

OSIFE project: Combatting anti-Roma violence and hate speech in France and Italy

The project aims to identify the extent to which incidents of violence and hate speech directed against Roma occur in France and Italy, evaluate the effectiveness of law enforcement's and public officials' responses to these incidents, and determine whether there exists a systemic failure in these countries to protect Roma from such crimes. Through in-country monitoring, including in Roma communities, and interfacing with law enforcement, the project will gather information that will help challenge institutional racism in law-enforcement agencies. The ultimate goal is to encourage such agencies to themselves monitor the extent of anti-Roma violence and hate speech in their countries and evaluate their own effectiveness in responding to it, in part through the collection and dissemination of data disaggregated by ethnicity about the victims of criminal activity.

The project's activities are:

- Monitoring and research;
- Advocacy and police engagement;
- Empowerment and training of local NGOs;
- Litigation.

Monitoring methodology

What will be monitored?

The project will focus on collecting information regarding suspected incidents of violence and hate speech against Roma in France and Italy, recording it, and eliciting details from the competent authorities about what steps have been taken and will be taken to investigate and/or punish those responsible.

The ERRC sees this project as a starting point for a new kind of litigation in the area of anti-Roma violence and hate speech. Instead of providing legal aid to Roma who have been subjected to violence or hate speech in individual cases, the project will be designed to build an evidence base that can be used to pursue large-scale litigation (e.g. for racial harassment or negligence in public duty by police or prosecutors) exposing institutional racism in French and Italian law-enforcement agencies and public prosecution services. The litigation aims to use anti-discrimination laws, or other laws, to challenge police and prosecutors for failing to provide an appropriate response to anti-Roma hate crime. Legal analyses of the incidents and the existing legal framework will inform this litigation.

What is a hate crime?

A hate crime is a criminal act motivated by bias towards a particular group. For example, it can be motivated by bias towards a specific race or ethnicity, such as Roma, and can take place anywhere (including in private spaces or public institutions). A hate crime has two elements: it is an offence under criminal law and is committed on the basis of bias or prejudice. Hate crimes can thus include threats, property damage, assault, murder or any other criminal offence committed with bias as a motivation. Although some jurisdictions specifically penalise crimes motivated by bias, the term "hate crime" here refers to a concept rather than a legal definition, except to the extent that there exists a criminal offence under national law.

What is the difference between a hate crime and a hate-motivated incident?

A hate-motivated incident is any act that is motivated by bias but does not *necessarily* amount to a crime, while a hate crime must, by definition, be a crime.

Hate-motivated incidents that do not amount to hate crimes fall outside of the scope of this project.

What is hate speech?

Hate speech always constitutes a hate-motivated incident, but it is not necessarily a criminal offence and, consequently, not necessarily a hate crime. However, in all EU Member States, incitement to racial hatred is considered a crime (in accordance with Framework Decision 2008/918/JHA), and so public incitement to violence or hatred directed against Roma is always a criminal offence in France and Italy.

What factors suggest bias in a potential hate crime / hate-motivated incident?

Some bias indicators from the Facing Facts Guidelines for Monitoring of Hate Crimes and Hate-Motivated Incidents available at: <http://www.ceji.org/media/Guidelines-for-monitoring-of-hate-crimes-and-hate-motivated-incidents-PROTECTED.pdf>.

<u>Bias indicators</u>	<u>Questions that can help determine if a bias indicator is present</u>
Victim perception	Does the victim perceive that the incident was bias motivated? Be careful, because the victims could not have this awareness.
Location	Did the incident happen in an area commonly associated with or frequented by Roma? Or was the location related to the perpetrator's group (for example, the headquarters of an extremist group or political party) or any hot spot for hate crimes?
Timing	Did the incident happen on a particular date?
Language and words used, including statements, gestures, graffiti, visible signs of the suspect	Did the suspect make comments, statements or gestures regarding Roma? Were drawings, markings, symbols or graffiti left where the incident happened?
History of previous hate crimes	Has the suspect been involved in similar incidents in the past?
In case of attacks against property	Does the property belong to Roma? Has the property an importance for Roma (e.g. a camp)?

Types of incidents from the Facing Facts Guidelines for Monitoring of Hate Crimes and Hate Motivated Incidents available at: <http://www.ceji.org/media/Guidelines-for-monitoring-of-hate-crimes-and-hate-motivated-incidents-PROTECTED.pdf>.

<u>Category</u>	<u>Sub-category</u>	<u>Description</u>
Homicide		The victim loss the life.
Extreme physical violence (including serious bodily harm and sexual assault)		Any physical and sexual attack.
Damage to property		Attacks directed against Roma's property
Threats and/or psychological violence		<ul style="list-style-type: none"> Any clear and specific threat, verbal or written.

		<ul style="list-style-type: none"> • Restriction of freedom (for example locking up a person). • Defamation (for example outline that a person is Roma).
Hate speech	Public hate speech	Public hate speech e.g. by politician.
	Cyber hate	Hate speech via Internet and social media.

Geographic focus: France and Italy

Activities

1. Written analysis, feeding into advocacy activities

The ERRC legal team will analyse data protection laws in France and Italy (using the OSJI material for France) to prepare arguments for legality of disaggregate data collection and to prepare the template for the freedom of information requests.

2. Database of hate crimes

The ERRC facilitators for France and Italy will monitor (through media, including social media, outreach to local communities and otherwise) and record hate crimes, as well as law-enforcement agencies' and public prosecutors' responses to them. The specific instances of hate crime to be monitored will be selected following the criteria above (definition of hate crime, bias indicators and type of incidents).

Additionally, an online reporting tool will be created and posted on the ERRC's website, through which Roma activists, civil society groups that concern themselves with issues of Roma rights, and members of the Roma community themselves will be able to anonymously report instances of hate crime that occur in France and Italy directly to the ERRC. An interactive map, which will graphically depict the locations from which hate crime reports were received and will provide details about individually reported cases of potential hate crime, will then also be posted to the ERRC's website as a public resource. ERRC will eventually use the information collected through the reporting tool as evidence of French and Italian law-enforcement agencies' and public prosecutors' failures to properly address anti-Roma violence and hate speech, which will be relevant in any large-scale litigation that ERRC may eventually pursue against these institutions.

Information to get about the incident

Date	DD.MM.YY
Location	Municipality, Country
Type	Hate speech, damage to property,

	threat, etc.
Short narrative description	Additional important information
Description of attacker(s)	Number, any characteristics (e.g. described by the victims as neo-Nazis, law enforcement officials)
Description of victim(s)	Number, any characteristics (e.g. individual, group, family, men, women, children) injuries, deaths
Media attention	General information, attention the media devoted to the case (e.g. how long and how intensively the case was covered by the media, whether media reported about the development of the case and the narrative told by the media, how the case was portrayed publicly whether the media portrayed the victim's perspective)
Photos, videos, etc...	Any photos and/or videos of the incident
Original source	Reference(s) to the original source of information

Legal status of the case

Investigation	Please provide dates where available
Prosecution	Please provide dates where available and include information on court hearings, if available
Racial motivation: subjective factors	Please describe whether the victim(s) believes the crime was racially motivated
Racial motivation: objective factors	Please describe whether there exists any objective evidence that indicate racial motivation on the part of the attacker(s)
<u>Addresses</u>	
Police	
Prosecutor	
Court	

Any instances of missing information should be indicated on the template.

In addition to the information submitted in the report, the ERRC facilitators for France and Italy will analyse media commentary concerning the case, particularly references to violence and hate speech against Roma for indications of bias.

3. Correspondence with authorities

The ERRC country facilitators for France and Italy will prepare letters to the competent authorities in response to those potential hate crimes, of which they became aware by monitoring the media, that the organization's legal team deems the most likely, given the information collected by the facilitators, to lead to successful prosecutions. These letters will include requests for detailed information about the selected incidents, on the bases of which further legal analyses will be conducted.

For each selected case, a letter will be sent to the respective authority. These letters will be sent from the ERRC in the local language of the state authority being contacted

The process will include:

- Translation of the template letter into French and/or Italian;
- Finalisation of the letters with information gathered through monitoring of the media;
- Sending out the letters
- Sending out reminders and/or follow-up letters

Additional information requests

There may be some cases in which we will need to send additional letters.

- If the authorities reject providing information, we will ask again trying to address their concerns and argumentation for not providing information;
- If the authorities provide a different authority to address the letter to, we will forward the letter to that different authority;
- If the authorities do not respond in the time given by the Act on Freedom of Information, we will send a reminding letter.

The information will be processed as it arrives.

Analyses of information from the letters

Letters received from the state authorities will be translated and subsequently analysed by the ERRC staff lawyer for France and Italy, under the supervision of the Legal Director.

This ERRC staff lawyer will analyse, from a legal perspective, each response from the authorities, particularly in regards to whether the authorities have respected their positive and negative obligations under domestic, European and international law to protect their domestic Roma communities from violence and hate speech.

4. Analyses of the existing protocols, policies and guidelines, particularly within police and prosecutors' offices and among investigating magistrates

The aim is to test those protocols, policies and guidelines against the results of the monitoring work. Any available information about these protocols, policies and guidelines will first be researched online, and any remaining information that needs to be obtained will be done so by contacting the relevant French and Italian security officials and prosecutors.

5. Analyses of previous hate crime and hate speech research and reports on France and Italy, particularly ECRI reports on each country and their annual reports also as well as ENAR publications.

The ERRC legal intern for France and Italy will research the web for any information concerning past ECRI and ENAR reports on anti-Roma violence, hate crime, and hate speech in France and Italy.

FAQ

Authorities reject providing information if the case is still open. How are we going to address this?

As legislation usually does not specifically forbid authorities to provide *any* information on the case, in the past experience authorities provided at least some information that they found are not in violation of the legislation. In some cases we did not get any information from police, but prosecutor provided full information, etc.

Personal data concerns

The past practice was very similar to what is described in the previous question. We need to maximise the understanding of the addressees that we are not interested in individual information, but need more general, even anonymised, information.

Should I contact the victims?

As we unfortunately cannot offer the victims legal representation in most cases, it is better to avoid direct contact with them not to raise expectations that we cannot meet.

All information is available online. Do we still have to send a letter?

Yes, while it is good to have more sources, we should always contact authorities too to get the official first-hand information.