metodika.

13 Typical examples are biased, racist jokes made in the interrogation room, comments about the money a victim might be awarded, blaming the victim instead of the perpetrator for the attack, etc.

According to the legislation, particularly vulnerable victims have the right to sensitive treatment, services free of charge, gently guided questioning and protection from the alleged perpetrator. The interrogation of such victims must be conducted with particular sensitivity and questions should not be posed which are intimate or to which the victim is especially vulnerable. Interrogation about the incident may only be repeated in exceptional cases. The victims have the right to have a loved one with them during the interrogation and to representation by an attorney. In 2011/2012, In IUSTITIA participated in the preparatory work on the Act on Victims of Crime and achieved the addition of the option for particularly vulnerable victims to choose the sex of their interrogator. The original proposal was for interrogation to be conducted by a police officer of the same sex as the victim. When pushing for this change we were primarily keeping in mind the interests of people who have been subjected to homophobic violence and the interests of transgender persons for whom interrogation by a person of the "same sex" might be as traumatizing as it would be for a heterosexually oriented victim to be interrogated by a person of the opposite sex.

In practice, the application of the Act on Victims of Crime is causing difficulties. The law is perceived primarily as an administrative burden by some criminal justice authorities. In IUSTITIA also encountered some police officers who do not know how to apply it. Some of the police, primarily the Criminal Detective Police Service and Crisis Interveners, apply the law completely in accordance with its requirements. An example of good practice is the Crisis Interveners System, which makes it possible for police to prove basic psychological interventions in serious cases (large-scale accidents, murders, suicides). Crisis Interveners are police trained to provide first aid in a psychological sense to victims and to then provide contacts to follow-up services. The Crisis Interveners System is provided 24 hours a day and requires the constant readiness of the Crisis Interveners.

As a result of the adoption of the Act on Victims of Crime, the Criminal Code was updated in 2013 to enhance protection for victims. Should victims request it, their address and the address of their employment and other data unrelated to the prosecution can be hidden in the protocol. Victims, or rather their attorneys, also have the new option of participating at every step of the criminal proceeding, which is significant for their asserting their claims and receiving compensation for damages. Previously victims participated only by being interrogated as witnesses and then not until the main hearing, which frequently had the consequence of their losing their entitlement to compensation for damages. Victims can be accompanied by a loved one during the criminal proceedings or represented by an attorney, and another innovation is that the attorney can now also be a legal entity.

3. JUDGES

3.1 DESCRIPTION OF INFORMANTS

As part of our research, we conducted 10 interviews with judges. Men and women were equally represented. The majority of the interviews, six in all, were conducted with judges from the district courts (DC). Of the remaining four, two were with regional court judges (RC), one with a High Court (HC) judge, and one with a judge of the Constitutional Court (CC). The Supreme Court was also contacted, but for reasons of inadequate experience declined to take part in the research. The judges' courts were located in the Pilsen, Karlovy Vary, Usti, Central Bohemia, Olomouc, South Moravia and Moravia-Silesia regions. They ranged in age between 39 and 60 years, with a mean age of 50 (age median: 50.5).

3.2 PERSONAL ACQUAINTANCE OF THE JUDGES WITH HATE CRIME

When the judges interviewed were asked whether they had encountered the term "hate crime" during their studies, none answered in the affirmative. Three informants recalled having been acquainted at school with at least the relevant qualified basis of hate crime motivation but did not encounter hate crime as an independent concept. None of the judges had personally been the victim of a hate crime, nor did they know anyone who had.

Some judges had nevertheless been aware of the existence of specific crimes motivated by prejudice before they encountered similar acts during the course of their judicial practice. One informant, for example, noted earlier conflicts between skinheads and anarchists that he had learned about from the media and from discussions in his environment.

3.3 PROFESSIONAL EXPERIENCE OF THE JUDGES WITH HATE CRIME

Both the judges and the courts where they worked had little experience with hate crime. This was the most frequent reason judges gave for refusing to take part in the research. Another research limitation was the lack of a unified understanding of the notion of hate crime among the informants. Some of the judges accordingly contacted us so that we could clarify for them our own understanding of the concept.[14] Previously, some had held a broad view of the concept in which the motive of hate crime was not restricted to prejudice, but included the emotion of hate itself (for example, in the context of a relationship between partners in which one partner committed a criminal act against the other).

14 Part of the request was the definition of hate crime as given by the OECD, which we used in the research, and a list of hate crimes under the Criminal Code.

> *"It's not a term I've encounter very often , so I didn't entirely understand the label, because hate could purely concern notions of ethnicity, religious faith, skin colour, and so on, or it could be a human characteristic, something normal in human relationships like love, and so on. And then this characteristic or state of mind could be reflected in the sphere of criminal law, as well…"* (DC Judge).

Significantly, no similar differences in the understanding of hate crime were evident in a group of prosecutors. This may reflect the fact that prosecutors are subject to the directives of the Supreme Public Prosecutor's Office which, for this type of crime, demands that they "do everything possible to determine the offender's motive" (NSZ 8/2009)[15], and it may also have to do with the fact that public prosecutors' offices in the CR are hierarchically organized, therefore they are under the supervision of a superior authority. Among judges, no similar methodological directive was found to be a factor, nor did any judge specialized in this type of criminality.

> *"We don't use the label hate crime here, there are no special records kept of it, and there's nowhere that it's stated. We do, of course, know the category of crime. We know what it's about. It's not like we're focused on it or that we have a specialty in it"* (DC Judge).

As has been noted, the informants normally had little experience with hate crime. It was not unusual for the judges to have heard only a handful of cases over the observation period of the last five years in which the accused was convicted of a hate crime. Some judges had prepared information on all cases identified as involving hate crime. They had not always decided these cases themselves, and in these instances, they acquainted us with them using publicly available information, especially from the relevant court decisions. For this reason, it was not always possible to go into detail about all the circumstances of the case or judicial proceeding.

A similar obstacle to obtaining all the necessary information on particular cases was the time elapsed since commission of the crime, along with the large number of cases that each judge hears every year. In many instances these cases did not leave a particularly strong impression on the judges' memories because there was nothing about them that stood out either in terms of the act itself or the court proceedings.

In terms of specific experience with hate crime, the informants discussed a total of 20 cases. In some instances, as when we spoke with both the judge in the court of first instance and the appeals judge, the cases overlapped. One case that was mentioned twice had originally been seen to involve a prejudice motive but, after the initial investigation, no further effort was made to clarify it, and it was agreed that no hate crime had actually been committed. This leaves, then, 18 cases that for examination in detail. Two in fact involve the same court case heard by two different judges. Since our concern in this phase is the experience of the informants rather than the total number of hate crimes committed, they will be treated as two separate cases.

15 http://www.nsz.cz/images/stories/PDF/POP/trest/1_SL_902-205_2.pdf.

In terms of the type of act involved, the informants indicated that nine cases concerned **physical violence** *and one case* **verbal aggression**. *In a further seven cases, the offender engaged in both physical violence and verbal aggression. One case involved* demeaning behaviour by police officers *towards a man of another "race" and nationality which was nevertheless not tried as a crime, and in which the topic of a later judicial review was whether the complainant's right to an effective investigation was breached.*

In nine cases, the victims of assault were Roma (both individuals and groups). Three cases involved homeless people as victims,[16] three others people of other ethnicities or nationalities.[17] The victims in two cases were of different "races" (one with dark skin and one Asian), and in one case the victim's political orientation seems to have played the decisive role. If the gender of the offender was noted, it was always male.[18] More detailed information was not ordinarily provided.

In six cases, the offenders included persons with ties to the far right (see below). In three of these cases, the informants specifically indicated that the individuals were skinheads. In seven cases, the offenders were juveniles or close to the juvenile age limit. From the information available it appears likely that in eleven cases, group activity (involving two or more offenders) was to blame. In six cases, the offender acted alone. In one case, the offender was not specified.

The group nature of these crimes was an oft-repeated theme in the judges' descriptions and was highlighted by some informants as playing a significant role in hate crime:

> *"So basically, what I think is typical for this kind of crime is—no one ever really acts alone, they always rely on the strength of the group. In the group, they feel emboldened"* (DC Judge).

One of the judges specifically emphasized the importance of collective identity when right-wing extremists are involved in crimes involving prejudice, as is evident from the following remark:

> *"Well, I really don't have any illusions that these people always behave the same way, you know… They're well-organized, even if that's difficult to prove, but it's not like someone would read a book or look at an article on the internet and turn into an extremist who starts attacking victims he doesn't know. I don't personally think it happens that way, I think it's always basically the same, it's a kind of crowd psychosis, right, there are more of us and we fight for an idea that we value, and there's no room for anybody else. Here I'm thinking about various ethnicities with a different skin colour or some such"* (DC Judge).

16 In one case, it was uncertain from the judge's description whether a homeless person had been attacked primarily because he was homeless and therefore whether the incident should be characterized as a hate crime. There was, though, no other visible motive indicated in the information available.

17 In both cases, they also differed in appearance (their skin was dark). In one case, the offender demonstrably knew the victim's nationality. Given the uniqueness of these individuals within the Czech environment, the nationality and ethnicity of these two victims will not be revealed in order to preserve the anonymity of the informants.

18 If, however, the crime was committed by a group, it cannot be ruled out that a woman was among the group members.

Based upon the cases shared with us by the judges, another typical characteristic of hate crimes is the influence of alcohol. In nine cases, the informants indicated that the offender had been under the influence of alcohol. In two cases involving the same court case, the offenders drank to "get courage", but it cannot be said that the act was committed under the influence of alcohol. Some judges saw alcohol as an almost certain factor in these crimes.

> *"Well, there was something going on in a bar, where the accused, or the offender, naturally under the influence of alcohol, attacked some of the people there on the basis of their origin"* (DC Judge).

> *"Just alcohol. It's always alcohol…"* (DC Judge).

This characteristic gives some idea of the fairly spontaneous nature of these crimes. The judges described cases in which alcohol was not only an aggravating factor in prejudiced behaviour but a necessary precondition. In these cases, it may be presumed that without alcohol, the offender would not have exhibited hateful behaviour.

> "*Probably, if I remember correctly, alcohol was used, and that may played a role, as alcohol usually helps to remove inhibitions. Personality characteristics like dissociality, a reduced level of tolerance for frustration, these things got reinforced and resulted first in a verbal attack: 'Hey Gypsy—let's kick his ass!' And then in actual physical violence"* (DC Judge).

3.4 OPINIONS OF THE JUDGES ON THE CONCEPT OF HATE CRIME

None of the judges expressed disagreement with the existence of specific hate crimes, whether they be in the form of a basic substantive merit or on the level of a qualified substantive merit. The informants highlighted various characteristics of hate crimes that justify their criminal status. These are: (1) the existence of a particular group characteristic on the part of the victim that cannot be changed, with no other potential motive that might be attributed to the offender, and (2) the impact of hate crime on the broader community of which the victim is a part. If a single individual is attacked simply because he or she bears the characteristics of a group, then any other group member bearing these characteristics may likewise be attacked for the same reason. Attacks on a single individual may in this way awaken a fear of attack throughout the victim's community.

In the following quote, the informant illustrates fact that the victim of a hate crime cannot change his ethnicity, race, or sexual orientation and thus cannot foresee or avoid being attacked. And that's why it's proper in his opinion that the sentence be toughened in such cases:

> *"This becomes an issue of natural law in that the penalty is stricter because the person who's threatened by the criminal act can't influence the thing, right… Let's take me for example. If I'm the victim of a criminal act, I can influence things to some extent by my behaviour: I can avoid dangerous locations, I can try to live an honest life, try not to hurt anybody—*

those things I can do to a certain extent, of course. But whether I'm Rom or homosexual, I can't influence that. This is where the qualified substantive merit stems from the principle that someone has hurt me simply for being the person that I am" (DC Judge).

3.5 SPECIFICS OF PROSECUTING HATE CRIME

The informants generally agreed that prosecuting hate crime is highly difficult and demands special effort on the part of actors in the criminal justice, particularly when it comes to gathering evidence and conducting detailed interrogations from the very start of the investigation. This understandably relates to the fact that, under Czech law, intent must always be shown on the part of the offender for a crime to be classified as a hate crime, and it is essential to be able to demonstrate without reasonable doubt that the offender's motive was prejudice when the offense was committed. On multiple occasions, the judges described a situation in which they instinctively "felt" that an act may have been motivated by prejudice on the part of the offender, but this could not be proven in court.

This exceptional difficulty of proving motivation is, according to one informant, the likely reason why the number of hate crimes heard in Czech courts is so low:

"It definitely doesn't seem to me that there haven't been any cases. I don't know. It seems to me… it seems it's just this complexity in proving it. That in a court proceeding we actually have to decide what has been shown beyond the shadow of a doubt. I as a judge may think whatever or consider it likely that it was a factor, that the two individuals fought precisely because one of them belonged to a particular ethnic or racial group, but I have to have that proven beyond the shadow of a doubt, and if no one screams it out loud…" (DC Judge).

The judges named a number of types of evidence that are typically used to demonstrate a hate motivation. Most often identified were verbal expressions by the offender that reveal negative animus towards the group to which the victim belongs. This is vital if the accused does not admit to feelings of prejudice. Such evidence demands the testimony of the victim and preferably also of other witnesses. Because this all turns on indirect proof, the informants generally agreed that verbal expressions by the accused are not enough to show motivation. Some judges laid a more general emphasis on the relationship of the offender to the victim, which need not be embodied in verbal expression. Proving that the victim was chosen at random, i.e. only because of his membership in a group defined by unalterable characteristics, is contingent upon every other potential motive or relationship to the victim being ruled out.

"There are not many types of evidence in cases of this kind, are there? Most of the time it involves verbal expression that's always, according to the victims, always present. That means it's the verbal expressions that let them understand why they're being attacked, since up to that moment, they actually had no connection to the perpetrator, it might have been the first time they saw him. So this is the essential evidence" (DC Judge).[19]

19 The absence of any other motive is not a motive itself, legally speaking. However, the absence may sometimes lead to deeper investigation and, together with other proofs (not necessarily verbal slurs), may lead to the conclusion concerning the motivation of the offender.

Aside from the relationship between the offender and a concrete victim, the relationship between the offender and the group to which the victim belongs was also emphasized. The offender's behaviour and social ties then serve as evidence. Special attention is paid to the prior relationship between the offender and the community to which the victim belongs, assessed on the basis of his opinions or criminal record and any ties to the far right. The quote that follows illustrates this:

> "*These are basically the relationships, if in fact there are any, between them. Say the relationship between the offender and the ethnic group before, or membership in a group, such as hooligans, skinheads, and so on"* (RC Judge).

Another point that was debated involved potential ties between the offender and right-wing extremism as relates to proving a hate motivation. In the eyes of some informants, ties to right-wing extremism or football hooliganism had a fairly significant relationship with hate crime. Generally, however, these ties were noted only as a type of indirect evidence of hate motivation.[20] One of the judges even indicated that he would only take their presence into account during the penalty phase of the trial. The statement below presents the view that there is an almost organic relationship between extremism and hate crime, albeit the terms cannot be equated:

> *"I think it's basically a matter of communicating vessels. Because what is extremism? It's just a deviation from the norm. So I'd say in general that essentially, let's say among right-wing radicals that extremism frequently relates to, it turns against the ethnic group, against the Romani ethnic group. So I would say that basically the two terms are intertwined, they needn't be identical, but they're intertwined. Extremism is definitely a breeding ground for this kind of hate crime, I think that's true"* (DC Judge).

In the quotation that follows, the informant explicates how connections to the far right may by contrast make it more difficult to prosecute the accused:

> *"It doesn't make it simpler [authors' note: to prosecute a perpetrator connected to the far right]. You may know that he has a criminal record, and you can present that as an argument when evidence is being given later, but it definitely doesn't make things simpler. It's totally the same as with others. What's more, they're experienced, so they lie about how it started. So even if you have a skinhead standing in front of you who has beaten a person of Romani background, he'll claim he didn't hit him because he was Rom. So we have to deduce that fact from something else, from some other piece of evidence. So I would say that it's the other way around, it's actually harder"* (DC Judge).

As noted above, among the cases described, six involved right-wing extremism. Three of these involved defendants who were explicitly labelled "skinheads". Ties between offend-

20 Based on our experience in representing hate crime victims, we argue that ties to a hate organization or movement may be introduced as proof of a hate motivation by the police. We even think that, with this evidence, it is more likely an offender will be identified as a hate crime offender.

ers and similar movements may have served as an indirect form of evidence[21] for the presence of a hate motive in only around one-third of cases described by the informants. Additionally, in one case (described by two judges), this fact was disputed in the appeals court.

It thus becomes evident that there is no direct relationship between hate crime and extremism. Based on the judges' experience, a more prominent feature is the greater likelihood of an attack by a group rather than an individual involved in the far right. While offenders from the far right are typically associated with victims defined by their race or ethnic origin, one judge also pointed to attacks on homeless people because of their group membership as a way to illustrate that hate crime is not only the work of right-wing extremists.

Another factor the informants noted as important was the subjective perception of victims regarding their victimization simply because of their group membership. What victims have to say may in some cases provide the initial impetus for trying to clarify the potential motivation of the offender.

> *"Primarily, the victim has to say that they felt threatened this way, then at that point further evidence can be gathered that tends in that direction. If the victim doesn't say it, the thought may occur to me a hundred times, but if he doesn't want to say it..."* (DC Judge).[22]

In the judges' experience, forensic expertise[23] was useful only for judging the symbolism and ideology of movements associated with extremism. It is of only limited value in determining hate motivation. Forensic experts could, for example, be used to assess the relationship between the accused and the group to which the victim belongs. In general, then, expert opinions are not typically included in evidence in the area of hate crimes.

To conclude, the judges thought it particularly challenging to clarify hate crime as a factor in those instances in which the offender does not admit to it, requiring that the motive be proven by a chain of indirect evidence. Among the most frequent elements are the verbal expressions of the perpetrator in the course of committing the act, the perpetrator's personal attitude towards the group in question, his past criminal history, and ties to the far right. But other potential motivations must be ruled out, typically involving the lack of any prior relationship between the offender and the victim.[24]

3.6 EVALUATION OF LEGISLATION

The judges substantially agreed that the laws on hate crime currently in force are adequate and allow all hate speech to be prosecuted and punished equitably. Any

21 As part of their investigation, the police does background checks on the involvement of perpetrator within an extremist (hate) group or movement. If police investigators identify a person as a political extremist in the police databases, they may put this piece of information into the investigation as an indirect proof leading to the conclusion about the long-term attitudes of the perpetrator towards a certain group of people.

22 The testimony of the victim is considered crucial evidence in a criminal proceedings. Basically, with no exceptions, victims are always called as witnesses.

23 A forensic expert on political extremism is an expert witness whose opinion—forensic expertise—is part of the chain of evidence. The expert is used if there are any materials with symbols or acronyms related to the crime (e.g., a synagogue is vandalised with graffiti reading "1488"). As criminal evidence, the expertise may lead the court to a conclusion about the motivation of the perpetrator when it is supported by other evidence. There are, however, also cases where the expertise was the only proof to determine the offender's motivation

24 Hate motivation does not need to be the only motive. When a number of motives occurs (e.g., if the offence is just partly motivated by hate) , bias must be apparent.

shortcomings noted tended to concern how they are used by actors in the criminal justice system. That is, the judges saw more problems in the practice of criminal proceedings rather than in legislation. Several informants proclaimed that it was up to the legislature to evaluate the laws and the issue of social priorities while their job as judges was only to act within the boundaries that have been established. As regards the legally demarcated substantive merit of hate crimes, the judges once again perceived current law as adequate.

Three of the informants conceded that it might be useful to add a qualified substantive merit targeting hate motives to the offense of disorderly conduct. This came in reaction to a question from us as to whether this might resolve the existing situation, in which harmful actions that often appear to stem from prejudice and that take place in public are qualified as disorderly conduct—as a criminal offence which does not enable the imposition of a more severe penalty for a bias motive. One of the judges, who was able to envision that the offence of Disorderly conduct could theoretically be expanded to take in hate crime motivation as a qualified substantive merit, cautioned that in precisely those situations where intent could not be proven, this would nevertheless end up becoming a "dead provision".

> *"So I don't think the law absolutely has to be rewritten. De lege ferenda we can then discuss whether to add it to the Disorderly conduct… but I think it's adequate as it is" (DC Judge).*

A further theme with regard to the effectiveness of the legislation was the question of whether to expand the characteristics protected under the hate crime laws to include, for example, sexual orientation and identity, homeless status, and physical disabilities. Three of the judges conceded that they could imagine expanding these group characteristics.

Informants who did not agree with rewriting the law argued that (1) it is always better to have a general legal framework and further refinement of that framework could lead to a complicated, ambiguous understanding of which group characteristics should be protected and which should not, and (2) the expansion of protected characteristics does not correspond to the current needs of society. If there were a case of this type—such as someone being attacked for their sexual orientation—the motive could be taken into account during the penalty phase as a general aggravating circumstance. Any ambiguity in interpreting the current law would be addressed by applicable case law, whose consistency is ensured by the Supreme Court. The following excerpt condenses the typical argumentation on the issue of potentially expanding the characteristics protected under criminal law.

> *"I know of no case in which someone has gotten beaten because they were homosexual. I have no such experience, but I really think if the act took place because of that, it would be possible to consider it an aggravating circumstance. That's no problem at all. It's the same as when emergency response workers ask for protection, totally the same thing, or older people with disabilities, but all of these things can be taken into account in deciding the penalty. I don't need it spelled out, these things can always be taken into account—as a positive or as a negative" (DC Judge).*

It is thus fair to say that, for the judges, the substantive provisions of the criminal law were not generally seen to stand in the way of prosecuting hate crime. In reaction to a question requesting their views of current legislation, they nevertheless did cite other factors not tied to legislation that were problematic. They were: (1) willingness on the part of Czech actors in the criminal justice system to prosecute hate crime when they have the tools available to do so, and (2) help for victims. These they consider key areas over which legislation has no influence.

> *"Because, really, whenever a problem arises, you hear that the law has to somehow be made more precise so, you know, if you want to solve the problem, you can find a legislative way to do it, but if you don't want to solve it, a better law won't help. [...] So I think that essentially it's more about helping the victims than increasing criminal penalties and adding on definitions. Because the rate of unreported crime is very high already, so why add extra definitions?" (CC Judge).*

As for opinions on the laws governing hate crime penalties, judges saw no inadequacies here either. In their view, the law provided enough room to ensure that offenders would be punished fairly. A greater source of debate was what type of sentence to impose, and how much to make use of alternative sentencing. Two of the informants were able to imagine using mediation between offender and victim, as well. But this would depend upon the particular circumstances of the case, especially the offender's personality. If he completely denies that a crime was committed, trivializes it, or shows signs of arrested personality development, there is not in their opinion anything to work with. At this point, it becomes necessary to resort to repressive measures. Greater success is to be expected with younger persons and in cases in which the offender was acting under the influence of another person.

On the other hand, one of the judges had had negative experience with alternative penalties, although they did not directly concern hate crimes. She insisted that attempts at supervision by Probation and Mediation Services and attempts to rehabilitate repeat offenders simply do not work. She pointed to a number of cases in her current judicial practice in which juvenile offenders did not meet the conditions of their PMS supervision, and as a result their suspended sentences had to be reinstated. She complained that these juveniles expressed complete indifference to the penalty imposed, and that they did not understand why they should be forced to undergo a rehabilitation program at all. She therefore called for greater consistency from the courts which, she said, should not be afraid to impose unconditional sentences if the previous method of punishment has failed.

3.7 PROCEDURAL-LAW AND ACTUAL LIMITS ON THE PROSECUTION OF HATE CRIME

While substantive law is in the opinion of the judges well-suited to prosecuting hate crimes and has not in their experience hampered sentencing in any case involving a hate motivation, some shortcomings were observed in procedural law. An issue that was raised several times was whether the protocol of the testimony of the

accused and witnesses—the writ of explanation—could be used in court. The Criminal Procedure Code does not allow the protocols of testimony acquired prior to the main hearing to be read in court unless both parties to the proceedings agree, except in clearly defined situations. In no event does it allow the use of interrogations (and protocols of them) conducted before charges were filed and thus before the start of prosecution, which among other things guarantees the defendant the right to take part in all such interrogations.

The judges who called attention to this issue identified two ways in which it might have a negative impact on the prosecution of hate crime. First, the inability to use protocols from earlier interrogations of the accused and witnesses could lead to there not being enough evidence to prove a hate motive on the part of the perpetrator. Second, repeated interrogations may harm victims of hate crimes and thereby lead to their secondary victimization. One of the judges pointed out, though, that the rights of the accused must also be respected. He therefore supported greater use of interrogations as a peremptory act in some sensitive cases that could include hate crime.

> *"If the system is set up in such a way that evidence is legal only from a certain moment, then if the information that testifies to it being a hate crime is not obtained as legal evidence, when it's not possible to prove to, so it remains unproven" (HC Judge).*

It became clear in the course of the interviews that the most pronounced effect on the prosecution of hate crime came not from procedural law but from certain practical issues. This especially concerns the judges' attitude to hate crime as an issue. One of the judges questioned said an important factor is the value system of the judge:

> *"So just as there are judges that are more conservative and judges that are more liberal, I think that large divergences in values occur in questions to do with foreigners, as well" (CC Judge).*

Unfortunately, the judge did not elaborate on her thinking, so it is impossible to say whether the judge really thought that more conservative judges would tend to have a more negative attitude to the existence of hate crime or resist making use of the concept in specific cases. Another judge was of the opinion that there is in practice a certain amount of discrimination against offenders from certain groups when it comes to hate crimes:

> *"With regard to the attitude of society and the trends that exist, and I very definitely do not agree with them, because actually it should work in the reverse direction, as well—not only when the victim is Romani, but also when a Rom attack a non-Rom because he's not one of them" (RC Judge).*

A further problem in prosecuting hate crime that for now remains hypothetical has to do with linguistic interpretation in the language of the victim, since oftentimes hate crimes target foreigners. One judge had already encountered the issue as part of a case involving Olah Roma (which was not, however, related to hate crime), in which there was a lengthy struggle to find someone who understood the language

and would also be willing to serve as interpreter during criminal proceedings. A similar problem with a shortage of translators was identified with respect to a situation that could come to pass if more Arab speakers begin to become targets of hate crime.

3.8 COOPERATION WITH POLICE AGENCIES IN INVESTIGATING HATE CRIME

In general, the judges did not cite any fundamental shortcomings in the work done by the police on hate crime. They were nevertheless aware of the key role played by the prosecutor who oversees the work of these agencies. Some informants also stressed the essential role played by the police in initially identifying hate motivation during their investigation of the criminal act. Particularly in cases that do not involve verbal expression or that lack third party testimony, the victim's subjective feeling that he was targeted because of his group membership is crucial. This requires sensitive interrogation of the victim by the police. Other judges noted that this always depends upon the particular police officer conducting the interrogation. It was noted as problematic that this initial task may also be carried out by less experienced officers.

> *"Again, I think the police and those actors of power, that it really depends upon the individuals. But I think that we have already succeeded in explaining why racially motivated criminal acts simply have to be investigated differently than other acts" (CC Judge).*

> *"But of course if it isn't explicitly said, and if it's not conclusive that there was a hate motive, that of course requires that the evidence be carefully gathered, and that the victims be very sensitively interrogated"* (DC Judge).

3.9 HATE CRIME VICTIMS, THEIR STATUS AND RIGHTS

Almost all the judges agreed that from a formal standpoint, victims are adequately protected during criminal proceedings, thanks as well to the amended version of the Act on Victims of Crime passed in 2015. While one informant agreed that hate crime victims should continue to be considered especially vulnerable, some other informants expressed the opinion that it is impossible to generalize. Although the Act on Victims of Crime expressly considers hate crime victims particularly vulnerable, some judges nevertheless insisted that the matter always depends upon the individual in question and their subjective perceptions of the criminal act:

> *"Of course afterwards the impact differs depending upon the victim. One person may be psychologically weaker, another psychologically stronger … And that's why I think every criminal act, every issue should be judged very individually and very generally. To make a generalization about whether someone has been more harmed as the result of a hate crime than someone else as the result of a more trivial crime is tough to do, isn't it?" (DC Judge).*

To the extent the judges identified problematic aspects tied to the victim's status, the issue turned not on the definition of their rights under the law, but rather on the question of their awareness. One of the informants cautioned against excessive

formalism. While it's true that the police present the victim with a number of documents to sign providing information about their rights, they don't always provide an understandable oral explanation. He therefore proposed that the protocol indicate what information police officers provided to the victim. Another judge pointed to the fact that in some cases, a victim may not even be aware that they have been the victim of a crime. The judge saw the remedy for this in the provision of free legal aid, ideally along with social services.

3.10 PROPOSALS FOR IMPROVING THE PROSECUTION OF HATE CRIME

Something that the judges repeatedly stressed in the interviews was the necessity of taking an individual approach to each case. They therefore thought it inappropriate that a manual would be provided to make their work in prosecuting hate crime more effective. Almost half of the judges did think, though, that expert training in the area (hate crime or extremism) would be of use, as might training that targets the culture of some of the groups under threat.

A factor that fundamentally influences the prosecution of hate crime is therefore the approach taken by particular persons within in the criminal justice system, in the sense of (1) their will and willingness to prosecute hate crimes and (2) carefully gathering sound evidence of hate motivation to be presented in court, or identifying it as such in the first place so that it can be made part of the charges. The following quote from one of the judges once again raises as a key factor influencing the prosecution of hate crimes the approach taken by particular individuals versus changes to the criminal code:

> *"Just constantly keep after everyone in the criminal justice system, because if this element is present in what took place, they should focus on it as they gather evidence, even if that means hearing an additional five witnesses" (DC Judge).*

3.11 SUMMARY

To summarize, the judges with whom we conducted the interviews did not have a great deal of experience with hate crime. As was pointed out by one of the informants, this need not mean that the phenomenon of hate crime occurs only infrequently, but rather that it is exceptionally complicated to prove a hate motivation.

Some of the judges took a broader view of hate crime, understanding it to include all actions motivated by hateful emotions that are punishable under criminal law (not just those that involve prejudice towards particular groups). All agreed that criminal actions involving prejudice (or hate in the strict sense of the term) are more harmful to society and thus deserve harsher penalties.

The judges often maintained that each case is individual and must be treated on that basis. This prompted them to avoid any kind of generalization as regards specific features of the prosecution of hate crime. Verbal expressions on the part of the perpetrator were the most frequently mentioned form of evidence. Other forms included personal information about him and his relationship to the victim and the group to which the victim belongs, as well as to any other injured party, which should be able to perceive the act to be motivated by hate and label it as such. Some judges see connections between hate crime and right-wing extremism or, in some cases, football hooliganism. But they did not equate the two, once again emphasizing the fact that each case is unique in character. As regards the police, the judges emphasized the careful collection of evidence and sensitive interrogation of victims. The informants' experience with police agencies was generally positive.

The judges perceived existing law regarding hate crime as adequate. None had had the experience of current law restricting their ability to decide hate crime cases or to impose stricter penalties on offenders. Some informants conceded that it might be helpful to expand the protected characteristics (to include sexual orientation and identity, homeless status, and physical disability). In two cases there was support for at least debating whether the offense of Disorderly conduct should be expanded to include hate motivation into qualified substantive merit. For the most part, however, the judges agreed that it is always better to have general legislation available.

At the procedural level, the major shortcoming was seen to be the impossibility of using testimony in court that was taken before charges were brought. This may impair the ability to prove intent on the part of the perpetrator or might contribute to the victimization of the injured party. Other factors which may be problematic in prosecuting hate crime include the attitude of each of the judges, the experience of police officers conducting interrogations and, looking to the future, a potential lack of interpreters who speak the language of persons victimized because of their presumed ethnicity or nationality.

Legal regulation of the status and rights of the victim was also perceived to be adequate. Problems were identified only in the approach taken to victims, which may be hampered by formality on the part of the police. It was also noted that the victim might not be able to offer any help if he or she failed to recognize that he or she had been the victim of a hate crime. The judges interviewed had only limited experience of working with victims' representatives, but they were not against doing so in principle.

Any proposals offered for improvement targeted areas outside changes to the law itself. Training by experts in the field was considered to be useful. Some judges stressed the importance of thorough work by actors in the criminal justice system in clarifying motivations, entitling victims to free legal aid, and making sure that the police conduct their investigation in a sensitive manner.

4. PUBLIC PROSECUTORS

4.1 DESCRIPTION OF INFORMANTS

For the public prosecutor category, we conducted 19 interviews, 16 of which were with men. A total of 14 informants worked for district (or municipal) public prosecutors' offices (DPPO), four worked for regional public prosecutors' offices (RPPO), and one worked for the Supreme Public Prosecutor's Office (SPPO). In two instances, a single interview took place with two informants working in the same office. Interviews were conducted with public prosecutors working in the Moravian-Silesian Region (8), the Ústí Region (3), the City of Prague (3), the Southern Moravian Region (2), the Olomouc Region (1), the Zlín Region (1), and the Central Bohemian Region (1). The interviewees ranged in age from 33 to 65 years, with an average age of 47 and a median age of 44.

The informants included both prosecutors with decades of experience and those that had been appointed relatively recently. Several had earlier worked for the Police Department. As public prosecutors, the majority had specialized in violent crime and extremist crime, including hate crime. A few worked in the area exclusively in a supervisory capacity. One prosecutor worked in the area as a matter of her own interest, despite the fact that her official specialization at the prosecutor's office was different. The specialization on hate crime was introduced by the General Directive of the Supreme Public Prosecutor No. 4/2009, dated 27 July 2009. Among other things, it ordered the creation of criminal specialization on "crimes committed because of racial, national or other hate motives" at the District and Regional Public Officers' Offices.[25]

4.2 PERSONAL EXPERIENCE OF THE PUBLIC PROSECUTORS WITH HATE CRIME

Only one informant indicated that she had met with the concept of hate crime during her studies. Six others said they had heard about crime so labelled at least during their study of criminal law at the law faculty, but in no case was it discussed as a distinct concept. The remainder responded in the negative to the best of their memory.

None of the public prosecutors had themselves been hate crime victims, nor did they know anyone else who had. One informant, however, during the communist regime, had encountered aversion from those around him because of his Catholic faith.

25 http://docplayer.cz/25404882-4-2009-pokyn-obecne-povahy-nejvyssi-statni-zastupkyne-ze-dne-27-cervence-2009-vzorovy-organizacni-rad.html.

4.3 PROFESSIONAL EXPERIENCE OF THE PUBLIC PROSECUTORS WITH HATE CRIME

The public prosecutors we interviewed were varied in terms of the experience they had with hate crime. While some had encountered it repeatedly, others had done so only when supervising preparatory proceedings. Cases handled by some of the prosecutors did not ultimately reach the stage of charges being filed, or if they were filed, did not include a hate motivation.

The informants gave several reasons for the termination of criminal proceedings:

- The offender could not be determined. One informant encountered this problem particularly in hate crime cases involving social networks, others in cases involving slogans sprayed on a wall or elsewhere.
- No criminal act was committed. Instead, a less serious form of behaviour was involved, typically a verbal attack, and the case was passed to the pertinent authority (the Municipal or Regional Office) for investigation as a misdemeanour.
- There was a shortage of evidence to prove a subjective motive.

All of the informants nevertheless stressed the need to pay attention to hate motivation, for instance in cases in which the victim and the assailant belong to different ethnicities or nationalities. Indeed they claim to have done so in the course of their work. More than once mention was made of a directive of the Supreme Public Prosecutor (General Directive of the Supreme Public Prosecutor No. 8/2009, dated 21 September 2009)[26] that obligates prosecutors dealing with hate crime to take all necessary steps to determine the motive. One informant maintained that even though public prosecutors have a methodology for use in hate crime cases, nothing binds them to follow it—in the final analysis, how they proceed is up to them. Other public prosecutors were somewhat sceptical about the very existence of such a directive and what effectiveness it might have:

> *"People say that if something gets emphasized, for instance in history, that's just proof of the fact that it doesn't work very well" (SPPO Prosecutor).*

One of the informants maintained that with some cases, he has also felt public pressure to prosecute the case as a hate crime. Another indicated that the media and non-governmental organizations follow the issue vigilantly.

The interviewees brought up 32 cases in which a hate motive was implicated. These included cases which they prosecuted themselves, cases which were prosecuted by colleagues in the prosecutor's office, or cases that they supervised. 28 of these cases ended in a court decision; in three, the criminal proceedings were halted; and in one case, the issue was still in the initial investigation phase before the filing of charges.

In terms of type of crime (without regard for the final legal classification or how hate motivation was reflected in the charges), seven cases concerned verbal abuse,

26 http://www.nsz.cz/images/stories/PDF/POP/trest/1_SL_902-205_2.pdf

six verbal expressions combined with threats of violence, and one case a combination of verbal abuse and blackmail. Two cases involved property damage. Two cases concerned threats of violence, and seven cases physical violence accompanied by verbal attacks. Another three cases described arson attacks (accompanied in at least one instance by verbal abuse). The seven cases in which physical violence was present account for less than one-quarter of the total 32 cases. The three involving arson might also be considered to be a form of violence against persons.

The concrete legal classification was not always given for these cases, and in some cases the informants were uncertain about the final classification. According to available information, the acts described were most often classified as Violence against a Group of People with a hate motivation (10 cases) or Defamation of a Nation, Race, Ethnic, or Other Group of People (9 cases), both often in conjunction with Disorderly Conduct (10 cases). Other classifications appeared in a case or two: Damage to a Thing of Another, Dangerous Threatening, Expressing Sympathy for Movements Seeking to Suppress Human Rights and Freedoms, Grievous Bodily Harm, Attempted Bodily Harm, Attempted Murder, General Endangerment, and Instigation of Hatred towards a Group of People or of Suppression of their Rights and Freedoms.

The characteristics of victims, too, were not always clear from the descriptions. In many cases, furthermore, no specific individuals were harmed. In approximately 12 cases, the public interest was harmed or unidentified groups of people (cases involving hate placards put up by political parties, expressions of hate at demonstrations, an arson attack on a synagogue, and damage to a monument). Attacks on individuals because of their group membership involved an Asian (Vietnamese) in one case, people of colour in four cases, and in 19 cases, people of a particular ethnicity or nationality. In six of these cases, the targets of the attack were Roma, in three cases Slovaks, in three cases Czechs, in two cases Poles, in one case, a Frenchman and in one case a German. In two instances, the attacks were on people who either were or were presumed to be Jewish. In another pair of attacks, the targets of the hateful actions of the offender included physically disabled individuals. In some cases, the motive of the attack involved several group characteristics at once.

In 28 cases, the offenders were male, in two cases female. In the remaining two cases, the public prosecutor offered no information about the offenders. Because of the nature of these last two acts—Damage to a Thing of Another—it is likely that the offenders were unknown. In 18 cases, the criminal act was committed by a single individual. In 11 cases, the act was committed by a group. Where more specific information was available about the offenders, they were in a clear majority of cases of Czech nationality or ethnicity. In the remaining cases, they were foreign nationals or members of another nationality, specifically a citizen of Egypt, one of Vietnam, a Romani male, a Romani female, a group of Slovaks, and a Romani group. [27] In two cases, the offenders were members of a far-right political party. Overall, there were demonstrable ties to the far right in only five of the cases described. In at least 11 cases, the offender acted under the influence of alcohol.

27 Official statistics from public prosecutors' offices do not allow determination of the nationality of offenders. Only data on foreign citizenship are registered. In narrative research, it is possible to obtain information on the nationality of offenders directly from the respondents..

In general, the cases were described as rather spontaneous actions by individuals or unorganized groups, many times at least encouraged by alcohol. Most commonly, they concerned verbal attacks and threats. More serious cases in which physical violence and bodily harm played a role were present only in a small minority of cases handled by the prosecutors we interviewed.

One public prosecutor laid the emphasis on the situational, spontaneous character of hate crime. He compared the current shape of the problem to its manifestation in the 1990s, when it primarily involved repeated behaviour by offenders of roughly juvenile age, and members of the skinhead subculture. The typical targets of their attacks were Roma:

> *"The change is visible even in terms of the number of attacks, because—especially during the period that you're focusing on—the attacks we deal with are primarily situational, often under the influence of alcohol. And the perpetrators aren't always skinheads. They may not be active members of a right-wing or some other Nazi group. These are people who are drinking and, when they get into a conflict, resort to violence and compound that by threats that relate to the victim's ethnicity, or to their Romani background. Things have shifted a bit in that respect" (RPPO Prosecutor).*

A hate motive was shown by the public prosecutors primarily by means of witness statements. This corresponds to the predominantly verbal nature of the attacks in a public setting. Also employed was documentation of the attacks themselves, whether as paper documents or audio-visual recordings. These recordings were made either by the victims themselves, by others present at the scene, or by television stations. In a minority of cases, forensic opinion in two main areas of expertise was also obtained. Forensic psychiatrists were used to assess the extent to which perpetrators were capable of insight into their behaviour under the influence of alcohol, and experts on extremism evaluated the material evidence that had been gathered. More than once wiretaps and recordings made by telecom operators were used. In some cases, confessions by the offender were also used as proof.

The following quotation illustrates one of the cases discussed, in which forensic testimony was key in demonstrating hate motivation. The role of the forensic expert was to comment on the extremist (hate) materials found in terms of content and the significance of individuals mentioned in them.[28] It was not to assess the legal aspects of the documents. Despite this, the public prosecutor took this testimony as his basis:

> *"Everything rested on the forensic expert's opinion, on whether the expert said the social harm done was negligible or minor, or maybe non-existent—it's a free speech issue"* (DPPO Prosecutor).

As regards sentencing, in a majority of cases, a suspended sentence was imposed. To the best of the informants' memory, the offender was sent to prison in five cases (involving more serious crimes or recidivism). In a single case obligatory medi-

28 This concerns for example the meaning of an alphabetical or numerical code ("HH" = Heil Hitler, "88" = HH = Heil Hitler, "Good Night Left Side", "ACAB" = All Cops Are Bastards) or of graphical imagery (Nazi symbols, the modern neo-Nazi symbol, alt-right symbols, etc.). The persons referred to include, besides Nazis, icons of the modern neo-Nazi movement on both the domestic and international levels. Also see below.

cal treatment was imposed and in one other, the offender was forbidden to attend sporting events involving a particular club.

4.4 PUBLIC PROSECUTORS' OPINIONS ON HATE CRIME

None of the public prosecutors expressed the opinion that hate crime should not be included in the criminal code. What is specific about the basis of hate crime is that even purely verbal acts may be penalized under the law, something which is an outgrowth of experience with the Nazi and fascist ideologies that gripped Europe in the 20th century. Legal culpability for verbal expressions of hate, according to the informants, is primarily based upon the assumption that they may be fertile ground for physical violence against the affected groups.

Some public prosecutors nevertheless maintained that it can be very difficult to differentiate serious illegal verbal expression from that which is on the level of a simple misdemeanour. There is thus the risk of criminalizing opinions. One informant maintained that it would be better to consider a certain continuity of expression to be operative rather than a clear dichotomy of permitted and forbidden expressions, as is illustrated in the following comment:

> *"That Vitkov case[29], that one's going to be very clear, right? But then we move from the point of absolute clarity along the axis to where we're in some kind of middle ground, and then we keep going until we're clear at the opposite extreme where you have to weigh everything with exquisite care in deciding whether a particular expression fulfils the substantive merit or not"* (DPPO Prosecutor).

Another informant emphasized the subsidiarity principle of punishment, saying punishment should be meted out for verbal infractions only in extreme cases. The opinion was also expressed that the decision as to whether a particular hate expression should be penalized or not depends upon the sensitivity of the prosecutor involved. One prosecutor who described himself as "liberal" urged greater caution in prosecuting hate speech on the part of politicians, because it is their job to express their opinions. The freedom of speech is protected. If speech incites or leads to physical violence, it may be prosecuted. Thinking of when to start the prosecution, it is thus important to consider at what point the (hate) speech could cross over into physical violence.

Prosecutors who expressed an opinion on the grounds of hate crime showed the following characteristics:

- the relationship between the offender and the victim and related substitutability of the victim: the victim usually has no ties to the offender but is selected as the target of the attack strictly because of his group membership;

29 The Vítkov case refers to the arson attack committed during the night of 18/19 April 2009 in Vítkov, Moravian-Silesian Region. As a result, three people were injured, including a three-year old girl named Natálie who suffered burns on 80% of her body. The four offenders had connections to far-right politics and neo-Nazi organizations such as National Resistance and Autonomous Nationalists. They were all found guilty for a racially motivated attempted multiple murder. In the interviews with research participants, it was clear that "Vítkov" became the symbol of hate crime. For more information about the attack, see: https://en.wikipedia.org/wiki/2009_V%C3%ADtkov_arson_attack.

- the absence of any other motive for the behaviour than prejudice; and
- the personality of the offender: investigation of the defendant in terms of his interests, opinions, criminal record, any ties to the far right, etc., may help to determine whether the behaviour was truly motivated by prejudice, or was simply rash.

The informant clarified the extent of damage to society caused by hate crime as follows:

> *"If someone attacks someone for whatever reason, where is it ruled out that tomorrow he's not going to attack me, for example, for some completely different reason, like maybe he doesn't like my eyes or my hair or what I'm wearing?"* (DPPO Prosecutor).

But most informants expressed no opinion on the nature of hate crime. The topic of the debate instead tended to be practical questions to do with prosecuting hate speech, such as determining the limits of freedom of expression or differentiating between the various classifications that may be used in prosecuting the crime.

4.5 INVESTIGATING HATE CRIME

The chief focus in investigating hate crime, the prosecutors said, lay in the fact that the hate motive must be proven. This complicates the investigation because it is simply impossible to "look into the defendant's head". The motive must be demonstrated using indirect proof.

Most of the prosecutors cited as key evidence verbal expressions, usually presented by means of witness reports or legally acquired—i.e. acquired in conformance with the Criminal Code—visual recordings. Some informants also raised the issue of witness credibility as something which must be assessed during the investigation. If credible witnesses are not available, it can be problematic to tie verbal expressions to subjective motivation beyond a reasonable doubt.

Although hate speech was considered absolutely crucial to demonstrating a hate motivation on the part of the offender, many of the informants pointed out that the motive cannot be deduced from hate speech taken alone. For this reason, the aim must be the entire context and character of the act. Attention should be paid to whether the behaviour was of a more situational character, typically under the influence of alcohol, or whether it was intentional. A further consideration is whether it represented a one-off event or occurred repeatedly. The historical context of the act may also serve as a guideline. This could include, for example, whether the act was committed on an anniversary date that is celebrated by members of the far right. Information must also be acquired about the relationship between the offender and the victim, and the credibility of these individuals.

In the following quotation, the informant indicates that some verbal insults may not be indicative of hate motivation, but are rather a label for the other side of the conflict, however crude:

> *"If someone says 'you white bastard' or 'you black bastard', it's difficult to judge whether this is just an instance of crude talk or a label, or whether it indicates that the person is of this or that nationality and that's why they're being attacked"* (DPPO Prosecutor).

The personality of the offender also played an important role in determining hate motivation. This involves identifying his opinions, interests, relationship to the victim's group, and determining whether there are any ties to the far right. For this purpose, social networks such as Facebook were identified as a useful source of information. They may also help to distinguish true hate speech growing out of long-held opinions from a one-off loss of self-control.[30]

In terms of a prosecution strategy, the collected expressions may be used to sentence the offender without the need to show a direct link to the act in question.

> *"Because in my experience these people often attach importance to what they put on Facebook, and very often they have content there that at the very least could be taken to be an expression of sympathy under section 404"* (DPPO Prosecutor).

Forensic expertise may also be useful in these cases, particularly from psychologists, because they can help to create a picture of the offender and any prejudice motive that may be present. One of the informants made use of such expertise in all cases involving serious crime. He pointed out, though, that by themselves these the expertise is not enough to demonstrate a motive. Forensic expertise is also useful in determining the influence of alcohol consumption on the offender's insight into his own behaviour. They may therefore be used to assess whether the behaviour was expressive of a direct intention, occurred as a by-product of other behaviour, or did not in fact occur at all.

Forensic experts in extremism can also be useful in hate crime cases. They may for example assess what kind of thinking is revealed by the use of particular symbols and whether material gathered during home searches contains extremist themes. Their findings may then serve as a source of evidence for proving sympathy for extremism and thus for attitudes reflecting prejudice. The following quote demonstrates this function of forensic expertise in determining the hate motivation on the basis of collecting neo-Nazi and racist items:

> *"If we would judge a racist crime, then of course it [daggers with swastikas on them, white power music, calendars etc.] is an absolutely ideal evidence, right. It is an absolutely ideal evidence by which we prove that the person has a certain relationship to it, because such things are not collected by a person who doesn't have a relationship to it. Because if he was interested in acquiring history or information about these movements, then he would have both right-wing and left-wing extremist movement" (DPPO Prosecutor).*

30 A one-off occurrence of loss of self-control cannot be used as evidence of hate motivation legally, although such cases do exist in practice.

A case was discussed above ("*Everything rested on the forensic expert's opinion…"*) in which the findings of a forensic expert on extremism were crucial in assessing the social harm caused by the promotion of this material and thus for deciding whether the behaviour crossed the full criminal liability threshold or was reflective of a simple misdemeanour. One informant was of the opinion that the courts sometimes require forensic evidence from extremism experts even in cases where this is not necessary. He felt that some questions for which forensic expertise is demanded should instead be decided by the judges themselves.

It is clear from the interviews that there is a significant difference between investigating hate crimes that represent the planned behaviour of a person typically connected to the far right from those which occur spontaneously, in which alcohol is very often a factor. The informant described a case in which the attack was committed spontaneously under the influence of alcohol, but that could not be resolved until several years after the fact because no perpetrator could be located:

> *"When something is organized, clues are left in the form of e-mails or letters or other documentation. Here that wasn't the case. The decision was made while drinking beer"* (RPPO Prosecutor).

As the case reports above show, demonstrable ties to the far right were present in only five of the 32 cases described (in two of these cases, the link was present for several offenders). In general, the prosecutors did not consider these ties to be especially strong evidence for demonstrating a hate motivation. Some did, however, admit that such ties could make it simpler to convict an offender. They may be helpful in deciding whether the case is situational or reflective of a true hate motivation.[31]

On the other hand, offenders with ties to the far right may be better acquainted with their legal rights and bring more frequent challenges to procedural steps taken by criminal justice entities. Or so this was the contention of the public prosecutor quoted below. He says the prosecution of offenders with ties to the far right may be more difficult because of the defence strategies they employ:

> *"Another specific of this criminal activity is that offenders, if they're really involved with the right-wing extremists, can really be proactive in defending themselves. They often have an attorney, and they complain about the approach taken by police, about the approach of the public prosecutor, and often have a tendency as well to think up a false alibi and invite their friends in to back them up"* (DPPO Prosecutor).

Another informant criticized what he viewed as an excessive focus by police on the concept of extremism. He himself considers the concept of hate crime to be more fundamental in that it allows acts to be prosecuted without first narrowing the focus to a particular group of offenders:

31 It must, however, be said that from the standpoint of the Criminal Code, this distinction is not justified. It need not be shown that the offender has a long history of prejudicial thinking. What is crucial is that the victim was attacked because of his actual or presumed membership in a particular social group.

> *"So for the police, naturally, it's easier to simply stereotype a certain set of people. Here we have a LEX (left-wing extremist), over here we have a REX (right-wing extremist) […] —to just operate along that axis. But if you do, you miss the people who… Completely normal mother, divorced mother of two, who curses Gypsies everyday on Facebook or spreads hoaxes about immigrants raping cattle"* (SPPO Prosecutor).

With regard to the exceptional difficulty of proving intent, of central importance in the informants' experience is the legal classification of the behaviour being prosecuted. Typically, in cases where there is inadequate evidence to demonstrate a hate motive for a verbal assault committed in public (Violence against a Group of People or Individuals, Defamation of a Nation, Race, Ethnic, or Other Group of People, Instigation of Hatred towards a Group of People or Suppression of their Rights and Freedom), the act was classified as Disorderly Conduct. For cases in which violence was threatened, the initial classification as Violence against a Group of People or Individuals was reclassified to Dangerous Threatening, which entails no bias motivation.

Two basic strategies by which to react to this situation emerged from the interviews: One of the prosecutors supported a strategy of setting a more aggressive classification at the outset. In other words, if there is any suspicion that the crime was motivated by prejudice, it should be qualified as such from the start. If the intent is not demonstrated, the classification can then be changed during the course of the investigation or in court so that it corresponds to the state of evidence. Two other informants were nevertheless able to envision a situation in which it would be a more advantageous strategy to qualify the act based on what has been proven. The main objective is to punish the offender. Here is a description of such an approach:

> *"A bird in the hand is sometimes better than two in the bush […] So rather than stubbornly insisting on a particular classification, it's better to make sure the individual is punished"* (DPPO Prosecutor).

Another informant agreed with the use of the second strategy, because it is much easier to prove the intent to engage in disorderly conduct than it is to show the intent to defame a particular group. But this second choice, the prosecutor said, presented them with another problem: how to define or achieve a precise understanding of nation, ethnic group, or race. For this reason, the better strategy may be to use a less fitting classification that is easier to defend in court.

4.6 EFFECTIVENESS OF HATE CRIME SENTENCES

The public prosecutors thought that hate crime is adequately defined in the Criminal Code. None saw any glaring deficiencies. The informants consistently expressed the opinion that it is always better if the law is broader in scope than if its provisions are too specific and exhaustive. If the formulation is too precise, they say, this may create difficulties in proving the crime and concede more room to the defence. One public prosecutor even opined that the law should leave some leeway for judges to decide.

> *"I tend to think that the law should leave room for judges to decide. […] So that they are able to assess whether the term includes something like that [a particular group characteristic]. Otherwise, you may as well have robots and computers and just enter the phrase he shouted, and they would spit out a sentence. So—no. The story always has to be taken into account along with the act"* (DPPO prosecutor).

What it comes to amending the Criminal Code, two prosecutors agreed that the law could be expanded to include more in the way of group characteristics. The only items they explicitly mentioned were sexual orientation and identity. The possibility was also raised that some examples of characteristics could be used:

> *"Of course you could do it the other way around, so that instead of having a list, you could present some examples. That you could add in words like 'on another, especially for [protected characteristics]'"* (DPPO Prosecutor).

This would solve the problem with the existing exhaustive list, which doesn't take in some groups like sexual minorities, disabled people, and homeless people. Another idea that was raised applies to cases in which particular characteristics are lacking. In these, an analogy[32] could be employed or, at least with some paragraphs, such as those relating to grievous bodily harm, the provision that boosts the penalty for the motivation behind the crime could be used (i.e. the qualified substantive merit). One informant admitted that greater use could be made of the formulation "or other groups of people".[33] This formulation, however, is currently stated only in section 356 Instigation of Hatred towards a Group of People or Suppression of their Rights and Freedoms. In other cases, hate motivation is limited to items on an exhaustive list (race, nationality, ethnic group, political convictions, and religious faith).

Other informants went so far as to seek a solution in leaving out all specification of protected characteristics. One informant saw advantage in reformulating the provisions in question so that, in place of concrete protected characteristics, only general reference to specific groups would be made.

> "*Perhaps the pertinent substantive merits could be modified* de lege ferenda *so that they don't even differentiate between the individual groups […] so that it was a truly general reference to the victim being a member of some specific group, whether that be a religious group, a racial group or an opinion group, or one of sexual orientation"* (DPPO Prosecutor).

There is also opposition to expanding the list of protected characteristics, because there is no current empirical evidence of a problem with people being attacked due to their membership in other groups or that the penal code as written does not impose adequate penalties:

32 Here it must be noted that analogies are strictly forbidden in criminal law according to the principle of nullum crimen sine lege, i.e. no crime without a law. This expresses the requirement that all actions criminalized by the state be clearly set out.

33 In this case, the focus is not on analogy but on complementing the law with an explication of the content of the term other groups of people, which is in principle admissible.

"So the question is whether we do not think up things that might be good and might be just but are out of touch with reality" (SPPO prosecutor).

Four other informants said they could imagine adding a qualified substantive merit for hate crime to the offense of Disorderly conduct. None, however, thought it necessary to do so. To the contrary—they expressed doubts as to whether it would be effective. The reason is that if a hate motivation is proved, the crime may be even now classified as an existing crime that includes a hate motivation in its substantive merit.[34] Alternatively one of these qualifications may be grouped with the disorderly conduct charge. One prosecutor said he couldn't understand why a qualified substantive merit for hate motivation existed for the crime of Breach of Confidentiality of Files and Other Private Documents in accordance with section 183.

In relation to substantive law, two main areas of concern have been identified in prosecuting hate crime, but they are not specific to it. In the case of hate speech, the prosecutors alluded to the difficulty of deciding whether the social harm done constituted a criminal offence or merely a misdemeanour. It is thus always mandatory to determine whether a particular instance of expression is protected as freedom of speech, or whether it may incite physical violence toward a particular group of people.

When it comes to violent hate crime, several informants pointed to problems in clearly differentiating amongst several legal classifications, such as General Endangerment,[35] Grievous Bodily Harm, and Murder (the last two usually in the trial phase). The ambiguity concerns the extent of harm a particular act might provoke, the amount of harm the offender wished to cause, and whether he acted with a direct or indirect intent. As a result, disputes have arisen between the prosecution and the defence, particularly in the classification of some arson attacks on dwellings involving larger groups.

These ambiguities were not specific to hate crime, but it was in this area of criminality that arson attacks took place repeatedly. It is also evident how these ambiguities may be especially problematic in sentencing hate crime. Given that General Endangerment is the only one of these crimes that does not include a substantive merit of hate motivation, it can be included only by the use of general aggravating circumstance. This means that proving hate motivation only justifies the imposition of a higher sentence within the allowed sentencing range. It does not permit the penalty to be increased *ex lege* as can be done for crimes in which hate motivation is a condition for employing a more severe penalty range. For crimes in this category, a role is played by the crime to which the public prosecutor and subsequently the court will tend.

34 In accordance with the nature of the act under section 352 Violence against a Group of People or Individuals, section 355 Defamation of a Nation, Race, Ethnic or other Group of People, and section 356 Instigation of Hatred towards a Group of People or Suppression of their Rights and Freedoms.

35 Whoever intentionally causes public menace by exposing people to a hazard of death or grievous bodily harm or property of another to a hazard of extensive damage by causing fire or flood or detrimental effect of explosives, gas, electricity or another similarly dangerous substances or powers or commits other similar dangerous conduct, or elevates such public menace or aggravates its averting or mitigation."

4.7 SENTENCING HATE CRIME

A clear majority of the informants consider the range of sentences for hate crime to be adequate, enabling all circumstances of the case to be taken into account. One informant promoted the notion that wider sentencing ranges be set in the Criminal Code to allow for greater differentiation in sentencing individual crimes. Some informants explicitly differentiated between verbal and violent crime when it comes to sentencing. One maintained that if it were up to him, he would increase the range of sentences only for more serious and violent crimes. Another informant stated that it is not within the public prosecutors' purview to assess how sentencing guidelines are set up.

To the extent there was criticism of sentencing, it only rarely concerned how the law is written. Instead, some public prosecutors raised the question of how existing sentencing ranges are used both as regards hate crimes and other types of crime. To a substantial degree, this is the responsibility of the courts. Any criticism was primarily directed at prison sentences. One informant stated that prison sentences are meted out only rarely and for short periods. Prison time, in his opinion, need not be long-term if the educational and deterrent role of the sentence functions.

With respect to the imposition of a particular sentence, one of the prosecutors indicated that for verbal manifestations, he would be in favour of a prison sentence only in exceptional cases, for example with recidivist behaviour, and that he would incline instead to the imposition of alternative sentences. Another saw rapid punishment for less serious hate crimes (like hate speech in stadiums)— preferably within a matter of days or weeks—as being more important than the type or length of punishment in cases where confinement is ordered.

One informant said that sentencing should be to a great extent a matter of "feel". By this he meant that it also depends on the judge what sentence is handed down in individual cases rather than purely on existing sentencing guidelines.

Several state prosecutors complained about insufficient work with prisoners. Some were also of the opinion that prison sentences may contribute to the radicalization of offenders or that they are losing their deterrent function to the extent that some offenders are probably happy to go back. They also saw room for improvement in working with offenders outside prison walls. Some complained that there were an inadequate number of psychologists and probation officers available. One saw as problematic the lack of resocialization programmes in neighbourhoods to work with these offenders.

4.8 PROCEDURAL AND FACTUAL LIMITS IN THE PROSECUTION OF HATE CRIME

Though our informants perceived substantive law to be adequate, their greatest reservations concerned the Criminal Procedure Code. Only a minority had no complaints about the sentencing process. These informants seem to have been used to working with the Criminal Procedure Code within the existing constraints. Some

complained in general that this Code in the CR is "overly formalized" and "heavily bandaged" after a large number of amendments.

The biggest criticism was levelled at the impossibility of using initial interrogation protocols of the accused and witnesses in court if an attorney was not present or other conditions imposed under law were not met. Several informants complained about the need to repeatedly Interrogate witnesses, especially when the victim is considered very vulnerable (even those who are hate crime victims).

In the below excerpt, the prosecutor explains why it may be problematic to re-interrogate witnesses in court, particularly when the offender is a member of the far right:

> *"It would be very helpful if we could at least present the official records to these people, because the trial takes place—under the best-case scenario—several months after the crime has been committed. But it may take up to several years, and the witnesses usually don't recall the incident very well. And when they do remember it, they are frequently afraid to give their testimony. The reason is that with extremist crimes, a certain cohesion may be seen among offenders. Often they bring their family to the main hearing, or friends who are members of the far right. That means witnesses may not find it comfortable to give their testimony in a situation where 10 skinheads are sitting behind them"* (DPPO Prosecutor).

Another informant saw cases in which the defendant must be interrogated anew as a bigger problem. Unlike the defendant, a witness can be charged with a criminal offence for lying, whereas the defendant may use any means available. There is thus a much greater risk that the defendant will deny or alter his original testimony. Another prosecutor by contrast did not see the way interrogation protocols are used in court as a problem. He did not believe that an official record could ever serve as key evidence, and therefore charges against the defendant could not be dropped simply because such evidence could not be used in court. He admitted, though, that making changes here could aid criminal justice agencies in proving the defendant's guilt.

Two prosecutors thought there was room for improvement in the way the law treats the institute of wiretapping and the way telecommunications traffic is recorded or monitored. He was not sure, for instance, where to put information mining from emails. Everything must be clearly defined in the Criminal Code, lest the defence raise an objection. One informant lobbied for simplification of the approval process for making use of these institutes, to speed up the criminal proceedings without impacting the rights and freedoms of citizens.

Another pair of prosecutors complained that there was too much external pressure when wiretaps are employed, since they are viewed as controversial and overused:

> *"But of course we're constantly being held back, and this is evident in the chest-beating of politicians when they say they've limited the number of wiretaps in use"* (RPPO Prosecutor).

In addition to the law, one other important factor should be noted that may influence the hate crime issue, and that is media coverage of cases. One informant indicated that she felt pressure from superior agencies to prosecute a case as a hate crime. She attributed this to the enormous interest aroused among members of the public and politicians after an arson attack in Vítkov. The informant thought this was a populist approach and said she withstood the pressure to use the classification. Another informant agreed that there is pressure exerted by the media, which may label some acts hate crimes.

4.9 COOPERATION WITH POLICE AGENCIES IN INVESTIGATING HATE CRIME

A clear majority evaluated their cooperation with police as problem-free. Some were of the opinion that the police always paid due attention to hate motivation in their investigations and understood how to work with these cases. One prosecutor said that there were problems in the area during the 1990s, when the issue was still novel and police officers had to be instructed to charge racially motivated acts as a full crime instead of a misdemeanour. Some of the informants saw no problem in the fact that officers sometimes had to be instructed. They saw it as part of a prosecutor's job to work with them, since officers cannot be expected to know the entire Criminal Code.

One informant described a case in which a memorial was damaged with hate symbols. He was surprised by the careful, sensitive way in which the police conducted the investigation. He said this might have been the result of the issue's novelty and required the officers to step out of their everyday routine. Another informant said an important factor was the particular officer was assigned to the case:

> *"Cooperation is always about people. It depends on which officer we're talking about, how intelligent he is, how aware, how diligent, how willing he is to discuss something with his co-workers. To consult, too, with the public prosecutor who will make the decision" (DPPO Prosecutor).*

In one case, the informant attributed the precise, objective approach taken by the police to the fact that the case had drawn the attention of the media.

Some prosecutors, though, had had less positive experiences with police investigations. One described their approach as run-of-the-mill. The problem as he saw it was that public prosecutors are dependent on what the police "scoop up", and thus what gets classified as a crime. The police officers have a lot of work, too, and the officer who is most knowledgeable doesn't always get assigned to the case.

Another informant had had the experience that the police sometimes simplified the investigation of hate crime by charging people only for speech that gives impression of prejudice. He also complained that police are sometimes inadequately sensitive to expressions of civil rights, such as certain actions directed against neo-Nazis (like carrying a sign bearing the slogan "Good Night White Pride") and want to prosecute these as hate crimes. He thought the police were overly enamoured of extremism as

a concept, and use of the label automatically justifies monitoring the individual in question.

The opinion was expressed repeatedly that the police play a key role in the initial evaluation of an act as a crime. If the police don't view the act as a crime, the case will never come before the prosecutor. It is also the responsibility of the police to thoroughly investigate all the circumstances of the case, including witness statements and an assessment of their credibility. In the next quotation, the informant explains the importance of the role played by police in clarifying motivation:

> *"The thing is that the police need to know where it took place. They need to think, to know the situation and circumstances that surrounded the event, and who was there. This makes it possible to deduce whether the individual had intent or didn't have intent, and just spit it out in anger. If he had the intent to offend someone or defame them. Otherwise it's always—in these crimes, it's all about words, right? So context is key—what was the person's intent, even what kind of history does he have"* (DPPO Prosecutor).

One informant nevertheless noted that it is difficult for police to clarify this issue on their own initiative. What is crucial is that the victim be first of all willing to press charges. Then it's up to the police to approach clarification of the motive without prejudice, and to be capable of evaluating the credibility of the statement.

4.10 HATE CRIME VICTIMS

For the most part, the informants saw hate crime victims as having adequate protections under the law and this was true as well with respect to the Act on victims of crime. Several times the opinion was expressed that although victims have adequate rights, they are not adequately advised of these rights, and their subsequent use is in some cases burdened by an excessive number of formalities. The following quotation from an interview with a public prosecutor illustrates the crucial importance of the attitudes held by the police officer conducting the investigation.

> *"The laws are awful. Nothing against the content of the law, but the form. Because the content gets lost in the form [...] When the cop is good, he has the people sign the ten pages, but he also tells them what's important for them to know"* (DPPO Prosecutor).

As the chief problem, one prosecutor cited the fact that victims rarely receive the damages they are entitled to because the offenders normally don't have the money. In his estimation, the state should pay out more money in such cases.

Aside from these points, the prosecutors we interviewed had no other criticism on the existing law on victims, the single exception being a prosecutor who disagreed with the law as currently written. She believed hate crime victims should have no specific rights, in order to avoid positive discrimination. In her opinion, the stress should be laid on the act itself as opposed to any specific consequences.

> *"Specifically, no. I don't think that it would be good for [the law] to contain specific provisions for [hate crime victims]. I think that every crime should correspond to what actually happened to the victim, regardless of the consequences [...] because to do so would once again lead to positive discrimination for some reason"* (RPPO Prosecutor).

Two other informants called attention to the fact that an overemphasis on the rights of victims could be contrary to the requirement that criminal proceedings be conducted as quickly as possible. In the following quotation, the public prosecutor points to the risks of having a greater number of victims' rights:

> *"So it's up to the victims to take an active role and be willing to make use of the rights they have in some way. So far, I haven't encountered them doing so very often. And truly that's fortunate, because victims have so many rights now that if they all start to demand them, it would extend the length of criminal proceedings significantly. And because there's a lot of pressure to get things done quickly, that would create problems"* (DPPO Prosecutor).[36]

The prosecutors had little experience with legal representatives in this area of law, and so only a few expressed an opinion on their role in criminal proceedings. One informant maintained that if the legal representative is an attorney, this is welcomed and may help in generating evidence because of the attorney's close contact with the victim. Two others said special benefits accrued from the use of representatives: 1) in situations where victims suffer from Posttraumatic Stress Disorder, making it difficult for them to assert their rights, and 2) in claiming damages, which is a fairly complicated process for victims.

4.11 PROPOSALS FOR IMPROVING THE PROSECUTION OF HATE CRIME

As regards improvements in the prosecution of hate crime cases, opinions varied to a fairly large degree. Some prosecutors saw no room for improvement. They indicated that there is no problem acquiring essential information, that training functions well, and that if the need arises, the issue can always be consulted with a higher level of the Public Prosecutor Office or already existing interpretations of the law can be utilized. Most frequently mentioned as useful were training (particularly where extremism is concerned) and the exchange of experience. One prosecutor also gave a positive evaluation to a training session held by the Judicial Academy entitled Introduction to Romani Culture. Another further stressed the need to have an adequate number of forensic experts in extremism capable of differentiating between extremist expressions and those which only relate to a different subculture, such as metalheads.

Other recommendations concerned the investigation phase. Two prosecutors call for improvements in the use of wiretaps and monitoring, which currently have significant constraints. One supported the greater use of wiretaps as a means of clarifying the motive. He would not hesitate to employ wiretaps based upon the

36 It should be noted that the victim is a part of the criminal proceedings.

International Convention on the Elimination of All Forms of Racial Discrimination. Based on the Convention, the Criminal Code allows the use of this institute even if the statutory requirement that the upper penalty range for prison time be at least eight years is not met. But the institute may be used only if its designated purpose cannot be obtained in any other way, and if the presumption that important information will be obtained for the case is justified. Another prosecutor recommended using social networks like Facebook to mine information that could clarify the motivation for hate speech incidents. One prosecutor pointed to the potential for problems with interpreters for some languages (such as the Olah Romani dialect).

Another proposal had nothing to do with prosecution, but it instead touched on work with offenders. Several informants felt there was a need for the existence of probation programs and stressed the resocialization of convicted individuals:

> *"What I think is incredibly important is working with these people, some kind of resocialization. I would be really interested to see how successful the resocialization of the Vítkov offenders will turn out to be. What will they be like, how will they think, how will they behave once they're out of jail"* (DPP Prosecutor).

4.12 SUMMARY

The public prosecutors had a fairly diverse range of experience with hate crime. Although some had never had a case in which the defendant was prosecuted for hate crime, all emphasized the importance of clarifying the motive in cases where there were indications that it could apply. Public prosecutors also have specializations and methodologies for handling this type of crime. On the one hand, this means an opportunity for specialization for individual prosecutors; on the other, it may lead to local interpretations of the law, particularly in the case of hate speech. Some of our informants also admitted that they feel pressure from the public, the media, and from their superiors to classify particular acts as hate crimes.

None of the informants were in favour of doing away with the substantive merit for hate crime. A prominent topic of debate was hate speech. The question was repeatedly raised as to where the borderline is between free speech and behaviour that is harmful to society and should be penalized. Such speech, they felt, should be treated with particular caution, and the subsidiarity of criminal repression should be considered. Something that definitely influences the perception of nonviolent hate crime is the personality of the prosecutor. This tends to the conclusion that the prosecution of hate speech is markedly uneven across the country.

The prosecutors generally viewed it as complicated to prove a hate motive. This is because of the necessity of proving a motive that, in the absence of a confession, must be shown indirectly. Verbal statements and information about the personality of the offender, as well as the totality of circumstances surrounding the act, are considered crucial pieces of evidence. An important factor in clarifying the motive, according to the prosecutors, is the ability to differentiate between situational expressions that are often influenced by alcohol consumption on the one hand, and organized behaviour on the other. When alcohol is involved, it may be more difficult

to demonstrate a hate motivation (which, according to the prosecutors, truly need not be present in such cases) and to uncover the perpetrator, because such behaviour is not typically planned in advance and few clues are available. Offender ties to the far right were identified in only about one-sixth of the cases described. Prosecuting such offenders may be trickier because of the potential that they have more experience in defending themselves and take a more proactive approach.

The informants mentioned two possible strategies in relationship to the legal classification of expressions of hate: 1) to aim at a more aggressive classification for hate motivation, which the court can then change if intent is not proven, or 2) in a situation in which the evidence is weaker, use a less suited classification that will be easier to defend in court and will allow offenders to be sentenced no less strictly.

The prosecutors generally rated the law as adequate and preferred the general nature of its wording. Two admitted that the law could be expanded to include protected characteristics, particularly as concerns sexual orientation and identity. They also proposed more general changes that would avoid a potentially problematic exhaustive list. In relation to interpreting the substantive merit, the greatest doubt centred on determining what kind of behaviour can be said to cause significant social damage (with hate speech) and should therefore be punishable under the criminal statutes. Further debates surrounded the problem of differentiating between General Endangerment, Grievous Bodily Harm, and Murder, particularly in the case of the arson attacks that have occurred repeatedly in the CR.

The informants also deemed sentencing laws to be adequate. Only two were in favour of widening the sentencing ranges in case of more serious or violent hate crimes. Greater objections were voiced with respect to the sentences handed out (too few prison sentences of the appropriate length) along with unsatisfactory levels of working with offenders (the issue of resocialization and the flagging ability of prisons to fulfil their deterrent and remedial functions). The role of the victim was once again perceived to be well-covered by the law. But some informants said that in practice, the approach to victims is burdened by formalism, for instance in the awarding of damages. If victims avail themselves of their legal rights more, meanwhile, this would have the potential to extend the time required for criminal proceedings.

The prosecutors perceived the trial court to be overly formalized. They saw its main weakness as the requirement that witnesses and defendants be interrogated repeatedly. Some of the informants were nevertheless used to utilizing the Criminal Procedure Code within its existing constraints and saw no need for changes. Inadequacies were also uncovered in the legal framework for wiretaps and monitoring. Most of the prosecutors had enjoyed good relations with the police. The predominant opinion was that they had learned how to work with this type of crime. Their chief role is in initially evaluating the act committed along with the surrounding circumstances. The prosecutors said they were dependent in this regard on police officers' assessment of potential criminal acts and on the approach taken by individual officers. A minority were critical of their work with police. Some said that the police are too enamoured of the concept of extremism and sometimes charge people on the basis of verbal expressions without paying due regard to context.

Some of the informants saw no room whatsoever for improvements in the way hate crimes are prosecuted. Training and the exchange of experience were generally rated as useful. On the topic of gathering evidence, some prosecutors called for more efficient laws governing the use of wiretaps and monitoring and greater use of information mining from social media. Particularly at some future point, problems could arise with the use of interpreters. An area that was seen as being in especial need of reform is the approach taken by the criminal justice system to offenders, both with regard to sentencing and with respect to their reintegration into society.

5. ATTORNEYS

5.1 DESCRIPTION OF INFORMANTS

A total of 20 interviews were conducted with attorneys. 12 were male, 8 female. They ranged in age from 26 to 54, with an average age of 38.5 and a median age of 38. Most worked in Prague, but they had also represented offenders or victims in other regions. Informants from outside Prague came from the Moravian-Silesian Region (3), the Pilsen Region (1), the Ústí Region (1), the Central Bohemian Region (1), and the South Moravian Region (1). Their experience in the practice of law varied. At the time of the interview, three informants had not yet passed the bar exam.[37] Others had been practicing law for periods ranging from two to 24 years, with an average of 8.5 years. One informant had also served as a district court judge, another as a forensic expert in political extremism, and one as a prosecutor prior to 1989.

As noted above, half of the informants had defended hate criminals, and half had served as advocates for victims. At least three defence attorneys had also represented victims. Since defence attorneys and victims' attorneys are on opposite sides of the criminal proceedings, the attorneys represent two relatively independent categories of informants. The quality of information provided is enriched by the fact that, by virtue of their function, they are well acquainted with the entire criminal process. They are present from the time offenders are initially interrogated until they are sentenced. Moreover, some of the informants may be regarded as true specialists in hate crime. For this reason this chapter is the longest, although to save space it includes fewer direct quotations.

5.2 PERSONAL EXPERIENCE OF THE ATTORNEYS WITH THE ISSUE OF HATE CRIME

Only one informant had been acquainted with the term hate crime (or hate violence) while still in law school. She had finished law school two years before the interview took place. A separate section had been devoted to the issue in her criminal law class. Other informants stated that hate crime had not been mentioned during the course of their studies.

A majority of the informants had been victims of hate motivated attacks, although two did not provide an answer to this question. The informants were attacked because of their membership in subcultures identifiable on the basis of appearance: dreadlocks, punk fashion (3 informants), Jewish identity (3 informants), Romani nationality (2 informants), political beliefs (2 informants), Czech nationality (1 inform-

37 To preserve their anonymity, we will nevertheless refer to them as attorneys.

ant) and membership in an extreme right skinhead group (1 informant). It should be noted that these were not always self-ascribed identities on the part of the informants themselves. One of the attorneys was also attacked for multiple reasons (anti-semitism and political beliefs).

5.3 PROFESSIONAL EXPERIENCE OF THE ATTORNEYS WITH THE ISSUE OF HATE CRIME

The professional experience of the attorneys with the issue varied. There were both informants who could be identified as specialists in hate crime, as well as informants who encountered the issue only rarely. A majority of the informants (12) tended to be in the latter group. Those that may be considered specialists had attained most of their experience working with victims. Two defence attorneys out of eight may also be regarded as specialists. A minority of the victims' advocates, six informants in all, were either collaborating with the organization In IUSTITIA at the time of the interview or had done so in the past.

During the interviews, 33 hate crime cases were discussed by the informants. Four were raised by more than one informant, with one of these cases involving three informants. More than once both a defence attorney and a victim's representative were involved in the same case. Of the 33 cases, 12 had taken place more than five years earlier, with some from as long ago as the early 1990s. More of the victims were individual males (17) than individual females (4). Seven cases involved attacks on males and females together, or on entire families. In terms of group membership, people of Romani background clearly dominated (15 cases). Attacks were also carried out on people of Czech nationality (3), people holding particular political beliefs (3), people of Jewish nationality or belief (2), Russian nationality (1), Vietnamese nationality (1), foreigners of other backgrounds(1), or who were homeless (1). The public interest was harmed in five cases in which there was no concrete victim.

All of the offenders involved were male and most had been demonstrated to be either members of hate movements or sympathizers. Most were right-wing extremists (18 cases). A not insignificant number of offenders were on the police force (4). In a single case, no information was available about the offender. Physical violence was characteristic of the cases. Physical attacks featured in 18 cases and threats of violence or incitement to violence in two cases. There were four cases of arson. Five cases were limited to nonviolent verbal attacks, and four concerned support for or promotion of a hate movement.

Of the 33 cases, seven were not treated as crimes. In these, as a rule the police were not notified. Only on a single occasion did police maintain that a criminal offense had not been committed (threats made because of help given to migrants). Another case, involving a physical attack on a Romani family, was forwarded by the police as a misdemeanour to the pertinent municipal authority. In one instance, the court case was still ongoing. In all, there were 31 preliminary or final judgments handed down, with the court in some cases deciding the guilt of more than one defendant. In three cases, charges against the defendant were dropped. All of the hate crime charges re-

lated to supporting or promoting a hate organization. 13 of the 28 convictions took into account the hate motive, 11 did not. Relatedly, more prison sentences were handed out than suspended sentences. Arson was judged to be a hate crime in three out of four cases. For the four remaining cases, which took place in the early 1990s, this information could not be determined.

5.4 THE STRATEGIES OF ATTORNEYS—DEFENSE ATTORNEYS AND VICTIMS' ADVOCATES

Asked how they choose strategies in defending individuals charged with hate crimes, the attorneys usually maintained that there is no one-size-fits-all strategy applicable to all these cases. The choice always depends upon the evidence involved, the characteristics and wishes of the client, and the social circumstances surrounding the case. Some clients decided to confess to having committed a crime, while trying to get a reduced sentence. Some admitted to everything, others only to a physical attack, for example, but not to hate motivation.

This denial of hate motivation may be seen to be one of the two chief characteristics of a hate crime defense. It primarily concerns those hate crime cases in which the hate motivation is included in the qualified substantive merit of the crime. Many defense attorneys indicated that their main objective was to challenge this motivation. This was normally done by promoting an alternative motivation that had nothing to do with hate. Two basic tactics may be discerned: incriminating the victim and justifying the actions of the defendant.

The first tactic consists in transferring responsibility for instigating the crime to the victim. In one case, the defendant maintained that the attack was in fact started by the victim. He alleged that the victim stepped on his foot without apologizing in an after-hours retail outlet, so he retaliated by punching him in the head. In another case, the defense emphasized the victim's share of blame in the assault. Had the victim ignored the attacker's provocation and walked away from the location of the assault, the conflict would not have escalated. The defense attorneys naturally did not restrict themselves exclusively to hate motivation. They also tried to discredit victims in other ways. In one case, for example, attention was drawn to the poor character of the parents, who immediately after the attack showed more concern for their property than their children.

Many defense attorneys tried to argue that the victims had been attacked not because of their nationality, ethnicity, or "racial" identity, but rather because of their problematic lifestyle. The defense in one case involving an arson attack, for example, was constructed around the claim that the defendant had attacked the home of "maladjusted" people who hid stolen goods in their basement. In other cases, perpetrators were said to have simply defended themselves by reacting to previous injustices. On one occasion, they avenged themselves for a theft that they or their friends had suffered. On another, the crime was instigated by changes to a neighbourhood to which a large number of Roma had moved. The offender had been accosted by them several times, and when he decided to move, he discovered that his home would not

sell because of his "bad neighbours". The act of throwing a Molotov cocktail into the house where the Romani individuals lived was presented as an unfortunate solution to an unfortunate situation the offender had been caught up in.

When it comes to justifying the defendants' actions, the defense attorneys often pointed to the defendants' good or unproblematic relationships with members of the victim's group to defuse accusations of a hate motivation. For example, some defendants claimed that they had or used to have friends among members of the group in question. They showed that they possessed personal contact information for these people (e.g., in the form of telephone numbers). And sometimes members of the group were even called in court as witnesses or asked to give sworn declarations in support of the defendant. In other words, they based their defense on the presumption that people whose relations with members of the victim's group were good could not be capable of committing a hate crime. Also used were claims that the defendant acted under the influence of alcohol or in a state of affect that diminished or destroyed his ability to act rationally. One of the arson attacks was defended in this manner. The defense attorney maintained that had the defendants not been intoxicated and as a result cheered on each others' use of nationalistic slogans, one of them would not have thrown a not yet extinguished torch through the window of a Romani family's apartment that they usually used on their way home from the pub. And finally, there was one case in which the perpetrator cited social pressure to justify his use of racist language: some of his relatives had attacked two Czechs, and the case had drawn media attention. In brief, he found it difficult to bear the media attention, got intoxicated and, when he was refused entry to a pub, reacted in an unfortunate manner, according to his attorney.

There are other ways, as well, to keep hate motivation from being considered. In one case, for example, the defense argued strongly that the charge should be reclassified from Murder to Dangerous Threatening; the latter offense by contrast does not include hate motivation in its substantive merit. The case concerned involved an arson attack, one of several that were discussed in the interviews, each of which had been classified differently. In one instance, the charge was attempted Murder. In another, it was grievous bodily harm. The third instance was General Endangerment; and the fourth used a separate classification for each defendant—one was charged with General Endangerment, the other with attempted Murder. The informants involved expressed strong criticism of the practice of classifying the same act variously.

Challenging hate motivation was not, however, always the chief strategy employed. One attorney in fact explicitly rejected such an approach. In her estimation, if a hate motivation was presented as part of a case, there was generally strong evidence for it. For this reason, she considered it better not to spend too much time on it, but instead to devote her efforts to other aspects of the case (which might include changing the classification of the crime; taking issue with the material and especially the psychological harm suffered as a result of the attack; objecting to bias on the part of forensic experts or the court; rejecting the illegality of a concert or an event at which the police were present but did not make any arrests, claiming this demonstrated its legality; and anything else that might encourage charges against the defendant to be dropped or his sentence reduced).

The second characteristic concerns extremist hate crime, chiefly support or promotion of a hate movement or organization. In such a case, it is hardly possible to present evidence in support of the defendant, the attorneys say. The only alternative is to focus on overturning the evidence presented by the prosecution. An important role in these cases is played by forensic experts on extremism. This often motivates the defense to accuse these experts of a lack of objectivity and thereby of a lack of professionalism. The attorneys attempt to demonstrate this by forcing the expert in question to admit that more than one interpretation of the material at issue (documents, images, symbols, etc.) is possible. Some defense attorneys directly assert that there is no such thing as objectivity in the fields of social science from which forensic experts are recruited. An attorney who in the past had himself served as a forensic expert called this strategy "postmodernism in practice". A lack of professionalism on the part of forensic experts was demonstrated either by challenging their methodology in court or by objecting to their bias. The objection against bias was submitted in the case of a forensic expert who had publicly referred to all neo-Nazis as "depressed brutes". Another expert was labelled as biased because of his allegedly Jewish background and the fact that he had been accused enriching himself illegally at the expense of the state. Legal arguments were used in addition to factual arguments. The attorneys defending the perpetrators connected to these hate crimes made frequent reference to constitutionally protected freedom of expression in challenging whether hate motivation was at all at issue.

Victims' representatives were characterized as important sources for getting access to justice that respects victims' interests and wishes. First of all, representatives possess a specific right the victim lacks: the right to participate in the interrogation of the accused and of the witness already during the preparatory phase of the proceedings. They may further exercise victims' rights which have been entrusted to them. This allows them to propose evidence and, with the consent of the court, have that evidence heard. They may also look at the file without challenge, enter claims for damages and, with the consent of the court, examine the defendant and witnesses. Second, advocates were seen as important sources of support in situations where the victim have no legal knowledge and are in a vulnerable position. The presence of the advocate helps the victim psychologically, because they are often anxious for their safety and require psychological intervention.

The informants maintained that victims' representatives need not have a law degree to be qualified. Aid organizations may be also be of assistance, and in general, any kind of victim's representative is better than none at all. Criminal justice agencies may not always place the needs of the victim first, because their first concern is the speed and efficiency of the criminal proceedings. This is particularly true with regard to hate crime cases, whose seriousness the police are alleged to minimize. Victims are often unfamiliar with the formalities of criminal proceedings and the legal language used with them by police. This may result in bad decision-making, such as failing to request that personal details be anonymized in the file or failing to join a claim for damages. In the first case, the victim's safety may be threatened. In the second, the court decision may fail to award damages. If the victim still wishes to claim damages, a civil suit is then the only recourse.

One attorney maintained that victims' advocates functioned in a way that gives victims leverage in criminal proceedings. She was convinced of this by a case brought by a victim that had been rejected by a public prosecutor on the grounds that no crime had been committed. When the victim's advocate complained, however, a higher-level agency reacted by referring the matter to the police for investigation. Another advocate told a similar story. Police, he claimed, trivialize complaints brought by victims who lack representation. A belief that the police will not support victims may be a further source of harm. Because of this, one advocate instead advises victims to pursue resolution of nonviolent hate attacks via defamation suits in the civil courts. If the suit ultimately fails, he says, clients will take it better, because they have committed themselves to the outcome. The disappointment factor is lower than in criminal proceedings, in which the police and other criminal justice organizations play the key role.

Victims' representatives also contribute to proving hate motivation. Most important, according to some of the advocates, was that the victim mention the hate motivation as soon in the process as possible, preferably while giving the initial statement. Otherwise there is a risk that the victim's credibility will be challenged, either by the opposing party or by the court. The mere presence of the attorney itself will not, however, guarantee that the case will be treated in an exemplary fashion. One attorney attempted to have the charges reclassified from a regular crime to a hate crime, but was ignored by police. Another remembered an instance in which a homeless person was accosted by security guards at a shopping complex. The man died, and there was suspicion this was due to the attack. But the police failed to investigate the attack, nor did they interrogate the security guards, and the case was set aside. Several attorneys indicated that advocates are not always shown adequate respect by the police. Cases were also recorded in which police blatantly stepped outside the law. In one instance, they contacted a client without the attorney being made aware they were doing so; in another, they sent information via registered mail rather than using a data box.[38]

Many cases came up in the interviews in which victims were poorly treated, some of them to an extent that corresponds to secondary victimization. Some of the attorneys spoke of attacks on victims by police officers present in the office together with investigators. On one occasion, an officer in an adjacent room answered a colleague who asked what his interrogation was about by saying, "Gypsies always stir shit up!" In another case, a woman who offered help to immigrants was assailed with the words, "So, you ought not to do that, stupid cow!" In neither of these cases did the victims' advocates react, because they feared that to do so would end up harming the interests of their clients. Some victims refused to report the attacks on themselves to police precisely because they feared victimization. And such fears were not exclusively focused on the police—public prosecutors and judges were also accused of hateful verbal expressions.

The role played by victims' representatives during the trial itself made take several forms. In some cases, their activity may be limited to submitting claims for damages. In others, they may essentially "take the reins from the public prosecutor",

38 A "data box" is an online electronic storage facility used for transactions of various kinds between government agencies and individual citizens. It provides a secure means of exchanging information.

as some defense attorneys critical of this tendency have formulated it. In their estimation, victims' advocates should perform a purely supplementary role in court, primarily aimed at "proving damages in the form of unjustified enrichment or immaterial harm, and so on". But this is not what happens in practice. Advocates may be allowed to "present evidence not directly tied to damages or immaterial harm that might negatively impact on the defendant", or to substitute for the role of the public prosecutor. The extent to which this is true depends upon the role of the public prosecutor and the judge. The advocates, however, defended this more active role. If the public prosecutor is too "lax", there is no other recourse. And if the perpetrator is not sentenced, damages cannot be awarded.

Sometimes, victims' advocates may hurt the interests of their clients. This may occur, for example, if they act out of line, are unable to provide grounds for all their requests, or do not act in accordance with expected norms (by for instance making claims they cannot back up). This may disadvantage the victim in the eyes of the court. The tendency noted above to seize the reins from the public prosecutor can also, in the final analysis, work to the client's disadvantage.

Two defense attorneys brought up a case in which, according to one of the attorneys, the opposing victims' advocate wanted to "make her name" in a high-profile extremism case. For this reason, she submitted a number of items of evidence that were intended to testify to the "hate climate in an entire village". She ended up, however, demonstrating the opposite of what she set out to show, instead casting the victims and Romani people in general in a negative light. This allegedly worsened the social relations in the village, which had not previously struggled with an atmosphere of hate. The other defense attorney characterized this as "doing more harm than good". In the end, by criticizing and generally prolonging the trial with calls for it to be suspended and other frequent comments, the advocate was said to have helped the defendant's cause instead of her client's. Also playing a role were the advocate's emotionality and her insistence upon the highest allowable damages, supplemented by the fact that she was a resident of the capital city, and this aroused the locals' ire.[39] In the final result, the defendant received a fairly light sentence which, upon appeal, was reduced to a suspended sentence.

The position of both these informants must be taken with a grain of salt. Proactive advocates always present issues for defense attorneys, since the two are on opposing sides. In a situation in which the defendant feels that paying compensation for damages would be more burdensome than receiving a suspended sentence, his main enemy will not be the public prosecutor but rather the advocate pursuing the victim's claim. To prove that claim, the advocate must provide evidence as well as challenge proposed evidence that may, for example, attack the victim's credibility. It is also the responsibility of the advocate to prevent secondary victimization by repelling attacks on the victim's dignity or honour that may occur during the course of the proceedings.

39 Advocates made repeated mention in the interviews of the significance of influences outside the legal system proper. Although there is no room here to go into the issue, it should be a topic of further legal research. It significantly disrupts the principle of equality in the criminal process.

5.5 ATTORNEYS' OPINIONS ON THE CONCEPT OF HATE CRIME

In principle almost all of the attorneys were in favour of hate crime laws. A single informant said that because of their frequent misapplication in particular cases—he alleged that Romani offenders are not charged with hate crime (see below)—he would be in favour of doing away with the qualified substantive merit that contains hate motivation. Considering his other remarks, however, exaggeration or a misunderstanding cannot be ruled out. Moderate doubts were expressed about nonviolent hate crime, but here, too, it was ultimately recognized that such acts should be legally governed. Two attorneys noticeably distanced themselves from the issue. They did not come out explicitly against hate crime laws, but neither did they accord them any great importance. Either they didn't consider them essential to obtaining justice, or they thought these laws were less important for disadvantaged groups than other issues of a civil law, antidiscrimination, or political nature.

Five reasons were given to justify the existence of hate crime laws: moral, social, deterrent, anti-extremist, and marketing-based. Firstly, attacks on the identity of some individuals are morally reprehensible—"pure evil" according to one attorneys—because unlike other crimes, hate crime concerns the identity and integrity of the victim. In the final analysis, the protections given under the law to groups threatened by hate crime are a matter of equality. If a person is attacked simply on the basis of his or her identity, and other people are not subject to such attacks, the inequality this represents must be eliminated. The second reason derives from a high level of social harm. Just as sentences increase with increasing levels of property damage, attacks motivated by hate should be punished more severely in view of the harm they cause not only to the victim but to social cohesion as a whole. The third reason concerns the use of anti-hate legislation as a deterrent. Hate must be defined in a way that prevents this sort of attack. The law may be utilized to send the message that such attacks will not be tolerated. The fourth reason sees hate crime laws as a means of forestalling the political radicalization in the society. It is based upon the presumption that the democratic state has the right and obligation to protect itself against those who would subvert it. This reasoning is based upon the principle of the anti-extremist doctrine. The fifth reason declares that the Czech Republic has a reputation as a racist country, and having hate crime laws in place sends a signal that the country does not wish to be seen in this way.

There was no consensus among the attorneys on the concept of hate crime. Some understood hate in the sense of a strong negative emotion that was not exclusive to cases in which the victim was attacked because of intergroup prejudices. This is a point of view that bears significant consequences when it comes to prosecuting hate crime. If the traditional narrow definition of hate crime is used, the number of hate crimes recognized by the attorneys will be smaller. Many of the attorneys seemed to have a notion of what type of act ideally conforms to the definition of hate crime. This was typically an arson attack by an organized extremist group that targeted the home of a Romani family with no other potential motivation for the crime than hate. If several motives are available, they are usually used to exclude the hate motivation. One attorney labelled these cases as "borderline hate crimes". Some informants did not consider them to be hate crimes at all.[40]

40 This is an understandable position on the part of defense attorneys. It follows from their duty to obtain the most favourable decision and sentence for their clients. If attacks motivated by hate are allowed to increase the mandatory length of the sentence, it is only logical that defense attorneys will challenge the existence of hate motives. It is important to note that the state has a general obligation to investigate hate motivation that is currently primarily based upon case law from the European Court of Human Rights.

In view of this, it is to be expected that criticism was commonly levelled at the incompetent manner in which criminal justice organizations applied the hate classification. This incompetence concerned not only the overuse of the classification, but its inadequate use, as well. Evaluations of the individual organizations differed, but the most frequent objections concerned the work of the police, followed by that of public prosecutors and judges.

"Overuse" refers to the use of the hate classification by criminal justice agencies even in cases where it is not applicable. Some defense attorneys even went so far as to talk about misuse or of "bending the law". In particular, police were said to be using the hate crime classification as a means of gaining recognition and merit among their peers. Frequent reference was made in this regard to the arson attack that took place in 2009 in Vítkov. The informants said that subsequent attacks were treated is as if they were highly similar to the Vítkov attack. The police, they said, are evaluated on the basis of how many cases they solve and are thus under pressure to document their success in the fight against extremism. Such a "point system" means that the most efficient strategy is to focus on straightforward, easily solved cases like support for or promotion of hate organizations (extremist hate crime).

In addition to the obvious injustice suffered by a defendant whose act is improperly classified and therefore suffers social stigmatization as a hate crime perpetrator, the defense attorneys noted two additional outcomes of this practice. First of all, unfairly labelling someone a hate crime perpetrator may end of strengthening prejudice against the group from which the victim hails. In other words, this experience may incline people who had not formerly evinced prejudice to become more racist. Another consequence is damage done to interethnic relationships at both the local level and across society. One informant stated that if the majority of people disagree with the hate crime classification given by criminal justice agencies in particular cases, this may exacerbate relations with the minority group in question—they will be perceived to have been given social advantages. However, the majority of informants did not share this "overuse" perspective.

Attorneys who were in favour of the traditional classification of hate crime as one involving prejudice, however, maintained that the classification is not used often enough. This they explained in two ways. First, the police may often refused to treat hate crime as a crime, instead declaring it a misdemeanour or not a criminal offense at all. And, second, if they do determine that culpability is present, they do not regard the act as a hate crime. Instead of a crime whose qualified substantive merit includes hate motivation, perpetrators are charged with crimes that do not entail hate, such as Disorderly Conduct. In the eyes of some attorneys, police make a concerted effort to disprove hate motivation. By way of illustration, one informant said the following:

> *"Something else comes to mind, another interesting point. That is that there is a tendency to disprove any hate motivation as soon as possible. Yeah, as long as there are not some indications, right? Such as the difference between the victim and the perpetrator, or if it's not a right-wing extremist or, I don't know, a Roma, or a Jew wearing a yarmulke. So unless it's absolutely clear... If it involves a so-called 'good citizen' who makes*

a slip and just beats someone up or breaks into someone's house in broad daylight, then from the very start, there's a tendency to disprove, to convince everyone that it wasn't motivated by hate, that there was another reason—that he was angry, that he didn't like the noise or the smell, or the people stole from him. I don't know, right? But in going through the files I really did encounter highlighted areas in the testimony from which it kind of followed that the attack had been motivated by an alternative reason instead of hate."

Five reasons were identified for this tendency. First, proving hate motivation places a higher workload on the police. Second, not citing hate motivation will result in a greater chance that a given case will be successfully closed. Proving hate motivation not only results in more work, it also generates a less certain outcome. The third reason involves prejudice on the part of the police against members of groups threatened by hate crime, as well as their legal representation. Typically, these groups are people of Romani background, Muslims, or human rights activists. The fourth reason is sympathy for the perpetrators. Police may either show frank bias or blame the victim for playing a partial role in the attack. An example of the latter would be the failure of the police to take seriously threats against a woman employed in an NGO working with migrants, in which the officers said that while the perpetrator's statements may have been extreme, so were her ideas about migration. It was also stated that penalizing hate crime is a priority for neither the police nor the Ministry of the Interior. When ministers and the police leadership speak negatively about refugees, it is hardly any wonder that those who work for them will take a similar position.

A separate problem is what one informant claimed was a failure to use the hate qualification for hate crimes committed by Romani individuals. The attorney claimed they are shown preference at the expense of "white" offenders. Another informant, by contrast, spoke of feeling pressure to use the hate classification in cases involving attacks by Roma perpetrators on Czechs, even when evidence that a hate motivation was involved was lacking. Clearly, the use of the hate motivation is influenced by the interests and relationships of power.

5.6 FEATURES SPECIFIC TO INVESTIGATING HATE CRIME CASES

The following were cited as features specific to the investigation of hate crime: the necessity of clarifying the perpetrator's motive, creating a profile of the perpetrator from information provided by the police, utilizing opinions by forensic experts, different assessments of hate crime by different criminal justice organizations ("regional laws"), and the impact of the approach taken by criminal justice organizations and other actors on the eventual classification of an act as a hate crime.

All of the attorneys agreed that it is very difficult to prove hate motivation. A hate crime is a type of crime that "to some extent is in one's head". If the perpetrator refuses to admit to the crime—and normally he does not—the hate motive must be deduced from external evidence. The most significant expressions of hate motivation involve verbal or physical acts during the attack, along with the social characteristics of the assailant: his sympathy for or membership in a hate movement or group and prior commission of hate crimes. As regards verbal and physical expressions,

the former most often concern racist or other hate-motivated epithets like "Burn, Gypsies!", "You black bastards!", "You white son-of-a-bitch, we'll get your ass!", "You fucking Jew!", and so on. Also included would be Nazi greetings like "Sieg heil!" or showing the Nazi salute.

There were differing opinions as to the weight that should be assigned to social characteristics. According to some attorneys, these were key, even more important than verbal or physical acts that did not reference these characteristics. The feature that is truly specific to hate crime is that a profile of the perpetrator is prepared by police extremism experts for regular duty officers and the public prosecutor's office. If the perpetrator has been registered by police as an extremist or expresses an inclination to neo-Nazism or other extreme right ideologies, either publicly (including the use of the telephone or the internet and social networks) or privately (on the basis of material gathered in home searches), this is said to elevate the likelihood that he will be arrested and sentenced as a hate criminal. By contrast, if the perpetrator is not so registered and does not evince these signs, this likelihood is diminished. It should, however, be stressed that simple affiliation with a hate movement or group need not in itself be accompanied by hate crime. Despite this, photographs of perpetrators attending properly licensed demonstrations or concerts have allegedly been introduced as evidence. The attorneys also pointed out that not every extremist commits hate crimes.

Hateful expressions were recorded via victim statements, third person witnesses, photographs and audio or video recordings, various kinds of documents such as books and other literature, items that promote various political or cultural events, music CDs, DVD concert recordings, clothing and fashion accessories, and flags. Some documents were obtained in personal or home searches. Others were digital and were gotten from investigating social media and other communications channels.

As regards victim statements, there were cases in which the statement formed the sole basis for the court's decision. In other cases, however, the statement was not enough and had to be supported by other pieces of evidence. The testimony of unbiased witnesses was rated as especially important. The police officers investigating the case in question could also be called as witnesses. If the perpetrator is involved in an extremist group, undercover agents who have infiltrated hate movements are utilized. Audio and video recordings also play a key role in documenting expressions of hate, whether they concern the attack itself or the perpetrator's social characteristics. In general, though, many of the attorneys claimed that no piece of evidence is decisive in and of itself; it is always an evidential chain that ends up convicting the offender.

Two exceptions are 1) an opinion by a forensic expert on extremism if the case concerns nonviolent crime or extremist hate crime, and 2) a confession on the part of the defendant. One attorney in fact doubted whether hate crime could be demonstrated without a confession. As for the use of forensic experts, several informants said that some cases do indeed stand or fall on the expert's opinion. Its importance is also evident, they said, in the fact that the charges and the court decision to some extent directly reflect its language—according to one informant, up to 80% of the text

may be copied. But on the other hand there were cases in which the court refused to accept the opinion's validity and judged a particular expression to be protected free speech.

The usual objective of a forensic opinion is to provide a historico-political interpretation of the symbols used by offenders in committing hate crimes. These symbols are typically displayed on clothing, fashion accessories, flags or promotional materials. Forensic experts are also, however, concerned with song lyrics from particular groups and the concerts they organize, including the political opinions of their visitors. The social context of the assault is also a focus of interest—whether it was carried out on the anniversary of an event important to the group concerned. The attorney who had formerly served as a forensic expert said that it is also important to assess whether offenders engaged in long-term preparation for the crime, motivated by their ideology, or whether situational dynamics and alcohol combined to create the motivation. The expert opinion, then, plays a role not only in the decision as to whether a hate crime was committed but also in determining the extent of the threat posed to society, even if the latter is not the legally designated purpose of the opinion.

The most frequent criticism made of the use of forensic opinions on extremism was that their authors focused on legal issues. This is not within their province under the law but is rather the exclusive domain of criminal justice agencies. The use of forensic opinions was criticised by both defence attorneys and victims' advocates. The latter primarily remarked upon the bias of forensic experts, which they said resulted in opinions being written in a way that favoured the prosecution. One advocate criticised the use in forensic opinions concerning the type of font used in documents. Others noted that police and other criminal justice agencies use forensic opinions even when the symbol in question has an obvious meaning, as with a swastika. Police officers should be able to judge the illegal nature of these symbols without the help of a forensic expert, instead of trying to "hide behind someone else's opinion".

There were other factors besides proving hate motivation that attorneys thought were decisive in determining whether a case would receive a hate crime classification. Chief among these was contextual conditionality, in reference to the varied nature of the approaches taken by criminal justice organizations. Many of the attorneys spoke in this regard of "regional law". This points to situations in which the same act is evaluated differently by different organizations. Some police agencies and public prosecutors' offices take an interest in hate crime; others do not. One court may find a defendant guilty, another may let that same defendant off the hook. The diverse range of court decisions is such that it has encouraged ambiguity in the law. This ambiguity was also enhanced by competing court decisions. Aside from the Supreme Court, which clarified that the Nazi salute is not illegal when used in concert out of public view,[41] the decisions have focused on graphic symbols. The experience of one client was noted in which various forensic experts disagreed as to whether particular symbols were permissible by law. One attorney recalled a case in which the court refused to hear evidence on the promotion of neo-Nazism, reasoning that there were more important social problems. It must be pointed out, however, that this was hearsay.

41 Decision of the Supreme Court dated 24/8/2011, File No. 7 Tdo 634/2011.

The role played by context in prosecuting hate crimes, in addition to its geographic and institutional dimensions, also has a temporal dimension. Several attorneys were of the opinion that the approach taken to hate crime has evolved over time. One defence attorney with long-time experience defending hate crime offenders pointed to a basic change in the approach taken by police. While ten years ago, offenders were charged with trivial infractions for wearing armbands with offensive symbols, today no charges are brought even in cases involving constant incitement to violence.

The attorneys just cited—both the informant who noted courts will refuse to hear about the promotion of neo-Nazism and the informant who spoke of perpetrators being charged with trivial infractions—brought up the recent "migration crisis". They worried about a potential scenario in which criminal justice agencies "become enmeshed in an atmosphere of hate within society". If context is of key importance in assessing hate crime, it must be taken to include events in society as a whole and all the actors involved. Two groups of actors in particular—politicians and journalists—were highlighted, because of their ability to contribute to the way hate crime is framed.

In the case of politicians, we have already noted the pressure to demonstrate success in the fight against extremism, preferably spectacular success. One attorney noted that during a certain period, perpetrators of verbal hate crime were treated more harshly than perpetrators of violent crime or other grave violations. Special police units were sent to their homes, the perpetrators were taken into custody—and remained there for an excessive amount of time—and it was virtually impossible to defend them because the quality of evidence was almost never taken into account in their convictions. Another attorney claimed that hate crime is used to neutralize the political competition. It is apparently enough for a politician to fall out of favour for police to begin working to discredit him. But he provided no additional information, nor did any of the other attorneys.

On the other hand, politicians were criticised for themselves contributing to the atmosphere of hate in society, if not indeed directly serving as the sources of hate expressions. Those who have served as such sources include both far right populists, for whom attacks on particular social groups are a key part of the agenda, and mainstream local politicians, who may do so to score political points. Leading politicians are also to blame, up to and including the president of the country, who in the words of one attorney has uttered statements similar to those that have landed other people in jail:

> *"Imagine that I was at the trial with Vandas [the chairman of then outlawed far right Workers' Party], who was convicted of making statements that I heard from President Zeman three or four years later, right? That's how it is. From my point of view it's useless to write about extremism, because as an agenda it's become passé. It's like it stands outside, like it's no longer a big social problem."*

With journalists, the situation is more complex. One reason may be that compared to politicians, they came up more frequently in the interviews with attorneys. Pronounced media attention was mentioned many times as a factor in the prosecution of hate crime. Negative experiences significantly outweighed positive experiences. Beginning with the latter, one attorney claimed media coverage increases the probability that criminal justice agencies will address a particular crime. It is, however, better if victims do not personally generate media attention, lest they be labelled "professional victims". The attention must come from the media itself or from another organization. Other attorneys criticized the presence of the press. They said journalists played a role in promoting a particular interpretation of a case—the hate interpretation—in instances where it did not fit. One said that his case would never have been investigated as a hate crime if the criminal justice agencies involved had withstood media pressure.

5.7 THE EFFECTIVENESS OF HATE CRIME LAWS

In providing an overall evaluation of anti-hate legislation, a clear majority thought that existing laws were adequate. A substantial number said the way the hate crime laws are currently written does not stand in the way of getting convictions. A single informant said that there is no stable consensus as to what meaning political beliefs bear in the sense of protected characteristics. This, she said, necessitated in one instance spending large amounts of time developing arguments for why employees of NGOs who are attacked for working with migrants belong in this group along with the members of political parties and movements. In general, the informants were not in favour of amending current law. Their belief was that the more general the law is, the more effective it will be. They took greatest issue with the application of a crime to particular acts (as noted above).

Despite these views, we were able to identify some areas the attorneys felt require changes. These primarily concerned the expansion of protected characteristics and the inclusion of hate motives in the qualified substantive merit of crimes where it is currently lacking.

There were mixed reactions to the expansion of protected characteristics. Some attorneys argued in favour of expansion, others were against it, and some had no opinion on the matter. Failure to have an opinion was ordinarily justified by citing minimal experience with hate crime. Some informants conceded that, if it were to be empirically proven that hate crime against groups not explicitly cited in the law presented a significant problem, they would be inclined to expand the list of protected characteristics. Others did not consider the issue to be of fundamental importance. Instead of expanding the list of protected characteristics, they were inclined to lay more emphasis on prosecuting existing laws.

Concrete characteristics that could be used to expand existing laws included: sexual orientation, age, subculture membership, and potentially foreign or migrant status. One informant said she would even be in favour of including all the characteristics given in the anti-discrimination laws (aside from these aforementioned also: gender, physical disability, and worldview) but only if they represented significant social problems. The informants who called for expansion maintained that the absence

of protected characteristics in the substantive merit leads to some crimes not being prosecuted as hate crimes at all. One example is Violence against a Group of People or Individuals under section 352 Par. 2. Here, protected characteristics are exhaustively listed and include actual or presumed race, ethnicity, nationality, political beliefs, and religion (or no religion). For attacks motivated by sexual orientation, this classification cannot be used at all. Instead, resort would have to be made to other, less suited classifications.

At the same time, however, most supporters of expansion conceded that all hate crime cases can be prosecuted under existing law using hate crime as a general aggravating circumstance. They did have two reservations. The first concerned the difference between an aggravating circumstance and a qualified substantive merit when it comes to sentencing. While the latter automatically increases the sentence, aggravating circumstances generally leave any such increase up to the judge, who must stay within the basic prescribed sentence length. This, then, puts an upper limit on sentences and does not automatically increase the length. The second reservation stems from the fact that hate is not in fact usually employed as a general aggravating circumstance. Only two attorneys said their experience would contradict this, but they could not cite a concrete case in which hate was so used. For this reason they considered expanding protected characteristics a means for increasing the effectiveness of enforcing justice in these cases. If in practice the hate motive is not introduced via a general aggravating circumstance, then expanding the list of protected characteristics on the level of the qualified basis will lead to their greater use by criminal justice agencies. If these organizations see, for example, sexual orientation in the basis, they will be more likely to prosecute an act as a hate crime than would otherwise be the case.

With the exception of section 356 of the Criminal Code (Instigation of Hatred towards a Group of People or Suppression of their Rights and Freedoms), existing law exhaustively lists protected groups of persons. One attorney stated that it might be effective to introduce a demonstrative list that includes supplementary protections for the so-called "other groups of persons" that the court could interpret in keeping with current social needs. Another attorney said verdicts including hate motivation could be issued in the form of an example. At the head of the list of protected characteristics, the phrase "for example" could be inserted. Both variants would disrupt the logic of the exhaustive list by opening space for other characteristics to be taken into account by the court in its interpretation.

Most of those opposed to expanding the list of protected characteristics in the criminal code ("introducing weeds") in fact rejected the notion of expansion out of hand. Hate crimes, they said, may be punished utilizing a general aggravating circumstance. Barring this, a set of crimes may be charged concomitantly, one of which specifically targets the hate motivation.[42] Last but not least, a particular act may be classified under existing hate crime substantive merit. Sexual orientation, for example may be treated similarly to race. This approach, however, is inadmissible with most crimes that feature a hate motivation, because most include an exhaustive listing of

42 This approach naturally has disadvantages. If, for example, the offender is prosecuted on a Disorderly Conduct charge concomitantly with Defamation of a Nation, Race, Ethnic or Other Group of People, this can significantly colour the crime statistics in favour of a higher number of nonviolent hate crimes recorded.

protected characteristics. Such an approach may only be used for violations of the above-noted section 356 of the Criminal Code, which speaks of other group of persons. If the Code is to be amended, however, it should be done in a way that primarily defines hate crimes demonstratively, not exhaustively. As an example, any crime in which the victim is attacked on the basis of his or her identity or group membership could be considered to be a hate crime.

The opposing opinion was also heard, however. One of the attorneys, for example, argued that hate crime is in general a marginal problem empirically, and there is therefore no need to change the way it is written. Another pointed to the negative consequences that expanding the list of protected characteristics could have: the more explicitly laid out the protected characteristics are, the smaller the chance for criminal justice organizations to recognize and pursue attacks that do not possess the characteristics attributed to hate crimes. Another attorney had similar fears that expanding the list could have unintended consequences for prosecution. Given that the police have difficulty recognizing the list as it is currently constructed, expanding it will only deepen the gap between the ideal and what actually happens. Hate crimes will be prosecuted even less thoroughly than they are now.

One informant stated that not only would he not expand the protected characteristics, he questioned some of those currently in force, because "they are too concerned with identity issues". Unfortunately, he did not enlarge upon this thought. One can only speculate whether he was referencing the overuse/misuse of the hate classification discussed above. The first of these variants, however, is the target of another informant's remarks: "As soon as they begin to place too much stress on this aspect [hate motivation], people start to be irritated. And I think it'll have the exact opposite effect of what's intended." He thereby indicated that changing the legal treatment would in no way contribute to prosecuting or preventing hate crime in general, because no one would agree with the move, not the criminal justice agencies and not the public.

The creation of a qualified substantive merit for hate in crimes which currently lack one was not the subject of much discussion. Only a few attorneys admitted or proposed that laws for some crimes be amended in this way: Disorderly Conduct (§ 358) and Dangerous Threatening (§ 353).

5.8 SENTENCING HATE CRIME

Virtually all of the attorneys considered the sentencing provisions of the hate crime laws to be adequate and just. Only one informant failed to answer the question. Another did not consider the sentencing provisions to be adequate, but did not indicate why. More important than increasing the range of sentences in general, according to several attorneys, or that sentences be prolonged for crimes with a qualified substantive merit, was that offenders receive at least some level of punishment. One indicated that it might be enough if the sentences imposed were at the upper end of the regular sentencing range. None of the informants, however, were in favour of further amplifying hate crime sentences. Several stated that finding a solution to hate crime would mean placing the emphasis on means other than the use of criminal law.

Rather than the law itself, criticism of sentencing focused on inappropriate practices. A frequently mentioned theme was the imposition of unfair sentences but this criticism did not solely concern hate crime. The only exception concerned offenders who committed extremist hate crimes. These were typically cases in which the Nazi salute was given, but allegedly without the intent that would fulfil the substantive merit of section 404, Expressing Sympathy for Movements Seeking to Suppress Human Rights and Freedoms. One public defender maintained that giving the Nazi salute while sitting in a pub has much more to do with the alcohol being consumed than any intent to promote or express sympathy. In such cases, he maintained, charges should be dropped.

Another attorney said the same holds true for a case in which the defendant was prosecuted for wearing an armband featuring symbols that referred to Nazi troops during World War II. The armband was obtained by police during the personal search of an individual who had taken part in a far right demonstration. The armband was concealed by the upper portion of the garment and therefore was not publicly displayed, as specified under section 405, Denying, Casting Doubt on, Expressing Approval for, or Justifying Genocide. The fact that this criminal offense was chosen by the criminal justice agencies is interesting in itself, by the way.

Another point of criticism was the claim that the sentences given to some hate crime offenders are too strict. In one case in particular, the sentences imposed were presented as being extremely harsh. The offenders were sentenced for attempted murder with a hate classification. The attorney indicated that the sentences were meant to serve as an example to discourage others from committing similar attacks. The case involved an arson attack on a home occupied by a Romani family. The court found the offenders guilty of the attempted murder of multiple individuals, and sentenced them to approximately 20 years in prison. The attorney, however, contended that the length of sentences handed out did not function as a general deterrent, because the public allegedly did not agree with the punishment. In the end, he said, the sentences did more harm than good because they sent the message that Roma benefit from positive discrimination—that sentences of this length would never have been handed out for a similar attack on whites.

Some informants stressed a need to work with prisoners. They promoted the creation of resocialization programs ("toleration courses") for hate crime offenders. One attorney spoke in particular of expanding the use of restorative justice as a preventative measure against hate recidivism. If offenders are not forced to re-evaluate their position toward groups they have attacked, it is to be expected that they may repeat such attacks in the future. It is for this reason imperative that they encounter individuals from the group in question, so that the offenders have the opportunity to see that they, too, are "human beings". By contrast, another attorney advocated separating offenders to a certain degree from fellow prisoners who are members of the attacked group. She alluded to the fears of her clients— the individuals who had committed the arson attack on the Romani family— that they would be placed in cells with Romani prisoners who would seek revenge.

5.9 PROCEDURAL LAW AND FACTUAL LIMITS ON THE PROSECUTION OF HATE CRIME

The informants agreed that from a legal standpoint, there is no difference between defending perpetrators of hate crime and other criminals. In both cases, the defence is based upon the Criminal Procedure Code. The informants rarely expressed an opinion on the Code. When they did so, it was assessed either neutrally or preferred over the codes of other countries. The issues they cited instead focused on failure to hear evidence (rejecting evidence as redundant), efforts to extract confessions before the offender's attorney is present, and the impossibility of retracting challenges to summary orders. These matters, however, were seen as general issues that were not specific to hate crime cases.

There are, however, certain issues that are specific to hate crimes, but they are not grounded in criminal law. They concern the approach taken by criminal justice agencies to the doctrine of political extremism. Several informants expressed the opinion that offenders with ties to extremism receive different treatment in the criminal justice system than do others. One indicated that offenders tied to extremism are presumed to be hate criminals unless proven otherwise. But this, according to the attorney, need not form a procedural-law or practical barrier; he rather labelled it a "philosophical barrier" in the defence of hate crime.

Another informant was involved in a case in which a particular type of act— an arson attack on a home occupied by a Roma family—prompted an attempt to show an extremist affiliation where none existed, except perhaps on the part of one member of the group of perpetrators. The evidentiary process was guided by the classification of the attack as an act committed against a group of persons that was motivated by far right ideology. Because it concerned an arson attack on a Romani family, as in the Vítkov case noted above, police classified the case in this manner— improperly, according to the informant and defence attorneys for other perpetrators. In their estimation, the offenders did not belong to a hate organization but were rather members of a group of friends who engaged in no systematic preparation for the attack and were in fact just a casual grouping. The group was in fact a construction of the police and the public prosecutor, something to which the court essentially admitted by dropping charges against one member of the alleged group who did not take part in the attack.

A frequent topic of discussion was the role played by witness statements. Two attorneys maintained that police on occasion gather evidence in an illegal manner. In one case, the police were said to apply pressure of an intensity that amounted to blackmailing witnesses. Witnesses were told that they were under suspicion, some for attempted murder. They were then told that charges against them could be dropped in exchange for information about the presumed real offenders. The informant was convinced of the truth of this because as soon as the threat was lifted, all of the witnesses began to tell the same story: they met each other at neo-Nazi concerts, most of their friends were also neo-Nazis, etc. The defence attorneys objected to the inclusion of these comments, but were not permitted by the court to present official transcripts of the initial witness statements, because this was not allowed under the Criminal Procedure Code. The only records admitted were the allegedly manipulated set during which the defence attorneys were already present.

Another attorney noted a police practice in which suspects are offered the lesser of two potential classifications if they agree to confess. But the bargain is not always kept: sometimes police end up charging the suspect with the more serious of the two crimes. And they usually make sure that the offender confesses fully, including to having had hate motivation. This practice depends upon the presence of an attorney during questioning not being mandatory. The presence of an attorney is required only after the suspect has been told of the charges against him. Procedural rules forbid the use of any statement made before this.

Another attorney raised the question of the role played by a forensic opinion in a case in which an appeal was underway that included a request to review the opinion, but its author no longer functioned as a forensic expert. In this case, the attorney maintained, the opinion could be rendered invalid. At the time of the interview, the appeals process still had not come to an end, so the court's position could not be determined. This attorney's position points to a willingness on the part of the defence to create bold legal constructs that, in our opinion, have no support in the law or in court procedure.

One attorney criticized the judge for being too lenient in accepting evidence brought by victims' representatives. In his estimation, this evidence extended beyond the relationship between the victim and the accused to include, for example, a situation in which the advocate described the general atmosphere in the municipality where the crime was committed. Another attorney confirmed this practice of supplementing for the public prosecutor, but at the same time was of the opinion that the advocate "had the right to raise all the same questions the defence attorney or public prosecutor could raise". In other words, no situation should arise in which the court does not allow the representative to ask questions.

5.10 THE RIGHTS AND PERCEPTIONS OF HATE CRIME VICTIMS

Victims entered into the discussion in the interviews with attorneys in two different ways. First, they were described as vulnerable people who were not self-sufficient, not well-oriented in the law and at the mercy of the actors in the criminal justice system. This description came primarily from their advocates. Second, doubts were raised about their status as victims. This happened primarily when defence attorneys blamed the victim for having played an active role in the conflict and for being at least partially responsible for it having escalated. A further strategy involved calling attention to problems in the victims' day-to-day lives: that they were unemployed, indebted, were disturbing the peace, were thieves, or in some other way were "maladjusted". They were also presented as greedy individuals who wanted to enrich themselves at the offender's expense to the maximum extent possible. And they were presented as lacking in credibility.

Credibility was generally assessed as an important criterion in judging the victim's contribution to clarifying whether a hate crime had been committed. As has been noted, a key indicator of credibility is whether the victim's testimony remains constant throughout the course of the criminal proceedings. Victim credibility is most likely to be called into question when the victim first mentions hate motivation due to anger or other reasons at a point later than the first interrogation. Victims are subject to substantial pressure, for example, to recall hateful expressions word-for-word. Alongside

assertions that their credibility is lacking come claims by some defence attorneys that victims have not spoken the truth or have expressly lied. In the course of questioning, one victim admitted that the hate expression "Burn, Gypsies!" had never been uttered, despite her claim that it had been during the initial police interrogation.[43] Finally, a lack of credibility may become apparent when victims assert their rights unnecessarily. A case that involved one of the defence attorneys may serve as an example. In it, a victim's representative demanded that testimony be given in the absence of the defendant, because both parties lived in a small village where they supposedly knew each other and had behaved normally after the attack.[44]

As concerns the position of the victim in the criminal proceedings, one attorney criticized the fact that victims and their advocates may currently only seek redress under the law when the verdict concerns a claim of damages. They cannot challenge statements made by defendants, nor appeal the sentence.

For victims to successfully assert their procedural law rights in criminal proceedings as well as to pursue any damages to which they are entitled, it is necessary that they receive adequate assistance and support. The critical element seems to be that they have a representative throughout the criminal process. The advocates criticized what they perceived as a lack of equal access to legal aid for victims of hate crime.[45] Victims must first demonstrate that they have no assets in order to have an advocate appointed by the state. The experience of the victims' representatives was that the courts do not have a united view of whether such advocates must always be attorneys, or whether their background may be more general.

Reimbursement for damages is an important part of the criminal process. Both material and non-material harm may be involved, with the latter consisting of physical and psychological harm. Less financial compensation is usually received for non-material harm. Although there is no legal cap on the amount of compensation, verbal attacks, according to one attorney, are rarely compensated with more than CZK 10,000. But even this amount is important to victims. It serves as recognition of the harm caused to the victim by the offender and the payment for damages ordered by the court is perceived as compensation for that harm. In addition, the financial impact may be more keenly felt by the offender than would a suspended sentence that "runs out and nothing happens".

Almost all of the attorneys brought up their experience in claiming damages on behalf of victims. Their success in bringing these claims varied widely. Sometimes they were rejected outright. This was sometimes attributable to unrealistic, inappropriate claims on the part of the victims' representatives. But it also occurred in cases in which the public prosecutor or the judge contravened normal judicial practice by refusing to entertain damages, and on occasions in which the charges were reduced to misdemeanour status. In other instances, damages were awarded in an amount in excess of that requested. One attorney worried that such

43 This, however, may also be explained by the victim, after the fact and in hindsight, not being able to recall the exact wording of the hate expression uttered. Any deviation from the statement is then held against the victim.

44 Under the law, victims may assert this claim without regard to their acquaintance or lack of acquaintance with the offender.

45 The interviews were carried out before the amendment of Act No. 45/2013 Coll., which markedly improved the access of highly vulnerable victims, including victims of hate crime. Free legal is now available under the law to all highly vulnerable victims.

high awards could end up doing more harm than good in punishing hate crime. Since victims are often Roma, the impression may be given that they are receiving favourable treatment compared to other citizens. But it is not clear where the attorney in question obtained a comparative sample that would justify such a conclusion. Most frequently, damages were brought to only a limited extent during criminal proceedings, with larger amounts being the subject of civil suits.

The situation regarding damages is said to be improving. Several attorneys said that whereas the courts were formerly reluctant to discuss non-material damages, they were now showing greater willingness to do so. Despite this progress, though, one case was identified in which the judge was unwilling to accept that the victim was suffering from posttraumatic stress syndrome, even though a forensic psychiatrist had diagnosed her as such. One attorney stated a general rule: "Psychological problems are really passed over by the criminal justice system." However, some informants also spoke of a general lack of faith in psychological judgements and stated that they often challenged them in court.

Also viewed as problematic was the fact that claims for the compensation of damages were referred to the civil courts even when such a shift of venue was not required under the Criminal Procedure Code (i.e., the principle of completing criminal proceedings as rapidly as possible was not contravened). In some instances, this is said to have occurred despite the courts having expressly forbade such a move. One example would be a case in which compensation was claimed for damage to a computer and stolen items—for which a forensic opinion was available detailing the extent of damages—and another involving funeral expenses.

An explicit problem lies in the unsuitable manner in which the institution of financial aid underwritten by the Ministry of Justice has been set up. Too strict conditions mean that the aid arrives late or not at all. One attorney says this is because the ministry provides aid only after the court has rendered its decision, which contradicts its intention to provide early assistance. A related issue lies in the inadequate amount of assistance provided.

5.10.1 THE ACT ON VICTIMS OF CRIME

None of the attorneys criticized the Act on Victims of Crime (AOVC). A single informant claimed not to understand why the AOVC is not part of the Criminal Procedure Code. In general, the act was recognized in terms of contributing to the victim's position in the criminal proceedings. Once it becomes more integrated into court procedure, its use in practice will become more frequent and more correct, according to several attorneys. Lack of knowledge of the act is also testified to by the fact that not all informants were even aware that under it, hate crime victims are considered highly vulnerable. On occasion the meaning of this status, too, was unclear. It was thought that "highly vulnerable" status was invoked not because of hate motivation on the part of the offender, but rather because of the crime's personal impact on the victim. At the same time, there was criticism by some attorneys that highly vulnerable victim status is not accorded all hate victims, only those who are victims of violent crime.[46]

46 This, too, no longer applies, because after amendment of the Act on Victims of Crime, all hate crime victims are considered to be highly vulnerable.

Though they agreed overall with adoption of the AOVC, some attorneys nevertheless expressed reservations about its wording or its practical use by criminal justice agencies. Shortcomings of the law were said to include limitations placed by the court on the right of victims' representatives to put questions that do not primarily pertain to compensation for damages, but rather provide clarification of the motive. In one advocate's experience, a proactive approach could help overcome deficiencies in the role played by the public prosecutor. In one hearing, the judge ruled that the representative was not entitled to put questions before the court that did not pertain to damages, adding explicitly that he, the judge, would not have any objection to such questions from the public prosecutor. It should, however, be noted that this did not concern a hate crime case.

Another attorney stated that there is no opportunity to obtain legal redress for court decisions that fail to respect provisions of the AOCV, thereby stripping victims of their rights. Victims, for instance, are forced to justify to the court why the defendant should not be present while they give testimony. In one case, the judge agreed to the request, but went beyond the law in requesting that the victim be given a psychiatric examination to confirm that she was in fact incapable of giving testimony with the defendant present. There should be a means of legal redress, not just for hate crime victims, but more generally one that allows the review of unlawful decisions by the court.

Another attorney objected to the amount of damage compensation provided by the state. He was of the understanding that currently, in the event of the death of a close family member, the state pays CZK 200,000. In cases of grave injury, there is a one-time CZK 50,000 payment. He appears not to have realized that victims can in fact request higher monetary amounts, but only if they can show that their expenses exceeded the amount given above. In general, a petition for damages must be supported by expert reports or forensic opinions. Some advocates mentioned by the informants failed to comply with this rule, and as a result, compensation was denied.

A final piece of criticism pointed to the unavailability of protections for highly vulnerable victims in other types of proceedings. One advocate spoke of an extraordinary experience in which she was allowed to informally utilize the AOVC protections in a misdemeanour hearing, because she was able to convince the official conducting the hearing to let her do so. The victims were permitted to testify in the absence of the defendant, and in fact gave their testimony via Skype with no impact on the rights of the defendant.

The greatest problem from a practical standpoint was seen to be that the provisions of the AOVC are not known to an adequate degree by criminal justice agencies. Police conducting investigations, for example, may refuse to grant victims highly vulnerable victim status even if they have a right to this status. Doubts were particularly expressed as to whether the court is at all knowledgeable about the AOVC. Some judges were accused of ignoring its provisions and continuing to perform their duties as they always have. For this reason, they treat these demands as "unheard of". This may be illustrated by the case noted above in which the victim was allowed to testify without the defendant present only if he agreed to undergo psychiatric evaluation, and by the difficulties encountered in another case when attempting to exercise the

right to present a statement detailing the impact the crime had on the victim. It was important to the victim to let the offender know the impact of the attack he made with a knife. The court did not initially agree to admit the statement, but in the end, with the help of the public prosecutor, the statement was allowed. The worry was nevertheless raised that allowing the statement might result in the same thing beginning to occur in the lower courts. Discussion also touched on the impact of media interest on the victim. The court did not limit the media's access to prevent reporters from swarming around the victim.

5.11 PROPOSALS TO IMPROVE HATE CRIME PROSECUTION

In the main, amending the criminal code was not seen to be necessary. But if it were to be amended, those changes should concern: the extention of a qualified substantive merit for some other crimes, expansion of the protected characteristics or changes to the wording of the hate classification that would permit other protected characteristics to be taken into account by means of a demonstrative list.

More extensive recommendations were made to change the Act on the Victims of Crime. The financial aid process should be simplified and should be accessible to greater numbers of victims—the current conditions are too strict. A process for legal redress should be introduced for cases in which the Ministry of Justice does not allow financial assistance despite the fact that the qualifying conditions have been met. Currently, the ministry awaits the court's decision, thereby negating the purpose of the institution.

A further recommendation was that a legal redress procedure be introduced for instances in which the police do not recognize hate crime victims as highly vulnerable despite their entitlement to this status. It should allow police officers' decisions to be reviewed with suspensory effect. Otherwise a situation could arise in which the officers' actions come into doubt only after the court decision has been rendered, at which point the highly vulnerable status no longer has any meaning. A means of redress should also exist for potential mistakes on the part of the judge. One informant proposed that all judicial decisions be published on the internet and made available to the public. This would be an incentive to judges to engage seriously with the cases and not just to copy/paste the charges as written. Finally, it would be desirable for the protections offered during criminal proceedings to be available as well for misdemeanour and civil cases.

It was further proposed that victims' representatives be made available to all victims, not just those without assets.[47] Non-attorney representatives should be paid by the state for actions that benefit victims, including cases in which they were carried out without the promise of compensation. Advocates' rights to put questions concerning the entire matter in dispute—not just claims for damages—should be honoured. Currently, the entitlement of the victim to damages depends upon the defendant being found guilty. Entitlement to damages for non-material harm further depends on whether statements made by the offender impacted the dignity of the

47 This proposal became law together with the amendment of the AOVC.

victim. Representatives must therefore be allowed to take an active role in the entire criminal process and, for the same reason, victims should have the right to appeal decisions to do with guilt and sentencing. This is especially true for verdicts in which charges are dismissed. Currently, appeals may be made only in matters concerning damage claims.

For a clear majority of attorneys, the chief problem in sentencing hate crime has to do with inadequate knowledge of the concept and associated laws by criminal justice agencies. Unsurprisingly, a frequent recommendation for improving the situation was to provide training for these agencies. The police were an especial focus of these recommendations, but training for judges and public prosecutors was also called for. Judges were particularly in need of better acquaintance with the provisions of the AOVC.

Training for police, they said, should concentrate on a better understanding of the specifics of hate crime. This should be implemented at the university level among students at law faculties and police academies. Criminal justice agencies should make available methodological guidelines, informational materials, and training that includes discussion of model cases. It is recommended that internationally recognized indicators of hate crime be the focus and, where it is evident, potential hate motivation should always be taken into account. Indicators concentrate on the context, rather than the personality of the offender. The simple fact that an offender is not a member of a hate organization or movement (an "extremist") does not rule out his having committed a hate crime. Likewise, what seem to be good relations with other members of the group the victim appears to belong to should be verified. Police should also lay greater focus on hate crimes committed over the internet, particularly on social networks.

Training should also include information on the rights and needs of victims and specific procedures to be used in working with them. Last but not least, police should be trained to direct victims to non-governmental organizations that will assist them. This is apparently not done currently, and represents a major weakness in police practice.

To make sure hate crimes are not trivialized, several attorneys recommended creating specialized teams of investigators. One other informant, though, expressed the fear that if police are not rotated through these positions, team members will begin to see "extremists around every corner". This could lead to the incidental overuse of the hate classification.

Offenders should also be treated with sensitivity. It should be taken into account that individuals accused of or charged with hate crimes may experience stigmatization. Even if the court drops the charges, this stigma may continue to plague them in line with the old saying "where there's smoke, there's fire". This may impact negatively on their lives. Along the same lines, one attorney called for sanctions against people who make unjust hate crime allegations. If disciplinary action or monetary penalties are required for false accusations of hate attacks, this will limit the undesirable stigmatization of individuals and damage to good relationships at the local level.

All criminal justice organizations should also be trained to recognize the position of victims' representatives. The current situation is such that representatives are treated as something of an appendage, and their legal rights may be ignored.

Finally, training for police officers should make clear why hate crime is an important area of interest. This is especially true because hate crime affects not only its direct victims, but other members of the group in which the victims were included by the perpetrator, thereby contributing to social tensions.

Not all attorneys, though, were convinced about the positive effects of training. Some had no faith in the concept at all, while others considered it insufficient. But it was in any event recommended that consistency be used in investigating hate crime. The failure to prosecute hate crimes as crimes with hate motivation was cited as a "significant shortcoming on the part of the police". Consistency may be attained in two ways. One is the consistent application of pressure by higher elements in the public prosecution hierarchy; the other is a clear political will to punish these crimes. In particular, the Minister of the Interior should insist that police prosecute hate crimes as a priority matter.

Two attorneys recommended the introduction of resocialization programs and the principle of restorative justice for offenders to help them understand the problematic nature of their behaviour and to free them from their prejudiced view of the group attacked. In the same fashion, one attorney advocated greater security for such offenders, where they may be subject to revenge attacks.

An occasional recommendation was also made to increase the frequency of research into hate crime and hate crime laws with a particular focus on deficiencies in current sentencing guidelines.

5.12 SUMMARY

The attorneys had broad experience with hate crime, both personally (most had been victims) and some even professionally. Defence attorneys considered this category of crime to be unique for two reasons. The first is the need to deal with hate motivation by applying a strategy of blaming the victim and justifying the actions of the offender. The second is the need to refute evidence introduced by the prosecution intended to demonstrate support for and promotion of hate organizations, particularly forensic opinions on political extremism. These opinions were seen as problematic either due to bias on the part of the judge, or lack of expertise on the part of the forensic expert. Victims' representatives were ordinarily presented as an important part of the criminal proceedings, because they possess specific right that the victim does not. In addition, they may aid in proving hate motivation, enable leverage on criminal justice agencies, present claims for damages, and provide their clients with psychological support. Some attorneys felt, however, that they may harm their clients as well.

Almost all the attorneys were happy that there were hate crime laws on the books for moral, social, deterrent, anti-extremist and marketing reasons. The attorneys nonetheless did not have a unified understanding of the hate crime concept.

Some defended a broader interpretation based upon hostile emotions rather than prejudice. This interpretation results in some hate crimes not being recognized as such—the existence of competing motives may normally be used to rule out the existence of the hate motive.

This is one reason that criminal justice agencies were criticized for their inability to properly apply the hate classification. Overuse of the classification was also a factor. The defence attorneys explained its occurrence as the result of a need to register successes in the fight against extremism on the part of the police, both with respect to the public and internally. They also noted that overuse may cause or reinforce prejudice against the group to which the victim belongs if the offender is unjustifiably prosecuted, and may damage inter-ethnic relationships. There was also and more often criticism, by contrast, of underuse of the hate motivation. This informants explained as being attributable to an unwillingness on the part of police investigators to add to their work, to a lesser degree of certainty that hate cases will be successfully prosecuted, to police prejudice against threatened groups and their representatives, to police sympathy for the offender, and the inadequate attention devoted to hate crime by the Police Presidium and the Ministry of the Interior. The power dimension of the dispute maybe seen in the varied experiences of the informants with the approach taken to Romani offenders. On the one hand, Roma are said never to be charged with hate crime; on the other, there is pressure to prosecute them even in the absence of evidence for a hate motive.

Factors that set the investigation of hate crime apart include the necessity of clarifying the offender's motive, profiling offenders on the basis of information from police monitoring, the use of opinions from forensic experts in political extremism, a lack of consensus as to how hate crime should be treated by criminal justice agencies ("regional law"), and the approach taken by criminal justice agencies and other actors to deciding what constitutes hate crime.

When they evaluated the existing anti-hate laws, a majority of the informants considered them adequate. If amendments were to be made, they should be designed to create a qualified substantive merit that includes hate motivation for some crimes, to expand protected characteristics, and to modify the wording of the substantive merit to eliminate the logic of the exhaustive list. Opponents of amending the code maintain that the code as currently written allows hate crime to be prosecuted as a general aggravating circumstance, or a set of crimes may be charged concomitantly, one of which specifically targets the hate motivation, or the crime may be classified under another hate crime classification. To employ the latter tactic, however, would go against the grain of the Criminal Code. Amending the law was opposed mainly out of fear of the impact of unsystematic changes on the effectiveness of the Criminal Code, or of undesirably "introducing weeds".

Several procedural law and factual limits were identified. One concerned the influence of political extremism doctrine on decision-making about use of the hate classification. Another had to do with attempts by the police to construct organized hate groups where none in fact exist. The issue came up of the role played by a forensic opinion in a case in which an appeal was underway that included a request to re-

view the opinion, but its author no longer functioned as a forensic expert. And finally, there was criticism of a judge for being too permissive about the actions of a victim's representative.

The position of hate crime victims depends primarily upon the perception of their credibility. A lack of credibility may be indicated by changes in the testimony offered by the victim during the course of the proceedings, when untruths or lies are uncovered, or when victims assert their rights unnecessarily. The Act on Victims of Hate Crime was generally perceived as a welcome contribution to improving the position of victims in criminal proceedings, but as currently written is far from perfect. Greater problems were perceived in connection with its application. Judges in particular were suspected by the attorneys of breaching the rights of victims because of their own limited or lacking knowledge. The inadequacy of damages paid to victims was a specific problem, as was the fact that victims were referred to the civil courts.

The informants had a series of recommendations to make the criminal process in hate crime cases more effective. Although some amendments were proposed (see above), the solution was not seen to lie primarily in legislative changes. Instead it was seen in the promotion of educational reinforcement by criminal justice agencies, with a focus on the unique characteristics of hate crime, the rights and needs of victims, the methodology used in working with them, the thorough provision of information on aid organizations, and an improved approach to victims' representatives. The creation of special police teams was also proposed but with reservations. In terms of the approach taken by police to offenders, stress was laid on the importance of preventing them from being unjustly labelled as hate criminals. This included potential sanctions for false accusations.

In addition to training, informants said they would like to see greater consistency in the prosecution of hate crime by both the highest-level public prosecutors' offices and by the Ministry of the Interior. Further, they proposed the creation of resocialization programs, along with restorative justice for hate crime offenders and ensuring their safety in the prison environment. And finally, one attorney spoke of the need for research focussed on hate crime and its prosecution by criminal justice agencies.

6. OFFENDERS

6.1 DESCRIPTION OF INFORMANTS

We conducted a total of nine interviews with hate crime offenders. All of the offenders were male, ranging in age from 23 to 51, with the average age at 33 (32.9) and the median at 33. Seven offenders declared their nationality to be Czech, two Romani. All had either an elementary or secondary school education (one with a GCSE). Before entering confinement, they were primarily manual workers, unemployed, or had been casual workers in the CR or abroad. One offender had tried to start a business. Most had lived the majority of their lives at the place of their birth or nearby. Two had worked outside the country.

All but one had previously been sentenced for other crimes; five informants had in addition committed past hate crimes, but stated that many of these crimes had gone unpunished. These five also declared themselves political radicals, either left-wing (one offender) or right-wing (four offenders). They were members of distinct subcultures (e.g., far right skinheads), subscribed to generalized systems of belief (such as anti-fascism, nationalism or neo-Nazism), took part in vaguely defined activities ("beating up Nazis"), or were either members or sympathizers with particular groups (like National Resistance).

6.2 TYPE OF CRIME[48]

The informants had been convicted of hate crimes. These may be further classified according to the following criteria: the type of crime committed, the way in which the crime was carried out, and the presence of collaborators.

6.2.1 TYPE OF CRIME COMMITTED

The crimes committed by the informants may be divided into two categories: ordinary hate crimes and hate crimes with an extremist subtext. In the first, hate motivation was included in the substantive merit (§ 352 Violence against Groups of Citizens and Individuals, § 355 Defamation of a Nation, Race, Ethnic, or Other Group of People, and § 356 Instigation of Hatred towards a Group of People or of Suppression their Rights and Freedoms), potentially as a qualified substantive merit (e.g. § 145 Severe Bodily Harm) or as a general aggravating circumstance. These crimes were committed by six informants. In addition, all had been convicted of other crimes committed either singly or multiply.

48 In this section, we will discuss crimes for which the offenders were sentenced that served to help us identify them. We discuss their past crimes only to the extent that they bear on the particular hate crime for which they were in prison or on probation at the time the research was conducted.

The second category includes *crimes against humanity* as stated in the Criminal Code (specifically, § 403 The Establishment, Support, or Promotion of Movements Intended to Suppress Human Rights and Freedoms, and § 404 Expressing Sympathy for Movements Intended to Suppress Human Rights and Freedoms). Czech security discourse labels these acts "extremist". In practice, this means that the behaviour of offenders is charged in correspondence with their relationship to hate groups and movements. Three informants fit this category in our research. In contrast to the first group, these offenders had been sentenced for a single crime and their actions were not considered in conjunction with other crimes. The structure of crimes for which the informants were sentenced is illustrated in Table 4.

Table 4: Type of hate crime committed

	Hate Crime		Non Hate Crime
Informan	Ordinary Hate Crime	"Extremist" Hate Crime	
1	Defamation of a Nation, Race, Ethnic, or Other Group of People		Disorderly Conduct
2	Violence against a Group of People... + Defamation of a Nation...		Disorderly Conduct
3	Defamation of a Nation, Race, Ethnic, or Other Group of People		Endangerment of Health, Disorderly Conduct, Theft
4	Violence against a Group of People...		Disorderly Conduct
5	Violence against a Group of People... + Instigation of Hatred...		
6	Attempted Assault + General Endangerment		
7		Expressing sympathy…	
8		Expressing sympathy…	
9		Establishment, support, and promotion of movement…	

6.2.2 HOW THE HATE CRIME WAS CARRIED OUT

In terms of the form they took, the crimes of the informants may be differentiated into groups depending upon whether they involved violence, were verbal, or were connected to the establishment of or support for a hate organization. Four of the offenders were sentenced for physically attacking their victims or the victims' property (for example, damaging automobiles, attacking with their fists, attacking with their fists and threatening with a knife, arson). In three cases, the crimes were verbal without damage to property or injury to health (defamation of the Czech nationality, threatening injury or death), and the final three cases concerned crimes involving support for hate organizations (calling for attacks on domestic ethnic minorities and making the Nazi salute, establishing a hate organization, promoting a hate organization by means of tattoos).

6.2.3 CO-OFFENDERS

Five of the nine informants committed hate crimes with fellow perpetrators in various forms. One example involved a shouting match between two groups of males in which one group used hateful language. Another example involved a group of persons trying to provoke a conflict with the residents of a building occupied by Roma. One of the provocateurs, moreover, resorted to hateful verbal expressions and damaged the victim's property. Another example involving more than one offender was an organized arson attack on a building occupied by a Roma family.

6.3 HOW THE CRIMES TOOK PLACE

Two factors proved fundamental in how the hate crimes took place. First, in no instance were the informants personally acquainted with their victims. Second, the informants often explained their crimes as impulsive acts committed under the prior influence of alcohol. At the same time, they admitted the influence of situational factors that preceded the hate crime.

6.3.1 ACQUAINTANCE WITH VICTIMS

The hate crimes committed were never preceded by a close relationship between the offender and the victim. In this respect, hate crime may be considered a crime against strangers. Two cases involved an attack on the victims' residence, during the course of which the offenders never encountered the victims, nor had they known them beforehand. In four cases, the crime represented the culmination of a chance conflict that in one instance began when a male minority group member admonished a male from the majority group to lower his voice. He responded by physically attacking the minority group member and hurling racist insults. In another instance, a conflict arose between two groups of males. One group began

to verbally insult the other group using racist epithets. The other group then responded in like manner.

6.3.2 HATE CRIME TRIGGERS

Crimes may be understood as stories. Every story has a plot, and every plot has a trigger. In almost all the cases discussed, the trigger was alcohol, the use of which caused the informants to act irrationally (a so-called "short-circuit"), resulting in the commission of the hate crime. In describing the commission of the crime, however, the informants spoke of other events that immediately preceded the behaviour and provided situational context for the short circuit. We have labelled such situations *revenge*, *collective outrage*, and *defence against injustice*.

"Revenge" might include, for instance, instances in which a group of Roma are attacked because the attacker believes that they have stolen from him. Two of the informants also spoke of the mutually reinforcing relationship between alcohol and *collective outrage*. Both cases occurred in a pub, where the informants, together with other visitors, complained about the behaviour of Roma living in the same village. In the following narrative, one of the offenders describes a situation in which he consumed alcohol, which triggered a desire in him to settle the score with a family he had had trouble with. Joining him were his drinking mates from the nearby pub:

> *"There's a house in our town where Gypsies used to live, or maybe still do. [...] They were drugs, yeah, one of those secrets everybody knows, and so on. [...] I don't drink too much alcohol because it makes me aggressive. So somehow I was feeling blue, I had a drink, and the first thing that occurred to me was to stand outside the house and scream at them. [...] I wanted to get into a fight. I shouted at them to come out of the house and fight me. Well, nothing happened, but the guys I'd been drinking with heard me shouting, so naturally they came out of the pub and joined me."*

Alcohol may also function as a trigger for hate crime in situations where the informants' descriptions were in the spirit of a *defence against injustice*. In contrast to the previous situations, this provoked a defensive reaction in which the hate crime was used as a tool of symmetrical defence against harm. Two Romani informants thus employed racist insults as a defence against racist insults that had first been hurled at them. In one case, people began shouting racist invective ("black swine"), because the radio was on too loud. When the informant returned the insults, the police arrived and sided with the instigators. One officer allegedly said, "Hitler should have killed them all, then we wouldn't have problems like this." The second case is in some sense even more remarkable because the informant was the target of racist insults from a woman who was also Romani. The dispute unfolded roughly as follows:

> *There's a Romani woman who works in the bar, and I had gone there in a very drunken state, right, because me and some of my friends had been celebrating outside. So I said, 'Do you have Gambrinus on tap, please?' And she says, 'Get out of here. We don't serve Gypsies.' So I say,*

'Drop dead, Czech bitch!' Cause I had something like a litre and a half of rum inside me. I was totally out of it, completely trashed. So I go, 'You call me a Gypsy, so you can just… to me you're…' So that's why I said to her, 'Drop dead, Czech bitch!' Yeah, and she, I gave her a 500 crown note and there was a cigarette vending machine there. And I say, 'Can you break this 500 crown note for me so I can at least buy some cigarettes?' And she goes, 'No, I'm not gonna break it for you. Beat it, blackface!'"

Only two informants reported no use of alcohol. One was convicted of establishing a hate organization as a way of differentiating himself from the remainder of the far right. The second was convicted of revealing tattoos on his body of a significantly German Nazi character. He described how he had had the tattoos done to display the ideas in which he had formerly believed, as well as for the sense of excitement that came from contradicting social norms, and a feeling of fellowship with like-minded individuals. The trigger for these informants, then, may be considered their ideological convictions.

6.4 IMMEDIATE AFTERMATH OF APPREHENSION AND THE INITIATION OF CRIMINAL PROCEEDINGS

The events that took place after the apprehension of the informants differed little from those that follow other criminal offenses. After their apprehension, the offenders were asked by the police to make a statement, were interrogated as suspects, and were charged with committing a crime. At the same time, the gravity of the offence was assessed, as was the likelihood that the perpetrators would persist in criminal activity and the potential for them to flee or influence witnesses.

6.4.1 APPREHENSION AND MAKING A STATEMENT

With the exception of a single informant who was not apprehended until years after commission of the crime and another informant charged in the course of the penalty phase, all of the informants were apprehended by the police immediately after commission of the hate crime. In these cases, some were taken to the holding tank to sober up and subsequently invited to make a statement. Some were taken straight to the police station or gave their statement at the scene. Two informants described their transfer to the station as violent, but each for a different reason. One informant stated that during the transfer, he attacked police officers while intoxicated; the other said the police started the violence. This violence on the part of the police was described by the informant as the culmination of a verbal skirmish that had begun at the location of the crime and continued during the transfer to the sobering-up station:

"Yeah, [one police officer] says to another—in the forest outside [name of village]—'Turn off the camera, turn off the camera.' So he turns off the

camera, and I stretched out my arms, which were really tightly bound, so tight my shoulder was popping. And then he came and started. He opened the door, walked around the car, opened the car door, and started to beat me up."

The informant was then asked to submit a statement at the police station, but refused to sign it because of the violence he had experienced at the hands of the police. He differed in this compared to the rest of our informants, although some said that they did not provide as testimony all the information that was important for the criminal proceedings.

One informant claimed that he had failed to tell the police that his victims had taken violent revenge against him after he committed the criminal act. He attributed this to the upset he experienced in the course of the dramatic events. In another case, another informant made reference to the specific structure of the statement protocol that he had submitted to the police after his arrest. He said that the police had translated the statement into bureaucratic police language that left out important details. This could have had a significant influence on the criminal proceedings, because the informant's statement at the police station differed from that presented in court.

6.4.2 BEING INFORMED OF CHARGES AND PLACED IN CUSTODY

Eight informants were told that they were being charged either at the time they gave their statement or during their second visit to the police station. The ninth was charged during his time in prison. All legal measures were taken within the walls of the prison where he was already serving time for other offences. Two offenders were placed in pre-trial detention. Neither one, however, was kept in detention during the trial itself. Three informants stated that they were under threat of detention during the trial.

It was not clear from the interviews whether this was because of fears that they would escape, attempt to influence witnesses or co-defendants, or engage in repeated criminal activity. The chief reason given by the informants for being threatened with confinement was suspicion that they had committed crimes with an extremism dimension. They stated that this dimension was assessed primarily on the basis of home searches conducted when they were apprehended. The following quote illustrates the point:

"I was out of jail. We only spent one night in the pretrial detention cell. I think they were waiting for the home search to take place, for the trial, and to hear from the court whether they could let us go or not, right? That time, everything depended on the judge."

But this claim is in fact incorrect. Suspicion of having carried out a criminal act with an extremism dimension is not grounds for detention in the CR. Unfortunately, it was impossible to determine where the offenders got this information. It is likely tied to the stigmatizing discourse of extremism that surrounds hate crime

in the CR—offenders suspected of hate crime are usually depicted as dangerous extremists. On this basis, those accused may fear harsher punishment than other offenders.

6.4.3 THE APPROACH TAKEN BY POLICE TO OFFENDERS, AND INFORMATION ON FURTHER STEPS

The informants did not agree about the approach taken by police. At one end of the spectrum, one informant considered the approach taken by police to be completely obliging and proper. At the other end of the spectrum, an informant alleged that the police had physically attacked him, and therefore considered the approach taken by police to be inappropriate. Between the two were informants who evaluated the actions of police neutrally.

We have already touched on police violence above. Apart from the incident described there, however, an additional two informants were fairly negative about the approach taken by police, stating that during the interrogation, they were threatened with stiff sentences, placement in the worst prisons, and unpleasant interrogations of their family members. In terms of positive feedback, the informants were especially appreciative of having been treated professionally, and described the police as helpful and nonviolent. One attributed the high level of professionalism shown by the police to the fact that he came from the same city as one of the investigators, and that he cooperated with the police during the investigation:

> *"They were polite, they were nice, everything was cool. This may sound stupid but I actually enjoyed it. Well, it was a new experience, right? I'd never been investigated like this, so […] So psychology, that's their job, right? They keep going, but it's not like they were rough or anything, not at all. Quite the contrary, they tried to be helpful and everything. Because one of them was also from [the informant's hometown], so he kind of knew me […] Or he knew about me somehow. It went down okay. We cooperated with each other. They had no reason [to be rough]."*

Those informants who evaluated the police neutrally spoke, for example, of investigators refusing to include the fact that they were willing to undergo a psychiatric evaluation and raising false hopes that the charges would be dropped. This represented, however, the acts of individual officers and did not impact the overall evaluation given to police.

The informants were similarly divided about the information police provided concerning further steps to be taken in the criminal case. The informants who were most dissatisfied with the work of the police were those who defended themselves in court. Those represented by attorneys, on the other hand, had very few complaints about the information provided by police. The solitary exception was an offender who did not know until the main trial that he was being charged with a hate crime in addition to other criminal acts. This offender was represented by a public defender.

6.4.4 INVOLVEMENT BY POLICE SPECIALISTS ON EXTREMISM

An important factor during criminal proceedings was the involvement of police specialists on extremism. "Anti-extremism specialists" were involved in the cases of five informants no matter the type of hate crime. The importance of involving these experts in the prosecution of hate crime, according to the informants, is their knowledge of the far right political scene. It's useful in supporting evidence as to whether the offender was a member or sympathizer.

When they were suspected of being hooked into the extremist scene, their cases were referred to anti-extremism specialists. These officers then carried out home searches to determine the extent of planning and organization that went into committing the act, added information into the file about the perpetrator's past, or did both.

In the opinion of some informants, the involvement of anti-extremism specialists led to them receiving stricter sentences than would have otherwise been the case. One of the informants, for example, indicated that his relatively "trivial" case of *promotion* made it all the way to the "anti-extremism department", led by a police officer whom he had encountered many times in the past at demonstrations. This officer then added information about his past to his file, and subsequently the court, in accelerated proceedings, decided against him.

6.5 COURSE OF THE TRIAL

It is fairly difficult to describe the course of the trial from the perspective of perpetrators of hate crime. From the interviews it was often not obvious whether the feelings expressed concerned the entire trial, or were in reaction to the particular approaches taken by individual actors (public prosecutors, judges, witnesses). In two instances, furthermore, the case never actually came to trial, so the informants did not take part. Their cases were discussed in accelerated preparatory proceedings, and the decision was made under a criminal order. In other cases, the informants had already forgotten the details of the trial or failed to differentiate between the prosecutor and the judge. For this reason, in the subsequent section, we will focus primarily on how informants understood the strategies used against them by actors in the court room and how they faced those strategies.

6.5.1 THE APPROACH TAKEN BY THE PROSECUTION AND THE COURT TO PROVING HATE MOTIVATION

Based upon the information obtained, the approach taken by prosecutors and courts may be differentiated based upon the gravity of the crime. While informants accused of violent crimes pointed to the activities of public prosecutors, those who were charged with providing support for or establishing hate organizations emphasized the role played by the courts. Informants who were convicted under a criminal order had no interaction with actors in the criminal justice system other than the po-

lice. It is therefore logical to consider the police to be the most important actor when it comes to impact on the informants' convictions.

Seven of the nine informants had gone to trial. Five cited as the main feature of their trial an attempt by the judge and the public prosecutor to discuss their hate motivation, including connections to far right political parties. In these cases, both personal belongings and items intended for sale secured during home searches were brought in as evidence. These consisted mostly of music, books, magazines, stickers, badges, and T-shirts that promoted or approved of violence against other population groups, as well as personal correspondence that could be taken to indicate ideological motivation, and plans for hate crimes. Their hateful nature was often testified to by witnesses with professional expertise in extremism.

According to our informants, police records that recapitulated their involvement with far right entities, or at least demonstrated their presence at far rights events, played an important role in their trials. A particularly important piece of information about the political trajectory of the offenders was the on-the-ground knowledge of police officers, including photos of demonstrations with accompanying descriptions, and the digital footprint of the offenders on social media sites, such as online interactions and public contributions.

Other evidence the offenders said had influenced their convictions included witness statements given by people present when the offenders admitted to the hate crime, made hateful remarks, or who saw the offenders shortly before the attack was committed. Similar significance was attributed by the offenders to audio or visual recordings in which the crime was audible or visible. Somewhat lesser importance was accorded the conclusions of expert witnesses who assessed their psychological status or provided information on the details of the attack.

If for the courtroom we use the metaphor of a battlefield in which the prosecution stands on one side and the defence on the other—with the battle being decided by an independent court—then according to the informants, the field is a place of confusion, one where roles are frequently exchanged. Only two informants felt that the court proceedings had been dominated by the public prosecutor, who was accusing them of having a hate motive. These were cases that were characterized by violence and in which it was suspected that long-term plans had been made for the offence, and the offenders were active in the far right scene.

According to two informants accused of establishing and supporting right-wing extremist organizations, it was the court that took the lead instead of the public prosecutor. They said the public prosecutor played a minor role and was clearly of a different mind than the court. One informant described the astonishment that swept the courtroom when the court offered evidence that surprised even the public prosecutor, who to that point had acted in a highly conciliatory manner. This evidence was intended to prove that the informant was politically active and involved in the far right, and cast doubt on his defence based on excessive drinking. The informant described the situation as follows:

> *"The public prosecutor was more or less more open, let's say, to some kind of a bargain or something more than the judge was. […] So then we were*

surprised when they pulled out the supporting evidence that surprised even the public prosecutor."

As noted above, the conviction of two informants came by way of a criminal order. The only actors in the criminal justice system that the offenders personally encountered in these cases were the police. It is thus no surprise that it was the police that both informants who were convicted under a criminal order pointed to as the chief actors in the proceedings. Both agreed that the police had acted in a negative light, in particular because they did not feel that their statement had been properly taken down, or felt that what they said had not been given due consideration.

For three informants, the interviews did not provide enough information for us to reliably differentiate between the court and the public prosecutor. Two informants no longer remembered the trial, and the third had been convicted of various crimes, with defamation of another race being considered the least serious of the lot. The charge therefore attracted little attention.

6.5.2 THE APPROACH TAKEN BY THE OFFENDERS TO THEIR DEFENCE

On the other side of the "battlefield" stand the accused or their legal representation. About half of the offenders in the research availed themselves of legal representation. Five informants made use of legal representation to defend themselves during the criminal proceedings. Two of those who lacked representation had no time to find any—they were sentenced by a criminal order. Two of the informants refused legal representation for various reasons. One informant indicated that a combination of financial reasons and the low severity of his crime, for which he anticipated a suspended sentence at the most—something that was acceptable to him—led him to reject representation. Another informant did not seek legal representation because, in his words, the experience of his acquaintances left him without faith in such institutions, and because his own experience with street fighting made him believe that he would only be given a suspended sentence.

Another informant had the same opinion of legal representation. But after some time, he re-evaluated his thinking, and hired a legal representative "just because", despite the fact that he did not expect the attorney to provide evidentiary help. This was the only one of the five defendants who chose an attorney himself. Public defenders were appointed for the remaining four. The informants were mostly satisfied with their performance. One informant was even persuaded that, in his case, his attorney had been more engaged than the informant had envisioned. The only disgruntled informant was the informant who had not been informed of the hate crime allegations against him. He also complained that his attorney had made false promises that he would at the most receive a suspended sentence.

The main strategy used during the defence was to try to get the greatest possible reduction in the sentence. In no case did the informants attempt to convince the court to exonerate them. Seven strategies, which might also be combined, were used to attempt to get the sentence reduced. We identified the following tactics:

confession, trivializing or denying having committed the act, challenging the victim's credibility, casting doubt on the victim's testimony, adapting the case to the character of the judge or prosecutor, making economic arguments, and rejecting appeals.

Three of the seven informant who had been in court chose as their main tactic confession. In none of these cases, however, was this the sole tactic. It was always supplemented by other tactics chosen based upon the context of the case.

A common tactic was to trivialize or deny having committed the crime. This indicates that the informants did not ascribe the same meaning to the deed as did actors in the criminal justice system. In such situations, the offenders and their attorneys rejected a hate motivation and attempted to frame the crime that had been committed as a result of the use of alcohol or a reaction to provocation by the victims. The tactic of challenging the credibility of the victim was used to a similar end. Both of these strategies were intended to lift the stigma of being a "racist" criminal from the offender and to set the hate crime in a different light. This strategy was put forth by an informant who, on the one hand had confessed to the crime before the court, but who also stated that his motivation was not to attack people of colour, but rather "junkies". Highlighting the poor reputation of victims is not the only path to this tactic. The victims' credibility may also be challenged by questioning the hurt they suffered during the attack. The attorney for one of the informants, for example, questioned whether the victim of an arson attack actually experienced post-traumatic stress disorder:

> *"The [attorney] went after the one [victim] who had complained that he was afraid of fire and stuff, right? And that he didn't go to the party because of us and stuff, right? […] So that was the reason that she was leaning on them. […] Yeah, I think had a statement. I think he had something with him. Some statement. Probably even certified by a doctor."*

Defence tactics need not only target the way the act is framed. They may also be adapted to the reputed characteristics of the public prosecutor or judge. In addition to the expected focus on strictness, the defence also takes into account other factors that may impact on the case, including courtroom manoeuvres and the likely speed of the trial. The aim is to avoid antagonizing the public prosecutor or judge.

Another tactic utilized by the defence to minimize the sentence is to convince the court that it would be cheaper for the state to hand down a suspended sentence or alternative punishment, because the defendant has a family and a job.

The final tactic identified was to refuse to appeal the sentence of the court of first instance. This tactic was motivated by the length of the criminal proceedings, which may be onerous psychologically for the defendant, and out of fear that the sentence could be increased by the appeals court. The latter concern, however, is groundless. If the offender has not yet received a final sentence, a stricter sentence cannot be imposed upon him. Unfortunately, we were unable to determine where the incorrect information came from.

6.6 PUNISHMENT

We may only speculate as to how well these strategies and tactics worked. All of the informants were ultimately convicted. Four received prison time, although two were charged with multiple crimes and the hate crimes were the least severe of the lot. The remaining five informants got suspended sentences. It is impossible to get a clear picture of whether the offenders considered their punishment to be just. While some characterized the entire proceeding including the sentence to be wrong, others were pleasantly surprised by the sentence they received.

6.6.1 REGULAR SENTENCES

Four of the offenders received prison time for their acts. All may be considered repeat offenders, with a rich history of past criminal acts. Three of these had repeated experience with accusations of hate crime. At the time of their latest act, they were either under investigation or subject to a suspended sentence because of prior crimes. One even carried out the act in question while already serving time in prison for another serious crime. The only informant not to have prior repeated experience with hate crime received prison time primarily for other criminal acts.

The sentences dealt to those who got prison time ranged from 24 to 42 months. The stiffest sentence went to an informant who had no prior hate crime conviction, but whose sentence chiefly encompassed other types of crime. He refused to enter into his sentence voluntarily, and had to be forced to do so six months later. The second most severe sentence was given to the informant convicted of establishing a hate organization. In the end, he was reconciled to his punishment because, he said, that way his companions could remain free.

Another informant who received prison time for promoting Nazism by means of tattoos had originally been given a suspended sentence. But a concurrent investigation resulted in his conviction on theft charges, and so the original suspended sentence for hate crime was revoked. He disagreed with his punishment because, he said, he had already paid his debt in the past and he lacked the finances to get the tattoo removed.

In contrast to the foregoing three offenders, the last informant to receive prison time was relatively accepting of his punishment and considered it just. This was primarily attributable to his long criminal record, which he admitted he himself would take into account were he the judge. This informant was also ordered to pay a fine to compensate for property damage he had caused.

6.6.2 SUSPENDED SENTENCES

Five informants were given suspended sentences for a wide spectrum of acts ranging from reckless endangerment as part of an attempted arson attack to Violence against a Group or Individual (physical attack including threatening with a knife) to

Dangerous Threatening and Defamation of a Nation, Race, Ethnic, or Other Group of People. Some offenders were convicted for these acts along with the crime of Disorderly Conduct. In addition to their suspended sentences, all the informants were given probation. In two cases, financial compensation to the victims was ordered for property and bodily harm. One informant was enjoined from drinking alcohol and his personal property (in the form of the knife used to attack the victim) was seized by the court. Another informant was ordered to submit to supervision by a psychologist.

The offenders who had gotten suspended sentences, too, had differing opinions as about their punishment. They based their feelings on whether the suspension would keep them outside the prison gates or instead "help them in". One informant was almost enthusiastic about his punishment, because he had anticipated a long prison sentence. But he had had no prior convictions, and there was no concurrent process to which he was subject. Such was not the case with the other three informants, who assessed their sentences in the light of their past criminal records and future prospects. Some informants had anticipated playing a more active role in their cases by hiring an attorney or appealing the sentence, but when they discovered the relatively moderate nature of the sentence that had been handed down, they did not do so.

Another informant considered the suspended sentence that had been given him to be a total injustice. But he, too, took no steps to fight the sentence. His strong feeling of injustice stemmed from the fact that, soon after the sentence was handed down, he was convicted in another case of obstructing justice, resulting in the suspended sentence being converted into prison time. This was also the fate of another informant, who had already been serving a suspended sentence for disorderly conduct at a football match when he was convicted of the hate crime. For the hate crime, his sentence was still pending; were it to be confirmed, he would have to serve time. He therefore appealed the conviction, hoping to avoid violating his parole.

6.7 EVALUATION OF THE CRIMINAL PROCEEDINGS AS A WHOLE

All of the informants but one provided an evaluation of the criminal proceedings as a whole. A clear majority—seven informants—considered them to have been unfair. But this did not always mean that actors in the criminal justice system had acted unfairly toward them.

6.7.1 THE CRIMINAL PROCEEDINGS WERE FAIR

A single informant rated the criminal proceedings as fair. He had been tried for hate crime in the past and evaluated the course of the proceedings as problem-free and his sentence as fair. His aversion to people of colour, specifically people of Roma background, was not politically motivated, and he had never been a member of or sympathizer with hate organizations or political movements. He considered his conflicts with Roma to be a personal matter, one for which he was willing to accept his punishment.

6.7.2 THE CRIMINAL PROCEEDINGS WERE UNFAIR

The remaining informants considered the proceedings to have been unfair. Their reasoning was of three types. In the first type, the criminal proceedings were perceived as having had a favourable impact on the offender. This type entirely concerns a single offender, who considered the proceedings to have treated him fairly, but not the victim. The offender believed that he should have been given a stiffer sentence for his behaviour. In the second type, the criminal proceedings were perceived as having had an unfavourable impact on the offender. The offenders admitted that they had committed the criminal act, but contended that it had taken place under different circumstances than those portrayed by the police or the victim. The third type of reasoning claimed that the proceedings should never have been initiated in the first place. Both Romani informants came to this conclusion. They completely rejected the notion that they had committed a racist attack. In their estimation, they had simply reacted to racist insults that had targeted them. Also in this group were informants who had been convicted of extremist crimes. The justification given was that their convictions had violated their right to free speech:

> *"Like for me it was absolutely natural. Because I'm a European, I want to somehow protect this country. I don't know the term extremism or neonazism, as they call it, at all. I don't know where they got these terms, these are just terms so they can use to convict us [...] [I couldn't understand] how they could actually charge us for some article [of law] you shouldn't be able to charge anyone under anyway. I think, take this article, for instance, well I don't recognize [the legitimacy of] democracy, but as long as I'm living in one, so we should follow some rules, and I don't understand how in a democracy, in a democratic system that says all people have their own opinions and can express them as they wish, so they can actually convict us for it. We just expressed our opinion, got people with the same opinion together, and they actually convicted us for that. So for them some articles, some things are worse than a machine gun, or something. So I don't get it. I don't get this kind of thinking, where they got this, that they can ban us from doing something and order us to do things."*

6.8 THE FUTURE

Perpetrators of criminal acts who have been convicted and sentenced often face the stigma of being considered a criminal, both during their time in prison and after their release. Furthermore, this stigma may be stronger depending upon the type of crime. With two exceptions, however, our informants did not consider themselves to be suffering from a serious social stigma because of the hate crime they had committed. A clear majority of the offenders had already been convicted of other crimes in the past. Rather than a single act, it was their entire criminal history that was judged by society and in the courtroom, as well as within their family environment. In other words, they claimed that their lives and plans were not affected by the type of crime they had committed, but that they instead battled a reputation as "career criminals", with all the consequences that perception brings.

6.8.1 LIVING WITH THE LABEL "HATE CRIMINAL"

We identified three types of consequences suffered by the informants for being labelled as persons who had committed a hate crime. Three informants stated that being labelled hate criminals had had a negative impact on their lives, particularly because of the reactions of those around them and unpleasant experiences tied to the stigma of being labelled a "racist".

One informant, who considered himself an anti-fascist, said that his conviction on hate crime charges had evoked a positive reaction within his circle of acquaintances. In a chance encounter with his one-time rivals, whom he called "Nazis", and with whom he shared the lifestyle of a street fighter, he brought up the hate crime he had committed. They applauded his conviction. This made him unhappy and he thought it unfair to be grouped together with them.

The remainder of the informants had nothing to say about being labelled hate criminals. They were either unimpacted by the label, or were already so thought of and were therefore used to it.

6.8.2 LIFE PLANS

Our informants' pasts were clearly reflected as well in their life perspectives. Three informants expressed the wish to "be at peace", which may be understood as a wish to avoid situations in which they would once again commit crimes. In this regard, they talked about building strong family relationships. This was vital as well to three informants who at least since the time of their prior convictions had met with difficult life circumstances including low pay, not enough money, and family worries.

Two informants stated in the course of the interview that they were considering moving abroad upon their release from prison. One wished to go to Cyprus and the other to Lithuania. In neither case, however, did they have any notion of what they would do in these countries, nor did they have any contacts to introduce them to the country. The near-term plans of both informants concentrated on their stay in prison. Both wished for more frequent visits from friends and relatives. One was at least in contact with friends, but the other had had no contact with anyone outside the prison for some time.

We did not speak about the future with one informant. During the course of the interview, however, he repeatedly referred to himself as a criminal, and it was in this direction that his answers to questions about profession and his relationship with security forces tended. With regard to the latter, he indicated with some humility that had he "not been a criminal", he would like to have served as a soldier or a police officer.

6.9 SUMMARY

To summarize, the convicted offenders with whom we conducted interviews were manual labourers who mostly came from peripheral areas of the CR and had a long history of breaking the law. In addition, but in most cases, their criminal histories were not exclusively focused on hate crime, but also included other types of

criminality, such as disorderly conduct, theft, or violent conflicts. The hate crimes for which they had most recently been convicted targeted victims that were unknown to them, or so-called extremist crimes that included establishing and promoting illegal political organizations or expressing sympathy for them. The offenders considered alcohol to be an important trigger for these crimes because it awakened resentment towards variously defined social groups.

The offenders gave differing descriptions of what happened immediately after their apprehension. Some complained about the pressure tactics of police, including violence, but most evaluated the police neutrally. The chief complaints came from those who had not had legal representation during the process. The way the criminal proceedings unfolded for the various offenders differed markedly, depending upon their past history and the gravity of the crime. But in addition to criminal recidivism, participation by the offenders in far right political organizations was also taken into account. In the offenders' judgment, such a background could artificially elevate the assessed gravity of their crimes. During their trials, a primary source of evidence was materials obtained during home searches, along with the input of police anti-extremism specialists. Another frequent source of evidence for assessing hate crimes was the testimony of witnesses and audio-visual recordings. These were used to build the case that a hate crime had been committed, not only by the public prosecutor but also, according to some informants, by judges who took an active role.

The main strategy employed by the offenders in their defense was an attempt to gain a maximum reduction in the potential severity of the sentence. To this end, they used various tactics, from confession to attempts to reframe the importance of the crime committed (through trivialization, denying the crime, or challenging the credibility of the victim) to adapting the defense to the character of the judge or prosecutor or arguing that it would be economically disadvantageous to convict the offender.

All of the informants were convicted of their crimes. Some of the informants received prison time. Two were convicted of multiple crimes, with the hate crime being seen by the judge as less serious. The remaining five informants were given suspended sentences, some of whom were convicted under a criminal order.

The offenders had various opinions of their sentences. Some considered the entire criminal proceedings to have been in error, including the sentencing. Others were pleasantly surprised by the leniency of the sentence. Most of the offenders did not feel stigmatized by having been convicted of a hate crime. Two offenders were exceptions. One had had no prior truck with the criminal justice system until his hate crime conviction; he considered his conviction for racial defamation an embarrassing label that he did not deserve. The other offenders maintained that their lives and plans were unaffected as much by being labelled hate crime offenders as they were by being labelled recidivist career criminals.

7. VICTIMS

7.1 DESCRIPTION OF INFORMANTS

We conducted a total of 10 interviews with hate crime victims. Six were with men and 4 were with women. Their ages ranged from 26 to 60 years, with the average age at 41 (40.7) and the median at 38. Eight of the informants had been born and spent most of their lives in the CR or Slovakia. One was from elsewhere in Eastern Europe and another from Northern Africa. Three informants had a university education, four a secondary education, and three a primary education. Seven informants were employed when the interview took place in various occupations ranging from the hospitality industry to the media, by non-governmental organizations, or in the cultural or financial sectors. Three informants were unemployed during the time of the interview. One informant had a criminal record. None of the informants declared radical political views.

Eight informants had been repeated victims of hate crime. They had been verbally accosted on the street, and had received death threats on the internet, but they had also often been physically attacked. Three informants had even been attacked by the police. Only a few had ever reported a hate crime to the police in the past. Their unwillingness to report this type of crime supports the conviction that hate crime is largely latent in nature. Interestingly, only one of the reported crimes that will be discussed in the subsequent section was classified by the police as a hate crime. But all of the informants considered themselves hate crime victims. We will therefore label them as such in what follows. In addition, we focus in the interviews primarily upon a single hate crime, normally that which was experienced most recently by the victim.

7.2 VICTIMIZATION

Our informants found themselves victims of both violent and verbal hate crime. They were injured in various ways, from serious physical attacks to various types of psychological damage. The attackers' chief motivation was the colour of the victims' skin, but this was often combined with other specific characteristics, such as religious or political beliefs. As with the hate crime offenders that we interviewed, the victims, too, normally had never encountered their attackers prior to the attack.

7.2.1 TYPE OF CRIME

Six informants had been physically attacked, and four were threatened with violence. In three cases, the threats came via the internet in various forms from public calls for execution through repeated threats of death to the informant's family.

On one occasion, the threat was delivered in a public location and was accompanied by gunfire. Two informants were subject to assaults in which bullying was a feature. In one case, a physical attack was preceded by long-term bullying in the form of groundless complaints, the spreading defamatory rumours, and verbal and physical attacks on the daughter of the victims. In another case, the attack involved public humiliation—the victim's assailants threw food at him and shouted abusive language concerning his sexual orientation.

7.2.2 INJURIES CAUSED

The informants may be divided into three groups primarily according to type of injury. The first group includes informants and informants' relatives who experienced serious bodily harm as a result of the hate crime. In one case in which an entire family was physically attacked, the husband of the informant was seriously injured. As a result, he was reliant on the care of other people until he died of cancer about a year after the attack. In another case, the informant was attacked using a metal bar. His leg was broken so seriously that the bone had to be reinforced with metal plates and he was forced into a wheelchair for four months.

The second group had less serious injuries and consisted of two informants. In one case, a woman with a baby carriage was knocked to the ground by an off-duty police officer. It put her in the hospital for two days. Another informant had been kicked by a police officer, but fortunately did not sustain serious injuries. The attack was preceded by a disturbing-the-peace complaint. The victim described the incident as follows:

> *"And then they kicked [name]. She was pregnant and they kicked her in the stomach. And I said, 'Why would you kick her in the stomach when she's pregnant?' [The police replied:] 'What do you want, you black piece of shit?' That's what he said. And I say, 'Listen, I'm being polite with you, speak politely to me, too. Just because I'm homeless, that doesn't mean you can do whatever you want with me.' [The police replied:] 'You know we can.' And somehow he got me down on the ground. He squeezed my throat right here and hit me with his fists, and raged and swore at me, and the other cop guarded the others."*

The third group was primarily composed of people who had been harmed psychologically. In one case, the victim was a foreigner working in the CR who had been attacked by a neighbour after standing up against his long-term bullying. His only physical injuries were scratches. But constant badmouthing from the neighbour, derogatory shouting at family members and filing fabricated illegal activity reports did do psychological damage, and his daughter, too, has been harmed:

"She's afraid. To this day, she takes the dog with her when she goes to the toilet. That's a typical example. She goes to take a bath… […] We went to a psychologist to try to calm her down at least a little. So she could explain to her that not everyone's like that. That it's not her fault. So that she could explain to her that it's not her fault. Because it's happened repeatedly that she goes out and then suddenly sees a neighbour and right away shouts, 'Daddy, can you come down here?', or 'Mummy, come here!'. And I think she's going to be like this for a long time. [...] So I've said to the neighbours repeatedly, 'If you've got some kind of problem, come to me! Leave my daughter out of it. You and I can solve the problem, she's got nothing to do with it.' No, they sussed out a 'weak spot' that they can attack and it really affects a child's psyche, it really shakes her up."

In another case, an offender made racist remarks to participants in a children's camp and fired his gun into the air. Those who had been targeted experienced pronounced shock. Other cases featured threats made via internet social networks. Two victims reacted to repeated concrete threats which made them fear for their lives. One informant reported the threats partly out of curiosity, she said, and partly under pressure from people around her. All of the cases in this group involved the use of verbal expressions of hate.

7.2.3 MOTIVATION OF OFFENDERS

In five cases, the attack was motivated by skin colour, or, more precisely by Romani nationality. One of these cases combined two characteristics—the victim was a Romani man who was homeless. Two victims were attacked because they were employed by a non-governmental organization that aids socially disadvantaged groups. Our informants also included individuals who were victimized because of their actual or presumed religion (Muslim), sexual orientation (gay), or nationality (Ukrainian). From the available information, it appears that none of the offenders concerned were adherents of the far right. The informants described them as ordinary citizens.

7.2.4 ACQUAINTANCE WITH THE OFFENDER AND SITE OF THE HATE CRIME

Eight of the victims had had no prior acquaintance with their attackers before the attack. Two knew their attackers by sight. In both cases, the attackers were police officers. In four cases, the hate crime took place in a publicly accessible location. One happened on the street, three others on private property—one in an international fast food chain, one in a taxi, one at a recreation facility. In three cases, the attack was carried out over the internet, in particular via e-mail or over social networks.

In the remaining three cases, the attack took place in the victim's home or very nearby. These attacks took various forms. In one case, the offender got into the victim's home and attacked everyone present. In another case, the offender attacked

a homeless man in his makeshift housing at the edge of the city. And one informant was attacked in the entryway of the apartment building where he lived.

7.3 EVENTS IMMEDIATELY AFTER THE HATE CRIME

Because of the pronounced differences between individual criminal acts, it is difficult to find a common denominator in events that took place immediately after the crime was committed. We will therefore compare them on the basis of the role victims say they played after the attack and what their role had to do with the initiation of criminal proceedings.

7.3.1 HATE ATTACKS NOT REPORTED

One informant failed to report the attack on him to the police. He justified his behaviour by saying that he didn't believe they would take his case seriously. He expected that instead they would laugh at him and subject him to the same demeaning behaviour as the offender. His conviction was reinforced by the fact that none of the people present at the fast food restaurant where the attack took place stood up for him. That included the private security guards, who simply watched as food was thrown and insults were shouted. The victim described the event as follows:

> *"All of a sudden a couple of guys came with a tray… older, maybe around 30. And they start making comments. […] They started chucking food at me, like throwing fries at my head. Like that. […] And at first I didn't react but then I started to defend myself, like telling them to calm down. And they started shouting at the entire restaurant, stuff like, 'I'd like to know how much your ass goes for, faggot.' […] But the worst thing of all was that the restaurant was full, and no one stood up for me in any way. […] And what's more, next to us, literally three meters away, there was a security guard. Who just stood there and watched as they threw food at my head… and shouted at me like that. And didn't do a thing."*

7.3.2 BEING PROACTIVE

Five informants tried to report the hate crime themselves. Three did so because of threats made over the internet. In the first case, our informant and his son were constantly threatened over a three-year period with death because of the colour of their skin. The victims used their own resources to determine the identity of the person making the threats and passed this information to the public prosecutor, who passed it to the police. In the second case, a call was made for the victim's execution because of his work for a non-governmental organization. The offender called for the execution on a social network, where it was publicly visible for a relatively long period of time. The informant contacted police, who came immediately and later

initiated criminal proceedings. In the final case, the informant submitted a complaint to the public prosecutor because she had received death threats from various assailants, once again because of her work at a non-governmental organization.

The two remaining cases involved face-to-face attacks. One informant tried to report threats and racist language over the telephone. But neither the local police nor the national police were willing to respond. She therefore decided to go to the police station in person and repeat her request. But she was not accommodated there, either, and the police officers behaved inappropriately. And so several days later she connected with a nongovernmental organization that assists hate crime victims. They represented her and she has been working with them since that time. She described her experience with reporting hate crime like this:

> *"So then it all started. We wanted the police to come. First we called the [name of town] police department. I told them to come out. He [the officer] said to me, 'You don't tell us what to do.' And hung up the phone. So I called 158 [the number for the Police of the CR]. Someone there told me they were going to turn it over to [the municipal police with whom she had already spoken]. And I say, 'So we're just going in circles, eh?' And no one came. To this day, no one from the police has contacted us at all, nothing. […] So then we went to the police in person and there, there they treated us like we were bothering them, what are we doing there anyway, and they didn't interview us. We went there because we at least wanted to file a report, everyone who was part of it, but they didn't interview us,,, […] And… they screamed at us there like What? Why did you come? and they weren't going to do anything for us, that we weren't going to make a big drama out of it…"*

An informant who along with his family had been the long-term subject of bullying by a neighbour because of his nationality attempted to make various actors aware of this behaviour. Fellow residents of his building had no reaction. Nor was there any reaction to his request for assistance from the local or even the state police, to whom the neighbour had reported the victim for various reasons (disturbing the peace, breaking the night-time noise curfew). The dispute culminated in an attack on the informant, which prompted his wife to contact a non-governmental organization that assists hate crime victims. With their help, the family of the informant was able to press charges.

7.3.3 THE HATE CRIME WAS REPORTED BY SOMEONE ELSE

In four cases, the hate crime was reported by someone other than the victim. In one case, the police were called by people who noticed the victim after he crawled under their apartment window from the attack site. In another case, the report was made by relatives who were with the victim on the street at the time the attack was carried out. The assailant focused only on the victim and pushed her to the ground. Friends of the assailant and the relatives of the victim then subdued him and called police. An attack on a homeless man was reported by a non-govern-

mental organization contacted by the victim on the advice of his social worker. And in the final case, the report was made by a neighbour with whom the daughter of the informant found refuge after she was able to flee her home, where the unknown assailant had entered.

7.4 COURSE OF THE INVESTIGATION AND THE CRIMINAL PROCEEDINGS

At the time the interviews took place, the informants were at various stages of the criminal proceedings that involved them. Final judgments had been issued in only two cases. In two other cases, criminal proceedings were still underway at the time the report was written. Two cases were classified as misdemeanours, and in one of these cases, too, the court proceedings were still underway as this report was being written. Three cases had been postponed by the police.

Our informants were mostly unaware of the individual phases of the criminal proceedings, and were advised about their course by their legal representatives. It is not, therefore, possible to identify a formula by which to characterize the investigations and criminal proceedings in hate crime cases from the victims' standpoint. It is, however, possible to observe several characteristics based upon the feelings of the informants, the most prominent being that police trivialized the harm done to them. This is further supported by the fact that police rated as crimes only those cases in which substantial physical harm had been done and the report was filed by someone other than the victim (two cases), and those cases where the victim received media attention (two cases). Of these four cases assessed by the police as criminal offenses, one case was qualified as a hate crime.

7.4.1 MEETINGS WITH POLICE AND LEGAL REPRESENTATION

In two cases the informants met with police at the hospital shortly after the commission of the crime. Providing testimony was problematic—as a result of her injuries, one victim was unable to respond. The other victim, a foreigner, gave testimony through an interpreter. But according to the victim, the interpreter spoke very poor French, a language in which the victim was comfortable. The report, though, said that the interrogation had taken place in English. The victim therefore requested to give testimony in his native tongue, Arabic. This was allowed, but the interview did not take place until six months after the event. Further along in the course of the investigation, the informant was advised by a police officer that as a Muslim, he should not drink alcohol. This was an apparent reference by the officer to the fact that the attack took place during the night, as the informant returned from a meeting with friends:

> *"I'm not saying that they are approaching me like according to my origins. But maybe just they don't care much about this kind of cases, or they don't give them much importance, or they don't treat them as it should*

be, like in details, in more, in more studied or more focused way. [...] Even like in the second interview with the police after my operation, the guy comes, the police officer is telling me: v islámu zakázáno alkohol [alcohol is forbidden in Islam]. Like the first thing is that in Islam it is forbidden to drink alcohol. In that time, I felt like high-pressured. I don't know if these guys are coming here to interview me to know truth or just to start judging me because I'm a Muslim who is drinking."

One female informant was also hospitalized. She was first interviewed by police, and evaluated their approach positively. But because of shock, she did not remember her testimony, nor did she remember to get a copy of her witness statement. Afterwards, she went to the hospital for treatment. In the hospital she was repeatedly attacked by the same assailant, who had come to the hospital accompanied by the police.

Two informants reported hate crimes committed over the internet to the public prosecutor. In both cases, the police opened an investigation, but the victims' injuries were trivialized. One informant even claimed to have been prevented from speaking with his legal representation during the police interview and said he was fined. The police officer responsible, he said, posted information about his case on the officer's social network profile. The second informant said that six months elapsed between the time she filed a complaint and the initial police interrogation. She was not treated as a victim during the course of the interview, she said, and the interviewing police officer minimized the death threats against her.

Another informant who had repeatedly been threatened over the internet filed a complaint with the police, who then came to see him in person. The informant found the police accommodating. His case was put on the back burner because police were unable to identify the assailant:

"Well, we filed a complaint and then… […] afterwards, if I remember correctly, he was here, a cop came, who actually conducted the interrogation. I didn't go to the police, he came here, and I told him my side of the story, and then another cop came. […] He was laid-back. He struck me as completely laid-back, a sort of bald muscleman. I didn't have a funny feeling or anything. And then he came out a second time, I think, to explain why he was putting the case on delay."

As noted above, one victim, after threats accompanied by shooting and racist epithets, contacted both the municipal and national police, who refused to open an investigation. This prompted her to take the case to the media, and to seek the involvement of a non-governmental organization. Only after this was she contacted again by the police. One other victim had a similar experience. Until a non-governmental organization got involved, the police repeatedly ignored his attempts to resolve his problem with a bullying neighbour.

From the above, it's clear that police for the most part did not take the harm caused to our informants seriously. The fact that eight informants were provided no information about further steps to be taken after their initial witness statements is further testimony, as is the fact that they were not apprised of the opportunity to receive legal representation by non-governmental organizations set up to help victims of crime.

In the end though all the victims received legal representation in some phase of the process. Seven were represented by a non-governmental organization that assists hate crime victims. One informant was represented by a lawyer recommended by an acquaintance; another was represented by a friend who was an attorney.

The non-governmental organization made contact with its clients either on the basis of information from the media or fieldwork, or by referrals from other non-governmentals active in the individual regions of the CR. In three cases, the victims directly sought help from the organization. Although the informants received legal representation at different points in their cases, all evaluated their representation positively. This was particularly true when the representative was present as the witness statement was being given to police and when representatives took charge of the conversation if police tried to trivialize the matter or edit the conversation. Their assistance was also appreciated in dealing with claims related to compensation for injuries and exercising rights under the Act on Victims of Crime (such as the option to give a deposition in court without the accused present, help with requests for financial assistance, etc.).

7.4.2 CRIMINAL PROCEEDINGS, THE USE OF EVIDENCE, AND SENTENCING

Criminal proceedings were carried out in four cases. Two of these, however, had not yet concluded at the time this report was written. Of the two that had, only one was classified as a hate crime. The offender in that case was sentenced for that crime. Upon appeal, however, the court reclassified the crime as an ordinary criminal act. In two cases, the harm suffered by the victim was assessed as a misdemeanour civic coexistence offense. In one case, a fairly high fine was levied. This was, however, reduced upon appeal and in the end, administrative entities were unable to complete the proceedings within the statutory deadline. There was thus a time limit, and the offender was freed from his obligation to pay the fine set under the preliminary decision. In three cases, the police did not consider the act to be a crime. The classification of the act and the state of the criminal proceedings at the time the report was written are summarized in the following table:

Table 5: The classification of the act of offender and the state of criminal proceedings at the time the report was written

Informant number	Classification	Classification as HC	Phase of proceedings
1	Criminal Act	In the first instance yes, upon appeal no (Serious Bodily Harm under § 145 Par. 1. Par. 2 Letter a) + Breaking and Entering under § 178 Par. 1, Par. 2 + Damage to a Thing of Another under § 228 Par. 1 of the Criminal Code)	Complete (Offender given a prison term)
2	Criminal Act	No (Violence against a Group of People or Individual under § 352 Par. 1)	Complete (Offender given a suspended sentence)
3	Criminal Act	No (Disorderly Conduct under § 358 Par. 1 of the Criminal Code + Harm to Health out of Excusable Motives under § 146a Par. 1, Par. 2 of the Criminal Code)	Underway
4	Criminal Act	No (Disorderly Conduct under § 358 Par. 1 of the Criminal Code)	Underway
5	Misdemeanour	No	Complete
6	Misdemeanour	No	Underway
7	Not classified as a criminal act	/	Criminal proceedings delayed
8	Not classified as a criminal act	/	Criminal proceedings delayed
9	Not classified as a criminal act	/	Criminal proceedings delayed
10	Not reported	/	/

The process of clarifying hate motivation from the viewpoint of the victims is therefore very difficult, the main reason being that none of these acts were classified as hate crimes despite the fact that their victims described them as such and continued to perceive them to be hate crimes. The reason that the sole hate crime offense was reclassified as a regular crime could not be recalled by the informant.

The main stock of evidence presented in court consisted, according to the informants,

of the statements of the victim and other witnesses to the crime along with electronic communications between the offender and victim that recorded threats and racist invective, and in some cases, health documentation recording injuries. Informants said ties between offenders and extremist political organizations or evidence of extremist political beliefs were never discussed.

7.5 EVALUATION OF THE ENTIRE CRIMINAL PROCEEDINGS

Only two informants were satisfied with the outcome of the criminal proceedings. The remaining seven expressed varying degrees of dissatisfaction. This mainly concerned the behaviour of police officers, who openly minimized the harm to the victims, thereby making them feel that their case would not be properly prosecuted. In two cases, officers appeared particularly insensitive: one posted information from the victim's file on his publicly visible social media profile; the other categorically refused to come to the scene of a threat involving shooting.

Further evaluations concerned technical matters to do with various phases of the criminal proceedings: shortcomings in providing an interpreter, limited provision of information to clients whose representation was not present when they gave statements, dissatisfaction with the sentence given the offender, etc.

Although most informants were dissatisfied with the criminal proceedings, virtually all said that they would report a similar attack in the future. Their motivation for this was varied, but their reasons may be summarized using the following categories: watching out for their own safety, political beliefs, and professional solidarity with clients. The final category reflects the conviction of some informants that hate crime is primarily latent in nature and must therefore be kept in the public view, especially by entities in the criminal justice system. Two informants did not answer this question.

7.5.1 WATCHING OUT FOR THEIR OWN SAFETY

Two informants indicated that, should they become hate crime victims again, they would once again report the crimes to protect their lives. One informant, who indicated that in the past he had been a hate crime victim several times without reporting the crime, said his motivation to do so in the future was his poor state of health, which prevented him from defending himself:

> *"Now I'd report it, because I have to protect myself. Because… I have to protect myself because of illness, because I can't just tear into someone. I'm terribly weak. I just don't have it anymore."*

It is important to note that both informants in this category had little knowledge of the law. They got representation only later via the non-governmental organization they contacted on the basis of social worker recommendations from their social workers.

7.5.2 POLITICAL BELIEFS

Three informants were of the opinion that reporting hate crimes would help remedy the unsatisfactory response by police, which negatively impacts disadvantaged groups. Improving their work would show that contemporary society protects the rights of disadvantaged groups, too, and thereby strengthen faith in the political institutions of the CR. One informant characterized her motivation in these terms:

> *"I think that if the criminal act is correctly named, somehow correctly judged, that will be motivation for children that there really is justice here. Because they don't much believe that, and I don't either after everything that's happened. That's what I'd like to have happen, so that there's a just decision as to what really happened. [...] I think that if people started to believe—I'll speak for Roma, okay? If Roma knew that someone would stand up for them, that the law is on their side, it just might start to work."*

In this respect, then, reporting a hate crime must be understood to be a political act. Two other informants had a similar take on the issue. One, for example, said that hate crimes have to be reported so that police adopt measures that will improve their sensitivity and behaviour towards the victims of these acts. This could result in greater faith in the police from those who so far have for various reasons failed to report the crime.

7.5.3 PROFESSIONAL SOLIDARITY WITH CLIENTS

Informants in the foregoing categories decided whether they would report future hate crimes on the basis of their own personal experience. Those in this category had a different basis. They encountered hate crime not only in their personal experience but also, and primarily, on a professional level, as part of their work for non-governmental organizations, for they learned about incidents of hate crime from their clients. One informant described this synergy as follows:

> *"We often want the clients to somehow defend themselves and do it, because on the one hand we want them to stand up for themselves, and on the other hand so that there's some practical movement forward [...] So I saw it like, if we're asking them to do that, we should do it as well, but it's not a very pleasant experience..."*

In other words, for employees of non-governmental organizations, the motivation for reporting hate crime grows out of their professional activity. In addition to solidarity with clients, they were also interested in the importance of police criminality statistics for calling attention to hate crime and hate crime victims. As one informant stated it, it is necessary to talk about hate crime for the simple reason that it will motivate the government to pay adequate attention to the problem. If hate crimes do not show up in criminal statistics, the state, too, will fall short in protecting the interests of victims:

"When I have the opportunity to talk to these people, I tell them it's up to them, that they should do what they feel, that I definitely don't want to force them to report it, but that it would be good simply because next time it happens, maybe the state will do more because they'll know the problem exists."

7.6 MEDIA ATTENTION

Four informants mentioned the media as a potentially important tool in exercising their rights. To various degrees, the media had provided information about the cases of no less than three of our informants, without which, in their estimation, the police would not have conducted an investigation. Before the media got involved, the police had expressed reluctance to take their cases and minimized their injuries. One such case we have already discussed above and will not repeat here. The other informant whose case received media attention described his situation as follows:

"The situation was that we really had to apply media pressure to get them to react to our request in any way. On the other hand, how many people, how many ordinary people, completely normal working people, or, God forbid, people from a disadvantaged social group. How many Gypsies can motivate that kind of media pressure?"

This quotation also outlines the conditions that render use of this tool impossible. In the case of this individual, the media pressure was based not only on mobilizing his social contacts, but also on the fact that, together with his legal representation, he was capable of formulating the problem in such a way that the media took interest. This, in his mind, is not possible for the majority of hate crime victims, in this case Roma.

The advantages of media attention were also cited by two other informants. One considered it very important, however, that the victim's identity is well protected in such cases. Media attention could result in the opposite of what is intended—causing harm to the victim.

7.7 SUMMARY

The victims who served as our informants had nothing in common aside from the fact that they were members of a social minority or worked with such minorities. They included Romani and LGBT individuals, homeless people, Muslims, and employees of non-governmental organizations that help disadvantaged groups. Most victims were current or former clients of the organization In IUSTITIA.

All of the hate crimes the victims talked about bore hallmarks of violence. They were either physically attacked, or they and their family members were threatened with physical liquidation, or they were publicly demeaned. With few exceptions, the

victims did not know their assailants. Those who did consisted of two informants who knew their assailants—police employees—by sight.

Almost all the hate crimes committed against our informants had been reported. Those that got the most attention from police were the crimes that had received media coverage, that bore visible hallmarks of violence, or that were reported by someone other than the victim. All in all, the victims were dissatisfied with the approach taken by police to solving their cases. This dissatisfaction primarily focused on efforts to devalue their injuries, which took the form of a clear unwillingness to investigate the acts reported, as well as in inappropriate comments and scepticism about psychological harm. But there was also concern about the violation of victims' rights (preventing consultation with legal representatives, failure to assist when disputes between neighbours escalated, failure to provide contacts to aid organizations, etc.) and specific practical shortcomings such as choosing a poor interpreter. Two informants indicated that their relationship with the police improved once their cases attracted media attention.

In most cases, the victims were represented by In IUSTITIA, in particular by attorneys whose services were arranged by the organization. In the remaining cases, the victims used other attorneys. Criminal proceedings were initiated in four cases involving our informants. In only one case, however, was the act classified as a hate crime, and even in that case, it was reclassified upon appeal as an ordinary criminal act. In two cases the act was qualified as a misdemeanour, and in the remaining three cases, no charges were brought. For this reason, no further relevant information could be obtained about the course of the investigation or sentencing, let alone clarification of the hate motive. Although there was not a single instance in which the actions of the assailants were classified as a hate crime, the informants perceived themselves to have been hate crime victims. This may be partially due to the fact that the interviews took place on behalf of an organization whose specialization is helping hate crime victims.

The victims indicated that in the future, they would once again report hate crimes, both for personal reasons and because society needs to prosecute these acts. The great majority of informants believe that a crime has a latent basis, and that even most victims do not draw attention to it for various reasons.

8. CONCLUSION

Our objective in this research was to determine how hate crimes are prosecuted in the CR. For this purpose, we conducted interviews with actors in the criminal justice process: judges, public prosecutors, attorneys, offenders, and victims. The interviews were also used to structure the analytical part of this research report. We will now synthesize the findings from these individual chapters.

The experience of our legally aware informants with hate crime may be summarized as follows. Judges and public prosecutors had, in general, less experience with hate crime. This may be partially connected to the greater complexity for police of proving this type of criminality, since it is they who must take the initial steps. With attorneys, the situation was more varied. Some had encountered only one or two cases in the course of their work, while others took hate crime as a focus. Most of these attorneys, moreover, considered that they themselves had been victims of hate crime. When it came to public prosecutors, only one had had such an experience. The concept of hate crime had been a topic of study during their university education for only one public prosecutor and one attorney. A smaller number had vague memories that they had encountered hate crime as part of their criminal law coursework. In general, among informants with a legal education, there were more whose personal and professional experience with hate crime was limited, although there were exceptions, particularly among attorneys.

The informants did not share a common view of hate crime. Some, instead of subscribing to the narrower classic conception that hate crime is motivated by prejudice toward groups defined by rules based on unalterable characteristics, took the broader view that any crime may qualify if it includes hate in the emotional sense, for instance in cases involving partnership disputes. This misconception appeared among both judges and attorneys. The more unified view of hate crime expressed by public prosecutors may likely be explained by the existence of a specific methodology and a hate crime specialization within the structure of the public prosecutor's office.

The concrete experience of the informants differed markedly. While judges and attorneys were particularly focused on crimes that involved physical violence (which may be accompanied by hate speech), public prosecutors, because of their role in the preparation phase of the proceedings, encountered hate speech much more often. For various reasons, many of their cases did not progress to the point of charges being brought. Both judges and prosecutors perceived hate crime as currently being of a primarily situational, spontaneous nature involving individuals or groups influenced to greater or lesser degree by the consumption of alcohol. Ties by offenders to the extreme right were noted in a minority of the cases described. Defence attorneys represented offenders primarily in cases involving physical violence, and most of their clients had demonstrable ties to the far right.

Informants working in the legal profession said their cases involved male perpetrators almost exclusively. Among victims, Romani nationality was a frequent marker. Other groups typically threatened by hate crime varied in composition. Among those mentioned were people who had been attacked because of their nationality (Czech, Slovak, Polish, Vietnamese, German), because of the colour of their skin, their religious faith (Judaism) and, in a few cases, because of political orientation or homeless status. Public prosecutors and to a lesser extent attorneys most frequently described cases that involved harm to the public interest or unidentified groups of individuals, particularly with the presence of various types of non-speech manifestations, such as written expressions and property damage.

None of the judges, public prosecutors, or attorneys thought that hate crime should not be anchored in the law. Only one public defender expressed the view that the qualified basis for hate should be removed from the law because, in his opinion, it is not used against Romani offenders. Some informants, particularly attorneys, had certain doubts about the existence of a substantive merit for hate speech. In their view, there is a thin line between free speech and the "criminalization of opinions". The informants gave various justifications for the importance of having hate crime laws in place. They most frequently indicated that such crimes are morally repugnant because perpetrators attack their victims simply because of who they are—i.e. because of their identity or integrity. Not only can victims not change their identity, they cannot influence whether they will be attacked. Hate crimes are also repugnant because they impact on the broader group of people or the community from which the victim hails and because they threaten social solidarity. Attorneys also noted the importance of hate crime laws when it comes to deterring potential offenders and avoiding political radicalization and extremism.

Informants with a legal education agreed that clarifying hate crimes is extraordinarily complex, particularly if the perpetrator refuses to admit to a hate motivation. In such cases, another means of proving the crime must be utilized. Judges and prosecutors cited verbal expressions by the perpetrator and information about him (criminal record, relationship with the community from which the victim hails, ties to the far right) as their primary sources of evidence, along with the circumstances in which the act was committed (especially the lack of any other motive). The judges and prosecutors considered any ties to the far right to be only one of many indicators that hate motivation may be present. In both categories, by contrast, the opinion was expressed that such offenders may be more problematic to prosecute because they are experienced defendants who may be more proactive in their own defence. According to some attorneys, however, defendants with connections to the far right are relatively more likely to be convicted. They particularly emphasized the profiling of offenders by police agencies and the use of forensic judgments by experts in political extremism. They repeatedly criticized what they viewed as the misuse of forensic judgments by criminal justice agencies, particularly the police. Typical complaints concerned overreliance by victims' advocates on forensic judgments, the defence asking legal questions of these experts, and bias on the part of the experts. The most important evidence was generally considered to be verbal attacks and physical attacks by the offender plus—aside from extremism—a prior history of hate crime.

The interviews also revealed certain strategies for prosecuting hate crime and defending hate crime perpetrators. Among public prosecutors, a strategy has emerged to start with a more rigorous qualification from the outset, including hate motivation, which the court may subsequently reclassify if necessary or, if the evidence is weak, to emphasize punishing the offender even at the cost of using a less appropriate legal classification that does not take hate motivation into account. The attorneys then described two tactics used by the defence or recorded: accusing the victim of being wholly or partly responsible for the offense, and justifying the defendant's actions (trouble-free relationships with the community in question, the existence of a motive other than hate, alcohol playing a role). Other options included attempting to reclassify the offense or to dispute other aspects of the prosecution's case (such as challenging forensic opinions).

When it comes to how police organizations carry out investigations of hate crime, prosecutors and judges primarily gave high marks. In their view, the police play a key role in the initial evaluation of the act and its surrounding circumstances. Prosecutors and judges substantially depend on material provided by the police, whether it concern considering a particular act to be a violation of the law or providing evidence connected to a hate classification. They often also depend upon the personal approach taken by the police officers conducting the investigation and their sensitivity. They were particularly critical of instances in which police rely too much on the concept of extremism, potentially resulting in hate crimes committed by individuals who are not sympathizers or members of hate movements being overlooked. Attorneys took a harsher view of police (and criminal justice agencies in general). Victims' advocates spoke above all of inadequate utilization of the hate classification, which may result from unwillingness or bias on the part of police officers, a tendency to side with offenders, or a preference for less complicated ordinary classifications that are easier to prosecute than hate crime. The last point of this criticism by attorneys was often levelled at the work of prosecutors and judges, as well. Police were also accused of proceeding inappropriately with both offenders and victims, with the latter often suffering secondary victimization. By contrast, several defence attorneys pointed to overuse of the hate classification, which in their eyes stemmed from the need to demonstrate success in the fight against extremism.

The overwhelming majority of judges, prosecutors, and attorneys were united in feeling that the hate crime laws as written are adequate, and that all the hate crimes with which they had come into contact were susceptible to prosecution and sentencing. Several informants in each category favoured or admitted the possibility of amendments to the legislation. Some supported expanding the set of legally protected group characteristics (e.g., sexual orientation/identity, age, homeless status, subculture membership, physical disability, etc.). Others instead proposed eliminating exhaustive listing and restricting the substantive merit by either not specifying specific group characteristics or doing so by way of examples. Some informants were willing to revise their notion that the protected characteristics as currently defined are adequate if it could be shown that unprotected groups are being attacked.

Other informants proposed adding a qualified substantive merit permitting stricter penalization of hate motivation in the commission of other crimes. These were typically Disorderly Conduct or Dangerous Threatening. In general, though, informants were of the opinion that it is better if the laws are more general in nature.

The issue of penalties also came up for discussion. Only a few informants thought that the penalties for violent hate crime should be increased. In this respect, they cited shortcomings particularly on the part of prosecutors, both in terms of sentencing, where offenders are not sentenced to prison often enough and the deterrent effect fails, and in terms of the re-educative role of punishment (including prison time).

Certain limitations were also seen in the text of the Criminal Procedure Code, which was generally perceived to be overly formalized. The chief complaint was to do with the wording of interrogation protocols. Aside from exceptions, they cannot currently be used as evidence in court if they were obtained prior to the initiation of criminal proceedings. This sometimes makes it difficult to demonstrate the intent of the perpetrator (if they later change their testimony), and may necessitate repeating the interrogation of witnesses, which may contribute to secondary victimization. In addition to procedural inadequacies, a number of other specific factors were raised that might influence the prosecution of hate crimes. These were: the existence of divergent rulings concerning the same act by various organs (so-called "regional law") that are partially due to the value orientation of these organs' representatives, the influence of the extremism doctrine in deciding whether to use hate motivation, the erroneous use of forensic judgments noted above and, last but not least, the way hate-motivated violence and the position of particular groups are framed by the media and politicians. A future problem may be a shortage of qualified interpreters in victims' native languages.

Thanks to the Act on Victims of Crime, the judges and prosecutors evaluated the position of victims during the criminal proceedings as well-handled. The same was true of attorneys, but among their ranks there was more criticism of the current wording. All three categories of informants viewed the approach taken to victims as problematic, burdened by formalism, with the result that victims often do not understand their current position or rights. In a similar manner, criticism was levelled at a lack of knowledge on the part of criminal justice agencies, particularly the police and the courts, which leads to the rights of victims being directly violated. It is also complicated for victims to obtain compensation for damages and psychological harm. Attorneys in particular pointed to the fact that victims are oftentimes referred to civil proceedings, even when there is no reason to do so. Judges, prosecutors, and most attorneys gave positive evaluations to the work of victims' representatives, which helps overcome some of these deficiencies. Reservations were expressed, however, about victims demanding their rights more often, since this could get in the way of a speedy trial. Overall, however, victims were perceived as the bearers of significant information for the criminal proceedings. For this reason, they are an important element in proving crime—demonstrating a hate motivation, if the victims label the attack as having been motivated by hate.

In addition to the proposals noted above for partial changes to the law, recommendations were directed at improving the prosecution of hate crime either by providing educative resources for criminal justice agencies (training experts in the specifics of this type of criminality and the rights and needs of victims, exchanging experience) or by working with offenders (with an emphasis on more rigorous punishment, resocialization, and the use of restorative justice designed to help them reassess their relationship to the targeted group) or with victims (a sensitive approach by police, careful interrogation to bring out any hate motive, making information on aid organizations accessible, providing free legal aid and access to victims' advocates).

Informants who were offenders were mostly recidivists who had committed various types of crimes (not only hate crimes). In six of nine cases, the hate crime was committed against a particular individual; in three cases, the public interest was harmed. Alcohol was cited by the informants as an important trigger in the crimes for which they were sentenced. Their experience during the criminal proceedings varied depending upon the severity of the crime and their own social trajectory. Their social trajectory was assessed on the basis of their criminal record and ties to the far right, where applicable; when present, in their estimation, such ties could potentially increase the severity of the crime. A majority said that the police conducted themselves in a manner that was neutral, but some criticized pressure practices to which they claimed they were subjected by the police. In court, their chief strategy was to maximally reduce their punishment by using various tactics from confession to trivialization or denial of the crime, to attacking the credibility of the victim. All were sentenced for their actions. Some perceived their punishment to be unfair, others accepted it. Among those who believed they had been punished unfairly were the two Romani informants. They claimed that their being charged with hate crime represented an abuse of the law. A majority of the offenders maintained that being labelled hate criminals did not in any way stigmatize them (as opposed to being labelled "career criminals").

The victims hailed from various social groups, most often defined by nationality, or they were individuals who assist people from these groups. In every case, the attacks made on them contained an element of either express physical violence (with or without the involvement of firearms) or the threat of violence. The victims knew the offenders in only two cases, and then only by sight—they were police officers. Almost all the attacks described by the victims were reported. The informants had generally had negative experiences with the approach taken by police, who they said did not take the harm done to them seriously and acted in breach of their rights. In none of the nine cases was the perpetrator sentenced for hate crime. Five cases never made it to court. They were either charged as misdemeanours or were dismissed as lawful encounters. They included a case in which a mother and her two children were physically attacked and one in which death threats were made. Only one of the remaining four cases was classified as a hate crime, but even this case was reclassified upon appeal as an ordinary crime. The victims of these crimes, however, perceived themselves to be hate crime victims, and agreed that it was essential to report such crimes because of the high level of unreported hate crimes present.

9. ANNEXES

ANNEX 1: INFORMED CONSENT

I, ……., DOB ……., the undersigned, hereby declare that I am a willing participant in the project ***"Lifecycle of a Hate Crime (Životní cyklus trestného činu z nenávisti)"***

- In accordance with Act No. 101/2000 Coll. On the Protection of Personal Data, as amended (hereinafter referred to as the "Act"), I hereby grant my consent to the collection, processing and storage of my personal data for the time and to the extent strictly necessary for purposes of the project "Lifecycle of a Hate Crime".
- Because of the study's theme, this consent will apply, whenever it is relevant, to sensitive data, as well. This includes data (listed under Section 4 of the Act) on nationality and ethnic origin, political attitudes, membership in trade unions, religious and philosophical beliefs, criminal history, health status, and sexual orientation.
- I also confirm that I am aware of my rights under Sections 12 and 21 of the Act. I am acquainted with all sections of this consent agreement, and all the personal data I provide to the project is accurate and true and voluntarily given.
- I confirm that I have been made fully aware of the nature of the project and my role in it. I have had a chance to ask any questions I have about it before agreeing to participate.
- It has been explained to me, either in the introductory letter or in person, what my participation will involve, and I know what further use will be made of the information I provide.
- I agree that my data may be processed for a period of 10 years.
- I am also aware that an audio recording will be made of the interview, and I consent to this. If I choose to do so, I can ask to have the audio recording stopped without stating a reason. I have been fully informed what use will be done with the recording once the study is complete.
- I understand that I have the right to receive copies of all records in which I feature, in the form agreed with the project coordinator.
- I completely understand that I am not obligated to participate in this project. I may rescind my consent to take part at any time and request that my records be destroyed, or that particular passages of the transcript be deleted.
- I have been advised that my participation in this study and any personal data I provide shall remain confidential.

_____ _____

Signature of Participant Date

ANNEX 2: DATE AND LENGTH OF INTERVIEW

Date of Interview	Informant ID	Interview Length	Transcript Pages (250 words)
16 March 2016	Attorney 1	1:05:21	15
18 May 2016	Attorney 2	1:18:24	27
19 May 2016	Public Prosecutor 1	0:53:03	21
20 May 2016	Victim 1	1:03:58	31
24 May 2016	Attorney 3	1:04:50	29
3 June 2016	Attorney 4	1:06:08	35
7 June 2016	Offender 1	1:00:00	Notes only
7 June 2016	Judge 1	1:01:23	23
15 June 2016	Judge 2	1:20:18	34
17 June 2016	Public Prosecutor 2	0:44:00	18
20 June 2016	Judge 3	0:43:42	21
8 July 2016	Public Prosecutor 4	0:48:32	28
18 July 2016	Public Prosecutors 5, 6	1:12:37	36
22 July 2016	Public Prosecutor 7	0:31:26	18
27 July 2016	Public Prosecutor 3	1:09:37	32
4 August 2016	Attorney 5	1:03:05	26
11 August 2016	Judge 4	1:03:36	27
30 August 2016	Public Prosecutor 8	1:21:51	40
30 August 2016	Attorney 6	0:48:07	24
31 August 2016	Public Prosecutor 10	1:04:23	33
8 September 2016	Judge 5	0:46:20	21
21 September 2016	Judge 6	1:13:07	31
22 September 2016	Judge 7	1:50:33	56
6 October 2016	Public Prosecutor 9	0:55:57	26
6 October 2016	Attorney 7	1:35:03	41
11 October 2016	Victim 2	0:45:28	18
11 October 2016	Attorney 8	1:40:11	45
14 October 2016	Attorney 9	1:18:33	35
26 October 2016	Attorney 10	1:14:55	34
18 November 2016	Offender 2	1:53:06	57
2 December 2016	Public Prosecutor 11	0:51:16	21
5 December 2016	Offender 3	1:06	32
6 December 2016	Offender 4	1:09:26	32
19 December 2016	Victim 3	1:08:05	33

4 January 2017	Attorney 11	1:04:15	29
10 January 2017	Public Prosecutor 12	1:02:29	33
11 January 2017	Judge 8	0:46:43	23
28 January 2017	Victim 4	0:59:57	27
2 February 2017	Victim 5	1:12:14	29
6 February 2017	Attorneys 12, 13	1:35:46	43
10 February 2017	Public Prosecutor 13	1:09:02	32
10 February 2017	Attorney 14	1:09:23	34
27 February 2017	Public Prosecutor 14	1:12:38	32
16 March 2017	Victim 6	0:50:05	19
17 March 2017	Victim 7	1:00:57	24
22 March 2017	Offender 5	0:46:43	23
22 March 2017	Judge 9	0:24:16	12
12 April 2017	Offender 6	2:11:14	66
17 April 2017	Attorney 15	1:08:15	33
4 May 2017	Victim 8	0:49:28	22
26 May 2017	Attorney 16	0:48:06	24
30 May 2017	Offender 7	1:20:23	29
31 May 2017	Offender 8	1:06:23	32
1 June 2017	Offender 9	1:02:02	36
2 June 2017	Attorney 17	1:11:52	32
20 June 2017	Attorney 18	1:02:13	26
26 June 2017	Attorney 19	1:15:24	33
18 July 2017	Public Prosecutor 17	1:36:01	49
21 July 2017	Public Prosecutors 15, 16	1:02:00	34
25 July 2017	Judge 10	0:59:22	29
1 August 2017	Public Prosecutor 18	1:20:00	Notes only
4 August 2017	Public Prosecutor 19	0:48:07	24
11 August 2017	Attorney 20	1:11:02	26
31 August 2017	Victim 9	1:17:11	47
1 September 2017	Victim 10	0:37:49	15
	Total	71:53:42	1913.6

1 The number shown, however, may not be taken as a standard indicator of the number of people serving prison terms for hate crime in the CR. The figure is context dependent. The actual number of people serving time for hate crimes may be much higher—and this leaves out of the picture those who may have committed hate crimes but were sentenced for other offenses that did not have a hate qualification. This, though, cannot be determined from official statistics.
The data given in this report represent summed counts of hate crime offenders provided by individual prisons for varying periods in 2016. In other words, while some of the data may come from June 2016, other data may be from November of that year. Furthermore, two prisons provided no information whatsoever about how many hate crime offenders they had behind bars, while others selected prisoners directly, without revealing the total number of hate crime offenders in the facility.

DECEMBER 2017

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