

**Handbook** for training

# SECURITY FORCES IN IDENTIFYING AND RECORDING RACIST OR XENOPHOBIC INCIDENTS



NIPO: 270-12-128-1

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**Central government catalogue of publications**

<http://publicacionesoficiales.boe.es>



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**Publishing and distribution:** Spanish Observatory on Racism and Xenophobia

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NIPO (official publication identification number): 270-12-109-3

Legal Deposit: M-34403-2012

Translation: Gamboa Firmware,S.L.

Design and layout: Carmen de Hijes

This publication is supported by the European Union Programme for Employment and Social Solidarity-PROGRESS (2007-2013).

This programme is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 strategy goals in these fields.

The seven-year Programme targets all stakeholders that can help shape the development of appropriate and effective employment and social affairs legislation and policies across EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

For more information: <http://ec.europa.eu/progress>

The information contained in this publication does not necessarily reflect the position and opinion of the European Commission.

## Institutional presentation

1. Introduction and presentation
2. Approach to key concepts
3. Diagnosis of Spanish reality
  - 3.1 Is Spain a racist country?
  - 3.2 Racist or xenophobic incidents in Spain
  - 3.3 How are allegations dealt with?
  - 3.4 Need for collaboration between the police and civil society
4. Need to identify racist or xenophobic incidents
  - 4.1. International perspective
    - 4.1. A. United Nations (UN)
    - 4.1. B. Council of Europe
    - 4.1. C. European Union (EU)
    - 4.1. D. Organization for Security and Cooperation in Europe (OSCE)
  - 4.2. Spanish legislation
    - 4.2. A. Spanish Constitution
    - 4.2. B. Penal Code
    - 4.2. C. Other regulations
5. Police actions to identify racist or xenophobic incidents
  - 5.1.- Aspects of the comprehensive strategy against racism, racial discrimination, xenophobia and other related forms of intolerance linked to policing.
  - 5.2- Classification of racist or xenophobic incidents in the crime statistics system (SEC).
  - 5.3.- Proof of motive for the crime.
  - 5.4.- Areas of policing that require special work methodology
    - 5.1. A. Special reference to local police actions
    - 5.2. B. Right of Admission
    - 5.3. C. Sport
    - 5.4. D. Internet
    - 5.5. E. Racial profiling
    - 5.6. F. Interviews with victims and witnesses
6. Selection of best policing practices
  - 6.1 Reducing prejudice by bringing groups together
  - 6.2 Improving the support provided to minority communities and building greater confidence in the institution
  - 6.3 Avoiding racial profiling
  - 6.4 Victim assistance
  - 6.5 Training
  - 6.6 Protocols and integral management
  - 6.7 Filling incident reports
7. Working group recommendations for preparing a police action protocol for dealing with racist or xenophobic incidents.
8. Bibliography
9. Acronyms
10. Contents of the CD attached to this publication

## **Institutional Presentation**

The Secretary General for Immigration and Emigration of the Ministry of Employment and Social Security and the Secretary of State for Security of the Ministry of Interior present this publication, which is designed as a *Handbook for Security Forces in identifying and recording racist or xenophobic incidents*.

The publication you have in your hands is one of the final products of the FIFIR “Training To Identify and Record Racist Incidents” project to communicate and disseminate the training given during the training sessions held for more than 150 trainers of the various Security Forces. The aim of this is to raise awareness and train different police forces on equal treatment and non-discrimination irrespective of racial or ethnic origin.

One of the goals of this training is to improve our knowledge of the reality of such a sensitive matter. The way to statistically register racist and/or xenophobic incidents is inescapably linked to the urgent need to be aware of this reality. Without information, problems cannot be tackled.

We are aware of the importance of properly recording racist or xenophobic incidents to improve the skills of security forces in preventing and prosecuting criminal acts motivated by hatred and/or discrimination, and the need to protect victims in an appropriate manner having as a goal preventing discrimination on the grounds of birth, race, sex, religion, opinion or any condition or personal or social circumstance, taking into account the wording of the Spanish Constitution of 1978, which establishes in its article 1 that equality is one of the highest values of our legal system and provides for in its article 9.2 the material dimension of equality for the social and democratic state in which we live, by stating that *“it is up to the public authorities to promote conditions so that the freedom and equality of individuals and the groups to which they belong are real and effective, removing obstacles that prevent or hinder their full enjoyment and enabling the participation of all citizens in political, economic, cultural and social life”*.

**Marina del Corral Téllez and Ignacio Ulloa Rubio**  
**Secretary General for Immigration and Emigration and Secretary of State for Security**

## 1- INTRODUCTION AND PRESENTATION

This publication is one of the products of the European Project, "Training to identify and record racist incidents" (FIRIR), which originates from the restricted call for proposals entitled "Support to national activities aimed at combating discrimination and promoting equality", JUST/2011/PROG/AG/D4, presented by the PROGRESS programme, an EU financial instrument supporting the development and coordination of European Union policies.

The project was led by the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security, through the Spanish Observatory on Racism and Xenophobia (OBERAXE).

**The aim of this project was to:**

**Firstly, further training on Equal Treatment and Non Racial or Ethnic Discrimination among Security Forces, providing tools for specific training in criteria used by different national, regional and local security forces to detect and record "racist or xenophobic incidents".**

**Secondly, to disseminate the training acquired in order to raise awareness to the various stakeholders, particularly Security Forces personnel.**

The project, from a methodological standpoint, was based on a working group with representatives of the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security, through Oberaxe and the State Secretariat for the Ministry of Interior, namely the Coordination and Studies Office with Civil Guard and National Police representatives, subsequently inviting the participation of autonomous regions with their own police forces, such as Catalonia, the Basque Country and Navarre, and the Spanish Federation of Municipalities and Provinces (FEMP), as the local police forces representative.

The working group comprised:

**-Concha Antón**, University Lecturer in the Department of Social Psychology and Anthropology, University of Salamanca, with extensive experience in Training Security Forces, specifically the National Police Force through the Training Division of the Avila Training Centre.

**-Carmen Quesada**, Lecturer of Public International Law and International Relations in the Faculty of Law at the National University of Distance Education, with a background in teaching and research in International Humanitarian Law and Human Rights, and experience in training for the Civil Guard and the National Police.

**-Miguel Ángel Aguilar**, public prosecutor of the Special Hate Crimes and Discrimination Service of the Barcelona Provincial Prosecutor's Office, whose purpose is to coordinate the actions of all prosecutors in criminal acts committed on discriminatory grounds, to ensure the coordinated action of the Public Prosecutor in interpreting and applying the law, and provide public prosecutors with greater doctrinal and jurisprudential tools in the fight against discrimination by compiling and providing for them extensive information, documentation and recommendations from international human rights defence organisations.

**-Francisco Sánchez**, a Civil Guard lieutenant, Head of the Crime Statistics Service in the Coordination and Studies Office of the State Secretariat for Security at the Ministry of Interior, a body which manages the methodological rules and regulations that govern crime statistics for both state and regional security forces, which disseminates crime statistics information from the Ministry of Interior to both public and private institutions and international and private organisations.

The tasks of the working group included project planning, organising meetings, suggesting methodological proposals and recommendations, document analysis, preparing working documents and evaluating experiences and good practices.

The group contacted the three levels of Police forces in Spain (national, regional with own police forces and local) to organise training activities for them.

**Four “training for trainers” sessions were held for the various security forces. Organising the participants’ attendance by provinces, a total of 158 trainers from all the security forces were invited to these sessions.**

During these sessions, documentation was handed out covering the contributions of each expert on the relevant areas. It was designed as a training and awareness aid for use by the trainers of the various security forces, with the following structure:

1. Approach to key concepts: racism, xenophobia and related intolerance.
2. General framework. Diagnosis of Spanish reality.
3. The international perspective on training in relation to recording and identifying racist incidents.
4. Hatred and discrimination from the criminal law perspective.
5. Police actions on racism and xenophobia.

It is up to each police organisation, specifically their training department, to establish the guidelines and content for developing the training modules of the various training academies and schools, to achieve the full “cascading” of the essential concepts obtained from the work carried out during the FIRIR Project.

## 2. APPROACH TO KEY CONCEPTS

To better understand the definition of “racist or xenophobic incident”, we need to look more closely at various “related terms”, which circumvent the difficulty of determining with practical and easily understandable criteria all behaviour or events that may implicitly include that qualification.

Stereotypes are defined as “a set of shared and generally structured beliefs on the personal attributes that characterise members of a group”. Diversity generates stereotypes. Stereotypes can be positive or negative. They originate from cultural learning and personal experiences. Stereotypes are based on biased and flawed perceptions and may give rise to error-strewn observations.

Prejudices “are evaluative tendencies directed towards social groups and their members”. Generally, prejudice towards ethnic and national groups is characterised by negative evaluations. These are judgments based on feelings and emotions, not objective facts. As prejudices are beliefs rooted in the culture of a society, it is expected that the majority of people, with varying degrees of intensity, have some prejudice.

Racism is an attitude that includes stereotypes, prejudices and the intention to discriminate against members of the community to which it is directed. Racism is therefore a set of beliefs that asserts the natural superiority of one group over another, both individually and institutionally. It involves discriminatory practices that protect and maintain the position of certain groups but which ensure the continuance of the inferior position of racial, ethnic or national minorities.

Racism, in its strict and etymological sense, is linked to the term “race”, but existed before that term was used by scientists to fragment and give a hierarchical structure to humanity and even survives to this day, with that term having now been discredited and removed from scientific vocabulary. The concept has therefore been mutated and in fact replaced with an euphemism, no longer referring to “races”, but rather ethnic groups or cultures, giving rise to the so-called *new racism*, with far more difficult arguments to combat than those of the old racist theories.

At present, social rejection of racism has favoured the emergence of new racist attitudes<sup>1</sup> which exceed the punishment received for theories of biological racism. Various theories argue the superiority of some cultures over others and the potential threat to western culture and way of life from the incompatibility of certain cultural, national, religious, ethnic groups, etc. (symbolic racism<sup>2</sup>). Some new approaches express the prejudice indirectly and symbolically, for example

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<sup>1</sup> Antón, C. and Quesada, C. (2008). Equal treatment and non-discrimination: Recommendations guide for training security forces. Ministry of Labour and Social Affairs, Madrid. [http://www.mtin.es/es/alianza\\_civilizaciones/documenta\\_interes/guia\\_policia.pdf](http://www.mtin.es/es/alianza_civilizaciones/documenta_interes/guia_policia.pdf)

<sup>2</sup> Symbolic racism is characterised by a negative attitude towards a group and positive attitude towards the principles of the Protestant Ethic. Kinder, D. R., and Sears, D. O. (1981). Prejudice and politics: Symbolic racism versus racial threats to the good life. *J. Pers. Soc. Psychol.* 40, 414–431

(modern racism<sup>3</sup>), but also deny segregationist or clearly exclusionary measures; or look for justifications for discriminatory behaviour (aversive racism<sup>4</sup>). In our society it is possible to find blatant forms of racism (traditional) together with more subtle ones<sup>5</sup>.

A good example of the existence of new types of racism is illustrated by how the majority population justifies its behaviour towards members of minorities. They say that treatment firstly depends on national affinity and cultural affinity, followed by economic position and finally skin colour.

Xenophobia<sup>6</sup> refers to the attitude of rejection and exclusion of all cultural identity apart from one's own. It differs from racism by proclaiming cultural segregation and accepting foreigners and immigrants only through cultural assimilation.

Cultural diversity is embodied in the uniqueness and plurality of the identities of the groups and societies that make up humanity. A source of exchange, innovation and creativity, cultural biodiversity is as necessary for humanity as biological diversity is for nature. In this sense, it is the common heritage of humanity and should be recognised and affirmed for the benefit of present and future generations<sup>7</sup>.

The principle of tolerance is defined as respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and human nature. Tolerance is an active recognition of the universal human rights and fundamental freedoms of others. It is not only a moral duty, but also a political and legal requirement that must be practised by individuals, groups and states<sup>8</sup>.

However, Intolerance <sup>9</sup> can be defined as any behaviour, attitude or form of expression that denies human diversity and violates or denigrates the dignity and rights of someone who is different, or which even encourages the violation or denial of such rights. There are many different signs and types of intolerance: racism, xenophobia, anti-Semitism, Islamophobia, sexism, homophobia, religious intolerance, hatred for the poor and political intolerance are the most well-known but not the only. Signs of intolerance are evidenced as a feeling of superiority, not over the person with their own individual and diverse identities but rather one's own identity over that of others. It is based on prejudices and stereotypes, on dogmas and defective

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<sup>3</sup>McConahay, J. B., Modern racism, ambivalence and the modern racism scale. In: Prejudice, discrimination and racism: theory and research, 1986, Academic Press, Orlando, United States, pages 91-126

<sup>4</sup> Modern racism implies a negative attitude towards the group and a positive attitude towards equality. The discriminatory response or not of the individual will depend on the needs of the situation and possibility of justifying discriminatory behaviour in a non-racist way. If the social structure favours discrimination and alternative explanations exist, the individual will exhibit discriminatory behaviour.

Gaertner, S. L. & Dovidio, J. F., The aversive form of racism. Prejudice, discrimination, and racism, 1986, Academic Press, San Diego, United States, pages 61-89.

<sup>5</sup> Pettigrew, T. and Meertens, R. W. (1995) "Subtle and blatant prejudice in Western Europe". European Journal of Social Psychology, 25: 57-75.

<sup>6</sup> Good Practices and Recommendations for Fighting Racism in the Job Market. Equal <http://www.equal-france.com/virtual/30/Documents/pdf/BPLuchaRacismo.pdf>

<sup>7</sup> UNESCO Universal Declaration on Cultural Diversity

<sup>8</sup> UNESCO Declaration of Principles on Tolerance

<sup>9</sup> European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance promoted by the Council of Europe in 1995

knowledge, it abounds in moments of crisis and social anomie, it is accompanied by a set of signs such as authoritarianism, subalternity and fanaticism, and its most common expressions are discrimination, hatred, hostility and violence. When projected politically it gives rise to totalitarian and fundamentalist regimes; its most extreme expression is war and genocide.

Ethnic group refers to an individual belonging to a group or a community that shares a language, symbolic identity, ideology, culture and sometimes visible physical traits that set them apart from other groups or communities. This is sometimes operationalised as nationality, although there is not a two-way relationship between both concepts.

Mysophobia preaches rejection of intercultural mixing and coexistence, and therefore defends uncontaminated societies.

Islamophobia<sup>10</sup> is defined as a feeling of hostility towards Islam and, by extension, the Muslim population. It is a form of intolerance fuelled by prejudice towards Islam, Muslims and everything about them<sup>11</sup>.

Anti-Semitism is a certain perception of Jews which may be expressed as hatred towards Jews. Verbal and physical displays of anti-Semitism are directed against both Jewish and non-Jewish people as well as their property, Jewish community institutions and religious places (working definition of FRA<sup>12</sup>). These displays may also target the state of Israel, conceived as a Jewish collective entity. Anti-Semitism frequently accuses the Jews of conspiring against humanity and is generally used to blame the Jews for "things going badly". Anti-Semitism is expressed in speech, writing, visually or in actions, and employs sinister stereotypes and negative personality characteristics<sup>13</sup>.

Anti-gypsyism or anti-romanyism is another sign of intolerance which includes all forms of hatred, discrimination, hostility and violence towards this group<sup>14</sup>. It is based on prejudice and ignorance and has strong historical roots in popular culture in the form of stereotypes, clichés, jokes, derogatory and demeaning attitudes.

Discriminating<sup>15</sup> is treating a person or group of people differently and unfavourably, based on the belief that not all people have the same rights and dignity and that, differences can therefore be made to put those people in a position of disadvantage compared to the rest. But discriminating is not only that. Although it might appear contradictory, discriminating may also sometimes be giving the same treatment as others to a person or group that is in a different situation for whatever reason.

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<sup>10</sup>Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and related intolerance  
<http://www.oberaxe.es/files/datos/4fd71e56109be/ESTRATEGIA-LINEA%20INTERACTIVO%208-12-2011.pdf>  
Muslims in Europe: between Islam and Islamophobia. Casa Árabe. 2007.

<sup>11</sup> Referred to by European Commission against Racism and Intolerance (ECRI) and the Council of Europe in various texts

<sup>12</sup> FRA: European Union Agency for Fundamental Rights. <http://fra.europa.eu/fraWebsite/material/pub/AS/AS-WorkingDefinition-draft.pdf>

<sup>13</sup> Approved in June 2005, at a conference on anti-semitism held in Cordoba, Spain, sponsored by the Organization for Security and Cooperation in Europe (OSCE).

<sup>14</sup> Movement Against Intolerance. Raxen Report 2011

<sup>15</sup> "Discrimination starts with you / Equality starts with you: todoimas forum 2011 for equality and non-discrimination" State Secretariat for Equality 2011

Direct racial discrimination<sup>16</sup> is a differential treatment based on race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. We therefore believe that a justification would not be objective and reasonable without a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the objective sought.

Indirect racial discrimination involves those cases where an apparently neutral factor, such as a provision, criterion or practice cannot be easily accomplished without causing disadvantages to persons belonging to a particular group because of their race, colour, language, religion, nationality or ethnic origin, unless this factor has a reasonable and objective justification. In the same vein, we believe that a legitimate aim is pursued if there is a reasonable relationship of proportionality between the means employed and the objective sought.

Indirect racial discrimination is the most difficult to determine. For example, the use of culturally biased tests in personnel selection processes in companies would be discriminatory because although it appears that an objective test is being used, what is actually being used is a tool that generates different consequences for certain groups. On the other hand, it is important to determine the indirect discrimination of a positive action that seeks to compensate for a disadvantage of a cultural or ethnic group with respect to the majority population. For example, adopting a series of measures that provide economic advantages for a certain ethnic group, such as the Roma population in terms of state subsidised housing, would not be discriminatory.

We can definitively conclude that racial discrimination is understood as a differential treatment for the reasons highlighted<sup>17</sup>. In fact, as we shall see, race is not the only motive considered in the ECRI definition<sup>18</sup>. Also relevant are motives related to colour, language, religion, nationality or national or ethnic origin. In any case, we believe that the criteria taken into account to determine the existence of racial discrimination are objective, since it is specified that differential treatment must be based on a legitimate objective or reasonable relationship of proportionality between the means employed and the objective sought.

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<sup>16</sup> ECRI General Policy Recommendation No. 7

<sup>17</sup> For definitions and examples on "direct and indirect racial discrimination", "racist incident", "hate speech", "ethnic profiling", see the following documents of the Council of Europe:

-Recommendation no.(97) of the Committee of Ministers of the Council of Europe on hate speech ([http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281997%29020&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281997%29020&expmem_EN.asp))

-General Policy Recommendation no 7 of the European Commission against Racism and Intolerance on national legislation to combat racism and racial discrimination ([http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation\\_n7/REC7-2003-8-ESP.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/REC7-2003-8-ESP.pdf))

-Policy Recommendation No. 11 of the European Commission against Racism and Intolerance on combating racism and discrimination ([http://www.coe.int/t/dlapil/codexter/Source/ECRI\\_Recommendation\\_11\\_2007\\_EN.pdf](http://www.coe.int/t/dlapil/codexter/Source/ECRI_Recommendation_11_2007_EN.pdf))

<sup>18</sup> ECRI definition of "racism": shall be understood as the belief that race, colour, language, religion, nationality or national or ethnic origin is a reason to justify contempt for one person or group of persons or the notion of superiority of one person or group of persons. See the link: [http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation\\_n7/REC7-2003-8-ESP.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/REC7-2003-8-ESP.pdf)

**After analysing the various terms related to the definition of a racist incident, as will be explained later, the Spanish Security Forces use that adopted by the European Commission against Racism and Intolerance of the Council of Europe, in its Policy Recommendation No. 11<sup>19</sup>.**

For the purposes of the ECRI, “racist incident” is therefore understood as: “any incident which is perceived to be racist by the victim or any other person”.

When two or more discrimination grounds are prevalent in a person or a group, we speak of *multiple discrimination*<sup>20</sup>. For example, a double discrimination case is that of immigrant women, as they are both women and immigrants, thus doubling the discrimination. A transsexual immigrant woman would therefore be a triple discrimination case: because of sex, sexual identity and ethnic origin.

Racism and xenophobia multiply their effect when combined, for example, with hatred for the poor and homophobia.

Hatred for the poor also encompasses rejection of the poor. Hatred for the poor covers expressions of intolerance relating to “hatred, disgust or hostility towards the poor, the destitute, the homeless”. The State Prosecution Service 2011 report calls for its inclusion as another aggravating reason of art. 22.4 of the Criminal Code. Racist and neo-Nazi groups have staged numerous attacks on homeless people<sup>21</sup>.

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<sup>19</sup> (ECRI General Policy Recommendation N° 11: Combating racism and racial discrimination in policing adopted by ECRI on 29 June 2007).

<sup>20</sup>The Comprehensive Strategy against racism, racial discrimination, xenophobia and related intolerance states that “multiple discrimination must be included in the measures provided, placing special emphasis on gender, religious or belief discrimination” (p. 28). It states therefore the recognition of this reality by the Durban Declaration (which in its article 2 explicitly outlines the concept) and point 14 of Directive 2000/43/EC (by highlighting that women are often “victims of multiple discrimination”). For their part, the 2010 Report of the Agency for Fundamental Rights and EU-MIDIS Report no. 5, entitled “Multiple Discrimination” - published in February 2011, broadly define the concept.

<sup>21</sup> The State Prosecution Service proposes in its 2012 report, as requested in the 2011 report, the reform of arts. 510 on the crime of incitement to hatred, violence and discrimination to adapt its content to the content of art. 20 of the International Covenant on Civil and Political Rights and European Union Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia in criminal law, requesting a change in its wording to overcome difficulties encountered and enhance interpretive criminal protection against this type of behaviour which are highly prejudicial to peaceful coexistence in a democratic society. Alongside hatred, violence and discrimination, it therefore calls for the inclusion of the term “hostility”, changing the verb “provoke” to avoid excessively restrictive interpretations and replace it with verbs like “incite, promote or disseminate”; it also calls for the inclusion of the criminal responsibility of legal entities, introducing new behaviour such as the glorification or subsequent justification of this type of behaviour and the inclusion of the socioeconomic situation of the victim as a reason for discrimination to cover attacks on beggars and the destitute.

Of interest too is the reform of art. 607.2 on the dissemination of ideas that justify genocide, requesting that it be re-adapted to reinstate denialism so that it simultaneously respects the doctrine established by our maximum constitutional interpreter in ruling 235/2007, whereby denialism is punished criminally not so much in terms of a mere denial of historic event (classification incompatible with freedom of expression), but rather in a context of incitement to hatred or slander against the protected group, i.e. in a real context of abuse of such freedom of expression.

In light of continuous changes in Spanish society and the limited application of certain articles of the penal code on discrimination, the Barcelona Public Prosecutor has focused the past three years on the need to update these articles to cover their omissions, deficiencies, gaps and hermeneutical problems, requesting a reform of the penal code that updates art. 22.4, 129, 173, 314, 510 to 512 and 607 bis.

So, and with regard to art. 22.4 on the aggravating factor of discrimination, a reference to hatred for the poor as an act of discrimination is missing. High Court Ruling 1160/2006, 9-11, Legal Basis n° 23 stated that an attack on a person with derogatory and inhuman treatment as a result of being a homeless beggar is not subsumed in the wording of art. 22.4<sup>a</sup> of the penal code (“it

Homophobia means fear and irrational aversion to homosexuality and the LGBT community (lesbians, gays, bisexuals and transgenders), based on prejudices and is comparable to racism, xenophobia, anti-Semitism and sexism. It is displayed in public and private fields in different ways, such as hate speech and incitement to discrimination, ridicule, verbal, psychological and physical violence, as well as persecution and murder, discrimination and violation of the principle of equality, unjustified and unreasonable constraints on rights, which are often hidden behind justifications of public order, religious freedom and the right to conscientious objection (European Parliament Resolution of 18 January 2006<sup>22</sup>).

A concept that extends its use primarily for the purpose of criminal policy is "Hate Crime" which the OSCE defines<sup>23</sup> as: "Any criminal offence, including offences against the persons (A) or property, where the victim, premises or target of the offence is chosen for their real or perceived connection, sympathy, affiliation, support or belonging to a group such as those defined in part B. (B) A group is based on a common characteristic of its members, such as their real or perceived "race", national or ethnic origin, language, colour, religion, sex, age, intellectual or physical disability, sexual orientation". The term refers more to a type of crime, or phenomena, than a specific crime and implies that the offence is based on bias, selection or prejudice.

As described by the European Union Agency for Fundamental Rights (FRA), "hate crimes" do not only concern the perpetrator and the victim, but the society as a whole. An appropriate response ensures to the victims that their fundamental rights, such as dignity and non-discrimination, receive effective protection<sup>24</sup>.

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cannot be asserted that the homeless beggar's situation, without establishing other factors, is down to certain ideologies or beliefs attributed to the victim, whether adopted or not by them, or their ethnic group, race, nationality, sex and sexual orientation, illness or disability"). However, in accordance with the provisions of Community law on the subject, it is preferable to refer to acts of discrimination, rather than specific phobias. In this respect, hatred for the poor could be included in "reasons related to the socioeconomic status of the victim".

<sup>22</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0018+0+DOC+XML+V0//ES>

<sup>23</sup> Definition used in the Decision of the Council of Ministers of the OSCE No. 4/03, Maastricht, 2 December 2003, and affirmed in the Decision of the Council of Ministers No. 12/04, "Tolerance and Non-Discrimination", Sofia, 7 December 2004

<sup>24</sup> Report of the European Union Agency for Fundamental Rights 'Making hate crime visible in the European Union: acknowledging victims' rights', FRA, Vienna, November 2012.

### 3 DIAGNOSIS OF SPANISH REALITY

#### 3.1. IS SPAIN A RACIST COUNTRY?

In Spain there has been an exponential increase in ethnic and national diversity. Over the last few decades, migration has helped enhance Spain's already great cultural and social diversity. **In recent years, Spain has moved into the top positions of the European Union's table of volume of foreign population**, mainly with regard to permanent residents. **Historically, Spain's most numerous ethnic group has been the Roma population, which is also the most discriminated against, stereotyped and socially rejected group.** The immigrant population is mostly made up the following minorities: firstly Romanians, secondly Moroccans, thirdly Ecuadorians, fourthly Colombians and finally Britons.

**Although reports on racism and xenophobia in European societies have pointed out that Spain, by comparison, cannot be considered a markedly racist country<sup>25</sup>, different realities and studies show that racist or xenophobic incidents are more frequent and widespread than may be apparent.** In this regard, there are studies for different types: a) systematic analyses of the evolution of racism and xenophobia in Spain<sup>26</sup>, produced by the Spanish Observatory on Racism and Xenophobia (OBERAXE), b) studies focused on the perception of potential victims<sup>27</sup> and, finally, c) reports that analyse complaints lodged by victims to equality bodies or different institutions or organisations that provide assistance to victims.<sup>28</sup>

Concerning the latter, it is important to note the usefulness of the information offered in the annual reports of the Office of Non-Discrimination of Barcelona City Council, the information from the Hate Crimes and Discrimination Service of the Barcelona Provincial Prosecutor's Office and finally that of the Council's Centres Network providing assistance to discrimination victims.<sup>29</sup>

*Perception of racism and xenophobia in the majority population.*

Although we are currently in an economic cycle characterised by a drastic reduction in job offers, followed by a contraction in migration flows and some immigrants returning to their countries of origin, most people still perceive immigration to be "excessive".

There may be a positive and generic perception of the immigrant population in the collective imagination; however, several indicators offer a more real reflection. This is especially true when indirect assessments are used, less susceptible to the social desirability response bias.

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<sup>25</sup> Annual report on discrimination and the application of the principle of equal ethnic or racial treatment in Spain 2010  
<http://www.oberaxe.es/files/datos/4ec3a9f707c2a/informeAnual2010.pdf>.

<sup>26</sup> "Evolution of Racism and Xenophobia in Spain (2010 report)"  
<http://www.oberaxe.es/files/datos/4e20230088dc8/INFORME%20RACISMO%202010.pdf>

<sup>27</sup> "Panel on racial or ethnic discrimination (2010): perception of potential victims"  
[http://www.oberaxe.es/files/datos/4eb3ddeaefcb8/2010\\_panel\\_discriminacion\\_consejo\\_accesible.pdf](http://www.oberaxe.es/files/datos/4eb3ddeaefcb8/2010_panel_discriminacion_consejo_accesible.pdf)

<sup>28</sup> Fresno, Jose Manuel and Chahin, Alia: Racial or ethnic discrimination perceived by the immigrant population. In: *Social Documentation*, no. 162; pages 31-56

<sup>29</sup> [http://www.igualdadynodiscriminacion.org/recursos/publicaciones/2011/pdf/2010\\_informe\\_red\\_asistencia\\_victimas\\_16feb11.pdf](http://www.igualdadynodiscriminacion.org/recursos/publicaciones/2011/pdf/2010_informe_red_asistencia_victimas_16feb11.pdf)

A total of 66% (5 percent more than the EU average) of respondents believe that ethnic discrimination occurs on a regular basis (Eurobarometer on Discrimination in the European Union for 2009<sup>30</sup>). According to the data in the Report on the Evolution of Racism and Xenophobia in Spain in 2010, 41% of respondents considered that Spaniards generally treat foreign immigrants with distrust, while 9% believe that this treatment is fraught with indifference and 9% with contempt and a 1% with aggression. What's more, the economic crisis generates changes in attitudes, with deterioration in rights, particularly *voting rights* and *citizenship*, turning initially favourable opinions on legal fairness towards *more nationalist* rhetoric on foreigners and access to social rights, particularly employment.

The 2010 report on "Evolution of Racism and Xenophobia in Spain" shows similar values in the express rejection to immigration (36% in 2009) to those reflected in the 2007 and 2008 surveys (37%). There have been qualitative changes though, especially among the ambivalent group, which believe, far more so than previously, that immigrants take away social benefits and job opportunities. This change reveals a more reluctant and less tolerant attitude. Since the ambivalent profile in 2009 was characterised by a lower level of education and professional qualifications and a greater number of people experiencing tough personal economic times - youths, men and people with recent experience of unemployment-, the explanation for the change lies once again in the current economic situation. A situation which also appears to have an impact on immigration stereotypes but which, according to the report, does not prevent some positive facts, such as an improvement in the acceptance of coexistence with immigrants.

This predominantly positive relationship context also constitutes the central conclusion reached in the 2010 Survey on Intercultural Coexistence at a Local Level produced by the La Caixa Foundation. Overall, we can see the existence of "peaceful relations, attitudes of respect and acceptance and a gradual extension of shared feelings of local identification, but (and this is the other side of the coin) with a lot of drawbacks, situations of ambivalence, possible risks and other clearly negative aspects, particularly rejection (minority but symptomatic) in a significant segment of the local population as well as ambiguity and passive tolerance in other far broader segments"<sup>31</sup>.

Regarding the Roma community, according to the Barometer of the Sociological Research Centre (CIS), prepared in November 2005, "one in four Spaniards would not like their children to share the same class as Roma pupils", or "more than 40% of Spaniards say that it bothers them a lot or quite a lot having Roma as neighbours". What's more, in the CIS study no. 2745, of 2007, a total of 44% of those surveyed chose a society with people of the same origin and culture while 52% said they had little or no sympathy towards the Roma population. <sup>32</sup>

There are treatment differences in rural or urban habitats, depending on the predominant production activity in the area to which these people are linked, and the type of settlement profiles

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<sup>30</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_317\\_fact\\_es\\_es1.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_es_es1.pdf)

<sup>31</sup> "la Caixa" FOUNDATION. Report on social and intercultural coexistence in highly diverse territories, based on the 2010 survey on local intercultural coexistence.

<sup>32</sup> (Sociological Research Centre. Discriminations and their Perception: Preliminary Report. December 2007).

produced. In terms of immigration, there are at least two types of space in rural habitats: intensive farming and tourism. Intensive farming attracts a huge number of immigrant workers many of which are seasonal workers hired in their countries of origin. A different profile comes from the high presence in tourist areas of non-EU workers and the residential immigrant population, usually in northern Europe. In this context, some authors suggest that, beyond competition, racist and xenophobic motives found in metropolitan areas seem more linked to frustration and the scapegoat hypothesis, while in rural settings these motives may be more related to the social identity theory, and the presence of traditional and exclusive communities.

### *Perception of racism and xenophobia in minority populations*

"Panel on racial or ethnic discrimination (2010): the perception of potential victims"<sup>33</sup> is a pioneering study on ethnic minorities in Spain prepared by the Council to promote equal treatment and non-discrimination of people, which analyses and measures discrimination subjectively perceived by potential victims. In this case, the principal minorities provide us valuable information on the opinions and experiences of ethnic minorities in Spain. This study, based on a survey of people from six ethnic groups, has identified several trends: 1) that there are differences between the different groups in terms of the self-perceived image that the Spanish population has of them, 2) that there are different levels of awareness and perception of the discrimination phenomenon and, finally, 3) there is a lack of understanding and knowledge of the discrimination itself, which would explain the few complaints. One of the main results of this study is that there is a big difference between *spontaneous* discrimination (that which respondents said they had suffered a priori) and experiences based on specific objective facts, attributable to discrimination for ethnic reasons. For example, around 70% of people who initially said they had not experienced any discriminatory situation did state that they had suffered discrimination by the Spanish population when asked about specific situations. The areas in which respondents recognised that they had experienced some type of discrimination due to racial or ethnic origin are as follows: housing, security forces, employment and public spaces and leisure.

In line with this, Spanish society's perception of racism and xenophobia is on average 4.8 on a scale of 1 to 10. One of the groups that perceives higher levels of discrimination is the Roma population, followed by North Africans. On the other hand, the Oriental population believes that Spanish society has a good image of it.

Regarding the Roma population, the last report of the Council for Promoting Equal Treatment and Non-Discrimination of People because of their Racial or Ethnic Origin (Victims of Discrimination Assistance Centres Network), described in selecting good practices, there were Roma victims in 17% of individual cases and 46% of group cases.

There is clearly a more negative perception among people that live in medium-sized municipalities (between 25,000 and 200,000 inhabitants) than in large or small municipalities. In any case (according to the study), there are three predictive perceptions of discrimination variables: sex, age, and size of habitat.

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<sup>33</sup> [www.lgualdadynodiscriminacion.org](http://www.lgualdadynodiscriminacion.org)

### 3.2- DO WE KNOW HOW MANY RACIST OR XENOPHOBIC INCIDENTS OCCUR IN SPAIN?

**The statistical data available should reflect the situation more accurately. Firstly, because in many cases incidents go unreported and, secondly, because the data collection system should be more flexible, to include all incidents of a racist or xenophobic nature.**

#### *Lack of knowledge of the allegations*

One of the main problems detected with racist and xenophobic incidents is the lack of published statistics to determine their quantitative and qualitative scope, despite the fact that in 2011 changes were made to the criminal statistics system by the Coordination and Studies Office of the Security State Secretariat of the Ministry of Interior and the OBERAXE of the General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security, to accurately and reliably record any act liable to be classed as racist or xenophobic. This fact is evident in the latest FRA report which points out, for the first time, that Spain provides “limited data”, abandoning the previous category of “not providing data”. The reader should refer to chapter 5 for an in-depth analysis of the statistics system.

**Spain is making a considerable effort to ensure that figures on criminal offences motivated by hatred and discrimination are handled increasingly in line with the actual situation.**

Similarly, prosecutors and the courts do not publish official statistics on the procedures that are initiated or filed for crimes or misdemeanours motivated by hatred and discrimination, nor on the judgments or orders of dismissal pronounced thereon.

#### *Lack of knowledge of the acts which occur and go unreported*

**One gets the impression that many of the crimes committed go unreported, with a true “hidden figure” of incidents that the victims, for many reasons, do not want or dare to report, or do not know that they can report.**

Victims have many reasons for not reporting racist or xenophobic incidents to the police and public authorities:

- **A belief that everything is useless:** Many victims believe that security forces or government officials will not take appropriate actions to respond to their complaints of racist or xenophobic incidents.
- **Lack of trust or fear of the police:** Immigrants or refugees who have fled their country of origin because of government support for violence may distrust the police in their new country of residence. Many victims come from countries where abuse, torture or extortion by some parts of the security and armed forces is commonplace. Such people, when they arrive in Spain, bring with them their fears and reluctance to trust in the country's police forces.

- **Fear of reprisals:** Many victims fear that, if they report a crime, the perpetrators of the crime or other people with similar points of view may take reprisals against them, their family or members of the community they belong to. What's more, if the perpetrator of a racist/xenophobic incident is attached or belongs to an organisation or group, the victims might fear that they could become the target of this organisation or group or similar organisations.
- **Secondary victimisation:** Members of a community may suffer discrimination on a routine basis, and they may have also occasionally suffered hostile treatment by the authorities, which might make them think that they are going to suffer abuse once again if they request help from the authorities. These fears may perpetuate the lack of trust between community groups and authorities.
- **Safety issues:** Although there is a widespread misconception that the typical hate-motivated crime is an attack carried out at random, in fact, many are produced in small communities and involve neighbours. Victims may fear reprisals if the perpetrator knows where the victim lives. When organised hate groups are involved, the victim may feel especially threatened. In such cases, taking into account the seriousness of the acts, the police must consider the possibility of getting the judiciary interested in the feasibility and availability of special witness protection measures, such as those provided in the Witness Protection Act (law 19/1994 of 23 December).
- **Lack of knowledge of the law:** Many people may be unaware that criminal laws protect them or do not know how or where to report crimes.
- **Shame:** Some victims feel distressed and embarrassed after being victims of a racist or xenophobic incident. They might even believe that the victimization was their fault or that their friends and/or members of their family or community might stigmatise them and consider socially unacceptable that the event is known publicly. Although this is also a factor in everyday crimes, the feeling of shame and degradation may be more acute in a racist or xenophobic incident as the individuals are being victimised solely because of their identity. The issue of shame is particularly significant as an obstacle to denouncing racist or xenophobic aggressions in cases involving sexual violence.
- **Denial:** To cope with the trauma of a racist or xenophobic incident, some victims deny or minimise the impact and seriousness of the crime.
- **Fear of revealing their sexual orientation:** For homosexuals, bisexuals and transsexuals, reporting a hate crime may involve publicly revealing their sexual orientation or gender at a family, social or work level, which may have a certain repercussion, particularly in small cities or rural areas.
- **Fear of revealing their ethnic, religious or political affiliation:** Members of ethnic minority, religious or political groups fear that revealing their identity may result in discrimination.

- **Fear of being arrested and/or expelled:** Individuals who are not citizens of the country where they have been victimised and who do not have a work or residence permit might fear that, despite being victims of a crime, coming into contact with the police or government may result in detention and/or expulsion.
- **Communication problems and lack of understanding of the language.**

Because of their importance, we would like to highlight the results of the survey of the European Union Fundamental Rights Agency (FRA) conducted among 23,500 EU citizens belonging to ethnic or racial minority groups and immigrants, published in Stockholm in December 2009, revealing the following data:

- 12% of those interviewed had suffered an incident in the past year which, under the law of that country, was a criminal offence.
- 82% of respondents had not made a complaint.
- 46% of respondents were unaware of their rights.
- 64% had not made a complaint because they did not think it would be worthwhile.

The Director of the EU Fundamental Rights Agency, Morten Kjaerum, pointed out: «The survey shows that the overwhelming majority of those surveyed do not report their experience of discrimination or racist crimes to any competent body. Thousands of racist crimes and discrimination incidents do not come to light. This means, therefore, that the perpetrators of the crime go unpunished, justice is not done for the victims and those responsible for policy formulation cannot undertake the appropriate actions to prevent the offences from reoccurring. It is hoped that the data from this new survey raises awareness of the need to develop more targeted policy responses to deal with this social evil». «The situation raises important issues, such as how to increase awareness of rights and strengthen confidence in existing protection mechanisms». «It is important to encourage victims of discrimination or harassment that they report their experiences and assure them that their complaints will be taken seriously».

In Spain, the "Panel on racial or ethnic discrimination (2010)" related to the perception of potential victims, showed that only 4.3% of people who had suffered discrimination actually reported a complaint, in contrast to 94.3% who did not.

For ethnic groups, the Roma population reported the most incidents, followed by the Asian-Oriental population and then North Africans. Of the respondents who had reported an incident, a high percentage, 84.2%, did not do so through organisations or associations that accompanied them throughout the process. Only 10.5% of people who lodged a complaint received the support or assistance of specialist associations. These people had an overwhelmingly negative perception of the treatment received by the institutions responsible for guaranteeing their rights (legal authorities, police authorities and administrative bodies): 61.1% said that they felt poorly or very poorly treated and 21.1% would not report an incident again.

### 3.3 HOW ARE ALLEGATIONS DEALT WITH?

As noted in the previous section, approximately two thirds of accusers of racist and xenophobic incidents express dissatisfaction with the treatment received by the institutions, mainly because they believe that there is a tendency on the part of the police, as well as judges and prosecutors, to play down the acts and not treat them well as victims of such crimes.

The absence in Spain of the publication of official statistics on racist or xenophobic incidents usually involves a lack of awareness of the scope and severity of the problem. This affects police officers, prosecutors and judges, who must be properly trained with the necessary technical skills to provide citizens with the answers that they expect of public servants.

A perpetrator frequently commits acts exclusively motivated by a rejection of the person that is different to them in order to undermine their dignity. These are acts of gratuitous violence where the perpetrator or perpetrators are mainly motivated by their hate for people who have distinguishing traits in terms of their racial or ethnic origin, sexual orientation or identity, etc.

The lack of training in authorities sometimes means that the few cases that reach police stations, prosecutors or courts tend to be played down. It also entails insufficient attention to the impact of such acts on the victims, whose social identity has been attacked and who are conscious of the risk of future victimisation. The physical damage is often less transcendental than the psychological one, which results from the violation and humiliation suffered, and often affects not just the victims, but also their family and community in general.

Several such cases are highlighted below:

- It has been shown in some cases that the police, judges and prosecutors tend to play down the severity of allegations such as threats or injuries with basic first aid administered, reducing their importance to simple minor offences, without investigating further and assessing how this behaviour might affect other legal rights such as the dignity or moral integrity of the victim. In cases of physical attacks on people using totally gratuitous violence in order to humiliate and harass the victim, creating a feeling of fear, anguish or inferiority in them, it must be considered that, besides the bodily injury, their dignity as persons is also being attacked, therefore requiring in these cases a weighing up of not only the crime of assault or misdemeanour assault but also a possible crime against moral integrity, as defined in Art. 173.1 of the Criminal Code.
- **It was also observed that complaints of threatening graffiti on NGO offices, places of worship, premises of political parties etc. are handled as a mere shabby property offence under art. 626 of the criminal code, not taking into account other articles of the Criminal Code such as the offence of threats under art. 170.**

- It is relatively common to find cases where a police officer wrongfully refers to consumer information services incidents such as denying a person entry to an establishment because of their racial origin, when the correct practice would have been to initiate criminal proceedings for an offence against fundamental rights under art. 512 of the Criminal Code.
- Police, judges and prosecutors sometimes lack the right knowledge to know and understand the cultural, social, occupational or psychological situation of victims, their daily difficulties and the reasons why they decide or not to report an incident, or when they decide to do so, it is not immediate.

Often, victims either do not report the incident or make contradictions in their statements, avoiding certain details about what they have suffered because of shame, ignorance, lack of trust or fear. The professionals responsible for investigating these crimes must be sufficiently skilled and trained to be able to empathise with the victim and therefore prove the occurrences and motivation for hatred or discrimination behind them.

Ignorance of cultural difference may make the “connection” with victims and gaining their trust difficult, preventing them from explaining as accurately as possible decisive factors in investigating the occurrences.

- **Police, prosecutors or judges are an expression of the society they serve and may therefore have the same stereotypes and prejudices as that society. Hence, when tackling a victim's case, they must be aware that they may be swayed by those stereotypes when assessing the credibility of a witness after receiving their statement or considering their testimony. It must be remembered that some witnesses or victims may offer certain resistance for the above reasons.**

In the affair “Stoica v. Romania, Serbia and Milanovic”, the European Court of Human Rights ruled that the State had failed to fulfil its obligations to effectively investigate cases of discriminatory motivation and stressed that the credibility of the witnesses had been conditioned by the stereotypes of the researchers, contributing to the lack of investigation.

Often that lack of investigation is because the police, prosecutors and judges are unaware of the everyday reality of the victims, or the specific nature of their problems or basic aspects of their social, cultural, religious life, etc.

### 3.4 NEED FOR COLLABORATION BETWEEN THE POLICE AND CIVIL SOCIETY

European and international institutions that tackle these problems insist in the importance of collaboration between the police and NGOs, immigrants or minority ethnic group organisations, cultural or religious representatives or leaders and community groups that work to prevent racism, xenophobia and other related forms of intolerance, or which are involved in supporting and representing immigrants and other vulnerable groups.

**Experience in various countries has shown that this collaboration provides satisfactory results in interpreting and preventing occurrences, assisting victims of these crimes and offences and creating mutual trust, particularly in difficult and complex situations.**

In dealing with the complex issues surrounding the victims in the initial phase of the investigation of a case, it is highly recommended that the police establishes partnerships and regular contact with social care services for victims/witnesses, NGOs, immigrants or minority ethnic group organisations, cultural or religious representatives or leaders and community groups, finding out which are most active in their field of action.

The police should not wait for a high profile case of hatred to occur before making contact with the community. Regular communication and consultation with community groups can be powerful tools for preventing all types of crime, and may lead to positive results for the police, helping to improve the confidence of victims in reporting incidents and enabling greater witness cooperation. These contacts ensure that when tensions arise between communities, the police have greater support and better resources to calm the situation and know when to step up police presence to address community concerns.

**This close relationship will help to increase citizens' trust in the police and the role they play in the community.**

In this context we must stress the support for victims of discrimination from organisations among others: Movimiento contra la Intolerancia (Movement against Intolerance), Fundación Secretariado Gitano (FSG), Unión Romani, Accem, Red Cross, Cepaim Foundation, MPDL, Red Acoge and Sos Racismo.

The actions of the various organisations are of interest to the police. For example, here are some of the actions of the NGO Movement against Intolerance<sup>34</sup>, with a lot of experience in the matter:

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<sup>34</sup> Source: [http://www.movimientocontralaintolerancia.com/html/cuadernosAnalisis/cuadernos\\_analisis.asp](http://www.movimientocontralaintolerancia.com/html/cuadernosAnalisis/cuadernos_analisis.asp)

Offering actions to the victims:

Lodging the complaint, accompaniment in formalities, work in their community environment, location of witnesses, initial self-protection measures, legal advice, legal aid for private prosecutor, representation in courts by people's action and

Post-legal actions:

Humanitarian aid to the victim, claiming the rights of the victim, meetings with other victims, information from other cases and offering aid to victims...

## 4. NEED TO IDENTIFY RACIST OR XENOPHOBIC INCIDENTS

**The way to statistically codify racist or xenophobic incidents is inescapably linked to the urgent need to be aware of this reality. Without information, problems cannot be tackled.**

One of the main objectives of Security Forces, as guarantors of public safety, is to protect people's fundamental rights. If anything, there is greater revulsion towards racist/xenophobic acts than other types of crimes because they violate principles of equality and non-discrimination.

As we will see in this manual, Spain is subject to both its own regulations and the international obligations that it has assumed.

In this respect, Decision 4/03 of the OSCE Ministerial Council meeting in Maastricht recommended to all participating States "to collect and keep records on relevant information and statistics on hate crimes, including violent displays of racism, xenophobia, discrimination and anti-Semitism" and to instruct the ODIHR (Office for Democratic Institutions and Human Rights) to serve as a point for collecting information and statistics of Member States and to regularly report on the information received. In addition to the above, another decision, this time of the OSCE Permanent Council, No. 607 of April 2004, committed participating States to "collecting and managing information and reliable statistics on anti-Semitic crimes and other crimes inspired by hate committed in their territories, communicating this information to the ODIHR and making it available to the public".

The European Court of Human Rights has stated the obligation of States to fully investigate all incidents that may be motivated for racist, xenophobic or other discriminatory reasons. For example, the *Secic v. Croatia* case of 31 May 2007 stated that "... when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to determine whether ethnic hatred or prejudice may have played a part or not in events.

### 4.1. INTERNATIONAL PERSPECTIVE ON TRAINING FOR RECORDING AND IDENTIFYING RACIST INCIDENTS

#### 4.1.A. BASIC INTERNATIONAL RULES THAT MUST BE KNOWN FOR PROVIDING TRAINING FOR IDENTIFYING AND RECORDING RACIST INCIDENTS.

As a starting point, with regard to international rules, two key areas need to be highlighted, the UN and the European regional area (EU, Council of Europe and OSCE):

#### 4.1.A.1.- United Nations:

- The International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, and the International Covenant on Civil and Political Rights (16 December 1966), stand out as legally binding instruments.

Other instruments which are non-legally binding but politically binding are:

- Declaration on Race and Racial Prejudice (27 November 1978)
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (25 November 1981)
- World Conference against Racism, 2001 (Declaration and Programme of Action)
- Declaration of Principles on Tolerance (16 November 1995)

#### 4.1.A. 2.- European regional area (European Union, Council of Europe and OSCE)

-In the European Union, the coming into force of the Lisbon Treaty in December 2009 has strengthened the powers of the EU in the field of equal treatment and non-discrimination:

- In particular, such strengthening is observed in the Lisbon consolidated version of the Treaty on European Union, especially articles. 2 and 3. Article 2 of the Treaty defines non-discrimination as one of the values that should underpin the actions of the European Union.
- Moreover, article 21 of the Charter of Fundamental Rights prohibits all forms of discrimination.

Similarly, within the EU, other instruments prohibiting discrimination and advocating equal treatment have been adopted:

- Directive 2000/43/EC of 29 June 2000 on the application of the principle of equal treatment between persons irrespective of their racial or ethnic origin.
- Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, access to employment, training and professional promotion and working conditions.
- Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

-The Council of Europe has the following legally binding instruments:

- Convention for the Protection of Human Rights and Fundamental Freedoms (November 1950)
- Protocol 12 of the European Convention on Human Rights (November 2000)

- The Framework Convention for the Protection of National Minorities (February 1995)
- The European Social Charter, (October 1961)
- The Convention on Cybercrime (November 2001)
- The Protocol to the Convention on Cybercrime (November 2002). It is worth noting that one of the recommendations of the European Commission against Racism and Intolerance stresses that Spain completes the process of ratification of the "Additional Protocol to the Council of Europe Convention on Cybercrime".

Other instruments of the Council of Europe which are not binding but which provide interesting recommendations are as follows:

- Recommendation no. (97)<sup>35</sup> of the Committee of Ministers of the Council of Europe relating to hate speech.
- General policy recommendation no. 7<sup>36</sup> of the European Commission against Racism and Intolerance on national legislation to combat racism and racial discrimination.

Policy recommendation no. 11<sup>37</sup> of the European Commission against Racism and Intolerance in the fight against racism and discrimination.

-The following policy instruments are available in the Organization for Security and Cooperation in Europe (OSCE):

- The Helsinki Final Act of 1989.
- The Helsinki Summit of 1992, establishing the Office for Democratic Institutions and Human Rights (ODIHR), the main institution of the human dimension of the OSCE.
- The High Commissioner on National Minorities, in charge of the fight against xenophobia and intolerance.

#### 4.1.B.-WHAT TYPES OF OBLIGATIONS DO INTERNATIONAL INSTRUMENTS IMPOSE ON SPAIN?

**Spain is part of an international context which imposes non-discrimination obligations on it. In this regard, it should be remembered that article 10.2 of the Spanish Constitution states that: "The rules on fundamental rights and freedoms that the Constitution recognises shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain". Moreover, article 96.1 of the same text sets out that: "International treaties validly signed,**

<sup>35</sup> [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281997%29020&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec%281997%29020&expmem_EN.asp)

<sup>36</sup> [http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation\\_n7/ecri03-8%20recommendation%20nr%207.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf)

<sup>37</sup> [http://www.coe.int/t/dlapil/codexter/Source/ECRI\\_Recommendation\\_11\\_2007\\_EN.pdf](http://www.coe.int/t/dlapil/codexter/Source/ECRI_Recommendation_11_2007_EN.pdf)

**once officially published in Spain, shall form part of national law. Their provisions can only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law”.**

Consequently, the international treaties cited (whether classed as a "Treaty", "Convention", "Agreement" or "Charter"), ratified by Spain, shall apply in Spanish domestic law, after their publication in the Official State Gazette (BOE). Similarly, the fundamental rights and freedoms that the Constitution recognises shall be interpreted in accordance with those international legal instruments. The other legal instruments mentioned that are not treaties shall only contain recommendations or guidelines.

Furthermore, since the adoption of Council Directive 2000/43/EC of 29 June 2000 on the application of the principle of equal treatment between persons irrespective of their racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, each of the 27 Member States of the European Union have been adopting these rules in their own national legislation.

In Spain, these directives were transposed into national law by Law 62/2003, of 30 December, on tax, administrative and social measures, creating a new framework of legal protection in cases of racial or ethnic discrimination in our country through the Council for the Promotion of Equal Treatment and Non-Discrimination of persons because of their racial or ethnic origin<sup>38</sup>.

The role of the Security Forces with regard to the obligation to protect victims and society against hate crimes and ensuring the right to non-discrimination is, as is clear from the above, especially important. In that context, the recording and identification of racist incidents is of decisive importance.

#### 4.1.C.-MECHANISMS THAT MONITOR FULFILMENT OF SPAIN'S INTERNATIONAL OBLIGATIONS

Below are some of the mechanisms for monitoring fulfilment of the obligations by the Spanish state.

-In the UN:

- The Human Rights Council, an intergovernmental body that is part of the United Nations system and composed of 47 Member States responsible for strengthening the promotion and protection of human rights worldwide. It was created by the General Assembly of the United Nations on 15 March 2006, with the main purpose of addressing situations of

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<sup>38</sup> The adoption of the Council Directive 2000/43/EC of 29 June 2000, on the application of the principle of equal treatment between persons irrespective of their racial or ethnic origin, involved the creation of the Council for the Promotion of Equal Treatment and Non-Discrimination of Persons. In 2007, its mission, composition and functions were regulated. The Council is made up of different national, regional and local public administrations, business organisations and unions, as well as non-profit organisations that work to promote the equal treatment and non-discrimination of persons regardless of their racial or ethnic origin. The following website provides more information about its working: <http://www.igualdadynodiscriminacion.org> The Council has 4 main functions: 1) Advising victims of discrimination independently when pursuing their claims. 2) Posting studies, investigations, reports autonomously and independently. 3) Promoting measures that foster equal treatment and non-discrimination, preparing appropriate recommendations and proposals. 4) Preparing and approving the annual report on the Council's activities and submitting it to the head of the Ministry of Health, Social Policy and Quality.

human rights violations and making recommendations. A year after holding its first meeting on 18 June 2007, the Council adopted its "institution-building package" which provides elements to guide its future work. These include the Universal Periodic Review (UPR) mechanism, through which it will examine the human rights situation in the 193 Member States of the United Nations.

Of note is the Universal Periodic Review of 2010 carried out in Spain<sup>39</sup>. The Report of the Working Group on the Universal Periodic Review for Spain (UN Doc A/HRC/15/6) includes the following recommendations to the Spanish state on the matter in hand:

1. Take more effective measures to combat racial discrimination and intolerance; among other things, compile and publish official statistics on cases of racially motivated crimes and promptly investigate hate crimes, racism and xenophobia and take stern action against the culprits.
  2. Compile statistics on racist and discriminatory incidents.
  3. Record and publish official statistics on incidents or allegations of racially motivated crime, and improve collection of data on hate crimes by members of the State Security Forces and authorities.
- The Committee on the Elimination of Racial Discrimination (CERD), a body of independent experts that monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by its States members, including Spain. All member countries must present periodic reports to the Committee. The Committee examines each report and expresses its concerns and recommendations to the State party in the form of "concluding observations". In addition to the report presentation procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early warning procedure, the examination of inter-state complaints and the examination of individual complaints.

The concluding observations of the Committee on the report submitted on Spain in 2011<sup>40</sup>were:

1. Urge the State to take effective measures to eliminate the practice of stop-and-search controls based on ethnic and racial profiling<sup>41</sup>.
2. Recommend that Spain considers the revision of those provisions of Circular 1/2010 and relevant State legislation that lead to interpretations which, in practice, can entail the indiscriminate detention and restriction of the rights of foreign citizens in Spain.

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<sup>39</sup> (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/35/PDF/G1014435.pdf?OpenElement>)

<sup>40</sup> [http://www2.ohchr.org/english/bodies/cerd/docs/co/Spain\\_AUV\\_sp.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/co/Spain_AUV_sp.pdf)

<sup>41</sup> Referring to its General Recommendation no. 31 (2005).

3. Remind Spain<sup>42</sup> that officials responsible for enforcing the law must receive intensive training in human rights to ensure that, in carrying out their duties, they respect and protect the fundamental rights of all persons, without discrimination on grounds of race, colour or national or ethnic origin.
4. Similarly, the Committee is concerned that there are no official figures on racist and xenophobic incidents, or the number of complaints, prosecutions brought, convictions, sentences imposed for racially motivated crimes, according to article 22.4 of the Criminal Code of the State party and reparations made to the victims.
5. The Committee urges Spain to periodically collect and disclose information about acts of racial discrimination among the police, courts, prisons and immigration services, respecting the rules on confidentiality, anonymity and personal data protection. Thus, in the next periodic report, Spain will have to provide data on complaints lodged, prosecutions brought, convictions, penalties imposed and reparations provided to victims.

In light of its General Recommendation No. 31 (2005), the Committee on the Elimination of Racial Discrimination reminds us that the absence or small number of complaints, prosecutions and convictions for acts of racial discrimination should not be regarded as necessarily positive; it may also be an indicator, among others, that victims fear social censure or reprisals, that there is a lack of confidence in law enforcement agencies, or that these authorities are not properly aware or know how to deal with discrimination complaints.

-In the Council of Europe:

- The European Commission against Racism and Intolerance (ECRI) of the Council of Europe, a Council of Europe body composed of independent members. It aims to combat racism, xenophobia, anti-Semitism and intolerance at a pan-European level and from the perspective of human rights protection. A cornerstone of the ECRI's methodology is its country by country approach, allowing it to analyse the racism and intolerance situation in each of the Member States and make proposals on how to address the problems identified. In late 1998, ECRI concluded the first series of its country reports on each Member State. The ECRI's first report on Spain was prepared in March 1998 and published in January 1999. An important step in the preparation of ECRI's country reports is the process of confidential dialogue with national authorities before final adoption of the report. We currently have the fourth report on Spain<sup>43</sup>, adopted in December 2010.

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<sup>42</sup> Referring also to its General Recommendation no. 13 (1993).

<sup>43</sup> <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/spain/ESP-CBC-IV-2011-004-ESP.pdf>

It reveals several of Spain's shortcomings with regard to racist incidents:

1. Firstly, it is noted that the Spanish government should collect and publish data on acts of racism and racial discrimination and the application of the laws in force, both criminal and civil and administrative, to combat such acts.
2. It is noted that the basic curriculum and continuous training of the police, private security personnel, prosecutors, forensic doctors, lawyers and judges should include compulsory courses on human rights, equal treatment, non-discrimination and current regulations to combat racism and xenophobia.
3. It also states that it should ensure an effective prohibition of all police practices aimed at racial profiling, taking into account ECRI General Policy Recommendation no. 11 on combating racism and racial discrimination in policing. This measure should be complemented by an independent mechanism for examining complaints against officials responsible for enforcing the law.
4. In any case, the ECRI recommends that the authorities continue their efforts to require that all possible racially motivated crimes feature in police reports, and that they order the police to be more rigorous with the inclusion of this information in their reports.

-In the European Union:

- European Union Fundamental Rights Agency (FRA), established in 2007, headquartered in Vienna<sup>44</sup>. The Fundamental Rights Agency succeeds the European Monitoring Centre for Racism and Xenophobia, created in 1997 by Regulation 1035/97. The objective of the Agency is to advise EU institutions and Member States on fundamental rights and their implementation in EU legislation. Its main tasks are to:
  1. Collect, analyse and disseminate objective and reliable data and develop new methods to improve the comparability and reliability of data.
  2. Promote research on fundamental rights.
  3. Develop and publish conclusions and opinions on specific topics, on its own initiative or at the request of EU institutions.
  4. Promote dialogue with civil society to raise public awareness of fundamental rights.

The Agency cannot examine individual complaints or set rules. It works according to a five-year programme, agreed with the Council and European Parliament. Its main priorities are the fight against racism, xenophobia and intolerance. It collaborates with other EU institutions, national authorities and civil society through the creation of a Fundamental Rights Platform. The

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<sup>44</sup> It was established by Council Regulation (EC) no. 168/2007 of 15 February 2007 (DO L 53/2 of 22.2.2007)

Agency includes all 27 EU Member States. Candidate countries (Turkey, Croatia, and the former Yugoslav Republic of Macedonia) may participate, to varying degrees, as observers.

A series of reports have been produced on its work against racism and xenophobia. In this regard, the 2011 annual report<sup>45</sup>, in chapter 6, on racism and discrimination, indicates that Spain has gone from being one of the countries that did not provide statistics on racist incidents to becoming a country which provides statistics, but on a limited basis. Greece and Italy have also improved similarly.

#### 4.1.D.-EXAMPLES OF RACIST INCIDENTS PROVIDED BY INTERNATIONAL ORGANISATIONS

##### 4.1.d.1.- The UN and examples of racist incidents: police identification based on ethnic profiling.

We are going to present an example of a decision by the UN Human Rights Committee on police activity by Spanish Security Forces: On 6 December 1992, Rosalind Williams Lecraft, a black woman originally from the US, who obtained Spanish citizenship in 1969, was stopped and searched at the railway station in Valladolid, a measure that the police did not carry out on any other person there at the time, as related in the report of the UN Human Rights Committee on Spain in 2009. After a verbal altercation with the police who requested her documents, and feeling the victim of a racist act, Rosalind filed a complaint providing a medical certificate which mentioned that she had "social phobia" as a result of the police control. After exhausting the domestic resources available to her, Williams Lecraft filed a complaint with the UN Human Rights Committee. The Committee stated that when a country's police authorities carry out identity checks, a person's physical or ethnic characteristics cannot be considered as an indication of their illegal residence in its territory.

However, the Committee noted that in Spain there are no explicit written instructions asking them to carry out identity checks based on skin colour, and that the country cannot be described as "racist". It did state though that the principle of non-discrimination in this case had been clearly violated. Accordingly, the Committee called on Spain to repair the damage suffered by Rosalind Williams Lecraft, a decision binding on any ratifying State of the International Covenant on Civil and Political Rights.

In line with this case in Spain, it is worth reflecting on the use of "ethnic profiling" in a political context. According to the ECRI, this shall be understood as "Use by the police, with no objective and reasonable justification, of criteria such as race, colour, language, religion, nationality or national or ethnic origin for control, surveillance or investigation activities"<sup>46</sup>.

Improper use of such profiling may occur in law enforcement if an official, in exercising their duties, has the authority to make decisions influenced by considerations of race, ethnic origin or religion, while carrying out identity checks, stopping and searching pedestrians and vehicles, identifications and mass searches, dispersion of groups, notices or warnings, fines and

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<sup>45</sup> [http://fra.europa.eu/fraWebsite/attachments/FRA-2012\\_annual-report-2011-chapter6\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA-2012_annual-report-2011-chapter6_EN.pdf)

<sup>46</sup> ECRI (EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE), General Policy Recommendation no. 11 on combating racism and racial discrimination, 29 June 2007, (Doc. CRI(2007)39), p.14.

arrests, raids, surveillance operations, automated data extraction, anti-radicalisation policies, etc. However, in the Spanish case, the most important recommendations of international organisations refer to the use of ethnic profiling for identification and registration purposes.

As indicated in the guide of the European Fundamental Rights Agency on this matter, it is obvious that the use of profiling is a legitimate tool for apprehending suspects after the crime. The use of profiling is usually based on evidence accumulated on an event or series of specific events ("description of the suspect"). One of the criteria to consider is that the more specific and detailed a profile, the less likely it is to be based predominantly on generic categories of race, ethnic origin or religion, or be discriminatory in nature<sup>47</sup>. Another criteria to be followed is behaviour<sup>48</sup>, and not racial, ethnic or religious characteristics. For example, police officers can work with profiles that indicate that they should focus on people who frequent specific places, or behave in a particular way. The use therefore of these profiles based primarily on patterns of behaviour is less likely to be considered discriminatory for reasons of race, ethnicity or religion. Accordingly, and based on criteria established by international law, we reached the following conclusion on the Williams Lecraft case: If police officers proceed to identify someone exclusively and principally because of their race, ethnic origin or religion, a case of direct and, therefore, illegal discrimination occurs. It must be understood that these are «principally» the reasons if the officer would not have identified the person if they had belonged to another race, ethnic group or religion. Race, ethnic origin or religion may be one of the factors considered by the officer, but cannot be the only factor or the principal reason for identification<sup>49</sup>.

#### 4.1.D.2.- Racist incidents and the Council of Europe

The role of the security forces is essential in investigating discriminatory motivation. For educational purposes, it is necessary to analyse some paragraphs of the judgments of the European Court of Human Rights.

As required by the European Court of Human Rights, the authorities have a duty to investigate the existence of a possible link between racist attitudes and violence, according to the obligations under the European Convention on Human Rights. Trainees should be aware of that reality, real examples and the rulings of the European Court of Human Rights.

The following are rulings that reflect the conception that the Council of Europe has of the role of Security Forces in recording and identifying racist incidents:

- A) European Court of Human Rights, *Nachova and Others v. Bulgaria*, cases no. 43577/98 and 43579/98, ruling of the Grand Chamber, Strasbourg, 6 July 2005, paragraph 160: "If it is suspected that racist attitudes led to the committing of a violent act, it will be especially important that the official investigation is carried out vigorously and impartially, taking into account the need to continuously reassert the social condemnation of racism

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<sup>47</sup> European Union Fundamental Rights Agency, For more effective policing. Guide to understanding and preventing discriminatory ethnic profiling, p.14.

<sup>48</sup> European Union Fundamental Rights Agency, For more effective policing. Guide to understanding and preventing discriminatory ethnic profiling, p.15.

<sup>49</sup> European Union Fundamental Rights Agency, For more effective policing. Guide to understanding and preventing discriminatory ethnic profiling, p.17-18.

and ethnic hatred and maintain the confidence of minorities in the ability of authorities to protect them from the threat of racist violence”.

- B) European Court of Human Rights, *Moldovan and others v. Romania*, cases No. 41138/98 and 64320/01, paragraph 111: "Discrimination based on race may constitute in itself degrading treatment prohibited by article 3 of the European Convention on Human Rights..."
- C) European Court of Human Rights. *Secic v. Croatia*, 31 May 2007, in a case that dealt with an attack by skinheads on Roma, paragraph 66: "...when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to determine whether ethnic hatred or prejudice played a role or not in the events. To fail to do this and treat racially motivated violence and brutality in the same way as cases that do not have a racist motive may close our eyes to the specific nature of acts which are particularly destructive of human rights”.
- D) European Court of Human Rights, *Beauty Salomon v. Espagne*, case no. 47159/08, ruling, Strasbourg, 24 July 2012, paragraphs 67 to 71<sup>50</sup>: "The Court considers that when investigating violent incidents State authorities are obliged to take all reasonable steps to discover whether there was a racist motive and to establish whether feelings of hatred or prejudice based on ethnic origin have played a part in events. It is true though that it is often extremely difficult in practice to prove racist motives. The obligation of the State to investigate the possible racist connotations of a violent act is an obligation of means and not results." "[...] the Court has found that Spanish authorities violated article 3 of the Convention<sup>51</sup> as they had not conducted an effective investigation into the incident." "[...] The Court notes that in the actions of 21 and 25 July 2005 the plaintiff mentioned the racist insults that had been hurled by the police [...] these arguments have not been examined by the courts responsible for the matter [...] without further investigation into the allegedly racist attitudes. "In light of the evidence provided, the Court considers that the decisions of the domestic courts have not taken into account the specific vulnerability of the applicant, inherent in her status as an African woman working in prostitution. The authorities have therefore failed in their rightful obligation under article 14 of the Convention<sup>52</sup>, in conjunction with article 3 on taking all possible measures to determine whether a discriminatory attitude could have or did not play a role in the events”.

4.1.D.3.- The European Union and racist incidents: examples. The Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

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<sup>50</sup> <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-112456>

<sup>51</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, "Section 3. Prohibition of torture, No one shall be subjected to torture or to cruel, inhuman or degrading treatment."

<sup>52</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, "Article 14. Prohibition of discrimination. The enjoyment of the rights and freedoms recognised in this Convention shall be secured without discrimination on any grounds, particularly sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or any other status."

The annual reports of the European Fundamental Rights Agency provide several examples of racist incidents in European Union countries. One of the cases referred to took place on 21 June, 2008, when a Jewish citizen in Paris was severely beaten by several people of North African/African origin. The prosecutor noted the aggravating circumstance of anti-Semitism because, according to police reports, and among other considerations, it was deemed that the victim was wearing a kipa and could be recognised as a Jew. In this case, the police reports were decisive for the Prosecutor being able to complete their work, highlighting the racist motive. If the police team had not recorded the fact that the victim was clearly identifiable and that the attackers were motivated by identifying the victim as a Jew, it would have been difficult for the Prosecutor to have applied the aggravating circumstance of anti-Semitism. We see how good collaboration between Security Forces and the judiciary can contribute significantly to the proper treatment of racist incidents.

According to the 2009 Report of the European Fundamental Rights Agency, in May 2008 the Ponticelli district of Naples was the scene of a series of violent attacks against Roma, including several fires. The police had to protect them from new attacks, highlighting the central role of the Security Forces in protecting citizens from racist incidents and aggressions.

However, the Framework Decision 2008/913/JAI, is a continuation of the Joint Action 96/443/JHA, which provides us a clear and accurate idea of what would be considered a racist incident. Similarly, this statement provides for the approximation of the legal rules and regulations of Member States concerning the racist or xenophobic behaviour covered in articles 1 and 2<sup>53</sup>. In line with this it is shown that racist and xenophobic behaviour must constitute a crime in all Member States and be punishable by effective, proportionate and dissuasive criminal sanctions, with a minimum one to three year prison sentence.

Art.1 considers punishable as criminal offences certain acts committed with racist or xenophobic objectives, briefly restated here: a) public incitement to violence or hatred directed against a group of persons or a member of such a group, defined by reference to race, colour, religion, descent or national or ethnic origin; b) the committing of one of the acts referred to in point a) by public dissemination or distribution of writings, pictures or other materials; c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and crimes of war as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is likely to incite violence or hatred against such a group or a member thereof; d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct may incite violence or hatred against such a group or a member thereof. Incitement,

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<sup>53</sup> This framework decision shall apply to any offence committed: in European Union (EU) territory, including crimes committed through an information system; by a citizen of a Member State or on behalf of a legal entity established in a Member State. In this respect, the framework decision establishes the criteria on determining the liability of a legal entity.

intentional participation or the attempt to commit any of the aforementioned acts shall also be punishable.

It is important to highlight the basic concepts of the Framework Decision set out below. The concept of ancestry is essentially about persons or groups of persons who are descendants of people who can be identified by certain characteristics (such as race or colour), without necessarily observing all of those features, despite which such persons or groups may be subject to hatred or violence, due to their ancestry. The concept of religion refers, in general terms, to religious beliefs or convictions which define people. The concept of hate refers to hate based on race, colour, religion, descent or national or ethnic origin.

In any case, it is worth noting that this Framework Decision shall not in any case be an impediment to a Member State adopting provisions in their national legislation to broaden the scope of article 1, section 1, points c) and d) to crimes against groups of persons defined by criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.

Racist and xenophobic motives are considered an aggravating circumstance and courts shall take into account such motives to determine penalties.

As a particularly relevant aspect, the adaptation to this Framework Decision by the domestic law of the Member States of the European Union means that the initiation of investigations and prosecutions for racist and xenophobic crimes will not be subject to the presentation of statements or charges by the victim.

#### 4.1.D.4.- Hate crimes and the work of the OSCE

The definition of hate crimes which is adopted in the OSCE must be known. The criteria developed by the OSCE to identify such crimes is particularly illustrative. It is vital to understand the work of this organisation on the matter in hand, since this international organisation has devoted most attention to the issue of hate crimes.

Within the framework of the Organization for Security and Cooperation in Europe (OSCE), the Office for Human Rights and Democratic Institutions (ODIHR) developed a working definition of hate crimes, with experts from the security forces of seven Member States, within the curriculum of the Pilot Law Enforcement Officer Programme on Combating Hate Crime conducted in Hungary and Spain. This working definition takes into account national peculiarities and differences in legislation, resources and approaches and needs. This will allow each State to articulate the definition as they best see fit.

As already defined above, a hate crime is: "Any criminal offence, including offences against the persons (A) or property, where the victim, premises or target of the offence is chosen for their real or perceived connection, sympathy, affiliation, support or belonging to a group such as those defined in part B. (B) A group is based on a common characteristic of its members, such as their real or perceived "race", national or ethnic origin, language, colour, religion, sex, age,

intellectual or physical disability, sexual orientation". The definition refers more to a type of crime or phenomena than a specific crime.

In any case, hate crimes have two basic elements: a crime and a motive based on different types of prejudices. Without a crime, even with a prejudice, there would not be a hate crime in the strict sense. Likewise, without a motive based on a prejudice, there would not be a hate crime either, only a common crime. The perpetrator always chooses their victim by their belonging (actual or perceived) to a specific group (ethnic, religious, sexual, disabled, etc.). From this definition we can conclude that there are two keys for differentiating hate crimes from any other type of parallel crime: On the one hand, the offender's motive, and on the other, the nature of the victim. Both matters are related to the grounds for the attack, which is the offender's reaction to the victim's identifying characteristics (race, ethnic origin, religion, nationality, gender, etc.). In short, the attacker commits these types of crimes for not tolerating or discriminating against certain identifying characteristics and the victim becomes the victim because they possess such characteristics.

For a true understanding of the motives for classing an incident with a racist motive as a hate crime, the OSCE's criteria will need to be taken into consideration.

According to the OSCE,<sup>54a</sup> a hate crime can be committed for one of the following motives, which can be considered as a basis or starting point, always connecting them to racism:

- The crime is committed because of resentment, jealousy or desire for approval.
- The criminal may not have any particular feeling towards the victim as an individual, but has hostile feelings or thoughts towards the ethnic group to which the individual belongs.
- The perpetrator or perpetrators has/have hostile feelings towards people that do not belong to the group to which they belong.
- At an even more abstract level, the victim may only represent the idea, for example, of immigration, whereby the perpetrator is hostile to this idea.

For the OSCE, the existence of just one of these motives would be sufficient to class an act as a hate crime.

The following OSCE example sufficiently stresses this argument: On 13 September 2001, in Seattle (USA), Michael Cunningham drove 25 miles from his house to a mosque, sprayed two vehicles parked outside with petrol and tried to burn them in order to destroy the mosque. When he was discovered, he fired a gun. The police discovered that Cunningham's act was inspired by hate from the terrorist attacks of 11 September.

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<sup>54</sup> OSCE, Hate Crimes Law, A Practical Guide, 2009.

Along the same lines, and in accordance with the OSCE's repeated recommendations, it is vital that, in reporting protocols, security forces recognise hate as a motivating factor for a particular crime. The most salient factor for identifying and reporting hate crimes is probably the perception of the victim and/or witnesses.

To this end, and following the model of the OSCE, we could refer to examples of action in countries which have more experience of hate crimes. In this respect, the legal authorities of the United Kingdom use the victim's perception of the crime, as opposed to only the opinion of investigators, when classifying hate incidents. According to the police and the Crown Prosecution Service in the UK, following the definition of the European Commission against Racism and Intolerance (ECRI) already mentioned in the definitions section: "a racist incident is any incident which is perceived to be racist by the victim or any other person". In Ireland, the police have also approved a definition of what constitutes a racist incident similar to that approved in the UK, following ECRI criteria.<sup>55</sup>

## 4.2.- SPANISH REGULATIONS

### 4.2.A.- Spanish Constitution of 1978. Principle of equality and non-discrimination

The Constitution of 1978, after noting in its article 1 *"that equality is one of the highest values of our legal system"*, includes the principle of equality before the law in its article 14, by recognising that *"Spanish people are equal before the law, without any discrimination on the grounds of birth, race, sex, religion, opinion or any condition or personal or social circumstance."*

Moreover, apart from this classic concept of equality, the Spanish text includes the material dimension of equality, belonging to the social state, by stating in its article 9.2:

*"1. Citizens and public authorities are subject to the Constitution and other legislation.*

***2. It is up to public authorities to promote conditions so that the freedom and equality of individuals and the groups to which they belong are real and effective, removing obstacles that prevent or hinder their full enjoyment and enabling the participation of all citizens in political, economic, cultural and social life"*.**

Let us not forget that this article is part of the first section of our Constitution and is a mandate for public authorities, and as such not only defines the executive or the legislature but also the judiciary.

Art. 9 of the constitution is closely related to a person's dignity, enshrined in art. 10 of our Constitution:

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<sup>55</sup> According to the ECRI, a "racist incident" is: "any incident which is perceived to be racist by the victim or any other person". This definition which features in Policy Recommendation No. 11 (ECRI General Policy Recommendation No. 11: *Combating racism and racial discrimination in policing* adopted by ECRI on 29 June 2007) is extracted, in turn, from the 1999 Stephen Lawrence Inquiry Report of Sir William Macpherson of Cluny (Cm 4262, chapter 47, section 12).

*"1. The dignity of the person, inherent inviolable rights, free development of the personality, respect for the law and the rights of others are the foundation of political order and social peace".*

The right that includes this constitutional precept has protection of fundamental rights: Firstly, the legal right with intangibility of the essence, as stipulated in art. 53.1 of the Spanish Constitution, although the organic law does not affect it. Secondly, enhanced legal protection, referred to in art. 53.2, which includes appeal for legal protection before the Constitutional Court.

Regarding the legal value of international texts ratified by the Spanish State, it should be remembered that they form part of our legal system<sup>56</sup> and must be a source for interpreting our internal rules, as established in art. 10.2 of our Constitution: *"The rules on fundamental rights and freedoms that the Constitution recognises shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain".*

#### 4.2.B.- CRIMINAL CODE (CC)

##### **THE GENERIC AGGRAVATING CIRCUMSTANCE OF DISCRIMINATORY GROUNDS (ART. 22.4 CC)**

***"Aggravating circumstances include (...)***

***Committing a crime for racist, anti-Semitic or any other type of discriminatory motive because of the ideology, religion or beliefs of the victim, ethnic group, race or nation to which the victim belongs, their sex, sexual orientation or identity, illness or disability."***

The inclusion of this circumstance in the Criminal Code was, according to the Statement of Reasons of the Reform Law of the Criminal Code, in response to "the proliferation in different European countries of racist and anti-Semitic violence perpetrated under the flags and symbols of Nazi ideology obliging democratic states to undertake decisive action to combat it", with Spain not having "remained indifferent to the awakening of this phenomenon".

##### Characteristics and requirements:

- An aggravating circumstance of a subjective nature, as it expresses a particularly undesirable motive: denial of the principle of equality.

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<sup>56</sup> Article 96.1 Constitution *"Validly concluded international treaties, once officially published in Spain, shall form part of the legal system. Their provisions may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law".*

Art. 1.5 of the Civil Code in the preliminary title, chapter I on sources of law provides:

5. Legal regulations contained in international treaties shall not be directly applied in Spain until they have become part of the legal system through their full publication in the Official State Gazette.

- The existence of a basic crime whose punishment will be maximum due to the presence of this aggravating circumstance based on an attack on the dignity of the individual, closely related to their personal or social circumstances (race, ideology, religion, etc.).
- So that the circumstance can be detected, all that is required is for the perpetrator of the crime to be fundamentally driven by an especially undesirable motive such as discrimination, irrespective of whether the personal characteristic for which the discriminatory motive arises is actually present or not in the victim of the conduct. For this reason, the circumstance will also be applicable, for example, if a woman is injured because she is married to someone of a certain ethnic group or identity, or to a journalist or politician for defending racial and ideological minorities, or to a member of an NGO who defends the rights of minorities, etc.
- It shall also be applicable if the perpetrator acts based on racist or discriminatory grounds, erroneously believing that the characteristic giving rise to the motive is present in the victim (belonging to a certain race, homosexuality, etc.). Example: two males leave a restaurant and say goodbye by giving each other a kiss on either cheek, a circumstance which is exploited by a group of skinheads to assault them believing them to be gays; however, they were mistaken as both victims were in fact related and heterosexuals. In such cases, the aggravating circumstance of discrimination would be applied as the article only requires committing the crime "on grounds" irrespective of the victim's status.
- The list of grounds for discrimination is assessed and interpreted strictly, as is always the case, in criminal law. Therefore in crimes motivated by other discriminatory grounds not covered in article 22.4, that aggravating circumstance cannot be detected, for example circumstances such as the victim's extreme poverty or physical appearance.
- The security forces, as previously indicated, must provide with the statement not only proof of the committing of the crime but also evidence of polarisation that helps demonstrate the discriminatory motive of the crime in order to show the occurrence of that aggravating circumstance. It is precisely this motive that distinguishes a crime with ordinary motives from a crime motivated by hatred or discrimination.

Example: murder in the Madrid Metro of a youth for ideological reasons. High Court ruling of 22/04/2010:

*"The purpose of the accused to attend the National Democracy right wing "against anti-Spanish racism" demonstration; his neo-Nazi appearance; the traditional Nazi shouts of "Sieg Heil" by the accused after stabbing Teodoro-, whilst also giving the Nazi salute; the use of the word "guarros" (filth) in referring to the anti-fascists, a derogatory term used by fascists to refer to their ideological opponents, according to some of the witnesses and police chief of Grupo XXI, evidence of the ideology of the accused and, in contrast, the radically opposite position of Teodoro, not challenged for his leftism, conclusively endorse the decision of the trial court in stating that the extreme differences of thinking were the motives that led to the attack by Fermín*

*on Teodoro, as unequivocally shown by the behaviour of the accused standing next to one of the entrance doors to the carriage, with the knife hidden, "calmly" waiting for the entrance of his ideological opponents, using the trivial pretext of asking about his sweatshirt to just stab him fatally".*

## CRIME OF THREATS AGAINST GROUPS

### Article 170

- 1. If the threats of harm constituting a crime were aimed at terrorising the inhabitants of a population, ethnic, cultural or religious group, or social or professional group, or any other group of persons and were sufficiently serious to achieve this, the upper penalties as provided in the preceding article will be respectively imposed.*

A dangerous crime whose specific nature is determined by the victim: *population, ethnic, cultural or religious group, or social or professional group, or any other group of persons.*

The type requires that these are serious threats and that the harm with which the group is intimidated constitute a crime.

It is relatively common for the police and judicial process to treat graffiti or paintwork of an intimidating nature scrawled on places of worship such as synagogues or the headquarters of cultural associations, political parties or homosexual or lesbian establishments as a simple summary trial for the defacing of property under art. 626 of the criminal code; however, this may be an erroneous practice since the intention of the perpetrator in these cases is not to deface the facade of the building but rather instil fear and intimidate members of the group in question. Here the circumstances of each case and the importance of the threat need to be weighed up to focus the investigation and prosecute it as a crime under art. 170 of the criminal code.

## CRIMES AGAINST MORAL INTEGRITY (ART. 173 CC and 174 CC)

### Article 173.

- 1. Anyone who inflicts degrading treatment upon another person, seriously injuring their moral integrity, shall be punished with a prison sentence of six months to two years.*

This precept is supplemented by article 177 CC which provides that "if, in addition to the infringement of moral integrity, the offences described in the preceding articles result in injury or harm to the life, physical integrity, health, sexual liberty or property of the victim or of a third party, those acts shall be punished separately with the penalties attached to them for the offences or misdemeanours committed, except when the former is already punished specifically by the Law".

The concept of moral integrity must be analysed with reference to the definition of that right by article 15 of the Spanish Constitution. The constitutional precept guarantees this right proscribing degrading treatment. For its part, art. 10 provides for dignity as a fundamental right, enjoying maximum constitutional protection. The High Court has not set a precise, univocal concept of moral integrity but links it to the inviolability of the person. Such attacks on moral integrity would include behaviour designed to denigrate, vilify, humiliate or harass.

The High Court ruling of 10 October 2008 states that the idea of moral integrity implies the existence of a legal right, a human value, with autonomy, separate and distinct from the rights to life, to physical integrity, to freedom and honour. Moral integrity has its own space and, therefore, needs criminal protection. In this space it is essentially defined from the idea of the inviolability of the person, in the right to be treated as oneself, as a free human being and never as a mere object.

High Court ruling 294/2003 of 16 April covers the elements of an attack on moral integrity, providing consolidated and settled case law on the matter. Such elements would be:

- A clear and unequivocal act of a humiliating nature for the victim.
- The existence of physical or mental suffering.
- Behaviour which is degrading or humiliating with special emphasis on the concept of dignity of the person or victim.

These three elements must be looked at together with the severity of the incident, which will require studying each specific case.

Moreover, it must be stressed that, according to case law, continuous conduct over time is not required to determine the occurrence of the type of crime in question, but rather an occasional act will suffice if it is severely harmful to the moral integrity of the individual.

**The Prosecutor's Office of Catalonia in instruction 2/2012, confirming an earlier instruction from 2007, provided the following guidelines to prosecutors from that autonomous region:**

***"It has been observed that sometimes physical attacks occur on persons which are alarming cases of totally gratuitous violence, in which the perpetrator or perpetrators choose the victim based on their origin, race, ethnic group, sexual orientation or identity, religion, age, illness or disability, situation of poverty or other circumstances or social or personal conditions.***

***Such acts which are carried out in order to humiliate and harass the victim, creating the same feeling of fear, anguish or inferiority by the gratuity of the attack, seriously hurt their human dignity.***

***Therefore, in accordance with the provisions in art. 173.1 section 2 of the LECRIM (Code of Criminal Procedures), and considering that the types of criminal injuries, of either a crime or misdemeanour, provided in the Criminal Code do not exhaust the total illegality of that behaviour, with the physical integrity of the person being protected therein exclusively as a legal right, without considering that such behaviour also entails an attack on their moral integrity, a legal right with its own, independent autonomy, different to physical integrity, honour or liberty, the Prosecutors must formulate a description, not only for a crime or misdemeanour assault but also a possible assault on moral integrity under art. 173.1 of the Criminal Code, in ideal concurrence of art.77 also from the Criminal Code with the aforementioned injury offence, for the above-mentioned cases of totally gratuitous physical violence carried out to humiliate and abuse the victim, seriously injuring their dignity, which will normally be for racist or anti-Semitic motives, or any other type of discrimination based on the ideology, religion or beliefs of the victim, the ethnic group, race or nation to which they belong, their sex, sexual orientation or identity, illness or disability”.***

Practical examples of application:

- A person on a commuter train sees a young Ecuadorian girl and shouts “bloody immigrant, go home you bitch” and “all immigrants must die”, kicking her several times. In this case, the injuries caused only required basic medical assistance, constituting a misdemeanour assault under art. 617.1 of the criminal code but the perpetrator was accused and condemned also for an offence against moral integrity under art. 173 (Ruling of the Provincial Court of Barcelona, 28/02/2010).
- An attack by a person on a disabled woman, in a wheelchair, who wanted to use the space reserved for persons with reduced mobility on a city bus, while hurling serious abuse about her disability. The acts were initially processed as a misdemeanour but the Prosecutor appealed saying that this was not a simple misdemeanour but rather a crime against moral integrity under art. 173.1 of the criminal code. Judgment is pending.
- High Court Ruling 819/2002 of 8 May: Several people drove the victim into the countryside and, after stripping him, spray painted his whole body, cutting his hair with scissors.
- Valladolid Provincial Court Ruling 58/2008 of 10 April: Three individuals physically assaulted a minor, pushing her to the ground face down with one of them sitting on her, hitting her and spitting on her, before carving a swastika into her arm.

Article 174

1. *Any authority or any public servant, who by the abuse of their position, and with the aim of obtaining a confession or information from any person, or to punish a person for any act which they have committed or is suspected of having committed, or for any reason based on any type of discrimination, submits that person to conditions or procedures which by their nature duration or other circumstance, inflict physical or mental suffering,*

*suppression or alteration of judgment or mental faculties or assault on their moral integrity, commits an act of torture.*

#### Article 175

*The authority or public servant who, by the abuse of their position and outside of the cases considered in the above article, assaults the moral integrity of a person will be punished with a prison sentence of two to four years if the assault is considered serious, and a sentence of six months to two years if it is not. The perpetrator will, in addition to the above-mentioned sentences, also be disqualified from their job or public office for two to four years.*

These are crimes where the perpetrator is an authority or public servant.

The nature of these crimes and the legal right protected is the same as in art. 173 analysed above.

For an attack on moral integrity to occur, case law requires:

- A clear and unequivocal act of a humiliating nature for the victim.
- Physical or mental suffering by that individual.
- And behaviour which is degrading or humiliating and infringes the concept of dignity of the person affected by the crime.
- The perpetrator is the authority or public servant that carries out the act in abuse of their position.

Example:

High Court ruling 543/2010 of 2 June

*“The appellant, who was carrying out their duties as a law enforcement officer, punched a person who had been led into the police station for identification as a result of incidents that had occurred on the street. It is clear that the act of being punched in itself represents physical suffering, even if no notable injury is caused. Moreover, given the circumstances in which it occurred, it also represents psychological suffering, taking into account the humiliating nature of an act of that type suffered in conditions where the victim is deprived of possibilities to react or defend himself. According to the factual account, the victim did not react in any particular way. In that situation he was under the authority of the police officers, in a place he could not leave until he had been identified, and where he was forced to accept the blow without being able to react to it. It is therefore an act solely designed to humiliate whoever is on the receiving end, unable to avoid and react to it, while under the custody of law enforcement”.*

## CRIME OF DISCOVERY AND DISCLOSURE OF SECRETS

### Article 197

1. *Anyone who, in order to discover the secrets or violate the intimacy of another person, without their consent, takes possession of their papers, letters, emails or any other documents or personal effects or intercepts their telecommunications or uses technical listening, transmission, sound or image recording or reproduction devices, or any other communication signal.*
6. *Similarly, when the acts described in the above sections affect personal data that reveals ideology, religion, beliefs, health, racial origin or sex life, or that the victim was a minor or declared unfit, the longer duration sentences shall be imposed.*

This is Internet behaviour known as computer intrusion or hacking, consisting of unauthorised access to or surreptitious interference with a computer system or communications network and using them without authorisation or beyond the level of authorisation granted (Morón Lerma, Internet and Criminal Law, Aranzadi 1999).

The sentence is far severer when such behaviour affects personal data that reveals ideology, beliefs, health, racial origin or sex life.

Practical example:

- Unauthorised access by an employer to an employee's PC discovering their sexual orientation, subsequently dismissing them.

## CRIME OF EMPLOYMENT DISCRIMINATION

### Article 314

*Those who cause serious discrimination in public or private employment against any person on the grounds of their ideology, religion or beliefs, their belonging to an ethnic group, race or nation, their sex, sexual orientation, family situation, illness or disability, for providing legal or union representation for workers, for their relationship with other workers in the company or for using any of the official languages of the Spanish state, and that do not restore the situation of equality before the law after a requirement or administrative sanction, repairing any economic damage caused, shall be punished with a prison sentence of six months to two years, or a fine of 12 to 24 months.*

Requirements:

- *An act of discrimination. Concept of Directive 2000/78:*
  - *Direct: person treated less favourably on grounds of discrimination.*
  - *Indirect: apparently neutral practice that may cause special disadvantage to persons on grounds of discrimination.*

- *Serious act: Legislative Royal Decree 5/2000, of 4 August on Labour Infringements and Penalties to determine whether the act of discrimination is serious.*
- *Private and public employment (career civil servants, labour officials, acting officials...)*
- *Resistance to work inspection, labour or legal authority:*
  - *Existence of a previous requirement or administrative sanction.*
  - *Not restoring situation of equality, repairing economic damage.*

#### Recommendations:

It is a crime which has not had many convictions to date bearing in mind its large number of requirements. The legislator opted, for the sake of the principle of minimum intervention, to consider this type of behaviour as labour law violations. The normal procedure will therefore be to make any complaints to the labour inspectorate. The following guidelines are provided if any complaint is made to the police:

- **Crime which requires a judicial inquiry for accreditation:**
  - Multiple requirements.
  - Information not easily available by the police.
- **Statement:**
  - Collect statement from accuser.
  - Verification of data of possible parties involved: employer, human resources manager, etc.
  - Verification of identity of possible witnesses.
  - Detention inadvisable
  - Send statement to judicial authority or Public Prosecutor.

#### CRIME OF INCITEMENT TO HATRED, VIOLENCE AND DISCRIMINATION

##### Article 510

1. *Those who incite discrimination, hatred or violence against groups or associations, on racist, anti-Semitic or other grounds related to ideology, religion, or beliefs, family situation, belonging of their members to an ethnic group or race, their national origin, sex, sexual orientation, illness or disability, shall be punished with a prison sentence of one to three years and a fine of six to twelve months.*

2. *Those who, with knowledge of its falseness or reckless disregard for the truth, disseminate harmful information about groups or associations regarding their ideology, religion or beliefs, the belonging of their members to an ethnic group or race, their national origin, sex, sexual orientation, illness or disability shall be punished with the same sentence.*

This is a crime which considers two different types of behaviour:

1. *Incitement to hatred, violence and discrimination (art. 510.1)*
2. *Provocative collective insult (art. 510.2)*
  - a) *Art. 510 section 1 incitement to hatred, violence and discrimination.*

*Grounds:*

This article 510.1 is the embodiment in Spanish punitive laws of the mandate contained in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, signed in New York on 7 March 1966, which requires States parties to declare “as an act punishable by law all dissemination of ideas based on racial superiority or hatred, all incitement to racial discrimination, and all acts of violence or all incitement to commit such acts against any race or group of persons of another colour or ethnic origin, and all support for racist activities, including their financing”, and article 20.2 of the International Covenant on Civil and Political Rights, signed in New York on 16 December 1996, which states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”, both ratified by Spain.

It is based on the danger of increased hostility to certain particularly vulnerable groups and jeopardising their existential security conditions.

*Nature:*

It is a crime of abstract danger, being the typical behaviour of inciting discrimination, hatred or violence. The type of offence does not require a specific method for the behaviour, let alone the need to advertise it. As mentioned, being a crime of abstract danger, no result is necessary either.

*The European Court of Human Rights in its rulings of 9 February 2012, in the Vejdeland and Others v. Sweden case on hate speech against homosexuals, and Féret versus Belgium of 16 July 2009 considered that incitement to hatred does not necessarily require a call to a particular act of violence or other criminal act. Attacks committed against persons by insulting, ridiculing or slandering certain parts of the population and specific groups or incitement to discrimination are sufficient for the authorities to give priority to the fight against racist speech over irresponsible freedom of expression that undermines the dignity, or even the security, of such parties or groups of the population. Political speeches that incite hatred based on religious, ethnic or cultural prejudice pose a threat to social peace and political stability in democratic states...”*

### **Requirements:**

- **An act of incitement to hatred, violence or discrimination.**
- **We understand that the type of criminal offence does not require public dissemination, i.e. through the media or mass media, since it talks about "dissemination by any means". Dissemination, ("Difusión") according to the Dictionary of the Royal Academy of the Spanish Language, is "the action and effect of spreading or circulating", with one of the meanings of the verb "to disseminate", according to the same dictionary, being to "spread or circulate knowledge, news, attitudes, customs, fashions, etc.", which can be done in different ways, not necessarily through use of the media.**
- **The behaviour must be directed towards an indeterminate number of persons. This would not include, for example, expressions used in a private conversation between friends.**
- **It makes no difference whether this is done directly towards a group of persons in an open or closed space, through publications, conferences, demonstrations, meetings, music concerts: Examples: RAC/OI music, or using the Internet or social networks.**

### *Hate Speech:*

What is punishable is not the expression itself of ideas, abominable as they are, but rather when this expression is made in such a way and circumstances that it gives rise to incitement to hatred, discrimination or violence, in violation of the constitutional values of human dignity and non-discrimination on grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance contained in article 14 of the Constitution. And also when the expression of such ideas incites hatred or violence, either physical or moral.

The Constitutional Court in its Ruling 176/1995 (Makoki case) defines "hate speech" as that containing "a strong content of hostility which incites, sometimes directly and other times subliminally, violence through humiliation. The explosive effect of these ingredients, mixed in this way, is something that the experience of our own eyes allows us to predict without almost any margin for error, due to a causal link between each of them". For its part, the European Court of Human Rights, pursuant to paragraph two of article 10 of the European Convention on Human Rights of 1950 (Ergogdu & Ince v. Turkey, 8 July 1999), states that "freedom of expression cannot offer coverage to so-called "hate speech", i.e., that produced in terms that imply a direct incitement to violence against citizens in general or against certain races or beliefs in particular".

### *Collision with fundamental rights recognised in the Constitution:*

- *Freedom of thought or freedom of conscience (art. 16 of the Spanish Constitution)*
- *Freedom of expression (art. 20 of the Spanish Constitution)*

Hate and discrimination speech can find no protection or coverage under the constitutional rights of freedom of expression and freedom of thought or freedom of conscience according to arts. 16 and 20. The International Covenant on Civil and Political Rights, after setting forth in its art. 19 freedom expression as a cornerstone of a democratic system and the rule of law, prohibits in its art. 20 incitement to hatred, hostility or violence on grounds of discrimination.

*Our Constitutional Court already made it clear from ruling 214/1991 that "neither freedom of thought (art.16) nor freedom of expression (art. 20.1) include the right to make statements, expressions or carry out campaigns of a racist or xenophobic nature since, as provided for in art. 20.4, unlimited rights do not exist and this is contrary not only to the right to honour of the person or persons directly affected, but also other constitutional rights such as human dignity (art.10), which must be respected by both public authorities and citizens themselves, in accordance with the provisions of arts. 9 and 10. Dignity as the rank or category of the person as such, from which the right to honour stems and in which it is projected (art.18.1), does not allow for any type of discrimination based on birth, race or sex, opinions or beliefs.*

*Hatred and contempt for a nation or ethnic group (any nation or any ethnic group) are incompatible with respect for human dignity, which is only fulfilled if attributed equally to all men, all ethnic groups, all nations. Therefore, the right to honour of members of a nation or ethnic group, insofar as it protects and expresses the feeling of dignity, is undoubtedly harmed if any nation or race is generically offended and injured. Thus, the expressions and statements uttered by the defendant are also unaware of the effective applicability of the higher values of the legal system, namely that of the value of equality enshrined in art. 1.1, in relation to art. 14 thereof, so they cannot be considered constitutionally legitimate.*

*In this respect, and even when, as commented, the constitutional requirement of the objective truth does not act as a limit on freedom of thought and freedom of expression, such rights do not in any case guarantee the right to express and disseminate a certain understanding of history or view of the world with the deliberate intention of belittling and discriminating against, while expressing it, persons or groups based on any personal, ethnic or social condition or circumstance, as this would be tantamount to admitting, purely by following the thread of more or less historical discourse, that the Constitution permits the violation of the higher values of the legal system, such as equality (art.1.1) and one of the foundations for political order and social peace: dignity of the person (art.10.1).*

*Thus, the combination of constitutional values, dignity and equality of all people makes it necessary to state that neither the exercise of freedom of thought or expression can protect declarations or expressions intended to belittle or generate feelings of hostility against certain ethnic groups, foreigners or immigrants, religious or social groups, for in a social, democratic and law-abiding state such as Spain the members of those groups have the right to live peacefully and be fully respected by the other members of the social community.*

The High Court, even though it does not yet have settled case law on the matter<sup>57</sup>, recently highlighted in the Ruling of 10/05/2011 (Blood & Honour case), invoking the doctrine already established by the Constitutional Court in Ruling 214/1991 (Violeta Friedmann case), that: *"It is not about establishing a militant democracy, imposing not respect but positive adherence to the legal system, firstly to the Constitution, Ruling 48/2003, of 12 March, but rather excluding from the supposed guarantee under article 20.1 of the Spanish Constitution an alleged right to express and disseminate a certain understanding of history and view of the world with the deliberate intention of belittling and discriminating against, while expressing it, persons or groups based on any personal, ethnic or social condition or circumstance, which violate one of the highest values of the legal system, namely equality, and one of the foundations of political order and social peace, the dignity of the person. Ruling 214/1991, of 11 November."*

Along these lines, the very recent Ruling of 28/12/2011 (Hammerskin case) found guilty, for a crime of conspiracy under art. 515.5, the members of the not legally constituted Nazi ideology association known as Hammerskin España (hereinafter HSE), which believes in the supremacy of the white race, and aims to spread hatred and violence as a result of homophobia, xenophobia and anti-Zionism, spreading those feelings among others by organising music concerts that involve groups who sing songs whose lyrics reflect the above ideology, distributing records and publications for this purpose. The lyrics of these songs contain, respectively, the theme of white male supremacy, anti-communism and anti-financial Zionism, anti-immigration, fighting to the death just like the Blue Division, the defence of the Aryan race, loyalty to the European race, confrontation with the police, white power and anti-miscegenation with the motto of the Ku Klux Klan: *"We must secure the existence of our race and a future for white children"* (what is known as the 14 words), hatred of the system or -with respect to the penultimate song- with a clear violent content against anarchists and communists, encouraging sports such as putting a "SHARP" on the ground and kicking and attacking him with their boots and braces.

Remember that these two rulings followed Ruling 259/2011, of 12 April, the Kalki Bookstore case in Barcelona, in which Court 2 of the High Court maintained a different argument, giving a very wide margin to freedom of expression, freedom of thought and freedom of conscience, but with an interesting and informed vote from Judge Martínez Arrieta which incorporates all the doctrine stated in this document of the Constitutional Court, European Court of Human Rights, and all the rules set out in the above-mentioned international treaties and recommendations of the above-mentioned international organisations.

European Court of Human Rights case law follows suit: Ruling of 9 February 2012 in *Vejdeland and Others v. Sweden* case on hate speech against homosexuals, *Féret v. Belgium* Ruling of 16 July 2009 on racist, xenophobic and Islamophobic hate speech and *Le Pen v. France* Ruling of 10 April 2010 on hate speech against Muslims.

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<sup>57</sup> The Ruling of 12/04/2011 (Kalki Bookstore case in Barcelona) maintains a different argument, giving a very wide margin to freedom of expression, freedom of thought and freedom of conscience. This ruling included an interesting and informed vote from Judge Martínez Arrieta.

It should be highlighted though that not all expressions that shock or offend or which have a discriminatory content constitute a criminal offence. In each specific case, the prevailing circumstances and profile background of the person responsible for the expressions must be analysed.

b) Art. 510 section 2

- This punishes the dissemination of harmful information about groups or associations for discriminating against their members.
- Connection with:
  - Libel under arts. 208 et seq.
  - Crime advocating genocide (art. 607.2 of the Criminal Code)
- Requires:
  - Disseminating harmful information on the grounds of discrimination.
  - Knowledge by the perpetrator of its falseness or reckless disregard for the truth.

## CRIME OF DENIAL OF SERVICES IN A PUBLIC SERVICE

### Article 511.

*1. Any individual responsible for a public service who denies a person a service to which they are entitled on the grounds of their ideology, religion or beliefs, their belonging to an ethnic group or race, their national origin, sex, sexual orientation, family situation, illness or disability shall receive a prison sentence of six months to two years and a fine of twelve to twenty four months, and be disqualified from their job or public office for one to three years.*

*2. The same penalties apply where the offence is committed against an association, trust, company or corporation or its members because of their ideology, religion or beliefs, the membership of its members or any one of them to an ethnic group or race, their national origin, sex, sexual orientation, family situation, illness or disability.*

*3. Public officials who commit any of the acts described in this article shall incur the same penalties at their upper level and be disqualified from public office for two to four years.*

### Characteristics:

- Persons:
  - Individual (art. 511.1) responsible for public service. “An individual responsible for a public service” is any person who, without being an authority or public servant, performs a public duty.

- Public servant (art. 511.3).
- Victim: individuals (art. 511.1) and groups.
- *"Service" must be understood* as any delivery resulting from performing the service typical of sectors legally classed as public sectors.
- It punishes the denial of the service on the grounds of discrimination, although nothing is said about the circumstances in which the service is formerly provided but in unreasonably inferior conditions for discriminatory reasons. The doctrine means that these cases are not included in the type of criminal offence. (GÓMEZ MARTÍN, V., Comment on art. 511 PC, in CORCOY BIDASOLO, M. / MIR PUIG, S. (Dirs.), *Comments on the Penal Code. LO Reform 5/2010*, Valencia, 2011, p. 1046.)
- The person denied the service must *"have right"* to it. The type of offence does therefore not include circumstances in which the differential treatment provided is justified or protected legally, for example foreigners in an illegal situation who do not have the right to all the benefits or services of the public health system.
- The perpetrator of the crime must be driven by one of the racist or discriminatory motives provided for in the type of offence. It is a finite list of motives.

Practical examples:

- A municipal bus driver who refuses a homosexual person entry onto the bus.
- A public library worker who refuses to lend a book or denies access to the reading room to a Muslim woman.
- A school headmaster who refuses enrolment in the school to a pupil who has HIV or says that this pupil must receive separate schooling to the others.
- An officially approved public or private doctor or nurse who refuses to treat an HIV patient.

## CRIME OF DENIAL OF SERVICES IN A BUSINESS OR PROFESSIONAL ACTIVITY

*Article 512.*

*Whoever in the exercise of their professional or business activities refuses a service to a person to which they are entitled, because of their ideology, religion or beliefs, their ethnic group, race or nationality, sex, sexual orientation, family situation, illness or disability, shall be disqualified from working in the profession, trade, industry or business, for a period of one to four years.*

**Characteristics:**

- The provision defines a special crime which can only be perpetrated by professionals, employers or their representatives. There is no crime if the service is refused by an individual not involved in any business or professional activity, for example an individual who refuses to rent a flat to an immigrant; however, this would not be the case if it were an estate agent's that refused to rent the flat.
- The type of crime also requires another element, regularity, inherent in all professional or business activity. The perpetrator of the crime must carry out the activity regularly, excluding therefore cases of offering goods or services on an isolated or occasional basis.
- The perpetrator of the crime must be driven by racist, anti-Semitic or any of the discriminatory motives provided for in the type of offence. It is a finite list of motives.
- It is important to note that the business entity cannot rely on the right to reserve admission to prevent access or enjoyment of a service because of the *ideology, religion or beliefs, ethnic origin, race or nationality, sex, sexual orientation, family situation, illness or disability* of the person, in short for reasons that violate art. 14 of the Constitution.

Practical examples:

- *High Court Ruling 29/09/1998:*
  - *Murcia Provincial Court Ruling 14/07/1997 found guilty an individual who refused to sell a car in a dealership because the person was black: "I don't sell to blacks like you, or gypsies or Arabs".*
- *Alicante Provincial Court Ruling 11/06/1999:*
  - *A bouncer was found guilty of preventing two coloured citizens, precisely for that reason, from entering a pub.*
- *Barcelona Provincial Court Ruling 15/01/2010 (Criminal Court Ruling 18 Barcelona 20/07/09)*
  - *access denied to nightclub "no gypsies or Moroccans are allowed in here"*
- *Valencia Provincial Court Ruling 23/02/2010*
  - *A group of persons with down syndrome were refused entry to a pub... "Why do you have to come in here to screw things up, there are other places you can go"*

## CRIME OF UNLAWFUL ASSOCIATION

### Article 515

*Unlawful association is punishable and is considered as:*

*5. Those who promote or incite discrimination, hatred or violence against persons, groups or associations because of their ideology, religion or beliefs, the belonging of their members or any one of them to an ethnic group, race or nation, their sex, sexual orientation, family situation, disability or illness.*

### Characteristics:

- For a crime of *unlawful association* to occur the High Court (e.g. High Court Ruling of 6 July 2010)
- requires the coming together of several persons organised for certain purposes, with the following requirements:
  - a) Several persons meeting to carry out a specific activity.
  - b) Existence of a more or less complex organisation depending on the type of activity planned.
  - c) Consistence or permanence in the sense that the agreement to associate must be long-lasting and not just temporary.
  - d) The purpose of the association must, under art. 515.5, be to promote or incite discrimination, hatred or violence against persons, groups or associations because of their ideology, religion or beliefs, the belonging of their members or any one of them to an ethnic group, race or nation, their sex, sexual orientation, family situation, illness or disability.
- The High Court states that the partners in crime situation, i.e. the existence of coordinated persons (without a hierarchical structure) does not imply the existence of an unlawful organisation or association, this is an advantage and something extra to simple partners in crime (High Court Ruling 1/3/2000), which is not satisfied purely through the meeting of persons to commit an offence (High Court Ruling 12/9/2003).

### Examples of application:

- High Court Ruling of 10/05/2011 in the Blood and Honour case, which confirmed the ruling of the Madrid Provincial Court of 30/06/2010 which found guilty several persons who formed the Spanish section of the International group Blood and Honour for a crime of conspiracy in accordance with art. 515.5 of the Criminal Code, i.e., conspiring to incite hatred, violence or discrimination.

The ruling said that "Blood and Honour" from the point of view of its ideology *"links directly with Nazism of Hitlerite Germany with absolute devotion for whoever is its leader, promoting both the superiority of the Aryan race, understood as the white race, and the inferiority of other races particularly miscegenation, as well as phobic rejection and violence towards immigrants, and the intrinsic evil of the Jewish race which is portrayed as the invisible enemy that must be fought, actively denying the Holocaust by the German Third Reich"*.

It was also proven that they organised concerts involving the bands Oi<sup>58</sup> and RAC, "Rock Against Communism" *(whose lyrics included references to Nazi, fascist and racist ideologies explicitly inciting violence against immigrants or Jews, and also sell discs with that music.*

The court ruling, confirmed this time by the High Court, stated that both the material and formal requirements were met to judge the organisation as an association with real and effective existence, whose activity falls fully within the scope of the type of offence provided for in art. 515.5 PC 95 which establishes limits on the right of association not in itself considered, but indeed in its declarations, which is in full accordance with the provisions in art.16.1 of the Spanish Constitution, by establishing as a limit on declarations of freedom of thought the need to maintain public order protected by the law, setting forth in art. 20 of that text, as a limit on freedom of expression, respect for other rights recognised in Title I, the precepts of the laws that implement it and, in particular the right to honour, intimacy, self image and protection of youth and childhood.

The High Court in the aforementioned ruling, following the case law of the European Court of Human Rights and Spain's Constitutional Court, stated: *"It is not about establishing a militant democracy, imposing not respect but positive adherence to the legal system, firstly to the Constitution, Ruling 48/2003, of 12 March, but rather excluding from the supposed guarantee under article 20.1 of the Spanish Constitution an alleged right to express and disseminate a certain understanding of history and view of the world with the deliberate intention of belittling and discriminating against, while expressing it, persons or groups based on any personal, ethnic or social condition or circumstance, which violate one of the highest values of the legal system, namely equality, and one of the foundations of political order and social peace, the dignity of the person, Ruling 214/1991 of 11 November."*

- High Court Ruling of 28/12/2011 in the Hammerskin case, which confirmed the ruling of the Madrid Provincial Court of 30/06/2010 which found guilty several persons who formed the Spanish section of the international association Hammerskin for a crime of conspiracy in accordance with art. 515.5 of the Criminal Code, i.e., conspiring to incite hatred, violence or discrimination.

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<sup>58</sup> Musical genre related to the skinhead movement which arose in the 1970s.

The High Court pointed out that the association spreads "hate speech" and referred to its Ruling 372/2011 of 10 May called "*Skin Heads Blood and Honour España*" and Ruling 224/2010 of 3 March, on terrorism, with the doctrine being fully applicable to this case.

Those convicted were part of the not legally constituted Nazi ideology association called Hammerskin España, which believes in the supremacy of the white race and aims to spread hatred and violence as a result of homophobia, xenophobia and anti-Zionism, spreading these feelings among people by organising music concerts in which the groups involved sing songs whose lyrics reflect that ideology, distributing discs and publications for that purpose.

The lyrics of the songs performed at the concerts contain, respectively, the theme of white male supremacy, anti-communism and anti-financial Zionism, anti-immigration, fighting to the death just like the Blue Division, the defence of the Aryan race, loyalty to the European race, confrontation with the police, white power and anti-miscegenation with the motto of the Ku Klux Klan: "*We must secure the existence of our race and a future for white children*" (what is known as the 14 words), hatred of the system or -with respect to the penultimate song- with a clear violent content against anarchists and communists, encouraging sports such as putting a "SHARP" on the ground and kicking and attacking him with their boots and braces. The last song cited is the HSE anthem which starts with the words "*it is the fury of the past, the pride of the forgotten, the power of the race, two hammers and start hunting*".

Premises are hired for the concerts and interest generated through the media, urging a lot of people to attend, making sure that the groups are not known in order to avoid administrative suspensions, charging for the admission and selling attendees products that both raise revenue and help finance the organisation and spread its ideas.

## CRIMES AGAINST FREEDOM OF BELIEF AND RELIGIOUS VIEWS

### *Article 522*

*A fine from four to ten months shall be incurred by:*

- 1. Those who, by means of violence, intimidation, force or any other unlawful imposition, prevent a member or members of a religious confession from carrying out the acts inherent to the belief they profess, or from attending these.*
- 2. Those who, by the same means, force another or others to practice or to attend to acts of worship or rites, or to carry out acts that reveal if they profess a religion, or to change the religion they profess.*

### Article 523

*Whoever, by violence, intimidation, tumultuous action or by imposition, were to prevent, interrupt or disturb the acts, functions, ceremonies or manifestations of religious confessions registered on the relevant public register at the Ministry of Justice and Internal Affairs, shall be punished with a sentence of imprisonment of six months to six years, if the act was committed at the place of worship, and with a fine from four to ten months if perpetrated anywhere else.*

### Article 524

*Whoever perpetrates profane acts that offend the views of a legally-protected religious denomination in a temple or place of worship, or at religious ceremonies, shall be punished with a sentence of imprisonment of six months to one year or a fine from 12 to 24 months.*

### Article 525

*1. Whoever, in order to offend the feelings of the members of a religious denomination, publicly disparages their dogmas, beliefs, rites or ceremonies, verbally or in writing, or abuse the rights of those who profess or practice them in the public, shall incur in a fine from eight to twelve months.*

*2. The same penalties shall be incurred by those who publicly disparage, verbally or in writing, those who do not profess any religion or belief whatsoever.*

We will focus on Article 525 because of its relevance and more common application.

### Right Protected by Law

Article 16 of the Spanish Constitution advocates for the protection of freedom of beliefs or religious views. This rule not only admits freedom of religion, thought and worship, but also sets down the obligation of public bodies to take the beliefs of the Spanish society into account. With the defence of religious freedom, the Criminal Code is protecting not only its practice but also the associated personal views. It is not a matter of supporting certain religious groups but of protecting the freedom of individuals, either religious or non-religious (see article 525.2) when exerting their fundamental rights. It is also acknowledged that freedom of religion comprises not only external signs and actions but also and, in most of the cases, respect for the private views it entails. Though those views may be of no interest for those who do not share certain beliefs, legislation has valued the fact of the religious beliefs as an important element in the personal development of individuals. The purpose is to admit that some people share common religious views that the secular state should also protect.

### Action

Penalties for those that make a mockery of dogmas, beliefs, rites or ceremonies in the public, verbally or in writing with the aim of offending the views of believers.

An objective conduct is required as described by the legislator as "making a public mockery" of dogmas, beliefs, rites or ceremonies associated to religions.

The definition of "making a mockery of sth" is "*to make something seem stupid or without value*". The meaning makes reference to a mockery, but not a usual one, but a "shameless" one.

The article also contains a subjective element by indicating that the action must have a purpose: that of disdain, that is, "*cause disdain, offend, humiliate, abase*" as the active subject has to behave in an "offensive way". The aim is, then, that the conduct has to have the direct intention of offending common religious views.

Jurisprudence is very restrictive as for the occurrence of all provisions of art. 525 and in most cases offenders have been acquitted because of the lack of subjective elements that offences require. Courts do not regard criminal conducts those that are mainly satirical, provocative or critical in nature.

The position of Courts with the precepts of this article is very restrictive as they provide a wide margin to the exercise of freedom of speech and freedom of artistic creativity and in most of the cases judgments have acquitted charges. Let us have a look to some of those judgments:

Ruling 668/93 of the High Court of 25 March that confirmed the acquittal nature of the decision arguing that the accused had no intention to offend.

Ruling of the Provincial Court of Seville (Section 4) no.553/04 of 7 June, acquitted the accused for considering that "no dogma, belief, rite or ceremony had been directly or indirectly put into question but the accused just uses a well-known image to outrage and cause such controversy that a non-religious image with no supporters in the city would have hardly achieved, and that is exactly the purpose of the offender without realizing that the multiple spelling mistakes that the text contains, would just be quite enough to outrage any reader". (fj 2º)

Ruling of the Provincial Court of Valladolid (Section 4) no. 367/05 of 21 October, also acquitted the accused by concluding that the conduct "had not the aim of injuring religious beliefs but just intended to express and manifest dissenting opinion" (FJ 2º).

Ruling of the Provincial Court of Valladolid (Section 2) no. 251/11 of 9 June, filed a claim against an interpreter who made a mockery of the Pope and the Curia, put Catholic dogmas into question and distributed condoms during a comedy show. The Chamber argued that "the facts that appear in the viewing as evidence of criminal behaviour actually prove to be indicators of the secular or even anti-clerical position of the speaker but there are no signs of mockery against the dogmas, beliefs, rites or ceremonies of the Catholic Church, nor taunting against those who practice them or malice to offend religious beliefs". (FJ 3º).

## CRIME OF SPREADING IDEAS JUSTIFYING GENOCIDE

### Article 607.2

*Spreading by any means of ideas or doctrines that deny or justify the crimes defined in the preceding section of this article, or that aim at reinstating regimes or institutions that protect this type of practices shall be punished with a sentence of imprisonment from one to two years.*

A major international achievement has been considering genocide as a crime against humanity, universally recognized and unanimously condemned. The legal term "genocide" was first used by the International Criminal Court in Nüremberg in between 1945-1946 when judging the crimes and abuses that had been committed from September 1st, 1939 during the Nazi Germany of the Third Reich. Genocide was understood as the extermination of millions of human beings by the only reason of being members of a particular ethnic group, Jewish people in this case. The historical reality of the Holocaust is common ground and has only been denied by those who intend to glorify Nazism as the accused did. It is also universally agreed that the Holocaust was a genocide and the Nazi regime of the Third Reich conducted a systematic elimination of other communities such as the Roma, which must also be recognized as genocide.

By December 9th, 1948 the General Assembly of the United Nations approved a Convention on the Prevention and Punishment of the Crime of Genocide, and in Article I, the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law and that they committed themselves to prevent and punish those crimes. Article III establishes that the following acts shall be punishable: genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide. This Convention was ratified by Spain and published in the BOE as of February 8, 1969. Consequently the crime of genocide was introduced in our criminal legislation by Act 44/1971 of 15 November that incorporated genocide in the Criminal Code in force among the crimes against the law of nations. The current 1995 Criminal Code punishes crimes of genocide in article 607 under the heading Crimes against International Law and paragraph 2 states that: "The spreading, by any means, of ideas or doctrines that deny or justify the crimes defined in the preceding section of this article, or that aim at reinstating regimes or institutions that protect this type of practices, shall be punished".

### Right Protected by Law:

The most widely accepted and widespread doctrine points out that the right protected by law in genocide crimes is the international community, understood as diverse human groups living together in harmony regardless of the level of organizational or political independence that bestows them with the category of states. In relation to this, Decision 214/91 (Violeta Friedmann case) of the Constitutional Court points out, respecting ethnic, religious or social groups of national foreigners and immigrants, that "in Spain, a social, democratic and state-of-law country, the members of those groups have the right to live in harmony and be fully respected by the rest of members of the social community".

## Action

- Crime observes two types of conducts:
  - 1) Spreading ideas or doctrines that deny or justify genocide.
  - 2) Spreading ideas or doctrines that intend to re-establish regimes or institutions in favour of genocide practices.
- Ruling 235/2077 of the Plenum of the High Court, related to an issue of unconstitutionality presented by the Third Section of the Provincial Court of Barcelona on the second paragraph of article 607 of the Criminal Code, partially accepted the issue of unconstitutionality by invalidating the inclusion of the expression "deny or" in the first paragraph of article 607.2 of the Criminal Code and stating that the first paragraph of the mentioned article against the dissemination of ideas or doctrines justifying genocide crimes, was not unconstitutional.

Consequently, since that decision was made, the dissemination of ideas justifying genocide is punishable in Spain while the dissemination of ideas denying genocide is not punishable.

- The most widely accepted and widespread doctrine regards genocide, as stated in Article 607.2 of the Criminal Code, as conduct crime that is committed by the simple spreading of ideas or doctrines. Therefore, no result is required for perpetration.
- We understand that the crime type does not specify that the dissemination must be public, that is, broadcast by the media or mass media, as it indicates "dissemination by any means". Dissemination is defined in dictionaries as "the opening of a subject to widespread discussion and debate", being spreading a synonym of dissemination with the meaning of "to cause or become widely seen or known; scatter or disseminate", which can be achieved through multiple means not only through the media.
- Dissemination is aimed at an unknown number of people. Comments made in private encounters with friends would be excluded. No matter if comments are directly made in front of a group of people, in the outdoor or the indoor, through the media, conferences, demonstrations, encounters, musical concerts, RAC/Oi! music or through the Internet or social networks.
- If the action consists of a direct incitement to commit a crime of genocide, conduct would be punishable according to article 615 of the Criminal Code.
- Everything mentioned above is applicable under the provisions of art. 510 of the criminal code regarding the limits of constitutional rights of freedom of speech and freedom of thought and belief (art.16 and 20 of the Spanish Constitution).

#### 4.2.C.- OTHER REGULATIONS

##### **Royal Decree 1/1995, of 24 March, approving the consolidated text of the Law on the Workers' Statute**

###### Article 4. Labour Rights

2. In relation to working conditions, workers have the right:

c) Not to be directly or indirectly discriminated in employment, or, once employed, discriminated on the grounds of sex, civil status, age within the limits set forth by this Law, racial or ethnic origin, social status, religion or beliefs, political ideas, sexual orientation, trade union membership or non-membership or for using any of the official languages of the Spanish state.

e) To protect their privacy and dignity, including protection against harassment on the grounds of racial or ethnic origin, religion or beliefs, disability, age, sexual orientation, and against sexual and gender harassment.

###### Article 17. Non-discrimination in labour relations.

1. Regulatory provisions, clauses of collective bargaining agreements, individual pacts and unilateral decision of employers that may arise in the workplace and in relation to pay and benefits, working hours and working conditions, direct or indirect unfavourable discrimination on the grounds of age or disability, or favourable or adverse discrimination in employment by reason of sex, racial or ethnic origin, civil or social status, religion or beliefs, political ideology, sexual orientation, trade union membership or non-membership and postulates, kinship with other workers in the company, and use of any of the official languages of the Spanish state, shall be understood as null and void.

###### Article 54. Disciplinary dismissal

2. The following shall be considered cases of contractual breach:

Harassment to the employer or the company staff on the grounds of racial or ethnic origin, religion or beliefs, disability, age, sexual orientation and sexual or gender harassment.

###### Article 55. Form and effects of disciplinary dismissal.

5. Dismissals grounded in the causes of discrimination prohibited by the Constitution or by Law, or violating the basic rights and public freedoms of workers, shall be null and void.

##### **Act 42/1997 of 14 November ordering the Labour and Social Security Inspection**

The Labour and Social Security Inspectorate is the administrative organization responsible for controlling and monitoring the fulfillment of labour regulations provided by Article 3 of Act 42/1997.

Article 7 of the Act details the role of inspectors of Labour and Social Security as public authorities.

Labour and Social Security sub-inspectors shall adhere to the procedures indicated in paragraphs 1, 2, 4, 5, 7, 11 and 13 of article 7 of the mentioned Act.

Article 9 deals with the support and collaboration of public entities, tax administration, governance bodies and common services of the Social Security with the Labour and Social Security Inspectorate.

The support of Security Forces is specially relevant to guarantee the inspection activities.

Paragraph 4 of article 9 states that:

"The Security Forces authorities shall support the Labour and Social Security Inspectorate in exerting their functions, by means of the control tools decided by the appropriate authority".

In compliance with the Worker's Statute and Article 10 of Act 42/1997 of 14 November ordering the Labour and Social Security Inspectorate, employers, employees and their respective representatives and all individuals liable to comply with social norms are obliged to collaborate with inspectors of the Labour and Social Security Inspectorate...,and also all individuals or legal entities are obliged to provide the data, records or information which are relevant for the inspectorate functions...

The infringement of collaboration with inspections shall involve the commission of an administrative offence as defined in Article 50 of the Consolidated Law on Offences and Penalties in the Social Order.

### **Royal Decree 5/2000, of 4 August, approving the Consolidated Law Act on Infringements and Sanctions within the Social Order**

Article 8. Very serious infringements

12. Unilateral decisions of the employer entailing adverse direct or indirect discrimination on the grounds of age and disability, or related to pays and benefits, working hours, vocational training, promotion and other working conditions on the grounds of gender, racial or ethnic origin, social status, religion or beliefs, political ideology, sexual orientation, trade unions membership or non-membership and postulates, kinship with other workers in the company or using any of the official languages of the Spanish state, along with the decisions of the employer resulting in an unfavourable treatment of the employee in response to a claim against the company or to any other legal proceedings aimed at enforcing compliance with the principle of equal treatment and non discrimination.

13 bis. Harassment on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation and sexual harassment under the concern of the company management and regardless of the offender, as long as the employer is aware of the situation and has not taken the necessary action to stop it.

#### Article 16. Very serious infringements

2. Requiring personal data in personnel selection processes or setting down working conditions either through advertising, broadcasting or any other means that pose favourable or adverse discrimination in hiring based on gender, racial or ethnic origin, age, civil status, disability, religion or beliefs, political ideology, sexual orientation, trade union membership, social status or use of any of the official languages of the Spanish state.

### **Act 7/2010 of 31 March, General Audiovisual Communication**

It represents the corresponding transposition into the Spanish legislation of the Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 on Broadcasting Activities.

Regardless of some contents outside the scope of this report, the law aims at the promotion of a society of inclusion and equality, especially in relation to the prevention and elimination of gender discrimination in advertising and media under the provisions of Organic Law 1/2004 of 28 December on the Comprehensive Protection Measures against Gender Violence and Organic Law 3/2007, of 22 March, for effective equality between men and women.

It envisages the establishment and regulation of the State Media Authorities under the name of Spanish State Council of Audiovisual Media (CEMA), as the regulatory and monitoring agent of the industry that will exert competence outside the sphere of influence of political and economic powers. It will be empowered to levy sanctions and members shall be elected by a qualified majority of three fifths of the Congress of Deputies. The main functions will be to ensure transparency and pluralism in the industry, independence and impartiality of the public media and compliance with the function of public service.

Some of the anti-discrimination provisions are:

-Audiovisual media shall never incite hate or discrimination based on gender or any personal or social circumstance, and shall be respectful to human dignity and constitutional values, with special attention to the eradication of conducts furthering unequal treatment for women (art. 4.2).

-In addition to the provisions of the General Advertising Act 34/1988 of 11 November, regarding illegal advertising, any commercial communication that violates human dignity or fosters discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation is prohibited. Any advertising that makes use of degrading or discriminatory images of women is also prohibited (art.18.1).

-Radio, television and related interactive audiovisual media services are general interest services which allow the exercise of the right to the free expression of ideas, the right to communicate and receive information, the right to participate in political and social life and the right to freedom of enterprise, and encourage equal treatment, plurality and democratic values (art.22.1).

-Persons with visual or hearing impairment are entitled to universal access to audiovisual media, according to the technological possibilities.

### **33/2011 of 31 March, General Law of Public Health.**

Article 6 ensures the *Right to equal treatment* and indicates that everyone has the right to access the services of the public health system, under no possible discrimination on the grounds of nationality, racial or ethnic origin, sex, religion, beliefs or ideologies, age, disability, sexual orientation or identity, illness or any other personal or social condition or circumstance.

In particular, under no circumstances shall men and women be treated differently by the public health services according to the provisions of the Organic Law 3/2007 of 22 March, on the effective equality of men and women and other existing regulation on this subject.

Illness cannot justify differences in treatment other than those derived from the process of healing, from the objective limitations imposed for conducting certain activities or from those required for the sake of public health.

### **Act 19/2007 of 11 July Against Violence, Racism, Xenophobia and Intolerance in Sports and corresponding regulation and Royal Decree 203/2010, of 26 February approving the Regulation for the Prevention of Violence, Racism, Xenophobia and Intolerance in Sports. (described in pages 75-76)**

**Ratification of the Convention on Cybercrime, Budapest November 23, 2001** (BOE 17/09/2010): It is an international treaty for the State Members of the Council of Europe and the other signatory States that set down the norms and principles for a common criminal policy aimed at the protection of society against cybercrime, *inter alia*, by adopting appropriate legislation and fostering international cooperation, searching for an adequate balance between prosecution interests and the respect for fundamental human rights enshrined in the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenant on Civil and Politics of the United Nations (1966) and other international treaties on human rights, which ensures everyone's right to defend their opinions without interference, and freedom of expression, including the freedom to seek, receive and impart all sorts of information and ideas, regardless of frontiers, as well as respect for privacy.

This international treatment is topped by the Additional Protocol about Cybercrime regarding the criminalization of racist and xenophobic acts committed through the information systems, and currently under ratification process by Spain.

Such protocol addresses the duty of states to punish the following conducts, although with some exceptions:

- Dissemination of racist and/or xenophobic subject matters through the information systems. Each State Member shall adopt the legal or whatever measures it deems necessary to set down that the dissemination or public availability of racist and/or xenophobic issues through the information systems shall be regarded as criminal offence under its domestic law as long as committed intentionally and without any right.
- Racially-motivated threat. Each State Member shall adopt the legal or whatever measures it deems necessary to set down that the intentional threats made through information systems, (i) against individuals who are members of a group of a specific race, colour, descent or national or ethnic origin, or who profess a specific religion and this is a pretext to commit the offence or (ii) against any groups of individuals who share any of these characteristics, shall be regarded under domestic law as serious criminal offences.
- Racially-motivated abuse. The necessary legal or other measures shall be taken to set down that public abuse committed through the information systems; (i) against individuals who are members of a group of a specific race, colour, descent or national or ethnic origin, or who profess a specific religion and this is a pretext to commit the offence or (ii) to any groups of individuals who share any of these characteristics, shall be regarded as criminal offences under domestic law, as long as committed intentionally and without any right.
- Denial, disparaging, approval or justification of genocide or crimes against humanity. The necessary legal measures shall be taken to typify the following conduct as criminal offence under domestic law as long as committed intentionally and without any right: spreading or making available for the public materials that deny, disparage, consent or justify acts of genocide or crimes against humanity as defined by the international laws and recognized as such by final and binding decisions of the International Military Tribunal, established under the London Agreement of August 8, 1945, or any other international court established by relevant international instruments and whose jurisdiction is recognized by Spain.

## 5. - POLICE ACTIONS TO IDENTIFY RACIST OR XENOPHOBIC INCIDENTS

### 5.1.- ASPECTS OF THE COMPREHENSIVE STRATEGY AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE LINKED TO POLICING

The “Comprehensive strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance”<sup>59</sup> comprises the actions that are being taken on this subject and which are directly linked to the Security Forces accountabilities<sup>60</sup>. These measures can be summarized as follows:

1. Modifications incorporated into the Crime Statistics System: In 2011 the Ministries of Interior and Labour and Immigration reached consensus to find a definition for racism and xenophobia following international recommendations. These measures make the Crime Statistics System (SEC) register all incidents grounded in racism and/or xenophobia along with the development of specific statistical typologies of events described as racist and/or xenophobic attitudes and conducts in the Criminal Code.
2. Protocol of cooperation between the Secretary of State Security and the Secretary General of Immigration and Emigration (former Secretary of State of Immigration and Emigration).
3. Implementation of a data base with cases of violation of the rights of persons in police custody.
4. Creation of a Hate Crime and Discrimination special service under the Barcelona Provincial Prosecution Service in October 2009 which has been followed by the Provincial prosecution Service in Madrid, Malaga and Seville.

Some of the objectives and measures to be implemented under the provisions of the mentioned Strategy are objectives 2 and 3 of section 4 referred to the analysis, information systems and criminal legal action on racism, racial discrimination, xenophobia and related intolerance.

Objective 2 favours the improvement of institutional statistical data collection systems on "racial and xenophobic incidents", racial discrimination and related intolerance. For that purpose, it establishes the course of action for the collection of statistical information and the elaboration of a process of registration of racist /xenophobic incidents understood as: “*any incident perceived as such by a victim or by any other person*”. Additionally, it takes into account the possibility of developing police action protocols against racist incidents and delivering specific training sessions aimed at civil servants of the Administration of Justice and Security Forces of the State, emphasizing an adequate collection of "racist incidents", improving the proceedings of data collection and recording them accurately.

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<sup>59</sup><http://www.oberaxe.es/files/datos/4ee5ba982ebe3/ESTRATEGIA-LINEA%20INTERACTIVO%208-12-2011.pdf>.

For further information see “**Promotion of Public Policies related to Discriminatory Behaviours on a national basis**” available for readers in the CD attached.

<sup>60</sup> In the CD attached to the present publication, readers can find different documents related to Security Forces: “Regulation of the Spanish Policing Model”, “Coordination Agents in the area of Security Forces” and “Regulation of Security Forces Action Protocols against Discriminatory behaviours”.

Objective 3 addresses the publication of the statistical data on racism, racial discrimination, xenophobia and related intolerance which have been collected.

## 5.2 TYPIFICATION OF RACIST OR XENOPHOBIC INCIDENTS IN THE CRIME STATISTICS SYSTEM (SEC)

The Crime Statistic System, hereafter SEC, is currently regulated by the Ministerial Orders, INT/2783/2009, INT/3310/2009 and INT/1202/2011. This statistical system contains the different statistical variables related to criminality collected by the information systems of the different police forces. Note that the SEC is formed by a working group of members from the Civil Guard, National Police, Ertzaintza, Regional Police of Navarre and Police Forces of Catalonia - Mossos d'Esquadra. This working team decides the rules of action, enables or disables statistical variables, etc. The group meets at least once a year and represents a model of policing coordination.

SEC provides information about victims (broken down by nationality, sex, age, etc.) and also about alleged offenders. Regarding events, it offers details about: type of crime, location, etc. At this moment there are about two hundred different types of events that mainly cover conducts described in the Criminal Code and also statistical types specifically created for particular administrative offences and what has been called "events of police interest". Those events of police interest are conducts criminally or administratively non-punishable but, due to their impact on policing performance, are of interest (suicides are an example). Suicide in Spain is not subject to criminal or administrative sanction (except in cases of incitement to commit or assistance with suicide), but it is included in the SEC because of its relevance.

Another concern is how to introduce certain events in the system, either because they are aggravating elements of the Criminal Code or conducts that affect to certain groups. To address those issues, a new element of criminal scope or context was created on a statistical basis to account for the circumstances and/or situations where a criminal event takes place. In other words, it frames the fabric or scene of persons, objects and situations where the event arises. Cases of racism/xenophobia may pose an example, prompted by offence of injuries, but committed by hatred grounds as the victim is a member of a particular ethnic group.

**The racist/xenophobic incidents present in our legislation can be divided into two subcategories:**

- ✓ **Criminal**
- ✓ **Offences of administrative laws**

As clearly stated before, aggravating criminal events of article 22.4 are difficult to encode statistically as it is the case of racially-biased offences of injuries. Consequently, criminal statistics depend on two variables, on the one hand the event itself (offence of injuries) and on the other hand the underlying criminal context.

Within the scope of the Crime Statistics System, we can find the following hate crimes:

**Racism/xenophobia: Any incident that a victim or any other person (including a police officer) perceives as a consequence of racism and/or xenophobia, even if the victim disagrees, as well as acts of hatred, violence, discrimination, phobia and rejection of foreigners or persons of some groups based on their racial, ethnic, national, cultural or religious circumstances.**

This definition embodies the objective 2.1 of the Chapter 4 of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance and it is the outcome of the application of the Recommendation of the ECRI general policy - Combating Racism and Racial Discrimination in Policing. An important aspect of this definition is the possibility of classifying the incident as racist/xenophobic even if the victim disagrees. When it comes to codify it statistically, it lies on the fact that anyone can notice. In case of contrary opinions, the statistical registration of the incident as racist must prevail if any person involved in the criminal or administrative process perceives it to be such.

This clearly represents a shift in policing proceedings as, rather than typifying the conclusions of a police officer, what it is statistically codified are the statements of any individual involved in the criminal or administrative process. This decision is intended to provide more information about the case of study and specify more precisely all the circumstances around events. Also, the implementation of this decision facilitates the comparison with other European countries that have also implemented the concept. For instance, for the Group Attorney General's Office, under the Crown Prosecution Service and for other agencies of the criminal justice system in the UK, "a racist incident is any incident perceived as such by the victim or by someone else". A similar definition of what a racist incident is has been approved by the Irish Police<sup>61</sup>.

Other areas related to this type of crimes which are statistically registered in the SEC are:

Sexual orientation or identity: Events motivated by sexual differences.

Religious beliefs or practices: Events motivated by opposition to certain religions.

Anti-Semitism: Any act of hatred, violence, discrimination, phobia and rejection, practised against Jews or Nationals of the State of Israel.

Disability: Any abuse against victims by availing of their impairment, whatever it may be (physical, psychological, old age, ...)

Furthermore, we shall point out the crime types resulting from racially-biased behaviours typified in the following articles of the Criminal Code and the way they are statistically recorded in the SEC:

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<sup>61</sup> Movement against Intolerance "Fight against hate crimes in Europe" (2005).  
[http://www.oberaxe.es/files/datos/4d1af5c9299cb/Delitos%20de%20Odio%20en%20Europa%20%20OSCE%20\(2\).pdf](http://www.oberaxe.es/files/datos/4d1af5c9299cb/Delitos%20de%20Odio%20en%20Europa%20%20OSCE%20(2).pdf)

- Article 170: crimes statistically typified as “intimidation to ethnic, cultural or religious group”, in the field of racism/xenophobia.
- articles 173 to 177, statistically typified as “degrading treatment” o “tortures”, field of racism/xenophobia
- article 197, type “discovery and disclosure of secrets”, area racism/xenophobia
- Articles 314, and 510 to 512: crimes statistically typified as “discrimination” in the area of racism/xenophobia.
- article 515: crimes statistically typified as "hatred-motivated illicit associations" in the area of racism/xenophobia.
- articles 522 to 525: crimes statistically typified as "against freedom of beliefs and religious views", area of racism/xenophobia.
- article 607: crimes of “genocide”, area of racism/xenophobia.
- article 607 bis: "crimes against humanity", area of racism/xenophobia.
- for the rest of articles of the criminal code: in case of criminal offences with the aggravating circumstance of racism and/or xenophobia, the events (injuries, coercion, intentional homicide, etc.) shall be codified in the area of racism/xenophobia.

Some of the administrative offences related to racism and xenophobia are:

- ✓ act 19/2007, of 11 July against violence, racism, xenophobia and intolerance in sports. conducts are described in article 2 of such law. statistically typified as "racist, xenophobic and intolerant events in sports" in the area of racism/xenophobia.
- ✓ article 23 of act 4/2000, dated 11 January, on the rights and freedoms of national foreigners in Spain and their social integration. statistically typified as "others against immigration law", in the area of racism/xenophobia.
- ✓ regulation related to public entertainment and leisure activities, area of racism/xenophobia. regulation on public entertainment is currently a competence of the autonomous regions. therefore, we should refer to regional legislation to find possible violations on this subject. statistically typified in the sec as "regulation on facilities, public entertainment and leisure activities" in the area of racism/xenophobia. an example of autonomous regulation on this subject is: general rules of admission of persons in public entertainment facilities and leisure activities, approved in decree 10/2003, of 28 January by the regional government of Andalusia, which in article 6 (bans) paragraph a) states: *"against discrimination or unequal treatment when accessing facilities depending on the age, sex, nationality or race of the members of the public and charging different prices depending on those circumstances..."*

### 5.3.- PROOF OF MOTIVE FOR THE CRIME.

This section presents some hints or clues warning about potential racially-motivated crime<sup>62</sup>.

**When making police reports, Security Forces do not usually have sufficient input to detect the reasons why offenders have committed criminal offences, and police officers just record the offence, abuse, coercion, etc. as they do with any other claim.**

**Many statements of crime victims, both during the police and judicial phases, are neutral or abstract and the true motivation of crime is disregarded to such an extent, that, statements would be as valid for racial or homophobic events as for any other type of crime such as road safety or neighbourhood incidents.**

**The description of the motivation, according to the data obtained not only from the statements of victims or perpetrators but also from the on-site inspections conducted by the police and the photo or video reports collecting evidence as symbols, anagrams, items of clothing or tattoos of the alleged offenders, are of the utmost importance for a correct criminal legal classification of the facts, and, in particular, to corroborate the aggravating of article 22.4 of the Criminal Code. Also, all the above mentioned has important implications in the possible adoption of prevention measures such as pre-trial detention or prohibition from coming into close proximity to the victim.**

In this sense, police officers should be sufficiently skilled to detect crimes motivated by race or discrimination so that they may guide research for due assessment. The so-called indicators of polarisation are very important for that purpose. They are hints or clues collected by the police and incorporated to the police report in order to provide prosecutors and judges with sufficient reasonable hints of criminality so as to allocate charges and, where appropriate, condemnations.

The concurrence of one or more factors of polarisation will be enough to orientate the investigation with the aim of revealing the existence of racial, xenophobic or whatever motivations in the commission of the crime. Some of the polarisation factors used to determining motivation are:

- **The victim's perception:** According to the recommendations of the European Commission against Racism and Intolerance of the European Council (ECRI), any incident that the victim perceives to be of a racist nature must urge authorities to conduct an efficient and full investigation to confirm or disregard the racist or xenophobic motive for the crime. The victim's subjective perception does not mean that the crime has to be regarded as racist and/or xenophobic but it urges the police officers, prosecutors and judges engaged in the process, to investigate that possibility. All this is corroborated by

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<sup>62</sup> Refer to the full transcript of hate crime indicators explained in the "Methodology of intervention with victims of hate crime," published jointly by the website [www.stophatecrimes.es](http://www.stophatecrimes.es) and in the CD of the NGO *Movement against Intolerance*.

the European Court of Human Rights on Decisions dated 4/03/08, 31/03/2010, 4/03/2011.

- **The membership of the victim to a community or minority group** by reason of racial or ethnic origin, religion or sexual orientation or identity.
- **Discrimination and hate for membership:** The victim may not be a member of the target group but can be an activist in solidarity with that group. It can also be the case that the victim was in the company of members of the vulnerable group. Victims are not members of a minority group but they are intentionally selected by their mutual relationships. Notice the crimes against interracial couples, groups of friends with different national, religious or ethnic origin or members of NGOs defending the rights of minorities.
- **Racist, xenophobic or homophobic expressions and comments** uttered or indicated by offenders when committing a crime. Those expressions should be literally filed from the statements of victims/witnesses.
- **Tattoos and items of clothing** that offenders wear and that in many cases, will be associated to hatred symbolism will be determinant to prove the profile of the perpetrator and the crime motivation. As a proof of fact the police will provide the photographs filed in police reports to corroborate such information.
- **Radical propaganda, banners, flags, placards, etc.** that the perpetrator may carry or that may be found in search warrants. All this proof of evidence will be recorded and photographed to file them into the police report. This requires researchers to learn about hate symbolism.
- **The police records of suspects** who were engaged in similar events in the past or who were identified in neo-Nazi concerts of RAC/Oi! music, conferences, encounters or demonstrations of a radical nature characterised by their hostility against minority groups.
- **The event occurred near a place of worship, cemetery or facilities of a minority group in the neighbourhood**, such as the exit of a gay club.
- **The relationship of the suspect with ultra groups of football teams.** In this case it will be necessary to interchange information with the Security Coordinators of football stadiums.
- The relationship of the suspect with groups or associations known by their hatred, ill will or hostility against immigrant groups, Muslims, Jews, homosexuals, etc.
- The apparent unjustified and gratuitous violence should be regarded as a determinant indicator.
- **Longtime hostility between the members of the group of the victim and the alleged suspect.**

- When events occur during a relevant date for the targeted group or community, for instance, on Fridays, prayer day for Muslims, Saturdays for Jews, Gay Pride Day, etc.
- When the events occur in a day, time or place of remembrance for the suspect, for instance Hitler's birthday on April 20th.
- **Sometimes perpetrators film events with their mobile phones and upload them in the web** to pride themselves in front of friends or to show off. Prior judicial authorization, the evidence from mobile phones or computers could be determinant. There are some cases where films have proved to be relevant to establish the motive and facilitate important details that provide researchers with the proof of evidence that leads to condemnation. However, these measures will not be applicable to all cases but will depend on the seriousness of the crime.

Although academics find it difficult to agree on the concept of felony, the Constitutional Court <sup>63</sup> indicates that the seriousness of the punishable offence may not be only determined by the type of penalty provided by law, being this an unquestionable factor to regard, but it must also take into account other factors such as:

- Nature of the legally-protected rights.
- Social relevance of behaviour.
- Crime committed by criminal organizations or
- Impact of IT use, as abuse paves the way for committing crime and makes fighting it difficult.

Police reports also show that no in-depth investigations are conducted to check if offenders are members of organized groups targeted to commit violence, discrimination and hate crimes against individuals of certain personal or social circumstances, preventing they may be charged by an offence of illicit association under the provisions of article 515.5 of the Criminal Code.

Focusing in the offender and in clearing up the event is not sufficient. Findings of research must go beyond to find possible latent instigators. In many cases perpetrators are members of groups or organizations intentionally created to spread hatred and committed to promote violence against certain groups of individuals such as immigrants, homosexuals, Muslims, etc.

They are real violent groups who identify themselves with specific musical, aesthetic and sports preferences. Among them, the "skinhead" movement or other organizations with hierarchical structure and paramilitary style<sup>64</sup> that, actually represent dangerous radical and

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<sup>63</sup> Related to the High Court Decisions: STC 299/2000 December 11(FJ,2), STC 123/2002 of May 20 (FJ2) or the important STC 104/2006 of April 3 (FJ3)

<sup>64</sup> Some of those groups are:

"Blood & Honour, Decision of the Provincial Court of Madrid dated 30/06/2010 (EDJ 2010/112984), corroborated by the High Court in STS 10/05/2011 (EDJ 85914) and

"Hammerskin", Decision of the Provincial Court of Madrid dated 16/07/2009 (EDJ 382819)

violent groups who have been denounced by the Research Committee on Racism and Xenophobia of the European Parliament and many prestigious institutions in the fight against discrimination, such as "The European Network of Legal Experts in the field of Non Discrimination"<sup>65</sup>, "Movement Against Intolerance"<sup>66</sup>, "SOS Racismo"<sup>67</sup>, etc.

With the aim of finding a solution to this problem, the State Security Secretariat under the Ministry of Interior issued Instruction 6/2009 *"To revive and give a continuance to the Police Action and Coordination Plan against Organized Groups and Youth Violence"*<sup>68</sup>. It contained, among others, the obligation of the Security forces to adopt the following measures:

- *"Establishing basic criteria and contents in police reports to provide the most adequate feedback to legal proceedings about the crimes committed by those groups. Special attention will be particularly paid to document those circumstances that may provide evidence, by the modus operandi of the group or organization, under the provisions of art. 515 of the Criminal Code for the eventual charge of offences for illicit association"*.

#### 5.4.- AREAS OF POLICING THAT REQUIRE SPECIAL WORK METHODOLOGY

Below we present the areas which require special attention and methodologies. With special reference to Local Police performance, we will deal with the right of admission to public entertainment, with the implementation of the "Law for Sports", with the spreading of hate speech in the Internet, with racial profiling and with interviews to victims and witnesses.

##### 5.4.A. – SPECIAL REFERENCE TO LOCAL POLICE ACTIONS

Regarding the local field, Act 7/1985, of 2 April on the Regulation of Local System Rules sets forth in additional requirement 10 that *"Under the provisions of Organic Laws 6/1985 of 1 July of the Judicial System; 2/1986 of 13 March of Security Forces; 1/1992 of 21 February on Public Safety Protection and in the legal provisions of local systems, the engagement of Local Police Forces in citizen safety will be reinforced - as proximity police-, as well as their accountabilities as judicial police, for such effects and by the Government of the Nation, the necessary actions will be promoted to elaborate the regulation including and specifying the scope of such engagement"*.

The creation of the Local Police forces is carried out under the provisions of Organic Law 2/86 of Security Forces, and of the local and autonomic legislation. Below we specify the existing regional legislation associated to the organization and coordination of the multiple forces of Local Police:

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<sup>65</sup> see "European Anti-discrimination Law Review, July 2009"

<sup>66</sup> see "2009 Raxen Report, Movement Against Intolerance"

<sup>67</sup> see "2008 annual report from the Crime Report Office of SOS Racisme"

<sup>68</sup> Plan agreed in Instruction 23/2005 of the State Security Secretariat.

- Act 13/2001, of 11 December on Coordination of Local Police Forces in the Region of Andalusia.
- Act 7/1987, of 15 April on Coordination of Local Police Forces in the Region of Aragón.
- Act 2/2007, of 23 March on Coordination of Local Police Forces in the Region of Asturias.
- Act 6/2005, of 3 June on Coordination of Local Police Forces in the Balearic Islands.
- Act 9/2007, of 13 April, on the System of Safety and Emergencies in the Canary Islands and revision of Act 6/1997, of 4 July on the Coordination of Police Forces in the Canary Islands.
- Act 5/2000, of 15 December, on the Coordination of Local Police Forces in the region of Cantabria.
- Act 8/2002, of 23 May 2002, on the Coordination of Local Police Forces in the Region of Castilla-La Mancha.
- Act 13/2006, November 13, revision of Act 9/2003, of 8 April on the Coordination of Local Police Forces in the Region of Castilla y León.
- Act 16/1991, of 10 July on Local Police Forces in the region of Catalonia.
- Act 4/1992, of 17 July, on Local Police Forces in the region of the Basque country.
- Act 1/1990, of 26 April on the Coordination of the Local Police Forces in the region of Extremadura.
- Act 4/2007, of 20 April, on the Coordination of the Local Police Forces in the region of Galicia.
- Act 4/1992, of 8 July, on the Coordination of the Local Police Forces of the region of Madrid.
- Act 4/1998, of 22 July, on the Coordination of the Local Police Forces of the region of Murcia.
- Act 8/2007, of 23 March, on Public Entertainment and Leisure Activities in the Region of Navarra.
- Act 6/1999, of 19 April on Local Police Forces and Coordination of Local Police Forces in the region of Valencia.
- Act 5/2010, of 14 May, on Coordination of Local Police Forces of the region of La Rioja.

In this section it is interesting to make reference to the "Framework Agreement of Collaboration and Cooperation between the Ministry of Interior and the Spanish Federation of Municipalities and Provinces on the subject of Public Safety and Road Safety". That Agreement fosters the creation of "Public Safety Committees" and highlights aspects such as: information exchange between local and national police forces, integration of local police forces into the National System of Policing Data Bases, encouragement to create joint means for policing communication and adoption of common standard models between Local Police Forces and the National Security Forces.

The engagement of Local Police forces in functions of judicial police is an innovative aspect. To this end, the police forces of the municipalities that apply for and meet the requirements described in the framework agreement, shall be able to exert functions related to Judicial Police in both: the collection of claims or the investigation of events related to the following minor criminal offences<sup>69</sup>:

- a) Criminal offences.
- b) Injuries that do not require hospital care.
- c) Domestic and gender violence.
- d) Crimes against relatives.
- e) Breaches of conviction; of permanent location; restraining orders and deprivation of the driving license.
- f) Thefts.
- g) Claims for vehicle recovery, provided they were not considered of police interest.
- h) Historical heritage of the municipality.
- i) Commercial or profitable activities performed in street markets regarded as offences against intellectual or industrial property.
- j) Frauds of electricity and similar.
- k) Offences against traffic safety.
- l) Threats and coercion.

The special circumstances of Local Police regarding racism and/or xenophobia were highlighted during the "Training the trainers" sessions. The closeness of these forces to neighbourhoods places them in the front line for the identification of racial and/or xenophobic incidents, their prevention and their mediation in citizens' disputes. The engagement and suggestions of participants during the training sessions is taken by their superiors as a proof of their interest. The contents were:

## PREVENTION

The Local Police of the Town Council of TINAJO (LANZAROTE) highlighted the need to have a data base common to all police forces in the subject of racist and/or xenophobic incidents with the aim of identifying repeat offenders, features of the different groups, symbols they may

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<sup>69</sup> Minor penalties included in the Spanish Criminal Code are:

Imprisonment from three months to five years.

Special barring up to five years.

Suspension from public employment and office up to five years.

Deprivation of the right to drive motor vehicles and mopeds from a year and a day to eight years.

Deprivation of right to own and carry weapons from a year and a day to eight years.

Deprivation of right to reside in specific places or to visit them, for a term of six months to five years.

Prohibition to approach the victims, their relatives or other persons determined by the Judge or Court of Law, for a term of six months to five years.

Prohibition to get into contact with the victims, their relatives or other persons determined by the Judge or Court of Law, for a term of six months to five years.

Fine of more than two months.

The proportional fine, whatever its amount, except as provided in section 7 of this article.

Community service, from 31 to 180 days.

Permanent location from three months and a day to six months.

Loss of the possibility of obtaining public subsidies or aid and the right to enjoy tax or Social Security benefits or incentives, whatever their duration.

carry, etc. They also proposed the elaboration of "Risk Notification Leaflets" to warn of existing risk and pave the way to preventive actions.

## PERFORMANCE IN EDUCATIONAL CENTRES PREVENTION

The Local Police of the Town Council of SILLA (VALENCIA) conducted a study<sup>70</sup> under the frame of the PIRAXE networking that it is further explained in the section of Police Good Practices. This study highlights the role played by Local Police in Education as, in many cases, perpetrators become collaborative social agents who are familiar with the *de facto* situation of schools. It is, then, noticeable how Local Police officers are first in identifying racial discrimination events where young people are involved and for that reason, they have to know how to proceed in these situations. Thus, Police intervention in educational centres will take place when: (a) There are physical or moral attacks, threats and intimidations and serious discrimination against any member of the educational community as well as a severe lack of respect for the individual integrity and dignity or (b) abuse and humiliation of any member of the school community, particularly of a sexual or xenophobic nature and also abuse against the students who are more vulnerable because of their personal, social or educational circumstances.

## RELATIONSHIPS WITH MINORITY COMMUNITIES

The Local Police of the Town Council of ALMONTE highlighted the relationships of the police forces with the social services of the municipality and their key role in the prevention, protection, education and interaction with citizens. This force has created the Unit PROMMESAS<sup>71</sup>, a prevention-based service that implies keeping in contact with the groups that require special attention, immigrants among them. The Unit intends to identify the characteristics of those groups and the problems they have to face by opening communication channels with contact persons from those communities. Additionally, the Unit provides information about formalities, hiring, citizenship, living together, legal issues, schools, etc. that may be really useful during the immigrants stay in the municipality and in our country.

## MANAGING DIVERSITY IN A COMPREHENSIVE WAY

The Local Police of the Town Council of FUENLABRADA and the Local Police of the Town Council of CASTELLÓN present projects on managing diversity in a comprehensive way. The project developed in Fuenlabrada is further explained in section 6 on Police Good Practice.

The performance of the Local Police of the Town Council of Castellón shows their twofold function: law enforcement authorities and mediators in disputes. Mediation tasks in policing contexts are quite typical of local police forces due to their closeness to citizens. In Castellón, the Unit GESDIPOL is working on diversity by using the model of Proximity Police, with personal and regular contacts with the different groups, gathering suggestions, concerns and issues that help

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<sup>70</sup> Authors: David Garfella Gil and Jacobo Domingo

<sup>71</sup> Francisca Borrero Nuñez.

them pay greater attention to any conflict that may arise. This action is specially relevant with the Roma community that is quite extensive and ingrained in Castellón's society but who are still enduring serious problems of adaptation, integration and social acceptance.

It is recommended to provide guided forms, similar to those used in cases of gender violence, that police officers shall fill out when required to act in racially-biased incidents.

Local Police of the City Council of MÉRIDA highlighted the social responsibility of the group to find solutions that meet the immigrants' concerns. They presented a project<sup>72</sup> with a proposal to establish policing intervention protocols for the integration of immigrants, the creation of a guide of policing resources with information, relying in a police formation aimed at providing quality service in the context of socio cultural diversity and promoting preventive, educational, supportive and attention policies for immigrants.

The Platform for the Police Managing of Diversity has the aim of encouraging and promoting change in policing services and improvements in their action protocols. The PIPE project (Program for Efficient Stop and Search Policing) is worth mentioning as it boosts equal and non discriminatory policing treatment<sup>73</sup>.

#### 5.4.B.- RESERVE OF THE RIGHT OF ADMISSION

According to Juan María Bilbao Ubillos, when it comes to deal with the so-called "reserve of the right of admission", judges have to face three main difficulties, when arbitrating conflicts, between the principle of non discrimination and the requirement of respect for autonomy:

- *First, a unique judicial act versus the practice of widespread discriminatory behaviours.*
- *Second, the privileged or monopolistic position of the discriminating entity in the market or in society is a decisive factor.*
- *The public nature of the harassment<sup>74</sup>.*

The question that arises here is, where is the right of admission regulated? As a reference, the answer to this question may be found in Royal Decree 2816/1982, of 27 August on the approval of the Regulation for the Police of Public Performances and Leisure Activities whose article 59.1.e. states that “*The public is forbidden:*

*“To enter a building if they do not meet the requirements established for the company's right of admission which will be visibly advertised with signs posted in entrance points that clearly indicate those requirements”.*

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<sup>72</sup> Miguel Ángel Paredes Porro

<sup>73</sup> [http://gestionpolicialdiversidad.org/PDFactividades/Programa%20PIPE%20con\\_cuestionario.pdf](http://gestionpolicialdiversidad.org/PDFactividades/Programa%20PIPE%20con_cuestionario.pdf)

<sup>74</sup> “Prohibición de discriminación y derecho de admisión en los establecimientos abiertos al público”, de Juan María Bilbao Ubillos. [http://www.estig.ipbeja.pt/~ac\\_direito/JuanBilbao.pdf](http://www.estig.ipbeja.pt/~ac_direito/JuanBilbao.pdf)

However, this subject matter is competence of the Regions, and several Autonomous Communities already have regulation in place<sup>75</sup>. An example of regional legislation is Catalonia's Act 11/2009, of 6 July on Administrative Regulation of Public Entertainment and Leisure Activities. Article 10 of the Act states: "*The reserve of right of admission must not entail discrimination of any kind on the grounds of nationality, race, sex, religion, ideology, disability, sexual orientation, gender identity or whatever other situation or personal or social circumstance of the users of public buildings and facilities, either in relation to access, stay or use of the services*". Furthermore, article 5, states in paragraph 2.f that "*Spectators, participants and users of public entertainment and leisure activities have the following obligations: Refrain from publicly carrying and displaying symbols, items of clothing and objects and adopting behaviours that incite to violence, as they can incur in apology of crime according to the provisions of the Criminal Code or may infringe the fundamental rights and freedoms recognized by the Constitution, especially if they incite to discrimination on the grounds of sex, racism, homophobia or xenophobia*". Afterwards, this Act evolves to Decree 112/2010, of 31 August, approving the Regulation of Public Entertainment and Leisure Activities. This Decree specifically details the former prohibitions in articles 50 to 55.

To sum up, the admission criteria must be objective and reasonable and must not infringe, among others, the principle of equality enshrined in the Spanish Constitution that has been more or less specified in the different Regions. The limit beyond this right is the adoption of arbitrary measures, negligence in displaying admission rules, infringement of the regional regulation related to right of admission and last, any possible legal presumption that discrimination has actually occurred.

#### 5.4.C.- EFFECTIVE LAW ENFORCEMENT AGAINST VIOLENCE IN SPORTS

For an effective law enforcement it is necessary to reinforce the understanding of Act 19/2007 of 11 July Against violence, racism, xenophobia and intolerance in sports and the corresponding regulation (*Royal Decree 203/2010, of 26 February approving the Regulation for the prevention of violence, racism, xenophobia and intolerance in sports*).

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<sup>75</sup> Decree 10/2003 of January 28, for the approval of the General Regulation for Admission of the Public to Public Entertainment and Leisure Activities.

Act 11/2005, of 28 December on Admission in Public Entertainment , Leisure Activities and Public Buildings in the Region of Aragón.

Act 8/2002, of 21 October, on Public Entertainment and Leisure Activities in the Region of Asturias.

Act 16/2006, of 17 October, on the Legal Framework governing Integrated Licensing of Activity in the Balearic Islands.

Act 7/2011, of 5 April, on Classified Activities, Public Entertainment and other supplementary measures in the Canary Islands.

Act 7/2006, of 2 October, on Public Entertainment and Leisure Activities in the Region of Castilla y León.

Act 7/2011, of 21 March, on Public Shows, Leisure Activities and Public Establishments in Castilla-La Mancha

Act 11/2009, of 6 July, on Public Entertainment and Leisure Activities in Catalonia.

Act 4/1995, of 10 November, on Public Entertainment and Leisure Activities in the Basque Country.

Act 17/1997, of 4 July, on Public Entertainment and Leisure Activities in the Region of Madrid

Act 2/2011, of 2 March, on Admission in Public Entertainment , Leisure Activities and Public Buildings in the Region of Murcia.

Act 2/1989, of 13 March, on Public Entertainment and Leisure Activities in the Region of Navarre.

Act 14/2010, of 3 December, of the Generalitat (Government of the Autonomous Community of Valencia) on Public Entertainment, Leisure Activities and Public Establishments.

Act 4/2000, of 25 October, on Public Entertainment and Leisure Activities in the Region of La Rioja.

The objective enforcement of this Law is determined by the official sporting tournaments organized on a national basis by sporting entities under Act 10/1990 of 15 October or those organized or approved by Spanish Sports Federations (art. 1.2).

It is important to highlight the following concepts:

**a.- Definitions of violent attitudes and racist, xenophobic or intolerant actions in sports (art. 2).**

An example would be:

- **The display, in sporting venues**, surrounding areas and transport facilities and access, of **banners, symbols, emblems or slogans** that, by their content or the circumstances in which they are displayed or used, somehow **incite, encourage or pave the way to violent or terrorist behaviours**, or **represent an act of explicit contempt for the persons participating in the sports event**. **The 2011 RAXEN Report issued by Movement against Intolerance contains the article "Analysis of Hatred Symbolism" by Alberto Flórez and David Docal that presents a detailed analysis of the symbols that radical groups usually hold.**<sup>76</sup>
- Chanting songs that incite to violence, terrorism or attacks on sports facilities, surrounding areas or transport facilities and access. Additionally, those chants that may represent an explicit disdain for the participants in the sports event.
- On the occasion of sports events, **the statements, gestures or hurling abuse** in sporting venues, surrounding areas or transport facilities and access **that may entail an explicit disdainful treatment on the grounds of race, ethnicity, geographical or social origin as well as religion, beliefs, disability, age, sex or sexual orientation and those that incite to hate or which seriously undermine the rights, freedoms and values that the Constitution proclaims**.

**b.- Accountabilities and obligations of organizers of sporting tournaments and entertainment and obligations of audiences and spectators of sporting tournaments and entertainment (articles 3 et seq.)**

Obligation to provide government authorities and specially the Security Coordinator, available information about supporters related to their structure, organization, behaviours and evolution as well as tracking the movements of those groups, active collaboration in the localization and identification of offenders and individuals who infringe the enforcement of the present Law. Also individuals or groups of followers who have who have infringed the present Law, will be deprived of means of transport, facilities, allowances, free tickets, discounts, advertisement or distribution of any kind of promotion or support for their activities.

Some of the prohibitions established by the Law are:

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<sup>76</sup> <http://www.movimientocontralaintolerancia.com/download/raxen/especial2011/especial2011.zip>

- Introducing, carrying or using any sort of weapon or similar objects as well as and flares, fireworks, explosives or, in general, flammable products, compressed gasses or poisonous.
- Introducing, displaying and preparing banners, flags, symbols or other signs with messages that incite to violence or by which an individual or group of individuals may be threatened, abused or disdained by reason of race or ethnic origin, religion or belief, disability, age, sex and sexual orientation.
- Incurring in behaviours described as violent, racist, xenophobic or intolerant in the first and second paragraphs of article 2.

The law states in article 7 that spectators in sports venues during sports events **are banned to conduct violent, racist, xenophobic and intolerant acts or actions inciting to them**, according to the first and second paragraphs of article 2 of the present law; in particular:

- a) Assaulting or interfering in the public order.
- b) Chanting racist or xenophobic songs, sounds or messages of intolerant nature that incite to violence or terrorism or represent any other constitutional breach.
- c) Displaying banners, flags, symbols or other signs that incite to violence or terrorism and include racist, xenophobic or intolerant messages.
- d) Throwing objects.
- e) Unauthorized entrance into the playing field.
- d) Throwing, carrying or having in their possession any kind of weapon or similar objects and flares, fireworks, explosives or, in general, flammable products, compressed gasses or poisonous inside sports facilities.

Any **infringement of the prohibitions mentioned** above shall entail the **immediate ejection** of troublemakers from the sports premises by the security forces and the possible eventual enforcement of the applicable sanctions.

c.- A relevant obligation under article 9 of the Law is keeping a logbook. The National Committee against Violence, Racism, Xenophobia and Intolerance in Sports shall determine that the clubs and organizers of tournaments and sports events have to keep a logbook, legally regulated, with generic and specific information about the activities of the clubs, associations or groups or fans that are members or supporters of such entities.

The Security Coordinator, the National Committee against Violence, Racism, Xenophobia and Intolerance in sports and also the government authorities if required, shall have access to the information contained in the logbook.

Apart from the information about fans available in logbooks, the clubs shall also provide the Security Coordinator all the existing information about organization, trends and behaviour of the team's supporters.

#### **d.- Security Coordinator**

In line with the exercise of the duties vested by Act 1/1992 of 21 February on Protection of Public Safety and Act 19/2007 of 11 July, the Ministry of Interior, the corresponding Government Representative or Deputy Government Representative and the authorities of the regions with competence on public safety, shall perform the functions of general coordination provided in law and appoint General Security Coordinators for certain territories or for specific sports and, under their supervision, coordinators for specific sporting facilities or events, with accountabilities limited to the scope of the entity or event.

In addition, and otherwise to the above, Security Coordinators could also be appointed for other types of professional or special risk events.

The Security Coordinator, that safeguards security coordination in sports events, is a member of the police authorities who has the role of managing, coordinating and organizing public safety services in sports events.

Government authorities or, where appropriate, the General Security Coordinator, assumes the tasks of managing, organizing, coordinating and controlling public safety services in sports events. Security Coordinators of clubs, sporting corporations or sports events will perform the tasks already mentioned under the supervision of the National Police Headquarters, Provincial or Local Police Stations, Civil Guard Headquarters or of the law enforcement bodies of the Regions with competence on public safety according to the territories where those Forces deliver service.

The Security Coordinator will exert the coordination of a unit of organizational control which is mandatory in all first-class sporting facilities of professional football and basketball tournaments and also in those decided by the National Committee against Violence, Racism, Xenophobia and Intolerance in sport events. The Security Coordinator is the head of that unit and chief of the staff working in the unit.

Sporting entities and organizers of sports events are obliged to effectively collaborate with government authorities to prevent violence, providing the Security Coordinator with the necessary material and human resources and implementing the prevention and control measures enforced by the law and by the present normative.

The organizational authorities will assign a security representative that will follow the safety instructions of the Security Coordinator during the sports event. This representative will be a Security Manager according to the regulation on private security services.

Prior to any sports event under the scope of the present rule, the club's Security Manager shall perform an evaluation of risks and an inspection of the venue to value the adequacy of the

facilities to the provisions in force, informing the Security Coordinator in advance about the course of action and indicating day and time in case supervision of the process is required.

The accountabilities of the General Security Coordinator are:

- a) Planning of the general public safety services to be set up in sports events.
- b) Coordination of the security action protocol in sports events, chairing as many preparatory meetings as it may be required depending on the specific circumstances.
- c) Monitoring the performance of Security Coordinators from each club, sporting corporation or sports event.
- d) Setting up the required variables to rank the risk of sports events, according to the established formulae.
- e) Performing the rest of the general accountabilities necessary for the protection of public safety, facilities or properties during sports events.

The Security Coordinator of each club and sporting corporation or event shall organize specific security course of action; keep contact and open communications with the CEO or Representative of the Club and with the respective Security Manager; coordinate the performance of all the services engaged in the sports event depending on the risk, especially Local Police, Fire Department, Civil Protection, Red Cross, Volunteers and Emergency services, chairing all the necessary meetings and specially exerting the functions detailed below:

Legislation and regulation establish the functions to perform both inside and outside the venue (see Annex).

#### **e.- Functions of Security Forces**

The functions of Security Forces, as for sports events concerns, shall be determined by Act 19/2007 of 11 July and related regulation, along with the general accountabilities assigned in the specific rules of Organic Law 1/1992 of 21 February on Protection on Public Safety and Royal Decree 2816/1982 of 27 August, approving the general regulation on Police of Public Performances and Leisure Activities.

The information about the tracking of violent groups and the dynamics of their behaviour will be in hands of the Ministry of Interior or, if required, of the General Security Coordinator so that they share it with the security authorities of sports events.

The Police authorities responsible for the security in sports events shall work as a team and will interchange the existing information either directly or through government bodies, creating a prevention networking to control violent groups of national Spaniards and/or national foreigners.

Acting police services will have master keys of entrance doors to venues as well as a complete set of plans of the facilities. All this information shall be provided by sporting clubs, sporting corporations or organizers.

The Security Coordination and police authorities shall hold as many prep meetings as maybe be required for high risk sports events. The representative of organizers and the police authorities involved, depending on the risk (Local Police, Fire-fighters, Civil Protection and the Spanish Red Cross) will specify and implement the provisions under the Individual Plan of risks and the possible indications of the Government representative and shall mark off the acting areas, inside and outside the venue, throughout the duration of the event.

Police services will act as coordinators for the rest of services participating in the sports event, mainly those mentioned above, and also volunteer associations, health services, private security operational services of the club or anonymous sporting companies.

If the sports event is going to be held in an autonomous regions with their own security forces, police authorities shall establish the most appropriate information and collaboration interactions.

#### Specific and Simultaneous Course of Action

##### *Security Operations:*

1. All sports events shall entail the planning and implementation of a specific security operation ensuring the operation of the police resources required to address violence inside and outside venues and surroundings.
2. Security Operation should include preventive measures to control violent groups, support services in gates and external and internal surveillance agreed by police officials and the Security Coordinator of the Club, sporting association or any other sports event.

*Protection of the public and the participants:* Security Forces shall be directly responsible for the protection of the spectators, participants and referees inside and outside the sports arena and in transit, and shall take the most appropriate course of action in each case.

Law enforcement assigns security forces the responsibility for managing the access control to the venue, control over the consumption of alcohol and drug, control on venue capacity and control of groups of supporters.

#### 5.4.D.- PROLIFERATION OF HATE SPEECH SPECIALLY IN THE INTERNET AND SOCIAL NETWORKS.

This outcome is known as CYBERHATE and applies to the use of electronic communications to disseminate anti-Semitic, xenophobic, homophobic, racist, intolerant and radical information and messages.

Electronic communications include the Internet (websites, social networks, web 2.0, users' contents, contact pages, blogs, online games, instant messaging and email) as well as mobile SMS that criminal groups use to easily disseminate their ideas along massive audiences, taking advantage of the difficulties of investigation and persecution when offenders live in

countries where this type of behaviours are not offensive or use servers hosted in the United States for their regulation of freedom of speech.

In a joint statement during the International Day for the Elimination of Racial Discrimination<sup>77</sup>, the Office for Democratic Institutions and Human Rights of the OSCE (ODIHR), the European Commission against Racism and Intolerance (ECRI) and the European Union Agency for Fundamental Rights (FRA) bluntly condemn manifestations of racism and xenophobia, with particular emphasis on the Internet:

***“We must remain vigilant in the face of racist behaviour and incidents, including hate crimes and malicious expressions of hate and racist sentiments on the Internet. “Our organizations are alarmed by patterns and manifestations of racism such as the ever-increasing use of the Internet by racist groups for recruitment, radicalization, command and control, as well as for the intimidation and harassment of opponents. The Internet has become an important communications channel that links people in ‘cyberspace’, who then meet and take action in the physical world. “Social networking sites are now prime locations for the spread of racist and xenophobic views, especially among young people. We must challenge such views, while being careful not to undermine freedom of expression.***

***“The danger emanating from hate spread through the Internet has long been recognized by the international community and our organizations dedicate serious attention to this issue. Prominent examples include ECRI’s General Policy Recommendation N° 6 on Combating the Dissemination of Racist, Xenophobic and Anti-Semitic Material via the Internet and the upcoming 22 March ODIHR expert meeting on challenges of combating crimes motivated by hate on the Internet”. “At the same time, we strongly believe in the Internet’s huge potential to overcome bias and prejudices based on characteristics including race, colour, language, nationality or national origin or religion. This potential should be fully utilized”.***

***We, the signatories of this statement, believe that:***

- Governments should investigate and prosecute criminal threats of violence based on racial, ethnic, religious or other bias and fully use existing domestic and international legal instruments and cooperation channels in this regard.***
- Governments should provide training to law enforcement officers and prosecutors on addressing hate crimes motivated by racist, xenophobic, anti-Semitic or other related bias on the Internet.***
- Governments should reflect on whether national legislation provides an adequate basis to respond to crimes motivated by racist, xenophobic, anti-Semitic or other related bias on the Internet.***

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<sup>77</sup> Janez Lenarčič, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Morten Kjaerum, Director of the European Union Agency for Fundamental Rights (FRA) Nils Muiznieks, Chair of the European Commission against Racism and Intolerance (ECRI)Strasbourg, Warsaw, Vienna. (March.2010)

- ***Governments should establish or expand educational programmes for children and young people about expressions motivated by racist, xenophobic, anti-Semitic or other related bias they may encounter on the Internet and include media literacy training in school curricula.***
- ***Effective measures addressing hate on the Internet that do not endanger freedom of speech and expression should be identified and disseminated.***
- ***Civil society should explore ways of utilizing the popularity of social networking sites to combat racism.***
- ***Civil society’s efforts to monitor the Internet for manifestations of hate, and efforts to share and publicise the findings should be encouraged and supported.***
- ***The Internet industry should take an active role in addressing the issue of hate on the Internet and develop and implement effective complaints response mechanisms while respecting freedom of expression”.***

The NGO Movement Against Intolerance stated<sup>78</sup>: “A glance at these racist blogs and websites and we can see how neo-Nazi organizations use the Internet to deny the Holocaust, to distribute their propaganda, and to incite hate crimes. The connection between hate speech and hate crimes is evident and we can now observe how an atmosphere of intolerance has condensed on websites, blogs, forums, chats, or in “newsgroups”. An atmosphere that legitimises violence and crime against immigrants, Jews, homosexuals, Muslims, Roma, those of African descent, and all human beings who do not fit into the “Aryan” and white supremacist perspective”.

Little by little the so-called doctrine of hate<sup>79</sup> is not longer being disseminated through conferences or speeches to the public. Today many criminal groups use the Internet and social networks because they are tools that make massive dissemination of ideologies easier and because of the difficulty to investigate and chase offenders who live in countries where these practices are not considered a crime and use more permissive servers to host information<sup>80</sup>.

It should be a priority for Security Forces and Prosecutors to promote investigations to combat these crimes. Thus, the units against cybercrime, besides computer fraud or child pornography, have to pay special attention to the identification and persecution of offences of incitement to hatred, violence and discrimination under art. 510 of the Criminal Code and also, to

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<sup>78</sup> Movement against intolerance: Xenophobia in Websites, Intolerance Crime in the Internet Analysis Books n 31 and 40

<sup>79</sup> Term used by the European Court of Human Rights throughout several sentences (Cases Garaudy v. France, June 24, 2003; Gündüz v. Turkey, December 4, 2003; Norwood v. UK, November 16, 2004; Alinak v. Turkey, March 29, 2005; Souias et autres v. France, July 10, 2008; Feret v. Belgium, July 16, 2009). The Court has been examining cases of hate speech, against which limitations may be imposed to “all forms of expression which spread, incite, promote or justify hatred based on intolerance”. The Court excludes hate speech from the guarantees of freedom of speech.

<sup>80</sup> First Amendment to the US Constitution: “The Congress will not make any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances”.

the offences of dissemination of ideas justifying genocide under art. 607.2 of the Criminal Code when committed through the Internet or social networks.

In this respect, investigations must be intensified in the line proposed by the State Security Secretariat under the Ministry of Interior through Instruction 6/2009 *"To revive and give continuance to the Police Action and Coordination Plan against Organized Groups and Youth Violence"*, that urges National Security Forces to intensify the control and tracking of websites and Internet fora which are *active advocates of criminal behaviours of xenophobic, racist, anti-Semitic nature, etc. or of violent behaviour inspired by hatred for minorities or to different ethnic origin or ideologies, as well as those where group members have to follow certain patterns of behaviour"*.

A specialty of such crime activity is music that is seen as special way to spread hate, specially *"R.A.C Music"* (*Rock Against Communism*) or *"Oi"* Music with lyrics that clearly incite to violence and even to the extermination of immigrants, homosexuals, Muslims or Jews. Songs can be bought in numerous websites and concerts transmit the most radical racism, xenophobia, anti-Semitism and intolerance.

RAC music is a powerful tool used by National-Socialist groups to spread hate and humiliate their classical targets: black people, homosexuals, immigrants or Jews.

In concerts where this type of music is played, new members are recruited and the National-Front ideology is spread over as a method of financing neo-Nazi organizations and associations.

Individuals who attend concerts of RAC Music are skinheads with neo-Nazi ideology and police records, often involved in racial and homosexual attacks and assaults on people with different ideological backgrounds. Incidents often occur during these concerts with fights and turmoil where the National-Socialist regime of the Third Reich is usually exalted, neo-Nazi symbols are displayed and songs are accompanied by neo-Nazi gestures.

In relation to the RAC music, the High Court ruling of 05.10.2011 sentenced:

*"...Bands of Oi! and RAC music played concerts, RAC standing for Rock Against Communism, musical trend that exalts the National-Front and includes a swathe of British National-Socialists and whose lyrics are featured by references to National-Socialist, fascist and racist ideologies with explicit incitement to exert violence against immigrants and Jews, and bringing this type of music to market"*.

The existing legal framework for the prosecution of hate and discrimination crimes committed through the information society services (such as Internet, social networks, emails, etc.), in particular crimes provided in articles 510, 515.5 y 607.2 of the Criminal Code, is implicit in the following legal documents:

- Act 34/2002 of 11 July, Services of Information Society and Electronic Commerce (based on Act 56/2007 of 28 December, Measures to Promote the Information Society, later revised by Act 2/2011 of 4 March on Sustainable Economy).

- Act 25/2007 of 18 October, Conservation of Information Relative to the Electronic Communications and to the Public Networks of Communications.

The non-judicial Chamber of the High Court approved on February 23, 2010 the following agreement: "Operators delivering services related to electronic communications and public networks of communication are required judicial permission to assign the data yielded for that purpose. Therefore, the Prosecution Office will require such authorization to obtain from operators the data stored as specified in art. 3 of Act 25/2007 of 18 October". This view was reflected in the High Court Decision 247/2010 dated 18.03.2011.

As repeatedly indicated by the Constitutional Court, though the law establishes that the prosecuted crime must be "serious",<sup>81</sup> the seriousness of the punishable offence may not only be determined by the type of penalty provided by law, although it is undoubtedly a factor to be considered, but it must also take into account other factors such as:

- Nature of the legally-protected rights.
- Social relevance of behaviour.
- Crime committed by criminal organizations.
- Impact in the use of IT, as abuse paves the way for committing crime and makes fighting it difficult.

*Special reference should be made to the public acts summoned to spread hate speech.*

One of the most serious concerns detected for some years now, has been the relatively frequent public acts which have been held either in the form of conferences, gatherings, expositions or musical concerts summoned with the aim of inciting and spreading hate speech, violence and discrimination and liable to be regarded as offences under article 510 or as crimes of ideology dissemination justifying genocide under article 607.2 of the Criminal Code.

At the news of a demand of presence to an act of this nature under reasonable suspicion of criminal activity, the Provincial Prosecution Service of Barcelona has been, during years, (and the one in Seville recently), investigating musical concerts of bands whose songs incite to hate, violence and discrimination against sexual orientation, immigrants and Jews. Also acts summoned by the well-known "Librería Europa" have been investigated.

All news and complaints lodged in the Service of Discrimination and Hate Crimes -usually by the police or human rights organizations- are previously analysed by special units of the Security Forces and in case of confirmation of reasonable suspicion of crime infringement of articles 510 or 607.2 of the Criminal Code, the police is authorized to fully record the act for subsequent analysis and, where appropriate, establish criminal liabilities.

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<sup>81</sup> Related to the High Court Decisions: STC 299/2000 December 11(FJ,2), STC 123/2002 of May 20 (FJ2) or the important STC 104/2006 of April 3 (FJ3)

Hate speech inciting to violence and hate against some minorities is out of the scope of the constitutional rights of freedom of speech and freedom of thought or belief of the EC articles 16 and 20 and on the basis of the international documents ratified by Spain as well as in the recommendations of the international organizations of human rights defense where Spain is a member, and which have been endorsed by the European Court of Human Rights (Cases Garaudy v. France, June 24, 2003; Günduz v. Turkey, December 4, 2003; Norwood v. UK, November 16, 2004; Alinak v. Turkey, March 29, 2005; Souias et autres v. France, July 10, 2008; Feret v. Belgium, July 16, 2009 or Case Vejdeland and Others versus Sweden -sentence of 9 February, 2012).

#### 5.4.E.-STOP AND SEARCH RACIAL PROFILING

The United Nations Committee for the Elimination of Racial Discrimination, under General recommendation XXXI related to the prevention of racial discrimination in the administration and functioning of the criminal justice system, requires Members States to take the necessary steps to prevent questionings, arrests and searches which are *de facto* based solely on the physical appearance of a person, skin colour or features or membership to a racial or ethnic group, or any other profiling which exposes him or her to greater suspicion".

The European Commission against Racism and Intolerance of the European Council (ECRI), under recommendation no.11 "Combating racism and racial discrimination in policing, CRI(2007)39, 2007", "has defined racial profiling as the use by the police, without any objective and reasonable justification, of criteria such as race, colour, language, religion, nationality or national or ethnic origin for control, surveillance or investigation activities". The ECRI has required Members States to "define and firmly ban by law the practice of racial profiling".

The identification of citizens by the police when exerting law enforcement, under no circumstances may result in discriminatory or unreasonable restrictions in the exercise of rights and freedoms of national foreigners.

In this sense, the recent Circular 2/2012 of the Directorate General of the National Police represents a step forward by establishing the police action protocol that officers must follow in stop- and- search diligences.

The Circular main guidelines are:

- Prevention is a basic pillar to achieve the objective and to have it in place is necessary, among others, the planning and implementation of selective operational plans and responses. Those diligences are based on analysis of criminal policy that, in relation to immigration, will be mainly aimed at eradicating illegal immigration and human trafficking as well as deporting illegal aliens subject to criminal proceedings.
- Nonetheless, the implementation of those plans and course of action should exclude any practice that may lead to an illegal curtailment of the rights and freedoms of immigrants. It is, therefore, forbidden to establish quotas for foreign identification or arrest

by any unit of the National Police, also avoiding massive or indiscriminate actions based solely on ethnic criteria.

- Suspects will be stopped and searched in an harmonious, respectful and educate way without causing any incident to the person. Thus, all the identification processes considered unnecessary, arbitrary, abusive or that involve an excess on the law enforcement by the Security Forces will be avoided.

- Suspects will be only taken to the police premises for identification purposes - arrest for identification- only in the cases provided by article 20.2 of the Organic Law 1/1992, i.e., unidentified individuals whose identification was not possible, and there were reasonable signs that they might commit a criminal offence, and also those individuals, equally unidentified, who have committed an administrative offence.

- Regarding the identification of individuals in police premises, Security Forces will adhere to the code of practices of the Instruction 12/2007 of the State Security Secretariat to ensure their actions respect the rights of the suspects arrested or under police custody (Instruction no. 6).

- Specifications derived from Organic Law 4/2000.—The stop-and-search procedures for national foreigners will adhere to the Instruction above and, in this respect and in relation to the contents of paragraph two, the illegal situation of an individual in our country does not justify his transfer to police premises, as long as the individual holds an official valid ID document and provides an address which can be confirmed at the moment of the identification.

#### 5.4.F.- INTERVIEWS WITH VICTIMS AND WITNESSES: COGNITIVE INTERVIEWS

A correct identification of the motivations and the subsequent settlements of many criminal investigations depends on the information gathered from victims and eyewitnesses. The studies on the quality of the information gathered by police officers show, however, that they are usually inaccurate, incomplete and too general. Some inadequate practices that explain the loss of important information throughout the process are: the excessive use of close-end questions, frequent disruptions, inflexible wording and inadequately sequencing of questions, no rapport and suspicious testimonies.<sup>82</sup>

One of the most important police actions to confirm racial motives has to do with gathering information from victims and eyewitnesses. The recommendation is to collect detailed statements from victims and eyewitnesses using their same words; describing with detail the time, duration and location in which the event took place; including specific wording, strong language, jargon; specific names, sequences of behavioural interactions, verbal exchanges, physical appearance of perpetrators, their specific actions and roles as well as any detail that

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<sup>82</sup> and MCCAULEY, M. The cognitive interview method to enhance eyewitness recall. In M.L. Eisen; J.A. Quas and G.S. Goodman, Eds. Memory and suggestibility in the forensic interview. Mahwah, New Jersey: Lawrence Erlbaum, 2002. págs.: 256-286

might seem trivial or neutral, or the victim/witness is not sure of; description of the physical, psychological, economic impact of any person who has been affected by the incident. The Cognitive Interview is, in this regard, a very useful strategy.

The Cognitive Interview (CI) is a product of the collaboration between the police and psychology experts in memory retrieval. The Enhanced Cognitive Interview, hereby exposed, promotes the use of social skills and rules referred to as mnemonic strategies for information retrieval. In comparison with the standard police interviews, CI gets more detail and more accurate information under the same quality parameters. Prepares victims/witnesses for subsequent leading-oriented interviews. Increases the details by which statements are compared to the behaviour/language used by suspects. Provides statements liable to be analyzed with truth and falsehood detection techniques applied to contents. Also, another benefit of CI is that it provides information that helps evaluate the psychological damage the victim has been suffering.

PHASES OF ENHANCED COGNITIVE INTERVIEW REVISED (Fisher and Geiselman, 1992)

Structure of the Cognitive Interview<sup>83</sup>

<b>PHASE 1</b>	<b>Greet and personalise the interview</b> <b>Establish rapport</b>
<b>PHASE 2</b>	<b>Explanation of the aims of the interview</b> <ul style="list-style-type: none"> <li>• Focus on memories</li> <li>• Tell everything</li> <li>• Transfer the control of the interview to the interviewee</li> <li>• No inventions nor assumptions</li> <li>• Strong concentration</li> </ul>
<b>PHASE 3</b>	<b>Start an interrupted narration</b> <ul style="list-style-type: none"> <li>• Context reconstruction</li> <li>• Open-ended questions</li> <li>• Breaks</li> <li>• Non-verbal behaviour</li> </ul>
<b>PHASE 4</b>	<b>Questions</b> <ul style="list-style-type: none"> <li>• Tell everything</li> <li>• Right questions for the interviewee</li> <li>• No inventions nor assumptions</li> <li>• OK to the "I don't know" answer</li> <li>• OK to the "I can't understand" answer</li> <li>• Concentration</li> <li>• Activate and prove an image</li> <li>• Open-ended and close-ended questions</li> </ul>
<b>PHASE 5</b>	<b>Varied and extensive recollections</b> <ul style="list-style-type: none"> <li>• Describe the event in several orders</li> </ul>

<sup>83</sup> Milne, Rebecca and Bull, Ray. Investigative interviewing. Psychology and practice. Chichester: John Wiley & Sons; 1999

	<ul style="list-style-type: none"> <li>• Reporting the event from different perspectives</li> <li>• Strong concentration</li> </ul>
<b>PHASE 6</b>	<b>Summary</b>
<b>PHASE 7</b>	<b>Closure</b>

#### PHASE 1. GREET AND PERSONALISE THE INTERVIEW. ESTABLISH RAPPORT.

In order to prevent fear or mistrust of police, insecurity or shame, it is important that the interviewer builds trust and security on victims or witnesses to reduce tension and make them feel comfortable. Therefore, the interviewer should personalise the interview to address the needs of each individual. Rather than introducing himself as a mere representative of the system, the interviewer should look as a normal person, concerned by the situation of the victim or witness and interested in the resolution of the incident.

##### Greetings:

- Greet the interviewee with his/her name and introduce ourselves with our name. Address the person for his/her name every now and then.
- Used formal or informal register to address the interviewee depending on his/her characteristics.
- There must be a unique interviewer.

##### Rapport:

Prepare the victim/eyewitness for memory retrieval.

- Eliminate any disrupting element during the interview such as noises, disruptions, phone calls, comments, questions, etc.
- Reduce initial anxiety by urging the interviewee to reply in a positive way. For that purpose, the first questions should be neutral and unconnected to the event but related to the victim/eyewitness. Questions should show interest in the person and should not be answered with monosyllables.
- Active listening: Show interest, avoid disruptions, appropriate use of non-verbal language - relaxed posture, speak slowly, eye contact, nods, angled position-.
- Ask open-ended questions and avoid leading questions.
- Allow them to express their feelings and provide emphatic responses.
- Stay open-minded to all possible assumptions.
- Comment the victim/eyewitness to take his/her time to retrieve and order memories.
- Do not interrupt and use silences as a strategy to make them remember.
- Do not express surprise and do not reinforce any type of response.

## PHASE 2: HINTS FOR THE INTERVIEW; FOCUS ON RETRIEVAL AND TRANSFER CONTROL

### Transfer control

The victim or eyewitness should not assume a passive role in front of the authority. But they must understand that they take control of the interview. The role of the police officer is to make the interviewee think and talk by using:

- open-ended questions
- no disruption
- reassuring the interviewee with comments such as: "I was not there, so I do not know what happened. You know all the details, so tell me everything you remember".

### Focus on memory

- Bring memories closer. Insist in trying to remember so that the victim or eyewitness does not give up at the first try.
- Convince them that we have all the time we may need.
- Find the most adequate moment to conduct the interview. Although time usually acts as a deterrent for the claim, in relation to mnemonics, after the first two hours oblivion chances are reduced. However, if the event was very shocking, the immediacy of the events may impair retrieval.

### Tell everything

Eyewitnesses and victims usually make a selection of the information they are reporting to the police based on the importance they think it has, because they may think the police already knows a lot about the case, because of how secure they feel about their recollections, because of embarrassment, etc. For this reason it is important to:

- insist them to tell every detail, regardless of how peripheral it may seem to the main incident or how insecure they feel about it.
- ask them to narrate the events as soon as they recall them.

## PHASE 3. START AN UNINTERRUPTED NARRATION

Retrieving circumstances. This is the most characteristic phase of the cognitive interview. It is based on the "encoding specificity principle" that confirms that the most effective memory retrieval is the one that creates a retrieval context very similar to the possible real encoding context. That is, it suggests that recollections are associated to their contextual origins. Revisiting their state of mind at the time, place, sensory and affective circumstances of the events will be a key driver to come close to the places where memories are stored. It consists of:

- placing the victim or eyewitness in the state of mind at the place and time of the event. Note that retrieving circumstances do not only refer to external factors such as time and place but also to internal ones such as feelings, thoughts and fears experienced when the event took place.

#### PHASE 4: REQUEST

During the previous phase, the police officer had to notice the details that were left incomplete and, once the account was over, return to them. The victim or eyewitness has already been informed about the importance of details and it is at this moment when the police officer has to proceed to collect them. Leading questions should be avoided as the interview should focus in what was spontaneously mentioned - facts, people, places- rather in what the police officer may think. Research has shown that repetition generates reminiscence or hypermnesias. That is, although repeating a question in the same way is not recommended (especially when interviewing children), asking the same questions in different ways actually increases the amount of details which are recalled.

During this phase we ask the victim/witness to go back to the details that were poorly explained:

- We request an effort of concentration to recall as much as possible even if it may seem trivial or peripheral.
- Explain the victim/eyewitness that "I don't know" is not a valid response.
- They must be taken into context again.
- As far as possible, questions should be coherent during the interview, that is, according to the ways information has been stored and following the same order in which it has been recalled.

#### PHASE 5: VARIED RETRIEVAL/EXTENSIVE RETRIEVAL

In this phase new strategies are used to search in memories for more details according to the theory of Multiple-Trace Memory and the Theory of Schema. The theory of Multiple-Trace Memory argues that memories form a kind of spider web or grids and, therefore, it is possible to follow multiple threads to search for memories. It may be the case that memories that could not be reached by using one trace, may be reached by taking a different one. It is then recommended to follow traces in many possible ways and in different directions to maximize recollections. The Theory of Schema states that it is better recalling the general scheme of the event; much better when it is encoded in scripts that organize memories in a hierarchical way. However, scripts hinder the retrieval of details, especially if they are not very usual, and favour the inclusion of false recollections coherent with the script. For this reason, it is necessary to use techniques that break the script and obtain details and techniques of "memory shaking" to complete memories.

The strategies are:

- Asking the victim/eyewitness to retell the narration but in a different chronological order, from the end to the beginning.
- Requesting the interviewee to observe the scene from a different perspective, for instance from the place occupied by a third person in the event.
- Making the interviewee recall other details different to what he/she saw: smells, sounds, tastes, touch.

- Encouraging the victim/eyewitness to draw a picture or representation of the scene or the location of the persons involved in the event.
- Throughout this process it is important that the interviewee understands that the effort demanded is not a question of credibility but the aim is to recall more details.

#### PHASE 6. SUMMARY

The police officer summarizes the interviewee's statement. Request eyewitness or victim to add as many details as they can recall.

#### PHASE 7 THE END

Victims and eyewitnesses should not perceive that interviews are fruitless and unsatisfactory. They should notice that we are satisfied with their performance and cooperation. At the end of the interview, we should give them a phone number in case they remember something else and also collect their personal data. Then, come back to the topics of the initial rapport.

## 6. – SELECTION OF BEST POLICING PRACTICES

Below we present a selection of police good practices on the grounds of racism and xenophobia. The good practices collected from the Spanish Security Forces have been reported by the police organizations themselves. Different fora recognize the excellence of the practices conducted by police organizations abroad.

### 6.1.- REDUCING PREJUDICE BY BRINGING GROUPS TOGETHER

ORGANIZATION: FINNISH POLICE

Good practice: Reducing prejudices

In Finland, *The Community Policing Project*, conducted in Tampere in 1999, is a good example of collaboration between the police and minority ethnic groups. The project has opened a channel of communication that has brought groups together on the occasion of problems with teens or when it has been necessary to get in contact with a specific ethnic group. Today immigrants find it easier to get in touch with the police as there is a single point of contact in police stations to assist them. This situation prevents episodes of mutual distrust, prejudices and stereotypes.

Objectives:

- Facilitating contact with the police by means of a system of mutual contact,
- providing information to ethnic minorities about the police and its functions and,
- building greater confidence of ethnic groups with local police.

Course of action of the project:

- Appointing a single point of contact in local police station to deal with Tampere's minority groups.
- Tampere's Immigration Office delivered some customized training aimed at contact officers. A wide range of minor ethnic associations are engaged in the project and have their own contact officer.
- An outcome of this project is that Tampere's police is taking part in 44 different networks of public authorities and NGOs.

## 6.2.- IMPROVING THE SUPPORT PROVIDED TO MINORITY COMMUNITIES AND BUILDING GREATER CONFIDENCE IN THE INSTITUTION

ORGANIZATION: KRAKOW REGIONAL POLICE HEADQUARTERS (POLAND)

Good practices: Threats against ethnic minorities and their perception of safety.

The Polish Regional Police Headquarters of Krakow conducted a research with a panel of experts of the Jagiellonian University and Roma representatives, about the experiences of this ethnic minority-

The objectives were:

- Analyzing the perception of minorities related to safety and threats.
- Improving cooperation between the police and the Roma community.
- Building greater confidence of the Roma community in law endorsement organisms.
- Improving security by raising the police's awareness towards racist crime.

The actions taken were:

- Distribution of informative leaflets, across the Roma community and the Police Forces, about *Roma people in Poland. Outline of the history and customs of the Roma* as well as a *Polish-Roma Pocket Dictionary*.
- Elaboration of the *Training Program for Roma Organizers, Police, and Employees of the Local Administration in the Dolny Śląsk Region*. It represented an educational meeting point for police officers and members of the Roma community. The program included six sessions to be delivered in five different locations with the aim of improving the effectiveness of the fight against racist crime.

## 6.3.- AVOIDING RACIAL PROFILING

ORGANIZATION: LOCAL POLICE OF FUENLABRADA AND, UNDER DEVELOPMENT, LOCAL POLICIES OF CASTELLÓN, MALAGA AND A CORUÑA

Good practice: Program for Efficient Stop and Search Policing (PIPE)

This program has been developed with funds granted to the Platform for the Police Managing of Diversity by the Open Society Foundations (Soros Foundation).

Objectives:

- Encouraging Police senior members from the participant public police forces

to exert greater control over the processes of identification.

- Establishing the action protocol for identifications to improve police efficiency on this subject and to prevent and control any possible discriminatory bias.
- Promoting regular revision of the identification of persons by police officers and adopting the corresponding corrective measures.
- Raising awareness and training members of the public Police Forces (and especially senior members) to adequately managing the identification of persons by police officers.
- Fostering contact and relationships between public Police Forces and the diverse society of local communities.

For that purpose, the following actions have been taken:

- Specific design of the Program with the collaboration of experts of the Platform for the Police Managing of Diversity according to the particular characteristics of each municipality.
- Preparation of a "Handbook of Police Action Protocol for Efficient Stop and Search Policing", that shall set forth the course of action in identifications with the collaboration of experts from the Platform for the Police Managing of Diversity.
- Design and implementation of "Guided forms for the identification of persons by the Police" that security forces shall use for the identifications specified in the handbook.
- Delivery of diverse training programs for senior members and police officers to enable a correct implementation of the handbook guidelines and make them aware of the impact that identifications may have in the relationships between the police and diverse society.
- Launch and use of a computer software or application, subscribed to the corresponding data protection authorities, to provide statistical analysis of the data gathered during the implementation of the Program.
- Establishing the necessary course of action and procedures to help and increase the interactions between the Police Forces and Diverse Society.
- Development of an information campaign aimed at Diverse Society about the rights and duties of citizens when stopped and searched by the police and also about the legal and ethical obligations of the members of the Police.
- Regular evaluation of the data obtained and contrast of that information with the social fabric of Diverse Society.
- Source:[http://gestionpolicialediversidad.org/PDFactividades/Programa%20PIPE%20\\_con\\_cuestionario.pdf](http://gestionpolicialediversidad.org/PDFactividades/Programa%20PIPE%20_con_cuestionario.pdf)

#### 6.4.- VICTIM ASSISTANCE

ORGANIZATION: Assistance Centres Network for victims of racial or ethnic discrimination under the Council for the Promotion of equal treatment and non-discrimination of persons because of their racial or ethnic origin.

##### Description of activities

Good practices: Victim assistance.

The Assistance Centres Network <sup>84</sup> for victims of racial or ethnic discrimination was started by mid-2010. This network of organizations runs over 100 points of information and advice (distributed across all the Spanish autonomous regions and cities), that provide support and counseling on discriminatory issues according to a predefined protocol agreed by all the organizations within the network. During the first 6 months of operation in 2010, 235 discriminatory incidents were recorded; 590 incidents in 2011. Every year, the network issues an annual report containing a description of the main characteristics of the incidents which have been recorded, analyses the most effective strategic action plan and makes recommendations to go forward. During the first six months of operation, 100% of the users of this Network recommend the service; 90% rate assistance as good or very good and think that the intervention of the network has been effective (75%) and about 70% consider that it worked out well for them. Along with the advice and assistance service for victims of discrimination, the Assistance Centres Network also promotes equal treatment and non discrimination through communication, awareness-raising and training activities.

Dialogue, negotiation and judicial advice are the basis of the Network as the most effective methods to settle the discrimination incidents recorded, along with training and awareness as techniques to prevent discrimination and promote equal treatment. Some of the actions which have been implemented are:

- Victim assistance.
- Legal advice.
- Mediation and negotiation with discrimination agents.
- Training and awareness aimed at potential victims and agents as key drivers to combat discrimination.
- Cooperation with related services and networking with recognized institutions.

Although most of the discrimination incidents recorded are not of a criminal nature, it is a priority for both the Council and the Assistance Network, to aid victims when this type of incidents occur.

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<sup>84</sup> The initial bodies that formed the Assistance Centres Network were: Spanish Red Cross, CEPAIM Foundation, FSG, Movement Against Intolerance, Movement for Peace, Disarmament and Freedom, Red Acoge , UGT (a Spanish trade union) and Romani Union, ACCEM joined in 2011.

The Council and the Assistance Network have carried out several initiatives to improve the coordination between the NGOs members of the network and Security Forces.

By November 2010 the Council delivered a training session on dialogue and mediation techniques in case of discrimination. A local police sergeant of Fuenlabrada was one of the speakers and exposed the operations of local police against crime offences due to discriminatory treatment.

Another training session was delivered by December 2011 on *Hatred speech on the Internet and discrimination in accessing goods and services: discussions with key organisms*, with the aim of deepening in this legal and administrative arena and understand the role played by the institutions and organizations responsible for these issues. A lieutenant of the Civil Guard Telematic Crime Group was present in this session.

SOURCE: <http://www.igualdadynodiscriminacion.org/home.do>

## 6.5.- TRAINING

ORGANIZATION: German Police

Good practice: Racist crime filed, specialized training and victim assistance.

The objectives are:

- Providing specialized training on recording racist crimes.
- Raising awareness through training and contact with minorities, to aid victims of racist violence.

Training programs include:

- Topics related to racism and extremism as "the basics for both initial and advanced police training".
- Training on KPMD-PMK "Kriminalpolizeilicher Meldedienst – Politisch motivierte Kriminalität" (Criminal Investigation Registration Service - Politically Motivated Criminality) created in 2005 to control racist and hatred crime.
- Specialized training aimed at special units of the police to investigate ultra right-wing and racist-biased offences with the learning objectives of conducting research and preserving evidence and documentation for the type of crimes of their concern.
- Some police stations and regional internal ministries consider that dealing with victims of violence and racist crime is a relevant subject matter for all police officers. In some cases the trainers are the police officers engaged in protecting victims and deliver basic and advanced training (as in North Rhine Westphalia, Berlin, Saarland and Thuringia). But other institutions and associations also take

part. In Leipzig, for instance, the Counseling Centre for Victims of Ultra Right-wing Violence delivers courses aimed at novel police officers and also advanced courses. The target is to make police officers aware of the suffering victims have to endure, inform about the psychosocial and legal situation related to the crimes of the ultra right-wing and get support for victims.

See a comparative analysis on police action against racist violence and crime: <http://fra.europa.eu/fraWebsite/material/pub/PRCV/PRCV-ES.pdf>

ORGANIZATION: Government and Local Police of the Region of Valencia

Good practice: Training course aimed at the local police.

Course developed under the frame of the First Action Plan of the Local Police of the Region against racism or xenophobia.

Objectives:

- Promoting continuous and specialized training programs for police officers on the grounds of racism and/or xenophobia.
- Training local police on the prevention and control of risks factors.
- Providing adequate research techniques.
- Social mediation skills for police officers.

Some actions are:

- Delivery of a training program to achieve a certification as Expert on Racism and Xenophobia (DERYXS). In 2012, 39 local police officers were first certified over the 205-hour training course.
- Creation of the Networking on Prevention and Action Plan against Racism and Xenophobia (PIRAXE), under the anti-discrimination unit reporting to the Centre for Research of Security and Emergency (CISE). Certified police officers will be part of the network dedicated to continuous training and development and knowledge transfer among the multiple local police forces of the Region.
- Promoted by PIRAXE, DERYXS should develop studies for in-depth knowledge of the municipalities circumstances that local police officers have to address. The study conducted in the municipality of Silla (Valencia) is a good example. They first conducted a research entitled: "Study of secondary and post-secondary education in the secondary school of Silla (Valencia) related to the attitudes of 4th-grade students regarding immigration"- based on the presence of racism and/or xenophobia in educational centres and the potential impact on students of ultra right-wing political speeches. Second, two local police officers engaged in the Network and part members of DERYXS, shall implement the project across the educational community from October 2012. Throughout this phase, the police officers involved shall be members of the local

police of Silla and Picassent respectively. The NGO Movement Against Intolerance will also participate in this project.

[http://www.gov.gva.es/lrportal/c/document\\_library/get\\_file?uuid=0dfd88dc-ad5e-434b-ba0e-ea52c8479d69&groupId=19770](http://www.gov.gva.es/lrportal/c/document_library/get_file?uuid=0dfd88dc-ad5e-434b-ba0e-ea52c8479d69&groupId=19770)

## 6.6.- FILLING INCIDENT REPORTS

ORGANIZATION: POLICE ACADEMY OF FINLAND AND POLICE DEPARTMENT OF THE MINISTRY OF INTERIOR

Good practice: Control system for filing racist incidents.

An annual report about racist crime is being published in Finland since 1998. In 2009 the system for information compilation was modified including not only a racism code (detailed by police officers in the statistical system), but also supplementary actions to improve the statistics reliability.

Objectives:

- Building greater confidence on "hate crime" statistics and facilitating real time tracking of crimes.
- Providing a temporary procedure to improve the reliability of files whereas the code is fully completed.

Some actions are:

- A system for collecting raw data from four sources:
  - 1 All crime reports that the police has labeled with the racism code. Claims should have that code stamped on. When necessary, the police officers processing crime reports must state the racist nature thereof by using an existing code in the statistical tool. Since this procedure has room for improvement, the other three searching criteria are used:
  - 2 All criminal claims including the combination of words: "racist" or "racism".
  - 3 All criminal claims including one of the specified crime types and one type from the search criteria. We seek to analyze if police reports contain certain terms that may be associated to hate crimes such as mosque, coming out of the closet, etc. The list of search terms is updated each time a new term or a newly found term appears. In the 2010 report, 253 search terms were used.
  - 4 All criminal claims classed as discrimination, discrimination in the workplace, discrimination by overwork, ethnic riots, genocide, premeditation to commit genocide, crimes against humanity, aggravated crimes against humanity or torture. They are all

classified in the Criminal Code of Finland as hate crimes on the grounds of race or discrimination, depending on their characteristics.

- Final data collection. A qualitative analysis is performed to debug raw data. Claims classed as racist when applying search terms are analyzed to find possible hate motives in the context they appear. For instance, the search term "queer" as in "My office is full of queers" would be disregarded if it appeared in this context: "*How queer my office is!* In spite of this work, reports present some methodological constraints such as spelling mistakes that invalidate the searches and may conceal the racist motivation of some of the reported incidents.
- Claim classification for disclosure. The information about alleged crimes, alleged offenders and injured parties is recorded and turned into numerical variables. The information recoded into variables intends to provide useful data to understand and combat racist violence (for instance, time and place of the incident, relationship between the victim and the offender, etc.). The analysis of numeric information provides information about the "hate crimes" reported to the police throughout the year and the results are published and documented in the corresponding annual report.

[http://www.poliisiammattikorkeakoulu.fi/poliisi/poliisioppilaitos/home.nsf/files/raportti\\_85\\_en/\\$file/raportti\\_85\\_en.pdf](http://www.poliisiammattikorkeakoulu.fi/poliisi/poliisioppilaitos/home.nsf/files/raportti_85_en/$file/raportti_85_en.pdf)

## 6.7.- PROTOCOLS AND INTEGRAL MANAGEMENT

ORGANIZATION: Police Forces of the Autonomous Region of Catalonia: Mossos d'Esquadra.

Good practices: Protocol against hate crime and discrimination

The Prosecutor Coordinating the Unit of Hate Crimes and Discrimination of the Barcelona Provincial Prosecution Service has been promoting since 2010 that the police forces of the region, Mossos d'Esquadra, have a "Procedure on criminal events motivated by hate or discrimination".

Objectives:

- Identifying situations in which the commission of a criminal offence meets one of the following motivations: race, religion, age, gender, sexual orientation, gender identity, political ideology, ethnic or national origin, physical/sensory disability, intellectual disability, illness, panic disorders or any other social or personal circumstance.
- Determining how to deal with these police operations:
  1. Specific area of the Centre of Police Information
  2. Communication to the corresponding service of Hate Crime and Discrimination of the Provincial Prosecution Office of the region of Catalonia.

- If there are groups of Victims Assistance available, they shall collect claims (with the aim of providing more specialized service and the subsequent follow-up of each case).

Actions:

- Publication of the protocol aimed at all Police members of Catalonia - Mossos d'Esquadra, and especially to the police officers working in training units.

<http://gestionpolicialediversidad.org/PDFdocumentos/ProcedimientoDelitosMossos.pdf>

ORGANIZATION: Local Police of Fuenlabrada

Good practices: Comprehensive Management of Social Diversity.

Practices performed by the Local Police of Fuenlabrada (Madrid) for almost a decade.

Objectives:

- Ensuring equal treatment and non discrimination in their local diverse community.

Actions:

- Police training and managing diversity. The Town Council of Fuenlabrada has an Annual Training Program in place aimed at civil servants. This Program includes specific training plans for local police with sessions dedicated to policing management of diversity.
- Police officers from diverse social origin. Since 2005 the local police of Fuenlabrada has been implementing "Acción Positiva", a measure to help members of minority communities (with granted Spanish citizenship) join the local police through a free of charge training course to prepare entrance examinations.
- Improving Stop and Search Policing. In 2007 the local police of Fuenlabrada participated in the European project STEPSS (Strategies for Effective Police Stop and Search) and designed a guide that sets up a control system to prevent any discriminatory bias in that subject matter.
- Working team to Managing Diverse Society. The local police of Fuenlabrada has also built a team expert in managing diverse societies that promotes and facilitates transversal policies across the organization and also acts as a mediator between the local police and the local minority communities.
- Citizen Safety Cross-cultural Committee. They have also created a platform to engage citizens in the local security policies, specifically designed for diverse societies. The aim is twofold, first to receive their demands in the field of safety and coexistence and second, to discuss the performance of the local police in the subject of diversification,

including but not limited to managing stop and search procedures.

- Manual for Policing Criminal Offences on Discriminatory Treatment. Eventually, the local police of Fuenlabrada approved in March 2010 a Manual for Policing Criminal Offences on Discriminatory Treatment. This guide has paved the way to standardize police performance on this subject, in order to ensure the best possible response strictly compliant with the legal provisions and also, to record the issues that take place in the town so that conflicts are better identified and the necessary actions are taken.

<http://gestionpolicialediversidad.org/PDFdocumentos/ActuacionTratoDiscr.pdf>

#### ORGANIZATION: Civil Guard

Good practices: Comprehensive Management of Social Diversity.

##### Special Unit of Support to Immigrants (EDATI)

EDATI started operations in 2000 with the aim of satisfying the needs of humanitarian assistance and legal and employment counseling to immigrants.

EDATI are currently located in the Civil Guard Headquarters of Granada, Almería, Valencia, Barcelona, Tarragona, Alicante, Huelva, Murcia, Baleares, Castellón, Algeciras, Cádiz y Málaga, delivering service over most provinces of the east and south coasts of Spain.

These teams have three human resources assigned (one of them must be a woman), specially trained to recognize the cultural particularities of immigrant communities, their location and social circumstances. EDATI members can speak foreign languages, specially French, Arab and English.

These teams have the following material resources: a van type vehicle, acting as "mobile station" properly equipped to assist and aid immigrants and to provide a closer service.

The information and expertise of this unit provides a better understanding of immigrant communities and this permits the detection and dismantling of international networks of trafficking in human beings, make immigrants have their rights protected and improve their integration into society.

The accountabilities assigned to this unit are:

- Collecting, addressing and guiding the safety demands and needs of immigrants.
- Facilitating the processes of their stay visas and/or residence permits in Spain.
- Ensuring that personnel selection processes complies with job recruitment regulation.
- Providing advice and information about activities that may ease immigrants integration and make their stay in our country easier.
- Acting as a link with institutions and organisms.

ORGANIZATION: National Police

Circular 2/2012 of the Directorate General of National Police establishing the police action protocol that officers must follow in stop- and- search diligences.

Detailed in section 5.4.E. "STOP AND SEARCH RACIAL PROFILING" it represents a step forward in operational police performance. Although prevention is considered a major policing activity, all units of the National Police are explicitly forbidden to establish stop and search and arrest quotas for immigrants, as well as massive or haphazard responses based solely on racial criteria that must be also avoided.

This Circular has been appraised and applauded by many NGOs and immigrant associations.

## 7.- RECOMMENDATIONS OF THEIR WORKING GROUP FOR THE PREPARATION OF A POLICE ACTION PROTOCOL TO DEAL WITH RACIST OR XENOPHOBIC INCIDENTS

So far, there is not a unified action protocol for all the National Police Forces to address racist or xenophobic incidents.

Police Forces follow different protocols for the collection of complaints, that differ even further depending on the police officer who is recording the claim. The need arises to create a template containing the required information about the criminal offence to be used afterwards by judicial bodies (prosecutors and judges in particular), and also to facilitate the incorporation of data into the SEC (in compliance with one of the objectives of the present document).

Under the Ministry of Interior, the State Security Secretary passed the Instruction 6/1997 "Support and information for victims of certain offences and actions and investigations taken for their resolution". The police unit that has developed a clear and specific action protocol has been the Mossos d'Esquadra in the Autonomous Region of Catalonia: "Course of action to deal with offences grounded in hatred or discrimination, March 10, 2010". See this protocol in: <http://www.dameroazul.com/documents/procedimiento-delitos-de-odio-me.pdf>

Some other Local Police Forces have been preparing policing protocols on this subject (Fuenlabrada, Silla, etc.) being the Local Police of Fuenlabrada an example: [http://www.observatorioreligion.es/upload/31/03/Manual\\_de\\_Procedimiento\\_-\\_Trato\\_discriminatorio.pdf](http://www.observatorioreligion.es/upload/31/03/Manual_de_Procedimiento_-_Trato_discriminatorio.pdf)

The recommendations below arise from the need perceived by the working group of creating a common action protocol for all Police forces, national or regional, on research and support to the victims of criminal offences based on hatred and discrimination. In this sense, the protocols of the Mossos d'Esquadra since March 2010 and the Local Police of Fuenlabrada mentioned above represent an excellent starting point.

The working group has been making an effort to bring statistics closer to reality with the specialization and specific training of Security Forces on this subject and the approval of a protocol that helps security forces identify and record racist incidents.

Such protocol should address the following aspects:

- 1) Applicable national and international legislation. Special reference to the recommendations of international organisms: UN, OSCE, European Council (ECRI) and European Union Agency for Fundamental Rights (FRA).
- 2) Setting forth the goal and scope of application:
  - a. Typology of criminal offences addressed by the protocol.
  - b. Recipients of the protocol.
  - c. Clear definitions of each of the hatred and discrimination motives (racism, xenophobia, ethnic, sexual orientation, sexual identity, etc.)

- 3) Guidelines to help police officers file criminal and administrative offences of a racist and/or xenophobic nature or grounded in hatred and discrimination in information systems <sup>85</sup>. The initiatives taken by the Ministries of Interior and Employment and Social Security since 2011 shall be effective if police officers have access to information systems when recording reports and know all the possibilities available to record racist and/or xenophobic incidents.

**The protocol should insist on promoting specific training to understand the existing prejudices in the community and within the organization. There are so subtle forms of prejudice in current societies that it is difficult to recognize not only our own attitudes but also conceal the discriminatory attitudes others may have. The police officers responsible for recording complaints must be fully aware of this reality. It is also relevant that police officers acknowledge the relevance of recording racist and/or xenophobic incidents in an appropriate way. Detecting and recording the discriminatory bias in complaints is essential to tackle discriminatory behaviours, protect victims and offer reparation proportional to the moral damage infringed.**

- 4) Disaggregated data refer to the situation of the different social groups and they are key to identify indirect discrimination patterns and of multiple discrimination. Additionally, detail collection must keep to the way those groups define themselves.
- 5) Specific norms should be established regarding the specific support to victims of racist or xenophobic crimes. Such support should be provided by specialists and this, along with the improvement of police officers' training, will increase awareness and prevent that victims may perceive neglectful or even offensive attitudes.

**It should be remembered that surveys mentioned in this handbook say that only a small number of victims venture to report incidents and if they perceive unreceptive attitudes on police officers, they will probably refrain from doing that or their testimonies will be contradictory as a result of unsteadiness and distrust.**

- 6) Establishing the criteria and guidelines to prevent officers from the different police forces from focusing on racist profiling when stopping and searching. Standard models for filing complaints should be specified and they should contain all the actions to be taken by the Security Forces in response to racist and/or xenophobic incidents as well as the need to duly inform citizens of the reasons why they have to be stopped and searched.
- 7) Set up the rules to file police reports:

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<sup>85</sup> Besides policing statistics, the working group considers that the judicial statistics would be useful to know the loopholes in anti-discrimination legislation. Such statistics should include details about the damages and reparation awarded to victims.

- **Regarding victims:**
  - Ensuring their safety and that of their closest personal relationships, preventing that victim and offender may share the same physical space or get in contact and taking into account the possibility that the acts may be repeated, considering some measures in order to avoid them.
  - Using cognitive interview techniques during interviews not only to enhance memory retrieval but also to assess the psychological harm in the victim and contrast that information with the suspects' behaviour/comments. In any case, file statements word by word recreating insults or racist or xenophobic comments.
  - Provision of accompanying victims to health centres and facilitate their access to social services.
  - Reinforcing the cooperation between social services and security forces.
  - Requiring the health centre to document appropriately the injuries.
  - Urging doctors to proceed with the examination of the victim, emphasizing the need of reflecting the emotional state of the victim in the medical report.
  - Providing victims with specific documentation containing details about their rights. In particular, victims of violence or sexual freedom should be informed about their rights and the support available for them.
  - Getting victims in contact with NGOs specialized in supporting and assisting victims of discrimination and hate crimes.
  - Analyzing possible retaliation or victimization, and if so, request the Court to implement the witness protection legislation.
  - Showing victims how to focus public attention.
- Steering investigations so as to confirm or disregard racist or xenophobic or other hate and/or discriminatory motivations.
- Providing direct or indirect evidence to corroborate the motives for the criminal offence.
- Statements by suspects should be painstaking, and preventive measures should be taken such as forensic trace evidence, keeping suspects apart so that they cannot seek a common position, and search for incriminating evidence.
- The report should not be limited to the statements of offender and victim as they would probably turn out into two contradictory versions. In case of lack of objective data, it would be necessary to make the best efforts to find additional witnesses to the victim's witnesses.

- Description of the most frequent polarisation factors that help police officers detect potential criminal offences of a racist or xenophobic nature or based on hatred and discrimination, including cases of multiple discrimination.
- Determining the offender's profile:
  - o Giving priority to police records based on similar events, even though they are just minor offences, infringements of the Law Against violence in sports, identifications conducted under the provisions of Act 1/92 during the attendance, for instance, to neo-Nazi concerts, or radical conferences, encounters or demonstrations.
  - o Pictures of tattoos, items of clothing, symbols or emblems displaying hate or discrimination.
- In-depth research to find out whether the perpetrator is a member of a criminal organization.
- Forwarding a copy of police reports to the Prosecution Offices where the Service of Discrimination and Hate Crimes is available, notwithstanding ordinary forwarding to Court and prosecutor on duty.
- **Regarding eyewitnesses:**
  - o The statements of eyewitnesses contribute to foster the "onus probandi" or "burden of proof". It is, therefore, important to obtain, from the scene of the crime, the maximum collaboration to clear up events, and statements must be started as soon as possible, because, after a time, reluctance to collaborate may increase. All the above mentioned provided that nobody may be obliged to declare against his ideology, religion or belief, as art. 16.2 of the Spanish Constitution states.
  - o Collecting thorough statements from eyewitnesses using their same wording; describing with detail the time, duration and place of occurrence of the event, including specific expressions, strong language, jargon; specific names, sequences of behavioural interactions, verbal interactions, physical appearance of perpetrators, their specific actions and roles as well as any detail that might seem peripheral or neutral, or the witness is not sure of.
  - o Furthermore, the Organic Law 19/1994 of 23 December on the Protection of Witnesses and Experts in Criminal Cases sets forth the course of action to take in case of reasonable evidence of high risk of peril for the person, freedom or goods of whoever intends to make use of it, his/her spouse, kinship or first degree relatives.
  - o Offering witnesses their statements as they can be useful to recall what they have to declare in Court.

- **Relationships with the community:**

The police should get in contact with the community before a high- risk hate incident takes place. Regular communication with community groups may be a powerful tool to prevent crimes and provide positive outcomes to the police, contributing to build greater confidence in victims to report incidents and improving the cooperation of witnesses. Thanks to those contacts, when hostilities between communities arise, the police has more means to calm down the situation and understand when they have to step up their presence to meet the concerns of the community.

It will be possible to learn and understand the cultural, social, labour and psychological circumstances of victims, their everyday life hardships and the reasons why they refrain from reporting abuse or they take a long time to do it.

The protocol should include:

- Chairing regular meetings with the groups of victims or NGOs that defend the rights of minorities to comment current issues with the community and provide updated information under the appropriate legal procedural rules.
- Contacting with everyday life areas of potential victims such as schools, churches or community centres.
- Showing the commitment of Security Forces in the identification and investigation of racist or xenophobic incidents, for example, through informative campaigns (Internet, placards in police facilities, “Director Plan” for the coexistence and improvement of school safety, etc.)
- Developing information analysis strategies to warn of racist and/or xenophobic risk (analysis of means of communication, Internet, leaflets, bulletins...) and that contribute to identify the groups or individuals more likely to become victims, as well as the most appropriate measures for their protection.
- When the police has been somehow informed and has strong suspicions about the celebration of whatever public act, either shows, expositions, conferences, encounters or demonstrations, press conference or any other massive event where statements liable to constituting offence under sections 510 and 607.2 of the Criminal Code may be spread and trigger hate, discrimination, violence or dissemination of ideas justifying genocide, shall inform the Prosecutor or legal authorities through a dedicated report.

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## 9. ACRONYM IDENTIFICATION

ACRONYMS AND ABBREVIATIONS	DESCRIPTION
ACCEM	Asociación Comisión Católica Española de Migración (Spanish Catholic Commission for Migration).
CC	Criminal Code
CE	Spanish Constitution.
CERD	Committee on the Elimination of Racial Discrimination.
CISE	Centro de Investigación de Seguridad y Emergencia (Centre for Research of Security and Emergency).
DERYXS	Diplomatura de Especialización en materia de Racismo y Xenofobia. Certification as Expert on Racism and Xenophobia.
CI	Cognitive Interview.
ECRI	European Commission against Racism and Intolerance
EDATI	Equipo de Atención al Inmigrante (Special Unit to Support Immigrants).
EPU	Examen Periódico Universal (Universal Periodic Review).
FEMP	Federación Española de Municipios y Provincias (Spanish Federation of Municipalities and Provinces).
FIRIR	Formación para la Identificación y Registro de Incidentes Racistas .Training to Identify and Record Racist Incidents.
FRA	European Union Fundamental Rights Agency.
LECRIM	Ley de Enjuiciamiento de Criminalidad ( <i>Code of Criminal Procedures</i> ).
LGBT	Lesbianas, gays, bisexuales y transexuales (Lesbians, Gays, Bisexuals and Transgenders).
MPDL	Movimiento por la Paz (Movement for Peace).
OBERAXE	Spanish Observatory on Racism and Xenophobia.
OIDDH (ODIHR)	Oficina de Instituciones Democráticas y Derechos Humanos (Office for Democratic Institutions and Human Rights).
NGO	Non-governmental Organizations.
OSCE	Organization for Security and Cooperation in Europe.
PIPE	Programa para la Identificación Policial Eficaz (Program for Efficient Stop and Search Policing).
PIRAXE	Red de Trabajo de Prevención e Intervención Contra el Racismo y la Xenofobia .Networking on Prevention and Action Plan against Racism and Xenophobia.
RAC	Rock Against Communism.
RAXEN	Report of the NGO Movimiento contra la Intolerancia on Racism and Xenophobia.
SAP	Sentencia de la Audiencia Provincial (Judgment by the Provincial Court of Appeals).
SEC	Sistema Estadístico de Criminalidad (Crime Statistics System)
SES	Secretaría de Estado de Seguridad (State Security Secretariat)
STEPSS	Strategies for Effective Police Stop and Search
EU	European Union

## 10. CONTENTS OF THE CD ATTACHED TO THIS PUBLICATION

**EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA).** Handbook on European non-discrimination Law.

**ANTÓN, C. Y QUESADA, C.** Equal treatment and non-discrimination: Recommendations guide for training security forces. Ministry of Labour and Social Affairs, Madrid.

### **EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI):**

Recommendation nº 1; Combating racism, xenophobia, anti-Semitism and intolerance.

Recommendation nº 2; Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level.

Recommendation nº 3; Combating racism and intolerance against Roma/Gypsies.

Recommendation nº 4; National surveys on the experience and perception of discrimination and racism from the point of view of potential victims.

Recommendation nº 5; Combating intolerance and discrimination against Muslims

Recommendation nº 6; Combating the dissemination of racist, xenophobic and anti-Semitism material via the Internet.

Recommendation nº 7; National legislation to combat racism and racial discrimination.

Recommendation nº 8; Combating racism while fighting terrorism.

Recommendation nº9; The fight against anti-Semitism.

Recommendation nº 10; Combating racism and racial discrimination in and through school education.

Recommendation nº 11; Combating racism and racial discrimination in policing.

Recommendation nº 12; Combating racism and racial discrimination in the field of sport.

Recommendation nº 13; Combating anti-Gypsyism and discrimination against Roma.

Recommendation nº 14; Combating racism and racial discrimination in employment.

### **EUROPEAN COUNCIL. COMMITTEE OF MINISTERS**

Recommendation nº 97 of the Committee of Ministers to Member States on "Hate Speech".

Ratification of the Convention on Cybercrime, Budapest 23 November, 2001 (BOE 17/09/2010)

**GENERALITAT DE CATALUNYA.** (CATALONIA'S REGIONAL GOVERNMENT) POLICE FORCES OF THE AUTONOMOUS REGION OF CATALONIA - MOSSOS D'ESQUADRA "Course of action to deal with offences grounded in hatred or discrimination, March 10, 2010".

**ACT 51/2003** of 2 December on Equal Opportunities, Non-Discrimination and Universal Accessibility for People with Disabilities (LIONDAU) and Act 26/2011, 1 August on Adaptation to Regulation of The International Convention on the Rights of Persons with Disabilities.

**ACT 19/2007** of 11 July against violence, racism, xenophobia and intolerance in sports and the corresponding regulation, *Royal Decree 203/2010, dated 26 February on the approval of the Regulation for the prevention of violence, racism, xenophobia and intolerance in sports.*

**ACT 7/2010** of 31 March, General Audiovisual Communication Act

### **MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY**

Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

### **MOVEMENT AGAINST INTOLERANCE**

"Notes for a Protocol of Protection and Care for Victims of Hate Crimes", jointly edited in the website [www.stophatecrimes.es](http://www.stophatecrimes.es) and the NGO in the CD.

Journals of Analysis 31 and 40. Xenophobia and Hatred in the Internet and Intolerance Crime in the Internet

Journals of Analysis 44 and 45. Stop Hate Crimes in Europe

### **ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)**

Decision 6 Porto 2002

Decision 4 Maastrich 2003

Decision 12 Sofia 2004

Decision 13 Brussels 2006

Decision 9 Athens 2009

**MINISTRY OF INTERIOR** Instruction 2/2012 of the Directorate General of National Police that establishes the performance criteria police officers must follow in stop and search diligences.



MINISTERIO DE EMPLEO Y SEGURIDAD SOCIAL

SECRETARÍA GENERAL DE INMIGRACIÓN Y EMIGRACIÓN



MINISTERIO DEL INTERIOR

SECRETARÍA DE ESTADO DE SEGURIDAD

GABINETE DE COORDINACIÓN Y ESTUDIOS



FOR DIVERSITY AGAINST DISCRIMINATION



mossos d'esquadra



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