

PROTOCOL FOR ACTION BY LAW ENFORCEMENT AGENCIES FOR **HATE CRIME** AND CONDUCT IN BREACH OF THE LEGAL PROVISIONS ON **DISCRIMINATION**



GOBIERNO
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INTRODUCTION

According to Article 1 of the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. On that basis, Article 1 of the Spanish Constitution enshrines equality as one of the highest principles of the legal system and in Article 14 as a fundamental right. Article 9 furthermore states that “the public powers shall promote conditions to make the freedom and equality of the individual and the groups to which they belong real and effective; to remove obstacles impeding or hindering their totality, and to facilitate all citizens’ involvement in political, economic, cultural and social life”.

In fulfilment of their constitutional mandate to protect free exercise of rights and liberties, the Law Enforcement Agencies are permanently guided by those fundamental values, particularly when it is remembered that conduct violating equality, such as hate crimes and discrimination, pose a serious threat to normal coexistence.

Spain’s situation as a bridge between cultures and its calling to be open to the world has meant that this is today a society which is open, and proud of its diversity. There can be no doubt that a notable aspect which may help to further this situation is the principle of “zero tolerance” toward any conduct which might violate Human Rights.

The objectives and actions foreseen for the 4 November 2011 *“Comprehensive Strategy against racism, racial discrimination, xenophobia and other associated forms of intolerance”* approved in a resolution of the Council of Ministers on the recommendation of the then Ministry of Labour and Immigration include “promotion of mechanisms for detection and protocols for intervention in case of racist, xenophobic or discriminatory incidents or attitudes”. To the end referred to above, this protocol thus becomes a framework for reference in defining police action on hate crimes and discriminatory behaviour, setting general guidelines which may be complemented by internal provisions of the various police forces, and upcoming legislative advances in the matter.

Moreover, the Ministry of the Interior’s National Anti-Hate Crimes Office, created in Instruction No. 1/2018 of the State Security Secretariat, will monitor and promote this protocol, drawing on the collaboration of social partners in the field nominated for the purposes from within the State Law Enforcement Agencies.

Therefore, and following further consideration of the matter, the area covered by these criminal acts needs to be defined in conceptual terms. In this sense, and from among the various current definitions, the Organization for Security and Cooperation in Europe (OSCE) has developed a concept of so-called “hate crimes”.

The definition undoubtedly implies subsequent adaptation to each State's legislation, as the term takes in various forms of criminal episodes and acts driven by elements that are racist, ideological, religious, ethnic, referring to nationality, the family situation, sexual orientation, illness or disability.

The OSCE defines “**hate crimes**” as “*any criminal breach, including those committed against persons or property, where the legal interest protected is chosen because of its real or perceived connection, sympathy, affiliation, support for or membership of a group. A group is based on a shared characteristic of its members such as their real or perceived “race”, national or ethnic origin, language, colour, religion, age, disability, sexual orientation or other like factor*”.

In short, the context for hate crimes or discrimination does not relate to specific legal categories as such under our criminal legislation but rather refers, in the terms of a denominating element, to hate which in turn causes discrimination and aversion, to a set of behaviours sometimes targeting new actions and at other times leading to classification of behaviours already dealt with in the Criminal Code or in administrative provisions.

Likewise, with a view to the correct application and interpretation of this protocol, an Annex sets out conceptual definitions of terms which may prove confusing or hard to understand when it comes to treating a certain conduct as a hate crime and, as applicable, as discriminatory.

In all, the purpose or aim in preparing a protocol for police action against hate crimes can be summarised in the need to establish unified and consistent rules or guidelines for police forces for the identification, correct collection and codification of racist or xenophobic incidents or discriminatory conduct, and a determination of the specific elements to be taken into account in the police procedures to be followed.

In drafting this protocol, account has been taken of the “SUPPORT MANUAL FOR TRAINING THE LAW ENFORCEMENT AGENCIES IN IDENTIFYING AND REGISTERING RACIST AND XENOPHOBIC INCIDENTS” published by the Ministry of Labour and Social Security in collaboration with the Ministry of the Interior.

Police forces must make this protocol known across all policing institution divisions, and include elements developed here in their **training plans**.



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CONDUCT INFRINGING CRIMINAL AND ADMINISTRATIVE PROVISIONS



2.1. CONDUCT INFRINGING CRIMINAL PROVISIONS

The criminal provisions include a number of behaviours which can be catalogued as discriminatory conduct or included under the term “hate crimes”, as follows:

THE GENERIC AGGRAVATING CIRCUMSTANCE OF DISCRIMINATORY MOTIVES (ART. 22.4^a of the Criminal Code)

The Law Enforcement Agencies’ **report must include** not only the established facts but also any statements and reports received, along with the circumstances observed and which may provide evidence or indication of the crime, together with **polarisation indicators** (See Section 3: Hate Crime Indicators) **making it possible to accredit the discriminatory motivation of the criminal conduct**, to demonstrate the presence of such aggravation. It is precisely this motivation which allows a crime involving ordinary motivations to be distinguished from one whose motivations are hate- or discrimination-based.

Article 22.4 of the Criminal Code regulates a fixed number of motivations which are the only ones constituting an aggravating factor. (*“A crime motivated by racism, anti-Semitism or some other form of discrimination referring to the victim’s ideology, religion or beliefs, ethnicity, the race or nation to which they belong, their sex, sexual orientation or identity, reasons of gender, illness or disability”*).



Only considered for the reasons listed in Article
22.4, with the exclusion of the remainder, e.g.
the victim’s poverty, physical aspect, etc.



To take this aggravating element into account, the Courts consider the following:

- The subjective element of the perpetrator. The subjective element comprises the components providing personal admission that an act was committed, in short transmitting aspects such as the aim, spirit and of course the motivation which led the perpetrator to act.



- The presence of an underlying crime, i.e. an action classified as a crime in the Criminal Code.
- This is independent of the personal quality of a collective victim targeted by discrimination. Sometimes the perpetrator is moved erroneously by that quality (**discrimination by error**) or the person or the group to which they belong is the target of discriminatory treatment because of their relation, real or supposed, with another (**discrimination by association**).

CRIME OF THREATS TO GROUPS (ART. 170 of the Criminal Code)

Article 170.1.: *“Should the threats of a wrong constituting a crime be intended to intimidate those belonging to a **population, an ethnic, cultural or religious, social or professional group or any other group of persons**, and they are sufficiently serious to do that, penalties will be imposed one degree above those established in the previous Article”.*

This category demands that the threats be grave, and the wrong used to intimidate the group must constitute a crime.

The removal of criminal offences from the Criminal Code repeals Article 626 (defacing of property) and these acts are reclassified as generic offences of damage. This makes it important to remember that **in dealing with criminal acts of damage to public properties** (graffiti or painting with intimidating content in centres of worship, the premises of cultural associations, political parties, homes, or in public establishments where different groups gather, etc.) **the perpetrator’s intention is taken into account**. This is because in such cases the aim is not to cause loss or to reduce another’s property or to destroy or damage such property, but rather to instil fear and intimidate those belonging to the group alluded to. Here, the specific circumstances of each case are considered, along with the scale of the threat, so as to focus the investigation and prosecute a crime pursuant to Article 170 of the Criminal Code.

CRIMES AGAINST MORAL WELLBEING (ARTICLE 173 - 176 of the Criminal Code)

Supreme Court Ruling No. 294/2003 of 16 April sets out the elements conforming the concept of assault on moral wellbeing, referring once again to consolidated case-law widely accepted on the matter. By way of summary, the following requisites may among others be highlighted:

- The action must clearly and unequivocally include content degrading to the target.
- Presence of a physical or mental impairment.

- The conduct is degrading or humiliating, particularly affecting the notion of the dignity of the person or victim.

These three elements must be combined with the aspect of seriousness, demanding study of each individual case. On the other hand, it should be emphasised that it is not necessary according to the case-law to show conduct reiterated over time to indicate the category in question: one specific act is sufficient, if seen as an action or omission gravely damaging to the person's moral well-being.

In cases under Articles 174, 175 and 176, the perpetrator must be an authority or public servant acting with abuse of office.

All that must be combined with any of the motivations confirming the nature of hate crimes.

CRIME OF DISCOVERY AND DISCLOSURE OF SECRETS (ART. 197 of the Criminal Code)

As part of the generic category dealt with in this Article, conduct must be highlighted which takes place on the Internet and is given the name of computer intrusion or hacking, involving unauthorised access or interference, especially when the data obtained surreptitiously **reveal some personal detail related to ideology, beliefs, health, racial origin or sexual life.**

CRIME OF DISCRIMINATION IN EMPLOYMENT (ART 314 of the Criminal Code)

The following are the requisites for an illegal act to be treated as a crime of discrimination at work:

- A serious act of direct or indirect discrimination.
As reference in deciding whether an action is serious, Legislative Royal Decree No. 5/2000 of 4 August approving the Reform Labour Breaches and Penalties Act (LISOS) should be consulted.
- The work is private or public (career civil servants, in employment, temps ...).
- Contempt for the employment inspectorate or the labour or judicial authority:
 - A previous summons or administrative penalty.
 - Failure to re-establish the situation of equality and redress financial loss.

Reality has shown this crime difficult to prove in court, leading to a conviction, because of the many requisites demanded. As a consequence, most of these cases are brought before the Labour Inspectorate. Nevertheless, should a complaint be filed with the Law Enforcement Agencies, the following guidelines must be kept in mind:

- The crime requires judicial investigation in order to be accredited:
 - Multiple requisites.
 - Information not readily available to police forces.
- In drawing up the report, it must be remembered that the following is advisable:
 - To take a statement from the complainant.
 - To review the data of those potentially involved: entrepreneur, head of human resources, etc.
 - To confirm the identity of possible witnesses.
 - The head of the investigation must weigh whether the alleged perpetrator should be detained, although that would not in principle be advisable.
 - The report is forwarded to the Judicial Authority or the Public Prosecutor.

It must be remembered that in these cases, a crime occurs if the perpetrator fails to right the situation or redress the financial loss caused by their action following an administrative order or sanction.

CRIME OF FOMENTING, PROMOTING OR INITIATING HATE, HOSTILITY, DISCRIMINATION OR VIOLENCE (ART 510-510 BIS of the Criminal Code)

The regulation in Article 510 of the Criminal Code classifies various types of conduct:

- Actions directly or indirectly **fomenting, promoting or inciting hate, hostility, discrimination or violence** against groups or individuals for belonging thereto for racist, anti-Semitic or other motives referring to ideology, religion or beliefs, family situation, membership of an ethnic group, race or nation, national origin, sex, sexual orientation or identity, for reasons of gender, illness or disability.
- **The production, elaboration, possession** for distribution, dissemination or sale of material with content fomenting, promoting or inciting hate, hostility, violence and discrimination.
- **Acts attacking and harming dignity** by humiliating, discrediting or demeaning persons or groups of persons.
- **Exaltation or justification** of crimes committed for discriminatory reasons against a person or group of persons.

On the other hand, Article 510. 1 incorporates former Article 607.2 of the Criminal Code concerning the crime of spreading ideas justifying genocide, including conduct which “publicly **denies**, seriously trivialises or glorifies **crimes of genocide**, crimes against humanity or against persons and property protected in armed conflict, or glorifying their perpetrators, when committed against a group or part thereof, or against a person because of their membership thereof for reasons which are racist, anti-Semitic or others related to ideology, religion or beliefs, family situation or the fact that their members are from an ethnic group, race or nation, for their national origin, sex, sexual orientation or identity, for reasons of gender, illness or disability, thereby promoting or favouring a climate of violence, hostility, hate or discrimination against them”. This reform introduces the provisions in Constitutional Court Ruling No. 235/2007 of 7 November, and the verdict points to an interpretation of the crime of genocide *denial* which is limited to cases where such conduct incites hate or hostility toward minorities.

In addition, a specific regulation is incorporated **increasing the penalty** when these **crimes are committed on the Internet or other wide-ranging social communication media**, the main aim being to combat hate speech through ICTs (Information and Communication Technologies).

Similarly, a higher penalty will be imposed pursuant to Article 510.4 of the Criminal Code “when, given the circumstances, the acts may alter public peace or create a serious feeling of insecurity or fear amongst members of the group”.

Hate Speech

It should be pointed out that the penalty targets not the expression of ideas as such, however execrable they may seem, but when this expression takes place in a manner and in circumstances that foment, promote or incite hate, hostility, discrimination or violence, infringing the constitutional values of human dignity and non-discrimination because of birth, racial origin, sex, religion, opinion or any other condition or personal or social circumstance, in the terms of Articles 10 and 14 of the Constitution.

Thus judges and courts are authorised to destroy, eliminate or mutilate books, archives, documents, articles and any type of support used for such crimes using information and communication technologies, as well as blocking access or interrupting the provision of information society services.

A further significant aspect of Article 510 is seen in point five, which includes special disqualification from educational practice or appointment in the teaching, sport and free-time fields as penalty for those perpetrating these acts.

Article 510 bis of the Criminal Code introduces the criminal liability of legal entities for crimes included in this Article, particularly when carried out by associations, and allows establishments to be closed down as penalty.

It must be understood that classification as criminal does not necessarily require incitement via communication media: Article 18.1 of the Criminal Code describes provocation as incitement to perpetrate a crime in print, by radio broadcast or in any other similarly effective medium.

The conduct must target an undefined multiplicity of persons, for example excluding statements made in a private conversation between friends.

It is irrelevant whether it occurs directly before a group of people, in an open or closed space, whether in publications, speeches, demonstrations, meetings, concerts, e.g. RAC/OI¹ music, or on the Internet or social networks.

It must in any event be made clear that not all expressions that shock or offend or whose content is discriminatory constitute a crime, so that the circumstances of each specific case must be analysed, along with the profile and record of the party responsible for such expressions, the context, forcefulness etc.

“Circular No. 7/2019 can be highlighted here **on guidelines for the interpretation of hate crimes regulated in Article 510 of the Criminal Code” issued by the General State Prosecutor’s Office** and designed to offer a guide to action and the interpretation of the various classes of crime covered by that Article.

CRIME OF REFUSAL OF PUBLIC SERVICE BENEFITS (ART 511 of the Criminal Code).

- Perpetrator:
 - A private individual (Article 511.1 of the Criminal Code) heading the public service, understood as one who, without being an authority or a public servant, is engaged in a public function.
 - A public servant (Article 511.3 of the Criminal Code).
- Victim: individuals (Article 511.1 of the Criminal Code) and groups.
- Benefit must be understood as any activity arising from the function of provision inherent to the sectors classified in regulations as public.

¹ Anti-Communist Rock

Refusal of benefit is punished if it was for discriminatory reasons, but no mention is made on the other hand of cases where the service is provided formally although, for reasons of discrimination, in unjustifiably inferior conditions.

- The person refused the benefit must be “entitled” thereto, so that the category excludes cases where the difference of treatment is justified or governed by regulations, e.g. illegal aliens not granted all public healthcare system benefits.
- The perpetrator of the crime must be driven by any of the racist or discriminatory motives provided for in this category. This is a closed catalogue of motivations (ideology, religion or beliefs, membership of an ethnic group or race, national origin, sex, sexual orientation, family situation, for reasons of gender, illness or disability).
- It includes special disqualification from professional activity or appointment in the fields of teaching, sports and free time.

CRIME OF DENIAL OF BENEFITS AS PART OF A BUSINESS OR PROFESSIONAL ACTIVITY (ART 512 of the Criminal Code)

The particular features of this illicit activity take the following form:

- The precept defines a special crime committed solely by professionals or entrepreneurs or those representing them. There is no crime if the benefit is refused by an individual not engaged in a business or professional activity. A clear example which may meet the terms for this category occurs when a real estate agency refuses to let an apartment to an immigrant, but not when an individual refuses such an operation.
- There is another element implicit to this category, namely the regularity inherent to all professional or business activity. Thus the commitment of the perpetrator of the crime must be permanent: isolated or one-off offers for goods or services are excluded.
- The party committing the crime must be impelled by racist or anti-Semitic motives or any of the discriminatory motives established in the category. This is a closed catalogue of motives.

- It must be emphasised that a businessman may not take refuge in the right to refuse admission in order to impede access to or the enjoyment of a benefit for reasons of ideology, religion or beliefs, membership of an ethnic group, “race” or nation, sex, sexual orientation, family situation, gender, illness or disability.
- Special disqualification is included from professional educational activity or appointment in the fields of teaching, sports and free time.

CRIME OF ILLICIT ASSOCIATION (ART 515 of the Criminal Code)

The features of the crime of unlawful association in the terms of Article 515 of the Criminal Code are:

- A multiplicity of persons associated for a given activity.
- The existence of an organization, more or less complex according to the type of activity planned.
- Consistency or permanence, i.e. the association agreement must be a lasting one, and not merely transitory.
- The association’s aim. Pursuant to Article 515.4 of the Criminal Code, this must involve fomenting, promoting or directly or indirectly inciting hate, hostility, discrimination or violence against persons, groups or associations because of their ideology, religion or beliefs, the fact that their members or any such associations form part of an ethnic group, race or nation, their sex, sexual orientation, family situation, illness or disability.

CRIMES AGAINST FREEDOM OF CONSCIENCE AND RELIGIOUS BELIEFS (ART 522 - 525 of the Criminal Code)

This requires objective conduct described by lawmakers as public “scorn” for dogmas, beliefs, rites or ceremonies which are part of a religious confession.

The dictionary defines scorn as “persistent derision committed with the intention of offending”, so referring not just to any derision but that which can be qualified as “persistent”.

Moreover, this Article includes a subjective element, suggesting that the action must have a purpose: to offend, i.e. “to cause affront, offend, humiliate, insult”. Thus the perpetrator must act “to offend”, so that the conduct has the direct intention of affronting a collective religious belief.

The case-law applies a highly restrictive criterion to consider that the requisites of Article 525 of the Criminal Code are present. In most cases, those involved have been acquitted given the lack of the specific subjective element required for the crime. Specifically, the courts exclude classification as a crime when the content of the conduct involved is predominantly satirical, provocative or critical.

This Article is interpreted very restrictively by the courts; it grants a wide margin for exercise of the rights of freedom of expression and of artistic creation, so that most of the rulings delivered according to this precept have been acquittals.

2.2. CONDUCT INFRINGING ADMINISTRATIVE PROVISIONS



Another major area of police action is administrative.

There is comprehensive administrative legislation (see ANNEX II) dealing with a set of discriminatory behaviours that come within the scope of application of this Protocol. Given their particular impact, racist, xenophobic or intolerant actions associated with sporting events are considered here. They are described in **Article 2 of the Anti-violence, Racism, Xenophobia and Intolerance in Sport Act, No. 19/2007 of 11 July**. Because of their importance, the following stand out:

- Actions whereby, publicly or with the intention of widespread dissemination, at the time of a sporting event, competition or display, or close to its time, an individual or legal entity issues statements or transmits information whereby a person or group of persons is threatened, insulted or taunted because of their racial, ethnic, geographical or social origin, and their religion, convictions, disability, age or sexual orientation.
- Actions during or close to the time of a sporting event, competition or display, or in the sports venue, the surroundings or on public transport for travel to the sports facilities, which represent harassment, such undesired conduct related to racial or ethnic, geographic or social origin and to a person's religion or beliefs, convictions, disability, age or sexual orientation, whose aim or consequence violates their dignity and creates an intimidating, humiliating or offensive environment.
- Statements, gestures or insults uttered in sports venues during matches, in the vicinity or on public transport for travel to them, and involving clearly degrading treatment for any person because of their racial, ethnic, geographic or social origin, and for religion, beliefs, disability, age, sex or sexual orientation, along with those inciting hate between persons and groups or which seriously breach the rights, freedoms and values enshrined in the Constitution.

- In sporting venues during sporting events, in the vicinity or on public transport for travel there, the chanting of songs, sounds or slogans and the display of signs, banners, symbols or other signals containing degrading or intimidating messages for anyone because of their racial, ethnic, geographic or social origin, religion, beliefs, disability, age, sex or sexual orientation, along with those inciting hate between persons and groups or which seriously violate the rights, freedoms and values proclaimed in the Constitution.
- Provision of technical, financial, material, electronic or technological resources which support, incite or help persons or groups of persons to carry on the actions set out in previous paragraphs in sports venues during sporting events, in the vicinity or on public transport for travel to them.
- Display in sports venues, their surroundings or on transport organised for travel there of banners, symbols, emblems or captions which, given their content or the circumstances in which they are displayed or used in some way incite, foment or aid violent or terrorist behaviour, or constitute an act of manifest contempt for persons participating in the sporting event.
- Provision of technical, financial, material, electronic or technological resources to persons and groups promoting racist, xenophobic and intolerant behaviour in sport, plus the creation and use of digital supports to the same ends.



3

HATE CRIME INDICATORS

A description of the motivation for the unlawful act using data obtained not just from the declarations of victims or perpetrators but also for the correct conduct of visual inspections by the judicial police, along with photographic or videographic reports gathering remains such as symbols, logos, clothing or tattoos of the alleged perpetrators, are of the **greatest importance** for a correct judicial-penal classification of the acts and, in particular, for an **evaluation of the aggravating circumstance established in Article 22.4 of the Criminal Code**. This will also have major repercussion on the possible adoption of precautionary measures such as remand in custody, or restraining orders on perpetrators.

In that sense, Law Enforcement Agency officers must receive specific or qualified training enabling them to detect whether the facts known to them can be categorised as a crime motivated by hate or discrimination. Such training is tuned to a fundamental end, to guarantee and direct an investigation toward **accrediting the indicators that characterise this criminal behaviour**. For these purposes, the so-called **polarisation indicators** are of the greatest significance.

POLARISATION INDICATORS

These are indicators that must be compiled and included in the police report, to furnish prosecutors and judges with sufficient rational indications of criminality, allowing charges to be formulated and, as applicable, for convictions to be handed down.

The presence of one or more polarisation factors is sufficient for focusing the investigation to reveal the presence of racist, xenophobic or some other motivation in the crime committed. The following may be considered notable among the polarisation factors that may lead to the motivation being accredited:

- The **victim's perception**. Following the recommendations of the Council of Europe's Commission combatting Racism and Intolerance (ECRI), the mere perception or feeling of the victim that the motive for the crime experienced may be racist, xenophobic or discriminatory obliges the authorities to conduct an effective and comprehensive investigation to confirm or discard that. Such subjective perception on the victim's part does not mean that ultimately the act will be classified as racist, xenophobic or discriminatory, but it does require the judicial police, prosecutors or investigating judges to investigate it. This was ruled by the European Court of Human Rights in decisions dated 4 March 2008, 31 March 2010, 4 March 2011 and 20 October 2015.
- **The victim belongs to a minority collective or group** because of ethnicity, race, religion, sexual orientation or identity, etc.

- **Discrimination and hate by association.** The victim may not belong to or be a member of the target group but may be an activist acting in solidarity with it. It may also happen that the victim was in the company of members of the vulnerable group. This in short concerns victims who do not belong to a minority but are deliberately selected because of their relation with it, e.g. acts against interracial couples or groups of friends of different national origins, religions or ethnicities or against members of an NGO defending minority rights.
- **Racist, xenophobic, homophobic, or any other degrading comment made against any person or group because of their ideology, religious orientation or disability,** etc., proffered by the perpetrator/s at the time of the action, with the recommendation in such cases that this be set out literally in victim or witness statements.
- **The perpetrator's tattoos, dress or appearance.** These elements often contain symbolism associated with hate, and help to accredit and describe in graphic form the perpetrator's profile and motivation for the crime. Thus the Law Enforcement Agencies must provide photographic accounts in their reports setting out all these data.
- **Propaganda, standards, banners, placards, etc. of an extremist or radical nature** which may be provided by the perpetrator or are found at their residence in the case of a home search. All these items will be filmed or photographed for inclusion in the report.
- **Police records on the suspect.** Background which may emerge from participation in similar actions or for having been previously identified from attendance at concerts of a neo-nazi character, RAC/OI² music, speeches, meetings or demonstrations of an ultra tone and defined by their hostility toward minority groups.

The law will match Spanish criminal records against those related to final convictions imposed by judges or courts in other European Union Member States, aligning the penalties handed down by them with those of the Spanish courts, except when their records have been cancelled – or may be cancelled under Spanish Law – with the concurrence of the aggravating factor of relapse.

² Anti-Communist Rock

- The **incident occurred** near a **place of worship, a cemetery or the establishment of a group deemed to be a minority** in the area, e.g. an association defending human rights or an NGO.
- The **suspect's relation with ultra football groups**. These data will have to be cross-checked against with those held by security coordinators in football stadiums and kept in the Central Register of Sanctions on violence, racism, xenophobia and intolerance in sport.
- The **suspect's relation with groups or associations characterised by hate, animosity or hostility towards groups** of immigrants, Muslims, Jews, homosexuals, etc.
- The **apparently gratuitous nature of the violent acts**, with no further clear motive. This factor must be treated as a very powerful indicator.
- **Historic enmity** between those in the victim's group and the alleged perpetrator.
- When the acts coincide with the motivation or on the occasion of **a date significant** to the target community or group. E.g. Friday, prayer day for Muslims, or a Saturday for Jews, gay pride day, etc.
- When the actions occur on a date, at a time or in a place **commemorating an event or constituting a symbol for the offender**, such as 20 April, Hitler's birthday.
- The **offender's conduct**. Those committing hate crimes frequently manifest their prejudices before, during and after the discriminatory incident. This makes it advisable to investigate and compile the relevant information on the offender in open sources of information such as the Internet, social networks, forums etc.

The perpetrators sometimes use their mobile phones to film the actions and upload them on the Internet to boast of their action or show off to friends. In such circumstances it would be of the greatest interest to **secure judicial authorisation and analyse their mobile telephones or computers** to obtain evidence. There have been cases in which these recordings have proved important in establishing the motive, facilitating pertinent data enabling investigators to gather evidence leading to a conviction. Such measures may not however be appropriate in all cases, depending on the seriousness of the offence.

Relatively frequently the perpetrators belong to groups or organisations expressly set up to spread the doctrine of hate, and which encourage and promote the commission of violent acts against certain groups of persons such as immigrants, homosexuals, those practising other religions, etc.



It is not sufficient simply to clarify the facts and focus on the perpetrator. The investigation must be exhaustive, to throw light on the possible existence of true masterminds.





4

THE PHASES OF POLICE ACTION



4.1. INITIAL PROCEDURES

Should an act become known whose nature may be deemed to constitute a hate crime, the Law Enforcement Agencies will complete the following initial formalities set out in Article 13 of the Criminal Proceedings Act:

- To protect those offended or damaged by it, their family members or other persons.
- To record evidence of the crime which may disappear.
- To collect and place in custody any element which may lead to its verification and the delinquent's identification.
- If appropriate, to detain the alleged perpetrators of the crime.

Subsequent actions to be completed with the victims, perpetrators and witnesses are detailed below.



4.2. CONTENT OF THE POLICE REPORT

Police intervention in such hate incidents takes the form of a police report **incorporating all the polarisation indicators**, namely items of evidence and signs needed to accredit the presence of the differentiating element, a specific motive that classifies and determines the commission of hate crimes. In particular, the following must be borne in mind:

- The **statement of the facts must be chronological, clear and precise**. The victim will be invited to set out the facts in their own words, without modifying the tone because it may be harsh. Likewise, italics will be used for any expressions or insults manifested by victims or witnesses, to reflect the literal nature of the account given.
- **Detailed identification of victims, perpetrators and witnesses**. The identification procedures must strictly respect the principles of non-discrimination for reasons of birth, nationality, racial or ethnic origin, sex, religion or beliefs, age, disability, sexual orientation or identity, an opinion or any other personal or social condition or circumstance.
- **The site of the events**, specifically stating any proximity to places of meeting, worship, sports events, etc.

*Discriminatory motivations must be probed, emphasising whether the date of the aggression was indicated by extremist groups or an unfortunate event took place in connection with a barbaric act, the significant date of a religious festivity or, in general, any of the **polarisation indicators**.*

- **Date or dates** on which they occurred.
- **Motives** put forward by the perpetrator.
- **Type of mistreatment**: physical, psychological or moral. Mistreatment must be described in full detail, avoiding generic expressions and reflecting as faithfully as possible the words used, the insults, threats, etc., and the actions that took place.
- **Means used**. Documentary record must be made of activity on the Internet, social networks and those using new technologies, whose content may disappear.

Particular attention must be paid to intervention in computer equipment during searches made in homes, premises or establishments, so that all equipment is sealed and not in any way manipulated *in situ*. This aims to preserve the chain of custody so that subsequent analysis by experts specialised in the field can be valid as evidence in court proceedings.

- **Similar previous events**, including those not reported.
- **Reports** drawn up for previous events.
- **Statements by victims and perpetrators**, taking account of any hate polarisation indicators.
- **Witnesses** able to corroborate the facts reported (family, friends, neighbours, etc.).
- **Professional reports** from healthcare personnel.
- **Informing the victim** when applicable of the right to seek a restraining order or some other protective measure, and to press it in the Courts.

- To avoid discriminatory situations, the Law Enforcement Agencies themselves must take particular care. All official public documents such as police reports and any information shared with social communication media must **avoid using terms or expressions which might be perceived as offensive or pejorative in referring to the group or sector of the population to which those involved in the actions belong** or which may identify or associate the rest of the group with the perpetrators of a punishable act, e.g. with persons from the Roma ethnic group, to avoid using the word “gypsy” and its connotations.



4.3. THOSE RESPONSIBLE

Statements will be taken from those responsible in line with the precautions in this country’s criminal procedural provisions and police operational procedural standards so that, in the case of detainees or individuals held in custody, **Article 520 of the Criminal Proceedings Act** (amended in Organic Act No. 13/2015 of 5 October) will be complied with strictly.

Moreover, pursuant to Article 520 of that Act *“detention and remand in custody must be applied in a manner which **is least prejudicial to the detainee’s person, reputation and property**. Those ordering the measure and those assigned to implement it, as well as during subsequent transfers, **must safeguard their constitutional rights to honour, privacy and image**, respecting the fundamental right of freedom of information”*.

Express reference to the catalogue of **rights** in **Article 520 of the Criminal Proceedings Act will be adapted** according to **age, maturity, disability** and any other personal circumstance which may limit the capacity to understand the scope of the information facilitated. It will therefore be furnished in a language which is comprehensible and accessible to the recipient and, for example for those with an intellectual disability, in **easy-to-read** mode.

It will prove to be of the greatest effectiveness for the investigation, whenever the circumstances of the police operation make it advisable, to complete initial procedures in the place where the actions occurred, giving certified record of the perpetrators’ **dress, tattoos**, a **description of the place where** the detention **took place**, accompanying persons, **the items taken from them**, etc. Other aspects of interest must also be recorded, such as **greetings, gestures** or any other form of **language or communication** used by the perpetrator and which may prove significant for the investigation. If possible, there should be graphic or audiovisual record of all these actions, to be incorporated into the report.

Should there be several perpetrators, they will from the outset be prevented from sharing the same physical space, to prevent them from agreeing on a common position.

In addition to the above questions, the police report must indicate:

- The **place** and **time** of the **detention** and **remand** or **release**.
- The perpetrator's **criminal record**.
- Whether subject to penalty for **administrative infractions** linked to acts of hate and discrimination.
- Their **relations with the victim** and the proximity of their physical residence.
- **Membership of an association, body or criminal organization** engaging in hate or discrimination.
- In the matter of **tattoos**, the 17 March ruling No. 161/2015 of the Supreme Court Criminal Division may be noted, to the effect that any form of symbolism anywhere on a detainee's body which is not visible and for which their active collaboration is required, must be photographed in the presence of their lawyer to ensure that they are granted all the procedural guarantees deemed necessary for that to be considered legitimate evidence.
- **Presence at events or shows** where hate or discrimination incidents may occur.
- **Arms** in their possession.
- Any **addictions or substance abuse**.
- Any restraining order or orders.
- The aggressor's profile will be notified to the specialised units to run an **Internet search** for evidence which may assist the investigation.
- In case of record of the perpetrator's membership in a given group or association, it may be appropriate to ask the Judicial Authority for a **search of the premises or establishment concerned**. Computer equipment and printed matter are among the items which may subsequently be analysed.
- Any **examination of a minor** under investigation who is charged with a punishable act, whether detained or not, must as far as possible be carried out by police experts in the field. If a minor is charged with a criminal act, any exploration must be conducted in the presence of those holding the minor's custody, protection or guardianship, unless they are under investigation or the courts order otherwise, exceptionally and in motivated form, or the Public Prosecutor. The court may order that the declaration be recorded. In cases involving minors, **Instruction No. 1/2017 of the State Secretariat for Security** dated 24 April approving the **Protocol for Police Action with Minors** must be borne in mind.

4.4. WITNESSES



Similarly, it will be of the greatest effectiveness for an investigation for witnesses to be sought at the place where the actions took place, securing all their personal details, addresses, etc. Their statements ought not to be delayed excessively as they may, after a certain time, be unwilling to collaborate. The report must include the following:

- Whether an **eyewitness** or by hearsay.
- **Description of the facts** known to them.
- Knowledge of previous **similar cases**.
- If at any earlier time it was necessary to **aid the victim**.
- The **usual conduct of victim and aggressor in the community** where they live, if the witness resides there.
- The **relation with the victim and the aggressor**.
- To require them to report on **aspects detailed** in part 3 (**polarisation indicators**).

Should a witness **not understand or speak Spanish**, an interpreter will be appointed through whom to ask questions and to receive their replies. In such circumstances, the declaration must be set down in the language used by the witness, then translated into Spanish.

If the witness is **deaf**, a sign language interpreter is appointed.

In cases where it is felt necessary given the seriousness of the matter, petition may be addressed to the Judicial Authorities to allow the witness to benefit from the terms of Organic Act No. 19/1994 of 23 December on the Protection of Witnesses and Experts in Criminal Cases.

As provided for in the State Secretariat for Security's Instruction No. 1/2017 of 24 April updating the "Protocol for Police Action with Minors", and in Organic Act No. 8/2015 of 22 July modifying the system for the protection of children and adolescents, when the witness of a criminal breach is a **minor**, the police action is adjusted to take account of the following:

- The minor's age and maturity.
- The personal circumstances.
- The nature of the acts leading to the intervention.
- The need, given their particular vulnerability, to guarantee their equality and non-discrimination.
- Any other elements for consideration which may be deemed relevant in this particular case, and they respect the rights of minors.

At the same time, they shall immediately receive any care, protection, and social, psychological, medical and physical assistance they may require.

In an examination of a minor who has witnessed a criminal act, it must be remembered that:

- Under no circumstances may the minor be forced to declare. This aspect is recorded in the report.
- Should the minor wish to declare, this must be done in the presence of their parents, guardians or carers, unless the circumstances suggest otherwise, in which case the Prosecutor with jurisdiction will be notified, to decide accordingly.



4.5. COMMUNICATION TO THE COURT AUTHORITIES AND THE PUBLIC PROSECUTOR

A Decree of the General State Prosecutor's Office dated 10 October 2011 created and inaugurated the category of Division Prosecutor Delegate for penal guarantee of equality and against discrimination, a role taken up from 12 December 2012 by the Coordinating Division Prosecutor for Cyber-Crime. Now, and as of 1 April 2015, the category continues, in its own right, newly named the **Division Prosecutor for Hate Crimes and Against Discrimination**. In turn, **Provincial Delegate Prosecutors for Hate Crimes and Against Discrimination** have been appointed in territorial Prosecutors' Offices. This network of Delegate Prosecutors is intended chiefly energise and reinforce the Public Prosecutor's action against hate crimes on the basis of uniform criteria in the interpretation and application of the legal standards.

*When any event possibly related to hate crimes becomes known, **and even in the absence of a known perpetrator, all information** of interest related to such reports as may have been delivered on facts connected with this matter **is forwarded** directly to the **Provincial Delegate Prosecutor for Hate Crimes and Against Discrimination** in the province concerned,.*

Reports processed for any of the criminal categories indicated in Chapter 2 must be delivered to the pertinent **Provincial Delegate Prosecutor for Hate Crimes and Against Discrimination, even should the perpetrator be unknown**, irrespective of whether any other Judicial or Prosecuting Authority must be notified for their information, with a view to implementing any complementary proceeding and statistical registration.

It is also important **to make it clear on the cover or sleeve of reports processed that the actions investigated may amount to hate crimes.**

Likewise, as provided for in the procedural criminal legislation, the Preliminary Investigating Court with jurisdiction is notified of the fact that these acts have occurred.

Where minors are involved in hate crimes (as victim, perpetrator or witness), the Office of the Prosecutor of Minors must be advised and a copy of the procedures completed is delivered to that Office.



4.6. CONCURRENCE OF CRIMINAL AND ADMINISTRATIVE PROCEDURES

The fact that criminal proceedings are under way does not prevent administrative or disciplinary proceedings from being opened on the same facts, although no ruling can be issued in these until a final conviction or dismissal has been handed down in that criminal matter.

A criminal and administrative or disciplinary sanction may be decreed on a single set of facts only when the subject, act and legal principle are not identical.

In any event, a declaration of proven facts in a ruling ending a criminal procedure will link to that issued in the administrative and disciplinary proceedings, notwithstanding any difference of legal classification in either.

Following this analysis, in such cases, and to avoid statutes of limitations, lapse or simply malfunction and delay, the following considerations may be set out as examples of action:



- For charges filed by Law Enforcement Agency officers if, following examination of the content and its initial classification, the authority with the jurisdiction to hear or rule on the matter considers that the terms of such charge do not constitute an administrative infringement but may involve a criminal breach, the complainants should draft the associated formalities, with all the guarantees established in the procedural provisions (to appoint an examining officer and clerk, take a statement, to offer actions, etc...) for delivery to the Public Prosecutor or the pertinent Court, provided that no statute of limitations has come into effect on those facts.
- Should review and consideration of the facts suggest that the subject, action and principle are identical and may result in a case of criminal or administrative breach and, therefore, a possible related criminal procedure, the complainants must prepare the associated documents, to be forwarded to the Public Prosecutor or the relevant Court.

In such case, the documentation must indicate that an administrative charge has also been filed with the corresponding authority concerning the same facts. That administrative Authority will file penalty proceedings in the matter, which will be suspended in a resolution reasoned in the terms of Article 7.2 of Royal Decree No. 1398/1993 pending an eventual court decision, thereby avoiding the statute of limitations on the administrative breaches alleged.

- The same happens if, once administrative penalty procedures are under way, it is revealed that criminal judicial proceedings have been opened concerning the same facts. The investigating officer must suspend the matter pending the Court's decision, then renewing or closing it in the light of the verdict handed down.



5

THE VICTIMS: ATTENTION, PROTECTION AND GUIDANCE FOR VICTIMS. THE VICTIM'S STATEMENT

Taking account among other criteria of the terms of European Parliament and Council Directive No. 2012/29/EU of 25 October 2012 defining the minimum rules on the rights, support and protection for the victims of crimes, replacing the Council's Framework Decision No. 2001/220/JAI, and its transfer to the domestic provisions in **Act No. 4/2015 of 27 April, the Victims of Crime Statute**, of 27 April, the following principles must be fulfilled in the treatment of victims of crimes, and of hate crimes in particular:

Hate-crime victims must be recognised and treated respectfully, sensitively and professionally, and are entitled to protection, information, support, assistance, attention and active participation, free of any form of discrimination.

- Account must be taken of the **circumstances and nature of the crime**, the **seriousness of the damage caused to the victim** and **risk that the crime may recur**, together with the **victim's characteristics** and **personal situation and their immediate needs, age, sex, possible disability, special protection and maturity**, in order to define their special protection requirements. At the same time, their physical, mental and moral well-being, freedom, safety, sexual freedom and indemnity, their privacy and dignity and those of their family members will be fully respected.
- Because of their vulnerability, it is advisable to **act prudently** in interacting with victims and their family members.
- As with the victims of other types of crime, it will be endeavoured as far as possible to take **claims** or **statements** in places that respect the victim's **privacy and intimacy**, enabling them to describe the circumstances surrounding the actions investigated in an **environment of trust**.
- **Direct contact of victims and family members with the suspect or accused** must be avoided.
- All **necessary measures** will be taken to **protect the privacy of victims and their families**, so that no information is divulged which may make it possible to identify underage victims or disabled persons with special protection needs.
- They may be **accompanied by the person whom they designate**, without precluding the intervention of legal counsel when in order, in the procedures and in engagement with the authorities, save when that may be detrimental to the correct pursuit of the matter.

- Those targeted by these crimes must be protected from **secondary victimisation** so securing the victim's statement without unjustified delay, reducing the number of statements and medical checks to the necessary minimum. They must at the same time receive adequate support to facilitate their recovery, and must have sufficient access to justice.
- A person must be considered a **victim irrespective of whether the perpetrator has been identified, detained, charged or convicted** and independent of any family relation between them.
- **Members of the victims' families** may also suffer loss as a consequence of the crime. In particular, members of the family of someone who has died or disappeared as a direct result of a crime may suffer damage as a consequence. Therefore, family members who are indirect victims of the crime must also benefit from protection.
- Information and guidelines must be provided in **simple terms** and **in language which is clear and accessible**, adapted to individual circumstances and the nature of the crime and the damage and loss caused. If the victim suffers from an intellectual disability, the documentation used must therefore be in **easy-to-read** version.
- It must also be guaranteed that the **victim can be understood while action is being taken**. Particular account must be taken of difficulties of understanding or communication arising from disability such as limitations on hearing or verbal expression, status as minor, their maturity, those arising from intellectual disability or mental health problems or any other personal circumstance which may alter the capacity to understand the scope of the information provided.
- Thus, for victims with **intellectual** or development **disability** (including witnesses) **when deemed appropriate, a "facilitator" may be allowed to intervene** to aid in access to justice for the intellectually disabled person, as of the first contact with the police. The facilitator's functions include first contact with officers, and effective communication between the disabled person and the police and court teams, as well as accompanying, all based on **neutrality**. This involves tasks such as preparing the victim for the police interview, an assessment of the victim's capabilities, interpretation or an evaluation of their capacity to consent.

A "facilitator" assists access to justice for the person with intellectual disability from the moment of the first police contact.

- For their intervention, contact will be made with national or provincial institutions or organisations with professionals specialised in intellectual disability who have trained as *“facilitators”*.
- Information must be provided in **sufficient detail** to ensure that dealings with the victims are respectful and they are able to take decisions which are fully informed in terms of their involvement in the processes. In defined cases, once the Judicial Authorities have been notified, any specific information sought on the perpetrator’s release or escape will be provided to victims at least in cases where there is a specific threat to their safety and provided that such notification does not create a specific risk of loss to the perpetrator.
- The **information** must be provided **to the victim from the very outset**. It must be detailed and subsequently updated and must **focus and inform on the rights available to the victim** on such questions as: support measures; the procedures for using the right to file complaint; the form and conditions of the protection, legal advice and defence; indemnification, interpretation and translation; measures to ensure the effectiveness of their interests if residing in another European Union country; how to proceed with a complaint because the authority with jurisdiction has failed to act; contact details for communications; services available for legal redress; and the procedure for reimbursement of court costs. The same goes for the victim’s right as complainant to receive a duly certified copy of the complaint, free language assistance for a victim wishing to file charges, and a free translation of the copy of the charge filed.
- For taking a statement, they must be **assisted free of charge by an interpreter** who speaks a language they understand. This right also applies to those with limitations on hearing or oral expression.

- The services offered by the **Offices for Assistance to Victims** should be made known. This is a free public service provided in all the Autonomous Communities, and assistance is never made conditional upon a prior complaint. It offers among other things information for victims on the procedure for filing charges, the benefit of psychological assistance, accompaniment in court, advice on social resources etc. When a crime causes especially serious loss this can be extended to members of the victim's family in terms also established in regulations. Authorities or officers making contact with victims **must refer them to the Offices for Assistance to Victims when necessary given the seriousness of the crime, or the victim requests that.**
- If the **victim is a minor**, it must be ensured that their higher interest prevails, and such interest is subject to individual evaluation. Any measure adopted for the minor's greater interest must respect the applicable procedural guarantees, in particular the minor's rights to be informed and heard and to participate in the procedure as provided for in the current provisions; the inclusion of qualified professionals and experts in the procedure; the participation of their parents, guardians or legal representatives or a judicial defence counsel in case of conflict or discrepancy with them, and the Public Prosecutor to defend their interests; a decision whose reasoning sets out the criteria employed; and the appeals allowing them to be reviewed.

As provided for in Instruction No. 1/2017 of the State Secretariat for Security, dated 24 April, updating the **Protocol for Police Action with Minors**, and in the Organic Act "http://noticias.juridicas.com/base_data/Privado/557001-lo-8-2015-de-22-jul-modificacion-del-sistema-de-proteccion-a-la-infancia.html" \t "_blank", and Act 2015 of 28 July amending the system for the protection of children and young people, when the **victim of a criminal offence is a minor, police action is adjusted to the minor's age and maturity; their personal circumstances; the nature of the facts** originating the intervention; the **need to guarantee their equality and non-discrimination because of their special vulnerability**, be this lack of a family environment, mistreatment, disability, sexual orientation and identity, their condition of refugee, seeking asylum or subsidiary protection, membership of an ethnic minority or any other significant characteristic or circumstance; **the need for stability in the solutions adopted in promoting the minor's effective integration and development in society while minimising risks which any shift in their material or emotional situation might cause to their personality and future development**; and **other analytical elements** deemed pertinent in that case, and which respect minors' rights. This obligation is also kept in mind for particularly vulnerable groups such as unaccompanied foreign minors suffering abuse in this area.

In examining a minor who has been the victim of a criminal act, the following must be borne in mind:

- Under no circumstances may the minor be forced to declare. Should they not wish to declare, this must be recorded in the proceedings.
 - When they agree voluntarily to declare, unless the circumstances advise otherwise, this will be done in the presence of their legal representatives and, when necessary, the Prosecutor with jurisdiction will be notified, to decide accordingly.
- In cases of **minors** and persons with **disabilities requiring special protection, statements taken during the investigation phase will be recorded whenever possible** with the consent of the guardians or legal representatives, using audiovisual means for subsequent reproduction in court. This makes it advisable, in investigations into actions of certain relevance, for victim and witness statements to be recorded audiovisually, reflecting the literal expressions and insults proffered to the victim, and important aspects of the non-verbal language facilitating contextualisation, immediacy and clearer understanding of the facts for the judicial authority.

A statement may also be taken through experts. The Court may ultimately be asked to designate judicial legal counsel for the victim, to represent them in the investigation in cases of conflict of interest such as where the legal representatives of the minor or disabled person requiring special protection are not in a position to implement their functions or the victim has been separated from them.

- With a view to avoiding extreme outcomes such as suicide, **protective measures will be adopted for underage victims and the disabled suffering harassment** (in school, by members of the community, etc.) following assessment of the gravity of the facts. In cases resulting in death, the possibility will be considered that this may be a suicide linked to a prior situation of harassment.

For disabled, especially vulnerable or underage victims, in addition to the general measures, others will be adopted which may prove necessary to avoid greater loss to them.

Expanding on the complaint process, victims are often disinclined to file for a multitude of reasons, including:

- A conviction that it is all useless.
- Mistrust or fear of the Law Enforcement Agencies.
- Fear of possible reprisals, intimidation, and secondary victimisation.
- Lack of knowledge of the law.
- Shame.
- Denial of the presence of the motivation underlying the act.
- Fear of revealing their sexual orientation, ethnic, religious or political ties.
- Fear of arrest and/or extradition.
- Problems of communication and unfamiliarity with the language.

To overcome this possible resistance to filing a charge, **all possible mechanisms must be put in place to remove any obstacles preventing or impairing such action.**

NGOs usually play a highly relevant role in this entire process, making them fundamental allies in aiding and protecting the victims who must therefore be **informed** of the **organisations in the civil field which may provide assistance and further aid.**

Contact will be facilitated with civil sphere organisations specialised in support and attention for victims of discrimination and hate crimes.

The following are noteworthy among actions to be taken with the victims and not referred to above:

- As already pointed out, their statement will, if possible, be taken by **personnel with adequate training, chiefly in the criteria for cognitive interview of vulnerable victims**, and by the **same person**, to avoid or limit the harm to them. Declarations will in any event be taken literally, reproducing insults or racist, xenophobic, homophobic expressions, etc. however vulgar or offensive they may be.
- Provision for them to be **accompanied to a healthcare centre** and to facilitate **access to social services.**

- To improve and strengthen **coordination with the social services**.
- To facilitate the **possibility for medical checkups**, whenever essential for the victim's situation or for the purposes of the investigation.
- If necessary because of the seriousness of the injuries, to ask the hospital centre to document **the victim's lesions** in the most adequate manner.
- To ask the doctor examining the victim for the report in addition to record their **emotional state**.
- In a specific document (offering actions), **to inform them of the rights** available to them as victims. In particular, **victims of violent crimes or those against sexual freedom** will be advised of the specific rights in this field, and the aid granted them in such cases. If the victim is intellectually disabled, **easy-to-read** documentation will be used.
- **To investigate potential reprisals against** the victim and their surroundings, in such cases informing them of the right to petition the Judicial Authorities for a restraining order or other protective measures and, where appropriate, to apply the legislation on the protection of witnesses and experts from the moment of the first action by the police.

The victim's statement must observe the Constitutional Court's precedent for classifying the matter as evidence, so that the following elements must be present:

- An absence of subjective implausibility resulting from prior accused-victim relations pointing to a possible spurious motive or revenge which may muddy the sincerity of the declaration.
- The veracity of the statement, which must be corroborated by other objective data on the record of the case.
- Persistent incrimination, extended over time, repeatedly specific and stated without fundamental ambiguities or contradictions.



6

HATE CRIMES COMMITTED ON THE INTERNET AND SOCIAL NETWORKS

Experience shows that so-called hate speech is no longer spread so much in lectures or addresses before a live audience but now many people or criminal groups take advantage of the Internet and social networks for the purposes, protected by the greater facilities these media offer for the mass dissemination of their ideas and the enormous potential for spreading messages and the difficulties in investigating and prosecuting them, particularly when the authors are in countries where such conduct does not amount to crime, or use is made of more permissive servers.

● ● ●

Law Enforcement
Agencies must make it
a priority to pursue
investigations
designed to combat
criminal activity
coined as “cyberhate”

● ● ●

This phenomenon of “cyberhate” is applied to the use of electronic information communications (the Internet, mobile devices etc.), to spread anti-Semitic, xenophobic, homophobic, racist, intolerant or extremist messages or information, etc.

Here, investigation must be intensified along the lines defined in Instruction No. 2/2014 of the State Secretariat for Security re-launching and furthering the Plan of Action and Police Coordination against Organised, Violent Youth Groups. This Instruction sought to tackle the problem of juvenile gangs comprehensively, focusing not just on specific police response measures but also on the adoption of a wide range of preventive initiatives including action in education, regulation and awareness.

As part of that criminal activity and as a special element, particular mention must be made of music used to propagate the doctrine of hate, especially so-called “R.A.C” (Rock Against Communism) or “OI”, whose lyrics clearly incite violence against, if not the extermination of immigrants, homosexuals, Muslims or Jews.

Here, a quandary arises which is in some cases difficult to resolve in that Law Enforcement Agency officers must determine whether content disseminated in the electronic communication media amounts to a direct attack on a person or on a particularly vulnerable group or, on the contrary, represents the exercise of freedom of expression.

The European Court of Human Rights, takes two approaches in deciding **whether there is incitement to hate or discriminate or a simple use of the right of freedom of expression**, as provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms:

- **Exclusion from protection under the Convention** in the terms of Article 17 (Prohibition of abuse of rights: *“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”*), where such observations amount to hate-speech and deny the Convention’s fundamental values; and
- To **establish restrictions on protection** in terms of Article 10.2 of the Convention (this approach is adopted when the discourse, while hate-speech, is not sufficient to destroy the Convention’s fundamental values). In this case, the restrictions are considered necessary as a matter of national security, public security, crime-prevention, protection of health or of morals, and safeguarding the rights and freedoms of others.

The Court will therefore consider in turn whether freedom of expression has been interfered with, if such interference is established by law and pursues one or more legitimate objectives and, finally, is necessary in a democratic society for attaining these objectives³.

Likewise, **Circular No. 7/2019 General State Prosecutor’s Office “on the interpretation of Article 510 of the Criminal Code”** cites Recommendation No. 15 of the European Commission against Racism and Intolerance setting out the criteria in the **United Nations’ Rabat Plan of Action** for setting the threshold allowing an adequate definition of what sort of expressions may constitute crimes, in the following terms:

1. The **context** in which the hate speech in question is used (especially if there are already serious tensions associated with such speech in the society).
2. The **capacity** of the person using hate speech to influence others (for example as a political, religious or community leader).

³http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

3. The **nature** and **force** of the language used (if provocative and direct, if using deceptive information, disseminating negative stereotypes and stigmatisation, or if able by other means to incite violence, intimidation, hostility or discrimination).
4. The **context of the specific comments** (whether an isolated incident or reiterated, or whether they may be considered to be balanced by other expressions by that same person or by others, especially during debate).
5. The **medium used** (whether or not it may provoke an immediate response from the audience as at a live public event).
6. The **nature of the audience** (whether or not it has the resources or is prone to or susceptible of engaging in acts of violence, intimidation, hostility or discrimination).

The current legal framework for investigating hate crimes and discrimination using information society services (the Internet, social networks, email, etc.), particularly the crimes provided for in Articles 510 and 515.5 of the Criminal Code, is defined in the following legal texts:

- The Information Society Services and E-commerce Act, Act No. 34/2002 of 11 July (as drafted in the Measures to Promote the Information Society Act, Act No. 56/2007 of 28 December, subsequently amended in the Sustainable Economy Act, No. 2/2011 of 4 March).
- Act No. 25/2007 of 18 October on the Conservation of Electronic Communications and Public Communication Network Data.

The law demands that the crime investigated be “serious” although, as repeatedly indicated by the Constitutional Court, the seriousness of the punishable breach cannot be determined solely in terms of the legally established penalty although that is unquestionably one component which must be considered: however other factors must also be taken into account, e.g.:

- The nature of the legal interest protected.
- The social relevance of the conduct.
- Criminal organisations committed the crime.
- The effect of the use of information technologies, abuse of which facilitates the perpetration of the crime and makes it difficult to prosecute.

On the other hand, the Supreme Court’s Case-law has established the validity of messages or other digital archives disseminated on the Internet as evidence, fixing the criteria for the correct evaluation of this type of evidence, particularly given the fact that the instantaneous communication media are easily manipulated.

Specifically, according to Supreme Court Ruling No. 300/2015 of 19 May, *“evidence in the form of two-way communication using any of the multiple instantaneous messaging systems must be approached with great precaution. The possibility of manipulating digital archives giving form to this exchange of ideas forms a part of the reality of things (...) Hence challenge of the authenticity of any of those conversations, when filed in proceedings in printed files, shifts the burden of proof to the party aiming to make use of their evidential suitability”*.

Therefore, *“it will be indispensable, in such a case (where the conversations are furnished in the form of printed files and for them to be accepted as evidence in the procedure) for expert evidence to be heard which identifies the true source of such communication, the identity of the interlocutors and, in short, the integrity of the content”*.

Thus the Supreme Court’s case-law has settled a number of questions, among them that transcriptions of Internet, social network and other messages using electronic devices, mobile phones and others (smartphones, tablets, etc.), “screenshots” or any other written or sound transcription constitute personal evidence, documented subsequently for submission in the proceeding. It may under no circumstances be deemed to be documentary evidence, so that error in the lower courts’ evaluation is not a motive for filing a motion to vacate in the Supreme Court for legal infringement.

Moreover, the Senior Court considers that this evidence must be analysed minutely in each case, determining its validity and soundness via other evidential resources (expert evidence and others). The court’s final decision as to its reliability will be the result of an evaluation of all the evidence heard in the judicial procedure.

Enhanced effectiveness in prosecuting this type of crime and in combatting the spread of hate speech through the new technologies makes it advisable for their investigation to be carried out by specialised Judicial Police units with adequate technical resources and personnel trained in the field, to monitor the Internet and social networks. Depending on the extreme gravity of these facts, they will be notified to the Central Judicial Police Units.

The **covert IT Agent** (Organic Act No. 13/2015 of 5 October amending the Criminal Proceedings Act) makes it possible to act in closed online communication channels and to exchange or send archives whose content is itself illegal, as part of an investigation, and analyse the results of the algorithms applied, to identify those archives. These tasks always require authorisation from the courts, to guarantee full respect for the rights of privacy and the secrecy of the communications of those affected by the investigation.

Thus, under Article 282.6 bis of the Criminal Proceedings Act, *“the Preliminary Investigating Court may authorise Judicial Police officers to act under an assumed identity in communications in closed communication channels to elucidate any of the crimes referred to in point 4 of this Article or any of the crimes provided for in Article 588 ter a)”*, in other words crimes committed using IT tools or any other information or communication or communication service technology.

On the other hand, for the registration of mass storage IT devices (computers, tools for telephone or on-line communication or for mass storage of digital data or access to on-line data repositories and other equipment) Article 588 sexies a) - c) introduces an essential prior demand, for judicial authorisation. The only exception foreseen in the legislation refers to urgent cases in which a legitimate constitutional interest is perceived which makes that measure imperative.

Remote search of computer equipment is also regulated in Article 588 septies a) - c) of the Criminal Proceedings Act. For this, the *“court with jurisdiction may authorise the use of identification data and codes and the installation of software allowing the examination, remotely and online and without the knowledge of the holder or user, of the content of a computer, electronic device, IT system, computer data mass storage facility or data base, provided that this is in pursuit of any of the following: Crimes committed using IT resources or any other information or telecommunication or communication service technology”*.

Finally, a data conservation order is foreseen (Article 588 octies of the Criminal Proceedings Act) as guarantee. *“The Judicial Police may require any individual or legal entity to keep and protect specific data or information included in a computer storage system available to it until securing judicial authorisation for its assignment”*. This seeks to incorporate this information into the procedure as evidence without risking its disappearance, alteration or deterioration.

This allows agents to investigate the dissemination on social networks of offensive messages inciting hate and violence, or Internet publications whose content may constitute crimes involving threat, etc.

It also enables a further set of technological investigation measures. Among other questions, individualised legal process is provided for police access to IMSI, IMEI, IP addresses and other elements for identifying a given card or terminal, all in line with the Supreme Court’s precedent in the matter.

Finally, it should be mentioned that, in connection with the measure for the interception of on-line communications, when the court authorises such measures for investigating crimes committed using on-line resources or any other information or communication or communication service technology (Article 588 ter a), the Criminal Proceedings Act establishes a system for sealing or advance electronic signature, or a sufficiently reliable certification system. Thus, to protect the chain of custody, this system makes it possible to guarantee the authenticity of the data downloaded by the police from the central system into the digital supports where the conversations were recorded (Article 588 ter f), to fully validate documents in electronic format which are to be incorporated into the procedure and placed at the court's disposal.



7

VIOLENCE IN SPORT

Act No. 19/2007 of 11 July against violence, racism, xenophobia and intolerance in sport is currently in force, along with its enabling regulations (Royal Decree No. 203/2010 of 26 February passing the Regulation to Prevent Violence, Racism, Xenophobia and Intolerance in Sport). These provisions set out a comprehensive catalogue of behaviours at this country's sporting venues which must be eradicated, pointing among other questions to the prohibition on introducing, displaying or producing placards, banners, symbols or other signs with messages inciting violence or by which a person or group of persons may be threatened, insulted or harassed because of their racial or ethnic origin, religion or convictions, disability, age, sex or sexual orientation.

On the occasion of a mass sports event, the police forces involved must create a mechanism to guarantee the public safety not only of those attending but of the organisers and participants; sports meetings are habitually attended by ideologically confronted rival fans or followers, which may generate violent conflicts.

Safety mechanisms put in place must include preventive and precautionary measures to confront and prevent violent, racist, xenophobic and intolerant acts by groups of followers at sports events.

In designing such safety resources for the event, account will be taken of the factors in the situation which may lead to violent acts, e.g. whether an at-home or away match, the classification of the teams concerned, the relevance of the match and the result, the way fans' groups are organised, etc.

Under the current provisions, the authorised services from the responsible police organisations' management centres will compile the information necessary on violent groups at sports events so that evidence is available for a particular occasion to prevent potential violent, racist, xenophobic and intolerant acts.

This will involve pre-match analysis and monitoring of the broadcast via any communication channel or medium (the Internet, social networks, etc.) of messages and/or slogans with racist, xenophobic or intolerant content in sport and which publicly incite violence, hate or discrimination or publicly insult and disparage persons or groups of persons because of their "race", colour, language, religion, nationality or national or ethnic origin.

To these ends, to detect potential scenarios for violent acts, the security coordinators must draw up a **report prior** to professional sports competitions setting out the following criteria among others:

- A remote record of violence or disturbances in the previous ten years.
- Immediate antecedents which may increase tension.
- The composition, organisation, and other characteristics of ultra and violent groups.
- Those receiving the tickets sold, through different channels (transfer).
- Radical group transport plans, furnished by travel agencies.

Likewise, backup services will be provided at accesses and for external and internal surveillance agreed on in each case by the police officers involved and the Security Coordinator from the club, sporting corporation or that particular event, together with controls on crowd numbers and the associated fans groups, to prevent infringement of the legal prohibitions in this area.

On the other hand, there is an obligation on those organising sporting competitions and events to provide the governmental authority and in particular the Security Coordinator with all the data available on the composition, organisation, behaviour and evolution of fan groups, and their travel plans. In addition, they must also collaborate actively in locating and identifying offenders and those behaving in ways which are prohibited under the current provisions; nor shall they provide or facilitate premises, grants, free tickets, discounts, publicity or dissemination or any other form of promotion to persons or groups of followers who have used the same transport, in support of their activities.

The police officials responsible for safety at matches shall collaborate closely, exchanging the information available, directly or through the official authorities, setting up a preventive network to control both national and foreign violent groups. In collaboration with the various federations and other organisers of these events, a census of ultra and violent groups will be prepared.

Immediately before and during sporting events, police officers will maximise all action for detecting display of racist, xenophobic or intolerant symbols in sport that provoke or are a direct means of inciting violence, hate or discrimination and, both inside and outside the venue, to prevent possible acts of vandalism, disturbances, brawls, confrontation between ultra or violent fan groups etc., which may affect security at the event. They shall, as necessary, taken any operational decisions and direct action at any time to eradicate possible violent outbreaks.

The “Fare Network” publishes a document called *Monitoring discriminatory signs and symbols in European football* which sets out the discriminatory symbolism displayed in football stadiums or used by fans.

This will, in case of conduct and incidents of a racist, xenophobic or intolerant tone observed and detected in sport, enable all available resources to be used efficiently to collect vestiges and signs enabling illegal acts to be clarified, focusing particularly on optimal use of video-cameras and video surveillance systems.

Moreover, international concern about this phenomenon is patent. In fact, FIFA has recently published the *Good Practice Guide on Diversity and anti-Discrimination*, to be used as a tool by its various national federation members. This model offers recommendations based on five fundamental pillars to clearly structure the promotion of diversity and non-discrimination in football, as well as practical examples for simple actions and initiatives that can be put in place to advance in combatting racism and discrimination in sport.



8

REGISTRATION OF HATE- CRIME-RELATED INCIDENTS

Consequent on Spain's international commitments, along with the fact that effective prevention is conditional on a correct understanding of the reality of crime, comprehensive data must be available on all hate-crime-related aspects. Consequently, employing structured data, with a harmonised, easily accessible methodology, points in the direction of the use of statistics, so that statistical recording of these developments becomes a perfect ally of the police function. Without information, problems cannot be contained.

With this in mind, changes have been made in recent years to the Crimes Statistics System (SEC) to accommodate this calculation.

A set of statistical variables is fixed in the SEC related to the action, the victim and the perpetrator, which must be complied with particularly carefully in dealing with acts which might be classified as hate crimes or discrimination. Here it must be remembered that, in addition to **specifically codifying the type of act** in question, the **criminal field or context** in which it takes place must be **defined**. The criminal field or context demarcates the circumstances and/or conditions in which a given criminal act occurs.

Thus, for tallying hate crimes, the following categories have been created in the SEC which, in addition to the aggravating aspects targeting certain vulnerable groups specified in the Criminal Code or other behaviours, refer to **aporophobia** (rejection of poverty), **anti-Roma racism** and **generational discrimination**.

- ✓ RACISM / XENOPHOBIA
- ✓ IDEOLOGY
- ✓ SEXUAL ORIENTATION OR GENDER IDENTITY
- ✓ SEX/GENDER DISCRIMINATION
- ✓ RELIGIOUS BELIEFS OR PRACTICES
- ✓ ANTI-SEMITISM
- ✓ THE DISABLED
- ✓ APOROPHOBIA
- ✓ ANTI-ROMA
- ✓ DISCRIMINATION BECAUSE OF ILLNESS
- ✓ GENERATIONAL DISCRIMINATION

Classification of these situations must always prevail, even in case of discrepancy, when perceived by anyone involved in a process (police officer, victim or third party). In other words, it is sufficient for any of the three to perceive it as such for an act to be treated for purely statistical purposes as an incident driven by discrimination.

The SEC classifies the following fields as “hate-crime” related:

- **Sexual orientation or gender identity:** any act pointing to a motive of hate or discrimination toward the victim because of their sexual orientation (sexual attraction, affection, for another person) or gender identity (the subjective gender perception a person has of themselves).
- **Racism/Xenophobia:** any incident seen as racist or xenophobic by the victim or any other person including a police officer or any other witness, even if the victim does not agree, and acts of hate, violence, discrimination, phobia and rejection of foreigners or persons from different groups because of their racial, ethnic, national, cultural or religious origin.
- **Ideology:** any act pointing to a motive involving hate or discrimination toward the victim because of their conception of aspects related to politics, the social system, economics and culture.
- **Reasons of sex/gender:** any action revealing a motive based on hate or discrimination toward the victim because they belong to a given sex (man/woman) or against a woman just because she is female, with intent to dominate and make clear a feeling of superiority over her. This does not include acts against a victim’s sexual orientation or identity (gay, lesbian, bisexual, trans-sexual, intersex).
- **Religious beliefs or practices:** anything indicating hatred for or discrimination against a victim because of their religious beliefs, including those motivated in the same way against atheists and agnostics, excepting anti-Semitism.
- **Anti-Semitism:** any act of hate, violence, discrimination, phobia and rejection of Jews or nationals of the State of Israel.
- **Disability:** any act against persons with disability/functional diversity motivated by discriminatory or hate-crime-related factors.
- **Aporophobia:** motivated by hate for or rejection of the poor and including intolerant expressions and conduct referring to “hate, repugnance or hostility toward the poor, those without resources and the destitute”.
- **Anti-Roma:** all actions motivated by discrimination, hate and stigmatisation directed against Roma and their environment.
- **Discrimination because of illness:** any action arising from discrimination toward someone suffering from a temporary or permanent condition limiting or blocking their physical or mental health and which, when considered as a form of segregation based on the mere existence of the illness itself or on stigmatisation of the person suffering from it as being ill, is a cause of discrimination.

- **Generational discrimination:** actions resulting in unequal or degrading treatment of a person or group because of age. This class of discrimination includes mainly gerontophobia (feelings of hostility and discrimination toward the elderly).

Inclusion of the aggravating factor for **reasons of gender** is a consequence of Spain's commitment in signing the Convention of the Council of Europe preventing and combatting violence against women and domestic violence, in Istanbul in 2011. In the framework of this convention, **gender is understood as the socially constructed roles, behaviours, activities or attributions a particular society considers proper to women or to men.**

Thus, for example, **this aggravating factor must be applied when the perpetrator commits the actions against a woman just because she is a woman, i.e. with the intention of making patent their feeling of superiority toward her⁴.** There is a subjective component, in the will to dominate or the perpetrator's awareness of discrimination as part of an asymmetric relation.

Incidents related to hate crimes **include:**

- Specific actions in breach of the terms of the Criminal Code and directly related to hate crimes.
- Any other criminal breach, administrative infringement and acts not involving breach pursuant to the SEC, which may be based on a motivation described in the unlawful fields or contexts detailed in this section.

Examples of this conduct can be seen in racially-motivated crimes with injuries, coercion over religious ideology, injury because of sexual orientation etc.

Therefore, **special attention will be paid to classifying these actions,** for subsequent analysis by the senior organisational units.

⁴Supreme Court Ruling No. 565/2018 of 19 November.



9

RELATIONS WITH THE COMMUNITY AND THE NGOs FOR VICTIMS AND FOR PROTECTING HUMAN RIGHTS

In line with international bodies' recommendations, officers of the Law Enforcement Agencies must be permanently focused on close contact with civil society, emphasising particularly the most vulnerable groups and seeking to enhance relations with their representatives as the means to create fluid communication flows that enable those Agencies to better understand their expectations and needs.

SOCIAL INTERLOCUTOR

Suitable communication channels will be opened between civil society representatives and Law Enforcement Agencies

A **social interlocutor** will be created in the operational units decided on by each police force who will be an officer from the State Security Corps and whose functions will include **maintaining close contact with civil society representatives, while providing a communication channel for concerns the NGOs may bring to their attention.**

Likewise, periodic meetings will be promoted with the associations representing the rights of the various groups, all with the aim of making known on the one hand the work of the police and on the other these associations' different viewpoints, which might make policing more effective.

At the central level, one representative will be appointed for each police force, to coordinate the actions of all the social agents from each institution and to represent them in actions deemed appropriate.



10

ANNEXES

ANNEX I

CONCEPTUAL DEFINITIONS

To ensure that this protocol is applied and interpreted correctly, some terms are set out below which may prove confusing or hard to understand in considering whether a certain form of conduct is a hate crime and, if applicable, discriminatory.

Almost all references to the concepts in this protocol derive from the conceptual approach in the Support Manual for Law Enforcement Agency Training in Identifying and Registering Racist or Xenophobic Incidents. These definitions are in turn based on the findings and specifications of both national and international bodies with authority in the field, including the European Fundamental Rights Agency (FRA), the European Commission against Racism and Intolerance of the Council of Europe (ECRI), the OSCE, etc.

The following must thus be understood as described:

- **ANTI-ROMA RACISM OR ROMAPHOBIA**: manifestation of intolerance including all forms of hate, discrimination, hostility and violence toward this group, based on prejudices and ignorance and with strong historic roots in popular culture in the form of stereotypes, clichés, jokes, and contemptuous and denigrating attitudes.
- **ANTI-SEMITISM**: a perception of the Jewish people that can be expressed as hate, violence, hostility, contempt or animosity toward them. Outward manifestations of anti-Semitism target Jewish persons as well as their assets, community institutions or places of worship.
- **APOROPHOBIA**: hate or rejection of the poor, including intolerant expressions and conduct related to hate, repugnance or hostility toward the poor, those without resources and the destitute.
- **CYBERHATE**: applied to the use of electronic data communications (the Internet, mobile devices etc.) to spread anti-Semitic, xenophobic, homophobic, racist, intolerant, extremist and other messages or information.

- **HATE CRIMES**: any criminal infringement, including those against people or property where the protected legal interest is selected because of a real or perceived connection, sympathy, relation, support for or membership of a group. Such groups are based on their members' shared characteristics such as "race" whether real or perceived, national or ethnic origin, language, colour, religion, age, disability, sexual orientation, etc.
- **DISABILITY**: a situation provoked by interaction between people with foreseeably permanent physical, mental, intellectual or sensory impairment and any barrier which limits their full and effective involvement. They are not required to hold a certificate of disability and it is sufficient merely for the disability to coincide for it to be a factor motivating the crime.
- **DISABLED WITH SPECIAL PROTECTION NEEDS**: a disabled person who, whether or not their capacity to act has been modified, requires assistance or support in using their legal capacity and for decision-making in relation to their person, rights or interests resulting from permanent intellectual or mental impairment.
- **DISCRIMINATE**: to treat a person or a group of persons differently and unfavourably based on the belief that we are not all equal in terms of rights and dignity, so that differences may be drawn which place some in a disadvantaged position in relation to the remainder.
- **DIRECT DISCRIMINATION**: differentiated treatment for reasons of "race", colour, language, religion, nationality, etc. with no objective and reasonable legal justification. Further definition: the situation of someone who, due to their personal circumstances ("race", colour, language, religion, sex, disability, sexual orientation or identity, etc.) is treated less favourably than another in a similar situation.
- **DISCRIMINATION BECAUSE OF ILLNESS**: discriminatory action toward a person suffering from a temporary or permanent condition limiting or stifling physical or mental health and which, considered an element of segregation based merely on the presence of the illness as such or in stigmatisation of the sufferer, is a discriminating motive.
- **GENERATIONAL DISCRIMINATION**: unequal or degrading treatment of a person or group for reasons of age, including gerontophobia (hostility and discrimination toward the elderly).

- **INDIRECT DISCRIMINATION**: an apparently neutral factor such as an order, criterion or practice not easily implemented without disadvantaging those from a given group because of their “race”, religion, nationality, etc.
Further definition: where a legal provision, criterion or practice, an apparently neutral individual decision, may cause particular disadvantage to one person compared with another given their personal circumstances, if not objectively for a legitimate purpose and the means for reaching that end are not adequate or legitimate.
- **HATE SPEECH**: discourse “covering all forms of expression encouraging, promoting, inciting or justifying racial hate, xenophobia, anti-Semitism or any other form of hate based on intolerance”.
- **DISABLISM**: a crime driven by a person’s disability – rejection, contempt, hate, etc.
- **STEREOTYPES**: “a set of beliefs shared and generally structured concerning the personal attributes of members of a group”. Diversity generates stereotypes which may be positive or negative and originating in the learning of the culture and living experiences. Stereotypes are based on biased and defective perception, and errors may occur if such perceptions are incomplete or biased.
- **ETHNIC GROUP**: an individual’s membership of a group or community sharing a language, symbolic identity, ideology, culture and, in some cases, certain visible physical traits differentiating them from other groups or communities.
- **FACILITATOR**: an independent professional not acting as accusation or defence but providing backup to the various phases of police and judicial procedure and helping to adapt judicial proceedings to the Convention on the Rights of the Disabled. Functions include preparing the victim for the police interview, evaluating the victim’s capacities which may condition evidence, taking the deposition and hearing pre-trial evidence, an interpreter or an assessment of the victim’s capacity to consent.
- **HOMOPHOBIA**: understood as fear of and aversion to homosexuality and the LGBT community (lesbians, homosexuals, bisexuals and transsexuals), seen in public and private spheres in forms such as hate speech and incitement to discrimination, ridicule, verbal, psychological and physical violence, as well as persecution and murder, discrimination based on violation of the principle of equality, limitations that are unjustified and lacking in terms of rights, often hidden behind justification related to public order, religious freedom and the right to conscientious objection.

- **IDEOLOGY**: the fundamental ideas shared by a sector of society on aspects of politics, science, the economy, culture, morals or religion.
- **INTOLERANCE**: any conduct, attitude or form of expression denying human diversity and violating or denigrating the dignity and rights of those who are different, or seeking to violate or deny them.
- **ISLAMOPHOBIA**: a feeling of aversion, rejection and hostility toward Islam and Muslims, seen in the form of prejudice, discrimination, offence, aggression and violence.
- **ANTI-MULTICULTURALISM**: rejects mixing and intercultural coexistence, defending pure societies.
- **THE DISABLED**: including those who are physically, mentally, intellectually or sensorially impaired long-term which, on interaction with diverse barriers, may block their full and effective participation in society on an equal footing with others.
- **PREJUDICES**: “evaluative tendencies targeting social groups and their members”. In general, prejudices against ethnic and national groups involve negative evaluations.
- **RACISM**: beliefs asserting the natural superiority of one group over another, both individually and institutionally, and involving discriminatory practices protecting and maintaining the position of certain groups, insisting on the inferior position of racial, ethnic or national minorities.
- **RACE**: the term "race" is used to refer to groups of persons considered different because of physical features such as skin colour, and is a social construct rejected by the international community. The word "race" nevertheless continues to appear frequently in international and national texts as a generic term covering such concepts as ethnic origin, skin colour and/or national origin.
- **XENOPHOBIA**: the rejection and exclusion of any cultural identity alien to one's own, differing from racism by proclaiming cultural segregation and accepting foreigners and immigrants only by socio-culturally assimilating them.

ANNEX II

PROVISIONS ON HATE CRIMES AND DISCRIMINATION-RELATED ACTS

Notable among the wide-ranging provisions on regulating and combatting hate crimes and discrimination are the main legal and administrative provisions which guided the contents of this Protocol.

INTERNATIONAL LEGISLATION

- European Charter of Fundamental Rights.
- European Social Charter (October 1961).
- Code of Conduct for Law Enforcement Officials passed by the General Assembly in Resolution No. 34/169 of 17 December 1979.
- World Conference against Racism, (Declaration and Programme of Action, 2001).
- Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment.
- International Convention on the Elimination of all Forms of Racial Discrimination.
- Convention on the Rights of Persons with Disabilities (December 2006).
- Convention for the Protection of Human Rights and Fundamental Freedoms, (November 1950).
- Convention on Cybercrime made in Budapest on 23 November 2001 and the Additional Protocol to the Convention on Cybercrime concerning criminalisation of racist and xenophobic acts committed through computer systems.
- Declaration of Principles on Tolerance (16 November 1995).
- Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief (25 November 1981).
- Decision No. 09/09 of the OSCE Ministerial Council on combatting hate-crimes (2 December 2009).
- Framework Decision No. 2008/913/JHA on combatting certain forms and expressions of racism and xenophobia using criminal law.
- Declaration on "Race" and Racial Prejudice (27 November 1978).
- Universal Declaration of Human Rights.
- Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (29 June 2000).
- Directive No. 2000/78/EC establishing a general framework for equal treatment in employment and occupation, access to work, training and professional promotion, and working conditions.



- Directive No. 2011/99/EU of the European Parliament and Council on the European Protection Order (13 December 2011).
- Directive No. 2012/29/EU of the European Parliament and Council establishing minimum standards on the rights, support and protection of victims of crimes (25 October 2012).
- FIFA Good practice on Diversity and Anti-discrimination (2015).
- *Fare Network*, Monitoring Discriminatory Signs and Symbols in European Football.
- International Covenant on Civil and Political Rights.
- International Covenant on Economic, Social and Cultural Rights.
- Preventing and responding to hate crimes (2009). Organization for Security and Cooperation in Europe (OSCE) Guide.
- Protocol 12 of the European Convention on Human Rights (November 2000).
- Recommendation No. R (97) 20 on Hate Speech, of the Committee of Ministers of the Council of Europe (30 October 1997).
- Committee of Ministers Recommendation (2001) 6 to Member States on the prevention of racism, xenophobia and racial intolerance in sport.
- ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
- United Nations General Assembly Resolution: human rights, sexual orientation and gender identity (4 June 2012).
- Resolution No. 690 of the Council of Europe Parliamentary Assembly, "Declaration on police" (1979).

LEGAL STANDARDS ENACTED AS PART OF NATIONAL REGULATORY PROVISIONS

- Circular No. 7/2019 of 14 May, of the General State Prosecutor's Office on guidelines to interpreting hate crimes classified in Article 510 of the Criminal Code.
- The Spanish Constitution.
- Spanish Strategy on Disability, 2012-2020.
- Comprehensive Strategy against racism, racial discrimination, xenophobia and associated forms of intolerance.
- Comprehensive National Strategy for the Homeless 2015-2020.
- Practical Guide: How to act in cases of discrimination and hate crimes and intolerance (2015). Institute for Women and Equal Opportunity, Ministry of Health, Social Services and Equality.
- Instruction No. 1/2018 of the Secretary of State for Security creating the National Anti-Hate-Crime Office.
- Instruction No. 1/2019 of the Secretary of State for Security on the Anti-Hate-Crime Plan of Action.
- Organic Act No. 2/1986 on the Law Enforcement Agencies, (13 March 1986).
- Criminal Code Organic Act No. 10/1995 (23 November 1995).

- Act No. 42/1997 Regulating the Labour and Social Security Inspectorate (14 November 1997).
- Act No. 51/2003 on equality of opportunity, non-discrimination and universal accessibility for the disabled (2 December 2003).
- Act No. 19/2007 against violence, racism, xenophobia and intolerance in sport and the regulation enabling Royal Decree No. 203/2010 of 26 February passing the Regulation against violence, racism, xenophobia and intolerance in sport (11 July 2007).
- Act No. 49/2007 defining the breaches and penalties in equal opportunity, non-discrimination and universal accessibility for the disabled (26 December 2007).
- The General Audiovisual Communication Act, No. 7/2010 (31 March 2010).
- Act No. 26/2011 adapting the provisions to the international convention on the rights of the disabled (1 August 2011).
- Act No. 33/2011, the General Public Health Act (4 October 2011).
- Act No. 4/2015 of 27 April, the Victims of Crime Statute.
- Act No. 26/2015 of 28 July modifying the system protecting children and adolescents.
- Act No. 41/2015 of 5 October amending the Criminal Proceedings Act to streamline criminal justice and strengthen procedural guarantees.
- The Third Social Action Sector Act, No. 43/2015 of 9 October.
- Organic Act No. 4/2000 on the rights and liberties of aliens in Spain and their social integration (11 January 2000).
- Organic Act No. 1/2015 of 30 March amending the Criminal Code Organic Act, No. 10/1995 of 23 November.
- Organic Act No. 8/2015 of 22 July modifying the system protecting children and adolescents.
- Organic Act No. 13/2015 of 5 October amending the Criminal Proceedings Act to enhance procedural guarantees and regulate technological investigation measures.
- Backup Manual to prevent and detect racism, xenophobia and other forms of intolerance in the classroom (2015). Spanish Racism and Xenophobia Observatory (OBERAXE) in the General Secretariat for Immigration and Emigration, Ministry of Labour and Social Security.
- Regional provisions on equal treatment and non-discrimination and public performances.
- Royal Decree No. 2816/1982 passing the General Police Regulation for Public Performances and Recreational Activities (27 August 1982).
- Royal Decree No. 1544/2007 regulating basic conditions for accessibility and non-discrimination in accessing and using transport for the disabled (23 November 2007).
- Legislative Royal Decree No. 1/1995 approving the Reform Labour Statute Act (24 March 1995).
- Legislative Royal Decree No. 5/2000 approving the Reform Social Order Breaches and Sanctions Act (4 August 2000).