College of Public Prosecutors
Brussels, 17 June 2013
JOINT CIRCULAR No. COL 13/2013 OF THE MINISTER OF JUSTICE, THE MINISTER OF THE INTERIOR, AND THE COLLEGE OF PUBLIC PROSECUTORS TO THE COURT OF APPEAL
The Public Prosecutor,
The Federal Prosecutor,
The Crown Prosecutor,
The Labour Prosecutor,
SUBJECT: Circular relating to the investigation and prosecution policy regarding discrimination and hate crimes (including gender-based discrimination).

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I. REGULATORY FRAMEWORK
This list below is by no means exhaustive. Its sole purpose is to draw the attention of magistrates to the multiplicity of standards likely to be applied in the domain of the present circular. Their inventory and, a fortiori, their comments exceed the framework of the present circular. In order to understand the subject, a glossary was written at the same time as the present circular. It includes an updated list of the standards concerned. For more details concerning these standards, information is available on the websites of the Centre for Equal Opportunities and Opposition to Racism (CECLR) and the Institute for the Equality of Women and Men (IEFH):
http://www.diversite.be/?action=onderdeel&onderdeel=226&titel=L%C3%A9gislation+et+Jurisprudence
http://igvm-iefh.belgium.be/fr/domaines_action/juridische_missie/

a) Federal legislation
- Articles 377bis, 405quater, 422quater, 438bis, 442ter, 444, 453bis, 514bis, 525bis, 532bis, 534quater of the Criminal Code, Belgian Official Journal 9 June 1867;
- Law of 23 March 1995 aimed at suppressing the negation, minimisation, justification or approval of the genocide committed by the German National Socialist regime during the Second World War, Belgian Official Journal 1995, err. Belgian Official Journal 22 April 1995 (the "negationism law");

- Law of 30 July 1981 which aims to suppress certain acts inspired by racism or xenophobia as amended by the Law of 10 May 2007, Belgian Official Journal 30 May 2007 (the “antiracism law”);
- Law of 10 May 2007 aimed at fighting certain forms of discrimination, Belgian Official Journal 30 May 2007 (the “antidiscrimination law”);
- Law of 10 May 2007 aimed at fighting discrimination between women and men, Belgian Official Journal 30 May 07 (the “gender law”);
- Law of 10 May 2007 adapting the Legal Code to the legislation aimed at fighting discrimination and suppressing certain acts inspired by racism or xenophobia, Belgian Official Journal 30 May 2007.

b) Community and regional legislation
These laws aim to complete the transposition of European directives to areas that fall under their competence (cf. glossary).
Flemish decrees
- Decree of 8 May 2002 amended on 30 April 2004, 9 March 2007 and 30 April 2009 relating to proportional participation in the labour market;
- Decree of 10 July 2008 concerning the framework of the Flemish policy on equal opportunities and treatment;
- Decree of 20 March 2009 concerning the accessibility of public places for people accompanied by a guide dog.
Decree of the French-speaking Community
- Decree of 12 December 2008 relating to the fight against certain forms of discrimination.
Decrees of the German-speaking Community
- Decree of 17 May 2004 relating to the guarantee of equal treatment in the labour market, amended by the decree-programme of 25 June 2007;
- Decree of 19 March 2012 aimed at fighting certain forms of discrimination.
Decree of the Walloon Region
- Decree of 6 November 2008 relating to the fight against certain forms of discrimination, as amended by the decree of 19 March 2009.
Orders of the Brussels-Capital Region
- Order of 4 September 2008 aimed at promoting diversity and the fight against discrimination in the Brussels regional civil service;
- Order of 4 September 2008 relating to the fight against discrimination and equal treatment in terms of employment;
- Order of 19 March 2009 amending the order of 17 July 2003 containing the Brussels Housing Code.
Decrees of the French-speaking Community Commission of the Brussels-Capital Region
- Decree of 22 March 2007 relating to equal treatment in terms of employment;
- Decree of 9 July 2010 relating to the fight against certain forms of discrimination and the implementation of the principle of equal treatment.

II. CONTEXT AND OBJECTIVES OF THE CIRCULAR
Context
These laws and decrees ensure that Belgian legislation complies with the European directives as regards the fight against discrimination, and the antiracism law executes the obligations imposed on Belgium by the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965. Furthermore, this reform aims to put an end to the direct and indirect consequences of decision 157/2004 of the Constitutional Court cancelling certain provisions of the Law of 25 February 2003 aimed at combating discrimination and amending the Law of 15 February 1993 creating a Centre for Equal Opportunities and Opposition to Racism.
It appeared that:
- the legislation relating to discrimination and hate crimes is not always clear in practice and that it is not always properly applied;

- collaboration between the public prosecutor, the police and/or the social inspection services concerned can be improved;
- collaboration with the institutional parties must be developed, firstly with the CECLR and the IEFH;
- the decisions and the statistical data are not always sent to the institutional parties;
- the registration of discrimination offences and hate crimes must be improved.

Objectives

The circular aims to standardise the investigation and prosecution policies on the basis of breaches of the "antidiscrimination", "gender" and "antiracism" laws and decrees, including the phenomenon of negationism. For this purpose, it provides for a framework and uniform criteria allowing a homogenous development of this policy in the field. In concrete terms, the objectives are as follows:
- more efficient identification and registration of acts of discrimination and hate crimes;
- raising awareness among the magistrates in the public prosecutor's office, the labour auditor's office, the police and the social inspection services concerned regarding the problem and current legislation;
- more efficient guidance in the investigation and prosecution of the offences concerned for magistrates and police officers in the field.
- improvement in collaboration and reciprocal exchange between judicial staff and police officers and the CECLR and IEFH;
- particular attention will be given to the investigation of offences committed via the internet and specific collaborations will be developed.

III. INVESTIGATION AND PROSECUTION POLICY FOR OFFENCES

1) Missions of the College of Public Prosecutors

The public prosecutor in charge of the matter within the College of Public Prosecutors appoints a coordinating magistrate.

2) Missions of the coordinating magistrate

This magistrate is responsible for collecting the information necessary for improvements likely to be made to the circular. They are the special point of contact for the CECLR and the IEFH with which they collaborate with a view to updating the glossary. For this purpose, they centralise the decisions and judgements in areas relating to the circular and can ask the contact magistrates at the public prosecutor's office or general auditor's office, and the auditor's office, for any useful information. They provide them with the necessary support for the correct application of the present circular. Once a year, the coordinating magistrate organises a general assembly of the contact magistrates from the public prosecutors' offices and auditors' offices as well the general auditors' offices, in order to assess the present circular's conditions of application, in particular with regard to particularly sensitive subjects such as racism, homophobia or gender-based discrimination. The Criminal Policy Department, the CECLR and/or the IEFH will also join in these meetings. The coordinating magistrate invites representatives from the police services or social inspection services and from all the other inspection services likely to note breaches to the standards of the present circular in the exercising of their missions. The list of these services could be established by the secretariat of the College of Public Prosecutors.

3) Missions of the public prosecutor and the contact magistrate of the public prosecutor's office or the general auditor's office.

Every public prosecutor designates a contact magistrate in the public prosecutor's office or general auditor's office in the area of discrimination and hate crimes, who is mainly responsible for providing information, follow-up, guidance and coordination of the criminal policy within their competence, including cooperation between the public prosecutors' offices and the labour auditors' offices.

4) Missions of the crown prosecutor and the labour prosecutor

The crown prosecutor and the labour prosecutor consult each other and coordinate with each other for the application of the criminal policy in their district. Within the framework of their respective competences, each one:
- defines the methods of management allowing "discrimination and hate crime" cases to be rapidly processed (i.e. cases on the basis of the "antiracism" law, the "gender" law and the "antidiscrimination" law, including aggravating circumstances, and the "negationism" law") by the magistrates of their public prosecutor's office/auditor's office: they ensure that the magistrates who examine these cases acquire the necessary experience, especially by participating in the training provided by the Institut de Formation Judiciaire (legal training institute);
- designates a contact magistrate, whose mission is defined hereafter and whose details are sent to the police services and competent social inspection services in the district, the CECLR and the IEFH. If two language groups exist in the district, a contact magistrate is designated for each language group;
- sets objectives (for instance: combating acts of homophobia) allowing their actions to be targeted (for instance: in nightclubs) according to the specificities of their district;
- gives an opinion on the "discrimination and hate crimes" cases which are submitted within the framework of the civil procedure;
- informs the public prosecutor of all the difficulties arising from the application of the criminal policy directives and makes useful proposals.
Typically, the labour prosecutor takes care of raising awareness in district units with regard to discrimination and hate crimes.

5) Missions of the contact magistrate to the public prosecutor's office
The contact magistrate for "discrimination and hate crimes" (i.e. cases on the basis of the "antiracism" law, the "gender" law and the "antidiscrimination" law, including aggravating circumstances, and the "negationism" law"), designated by the crown prosecutor assists the latter in missions associated with the subject.
Furthermore:
- this magistrate is the special point of contact for the police services and the court house within the framework of initiatives aimed at local dialogue, the contact magistrate designated by the College of Public Prosecutors, the CECLR and the IEFH;
- within the public prosecutor's office, they coordinate the processing of the "discrimination and hate crimes" cases, when, in accordance with the internal rules decided upon by the crown prosecutor, they do not examine all the cases alone.
More particularly, the contact magistrate to the public prosecutor's office:
- ensures at regular intervals that police services, magistrates and the secretariat of the public prosecutor's office are duly familiar with the present circular;
- checks whether the instructions relating to the identification and registration of the "discrimination and hate crimes" cases are actually and properly applied by the police services and the secretariat of the public prosecutor's office. The registration and proper follow-up of the cases are indeed of utmost importance in order to obtain accurate statistics that can help in the analysis of the phenomenon and the processing of acts brought to their attention by the police and the law;
- sends out all the information concerning the management of "discrimination and hate crimes" cases to the members of the public prosecutor's office, the police services and the competent social inspection services;
- ensures that they are informed by their colleagues of crimes and ordinary criminal offences affected by an aggravating circumstance of "discrimination and hate crimes";
- makes all necessary proposals to the coordinating magistrate, through the contact magistrate of the public prosecutor's office or the general auditor's office in order to keep the "discrimination and hate crimes" glossary up to date.

6) Missions of the contact magistrate to the labour auditor's office

The contact magistrate for "discrimination and hate crimes" (i.e. cases on the basis of the "antiracism" law, the "gender" law and the "antidiscrimination" law, including aggravating circumstances, and the "negationism" law"), designated by the labour prosecutor, assists the latter in their missions.
Furthermore:
- this magistrate is the special point of contact for the social inspection services and all the services likely to observe offences that fall under the scope of the present circular. They are also the point of contact for the CECLR and the IEFH;
- they ensure coordination in the processing of "discrimination and hate crimes" cases, when, in accordance with the bylaws decided upon by the labour prosecutor, they don't examine all the cases alone.
More particularly, the contact magistrate to the labour auditor's office:
- regularly ensures that the present circular is duly known to magistrates, social inspection services and other inspection services likely to observe breaches to the present law, and the secretariat of the auditor's office;
- checks whether the instructions relating to the identification and registration of the "discrimination and hate crimes" cases are actually and properly applied by the secretariat of the auditor's office;
- sends out all useful information concerning the management of "discrimination and hate crimes" cases to the members of the labour auditor's office, the social inspection services and all inspection services likely to observe breaches to the present law;
- makes all necessary proposals to the coordinating magistrate, through the contact magistrate of the public prosecutor's office or the general auditor's office in order to keep the "discrimination and hate crimes" glossary up to date.

7) Missions of contact police officers
The federal police shall designate contact police officers responsible for acts of "discrimination and hate crimes" (i.e. cases on the basis of the "antiracism" law, the "gender" law and the "antidiscrimination" law, including aggravating circumstances, and the "negationism" law) according to the terms it has established. In particular, this designation shall concern the components of the federal police who execute front-line police missions (such as the traffic police or railway police) and, according to need, the other components of the federal police.
The commanding officers of the local police designate a contact police officer in the field of "discrimination and hate crimes" (i.e. cases on the basis of the "anti-racism" law, the "gender" law and the "anti-discrimination" law, including aggravating circumstances, and the "negationism" law).
In some larger police zones, the commanding officer can envisage designating more than one contact police officer. In some smaller police zones, the commanding officer may decide to designate a contact police officer who is responsible for several zones.
As the special point of contact of the contact magistrate of the public prosecutor's office and the auditor's office, this contact police officer:
- takes initiatives so that this circular is known to members in their department;
- provides police officers that may come into contact with victims of discrimination and hate crimes, with all useful information to allow them to correctly receive the victims and react in the appropriate manner;
- ensures the instructions are applied, in particular, instructions relating to the identification and registration of "discrimination and hate crimes" cases and guidance for victims;
- is the special point of contact for the police services, the court house, social inspection services, all inspection services likely to observe offences relating to the application of the present circular, the CECLR and the IEFH;
- informs the contact magistrate and their internal hierarchy in the police about all the difficulties arising from the application of the criminal policy directives and makes useful proposals.

8) Rules for the approach to discrimination and hate crimes

a) As regards police intervention
The police draws up a statement and sends it to the crown prosecutor or the labour prosecutor every time there is a sign or observed acts of discrimination and hate crimes even if, in principle, it considers that there has not been an offence. It is up to the crown prosecutor or the labour prosecutor to assess whether or not they constitute an offence.
This statement is often a determining factor in the outcome of the case. Therefore, it must be particularly detailed in its description, with the emphasis on what could be evidence of the motivation behind the behaviour. For example: views concerning the sexual orientation of the victim.
When a statement is written regarding discrimination and hate crimes, the police officer indicates in the context field that this is a case of “discrimination and hate crimes”.
When a complaint is filed at the police station for an act of discrimination or a hate crime, or if the police itself intervenes at the place of the act, police officers must, without prejudice to additional instructions from the crown prosecutor or labour prosecutor, respect the following rules:
- receive the victim in material conditions guaranteeing them maximum discretion;
- give every complaint the required attention and not treat it as something commonplace;
- gather and seize all useful evidence (for instance, photos, written evidence, etc.);
- have a detailed hearing with the victim;
- have a detailed hearing with the suspect;
- immediately inform the public prosecutor’s office or the labour auditor’s office when an act has major repercussions on public opinion and in cases of exceptional violence where the victim is seriously affected on a physical or psychological level;
- in the case of sexual violence, apply the ministerial directive of 15 September 2005 relating to the sexual violence kit, distributed by circular no. COL10/2005;
- hear the people who were witness to the acts.
Police officers will ensure the principles contained within circular GPI58 are applied in full. In particular, they will ensure that people who ask for help or assistance are put in contact with the specialised services. They will inform the victim of their rights, the existence of victim support services at the public prosecutor’s office and the courts, and the possibility of receiving legal aid from the CECLR or IEFH.

b) As regards the prosecution
The prosecution must remind the perpetrator as quickly as possible to respect the standards of behaviour in force. This reminder can take any form available to the prosecution. The reaction of the latter must be adapted to each specific case, and not rely on automatic reflexes, taking into account the personality of the perpetrator and the victim. Closing a case according to the principle of opportunity is to be avoided. There should at least be a reminder of the standard by the magistrate of the public prosecutor’s office or the auditor’s office. Instituting a civil case, by the parties, the institutions designated by the respective laws or the public prosecutor, could provide an adequate response and exclude any form of criminal proceedings.

1° Criminal proceedings
In the case of a breach of the “antiracism”, “antidiscrimination”, “gender” and “negationism” laws, involving at least one of the following criteria:
- serious damage to the physical integrity of the victim (here, the seriousness of the violence and its psychological consequences must be taken into account);
- fire;
- criminal organisation;
- recurrence of acts;
- acts that seriously violate public order.

It is preferable to call for an investigating magistrate, if criminal mediation cannot be envisaged, with a view to obtaining an arrest warrant or to directly summon the perpetrator to appear before the criminal court.
For other breaches of the "antiracism", "antidiscrimination", "gender" and "negationism" laws, the magistrate will take one of the following decisions:
- summons to appear before the criminal court;
- the case is oriented towards the procedure provided for in article 216ter of the Code of Criminal Instruction, which provides for the possibility of organising criminal mediation, executing work of general interest, doing training or having therapy;
- proposal of a transaction (see COL 1/2011 and 6/2012 of the College of Public Prosecutors);
- reminder of the standard by the magistrate of the public prosecutor's office following a reprimand that will lead to the closure of the case ("*probation prétorienne*");
- referral to the administrative authorities when permitted by the law with a view to imposing an administrative penalty.
The prosecution also has the possibility of offering the parties restorative mediation, as provided for in article 3ter of the Preliminary Title and in articles 553 – 555 of the Code of Criminal Instruction.
In accordance with article 35 of the Criminal Code, the public prosecutor can request the winding-up of the legal persons that were intentionally created in order to exercise punishable activities.
In case of exceptional violence where the victim is seriously physically and psychologically harmed, the crown prosecutor shall envisage an audiovisual hearing in accordance with article 112ter of the Code of Criminal Instruction.

2° Civil proceedings
Notwithstanding the prosecutions the public prosecutor may institute on a criminal level, the magistrate from the public prosecutor's office or the auditor's office may address the president of the competent court to order an end to the discriminatory practices. This takes the form of summary proceedings. This provision aims to guarantee a rapid reaction to the acts of discrimination (art. 18 of the "antiracism" law, art. 20 of the "antidiscrimination" law, and art. 25 of the "gender" law).
The labour prosecutor shall also be attentive to the possibility of instituting a collective civil case on the basis of article 138bis, § 2, of the Judicial Code.
This public prosecutor can also request a penalty for the perpetrators of the discrimination if the discrimination continues after the judgement (art. 17 of the "antiracism" law, art. 19 of the "antidiscrimination" law, and art. 24 of the "gender" law).
For the protected criteria, it is necessary to examine whether the civil route provides a sufficient response.
It is important to remember that in accordance with art. 764, 10° to 14° of the Judicial Code, the public prosecutor is required to issue an opinion in civil cases brought before the labour courts involving, if need be, grievances concerning discrimination.

3° Aid to victims
If the case is handed over to the public prosecutor's office or in case of judicial investigation, the secretariat of the public prosecutor's office immediately sends a copy of the initial statement as well as the details of the victim to the victim support service. Depending on the circumstances, the victim support service will contact the victim, either immediately by phone, or by sending a letter specifying the services they can expect from the judicial assistants.
In other situations, the magistrate will assess the opportunity to refer the case to the victim support service in the same manner.
The principles and criteria decreed by circular COL 16/2012 relating to victim support within public prosecutors' offices and courts must be taken into account.

c) Specific problems for the youth section of the public prosecutor's office

In accordance with article 45quater of the Law of 8 April 1965 relating to youth welfare, treatment of minors who have committed an act considered to be an offence and reparation for the damage caused by this act, every time a victim is identified and, unless it is essential for the juvenile magistrate to submit the case to court, the crown prosecutor will inform the young person suspected of having committed an act considered to be an offence, the persons with parental authority over the young person, or the persons who care for the young person in law or in fact, so that they can take part in mediation and, within this framework, have the possibility of going to a mediation service designated by the crown prosecutor. The crown prosecutor's decision whether or not to choose the mediation procedure for a case must be made in writing and the reasons laid out.
As mentioned earlier, the closure of the case for reasons of opportunity should be avoided; the magistrate from the public prosecutor's office should at least issue a reminder of the standard.

d) In case of discovery of an internet-based offence (cyberhate)
As mentioned above, particular attention will be given to crimes committed on the internet and social networks. The directives of this circular are indeed applicable in the case of offences committed on/via the internet according to the "antidiscrimination", "antiracism", "gender" and "negationism" laws and articles 442ter and 453bis of the Criminal Code. The notion of "cyberhate" relates to expressions of hatred (harassment, bullying, insults, discriminatory views) on the internet against others owing to the colour of their skin, their race, their origin, their gender, their sexual orientation, their philosophical or religious convictions, their disability, their illness, their age, etc.

1° Police services that are faced with a negationist, racist or discriminatory crime committed on/via the internet can refer to the practices in force.

2° Magistrates can draw inspiration from the following instructions:

A. When websites are discovered whose content is contrary to the "antidiscrimination", "antiracism", "gender", "negationism" laws, or articles 442ter and 453bis of the Criminal Code, a number of verifications must be made.
- The site is a .be (.vlaanderen or .brussels as of 2014) or .eu website:
In this event, it is possible to make use of article 39bis, §3, of the Code of Criminal Instruction and directly address the managers of the domain names located in Belgium. This brief will aim to make the data (i.e. the website) inaccessible to surfers worldwide because the manager of the domain name will block the site at the root. It will be sent to DNS.be in the case of a .be address (.vlaanderen and .brussels as of 2014) and to EURid for sites ending in .eu.
- The site is a .com website or another extension:
This is the most common scenario. The major drawback results from the fact that the manager of the domain name is not established in Belgium. Therefore, it is not possible to block the site in the same way as in the previous point. According to the current state of technology, it is necessary to send a brief based on article 39bis, § 3, of the Code of Criminal Instruction to all the ISP (Internet Service Providers) in the country. The result of this brief will be that only the connections to the website to be rendered inaccessible, passing through a Belgian ISP, will be concerned.
- The investigation reveals that the site manager is present in Belgium:
If a search or house search, upon consent, at the home of the suspect reveals computer equipment linked to a web server hosting the incriminated site or the access codes providing access to it, effective use will be made of the possibilities offered by article 88ter of the Code of Criminal Instruction relating to searches in a computer environment. Once the searches have been completed, use can be made of article 39bis to seize this data or make it inaccessible, unless it is situated abroad.
The instructions based on article 39bis should be sent to the police department responsible for the investigation, which will be channelled through the FCCU/RCCU.

General remark: abovementioned article 39bis is not accompanied by a specific offence regarding an operator who refuses to comply. However, if they are made aware of the offence, they become an accomplice or accessory to the offence if they refuse to implement the measures aimed at preventing access to the data because they are allowing the offence to continue with full knowledge of the facts.

B. Discussion forums can also contain messages contrary to the laws referred to in the present circular. If the manager is in Belgium, it is possible to send them a brief based on article 39bis of the Code of Criminal Instruction so that they can make the messages concerned inaccessible. For forums located abroad, only a request for mutual legal assistance may be attempted with no guarantee that it will be executed, since the notion of freedom of speech does not have the same reach in all countries. In order to avoid this stumbling block, the use of article 145, § 3bis, of the Law of 13 June 2005 relating to electronic communications is recommended.

C. If pages or messages contrary to the values protected by the laws covered by the present circular are discovered on social networks abroad, it must be acknowledged that according to the current state of the legislation, there is no other way to proceed than through mutual legal assistance, knowing that requests for assistance will often be directed towards the United States where the manner in which freedom of expression is understood leaves little hope for a positive outcome. In order to avoid this stumbling block, the use of article 145, § 3bis, of the Law of 13 June 2005 relating to electronic communications is recommended.

D. In this area, the Law of 11 March 2003 on certain legal aspects of the information society's services (Belgian Official Journal 17 March 2003) can be an interesting tool both from the point of view of criminal proceedings and the criminal point of view. By regulating the fundamental principles of the use of the information society, this law sets out a certain number of principles of responsibility for internet access or service providers, and, above all, obligations to denounce criminal offences committed through their services, to cooperate with the judicial authorities and to keep data that is the subject of an offence.
More precisely, articles 18 to 20 of the law set out the obligation to cooperate with the judicial or administrative authorities as well as a mechanism of responsibility for internet access and service providers (ASP and ISP). The law lays down conditions concerning the non-responsibility of providers; conditions that are increasingly strict according to the activity exercised: the simple transportation of data (art. 18), storage in the form of a temporary copy of data (art. 19), hosting activity (art. 20). The principle laid down by the law is that, as soon as the provider exercises a certain control over the data, they can be held responsible for offences for which they can be the subject. Such could be the case, subject to the following as regards press offences, i.e. discriminatory comments expressed below an online article on the website of a newspaper that would be sorted by a moderator.
There is not any general monitoring obligation. However, service providers are obliged to immediately inform the competent judicial authorities of any illegal activities they are aware of, being exercised by the users of their services or services that these users provide (art. 21). More generally, for information society service providers, being aware signifies responsibility. Hence, when an access provider is made aware by an apostil or a brief on the basis of article 39bis of the Code of Criminal Instruction, that their services are being used to commit an offence, they are obliged to prevent access to the contentious information while waiting for the decision of the crown prosecutor concerning the copying, inaccessibility and removal of this data.
Failure to respect the principles laid down, such as the refusal to cooperate, is a punishable offence according to the specific offences set out in articles 26 and 27 of the Law of 11 March 2003, but this can also lead to the prosecution of the access provider on the basis of collaboration.

3° Furthermore, as regards cyberhate, attention should be drawn to the ruling of the Court of Cassation of 6 March 2012 according to which a press offence can be committed through the

internet. A press offence occurs every time a punishable opinion is committed on the internet in conditions similar to those of the written press, i.e. on a site accessible to everyone who reads it. However, this does not have any consequences as regards racist or xenophobic press offences, given that article 150 of the Constitution holds that these offences fall under the competence of the criminal courts and not the assize court.
It is important to remember that the limitation period shortened by three months for press offences only concerns offences referred to in particular laws, especially insults or libel aimed at persons in the public arena (art. 12, Decree of 20 July 1831 on the press).
However, this means that a homophobic press offence, for instance, falls under the competence of the assize court.
Therefore, it is necessary to check whether or not the conditions of the press offence are the same for all offences other than racist or xenophobic ones.
A press offence is considered to occur every time a punishable opinion is committed on the internet in conditions similar to those of the written press, i.e. on a site accessible to everyone who reads it. Police custody for press offences is excluded.
Another particular aspect is cascading liability (article 25, § 2, Constitution). This rule departs from the rule of articles 66 and 67 PC, in accordance with which anyone participating in a crime or offence as the perpetrator, accomplice or accessory, is punishable by law. In the case of press offences, except for accomplices, only one person is prosecuted in accordance with the cascading system.

IV. PROCEDURE TO REGISTER OFFENCES

Principles

Breaches of the “antiracism” law, the “gender” law, the “antidiscrimination” law and the “negationism” law, are registered in the judicial system under prevention code 56A (racism), 56B (xenophobia) and 56C (discrimination, besides cases of racist or xenophobic discrimination). Added to this are specific subcategories concerning “gender-based discrimination” (56D), “homophobia" (56E) and “disability-based discrimination” (56F).
When an offence is committed, such as aggravated assault for racist reasons, this offence is registered under the usual code 43A without the perpetrator’s motive being taken into account, or the reason for which the person acted or the aim they hoped to achieve.
Hence, it is impossible to include racist or xenophobic offences committed owing to the person’s gender, homophobic acts, hate crimes or other discriminatory offences, in a reliable statistic. To overcome this shortfall, public prosecutors’ offices have “contextual fields” in the REA/TPI computer system. These fields offer the possibility of registering racist, xenophobic and homophobic incidents. Any breach of one of the abovementioned laws is automatically registered under the codes 56A, 56B or 56C, but it is also registered in another section, i.e. in a contextual field: "racism/xenophobia" or "homophobia"; up until now, if another offence, which is not mentioned in these laws, was committed for racial, xenophobic or homophobic reasons, this offence was not only registered under its own code, but the remark “racism/xenophobia” or “homophobia” was also included in the contextual field.
In order to avoid the double use of the codes for prevention and the contextual fields, and considering that the PJP computer system of the public prosecutor’s office for youth offenders does not have contextual fields, this method must be replaced by a secondary registration system consisting of indicating the correct secondary prevention code in the REA/TPI and/or PJP field provided. Thus, assault and battery committed for homophobic reasons will be given the main prevention code 43A, and 56E as the secondary prevention code.

Uniform method

1. When the police discovers an offence, it is registered under the usual code; if, in addition, the police discovers that the motive behind the offence is racist, xenophobic, sexist or homophobic, it mentions it in the field "remark public prosecutor's office", provided in the header of the first page of report.

2. When the report with the comment "incident" arrives at the public prosecutor's office, the secretariat here registers the relevant secondary prevention code (56A to 56F); the magistrate to whom the report is submitted checks to see whether this is correct. If the motive is not discriminatory based on the abovementioned criteria, this remark will be crossed out.
On the other hand, if an examination of the relevant facts shows that the motive is indeed one of the criteria protected by the law and that the secondary prevention code has not been mentioned, it will be added upon the initiative of the magistrate of the public prosecutor's office.

3. If a complaint is submitted to the public prosecutor's office, the secretariat or the magistrate will proceed in the same way.

4. In cases where there is still a doubt, the contact magistrate, who ensures the correct application of the present circular, may be called upon.

5. Whether during the pre-trial investigation of a case or during the inquiry, the comment may be removed or added at any stage of the procedure.

6. If several cases are joined together, one of which concerns an offence(s) motivated by one of the protected criteria above, it is important to ensure that the prevention codes 56A to 56F are maintained or added in the main case.

V. TRAINING
In every public prosecutor's office and every auditor's office, at least one magistrate must follow the training organised by the Institut de Formation Judiciare.
At the same time, every contact police officer must follow training in a specialised area, which will be organised by the authorities in charge of the training of police officers.
If necessary, the training can be shared within the framework of a collaboration between the Institut de Formation Judiciaire and the police schools.

VI. COLLABORATION BETWEEN THE PUBLIC PROSECUTOR, THE CECLR AND THE IEFH
The magistrates of the public prosecutor's office, the auditor's office and police officers may directly contact the Centre or the Institut in order to obtain information concerning discrimination and hate crimes by phoning the following numbers: 02/ 212 30 00 (CECLR) and 02 233 40 20 (IEFH). They can also go to the following websites: CECLR (www.diversite.be) or IEFH (www.igvm-iefh.belgium.be) for jurisprudence.
The Centre and the Institut, in collaboration with the contact magistrates, keep the glossary up to date.
The magistrates of the public prosecutor's office, including those in the youth offenders section, and the labour prosecutors, must always inform the CECLR and/or the IEFH, according to their respective competences, of a case of discrimination or hate crime, brought before the competent court. The place, date and time of the hearing must be sent out by e-mail (epost@cntr.be) or by fax to 02/212.30.30 at the CECLR or the IEFH (e-mail: egalite.hommesfemmes@iefh.belgique.be or gelijkheid.manvrouw@igvm.belgie.be, fax: 02/233 40 32). This is also the case for cases not involving the Centre (see competences article 3, 5° of the law on the creation of the Centre) or the Institut.
The magistrates of the public prosecutor's office, including those in the youth offenders section, and the labour prosecutors, must automatically send, preferably by e-mail, all the copies of the decision regarding discrimination and hate crimes, to the CECLR and/or the IEFH, according to their respective

competences: CECLR (e-mail: epost@cntr.be; fax: 02/212.30.30) or IEFH (e-mail: egalite.hommesfemmes@iefh.belgique.be or gelijkheid.manvrouw@igvm.belgie.be, fax: 02/233 40 32). The CECLR and IEFH are legally competent to collect and publish statistical data and legal decisions, with no possibility of identifying the parties involved, that are necessary for the assessment of the application of the "antiracism", "antidiscrimination" and "gender" laws (article 3, 9° of the law on the creation of the CECLR and article 4, 8° of the law on the creation of the IEFH. They will also inform the contact magistrate appointed by the College of Public Prosecutors in the same manner.
Every year, the statistical analysts from the College of Public Prosecutors will make the statistics, including those from the juvenile section, relating to racism and discrimination, available to the CECLR (epost@cntr.be) and the IEFH (egalite.hommesfemmes@iefh.belgique.be ou gelijkheid.manvrouw@igvm.belgie.be).
The coordinating magistrate will organise the yearly meeting mentioned above to which the CECLR and the IEFH are invited in order to improve investigation methods concerning offences.

VII. ASSESSMENT
The public prosecutor competent in the field of discrimination and hate crimes sends the assessment reports written by the contact magistrates for "discrimination and hate crimes", to the Criminal Policy Department by e-mail every two years. On the basis of the information delivered, the Criminal Policy Department draws up an assessment report.

VIII. ENTRY INTO FORCE
The present circular comes into force on 17 June 2013.
Circulars COL6/2006 and 14/2006 have been abrogated and replaced by this one.
Appendix :
- the glossary of the notions used.

Brussels, 17 June 2013
The Minister of Justice,
Annemie TURTELBOOM

The Minister of the Interior,
Joëlle MILQUET

The public prosecutor at the court of appeal in Antwerp, president of the College of Public Prosecutors,
Yves LIÉGEOIS
The public prosecutor at the court of appeal in Mons,
Claude MICHAUX
The public prosecutor at the court of appeal in Liège,
Christian DE VALKENEER
The public prosecutor at the court of appeal in Ghent,
Anita HARREWYN
The public prosecutor at the court of appeal in Brussels,
Lucien NOUWYNCK