

MISSING THE POINT

LACK OF ADEQUATE
INVESTIGATION OF
HATE CRIMES IN BULGARIA

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the universal declaration of human rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



First published in 2015 by Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2015

Index: EUR 15/001/2015 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: Violent attack against Muslim worshippers outside the Banya Bashi mosque in Sofia city centre, May 2011. © Juliana Nikolova

amnesty.org

CONTENTS

| | |
|--|----|
| 1. INTRODUCTION | 5 |
| Methodology | 8 |
| 2. LEGAL FRAMEWORK | 10 |
| International and regional standards | 10 |
| Investigating hate crimes | 12 |
| Providing remedies to victims | 12 |
| National law | 14 |
| 3. OBSTACLES TO REPORTING AND RECORDING HATE CRIMES | 17 |
| Lack of official data | 22 |
| 4. INADEQUATE INVESTIGATIONS | 24 |
| Failure to unmask discriminatory motives | 26 |
| Lack of experience and training | 31 |
| Investigation and prosecution of homophobic hate crimes | 33 |
| 5. FAILURE TO RESPECT THE RIGHTS OF VICTIMS | 36 |
| 6. CONCLUSIONS AND RECOMMENDATIONS | 41 |
| APPENDIX 1: RELEVANT PROVISIONS OF THE CRIMINAL CODE | 46 |
| APPENDIX 2: AMNESTY INTERNATIONAL'S CHECKLIST ON HATE CRIMES | 48 |

4 Missing the point. Lack of adequate investigation of hate crimes in Bulgaria

1. INTRODUCTION

“They won’t investigate the attack against me because I am a foreigner. It’s not only me, there are other cases; they were treated the same.”

Nazir, an asylum-seeker from Iraq attacked in September 2013, Amnesty International interviews, November 2013 and July 2014.

Nazir, like millions of others around the world, fled his war-torn country in search of safety. He arrived in Bulgaria, one of the main entry-points to Europe for asylum-seekers. What he found was not protection, but hostility and violence. His experiences are far from unique. According to the Bulgarian Helsinki Committee, as well as other civil society organizations and victims of attacks whom Amnesty International spoke to, attacks against migrants and asylum-seekers in Bulgaria spiked towards the end of 2013.¹ Dozens of anti-migrant demonstrations were staged by nationalist and far-right organizations. On 28 April 2014, three Syrian families who had settled in Rozovo, in central Bulgaria, fled to another village in the aftermath of protests staged by about 150 residents.² In the capital, Sofia, nationalist movements set up so-called “citizen patrols” with the declared aim of “exercising self-defence against migrants and asylum-seekers”.³

Discriminatory violence has a long-lasting effect not only on the individuals who are directly targeted, but also on their communities and on wider society. Some of the asylum-seekers and refugees who spoke to Amnesty International said they were living in fear because they were aware that other members of their communities had been attacked. Ali, a 17 year-old Syrian asylum seekers who was stabbed in November 2013 told Amnesty International: *“Bulgaria is a difficult country, I lived my worst days of my life there. I heard many stories of migrants who have been harassed”*.⁴

1 Bulgarian Helsinki Committee, Human Rights in Bulgaria in 2013, p. 43, available at

http://www.bghelsinki.org/media/uploads/documents/reports/annual_human_rights_report/2013_bhc_annual_report_en.pdf, accessed 24 November 2014.

2 Email communication between Amnesty International and the UNHCR, 3 June 2014. The families relocated to a nearby village, Kran, but had left Bulgaria when Amnesty International's researchers visited the country in July 2014.

3 On 25 November 2013, the Ministry of the Interior, the Prosecution Office and the National Agency for Security clarified that the creation of these “citizens patrol” had not been coordinated with state authorities and that they had not authority to perform law enforcement functions, <http://prb.bg/main/bg/News/4203/>, in Bulgarian, accessed 24 November 2014.

4 Phone interview with Ali, 6 August 2014.

Several Syrians told Amnesty International that, even though they had not personally been attacked, they avoided going out after dark, even to break their fast with friends during Ramadan. Rafik, an asylum-seeker from Syria, told Amnesty International: "I fear that my wife could be attacked because she wears the headscarf. I am also scared of being attacked. I go home before sunset and don't go out after."⁵

Negative stereotyping of asylum-seekers and migrants is widespread and reaches beyond the ranks of nationalist and far-right parties. For example, in an interview, Nikolai Tchirpanliev, the ex Director of the State Agency for Refugees, said: "It is well known that Arabs have a tendency to lie. This is part of their ethnic group. This is how they live."⁶ Teodora Georgeva, the mayor of Rozovo, said concerning the protests: "The residents of Rozovo are not used to live with [others]... we are a pure village, inhabited only by native Bulgarians, there are no Gypsies, no Turks. That's what worries the people. Everybody here knows each other, people here feel scared by others who are different."⁷

Hate crimes are not a new phenomenon in Bulgaria and they reflect a wider resurgence of discrimination in Europe and beyond. However, the way in which the Bulgarian authorities responded to the wave of hate crimes against perceived migrants in late 2013, and those that have occurred since, calls into question Bulgaria's commitment to fulfil its obligations to ensure that everyone in the country is able to enjoy their human rights on the basis of equality.

The failure of the state to ensure justice for the victims of hate crimes has helped create an atmosphere in which such attacks are likely to be repeated. And indeed violent attacks motivated by discrimination continue to be reported. For example, on 11 October 2014, a pregnant Bulgarian woman and her Moroccan husband were insulted and attacked in central Sofia by three people who had heard them speaking in English. One of the attackers told the Moroccan man "So, you are Arab, fuck your Arab mother!", "Who are you to talk in English!", "Shut your Mouth!" His wife said: "One of the men took out a metal knuckle-duster and hit my husband three times on his head... My husband fell on the floor and the attackers continued to kick him and punch him... one of the men hit me with a knuckle-duster in the stomach."⁸

The authorities have taken some steps to improve their response to discriminatory violence. For example, some people told Amnesty International that they believed the government's condemnation of hate crimes in late 2013 had helped reduce tensions and hostility towards migrants.

However, certain entrenched problems persist. Among those highlighted in this report is the

⁵ Focus group with Syrian asylum seekers and refugees, Sofia, 5 July 2014. Rafik is a pseudonym.

⁶ Interview of Nikolai Tchirpanliev with the Balkan Investigative Reporting Network, <http://fellowship.birn.eu.com/en/fellowship-programme/fellowship-programme-2014-article-syrian-refugees-leave-bulgaria-for-german-limbo>, accessed 2 December 2014.

⁷ Video published on Youtube on 24 April 2014, <https://www.youtube.com/watch?v=7IEvzQia-eQ>, accessed 9 December 2014.

⁸ Testimony collected by the Bulgarian Helsinki Committee and then communicated to Amnesty International. Email communication, 20 November 2014.

failure to identify, investigate and prosecute hate crimes in a manner that accounts for their discriminatory motive, despite changes to legislation in 2011 that should facilitate this. Hate crimes are often investigated as other offences, most commonly as crimes motivated by hooliganism. The discriminatory element of these crimes, the fact that victims are targeted because, for example, they are Roma or asylum-seekers or gay men, is frequently ignored. This is the case even when there are clear indications of discriminatory motives, such as attackers using discriminatory language before or during the attack.

Victims often face considerable obstacles in getting access to justice. Many do not receive the information they need either to navigate the justice system or to get access to the support services they need. Many survivors expressed their frustration at the police's failure to keep them informed of progress in their case. Hristina, the mother of Mihail Stoyanov, a medical student killed in 2008 because he was perceived to be gay, told Amnesty International: "I am seeing a psychologist as this situation is very overwhelming and I am also taking medicine. I cannot sleep, I am depressed. I think there is no progress with my case. I have the impression that victims have no rights. I have received no support at all from the state".⁹

The lack of appropriate state responses fuels fear within communities and further erodes trust in authorities, which in turn discourages others from reporting hate crimes. Marwan, who was the victim of a discriminatory attack in December 2013, was staggered by the authorities' response to his case: "I came here to Bulgaria to escape death in Syria but I don't have rights here... I was beaten up and I have almost lost one eye... I went to police and asked about my case but I was not provided with much information apart from the fact that I was considered to be a witness of the attack".¹⁰

This report looks at how the response of the Bulgarian authorities to hate crimes falls short of international and regional standards. It also highlights how the provisions of Bulgarian domestic laws, which have partially incorporated international and regional standards, are not being effectively implemented in responding to hate crimes. The report ends with a series of recommendations to key state authorities on how to address these shortcomings and put in place effective measures so that the guarantees Bulgaria has given to ensure human rights, without discrimination, becomes a reality for all those living in the country.

BACKGROUND: ETHNIC MINORITIES IN BULGARIA

According to the latest available census, almost 7,365,000 people were living in Bulgaria in 2011. Ethnic Turks represented the largest ethnic minority in the country. They comprised 8.8% of the population (588,315 people). Roma represented the second largest ethnic minority. They comprised 4.9% of the population (325,343 people).¹¹

⁹ Interview with Hristina Stoyanova, 28 June 2012. For further information concerning this case, see p. 32

¹⁰ Interviews with Marwan on 3 and 11 July 2015. Marwan is a pseudonym. Marwan's real name has been withheld to protect his security and privacy. For further details, see p. 38.

¹¹ Census 2011, p. 3, http://www.nsi.bg/census2011/PDOCS2/Census2011final_en.pdf, accessed 24 November 2014

Many Roma live in poverty and experience discrimination. According to a 2012 study, almost 90% of Roma were living in households at risk of poverty; the comparable figure for the rest of the population was 50%. Around 45% of Roma respondents aged over 18 had medical insurance; the comparable figure for the rest of the population was more than 80%.¹²

The number of migrants and asylum-seekers in the country increased sharply in 2013. In 2012, 1,700 migrants and asylum-seekers crossed the border with Turkey. In 2013 this had risen to more than 11,150, the vast majority – more than 8,600 – reached Bulgaria between August and November, when the Bulgarian authorities strengthened policing at the frontier with Turkey and started the construction of a 33-km fence along the border. As of October 2013, the authorities had opened four new reception centres, but these did not ensure adequate living conditions for asylum-seekers.¹³ In 2014, the number of migrants and asylum-seekers who reached Bulgaria decreased. According to authorities, 4,361 people crossed the borders between January and the beginning of October 2014.

More than 4,350 migrants and asylum-seekers were apprehended at Bulgaria's borders between January and October 2014. Almost 65% were from Syria.

METHODOLOGY

This report is based on information gathered during two visits by Amnesty International's representatives to four Bulgarian cities — Sofia, Plovdiv, Pleven and Banya — in July and September 2014. Interviews were conducted with more than 50 representatives of various state bodies, 50 members of minority groups and 20 lawyers and representatives of civil society organizations. The report also draws on desk research undertaken between November 2013 and December 2014.

Amnesty International met with the Supreme Prosecution Office of Cassation, the Sofia City, Regional, District and Appellate Prosecution Offices, the Pleven Regional Prosecution Office and the Plovdiv Regional and District Prosecution Offices.

Amnesty International also met a number of officials from the General Directorate of Police; the Sofia Metropolitan Directorate of Police; the Sofia Regional Departments of the Ministry of the Interior (police stations) 01, 02, 03, 04, 05, 06 and 08; the Pleven Directorate of the Ministry of the Interior; the Plovdiv Directorate of the Ministry of the Interior; the Plovdiv Regional Department of the Ministry of the Interior (police station 04); and the Police Academy.

In addition, Amnesty International met Sofia City and District court judges and the judges of the Plovdiv Appellate and District courts.

Amnesty International interviewed 50 migrants, asylum-seekers and refugees, Roma and ethnic Turks. About 30 said that they had been the targets of discriminatory violence. Amnesty International also spoke to two victims of homophobic threats; this report builds on

¹² European Union Agency for Fundamental Rights and UNDP, The situation of Roma in 11 EU member states, 2012, p. 21.

http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf

¹³ Amnesty International, Refugees in Bulgaria trapped in substandard conditions, EUR 15/002/2013, <http://www.amnesty.org/en/library/info/EUR15/002/2013/en>

previous research undertaken by Amnesty International in 2012 and 2013 on homophobic and transphobic hate crimes in Bulgaria.¹⁴

Amnesty International would like to thank the Bulgarian Helsinki Committee for their invaluable support in liaising with victims of discriminatory violence and providing follow-up information concerning their legal cases.

¹⁴ Changing Laws, Changing Minds. Challenging homophobic and transphobic hate crimes in Bulgaria (Index: EUR 15/001/2012), available at <http://www.amnesty.org/en/library/asset/EUR15/001/2012/en/af27ea5f-3bc8-40b0-be79-d4ac8a26626f/eur150012012en.pdf>; and Because of who I am: Homophobia, Transphobia and hate crimes in Europe (Index: EUR 01/014/2013), available at <http://www.amnesty.org/en/library/info/EUR01/014/2013/en>

2. LEGAL FRAMEWORK

INTERNATIONAL AND REGIONAL STANDARDS

Hate crimes target people because of their real or perceived links to a group defined by characteristics such as race, ethnic origin, religion, migrant or socio-economic status, sexual orientation or gender identity. They constitute a form of discrimination because the target is chosen on the basis of personal characteristics that constitute protected grounds under international human rights law.¹⁵

Hate crimes generally implicate a number of human rights, which are protected under international and regional law binding on Bulgaria. These include the right to be free from discrimination as well as the right to life, physical integrity, and the right to be free from torture and other ill-treatment.

The **International Covenant on Civil and Political Rights (ICCPR)** requires states to protect human rights without discrimination.¹⁶ States must not only refrain from violating these rights, but must also exercise due diligence to prevent, punish, investigate, and redress the harm of human rights abuses by private individuals or groups (non-state actors).¹⁷

The **International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD)** requires states parties to guarantee, without discrimination, “[t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”¹⁸

At the regional level, the **Charter of Fundamental Rights of the European Union** protects the rights to life, to physical integrity and to be free from torture and ill-treatment and prohibits discrimination “on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.”¹⁹ These rights are also

¹⁵ Discrimination is “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”, Human Rights Committee, General Comment No. 18, para. 7

¹⁶ ICCPR, Article 2(1) and Article 26.

¹⁷ The UN Human Rights Committee, the body charged with interpreting and monitoring the implementation of the ICCPR, has emphasized that: “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.” Human Rights Committee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 8.

¹⁸ ICERD, Article 5(b). Bulgaria ratified the ICERD on 8 August 1966.

¹⁹ Charter of Fundamental Rights of the European Union, Arts. 2, 3, 4 and 21.

protected by the **European Convention on Human Rights (ECHR)**.²⁰

The **Treaty on the Functioning of the European Union (TFEU)** provides the legal basis for the Council of the European Union to adopt measures aimed at combating discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. On the basis of Article 19 of TFEU, the EU has adopted secondary legislation aimed at combating discrimination.²¹ Article 67.3 of TFEU²² establishes that: “the Union shall endeavour to ensure a high degree of security through measures to prevent and combat crime, racism and xenophobia”.

EUROPEAN UNION FRAMEWORK DECISION TO COMBAT RACISM AND XENOPHOBIA

In 2008, a Framework Decision (2008/913/JHA) was adopted with the aim of countering racism and xenophobia using the criminal law. Article 4 of the Framework Decision requires member states to ensure “that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.”

The mere transposition of the Framework Decision often does not ensure that in practice authorities take all necessary steps to combat hate crimes. Article 4 focuses on the penalty applicable to hate crimes and has not been implemented in a way that is consistent with the requirement in European human rights law regarding authorities’ duty to take all reasonable steps to unmask a xenophobic or racist motive, especially during the investigative phase.

In addition, the Framework Decision, does not establish that all discriminatory motives, including homophobic and transphobic motives, are investigated, prosecuted and sentenced as such.²³

²⁰ ECHR, Articles 2, 3, 5, 14. Bulgaria ratified the ECHR in 1992.

²¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

²² Ex Article 61 TEC and ex Article 29 TEU, which served as a legal basis for the adoption of the Framework Decision.

²³ For further information see: Amnesty International submission to the European Commission and the Council of the European Union on the Framework Decision on racism and xenophobia (Council Framework Decision 2008/913/JHA), Index: IOR 52/001/2013, available at <http://www.amnesty.org/en/library/asset/IOE52/001/2013/en/8cb55bdd-37bf-4d3d-9322-3381e57b7337/ior520012013en.pdf>

INVESTIGATING HATE CRIMES

The **European Court of Human Rights** has examined the obligations of states regarding the investigation of hate crimes in a series of rulings.²⁴ In the case of *Abdu v. Bulgaria*, the court held that:

*[W]hen investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person's ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.”*²⁵

PROVIDING REMEDIES TO VICTIMS

International standards require states to ensure adequate reparation to victims of crime. This should not only include restitution but also compensation, rehabilitation, access to justice and redress. The **UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**²⁶ and the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (Declaration)²⁷ call on states to ensure victims of hate crime have access to the mechanisms of justice and redress; reparation for the harm suffered, including fair and just compensation; and material, medical, psychological and social assistance.

The **UN Handbook on the Use and Application of the Declaration** defines the goals of victim assistance programmes: “assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation and coping with problems associated with the victimization.” These programmes should include a wide range of services including long-term counselling and mental health intervention in response to trauma.²⁸

Support services should be provided to victims at all stages of the criminal justice process: during and after the investigation and any legal proceedings. States should ensure that

²⁴ See, for example, *Nachova and others v. Bulgaria*, Apps. Nos. 43577/98 and 43579/98, para. 160 (citing Chamber decision, paras. 157-8), 2005, *Stoica v Romania* (application no. 42722/02), 4 March 2008, *Secic v Croatia* (application no. 40116/02), 31 May 2007, *Abdu v Bulgaria* (application no. 26827/08), 11 March 2014.

²⁵ European Court of Human Rights, *Abdu v Bulgaria* (application no. 26827/08), 11 March 2014.

²⁶ See the UN Principles and Guidelines, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>, accessed 15 December 2014.

²⁷ A/RES/34/40, <http://www.un.org/documents/ga/res/40/a40r034.htm>, accessed 23 January 2015.

²⁸ Handbook on Justice for Victims, on the use and application of the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, p. 16, <http://www.uncjin.org/Standards/9857854.pdf>, accessed 23 January 2015.

victims have access to information of relevance to their case, be advised of their rights and how to access them and be informed about the progress of the investigation.²⁹ They should be provided with assistance and, when appropriate, protection both throughout such proceedings and after them. The views and concerns of victims should be presented and considered at appropriate stages of the proceedings in a manner that is consistent with the rights of the accused to a fair trial.

Under the **European Convention on the Compensation of Victims of Violent Crimes**, victims who sustain serious bodily injury or impairment of health directly attributable to an intentional crime of violence, or the dependants of persons who have died as a result of such crimes, are entitled to compensation that covers, depending on the case, at least loss of earnings, medical and hospitalization expenses and funeral expenses and, as regards dependants, loss of income.³⁰

Directive 2012/29/EU of the European Parliament and the Council establishes a comprehensive set of rights for all victims of crimes. These include the right to receive information (Articles 4 and 6); the right to interpretation and translation when making a complaint (Article 7); the right to receive support services including psychological counselling (Article 9); and the right to participate in criminal proceedings including the right to review a decision not to prosecute suspects (Articles 10-17). The Directive also recognizes that victims of hate crimes may need special protection measures because of the harm associated with hate crimes and the high risk of repeat victimization (Article 22.3).³¹

29 Council of Europe Committee of Ministers Recommendation to member states Rec (2006)8 on assistance to crime victims, para. 6.

30 Bulgaria did not sign the Convention. The Convention was opened to signature in 1983 and entered into force in 1988.

<http://www.conventions.coe.int/Treaty/en/Treaties/Html/116.htm>

31 Recital 56: Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.

Recital 57: Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.

Article 22.3: In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

NATIONAL LAW

Under Bulgarian criminal law, discriminatory motive is a constitutive element of some crimes, referred to as “crimes against national and racial equality” and “crimes against religious denominations” in the Criminal Code. This group of crimes includes incitement to hatred and discrimination as well as violence (resulting in minor injury or no injury) against people or property on grounds of race, ethnicity and nationality (Article 162); participation in a group, which aims to attack people or property on grounds of race, ethnicity or nationality (Article 163); incitement to religious hatred and desecration of or damage to places of worship (Article 164); and the use of force or threats aimed at hindering the right to express one’s religion (Article 165).³²

For certain crimes – namely, murder and the infliction of bodily injuries – a racist or xenophobic motive is regarded as an aggravating factor and attracts a heavier penalty (Articles 116.1.11 and 131.1.12 of the Criminal Code). The current criminal Code does not establish that a racist or xenophobic motive is an aggravating circumstance in respect of other crimes such as robbery or rape. Penalty enhancements for racist or xenophobic motives were added to Articles 116.1.11 and 131.1.12, for the crimes of murder and the infliction of bodily injuries, relatively recently, in April 2011. Before that, discriminatory motives for murders or serious assaults could only be recognized as being motivated by “hooliganism,” while some other, less serious, hate crimes could be prosecuted as stand-alone offences on the basis of Articles 162-165 of the Criminal Code.³³

Perpetrating murder or the infliction of bodily injuries with a hooligan motive continues to attract equal penalty enhancement to those with racist or xenophobic motive.³⁴ A hooligan motive exists when a crime is aimed at “expressing clear disrespect and neglect towards the society”.³⁵

Hooliganism is also a stand-alone crime in the Criminal Code. It refers to indecent acts grossly violating public order or showing open disrespect for society (Article 325.1).³⁶

³² See appendix 1: relevant provisions of the Criminal Code.

³³ Some violent attacks were prosecuted on the basis of Article 162.2 of the Criminal Code according to which “An individual who uses violence against another or damages his property in view of his nationality, race, religion or political convictions, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration”. The authorities stressed that this Article is applicable only in instances where victims suffer either light injuries or no injuries at all.

³⁴ Murder attracts a penalty of 10 to 20 years of imprisonment (Article 115 of the Criminal Code). Murder perpetrated with a hooligan, racist or xenophobic motive attracts a penalty of 15 to 20 years, life imprisonment or life imprisonment without parole, (Article 116 of the Criminal Code). Inflicting bodily injuries attracts a penalty which depends on the gravity of the injuries suffered. Inflicting severe bodily injuries attracts a penalty of 3 to 10 years imprisonment, inflicting medium bodily injuries attracts a penalty of up to 5 years imprisonment, inflicting mild bodily injuries resulting in health impairment attracts a penalty of up to 2 years imprisonment and inflicting mild bodily injuries which do not result in health impairment attracts a penalty of up to 6 months imprisonment (Article 115 of the Criminal Code). Perpetrating the same criminal offences with a hooligan, racist or xenophobic motive attracts a penalty of 3-12 years, 1-5 years, up to 3 years and up to 1 year imprisonment respectively (Article 116).

³⁵ Decision 2/1957 of the Plenary of the Supreme Court

³⁶ Article 325.1: A person who performs indecent acts, grossly violating the public order and expressing open disrespect for society, shall be punished for hooliganism

Crimes perpetrated with a discriminatory motive that are currently not explicitly recognized by the Criminal Code, such as those targeting people because of their sexual orientation or gender identity, continue not to be prosecuted as hate crimes.³⁷ In these cases, the homophobic or transphobic motive can be included by prosecutors in the factual part of the indictment, but is frequently omitted. In practice, some of these hate crimes are prosecuted as motivated by hooliganism.

On 31 January 2014, the government proposed a new draft Criminal Code, which was subsequently transmitted to the Parliament. Amnesty International raised concerns about some of the provisions included in the draft proposal.³⁸ However, the inclusion of sexual orientation was a positive development.³⁹ The dissolution of Parliament on 6 August 2014 interrupted the legislative process and at the time of writing, it was uncertain whether the proposal would be endorsed by the new executive.

INVESTIGATING HATE CRIMES

According to Bulgarian law, a pre-trial investigation must be opened whenever a crime comes to the attention of the police or prosecuting authorities (Articles 207 and 208 of the Criminal Code of Procedure).⁴⁰ If a crime is reported to police, the relevant Prosecution Office must be informed within 24 hours. The Prosecution Office is responsible for opening investigations.

District and Regional Prosecution Offices are responsible for supervising police investigations of hate crimes. Prosecutors exercise a wide range of supervisory powers, including giving binding instructions to investigators and inspecting all the materials collected by investigators (Article 196 of the Criminal Code of Procedure). The Prosecution Office can task the police or other specialized bodies to carry out a preliminary check before taking a decision on whether not to open a pre-trial investigation.⁴¹

by deprivation of liberty for up to two years or by probation, as well as by public censure.

37 See Amnesty International, *Because of who I am: homophobia; transphobia and hate crime in Europe* (Index: EUR 01/014/2013).

38 Letter sent to the Ministry of Justice in September 2013 on a draft dated May 2013. Most of concerns were not addressed in the final proposal adopted by the government.

39 Article 22.1 of the draft Criminal Code: Protected characteristics are: race, skin colour, nationality, ethnicity, origin, religion, belief, health status/condition, age, sex, sexual orientation. Other concerns raised by Amnesty International included a non-gender neutral definition of rape and sexual violence (Articles 163-168) and the criminalization of illegal border crossing (Article 352).

40 Article 207: Conditions for the institution of pre-trial proceedings: (1) Pre-trial proceedings shall be instituted where there is a statutory occasion and sufficient information about the perpetration of a crime. (2) In the hypotheses set out in the Special Part of the Criminal Code, publicly actionable proceedings shall be instituted following complaint of the victim addressed to the prosecution office and these shall not be susceptible of termination on grounds of Article 24, para 1, item 9. (3) The complaint shall be required to contain information about the author and to be signed by him/her. (4) No state fees shall be due at the moment the complaint is filed.

Article 208: Statutory occasions. The following shall be considered statutory occasions for the commencement of investigation: (1) A notice sent to the pre-trial bodies of the perpetration of a criminal offence. (2) Information about a perpetrated criminal offence, distributed by the mass media; (3) Appearance of the perpetrator in person before the pre-trial bodies with a confession about a perpetrated crime. (4) Direct discovery by pre-trial bodies of signs of a perpetrated crime.

41 Instructions of the Ministry of the Interior and the Prosecutor Office on the conduct of preliminary checks, n. 89 of 10 March 2011.

<http://www.sopa.bg/request.php?1467>, accessed 7 November 2014.

The investigation of crimes perpetrated with a discriminatory motive (Articles 116.1.11, 131.1.12 and 162-165 of the Criminal Code), as well as of many other crimes, is carried out by police investigators, which operate in each regional departments (police stations) and directorates (police directorates) of the Ministry of Interior.⁴²

Generally, an investigation has to be completed within two months. In particularly complex cases, a higher prosecutor can extend the duration of the investigation by a maximum of four months. In exceptional cases, the Prosecutor General can extend the investigation further (Article 234 of the Criminal Code of Procedure).

Investigative bodies have to present the results of the investigation to the prosecutor responsible (Article 226 of the Criminal Code of Procedure), who then decides whether to press charges or not (Article 242 the Criminal Code of Procedure). The indictment should indicate any circumstances that aggravate or attenuate the liability of the suspect, including discriminatory motives (Article 246 of the Criminal Code of Procedure).

⁴² Article 194 of the Criminal Code of Procedure: Distribution of cases during pre-trial proceedings among the investigative bodies (1) Investigation shall be carried out by investigators in cases of: 1. publicly actionable criminal offences under Article 95 - 110 , 357 - 360 and Article 407 - 419 Criminal Code; 2. (supplemented, SG No. 109/2007) criminal offences committed by individuals enjoying immunity, members of the Council, judges, prosecutors and investigators of Ministers or civil servants with the Ministry of Interior or in the State Agency for National Security; 3. Criminal offences committed abroad. (2) (Amended, SG No. 69/20080). In cases other than those specified in paragraph (1), investigation shall be carried out by investigating police officers.

3. OBSTACLES TO REPORTING AND RECORDING HATE CRIMES

“The main problem with reporting hate crimes to police is the general lack of trust in that institution.”

Dragomir Markov, a social worker in Plovdiv with the foundation Avis Vita, which provides support services for sex workers and men who have sex with men, interviewed by Amnesty International, July 2014.⁴³

Across Europe, minority groups such as migrants, Roma or Muslims are often reluctant to report hate crimes to police. According to the European Union Agency for Fundamental Rights (FRA), hate crimes are underreported everywhere in the European Union. For example 74% of people from Turkish minority backgrounds and 69% of Roma in the European Union, who participated in the 2009 EU-MIDIS survey, said that they had not reported cases of assault or threats to the police. When asked why they had not reported those cases, 52% and 75%, respectively, said that they did not trust the police.⁴⁴

Similarly, most available evidence suggests that homophobic and transphobic hate crimes are frequently not reported. According to a FRA LGBT survey carried out in the European Union in 2013, 86% of LGBT people surveyed in Bulgaria who had experienced violence or threats of violence did not report their experiences to the police; 32% of those who did not report cited fear of homophobic or transphobic reactions from the Bulgarian police as the reason for their reluctance to lodge complaints.⁴⁵

⁴³ Interview with Dragomir Markov, Plovdiv, 9 July 2014.

⁴⁴ European Union Agency for Fundamental Rights, EU-MIDIS, European Union Minorities and Discrimination Survey, Main Results Report, 2009, http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf, accessed 9 December 2014.

⁴⁵ European Union Agency for Fundamental Rights, EU- LGBT Survey, European Union Lesbian, Gay, Bisexual and Transgender Survey, Results at a glance, 2013. In the context of the survey, 1033 LGBT people were interviewed in Bulgaria. <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results>, accessed 9 December 2014.

Even where hate crimes are reported, some may not be registered by authorities, who therefore fail to launch an investigation or begin such an investigation only after local groups intervene. For example, Bulgarian authorities started an investigation into the attack perpetrated against Giorgi, a Roma man who was targeted with violence in 2013, only after the Bulgarian Helsinki Committee had raised the case with the Prosecutor Office (See p. 25). In the case of Nazir, police did not record the attack on the crime scene and failed to take Nazir's report afterwards.

NAZIR'S CASE

On 16 September 2013, Nazir, an asylum seeker from Iraq, was attacked in Sofia city centre by a group of 8 or 9 people. He was walking back home with a friend at about 00:30 when a man wearing a black shirt and a tall hat approached them near the corner of Oplachenska street and Tsar Simeon street. Nazir said: *"He told us to stop. I spoke to him in Bulgarian and asked him what the problem was ... he then took out a knife. I did not imagine that things would have turned so bad... the guy tried to stab me and many guys attacked me from behind with metal knuckles"*.⁴⁶

Nazir ran away but the attackers chased him and continued to physically assault him until he fell in a canal: *"I almost lost consciousness because my leg was bleeding, I took off my shoe, took off the boot strap and tied my leg. I tried to fix it but the bone was exposed and the flesh was ripped"*. After a while, Nazir started shouting and was attended to by a woman who told him that an ambulance was coming. Nazir reached the Pirogov Hospital at about 2 am. He underwent two operations and spent 9 days at the hospital.

He described what happened to him when he tried to report the attack to police station 02.

"At the hospital they treated me well... but police never came there to take my statement. The police only came at the beginning, when they took me out of the canal and radioed the station saying that a guy from Syria got beaten up. I told them I was from Iraq".

Police are responsible for registering any information concerning an alleged crime and informing the competent prosecutor within 24 hours. The police officer at the crime scene failed to register the information concerning the attack against Nazir. Police also failed to take Nazir's statement at the hospital or after he had undergone treatment.

Nazir told Amnesty International that he went to the police some four months after the attack. He could not walk without crutches in the aftermath of the attack and told Amnesty International that he did not have the strength to go to police earlier. He tried to report the case but police did not register his complaint.

"First, I went to a police station close to the Ramada Princess Hotel in Sofia [police station 02]. I spoke to a police guard who called an officer. He came and brought a map and asked me to point to where the attack happened and he told me that it was not in their area. He wrote another address for me to go. I took a taxi and went there. I was surprised when I realized that it was not a police station but probably an office for intelligence or something similar... The staff were all civilians... two staff members said it was too late to report the attack and one of them told me to go away or they would send me back to Iraq".

⁴⁶ Interview with Nazir, Banya, 5 July 2014.

Representatives of police station 02 told Amnesty International that they could not find any information about Nazir's case in their files. They said they had contacted the Pirogov hospital, where Nazir had undergone treatment, and that Nazir's injuries may have been caused by an accident.⁴⁷ According to the medical report, seen by Amnesty International, Nazir had a broken leg. The report did not include any information about the potential causes of the injuries.

On 19 September 2014, following the Amnesty International's inquiry on the case, representatives of the Ministry of the Interior informed Amnesty International that an internal inspection was being carried out by the Sofia Metropolitan Directorate of the Interior in order to establish whether police had diligently executed their duties concerning the registration of the case. On 12 December, the Minister of Interior informed Amnesty International that two police officers from Sofia station 02 had been sanctioned for lack of due diligence concerning Nazir's case. At the time of writing, it was unclear if an investigation into the case had been launched.

Recent research undertaken by other organizations has highlighted the issue concerning the authorities' failure to register crimes in general. It is probable that this generalized problem also affects reports of hate crimes, although no separate statistics are available for this.

Since 2006, the Centre for the Study of Democracy (CSD), a Sofia-based think-tank, has undertaken a yearly national crime survey which assesses the extent to which various types of crime are either not reported by victims or not registered by authorities. In 2010, for instance, 548,617 crimes were estimated to have occurred in Bulgaria. About 43% were not reported to police; another 44% were reported to police but did not figure in official police statistics. According to the study, only 12.5% of crimes that occurred in 2010 were included in official police statistics.⁴⁸

Representatives of the Ministry of the Interior conceded that the failure to register reports of crime had been a problem in the past, but stressed that measures had been taken to ensure that each crime is currently diligently registered by police.⁴⁹ However, a more recent CSD survey reported similar trends to those observed between 2006 and 2010. In particular, according to the study, only 42.4% of crimes that occurred in 2012 were reported to police. Moreover, the study found that between 2007 and 2012 on average only about 36% of crimes that were reported were registered by the authorities.⁵⁰

One factor which may inhibit effective investigations, or indeed a willingness to undertake any investigation at all, into hate crimes is entrenched prejudice against minorities and groups that are often the targets of discriminatory violence. In meetings with Amnesty

47 Meeting with Representatives of the Sofia police station 02, 2 September 2014.

48 The CSD undertook a National Crime Survey each year from 2006 to 2010. The Survey was based on a sample size of 2,500 respondents and was based on experiences of 10 typologies of crimes including crimes against property, such as theft, and crimes against persons, such as sexual violence or physical assaults. Data from the Survey, which also include information on whether a crime was reported to authorities, was compared to official police statistics. See Centre for the Study of Democracy, *Crime Trends in Bulgaria. 2000-2010*, published in 2011.

49 Meeting with representatives of the Ministry of the Interior, Sofia, 3 July 2014. .

50 Centre for the Study of Democracy, Policy Brief 41, *Crime Trends 2012-2013*, <http://www.csd.bg/artShow.php?id=16667>, accessed 14 November 2014.

International, some officials expressed biased views against minority groups, especially Roma, for example alleging that Roma communities were responsible for high crime rates, despite the lack of any official data to support such a claim.

“There are many crimes perpetrated by Roma and targeting other citizens...they include robberies, burglaries and other crimes against property, these create a desire for revenge... 90 per cent of robberies are committed by Roma people, don't you think this creates a reason for discriminating against them?”

A representative of the Sofia Police station 08 interviewed by Amnesty International, 3 July 2014⁵¹

“I don't think we have many cases of Roma who are discriminated against... the vast majority of cases we deal with are cases in which Roma are perpetrators of crimes... We have a problem with Roma people that has to be addressed; they don't work, children don't go to school”.

A representative of the Pleven Regional Prosecution Office interviewed by Amnesty International, 7 July 2014⁵²

Investigators at Sofia Police Station 06 told Amnesty International that in their view many Roma lacked education and employment and therefore tended to commit crimes more often than other groups. They also stressed that education was not valued by Roma and that they had many children in order to receive social benefits.

Such attitudes raise concern about the extent to which allegations of crimes perpetrated against Roma can be objectively and diligently investigated by the authorities. They may also further contribute to undermining the trust of Roma citizens in the authorities.

This lack of trust in the authorities and fear of further victimization was reflected among a variety of groups. For example, a gay man who had been the target of homophobic violence several times told Amnesty International that he would never go to the police “especially concerning me being gay.”⁵³ Laila, a transgender woman, who was attacked in 2009 by a group of skinheads in Sofia, told Amnesty that she did not report the attack to police: “They wouldn't have done anything to investigate my case... I don't trust police, they are very... transphobic”.⁵⁴

A Syrian asylum-seeker noted: “If I can't trust the state to protect refugees, why should I trust the police?”⁵⁵ Some advocates working with migrants also noted that many migrants feared that reporting hate crimes against them could have a negative impact on their ability to obtain refugee or other immigration status.⁵⁶

51 Meeting with representatives of Sofia Police Station 08, 3 July 2014.

52 Meeting with the Pleven Regional Prosecutor's office, 7 July 2014.

53 Interview with M, 9 July 2014.

54 Email conversation with Laila, 1 December 2014.

55 Meeting with Syrian asylum-seekers, 5 July 2014.

56 Interview with Council of Refugee Women in Bulgaria, 2 July 2014

Other factors that deter people from minority groups from reporting are cases of abuses by police against those groups and the failure to bring officers responsible for human rights violations to justice. Human rights treaty bodies have raised concerns regarding the excessive use of force by police towards ethnic minorities in Bulgaria and the lack of an independent mechanism to investigate allegations of such violence. In 2011, the Human Rights Committee expressed concerns at: “racially-motivated discrimination, especially against persons of Roma origin, at the hands of law enforcement officers”. The Committee stressed that: “none of these cases has resulted in sanctions against the police officers involved, and that remedies have not been provided to the victims. The Committee is concerned that the present system shows a possible lack of objectivity and credibility, and facilitates impunity for police officers involved in human rights violations... The State party should ensure the creation and implementation of an independent oversight mechanism on prosecution and convictions in the cases of complaints against criminal conduct by members of the police”.⁵⁷ Similar concerns have also been raised by the UN Committee against Torture.⁵⁸

Data on allegations of violence and ill-treatment perpetrated by police are collected by the Prosecution Office. However, these data are not disaggregated by motive.⁵⁹ Whilst outside the scope of this report, several of those interviewed by Amnesty International raised concerns about the effectiveness and impartiality of investigations into human rights abuses, including hate crimes, perpetrated by police. For example, a high-profile case of alleged disproportionate use of force by police, allegedly accompanied by racist insults, against a group of about 30 Roma men in a club in Pleven in 2009 has still not been the subject of a thorough investigation by a prosecutor. Four men who spoke to Amnesty International had sustained injuries that, according to the medical forensic report, were likely to have been produced by kicks, punches and being beaten by objects such as batons.⁶⁰ At least one person had medical evidence of broken bones. In an interview with Amnesty International, the Pleven District Prosecutor said that broken bones corresponded to injuries whose severity required the opening of an investigation. However, he disputed the existence of these injuries in this case.⁶¹

In August 2009, seven of the men who had suffered injuries wrote a letter to prosecuting authorities asking them to launch an investigation into allegations of disproportionate use of police force.

The Director of the Regional Police Directorate appointed a group of police representatives to

57 Human Rights Committee, Concluding Observations on Bulgaria, CCPR/C/BGR/CO/3, 11 August 2011, para. 8, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BGR/CO/3&Lang=En, accessed 27 October 2014.

58 Committee against Torture, Concluding Observations of the Committee against Torture, Bulgaria, CAT/C/BGR/CO/4-5, 14 December 2011, para. 28, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2F%2FBGR%2FCO%2F4-5&Lang=en, accessed 1 November 2014.

59 The Supreme Prosecution Office of Cassation informed Amnesty International that 39 cases of alleged violence perpetrated by police had been initiated in 2013 and that 15 and 8 officers had been tried and convicted respectively.

60 Interviews with V., I., O., S., 6 July 2014.

61 Meeting with Pleven District Prosecutor Office, 7 July 2014.

collect relevant evidence concerning the case. The findings were shared with the Prosecution Office, which took the decision not to launch an investigation into the majority of complaints on the basis that there was no evidence that the police behaviour constituted a criminal offence.⁶² One investigation was opened against unknown perpetrators for injuries suffered by one of the men who had been left in a coma.

At the time of writing this investigation was theoretically ongoing, but investigators were no longer actively looking for the perpetrator. One police officer received a disciplinary sanction as he appeared on video footage hitting one of the men.⁶³ However, he continued to serve in the same police station until he retired.⁶⁴

LACK OF OFFICIAL DATA

Official data on discriminatory violence are not collected systematically or thoroughly by the authorities in Bulgaria.⁶⁵ It is, therefore, difficult to estimate the frequency with which these crimes are reported, investigated or prosecuted.

Official statistics also do not reflect reports or allegations of hate crimes, many of which may not reach the stage of prosecution or conviction or may not ultimately take account of the discriminatory motive at trial. Such data could be useful in assessing the efficacy of investigations and prosecutions and help inform the design of policies aimed at combating hate crimes.

Judicial officials told Amnesty International that data on cases of murders (Article 116.1.11 of the Criminal Code) and bodily injuries (Article 131.1.12 of the Criminal Code) perpetrated with a racist or xenophobic motive are not disaggregated by motive. The Commission for Protection against Discrimination, the focal point on hate crimes in Bulgaria for the OSCE Office of Democratic Institutions and Human Rights, also highlighted the same problem. They indicated that many different authorities collect different types of data, but not in a coordinated manner.⁶⁶

The Commission provided the following information about murders and physical assaults perpetrated with a racist or xenophobic motive or motivated by hooliganism, though they did not distinguish as to which motive was recorded. In 2013, two new cases of murder (Article 116.1.11 of the Criminal Code) were reported to the police, seven cases were prosecuted and four cases ended with the conviction and sentencing of the perpetrators.⁶⁷ In addition, 633

⁶² Letter from Prosecutor Viktor Dotsev, no. 05723/2009 of 20 October 2009.

⁶³ YouTube video uploaded on 4 August 2009, <http://youtu.be/b27s8kN2unU>, accessed 9 December 2014.

⁶⁴ Meeting with Pleven Regional Prosecutor Office, 7 July 2014 and Pleven Police, 3 September 2014.

⁶⁵ European Union Agency for Fundamental Rights, *Making Hate Crime Visible in the European Union: acknowledging victims' rights*, 2012, p. 36. The FRA included Bulgaria in the category of countries where only a few incidents concerning a limited number of grounds are collected and data is usually not published, http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf, accessed 2 November 2014.

⁶⁶ Meeting with representatives of the Commission for Protection against Discrimination, 3 July 2014.

⁶⁷ Letter of the Commission for Protection against Discrimination, no. 16-13-112 of 12 November 2014.

cases of physical assault⁶⁸ were reported to the police, 290 cases were prosecuted and in 232 cases the perpetrators were convicted and sentenced.

The statistics for assaults are significantly higher than those for 2011, the next most recent year for which data are available. In 2011, 29 cases were reported, 40 prosecuted and 10 people convicted. The 2011 statistics included only stand-alone offenses (Articles 162-164 of the Criminal Code). The 2013 additionally include murders and physical assaults associated with a hooligan, racist or xenophobic motive. However, it is difficult, therefore, to make a meaningful analysis of trends from year to year.⁶⁹

Separately, in April 2014, the Deputy Prosecutor General informed Amnesty International that the Sofia City and Regional Prosecution Offices had opened 80 pre-trial proceedings concerning crimes perpetrated against ethnic minorities – including migrants, asylum-seekers, Roma and ethnic Turks – between January 2013 and March 2014.⁷⁰

Apart from data gathered by the state, some data on hate crimes against individuals from ethnic minorities, including Roma, migrants and Muslims, as well as against places of worship are collected by civil society organizations. For example, according to the European Roma Rights Centre, at least 14 cases of violent attacks against Roma occurred in 2011 and 2012. As a result, three Roma died and 22 were injured. Some of these attacks took place in the aftermath of anti-Roma protests staged in several towns in September 2011 following a road accident in which an ethnic Bulgarian youth was killed by a Roma driver in Katunitsa (Plovdiv).⁷¹ In 2013, the Office of the Grand Mufti, a religious leader for Muslims in Bulgaria, recorded 15 cases of attacks against Muslim places of worship.

Official data on hate crimes do not include homophobic and transphobic hate crimes because sexual orientation and gender identity are not protected characteristics according to the existing Bulgarian hate crime legislation. According to a survey undertaken in 2013 by the European Union Agency for Fundamental Rights (FRA-LGBT Survey), 31% of the LGBT people surveyed in Bulgaria had experienced violence or threats of violence in the previous five years, although not all the attacks were necessarily motivated by homophobia or transphobia. Of these, 68% perceived that the most recent incidents of threat or violence had been motivated by their sexual orientation or gender identity.⁷²

68 The Commission did not indicate on the basis of which specific Articles of the Criminal Code these data were collected. Physical assault can include offences under Article 131.1.12 and Article 162.2 of the Criminal Code, which would refer only to assaults causing light or no injury.

69 Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, Hate Crimes Reporting, <http://hatecrime.osce.org/bulgaria?year=2011>, accessed 10 December 2014.

70 It is unclear whether these cases involve also non-violent crimes including those set out in articles 162.1 and 164.1 of the Criminal Code.

71 AI Public statement, Bulgaria : authorities must urgently act to stop the escalation of violence targeting Roma communities, Index: 15/002/2011, <http://www.amnesty.org/en/library/asset/EUR15/002/2011/en/9db7c314-4bf4-47dc-bef5-b9d5897102ae/eur150022011en.html>

72 European Union Agency for Fundamental Rights, Survey Data Explorer, <http://fra.europa.eu/DVS/DVT/lgbt.php>, accessed 9 December 2014.

4. INADEQUATE INVESTIGATIONS

“I would like to stress that the competent governmental bodies which are in charge of investigating xenophobic and racist actions, have to be very strict. They have to recognize and investigate the hypothetical possibility of hate crimes, rather than automatically to define them to be perpetrated out of hooliganism, as it happened many times in previous cases.”

Statement of the Ombudsman, 6 November 2013⁷³

The authorities have an obligation to initiate prompt, effective, adequate and thorough investigations into all crimes. In the case of hate crimes, European human rights law requires the authorities to take all reasonable steps to unmask any discriminatory motive.

Meeting this obligation requires investigators to have in place procedures to ensure that indicators of possible hate crimes are recognized at the outset, and during the length of, an investigation. While police generally indicated that they took account of certain indicators, such as membership in a racist group or the testimony of suspects, they were less attuned to other indicators. These include the perceptions of victims and witnesses – which are among the most important – or the location and nature of an attack, such as whether it fits a pattern of other recent hate crimes.⁷⁴

Amnesty International’s research suggests that the Bulgarian authorities are not fulfilling their obligations and are consistently failing to investigate thoroughly alleged discriminatory

⁷³ <http://www.ombudsman.bg/public-positions/2845>, accessed 8 December 2014.

⁷⁴ See OSCE/ODIHR, Preventing and Responding to Hate Crimes: A Resource Guide for NGOs in the OSCE region, Chapter 2, <http://www.osce.org/odihr/39821?download=true>

motives associated with crimes against ethnic and religious minorities, migrants, asylum-seekers, refugees or LGBTI people.

GIORGI'S CASE

Giorgi, a young Roma man, was attacked by a gang of eight or nine people on the afternoon of 3 November 2013 in the centre of Sofia. Giorgi described the attack:

"First, one of them grabbed me and then they pushed me on the ground and they all started kicking me and shouted, 'We are going to make soap out of you, Gypsy!' I remember that a group of women came and tried to help me... They swore at them and said they were beating me because I was a gypsy".

Giorgi told Amnesty International that the police officers who came to the scene were rude and accused him of wasting their time. The following day, Giorgi was summoned to Police Station 04. He went on time, but the investigating officer postponed the meeting. Three weeks later, on 25 November 2013, Giorgi, with the support of the Bulgarian Helsinki Committee, informed the Sofia Regional Prosecution Office in writing about the attack.

The authorities acknowledged the discriminatory motive behind the attack on Giorgi. An investigation was launched for violence perpetrated on grounds of ethnicity (Article 162.2 of the Criminal Code). However, there are concerns about the effectiveness of the investigation as it was only on 27 November 2013, two days after the Bulgarian Helsinki Committee contacted the Prosecution Office, that any action was taken. Officers from police Station 04 confirmed that two police patrols were present at the crime scene and that the victim and witnesses were questioned immediately. Two suspects were apprehended by the police, but then released. In September 2014, police representatives of police station 04 told Amnesty International that the two suspects were subsequently summoned to come to the police station but only one did; the second suspect had still not been questioned many months after the attack.⁷⁵

When Amnesty International met Giorgi in July 2014, he was still experiencing health problems as a result of the attack. For example, in March 2014 he lost consciousness at least twice; an ambulance was called and he was treated with painkillers but not taken to the hospital. He said he was having difficulty getting medical care because he did not have health insurance.

Moreover, Giorgi said he had been stabbed by a group of far-right supporters on 6 March 2009. He reported the case to police with the assistance of the Bulgarian Helsinki Committee. However, the Deputy Prosecutor General indicated that no record of this attack could be found.⁷⁶

At the time of writing, the investigation into the attack experienced by Giorgi in 2013 was continuing.

⁷⁵ Meeting with representatives of Police Station 04, 2 September 2014.

⁷⁶ Letter of the Deputy Prosecutor General Penka Bogdanova to Amnesty Internationaln. 6723 of 6 October 2014.

FAILURE TO UNMASK DISCRIMINATORY MOTIVES

“For the past 10 centuries, different nations have been living in Bulgaria and Bulgarians are very tolerant. In 99% of the crimes there is no racist or xenophobic motive. I haven’t dealt with any such case. We often deal with crimes associated with a hooligan motive”.

Prosecutor in Sofia interviewed by Amnesty International in July 2014.⁷⁷

“Bulgaria is a difficult country. I lived the worst days of my life there. I heard many stories of migrants who have been harassed”.

Ali, a Syrian asylum-seeker who was stabbed in November 2013, interviewed by Amnesty International in September 2014

Ensuring that the discriminatory motives of hate crimes are investigated, acknowledged and publicly condemned by authorities and political leaders is essential not only to help prevent such crimes in future, but also to combat discrimination more generally.

The European Court of Human Rights has repeatedly emphasized the importance of taking into account discriminatory motives in hate crimes cases. However, in its 2014 report on Bulgaria, the European Committee against Racism and Intolerance (ECRI) noted: “that very often other provisions of the Criminal Code are invoked instead of those specifically targeting racist violence, such as article 325 on hooliganism.”⁷⁸

ATTACKS ON THE DJUMAYA MOSQUE

“This was not an act of hooliganism but a clear attack against a Muslim place of worship”. Ersin Ahmed, Regional Mufti of Plovdiv⁷⁹

In recent years, several protests have been staged against the restitutions to the Muslim communities of properties expropriated under the Communist regime.⁸⁰

On 7 and 14 February 2014, members and supporters of nationalist groups gathered in front of the Plovdiv Appellate Court to protest against the restitution of the mosque in Karlovo to the Grand Mufti’s Office. According to Ersin Ahmed, the regional Mufti, around 200 people attended the protest on 7 February, while between 2,000 and 3,000 gathered on 14 February, when the Court decided in favour of the Grand Mufti’s Office.

After the judgement was made public, protesters marched to the mosque and hurled stones and firecrackers at the building for about 20-30 minutes. A video of the protest shows protesters shouting discriminatory slogans such as “Bulgaria is our land, Turks out!” and “Gypsies into soap, this is our land!” Police created a

77 Meeting with representatives of Sofia Regional, District and Appellate Prosecutor Offices, 10 July 2014.

78 ECRI report on Bulgaria, CRI (2014) 36, published in September 2014, paragraphs 58 and 59, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-V-2014-036-ENG.pdf> (accessed 27 October 2014).

79 Interview with Ersin Ahmed, 9 July 2014.

80 On the basis of the 2002 Religion Denomination Act (Transitional and final provisions, § 5), all religious denominations can equally obtain the restitution of properties. The Grand Mufti Office reportedly filed a couple of dozen applications to obtain the restitution of several properties.

protection cordon around the mosque but failed to keep protesters at a distance that would have prevented them from damaging the building. No one was injured and police remained onsite until about 5pm.

Despite the discriminatory slogans, the director of Plovdiv Police Station 04 told Amnesty International that the protest did not target the mosque explicitly and that there were no elements indicating that the protest and the attack on the mosque were motivated by ethnic or religious hatred. He explained that protesters felt very emotional because the building in Karlovo was given back to the Muslim community and that their actions were motivated by this material loss. He also stated that verbal abuse could point to a discriminatory motive only insofar as it is clearly linked to the purpose of the protest, for example if it is contained in a speech made by the organizer or leader of a protest.

Five pre-trial investigations concerning the attack of 14 February 2014 had been launched. Three people were prosecuted for hooliganism (Article 325 of the Criminal Code) and one for damaging the mosque (Article 164.2). At the time of writing, another pre-trial investigation against unknown perpetrators for damaging the mosque (Article 164.2) was continuing.

Amnesty International's research suggests that the authorities tend to treat violent crimes against minorities as motivated by hooliganism rather than racism or xenophobia, even when factors such as verbal abuse point to a discriminatory motive. The result is that these crimes are not recognized for what they are – crimes motivated by discrimination.

A number of factors contribute to the tendency to deal with these crimes as motivated by hooliganism. These include the fact that the evidence required to substantiate hooliganism is simpler to obtain. In addition, the laws dealing with murder or assault aggravated by a racist or xenophobic motive (Articles 116.1.11 and 131.1.12 of the Criminal Code) are relatively new and officials lack experience and, in some instances training, on their practical implementation, including the steps required to uncover discriminatory motives during investigation. As a result, victims or witnesses are not systematically asked about their impressions of the motive for attacks, nor are many other types of potential indicators of hate crimes, including the use of discriminatory language or the victims' belonging to a protected group, investigated as a matter of course.

METIN'S CASE

On 9 November 2013, Georgi Dimitrov Dimitrov (known as Metin), a Bulgarian citizen of Turkish origin, was brutally attacked near his house, in Pirotska street, Sofia. Metin and his partner Minka were living in a residential complex which was home to a large number of migrants. Minka described what happened as she was waiting for Metin to return home from work on the day of the attack:

*“Five skinheads entered the courtyard and started banging the doors... They had shaved heads and wore black clothes... I locked the door from the inside... They caught an Arab man who lived in the complex and tried to hit him with a metal pole. Luckily, he managed to run away. The landlord intervened and asked them why they were attacking the man and they shouted: ‘Why are you defending the migrants? They are killing Bulgarian girls’”*⁸¹

⁸¹ Interview with Minka, November 2013. Phone conversation with Minka, 26 November 2014.

After the five men left the complex, Minka went out looking for Metin and found him in the street, covered in blood. The police were already at the scene. She believes the five men attacked Metin because they thought he was a migrant. She told Amnesty International that police questioned her the day after the attack and that she had explained that three men tried to break into their apartment shortly before Metin was attacked.

Metin did not remember much about the attack. He told Amnesty International: *“I was going home with a friend of mine, Emin, who is Arab. When we were almost at home, five skinheads approached my friend and started beating him. I asked why they were beating him and then I felt I was hit on the back, I don't remember much else, everything happened so quickly”*.⁸² He sustained life-threatening injuries and spent several weeks in a coma. Metin was still experiencing health problems as a result of the attack a year later.

Three suspects were apprehended on the spot and a pre-trial investigation was opened for attempted murder motivated by hooliganism. An indictment against the suspects was issued on 31 July 2014.⁸³

Representatives of the Sofia Metropolitan Directorate of the Ministry of the Interior told Amnesty International that the attempted murder of Metin was assessed as being motivated by hooliganism because the suspects did not know Metin and the attack was perpetrated in a public space.⁸⁴ They pointed out that the racist motive was excluded because the perpetrators' aggressiveness was due to intoxication, rather than stemming from a racist bias, and because they could not establish any link between the perpetrators and far-right groups. The police also denied that Minka had told them about the men who had entered the housing complex just before the attack.

The investigation did not seem to take into account several indicators suggesting that Metin might have been attacked because of his ethnicity or because his attackers thought he was a migrant as he was visibly not an ethnic Bulgarian. The investigators ruled out a racist motive on the basis of the fact that the suspects may have been intoxicated, which, does not, per se, exclude a racist motive.

Metin lived in a building which accommodated many migrants and asylum seekers and the five men who tried to enter Metin's residence, who could have been his aggressors, allegedly used discriminatory language against migrants, as witnessed by several people including Minka. The Prosecutor in charge of supervising the investigation into this attack failed to take these elements into account when establishing the classification of the crime and to instruct police investigators to further investigate them.

Many officials agreed that establishing that a crime is motivated by hooliganism⁸⁵ is simpler than establishing a discriminatory motive. For example, Rumen Popov, Prosecutor at the Plovdiv District Prosecution Office, explained that: “the discriminatory motive can be established with certainty when the suspects mention it in their confession. In other cases, prosecutors can establish it through the investigation and by excluding any other possible

⁸² Phone conversation with Metin, 26 November 2014.

⁸³ Letter of the Deputy Prosecutor General Penka Bogdanova to Amnesty International, n. 6723 of 6 October 2014.

⁸⁴ Interview with Representatives of the Sofia Metropolitan Directorate of the Minister of Interior, 2 September 2014.

⁸⁵ Decision nr. 2/1957 of the Plenary of the Supreme Court, “hooliganism” was defined as an act which is not perpetrated on a personal motive and does not stem from any past interaction between the victim and the perpetrator who are unknown to each other.

motive, but it is generally difficult".⁸⁶

In a meeting with Amnesty International in Plovdiv, judges affirmed that any discriminatory motive could be established only if perpetrators exhibited specific behaviour such as discriminatory language, possibly corroborated by witnesses, or distributing materials, such as brochures, before committing the crimes. Previous acts or membership of specific groups, including far-right groups, may also point to a possible discriminatory motive, although they are not sufficient to objectively substantiate it.⁸⁷

In contrast, all that is needed to establish that a crime is motivated by hooliganism is that it took place in a public space, in the presence of witnesses and that the victims and perpetrators do not know each other (see p.13). Representatives of several Prosecution Offices in Sofia stressed that a discriminatory motive can be established on the basis of a narrower range of evidence than hooliganism and that in most of cases the latter is the basis of the investigation.

The basis on which an investigation is conducted, both in terms of its classification and motive, can be altered as new information comes to light. Prosecutor Georgiev of the Supreme Prosecution Office of Cassation pointed out that: "[W]hen a pre-trial investigation is initiated, it is based on the information available at that point... as more information and evidence is gathered, other motives can be included in the circumstances relating to the crime".⁸⁸

However, in practice, this rarely occurs and possible discriminatory motivation is only investigated if obvious factors pointing to this emerge at an early stage of the investigation and when prosecutors give explicit instructions to take a discriminatory motive into account.

Unearthing a discriminatory motive can indeed require a whole set of pro-active steps by investigators. These include, for instance, inquiring about potential discriminatory views held by suspects or their links with groups promoting discriminatory views, asking witnesses targeted questions and take into account the victims' perceptions of the potential motives, or noting whether a crime has characteristics in common with other recent incidents of hate crimes. These steps may not be thoroughly undertaken if investigators do not take into account a possible discriminatory motive from the outset.

It is also theoretically possible that a discriminatory motive could be taken into account at trial on the basis of new evidence if the prosecutor amends the indictment. If the prosecutor does not proactively do this, however, it is unlikely the motive could be taken into account by the judge, as this would be viewed as infringing the rights of defendants.⁸⁹

⁸⁶ Meeting with Rumén Popov, Plovdiv, 8 July 2014.

⁸⁷ Meeting with judges of Plovdiv Appellate and District Courts, 8 July 2014.

⁸⁸ Meeting with Prosecutor Georgiev, 2 July 2014.

⁸⁹ Meeting with judges of Sofia City and District Courts, 4 July 2014.

It is crucial that crimes perpetrated with a discriminatory motive are identified as such. While hooliganism may attract a similar heavy penalty to discriminatory motivation (see p.13), hate crimes are a distinct category of crime. They are a form of discrimination and states therefore have a specific obligation under international law to take a wide range of measures to combat them. These include identifying and accurately recording hate crimes. This data can then inform effective policies to combat the root causes of discrimination and help build confidence and trust between the authorities and the targeted communities. This in turn will encourage better reporting, more accurate data and more effective policies to combat discrimination. As A.A., who was physically assaulted in Sofia in May 2011, pointed out: “Such attacks [discriminatory attacks] can lead to severe social unrest if not addressed... they’re not just common robberies. When I shared what happened to me with my friends, I could see their outrage.”⁹⁰

Regarding the cases of attacks against religious buildings, a representative of the Grand Mufti’s Office pointed out that: “It is hard to prove for the police that these attacks are racially motivated so they considered them as just motivated by hooliganism.”⁹¹ The former Chair of the Parliament’s Legal Committee, Tchetin Kazak, stressed that: “regrettably, prosecutors and investigators almost never use these provisions [on hate crimes] because it is hard to prove motives... the problems come from the lack of application of the law, not from lack of existing legislation... The law is not applied to the full scope, the formulation of ‘hooliganism’ is over used and [hate] crimes are not qualified as [hate] crimes”.⁹²

BANYA BASHI MOSQUE ATTACK

“I clearly told the police that the attack was motivated by hatred against Muslims. I know that at least a few other people who were present that day told the police the same”. Mustafa Izbishtali, Sofia Regional Mufti.⁹³

The Banya Bashi mosque, the only functioning mosque in Sofia, is too small to host all the Muslim worshippers. As a result, many have to pray on the pavement adjacent to the building during Friday prayers. On 20 May 2011, the mosque was attacked by violent protesters.

According to the Sofia Regional Mufti and a worshipper, Veli Karaahmed, who were both at the mosque that day, protesters gathered in the park behind the mosque at 11:30am, two hours before Friday prayers. The demonstration was organized by the nationalist ATAKA party, ostensibly to protest about the noise of by the mosque’s loudspeakers. ATAKA leader Volen Siderov and other ATAKA members of the parliament took part. Two hours later, up to 200 protesters approached the mosque shouting racist abuse, such as “Turkish stooges” and “Filthy terrorists”, and started throwing stones at the mosque and Muslim worshippers.

According to the Minister of the Interior, police were alerted only at about 11:50am that a protest had been

90 Interview with A.A., 10 July 2014.

91 Meeting with the Grand Mufti Office, 3 July 2014.

92 Meeting with MP Tchetin Kazak, 3 July 2014.

93 Interviews with Mustafa Izbishtali, 4 July and 3 September 2014.

authorized by the Sofia Municipality and that members of ATAKA were gathering near the mosque.⁹⁴ Police were sent onsite and remained there until 2pm, when the protesters left. Five Muslim worshippers, five police officers and one ATAKA Member of the Parliament were injured.

Ahmed, who was worshipping at the mosque that day told Amnesty International: *"I have never witnessed such an aggressive attack before. They came with eggs and batons... it was not intended to be a protest, it was a targeted attack"*.⁹⁵

The attack was publicly condemned by the Bulgarian President and in a declaration adopted by Parliament that called on the prosecuting authorities and courts to act. Several investigations were initiated; two for hooliganism, one for physical injuries to an ATAKA Member of Parliament, and two for incitement to hatred. The investigation into the physical attacks against Muslim worshippers did not take any potential discriminatory motive into account. In July 2014, the Deputy Prosecutor General informed Amnesty International that only one of the investigations concerning incitement to hatred was still ongoing.⁹⁶

Officers from Sofia Police station 05 told Amnesty International that the investigation of this case was complex but made it clear that the crimes investigated as motivated by hooliganism had not been motivated by religious hatred. They pointed out that although protests may start off peacefully, they can sometimes descend into violence because of the presence of a few violent protesters.⁹⁷ One representative of the Ministry of the Interior pointed out that the protest was not directed against Muslims but against the noise produced by the mosque's loudspeakers and the use of the pavement adjacent to the mosque as a space for prayer.⁹⁸ When asked about the discriminatory language used by some of the protesters, he declined to comment, saying he had not witnessed the events.

Officials of Sofia Police Station 01 asserted that the attack was motivated by hooliganism because the aim of the protesters was to disturb the peace and public order rather than to target Muslims or the mosque with a discriminatory purpose. Investigators denied that any of the witnesses pointed to any discriminatory motive. However, at least three witnesses who spoke to Amnesty International stressed that they had mentioned to police that, on the basis of the racist language being used by protesters, they believed the attack was motivated by discrimination against Muslims.

LACK OF EXPERIENCE AND TRAINING

"These provisions are very new, they were included only a couple of years ago in the Criminal Code. It takes time to develop a practice that will distinguish between hooligan and racist or

⁹⁴ As stated by the Minister of the Interior on 3 June 2011 during the parliamentary question time.

⁹⁵ Meeting with Ahmed, 5 September 2014

⁹⁶ Another investigation concerning incitement to hatred against unknown perpetrators, initiated upon a complaint filed by Veli Karaahmed, was suspended on 17 October 2011. In 2013, he brought the case before the European Court of Human Rights alleging that the investigations were improperly classified and that his rights as a victim were violated. The case was still pending in December 2014 when this report was prepared. Karaahmed v. Bulgaria, App. No 30587/13, lodged on 30 April 2013 and communicated to the Bulgarian government on 3 December 2013. <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141791>, accessed 23 January 2015.

⁹⁷ Meeting with representatives of Sofia Police Station 05, 2 September 2014.

⁹⁸ Meeting with representatives of the Ministry of the Interior, 3 July 2014.

xenophobic motives. There is not even a definition of what constitutes a racist or xenophobic motive. According to our experience, it takes years to establish a consolidated practice.”

Statement made by a judge during a meeting of judges of the Sofia District and Regional Courts with Amnesty International in July 2014.⁹⁹

Representatives of several Prosecution Offices in Sofia also highlighted the lack of experience in dealing with the classification of crimes motivated by racism or xenophobia.

Similarly, some police investigators operating at the police station level highlighted the lack of experience in investigating hate crimes. Representatives of the Ministry of the Interior told Amnesty International that in 2013, 50 police officers from different police stations across the country attended a training on hate crimes organized by Organization for Security and Co-operation in Europe (OSCE).¹⁰⁰ However, most of the police investigators Amnesty International spoke to said they had not received any specific training on the topic.¹⁰¹

Investigators at Sofia Police Station 05 stressed that “hate crimes occur very rarely and there are no methodical guidelines or specific training on hate crimes for police... even in the few cases where a discriminatory motive can be established at the preliminary stage, it is the hooligan motive that is eventually taken into account by prosecutors... there is a very well established practice in respect of hooliganism”.¹⁰²

In December 2013, *Methodical Guidelines concerning the investigation of discriminatory crimes*, drafted by the Analytical Department of the Supreme Prosecution Office of Cassation, were made available to prosecutors. While not binding, they are aimed at providing guidance to prosecutors. The *Guidelines* spell out the elements that have to be taken into account when investigating hate crimes. These include both victims’ and perpetrators’ characteristics. In particular, if a victim belongs to a group defined by a protected characteristic, this has to be taken into account by the investigators. Moreover, any circumstance that may have been known to others that the victim belonged to a group defined by a protected characteristic, such as their participation in specific public activities, deserves special attention in the investigation. The *Guidelines* also stress that the victim’s understanding of the possible motives, as well as any other circumstance concerning the crime, including where it is perpetrated, need to be taken into account.

While the *Guidelines* constitute a useful tool to ensure that any alleged discriminatory motive is thoroughly investigated, many authorities seemed unaware of them. Police representatives and prosecutors who spoke to Amnesty International stated that the tools and methods used to investigate hate crimes are those spelled out by the Criminal Code of Procedure and that no specific protocols, procedures or mechanisms existed for these crimes. None of the 15 Regional and District Prosecutors or the 30 police investigators and representatives of the

⁹⁹ Meeting with Sofia District and City Courts’ judges, 4 July 2014.

¹⁰⁰ Meeting with Representatives of the Ministry of the Interior, Sofia, 3 July 2014.

¹⁰¹ Amnesty International met with police investigators in 10 police stations and directorates in Sofia, Plowdiv and Pleven.

¹⁰² Meeting with representatives of Sofia police station 05, 2 September 2014.

Ministry of the Interior mentioned the *Guidelines* in their meeting with Amnesty International.

INVESTIGATION AND PROSECUTION OF HOMOPHOBIC HATE CRIMES

Although sexual orientation is a protected ground in Bulgarian civil anti-discrimination legislation, the Criminal Code does not consider it to be a protected characteristic.¹⁰³ Gender identity is not an explicitly protected ground in civil anti-discrimination legislation¹⁰⁴ or in the Criminal Code. The law, therefore, makes it impossible to explicitly take into account sexual orientation or gender identity as motives for attacks on LGBTI people.

The inclusion of sexual orientation in the draft new Criminal Code adopted by the government in January 31 was certainly a positive move, although it was unclear at the time of writing whether this would be approved by the new government following elections in October 2014 (see p.13)

In some cases of alleged hate crimes against LGBTI people, officials have ascribed hooliganism as a motive. In June 2012, Dragomir Yanchev, the then prosecutor in the case of the murder of Mihail Stoyanov, told Amnesty International: “The law is limited and that’s why I could not take into account the homophobic motive in the indictment. However, this is the very first case of homophobic crime I have dealt with. Bulgaria is a pretty tolerant country; for instance we are accustomed to live together with the Turkish minority. Maybe that’s why the law does not define homophobic hate crime.”¹⁰⁵

THE MURDER OF MIHAIL STOYANOV

“What is driving me to seek justice is that no more cases like this should happen. The victims who do not dare to complain should not be afraid any more to complain. I don’t see the point of complaining if there is no law. It is not only my case. My case got publicity but there are more similar cases that no one is talking about”.
Hristina, Mihail Stoyanov’s mother.¹⁰⁶

On the evening of 30 September 2008, Mihail Stoyanov, a 25-year-old medical student, was brutally killed in Borisova Gardens, Sofia, because he was perceived to be gay. The investigation of this crime resulted in the arrest of two suspects in 2010. The homophobic motive was well established during the investigation. In fact, three men testified in court that they and the two suspects were part of a group that intended to “cleanse” the park of gays and confirmed that the group attacked other men solely because of their perceived sexual orientation. The three men said that they saw the suspects kill Mihail as part of these anti-gay attacks.

In August 2013, the Sofia City Prosecution Office pressed charges against the two suspects for murder motivated by hooliganism. The indictment did not mention that Mihail may have been targeted because of his

103 Article 4 of the 2004 Protection against Discrimination Act, <http://www.refworld.org/docid/44ae58d6d5.html>, accessed 2 December 2014.

104 Although the ground “gender” included in Article 4 should also be interpreted as including “gender reassignment” in line with the European Court of Justice’s case law. See for example Case C-13/94 P v S and Cornwall County Council, 1996, K.B. v National Health Service Pensions Agency and Secretary of State for Health, 2004, Case C-423/04 Sarah Margaret Richards v Secretary of State for Work and Pensions, 2006.

105 Interview with Dragomir Yanchev, 28 June 2012.

106 Interview with Hristina Stoyanova, 28 June 2012.

perceived sexual orientation. The indictment stressed that: “The aim of the defendants had been to show their clear disrespect for society, disregard for the rules of morality and human personality through the murder”. At the time of writing, the trial was continuing.

According to representatives of the Sofia Prosecution Offices, homophobic and transphobic hate crimes can be investigated as crimes motivated by hooliganism as these crimes show a disrespect for society and for publicly accepted norms, which include tolerance towards LGBTI people. The prosecutors stressed that a murder motivated by hooliganism attracts the same penalty as a murder perpetrated with a racist or xenophobic motive.¹⁰⁷

However, gaps in the law protecting LGBTI people contribute to the invisibility of homophobic and transphobic hate crimes. They also mean that data on these crimes is not collected separately and so reliable information on which to base policies to prevent these attacks is absent. This is crucial in a context in which negative attitudes towards LGBTI people are widespread.

M., a gay man who has been attacked several times because of his sexual orientation, told Amnesty International: “It’s horrible... after this happened... whenever I’m on the street I feel like I’m constantly threatened. Every guy I see who has short hair or black clothes or every time someone speaks louder close to me, it’s like... I expect to be attacked any second.”¹⁰⁸

THREATS AGAINST THE LGBTI FILM FESTIVAL IN PLOVDIV

“We asked for police protection in advance but, notwithstanding all the threats, we were ignored”.

Ivelina Panicharova, the president of the organization LGBT Plovdiv¹⁰⁹

In June 2013, Ivelina and other LGBT Plovdiv volunteers organized the first LGBTI film festival in the city. The event sparked intense debate, in part because it was part of a cultural programme aimed at supporting Plovdiv’s application to be the European Capital of Culture 2019. There was considerable opposition to the film festival, including from members of the football club Botev, who wrote to the municipality to complain. Ivelina and other organizers received threats through social media and Ivelina was also told by a friend that some supporters of ATAKA had threatened her.

On 10 June, the first day of the festival, a group of seven or eight people tried to break into the venue where the festival screening was due to take place. They were pushed back by the venue’s security staff. Following this attempted attack, the organizers sought police protection, but this was not forthcoming until 13 June when a representative of the US Embassy was participating.

On 14 June at about 7.30pm a group of around 10 men and one woman went to Bar Mojito, where a film screening was scheduled, threatened those present and smashed the projector. Ivelina described what happened:

¹⁰⁷ Meeting with representatives of Sofia Prosecution Offices, 10 July 2014.

¹⁰⁸ Interview with M, 9 July 2014.

¹⁰⁹ Interview with Ivelina Panicharova, 9 July 2014.

“The first asked ‘Is it here the faggot projection?’. Then they insulted us saying we were perverts and that no other such festival in Plovdiv would take place.”

Ivelina called the police who came after about 20 minutes, by which time the men had left. Ivelina went to the police the following day and was told that the organizers of the festival were not considered as party to the case as they had not been attacked. She was also told that the investigation was limited to identifying the person who broke the projector.

The police ensured protection of the film festival for the remaining three days. A police car was stationed outside and two police officers were present inside the festival venue.

Representatives of police station 02 told Amnesty International that the LGBTI film festival had been organized in private venues and as such did not require police protection. They also pointed out that the festival would have been protected by police “only if it were directly threatened”. The Deputy Prosecutor General informed Amnesty International that an investigation had been initiated into the damage to property, but was suspended on 26 August 2013 as no suspects had been identified.

5. FAILURE TO RESPECT THE RIGHTS OF VICTIMS

Many of the victims interviewed by Amnesty International said that they received no information at all about the follow-up of the investigation concerning their cases. This is at odds with domestic law ensuring the rights of victims. Moreover, it contributed to shattering victims' trust in the authorities. Many felt that they were left with no effective avenues to access remedies.

A.A.'S CASE

"I was in great shock, I did not go to the mosque for the early-morning prayer for about a year... the attack against the mosque was the peak... but still nowadays people have prejudices. For example I sometimes hear negative comments when I am with my wife on the street just because she wears the headscarf".¹¹⁰

On 28 May 2011, A.A. was attacked as he approached the Banya Bashi mosque for the early morning prayer by three shaven-headed men wearing black clothes. He told Amnesty International: *"One of them blocked my path and started cursing Islam. He said: 'F*** your Muslim mum'... luckily someone probably alerted the police who were patrolling the mosque. They came immediately and they caught two of them... The third one managed to run away."*

A.A. went to Sofia Police Station 05 where he identified the two perpetrators. He explicitly told police that he was attacked because he was a Muslim and that perpetrators used derogatory language against Islam. A.A. told Amnesty International that he had never received any information from the police concerning the investigation.

The Ministry of the Interior informed Amnesty International that an investigation was launched against the two suspects for hooliganism. In the course of the investigation, the police established that the attempted assault on A.A. had been perpetrated by the man who escaped and not by the two who had been apprehended. As a consequence, on 11 August 2014, criminal proceedings against the two suspects were shelved.¹¹¹

A.A. was given no information about developments in the investigation and police did not provide further information about the evidence on which the decision to release the two suspects was based or about steps taken to apprehend the third suspect, who, at the time of writing, remained at large.

Under Bulgarian law, victims of crime, or their next of kin in fatal cases, should be informed about their rights and the progress of the proceedings (Article 74 of the Criminal Code of Procedure). They also have the right to protection for themselves and their families or acquaintances, and to take part in the proceedings in the role of private prosecutors (Article

¹¹⁰ Interview with AA, 10 July 2014.

¹¹¹ Email communication with the Ministry of Interior, 19 September 2014.

75), which includes the right to examine files, produce evidence and raise objections in court (Article 79).

According to representatives of the Ministry of the Interior, investigating officers must inform victims about their rights from the outset. Police officers are expected to follow a detailed protocol, which entails reading the victims of a crime their rights before taking their statement. Representatives of Sofia Police Station 08 stressed that, although there are no victim liaison officers operating within police stations, victims are systematically informed of their rights when they sign their statements.¹¹² Paragraph 75 of the Criminal Code of Procedure, which spells out victims' rights, is indeed included in the form used by police to record victims' statements.

However, as several of the cases detailed in this report show, these requirements are often not adequately enforced.

AURORE

On 19 April 2014, Aurore, a black French national visiting Sofia from France, where she lives, was physically assaulted at a bus stop by a group of seven or eight men. She described what happened:

"I was waiting for the bus with my Bulgarian boyfriend and two other friends. As soon as the bus stopped, I remember that a man on the bus started staring at me from the window and made noises that sounded like a monkey. The bus doors opened, he got off with other people and attacked me, I don't remember much, I just tried to protect my head while I was on the floor and they were kicking me".¹¹³

Aurore was with three friends who were white. They were not targeted with violence. After the attack, they told Aurore that they had tried to intervene but some of the attackers prevented them from helping her. They also said that the perpetrators referred to Aurore's skin color while attacking her. They allegedly said: "Where is the black guy?" Aurore thought that the perpetrators may have perceived her as a man as she was quite tall and she was wearing a hooded sweater.

Aurore told Amnesty International that she had been the victim of a racist attack. She pointed to the look of the perpetrators, who were wearing dark clothes and had shaved heads, and she stressed that her white friends had not been targeted. The Deputy Prosecutor General informed Amnesty International that two suspects had been indicted for inflicting physical injuries in an attack motivated by hooliganism. Representatives of Sofia Police stations 02 clarified that the hooligan motive was established on the basis of the fact that the attack took place in a public space and that Aurore did not know her aggressors. They alleged that witnesses did not report any use of discriminatory language. However, other elements concerning the dynamics of the attack, including the fact that Aurore's friends, who were ethnic Bulgarians, were not targeted, were largely overlooked.

Aurore mandated the Bulgarian Helsinki Committee as her legal representatives in judicial proceedings. According to the Bulgarian Helsinki Committee, she was initially considered as a victim. Then, for reasons

¹¹² Meeting with Representatives of Sofia police stations 08, 3 July, 2014

¹¹³ Interview with Aurore, Paris, 5 November 2014.

unknown to the Bulgarian Helsinki Committee, she appeared to become a witness in the case. She was never summoned as either a victim or a witness to appear in court nor were her legal representatives informed about the court hearing. As a consequence, Aurore was unable to claim compensation as a civil claimant. On 15 August 2014, the court absolved the suspects of all criminal liability (Article 78a of the Criminal Code) and imposed a fine.

Aurore suffered serious post-traumatic stress after the attack. She told Amnesty International:

"I was really stressed and scared... I had to stop working for two months. I am doing better now but it is as if a part of me died on that day... and even more so, by knowing that those people were just fined and that I was not even informed about the hearing... that's unfair, I don't want money or anything, I just want these acts recognized and sanctioned adequately so that perhaps similar things won't happen in the future again".

At the time of writing, an appeal lodged by the Bulgarian Helsinki Committee against the court's decision was pending.

Representatives of the Sofia Prosecution Office stressed that legislation on financial compensation and legal aid were part of victims' rights framework set out in the Criminal Code of Procedure. Indeed, in 2007 a Law on Assistance and Financial Compensation for Victims of Crime (State Gazette 105/22.12.2006) was introduced. It provides for access to assistance and compensation for most serious crimes, including grievous bodily harm and premeditated murder. Access to legal aid, including in criminal, civil or administrative cases, is regulated by the Law on Legal Aid (State Gazette 79/4.10.2005).

However, there is no provision in Bulgarian law for free access to health care, including psychological counselling, for victims of crime. Under Bulgarian law, citizens, foreign nationals or stateless people who are long-term residents and refugees or people who have obtained humanitarian protection are required to contribute to the compulsory National Health Insurance Fund.¹¹⁴ Foreign nationals with the right to remain in Bulgaria on a short-term basis have to pay for health care unless they are covered by a foreign health insurance.¹¹⁵

Some victims of hate crimes interviewed by Amnesty International did not have access to the treatment they needed, beyond emergency care – which is provided irrespective of the contribution to the National Health Insurance Fund.¹¹⁶ For example, Metin's aunt (see page 25) told Amnesty International that the family had felt abandoned by state institutions in the aftermath of the attack: "The only institution that supported us was the Mosque... I had to cover three years of backdated payments for the health insurance so that Metin could access all the necessary medical treatments... Last April he came to Berlin as I had some time and

¹¹⁴ Health Act, Article 8.1

¹¹⁵ Health Insurance Act, Article 33.

¹¹⁶ Health Act, Article 82.

could take care of him.”¹¹⁷

MARWAN'S CASE

*“I came here to Bulgaria to escape death in Syria but I don't have rights here”.*¹¹⁸

Marwan, a Syrian refugee living in Sofia, was attacked outside his workplace after he alerted his manager in Arabic about an attack taking place in the street by a group of about 20 people against three foreign nationals. The attackers then turned on him.

Marwan is convinced that he was targeted because the attackers realized he was a foreigner. He also alleged they were far-right supporters: “I think they were those people who hang out at night and attack Arabs... They had shaved heads and were wearing black clothes... Many people warned us not to speak Arabic in public as there were many attacks against Arabs”.

Marwan tried to report the attack to the Sofia Police Station 03. He shared with Amnesty International his frustration and disappointment about how police dealt with his case.

“I went three times to the police. The first time after having received emergency care, I showed them the medical certificate and I highlighted that I was attacked as soon as they heard me speaking Arabic... They made me sign a statement and then the interpreter told me that I had been considered as a witness in the case. I said I did not agree because I had also been attacked. I was told to come back the following day and to make another complaint, although they pointed out that it would probably be pointless as I was unable to identify any suspects. I had the impression they wanted to close my case. The second time I went, three weeks after the attack, to inquire about the investigation. They told me that the case had been closed and that I had to appoint a lawyer to reopen it. I went to the Bulgarian Helsinki Committee¹¹⁹ and asked for support; they suggested calling their lawyer once at the police station. So, I went to the police a third time. We called the lawyer who was told by police that I could not get a copy of my statement and that I was a witness and not a victim in the case... I went to the police station several times but I don't know anything about my case”.

Representatives of the Sofia Police Station 03 told Amnesty International that, on the basis of CCTV footage installed outside Marwan's workplace, three suspects had been identified in connection with the attack on the three men. Initially the case was treated as motivated by hooliganism. However, a psychological assessment of the suspects subsequently revealed a bias against foreigners so a xenophobic motive was also taken into consideration. The Deputy Prosecutor General stated that both motives had been taken into account in the indictment issued against the three suspects on 8 July 2014.

Representatives of the Sofia Police Station 03 explained that Marwan had been considered as a witness in the case concerning the attack on the three men. However, they stressed that another separate case regarding the injuries inflicted on Marwan was opened against unknown perpetrators. The police alleged that it was not

¹¹⁷ Interview with Metin's aunt, Berlin, 28 September 2014.

¹¹⁸ Interview with Marwan on 3 and 11 July 2015. Marwan's real name has been concealed according to the informed consent received by Amnesty International. Marwan is a pseudonym.

¹¹⁹ The Refugee Programme of the Bulgarian Helsinki Committee has not recorded the legal counsel provided to Marwan as it consisted in one-off phone consultation.

possible to establish on the basis of the CCTV footage whether the same suspects were involved in the attack on the three men and on Marwan. The police said that no xenophobic or racist motive was considered in the attack against Marwan as the suspects were unknown and thus no assessment, necessary to establish such motive, could be carried out. They also argued that Marwan had been attacked because he tried to help the other victims rather than because he was also foreigner.¹²⁰

The Deputy Prosecutor General did not confirm that a separate pre-trial investigation regarding the attack against Marwan had been initiated.¹²¹ At the time of writing, it was unclear whether a separate investigation was ongoing into the attack against Marwan.

¹²⁰ Interview with representatives of the Sofia Police Station 03, 2 September 2014.

¹²¹ Letter of the Deputy Prosecutor General Penka Bogdanova to Amnesty International, 6723 of 6 October 2014. Amnesty International specifically inquired about the status of the investigation into the physical assault against Marwan and highlighted that Marwan believed he had been considered a witness of the attack against three other men. The Prosecutor replied just stressing that "victims are questioned in their capacity of witnesses and have the respective rights and obligation under Articles 117-123 of the Criminal Code".

6. CONCLUSIONS AND RECOMMENDATIONS

Hate crimes in Bulgaria remain largely hidden and unacknowledged. Many factors contribute to this failure to recognize the scale of the problem and to put in place effective measures to address it.

When hate crimes are reported, many are simply dealt with as motivated by hooliganism rather than discrimination. This, again, contributes to the lack of reliable data on hate crimes and the lack of confidence in the justice system among those communities at greatest risk of these crimes. The failure of investigators and prosecutors to take into account discriminatory motives, even when verbal abuse or other factors supporting the presence of such a motive are reported, is very worrying. It also suggests that there is a lack of understanding of the obligation of state officials to take such factors into account and to make efforts to unmask discriminatory intent.

Although legislation aimed at combating racist and xenophobic hate crimes exists and is at least partially in line with the EU Framework Decision to Combat Racism and Xenophobia, it has not thus far resulted in effective and thorough investigation and prosecution. This would appear in part to be caused by a lack of specialized training among police and prosecution officials. Strengthening the EU Framework Decision, so that domestic investigating authorities would be explicitly required to unmask any potential discriminatory motive would have a positive effect in combating hate crimes in Bulgaria.

While Bulgarian criminal law does, in theory, provide some protection for hate crimes motivated by xenophobia or racism, it does not make similar provisions for crimes motivated by homophobia or transphobia. These abuses remain completely hidden and urgent amendments to the Criminal Code are needed to recognize other defined characteristic, including sexual orientation and gender identity, as grounds on the basis of which hate crimes can be perpetrated. Amending the EU Framework Decision to include these grounds would have a positive effect on combating these crimes in Bulgaria as well as in other European countries.

Many victims who spoke to Amnesty International stressed the profound and long-term consequences of hate crimes. These effects were exacerbated by the failure of the authorities to ensure that their rights as victims were respected, as required by international and national law. Victims of hate crimes are often not informed about the development of their cases and many received no support from state institutions in navigating the justice system, leaving them feeling frustrated at the failure of the system to ensure that they received justice. Several also stressed the lack of health care offered to them as victims of crime. The cumulative effect of these failures on the part of the authorities is to intensify their fear of being attacked again, the lack of trust in state institutions and marginalization from the wider society.

Bulgaria has signed up to international instruments that guarantee the human rights of all, including the right to freedom from discrimination. There is an urgent need for the authorities to show the political will and to institute measures to ensure that these provisions are implemented effectively and bring about real improvements in the lives of those communities at risk of hate crime. The following recommendations, if implemented, would ensure that Bulgaria made significant strides towards fulfilling its human rights obligations.

ON IMPLEMENTATION OF THE EXISTING LEGISLATION

To the Government of Bulgaria

Government officials should:

1. Condemn hate crimes when they occur and make clear that crimes targeting people for discriminatory reasons will not be tolerated;
2. Ensure that hate crimes motivated by racism, xenophobia or other forms of discrimination are fully and effectively investigated, including by taking the specific measures outlined below, and that those against whom sufficient admissible evidence of criminal wrongdoing exists are brought to justice;
3. Ensure that investigating authorities are required to investigate any discriminatory motive when it is alleged by victims or on their own initiative when there is reason to believe discrimination may have played a role;
4. Ensure that comprehensive data on hate crimes are collected at all levels, including reporting, investigation, prosecution and sentencing. Data should be disaggregated by protected ground and proactively made publicly accessible (taking into account privacy considerations);
5. Ensure that police investigations into alleged criminal misconduct by law enforcement officials, including towards foreign nationals or members of minorities are conducted in a prompt, thorough, independent and impartial manner;
6. In co-operation with NGOs, community-based organizations and representatives of minorities, outline and implement measures that would encourage reporting of racist and other hate-related incidents, such as establishing specialized agencies with trained personnel to which hate crimes can be reported;
7. Design and carry out a broad-based victimization survey to assess the extent to which hate crimes may be underreported, or not recorded, and why;
8. Ensure the regular review of data from victimization surveys, as well as data on reported, investigated and prosecuted hate crimes to inform action plans for better detection and prevention of hate crimes.

The Ministry of the Interior should:

9. Develop and implement guidelines for police officers on investigating crimes of murder and inflicting physical injuries with a racist or xenophobic motive (Article 116.1.11 and 131.1.12 of the Criminal Code) and of crimes against the equality of citizens and religious denominations (Articles 162-165 of the Criminal Code);
10. In cooperation with NGOs, community-based organizations and representatives of minorities, develop initiatives aimed at enhancing trust in law enforcement officials and in ensuring that any crimes perpetrated against ethnic and religious minorities, migrants, asylum-seekers and refugees and LGBTI people, among others are reported to competent authorities;
11. Define “discriminatory incident” for the purposes of police reports and statistical records as “any incident which is perceived to be discriminatory by the victim or any other person”;
12. Ensure that all police officers receive in-service training on the nature of hate crime and the role of the police in combating discrimination;
13. Ensure that all officers, who are likely to come into contact with victims receive adequate training to increase awareness of the needs of victims and to enable them to deal with victims in professional manner;

The Prosecution Office should:

14. Ensure that all alleged hate crimes, including those noted in this report, are fully and effectively investigated;
15. Ensure that all efforts are made to unearth any discriminatory motive in the course of criminal investigations;
16. Instruct investigators to investigate any discriminatory motive when it is alleged by victims or on their own initiative when there is reason to believe discrimination may have played a role;
17. Bring alleged discriminatory motives to the attention of the court when there is sufficient evidence to do so;
18. Ensure that the *Methodical Guidelines concerning the investigation of discriminatory crimes* adopted in December 2013 are effectively implemented by prosecutors when supervising the investigation of any alleged hate crime, are published and widely disseminated;
19. Ensure that all representatives of Prosecution Offices who are likely to come into contact with victims receive adequate training to increase awareness of the needs of victims and to enable them to deal with victims in professional manner;

20. Collect disaggregated data on allegations of hate crimes perpetrated by police officers and other state actors, including data on reporting, investigation, prosecution and sentencing. Data should be disaggregated by protected ground, and proactively made publicly accessible (taking into account privacy).

The police should:

21. Promptly register any report concerning alleged hate crimes, as well as any other crime, and inform prosecuting authorities without any undue delay so that an impartial, adequate and thorough investigation can be initiated;
22. Register all the elements concerning a crime mentioned by victims or witnesses at time of reporting, including any alleged discriminatory motive;
23. Ensure that discriminatory motives are always highlighted in police reports and that all discriminatory incidents are recorded for the purposes of public statistics. This could be achieved either through the introduction of separate “Discriminatory Incident Forms” or by providing for a designated section on standard police report forms;

ON THE ADOPTION OF NEW LEGISLATION

The Government of Bulgaria must:

24. Ensure that the Criminal Code is revised to include all protected characteristics on the basis of which hate crimes may be committed –including disability, sexual orientation and gender identity – and that discriminatory motives behind any type of crime are recognized;

ON VICTIM SUPPORT

The Ministry of Justice must:

25. Ensure that the victims of hate crimes have effective access to the mechanisms of justice and to redress, including through ensuring their access to appropriate support and assistance, including legal aid where required, for each stage of any criminal justice processes, and where appropriate after them. The support and assistance should be provided even in cases in which the perpetrators are not identified, prosecuted or convicted;
26. Ensure that all the provisions of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, including those concerning support services for victims and their right to information, are transposed into Bulgarian law and effectively implemented.

The police must:

27. Ensure that the victims of hate crimes, and where appropriate their families, are informed about, support, assistance and protection including counselling and legal assistance throughout any investigation and criminal proceedings, continuing after the case has been closed, and provide assistance in accessing such services where necessary;

THE EUROPEAN UNION SHOULD:

28. In the context of the monitoring of the implementation of the Framework Decision 2008/913/JHA, raise concerns on investigation and prosecution of hate crimes in Bulgaria and other member states, and adopt guidelines to ensure that any alleged discriminatory motive is thoroughly investigated and taken into account in the prosecution phase;
29. Review the Framework Decision 2008/913/JHA and ensure that any revised instrument prohibits all crimes perpetrated with any discriminatory motive. Such a revised instrument should explicitly require states to investigate any alleged discriminatory motive associated with a crime and include an open list of grounds on which hate crimes can be prosecuted, including sexual orientation, gender identity and disability;
30. Provide guidance to Bulgaria and other member states on transposing and implementing the EU Directive 2012/29/EU, to ensure that victims of hate crimes have equal access to all the rights protected by the Directive.

APPENDIX 1: RELEVANT PROVISIONS OF THE CRIMINAL CODE

Article 116.1.11

(1) (Previous Article 116, SG No. 62/1997) For murder:

11. performed by hooligan, racist or xenophobic motives

Article 131.1.12

(1) (Previous Article 131, SG No. 62/1997) for inflicting bodily injury:

12. out of hooligan, racist or xenophobic motives, the punishment is imprisonment: from 3 to 15 years for heavy bodily injury; from 2 to 10 years for medium bodily injury; up to 3 years for light bodily injury, according to Article 130.1 and for up to 1 year or probation, according to Article 130.2

Article 162

(1) An individual who preaches or abets to racial, national or ethnical hostility, hatred or racial discrimination through the means of communication as the press, mass media, electronic information systems or through the use of another means, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration.

(2) (Last amendment, SG No. 27/2009) An individual who uses violence against another or damages his property in view of his nationality, race, religion or political convictions, is subjected to a penalty of imprisonment for a term up to four years, a fine from five to ten thousand BGN and public execration.

(3) (Last amendment, SG No. 27/2009) An individual who forms or leads an organization or a group that has set itself the task of doing activities under para.1 and 2, or systematically tolerates the performance of such activities, is subjected to a penalty of imprisonment for a term from one to six years, a fine from ten to thirty BGN and a public execration.

Article 163

(1) (Last amendment, SG No. 27/2009) The persons who take part in a crowd rallied to attack groups of the population, individual citizens or their property in connection with their national, ethnic or racial affiliation, shall be punished:

1. The abettors and leaders - by deprivation of liberty for up to five years;
2. All others - by deprivation of liberty for up to one year or by probation.

Crimes against Religious Denominations

Article 164

(1) An individual who propagates hatred on a religious basis by speech, through the press or another mass media devices, through electronic information systems or by the use of another means, is subjected to a penalty of imprisonment for a term of up to four years or probation and a fine from five to ten thousand BGN.

(2) An individual who desecrates, destroys or damages a religious temple, devotional house, sanctuary or an adjacent building, their symbols or gravestones, is subjected to a penalty of imprisonment for a term up to three years or probation and a fine from three to ten thousand BGN.

Article 165

(1) A person who, by force or threat hinders the citizens from freely practising their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morality, shall be punished by deprivation of liberty for up to one year.

(2) The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services.

(3) For the acts under Article 163, committed against groups of the population, individual citizens or their property, in connection with their religious affiliation, the punishments provided therein shall be applied.

Article 166

A person who forms a political organisation on religious basis or who by speech, through the press, action or in another way, uses the church or religion for propaganda against the state power or its undertakings, shall be punished by deprivation of liberty for up to three years, if he is not subject to more severe punishment.

Article 325

1. A person who performs indecent acts, grossly violating the public order and expressing open disrespect for society, shall be punished for hooliganism by deprivation of liberty for up to two years or by probation, as well as by public censure.
2. Where the act has occurred with resistance to a body of authority or a representative of the public, fulfilling their obligations of preserving the public order, or where by its content it has been distinguished for its extreme cynicism or arrogance, the punishment shall be deprivation of liberty for up to five years.

3. Where an act under the preceding paragraphs has been committed for a second time, the punishment shall be: under paragraph (1) - deprivation of liberty for up to three years; under paragraph (2) - deprivation of liberty for one to five years.
4. Where an act under paragraphs (1) and (2) constitutes dangerous recidivism, the punishment shall be deprivation of liberty for one to six years.

APPENDIX 2: AMNESTY INTERNATIONAL'S CHECKLIST ON HATE CRIMES

How does the government in your country respond to hate crimes?

The Amnesty International checklist can help you identify if the current laws, policies and practices need to be reformed, or if there are any obstacles that are blocking the implementation of these policies. You can go through these seven questions to assess the situation in your country:

- Is the existing legislation adequate?
- Are reporting mechanisms appropriate?
- Are hate crimes investigated effectively and thoroughly?
- Are hate crimes prosecuted effectively?
- Are victims given appropriate medical, psychological and legal support?
- Are there effective training programs to raise awareness of hate crimes for law enforcement authorities, judicial authorities and health professionals?
- Is there an official, public and efficient hate crime data collection system?

1) Legislation on hate crimes

A hate crime is any criminal offence that is perpetrated against a person or a property *chosen* by the offender because of the real or perceived association with a group defined by a protected characteristic (such as ethnic origin, religion, sexual orientation or gender identity).

- ✓ Does legislation in your country prohibit all forms hate crimes?

- ✓ Does legislation in your country include an open list of protected characteristics in the list of hate motives on the basis of which a criminal offence can be perpetrated?

2) Reporting hate crimes effectively and appropriately

The police must register any alleged hate motive associated with a crime (this might be either on the basis of the victim's perception or on their own belief that the crime reported was a hate crime). The police must also avoid inconsistencies in the classification of hate crimes.

- ✓ Are there guidelines or protocols requiring the police to register any alleged hate motive associated with a crime?
- ✓ Are there clear guidelines to ensure that hate-motivated crimes are classified consistently?

3) Investigating hate crimes thoroughly

Every investigation must comply with the principles of due diligence and effectiveness. The investigation should unmask any alleged hate motive behind the crime, whether or not this motive has been reported by the victim.

- ✓ Do investigating authorities conduct their investigations in a timely manner and explore all relevant evidence in order to identify the suspects of hate crimes?
- ✓ Are there protocols or guidelines requiring authorities to thoroughly investigate any alleged hate motive associated with a crime?

4) Prosecuting hate crimes effectively

The prosecuting authorities have to make efforts to bring suspects to justice on the basis of the results of the investigation. Prosecutors should bring any alleged hate motive to the attention of courts when sufficient evidence is established by the investigation.

- ✓ Do the prosecuting authorities use all the powers available to them to prosecute the suspect in a timely manner?
- ✓ Do they mention any alleged discriminatory motive when pressing charges against suspects of hate crimes?

5) Supporting victims and protecting their rights

States must ensure that all victims of hate crime have access to medical care, counseling, consular assistance and legal advice, and that victims have effective access to justice.

- ✓ Do health services provide adequate care, including psychological counselling, to victims of hate crimes?
- ✓ Do health services refer victims of hate crimes to other appropriate services, such as legal services, or those dealing specifically with their situation, including those for migrants or sex workers?
- ✓ Are victims informed promptly and in detail – in a language they understand – of the progress of the investigations and prosecution, as well as of their rights, including the right to be heard in the legal proceedings?

- ✓ Are victims heard in the legal proceedings?

6) Combating prejudice in institutions

States must adopt policies that actively promote and encourage inclusion, non-discrimination and respect for diversity. The police, judicial authorities and health professionals should be trained to deal with hate crimes and to provide adequate support to victims of these crimes. Public officials and political leaders must play a leading role in raising awareness of human rights and non-discrimination.

- ✓ Are there training programs for the police, judicial authorities and health professionals aimed at raising their awareness of human rights, discrimination and hate-motivated crimes?
- ✓ Do public officials and political leaders firmly condemn all forms of hate crime and discrimination?

7) Collecting official data on hate crime

States must collect comprehensive data and statistics on hate crime.

- ✓ Are official data and statistics on hate crimes collected at different levels, including data on numbers of crimes reported to the police, number of investigations opened, number of investigations that lead to a prosecution and number of convictions?
- ✓ Are data and statistics disaggregated by the type of crime and the associated hate motive?
- ✓ Are data and statistics adequately taken into account when authorities design policies to fight hate crimes?
- ✓ Are data and statistics available to the public?



**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

■ Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.

■ Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my Visa Mastercard

number

expiry date

signature

amnesty.org

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom



MISSING THE POINT

LACK OF ADEQUATE INVESTIGATION OF HATE CRIMES IN BULGARIA

Victims of hate crimes in Bulgaria are being denied justice by the failure of investigators and prosecutors to take discriminatory motives into account. Hate crimes are typically investigated as offences motivated by “hooliganism”, rather than crimes targeting victims on account of their ethnic origin, migrant status or sexual orientation. The full extent of hate crimes in Bulgaria and their impact on victims therefore remain largely hidden and unacknowledged, fuelling fears within targeted communities, eroding their trust in authorities and delaying the introduction of effective measures to combat these crimes.

MISSING THE POINT analyses and makes recommendations to improve the reporting, recording and effective investigation of hate crimes. It calls on the Bulgarian authorities to revise and enforce its hate crime legislation.

amnesty.org

February 2015

Index number: EUR 15/001/2015

**AMNESTY
INTERNATIONAL**

