



# LIVING IN INSECURITY

HOW GERMANY IS FAILING VICTIMS  
OF RACIST VIOLENCE

**AMNESTY**  
INTERNATIONAL



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*Cover photo:* Fire fighters extinguish a fire in an empty building in Weissach im Tal, Germany, 24 August 2015. The fire almost completely destroyed the building, which was intended to serve as an accommodation for refugees. As of June 2016, the cause of the fire remained unknown, however an arson attack was not ruled out by the local police.

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# CONTENTS

GLOSSARY.....	5
EXECUTIVE SUMMARY .....	7
Key recommendations .....	10
Methodology .....	10
1. INTRODUCTION: THE LEGACY OF THE FAILURES TO INVESTIGATE THE NSU MURDERS .....	12
2.1 Investigations into the NSU murders before 2011 .....	13
2.2 Investigations into the NSU murders after 2011 .....	15
Conclusions .....	17
2. THE DUTY TO PROTECT PEOPLE FROM HATE CRIMES.....	19
Definition and investigation of hate crimes in Germany .....	21
3. CONTINUING FAILURES TO ADDRESS HATE CRIME .....	23
3.1 Investigation of hate crimes in Germany .....	24
3.2 Lack of diligence by police .....	26
Conclusions .....	31
3.3 Racist motive overlooked by judicial authorities .....	33
3.3.1 Prosecution and sentencing of racist hate crimes .....	34
3.3.2 Shortcomings in the prosecution and trial of racist hate crimes .....	36
Conclusions .....	39
4. ATTACKS ON ASYLUM SHELTERS AND REFUGEES.....	41
4.1 Hostile climate for refugees and asylum seekers .....	43
4.2 Protecting asylum shelters and preventing violent attacks .....	44
4.3 Policing anti-refugee protests.....	48

4	Living in insecurity How Germany is failing victims of racist violence	
4.4	Lack of a comprehensive strategy to counteract hate crime against refugees	50
	Conclusions	51
5.	DATA ON HATE CRIMES	55
5.1	The system used to classify and collect data on politically motivated crimes (the PMK system)	55
5.2	Concerns regarding the PMK system	58
	Conclusions	61
5.3	Data collection and underreporting of hate crimes against asylum shelters, asylum-seekers and refugees	61
5.4	Data on the prosecution of hate crimes	65
	RECOMMENDATIONS	66

# GLOSSARY

In Germany **politically motivated crimes** (*Politisch motivierte Kriminalität*) are not defined as such in the Criminal Code but in a classification system (PMK system) used by police since 2001. Several criminal offences fall under the category of politically motivated crimes. These include criminal offences targeting individuals on discriminatory grounds (hate crimes) as well as crimes that “counteract the democratic order or the stability and security of the nation”. The latter includes establishing an organization that challenges the democratic order or using symbols of an unconstitutional organization – e.g. Nazi symbols. Politically motivated crimes are classified according to the ideology of their perpetrators. They include for example right-wing or left wing ideologies (see chapter 5 for more information).

**Hate crimes** are criminal offences targeting an individual, a community or premises because they belong to, or are associated with, a group defined by one or more protected characteristics, such as race, ethnicity, migration status, or sexual orientation or gender identity. Discrimination on the basis of such protected characteristics is prohibited under international human rights law. In this report, the term **racist hate crimes** refers to criminal offences under German law that are perpetrated on grounds of race, religion, ethnicity, skin colour, nationality or migrant or refugee status.

**Racial discrimination** is any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (UN Convention on the Elimination of Racial Discrimination, Article 1.1).

**Racism** is an ideological construct that assigns a certain race and/or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth, involving hierarchical relations where the “superior” race exercises domination and control over others (Office of the High Commissioner for Human Rights).<sup>1</sup>

**Xenophobia** describes attitudes, prejudices and behaviour that reject, exclude and often vilify individuals, based on the perception that they are outsiders or foreigners to the community, society or national identity (Office of the High Commissioner for Human Rights).<sup>2</sup>

**Racial, ethnic and religious minorities** are non-dominant communities who may not necessarily be numerical minorities. The existence of a minority should be determined according to reasonable criteria, taking as a starting point how the group identifies itself, and

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<sup>1</sup> UN Office of the High Commissioner for Human Rights in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), *Dimensions of Racism*, 2005, Chapter 8, p.112, <http://www.ohchr.org/Documents/Publications/DimensionsRacismen.pdf> (accessed 23 April 2016).

<sup>2</sup> *Dimensions of Racism*, 2005, Chapter 8, p.112.

then considering characteristics of the group such as race, ethnicity, national origin, culture, language or religion, and the group's expressed desire to maintain and promote its identity. Members of minorities do not need to be citizens of the state in question.

A **refugee** is a person who has fled from their own country because they have a well-founded fear of persecution and their government cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes someone as a refugee, it gives them international protection as a substitute for the protection of their country of origin.

An **asylum-seeker** is someone who has left their country seeking protection but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum-seeker must not be forced to return to their country of origin.

In this report, a number of different terms are used to refer to the victims of racist crimes, such as **Black people, people of colour** and **people of Turkish descent**. These terms are not defined by Amnesty International; the organization has endeavoured to use the terms the victims themselves deem suitable to describe their identity.

**People of colour** is a term predominantly used in the debate on racism and racial discrimination in the United States of America. However, some German civil society organizations have used this term to refer to people who can be targeted with racist crimes and racial discrimination.<sup>3</sup>

At certain points the term **minority groups** is used in this report as an overarching term to refer to these groups as well as asylum-seekers and refugees.

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<sup>3</sup> See for example the shadow report submitted by civil society organizations to the UN CERD, "Rassistische Diskriminierung in Deutschland. Erscheinungsformen und Menschenrechtliche Verpflichtungen zum Schutz vor rassistischer Diskriminierung", [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF/Dateien/Pakte\\_Konventionen/ICERD/icerd\\_state\\_report\\_germany\\_19-22\\_2013\\_parallel\\_FMR\\_Diakonie\\_2015\\_de.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF/Dateien/Pakte_Konventionen/ICERD/icerd_state_report_germany_19-22_2013_parallel_FMR_Diakonie_2015_de.pdf)

# EXECUTIVE SUMMARY

Between 2000 and 2007, a far-right group in Germany, the National Socialist Underground (NSU), murdered eight men of Turkish descent, one man of Greek descent and a White German police officer. In 2011, the alleged suicide of two members of the NSU and the surrender of a third to police exposed shocking failures in the German authorities' response to the murders.

Several police forces failed to take into account and effectively investigate aspects of the murders pointing to a discriminatory motive. Instead, they focused their attention on victims' relatives and members of minority communities, despite the absence of any reasonable grounds for believing that they were involved in the crimes. As highlighted by a number of human rights bodies, the authorities' repeated failure to identify and investigate leads pointing to the racist motivation behind the attacks is indicative of a broader problem of institutional racism within German police authorities.

The term "institutional racism" should not be understood as referring simply to a high incidence of overtly racist attitudes amongst the personnel of any given organisation. It can exist even where such attitudes are rare. It should, rather, be understood as "the collective failure of an organization to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin ... [that] can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people".<sup>4</sup>

Following the 2011 revelations, the Federal Parliament (*Bundestag*), as well as several state parliaments (*Landtage*), carried out inquiries into the failure of the police and intelligence services to counteract the NSU. However, these mechanisms did not specifically investigate, and drew no explicit conclusions regarding, the extent to which institutional racism had played a role in the authorities' failures to investigate leads pointing to racist motives. Nor, therefore, did they make any recommendations regarding the wider range of measures that law enforcement agencies and judicial authorities could implement to counteract institutional racism.

Some recommendations made by these committees have been implemented. For example, in 2015, the Criminal Code was amended to impose a specific duty on courts to take any racist, xenophobic or other discriminatory motive associated with the crime into account when sentencing. New structures have also been established with the aim of improving coordination between the authorities at different levels in combating hate crimes.

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<sup>4</sup> *The Stephen Lawrence Inquiry, Report of an inquiry by Sir William Macpherson of Cluny*, February 1999, para. 6.34. The Stephen Lawrence Inquiry was ordered by the Home Secretary (Minister of Interior) of the United Kingdom "to inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes."

Shortcomings in the response to hate crimes remain, however. As this report shows, there continue to be cases where police officials do not carry out effective, prompt, adequate and thorough investigations into allegations of racist violence. NGOs and lawyers working on such cases highlight, in particular, the failure of law enforcement agents to secure evidence, take witnesses' statements and identify or record possible racist motives in the early stages of investigations.

These failures are linked, at least in part, to the complexities of the German system for classifying hate crimes. The current system, which has been in place throughout Germany since 2001, classifies hate crimes as a subset of politically motivated crime. Once recorded as such, the investigation of a politically motivated crime is transferred to specialized police units, whose number and resources have increased in many states in recent years. It would appear, however, that, in its application at least, the current system sets too high a threshold for the initial recording of potential hate motives and that frontline police officers are not, consistently, as sensitive to indicators of racially motivated crimes as they should be.

It is beyond the scope of this report, and, indeed, the resources available to Amnesty International, to present a definitive conclusion as to the existence of institutional racism within the many diverse and inter-locking federal and state law enforcement structures and judicial authorities in Germany. However, the research carried out for this report does tend to the conclusion that there are broader structural and attitudinal reasons for some of the failures to investigate, prosecute and sentence hate crimes effectively.

Amnesty International recommends the establishment of an independent inquiry that would review the police authorities' response to hate crimes in a much more comprehensive manner than the inquiries carried out to date into the NSU murders; while such an inquiry might usefully take the NSU murders as its starting point, the inquiry should review whether prevailing attitudes and established systems are contributing to the failure to consistently identify and respond effectively to the full range of hate crimes. A comprehensive inquiry would extend to a wider review of the quality of the service provided by police authorities to ethnic minorities and make recommendations for its improvement.

The need to review how German police authorities deal with hate crimes is long-standing. It has taken on particular urgency however in light of the rise in hate crimes linked to the large-scale arrival of asylum seekers during 2015. By the end of the year, Germany had received more than 1.1 million new asylum seekers, with, for the most part, a welcoming attitude unmatched anywhere in Europe. At the same time, almost six anti-refugee protests were staged every week in Germany during the course of the year. In the face of such hostility to the arrival of such a large number of people, state and, especially, federal authorities, repeatedly highlighted the needs of asylum seekers and refugees and strongly condemned racism, discrimination and violence.

Nonetheless, violent attacks against asylum seekers and shelters spiked significantly. Over the last two years, the country has witnessed scenes of asylum shelters being set alight, protesters preventing asylum-seekers from reaching their shelters and daily attacks on individuals in the street.

In 2015, authorities recorded 1,031 politically motivated crimes against asylum shelters,

five times as many as in 2014 (199 crimes) and sixteen times as many as in 2013 (63 crimes). In the first trimester of 2016, authorities reported 347 politically motivated crimes against asylum shelters. The Amadeu Antonio Foundation reported 1,082 violent attacks against asylum seekers in 2015, a four-fold increase over 2014.

Many asylum-seekers and refugees who were attacked, or whose friends or acquaintances were the victims of hate crimes, told Amnesty International that they live in fear and do not feel safe in the towns or neighbourhoods where they live. **Ciwan B.**, an ethnic Kurd who fled Syria and was assaulted in Germany in September 2015, said:

*“When authorities told me I had to come to Dresden [Saxony, eastern Germany], I was really afraid, I had heard about PEGIDA [Patriotische Europäer gegen die Islamisierung des Abendlandes]<sup>5</sup> and the protests against refugees. Initially, I felt welcomed in the asylum shelter but after the attack I was very scared, I tried not to go out much, I thought I could be attacked again. All my friends were afraid after the attack against me. I escaped a war in Syria and I don't need to face tensions here in Germany. I just would like to work ... and to have a good life, as I had before the war.”<sup>6</sup>*

German authorities, especially at the federal level, have acknowledged that the sharp increase in attacks against asylum-seekers and refugees is a matter of serious concern. Since the beginning of 2014, the federal authorities have been reviewing on a regular basis all alleged hate crimes perpetrated against asylum shelters. On 17 March 2016, following a joint meeting, the Ministers of Justice of the 16 states and the Federal Minister of Justice expressed serious concern about the rise in hate crimes and called for improved cooperation between authorities at different levels. They also stressed the need to collect thorough data on prosecutions and convictions for hate crime and for training programmes on hate crimes to be developed for judges and prosecutors.<sup>7</sup>

However, federal and state authorities have failed to design and implement comprehensive risk-assessment mechanisms aimed at identifying the shelters that are most at risk of being targeted for violence. State authorities should adopt risk-assessment strategies based on a framework agreed with federal authorities. The mechanism should be based on clear criteria, such as the number of attacks perpetrated against asylum shelters in specific areas, neighbourhoods or towns. Although it would clearly not be realistic to provide police protection round-the-clock for all the asylum shelters in Germany, further protection should be provided to those identified as being at particular risk on the basis of a comprehensive risk-assessment mechanism.

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<sup>5</sup> European Patriots against the Islamisation of the West.

<sup>6</sup> Interview with Ciwan B., 19 October 2015.

<sup>7</sup> Public statement released after the meeting, [http://www.bmjv.de/SharedDocs/Downloads/DE/Artikel/03172016\\_Abschlusserklaerung\\_Justizgipfel.pdf?\\_\\_blob=publicationFile&v=1](http://www.bmjv.de/SharedDocs/Downloads/DE/Artikel/03172016_Abschlusserklaerung_Justizgipfel.pdf?__blob=publicationFile&v=1) (accessed 23 April 2016).

## KEY RECOMMENDATIONS

- Establish a fully independent public inquiry to review the NSU murder investigations, and broader police practices and attitudes regarding the classification and investigation of hate crimes, with a view to identifying lessons to be learned.
- The Permanent Conference of the Ministers of the Interior (*Ständige Konferenz der Innenminister und senatoren der Länder, IMK*) should amend the guidelines on the investigation, classification and collection of data on politically motivated crimes (which include hate crimes) so that an explicit duty is imposed on police to uncover any racist or other discriminatory motive behind criminal offences. The revised guidelines should require the police to classify a criminal offence as a hate crime at the outset if the victim or any other person alleges a racist or other discriminatory motive. The content of these guidelines should be made available to the public.
- Police authorities at the state level (*Landpolizei*) should develop comprehensive strategies aimed at assessing the security threats against asylum shelters. Enhanced police protection should be provided to shelters that are most at risk of being targeted for discriminatory violence. Federal authorities should cooperate with authorities in all the states to establish the framework for strategies to be taken by each state.

## METHODOLOGY

Amnesty International monitored hate crimes in Germany from April 2014 to May 2016. Desk research was conducted throughout that period. In addition, Amnesty International carried out five field research visits to Germany in May 2014 (one week), September 2014 (two weeks), October 2015 (one week), November 2015 (one week) and February 2016 (three days).

This research carried for the purposes of this report focused on violent racist crimes perpetrated against Black people, people of colour, people of Turkish descent, asylum-seekers and refugees and other minorities who may face racial discrimination. In the course of this research, Amnesty International also received information about homophobic and transphobic hate crimes. While some of the findings regarding the authorities' response to racist hate crimes may be applicable to other forms of hate crime, such as homophobic and transphobic hate crimes, this report focuses only on racist hate crimes. The scope of this report was chosen in view of the German authorities' failure to investigate racist crimes perpetrated between 2000 and 2007 by the far-right National Socialist Underground (NSU) and the sharp rise in racist crimes registered by both the authorities and civil society organizations over the past two years.

Field research was primarily aimed at collecting information regarding the response of federal and state authorities to these crimes. This research was mainly carried out in four German states (*Bundesländern*): Bavaria, Berlin, Saxony and Saxony-Anhalt. These states were chosen in part because of the increased number of racist crimes recorded by authorities and civil society organizations there. Their geographical distribution was also important as it allowed research both on states where priority funding after the reunification resulted in the establishment of strong support groups for victims of right-wing and racist violence (Saxony and Saxony-Anhalt) and on states where such groups are less developed (Bavaria).

Amnesty International researchers interviewed representatives of civil society organizations supporting victims of hate crimes in Berlin, Bavaria, Brandenburg, Saxony, Saxony-Anhalt and Thuringia. In addition, Amnesty International met representatives of 48 civil society organizations including anti-racist and anti-fascist initiatives, foundations, refugee councils and other non-governmental organizations (NGOs) active in the areas of non-discrimination, migration and asylum. Amnesty International interviewed 30 people who had been the victims of crimes that they believed had a racist motive. In addition, Amnesty International met 15 lawyers who represented some of these victims as well as victims of other alleged hate crimes.

Amnesty International met representatives of the following federal authorities: the Ministry of the Interior, the Ministry of Justice and Consumer Protection, the Federal Criminal Affairs Department (*Bundeskriminalamt*) and the Federal Police (Bundespolizei). In Bavaria, Amnesty International met representatives of the following state authorities: police departments (Polizeipräsidium) of Munich and Mittelfranken (Nuremberg), the Bavarian State Criminal Affairs Department (*Bayerisches Landeskriminalamt*), the Prosecutor's Offices of Munich, Nuremberg and Bamberg and the Bavarian Ministry of Justice. In Berlin, Amnesty International met representatives of the Berlin State Criminal Affairs Department (*Landeskriminalamt Berlin*), the Berlin Ministry of the Interior and Sport (*Senatsverwaltung für Inneres und Sport*) and the Berlin Commissioner for Victims (*Opfer Beauftragter des Landes Berlin*). In Saxony, Amnesty International met with representatives of the Saxony State Criminal Affairs Department (*Landeskriminalamt Sachsen*), the Office for the Protection of the Constitution in Saxony (*Landesamt für Verfassungsschutz Sachsen*), the Operational Defence Centre of the Saxony Police (*Operative Abwehrzentrum, OAZ*), the Prosecutor's Offices of Leipzig, Dresden and Chemnitz. In Saxony-Anhalt, Amnesty International met representatives of the State Criminal Affairs Department of Saxony-Anhalt (*Landeskriminalamt Sachsen-Anhalt*). Amnesty International met representatives of the following municipalities: Dresden, Hoyerswerda and Marzahn-Hellersdorf.

Amnesty International met police representatives of state (*Landeskriminalämter*) and federal authorities (*Bundeskriminalamt*) as well as the Federal Ministry of the Interior in September 2014 and October/November 2015. The interviews in 2015 focused specifically on hate crimes perpetrated against asylum shelters, asylum-seekers and refugees.

Interviews were conducted in German (with interpretation), English and French. Most of the interviews were conducted in person and a few over the telephone. In some cases pseudonyms have been used where interviewees asked that their names be withheld in order to protect their privacy and safety.

# 1. INTRODUCTION: THE LEGACY OF THE FAILURES TO INVESTIGATE THE NSU MURDERS

**“Nothing will change unless those people responsible for the mistakes in the investigation into the NSU murders have been held accountable. We need to fight institutional racism within the German authorities and in particular within the police. It is also important to raise awareness, including of the crimes perpetrated by the NSU”.**

Yvonne Boulgarides, the wife of Theodoros Boulgarides, a victim of the NSU, 17 September 2014.

Three members of the *Nationalsozialistischer Untergrund* (National Socialist Underground-NSU) – Uwe Mundlos, Uwe Böhnhardt and Beate Zschäpe – allegedly murdered 10 people in six German states between 2000 and 2007. Eight of the victims were of Turkish descent, one was of Greek descent and one was a police officer. The group also allegedly carried out two bomb attacks in Cologne in 2001 and 2004 and several robberies.

The German authorities failed to carry out an effective investigation into the murders. In particular, for a decade the police and intelligence services at both the federal and state levels overlooked aspects of the crimes that pointed to the involvement of a far-right group and to a racist motive for the killings.

On 4 November 2011, after robbing a bank in Eisenach (Thuringia), Uwe Mundlos and Uwe Böhnhardt set the mobile home in which they were hiding alight and allegedly shot and killed themselves shortly before police found them. The same day, Beate Zschäpe allegedly set fire to the flat in Zwickau (Saxony) where the three had lived together. She sent a propaganda video, which linked the group to the murders and other crimes, to several recipients, including policy makers and the media, before turning herself in to police. At the time of writing (May 2016), the trial of Beate Zschäpe and four individuals who allegedly supported the NSU was continuing in Munich.

Despite the many elements indicating that institutional racism within police and intelligence services may have played a part in the repeated failures to identify and investigate the racist motive behind the murders, the official reviews conducted to date have failed to examine this question thoroughly. Their focus – and the focus of resulting recommendations – has, rather, been on technical failures and operational shortcomings, leaving deeper problems of attitude and approach only partially addressed.

## 1.1 INVESTIGATIONS INTO THE NSU MURDERS BEFORE 2011

*“In all these years, they have never treated us as victims. We were always treated as suspects by police or politicians, as those who were hiding something. Nobody asked us about our opinion or listened to us.”*

Yvonne Boulgarides, the wife of Theodoros Boulgarides, a victim of the NSU.

Nine of the murders were carried out with the same firearm, a Česká zbrojovka CZ 83. Investigators also identified a number of elements common to these crimes: several of the victims were small shopkeepers who were attacked in their shops, but nothing was stolen.<sup>8</sup>

The murders were committed in six different states (Bavaria, Baden-Württemberg, Hamburg, Lower-Saxony, Meklenburg-Western Pomerania and North-Rhine Westphalia), and the police established several special commissions to investigate the crimes including those in Dortmund, Hamburg, Kassel, Munich, Nuremberg and Rostock. The Federal Criminal Affairs Department (*Bundeskriminalamt, BKA*) was involved in the investigations, mostly assuming a coordination function between state authorities. Significantly, none of the police units in charge of investigating politically motivated crimes at the state and federal levels played any substantial role in the investigations.

Until 2006, despite the lack of any serious evidence implicating them in the crimes, the police focused primarily on the theory that the murders were carried out by organized criminal networks operating within minority communities and dealing with drugs and other illegal activities. A special police commission established in Nuremberg in 2001 to investigate one of the murders, that of Habil Kılıç, was called the Crescent Special Commission (*SoKo Halbmond*), referring to the crescent in the Turkish flag. Another police commission established in 2005 was called Bosphorus Special Commission (*Besondere Aufbauorganisation Bosphorus, BAO Bosphorus*), referring to the strait connecting the Black Sea to the Marmara Sea in Turkey.

This approach led the police to interrogate hundreds of people of Turkish descent. In addition, relatives and friends of the victims were often treated as suspects and were not promptly provided with information regarding the progress of the investigation.

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<sup>8</sup> Much of the information included in this chapter about the investigation into the murders draws on the report of the NSU Committee of Inquiry established by the German Federal Parliament on the basis of Article 44 of the German Constitution, *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes*, 22 August 2013, <http://dipbt.bundestag.de/dip21/btd/17/146/1714600.pdf> (accessed 23 April 2016).

**Yvonne Boulgarides**, the wife of Theodoros Boulgarides who was killed by the NSU on 15 June 2005 in Munich, told Amnesty International that right from the start of the investigation police failed to inform her properly about the circumstances surrounding her husband's murder. The day after the murder, police interrogated Yvonne and her daughters. She told Amnesty International: "We were separated by police and interrogated separately. I was interrogated for 3 or 4 hours. At some point I heard one of my daughters screaming: 'I won't say anything anymore'."<sup>9</sup> According to Yvonne's lawyer, Yavuz Narin, police asked Yvonne's 15-year-old daughter whether her father was a drug dealer and if he had sexually abused her.<sup>10</sup>

Yvonne was interrogated many times between 2005 and 2011. She told Amnesty International that she had often felt under enormous pressure from the investigators to confess her involvement in the murder. Yvonne said: "In all these years, they never treated us as victims. We were always treated as suspects by the police or politicians, as if we were hiding something. Nobody asked us about our opinions or listened to us."<sup>11</sup>

The relatives of other victims described similar experiences. Police treated them as suspects, despite the lack of credible evidence pointing to their involvement. Antonia von der Behrens, lawyer for the family of Mehmet Kubaşık who was murdered on 4 April 2006 in Dortmund (North-Rhine Westphalia), told Amnesty International: "Police interrogated family members, friends and neighbours many times. They always asked the same questions about the victim's possible involvement in criminal activities etc. The family found itself isolated and stigmatized. Neighbours and acquaintances took some distance, they started thinking the family may hide dodgy secrets. That was also strengthened by the negative messages conveyed by the authorities' public campaign which stressed that people of Turkish descent constituted a parallel society, that families did not want to cooperate with police, who were confronted with a wall of silence".<sup>12</sup>

In 2006, several years after the first in this series of murders, Bavarian investigators started to consider the possibility that the murders had been perpetrated by one individual (*Einzeltätertheorie*), rather than a network and that there may have been a racist motive. In a new case analysis (*Fallanalyse II*), the Bavarian State Criminal Affairs Department (*Bayerisches Landeskriminalamt*, BLKA) identified prejudice against Turks as a possible motive behind the murders. In 2007, following a discussion between the Bavarian investigating authorities and the US Federal Bureau of Investigation (FBI), the latter shared its assessment regarding the profile of the perpetrator. This stated: "the offender is a disciplined, mature individual who is shooting the victims because they are of Turkish ethnic origin or appear to be Turkish. The offender has a personal, deep rooted animosity towards people of Turkish origin".<sup>13</sup>

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<sup>9</sup> Interview with Yvonne Boulgarides, 17 September 2014.

<sup>10</sup> Interview with Yavuz Narin, 24 October 2015.

<sup>11</sup> Interview with Yvonne Boulgarides.

<sup>12</sup> Interview with Antonia von der Behrens, 16 November 2015.

<sup>13</sup> *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des*

However, the authorities in many other states did not agree with the conclusions reached by the BLKA and the Baden-Württemberg's State Criminal Affairs Department was asked to develop another case analysis. This was published on 30 January 2007 and excluded any possible racist motive for the murders. It concluded that the fact that most of the victims were of Turkish descent did not preclude the perpetrators also being of Turkish descent. Astonishingly, it pointed to the "rigid code of honour" of the perpetrators, stating that this meant those responsible could not have had a Western European background.<sup>14</sup>

According to lawyers who spoke to Amnesty International, several of the victims' relatives and other witnesses raised the possibility that the murders had been motivated by racism with the police. However, their views were either dismissed or not seriously investigated. For example, after the bombing in Keupstrasse (Cologne) in 2004, members of the Turkish community raised with the authorities the possibility that the attack could have been racially motivated. However, the General Prosecutor of North-Rhine Westphalia (where Cologne is situated) dismissed that hypothesis as in his opinion there was no concrete evidence to support it.<sup>15</sup> After the bombing, the Federal Office for the Protection of the Constitution, one of the German intelligence services, briefly considered the possible involvement of members of the far-right, but restricted its investigation to the area of Cologne. The authorities identified three suspects from the far-right scene, who were able to provide an alibi. They subsequently ended that line of enquiry.<sup>16</sup>

## 1.2 INVESTIGATIONS INTO THE NSU MURDERS AFTER 2011

In November 2011, police found the firearm used in nine of the murders in the apartment in Zwickau that was set alight by Beate Zschäpe. In addition, the video she sent to several policy makers and other political and religious stakeholders made clear the NSU's involvement in the murders.

In the burned out flat, the authorities found a list of about 10,000 potential targets for violent attack across Germany. They included asylum shelters, businesses owned by people from minority backgrounds, Turkish cultural and community organizations and left-wing organizations.<sup>17</sup>

Victims' families first heard about the NSU's involvement in the murders of their relatives from the media. Yvonne told Amnesty International: "When I found out from the media why my husband was killed I could not believe it. The fact that he was murdered because of who he was, because of how he looked, that racism was the motive for the murder made his death

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*Grundgesetzes*, p. 578.

<sup>14</sup> *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes*, p. 576.

<sup>15</sup> Interview with Yavuz Narin, 24 October 2015.

<sup>16</sup> Interview with a lawyer who preferred to remain anonymous. This information is also included in: Christian Fuchs, John Goetz, *Die Zelle. Rechter Terror in Deutschland*, 2012, <http://www.rowohlt.de/hardcover/christian-fuchs-die-zelle.html>.

<sup>17</sup> Interview with Yavuz Narin, 24 October 2015.

even more senseless".<sup>18</sup>

In January 2012, the German Federal Parliament established a Committee of Inquiry into the authorities' failure to effectively investigate the NSU murders and to bring those responsible to justice. On 22 August 2013, the Committee published its final report. This acknowledged the authorities' failures to take all reasonable steps to investigate the racist motive behind the murders. In particular, the report highlighted that authorities had continued to pursue their initial leads even when they proved to be blatantly inconclusive, had underestimated the potential threats posed by far-right structures in Germany and had dealt inadequately with the families of the victims. It also pointed to the poor coordination during investigations between the police forces and intelligence services at both the state and the federal levels.

The Committee addressed dozens of recommendations to authorities aimed at improving the investigation and prosecution of politically motivated crimes.<sup>19</sup> They included for instance the need for further cooperation between police and prosecutorial authorities in the investigation of politically motivated crimes, the revision of the criteria to classify and investigate these crimes and the need to build further intercultural competences within police services.

However, the report did not include any specific conclusion regarding the part that institutional racism may have played in the authorities' failures to investigate the murders as racist crimes. On 14 October 2015, the German Federal Parliament established another Committee of Inquiry focusing on two particular aspects of the cases that remained unclear: the role played by paid informants within the far-right scene, including the information that they may have had regarding the NSU; and the support that the three members of the NSU may have received from other individuals.<sup>20</sup>

The inquiry followed concerns raised by some lawyers and members of the Federal Parliament that the authorities had received information about the NSU before November 2011. Since the 1990s, dozens of members of the far-right scene have been cooperating with intelligence services in several states as informants.<sup>21</sup> It remains unclear to what extent those informants provided the authorities with reliable information on the three members of the NSU as well as on their supporters.<sup>22</sup> In particular, some of the informants, especially in Thuringia, were very close to far-right groups in which the three members of the NSU were active in the 1990s.<sup>23</sup>

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<sup>18</sup> Interview with Yvonne Boulgarides, 17 September 2014.

<sup>19</sup> *Beschlussempfehlung und Bericht des 2. Untersuchungsausschusses nach Artikel 44 des Grundgesetzes*, pp. 890-899. The implementation of some of the recommendations is reviewed in Chapter 3.

<sup>20</sup> Request regarding the establishment of a new Committee of Inquiry, 14 October 2015, <http://dip21.bundestag.de/dip21/btd/18/063/1806330.pdf> (accessed 23 April 2016).

<sup>21</sup> Some of these informants have been heard in the context of the trial of Beate Zschäpe and four NSU supporters, (interview with Sebastian Scharmer, 13 November 2015).

<sup>22</sup> Interviews with Sebastian Scharmer, Yavuz Nerin, Ulla Jelpke (MP), 13 November 2015, and with Irene Mihalic (MP), 12 November 2015.

<sup>23</sup> These included for example Tino Brandt, the leader of the far-right group *Thüringischer Heimatschutzes*

In the aftermath of the events of November 2011, which brought to light the involvement of the NSU in the murders, several hundred files stored at the Federal Office for the Protection of the Constitution were destroyed; the employee officially held responsible was disciplined. The uproar following the disclosure of this action resulted in the resignation of several heads of the intelligence services at both the federal and the state level. They included the head of the Federal Office for the Protection of the Constitution and the heads of the Offices for the Protection of the Constitution of Berlin, Saxony, Saxony-Anhalt and Thuringia.

At the time of writing, no inquiries had identified the specific authorities responsible for the failures in the investigation of the murders.

## CONCLUSIONS

Both the UN Committee on the Elimination of Racial Discrimination (CERD) and the Council of Europe Commissioner for Human Rights<sup>24</sup> have noted that some of the authorities' failures to effectively investigate the crimes perpetrated by the NSU point to institutional racism.

"Institutional racism" was defined in the report of the Committee of Inquiry led by Sir William Macpherson into the case of the racially motivated murder in the UK of Stephen Lawrence on 22 October 1993 as:

*"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people".<sup>25</sup>*

The Macpherson report concluded that institutional racism was apparent in the investigation into the murder of Stephen Lawrence and particularly in the treatment received by the family of the victim, the racial stereotyping of a witness and the failure of many officers to recognize

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(THS), who was an informant for the Thuringian Office for the Protection of the Constitution (*Thüringer Landesamtes für Verfassungsschutz*). See the report of the Thuringian Parliament's Committee of Inquiry into the NSU, *Bericht des Untersuchungsausschusses 5/1 "Rechtsterrorismus und Behördenhandeln*, 16 July 2014, [http://www.thueringer-landtag.de/mam/landtag/aktuell/2014\\_8/drs58080.pdf](http://www.thueringer-landtag.de/mam/landtag/aktuell/2014_8/drs58080.pdf) (accessed 23 April 2016).

<sup>24</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Germany on 24 April and from 4 to 8 May 2015, para. 184, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2810698&SecMode=1&DocId=2309354&Usage=2>; and CERD Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany (CERD/C/DEU/CO/19-22), advanced unedited version, 15 May 2015, [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Pakte\\_Konventionen/ICERD/icerd\\_state\\_report\\_germany\\_19-22\\_2013\\_CoObs\\_2015\\_advanced\\_en.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/ICERD/icerd_state_report_germany_19-22_2013_CoObs_2015_advanced_en.pdf) (accessed 23 April 2016).

<sup>25</sup> *The Stephen Lawrence Inquiry*, February 1999, para. 6.34, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf) (accessed 23 April 2016).

the murder as racially motivated.<sup>26</sup>

In a report to CERD and in meetings with Amnesty International, many lawyers, scholars and NGOs have also raised concerns about institutional racism as one of the underlying reasons for the failures by German authorities to effectively investigate the murders perpetrated by the NSU.<sup>27</sup>

The reluctance of the German police to adequately investigate the alleged racist motive behind the murders – exemplified by their discarding of the case analysis provided in 2006 by the Bavarian investigators, the stereotyping which they relied on to describe the profile of the perpetrators, and the treatment of family members – are all indicative of institutional racism. This is not to say that individual officers and investigators were racist themselves or that the authorities follow racist policies and practices, but to recognize that the authorities failed as institutions to ensure equal treatment irrespective of race or ethnicity.

It is beyond the scope of this report, and the resources of Amnesty International, to present a definitive conclusion as to the existence of institutional racism within the many diverse and inter-locking police authorities at both the federal and state levels. Its existence has, however, been posited by numerous international human rights bodies and many German NGOs working in this field. The research carried out for this report and presented in the following chapters also tends to the conclusion that there are broader structural and attitudinal reasons for some of the failures to investigate, prosecute and sentence hate crimes effectively. In the light of these widely articulated concerns, Amnesty International recommends that the German authorities, at both the state and federal, to carry out a wide ranging, independent, review into the possible existence of structural bias and widespread attitudes, which if not overtly racist or discriminatory, may yet be resulting in failures on the part of police authorities to identify and respond effectively to the full range of hate crimes.

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<sup>26</sup> *The Stephen Lawrence Inquiry*, para. 6.45.

<sup>27</sup> Institutional racism as exemplified by the case of the terror group “National Socialist Underground” (NSU) and necessary steps to protect individuals and groups against racial discrimination, 7 April 2015, [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DEU/INT\\_CERD\\_NGO\\_DEU\\_20170\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/DEU/INT_CERD_NGO_DEU_20170_E.pdf) (accessed 23 April 2016).

## 2. THE DUTY TO PROTECT PEOPLE FROM HATE CRIMES

Hate crimes target people because of their real or perceived links to a group defined by characteristics such as age, disability, ethnicity, gender, gender identity, race, sexual orientation and social or economic status. They constitute a form of discrimination because the target is chosen on the basis of personal characteristics that constitute protected grounds under international human rights law.<sup>28</sup>

Under international human rights law, states have an obligation to ensure that their agents and institutions do not discriminate against groups such as Black people, people of colour, asylum-seekers and refugees. States also have a positive obligation to protect everyone in their jurisdiction from acts of discrimination carried out by private individuals or groups.<sup>29</sup> This duty to protect applies to hate crimes, which are a specific manifestation of discrimination.

In order to fulfil their obligations, the authorities should put in place effective mechanisms to prevent, investigate, punish and provide redress for the harm caused by hate crimes perpetrated by private individuals or groups.<sup>30</sup> These should reflect the positive duty of the police to combat hate crime, and, when such crimes are committed, to investigate any possible discriminatory motives behind them. These duties should govern all police actions and be given due consideration when dealing with members of groups experiencing discrimination. In particular, the authorities should adopt laws and policies requiring law enforcement and judicial officials to investigate and prosecute as hate crimes all crimes that are partly or wholly motivated by discrimination. They should also monitor the implementation of these laws by collecting comprehensive data on hate crimes, which should constitute the basis for adopting informed decisions regarding legal amendments or other policy measures that need to be put in place to combat these crimes.

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<sup>28</sup> Discrimination is “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, all rights and freedoms”, Human Rights Committee, General Comment No. 18, para 7.

<sup>29</sup> Human Rights Committee, General Comment 31, para. 8, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YROIW6Txaxgp3f9kUFpWog%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuuJQRnbJEaUhby31WiQPI2mLFDe6ZSwMMvmQGVHA%3D%3D>, and CERD, General recommendation 20 on Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, para. 5, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7492&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7492&Lang=en) (accessed 23 April 2016).

<sup>30</sup> Article 2 para. 1 and 2 of the ICCPR, Article 2.1.a and 5b of the CERD.

Moreover, the authorities have a responsibility to ensure that victims of human rights abuses can access effective remedies. This requires launching effective, prompt, independent, adequate and thorough investigations aimed at identifying suspects as well as any alleged discriminatory motive associated with the crime. Those suspected of committing hate crimes should be prosecuted in proceedings that comply with international fair trial standards.

The UN Human Rights Committee, the body of independent experts responsible for monitoring states' compliance with their obligations under the International Covenant on Civil and Political Rights (ICCPR), has underlined that states must protect individuals from acts committed by private individuals or groups that would impair the enjoyment of the rights set out in the ICCPR, such as the right to non-discrimination, the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment. The Committee has stressed that states have an obligation to exercise due diligence to prevent, punish, investigate and provide redress for the harm caused by such acts.<sup>31</sup>

The European Court of Human Rights (European Court) has set out a comprehensive framework regarding the duty to investigate, in particular with regard to violations of Article 2 (right to life) and Article 3 (prohibition of torture or inhuman or degrading treatment or punishment) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Court has repeatedly stressed that states have a positive duty to conduct an investigation into any act that engages Articles 2 or 3 of the ECHR, which can include physical violence perpetrated by private individuals, if it results in death or amounts to inhuman or degrading treatment.<sup>32</sup>

This requires that the authorities carry out a prompt, effective, independent and thorough investigation capable of leading to the establishment of the facts and to the identification and punishment of those responsible. The Court has found violations of Articles 2 or 3 of the ECHR in situations where the authorities had failed to take reasonable steps to identify and punish the perpetrators of a violent crime.<sup>33</sup>

The prohibition of discrimination in the enjoyment of the rights set out by the relevant treaties (Article 14 of the ECHR and Article 2 of the ICCPR) imposes on states an additional duty with regards to crimes perpetrated with an alleged discriminatory motive. It requires the authorities to take all reasonable steps to unmask any discriminatory motive associated with a

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<sup>31</sup> Human Rights Committee, General Comment No. 18, para. 3.

<sup>32</sup> The European Court has considered treatment to be inhuman when, for example, it was premeditated, applied for hours at a stretch and caused either actual bodily harm or intense physical and mental suffering. It has deemed treatment to be degrading when it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. See for example *Ireland v the United Kingdom*, judgment of 18 January 1978, para. 167, and *I.I. v Bulgaria*, judgment of 9 June 2005, para. 67.

<sup>33</sup> For example, European Court of Human Rights, *Angelova and Iliev v. Bulgaria*, judgment of 26 July 2007; *Šečić v Croatia*, judgment of 31 August 2007; *Stoica v Romania*, judgment of 4 March 2008; *Milanović v Serbia*, judgment of 14 December 2010; *Abdu v Bulgaria*, judgment of 11 March 2014; and *Identoba and others v Georgia*, judgment of 11 May 2015.

crime. The European Court has stated that: “Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention”.<sup>34</sup>

## EUROPEAN UNION FRAMEWORK TO COMBAT RACISM AND XENOPHOBIA

Framework Decision 2008/913/JHA was adopted in 2008 with the aim of countering racism and xenophobia using the criminal law. Article 4 of the Framework Decision, which applies to crimes committed with racist or xenophobic motive, focuses exclusively on the penalties, requiring that member states ensure “that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties”. Article 46.2 of the German Criminal Code transposed Article 4 of the Framework Decision into German criminal law (see next sub-chapter).

The focus solely on penalties fails to reflect the duty in European human rights law to take all reasonable steps, especially during the investigative phase, to unmask a xenophobic or racist motive for hate crimes. As a result, and as the example of Germany shows, the transposition of the Framework Decision into national law, and specifically its Article 4, does not in itself ensure that in practice the authorities take all necessary steps, in the context of the criminal justice system, to respond to such crimes.

The European Commission should review Framework Decision 2008/913/JHA and ensure that any revised instrument explicitly requires states to identify any alleged discriminatory motive associated with a crime in the course of the investigation and to take any such motive into account in the prosecution of suspects.

## DEFINITION AND INVESTIGATION OF HATE CRIMES IN GERMANY

In Germany hate crimes are considered a specific type of politically motivated crimes (*Politisch motivierte Kriminalität*). Politically motivated crimes and hate crimes are not defined as such in the Criminal Code but in a system used by police since 2001, when authorities established a unified federal system for classifying, investigating and collecting data regarding politically motivated crimes (the PMK system).<sup>35</sup>

Under this system, several criminal offences constitute politically motivated crimes. These include any criminal offence targeting individuals on discriminatory grounds (hate crimes) as well as crimes that “counteract the democratic order or the stability and security of the nation”. The latter includes establishing an organization that challenges the democratic order or using symbols of an unconstitutional organization – e.g. Nazi symbols – (see Chapter 5). Politically motivated crimes are classified according to the ideology of their perpetrators.

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<sup>34</sup> European Court of Human Rights, *Abdu v Bulgaria*, judgment of 11 March 2014, para. 44.

<sup>35</sup> [http://www.bmi.bund.de/DE/Themen/Sicherheit/Kriminalitaetsbehaempfung/Politisch-motivierte-Kriminalitaet/politisch-motivierte-kriminalitaet\\_node.html](http://www.bmi.bund.de/DE/Themen/Sicherheit/Kriminalitaetsbehaempfung/Politisch-motivierte-Kriminalitaet/politisch-motivierte-kriminalitaet_node.html) (accessed 24 April 2016).

They include for example right-wing or left wing ideologies (see chapter 5).

In sum, any hate crime is a politically motivated crime, but there are many other politically motivated crimes which are not hate crimes (see chapter 5).

Although the organization of police forces is different in each of the 16 federated German states (*Bundesländer*), cooperation among the ministers of the interior have resulted in specialized police units or departments being tasked with the investigation of politically motivated crimes in all the states (see Chapter 3).

On the basis of Article 46 of the Criminal Code, courts should weigh both the circumstances in favour and against the perpetrator of a crime in the establishment of the sentence. Following a reform of Article 46.2 of the Criminal Code in 2015, courts must explicitly take into account any racist, xenophobic and other inhumane (*menschenverachtende*) motives, when sentencing. A racist motive could therefore result in a penalty enhancement (see chapter 3).

### 3. CONTINUING FAILURES TO ADDRESS HATE CRIME

“Although I was the one who had been beaten up and suffered injuries, I was treated as if it had been my fault... as soon as a police officer came on site, I was asked about my identity documents and then accused of disturbing public order... he didn’t talk to people around or anything... then he told me to go away”.

Eric S., a Black man who was attacked in 2013 in Aachen, North-Rhine Westphalia.

In response to the recommendations of the Federal Parliament’s Committee of Inquiry into the NSU murders, federal and regional authorities have introduced a number of reforms. They have, for example, established more specialized police structures responsible for investigating politically motivated crimes, including hate crimes. They have also amended Article 46.2 of the Criminal Code to explicitly require courts to take into account any racist, xenophobic or other discriminatory motive in sentencing.

In his 2015 report on Germany, the Council of Europe Commissioner for Human Rights referred to a range of measures that the authorities had put in place since late 2011, but raised concerns “that these measures only marginally address what appears to lie at the root of the NSU affair, namely the structural bias in German law enforcement which led to a failure to see and acknowledge the racist dimension of the crimes”.<sup>36</sup>

According to almost all the representatives of the 48 civil society organizations that Amnesty International interviewed, serious concerns continued to persist with regards to the classification and investigation of racist crimes by police. In particular, all the organizations providing support to victims of hate crimes met by Amnesty International highlighted two problematic areas. They included the poor application of the PMK system by police, which

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<sup>36</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, para. 184, p. 37.

results in many hate crimes being classified and investigated as common crimes (see Chapter 5) and the lack of police diligence in the early phases in the investigation.<sup>37</sup>

In several cases documented by Amnesty International after 2011, the police demonstrated a lack of diligence in identifying crimes perpetrated with a possible racist motive and in taking the necessary steps to launch an effective and thorough investigation into those crimes, including their motivation. In many of these cases, initial failures on the part of the police hampered the effectiveness of the investigations. For example, the police failed to collect evidence and witness statements, which were crucial for an effective investigation, at the crime scene. Moreover, in some cases, the police failed to give due consideration to, and record factors pointing to, a possible racist motive behind crimes they were tasked to investigate.

### 3.1 INVESTIGATION OF HATE CRIMES IN GERMANY

Under German criminal law, a criminal investigation can be carried out by the Prosecutor's Office or by the police (Article 161.1 of the Code of Criminal Procedure).<sup>38</sup> In practice, police and prosecutors cooperate closely when investigating the most serious crimes, such as murder. In other cases, criminal investigations are usually carried out by the police, although specific measures needed in the course of the investigation, including searches or arrests, must always be authorized by prosecutors.<sup>39</sup>

Law enforcement is the responsibility of each of the 16 federated German states (*Bundesländer*). Each state has a police force controlled by a state minister of the interior and governed by a specific law (*Polizeigesetz*). There is also a federal level police force, which is responsible for areas such as border control, law enforcement at airports and railway security.

The interior ministers of the 16 federated states cooperate closely in the areas of internal security and intelligence. Since 1954, they have met twice a year in the context of the Permanent Conference of the Ministers of the Interior (*Ständige Konferenz der Innenminister und senatoren der Länder, IMK*).<sup>40</sup>

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<sup>37</sup> Interview with representatives of RAA (Saxony), 8 May 2014; BUD (Bavaria), 16 September 2014; Mobile Beratung für Opfer rechter Gewalt (Saxony-Anhalt), 25 September 2014; Reachout (Berlin), 29 September 2014; Berliner Register (Berlin), 19 August 2015; EZRA (Thuringia), 10 November 2015; and Opferperspective (Brandenburg), 12 November 2015.

<sup>38</sup> An official English translation of the German Code of Criminal Procedure is available at [http://www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html](http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html) (accessed 23 April 2016).

<sup>39</sup> Meetings with representatives of the Prosecutor's Offices of Munich, Nuremberg, Bamberg (Bavaria), 19 September 2014 and of the Prosecutor's Offices of Dresden, Leipzig and Chemnitz (Saxony), 23 September 2014.

<sup>40</sup> The Federal Minister of the Interior participates in the IMK but has no voting rights. Decision are taken unanimously. Six permanent working groups, composed of heads of ministerial departments, prepare the regular meetings of the IMK. The preparatory work is reviewed and validated by state secretaries before each regular meeting of the IMK. For more information (in German) see

The IMK is responsible for taking decisions concerning the data collection system for, and the guidelines for police investigations of, politically motivated crimes, which include hate crimes (see terminology and Chapter 5). Police forces in each state record and investigate hate crimes on the basis of the same definitions and guidelines. Although the organization of police forces is different in each of the 16 states, cooperation among the ministers of the interior and the long-standing specific focus on combating politically motivated crimes have resulted in specialized police units or departments being tasked with the investigation of politically motivated crimes in all the states.<sup>41</sup>

For example, in the southern German state of Bavaria (population 12.5 million), the Bavarian State Criminal Affairs Department (*Bayerisches Landeskriminalamt*, BLKA) is responsible for centralizing the information concerning politically motivated crimes in Bavaria and compiling statistics. The BLKA is usually not directly involved in criminal investigations,<sup>42</sup> which fall within the remit of the 28 police criminal investigation departments (*Kriminalpolizeiinspektionen*) operating in the state. Specialized units or departments (*Kriminalfachdezernat Staatsschutz* or *Kommissariat Staatsschutz*) are exclusively responsible for the investigation of politically motivated crimes, including hate crimes, once identified as such. In the aftermath of the failures identified by the parliamentary inquiry into the NSU murders (see Chapter 2), eight new police units (*Kommissariat Operativer Staatsschutz*) charged with the investigation of politically motivated crimes have been established in rural areas in Bavaria where no specialized units had previously operated.

The most serious crimes including arson, assault, murder and robbery are usually investigated by the criminal police. The specialized units are involved in the investigation only when there are elements suggesting that a crime could be politically motivated, including when allegedly associated with a discriminatory motive. In these cases, the regular police pass on the investigation of the case to a specialized unit. According to the representatives of the BLKA, some offences, including attacks against asylum accommodation or synagogues, are normally investigated by the specialized units as they are usually considered to be politically motivated crimes from the very outset.<sup>43</sup>

In the eastern German state of Saxony (population over 4 million), special units (*Polizeilicher Staatsschutz*) dealing exclusively with the investigation of politically motivated crimes operate within each of the five police directorates in the state (*Polizeidirektionen*). Moreover, in the aftermath of the inquiry into the NSU, a special centralized mechanism, the *Operatives Abwehrzentrum*, has been established within the Leipzig Police Directorate to

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<http://www.innenministerkonferenz.de> (accessed 23 April 2016).

<sup>41</sup> Meetings with representatives of the Federal Ministry of the Interior and the Federal Criminal Affairs Department, 30 September 2014; the Federal Police, 1 October 2014; the Berlin Ministry of the Interior, 26 September 2014; the Saxony State Criminal Affairs Department and the OAZ, 23 September 2014; the Bavarian State Criminal Affairs Department, 17 September 2014; the Munich Polizeipraesidium 17 September 2014; and the Polizeipraesidium Mittelfranken, Nuremberg, 16 September 2014.

<sup>42</sup> Meeting with the Bavarian State Criminal Affairs Department, 17 September 2014.

<sup>43</sup> Meeting with the Bavarian State Criminal Affairs Department, 17 September 2014.

investigate the most complicated politically motivated crimes.<sup>44</sup>

The identification of a crime as a politically motivated, or more specifically as a hate crime, and the standards and procedures to be followed in the investigation are spelled out in several sets of federal guidelines that are restricted and thus not available to the public (see Chapter 5).<sup>45</sup> The classification of some criminal offences as politically motivated crimes is automatic. Some crimes, such as the dissemination of propaganda materials of unconstitutional organizations or the use of their symbols (Article 86 and 86a of the Criminal Code) are always considered to be politically motivated.

It is less clear what elements the police are required to take into account when deciding whether or not to classify a crime as a hate crime. In interviews with Amnesty International, police officials explained that the use of racist language associated with a crime was indicative of a possible discriminatory motive. Most of the police officials interviewed by Amnesty International were of the opinion that the victim's perception regarding a possible discriminatory motive was not sufficient, in absence of other elements, to classify a crime as a hate crime.

The police can modify the classification of a crime in the course of the investigation if new elements are unearthed. In practice, the effectiveness of this system strongly relies on the capacity of regular police forces to detect elements associated with a crime that could point to a discriminatory motive and to classify those crimes as politically motivated, and, more specifically, as hate crimes.

The cases analysed by Amnesty International, and the views of lawyers and NGOs working in this field, suggest that this is where the greatest weakness in how hate crimes are dealt with lies. This weakness will not be resolved by addition of more special units, but by a more thorough review of practices and - often unspoken - assumptions of frontline police officers. It is at this stage that a sensitivity to hate motives and a commitment to combating hate crime must be ingrained.

### 3.2 LACK OF DILIGENCE BY POLICE

*"Police did not take Hussein seriously when he described the physical violence against him. For example, when he reported that the woman who had attacked him made a Hitler salute and said 'Heil Hitler', they asked him: 'Was it really a Hitler salute?' Then, one officer referred to 'mud wrestling' when Hussein said the woman smashed a big glass on his head...Although three people witnessed the racist language being used by the suspects, officials were still reluctant to consider the attack as racially motivated. This would be different if the victim was White and middle-class."*

Ricarda Lang, lawyer representing Hussein, who was racially assaulted in Bavaria on 20 September 2014

The early phases of an investigation, in which police collect statements from victims and

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<sup>44</sup> Meeting with the Saxony State Criminal Affairs Department and the OAZ, 23 September 2014

<sup>45</sup> Meeting with the Federal Ministry of the Interior and the Federal Criminal Affairs Department, 30 September 2014.

witnesses and secure evidence at the crime scene, fall within the remit of the regular police. Investigators operating in specialized units focusing on politically motivated crimes are usually not involved at this stage. Diligence by police in identifying relevant evidence is crucial in the early phases immediately after the crime has been discovered in order to ensure an effective investigation in the subsequent stages. This includes identifying at an early stage any evidence pointing to a possible discriminatory motive for the crime that should result in its classification as a hate crime.

In some instances, police have failed to take all reasonable steps to launch a prompt and effective investigation into crimes perpetrated against Black people, people of colour and other minorities. For example, in the case of **Eric S.**, they failed to register his statement, to seek eyewitnesses at the crime scene and to promptly launch an investigation.

In February 2013, Eric, a Black man originally from Cameroon, was physically assaulted by three private guards at a public fair in Aachen (North-Rhine Westphalia). He told Amnesty International that the guards had denied him access to the event, as they had done in previous years: "I think that's because I am Black and foreigner. I had often been prevented from accessing clubs and other public events in the past. In this case they told me the event was full but I saw many people getting in at the same time".<sup>46</sup>

When Eric insisted on getting into the event and refused to leave, three guards physically assaulted him. Eric told Amnesty International that one guard in particular hit him in the neck several times. The police officer who arrived at the scene refused to register Eric's testimony or to seek eyewitnesses in the area. This meant important evidence about the attack was not collected.

Eric said: "He took the guards' statements and then treated me as if I were the one responsible for what happened. He asked to see my ID and then noted down in his report that I was threatening public order without asking me any questions or allowing me to explain my point of view. Despite my visible injuries, he told me to go away as fast as possible."

The injuries Eric suffered as a result of the assault had a lasting effect. He was on sick leave from work for three days and required four months of treatment for his neck injuries. One week after the attack, Eric contacted a support group for victims of right-wing violence who accompanied him to the police station to file a complaint. He told the authorities that he thought the assault had a racist motive. One guard was subsequently charged with causing bodily injuries. Neither the Prosecutor's Office nor the court took into account the possible discriminatory motive behind the attack.<sup>47</sup> The guard was eventually acquitted as there was insufficient evidence that he was the person who had assaulted Eric.

In the case of **Abdurrahman E.**, a Turkish national assaulted on 21 September 2013, police failed to secure evidence at the crime scene and to protect the victims from further threats of violence. Abdurrahman, who had lived in Germany for many years, was attacked at the

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<sup>46</sup> Phone interview with Eric S., 7 April 2015. Eric S. is a pseudonym.

<sup>47</sup> Phone interviews with Eric on 7 April 2015 and 31 March 2016.

Bernburg railway station (Saxony-Anhalt) by a group of nine men.<sup>48</sup> At about 9pm, Abdurrahman was shutting his kebab shop, located on one of the platforms inside the train station. He was with Anne S., his partner, and a friend. Nine men approached the shop. They were going to a bachelor's party and were drinking beer. Abdurrahman and Anne told Amnesty International that one of the men called her a "Turk's whore" (*Türkenschlampe*). When Abdurrahman tried to calm him down, the man smashed a bottle in his face. Abdurrahman was subsequently kicked by the men and hit with an air pump that they were carrying with them.

Anne called the police, who arrived on the scene after a few minutes. According to both Anne and Abdurrahman, police failed to protect them from further threats of violence from the group and to secure evidence at the crime scene. In particular, only two police officers were designated to escort the nine suspects to the police station. Initially, they walked along the rail tracks towards the direction of the police station. When one of them tried to run away by crossing the tracks, the two officers decided to reach the police station by following another path, which required them going back to the crime scene, where paramedics were treating Abdurrahman. One of the suspects approached Anne and threatened her with a beer bottle. Anne said the nine men were still drinking beer and smoking while being escorted to the police station. When Anne reached the police station, she was asked to wait in the same room where the men were sitting. She refused and was allowed to sit in a room nearby.

According to Anne, Abdurrahman and their lawyer, police failed to secure evidence both at the crime scene and later at the police station. For example, Anne found the mobile phone of one of the attackers on a bench at the crime scene and noticed that the screensaver displayed a picture of Hitler. She gave the phone to a police officer at the crime scene, who promptly returned it to its owner. Moreover, police did not seize the air pump that was used to hit Abdurrahman, but gave it back to the perpetrators. As a result the air pump disappeared and was not found in a subsequent police search of the house of one of the suspects.

Abdurrahman suffered life-threatening injuries. He was put into an induced coma for five days and remained at the hospital for four weeks. Although the attack was investigated by a specialized police unit which took into account the discriminatory motive and classified the attack as a politically motivated crime, some of the police failures in the early stages of the investigation had negative consequences on the prosecution and trial of suspects. For example, the air pump used by the suspects to hit Abdurrahman was subsequently never found by authorities. This strengthened the suspects' argument that they had attacked Abdurrahman partially in self-defence. The racist motive was only partially taken into account by the court (see Section 3.3.2 below).

In other cases, police failed to take into account elements that pointed to a potential discriminatory motive behind violent crimes, to register those crimes as hate crimes and to launch a thorough investigation into them conducted by a specialized unit.

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<sup>48</sup> Interview with Anne S., Abdurrahman E. and a counsellor from Mobile Opferberatung, a support group for victims of hate crimes in Saxony-Anhalt, who counselled them, 25 September 2014.

On 21 February 2015 between 1am and 1.30am, **Savas T.**, a young man of Turkish descent, was attacked by two men in a nightclub in a town near Regensburg (Bavaria). Savas told Amnesty International: “Two men followed me to the toilet. Then they insulted me, they said ‘Shitty Foreigner’ and ‘Heil Hitler’ and they performed the Nazi salute. As soon as I replied by saying ‘shitty Nazis’, they hit me, pushed me to the floor and started kicking me. At some point, after a while, the friend I was with at the club came down to the toilet. The two men stopped kicking me. The security guards of the club kicked us all out of the club, I was injured and I told them to call the police but they did not do anything. My attackers were able simply to walk away.”<sup>49</sup>

Savas called the police immediately after being thrown out of the club by the security guards. According to him, police arrived one hour later, even though the police station was only a few hundred metres from the club. While waiting, Savas and his friend tried to find the two attackers. They noticed one of them in a nearby club and they asked the security guards to prevent him from leaving until the police arrived. Savas told Amnesty International that he had the impression the police did not believe him. He said: “Two police officers finally arrived, I told them about the attack, the racist insults and the Nazi salute. I also indicated that one of the attackers was in the club. One officer questioned my testimony and asked if I had been ‘cheeky’. They noted down both my personal details and those of one of the attackers, the one who was in the club. He claimed the other guy had been the only one attacking me and he said he did not know him. My friend explained that that was not true and gave his statement. Police did not ask us to go to the station for further questioning or anything. They did not believe me. I went to the police station the morning after, they had no further questions. I showed them the medical records certifying the injuries I had suffered. They included those details in the crime report only because I insisted several times”.

Savas’ lawyer stated that police initially did not classify the attack as a hate crime and overlooked the elements pointing to a possible discriminatory motive for the attack. However, following some pressure from the lawyer, a specialized police unit responsible for politically motivated crimes took up the investigation. Their investigation was concluded in May 2016 and found that the two suspects had racially insulted Savas before attacking him. However, the alleged racist motive was not taken into account by the Prosecutor’s Office (see Section 3.3).<sup>50</sup>

In the case of **Hussein T.**, a Jordanian student who had been living in Germany for 10 years, police failed to promptly collect his statement and to register the alleged racist motive reported by witnesses. According to Hussein, on 20 September 2014, he was attacked by a couple, a man and a woman, in a cafe. Hussein was sitting at a table with three friends when he leaned backwards on his chair and bumped into a man who was sitting behind. Hussein said the man had immediately started to racially insulting him, calling him a “Shitty

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<sup>49</sup> Phone interview with Savas T., 19 March 2015. Savas T. is a pseudonym. His real name and the name of the town where the attack took place have been withheld in accordance with his informed consent.

<sup>50</sup> Meeting with Ricarda Lang, Savas’ lawyer, 24 October 2015. Phone interview with Ricarda Lang, 8 April 2016.

foreigner". He then hit Hussein who was still sitting on his chair. When Hussein tried to push him away, his partner smashed a large, heavy beer glass on Hussein's head and he fell to the floor.<sup>51</sup>

One of Hussein's friends called the police and an ambulance. Meanwhile, the two attackers continued to insult Hussein. In particular, the woman said: "Fucking foreigner! Germany to Germans! Go back to the hole from you crawled out of" and performed the Nazi salute several times.

While he was being treated by paramedics at the crime scene, Hussein asked to give his statement to police. A police officer explained to him that they would first collect statements from the witnesses and they would take his statement later on at the hospital. However, that never happened. Hussein remained in hospital for five days. He had to undergo an emergency operation for his broken ankle and was treated for a wound on the back of his head. No police officer went to the hospital to take his statement during that time.

While still at the hospital, one of the friends who had witnessed the attack informed Hussein that police had not registered her statement properly. In particular, police failed to record the racist insults against Hussein.

Ten days after the attack, when Hussein went to the police station to try to get more information about the case, he was told that the case had not been registered as a racist crime and suggested Hussein call another police officer for more information and gave him the number. Hussein tried to call several times, but no one ever picked up the phone.

Shortly afterwards, police informed Hussein in writing that a complaint for inflicting bodily harm had been filed against him by the couple who had attacked him. Hussein contacted a grassroots organization which helped him publicize the case. At a press conference, Hussein and his friends talked about the physical attack and the racist motive behind it. On 14 October, in the aftermath of the public pressure triggered by the publicity, a specialized police unit tasked with investigating politically motivated crimes took over the investigation into the attack. All the witnesses had to be heard again as police claimed that the statements they had collected previously had been lost.

In January 2015, the Prosecutor's Office dropped the charges against Hussein on the basis of the consistent statements from witnesses that he had not physically assaulted the couple. The prosecutor indicted the couple who had attacked Hussein on charges of causing bodily harm, but did not take into account the alleged racist motive. The prosecutor described the racist insults against Hussein in the indictment but pointed out that, as they were uttered only after the assault, they could not be seen as an element proving the motive of the attack. The prosecutor argued that no witnesses had heard the man insulting Hussein before the

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<sup>51</sup> Phone interview with Hussein T., 28 October 2014, and interview with Hussein T., 25 October 2015. Hussein T. is a pseudonym. His real name as well as other personal details, including the place of residence, have been withheld in accordance with his informed consent.

attack.<sup>52</sup>

In October 2015, Hussein told Amnesty International that he had experienced difficulties renewing his residence permit because the case was still pending; his permit was only extended for six months, until May 2016, instead of the usual two years. Hussein told Amnesty International: "I just would like to have my residence permit and to work as a doctor in Germany. I have always tried to live my life discreetly in Germany and to stay away from problems. I would like my case to be treated as a racist crime. That would give me the impression that I am not on my own, that I could trust police and authorities, that they would operate fairly, irrespective of whether the victims or the perpetrators are foreigners or not".<sup>53</sup> In February 2016, following a mediation procedure (in line with Article 153a of the Code of Criminal Procedure) between Hussein and the perpetrators, the couple was convicted of causing bodily injuries and the woman was also convicted of making insults and using symbols of an unconstitutional organization. The woman was given an eight-month suspended sentence and the man was ordered to pay €5,000 compensation to Hussein.<sup>54</sup>

## CONCLUSIONS

The cases outlined above all contain elements pointing to the failure by the police to conduct effective, impartial, adequate, prompt and thorough investigations into racist hate crimes, in violation of both Article 3 ECHR and the principle of non-discrimination set out in Article 14 ECHR.

The law enforcement failures highlighted are consistent with those more widely alleged by lawyers and civil society activists Amnesty International interviewed while researching this report - in particular in respect of the initial identification of and response to indicators of racist motivations. Obtaining an accurate picture of the full extent of these short-comings, and their causes, requires an inquiry on a scale and using a methodology beyond Amnesty International's abilities. Given the importance of addressing hate crimes, and the rise in recorded incidents, partially linked to the arrival of over a million asylum seekers last year, Amnesty International recommends that the German authorities establish a wide-ranging, independent inquiry into how hate crime is tackled by police authorities with a mandate to make recommendations for how it can be improved.

## LACK OF AN INDEPENDENT MECHANISM TO INVESTIGATE ALLEGATIONS OF RACIST ILL-TREATMENT BY POLICE

The main focus of this report is on the obligation of the state and its officials to protect people against hate crimes by private actors.

However, civil society organizations, including victim support groups and lawyers, in Germany regularly report cases of police ill-treatment against Black people, people of colour, asylum-seekers and refugees as well as

<sup>52</sup> Meeting with Ricarda Lang, Hussein's lawyer, 24 October 2015.

<sup>53</sup> Interview with Hussein, 25 October 2015.

<sup>54</sup> Judgment of the Regensburg Court (*Amtsgericht Regensburg*) of 8 February 2016.

members of other minorities.<sup>55</sup> For example, the civil society organization KOP (*Kampagne für Opfer Rassistischer Polizeigewalt, Campaign for Victims of Racist Police Violence*) collected about 40 cases of alleged racist police ill-treatment against members of minority groups in Berlin between 2013 and the June 2015.<sup>56</sup>

Whilst not all police ill-treatment of members of minority groups is necessarily motivated by discrimination, any ill-treatment by the police is a human rights violation and should be investigated accordingly.

Human rights treaty bodies and other human rights bodies, including the UN Human Rights Committee, the UN Committee against Torture and the Council of Europe Commissioner for Human Rights, have repeatedly raised concerns regarding the lack of an independent mechanism to investigate allegations of police ill-treatment, especially at the federal level.<sup>57</sup> The authorities do not collect data disaggregated by the ethnicity of the victims of alleged police ill-treatment. Nor do they collect specific data on alleged hate crimes perpetrated by police.

Independent external bodies are a crucial element of the mechanisms required to ensure effective oversight of the police, including investigations into such allegations.<sup>58</sup> Independent bodies can also play an important role in identifying ethnic profiling practices and urging the police to take corrective action.

Since Amnesty International raised concerns in 2010 regarding the lack of an independent mechanism to investigate allegations of ill-treatment by police,<sup>59</sup> some improvements have been made, especially at the state level. For example, since December 2013, criminal allegations against the Bavarian police have been investigated by a specialized unit (*Dezernat 13*) of the State Criminal Affairs Department (*Landeskriminalamt*).<sup>60</sup> However, this mechanism fell short of full independence as the specialized unit tasked with investigating allegations against law enforcement agents remained a police authority.

In some states, including Bavaria and Saxony, specialized units within the Public Prosecutor's Office

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<sup>55</sup> Meetings with Initiative Schwarze Menschen in Deutschland, 8 May 2014, *Kampagne für Opfer Rassistischer Polizeigewalt*, 25 August 2015 and Sven Adams, 17 November 2015.

<sup>56</sup> KOP, "Chronik rassistisch motivierter Polizeivorfälle für Berlin in den Jahren von 2000 bis 2014", <https://www.kop-berlin.de/files/documents/chronik.pdf> (accessed 24 April 2016).

<sup>57</sup> Committee against Torture, Concluding observations on Germany, 2011, para. 19; Human Rights Committee, Concluding observations on Germany, 2012, para. 10; Council of Europe Commissioner for Human Rights' report following his visit to Germany, 2015, para. 41.

<sup>58</sup> See Council of Europe, Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police (2009), CommDH (2009) 4, <https://wcd.coe.int/ViewDoc.jsp?p=&id=1417857> (accessed 24 April 2016). See also Amnesty International Dutch Section, *Police oversight: Police and Human Rights Programme – Short paper series No. 2*, January 2015, [https://www.amnesty.nl/sites/default/files/public/police\\_oversight\\_light\\_def\\_for\\_website\\_phrp.pdf](https://www.amnesty.nl/sites/default/files/public/police_oversight_light_def_for_website_phrp.pdf).

<sup>59</sup> Amnesty International, *Unknown Assailant: Insufficient investigation into alleged ill-treatment by police in Germany* (Index: EUR 23/002/2010).

<sup>60</sup> Meeting with the Bavarian State Criminal Investigation Department, 17 September 2014.

investigate criminal allegations against police.<sup>61</sup> In other states, more independent mechanisms have been established, including for example in Rhineland-Palatine, where a Commissioner for the Police (*Beauftragter für die Landespolizei*) deals with citizens' complaints of alleged police ill-treatment.<sup>62</sup>

Lawyers told Amnesty International that victims of alleged police ill-treatment seeking redress continues to face a number of barriers. They said that often police file complaints for defamation, insults or resisting arrest against those who report ill-treatment at the hands of the police.<sup>63</sup> Due to the lack independent mechanisms, victims do not have equal arms to counteract complaints filed by police and to seek redress for the human rights violations they suffered.

### 3.3 RACIST MOTIVE OVERLOOKED BY JUDICIAL AUTHORITIES

The failure to respond appropriately to discriminatory offences also manifests itself in the prosecution and sentencing of hate crimes. Human rights bodies have repeatedly highlighted the importance of prosecuting racist crimes.<sup>64</sup> Moreover, European Union law establishes that courts should take into account any racist or xenophobic motive associated with a crime in the sentencing phase.<sup>65</sup>

Despite the existence of laws and guidelines imposing a duty on German prosecutors and courts to take into account any alleged discriminatory motive in the prosecution and sentencing phases, judicial authorities appear on occasion to be reluctant to do so, despite a number of recent positive reforms. In a positive sign of a growing sensitivity to shortcomings in the judicial treatment of hate motives, the ministers of justice of the 16 states and the Federal Minister of Justice expressed serious concern about the rise in hate crimes and called for better cooperation between authorities at different levels following a joint meeting on 17 March 2016. They also stressed the need to collect thorough data on prosecutions and convictions for hate crime and for training programmes on hate crimes to be developed for judges and prosecutors.<sup>66</sup>

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<sup>61</sup> Meetings with representatives of the Prosecutor's Offices in Munich, Nuremberg, Bamberg (Bavaria), 19 September 2014; and the Prosecutor's Offices in Dresden, Leipzig and Chemnitz (Saxony), 23 September 2014.

<sup>62</sup> More information is available on the website of the State Parliament of Rhineland-Palatinate, <http://www.landtag.rlp.de/Parlament/Buergerbeauftragter-und-Beauftragter-fuer-die-Landespolizei/> (accessed 24 April 2016).

<sup>63</sup> Interview with Hans-Eberhard Schultz, 12 November 2015, and Sven Adams, 17 November 2015.

<sup>64</sup> CERD, General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 15. European Committee against Racism and Intolerance, General Policy Recommendation no. 1: combating racism, xenophobia, anti-semitism and intolerance, p.5.

<sup>65</sup> Framework Decision 2008/913/JHA of 28 November 2008 to combat certain forms of racism and xenophobia by means of criminal law, Article 4.

<sup>66</sup> Public statement released after the meeting, [http://www.bmjv.de/SharedDocs/Downloads/DE/Artikel/03172016\\_Abschlusserklaerung\\_Justizgipfel.pdf?\\_\\_blob=publicationFile&v=1](http://www.bmjv.de/SharedDocs/Downloads/DE/Artikel/03172016_Abschlusserklaerung_Justizgipfel.pdf?__blob=publicationFile&v=1) (accessed 23 April 2016).

### 3.3.1 PROSECUTION AND SENTENCING OF RACIST HATE CRIMES

*"The attack may have been motivated by racism, the judge has to decide. If it was a racist attack, I would be really sad because it means that this could happen to me again and again".*

Madou D., a Black asylum-seeker who was attacked in Bavaria

Prosecutors are responsible for the investigation of criminal offences.<sup>67</sup> In practice, as highlighted in the previous chapter, police carry out most of the investigations.

In meetings with Amnesty International, prosecutors stressed that the motives behind a crime, including any discriminatory motive, must be established in the course of an investigation, taken into account in the prosecution of suspects and, thus, reflected in the indictment.<sup>68</sup> Moreover, the Federal Ministry of Justice guidelines on criminal proceedings and fines (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*) state that any racist, xenophobic or inhumane motive associated with a crime should be taken into account in the investigation.<sup>69</sup>

Under German Criminal Law, prosecutors can decide not to prosecute some less serious criminal offences if the victim does not specifically request prosecution and if they judge that there is no public interest in prosecuting the case.<sup>70</sup> The prosecutors who spoke to Amnesty International pointed out that, in practice, any offence associated with a discriminatory motive is prosecuted on the basis of public interest.<sup>71</sup>

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<sup>67</sup> The organization of the prosecuting authorities is established by the Courts Constitution Act (*Gerichtsverfassungsgesetz, GVG*), Articles 142-152. Prosecutor's Offices are established for each court and come within the competence of the states (Länder). The Prosecutor's Offices at state level come under the authority of the ministry of justice of each state. The Federal Public Prosecutor's Office is established at the level of the Federal Court of Justice (*Bundesgerichtshof*) and comes under the authority of the Federal Ministry of Justice.

<sup>68</sup> Meeting with representatives of the Prosecutor's Offices in Munich, Bamberg and Nuremberg and the Bavarian Ministry of Justice, 19 September 2014. Meeting with representatives of the Prosecutor's Offices of Leipzig, Dresden and Chemnitz, 23 September 2014. Article 160.3 of the Code of Criminal Procedure states that "the investigations of the public prosecutor's office shall extend also to the circumstances which are important for the determination of the legal consequences of the act. For this purpose it may avail itself of the service of the court assistance agency", [https://www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html#p1331](https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1331) (accessed 23 April 2016).

<sup>69</sup> Paragraph 15. The guidelines are available in German at [http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund\\_01011977\\_420821R5902002.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_01011977_420821R5902002.htm) (accessed 23 April 2016).

<sup>70</sup> These offences (*Antragsdelikte*) include, for example, causing bodily injuries intentionally (Article 223 of the Criminal Code in conjunction with 230), negligence resulting in bodily injuries (Article 229 in conjunction with 230) and damage to property (Article 303 in conjunction with 303c). As of 1 August 2015, a public interest is established when a crime is associated to a racist, xenophobic or otherwise discriminatory motive (Article 86 of the Guidelines of the Federal Ministry of Justice on criminal proceedings and fines (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*)).

<sup>71</sup> Meeting with representatives of the Prosecutor's Offices in Munich, Bamberg and Nuremberg, 19

Special units or specialized prosecutors, depending on the size of each Prosecutor's Office, are responsible for prosecuting crimes classified by the police as politically motivated, which includes hate crimes.

According to Article 46 of the Criminal Code, courts have a general duty take into account all the circumstances associated with a crime, including both attenuating and aggravating ones, when setting sentences. On 19 March 2015, the Federal Parliament passed a government-backed amendment of Article 46.2 of the Criminal Code.<sup>72</sup> The amended Article requires courts to take into account the motives of the perpetrators and specifically racist, xenophobic and other inhumane (*menschenverachtende*) motives, when sentencing.<sup>73</sup> On the basis of this Article, a racist motive could result in a penalty enhancement.

The Federal Ministry of Justice argued that the amendment would result in increased awareness among judges, but also among prosecutors and the police, of hate crimes.<sup>74</sup> Some judicial officials noted that while the amendment could raise the awareness of judges and prosecutors, it would have no effect on investigations, especially at the police level.<sup>75</sup>

In 2014, some civil society organizations, including support groups for victims of hate crimes, told Amnesty International that this reform would not be very significant as it would not improve the classification and police investigation of hate crimes. The proposal also failed to provide an explicit legal basis for courts to take into account other discriminatory motives, such as homophobia and transphobia.<sup>76</sup>

German authorities do not collect data regarding the application of Article 46 by courts (see chapter 5). Research undertaken by academics and journalists before the amendment of Article 46.2 of the Criminal Code pointed to the fact that courts often did not take into account the racist motive in the phase of sentencing. In the absence of official data, it is not possible to draw general conclusions on the impact of the reform of the Criminal Code (see Chapter 5).<sup>77</sup> However, some lawyers of victims of racist crimes argued that the reform had not – or at least not yet – substantially raised the awareness of judges on racism, discrimination and hate crimes.

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September 2014 and with representatives of the Prosecutor's Offices of Leipzig, Dresden and Chemnitz, 23 September 2014.

<sup>72</sup> [https://www.bundestag.de/dokumente/textarchiv/2015/kw12\\_de\\_nsu/364372](https://www.bundestag.de/dokumente/textarchiv/2015/kw12_de_nsu/364372) (accessed 23 April 2016).

<sup>73</sup> In German: "*die Beweggründe und die Ziele des Täters, besonders auch rassistische, fremdenfeindliche oder sonstige menschenverachtende*".

<sup>74</sup> Meeting with the Federal Ministry of Justice, 1 October 2014.

<sup>75</sup> Meeting with prosecutors in Saxony, 23 September 2014.

<sup>76</sup> Interview with the LSVD (Lesben- und Schwulenverband in Deutschland) LGBT organization, 5 May 2014.

<sup>77</sup> Information from the project is available to the public at <http://www.zeit.de/gesellschaft/zeitgeschehen/todesopfer-rechter-gewalt> (accessed 24 April 2016).

### 3.3.2 SHORTCOMINGS IN THE PROSECUTION AND TRIAL OF RACIST HATE CRIMES

In some of the cases documented by Amnesty International, prosecutors failed to take into account the alleged racist motive behind violent crimes. For example, in the case of **Savas T.**, a man of Turkish descent who was attacked on 21 February 2015 by two men who had racially insulted him and who performed the Hitler salute (see above), the prosecutor did not take into account the racial motivation for the attack. Even though the prosecutor charged both suspects with causing bodily injuries (Article 224 of the Criminal Code) and one man with making verbal insults (Article 185 of the Criminal Code), he did not consider the racial abuse to be indicative of a probable racist motive.<sup>78</sup>

In the case of **Nawal A.**, a Lebanese refugee who has been living in Pirna (Saxony) since 2008, the Prosecutor's Office decided not to prosecute those responsible for attacking her and causing bodily injuries on the basis that there was insufficient public interest in doing so.

In June 2014, a Syrian family living in Pirna asked Nawal for help as a neighbour had been constantly harassing them for no apparent reasons. On 20 June, Nawal went to the man's flat to speak to him as the Syrian family did not speak German. The man insulted Nawal, told her to go back to her country and punched her breast. Nawal reported the attack to police, who classified and investigated the attack as a hate crime.

Nawal told Amnesty International about the dire consequences that the attack had on her: "I lived on the same street and I was so afraid of bumping into the man again. He did not stop bothering the Syrian family but they decided not to report him to the police as they were afraid of his retaliation. Once he threatened my children on the street".<sup>79</sup>

According to Article 230 of the Criminal Code, prosecutors can decide not to prosecute some crimes, including the crimes of intentionally and unintentionally causing bodily injuries (Articles 223 and 229 of the Criminal Code), if they estimate there is not public interest in doing so and unless a specific request is made by the victim.<sup>80</sup> Prosecutorial authorities met by Amnesty International highlighted that in practice all criminal offences motivated by discrimination are publicly prosecuted. Despite the crime against Nawal being considered by authorities as a politically motivated crime, (on which grounds she received financial compensation), the suspect was not prosecuted.<sup>81</sup>

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<sup>78</sup> Phone conversation with the victim's lawyer, 8 April 2016.

<sup>79</sup> Interviews with Nawal A., 23 September 2014 and 21 October 2015. Nawal A. is a pseudonym in accordance with her informed consent.

<sup>80</sup> These offences (*Antragsdelikte*) include, for example, causing bodily injuries intentionally (Article 223 of the Criminal Code in conjunction with 230), negligence resulting in bodily injuries (Article 229 in conjunction with 230) and damage to property (Article 303 in conjunction with 303c). As of 1 August 2015, a public interest is established when a crime is associated to a racist, xenophobic or otherwise discriminatory motive (Article 86 of the Guidelines of the Federal Ministry of Justice on criminal proceedings and fines (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*)).

<sup>81</sup> Letter from judicial authorities (*Bundesamt für Justiz*) informing Nawal about the compensation as she

In some cases, courts disregard an alleged racist motive behind violent crimes because of an apparent failure to appreciate precisely what constitutes a hate crime.

For example, **Mike K.**, a refugee from Sierra Leone who had been living in Germany for several years, was attacked twice by the same perpetrators on the night of 30 April/1 May 2012 in a town in Saxony-Anhalt.<sup>82</sup> He told Amnesty International: "I went to a public 1 May celebration with my girlfriend and other friends. After dancing a bit, I sat down to rest. Two men came and sat next to me although there were plenty of other seats around. They threatened me. They said: 'Hey Nigger, we give you 3 days to leave this town'. I asked them what was their problem and they repeated they wanted me to go away. I left then, but those words stuck with me. I thought it was unfair, I thought they may not like foreigners but I have always worked and paid taxes in Germany. So, I went back to talk to them but I could not find them anymore. At some point I was on the street, my girlfriend called me from home, I picked up the phone and all out of a sudden a car came. The two guys were in it. They got out of the car, started insulting me again, took my phone and kicked me. I managed to run away and to hide in the car park of a residential compound. The two guys came there, they kept using racist slurs against me and I realized from what they were saying that they had a knife, I think they could have killed me if they found me...fortunately they didn't and at some point left".<sup>83</sup>

According to the victim support group who counselled Mike, the attack was classified as a hate crime by police and investigated by a specialized unit (see Section 3.1). Many witnesses at the public May celebration reported the racial insults against Mike. Moreover, a witness who lived in one of the flats in the compound where Mike hid, reported the extremely aggressive and discriminatory language used by the attackers while they were chasing him.<sup>84</sup>

The court convicted Mike's attackers of causing bodily injuries. They received a suspended sentence (17 and 19 months' imprisonment respectively.) Surprisingly, the court acknowledged the discriminatory motive only in respect of the attempted attack in the residential compound and not the actual physical attack that Mike had suffered in the street. The court justified its decision on the basis that no one witnessed the physical assault against Mike in the street. The court reached that conclusion despite the fact that Mike was attacked by the same perpetrators and the obvious connection between the two attacks and the racist threats made by the perpetrators against Mike at the public celebration before the attacks.<sup>85</sup>

In the case of the attack on **Abdurrahman E.** in Bernburg, Saxony-Anhalt in 2013 (see Section 3.2), the court (*Landgericht Magdeburg*) acknowledged that all the perpetrators were

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qualified as a victim of a politically motivated crime (*Rechtstremismus*), 21 March 2016.

<sup>82</sup> Some of the details concerning this case have been withheld in accordance with his informed consent. Interview with Mike K., 29 September 2014. K. is not the first letter of Mike's real surname.

<sup>83</sup> Interview with Mike, 29 September 2014.

<sup>84</sup> Interview with the Mobile Beratung für Opfer rechter Gewalt, a victim support group in Magdeburg who provided counselling for Mike after the attack, 29 September 2014.

<sup>85</sup> Interview with the Mobile Beratung.

members of far-right groups and that one of them racially insulted Abdurrahman's partner. However, the court highlighted the fact that the perpetrators went out to attend a bachelor's party that night and there was no premeditated intention to target someone from a minority background.

The court concluded that Abdurrahman threatened the perpetrators with a stick after one of them insulted his partner. The court based this decision on the testimonies of the perpetrators and a passenger on a train which arrived at a platform near to the crime scene. However, this was not corroborated by other witnesses, including the train driver. Astonishingly, the court concluded that as the concept of honour was central to Turkish culture, it was plausible that Abdurrahman felt he had to respond to the insults against his partner and therefore threatened the nine men.<sup>86</sup>

The suspects were indicted for attempted murder. However, the court did not consider the attack to have been fully motivated by racism and so the four accused were convicted of attempted manslaughter (*Totschlag*), rather than attempted murder (*Mord*). Under German criminal law, the act of killing someone for "base motives" (*niedrigen Beweggründen*), which could include racism, is defined as a murder (*Mord*, Article 211 of the Criminal Code). Five of the suspects were found not guilty. In July 2015, the Federal Court of Justice (*Bundesgerichtshof*) confirmed the judgment.

Similarly, in the case of **Madou D.**, the court disregarded the alleged racist motive. Madou, an 18-year-old asylum-seeker from Mali, arrived in Germany in February 2014. He lived in a shared flat with other asylum-seekers in Mallesdorf, 100km northwest of Munich. On 20 December 2014, he took the train from Straubing back to Mallesdorf. One of the attackers was on the same train with his girlfriend and another friend. At some point the girlfriend and the friend got off the train. The attacker remained on the train, phoned his brother and a friend and asked them to join him on the train in Mallesdorf to attack Madou. The three men subsequently beat Madou up before he could get off the train in Mallesdorf. They also hit him on the head with a hammer they had brought from home.<sup>87</sup>

In the course of the investigation and in court, the three men justified the attack by referring to the fact that Madou had provoked one of the attackers and his girlfriend on the train by spitting on the floor and by flirting with her. No other witnesses apart from the friend and the girlfriend of one of the attackers corroborated this.

Ricarda Lang, one of Madou's lawyers, said police had not classified the attack against Madou as a hate crime. Madou did not initially mention to police that the attack could have had a discriminatory motive as he had not fully realised it himself. The Prosecutor's Office did not include any alleged racist motive in the indictment against the suspect. All three suspects were charged with attempted manslaughter.

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<sup>86</sup> Interview with Mobile Beratung in Halle and with Sebastian Scharmer, Abdurrahman's lawyer, 25 and 29 September 2014 and 13 November 2015.

<sup>87</sup> Interview with Madou and his lawyers, 24 October 2015. Case statement addressed by Nico Werning to the court (*Landgericht Regensburg*) on 22 September 2015.

However, several elements clearly pointed to a racist motive. In particular, in a statement presented verbally and in writing to the court (*Landgericht Regensburg*), Nico Werning, Madou's second lawyer, highlighted the fact that one of the perpetrators had repeatedly used racist insults to refer to Madou in SMS conversations with an acquaintance after the attack. For example, on 6 February, he wrote: "Something a bit shitty happened here...Look, a shitty nigger has fucked me up...now they're accusing me of attempted manslaughter".<sup>88</sup>

Before the court judgment, Madou told Amnesty International: "They attacked me without a reason. I do not understand this. I don't know why that happened. It doesn't make any sense. They said I had provoked them, but what they did was illogical. If I really had provoked them why didn't they just call the police. They attacked me, instead. The attack may have been motivated by racism, the judge has to decide. If it was a racist attack, I would be really sad because it means that this could happen to me again and again".<sup>89</sup>

The court concluded that the three men had attacked Madou because they indeed felt provoked by him. The court discounted any racist motive for the attack and convicted the three suspects of causing bodily injuries in group and with a weapon (Article 224 paragraphs 2 and 4 of the Criminal Code).<sup>90</sup>

## CONCLUSIONS

The state's duty to protect everyone from hate crime perpetrated by private individuals requires an effective, prompt, and thorough investigation into any violent crime where a discriminatory motive is suspected. While in practice police conduct investigations, prosecutors have a duty to supervise them and ensure that all the circumstances associated with a criminal offence, including the motives of the perpetrators, are uncovered in the investigation phase and reflected in the indictment of suspects.

It is also crucial that, following a fair trial which respects the rights of both victims and suspects, courts ensure their judgments and sentencing take into account any racist motive. By acknowledging racism and discrimination as motives behind violent crimes, courts send a clear signal to perpetrators and to society at large that racist violence is not, should not and will not be, tolerated.

The apparent reluctance of German prosecutors and courts to prosecute the crimes mentioned above as racist crimes and to reflect these motives in judgments is at odds with the obligations imposed on them by international and European human rights standards on discrimination and hate crimes.

As authorities do not collect comprehensive data on prosecutions and convictions of hate crimes (see chapter 5), it is difficult to establish with certainty the extent to which these

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<sup>88</sup> Case statement addressed by Nico Werning to the court (*Landgericht Regensburg*) on 22 September 2015.

<sup>89</sup> Interview with Madou, 24 October 2015.

<sup>90</sup> Phone conversation with Ricarda Lang, 1 March 2016. Judgment of the Regensburg State Court (*Landgericht Regensburg*), 8 February 2016.

conclusions can be generalized. However, several lawyers, civil society organizations and past research on murders perpetrated with a discriminatory motive suggest that there may be a general reluctance on the part of judicial authorities to take racist motives in judicial proceedings and when sentencing (see chapter 5).

German authorities should establish a comprehensive data collection system on hate crimes at the prosecution and conviction levels. They should rely on the data collected through that system to draw conclusions on whether discriminatory motives are overlooked by judicial authorities.

In its monitoring of the implementation of Framework Decision 2008/913/JHA (see chapter 2) in Germany, the European Commission should take into account the elements pointing to the reluctance on the part of judicial authorities to take racist motives into account when sentencing. The European Commission should require the German authorities to collect comprehensive data regarding the application of Article 46.2 of the Criminal Code by courts, which is a necessary step to thoroughly assess the implementation of Article 4 of the Framework Decision.

Moreover, the European Commission should take into account all the failures outlined in chapter 3.2 regarding the classification and investigation of racist hate crimes by police. The failures to adequately and thoroughly investigate any racist motive allegedly associated with a crime result in courts being less likely to take those motives into account, and thus to apply Article 46.2, when sentencing.

## 4. ATTACKS ON ASYLUM SHELTERS AND REFUGEES

“I don’t leave the house, not even to get my groceries. I ask friends to fetch me food. The family of the perpetrators threatened me and I have the feeling that everyone in town hates me. In Germany, I feel like I am in prison”.

Abdi Farah, a Somali asylum-seeker who was attacked near the asylum shelter in Wallersdorf (Bavaria) in 2013<sup>91</sup>.

In recent years, the number of asylum seekers and refugees in Germany has significantly increased. In 2015 alone, Germany received around 1.1 million asylum-seekers. By the end of the year, 476,649 individuals had lodged an asylum application – a more than a two-fold increase over the previous year (202,834).<sup>92</sup>

As the number of refugees and migrants entering south eastern Europe spiked dramatically during the course of 2015, the welcoming attitude of the German government, and Chancellor Merkel in particular, stood in marked contrast to the demands to block their entry that were being voiced by most European leaders.<sup>93</sup>

A very considerable part of German civil society also welcomed asylum seekers and refugees, contributed to catering for their needs and opposed racism and discrimination. However, protests against asylum shelters, asylum seekers and refugees, as well as physical attacks, also dramatically increased. In 2015, according to official statistics, 1,031 criminal offences were perpetrated against asylum shelters;<sup>94</sup> a five-fold increase on the previous year (199

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<sup>91</sup> Interview with Abdi Farah, Regensburg, 21 September 2014.

<sup>92</sup> Official statistics, Bundesamt für Migration und Flüchtlinge, [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.pdf?__blob=publicationFile), accessed 5 May 2016.

<sup>93</sup> See Amnesty International Annual Report 2015/2016. Entry on Germany, [www.amnesty.org/en/countries/europe-and-central-asia/germany/report-germany](http://www.amnesty.org/en/countries/europe-and-central-asia/germany/report-germany), accessed 4 May 2016.

<sup>94</sup> Information provided to Amnesty International by the Federal Ministry of the Interior, email communication of 13 April 2016. Further information is included in the response of the federal

offences).<sup>95</sup> In the first trimester of 2016, authorities registered 347 crimes against asylum shelter (319 PMK-R), five times as many as in the first trimester of 2015 (71 crimes)<sup>96</sup>.

Civil society organizations that monitor hate crimes have reported a sharp increase in violent attacks against refugees and asylum-seekers in the last three years. In 2015, the Amadeu Antonio Foundation recorded 183 violent attacks<sup>97</sup>, an increase of more than 120% over the previous year (81 cases).<sup>98</sup> Official statistics on hate crimes disaggregated by the refugee status of the victims were not available at the time of writing.<sup>99</sup>

In 2014 and 2015, anti-refugee protests were staged on average almost six times a week in Germany. The Amadeu Antonio Foundation recorded 292 protests against refugees in 2014<sup>100</sup> and 288 in 2015.<sup>101</sup> These protests were organized by a variety of groups, including established far-right groups, such as the German National Democratic Party (*Nationaldemokratische Partei Deutschlands*, NPD), The Right (*Die Rechte*) and The Third Way (*Der Dritte Weg*), as well as by newly established groups or parties including the European Patriots against the Islamisation of the West (*Patriotische Europäer gegen die Islamisierung des Abendlandes*, PEGIDA) and Alternative for Germany (Alternative für Deutschland, AfD).

Protests and violent attacks on asylum shelters as well as individual refugees and asylum-seekers have created a climate of hostility and insecurity for refugees and asylum-seekers. The authorities have acknowledged that the sharp increase in hate crime against refugees is a

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government to a question posed by members of the party Die Linke, "Protests and criminal offences against asylum shelters in the fourth trimester of 2015", Drucksache 18/7465, 4 February 2016, available at <http://dip21.bundestag.de/dip21/btd/18/074/1807465.pdf> (accessed 23 April 2016). The criminal offences registered by authorities include violent offences such as damage to property, bodily harm perpetrated against refugees in the vicinity of asylum shelters and arson attacks, as well as incitement to hatred (Article 130 of the Criminal Code) and displaying the symbols of unconstitutional organizations (Article 86a of the Criminal Code). According to the Ministry of the Interior, 177 offences out of the 1,031 recorded in 2015 were violent.

<sup>95</sup> *Bundeskriminalamt, Straftaten gegen Asylunterkünfte, Clearingstelle-Lagebild* Nr 7, 9 October 2015.

<sup>96</sup> <http://www.linksfraktion.de/abgeordnete/ulla-jelpke/downloads/>;  
<http://dip21.bundestag.de/dip21/btd/18/048/1804821.pdf>

<sup>97</sup> Data for 2015 can be searched on: <https://www.mut-gegen-rechte-gewalt.de/service/chronik-vorfalle> (accessed 25 April 2016).

<sup>98</sup> [https://www.amadeu-antonio-stiftung.de/w/files/pdfs/pressemitteilungen/gewalt-gegen-fluechtlinge-2014\\_aas.pdf](https://www.amadeu-antonio-stiftung.de/w/files/pdfs/pressemitteilungen/gewalt-gegen-fluechtlinge-2014_aas.pdf) (accessed 23 April 2016).

<sup>99</sup> Official statistics on hate crimes disaggregated by the refugee status of the victims have been collected as of January 2016. However, data were not available yet at the time of writing. Email communication with the Federal Ministry of the Interior, 13 April 2016.

<sup>100</sup> [https://www.amadeu-antonio-stiftung.de/w/files/pdfs/pressemitteilungen/gewalt-gegen-fluechtlinge-2014\\_aas.pdf](https://www.amadeu-antonio-stiftung.de/w/files/pdfs/pressemitteilungen/gewalt-gegen-fluechtlinge-2014_aas.pdf)

<sup>101</sup> Data for 2015 can be searched on: <https://www.mut-gegen-rechte-gewalt.de/service/chronik-vorfalle> (accessed 25 April 2016).

matter of grave concern and have tended, especially at the federal level, to promptly condemn the most serious cases. However, neither the federal government nor the governments of the federated states (*Bundesländer*) have developed and implemented an overall strategy aimed at improving police protection of asylum shelters and preventing violent attacks on or near them. Nor have they developed comprehensive policy measures to combat the racism and discrimination that fuel hate crimes, including against refugees and asylum-seekers. The 2008 plan to combat racism has been poorly implemented and has not been updated ever since.

#### 4.1 HOSTILE CLIMATE FOR REFUGEES AND ASYLUM SEEKERS

*"I cannot stay at home on my own, those people who threaten us could come back here at any time and if they find me here alone they could beat me up or...who knows. With the others [who live here] we have agreed to gather every day at a meeting point and we go back home only when we are in a group of 15 or 20 people."*

Florin S., a Romani migrant from Romania living in a squatted building with about 40 other Romani people in Berlin-Blankenburg. They were harassed on a weekly basis by three far-right supporters<sup>102</sup>

Several migrants, asylum-seekers and refugees told Amnesty International about the daily hostility and insecurity they experienced. They detailed the violence targeted against them or the shelters where they were living and described what it is like to live in towns or neighbourhoods where anti-refugee protests and violent attacks take place on a regular basis.

For example, in the town of **Hoyerswerda** (Saxony) far-right groups started to mobilize against refugees in the second half of 2013 when information regarding plans to open the first asylum shelter in town became public.<sup>103</sup> The asylum shelter became the target of violent attacks as soon as it opened in February 2014. Unidentified perpetrators threw stones, bottles and firecrackers against the building several times. On the night of 19 April 2014, as **Sosin S.**, a Kurdish single mother who had fled Iraq, was sleeping with her three children in the asylum shelter, someone tried to break into the building. In September, she told Amnesty international: "Every month we either hear about people who are attacked or we witness attempted attacks against the shelter. I really don't feel safe here. I don't even go to the park with my kids anymore. I have the impression people in town don't like me. They gave me bad looks probably because I am a foreigner."<sup>104</sup>

In August 2014, **Jahida T.**, a Palestinian woman from Lebanon, was attacked in the street in Hoyerswerda as she was on her way to the doctor with her children: "A car approached us, the driver started shouting insults and then hurled a bottle of beer at me. I am not going out anymore without my husband, I am too scared...We spend all our time indoors...people always give me bad looks just because I am wearing the headscarf and I am a foreigner, I feel

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<sup>102</sup> Interview with Florin S., 11 November 2015.

<sup>103</sup> Interview with a representative of the refugee support initiative Hoyerswerda Hilft mit Herz and a social worker supporting asylum-seekers, 24 September 2014.

<sup>104</sup> Interview with Sosin S., 24 September 2014. Sosin S. is a pseudonym.

so rejected here.”<sup>105</sup>

Some asylum-seekers told Amnesty International that they knew about the anti-refugee protests and the hostile climate in specific towns or neighbourhoods before being told by authorities to move there. **Ciwan B.**, who was attacked with pepper spray near the shelter where he lived in September 2015 (see Section 4.4), told Amnesty International: “When authorities told me I had to come to Dresden, I was really afraid. I had heard about PEGIDA and the protests against refugees. Initially, I felt welcomed in the asylum shelter but after the attack I was very scared. I tried not to go out much, I thought I could be attacked again. All my friends were afraid after the attack against me. I escaped a war in Syria and I don’t need to face tensions here in Germany. I just would like to work maybe in the same sector I used to work in in Syria [manager for an IT company] and to have a good life, like I had before the war.”<sup>106</sup>

**Sliman R.**, a Syrian asylum-seeker who arrived in Germany in June 2013 after an arduous six-month journey through Turkey, Greece and the Eastern Balkans, was transferred to the asylum shelter in Carola-Neher Street in the Berlin district of Merzahn-Hellesdorf. He told Amnesty International: “Before my transfer to Hellesdorf, I already knew some people who lived there. Many of them asked authorities to be transferred elsewhere because of the anti-refugee demonstrations. I witnessed myself two demonstrations and I remember an attack on 1 January 2014 when firecrackers were thrown at the building. Many people, especially women, were afraid and avoided walking on their own in the neighbourhood. They always called someone to pick them up at the tube station when, for example, they came back from the city centre. I perceived myself the neighbours’ hostility, they often gave me unfriendly looks in cafes or on the bus and sometimes they talked to me aggressively”.<sup>107</sup>

**Hubab L.**, who lived in Magdeburg (Saxony-Anhalt) for two and a half years, talked about the impact of the weekly anti-refugee demonstrations staged by the local group MAGIDA (a local off-shoot of PEGIDA): “I think the situation has really worsened in the last couple of years. The MAGIDA demonstrations allow people to be openly racist. We are often called names and insulted in the street. I don’t go out on Monday, when they stage their protest and in general I don’t go out on my own. I never leave my house without taking some pepper spray with me in case I am attacked”.<sup>108</sup>

## 4.2 PROTECTING ASYLUM SHELTERS AND PREVENTING VIOLENT ATTACKS

Police authorities and some representatives of the organizations running asylum shelters told Amnesty International that the private companies hired or funded by the authorities running the asylum shelters are responsible for security issues within the shelters. On the other hand, security issues in the vicinity of asylum shelters, either in the areas immediately surrounding

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<sup>105</sup> Interview with Jahida T., 24 September 2014. Jahida T. is a pseudonym.

<sup>106</sup> Interview with Ciwan B., 19 October 2015.

<sup>107</sup> Interview with Sliman R., 13 November 2015. R. is not the initial letter of Sliman’s real surname.

<sup>108</sup> Interview with Hubab L., 11 November 2015. Hubab is a pseudonym. L. is not the initial letter of Hubab’s real surname.

them or in the neighbourhoods where they are located, are the responsibility of the police.<sup>109</sup>

Police officials in all the four states visited (Bavaria, Berlin, Saxony and Saxony-Anhalt) explained to Amnesty International that specific security plans for asylum shelters are usually discussed on a case-by-case basis. Federal officials acknowledged that there was not an overall framework at the federal level to support and coordinate the establishment of security plans at the state level.<sup>110</sup> Similarly, state officials in Bavaria, Berlin, Saxony and Saxony-Anhalt who met Amnesty International delegates explained that in those states there was no overall risk assessment plan or strategy aimed at preventing attacks against asylum shelters.<sup>111</sup>

Clearly, it would not be realistic or feasible for the police to ensure round-the-clock police protection for all the asylum shelters in Germany or to accommodate all asylum-seekers in private housing to avoid opening new asylum shelters, which are visible and therefore identifiable as targets for violent attacks. However, the sharp rise in attacks against asylum shelters and individuals who are, or are perceived to be, asylum-seekers or refugees requires specific measures on the part of authorities to prevent, whenever possible, violent attacks. These measures should include enhanced police protection for asylum shelters that are most at risk of being targeted with violence and/or for neighbourhoods where most of these hate crimes happen. This strategy should be based on a thorough risk assessment system carried out by the police authorities in each state and be coordinated by federal authorities.

In the case of other communities increasingly targeted for discriminatory violence, the German authorities at both the federal and the state levels have put in place such strategies. In 2014, Chancellor Angela Merkel told the press that Jewish institutions were under regular police protection because of the violent threats.<sup>112</sup> In May 2015, Thomas de Maizière, the Federal Minister of the Interior, condemned the rise in anti-Semitic attacks and vowed to improve the existing risk-assessment mechanisms for Jewish institutions, in cooperation with Jewish organizations.<sup>113</sup> The Ministry of the Interior stated that state authorities are

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<sup>109</sup> Meetings with the Bavarian Criminal State Affairs Department, 23 October 2015; the Saxony State Criminal Affairs Department, 22 October 2015; the Berlin State Criminal Investigation Department, 17 November 2015; the State Criminal Affairs Department of Saxony-Anhalt, 9 December 2015. Amnesty International also met a social worker at an asylum shelter in Hoyerswerda, 24 September 2014; a social worker at the asylum shelter in Carola-Neher Street in the Marzahn-Hellersdorf neighbourhood of Berlin, 1 October 2014; the manager of the asylum shelter in the former Lindhof Hotel in Dresden, 19 October 2015; and the manager of the asylum shelter in Heidenau, 20 October 2015.

<sup>110</sup> Meeting with the Federal Ministry of the Interior and the Federal Criminal Affairs Department, 13 November 2015.

<sup>111</sup> Meetings with the Bavarian State Criminal Affairs Department, 23 October 2015; the Saxony State Criminal Affairs Department, 22 October 2015; the Berlin State Criminal Affairs Department, 17 November 2015; and the State Criminal Affairs Department of Saxony-Anhalt, 9 December 2015.

<sup>112</sup> Reuters, *Merkel vows to fight anti-Semitism in Germany*, available at <http://uk.reuters.com/Article/uk-germany-merkel-jews-idUKKBN0H10AD20140906> (accessed 24 April 2016).

<sup>113</sup> <http://www.bmi.bund.de/SharedDocs/Reden/DE/2015/05/ministerrede-juedischen-leben-in-dt.html> (accessed 24 April 2016). Amnesty International did not thoroughly research the protection mechanisms

responsible for the specific police plans to protect Jewish institutions and that there is usually close coordination between Jewish organizations and police authorities in the area of risk-assessment at both the state and federal levels.<sup>114</sup>

Most of the authorities met by Amnesty International at both the federal and the state levels stated that there was no proven causal link between anti-refugee demonstrations and the perpetration of violent attacks against asylum shelters. Amnesty International acknowledges that it is not possible to draw conclusions about the extent to which anti-refugee protesters also commit violent hate crimes. However, the rise of anti-refugee demonstrations, albeit often non-violent, has been accompanied by a rise in discriminatory violence against refugees in the same area (see the specific example of the district Marzahn-Hellersdorf below).

A rise in anti-refugee demonstrations, especially if they coincide with an increase in hate crimes, in specific neighbourhoods or towns should ring alarm bells with the authorities and may warrant, beside the deployment of more police on a case-by-case basis, the adoption of specific policing strategies to prevent further hate crimes.

The lack of a coherent strategy for assessing the level of threat faced by asylum shelters and the failure to take adequate measures to address the risk has resulted in ad hoc and often inadequate police measures to counteract violent attacks. For example, between 2013 and 2015, the authorities opened at least six asylum shelters in the **Marzahn-Hellersdorf** district of Berlin.<sup>115</sup> The increase in the number of asylum-seekers in Berlin during that period, which was mirrored throughout the country,<sup>116</sup> triggered the mobilization of far-right parties and/or other groups, especially in some districts, including Marzahn-Hellersdorf. The police registered a general increase in violent politically motivated crimes perpetrated by right-wing groups and individuals in Berlin. Attacks on asylum shelters in particular almost doubled in 2015 (40 cases) compared to the previous year (21 cases).<sup>117</sup>

In 2015, almost two public events per week were organized in Marzahn-Hellersdorf, mainly to protest against refugees. Eight times as many such protests were staged in 2015 as in 2014

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put in place by German authorities to prevent anti-Semitic attacks. Therefore, this report does not aim at drawing conclusions about their effectiveness to prevent anti-Semitic crimes.

<sup>114</sup> Email communication from the Federal Ministry of the Interior, 13 April 2016.

<sup>115</sup> With a population of about 250,000, Marzahn-Hellersdorf, was until recently one of the least ethnically diverse neighbourhoods of the capital. In some areas of Marzahn-Hellersdorf, the far-right NPD obtained 10% or even 12% of the vote in the 2013 federal elections. For more information see: <https://www.opensocietyfoundations.org/sites/default/files/white-working-class-communities-berlin-20150410.pdf> and <http://berlinwahlkarte2013.morgenpost.de/en/#partei=4>

<sup>116</sup> In line with the quota system (*Königsteiner Schüsse*) for distributing asylum-seekers among the 16 German states, about 5% of all asylum-seekers in Germany were placed in Berlin in 2014 and 2015 (<http://www.bamf.de/DE/Migration/AsylFluechtlinge/Asylverfahren/Verteilung/verteilung-node.html>). According to Eurostat, the number of first time asylum applicants in Germany increased from 173,000 in 2014 to 442,000 in 2015, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) (accessed 24 April 2016).

<sup>117</sup> Official police data on politically motivated crimes in Berlin in 2015, <https://www.berlin.de/polizei/verschiedenes/polizeiliche-kriminalstatistik> (accessed 24 April 2016).

(83 events in 2015, 10 in 2014).<sup>118</sup> Although a direct link between the protests and the attacks cannot be proved, the increase in protests coincided with an increase in attacks against asylum shelters, refugees and asylum-seekers, which more than tripled from 20 cases in 2014<sup>119</sup> to 72 cases in 2015.<sup>120</sup>

The publication of information about the opening of each new asylum shelter in the district has been systematically accompanied by anti-refugee protests and attacks. In August 2013, the first refugee shelter opened in a former school in Carola-Nehrer Street. From January 2013 onwards, far-right groups, in particular the NPD, organized a public campaign against the opening of the shelter. Protests were staged on a regular basis before and after the opening of the shelter.<sup>121</sup>

In October 2014, information about the building of a second asylum shelter in Marzahn-Hellersdorf (Blumberger Damm) became public. Far-right and other groups mobilized the local population against the opening of the shelter. Demonstrations were held every Monday until December 2014. Some of them were attended by as many as 1,000 participants. Demonstrations resumed in January 2015 and continued throughout the year.<sup>122</sup>

On 8 September 2015, the municipal authorities announced that a former school on Glambecker Ring was to be converted into a new asylum shelter. This triggered a wave of protests and attacks against the building and some of the volunteers who were on site to support refugees. In the first months of 2016, several asylum-seekers who lived on Glambecker Ring were threatened and attacked.<sup>123</sup>

The Berlin police acknowledged that the opening of refugee shelters in Marzahn-Hellersdorf, as well as in other Berlin districts, sparked protests because of the presence of strong far-right structures in those areas. They stressed that the police constantly monitored the far-right scene and took action in specific instances. For example, restriction orders were

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<sup>118</sup> Data collected by civil society organizations (Reachout and the Berliner Register) in 2015, [http://www.berliner-register.de/sites/default/files/Pressemappe\\_ReachOut\\_Register\\_2016\\_0.pdf](http://www.berliner-register.de/sites/default/files/Pressemappe_ReachOut_Register_2016_0.pdf) (accessed 24 April 2016).

<sup>119</sup> Data collected by civil society organizations (Reachout and the Berliner Register) in 2014, [http://www.berliner-register.de/sites/default/files/Pressemappe\\_RO\\_Register\\_2014\\_neu.pdf](http://www.berliner-register.de/sites/default/files/Pressemappe_RO_Register_2014_neu.pdf) (accessed 24 April 2016).

<sup>120</sup> Data collected by civil society organizations (Reachout and the Berliner Register) in 2015

<sup>121</sup> Interview with Hellesdorf Hilft, a refugee support group established in Marzahn-Hellersdorf to counteract the anti-refugee campaign orchestrated by the far-right, 18 August 2015. For more information, see the data collected by the civil society organization WUT, [https://suburbanhell.org/chronik?from\[value\]\[date\]=1.1.13&to\[value\]\[date\]=1.1.14&body\\_value=&&sort\\_by=field\\_incident\\_date\\_value&sort\\_order=DESC&page=12](https://suburbanhell.org/chronik?from[value][date]=1.1.13&to[value][date]=1.1.14&body_value=&&sort_by=field_incident_date_value&sort_order=DESC&page=12), accessed 25 May 2016.

<sup>122</sup> Interview with a representative of Antirassistisches Register an der Alice-Salomon-Hochschule in Marzahn-Hellersdorf, 17 November 2015.

<sup>123</sup> Data on hate crimes collected by the Berlin Register, <http://www.berliner-register.de/chronik/marzahn-hellersdorf> (accessed 24 April 2016). Interview with Omar, an asylum-seeker who lived in Marzahn-Hellersdorf, 16 February 2016.

imposed by police on two members of a far-right group in the district to stop them approaching the asylum shelter on Glambecker Ring. However, the Berlin police have not adopted any overall plan or strategy to prevent attacks in Marzahn-Hellersdorf, despite the available data regarding the rise in hate crime in the district.

The police stated that private companies were responsible for the general security of asylum shelters and that if a specific threat arose, police had a duty to intervene.<sup>124</sup> However, the police did not have a comprehensive risk-assessment plan aimed at identifying the asylum shelters, or the districts, particularly vulnerable to hate crime.

### 4.3 POLICING ANTI-REFUGEE PROTESTS

In general, the police pointed out that whenever municipal authorities informed them about the organization of a demonstration, including a demonstration to protest against the opening of an asylum shelter or against refugee policies, they carried out a security assessment and discussed with organizers the necessary arrangements<sup>125</sup>. Although policing demonstrations against refugees can be a complicated task for police, especially if it requires policing one or more counter-demonstrations, in some instances witnesses and civil society organizations referred to the lack of sufficient police officers and/or of adequate policing strategies to keep anti-refugee demonstrators at a safe distance from asylum shelters and refugees.

In **Heidenau**, for example, hundreds of people staged protests against the opening of the first asylum shelter in town between 19 and 22 August 2015.<sup>126</sup> According to activists who were on site, as well as the manager of the asylum shelter, there were not enough police officers present on the first day of the protest, which started before the asylum-seekers' scheduled arrival.<sup>127</sup> Protesters turned violent and tried to attack the shelter. They also blocked the arrival of buses transporting asylum-seekers for several hours. Only two of the five buses in which asylum-seekers were travelling managed to reach the shelter and even they arrived after 1am the next morning when the situation had calmed down.<sup>128</sup> Thirty-one police officers were injured trying to contain the violence. According to two refugees who participated in counter-demonstrations staged on 20 August, far-right protesters were able to approach the shelter on the first two days as a police security cordon around the building was not established until the third day.<sup>129</sup> A police security zone was subsequently set up around the shelter for about a month. The events in Heidenau received prominent media attention and were strongly condemned by government officials at all levels, including Chancellor Angela

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<sup>124</sup> Meeting with the Berlin State Criminal Affairs Department (*Landeskriminalamt*), 17 November 2015.

<sup>125</sup> Meetings with police authorities at the state level in Bavaria, Berlin, Saxony and Saxony-Anhalt.

<sup>126</sup> According to official statistics, the demonstrations were attended by 350, 600, 1,100 and 700 people on each day. Response of the Saxony Minister of the Interior to a written question posed by members of the state parliament, no. 6/2815 of 26 October 2015.

<sup>127</sup> Interview with the management of the asylum shelter in Heidenau, 20 October 2015, and representatives of the Asylum Seekers' Movement, 21 October 2015.

<sup>128</sup> Interview with the management of the asylum shelter in Heidenau, 20 October 2015.

<sup>129</sup> Interview with representatives of the Asylum Seekers' Movement, 21 October 2015.

Merkel, who visited Heidenau on 26 August 2015.<sup>130</sup>

The Saxony police told Amnesty International that the events in Heidenau were exceptional. They highlighted the fact that violence had erupted following an initially non-violent protest, that it was generally not possible to establish a link between protests and violent attacks and that anti-refugee protests were usually non-violent. However, according to official statistics, some other anti-refugee protests staged in Saxony in 2015 were violent. For example, several violent crimes were perpetrated by protesters in **Freital** between 23 and 27 June 2015. These included causing bodily injuries (Article 223 of the Criminal Code), causing bodily injuries by dangerous means (Article 224) and criminal damage (Article 303).<sup>131</sup>

On 8 September 2015, police in **Marzahn-Hellersdorf** allegedly did not ensure that the demonstration against the opening of an asylum shelter on Glambecker Ring took place at a safe distance from the entrance of the building where asylum-seekers were supposed to arrive by bus. According to one legal monitor, police allowed protesters to approach the shelter and to intimidate refugees. He told Amnesty International: “There were 30 police officers at the scene, but they did not prevent protesters from throwing bottles and insulting refugees who were arriving by bus. Many of the refugees who arrived were really scared and told us they did not want to stay in the shelter. Protesters attempted to physically assault two volunteers on their way back home, just 100 metres or so away from the shelter. We did not know how to leave the shelter as protesters were violent, we had to wait for a friend who came to pick us up by car”.<sup>132</sup> On the same night, the police authorities registered an arson attack on the shelter which was classified as a politically-motivated crime (PMK-Right).<sup>133</sup>

The police have a duty to ensure that everyone can exercise the rights to peaceful assembly and freedom of expression. Individuals and groups have the right to peacefully protest against the opening of asylum shelters or government policies regarding refugees. However, when devising security plans for those protests, the police should take into account the current climate of hostility against refugees, many of whom have been traumatized as a result of their experiences before they came to Germany. Police should also take into consideration that protests against refugees have not always been peaceful and, in some instances, that protesters have perpetrated violent crimes during or after the demonstrations. In general, adequate consideration should be given to the potential impact of anti-refugee protests on asylum-seekers and refugees, especially when protests are staged in the immediate proximity of an asylum shelter or are intended to coincide with the scheduled arrival of asylum-seekers in a specific shelter.

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<sup>130</sup> <http://www.spiegel.de/politik/deutschland/angela-merkel-in-heidenau-danke-an-jene-die-hier-hass-ertragen-a-1049893.html> (accessed 24 April 2016).

<sup>131</sup> Response of the Saxony Minister of the Interior to a written question posed by members of the state parliament, no. 6/2815 of 26 October 2015 and 6/2020 of 28 July 2015.

<sup>132</sup> Interview with Johan A., 15 November 2015. Johan A. is a pseudonym.

<sup>133</sup> Written response of the Berlin State Minister of the Interior and Sport to a question asked by a member of the Berlin Parliament, no. 17/17697 of 26 January 2016, [http://www.clara-herrmann.net/sites/default/files/rassistische\\_angriffe\\_gegen\\_gefluechtete\\_und\\_unterkuenfte\\_fuer\\_gefluechtete\\_in\\_berlin\\_2015\\_ii.pdf](http://www.clara-herrmann.net/sites/default/files/rassistische_angriffe_gegen_gefluechtete_und_unterkuenfte_fuer_gefluechtete_in_berlin_2015_ii.pdf) (accessed 24 April 2016).

The right to freedom of expression is not absolute – it can be subject to limitations which are demonstrably necessary and proportionate for certain specific permissible purposes, including the protection of the rights of others. While the right to freedom of expression of the protesters includes the right to express strong and vehement opposition to the state's asylum policies generally or the building of refugee shelters specifically, if such protests are carried out in a way that amounts to, or is clearly bound up with, intimidation or threatening behaviour towards asylum-seekers and refugees, or if they obstruct access to the shelters by those who are living there, the authorities should take effective measures to protect asylum-seekers and refugees against such intimidatory or threatening conduct. Such measures may entail, for example, necessary and proportionate restrictions on the protests, such as requiring protesters to keep some distance away from the shelter to enable those living there to enter and leave their accommodation without intimidation.

#### 4.4 LACK OF A COMPREHENSIVE STRATEGY TO COUNTERACT HATE CRIME AGAINST REFUGEES

The soaring number of attacks against asylum shelters, refugees and asylum-seekers requires specific preventive police measures (see Section 4.2). Additional policy measures aimed at preventing hate crimes and raising awareness about racism and discrimination should be part of an overall plan agreed by authorities at both the federal and state levels and spelling out the responsibilities of various authorities at different levels and how they will cooperate with each other.

A representative of the Ministry of the Interior pointed out to Amnesty International that there was a proliferation of parties and movements that mobilized against refugees and that “the radicalization of those who take part in those movements” was not an issue that can be dealt with by police. But while the German authorities, in particular at the federal level, have often acknowledged and condemned the rise in hate crimes against refugees, they have not to date developed an overall policy plan to combat these crimes.

Initiatives aimed at raising awareness about and, to some extent, preventing hate crimes have been implemented at the local level. For example, several forums have been established to improve coordination between authorities, including local police and municipal authorities, and to discuss major local trends regarding crimes or, more specifically, hate crimes. These include for example Crime Prevention Councils (*Kriminalpräventiver Räte*), which are advisory boards to mayors and bring together judicial and law enforcement officials in some municipalities.<sup>134</sup>

Local authorities have often attempted to raise awareness among the local population on asylum issues, for example whenever an asylum shelter was planned for a specific neighbourhood or town. Municipal officials who spoke to Amnesty International pointed out that they had always tried to provide some information to those living in the neighbourhood as soon as they were informed about the opening of a new asylum shelter by the competent higher authority. However, they raised concerns regarding the very little advance notice they

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<sup>134</sup> Meeting with municipal authorities in Dresden (Saxony), 22 October 2015 and in Hoyerswerda, 21 October 2015.

were given. For example, in November 2015, municipal officials in Marzahn-Hellersdorf (Berlin) told Amnesty International that they were informed by the Berlin government (*Der Senat von Berlin*) about the opening of new asylum shelters in the district only a few hours before the actual opening. As a result, municipal authorities could not organize public events to inform the local population and address potential concerns.<sup>135</sup>

In 2008, the German authorities adopted a National Action Plan against Racism, Xenophobia, Anti-Semitism and related Intolerance. However, the plan has not been updated since then and, as highlighted by the European Commission against Racism and Intolerance (ECRI) in 2014, “it has been relegated to the background”.<sup>136</sup> German federal authorities should revise the existing plan to meet current needs or develop a new plan by involving authorities at different levels, including municipal authorities. The new or amended plan should specifically prioritize measures to counteract hate crimes against asylum-seekers and refugees, which have been such a prominent development since 2008.

## CONCLUSIONS

There are several respects in which the German authorities are failing to fulfil their duty under international law to protect refugees and asylum-seekers from discriminatory violence.

The authorities have acknowledged and condemned the sharp increase in attacks. While political condemnation is important, concrete measures are necessary to curb the rise in hate crimes against asylum-seekers and refugees effectively and to proactively encourage reporting when such crimes do take place. The police authorities should devise a strategy for assessing the security threats against asylum shelters and provide enhanced police protection to those that are most at risk of violence.

Beyond police protection, there is a need for an overall strategy involving authorities at different levels, including municipal authorities, aimed at counteracting hate crimes. Such a strategy should prioritize measures aimed at counteracting violence, discrimination and related intolerance against asylum-seekers and refugees.

## RACIAL PROFILING

The police can carry out identity checks for a wide range of purposes. Federal police officials, who are responsible for law enforcement at the borders as well as in airports and train stations, can for example perform identity checks to prevent unauthorized entry into German territory (Article 22.1a of the Law on Federal Police), in border areas (Article 23.1.3) or to prevent a threat to public security (Article 23.1.1).<sup>137</sup>

State laws allow state police forces to carry out identity checks to prevent a threat to public security, in places where individuals without authorization to stay in Germany gather or in places and venues where a crime has

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<sup>135</sup> Meeting with municipal authorities in Marzahn-Hellersdorf, 17 November 2015.

<sup>136</sup> ECRI report on Germany, para. 42 <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Germany/DEU-CbC-V-2014-002-ENG.pdf>.

<sup>137</sup> Articles 22 and 23 of the Law on Federal Police (*Bundespolizeigesetz*), [http://www.gesetze-im-internet.de/bgsg\\_1994/BJNR297900994.html](http://www.gesetze-im-internet.de/bgsg_1994/BJNR297900994.html) (accessed 24 April 2016).

been committed.<sup>138</sup>

According to ECRI, racial profiling is “the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”.<sup>139</sup>

Amnesty International considers that singling out people belonging to minority groups during identity checks by law enforcement officials using race or ethnicity as the sole rationale for assuming such individuals are likely to be irregular migrants or to have committed a crime, constitutes racial profiling, which is a form of discrimination. The obligation to respect the principle of non-discrimination imposes on state authorities a duty to combat racial profiling by law enforcement agents and to set up effective mechanisms to provide redress for the human rights violations suffered by those targeted by this form of discrimination.

According to official statistics, in 2014 almost 500,000 checks were carried out by Federal police on trains and in railway stations on the basis of Article 22.1a of the Law on Federal Police. In addition, police carried out more than 2 million checks at the borders on the basis of Article 23.1.3. Some 4% of checks resulted in the identification of criminal offences and 1.5% identified individuals who did not have the right to either enter or stay in Germany.<sup>140</sup>

The German police authorities deny any discriminatory application of their powers to carry out identity checks. In a meeting with Amnesty International, the President of the Federal Police, Dr Dieter Romann, stressed that identity checks were key for migration control purposes. He denied that specific groups could be targeted for identity checks in a discriminatory manner.<sup>141</sup> However, in 2012, the Koblenz Administrative Court, in an unprecedented judgment, found that Federal Police discriminated against a Black German man by checking his identity on a train. The President of the Federal Police referred to this case as an isolated one.<sup>142</sup>

Sven Adams, a lawyer who represented the man who was subjected to the discriminatory check, said that the case was far from being unique. In November 2015, he was providing legal support to about 10 Black people and people of colour travelling by train who had been the only passengers checked in the coach where they were sitting.<sup>143</sup>

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<sup>138</sup> See, for example, Articles 12 and 13 of the Law on the Duties and Powers of the Bavarian police <http://www.polizeirecht.de/polizeiaufgabengesetz-Bayern.htm>; Articles 21-23 of the Law for the Protection of Public Security and Order in Berlin <http://www.polizeirecht.de/ASOG-Berlin.htm>; and Articles 19 and 20 of the Police Law of the Free State of Saxony, <http://www.polizeirecht-sachsen.de/Text%20des%20S%E4chsischen%20Polizeigesetzes.html> (accessed 24 April 2016).

<sup>139</sup> ECRI General Policy Recommendation No. 11, Combating racism and racial discrimination in policing.

<sup>140</sup> Data included in the reply of the Federal government to a question asked by members of the Federal Parliament, no. 18/4149 of 27 February 2014, <http://dip21.bundestag.de/dip21/btd/18/041/1804149.pdf> (accessed 24 April 2016).

<sup>141</sup> Meeting with Dr Dieter Romann, President of the Federal Police, 1 October 2014.

<sup>142</sup> Meeting with Dr Dieter Romann.

<sup>143</sup> Interview with Sven Adams, 17 November 2015.

For example, in July 2013, the Berlin police allegedly used the powers to perform an identity check in a discriminatory manner on O., a Black student from West Africa.

O. went to the Görlitzer Park (Berlin) to meet some friends who were having a barbecue. O. was eating with his friends, who were all white, when police officers suddenly assaulted him from the back, forced his arms behind his back and handcuffed him. O. thought police wanted to check his identity, as had happened many times before.<sup>144</sup>

O. was taken by two police officers through the park in handcuffs. He asked repeatedly why he had been escorted away from his friends, but received no explanation from police. They approached a street where a large number of police vans were parked. O. noticed that the police had already arrested several men, all of them were Black people and people of colour. He was made to stand in line with the other men. When it was his turn, he was asked to show his ID. His personal data were recorded. The police searched him and his bag. Nothing suspicious was found. After the body search, O. and the other men who had been arrested were made to sit in a police van.

After a while, a police officer told O. that one of her colleagues thought he was a drug dealer and that this was the reason why he had been checked. She apologised several times, then removed the handcuffs and eventually released O. He asked to receive a document stating that no charges would be brought against him. Police gave him a form including his personal data and simply a blank space under the section “charges”.

Seven months after the incident, O. went to the migration department to extend his student visa. While checking his personal record, the civil servant asked him if he had been charged with drug-related offences. The civil servant explained that a police report about him had been sent to the migration office. O. tried to enquire at the police station in Alexanderplatz. The police officer told him he could not find any detail. O. tried to get more information in another police station in Neukölln. He was informed that he had been charged with drug-related offences.

O. contacted a lawyer who obtained access to the files. O. filed an administrative complaint against the police officers. Police subsequently amended the criminal record of O. However, the complaint he brought against police was not followed up.<sup>145</sup>

German civil society organizations report cases of racial profiling by police on a regular basis.<sup>146</sup> In 2014 and 2015, ECRI and the Council of Europe Commissioner for Human Rights raised concerns about the discriminatory application of police powers in the area of identity checks. In 2015, CERD raised concerns about the broad scope of Article 22 of the Law on Federal Police, whose application resulted in racial profiling.<sup>147</sup>

Despite the concerns raised at both the domestic and the international levels, the German authorities have

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<sup>144</sup> Interview with O., 28 September 2014.

<sup>145</sup> Meeting with Reachout, the victim support group who provided support to O., 25 August 2015.

<sup>146</sup> Interview with two representatives of Initiative Schwarze Menschen in Deutschland, 8 May 2014.

<sup>147</sup> CERD, Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany, Advanced Edited Version (CERD/C/DEU/CO/19-22), para. 11.

failed to date to take measures to counteract the discriminatory use of police powers in the area of identity checks by narrowing the grounds on which those checks can be carried out, and by explicitly prohibiting racial profiling. They have also failed to collect disaggregated data by ethnicity and race on identity checks and to ensure that victims of racial profiling can access remedies for the human rights violations they have suffered.

## 5. DATA ON HATE CRIMES

Official statistics collected by police show an increase in racist violent crimes in the last few years. These crimes rose from 693 in 2013 to 844 in 2014 – an increase of 22%. The figures for 2015 (1295 crimes) show an increase of 87% compared to 2013.<sup>148</sup> Since 2001, the police in all German states classify, investigate and collect data on hate crimes using the same system. This system is complex and not fully transparent and has, for this and other reasons, been widely criticized by victim support groups and other civil society organizations. The regular police is in charge of identifying hate crimes on the basis of this system. Beyond the police/investigation stage, very limited data is collected on the prosecution of hate crimes, and no data at all is collected regarding the application of Article 46.2 of the Criminal Code by the courts (see Section 3.3).

### 5.1 THE SYSTEM USED TO CLASSIFY AND COLLECT DATA ON POLITICALLY MOTIVATED CRIMES (THE PMK SYSTEM)

In 2001, the authorities established a unified federal system for collecting data regarding politically motivated crimes (*Politisch motivierte Kriminalität*, the PMK system).<sup>149</sup>

The PMK system is composed of several sets of guidelines including definitions and investigation protocols on politically motivated crimes. The PMK system was not linked to any legislative change, but simply provided police with an additional tool to tackle these crimes. The notion of politically motivated crime is broader than that of hate crime. According to the PMK system, any hate crime is a politically motivated crime, but there are many other forms of politically motivated crimes which do not constitute hate crimes.

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<sup>148</sup> This data includes violent hate crimes perpetrated with a racist, xenophobic, anti-Semitic or religious motive. This includes hate crimes classified as PMK-Right, PMK-Left, PMK-Foreign ideology and PMK-Other. Most of them are PMK-Right (710 in 2014 and 660 in 2013). The overall number of violent politically motivated crimes was 608 in 2013, 707 in 2014 and 1151 in 2015. Most of violent hate crimes registered by authorities are perpetrated with a racist, xenophobic, anti-Semitic or religious motive. For example, in 2015 only 96 violent hate crimes were perpetrated on other grounds (39 on social status, 54 on sexual orientation and 3 on disability). The Ministry of the Interior explained that the overall number was smaller than the number of politically motivated crimes perpetrated with a racist, xenophobic, anti-Semitic or religious motive because one criminal offence can be perpetrated with a compounded discriminatory motive, which is registered by police. Übersicht Hasskriminalität – Entwicklung der Fallzahlen 2001 - 2015, [https://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Pressemitteilungen/2016/05/pmk-2015-hasskriminalitaet-2001-2015.pdf;jsessionid=1FD45E84DCB40AA094AAE547E84A50CC.2\\_cid373?\\_blob=publicationFile](https://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Pressemitteilungen/2016/05/pmk-2015-hasskriminalitaet-2001-2015.pdf;jsessionid=1FD45E84DCB40AA094AAE547E84A50CC.2_cid373?_blob=publicationFile) (accessed 23 May 2016).

<sup>149</sup> [http://www.bmi.bund.de/DE/Themen/Sicherheit/Kriminalitaetsbekaeufung/Politisch-motivierte-Kriminalitaet/politisch-motivierte-kriminalitaet\\_node.html](http://www.bmi.bund.de/DE/Themen/Sicherheit/Kriminalitaetsbekaeufung/Politisch-motivierte-Kriminalitaet/politisch-motivierte-kriminalitaet_node.html) (accessed 24 April 2016).

There are historical reasons for the PMK system's focus on the political ideology of the perpetrators, in particular right-wing and left-wing ideologies. These include the activities of far-left groups which relied on the use of political violence in the 1970s and 1980s and the rise of far-right groups in the 1990s, after the reunification of the German Democratic Republic (GDR) and the Federal Republic of Germany. The authorities designed the PMK system with a view to improving the monitoring of politically motivated crimes perpetrated by right-wing and left-wing groups so that this information could help inform appropriate policies to address such offences.

Before the introduction of the PMK system, German police collected specific data on some criminal offences that were subsequently included in the category of politically motivated crimes. They included crimes threatening the democratic state (*Staatsschutzdelikte*, collected since 1959),<sup>150</sup> extremist crimes (*extremistische Straftaten*, collected since 1961), xenophobic crimes (collected since 1992) and anti-Semitic crimes (collected since 1993).<sup>151</sup>

According to the information collected by Amnesty International in meetings with police officials,<sup>152</sup> for the purposes of the PMK system, politically motivated crimes are defined as crimes that, in view of the context in which they are perpetrated and/or the attitude of the perpetrators:

- aim to negatively influence the democratic process, prevent the achievement of political goals or counteract the implementation of political decisions; or
- aim to counteract the free democratic order or threaten the stability and security of the Federal Republic or of one of its states; or
- jeopardize German foreign interests through the use of violence or preparatory actions for using violence; or
- are motivated by the political opinion, nationality, ethnicity, race, skin colour, religion or belief, appearance, disability, sexual orientation or social status of the victim.

Under the PMK system, hate crimes are a specific category of politically motivated crimes (last category above).

All the police officials who met Amnesty International delegates, as well as the Federal Ministry of the Interior, highlighted the fact that the guidelines on the basis of which the

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<sup>150</sup> *Staatsschutzdelikte* offences established by the following Articles of the German Criminal Code: 80-83, 84-86a, 87-91, 94-100a, 102-104a, 105-108e, 109-109h, 129a, 129b, 234a or 241a. They include, for example, disseminating and using the symbols of an unconstitutional organization, continuing a political party considered to be unconstitutional, sabotage against the Constitution and forming a terrorist organization.

<sup>151</sup> For further information, see Kati Lang, *Vorurteilkriminalität*, "Kapitel 2: Polizeilicher Erfassung und Verfolgung von Vorurteilkriminalität", p.55, Nomos, 2014.

<sup>152</sup> Meetings with police authorities at the state level in Bavaria, Berlin, Saxony and Saxony-Anhalt.

PMK system is applied – which include definitions of politically motivated crimes as well as criteria for applying those definitions and guidelines for investigating these crimes – are confidential and thus not available to the public. The Federal Criminal Affairs Department (*Bundeskriminalamt*) explained that the guidelines were restricted for security reasons; that is, to ensure that perpetrators of politically motivated crimes could not access their content as this would hamper the investigation of those crimes.<sup>153</sup> None of the groups supporting victims of hate crimes and other civil society organizations whom Amnesty International met had seen the entire content of those guidelines.

Amnesty International had access to one set of guidelines, which include the main definitions on politically motivated crimes included in the PMK system. Police classify and collect data on politically motivated crimes according to multi-layered categories.<sup>154</sup> They include three dimensions:

- The quality of the offence (*Deliktsqualität*), which includes for example violent crimes (*Politisch motivierte Gewaltskriminalität*), propaganda offences (Articles 86 and 86a of the Criminal Code) or terrorist offences (as defined in Articles 129a, 129b, 89a, 89b and 91 of the Criminal Code);
- The subject/issue (*themenfelder*), which includes for example Separatism (*Separatismus*), hate crimes (*Hasskriminalität*) and nuclear energy (*Kernenergie*). Hate crimes can be further classified according to 10 sub-themes reflecting protected characteristics. These are: nationality, ethnicity, race, colour, religion, origin, sexual orientation, disability, social status and appearance.
- The ideological tendency (*Phänomenbereiche*), which has four main sub-categories:
  - *PMK-Links* (politically motivated crimes-left) are crimes that, in view of the circumstances of the offence and/or the attitude of the perpetrator are suspected of being connected with a “left-wing political orientation”; examples given include Anarchism, Marxism or Communism;
  - *PMK-Rechts* (politically motivated crimes-right) are crimes that, in view of the circumstances of the offence and/or the attitude of the perpetrator, are suspected of being connected with a “right-wing orientation”; examples given include nationalism, racism or national socialism;
  - *PMK-Ausländer* (politically motivated crimes-foreign ideology): the authorities have described these crimes as inspired by an ideology that is “not considered

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<sup>153</sup> Meetings with representatives of the Federal Criminal Affairs Department (*Bundeskriminalamt*) and the Federal Minister of the Interior, 30 September 2014.

<sup>154</sup> Amnesty International had access to one set of guidelines including the definitions mentioned here via a source that wishes to remain confidential. The Federal Ministry of Interior told Amnesty International that the PMK system is implemented on the basis of 5 set of guidelines and other 4 documents including case-studies.

to be German". The authorities have often referred for instance to crimes inspired by "Islamist ideologies" and have highlighted that these crimes can also be perpetrated by German citizens who for example have converted to Islam. Other examples include the crimes perpetrated by members of the Kurdistan's Workers Party (PKK) in Germany.

- *PMK-Sonstige* (politically motivated crimes-other): this area includes crimes that cannot be classified in any of the previous three sub-categories.

## 5. 2 CONCERNS REGARDING THE PMK SYSTEM

The regular police first classify a criminal offence on the basis of the definitions provided in the Criminal Code: general police crime statistics are disaggregated by Article of the Criminal Code.<sup>155</sup> The PMK system is an additional classification system, which includes definitions and sub-categories of politically motivated crimes and hate crimes. The regular police are in charge of classifying and collecting data on hate crimes on the basis of the PMK system.

Information on politically motivated crimes is published each year by the Federal Minister of the Interior. Some of this data is shared with members of federal and the state parliaments (*Landtage*).

Data on politically motivated crimes-right and on hate crimes is also compiled by hate crime victim support groups in some states. For historical reasons, namely that victim support groups in German states that were formerly part of the German Democratic Republic (GDR), were prioritized for funding, reliable alternative data is available only for the six out of Germany's 16 states that (apart from West Berlin) made up the former GDR: Berlin, Brandenburg, Mecklenburg - West Pomerania, Saxony, Saxony-Anhalt and Thuringia. Victim support groups compile data on the basis of definitions similar to those used by the police and included in the PMK system. Their data include cases of victims of hate crimes to whom they provided counselling as well as cases collected via press monitoring or outreach efforts to other civil society initiatives and community organizations.<sup>156</sup>

According to almost all the civil society organizations that spoke to Amnesty International, official statistics on politically motivated crimes tend to underestimate the prevalence of these crimes. They pointed to several possible explanations, including the police lacking the skills to classify and investigate hate crimes using a very complex system such as the PMK system and, more generally, the awareness on discrimination and hate crime. Moreover, all the victim support groups met by Amnesty International explained that the biases and

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<sup>155</sup> For more information on the Catalogue of criminal offences and the Catalogue of definitions used to compile the Police Crime Statistics, see [https://www.bka.de/EN/Publications/PoliceCrimeStatistics/2014/pcs2014\\_node.html?\\_nnn=true](https://www.bka.de/EN/Publications/PoliceCrimeStatistics/2014/pcs2014_node.html?_nnn=true) (accessed 24 April 2016).

<sup>156</sup> Interview with representatives of RAA (Saxony), 8 May 2014; BUD (Bavaria), 16 September 2014; Mobile Beratung für Opfer rechter Gewalt (Saxony-Anhalt), 25 September 2014; Reachout (Berlin), 29 September 2014; Berliner Register (Berlin), 19 August 2015; EZRA (Thuringia), 10 November 2015; and Opferperspective (Brandenburg), 12 November 2015.

prejudices within specific police services, and the police as an institution, contributed to registering and investigating racist crimes as common crimes, including in instances where some elements clearly pointed to a possible racist motive.<sup>157</sup>

There is a significant discrepancy between official statistics on racist crimes and alternative data published by civil society organizations. For example, in 2015, the victim support group RAA in Saxony registered 477 violent politically motivated crimes-right (*PMK-Rechts*).<sup>158</sup> In the same year, the authorities in Saxony registered 213 violent crimes classified as *PMK-Rechts*.<sup>159</sup>

The discrepancies highlighted above may partially be explained by the fact that some crimes included by victim support groups in their statistics are not reported to police. An additional explanation could be that, as noted above, some crimes perpetrated with an alleged racist motive are not classified as such by police and thus not included in official statistics.

It is not possible to draw general conclusions regarding the extent to which the lack of police diligence in classifying and registering hate crimes could explain the discrepancy between official and alternative statistics. However, the data collected by the victim support group Mobile Counselling for Victims of Right-wing Violence (*Mobile Beratung für Opfer rechter Gewalt*) in Saxony-Anhalt provides some useful insights.

In 2014, a third of reported crimes where victims alleged a discriminatory motive (28 out of 75, including eight threats of violence) were not classified and investigated as hate crimes. Moreover, a quarter (28 out of 103) of the alleged hate crimes on which data was collected by the victim support group in Saxony-Anhalt were not reported to police. According to Mobile Counselling, in 2015, only 56% of violent crimes perpetrated with an alleged discriminatory motive were classified and investigated as hate crimes by the police.<sup>160</sup>

The police authorities told Amnesty International that the classification of an offence as politically motivated can be updated in the course of an investigation. A criminal offence that is not classified as a hate crime at the beginning of the investigation, and thus not initially included in the PMK statistics, can be included in those statistics if subsequent phases of the investigation unmask a possible discriminatory motive. However, the initial classification determines the police unit in charge of the investigation. Only criminal offences that are initially classified as politically motivated crimes are investigated by specialized police units (see Chapter 3.1).

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<sup>157</sup> Meetings with groups supporting victims of right-wing violence in Bavaria, Berlin, Brandenburg, Saxony, Saxony-Anhalt and Thuringia.

<sup>158</sup> <https://raa-sachsen.de/index.php/statistik-detail/rechtsmotivierte-und-rassistische-gewalt-in-sachsen-2015.html> (accessed 25 May 2016).

<sup>159</sup> [https://www.polizei.sachsen.de/de/MI\\_2016\\_41981.htm](https://www.polizei.sachsen.de/de/MI_2016_41981.htm) (accessed 25 May 2016).

<sup>160</sup> Phone conversation with Mobile Beratung, 12 March 2015. Published statistics for 2014: [http://www.mobile-opferberatung.de/doc/statistik\\_rechte\\_und\\_rassistische\\_gewalt\\_2014.pdf](http://www.mobile-opferberatung.de/doc/statistik_rechte_und_rassistische_gewalt_2014.pdf) and for 2015: [http://www.mobile-opferberatung.de/b\\_0001464.html](http://www.mobile-opferberatung.de/b_0001464.html) (accessed 24 April 2016).

Some of the cases presented in Chapter 3 of this report were not initially classified as hate crimes by police, even though aspects of the crime pointed to a possible discriminatory motive. In the case of Abdi Farah, police did not take into account the new evidence that emerged in the course of the investigation on the basis of which the attack should have been reclassified as a hate crime.

On 29 August 2013, **Abdi Farah**, a Somali asylum-seeker, was attacked by two German men just outside the asylum accommodation centre in Wallersdorf (Bavaria) where he lived. The two attackers approached him on a motorcycle. The man who was sitting at the back first threw a beer bottle at Abdi and then got off the motorcycle and attempted to hit him. Abdi managed to dodge the blows and ran away. The men chased him, caught him and physically assaulted him. Abdi fell on the floor, started screaming and was eventually rescued by some other asylum-seekers who called the police.<sup>161</sup>

Police excluded the possibility of any discriminatory motive associated with the attack, and thus did not classify the attack as a hate crime; Abdi Farah did not get on with another Somali asylum-seeker and police thought the latter could have instigated the attack. In addition, Abdi initially told police there was nothing about the attack to make him think there was a racist motive.

However, subsequent investigations showed that the other Somali asylum-seeker did not instigate the attack. The investigators acknowledged that the man who physically assaulted Abdi Farah had a clear bias against foreigners.<sup>162</sup> Nevertheless, the attack was not reclassified as a hate crime and when the case came to trial the racist motive was not reflected in the judgment.<sup>163</sup>

Although the police use the PMK system to collect disaggregated data on hate crimes, it was designed as a tool for classifying and investigating politically motivated crimes, which constitute a broader category of crimes than hate crime.

The main problem with the PMK system of classification rests with its complexity. The regular police, not specialized police units, are in charge of classifying and collecting data on hate crimes using the PMK system. Discrepancies between data on hate crimes collected by police and that recorded by victim support groups may point to the fact that police authorities do not always classify and investigate crimes perpetrated with an alleged discriminatory motive as hate crimes. Although it may not be representative of the situation in other states, this is suggested by data available in Saxony-Anhalt. However, the reasons for this are difficult to ascertain as the guidelines and definitions on the basis of which police apply the PMK system are not available to the victims of hate crimes, victim support groups or the general public. In particular, it is unclear what elements the police take into account when classifying a crime as a politically motivated crime and, more specifically, as a hate

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<sup>161</sup> Interview with Abdi Farah, Regensburg, 21 September 2014.

<sup>162</sup> Request regarding financial compensation for the injuries suffered by Abdi Farah sent by his lawyer to the Landau Local Court, 3 August 2015.

<sup>163</sup> Email communication with Abdi Farah's lawyer, 8 April 2014.

crime. Moreover, some of the publicly available definitions included in the PMK system, including politically motivated crimes-foreign ideology (*PMK-Ausländer*) and politically motivated crimes-other (*PMK-Sonstige*) are quite vague.

In November, the Federal Ministry of the Interior told Amnesty International that a working group of the Conference of the Ministers of Interior (IMK, see Section 3.1) had developed suggestions to amend the definition included in the PMK system. More specifically, the category *PMK-Ausländer* would be split into two: PMK-inspired by a foreign religious ideology and PMK-inspired by a foreign non-religious ideology. Moreover, “hate crime” would include four new sub-sections: anti-Muslim crimes, anti-Christian crimes, other religious-based crimes and anti-Roma crimes. In April 2016, the Ministry told Amnesty International that the amendments were likely to be adopted by the meeting of the IMK in June 2016.<sup>164</sup>

## CONCLUSIONS

The PMK system was never specifically designed to classify and collect data on hate crimes generally. For historical reasons, the German authorities have focused on politically motivated crimes perpetrated by individuals and groups with a specific ideological orientation. In Germany, hate crimes are considered a specific type of politically motivated crimes, and subsumed as such in data collection systems and investigation protocols. The concern with this system is that, consciously or otherwise, it introduces a high threshold for an offence to be classified and treated as a racist or otherwise hate-fuelled crime.

International and European human rights standards on non-discrimination impose on authorities to establish an adequate, thorough and transparent system to collect data on hate crimes (see chapter 2). To this end, German authorities should review the PMK system. In particular, they should develop a separate set of guidelines to classify and investigate hate crimes, apart from politically motivated crimes. The guidelines should include simplified criteria and definitions aimed at facilitating the classification of hate crimes by regular police at the outset of an investigation and imposing a duty on police to classify a crime as a hate crime in any incident perceived by the victim, or any other person, to be associated with a discriminatory motive.

## 5.3 DATA COLLECTION AND UNDERREPORTING OF HATE CRIMES AGAINST ASYLUM SHELTERS, ASYLUM-SEEKERS AND REFUGEES

In April 2016, the Federal Ministry of the Interior informed Amnesty International of the dramatic 16-fold increase in the overall number of politically motivated crimes (including non-violent ones) perpetrated against asylum shelters between 2013 and 2015 (63 in 2013, 199 in 2014 and 1,031 in 2015).<sup>165</sup> In the first trimester of 2016, authorities reported 347 crimes perpetrated against asylum shelters.<sup>166</sup>

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<sup>164</sup> Email communication with a representative of the Federal Ministry of the Interior, 13 April 2016.

<sup>165</sup> Email communication with the Federal Ministry of the Interior, 13 April 2015.

<sup>166</sup> Response of the Federal Ministry of Interior to a written question (No. 18/8197) introduced by MP Ulla Jelpke, 6 May 2015, <http://www.linksfraktion.de/abgeordnete/ulla-jelpke/downloads/> (accessed 31

The federal authorities acknowledged that the rise in attacks against asylum shelters, especially in 2015, was an extremely serious problem and admitted that they had not foreseen this sharp increase in attacks.

The authorities have been collecting disaggregated data on hate crimes against asylum shelters using the PMK system since the beginning of 2014, when the new sub-category "asylum accommodation" (*asylbewerber Unterkünfte*) was added as subject/issue (*themenfelder*) in the PMK system. Attacks against asylum shelters as well as attacks in the immediate vicinity are recorded under this sub-category. For example, setting alight a garbage can in front of an asylum shelter would be included in the data of attacks against asylum shelters. Following a reform of the PMK system that entered into force on 1 January 2016, the authorities started collecting data on hate crimes disaggregated by the refugee status of the victim.<sup>167</sup>

Since the beginning of 2014, the federal authorities have been reviewing on a regular basis all alleged hate crimes perpetrated against asylum shelters. Four staff members within the Federal Criminal Affairs Department (*Bundeskriminalamt*) have been specifically assigned responsibility for this periodic review. They coordinate closely with other staff members of the *Bundeskriminalamt* dealing with politically motivated crimes-right (*PMK-Rechts*) and with other structures such as the Joint Centre for Counteracting Extremism and Terrorism (*Gemeinsames Extremismus- und Terrorismusabwehrzentrum, GETZ*).<sup>168</sup>

The federal authorities explained that any violent crime perpetrated against an asylum shelter was usually classified as a politically motivated crime under the PMK system. More specifically, they clarified that those attacks were either classified as PMK-right or, in the absence of elements pointing to the ideology that had inspired the perpetrators, PMK-other.

Civil society organizations in Germany have raised concerns that official statistics underestimate the number of hate crimes against asylum shelters. For example, in 2015 a monitoring project, Courage against Right-wing Violence (*Mut Gegen Rechte Gewalt*), reported 1,082 violent attacks against asylum shelters throughout Germany, six times more than official statistics (177 cases).<sup>169</sup>

The authorities' classification and data collection regarding hate crimes against asylum

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May 2016).

<sup>167</sup> New sub-categories were added under the subject/issue "asylum" in the PMK system. They include: attacks against refugees and asylum-seekers, attacks against supporters and attacks against journalists (for example in the context of anti-refugee protests). Meeting with the Federal Ministry of the Interior and the Federal Criminal Affairs Department, 13 November 2015. Email communication with the Federal Ministry of the Interior, 13 April 2016.

<sup>168</sup> The GETZ was established on 15 November 2012 with the aim of improving cooperation between the police and the intelligence services at both the state and federal levels in the area of extremism and terrorism. <https://www.verfassungsschutz.de/en/about-the-bfv/getz-en> (accessed 24 April 2016).

<sup>169</sup> The data collected by *Mut Gegen Rechte Gewalt* can be found here: <https://www.mut-gegen-rechte-gewalt.de/service/chronik-vorfaelle> (accessed 24 April 2016).

shelters raise some of the concerns outlined in previous chapters about classification and data collection regarding hate crimes in general. More specifically, the authorities do not always take into account the climate and the overall circumstances in which attacks against asylum shelters occur or the alleged discriminatory motive. For example, in the classification and investigation phase, the authorities should take into account whether similar attacks were perpetrated in the past in the same geographical area and/or whether the climate in a specific neighbourhood or town is particularly hostile towards asylum-seekers and refugees. Physical assaults against asylum-seekers and refugees often happen in a context where hostility and violence have already been manifest, as was the case, for example, in Dresden-Stetzsch.

In July 2015, the former Lindhof Hotel in the neighbourhood of **Dresden Stetzsch** (northwest of Dresden, Saxony) was converted into an asylum shelter following an agreement between the municipality of Dresden and the private owner of the hotel. There was a great deal of opposition to this decision in the neighbourhood. In October 2014, as soon as information about the possible conversion of the hotel into an asylum accommodation centre became available, neighbours launched a petition targeting the municipality of Dresden and opposing the establishment of the shelter.

On 25 July, the municipality of Dresden organized an open day at the premises of the former hotel to inform and raise awareness among the local population about the upcoming arrival of asylum-seekers in the neighbourhood, scheduled for 29 July. The manager of the asylum shelter told Amnesty International that the former hotel had been the target of violent attacks several times even before asylum-seekers moved in: "Stones were thrown against the building on the night of 26 July, several windows were broken. Stink bombs were thrown inside the building several times, including once in my office. Then, at the end of August the windows of my office on the first floor were smashed. Demonstrations opposing the asylum shelter were staged shortly after 29 July and continued until September. Every day, between 15 and 40 people gathered outside the shelter, drinking and insulting asylum-seekers. A police car was around on some days but not on a regular basis".<sup>170</sup>

On 27 September 2015, **Ciwan B.**, a 24-year-old Kurdish asylum-seeker from Syria who moved into the former Lindhof Hotel in early September, was attacked a few hundred meters from the asylum shelter. He told Amnesty International: "I was cycling with a friend [who was also an asylum-seeker], a car slowed down and approached us. They open the window and sprayed a stinging-spray in my face. They left immediately afterwards. I reported the attack to police. What happened really puzzled me. I don't see any other reason behind this attack than my foreign physical appearance, but why? I am a human like them, I don't understand why people are so afraid of refugees".

According to the manager of the asylum shelter and to media reports, the specialist Saxony police forces responsible for dealing with hate crimes (*Operative Abwehrzentrum*) investigated the attacks against the asylum shelter in July and August 2015. However, none of these attacks was included in the list of hate crimes perpetrated during that period

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<sup>170</sup> Interview with the manager of the asylum shelter, 19 October 2015.

provided by the Saxony Minister of the Interior to the parliament (*Landtag*) on 26 October 2015.<sup>171</sup> Similarly, the attack against Ciwan was not included in the list of politically motivated crimes-right perpetrated in September 2015 in Saxony and published by the Minister of the Interior on 16 October 2015.<sup>172</sup> Hate crimes against asylum-seekers and refugees are not only likely to be under-recorded, as described above, they are also, like other forms of hate crimes, likely to be underreported. Several civil society organizations as well as asylum-seekers themselves told Amnesty International about the additional barriers they face in reporting hate crimes, especially the uncertainties regarding their legal status and their lack of trust in the police, which lead some victims simply not to report such crimes.<sup>173</sup>

**Hubab L.**, a 25-year-old Syrian refugee who lived in Magdeburg (Saxony-Anhalt) for more than two years, was attacked in the street in July 2015. He told Amnesty International: “I am often called names in the street because of my appearance. You never know if the insults will also be followed by violence. In July, I was at a street party in Magdeburg and two men who were close to me said ‘Fucking foreigner’. I asked them what their problem was. They punched me. I ran away. I asked for help from private security guards who were around but they told me to go away. I did not report the attack to police. In general, I don’t think police would help or protect me. They would not believe me unless I brought witnesses. I have many friends who were physically attacked by far-right supporters but they did not report to police”.<sup>174</sup>

**Madou D.**, a Malian asylum-seeker who was attacked in Bavaria in December 2014, said: “We asylum-seekers are afraid to get in touch with police, because we could be deported or put in jail. If they consider us to be illegal immigrants they can detain us. We are very careful not to attract police attention”.<sup>175</sup>

**Omar Z.**, a Syrian asylum-seeker who lived in an asylum shelter in Marzahn-Hellersdorf (Berlin), told Amnesty International: “I have been living here for a couple of months and I know at least four people who have been threatened and attacked by Nazis in the neighbourhood. Some of them are children. None of them would report those events to police. They are afraid they would not be allowed to stay in Germany if they did so.”<sup>176</sup>

A comprehensive strategy to counteract hate crimes against asylum-seekers and refugees (see Section 4.4) should include specific measures aimed at increasing victims’ trust in the

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<sup>171</sup> Response of the Ministry of the Interior to written question 6/2815 (Kleine Anfrage der Abgeordneten Juliane Nagel, Fraktion Die Linke), 26 October 2015.

<sup>172</sup> Response of the Ministry of the Interior to written question 6/2898 (Kleine Anfrage der Abgeordneten Kerstin Köditz, Fraktion Die Linke), 16 October 2015.

<sup>173</sup> Interview with representatives of RAA (Saxony), 8 May 2014; BUD (Bavaria), 16 September 2014; Mobileopferberatung (Saxony-Anhalt), 25 September 2014; Reachout (Berlin), 29 September 2014; Berliner Register (Berlin), 19 August 2015; Asylum Seekers’ Movement, 21 October 2015, EZRA (Thuringia), 10 November 2015; and Opferperspective (Brandenburg), 12 November 2015.

<sup>174</sup> Interview with Hubab L., 11 November 2015. Hubab L. is a pseudonym.

<sup>175</sup> Interview with Madou D., 24 October 2015.

<sup>176</sup> Interview with Omar Z., 18 February 2016.

authorities, especially the police and facilitating and improving the reporting of hate crimes.

#### 5.4 DATA ON THE PROSECUTION OF HATE CRIMES

The PMK system is used only by the police. Other parts of the criminal justice system collect their own data. Some data regarding politically motivated crimes as well as the crimes included in Article 74a of the Law on the Constitutional Court (*Gerichtsverfassungsgesetz*),<sup>177</sup> which include for example crimes against the state (*Staatsschutzdelikte*)<sup>178</sup>, are collected. Prosecutors who met Amnesty International explained that specific key codes (*Sachgebietsschlüssel*) are assigned to two categories of crime: crimes against the state (key code 10) and politically motivated crimes (key code 11). However, no specific disaggregated data on hate crimes is collected.

No data is collected regarding the application by the courts of Article 46.2 of the Criminal Code, requiring courts to take into account racist, xenophobic and other inhumane (*menschenverdachtende*) motives in hate crimes cases. According to earlier research carried out by journalists in collaboration with victim support groups, the courts identify racist murders as hate crimes in only a minority of cases. Researchers reviewed 152 cases of murders perpetrated from 1990 to 2014. In all these cases, researchers and victim support organizations identified elements pointing to the fact that the perpetrators were members or supporters of far-right groups. In 56 cases, they identified a xenophobic motive. However, the courts mentioned a xenophobic motive in the judgment in only 23 out of 56 murders. In the other 33 cases no discriminatory motive was recognized.<sup>179</sup>

In meetings with Amnesty International, representatives of the Federal Ministry of the Interior confirmed that about 3,000 past cases of murder and attempted murder were under review with the aim of establishing whether a discriminatory motive had been overlooked. In September 2014, the Ministry confirmed that the first phase of the review, which focused on cases where no suspect had been identified, had been completed. None of these cases had been reclassified as politically motivated crimes or hate crimes.<sup>180</sup>

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<sup>177</sup> [http://www.gesetze-im-internet.de/englisch\\_gvg/englisch\\_gvg.html#p0384](http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0384) (accessed 24 April 2016).

<sup>178</sup> *Staatsschutzdelikte* offences established by the following Articles of the German Criminal Code 80-83, 84-86a, 87-91, 94-100a, 102-104a, 105-108e, 109-109h, 129a, 129b, 234a or 241a. They include for example disseminating and using the symbols of an unconstitutional organization, continuing a political party considered to be unconstitutional, sabotage against the Constitution and forming a terrorist organization.

<sup>179</sup> Information from the project is available to the public at <http://www.zeit.de/gesellschaft/zeitgeschehen/todesopfer-rechter-gewalt> (accessed 24 April 2016).

<sup>180</sup> Meeting with the Federal Ministry of the Interior, 30 September 2014.

# RECOMMENDATIONS

## **On the need for a comprehensive review of police practices regarding hate crimes**

- Establish a fully independent public inquiry to review the NSU murder investigations and broader police practices and attitudes regarding the classification and investigation of hate crimes, with a view to identifying lessons to be learned.

## **On the investigation and recording of hate crimes**

- Police laws at both the state and the federal level (*Bundespolizeigesetz*) should be amended to include an explicit duty for police authorities to investigate any racist or otherwise discriminatory motive behind the perpetration of a crime;
- Specific guidelines on the classification and investigation of hate crimes, as distinct from politically motivated crimes, should be developed and included in the guidelines aimed at implementing the PMK-system;
- The guidelines should include simplified criteria and definitions for the classification of hate crimes by regular police at the outset of an investigation. These guidelines should impose on regular police the duty to detect, and take into account, any element pointing to a discriminatory motive without requiring them to apply the PMK-system in its entirety;
- The aforementioned guidelines should include a specific duty for police authorities to take into account the possibility that a crime may have been motivated by discrimination when, for example, the perpetrators use discriminatory language before, during or after the attack or if there is no other apparent plausible motive behind the crime;
- The guidelines should define any criminal offence which is perceived to have a discriminatory motive by the victim or any other person as a hate crime for the purposes of police reports and statistical records;
- The guidelines to implement the system aimed at classifying and investigating politically motivated crimes (PMK-system) should be transparent and made accessible to the public;
- All police officers should receive in-service training on the nature of hate crime, on the specific needs of the victims and the role of police in combating and protecting people against racism and discrimination;

### **On the prosecution of hate crimes**

- The Code of Criminal Procedure should be amended to establish an explicit duty for prosecutors to refer to racist or otherwise discriminatory motives when pressing charges for crimes in respect of which the investigation has revealed these elements;
- In-service training for prosecutors and judges on hate crimes, racism and discrimination should be made mandatory.

### **On the collecting of hate crimes data**

- Data on hate crimes reported to authorities disaggregated by motive, criminal offence and perpetrators (state actor/non-state actor) should be published regularly. These data should clearly distinguish hate crimes from other politically motivated crimes;
- Hate crimes data should include the number of indictments, convictions and sentences (using Article 46.2 of the Criminal Code) that took a discriminatory motive into account;
- Measures aimed at reaching out to groups that are likely to be targeted with hate crimes should be adopted and implemented in cooperation with NGOs to encourage the reporting of hate crimes and build trust in police authorities;
- A broad-based victimization survey should be designed and regularly carried out with a view to inter alia assessing the extent to which hate crimes may be underreported to the police, and why.

### **On the protection of asylum shelters and asylum-seekers and refugees**

- State police should, in consultation with federal authorities, develop a thorough risk-assessment strategy to identify asylum shelters at particular risk of being targeted with violence and setting out appropriate police protection measures;
- Strategies should be developed to ensure public security in the context of protests against asylum shelters or, more generally refugees, that respect the rights of all the groups involved. If such protests are carried out in a way that amounts to, or is clearly bound up with, intimidation or threatening behaviour towards asylum-seekers and refugees, or obstructs access to the shelters by those who are living there, the authorities should take effective measures to protect asylum-seekers and refugees against such intimidatory or threatening conduct. Such measures may entail, for example, necessary and proportionate restrictions on the protests such as requiring the protesters to keep some distance away from the shelter to enable those living there to enter and leave their accommodation without intimidation.

### **On the prevention of discriminatory police practices**

- Laws governing police at the state and federal level should be amended so that the grounds on the basis of which police can carry out identity checks are made more stringent and racial profiling is explicitly prohibited;

- Independent police complaints bodies should be established at both the federal and the state levels, to examine all allegations of serious human rights violations including incidents which raise issues under Article 2 or 3 of the ECHR.

**On the prevention of hate crimes and discrimination**

- State and federal authorities should update the 2008 National Action Plan against racism, Xenophobia, Anti-Semitism and related Intolerance in consultation with civil society organizations; include in the Action Plan a comprehensive strategy aimed at preventing hate crimes against asylum shelters, asylum seekers and refugees.

**The European Union should:**

- In the context of the monitoring of the implementation of Framework Decision 2008/913/JHA in Germany, raise concerns on the failures on the part of law enforcement and judicial authorities to fully take into account any racist motive associated with a crime in the investigation, prosecutions and sentencing phases;
- Review Framework Decision 2008/913/JHA and ensure that any revised instrument prohibits all violent crimes motivated by discrimination on any of the prohibited grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status. Such a revised instrument should explicitly require states to identify any alleged discriminatory motive associated with a crime in the course of the investigation and to take any such motive into account in the prosecution of suspects.







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## **LIVING IN INSECURITY**

### **HOW GERMANY IS FAILING VICTIMS OF RACIST VIOLENCE**

Hate crimes have soared in Germany in the last few years. Between 2013 and 2015, the number of violent racist crimes increased by 87%, while there has been a sixteen-fold increase in the number of crimes targeting shelters for asylum-seekers.

Long-standing shortcomings in the response to hate crimes have not been addressed, however, despite reviews prompted by the failure to effectively investigate the racist murders perpetrated by the National Socialist Underground (NSU) between 2000 and 2007.

This report analyses ongoing failures to record, investigate and prosecute hate crimes effectively, all of which point to the existence of a broader problem of institutional racism within German police and judicial authorities.

Amnesty International is calling for the establishment of an independent inquiry into the procedures, attitudes and behaviours within law enforcement that are obstructing victims of racist attacks from getting justice.

The report also examines the police response to the rise in attacks on asylum seekers and shelters and urges both state and federal authorities to set up a comprehensive risk assessment mechanism to improve the protection of those asylum shelters that are most at risk of being targeted with violence.

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