



The State Response to “Hate Crimes” in Germany
A Human Rights Watch Briefing Paper

Summary..... 2

Methodology and Background4

Germany’s Approach to Hate Violence7

Police Response to Hate Crimes 10

Reluctance of Victims to Report Hate Attacks to the Police..... 11

Insufficient Cooperation with Some Victim Support Groups13

Obstacles to Effective Investigations in Some Cases 14

Police Treatment of Hate Crimes as Ordinary Offenses..... 16

Judicial Response to Hate Crimes 18

Prosecuting and Sentencing Hate Crimes as Ordinary Crimes..... 18

Summary

Racist and other hate violence is a problem in Germany—as it is in many European Union countries— with hundreds of violent attacks recorded by authorities and civil society groups each year.

Germany has made progress in improving its institutional response to “hate crimes” over the past decade, including more effective recording of such crimes by the police, prevention programs to discourage young people from getting involved in extremist groups, and support to civil society groups and local programs addressing right-wing extremism, xenophobia and anti-Semitism. But a number of challenges remain.

Many countries in the European Union explicitly penalize hate crimes as such through the criminal justice system. Some have separate criminal offenses for violent attacks carried out with racist or other hate motivation. Others provide explicitly for higher sentences when a violent offense is carried out with such motivation.

Germany takes a different approach. It has no separate category of offenses for “hate crimes” involving violence. Nor does it explicitly provide for higher sentences for them. But the courts can still take hate motivation into account during sentencing using general sentencing principles.

Although there is no formal category of “hate crime” offenses, police in Germany can nonetheless keep track of racist attacks or other crimes motivated by hate. The crimes may be recorded as politically motivated crimes, which are broken into four categories, including right-wing extremism. According to the Federal authorities, this includes any crime where there is evidence that the reason for the attack was connected to the victim’s identity.

In practice, however, the conflation of politically motivated crimes and hate crimes, and an understandable focus on combating right-wing extremism, means a hate crime may not be recorded or investigated as such. This can occur for example where a perpetrator lacks either an obvious ideological motivation (as in an attack on a person with disabilities or a lesbian, gay, bi-sexual or transgendered person) or clear links to the extreme right.

While police performance in responding to racist attacks and other hate crimes has generally improved, particularly in forces with dedicated community liaison officers, there are still concerns amongst victims and victim support organizations about the police response.

Victims of hate crimes and victim support groups presented Human Rights Watch with examples of cases in which the police at a crime scene had focused their questions on the victim rather than alleged perpetrator, had sought to discourage victims from filing complaints, or had failed to take basic investigative steps, all of which undermined confidence in the police.

Victims are sometimes reluctant to report hate crimes to the police for example because of negative prior experiences with the police in Germany or elsewhere.

Specialized victim support organizations feel that further work is necessary to strengthen cooperation with police, and ensure for instance that the police inform them systematically when a hate crime occurs so that they can offer to assist the victims.

The performance of prosecutors and judges in handling hate crimes has improved. States now have specialized prosecutors trained in politically-motivated cases, but due to caseload and the duty roster, duty prosecutors may have to take on prosecutions of a hate motivated crimes on the day of the hearing even if they do not have specialized training or experience.

The failure by police to record or investigate a case as a “politically motivated” hate crime means that the prosecutor is then unlikely to pursue evidence that the crime was indeed motivated by hate in the prosecution of the offenses. This is despite the fact that prosecutors have independent authority to order the police to pursue that line of inquiry in their investigation if that they are not doing so. Where evidence of hate motivation does not surface during a prosecution, it is also highly unlikely that the prosecutor would call for that factor to be taken into account during sentencing in the event of a conviction.

Justice ministries in some of the key states and the Federal authorities argue that hate motivation is taken into account as a factor in sentencing when appropriate. While this might be the case, victims of hate crimes, victim support groups and criminal lawyers suggest that it is often left to the lawyers acting for the crime victim to call for this factor to be taken into account if evidence of hate motivation emerges at trial. Prosecutors cannot be relied upon

consistently to make this call themselves. The same sources also indicate that judges have a mixed record of taking hate motivation into account as a factor in sentencing even when it is raised.

Germany's approach to hate crimes is not fundamentally flawed. But with some simple steps it could be greatly improved:

- The police should build on successful efforts already underway to strengthen ties with affected communities and victim support groups.
- Prosecutors should be trained to thoroughly examine the possibility that racial, homophobic or other hatred may have been a motivating factor in an attack, to order further investigative steps where necessary, and to put hate motivation forward as a factor in sentencing where appropriate.
- Judges should receive further training on how to identify and assess relevant evidence of hate motivation, and when to take it into account.

Methodology and Background

Racist and other violence motivated by hatred towards a particular group (commonly known as “hate crimes”) is a common problem in Europe. Germany has not been immune, with attacks reported on ethnic and religious minorities, asylum seekers, refugees, migrants, Germans of migrant origin, lesbian, gay, bi-sexual and transgendered (LGBT) people and other vulnerable groups in recent years.

Since 2008, aspects of the country's approach to racist violence and other “hate crimes” have been called into question or have been the subject of recommendations for improvement by the United Nations Committee on the Elimination of Racial Discrimination, United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Council of Europe European Commission against Racism and Intolerance.¹

¹ United Nations Committee on the elimination of racial discrimination, concluding observations, CERD/C/DEU/CO/18, Seventy-third session, September 22, 2008; UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, on his mission to Germany (22 June – 1 July 2009), A/HRC/14/43/Add.2, Fourteenth session, February 22, 2010; European Commission against Racism and Intolerance (ECRI)/Council of Europe, “Fourth Monitoring Report on Germany,” CRI(2009)19, May 26, 2009, http://hudoc.ecri.coe.int/XML/ENGLISH/Cycle_04/04_CbC_eng/DEU-CbC-IV-2009-019-ENG.pdf (accessed June 29, 2010).

In order to assess the phenomenon of “hate crimes” in Germany, and the response of German authorities to it, Human Rights Watch conducted research in Germany between December 2009 and September 2010.

We carried out research in Berlin, Lower Saxony, North Rhine-Westphalia, Saxony, Saxony-Anhalt and Thuringia, speaking to victims of violence, associations supporting and representing victims and minority communities and criminal lawyers. Human Rights Watch interviewed ministry and police officials as well as prosecutors. We also conducted follow-up and other telephone interviews with interlocutors in Bavaria, North Rhine-Westphalia, Saxony-Anhalt, Saxony and Lower Saxony.

In addition to conducting field research, we analyzed existing laws and regulations, reviewed news reports, and examined studies by international bodies, academics and civil society. Other sources of information included court judgments, parliamentary materials and public campaigns.

This briefing paper does not represent a comprehensive survey of the phenomenon of hate crimes in Germany or the criminal justice response to such crimes. Instead it sets out the common concerns we identified across a number of states.

The decentralized nature of policing in federal Germany and the way in which hate crimes are classified, makes assessing the scale of hate crime in Germany a complex task. According to data published by the Federal Ministry of Interior in April 2011 there were 2,636 offenses of violent politically motivated crimes recorded in 2010 and 3,044 in 2009.² “Hate crimes” are treated by the authorities as a subcategory of politically motivated crimes.

Information provided to Human Rights Watch by the Federal Ministry of Interior indicates that the number of violent hate crimes in Germany has remained around 500-650 per year since

² The number of violent crimes increased in the category of “other” politically motivated crimes and politically motivated crimes committed by foreigners. According to these official numbers there were more left wing violent politically motivated cases (including against police officers) than right wing. German Federal Ministry of Interior, “Development of politically motivated crimes in 2010”, April 15, 2011, <http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2011/04/pmk.html?nn=303936> (accessed May 22, 2011)

2005.³ Germany's most recent report to the OSCE for its annual hate crimes survey indicates that in 2010, there were 467 violent hate crimes recorded by police.⁴

Unofficial statistics collected by victims' associations suggest the actual number of incidents may be higher than Federal government figures suggest. Seven organizations for victims of right-wing, racist and anti-Semitic violence in the eastern states and Berlin have published their own joint annual statistics since 2003.

In 2010, in the eastern states and Berlin alone, these organizations counted 704 right-motivated violent offenses involving at least 1,416 victims.⁵ The number represents a decline compared to the annual number of incidents from 2006 and 2008 as well as 2009 but is higher than the annual number between 2003 and 2005.⁶ The lack of fully established specialized victim support organizations in western Germany may mask the scale of the problem there. The Federal Ministry of Interior argues that any discrepancy between the official and unofficial statistics can be explained by victim support groups relying solely on the subjective assessment of the victim in determining whether the offense was motivated by hate.⁷

Some victim support organizations acknowledged that their victim-centered approach might account for part of the difference. But victim support organizations also argue the differences arise from a police failure to assess some crimes as hate crimes, and from the fact that some victims report attacks only to victims associations and not to the police.

The German federal and state authorities do not publish statistics that would allow an analysis of the proportion of reported hate crimes resulting in successful prosecutions, the level of

³ Overview of number of cases of "hate crimes" 2001-2009 provided in Human Rights Watch email correspondence with the Federal Ministry of Interior on June 2, 2010 following a Human Rights Watch interview with two officials of the Federal Ministry of Interior on May 28, 2010.

⁴ Organization for Security and Co-operation in Europe, "Hate Crimes in the OSCE Region: Incidents and Responses Annual Report for 2010 – Germany," <http://tandis.odhr.pl/hcr2010/pdf/countries/Germany.pdf> (accessed November 24, 2011).

⁵ These organizations recorded one person (an Iraqi national), who died in 2010 because of a right-motivated attack in Saxony.

⁶ "Counseling organizations publish annual statistic on right-wing violence in the eastern Germany" ("Beratungsstellen veröffentlichen Jahresstatistik zu rechter Gewalt in Ostdeutschland"), Opferperspektive press release, <http://www.opferperspektive.de/Home/Statistikberichte/1080.html> (accessed May 20, 2011), April 18, 2011 – the press release notes that it should be considered, that the published numbers as a rule still increase through subsequent late registrations. "Counseling organizations for victims of right-wing violence in the east German states publish annual statistic 2009" ("Beratungsstellen für Opfer rechter Gewalt in den ostdeutschen Bundesländern veröffentlichen Jahresstatistik 2009"), Opferperspektive press release, <http://www.opferperspektive.de/Home/996.html> (accessed July 6, 2010) and LOBBI press release, <http://www.lobbi-mv.de/presse/24.php> (accessed on July 6, 2010), both March 9, 2010.

⁷ Human Rights Watch email correspondence with the Federal Ministry of Interior following a Human Rights Watch interview with two officials of the Federal Ministry of Interior.

sentences handed down in such cases, or the proportion of those successful prosecutions in which hate motivation is taken into account in sentencing as aggravated circumstances. Information provided to Human Rights Watch by the Federal Ministry of Justice on successful prosecutions for hate crimes (with racist, xenophobic, anti-Semitic, and right-extremist motives) provided examples from only two states.

Our research indicates that German authorities have taken significant steps in the last decade to reform the institutional framework for dealing with hate crimes. The authorities have helped establish and fund programs to discourage young people from being drawn to right-extremist groups or help those who have joined to leave, and have provided financial support to civil society groups and local programs addressing right-wing extremism, xenophobia and anti-Semitism. State and federal authorities have made efforts to improve the registration and investigation of hate crimes by police. Authorities regularly denounce and condemn anti-Semitic crimes and pursue the perpetrators.⁸

Despite these important efforts, a number of existing challenges merit further attention. These challenges are set out below.

Germany's Approach to Hate Violence

Many countries in the European Union penalize “hate crimes,” either through having a separate aggravated offense for violent attacks carried out with such motivation (e.g. racially aggravated assault) or by providing explicitly for higher sentences when a violent offense is carried out with such motivation.⁹ Some EU states record crimes against specific victim groups

⁸ European Commission against Racism and Intolerance (ECRI)/Council of Europe, “Fourth Monitoring Report on Germany”, CRI(2009)19, May 26, 2009, http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_04/04_CbC_eng/DEU-CbC-IV-2009-019-ENG.pdf (accessed June 29, 2010). In case of vandalized Jewish cemeteries officials have also visited the site to show that this kind of crime is not acceptable.

⁹ Human Rights First, Hate Crime Report Cards, <http://www.humanrightsfirst.org/our-work/fighting-discrimination/hate-crime-report-card/> (accessed March 9, 2011); The Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), “Hate Crime Laws, A Practical Guide”, March 9, 2009, <http://www.osce.org/item/36671.html?ch=1263> (accessed March 9, 2011) and “Hate Crimes in the OSCE Region – Incidents and Responses. Annual Report for 2009,” November 2010, http://www.osce.org/publications/odihr/2009/11/41314_1424_en.pdf (accessed March 10, 2011).

such as Muslims¹⁰ and Roma.¹¹ Eighteen EU states collect data on both hate crimes and incitement to hate crimes and/or discrimination.¹²

In Germany, the federal and state criminal police registration system introduced in 2001 requires the police to collect statistics on “politically motivated crimes.”¹³ There are four categories: right-wing politically motivated crimes, left-wing politically motivated crimes, politically motivated crimes committed by foreigners, and other politically motivated crimes.¹⁴ It is important to note that these categories do not all represent distinct criminal offenses under the criminal code but are instead designed to facilitate the recording and collection of data by the authorities.

According to the Federal Ministry of Interior, “politically motivated crimes” also include any acts where there are indications that it was directed against a person because of his or her political opinion, nationality, ethnicity, race, skin color, religion, belief, origin, disability, sexual orientation or because of his or her outward appearance or social status.¹⁵

Under German criminal law, “politically motivated” hate crimes do not constitute explicit offenses or give rise automatically to higher sentences. Section 46 of the German criminal code gives judges the discretion to take the context of the crime into account when determining the sentence, including factors that aggravate the offense (such as the amount of force used) or those that mitigate it (such as efforts to make restitution for the harm caused).¹⁶

¹⁰ In nine EU states. “Hate Crimes in the OSCE Region – Incidents and Responses. Annual Report for 2009,” November 2010, <http://www.osce.org/files/documents/9/6/73636.pdf> (accessed March 28, 2011).

¹¹ In eight EU states. “Hate Crimes in the OSCE Region” November 2010.

¹² “Hate Crimes in the OSCE Region,” November 2010.

¹³ The 2001 reform was introduced after criticism following media reports in 2000 indicating that there was significant underreporting of racist attacks in Germany. Nigdy Więcej and Opferperspektive (eds.), “Hate Crime Monitoring and Victim Assistance in Poland and Germany,” Germany 2009. Mario Peucker, “The hate crime concept in GERMANY and how to improve the knowledge on the extent of hate crimes”, Paper prepared for the OSCE meeting “Tolerance Implementation Meeting: Addressing the hate crime data deficit” (Vienna, 8-10 November 2006), Bamberg 2006, European forum for migration studies, National Focal Point (Germany) for the EUMC at the time.

¹⁴ Human Rights Watch email correspondence with the Federal Ministry of Interior following a Human Rights Watch interview with two officials of the Federal Ministry of Interior.

¹⁵ Federal Ministry of Interior, Combating politically motivated crimes, http://www.bmi.bund.de/DE/Themen/Sicherheit/Extremismus/PolKriminalitaet/PolKriminal_node.html (accessed March 10, 2010); Human Rights Watch email correspondence with the Federal Ministry of Interior on June 2, 2010 following a Human Rights Watch interview with two officials of the Federal Ministry of Interior on May 28, 2010.

¹⁶ Section 46 German Criminal Code.

The German criminal code does not refer explicitly to racial, religious, ethnic or homophobic hate motivation as an aggravating factor for sentencing (there is one exception according to the established jurisprudence by the Federal Court of Justice, in cases where murder or attempted murder is motivated by a “hatred of foreigners”). But the courts in Germany can use section 46 to take hate motivation into account as an aggravating factor when determining sentences.

Our research indicates several difficulties that can arise from this approach. The principal overarching problem is that the focus on the political motivation for such violence can lead in practice to the under-inclusion of “hate crimes” when the perpetrator lacks any identifiable political motivation or ties to an organized right-wing grouping. This can be particularly problematic when it comes to hate crimes against LGBT people or persons with disabilities but also in some cases of racist violence where an ideological motivation may not be evident. This in turn leads to under-recording of crimes that lack those features, and, as will be discussed further below, means that they may not be investigated, prosecuted or sentenced as hate crimes.

A focus on right-wing extremism is both understandable and important as an object of state policy. But while it is often related to hate violence, the two categories are distinct. In our assessment, it is vital to determine whether and the extent to which the protected characteristics of the victim – rather than exclusively the ideology of the perpetrator or his or her ties to organized extremist groups – was a motivating factor when recording, investigating and prosecuting crimes. We believe that this dual-approach is more inclusive and would better capture the circumstances in which hate violence occurs and permit a more comprehensive response from the authorities.

Human Rights Watch recommends that:

- State authorities, in conjunction with the federal authorities, should commission a study, in consultation with the Federal Anti-Discrimination Agency and the German Institute for Human Rights, to examine whether the concept of politically motivated crime results in practice in the exclusion of hate crimes from recording, investigation and prosecution, especially in cases where the perpetrator lacks any ties to organized extremist groups, and whether a model based on the manifestation of hatred or

hostility towards the victim would allow a more complete and effective law enforcement response to such violence.

Police Response to Hate Crimes

Police in the states we researched are generally playing an increasingly active role in the prevention of racist, xenophobic and anti-Semitic crime. Victim support organizations interviewed by Human Rights Watch pointed for instance to improved cooperation with the police and particularly good progress in Berlin and parts of Saxony and Brandenburg.¹⁷ In every state, there are designated officers (known as “state security officers”¹⁸) in the state police office for criminal investigations with specific responsibility for politically motivated crimes.

The experience of the Berlin police indicates that having specialized or dedicated officers in contact with particular victim groups and victim support groups can be helpful in facilitating an effective response to hate crimes, particularly for groups reluctant to report crimes to the police. The Berlin police have officers designated as contact persons for “same-sex modes of life” who deal also with hate violence, which LGBT groups assess to have had a positive impact.¹⁹ North Rhine-Westphalia and Lower Saxony are among the other states with contact points for LGBT persons.²⁰

However, victim support organizations, criminal lawyers engaged in relevant court cases and victims themselves also identified a number of common concerns in relation to individual cases. These concerns are set out below.

¹⁷ Human Rights Watch interview with victim counseling organization, Dresden, April 13, 2010; Human Rights Watch interview with a representative of a civil society association, Pirna, April 12, 2010; Human Rights Watch interview with representative of victim support organization in Brandenburg, Berlin, December 9, 2010; Human Rights Watch interview with LGBT organizations, Berlin.

¹⁸ The state police office for criminal investigations of Rhineland-Palatine does not use this term.

¹⁹ Human Rights Watch interview with LGBT organizations in Berlin, December 10 and 11, 2009 and Human Rights Watch interview with representative of self-organized organization and counselling center of LGBT people with a migrant, in particular Turkish, background, Berlin, May 28, 2010

²⁰ Brandenburg, Rhineland-Palatine, Hamburg and Hesse also reportedly have contact points: association of lesbian and gay police officers in Berlin-Brandenburg, http://www.velspol-bb.de/index.php?option=com_content&view=article&id=121:ansprechpartner-in-der-brandenburger-polizei&catid=1:aktuelle-nachrichten&Itemid=50 (April 16, 2011); police in Rhineland-Palatine, <http://www.polizei.rlp.de/internet/nav/28b/28b2093b-1222-3e21-13c0-11f42680e4cd.htm> (April 16, 2011); police in Hamburg, <http://www.hamburg.de/contentblob/203636/data/gewalt-gegen-schwule-und-lesben-do.pdf> (April 17, 2011); police in Hesse, <http://www.polizei.hessen.de/internetzentral/nav/24c/24c70ee1-825a-f6f8-6373-a91bbcb63046&uCon=2d73b712-bde5-2219-fe86-a12109241c24&uTem=bff71055-bb1d-50f1-2860-72700266cb59.htm> (accessed April 16, 2011)

Reluctance of Victims to Report Hate Attacks to the Police

Victim support organizations interviewed by Human Rights Watch in Berlin, Lower Saxony, North Rhine-Westphalia, Saxony, Saxony-Anhalt and Thuringia indicated that victims can be reluctant to report hate crimes to the police.²¹

Victim support groups and groups representing migrants and other minorities who are the target of violence told Human Rights Watch that victims of hate violence, particularly migrants, asylum-seekers and refugees, are sometimes reluctant to report incidents to police or file charges because they lack confidence that police will protect them or take their complaints seriously, or because they anticipate that the perpetrators are unlikely to be arrested or punished.²²

Gautier, a 32 year-old man from Cameroon, who has lived in Berlin for over 8 years described to Human Rights Watch his interaction with police in October 2009 when he was attacked by 3 men, leaving him hospitalized for 5 days:

The first statement of the investigator was ‘why did you not call the ambulance, but the police?’ The second question was to ask for my ID. The third if they should call an ambulance. Only later they asked me a brief question on what happened. Two of the three men were arrested on the spot.²³

²¹ Human Rights Watch interview with counselling center for lesbians and gays, Cologne, May 18, 2010; Human Rights Watch interview representatives of victim support organization, Dresden, April 13, 2010.; Human Rights Watch telephone interview with victim counseling organization, Chemnitz, April 21, 2010; Human Rights Watch interview with representative of association supporting binational families, Leipzig, April 25, 2010; Human Rights Watch interview with Christina Büttner, Thüringer Hilfsdienst für Opfer rechtsextremer Gewalt, Jena, April 22, 2010; Human Rights Watch telephone interview with contact person of anti-discrimination office in Hanover, September 17, 2010; Human Rights Watch interview with counsellor of victim counselling organization, Berlin, December 11, 2009; Human Rights Watch interview with representative of city initiative for democracy and tolerance, Wuppertal, May 20, 2010; Human Rights Watch interview with representative of self-organized organization and counselling center of LGBT people with a migrant, in particular Turkish, background, Berlin, May 28, 2010.

²² Human Rights Watch interview with representative of African migrant association, Dresden, April 14, 2010; Human Rights Watch interview with Yonas Endrias, anti-racism working group of the Forum Menschenrechte, at the time vice-president of the Internationalen Liga für Menschenrechte, December 9, 2009 and May 27, 2010. Human Rights Watch interview with Oliver A. (pseudonym) of African origin born in the Ivory Coast, Saxony-Anhalt, March 23, 2010. Human Rights Watch interview representatives of victim support organization, Dresden, April 13, 2010. Human Rights Watch interview with representative of association supporting binational families, Leipzig, April 25, 2010; Human Rights Watch interview with counsellor of victim counselling organization, Berlin, December 11, 2009; Human Rights Watch interview with several counsellors of the victim support organization Mobile Opferberatung in Saxony-Anhalt.

²³ Human Rights Watch interview with Gautier, Berlin, March 2, 2010. [Last name withheld]

The police later dropped the case because the three alleged perpetrators were Ukrainian nationals without registered addresses and could not be located after their release.²⁴

Victim support organizations and a civil society representative told Human Rights Watch that victims are also sometimes reluctant to report crimes to the police because victims are concerned about reprisals or further conflict with the perpetrator.²⁵

It is unclear how widespread these concerns are, but examples cited to Human Rights Watch by victims and victim support organizations included police collecting personal data from victims at a crime scene when the alleged perpetrator was standing in earshot; failing to escort victims home late at night after attacks have taken place; and including the home address of the victim in the case file, where it can be obtained by the defense or mentioned aloud in the trial when a case comes to court, despite legal provisions that permit contact details of lawyers or a victim support organization to be provided instead.²⁶

Migrants and asylum seekers may be particularly reluctant to come forward. Organizations and associations in North Rhine-Westphalia, Saxony and Thuringia cited negative experiences of migrants with police in their home countries as a further reason why migrants who experience racist attacks are reluctant to come forward.²⁷ Migrant representatives report that in the past sometimes asylum seekers who were attacked in locations outside their assigned restricted place of residence might choose to not report the incident, in order to avoid possible negative consequences for being present in an unauthorized location.²⁸

Organizations supporting LGBT persons gave a variety of explanations for the reluctance of

²⁴ Human Rights Watch telephone interview with victim counselor, Berlin, February 22, 2010 and in person March 2, 2010.

²⁵ Human Rights Watch interview with Yonas Endrias, anti-racism working group of the Forum Menschenrechte, at the time vice-president of the Internationalen Liga für Menschenrechte, December 9, 2009 and May 27, 2010; Human Rights Watch interview with Christina Büttner, THO, Jena, April 22, 2010; Human Rights Watch interview with two counselors of victim support organization in Saxony-Anhalt, March 4, 2011; Human Rights Watch telephone interview with victim counselor from victim counseling organization based in Saxony-Anhalt, but which also deals occasionally with cases from parts of Lower Saxony who address them, May 20, 2010.

²⁶ Legal amendments of July 2009 allow this if there is a founded reason of danger for the person and his property or of influence on witnesses. In the reasoning of the draft law there was an explicit referral to right extremist offenses.

²⁷ Human Rights Watch telephone interview with victim counselor in Saxony, April 21, 2010; Human Rights Watch interview with Christina Büttner, Thuringia; Human Rights Watch interview with representative of city initiative for democracy and tolerance, Wuppertal, May 20, 2010.

²⁸ Human Rights Watch interview with Yonas Endrias, anti-racism working group of the Forum Menschenrechte, at the time vice-president of the Internationalen Liga für Menschenrechte, December 9, 2009 and May 27, 2010; Human Rights Watch interview with representative of refugee support group, Jena, April 23, 2010.

LGBT victims to come forward, including concerns about prejudice on the part of police officers, or discrimination in the criminal justice system.²⁹ An organization in Berlin indicated that the reluctance of transgender persons to come forward was linked to their negative experiences with authorities and the police in general.³⁰

Human Rights Watch recommends that:

- States, in particular the interior ministries, should consider creating police force contact points/community liaison officers, using the Berlin state police contact persons with the LGBT community as a model, to help build confidence in the police and facilitate contact with victims of hate crimes across all communities.

Insufficient Cooperation with Some Victim Support Groups

Victim support organizations are well placed to facilitate contact between victims and the police and to ensure an effective response to hate crimes. They can bring patterns of abuse to the attention of the authorities, alert police to crimes they might not otherwise be aware of, and support victims when cases are in the criminal justice system.

Some specialized victim support groups, including in Berlin, Dresden and Brandenburg, told Human Rights Watch they now enjoy good cooperation with the police, and have been able to overcome past difficulties.³¹ In some other states such Thuringia and North Rhine-Westphalia, specialized victim support organizations pointed to deficiencies in cooperation and regular institutionalized exchange with the police, which they said can impede their ability to provide support to victims and the ability of the police to engage with victims in some communities.³²

²⁹ Human Rights Watch interview with representative of LGBT association, Berlin, December 10, 2010; Human Rights Watch interview with representative of counselling center for lesbians and gays, Cologne, May 18, 2010; Human Rights Watch interview with representatives of victim support organization, Dresden, April 13, 2010.

³⁰ Human Rights Watch interview and correspondence with two staff from counseling center for lesbian/bisexual migrants, black lesbians and transgender persons, Berlin, who reject the notion of hate crime and rather use the concept of hate violence.

³¹ Human Rights Watch interview with victim counseling organization, Dresden, April 13, 2010; Human Rights Watch interview with representative of victim support organization in Brandenburg, December 9, 2010, Human Rights Watch interview with LGBT organizations, Berlin.

³² Human Rights Watch interview with counselling center for lesbians and gays, Cologne, May 18, 2010; Human Rights Watch interview with Christina Buettner, Thüringer Hilfsdienst für Opfer rechtsextremer Gewalt, Jena 22 April, 2010; Human Rights Watch telephone interview with victim counselling organization, Chemnitz, April 21, 2010; Human Rights Watch interview with Zissi Sauerman, Mobile Opferberatung, Halle, March 23, 2010. The press spokesperson of the Office of the State Criminal Police in Saxony-Anhalt had upon inquiry of Human Rights Watch reported that regular and incident driven information exchange with that organization would take place. Upon follow up, the Mobile Opferberatung informed Human Rights Watch that the exchange with the State Criminal Police had been taken up again (following the inquiry by Human Rights Watch) and that they were very pleased about this development and the current cooperation.

In addition, some specialized victim support organizations in parts of Saxony and Thuringia said they wished that police would pass on their offers of support to victims of hate crimes and inform them about cases where they could offer such support.³³

Human Rights Watch recommends that:

- State police forces should designate liaison officers with victim support organizations to ensure regular interaction.
- State police forces should systematically advise crime victims about the availability of assistance from specialized victim support organizations and facilitate contact with those organizations if victims then request it.

Obstacles to Effective Investigations in Some Cases

Human Rights Watch's research indicates a number of obstacles to effective investigations in some cases involving hate crimes. Our research found examples of victims who had experienced problems when filing complaints or accessing the police. We were also told of cases where the police were apparently unwilling to do more than halt violence and separate parties when they arrived at crime scenes. For example they appeared unwilling to take witness statements and make other investigative steps and in some cases focused more attention on questioning the victim than the alleged perpetrator.

Victim support organizations, criminal lawyers, migrant and civil society representatives, and victims in Berlin, Saxony and Saxony-Anhalt referred to difficulties regarding filing complaints in some cases.³⁴ Reported incidents ranged from extended delays before the police arrived at the crime scene or dealt with the case in the police station, to cases where the police allegedly showed reluctance to take the complaint seriously or even sought to discourage victims from filing a complaint.

³³ Human Rights Watch telephone interview with victim counseling organization, Chemnitz, April 21, 2010; Human Rights Watch interview with Christina Buettner, Thüringer Hilfsdienst für Opfer rechtsextremer Gewalt, Jena 22 April, 2010.

³⁴ Human Rights Watch interview with representative of African migrant association, Dresden, April 14, 2010; Human Rights Watch interview with two criminal lawyers in Berlin, March 3, 2010 (who also deal with cases in Brandenburg and Saxony-Anhalt); Human Rights Watch interview with two criminal lawyers in Leipzig, April 14, 2010. Human Rights Watch interview with Oliver A. (pseudonym) of African origin born in the Ivory Coast, Saxony-Anhalt, March 23, 2010; Human Rights Watch telephone interview with victim counselor in Saxony, April 21, 2010; Human Rights Watch interview with Yonas Endrias, anti-racism working group of the Forum Menschenrechte, at the time vice-president of the Internationalen Liga für Menschenrechte, December 9, 2009 and May 27, 2010. Human Rights Watch interview with expert from the Amadeu-Antonio Foundation (a foundation which works on neo-Nazism, racism and anti-Semitism), Berlin, December 9, 2009.

Despite some progress in the conduct of the police in investigating hate crimes, criminal lawyers, one victim and victim counselors and some migrants and Germans of African descent told Human Rights Watch about incidents in Saxony and Saxony-Anhalt in which the police had come to a crime scene, separated the parties and halted the violence, but had failed to take prompt steps to identify the alleged perpetrator, take the contact details of witnesses and carry out initial questioning at the scene.³⁵

An asylum seeker from Central African Republic, who was attacked by a group outside a nightclub in Burg in 2008 along with a Saudi asylum seeker, explained his experience:

“The two police officers took us out of that group around us, which was still there when the police arrived and was also still screaming. They did not ask anybody anything. They put us in their car and drove us away. When we asked them why they did not question any of the people present, they told us to be quiet. When we continued to ask them questions about this, one of them said ‘What do you want, I saved your ass, I could have left you there.’”³⁶

Following an investigation criticized by the lawyer and the victim support organization involved in the case, only one person was prosecuted for the attack. He was acquitted in March 2010 for lack of evidence.³⁷

Criminal lawyers, victims, one expert and victim counselors reported some cases in parts of Saxony, Saxony-Anhalt, Thuringia and Berlin in which police officers had arrived at a crime scene and persistently focused attention on the victim, for instance requiring the victim to provide identification, especially if he or she was a foreign national or migrant, even if the victim was visibly injured, or failing to take prompt steps to identify, pursue, question or detain

³⁵ Human Rights Watch group interview with several men of African origin, Dresden, April 25, 2010; Human Rights Watch interview with two criminal lawyers, Leipzig, April 14, 2010; Human Rights telephone interview with F. Diallo (first name changed upon request), September 1, 2010 and Human Rights Watch telephone interview with the criminal lawyer in the case, September 6, 2010. Human Rights Watch telephone interview with Heike Kleffner, August 27, 2010. She is the former project leader of the association “mobile counseling of victims of right violence” (“Mobile Beratung für Opfer rechter Gewalt”) in Saxony-Anhalt and still provides advice and support to it, currently public relations officer of the Action Reconciliation Service for Peace (ARSP). The association supports and advises victims after racist, right-extremist and anti-Semitic attacks.

³⁶ Human Rights telephone interview with victim from Central Africa, September 1, 2010.

³⁷ Human Rights Watch telephone interview with Heike Kleffner, former project leader of the association “mobile counseling of victims of right violence” (“Mobile Beratung für Opfer rechter Gewalt”) August 27, 2010; Human Rights Watch telephone interview with the criminal lawyer acting for the victim, September 6, 2010

alleged perpetrator(s) still present at the scene.³⁸

Human Rights Watch recommends that police and state interior ministries:

- Establish regular community outreach and public information programs and involve community representatives in identifying problems and concerns.
- Provide further increased and extended training for all police officers in diversity and on the identification and characterization of hate crimes, as well as increase measures to ensure wide attendance at all levels.

Police Treatment of Hate Crimes as Ordinary Offenses

Human Rights Watch research indicates that some hate crimes in Germany are assessed, recorded, or investigated by the police as ordinary offenses.

State Criminal Police Offices and the Federal Ministry of Interior have stated that data on such offenses is recorded carefully using a broad approach that is not exclusively focused on right-extremism, and that any targeting of minority groups would be automatically recorded as a politically motivated and/or hate crime regardless of the perpetrator's background or perceived intention.³⁹

In practice however, despite improvements in recent years, the police in some states sometimes appear to take a narrower approach. Victim support organizations and others reported concerns in Berlin, North Rhine-Westphalia and Saxony but also Germany-wide about the initial assessment of the offense by police officers, particularly if the alleged perpetrator is not clearly recognizable as a member of an organized far-right group or the perpetrator's

³⁸ Human Rights Watch interview with criminal lawyers, Leipzig, April 14, 2010; Human Rights Watch interview with Gautier, men of Cameroonian origin, Berlin, March 2, 2010 (double-check quotation authorization and style); Human Rights Watch interview with two criminal lawyers, Berlin, March 3, 2010; Human Rights Watch interview with two criminal lawyers, Berlin, March 4, 2010 (who mostly deal with cases in Brandenburg and Saxony-Anhalt); Human Rights Watch interview with criminal lawyer based in Berlin with cases also in other states such as Saxony-Anhalt, Berlin, March 24, 2010; Human Rights Watch interview with Aydin, Greiz, April 24, 2010. Human Rights Watch interview with Christina Büttner, THO, April 22, 2010; Human Rights Watch telephone interview with counselor of victim counseling organization, Chemnitz, April 21, 2010.

³⁹ Human Rights Watch interview with official of police state protection, Berlin, March 3, 2010; Human Rights Watch interview with official from the Office of the State Criminal Police in Saxony-Anhalt, Magdeburg, March 25, 2010; Human Rights Watch interview with official from State Criminal Police Office Saxony, Dresden, April 15, 2010; Human Rights Watch interview with officials from State Criminal Police Office Thuringia, Erfurt, April 23, 2010; Human Rights Watch interview with two officials of the Federal Ministry of Interior on May 28, 2010.

motives are not obvious to the authorities.⁴⁰ One migrant organization representative in Saxony said this could be a problem with crimes against migrants, where xenophobic motivation was sometimes overlooked by the police.⁴¹

Where a case is deemed not to be politically motivated, the police are unlikely to gather the necessary evidence through, for example, prompt questioning of suspects and witnesses on indications of motivation or on the background of the suspect that would permit the court to consider hate motivation as an aggravating factor in the event of a conviction.

In addition, victim support organizations and a criminal lawyer told Human Rights Watch about individual cases of hate crimes in Berlin, Saxony-Anhalt and Thuringia which had not been properly identified as hate crimes, including cases in which police did not investigate the alleged right-extremist background of the alleged perpetrator.⁴²

The authorities in Saxony-Anhalt, Saxony and Thuringia acknowledged that individual mistakes can occur but argued that the system is capable of resolving any errors and is self-correcting.⁴³

State police and justice ministry officials in Saxony, Saxony-Anhalt and Thuringia told Human Rights Watch that they train police cadets, new officers and state security officers on the basic elements of such crimes and provide specialized continuing education courses for police departments and justice personnel.⁴⁴ The latter are generally optional.

⁴⁰ Human Rights Watch interview with counsellor of victim counselling organization, Berlin, December 11, 2009; Human Rights Watch telephone interview with another counselor of the same victim counseling organization, Berlin, February 24, 2010. Human Rights Watch interview with representative migrant council in Saxony, Dresden, April 13, 2010; Human Rights Watch interview with representative of city initiative for democracy and tolerance, Wuppertal, May 20, 2010; Human Rights Watch interview with representative of self-organized organization and counselling center of LGBT people with a migrant, in particular Turkish, background, Berlin, May 28, 2010. Human Rights Watch interview with representative of gay anti-violence project and counselling center, Berlin, December 11, 2009.

⁴¹ Human Rights Watch interview with representative of the migrant council in Saxony, Dresden, April 13, 2010.

⁴² Human Rights Watch interview with criminal lawyer, Berlin, March 24, 2010; Human Rights Watch interview with Christina Buettner, Thüringer Hilfsdienst für Opfer rechtsextremer Gewalt, Jena 22 April, 2010; Human Rights Watch interview with Mobile Opferberatung, Saxony-Anhalt.

⁴³ Human Rights Watch interview with official from the Office of the State Criminal Police in Saxony-Anhalt, Magdeburg, March 25, 2010; Human Rights Watch interview with official from State Criminal Police Office Saxony, Dresden, April 15, 2010; Human Rights Watch interview with officials from State Criminal Police Office Thuringia, Erfurt, April 23, 2010.

⁴⁴ Human Rights Watch interview with two officials from the Saxon State Ministry of Justice and for European Affairs, Dresden, April 13, 2010; Human Rights Watch interview with officials Mr. Lehmann and Ms. Zink of the State Office of Criminal Investigation in Saxony, Dresden, April 15, 2010; Human Rights Watch interview with Michael Klocke, press spokesperson of state office for criminal investigation in Saxony-Anhalt, Magdeburg, March 25, 2010. Human Rights Watch interview with officials of the State Office of Criminal Investigation in Thuringia, Erfurt, April 23, 2010.

Civil society representatives and criminal lawyers told Human Rights Watch they believe there is a need for further specialized police training in identifying hate crimes, and for greater prioritization of this issue at all levels of state police forces throughout Germany.⁴⁵

Human Rights Watch recommends:

- State authorities, in particular the interior ministries, as well as police education institutions, should strengthen further training for police officers at all levels—not only those assigned to specialized task forces—to increase sensitization and awareness about hate crimes further, and improve the initial assessment of bias motivated crimes.

Judicial Response to Hate Crimes

Victim support organizations and criminal lawyers highlighted improvements in the performance of prosecutors and judges in the investigation and prosecution of hate crimes in certain districts within states. As noted above, the absence of pertinent federal or state statistics makes it impossible to determine comprehensively the extent to which reported hate crimes result in successful prosecutions, or the taking into account of such aggravated circumstances and the level of sentences handed down in such cases. But information from victim support organizations, criminal lawyers and victims identified a number of concerns with the way in which hate motivation is dealt by the courts. Those concerns are set out below.

Prosecuting and Sentencing Hate Crimes as Ordinary Crimes

The Offices of Public Prosecution in Berlin, Saxony-Anhalt, Saxony, Thuringia, North Rhine-Westphalia and Lower Saxony have specialized departments and prosecutors for state security issues, right-extremist or politically motivated crimes.

Victim support organizations indicate that prosecutors in such departments have greater familiarity, training and experience with such crimes and how to investigate them effectively. It

⁴⁵ Human Rights Watch telephone interview with a counselor of a victim counseling organization, Berlin, February 24, 2010. Human Rights Watch interview with two criminal lawyers in Berlin, March 3, 2010 (who also deal with cases in Brandenburg and Saxony-Anhalt); Human Rights Watch interview with two criminal lawyers, Berlin, March 4, 2010 (who mostly deal with cases in Brandenburg and Saxony-Anhalt); Human Rights Watch interview with two criminal lawyers, Leipzig, April 14, 2010; Human Rights Watch interview with Christina Büttner, Thüringer Hilfsdienst für Opfer rechtsextremer Gewalt, Jena, April 22, 2010; Human Rights Watch interview with Yonas Endrias, anti-racism working group of the Forum Menschenrechte, at the time vice-president of the Internationalen Liga für Menschenrechte, May 27, 2010.

appears, however, that prosecutions during the court hearings are sometimes led by whichever prosecutor is on duty at the court at the time, whether or not they have experience in such cases.⁴⁶

The justice ministry in Saxony-Anhalt told Human Rights Watch that they aim to deploy specialized prosecutors for all such cases, and that in cases where this is not possible due to organizational and personnel issues, the prosecutor on duty is duly briefed by his colleague before the hearing. The justice ministry in Saxony said that for difficult cases a specialized prosecutor would always attend the session and that in some “smaller” cases the prosecutor in charge on that day would attend the trial.⁴⁷

Victim support organizations and criminal lawyers told Human Rights Watch that prosecutors do not always present evidence at hate crimes trials that would support the conclusion that hatred was a motivating factor. In most cases this is because the police failed to obtain such evidence during the investigation or prosecutors failed to seek it, but in some cases it is because prosecutors fail to elaborate on the motivation or the background of the perpetrator during the trial.⁴⁸

Even when such motivation is established, prosecutors do not consistently call for it to be taken into account in sentencing under section 46 during prosecutions for hate violence. According to victim support organizations and lawyers acting for victims it is often left to them to raise hate as a motivating factor during the trial.⁴⁹

⁴⁶ Human Rights Watch interview with Zissi Sauerma, Mobile Opferberatung, Halle, March 23, 2010; Human Rights Watch interview with two criminal lawyers, Leipzig, April 14, 2010.

⁴⁷ Human Rights Watch Interview with official at Ministry of Justice of Saxony-Anhalt, March, 25 2010; Human Rights Watch interview with two officials from the Saxon State Ministry of Justice and for European Affairs, Dresden, April 13, 2010

⁴⁸ Human Rights Watch interview with representative of gay anti-violence project and counselling center, Berlin, December 11, 2009. Human Rights Watch telephone interview with victim counseling organization, Chemnitz, April 21, 2010; Human Rights Watch interview with Zissi Sauerma, Mobile Opferberatung, Halle, March 23, 2010; Human Rights Watch interview with criminal lawyer based in Berlin with cases also in other states such as Saxony-Anhalt, Berlin, March 24, 2010.

⁴⁹ Human Rights Watch telephone interview with counsellor of victim counselling center, Dessau, April 12, 2010; Human Rights Watch interview with criminal lawyer based in Berlin with cases also in other states such as Saxony-Anhalt, Berlin, March 24, 2010; Human Rights Watch interview with two criminal lawyers, Leipzig, April 14, 2010; Human Rights Watch interview with two counselors of victim support organization Mobile Opferberatung in Saxony-Anhalt.

Moreover, Human Rights watch found that, even where evidence of hate motivation is put forward during the trial, judges have a mixed record of taking it into account when determining the sentence.⁵⁰

According to victim support organizations, experiences from some states indicate that judges are more likely to take hate motivation sufficiently into account if the victim is a formal party to the case as a joint plaintiff⁵¹ and is therefore represented by a lawyer who can ensure that motivation is raised and evidence to establish it is drawn out during the trial.⁵²

The Federal Ministry of Justice has asserted to Human Rights Watch that racist and other hate motivations are regularly considered as aggravating circumstance by German courts. The ministry provided Human Rights Watch with a selected non-exhaustive list of 23 judgments from 1995 to 2009 in the states of Brandenburg and North Rhine-Westphalia in which racist, xenophobic, anti-Semitic, and right-extremist motives were considered as aggravating circumstances for sentencing under section 46.⁵³

The cases include rulings from the Federal Supreme Court, a Higher Regional Court and regional and district courts on various offenses.⁵⁴ While the information is undoubtedly evidence that racist and other hate motivation is sometimes taken into account when sentencing, it is not possible to conclude from 23 cases in two states over a fourteen year period that such factors are assessed regularly by Germany courts in general.

⁵⁰ Human Rights Watch interview with counsellor of victim counselling organization, Berlin, December 11, 2009; Human Rights Watch interview with Yonas Endrias, anti-racism working group of the Forum Menschenrechte, at the time vice-president of the Internationalen Liga für Menschenrechte, December 9, 2009 and May 27, 2010; Human Rights Watch interview with representative of city initiative for democracy and tolerance, Wuppertal, May 20, 2010; Human Rights Watch interview with representative of gay anti-violence project and counselling center, Berlin, December 11, 2009; Human Rights Watch interview with criminal lawyer, Berlin, March 24, 2010; Human Rights Watch interview with two criminal lawyers, Leipzig, April 14, 2010

⁵¹ German Code of Criminal Procedure sections 395-402.

⁵² Human Rights Watch interview with counsellor of victim counselling organization, Berlin, December 11, 2009; Human Rights Watch interview with two counselors of victim support organization Mobile Opferberatung in Saxony-Anhalt..

⁵³ HRW interview with Dr. Hans-Jörg Behrens, Ministerialrat, Permanent Deputy Agent for Human Rights, Federal Ministry of Justice, March 4, 2010; presentation of Dr. Almut Wittling-Vogel, Ministerialdirigentin, Agent of the Federal Government of Matters Relating to Human Rights, Federal Ministry of Justice, at ECRI Round Table in Germany, May 12, 2010, Berlin and HRW email correspondence with Federal Justice Ministry, February 17, 2010. Offenses under section 130 StGB, incitement to hatred (in which political motivation is an element of the offense) were not included.

⁵⁴ The Ministry obtained the information from a query to all state justice ministries in October 2009, in preparation of an event with all justice ministries of the Länder on a completely different topic, in which they were asked to submit relevant judgments. No time frame was given for the judgments. Since not all Länder had responded, only an evaluation of received judgments could be carried out. At the time, the federal ministry of justice was still deciding if the inquiry will be taken up again and pursued further to be able to complete the list.

Officials in the justice ministries of Saxony-Anhalt, Thuringia and in the senate in Berlin told Human Rights Watch that they saw no deficiencies and shortfalls in their area of application and that they have court cases where considerable sentences were imposed. In the case of Saxony, the justice ministry qualified its positive assessment by noting that not all cases are reported to the ministry, making a definitive assessment difficult.⁵⁵

Some victim support organizations and human rights activists recommend that investigating authorities in Germany be required to examine the background of an offense in any case where the victim alleges a bias motive.

Human Rights Watch recommends that:

- States should examine how to strengthen the systematic examination of possible hate motivation in the prosecution of cases, including through a possible decree issued by justice ministries to prosecutors to reiterate that the hate dimension of attacks, including those against LGBT people and persons with disabilities, should be thoroughly investigated, and where such evidence exists, put forward during the trial, and in case of conviction, during sentencing.
- The federal and state justice ministries should intensify efforts to develop and extend existing professional training for prosecutors and judges, on the effective identification and characterization of hate motivation in criminal offenses.
- The federal and state justice ministries should publicize the prosecution of bias-motivated crimes to the general public and to the affected communities.

⁵⁵ Human Rights Watch interview with two officials from the Saxon State Ministry of Justice and for European Affairs, Dresden, April 13, 2010.