

**Incitement to National, Racial or Religious Hatred: Role of Civil Society and National Human Rights Institutions  
(OHCHR, Vienna 9-10 February 2011)**

1. This paper comments on the role of civil society and national human rights institutions (NHRIs) in Europe in combating advocacy of national, racial or religious hatred which amounts to incitement to discrimination, hostility or violence and which is prohibited by Article 20 of the International Covenant on Civil and Political Rights (ICCPR). Incitement to national, racial and religious hatred is a complex issue which is at the intersection of several neighbouring discourses: human rights; equality and anti-discrimination law; anti-racism; political and civic culture; tolerance and social cohesion; media law; hate crime; interfaith tolerance, etc. Generally speaking, both civil society and NHRIs in Europe have been preoccupied with questions relevant to this theme for a number of decades. The following general observations can be offered in an attempt to characterize the role of civil society and NHRIs in Europe on the framing and addressing of national, racial and religious incitement:

**A. General Remarks**

2. Analysing the role of civil society depends on how we define this term. If “civil society” is understood broadly to include all types of civic organisations, movements and initiatives outside the public/government and the corporate/business sectors, irrespective of their values, and thus encompassing those based on radically intolerant ideologies, such as extreme rightwing nationalist, anti-minority or anti-immigrant groups, then civil society contains both perpetrators of incitement to national, racial or religious hatred and fighters against it. Civil society in this broad definition is not a positive force working to implement the human rights agenda set by Article 20 ICCPR. If we want to look at civil society only as a positive force, we should, for the purposes of such an analysis, limit the scope of the concept to only those actors which can be reasonably described as promoting equality and human rights.

3. This last requirement however is far from simple, as the evaluation of civil society actors depends on who the evaluator is. Not all civil society actors who engage with issues of incitement to national, racial and religious hatred from a self-professed human rights or equality perspective would be judged to be genuine supporters of these values by legitimate representatives of the human rights and equality community. Because of the general legitimating role that the human rights framework plays in our times – in any case in Europe – a self-identified commitment to human rights does not necessarily locate the actor in a human rights politics universe or indicate support for a certain core of universally accepted human rights positions. In other words, activists or organisations belonging to opposing camps, e.g. rightwing nationalist groups attacking immigrants and anti-racist groups defending immigrants’ rights can both profess – and deeply feel – a commitment to human rights, but understand these in diverging ways. Many members of groups sympathising with the Bulgarian Ataka or the British National Party sincerely believe that they defend the rights of their compatriots that are endangered by Roma, liberal politicians, national traitors, or too high numbers of immigrants. The basic agonistic structure of the political spectrum is essential in understanding the politics of human rights and in particular the politics of such an easily politicisable issue as the advocacy of national, racial or religious hatred. The issue cannot be easily decouples from “the political”.

4. Within a narrowly-defined human rights-based civil society in the Europe, whose borders are subject to informal but tight control by established advocates, professional experts or similar discursive authority, there still are what can be termed “legitimate differences of opinion” about the limits of acceptable expression and the balance of rights involved in issues around incitement. For a number of historical reasons whose analysis is beyond the scope of this paper, advocacy of national, racial or religious hatred is a more controversial issue at present than most other human rights issues, and generates diverging responses from within the established human rights community, whose members otherwise agree on the same core values of tolerance, equal respect, equal worth, equal dignity and equal rights of all in the spirit of the Universal Declaration on Human Rights. A glance at the way in which human rights jurisprudence has grappled with advocacy to national, racial or religious hatred and incitement to discrimination, hostility or violence is sufficient to illustrate this point. The panorama of varying positions among both civil society actors and NHRIs reflects this stage of unsettled (to date, in any case) normative environment on this issue.

5. In the last ten years, and particularly but not only in the member states of the European Union, the issue of advocacy to national, racial or religious hatred and incitement to discrimination, hostility or violence as enshrined in the ICCPR has been strongly influenced by the fast-growing discourse of equality and anti-discrimination law. This growth has been propelled by the sequence of equality Directives of the European Union, especially since the 2000 Directive 2000/43/EC on implementing the principle of equal treatment irrespective of racial or ethnic origin, and involves a strengthening of anti-discrimination legislation and policies within EU member states, as well as introducing, reforming and strengthening of specialised equality bodies parallel to or partly overlapping with NHRIs. It can be argued that this influence is in the direction of clarification of the concepts covered by Article 20 ICCPR and introduction of legal definitions, criteria and tests for deciding if a certain conduct falls within a sphere which can be defined as discrimination, thus warranting prohibition.

6. At the institutional level, this means a strong involvement of actors from the field of equality in issues around hate speech. The rise of civil society equality actors and equality bodies in Europe has begun to re-shape and transform the older human rights movement in the region. This is an intriguing process that has not been subject to research yet but that should be kept in mind when discussing the topic of this paper. Particularly with respect to independent human rights and equality bodies, in a number of countries the equality bodies – themselves differing as to their scope<sup>1</sup>, functions, structure and size – are more recent and tend to be stronger than the older NHRIs, sometimes partially overlapping with them or combining elements of both equality law and human rights. With a view to the advocacy of hatred and the incitement to discrimination, hostility or violence, it is particularly difficult to disentangle the mandate of an equality body from that of a NHRI, because the issue itself is equally relevant to both paradigms and calls for an integrated approach putting equality and human rights in the same house.<sup>2</sup>

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<sup>1</sup> In Europe, independent equality and anti-discrimination bodies differ from country to country as to whether they cover one, several or all strands of equality (related to gender, race, religion, disability, sexual orientation, etc.); whether they cover the public or private sector or both; and whether they deal with all areas of activity or only some (e.g. employment, education, goods and services, administration of justice, etc.)

<sup>2</sup> It should be noted that the different origins and corresponding different approaches of the two paradigms – equality law and human rights law – have for a long time been overlooked, and have come into focus only when analysts have been confronted with the seemingly incompatible usages of such basic concepts as “discrimination”. However, it should further be noted that in the last years there has been a spontaneous process of converging the two paradigms, and at least one deliberate attempt to integrate the two, through establishing basic principles of equality law consistent with accepted human rights jurisprudence: see The Equal Rights Trust, Declaration of Principles on Equality, London 2008, as well as my commentary to this

7. A significant amount of effort has been expended by civil society actors in some countries to counteract authorities' abuse of laws meant to punish the incitement to national, racial or religious hatred. In Russia, for example, NGOs have regularly reported abuse of anti-extremist legislation, under which authorities have brought charges against religious groups such as Jehovah's Witnesses, scientologists, and Muslim organisations,<sup>3</sup> of incitement to hatred and similar offences. Human rights organisations reporting on sensitive issues such as human rights abuses in the context of Chechnya and the North Caucasus have also been subjected to persecution based on anti-incitement provisions of the Penal Code. This perverse use of incitement legislation against human rights defenders, in ways contrary to the object and purpose of human rights instruments such as the ICCPR, should also be held in the centre of attention when describing the role of civil society in combating the advocacy of hatred. The repercussions of anti-terrorism legislation after the 9 September terrorist attack on the United States have also been pointed out to include a tendency of over-use of legislation prohibiting incitement to racial or religious hatred, and targeting certain ethno-religious groups as potential terrorist suspects.

8. Along with human rights advocates, NHRIs in Europe have come forward to condemn the turning of anti-hatred laws against innocent or weaker groups or against those who are victims of strong public prejudice. For example, the Hungarian Parliamentary Commissioner on the Rights of National and Ethnic Minorities, in his 2009 report, stated that there had been a growing number of petitions on behalf of the "majority" population, in which ethnic Hungarians strongly object the "accusation" of anti-Roma or racist behaviours on behalf of the majority society, complaining that it is the majority itself that should be considered defenceless and exposed to Roma crime: "In these cases we could easily establish in three lines the lack of our competence, though, we regularly attempt to convince our clients based on detailed criminological and criminalist arguments that the so called 'Gypsy criminality' is nothing else than a part of the hate speech also supported by certain political powers: a phantom category giving rise to ethnic hatred."<sup>4</sup> Similarly, the Human Rights Ombudsman of the Russian Federation, Mr Lukin, has spoken out repeatedly against the abuse of the Anti-Extremism Act, in particular as regards the persecution of Muslim organisations and the banning of Muslim religious literature in recent years.<sup>5</sup>

9. The main issues within the subject matter of Article 20 ICCPR which have mobilised civil society actors and NHRIs in Europe in the last ten years and have been the focus of sustained campaigns by numerous organisations and NHRIs include:

- a) Anti-immigrant hate speech
- b) Anti-Gypsyism
- c) Islamophobia
- d) Anti-Semitism

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document in the same publication: Petrova, D., "The Declaration of Principles on Equality: a Contribution to International Human Rights", available at <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20cropped%2016%20Oct%20dimitrina%20comment.pdf>.

<sup>3</sup> According to the Moscow-based SOVA Centre, in autumn 2010, at least four cases were brought against members of the group, with charges including incitement of hate, in Kemerovo and Altai Republic. Legal experts engaged by authorities to analyse the content of Islamic religious books of the theologian Said Nursi have interpreted the description of Muhammad's military actions accepted in the Islamic tradition as an appeal for violence. See SOVA Center, Racism and xenophobia, 2010, 25 October, available at <http://www.sova-center.ru/misuse/news/persecution/2010/10/d20090>.

<sup>4</sup> *Report on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities 2009*, Budapest, 2010, p. 87, available at: <http://www.kisebbsegombudsman.hu/data/files/183253997.pdf>.

<sup>5</sup> See, for example, [http://religion.ng.ru/politic/2008-06-04/4\\_lukin.html](http://religion.ng.ru/politic/2008-06-04/4_lukin.html) 2008-06-04.

## **B. Mapping Civil Society and NHRIs Role by Types of Activity**

10. The activities of civil society groups and NHRIs outlined below are not always distinct and are indeed strongly interrelated. For example, through participation in resolution of disputes, litigation and filing complaints to prosecutorial authorities, civil society groups and NHRIs have had an impact on setting legal standards by the courts; through monitoring and reporting cases of incitement to hatred they have contributed to public education, etc.

### **Standard-setting**

11. Civil society has contributed to setting standards related to combating advocacy to national, racial or religious hatred through its actions at international, regional and national level: sending submissions to UN treaty bodies and to the Human Rights Council Universal Periodic Review, providing *amicus* briefs to courts, sending information to special bodies of the Council of Europe such as the European Commission against Racism and Intolerance, the Advisory Committee on the Framework Convention on National Minorities, making statements to the annual conferences on the human dimension of the OSCE, etc.

12. Two important initiatives of adopting sets of principles should be mentioned. In October 2008, The Equal Rights Trust publicised the Declaration of Principles on Equality, elaborated and signed initially by 128 international experts and advocates whose work the Trust had coordinated in the course of over 18 months.<sup>6</sup> The significance of the Declaration to the issue of advocacy of national, racial or religious hatred is in summing up the principles of equality law integrated with human rights law, and in presenting a clear unitary perspective from which the pieces constituting the subject matter of Article 20 ICCPR fall into place. The unitary equality framework helps resolve some of the complex definitional issues surrounding the concepts used in Article 20 ICCPR, and contributes to their depoliticisation, moving them into the remit of objective and reasonable justifications criteria as applied in equality jurisprudence. Based on existing best legislative approaches and good practices, the Declaration provides legal definitions of the concepts of discrimination and of the various types of discrimination, including harassment. The latter is particularly relevant as in many jurisdictions the legal definition of harassment related to (or based on) race or religion determines the approach to the advocacy of hatred constituting incitement to discrimination, hostility or violence.<sup>7</sup> Featured also in the EC equality Directives, the legal definition of harassment is crucial in addressing the issues covered by Article 20 ICCPR, and is particularly useful in non-criminal contexts. The Declaration of Principles on Equality, which also contains a definition of harassment as a type of discrimination, along with all other types, highlights the usefulness of the rich case law on racial and religious harassment in looking at the advocacy of hatred as defined in Article 20 ICCPR. In the European case law in particular, one important and interesting question is whether religious harassment can be treated in a way similar to racial harassment, or it should be regarded as special and require different legal regulation.<sup>8</sup>

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<sup>6</sup> The Equal Rights Trust, Declaration of Principles on Equality, London 2008, available at <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf>. The Declaration has been subsequently endorsed by several hundred further experts from all regions of the world.

<sup>7</sup> In current British law, for example, harassment is defined as follows: "A person (A) harasses another (B) if —(a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of—(i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B." See Equality Act 2010, Article 26.

13. In a standard setting exercise directly relevant to the topic of this paper, in April 2009, the London-based Article 19 issued the Camden Principles on Freedom of Expression and Equality, a document adopted after consultations with a number of high-profile human rights experts and focusing on the protection of equality while exercising freedom of expression, i.e. addressing the same area of concern underlying Article 20 ICCPR.<sup>9</sup> The document seeks to contribute to the clarification of international human rights law by defining the complex balance between freedom of expression and equality, in particular formulating criteria on what constitutes hate speech and what should be the obligations of the media and other actors in protecting equal rights while exercising the right to freedom of expression. The Camden Principles were presented by Article 19 at a parallel event at the Durban Review Conference in Geneva in April 2009.<sup>10</sup>

14. NHRIs have also taken part in setting standards regarding advocacy to hatred and related activities, through participating in consultations, or advocating proposals of their own. The Parliamentary Commissioner on the Rights of National and Ethnic Minorities of Hungary, for example, has brought forward a proposal for action against hate speech, which he defined as a “third type” of solution lying between the strong judicial stand on defending freedom of expression and the practical need to react to increasingly vicious hate speech. Noting that “the repeatedly failed legal initiatives aimed at taking action against hate speech almost seem to fuel hate speech”, the Parliamentary Commissioner proposed extending the scope of an already functioning law that provides the possibility of taking action against hate speech -- the Equal Treatment Act:

“In terms of taking action against hate speech, the concepts of harassment and – to a lesser extent – instruction to forms of conduct violating the principle of equal treatment are of key importance. According to Section 10 (1) of the Equal Treatment Act, *‘Harassment is a conduct violating human dignity related to the relevant person’s characteristic defined in Section 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person.’* Harassment, therefore, includes all verbal or non-verbal forms of behaviour which violate human dignity and are liable to turn the social environment against a group of persons with certain characteristics. “Hate speech”– type comments requiring a legal reaction are characterised by precisely the above features. ...The text of the law in force provides the possibility of public interest action against all forms of hate speech – in the conceptual sphere of harassment and instruction to discrimination – committed by legal subjects covered by the scope of the law.”

The Parliamentary Commissioner proposed that the personal scope of the Equal Treatment Act is extended to cover a larger circle of potential actors of the private sphere, in particular various press products, the printed and electronic media, the internet, and participants in announced and “spontaneous” events and street demonstrations. He further proposed to grant the Parliamentary Commissioners the right to bring public interest lawsuits (on topics coming under their scope of competence) in addition to the public prosecutor, the Equal Treatment Authority and civil and interests representation organisations.<sup>11</sup>

<sup>8</sup> On this latter issue, see Uccellari, P., “Banning Religious Harassment: Promoting Mutual Tolerance or Encouraging Mutual Ignorance?”, *The Equal Rights Review*, Vol. 2 (2008), pp. 7-27.

<sup>9</sup> Article 19, *Camden Principles on Freedom of Expression and Equality*, April 2009, available at <http://www.article19.org/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

<sup>10</sup> The Durban Review Conference itself presents an interesting case study in the politics of UN standard-setting related to, inter alia, the advocacy of hatred, especially the issue of the so called “defamation of religion”. See Petrova, D., “‘Smoke and Mirrors’: The Durban Review Conference and Human Rights Politics at the United Nations”, *Human Rights Law Review* 10:1 (2010).

<sup>11</sup> *Report on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities 2009*, Budapest, 2010, p. 76-84, available at:

## Monitoring, Reporting and Reacting to Incidents of Hate Speech

15. Civil society actors have contributed greatly to the documentation of cases of hate speech and related phenomena, as well as issuing statements expressing positions on such incidents. A number of civil society groups have been active in regularly reporting of hate speech and related phenomena, and have become a reliable source of information. These include, among many others, the Oslo-based Article 18 focusing on freedom of conscience and religion, the European Roma Rights Centre based in Budapest which has reported countless manifestations of anti-Gypsism across Europe, the Brussels-based European Roma Information Office, the Greek Helsinki Monitor that has been one of the most productive disseminators of information related to hate speech in Greece and in Europe, the Warsaw-based Never Again Association, the Human Rights Without Frontiers which, while based in Brussels, has regularly informed the public on incidents of persecution and hate speech related to religion and taking place in all regions of the world, and the Moscow-based Sova Centre which has been leading an uphill battle against numerous forms of advocacy of hatred in Russia, as well as the use of incitement to national, racial or religious hatred legislation as a weapon of muzzling and stifling dissent in Russian society. In a typical example, in 2005 in Greece, both civil society and the NHRIs adopted a firm stance with regard to the decision of extremist rightwing organisations to host an international “hate festival”, with the participation of European extreme rightwing leaders. The strong and unanimous condemnation forced the organizers of the “festival” to abandon their plans.<sup>12</sup>

16. NHRIs have played a similarly important role in documentation of, and voicing positions regarding hate speech. In the wake of the infamous cartoons in the Danish daily *Jyllands-Posten* which triggered protests and controversy all over the world, the Danish Institute for Human Rights (DIHR) responded strongly by organising a large public meeting in December 2005 attended by Flemming Rose, Culture Editor of *Jyllands-Posten*, and in numerous ways made its position clear: Freedom of expression is crucial in a democratic society, but not unlimited. Morten Kjærum, then Executive Director of DIHR, stated that it is fully legitimate to restrict freedom of expression and that the cartoons of the Prophet created neither “communication nor dialogue”. One week later, Mr Kjærum and his colleagues from Greece, Ireland and France issued a press release on behalf of the European national human rights institutions, in which they said:

“Freedom of expression is often seen as a precondition for the exercise of other rights and as such imperative to a democratic society, but it is not and has never been unconditional. All human rights must be exercised in a way which does not violate the rights of others. European history has taught us the extremely dangerous consequences of a gradual accumulation of events reinforcing an explicit divide between majority and ethnic and religious minorities. Such divide foster hate and aggression that is counterproductive to any society. The publication of the drawings and the obvious reaction to them should be seen in the context of this harsh and dichotomising debate. We therefore take this opportunity to urge governments, independent institutions and civil society everywhere to collaborate in

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<http://www.kisebbsegiombudsman.hu/data/files/183253997.pdf>

<sup>12</sup> Committee on the Elimination of Racial Discrimination, *Report Submitted by States Parties Under Article 9 of the Convention: Nineteenth periodic reports of States parties due in 2007: Greece* (27 March 2008, CERD/C/GRC/16-19, available at:

[http://www.nchr.gr/media/keimena\\_diethnwn\\_organismwn\\_kai\\_forewn/diethneis\\_ektheseis\\_gia\\_ta\\_dta\\_stin\\_ella/Report\\_greece\\_to\\_CERD\\_2009.pdf](http://www.nchr.gr/media/keimena_diethnwn_organismwn_kai_forewn/diethneis_ektheseis_gia_ta_dta_stin_ella/Report_greece_to_CERD_2009.pdf).

an effort to ensure and promote a climate of peaceful dialogue, with respect for diversity and human rights without any form of discrimination.”<sup>13</sup>

17. In some cases, NHRIs’ reaction to incidents of advocacy of hatred includes interventions aimed at sanctions, such as removal of website content, prevention of events, public apology, fines or other appropriate remedy. The Estonian Institute of Human Rights was involved in a case in autumn 2005 when an Estonian Internet service provider had granted web space with an Estonian domain name to a neo-fascist group based in Russia. The website published material that promoted national hatred and issued instructions on how to produce bombs. The Internet service provider refused to react to repeated requests from Moscow’s human rights organisations to close down the website. The Estonian Institute of Human Rights informed all relevant state agencies, including the Office of the President, of the problem. The authorities warned the service provider and this resulted in closing down the website, although no further sanctions or restrictions were imposed on the provider.<sup>14</sup> Other European NHRIs have frequently criticised media and appealed to them to refrain from escalating tension and hatred through the use of abusive and aggressive language and narrow-minded reporting of political events.<sup>15</sup>

18. The Organization for Security and Co-operation in Europe (OSCE) ODIHR has been one of the most significant actors in Europe on issues of hate crime, including attempts to define and counteract the criminal aspects of advocating hatred. ODIHR has been collecting information through a network of national contact points, thus engaging in this work civil society and NHRIs. For example, the Bulgarian Commission on the Protection against Discrimination has served as ODIHR’s partner, gathering information on hate-motivated crimes, their investigation by the prosecution and police, and courts’ practices on hate crime. The Commission collects signals and articles on hate speech, hate-crimes or hostile incitement on various grounds and through various media.<sup>16</sup>

## Legal Cases

19. Civil society groups in a number of countries in Europe have more or less successfully attempted to ensure that hate advocacy and incitement to discrimination be curtailed through prosecutions and civil or administrative court decisions. Non-governmental organisations have played a variety of roles, including direct legal representation, *amicus curiae*, and technical support to parties in legal cases. In Bulgaria, for example, the Bulgarian Helsinki Committee has filed a number of law suits under Bulgarian anti-discrimination law making use of its provisions banning racial and religious harassment, against Mr Volen Siderov, the leader of the rightwing nationalist party Ataka, challenging his public speeches as inciting discrimination against Roma, Jews, and Muslims. At the international civil society stage, the London-based Interights has been assisting litigants on freedom of expression cases at the European Court of Human Rights, where a number of cases have involved seeking a balance between freedom of expression and other rights, and where

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<sup>13</sup> The Danish Institute for Human Rights, *Annual Report 2006*, p. 9, available at: <http://www.humanrights.dk/files/pdf/Publikationer/IFMR%20uk2006.pdf>.

<sup>14</sup> Estonian Institute of Human Rights, *Overview of the Human Rights Situation in Estonia in 2005*, p. 24, available at: [http://www.eihr.ee/texts/ylevaade2005\\_en.doc](http://www.eihr.ee/texts/ylevaade2005_en.doc).

<sup>15</sup> See, for example, Human Rights Defender of the Republic of Armenia, *Annual Report 2008: Activities of the Republic of Armenia’s Human Rights Defender, and violations of human rights and fundamental freedoms in the country*, Yerevan 2009, p. 59, available at: [http://www.ombuds.am/download.php?file\\_id=845&rand\\_int=65535](http://www.ombuds.am/download.php?file_id=845&rand_int=65535).

<sup>16</sup> See [http://kzd-nondiscrimination.com/start/index.php?option=com\\_content&task=view&id=278&Itemid=21](http://kzd-nondiscrimination.com/start/index.php?option=com_content&task=view&id=278&Itemid=21).

by now an extensive body of case law has accumulated, with applicants claiming a violation of their freedom of expression rights. In an unprecedented development, the Court's Grand Chamber will soon consider a case in which the applicant, a Roma from Turkey, asserts a violation of his rights to privacy and non-discrimination, resulting from publications that allegedly contain slander against Roma as a group. Several NGOs, including The Equal Rights Trust, are preparing to amicus curiae briefs in this case, as the judgment on it will determine the direction of Strasbourg jurisprudence on racial incitement in the years to come, and this will have important consequence for the future jurisprudence on hate speech in Europe.<sup>17</sup>

20. NHRIs, as well as/including equality bodies, are also frequently engaged in legal cases. Those independent bodies whose mandates include adjudication, mediation or dispute resolution following individual complaints, play an important role in combating the advocacy of racial or religious hatred. The Bulgarian Commission for Protection against Discrimination for example has in its approximately six-years' existence considered a number of cases in this area, and has actively encouraged the public to bring complaints against hate speech.<sup>18</sup> Another role played by NHRIs consists in seizing the competent state prosecutorial bodies and urging them to launch investigation into cases of racial or religious hatred. In September 2010, the Bulgarian human rights ombudsman, referring to Bulgarian law (Article 162 (1) of the Penal code) and Article 20 ICCPR, asked the prosecutorial authorities to intervene and prevent a mass "protest against Gypsy terror and invasion" planned for 25 September 2010 in central Sofia. The protest's organisers were the Bulgarian National Union and "Civic Initiative for Equal Rights and Responsibilities", and they advertised the event through internet and social media, in terms that implicated all ethnic Roma in criminal and anti-social behaviour. The investigation triggered by the ombudsman found that the city authorities had indeed given permission to hold the event, albeit under a different and more benign name, a "Demonstration for the Protection of the Rights of Bulgarian Citizens".<sup>19</sup>

21. NHRIs in a number of European countries have also frequently asked prosecutors to look at hate speech in print and electronic publications, attaching Jews, Africans, Roma and other groups, or justifying Nazi policies and genocide. In a number of cases, this has resulted in convictions and sanctions. In Finland, the Ombudsman for minorities has triggered prosecutions in cases of hate advocacy through books and TV debates, and has issued good practice guidelines to political parties and others regarding the propaganda of racial or religious hatred.<sup>20</sup> The Hungarian Parliamentary Commissioner on the Rights of National and Ethnic Minorities has also seized the Chief Public Prosecutor on issues concerning the application of law affecting the facts of the crime of "incitement against community", in a case of hate contents of a music band on a certain website targeting Roma and Jews. The Public Prosecutor's Office – not having been able to reveal the identity of the perpetrator – had terminated the prosecution on grounds of not being able to identify the authors. The Parliamentary Commissioner found this response unacceptable – moreover, the "song lyrics" in question had still remained publicly available on the given website. In another case, hate-notice appeared on a giant poster, reading „Gas chamber for Gypsies”.

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<sup>17</sup> See *Aksu v Turkey*, Application No. 4149/04, Referral to the Grand Chamber, <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/The+Grand+Chamber/>.

<sup>18</sup> See Как да инициираме образуването на производство пред Комисията за защита от дискриминация? издание-наръчник на Комисията за защита от дискриминация, available at: <http://kzd-nondiscrimination.com/start/images/stories/materials/narachnik/nary4nikbg.pdf>.

<sup>19</sup> "Омбудсманът сезира компетентните органи за прояви на омраза на расова и етническа основа", 24 September 2010, available at: <http://www.ombudsman.bg/news/756>.

<sup>20</sup> See *2009 Annual Report of the Ombudsman for Minorities*, p. 29-31, [http://www.ofm.fi/intermin/vvt/home.nsf/files/VV\\_Vuosikertomus\\_englanti/\\$file/VV\\_Vuosikertomus\\_englanti.pdf](http://www.ofm.fi/intermin/vvt/home.nsf/files/VV_Vuosikertomus_englanti/$file/VV_Vuosikertomus_englanti.pdf).



According to the statement of the deputy head of the County Public Prosecutor's Office "the notice is too general and is directed not towards a specific person but a group", therefore it did not realize the crime of incitement against community. However, the Chief Public Prosecutor agreed with the Parliamentary Commissioner in both cases and took steps for the elimination of both from public spaces.<sup>21</sup> In the United Kingdom, the Committee on Race Relations (CRE) which existed until October 2007 before merging into a unitary Equality and Human Rights Commission, had difficulty working on cases of hate speech, partly because few cases were filed. It has been noted that many of those people who would seek to incite racial hatred, knew the legislation well and were able to spin their vile message within the parameters of the law.<sup>22</sup> Nevertheless, CRE used its powers in order to send out a message. For example, in January 2004, CRE referred remarks made by a BBC presenter about the Arab community to the Crown Prosecution Service to consider whether or not they constituted incitement to racial hatred, and the journalist no longer worked at the BBC some time after the signal. Similarly, in 2003, CRE publicly asked the Crown Prosecution Service to decide whether the burning of an effigy of a Gypsy caravan by a bonfire society in Sussex might constitute an offence under the Public Order Act.<sup>23</sup>

### **Public Education, Awareness Raising and Capacity Building**

23. Perhaps the largest volume of activities in the area of combating hate speech by civil society organisations in Europe can be described as aimed at public education and awareness-raising among the general public, as well as capacity building of targeted organisations, including in the sphere of justice, public services, health, education, etc. A noteworthy model of coordinating civil society efforts on promoting equality and combating intolerance is the UK Equality and Diversity Forum, a membership organisation meeting monthly to discuss issues of common interest, coordinate positions, streamline campaigns and, on occasion, elaborate common platforms and strategies related to equality issues. It is interesting that groups working on all strands of equality are brought together in the Forum, and this has been useful in smoothing out tensions between different identity groups insisting each on their own priorities.<sup>24</sup>

24. The Belgian Centre for equal opportunities and opposition to racism sorts out cases of discrimination from cases of hatred that do not amount to discrimination. While discrimination is dealt with through referrals to other authorities or organisations and various other forms of practical support to victims, hatred requires a different approach: "Hatred and discrimination are different acts. Dispelling hatred involves the restoration of a broken social bond. Hence, the Centre prioritises approaches involving dialogue, negotiation, reconciliation and even mediation."<sup>25</sup> The Hungarian NHRIs have also been active in educating the public through denouncing manifestations of racism and related intolerance, such as what has been termed "negative sensationalism" in the media, painting a negative picture of the Roma, and reinforcing stereotypes in a sensationalist "tabloid splash".<sup>26</sup>

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<sup>21</sup> *Report on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities 2009*, Budapest, 2010, p. 88-89, available at: <http://www.kisebbségiombudsman.hu/data/files/183253997.pdf>.

<sup>22</sup> Rogers, S., "Punishing Racially Aggravated Crime – The UK Experience", Conference on Combating Racism and Promoting Equality through Legislation, Dublin, 27 March 2004.

<sup>23</sup> Ibid.

<sup>24</sup> See [www.edf.org.uk](http://www.edf.org.uk) for more information on how this forum works.

<sup>25</sup> Centre for equal opportunities and opposition to racism, see *Legal Base and Mission* section of the Centre's website, <http://www.diversiteit.be/?action=onderdeel&onderdeel=103&titel=Legal+Base+and+Mission>.

25. In Bulgaria in 2009, the Commission for Protection against Discrimination launched the campaign “In Support of Tolerance” dedicated to raise the awareness of the general public, the media, civil society associations and relevant institutions on the issues of hate speech and hate- and intolerance motivated incidents and crimes. Also in 2009, the Commission organised a seminar on “Diversity and Non-Discrimination in the Media” in Velingrad, involving 66 journalists from print and electronic media. The seminar focused on the practice of the Commission by solving cases of hate speech and raised awareness on journalists’ responsibility to cultivate tolerance. The Commission also participated in a briefing on “Hate-Speech and Hate-motivated Crimes: How to Recognize them and How to Tackle them”, organized by the Bulgarian Telegraph Agency.<sup>27</sup> The Danish Institute for Human Rights has also organised seminars and similar events, such as a 2008 dialogue focusing on the need to change immigrant stereotypes, throwing light on the including the identification of the root causes of migration and asylum-seeking.<sup>28</sup>

26. Almost all NHRIs in Europe publish materials on their websites explaining the concepts of advocacy to racial, religious or other forms of hatred, incitement to discrimination, hate speech, “ethnic agitation” and similar manifestations of prejudice.<sup>29</sup> In many cases, while reacting to complaints about hate speech, they have taken the opportunity to develop guidelines and assist institutions in putting in place policies ensuring racial and religious tolerance. In Slovenia, a problematic ethnically-motivated text published in a high school journal that was sent for information to the Human Rights Ombudsman became an opportunity for the ombudsman to make recommendations for the school on how to prepare rules or code of good treatment, and continuously educate their employees and raise the awareness for work in a multicultural environment.<sup>30</sup>

## **Conclusion**

Civil society organisations and NHRIs play an important role in Europe in combating the advocacy of national, racial or religious hatred, through a number of different activities: standard setting, documentation and condemnation, litigation, capacity building, raising public awareness, etc. They participate, along with other stakeholders, in a process that may eventually lead to better legislation, policies and practices related to the balance between freedom of expression and the need to counteract the advocacy of racial, religious and similar forms of hatred.

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<sup>26</sup> *Annual Report of the Parliamentary Commissioner for National and Ethnic Minority Rights 2006*, available at: <http://www.kisebbsegiombudsman.hu/hir-271-annual-report-of-the-parliamentary.html>.

<sup>27</sup> *Annual Report of the Commission for Protection against Discrimination of the Republic of Bulgaria*, 2008, p. 27-30, available at: [http://www.kzd-nondiscrimination.com/images/stories/pdf/Annual\\_Report\\_2008\\_KZD\\_EN.pdf](http://www.kzd-nondiscrimination.com/images/stories/pdf/Annual_Report_2008_KZD_EN.pdf).

<sup>28</sup> Danish Institute for Human Rights, see materials at: <http://www.humanrights.dk/news/archive/news+2008/dialogue+focuses+on+need+to+change+immigrant+stereotypes>.

<sup>29</sup> See, among many others, the website of the Finnish Parliamentary Ombudsman, <http://www.ofm.fi/intermin/vvt/home.nsf/pages/02D68EB7EF560127C22573A200335C90?opendocument>

<sup>30</sup> Slovenia, 14th Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2008, p. 39, available at: [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP09\\_ANG\\_WEB.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP09_ANG_WEB.pdf)