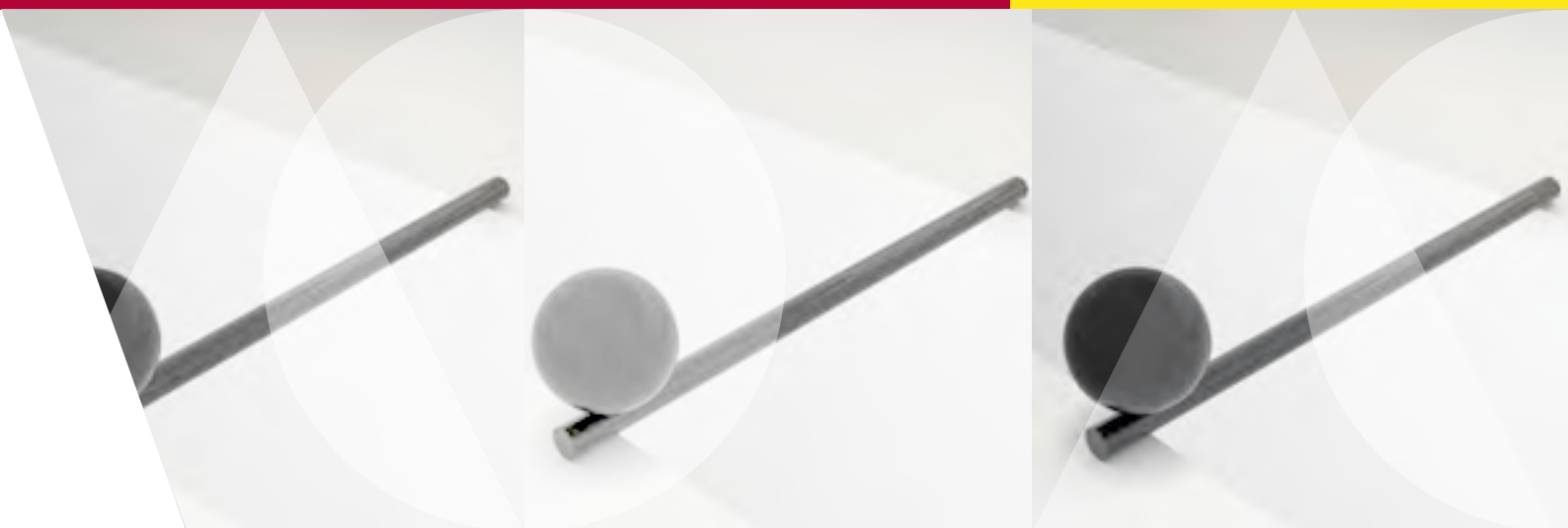


JUSTICE



# Ensuring justice for hate crime victims: professional perspectives



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# Ensuring justice for hate crime victims: professional perspectives



# Foreword

Hate crime is the most severe expression of discrimination and a core fundamental rights abuse. It demeans victims and calls into question an open society's commitment to pluralism and human dignity. The European Union (EU) has demonstrated its resolve to tackle hate crime with legislation such as the 2008 Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. Nonetheless, the majority of hate crimes perpetrated in the EU remain unreported, unprosecuted and therefore invisible, leaving victims without redress for their suffering.

It is essential for EU Member States to take measures to prevent such crimes from taking place, but it is equally important to ensure that victims have access to justice. This means enabling them to report their experiences to competent institutions, and then providing them with the support they need. At the same time, hate crime must be promptly and effectively investigated, and the perpetrators punished.

The European Union Agency for Fundamental Rights (FRA) has already produced extensive research on victims of crime, including with a specific focus on victims of hate crime. This report offers important insights from the perspectives of professionals. Drawing on interviews with representatives of criminal courts, public prosecutors' offices, the police and non-governmental organisations involved in supporting hate crime victims, it sheds light on the complexities that victims face in reporting as well as the organisational and procedural factors that impede their access to justice and the proper recording of hate crime.

Underscoring the diverse challenges involved, this report addresses the difficulties encountered by professionals in applying the concepts of hate crime, the risk that police officers may share the discriminatory attitudes of offenders, victims' potential lack of trust in the police, and the problem of discriminatory attitudes being overlooked in court proceedings. However, it also presents numerous promising developments across the EU, and identifies the institutional preconditions necessary to develop effective policy against hate crime.

The 2012 Directive establishing minimum standards on the rights, support and protection of victims of crime acknowledges that hate crime victims are particularly vulnerable and stresses their right to protection in accordance with their particular needs. EU Member States should strive to improve access to justice for such victims, both by supporting victims in reporting their experiences to the police and by improving the police and judiciary's responses. This report aims to encourage such efforts.

**Michael O'Flaherty**  
*Director*



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# Executive summary and FRA opinions

Previous FRA research explored the issue of hate crime victims being reluctant to report – or prevented from reporting – their victimisation, and the reasons victims gave to account for these difficulties. It revealed disquieting levels of hate crime against individuals who belong to ethnic or national minorities, persons of Jewish background and persons who are gay, lesbian, bisexual or transgender (LGBT).<sup>1</sup> While it is essential for EU Member States to take measures to prevent such crimes, it is equally important to ensure that victims have access to justice: that they are able to report to competent institutions, that the crimes are promptly and effectively investigated, that perpetrators are punished and that victims receive the support they need.

The earlier research did not cover professionals' views on the complexities that victims face in reporting, nor the organisational and procedural factors that impede victims' access to justice and the proper recording of hate crime. The present report seeks to fill this gap. It presents professionals' views on the situation on the ground: how victims access justice in Member States and what prevents them from doing so, as well as the role of the police in recording offences and acknowledging victims of hate crime.<sup>2</sup> Building on FRA's extensive research on the rights and situation of victims of crime,<sup>3</sup> it both focuses on victims of hate crime and presents voices from within institutions that represent the entire criminal justice system: criminal courts, public prosecutors, police officers, as well as non-governmental organisations (NGOs) supporting hate crime victims. In total, 263 interviews were carried out in all EU Member States between the second half of 2013 and early 2014.

Offering insights into the reporting and recording of hate crimes from the perspective of professionals, this report analyses the specific factors that affect how and why hate crime victims do or do not seek justice and how and why victims' efforts to be acknowledged as victims of severe discrimination ultimately are – or are not – successful. Understanding the obstacles to victims' access to justice will allow EU institutions and Member States to adopt targeted measures that facilitate such access and make victims' fundamental right to access justice a reality.

## Key factors that impede victims' access to justice and measures for improving access

The interviewed professionals were asked what factors prevent victims from reporting and what measures, in their view, have the potential to significantly improve victims' access to justice.

The factors identified as promising by interviewees involve four main themes:

- Almost nine out of 10 interviewed professionals believe that measures are needed to improve hate crime victims' awareness of their rights and of victim support services available to them as victims of hate crime. In addition, around six out of 10 interviewees view the actual lack of support services as a factor that impedes victims' access to justice. Hence, the fragmented and patchy nature of appropriate support services available to hate crime victims emerges as a factor significantly impeding victims' access to justice.
- Three quarters of interviewees believe that victims are discouraged from reporting because they do not believe that the police would treat them in a sympathetic and non-discriminatory manner. Accordingly, four out of five interviewed professionals believe that it is necessary to enhance victims' trust in the police; and three fourths of interviewees view as necessary measures that tackle discriminatory attitudes within the police.
- Professionals see several practical measures as promising means of facilitating hate crime reporting, including setting up specialised police units or liaison officers and allowing online reporting.
- About two thirds of all interviewees believe that the police and judiciary need to take hate crime more seriously. This finding per se raises concerns. Interviewees indicated that two factors underlie this assessment: first, a lack of profound understanding of the legal concepts and categories that define the phenomenon of hate crime; and, second, a lack of commitment to identify, prosecute and impose sentences for hate crime.

1 FRA (2012c); FRA (2013a); FRA (2014b); (2014a).

2 See also, FRA (2012d).

3 The research leading to this report formed a sub-project of FRA's wider research on victim support services, which resulted in a publication on *Victims of crime in the EU: the extent and nature of support for victims* (FRA 2014c).

FRA's report on violence against women identified similar reasons for many victims not reporting crimes to the police, indicating a need for enhanced responses for victims who may be vulnerable.<sup>4</sup>

## FRA opinions

The following FRA opinions build on previous opinions issued by the agency. The report's findings reinforce many of these earlier opinions; while not repeated here, some of these previous opinions are cited throughout the report.

### Ensuring a more comprehensive and coordinated approach to establishing support services for hate crime victims

Many services supporting hate crime victims are highly specialised, so support service provision for hate crime victims is complex, patchy, fragmented and piecemeal in many EU Member States. An appropriate service may be available for some victims in one particular region, but not for other forms of hate crime and in other regions. The Victims' Rights Directive<sup>5</sup> obliges EU Member States to ensure that appropriate support services are available to all victims of hate crime. It tasks governments with establishing a mechanism to coordinate and, where needed, encourage – and financially support – initiatives aimed at providing support services to victims who do not yet have such services available to them.

NGOs that work in the anti-discrimination field are not necessarily fully aware of the complex situation of victims in criminal proceedings. It is important for victims to be supported by NGOs that can inform them about their potential role in initiating and participating in criminal proceedings.

#### FRA opinion

*For victims of hate crime, EU Member States should strive to overcome, where it exists, the fragmentation of victim support services and ensure that appropriate support services are available to all victims of hate crime. Such support services should combine an understanding of discrimination and of anti-discrimination policies with expertise in criminal justice matters and the situation and rights of victims in criminal proceedings.*

<sup>4</sup> FRA (2014d).

<sup>5</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Rights Directive), OJ L 315.

### Reaching out to victims and encouraging them to report

The interviewed professionals agree that hate crime is underreported and that this significantly undermines the functioning of the criminal justice system. They also agree on why hate crime victims are reluctant to, or do not, report to the police. Professionals believe that it is particularly difficult for hate crime victims to report incidents – partly due to feelings of fear, guilt and shame and partly because they lack information about their rights as crime victims and available support services.

Given victims' strong reluctance to come forward and report their victimisation to the police, it is crucial for police services to take action to lower the reporting threshold. Various Member States have adopted measures to address this. These include, for instance, IT applications that allow victims to report their victimisation to the police online and the establishment of specialised police units that proactively reach out to victims and ensure that those who do report are treated in a sympathetic and non-discriminatory manner. While reliable evaluations of such measures are scarce, Member States should be encouraged to adopt whatever mechanism they consider most promising and ensure that their impact on the number of victims who report hate crime to the police is reliably assessed.

#### FRA opinion

*EU Member States should consider stepping up their efforts to reach out proactively to victims of hate crime and to encourage their reporting, including by introducing online reporting tools and establishing specialised police units.*

### Introducing specific hate crime offences to criminal law

Many interviewed professionals believe that failing to specifically define hate crime offences increases the risk that police officers overlook bias motives. Criminal law provisions should reflect the fundamental difference between an offence that, in addition to infringing other rights of the victim, also violates an individual's right not to be discriminated against, and an offence that does not involve a discriminatory aspect. Such a differentiation treats, at legislative level, as different what is essentially different and affects victims' actual chances of being recognised and granted access to justice.

## FRA opinion

*EU Member States should assess to which extent specific criminal law definitions covering the most frequent forms of hate crime, including assault, vandalism and insult, can be applied to ensure that discriminatory motives of offenders are not overlooked. They should further raise awareness among professionals of the necessity to acknowledge victims of hate crime as victims of severe discrimination.*

### Introducing third party reporting as a means of overcoming underreporting

Previous FRA publications outlined several recommendations aimed at assisting EU Member States in addressing underreporting, including reaching out to individuals at risk of hate crime victimisation, facilitating reporting by establishing low-threshold channels and setting up specialised police units to communicate with local communities.

One aspect that so far has not featured prominently in hate crime discourse is the possibility of unburdening victims of reporting by offering third parties – such as NGOs that advocate on behalf of victims of discrimination – standing in hate crime proceedings. This could also be appropriate in cases of hate speech directed not against concrete individuals but against categories of persons or large population groups.

## FRA opinion

*To disburden victims of the onus of reporting to the police and enable civil society associations to take the initiative in instances when no individual victim can be identified, EU Member States are strongly encouraged to consider allowing public interest actions (actio popularis) to enable third parties to institute proceedings against perpetrators of hate crime on behalf, or in support, of victims.*

*In cases of hate speech or negationism, when discrimination targets a group or abstract category, and hence not necessarily an individual, Member States should allow NGOs to represent victims of hate crime in criminal proceedings – where an NGO could present evidence on behalf of the group or category of individuals discriminated against.*

### Evaluating all measures aiming to enhance the reporting and recording of hate crime

The research also reveals a lack of robust evaluation of existing measures to improve the reporting and recording of hate crime. While most EU Member States have taken some form of action – launching information campaigns, setting up specialised units and reporting channels, developing tools for online reporting – the impact of these measures is very often not known because reliable and methodologically sound assessments are lacking. Despite these measures, experts still believe that underreporting potentially undermines the criminal justice system's effectiveness. It is not clear whether this reflects the ineffectiveness of measures adopted or a lack of specific measures aiming to enhance the reporting of hate crime.

## FRA opinion

*When adopting measures to enable or encourage victims to report hate crime to the police, EU Member States should ensure that the measures' impact on numbers of victims reporting to the police is assessed in a robust, methodologically sound manner.*

### Ensuring that bias motives are not overlooked when assessing victims' protection needs in accordance with Article 22 of the Victims' Rights Directive

EU Member States are required to ensure that offenders' discriminatory motives are recorded and taken seriously throughout proceedings. At present, strict and binding regulations and protocols obliging police officers to systematically record all indications of bias motives are lacking. The lack of such protocols should be seen in the context of the obligation on Member States, when implementing the Victims' Rights Directive, to establish procedures and protocols to ensure that victims' protection needs are individually assessed under Article 22 of the directive. This assessment takes into account the nature and circumstances of the crime. According to paragraph 3 of Article 22, particular attention must be paid to victims who have "suffered a crime committed with a bias or discriminatory motive." Hence, it is of crucial importance that Member States, when setting up procedures to implement Article 22, pay attention to whether there are any indications that offenders were motivated by discriminatory attitudes.

FRA opinion

*When implementing Article 22 of the Victims' Rights Directive concerning the individual assessment of victims' protection needs, it is crucial for EU Member States to pay attention to the question of whether there are any indications that the offence was committed with a discriminatory motive.*

### Raising awareness of professionals – police officers, prosecutors and judges – through comprehensive training on hate crime

One of the main findings of this research is that there is a lack of sufficient training for professionals in the criminal justice system. This means there are deficiencies in terms of:

- a true understanding of the key concepts used in hate crime legislation;
- a sufficient level of awareness and sensitivity to the problem of hate crime;
- police officers' ability to encourage reporting as well as to record and investigate hate crime.

The research revealed that both police and individual judges and prosecutors lack a profound understanding of the relevant concepts, such as hate crime, hate speech and negationism. It is indispensable for the entire criminal justice system to avail itself of a common language that enables it to identify hate crimes and render these visible throughout criminal proceedings.

Another central finding is that, as highlighted by many interviewed professionals, police officers' lack of understanding of basic notions, concepts and categories used to analyse hate crime often impedes the implementation of measures to counteract hate crime. As long as police services fail to use language that clearly addresses hate crime and that all members of the service understand, it will be difficult for policies tackling hate crime to be effective. The introduction and firm organisational anchoring of the fundamental concepts and categories of hate crime – based on a human rights approach and taking into account ECtHR case law and relevant EU legislation – is a vital first step towards developing an effective hate crime policy.

FRA opinion

*In line with Article 25 of the Victims' Rights Directive, which obliges EU Member States to train professionals, EU Member States must ensure that all police officers, public prosecutors and criminal judges fully understand the basic concepts of hate crime, incitement to hatred, and negationism – as applicable under national law – and are trained to deal with hate crime and its victims in a professional manner. To this end, training needs to promote awareness of, and sensitisation to, the phenomena of hate crime and its impact on victims; and the skills required to recognise, record and investigate such incidents.*

### Acknowledging the institutional aspects of discrimination

When planning and evaluating state policy measures that address hate crime, it is crucial to take institutional aspects of discrimination into account. More than two out of five interviewed professionals rated as very or fairly high the risk that police officers to whom hate crime victims report share the offenders' discriminatory attitudes. Three fourth of all interviewees believe that improving victims' reporting to the police requires measures that address discriminatory attitudes within the police. Given this low level of trust in the police's ability and commitment to counter discrimination, hate crime victims' reluctance to report to the police is not surprising. It should be noted, though, that the evidence reported here represents only the opinions of those interviewed, and is not necessarily representative of all police and criminal justice actors in all Member States.

While any attempt to encourage victims to report to the police has to take this factor into account, police officers' discriminatory attitudes cannot be viewed in isolation. Countering such attitudes should form an integral element of a comprehensive, human rights-based policing strategy. This cannot be achieved through training alone. How a police service positions itself in relation to hate crime and discrimination touches on its very mission and identity and is therefore a matter of organisational development that concerns, first of all, police leaders.

Unless the police actively display their commitment to ensuring the human rights of all individuals, hate crime victims will not develop confidence in the attitudes of police officers. As long as victims are not confident that the police will clearly and unequivocally respect their dignity, a significant improvement in reporting rates is not to be expected. A policing approach based on a strong culture of human rights and on cooperation, transparency and accountability towards local communities and hate crime victims could encourage the public to have confidence in the police and victims to report crime.



## FRA opinion

*In line with their obligations – under Article 1 of the Victims' Rights Directive – to ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, EU Member States must see to it that victims of hate crime can report to the police without fearing that police officers share the discriminatory attitudes of offenders. They must adopt whatever measures are necessary to prevent and eradicate such attitudes among police officers, including by changing the prevailing police culture.*

### Taking hate speech seriously

Interviewees highlighted the negative impact discriminatory speech has on the societal climate and particularly emphasised the language politicians use during election campaigns. Political parties should ensure that hateful speech directed against groups of individuals is not accepted.

## FRA opinion

*EU Member States should strengthen the consensus among political actors that discrimination is not an acceptable form of political dispute and competition. They should also guarantee access to courts in all relevant areas of law.*

In 12 EU Member States, at least 40% of interviewees considered the denial of the Shoah a fairly or very serious problem. This underlines the importance of Member States comprehensively implementing the relevant provisions of the Framework Decision on Racism and Xenophobia.

## FRA opinion

*Publicly condoning, denying or grossly trivialising crimes of genocide – including the Holocaust, crimes against humanity and war crimes – insults victims and their memory and reinforces their discrimination. EU Member States should fully implement Article 1 of the Framework Decision on Racism and Xenophobia and consider strengthening related practices in line with international human rights law.*



# Introduction

## Project objectives

Hate crime victims are often unable to seek redress against perpetrators for a variety of reasons, meaning many crimes remain unreported, unprosecuted and, ultimately, invisible. In such cases, the rights of victims of crime may not be fully respected and EU Member States may not be upholding their obligations towards victims of crime and society in general.

FRA's work on hate crime and on the rights of victims of such crime has consistently found that the criminal justice system's response to hate crime is significantly affected when victims encounter difficulties in reporting, and, in many cases, by the police's, public prosecutors' and criminal judges' reluctance to record and acknowledge hate crime. FRA's victimisation surveys – which collected victim views on racist and xenophobic,<sup>6</sup> LGBTI-related<sup>7</sup> and antisemitic crimes,<sup>8</sup> as well as on the experiences of women as victims of violence<sup>9</sup> – examined the reasons for these difficulties from the perspective of victims.

However, professionals' views on these issues were not addressed. The present report seeks to fill this gap. It presents the results of 263 interviews conducted with three professional groups:

- police officers;
- public prosecutors and judges from criminal courts;
- experts working for victim support services and civil society organisations with a human rights remit.

Professionals were interviewed in all 28 EU Member States about:

- the complexities that impede hate crime victims' access to justice and how they can be overcome;
- factors that undermine the criminal justice system's ability to record and acknowledge hate crime.

This report therefore aims, on the basis of the conducted interviews, to support EU Member States in improving access to justice for victims of hate crime – both by encouraging and supporting victims in reporting their victimisation to the police and by improving the police's and judiciary's performance in recording hate crime and acknowledging its victims.

Victims have a right to access justice under Article 13 of the European Convention on Human Rights and, where applicable, under Article 47 of the Charter of Fundamental Rights of the European Union. In addition, Article 1 of the Victims' Rights Directive states that its purpose is to ensure that victims of crime are able to participate in criminal proceedings. However, it is important to remember that access to justice is a right, and not an obligation of crime victims. The ultimate objective is not to have all victims actually report to the police, but to ensure that all victims are offered a real possibility of doing so.

This report therefore looks into access to justice for victims of hate crime. It aims to identify the decisive factors that either enhance victims' access to justice or prevent, or discourage victims from having, or making use of, such access. The report identifies examples of promising developments as well as shortcomings that have the potential to significantly impair victims' access to justice.

## Legal foundations - secondary EU legislation

This report aims to assist Member States in implementing the Framework Decision on Racism and Xenophobia<sup>10</sup> and relevant provisions of the Victims' Rights Directive, notably Article 22, which refers to victims of crimes "committed with a bias or discriminatory motive".

### Framework Decision on Racism and Xenophobia

The Framework Decision on Racism and Xenophobia established legally binding minimum standards for countering severe forms of racism and xenophobia with criminal law definitions and sufficiently deterrent

### Methodology

Data were collected through FRA's multidisciplinary research network FRANET. This network is composed of contractors in each EU Member State who, upon request, provide relevant data on fundamental rights issues to FRA to facilitate the agency's comparative analyses.

*For more information on methodology, refer to the report's Annex, and on Franet, see FRA's website.*

6 FRA (2009).  
7 FRA (2013b).  
8 FRA (2013a).  
9 FRA (2014d).

10 Council Framework Decision 2008/913/JHA of November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (*Framework Decision on Racism and Xenophobia*), OJ L 328.



criminal sanctions, thereby addressing widespread impunity for hate crime.

The Framework Decision consists of two parts. The main component aims to approximate Member States' penal laws in terms of how these define criminal offences and sanctions. This part includes Articles 1, 2, 3, 5 and 6, which oblige Member States to criminalise and penalise certain forms of public expressions of racism and xenophobia – forms referred to as incitement (Article 1 (1) (a) and (b)) and as negationism (Article 1 (1) (c) and (d)).

Article 4 of the Framework Decision on Racism and Xenophobia follows a different approach. It obliges Member States' authorities – including the police, public prosecutors and criminal courts – to take into consideration any racist or xenophobic motivations underlying a criminal offence. As mentioned above and further discussed below, this provision relates to crime victims' right to have the criminal justice system render visible – or 'unmask' – any discriminatory motives of offenders. Offences prompted by a bias motivation can be referred to as 'crimes committed with a discriminatory motive' – as in the Victims' Rights Directive – or simply as 'hate crime'.

The crucial difference is that Article 4 does not oblige Member States to criminalise any particular form of behaviour. However, if a Member State decides to criminalise a certain form of conduct, then the authorities of that Member State must distinguish between the offence per se and the offence committed with a discriminatory motive. According to Article 4, this crucial distinction can be achieved in two ways: by creating an enhanced penalty, which courts would have to take into account in proceedings leading up to conviction that are relevant to identifying the concrete type of offence committed; or by introducing an aggravating factor, which would primarily be relevant at sentencing.

In January 2014, the European Commission published a report on the implementation of the Framework Decision on Racism and Xenophobia.<sup>11</sup> The Commission concluded that, at the time of its report, "it appears that a number of Member States have not transposed fully and/or correctly all the provisions of the Framework Decision, namely in relation to the offences of denying, condoning and grossly trivialising certain crimes. The majority of Member States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the Framework Decision. Some gaps have also been observed in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction."

11 See European Commission (2014).

Section 2.2 of FRA's Annual Report 2015 further discusses recent developments regarding the Framework Decision on Racism and Xenophobia.

## Victims' Rights Directive and its impact on victims' rights in general

The Victims' Rights Directive, which was adopted in October 2012 and had a November 2015 transposition deadline, marks a huge step forward for victims' rights.<sup>12</sup> The directive aims "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings" (Article 1). This objective corresponds to Article 47 of the EU Charter of Fundamental Rights, which acknowledges basic rights of parties – including crime victims – to court proceedings that, in their entirety, define due diligence standards of granting and fostering access to justice. The directive specifies and substantiates the meaning of victims' fundamental rights and defines concrete and binding minimum standards. These concern, among others:

- A victim's right to recognition and to respectful and compassionate treatment, which includes protection against so-called secondary victimisation;
- Means of ensuring that victims' access to justice is effective in practice, requiring, among other measures, the provision of victim support services, safeguards ensuring that victims are sufficiently and timely informed and advised of their rights, an effective system of legal aid, and comprehensive training of professionals to allow them to respond to victims' reports in an informed, sympathetic and professional manner;
- Rights of victims to actively participate in proceedings (although such participation depends to a certain extent on varying national legal systems);
- The protection of victims against repeat victimisation, intimidation and retaliation.

Section 6.3 of FRA's Annual Report 2015 outlines recent developments concerning the implementation of the Victims' Rights Directive.

## Specific rights of hate crime victims under the Victims' Rights Directive

The Victims' Rights Directive uses the terms "crime committed with a discriminatory motive" (Recital 56), "bias crime" (Recital 56), "hate crime" (Recitals 56 and 57), and "crime committed with a discriminatory or bias motive" (Article 22(3)). It appears unlikely that these different terms all relate to different categories of crimes. Instead, it appears that they are interchangeable or, as far as Article 22 (3) is concerned, mutually

12 On the Victims' Rights Directive, see also FRA (2014c).





reinforce one another. All these terms are to be interpreted in light of an individual's right to be protected against discrimination under Article 21 of the Charter and, correspondingly, under Article 14 of the ECHR.

Unlike the Framework Decision, which is restricted to racism and xenophobia, the Victims' Rights Directive refers to all victims of hate crime on an equal footing, regardless of the attribute invoked by offenders. In addition, the directive emphasises the rights of victims of terrorism – which typically constitutes a form of large-scale hate crime, because it does not target victims personally but is based on political, religious or ideological classifications. Recital 16 highlights the connection between individual victims of terrorism and their society and underlines that such victims may need “special attention, support and protection”. Other provisions of the directive, such as Recital 57 and Article 22, also relate to victims of terrorism.

The Victims' Rights Directive underlines the need to take the specific nature of hate crime into account (Recital 56). It also highlights the particular vulnerability of victims of such crimes to secondary victimisation (additional damage suffered by victims due to harmful conduct by society, public workers, police officers, doctors, or any other persons with whom victims of crime have contact) and to repeat victimisation (when victims repeatedly fall victim to crime), which can encompass intimidation and retaliation. In particular, Article 22 obliges Member States to ensure that victims enjoy a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings due to their particular vulnerability.

Article 22(3) of the Victims' Rights Directive lists groups of victims to whom particular attention must be paid in individual assessments, including victims who have suffered crimes committed with a bias or discriminatory motive. The directive states that there “should be a strong presumption” that victims of hate crime “will benefit from special protection measures” (Recital 57). The exact nature of such measures should be determined by taking victims' wishes into account. The victims' concerns and fears regarding proceedings should be a key factor in determining whether they need any particular measure (Recital 58). Similarly, Article 22(6) stipulates that the individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes – including the wish not to benefit from special measures.

According to Article 23 of the Victims' Rights Directive, victims with specific protection needs have the right to be interviewed by or through professionals trained

for that purpose. In cases of hate crime, this right of victims could be particularly relevant for ensuring that victims are interviewed by police officers who avoid any conduct that could suggest that they share the discriminatory attitudes of the offenders – an issue dealt with later in this report.

In addition, all interviews with victims of sexual and gender-based violence, unless conducted by a prosecutor or a judge, must be conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

Having regard to the specific trauma often suffered by hate crime victims and their reluctance to report to the police, providing victim support services is crucial to help victims come to terms with what they have endured and to encourage them to actively seek redress and participate in proceedings. Therefore, the Victims' Rights Directive highlights that particularly vulnerable victims should be provided with specialist support (Recital 38, Articles 8 and 9). While the directive lets Member States decide whether to establish specialist services separately and in addition to general support services or to integrate these into a generic organisation, it encourages Member States to adopt a coordinated approach and to cooperate with civil society organisations in monitoring and evaluating the impact of measures to support and protect victims (Recital 62).

The Victims' Rights Directive also places emphasis on training. Officials who have contact with victims should receive sufficient training to enable them “to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner” (Recital 61, Article 25). This requirement is particularly pertinent in the context of the individual assessment of protection needs stipulated by Article 22.

## Terminology

This report uses the terms ‘crimes committed with a discriminatory motive’, ‘bias-motivated crimes’ and ‘hate crimes’ interchangeably, and as differing only in length and precision. Hate crime committed on the internet is referred to as ‘cyber hate’. Incitement to violence or hatred against a protected category of persons – commonly referred to as ‘hate speech’ – is both a criminal offence and an expression of discrimination and hence a sub-category of the wider concept of hate crime. FRA's (2012) report on *Making hate crime visible in the European Union: acknowledging victims' rights*<sup>13</sup> gives a detailed explanation of this terminology.

<sup>13</sup> FRA (2012d).

## Contextualising this report within FRA's work

According to FRA's founding regulation,<sup>14</sup> the agency's work should cover the phenomena of racism, xenophobia and antisemitism, the protection of rights of persons belonging to minorities, as well as gender equality, as essential elements for the protection of fundamental rights. To this end, FRA has conducted several large-scale surveys, carried out socio-legal research, delivered situation reports in particular instances, provided opinions, and set up – jointly with Member States – a Working Party on Hate Crime.

### Previous FRA research

This report cuts across two policy areas FRA has extensively researched: discrimination relating to various characteristics and supporting victims' access to justice. This report emerges from FRA's broader work on victims of crime. It forms a 'sub-project' of a comprehensive research project on victim support services that led to the publication, in December 2014, of the report on *Victims of crime in the EU: the extent and nature of support for victims*. That report provides concrete examples of different practices in the area of victim support, based on an analysis of current procedures at national level; it identifies achievements as well as promising practical measures that can serve as a source of inspiration to Member States in implementing the Victims' Rights Directive, and highlights areas that need further attention.

The current report takes into account FRA's previous work related to hate crime, in particular the report on *Making hate crime visible in the European Union: acknowledging victims' rights*<sup>15</sup> and the *EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime* – both published in 2012 – and the above-mentioned 2014 report on victims of crime.

Several FRA publications help place the present report's findings into a broader context: FRA's Opinion on the Framework Decision on Racism and Xenophobia of 15 October 2013;<sup>16</sup> the conclusions of the Fundamental Rights Conference 2013 on hate crime;<sup>17</sup> as well as the findings from previous FRA research projects – particularly large-scale surveys on discrimination of minorities, LGBT-related discrimination and antisemitism.<sup>17</sup> Other relevant FRA reports include *Access to justice in cases of*

*discrimination in the EU – steps to further equality*,<sup>18</sup> and the thematic situation report on *Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary*.<sup>19</sup> FRA recently published a Focus paper on "Equal protection for all victims of hate crime: The case of people with disabilities",<sup>20</sup> which highlights the need for thorough training of law enforcement officers and for measures to encourage reporting by disabled victims of bias-motivated crimes. In addition, FRA's report on *Violence against children with disabilities: legislation, policies and programmes in the EU*, published in December 2015, notes a general lack of awareness of hate crime motivated by disability.<sup>21</sup>

Finally, Section 2.2 of FRA's Annual Report 2015 provides information on recent developments regarding policies against racist hate crime, including the Commission's initiatives to support Member States in meeting the targets defined by EU legislation as well as relevant measures adopted by Member States, including on police training.

### Working Party on Hate Crime

At its meeting in Brussels on 5 and 6 December 2013, the Council of the European Union adopted its 'Conclusions on combating hate crime in the EU'. Among many other recommendations, the Council invited "the Fundamental Rights Agency to work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crime."<sup>22</sup>

Responding to this recommendation, FRA, jointly with the Italian Presidency of the Council of the EU, in 2014 established a Working Party on Hate Crime to assist Member States in designing and implementing such measures. The Working Party focusses on encouraging victims to report, improving recording of hate crime, enhancing multi-agency partnership and providing training for public service providers. The present report aims to contribute to the Working Party's activities.

14 Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, p. 1.

15 FRA (2013e).

16 FRA (2013d).

17 FRA (2012c), FRA (2013a), FRA (2014b).

18 FRA (2012a).

19 FRA (2013f).

20 FRA (2015a).

21 FRA (2015b), p. 39.

22 Council of the European Union (2013).

# 1

## Professionals' views on hate crime



### 1.1. Grounds of discrimination

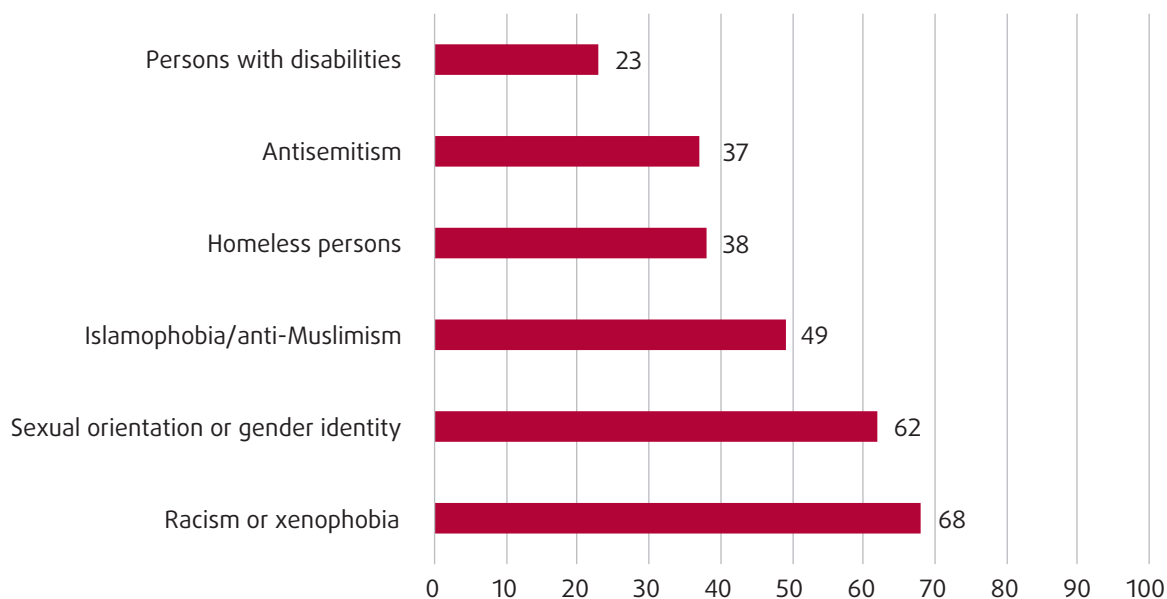
As shown in Figure 1, experts rate the severity of the problem of hate crime (bias-motivated crimes, including incitement to such offences) motivated by discrimination on various grounds in their own Member States as follows:

1. Racism or xenophobia
2. Sexual orientation or gender identity

3. Islamophobia or anti-Muslimism
4. Homelessness
5. Antisemitism

Respondents were asked to comment on each category of hate crime and whether or not they considered it a problem. A number of respondents gave no answer when asked to rank the seriousness of hate crime, with 'no answer' being more typical with respect to persons with disabilities and homeless persons – which could

**Figure 1: Interviewed experts from all professional groups assessing the severity of the violent attacks or threats of violence motivated by bias or directed against a certain perceived group of persons as a very or fairly serious problem (N=263, %)**



**Question:** Do violent attacks or threats of violence motivated by bias or directed against a certain perceived group of persons in your Member State constitute a [...] problem/no problem at all?

**Answers:** A. A very serious problem; B. A fairly serious problem; C. A not very serious problem; D. No problem at all.

Figure 1 groups together the percentage of respondents who selected answers A and B.

**Source:** FRA, 2016

reflect a lack of awareness of, or experience with, hate crime against these groups in some Member States. Two thirds of all 263 interviewees believe that violent attacks or threats of violence motivated by racism or xenophobia in their Member States amount to a very or fairly serious problem (one third believed it is very serious, one third that it is fairly serious). This is followed narrowly by the rated seriousness of attacks and threats motivated by the victim’s perceived sexual orientation or gender identity, which about three out of five interviewees view as a very or fairly serious problem.

Experts rate the risk of being attacked due to perceived homelessness as fourth in seriousness. Several experts (for example, in Germany, Portugal and Sweden) perceived violence against homeless persons as an issue of mounting significance.

*“And here I will also say, from the perspective of my own practice, that we have a lot of cases in which the victims of battery are homeless persons, or poor people. [...] There have also been cases where homelessness was the only cause of aggression.”* (Judge, Poland)

While a clear majority of the interviewed professionals does not perceive hate crime against people with disabilities as a very serious problem, this may be because disability hate crimes have received less attention than

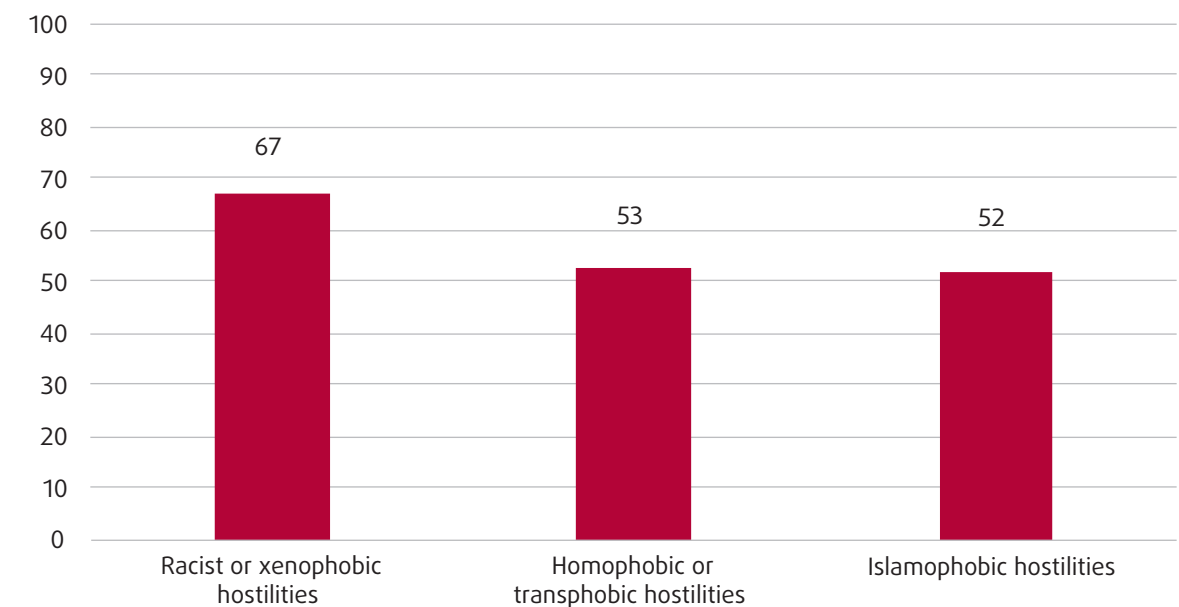
other forms of hate crime, including from lawmakers. FRA research shows that many people with disabilities commonly experience violence, harassment and abuse, creating a barrier to their inclusion and participation in the community.<sup>23</sup>

The evaluation of the seriousness of offences of inciting hostility or violence on various grounds precisely mirrors the assessment of the relative seriousness of various grounds of discrimination (Figure 2).

A majority of experts view crimes of inciting violence or hatred based on racist, xenophobic, homophobic, transphobic or Islamophobic motives as very or fairly serious. The available data do not make it possible to gauge to what extent this assessment reflects the duration and intensity of ongoing discourses rather than the reality of criminal phenomena.

In many Member States there is a discernible difference between the opinions of state and non-state actors regarding the significance of hate crime. For example, in Belgium, interviewees from victim support services and human rights institutions felt that there is a high incidence of hate crime and that its impact is underestimated, while interviewed police officers and prosecutors claimed that there are very few cases of hate crime. Similar differences were observed in

**Figure 2: Interviewed experts from all professional groups assessing the severity of the problem with regard to publicly inciting hostilities as a very or fairly serious problem (N=263, %)**



Question: Does public incitement to racist or xenophobic, Islamophobic, homophobic and transphobic hostilities in your Member State constitute a [...] problem/no problem at all?

Answers: A. A very serious problem; B. A fairly serious problem; C. A not very serious problem; D. No problem at all. Figure 2 groups together the percentage of respondents who selected answers A and B.

Source: FRA, 2016

23 FRA (2012b); FRA (2015a).

Cyprus, Estonia, Hungary, Lithuania, Malta, Romania and Slovakia.

One reason for this could be that support services often experience hate crime through the victim's perspective and in accordance with their specific professional experience; by contrast, the police and judges primarily confront only those cases that are officially dealt with in proceedings and, more particularly, are addressed as hate crime. Several interviewees indicated that there is a 'dark figure' of hate crime (incidents that are not reported to law enforcement), resulting in considerable discrepancies.

Experts in several Member States also see regional differences in the prevalence of hate crime, with hate crime perceived as being higher in large cities or urban areas. If true, this would affect the distribution of resources (specialised victim support services, etc.). However, such perceptions should be treated with caution. Crime is generally proportionate to the population density and thus more widespread in urban areas. However, as several interviewees in the Netherlands pointed out, local governments' and/or police units' prioritization of discrimination can also result in regional differences in the number of reported hate crimes. They added that a higher number of reported hate crimes in one region compared to another does not necessarily reflect a greater prevalence of hate crime there, nor does an increase of registered incidents in police data necessarily mean that discrimination has increased. Respondents in the United Kingdom also recognised that differences in reporting levels may make some forms of hate crime appear more or less prevalent. Publicity is a case in point. For example, the publicity given to disability-based hate crime in the United Kingdom in recent years has led to increased reporting and a rise in recorded cases (more so for mental than physical disability), making it appear especially common. In the meantime, one interviewee added that much transphobic hate crime remains hidden because of barriers to reporting, including the incidents occurring in the home or the fear of being outed as a trans person.

Interviewees criticised that legislation on hate crime often covers certain protected characteristics, but overlooks others that would be practically relevant, such as homelessness or disability. Paradoxically, by introducing differing levels of protection, anti-discrimination policies add to discrimination against certain categories of vulnerable persons. These findings underline the necessity to adopt, in line with Article 21 of the Charter, legislation that deals with all protected categories on an equal footing. Otherwise, certain crimes committed with a discriminatory motive are not acknowledged and hence remain invisible.

*"One of the problems that we see here in Malmö and Stockholm, is that a number of EU citizens, from Bulgaria, primarily Roma, are begging on the streets. We know that these groups are very vulnerable, but they are not included in hate crime statistics. I think it is time to think a little more in terms of hate crime, that we expand the definition to include even homeless people and why not even people with disabilities." (Police officer, Sweden)*

*"The fact that homophobia and disability are not yet grounds covered by the law is a shortcoming in the legislation that should be overcome." (Police officer, Italy)*

*"The second problem concerns crimes motivated by homophobia – those are not perceived as hate crime in Latvia. Thus, there are no records about such crimes in the police and no legal basis for it. Such cases are registered as hooliganism. Thus, it can seem that such crimes are not committed." (NGO, Latvia)*

## 1.2. Public discourse

Interviewed professionals in several countries raised particular concerns about certain types of public incitement to hatred, including hate speech on the internet and statements made by politicians, especially during election campaigns (see [Section 1.3](#) on cyber hate).

In many Member States, there is an issue with prominent persons making discriminatory statements in public. Such statements can have a strong impact on the societal climate. Some interviewees noted that hate speech increases during election campaigns. A number of interviewees (including from Italy, Poland and Slovenia) alluded to politicians contributing to the problem of hate crime with public racist or discriminatory statements. In Ireland, too, a number of interviewed victim support service providers noted that public officials, including politicians, may contribute to an atmosphere of hostility – for example, by reinforcing stereotypes about ethnic minorities.

*"The racial insults, they happen indeed every day, well there is a trivialisation of racial insults with people who will systematically say at the hearing "but I am not racist, my sister-in-law is from that origin", "my brother-in-law is Jewish", "my best friend is black" but anyone might say when they are angry "you dirty black man", "you dirty Arab" or "go back to your country" to their neighbour or to the person who overtook them or who cut them up with their car. I think there are different levels in hate crime and that there are people who really incite the hatred of the other and this common racism. We really see those two realities. This common racism accounts for some of our hearings." (Judge, France)*

*"It's jokes, in a racist way, in suburbs, junior high schools and high schools, but it can be more or less humoristic. It is an everyday racism, claimed, absolutely not intellectualized, and which happens daily." (Public prosecutor, France)*



*“Low level racism is happening all the time, you can be on a tube, you can be on a train, it’s there, it’s happening [...]”*  
(Victim support service, United Kingdom)

Professionals interviewed in Poland stated that there is a certain level of social acceptance of homophobic messages in the public sphere. Similarly, the majority of interviewees in Italy claimed that politicians often make racist statements and that no action is taken against them, with only few incidences having led to criminal proceedings. Some interviewees from victim support services said that, in public discussions on measures in support of equal rights for gay couples, anti-LGBTI arguments are still frequently used, even by politicians and some institutional representatives, and that this reinforces intolerance against LGBTI persons.

*“It is a very serious problem, because when public figures, politicians, people from the world of entertainment, business, that is - people who are presented as important, speak ugly about other groups, then everyone thinks that this is allowed and that it is the right thing to emulate them; then this expands so that other people start speaking like that and there is then only a step towards violence against these groups. Here, I think, is a problem. More or less it targets citizens of the former Yugoslavia and the Roma.”*  
(Judge, Slovenia)

*“The State’s indifference regarding hate speech by some political parties is obscene... this sort of speech cannot be allowed to be produced from an official position.”* (Victim support service, Spain)

*“It is extremely import for public figures, I am mostly talking about the people in power, to clearly, unambiguously and publicly talk about the topic of hate crime and, in those utterances, to unequivocally express disapproval and criticism. This message has to reach the masses. It is simply not allowed to beat anyone because of their skin colour, sexual orientation or disability. It is prohibited to insult anyone because of his/her religion which is different.”*  
(Victim support service, Poland)

*“It is more problematic if a politician makes a discriminatory statement rather than if a moron says the same thing in a pub”.* (Police officer, Italy)

Interviewees in at least one third of Member States linked the economic crisis and migration patterns to an increase in hate crime.

*“The foundation for those ideologies (racist, xenophobic) is created by the fact that a couple of phenomena converged in Poland, for example the economic crisis, which makes the society poorer and causes exclusion of certain social groups. Many young people don’t have a job, approximately 30 %. It brings frustration and a turn to some ideologies which may explain this state of affairs, for example I don’t have a job because black people are taking my jobs.”*  
(Victim support service, Poland)

*“What we’ve seen with regards to migrants is that it fluctuates. It’s like a wave going up and down. There was a period of extreme violence some years ago in the phase where they were burning the cars, 2007/2008 I think, thereabouts. Then it subsided, it calmed down, because of the patterns of migration, less boats arrived, people realised they went a bit too far with the violence, so people took a step back. But now it looks like it’s on the increase again.”*  
(Victim support service, Malta)

As to antisemitic discourse, several interviewees from victim support services see this as a serious problem – both from the point of view of the number of statements and their symbolic meaning when made by persons with a high public profile. Interviewed experts from some Member States considered antisemitic hate speech to be more of a problem than interviewees from other countries did. Holocaust denial is an example. With regard to the seriousness of incidents involving individuals publicly condoning, denying or grossly trivialising the Holocaust, experts’ opinions varied extremely among Member States. Eight out of nine interviewed experts from all professional groups in Greece, and 12 out of 18 in Spain, rated Holocaust denial as a very or fairly serious problem in their Member States. By contrast, close to all interviewed experts in Denmark (eight out of 10), and all interviewees in Estonia (seven out of seven), believe that this is not a problem at all in their Member States. It should be noted that the number of interviewees per country varies strongly and is overall small. Still, in some Member States the seriousness of incidences of Holocaust denial is rated similarly to the seriousness of racist, xenophobic or homophobic bias offences, while in other Member States – including Denmark, Ireland, Luxemburg and Estonia – professionals observe almost no such problem.

These findings are to be seen in the context of the results from FRA’s survey on discrimination and hate crime against Jews in EU Member States, which reports on experiences and perceptions of antisemitism amongst Jewish respondents in select Member States. Interviewees were asked how frequently they heard or saw certain statements by non-Jewish people, including “The Holocaust is a myth or has been exaggerated”. Over half of all survey respondents (57 %) heard or saw such a statement during the preceding 12 months.<sup>24</sup> However, respondents’ awareness of laws forbidding denials or trivialisations of the Holocaust varied considerably among Member States – ranging from 85% in France and 82% in Germany to 27% in Sweden and only 2% in Latvia.<sup>25</sup>

Interviewees from several Member States highlighted the particular risk faced by individuals seen as belonging to Roma communities. Respondents in Hungary

<sup>24</sup> FRA (2013a), p. 11.

<sup>25</sup> *Ibid.*, Figure 31, p. 62.



and Romania agreed that, when it comes to racist hate crime, Roma are the most targeted group; in Italy, all interviewees pointed out that Roma and Sinti are the groups most exposed to public incitement to hostilities. Interviewees in Poland observed an increase of hate speech directed against Roma communities, including in the media, press and internet. According to interviewees in Romania, political discourse incites discrimination against the Roma population. One interviewee from a victim support service declared that all mayors in his region who used this type of discourse won local elections. Specifically, the local administration organises consultations with the population 'to legitimise' the decision to commit an abuse against the Roma population, such as evacuating them and moving them to areas that are not appropriate for living or even dangerous for their health. In addition, a climate of anti-Roma racism can affect the institutional response to hate crime victims. A professional working at a victim support service in Croatia highlighted that the risk of the police sharing the discriminatory attitudes of hate crime offenders is highest with regard to Roma communities.

*"There is the issue of Roma. Well there is, I don't know what, but a surge of hate speech and absolutely... well the hunt is open. For some time now, there has been a real incitement to racial hatred and some public speeches that are..."* (NGO, France)

*"There are victims of first class and victims of second class: while crimes against Jews would not be tolerated, there is a sort of consensus for crimes against gypsies".* (Judge, Italy)

### 1.3. Cyber hate

Many interviewees also opined that hate speech on the internet is a growing problem and a great concern. According to professionals, the internet has unleashed boundless hate speech. Several experts from France independently used the term "explosion" to describe how they perceive this development. Experts connect the increase of racist, anti-Muslim, antisemitic and homophobic hate speech in public to these forms of hate speech developing unimpeded and endemically on the internet. Hate speech in public is partly perceived as spill over from the uncontrolled and explosive development of cyber hate. Many interviewees highlighted the role of social networks, such as Facebook and Twitter, in serving as platforms for rapidly spreading and, at the same time, trivialising – racist, sexist and homophobic – hate speech.

*"It is indeed the phenomenon that is increasing the most and its expression is booming literally because people do not realize that what they write in their home, in their living-room, in their kitchen, they write it while seated in their kitchen but it can be read on the other side of the earth [...] there is an enormous trend of people acting without self-restraint."* (NGO, France)

*"There people do whatever they want, some believe they can do anything they want, they feel protected because they are anonymous."* (Police, France)

*"In the future, we will find ourselves in big troubles over social media. This is an enormous space completely out of control, with large influence over young people. I think that we have not fathomed the proportions of this problem as yet."* (Public prosecutor, Croatia)

*"The main problem is hate speech. [...] Speaking about expression of hate on the internet – the internet environment is not regulated, the responsibility of internet portal is not defined. What is important here is the principle of proportionality and moral responsibility of internet portals. There is a need for legal initiatives stipulating liability, thus regulating the environment of internet portals."* (Police officer, Latvia)

*"As a judge and a legal expert in the field, I look forward to the adoption of legal provisions regulating the web to enable police and the criminal justice system to better react to hate crime committed through the internet."* (Judge, Italy)

The very critical views expressed by professionals in this research correspond to findings from surveys conducted by FRA. The survey on discrimination and hate crime against Jews in EU Member States revealed that antisemitism on the internet – including antisemitic comments made in discussion forums and on social media – was a significant concern for a majority of respondents. Seventy-five percent of all respondents considered antisemitism expressed online to be a problem. In addition, 73% believed that this form of antisemitism increased over the past five years.<sup>26</sup>

FRA's survey on violence against women found that one in 10 women (11%) had faced at least one of the two forms of cyber-harassment – 'unwanted sexually explicit emails or SMS messages' or 'inappropriate advances on social networking websites' – since the age of 15, and one in 20 (5%) had done so during the 12 months before the survey.<sup>27</sup> The report concludes that social media "could do more to highlight and respond to abusive behaviour by focusing on the responsibilities of perpetrators, and by outlining where online comment becomes threatening and abusive behaviour under the

<sup>26</sup> FRA (2013a), p. 12.

<sup>27</sup> FRA (2014d), p. 104.

terms of the law and has little to do with the fundamental right of freedom of expression.”<sup>28</sup>

Officials from the police and the judiciary, interviewed for this research, pointed out that people sometimes feel that opinions expressed on the internet are automatically less serious and do not have to be accounted for as much as speech ‘in real life’ does. Experts referred to cases where defendants explained that they used insulting language on the internet just for fun, as if they were acting in a virtual world beyond all responsibility. As experts commented, apparently many people feel free to make racist jokes on the internet. In addition, interviewees noted that internet users sometimes forget – or suppress the fact that they are acting in a public domain.

## 1.4. Weaknesses of conceptual frameworks

Obviously, the criminal justice system’s ability to recognise and respond to hate crime is premised on professionals’ understanding of the basic concepts. However, this research project revealed that professionals are often not well acquainted with the terminology framing the hate crime discourse. Many interviewees highlighted as an issue the lack of a clear and shared understanding of the relevant concepts and hence of the phenomena they cover.

For example, experts from victim support services and human rights NGOs in Spain highlighted that, due to insufficient training, police officers have a poor understanding of the concept of hate crime. This, in turn, often leads to the defective categorisation of an offence, with it recorded without any reference to discriminatory motives. Therefore, the problem is not only that few complaints are submitted, but also that few complaints are duly registered as hate crimes, so even fewer complaints reach the court system.

Several experts expressed similar concerns regarding Romania. Interviewees from victim support services highlighted a lack of understanding among police officers regarding what a hate crime is and how to investigate the bias motive of a crime. In many instances, instead of registering hate crimes as such, police officers investigate them as ordinary crimes. This might explain why interviewees who have been working in support services for victims of hate crimes for a long time declare that they have no hate crime cases that were acknowledged as such at the national level.

Several interviewees pointed to the conceptual problem that arises from using – and sometimes confusing – two

sets of language: one focusing on discrimination, the other using political categories. In some Member States, hate crimes are identified with certain political categories, such as extremism. This can lead to hate crime being overlooked unless they are committed by certain groups – for example, by Neo-Nazis. Interviewees from Slovakia and Hungary placed particular emphasis on this problem. Also, the problem of linking hate crime to one particular strand was raised by several interviewees. For example, in Slovakia, one interviewee from a victim support service claimed that hate crimes are still perceived as a phenomenon closely connected to the propagation of neo-Nazism or Nazi symbolism. The police do not pursue hate speech as a crime unless it contains explicit neo-Nazi statements. As a result, inciting hostility or defamation of race – which is common in online national newspaper discussions or right-wing politics – is underestimated, practically missing in Slovak crime statistics and generally considered standard behaviour.

### FRA Opinion on the Framework Decision on Racism and Xenophobia

#### Action 2

“EU Member States are asked to review that in cases of crime committed with a discriminatory motive, the police, prosecution services and courts acknowledge and pay proper attention to the discriminatory nature of the offence. In this regard, it is important that the terminology used to refer to bias-motivated crime is appropriate to highlight the discriminatory motives for which such crimes are committed. The use of political categories, such as ‘right-wing extremism’ or ‘left-wing extremism’ can lead to hate crime being overlooked and victims not being acknowledged as victims of discriminatory crimes, in particular, where crimes are not perpetrated by members of extremist groups.”

*Source: FRA, Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime, FRA Opinion – 02/2013, Vienna, p. 13*

In addition, EU Member States tend to deal with offences defined as politically motivated (originating from groups that are positioned as extreme-right or extreme-left wing actors) as a matter of state security or public order rather than as a violation of the fundamental rights of individual citizens. If offenders are seen as belonging to a politically motivated group, this can result in the police not paying sufficient attention to the rights of victims of hate crime and their right to be acknowledged as victims of discrimination. That the Austrian Report on the Protection of the Constitution 2014 (*Verfassungsschutzbericht*) does not once mention the victims of the

<sup>28</sup> *Ibid.*, p. 93.





reported offences arguably illustrates this tendency.<sup>29</sup> Framing the issue in political terminology – extremism, terrorism, etc. – comes with a risk of overlooking individuals' rights.

The situation in Germany is particularly complex.<sup>30</sup> It appears that all hate crime is categorised as “politically motivated crime”.<sup>31</sup> This approach is in line with the fact that the police organisation protecting the constitution (*Verfassungsschutz*) is the main authority tasked with investigating hate crimes. The question arises whether this type of framework can adequately capture, for example, homophobic, sexist or hate crimes against persons with disabilities. According to data provided by the German Ministry of the Interior, in 2012, 4,514 hate crime offences were registered as “politically motivated crimes”. Of these, 2,922 were registered as having been committed with a xenophobic motivation; only 186 as relating to the perceived sexual orientation; and only 29 in relation to a perceived disability. The political framework within which these crimes are approached may explain the relatively low numbers of these latter forms of bias-motivated crimes.

However, the findings from this project suggest that the problem of conceptual and resulting perceptual weaknesses is not confined to the police. The interviews conducted with public prosecutors and criminal judges indicate that the criminal justice system is reluctant to recognise hate crime, which could result from a lack of understanding of the concepts on which measures to counter hate crime are necessarily premised.

*“I do not understand the differentiation in the end: Hate crime – every slap in the face which ends up in a nasal bone fracture is motivated by hate, if it is the fan of the opposite football team; the rival, who pinched somebody’s girlfriend, the person, who pushed me at a festival – the motive is always aggression.”* (Judge, Austria)

*“There is no such kind of fanaticism in Cyprus. And I am wondering also how a hate crime can be proven as such. Especially among Cypriots, I believe that this phenomenon does not occur... We don’t have such incidents in Cyprus and even not against foreigners. If there are, these are very limited.”* (Judge, Cyprus)

*“We have so many other serious problems before that one...”* (Judge, Portugal)

*“It is a problem that media is dramatising; I assume that there are just few such attacks. In this district it is just a marginal problem, it could be different in areas with high percentage of Roma. There the tension and aversion from the majority are to be expected. [...] I assume that such attacks could be the answer of a society to problematic behaviour of Roma and other ‘troubled persons’.”* (Judge, Slovakia)

The readiness of judicial institutions to acknowledge victims of hate crime as victims of discrimination and to make the additional wrongdoing of discrimination visible is crucial. Unless criminal courts take hate crime seriously, there is a risk that police efforts are rendered futile and victims are deprived of effective remedies. However, FRA evidence suggests that criminal justice institutions in some Member States are reluctant to classify offences as discriminatory, and the interviews with judges suggest that the judiciary’s hesitance to fully acknowledge hate crime victims could result from being insufficiently acquainted with the underlying concepts. The interviews conducted revealed that some interviewees were deeply sceptical about the concept or the significance of hate crime.

Consistent with this impression, interviewees from other professional groups voiced doubts as to whether judges always attribute sufficient attention to hate crime. As one NGO staff member in Spain put it: “There is no awareness in the judiciary of the seriousness of hate crime.” As observed by interviewees, this can have various effects. Sometimes, hate crimes are downgraded to public order offences, such as ‘hooliganism’. In other cases, courts introduce additional distinctions, requirements and limitations that have no basis in legislation – such as requiring an offence to reach a threshold of ‘social danger’, or of disturbing social order and peace, or distinguishing between ‘incitement to hatred’ and ‘incitement to active hatred’.

29 Austria, Federal Interior Ministry (2014).

30 On the German situation, see Glet (2009) and Glet (2011).

31 Germany, Federal Ministry of Interior (undated); Backes (2013), p. 63.

### **Romania, judgement No. 458/2011, Court of Alba, 19 December 2011**

Four men who played football in a club next to a street known to be inhabited by members of the Hungarian national minority had some beer after their training. They engaged in a heated political discussion about the Hungarian national minority's request for local self-government. At midnight, they decided to walk along that particular street, throwing stones at the windows of the nearby houses and shouting "Hungarians, get out of the country!" A man of Hungarian origin came out of his home with a baseball bat. The defendants took his bat and started to beat him. Two other men also came out of their homes, and the perpetrators beat and kicked them, and hit them with the baseball bat. The victims needed between 7 and 12 days of medical care. The court reviewed the case as possibly involving the criminal offence of *incitement to discrimination* (Article 317 of the Criminal Code). However, the court held that the facts did not meet the offence's required level of "social danger", because the incident only involved a spontaneous reaction to a debate related to a controversial topic in society, and not an ideology against that group, promoted in a systematic way, which could lead to inter-ethnic tensions. The defendants were instead found guilty of an offence against public order (Article 321(1) of the Criminal Code), and had to pay a small fine.

### **Hungary, decision B. VI-VII. 5303/2011/4, District Prosecutor's Office, 20 November 2011**

The annual Gay Pride march took place on 18 June 2011. Several extreme right-wing groups officially organised counterdemonstrations, which drew hundreds of participants, at a large square along the planned itinerary of the march. Activists affiliated with the extreme right-wing website *mozgalom.org* allegedly held up signs calling for the extermination of gay people (the signs showed a rope, a pink triangle referring to the persecution of gay people in Nazi Germany, and the words: "New treatment for the gays"). Demonstrators repeatedly shouted "Dirty faggots, dirty faggots!" Several participants of the march were also allegedly assaulted and injured following the event. The police started to investigate the case, but it was closed due to claims that no crime had been committed. The prosecution service maintained that holding the signs at issue did not amount to incitement to "active hatred".

### **Bulgaria, application pending before the ECtHR**

In September 2011, a criminal case in the Bulgarian village of Katunitsa sparked anti-Roma protests throughout the country. As a response to the protests, the right-wing political party 'Ataka' started disseminating amongst the public a brochure titled "Gypsy crime – a danger for the state" alongside leaflets promoting the party leader for president. The texts refer to Roma people using expressions such as "gypsy banditism", "danger to the state", "monsters", "drunk and dirty", "trash", "beast", etc. Three instances of the prosecution service declined to institute pre-trial proceedings for hate speech following complaints submitted against the brochure and the political party. The prosecution refused to institute pre-trial proceedings based on the conclusion that the expressions used in the brochure were not opinions or comments but only statement of facts and circumstances based on information by the police – and that the author did not intend to incite racial hatred but only to focus public attention on certain aspects of criminal activity.

Source: [www.bghelsinki.org/media/uploads/17.01.2013\\_application.pdf](http://www.bghelsinki.org/media/uploads/17.01.2013_application.pdf).

This report does not intend to criticise single decisions of criminal justice authorities. However, it should be considered that, when a wider pattern suggests a lack of judicial resolve to acknowledge hate crime victims as victims of severe discrimination, this potentially sends discouraging signals to individuals at increased risk of hate crime victimisation, and potentially encourages groups inclined to discriminate.

Because of the risk emanating from public prosecution services' and courts' hesitance to fully acknowledge victims of hate crime as victims of discrimination, from the victims' perspective it is crucial that effective remedies are available. Some Member States have introduced initiatives aiming to ensure that public prosecutors identify bias motives and prosecute such crimes under appropriate classification.

For example, in 2013, the Prosecutor General of Poland instructed appellate prosecutors to choose, within the jurisdiction of each regional prosecution, one or two district prosecution bureaus that will be responsible for conducting preparatory proceedings in cases of hate crime. Within these bureaus, two prosecutors should be appointed to conduct criminal proceedings in hate crime cases. As part of this initiative, the General Prosecutor's Office organised training for prosecutors on violations of the rights of individuals based on their national and ethnic origins or religious belief, promoting fascism and other totalitarian systems and hate speech. The practice allows for the creation of a group of trained prosecutors who will be able to specialise in, and devote their time to, hate crime. While more information would be needed to allow for an assessment of this practice, according to the interviewed experts, this practice may



positively influence police practice in hate crime cases, as prosecutors should supervise the police in the conduct of preparatory proceedings. It may also lead to better co-operation between lower level prosecutions and NGOs that deal with human rights or provide support services to victims of hate crime.<sup>32</sup>

### FRA Opinion on the Framework Decision on Racism and Xenophobia

#### Action 4

"EU Member States should respect the right of victims of crimes committed with a discriminatory motive to have "a review of a decision not to prosecute" or to discontinue proceedings "in accordance with their role in the relevant criminal justice system" (Article 11, Victims' Rights Directive)."

#### Action 5

"EU Member States are asked to assess to which extent victims are entitled to ask for the review of a court decision in cases where victims claim that the court has not paid due attention to the discriminatory motives behind the offence."

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, pp. 14-15.

### FRA opinion – Acknowledging victims of hate crime

"As the right to non-discrimination under Article 14 of the ECHR ties in with the right to an effective remedy under Article 13 of the ECHR, victims of hate crime should have remedies available to them to enable them to assert their rights under Article 14 of the ECHR. This would apply in any case where victims believe that the public prosecutor or the criminal court did not sufficiently address the violation of this right."

Source: FRA (2012), *Making hate crime visible in the European Union: acknowledging victims' rights*, Luxembourg, Publications Office, p. 11

Overall, initiatives taken to raise prosecutors' and criminal judges' awareness of the importance to respond resolutely to hate crime remain scarce, including when compared to measures adopted at the level of the police.

## Conclusions and FRA opinions

FRA has consistently called for legislation covering the entire range of characteristics protected under Article 21 of the Charter and "dealing with all grounds of

discrimination on an equal footing".<sup>33</sup> While there is no need to repeat this recommendation, it is worth noting that interviewed professionals deemed unsatisfactory situations where only some categories of hate crimes are covered, leaving groups of victims unprotected against discrimination.

### FRA Opinion on the Framework Decision on Racism and Xenophobia

#### Action 1

"When implementing the Victims' Directive and having regard to the rights of victims of crimes committed with a discriminatory motive, EU Member States should interpret 'discrimination' as relating to all characteristics protected under Article 21 of the Charter."

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, p. 11

Experts highlight the negative impact of discriminatory speech on the societal climate. This relates to various forms of public discourse but in particular to political campaigns.

#### FRA opinion

*EU Member States should strengthen the consensus among political actors that discrimination is not an acceptable form of political dispute and competition. They should also guarantee access to courts in all relevant areas of law.*

Experts in some EU Member States consider denial of the Shoah to be a very serious problem. This underlines the importance of implementing the provision of the Framework Decision on Racism and Xenophobia obliging Member States that are bound by this instrument to criminalise the denial of the Holocaust and other war crimes. The European Commission's implementation report of January 2014 – referred to in the **Introduction** – lists 15 EU Member States that have no specific provisions criminalising this form of hate speech and reports that legislation in Romania makes reference to Holocaust denial only in relation to the distribution of material. However, it is worth mentioning that Greece, Romania and Italy recently enacted pertinent criminal law provisions. Still, relevant legislation, in line with Article 1 (1) (c) and (d) of the Framework Decision, is missing in around half of Member States.

32 Poland, General Prosecutor's Office (2014)

33 See, for example, FRA (2012d), p. 11.

FRA opinion

*Publicly condoning, denying or grossly trivialising crimes of genocide – including the Holocaust, crimes against humanity and war crimes – insults victims and their memory and reinforces their discrimination. EU Member States should fully implement Article 1 of the Framework Decision on Racism and Xenophobia and consider strengthening related practices in line with international human rights law.*

A finding of this research is that, as highlighted by many of the interviewed professionals, professionals' lack of understanding of the relevant notions and concepts can impede the implementation of measures aimed at counteracting hate crime. There are many indications that police officers and members of the judiciary – public prosecutors and judges – are not fully aware of the basic notions on which effective policies against hate crime are premised. As long as police officers, public prosecutors and judges do not reliably master the relevant terms, it is difficult to imagine how policies will become fully effective. Hence, this lack of understanding adds to the risk that victims of hate crime fail to be acknowledged as victims of severe discrimination.



# 2

## Victims of hate crime reporting to the police



Previous FRA publications have consistently highlighted the reluctance of victims of hate crime to report to the police. A report on minorities as victims of crime, published in 2012 and based on data from FRA's first EU-wide survey on minorities as victims of crime (EU-MIDIS), found that the majority of victims of racist assaults or threats did not report their experiences to the police.<sup>34</sup> FRA's survey on discrimination and hate crime against Jews in EU Member States revealed that 38% of victims of antisemitic vandalism reported the incident to the police, compared to 26% of victims of anti-Semitic physical violence and 14% of victims of antisemitic harassment.<sup>35</sup> A FRA survey of lesbian, gay, bisexual and transgender individuals across the EU (EU LGBT survey) shows that fewer than one in five of the most recent incidents of hate-motivated violence that respondents experienced in the previous twelve months were brought to the attention of the police.<sup>36</sup> According to FRA's survey on violence against women, only 14 % of victims of sexual violence committed by a non-partner contact the police.<sup>37</sup>

### 2.1. Victims' underreporting significantly impairs the criminal justice system's response to hate crime

One of the main findings of this report is that the vast majority of professionals interviewed, including professionals across all three professional groups from Bulgaria, Cyprus, the Czech Republic, Finland, and the United Kingdom, agreed that the effectiveness of criminal justice is severely impaired by the systemic underreporting of victims of hate crime. Also, seven out of 10 interviewees in

the Netherlands stated that underreporting to the police by victims significantly compromises the criminal justice system's response to hate crime.

*"There could be some crimes which are motivated by hate, but those are few and they are not reported."*  
(Police officer, Portugal)

*"In my opinion...this is an area that as a rule is considered and is also justified in some cases that this kind of criminality is hidden for various reasons. For example, when someone who is illegally residing in the country becomes a victim of racist violence, we don't expect that he will report it, because he knows that at the end this will turn against him as he will be deported."* (Police officer, Cyprus)

*"The fact that these cases are not reported to us, and we have no knowledge about this subject, it doesn't mean that it's not a problem. Because, let's take homosexual persons. I suspect that they more than once in their surroundings, in their place of residence fall victim to hate crime, even to physical or psychological violence, but they simply don't report it. For various reasons."* (Police officer, Poland)

Consequences are far reaching. If the vast majority of victims do not report their victimisation to the police, this allows offenders to go unpunished. This impunity undermines the effectiveness and credibility of the criminal justice system, particularly when its failure to react to offences becomes systematic and known to the public. Encouraging and supporting victims to come forward and report their victimisation not only serves their rights as individuals, but also enhances the functioning of the police and of the entire criminal justice system.

However, if the police are not perceived as taking hate crime seriously, they fail to encourage victims to come forward. Thus, victims' underreporting starts off a vicious circle of the police not being active in the field and hence further discouraging victims from reporting.

34 FRA (2012c), p. 14.

35 FRA (2013a), p. 49, Figure 12.

36 FRA (2014d), p. 66.

37 FRA (2014d), p. 58, Table 3.3.

*Question: “Do you think that the response of the criminal justice system to hate crime is significantly impaired by underreporting of victims to the police?”*

*Answer: “Yes. To an extent, people don’t give us a chance to help them.” (Public prosecutor, Poland)*

*“Partly yes, because if there were more crimes reported, law enforcement bodies would react differently. I see a clear relationship between this phenomenon and the ability to respond...or the inability... not treating these crimes as a serious problem.” (NGO, Poland)*

*“If we received many more reports [of hate crime] then I think we would prioritise it more.” (Police officer, Netherlands)*

*“If we don’t get to hear about it, it’s difficult to do something about it. We do a lot of work with all criminal justice partners to encourage reporting. Whether it be third party reporting, online, through our links into equality groups, explaining what a hate crime is and how you go about reporting it, and trying to build trust and confidence that this is the sort of thing we can do if it is reported.” (Police officer, United Kingdom)*

In several Member States – including Austria, Belgium, Germany and Malta – most experts from law enforcement agencies and victim support services believe that victims’ underreporting impairs the criminal justice system’s response to hate crime. The judiciary’s response was less uniform (often because interviewees have only dealt with a few such cases and could not comment). These findings suggest that overall hate crimes are more visible to

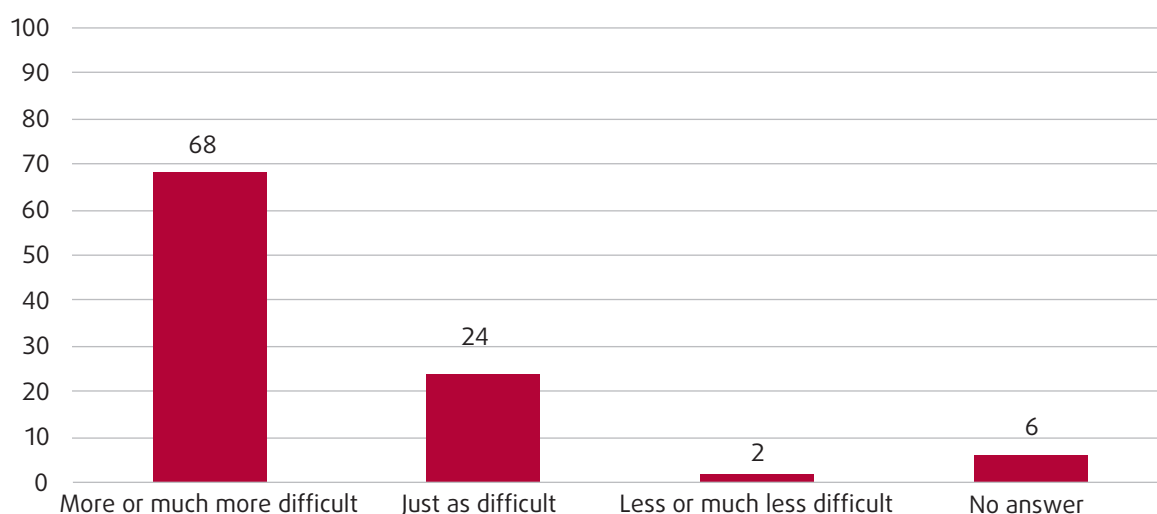
police officers than to prosecutors and judges. One police officer from the Netherlands also noted that there may be significant regional differences in the extent to which underreporting is a problem, depending on regional police efforts to make themselves known to certain groups. He specifically pointed to LGBTI victims, who may also be more hesitant to report hate crime in areas with a dominant religious (Dutch reformed) population.

This assessment underlines the importance of measures aiming to enable and encourage victims to come forward and to assist them in doing so. Only proactively supporting victims of hate crime can break the cycle of victims not reporting such crimes, preventing the criminal justice system from acknowledging victims of hate crime and their rights, and further discouraging reporting.

## 2.2. Reasons for underreporting

The interviewed professionals consistently indicated that they believe it is more difficult for victims of hate crime to report to the police than it is for victims of crimes committed without a discriminatory motive. It should be noted, however, that the ratio of victims reporting to the police also heavily depends on the type of offence. As FRA’s surveys indicate, the readiness of victims of bias-motivated vandalism to report their victimisation to the police by far exceeds the tendency of victims of violence – particularly sexual forms of violence – to contact the police.

**Figure 3: Interviewed experts from all professional groups assessing the difficulty for victims of bias-motivated crimes to report to the police compared to other victims of comparable crimes (like insults, violence or threats) (N=263, %)**



*Question: Compared to other victims of insult, violence or threats, for victims of bias-motivated crimes, it is [...] difficult to report to the police.*

*Answers: A. Much more difficult; B. More difficult; C. Just as difficult/no difference; D. Less difficult; E. Much less difficult. F. No answer*  
 Figure 3 groups together the percentage of respondents who selected answers A and B, as well as D and E.

*Source: FRA, 2016*



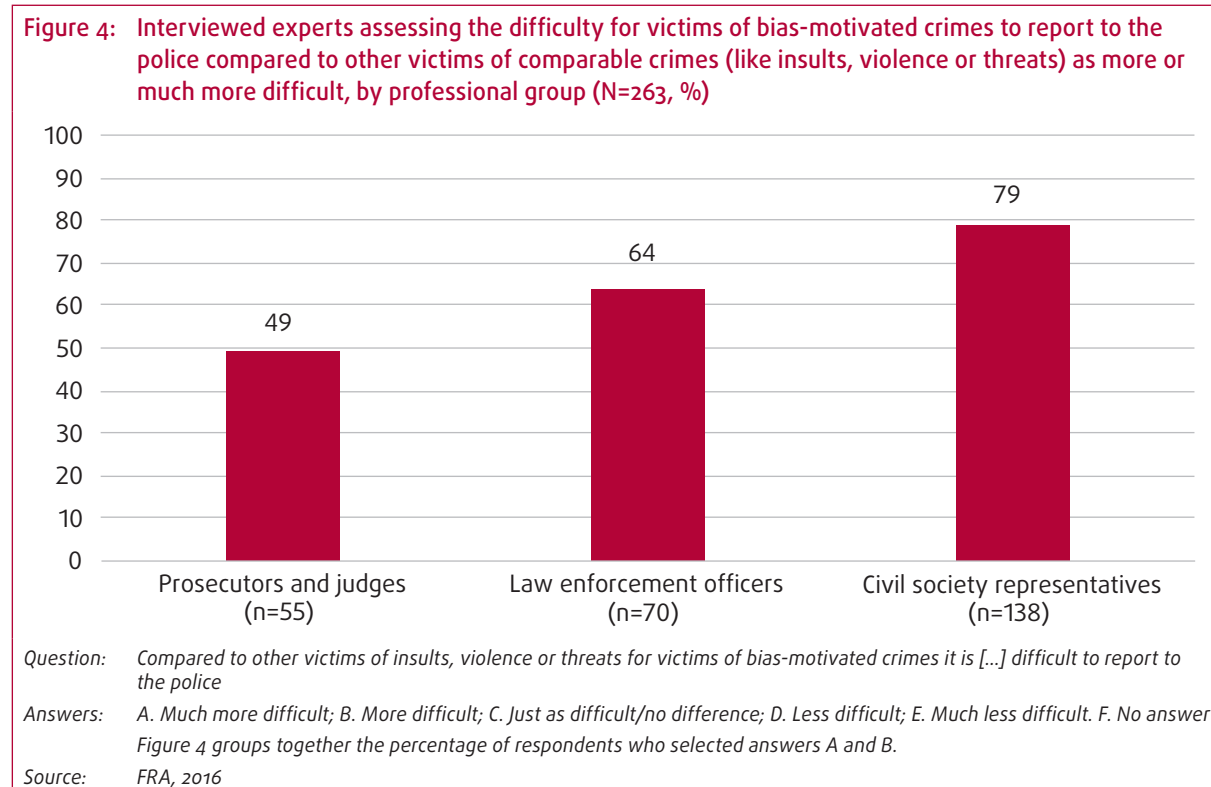
As **Figure 3** illustrates, around two thirds of respondents rated reporting to the police as either more or much more difficult for victims of hate crime. About one in four of the experts interviewed believes that it is “much more difficult” for hate crime victims to report to the police compared to other victims of similar crimes. In addition, two fifths of respondents rated reporting as “more difficult” for hate crime victims. This is consistent with claims by academics that crimes committed with a discriminatory motive are more debilitating than other forms of victimisation.<sup>38</sup>

The extent to which these difficulties of victims of bias crimes are acknowledged varies significantly among professional groups. The views of civil society representatives may be affected by the fact that some of the interviewed professionals work mainly or even exclusively to support victims of hate crime. However, as shown in **Figure 4**, compared to interviewed prosecutors and judges, significantly more law enforcement officers also acknowledge that victims of hate crime face particular difficulties.

Regarding the factors that account for victims’ under-reporting, the answers given by the interviewed professionals are fairly consistent.

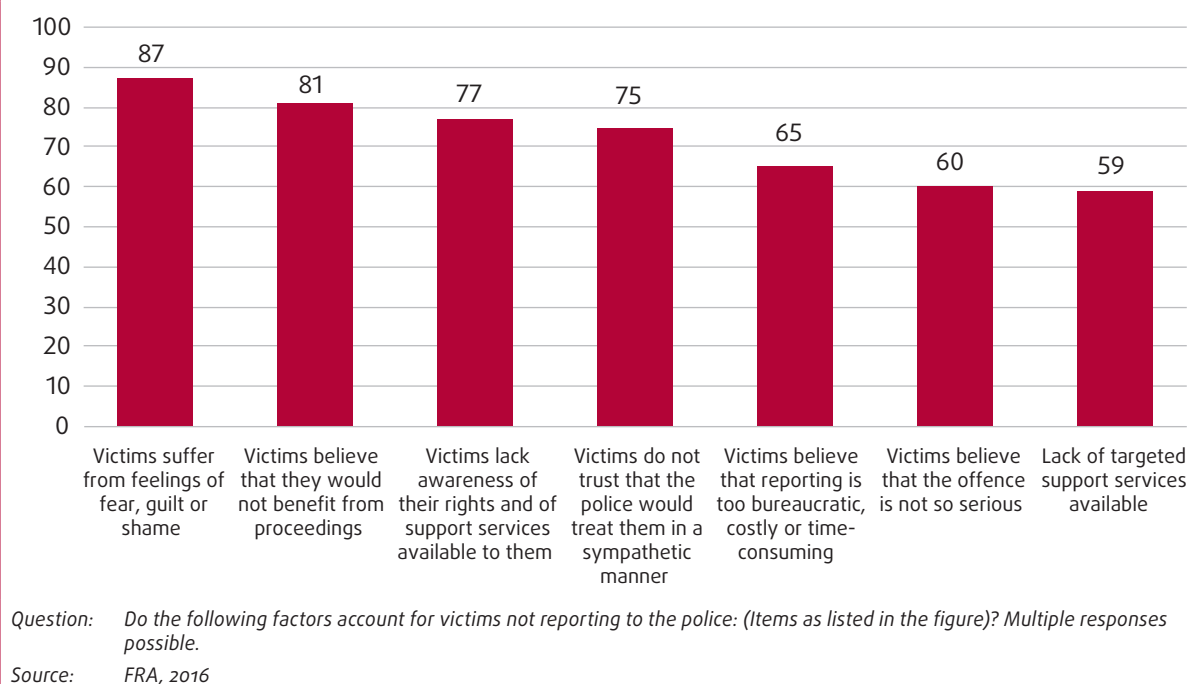
- Most experts indicated that victims are reluctant to report to the police because they suffer from feelings of fear, guilt or shame. This makes it particularly stressful for them to speak up.
- These difficulties tie in with other factors that, according to the experts, account for underreporting: victims’ lack of awareness of their rights and their lack of awareness of support services available to them – partially due to an actual lack of victim support services.
- In addition, four out of five interviewed experts indicated that victims doubt that they would benefit from proceedings if they did report hate crimes, and see proceedings as bureaucratic, costly and/or time consuming.
- Another very significant factor, according to the interviewed professionals, is victims’ lack of trust that the police would treat them in a sympathetic manner. In short, victims have little confidence in the criminal justice system being oriented towards allowing victims to experience justice.

*“For us, at the level of the district, [...] we have not been confronted with these kinds of offences. So of course, the question we ask ourselves is whether people did not feel confident enough to report to the police about that or that simply enough, there are not these kinds of offences in our district, these are the two conclusions we can reach.”*  
(Police, France)



<sup>38</sup> With regard to racist victimisation, see Wemmers et al. (2008), pp. 43-66.

**Figure 5: Views of all interviewed experts on the factors accounting for victims' underreporting of hate crime (N=263, % of all responses)**



*“Either they [victims] might think that if one has become a victim of this kind of crime, so the official that one has to report to might represent the same kind of way of thinking [as the offender]. This assumption is maybe not based on facts [...] but I am not very convinced that these victims of crime understand that the officials take these things seriously.” (Judge, Finland)*

The professionals’ view that victims of hate crime suffer from strong feelings of fear, guilt or shame ties in with their assessment of the trauma of victims of hate crime as being particularly severe. Several interviewed experts stressed the particular impact of hate crime on victims, even where the criminal offence does not seem that severe. As a police officer from the United Kingdom put it, “We realise that it is low crime, but high impact.”

This assessment of the impact on victims relates to the fact that victims are targeted for what they are perceived to be. An interviewed judge from the United Kingdom said: “To the individual concerned, it’s always been the most horrendous experience to feel that you are being targeted on the basis of something that you have no control over.” This particular meaning of hate crime underlines the importance of acknowledging victims of hate crime as victims of discrimination, as explained in FRA’s report on *Making hate crime visible in the European Union*.<sup>39</sup>

39 FRA (2012d), pp. 19-22.

*“Police officers are insufficiently aware that, when you are discriminated, that has a terrible impact on yourself as a person and that it is therefore [...] easier to deal with it by [saying] “let’s say it’s an insult or abuse, that way they cannot say we have not punished him [the perpetrator]” and then nothing is said about the discrimination, whereas that aspect may be even worse for the victim.” (Police officer, Netherlands)*

*“And then the type of the crime is maybe not so extreme, there isn’t for example a concrete threat of killing somebody, but something smaller that happens all the time [...] according to my view we have quite weak measures to influence. I suppose the only [measure] for the victim is that he/she moves away.” (Judge, Finland)*

Some interviewees noted that individuals who may be discriminated against based on more than one characteristic are at particular risk. For example, experts from France pointed to the situation of Muslim women.

*“Against Muslim people, yes, we could observe an increase, this year, of attacks against women with the headscarf, for instance in bus, in the street. [...] There has been an increase these last months. What’s more, there is a correlation with sexism because very “bravely”, they only attack women.” (Victim support service, France)*

The professionals’ opinions – based on their personal knowledge of, and encounters with, victims – tend to reflect responses given by victims in FRA surveys. However, professionals can only base their knowledge on interactions with those victims who do contact a service



and do approach the police and, in the case of some victims, finally engage with the criminal justice system.

- According to FRA's LGBT survey, 43% of victims did not report the most serious incident of hate-motivated violence they experienced to the police because they did not think that the police would do anything.<sup>40</sup> The same survey shows that 30% of victims did not report such incidents because they felt that the matter was too minor or not serious enough, or simply because it never occurred to them.<sup>41</sup>
- FRA's report on minorities as victims of crime, published in 2012, noted a similar phenomenon. Asked why they did not report their victimisation to the police, 37% of interviewees indicated that "the incident or incidents concerned were too trivial and not worth reporting".<sup>42</sup>
- In the survey on discrimination and hate crime against Jews, 47% of victims of antisemitic harassment commented that they did not report to the police because they believed that nothing would happen or change if they did; and 18% indicated it would have been too bureaucratic and time-consuming.<sup>43</sup>

**Table 1: FRA Violence against Women Survey - Reasons for not contacting the police following the most serious incident of violence, by type of perpetrator and type of violence<sup>\*,\*\*</sup>**

	Any partner (current and/or previous)		Non-partner	
	Physical violence	Sexual violence	Physical violence	Sexual violence
	%	%	%	%
Dealt with it myself / involved a friend / family matter	41	33	36	26
Too minor / not serious enough / never occurred to me	34	17	38	16
Did not think they would do anything	7	13	6	12
Did not think they could do anything	5	12	6	9
Fear of offender, or reprisal	11	20	6	14
Somebody stopped me or discouraged me	2	3	1	2
Shame, embarrassment	11	23	5	26
Thought it was my fault	4	6	4	13
Didn't want anyone to know/kept it private	11	21	4	18
Too emotionally upset to contact the police	4	5	3	7
Didn't want the offender arrested or to get in trouble with police	5	5	3	2
Would not be believed	2	9	2	14
Afraid I would lose the children	2	4	n/a	n/a
Did not want the relationship to end <sup>***</sup>	4	6	n/a	n/a
Went directly to a magistrate or judge to report the incident	(0)	(0)	(0)	(0)
Somebody else had reported it, or police came to know about it on their own	1	2	3	3
Went someplace else for help	2	2	3	4
Other reason	7	13	11	13
n	4,606	1,562	3,709	1,615

Notes: \* Respondents were able to give more than one answer, so categories may total to more than 100 %.

\*\* Results based on a small number of responses are statistically less reliable, thus observations based on fewer than 30 responses are put in parentheses.

\*\*\* This answer category was available to the respondents only when they were asked about partner violence.

Source: FRA (2012), Gender-based violence against women survey data set

40 FRA (2014b), p. 68, Table 6.

41 *Ibid.*

42 FRA (2012c), p. 14.

43 FRA (2013a), p. 51, Figure 25.

- In FRA’s survey on violence against women, 16% of victims of sexual violence committed by a non-partner indicated that they did not contact the police for reasons often similar to those of hate crime victims. According to the survey, and as indicated in Table 1 below, many women do not report their victimisation to the police for a variety of reasons, including fear of reprisals from the offender. In addition, some women consider the incident ‘too minor’. This may be rooted in the ‘everyday’ nature of violence encountered by women, and is similar to the repeat nature of many hate crime offences against victims.<sup>44</sup>

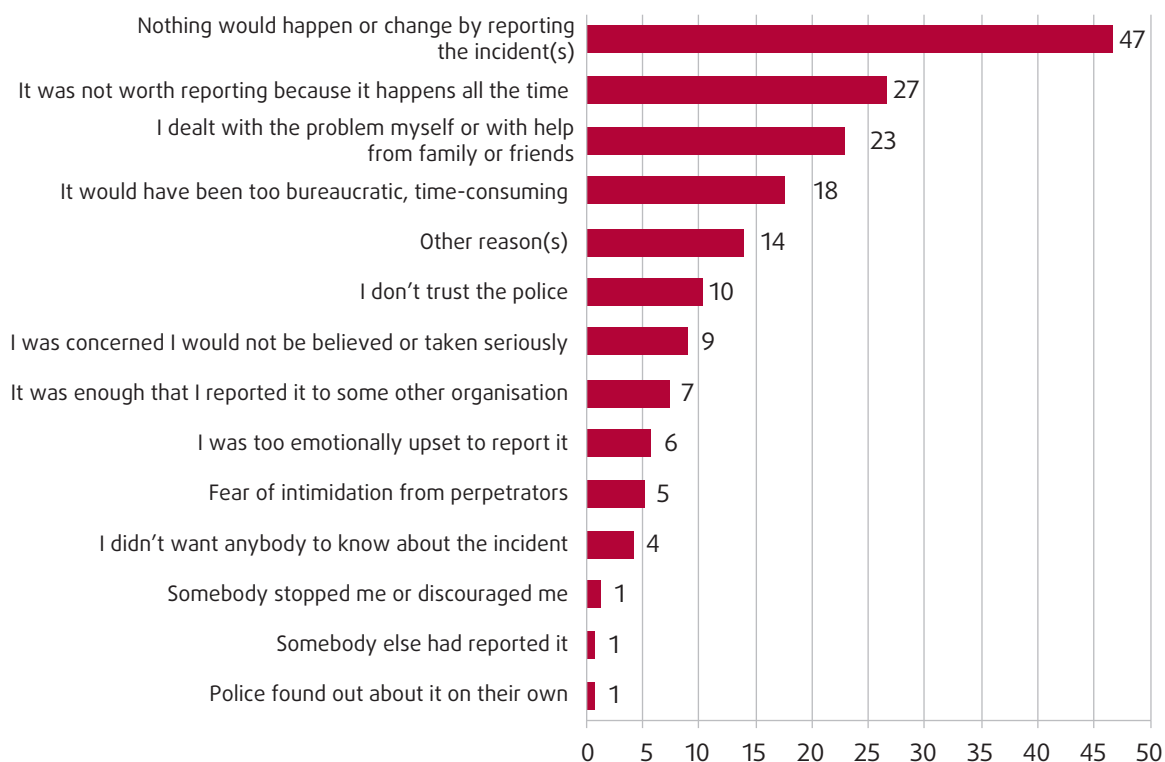
FRA’s report on minorities as victims of crime suggests that the apparent contradiction of, on the one hand, a majority of victims considering their experiences to have been ‘serious’ and, on the other, many believing that their victimisation is still too trivial to be reported, can be explained by the fact that many victims experience these types of in-person crimes repeatedly so that such incidents become ‘normalised’.<sup>45</sup> In fact, FRA’s

survey on discrimination and hate crime against Jews in EU Member States explicitly asked victims about this, and 27 % of the victims of antisemitic harassment indicated that they believed it was not worth reporting because “it happens all the time”.<sup>46</sup>

Some experts interviewed for this project believe that victims may perceive hate crime victimisation as unexceptional because it ‘happens all the time’. Indeed, data from surveys conducted by FRA underline the repeat nature of hate crime.

- The survey on discrimination and hate crime against Jews in EU Member States found that 44% of survey respondents had experienced just one single incident of anti-Semitic harassment, while the majority experienced either several different forms of harassment, or repeated incidents of a particular type of anti-Semitic harassment. Regarding cyber hate speech, almost half (44%) of those who faced offensive comments online indicated that this had taken place once or twice; one third (34%) indicated that

**Figure 6: Survey on discrimination and hate crimes against Jews: reasons for not reporting the most serious incident of antisemitic harassment to the police in the past five years (N=1,653, % of all respondents)**



Question: Why did you not report the incident to the police: (items as listed in the figure)?  
Multiple responses possible.

Source: FRA (2013), Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, p. 51

44 FRA (2014d), p. 64, Table 3.6.  
45 FRA (2012c), p. 14.

46 FRA (2013a), p. 51, Figure 25.

this had taken place three to nine times; and one quarter (23%) experienced it 10 or more times.<sup>47</sup>

- Similarly, the LGBT survey revealed that LGBT respondents were subject to high levels of repeat victimisation and violence – particularly transgender respondents.<sup>48</sup>

*“The victims of racism have heard so often so many nasty comments that after a while such comments, while they are still, obviously, based on prejudice, no longer have an impact on the person who maybe feels that this is not that serious, when it is extremely serious.”*

(Victim support service, Portugal)

*“Again, they just think its part and parcel of living life with a disability and it’s something that they have to put up with and that shouldn’t be the case.”*

(Victim support service, United Kingdom)

That four out of five professionals maintain that victims “believe that reporting is not worthwhile, they would not benefit from proceedings” is significant and calls for further reflection. To some extent, victims’ views may mirror the broader perception of criminal proceedings being concerned with public interests rather than with the wrong done to an individual victim. In other words, victims could simply be right in expecting that criminal proceedings would not primarily intend to acknowledge them as having been wronged by the offender and as entitled to redress.

One aspect of this complex issue is victims’ prospects to be, within the framework of criminal proceedings, compensated for the damage suffered as a consequence of an offence, including non-pecuniary damage. Future research is needed to better understand the expectations of victims and what criminal justice could offer them to encourage more victims to report and to meet their legitimate interests. However, compensation may not be a priority for victims of hate crime compared to being acknowledged as the person discriminated against by an offender.

Overall, the picture painted by the interviewed professionals is quite sobering. First, they believe that it is particularly challenging for victims of hate crime to report to the police. Second, that it is not attractive to report because victims are not sure whether the police will respond sympathetically; proceedings are complex, costly and time-consuming; and victims do not expect to benefit much from the outcome. If this reflects actual practice, low reporting rates should not come as a surprise.

## 2.3. Professionals’ views of on what is most needed to improve reporting

Experts gave highly consistent answers when asked what would help victims report, and so enhance hate crime visibility. A clear majority indicated that the measures identified in Figure 7 would significantly increase the number of victims reporting to the police.

Several reasons for underreporting relate to victims’ lack of trust in the skills and attitudes of the police; subsequent chapters will further look into these.

Here it suffices to observe that the police generally first engages with victims and therefore has to inform victims of their rights, and that *all* measures strongly supported by the interviewed experts in one way or another relate to the police, including to victims not being sufficiently informed of their rights and of available support services.

It is worth noting that many interviewees believe that more victims would report hate crimes to the police if they were better protected against offenders. This finding underscores the importance of taking seriously victims’ risk of repeat victimisation and seeking to improve the protection of victims of hate crime against repeat victimisation.

*“Comparing suspected and accused people on one hand, and victims on the other hand, the main focus in Lithuania is on the rights of accused people. There is no focus on the rights of victims. Nobody emphasises that. We are looking at prisons in order to ensure normal conditions there. But we are not looking at victims, while in reality we should give more attention to victims [...] I think that too little information is coming from lawyers, from all this side, police [...] too little information on the victims. Sometimes they are coming and do not know what to do, when, what, the process itself. When civil claim can be submitted. Do they need a lawyer or not, and where they can get that lawyer. Victims of violent crimes, do they know that they can get compensation from the state? Very rarely... To provide all this information should be one of the main tasks.”*

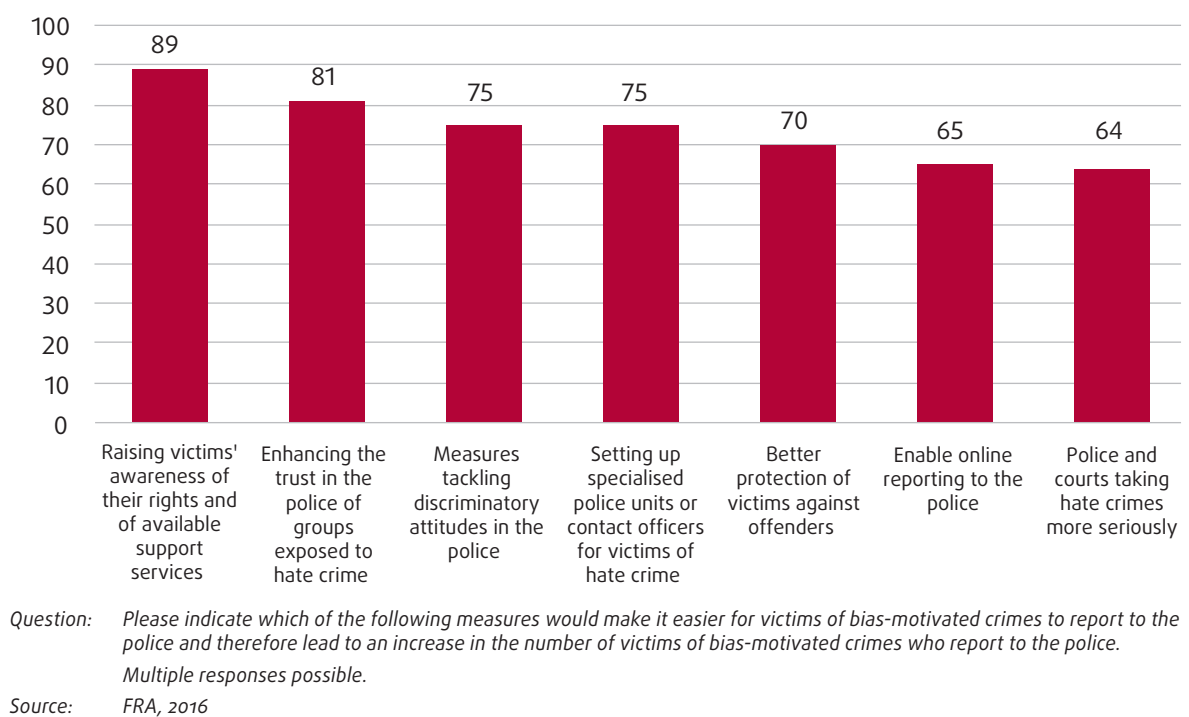
(Judge, Lithuania)

Hence, there is little doubt that the police holds a crucial position as gatekeeper of the criminal justice procedure and plays a critical role in enabling, encouraging and supporting victims in accessing justice.

<sup>47</sup> *Ibid.*, p. 46.

<sup>48</sup> FRA (2014b), p. 13.

**Figure 7: Views of the interviewed experts from all professional groups on the factors that would presumably increase the number of victims reporting to the police (N=263, % of all responses)**



## Conclusions and FRA opinions

There is a strong consensus among the interviewed professionals regarding underreporting of hate crime, its significantly negative impact on the functioning of the criminal justice system, as well as the reasons why victims of hate crime are reluctant or not in a position to report to the police.

Professionals believe that it is particularly difficult for hate crime victims to report such crimes, partly due to feelings of fear, guilt and shame, and partly because they lack information about their rights as crime victims and available support services. However, the latter factor should be seen in light of professionals' assessment that appropriate support services are indeed often not available. The interviewed professionals believe that more needs to be done to raise victims' awareness of their rights and confidence in the availability of targeted support services. These findings underline the importance of making support services accessible to victims of hate crime, which the next chapter addresses.

Regarding supporting victims of hate crime in accessing justice, FRA has outlined a series of related recommendations in former publications and particularly in its Opinion, issued in October 2013 on request of the Council, on the Framework Decision on Racism and Xenophobia, which paid special attention to the rights of crime victims. The recommendations address, among others, measures to facilitate reporting (Action 6), raising victims' awareness of their rights (Action 7), establishing

specialised units (Action 10), and internet-based hate crime (Action 17).

One possibility that has not featured prominently in hate crime discourse so far is unburdening victims of reporting by offering third parties – such as NGOs advocating the rights of victims of discrimination – standing in hate crime proceedings. It will be recalled that Article 7 – “Defence of rights” – of the Racial Equality Directive<sup>49</sup> obliges Member States to “ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.” Engagement of associations or other organisations on behalf or in support of victims need not be restricted to anti-discrimination proceedings or to discrimination based on race, but could be extended to all forms of hate crime. EU Member States should hence consider enabling private associations with an anti-discrimination or wider human rights remit to act on behalf, or in support, of victims or categories of persons targeted by hate speech.

<sup>49</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Racial Equality Directive*), OJ L 180.

## FRA Opinion – Legal standing

“Narrow rules relating to legal standing prevent civil society organisations from taking a more direct role in litigation. EU non-discrimination law requires Member States to allow associations, such as non-governmental organisations (NGOs) or trade unions, to engage in judicial or administrative proceedings on behalf of or in support of claimants. Beyond this area of law such entities are allowed to initiate legal proceedings in only some Member States. Most Member States allow for public interest actions (*actio popularis*) in relation to environmental cases according to their obligations under the Aarhus Convention. This suggests that broader rules on legal standing are acceptable in principle, and Member States should consider widening their rules on standing in other areas of law.”

Source: FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, p. 11

Allowing associations to intervene on behalf of victims of discriminatory crimes could be a powerful instrument in enhancing access to justice. As mentioned, many interviewed experts maintained that it is particularly difficult for victims of bias crimes to overcome feelings of fear, shame and guilt and to report to the police. Other factors that impede reporting involve victims’ risk of secondary victimisation and victims’ doubts as to whether engaging in criminal proceedings would ultimately be rewarding and worthwhile. Enabling associations to carry the burden of lengthy proceedings in representative cases could be a way to lower the level of impunity for hate crime.

In addition, third-party interventions could bridge the gap that results because most instances of public incitement to hate crime, negationism and resurgence lack individual victims, given that the hate speech is not directed against concrete individuals but against categories of persons or large population groups. Where hate speech falls short of victimising a specific individual, the problem can arise that no one qualifies as a victim, meaning nobody is in a position to act on the rights of a victim, such as challenging decisions of prosecutors to discontinue proceedings or asking that certain witnesses are heard, etc. The Framework Decision on Racism and Xenophobia demonstrates Member States’ political will to pay attention to expressions of racism that have the potential to insult or intimidate potential victims and hence to take action against hate speech. However, relying on traditional criminal justice instruments may not be effective where no individual has been victimised in the sense of the applicable criminal law provisions.

### FRA opinion

*To disburden victims of the onus of reporting to the police and enable civil society associations to take the initiative in instances when no individual victim can be identified, EU Member States are strongly encouraged to consider allowing public interest actions (actio popularis) to enable third parties to institute proceedings against perpetrators of hate crime on behalf, or in support, of victims.*

*In cases of hate speech or negationism, when discrimination targets a group or abstract category, and hence not necessarily an individual, Member States should allow NGOs to represent victims of hate crime in criminal proceedings – where an NGO could present evidence on behalf of the group or category of individuals discriminated against.*



# 3

## Providing access to victim support services



### 3.1. Support available to hate crime victims

In many EU Member States, the role of generic victim support services in providing support to victims of hate crime appears to be of less significance than could be expected.<sup>50</sup> Instead, specialised support services prevail, with victims mainly advised and supported by public or private organisations that engage in anti-discrimination activities related to the form of discrimination encountered by the victim. The Victims' Rights Directive leaves it up to Member States to establish specialist services separately and in addition to general support services, or to integrate them into a generic organisation. Still, it should be recognised that some victims of hate crime find it easier to confide in and rely on the expertise and solidarity of smaller and highly specialised organisations advocating for their rights – for example, feminist NGOs supporting victims of gender-based violence or ethnic associations supporting members of their ethnicity.<sup>51</sup>

However, partly because specialised support services often provide support to victims of hate crime, the resulting support is highly fragmented and somewhat piecemeal. Given the many forms of discriminatory offences, this is not surprising. There are NGOs that support asylum seekers as victims of racist violence, NGOs that help women with disabilities in case of harassment, groups specifically working with victims of racist violence by right extremist groups, organisations assisting victims of LGBTI-related violence, and so on. Most of these NGOs are small and cover only a very limited topical and geographical area.<sup>52</sup>

<sup>50</sup> For more information on generic victim support services in EU Member States, see FRA (2014c).

<sup>51</sup> *Ibid.*

<sup>52</sup> An overview of these services is available on the [Weisser Ring \(White Ring\) website](#).

#### FRA Opinion – Recognising the important role of support services

“While recognising that specialist services can either be established separately and in addition to general support services or integrated into a generic organisation, EU Member States should ensure the existence of support services, including trauma support and counselling, that provide targeted support for victims with specific needs. [...] In addition, when implementing the Victims' Rights Directive, EU Member States should pay particular attention to the protection needs of victims of crimes committed with a discriminatory motive.”

Source: FRA (2014), *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg, Publications Office, p. 16

In the United Kingdom, a number of NGOs support hate crime victims. The government funds about 13 organisations that specialise in prevention and nineteen that offer victim support. However, in the latter case, this amounts to only £2.1 million over three years, and a listing of supported projects reveals a diverse range of NGOs spread across the country, albeit concentrated in London and other metropolitan areas.<sup>53</sup> For example, ‘Stop Hate UK’ – the main agency providing services for victims of all hate crime – is based in Leeds and covers areas of the country in which it has built up a good relationship with local police and other agencies.<sup>54</sup> More specialist agencies, like the Community Security Trust, which supports victims of antisemitic hate crime, provides a national service but is inevitably stronger in

<sup>53</sup> United Kingdom, Home Office (2012).

<sup>54</sup> For more information, see the [‘Stop Hate UK’ website](#).



certain parts of the country, specifically those with a strong Jewish community.<sup>55</sup>

A possible countermeasure to the fragmentation of victim support services was introduced in Germany. In October 2014, a number of regional counselling services and initiatives – working with victims of right wing, racist and anti-Semitic violence – formed a coalition aiming to coordinate their work, establish common standards, and represent the interests of such services on the national level.<sup>56</sup>

Responses also stress regional differences within Member States. In Hungary, the main state-run victim support organisation has expanded free psychological counselling in recent years, but geographical differences persist: psychologists are only available in 15 of 19 counties. Victims can be accompanied to police stations, but this service is offered by the victim support organisation via volunteers and not all county victim support services have volunteers. Human rights NGOs that offer free legal aid to hate crime victims are very unequally distributed geographically, as well.

In Slovakia, experts from victim support services emphasised that for an NGO based in Bratislava it is practically impossible to provide any kind of support to a victim from a rural area; therefore, an extension of support services is necessary, ensuring that support is available in the victim's vicinity.

A striking general finding with regard to interviewees' responses is a lack of awareness or agreement between experts on the actual availability of such services (e.g. in Ireland, Luxembourg and Portugal). For example, in Poland, all respondents from victim support services stated that psychological assistance to hate crime victims is not provided by the police, but by NGOs, while three out of four interviewees from the police said that psychological assistance is available to victims and is provided by the police. In Belgium, none of the interviewees from human rights institutions, prosecutors and judges knew whether such assistance existed, whereas all other interviewees (from victim support services and the police) knew of victim support

services available at police stations. Interviewees in Croatia and Hungary also lacked information or clarity on the issue.

In Spain, the varied responses to this question suggest a high level of institutional and regional fragmentation. One interviewee from a human rights NGO reported the existence of support services within some units of the Civil Guard; two other interviewees from judicial institutions and victim support services mentioned services within the Catalan police; and two other interviewees highlighted services provided by the Bar Associations and by a Catalan Assistance Service supporting families in distress (*Equips d'Assessorament Tècnic en l'Àmbit de Família, EATAF*). A fifth interviewee from a law enforcement agency reported the existence of the Municipal Victim Support Team in the municipality of Fuenlabrada (Madrid). Most of the interviewees, however, referred to the services provided by the organisations of which they are members or claimed not to know about any such assistance, at least at the official level.

*"In Latvia the situation is exacerbated by the fact that there is generally no national victims support service and there are no specialised support services for the victims of hate crime."* (NGO, Latvia)

To conclude, first, it should not be overlooked that some of the interviewed professionals made clear that neither generic nor specialised support services are available to hate crime victims in their countries. As a general assessment, whether or not hate crime victims have an appropriate specialised support service to turn to in their region is often a matter of chance. In addition, some of the organisations to which victims of hate crime turn for support strongly focus their work on anti-discrimination rather than on criminal proceedings. As a result, they sometimes lack expertise related to criminal justice, victims' rights in criminal proceedings and close interaction with police or courts.<sup>57</sup> In sum, the emerging picture is one of insufficient assistance for hate crime victims across many Member States – partly due to an actual lack of assistance, and partly due to ignorance and information not being passed on to victims (and practitioners).

55 Community Security Trust (2013).

56 See LOBBI (2014).

57 For more information on national-level organisations providing support to hate crime victims, see FRA (2014c), Annex VI and Section 5.2 ('Provision of support to specific groups').





## FRA Opinion on the Framework Decision on Racism and Xenophobia

### Action 12

“Particular attention should be devoted to assessing the existing system of victim support provision in relation to all existing categories of hate crime victims. In this assessment, governments should cooperate with civil society organisations. In line with due diligence standards, EU Member States should make appropriate efforts to set up or strengthen existing victim support services with a view to ensuring that all victims of hate crime, “in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings” (Article 8 (1), Victims’ Rights Directive). The Victims’ Rights Directive also highlights the need for Member States to “encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime”, including by providing interim accommodation and targeted support such as counselling for victims with specific needs (Article 8 (2), Victims’ Rights Directive).”

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, p. 18

### 3.2. Police referring victims of hate crime to support services

With regard to referring hate crime victims to victim support services, according to research findings, a standard procedure for police to refer victims of crime is in place in more than half of Member States (Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Luxembourg, Netherlands, Slovakia, Sweden, the United Kingdom). Specific procedures do not appear to be in place for referring victims of hate crime – instead, such procedures deal with all victims of crime.<sup>58</sup> The complex, highly fragmented and compartmentalised state of support services raises the question of how effective referral mechanisms that do not take the specific situation of hate crime victims into account can be.

As an exception, in France, the Ministry of the Interior and the International League against Racism and Anti-semitism (LICRA) signed a convention in 2010. Based on this convention, police and gendarmerie units and local branches of LICRA adopted local protocols. This cooperative effort aims to increase the number of referrals of victims from the police to victim support services and to improve the provision of information about victims’ rights. Leaflets published by LICRA are available at police stations, providing information and relevant contact details.

The interviewed professionals in some Member States (for example, in Finland and Hungary), and almost all support service providers interviewed in Finland, expressed doubt as to the effectiveness of the referral mechanism, saying that, in practice, police do not necessarily refer victims to victim support services. According to interviewed professionals from Hungary, the very low proportion of victims turning to the victim support service shows that referrals are not effective.

Referral methods vary in Member States; in many (for example, Austria, Ireland and Luxembourg), an information sheet with details on victim support organisations is handed out to victims.

*“The police itself doesn’t. I know from my own experience that even when they hand in a list of organisations which provide support, they do it in the same way as with information on victims’ rights. It means that they just hand out the list, without any explanation. Also from my experience, I know that information about which organisation can help best in a case of a particular crime is the best. When I hear a victim of rape I ask whether he/she wants help from any non-governmental organisation and I call this organisation. I recommend that to other prosecutors. (...) This is how I would see the role of the police, as saying and explaining: “This is this kind of organisation, it is situated here and here, would you like me to phone them and ask?” (Public prosecutor, Poland)*

In Estonia, police officers must inform victims of their right to victim support services or, if a victim agrees, may also forward information on the victim directly to the services, which then contact the victim.<sup>59</sup>

<sup>58</sup> For more information on the referral of victims to victim support services, see FRA (2014c), Section 3.6.

<sup>59</sup> Estonia, Victim Support Act, § 33.

## Conclusions and FRA opinion

The interviews – and evidence from FRA’s large-scale surveys on victims – underscore the difficult emotional and motivational situation of hate crime victims. They suffer from feelings of fear, guilt and shame; they suspect a risk of secondary victimisation via the criminal justice system; they feel that criminal proceedings are too bureaucratic, costly or time-consuming; and they believe that, in the end, they will not benefit much from these proceedings. This makes targeted professional support services that provide reassurance and encouragement particularly crucial. However, while the Victims’ Rights Directive provides that all crime victims should have access to support services that meet professional standards, the actual situation clearly falls short of this goal. About six in 10 of all interviewed experts highlight a lack of such services.

Support service provision for hate crime victims is in many Member States generally patchy, fragmented and piecemeal. While an appropriate service may be available for a certain type of victimisation in one particular region, it may not be for other forms of hate crime or in other regions. To a certain extent, this situation reflects a practical dilemma. Hate crime victims seek support from NGOs that advocate on behalf of their particular group. Hence, many specialised support services are restricted to one group of hate crime victims – for example, victims of Islamophobia or homophobic hate crime. While the complex nature of hate crime victimisation may call for specialised support service providers, the high level of specialisation of many services targeting victims of hate crime adds to the patchy nature of support service provision.

In addition, NGOs focusing on anti-discrimination policies may have less experience in advising victims about their rights in criminal proceedings, including the risk of secondary victimisation in various stages of the police and criminal justice process. (‘Secondary victimisation’ refers to additional damage suffered by victims due to harmful conduct by society, public workers, police

officers, doctors, or other persons with whom they enter into contact). NGOs’ lack of practical experience with criminal justice matters may result in a lack of information and encouragement to seek access to justice. Victims should of course autonomously decide whether to report to the police and seek access to criminal proceedings. But victims should be allowed to make this decision based on comprehensive information, professional advice and reliable assistance. Many hate crime victims will only pursue criminal proceedings if they feel confident that they can estimate what the consequences of reporting to the police will be for them.

The Victims’ Rights Directive tasks governments with establishing mechanisms that coordinate and, where needed, encourage – and support financially – initiatives aimed at providing support services to victims of the various hate crime categories. FRA’s report on *Victims of crime in the EU: the extent and nature of support for victims* addresses the challenges EU Member States face in this respect from a more general perspective.<sup>60</sup> However, the specific aspect of support service provision needs to be added in this area where many NGOs carry out related functions in countering discrimination. The particular challenge is to find ways of relying on the expertise of NGOs with a wider anti-discrimination remit while ensuring that victims are informed about their potential role in initiating and participating in criminal proceedings.

### FRA opinion

*For victims of hate crime, EU Member States should strive to overcome, where it exists, the fragmentation of victim support services and ensure that appropriate support services are available to all victims of hate crime. Such support services should combine an understanding of discrimination and of anti-discrimination policies with expertise in criminal justice matters and the situation and rights of victims in criminal proceedings.*

<sup>60</sup> See, in particular, FRA (2014c), pp. 62-66.



# 4

## Role of the police in encouraging victims to report, and in recording and investigating hate crime



### 4.1. Measures adopted by the police to encourage and facilitate reporting

#### 4.1.1. Reaching out to victims: police cooperation with civil society and specialised reporting channels

Establishing specialised police units is one way of moving closer to victims and of encouraging reporting. These can both improve cooperation between the police and NGOs that support (specific categories of) hate crime victims and boost victims' confidence that they will be understood and acknowledged if they report hate crime. In several EU Member States – including Belgium, Croatia, Denmark, France, Luxembourg and the Netherlands – the police and NGOs jointly campaign against homophobic crime to encourage victims to report such crime and to emphasise that they can do so in a safe and understanding environment.

*“This would be a good idea because the moment you know that [the fact that there is a special unit/contact person] you might be beyond the point where you fear to be ridiculed, and you will meet somebody who knows a little about what kind of person he stands in front of.”* (Victim Support, Denmark)

*“We are introducing, at the local level, police units which are directly in contact with foreign communities which have grown in number in recent years to help the communication between police and potential victims. This raises the number of complaints reported to the police.”* (Police officer, Italy)

Some experts indicated that the police would have to make the first move by creating such a safe environment and by proactively reaching out to victims, as otherwise victims would not report and hate crime would remain hidden. It is for the state to break the cycle of victims not being encouraged to report and hence not

being acknowledged as hate crime victims, thus sending a discouraging message to other victims of hate crime.

*“What comes first the figures or the confidence? If you don't have the confidence to report, your figures will never go up, and if your figures don't go up then you will never put in the resources and money. You just go round and round in circles.”* (Police officer, United Kingdom)

*“When I had a chance to talk to police officers they themselves claimed that when there was not an increased rate of reported hate crime they had no motivation to adopt specialised policies. Therefore I sense that lack of reported hate crime could strengthen police inactivity and unwillingness to pay attention to hate crime.”* (NGO, Slovakia)

In Denmark, police are actively tackling the problem of hate crime underreporting by informing the public about such crimes and by cooperating with various organisations (such as LGBT Denmark, Arab-Danish organisations, etc.). In Funen, the Municipality of Odense formed a partnership agreement with the local LGBTI association and the Funen district police. By cooperating with the local LGBTI association, the hope is that more LGBTI persons will be encouraged to report hate crime. According to interviewed experts, the Funen police appears to take these meetings very seriously and plans to extend the agreement to other NGOs to cover other grounds of discrimination. In Copenhagen, the Danish police and the municipalities of Copenhagen and Frederiksberg carried out, in cooperation with the Danish Institute of Human Rights, a campaign encouraging victims to report hate crime in 2009, 2010 and 2012.

In Croatia, a national campaign – ‘Report a hate crime’ – was launched in 2013 within a project entitled ‘Prevention and suppression of hate crime against LGBT persons’, carried out by NGOs Kontra and Iskorak. The campaign aimed to encourage LGBTI people to report

hate crime and was the first public campaign conducted jointly by the Ministry of Internal Affairs and LGBTI civil society organisations.

### **FRA Opinion – Tackling underreporting of victims**

“As a means of encouraging victims to report crimes and of facilitating such reporting, EU Member States should make sure that information about victim support services and victims’ rights is accessible and made available to victims by all authorities and public services that victims contact, including medical service providers, and that the staff of these organisations are trained to deal with victims in an informed and sympathetic manner.”

Source: FRA (2014), *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg, Publications Office, p. 13

### **FRA Opinion on the Framework Decision on Racism and Xenophobia**

#### **Action 6**

“EU Member States are encouraged to take appropriate measures to facilitate the reporting of hate crime and to encourage victims and witnesses to report such crime.”

#### **Action 7**

“EU Member States may wish to consider how to raise awareness among persons who are at particular risk of hate crime victimisation about the rights of victims and how to seek assistance and advice. In conducting information and awareness-raising campaigns, Member States should work closely with civil society organisations, national human rights institutions, equality bodies and ombudsperson institutions to ensure efficient outreach.”

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, pp. 15-16

When it comes to police services reaching out to victims of hate crime, one of the most common measures is to appoint officers – liaison or contact officers – who are specifically tasked with establishing links and communication flows to individuals or groups at risk. The majority of experts identify the establishment of specialised units or officers as a means of improving a police service’s response to hate crime. In fact, the police of about one third of all Member States have introduced some

form of specialisation.<sup>61</sup> Specific measures were enacted in Belgium, Denmark, France, Germany, Ireland, the Netherlands, Sweden, Slovakia and the United Kingdom.

For instance, establishing contact points for LGBTI persons is widespread<sup>62</sup> in a number of German federal states. According to an interviewee from a law enforcement agency, the police in Berlin cooperates with LGBTI, migrant and religious groups to establish stronger links and build trust. The police in Berlin also ran a project called ‘Transfer of Intercultural Competence’ from 2003 to 2011. Intercultural aspects are now integrated in all parts of police service. Furthermore, a central contact point for intercultural affairs was installed.<sup>63</sup>

In Ireland, the national police force has appointed Ethnic Liaison Officers (ELOs), whose role includes receiving reports and investigating cases of racist hate crime, since 2002. More recently, special Liaison Officers were also appointed to deal specifically with LGBTI hate crime. In addition, the police has a ‘Racial, Intercultural and Diversity Office (GRIDO)’, which encourages people to report suspected racist crime to their local police. It does so by informing the public about specialist liaison officers who are competent to receive reports and investigate hate crime as well as about services available to hate crime victims at the *Garda* Racial Intercultural and Diversity Office. The services of Ethnic Liaison Officers and LGBT Liaison Officers are advertised on the police website, and appointed officers are named with details of their station.<sup>64</sup>

In the Netherlands, the Midden-Nederland, Noord-Nederland, Den Haag, Amsterdam, Limburg and Rotterdam units offer a ‘Pink in Blue’ (*Roze in Blauw*) telephone helpline/reporting point for LGBTI hate crime or LGBTI-related issues. Pink in Blue police officers are available in some units to speak with LGBTI victims who wish to report a hate crime. Citizens who call a Pink in Blue reporting point can speak directly to a police officer who is sensitive to the issue of LGBTI-related hate crime.

In Sweden, hate crime groups within the police in Malmö and Stockholm have set up a free phone number to facilitate the reporting of hate-motivated offences. Employees of such hate crime groups manage the helplines and inform vulnerable communities about the opportunity to directly call the group.<sup>65</sup> Police in Stockholm, Västra Götaland, Skåne, Västmanland and Värmland have established dialogues from a prevention perspec-

61 Including Belgium, Cyprus, Germany, Greece, Hungary, Ireland, Luxembourg, Malta, the Netherlands, Slovenia, Sweden and the United Kingdom.

62 Human Rights Watch (2011), p. 10.

63 See the [city of Berlin website](#).

64 For more information, see the [Ireland’s National Police Service \(An Garda Síochána\) website](#).

65 Sweden, The National Police Board (*Rikspolisstyrelsen*) (2013), p. 18.

tive with Jewish, Muslim and LGBTI communities. These contacts include seminars and training and raising awareness about hate crime among the communities.<sup>66</sup>

*“I assume that the group most in risk of hate crime are ethnic minorities and Roma... Among foreigners and migrant we are reported by our clients only occasionally about e.g. bias-motivated verbal attacks or physical contacts on the street, but I don't think the extent of these incidents is comparable to violence directed against Roma.”* (NGO, Slovakia)

In 2006, the Ministry of Interior in Slovakia implemented a project that envisioned 230 police specialists working with Roma communities within their own community.<sup>67</sup> The idea was that, by breaking the barrier between the police and the Roma minority, the project would encourage members of the Roma minority to report possible hate crime. However, a robust assessment of the initiative's outcomes is not available.

Finally, in the United Kingdom, examples of police-led hate crime partnerships include West Mercia (where police work with several organisations in the voluntary sector, including the Citizens Advice Bureau, to accommodate reporting at centres where victims already feel comfortable and safe)<sup>68</sup> and Northumbria (where dedicated 'Neighbourhood Policing Teams' are available to talk to victims about hate crime).<sup>69</sup>

#### 4.1.2. Online reporting

In many Member States, the police administers platforms that allow victims of cyber hate to report to the police online. Victims can report crimes online in the majority of Member States (in many this is not specific to hate crime but possible with all forms of crime).

In the United Kingdom, the Association of Chief Police Officers (ACPO) is responsible for True Vision,<sup>70</sup> a web facility that provides information for victims and advocates and facilitates the reporting of hate crime and incidents to the police. It also allows the sharing of good practices and resources for local agencies. The site was visited more than 60,000 times in its first year of operation and received around 1,900 reports from members of the public, including many crimes that did not otherwise come to the attention of the police.<sup>71</sup> Individual forces also frequently offer a facility for online reporting. However, the UK experts interviewed were gen-

erally sceptical about the impact of such websites on reporting levels.

The police in Finland in 2010 launched an online service that allows the general public to tip off the police about suspicious material on the internet. The service aims to detect possible racist or hate crime and is meant for use in non-emergency situations only. The service consists of an online form that is completed and submitted to the police.<sup>72</sup> The instructions on the police website state that online reporting can only be used for less severe crimes that do not require immediate action by the police.<sup>73</sup>

In Lithuania, crimes can be reported anonymously by completing an electronic form available on the e-police website.<sup>74</sup> Victims of hate crime may also contact (directly or via e-mail) specialised prosecutors within the Prosecution Service (*Generalinė prokuratūra*).<sup>75</sup>

Experts' views on online reporting differed considerably. While some appreciate online reporting as a low-threshold method that makes it easier for victims to report crime, others note that this method does not allow for an initial assessment or for the victim to establish trust in the police. For example, interviewees across all professional groups in the Netherlands mentioned that it is difficult to obtain reports of good quality when victims fill out an online form, and victims will probably need to be contacted to provide specific additional information. Online reporting has the advantage of being discreet and less bureaucratic, in addition to allowing victims to report at any time – day or night. It is important to offer online access for different languages and access for persons with disabilities. However, several experts raised the issue of loss of control over one's data and lack of data protection as a factor that could speak against online reporting. In addition, a personal interrogation and medical examination might be necessary. Finally, not all people have access to the internet, and not all people can read and write.

In some countries, platforms and websites for reporting hate crime to entities other than the police were established. For example, in Italy, the Observatory for Security Against Discriminatory Acts (OSCAD) in 2010 established an online reporting system (by e-mail and fax) through which victims, organisations and

66 Sweden, The National Police Board (*Rikspolisstyrelsen*) (2013), p. 23.

67 Information provided upon request by the senior public policy adviser on human rights and extremism at the Slovakia Ministry of Interior, telephone conversation, 9 September 2013.

68 West Mercia Police (2012).

69 Northumbria Police (2013).

70 ACPO (undated).

71 Giannassi (2012).

72 See the [Finnish police website](#).

73 *Ibid.*

74 Available through the [e-police website](#).

75 Prosecution Service of the Republic of Lithuania (*Lietuvos Respublikos Generalinė prokuratūra*) (4 October 2013). Various forms of submission of complaints are regulated by 11 August 2008 Order No I-110 of General prosecutor-adopted recommendations for initiation and registration of the pre-trial investigation (*Lietuvos Respublikos generalinio prokuroro 2008-08-11 įsakymu Nr. I-110 patvirtintos rekomendacijos dėl ikiteisminio tyrimo pradžios ir jos registravimo tvarkos*).



institutions can report cases that occurred in the territory of the police. The grounds of discrimination covered are wider than those covered by existing legislation: race, ethnicity, nationality, religion, gender, age, language, disability, sexual orientation and sexual identity. The National Office against Racial Discrimination (UNAR) also established a reporting mechanism, which includes a website and a helpline. When UNAR receives information on a case of discrimination that constitutes a criminal offence, it has to refer it to the police.

When victims can report to the police online, this offers an opportunity to direct them to an appropriate support service. For example, the state police of Mecklenburg-Hither Pomerania runs a “Hotline against Extremism” that allows for the online reporting of incidents of extremism i.e. hate crime<sup>76</sup> – and provides a link to an association for persons affected by right-wing violence in that federal state.<sup>77</sup>

An initiative in Hungary targets victims of homophobic crime. The Háttér Support Society for LGBT People in Hungary established an online reporting tool that allows victims to either report cases anonymously or also leave their contact information. In the latter case, they can also request Háttér’s legal aid service to get in touch and provide them with legal aid. Victims can also consent to publishing their stories online, in which case Háttér publishes an edited and anonymised version of the story on the website and on Facebook. This encourages other victims to share their stories, and helps raise awareness of such phenomena.<sup>78</sup>

#### 4.1.3. Lack of reliable assessments of the impact of initiatives

In spite of these many initiatives, the vast majority of interviewees stressed that victims are not aware of what their rights are in connection with their victimisation. While many initiatives aim to reach out to victims of hate crime and encourage them to report, data on their actual level of ‘success’ – in terms of an actual increase in numbers of hate crime victims reporting to the police – are scarce. The interviewed professionals often expressed the belief that a measure successfully improved victims’ access to justice, but were not able to cite an effective evaluation supporting that belief.

In Greece, two specialised ‘Racist Violence Response’ police departments were established in Athens and Thessaloniki, in addition to a 24-hour police hotline

(11414) that victims can call anonymously.<sup>79</sup> The hotline became available in January 2013 and, between January and September 2013, 215 complaints were recorded.<sup>80</sup> However, the Greek authorities have not assessed the project’s impact on victims’ reporting.

The interviewed professionals generally indicated that the Slovak initiative to encourage police to work together with Roma communities was successful. Also, the Ministry of Internal Affairs declared that a project involving training of Roma police specialists is helping to “[build] the trust and understanding between police and Roma communities”.<sup>81</sup> However, no reliable assessments could be identified.

Similarly, while there are no official evaluations of the success of the ‘Pink in Blue’ scheme in the Netherlands, several police officers indicated that these initiatives very much contribute to the willingness of LGBTI persons to report to the police.<sup>82</sup>

No information relating to the impact of similar schemes in Ireland and Denmark is available.

## 4.2. Recording hate crime and ensuring that bias motives are not overlooked

### 4.2.1. Assessing bias or discriminatory motives in accordance with Article 22 of the Victims’ Rights Directive

FRA’s 2012 report on *Making hate crime visible in the European Union: acknowledging victims’ rights* highlighted the right of a victim of a criminal offence committed with a discriminatory motive to be acknowledged as a victim of discrimination, as well as the police’s obligation to investigate an offender’s motivation when there is a relevant indication of a discriminatory motive. The report suggested that the offender’s motivation should only be looked into when there are objective indications of discrimination. In the report’s conclusion, FRA opined that law enforcement agencies “should be attentive to any indication of bias motivation when investigating

76 Further information is available on the [Mecklenburg-Hither Pomerania’s state police website](#).

77 See the [Mecklenburg-Hither Pomerania’s state police website](#), which leads to the [LOBBI website](#), an association for individuals affected by right wing violence.

78 Further information is available on the [Háttér Society website](#).

79 Further information is available on the [Hellenic Police website](#).

80 These data are included in Greek Ombudsman (2013).

81 The handbook is available on the [Ministry of Interior of the Slovak Republic website](#). See also Kralčáková (2009), pp. 14-15.

82 See also Dutch knowledge centre on discrimination (2013), Art. 1.



and prosecuting crimes” and that they should record the relevant details of hate crimes to allow for the identification of specific bias motivation in the course of the investigation and the prosecution of hate crimes.<sup>83</sup> Hence, it is of crucial importance that:

- the police know that they are tasked with investigating and recording comprehensively all indications of bias motives that may account for the commission of a crime;
- police officers have a sufficient understanding of the concepts and various forms of hate crime and are aware of how they should proceed in cases possibly involving discriminatory motives of offenders;
- they are committed to countering discrimination in general and to identifying and recording hate crime in particular.

Article 22 of the Victims’ Rights Directive obliges EU Member States to provide a standard procedure for an individual assessment of victims’ protection needs. The aim of this procedure is to identify whether a victim’s vulnerability requires taking special measures to avoid secondary or repeat victimisation, intimidation or retaliation. Some categories of victims, such as children, victims of domestic violence, and victims with disabilities, are considered particularly vulnerable; this group includes “victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics” (Article 22 (3) of the Victims’ Rights Directive).<sup>84</sup> Hence, in assessing victims’ vulnerability, the police must pay attention to such motives.

In Croatia, the Office for Human Rights has adopted Rules of Procedure in the Case of Hate Crime, which require the police to take immediate measures and actions to protect the victim against repeat victimisation.<sup>85</sup>

In other Member States – including Portugal and France standard procedures for assessing victims’ protection needs are currently being developed.

### FRA Opinion – Ensuring individual assessments to identify possible specific protection needs

“EU Member States must ensure that individual assessments are carried out by the victim’s first point of contact, typically the police or a victim support organisation. Victims should be referred in a timely fashion to specialised victim support services that are able to offer them the help and support they need. EU Member States must ensure that children are always treated as persons in need of special protection, taking into account their age, maturity, level of understanding and any communication difficulties they may have, and in accordance with Article 22 (4) of the Victims’ Rights Directive.”

Source: FRA (2014), *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg, Publications Office, p. 15

### FRA Opinion on the Framework Decision on Racism and Xenophobia

#### Action 9

“EU Member States should review the methods applied to assess the needs of victims of bias-motivated crime, including requirements for effective protection against secondary and repeat victimisation, intimidation and retaliation.”

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, p. 16

It is worth emphasising that it is crucial for the police to devote special attention to whether or not an offence has been committed with a discriminatory motive when individually assessing victims’ protection needs in line with Article 22 of the Victims’ Rights Directive.

#### 4.2.2. Police overlooking discriminatory motives

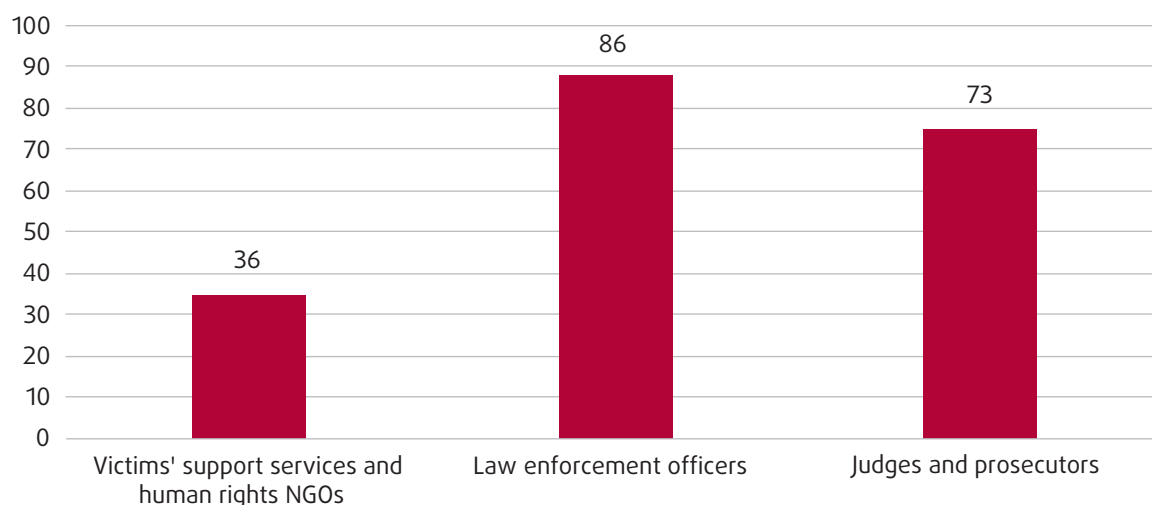
The majority of interviewed experts across all EU Member States believe that the police considers it very or fairly important to investigate possible bias motives of crimes. However, opinions differed significantly among professional groups (Figure 8). Most law enforcement officers, prosecutors and judges believe that the police considers investigating bias motives to be very or fairly important, while more than half of staff members of victims’ support services and human rights NGOs were more critical in this respect.

83 FRA (2012d), pp. 11, 15-18, 21.

84 For more information on the individual assessment, including several promising practices, see FRA (2014c), Section 5.1.

85 Croatia, Office for Human Rights (2011).

**Figure 8: Interviewed experts assessing whether the police considers it as very or fairly important to assess whether the offence was bias motivated, by professional group (N=263, %)**



*Question: Do the police consider it important to assess whether the offence was motivated by bias?*  
*Answers: A. Very important; B. Fairly important; C. Not very important; D. Not important at all. E. No answer*  
 Figure 8 groups together the percentage of respondents who selected answers A and B.  
 Source: FRA, 2016

### FRA Opinion – Ensuring effective investigation and prosecution

“EU Member States’ law enforcement agencies and criminal justice systems should be attentive to any indication of bias motivation when investigating and prosecuting crimes.”

Source: FRA (2012), *Making hate crime visible in the European Union: acknowledging victims’ rights*, Luxembourg, Publications Office, p. 11

Despite many differences among professional groups and Member States, the interviewed groups broadly agreed regarding the principle factors that in practice can render police officers unable or unwilling to investigate bias motives.

- First, some police officers do not adequately understand the concept of hate crime and its particular impact on victims, so they limit their investigation to the physical manifestation of the crime (e.g. bodily injury), believing that the motive is of minor importance.
- Second, proving a crime’s discriminatory motive is more difficult than establishing the objective facts, and the police are viewed as often lacking time, staff and other resources to make the additional effort.
- Third, the police tend to think that it is not their task to investigate discriminatory motives and that the prosecution service or judiciary should establish these at a later stage of criminal proceedings. The police are merely concerned with “collecting the facts” (Austria, Bulgaria, Denmark, Greece and

Lithuania). This factor relates to the crucial question of whether criminal legislation clearly distinguishes between crimes committed with a bias motive and crimes committed without such a motive. If establishing the bias motive does not alter the legal characterisation of the crime, the police have little motivation to investigate it (Estonia, Greece, Ireland and Latvia) and to record possible bias-motivation when documenting the circumstances of a crime.

- Fourth, police officers are not immune to the beliefs and prejudices held by the rest of society, sometimes share the discriminatory beliefs of the offenders and thus do not feel the need to address them. Several experts (for example, in France, Hungary and the United Kingdom) also listed the importance of the determination to tackle hate crime at the operational as well as the management level. This resolve will be weak if members of law enforcement to a certain extent share the discriminatory attitudes of offenders. In this context it was emphasised that the mentality and attitudes of police officers are changing as societies become more open to diversity, and many interviewees stated that discriminatory attitudes among the police are nowadays less frequent than several decades ago (Belgium, Finland, France and Romania).

Only a small fraction of Member States (Denmark, Germany, Greece, the Netherlands, Spain and Sweden) has legislation or binding internal instructions explicitly requiring the police to pay attention to, and register, discriminatory motives when recording criminal offences. However, the existence of this obligation on paper may not transfer to practice – as indicated by the low number of cases of hate crime (as encompassed by national law)



that are prosecuted in some countries, such as Greece. Several Member States require the police to investigate bias motives only with respect to certain offences. For example, in Austria, this requirement applies only to acts that violate the law banning the resurgence of national socialist activities.

In a few other Member States (including Hungary and Malta), interviewed experts indicated that, even though the police is not legally obliged to identify bias motives of crimes, police officers often attempt to do so on their own initiative. However, compliance with the obligation to investigate bias motives should not be left to the personal initiative of police officers.

The views expressed by the interviewed professionals point to the importance of substantive criminal law provisions that already take bias motives into account in the definition of the offence. Such provisions underline the specific nature of hate crimes as offences that involve violations of a victim's right not to be discriminated against.

*“Legally there is no hate crime in Spain, it is only considered an aggravating circumstance and this is seldom applied. [...] There has been no progress in the past few years regarding threats or bias-motivated crimes. There has been no evolution because there is no specific legislation on these issues... we are at a standstill.”* (Victim support service, Spain)

*“[The bias motivation] is seen as less important. When someone is beaten up, this constitutes a violent crime and that is where the focus is and not on what preceded the assault.”* (Victim support service, Netherlands)

*“I believe that it's not so important for the police to know whether there was a bias motive. From what I know the law does not specify something like that, and I don't think that the prejudices as motives can be considered as aggravating factors. For example, in the cases of crimes motivated by racism these cases are not handled or tried differently [...]. The penalty is decided based on the nature of the offence, that is, whether there was physical violence, harassment etc.”* (Victim support service, Cyprus)

*“At present it is not important. But it should be important in order to be able to qualify the offence correctly, to make conclusions about tendencies in the society and decide about the actions to decrease hate crime.”* (Victim support service, Latvia)

*“There are not very many cases that go to the Public Prosecution Service as discrimination, because many cases sort of disappear in the big pile of assault and it is not always visible that something had a discriminatory motive. We do try that, but it definitely slips past us sometimes, I have to admit.”* (Police officer, Netherlands)

When asked which measures would be effective in ensuring that the police devote adequate attention to investigating bias motives, professionals in Germany,

Greece, Hungary, Latvia and Romania emphasised the need for special training for police officers. Such training should enable them to understand the concept of hate crime and acquire the skills for investigating bias motives even in the absence of specific complaints by victims.

A promising development worth noting is that several Member States have taken action to provide guidance for the police. In **Spain**, the Catalan police (*Mossos d'Esquadra*) adopted the 'Procedure for Criminal Offences motivated by Hatred and Discrimination' in 2010. The procedure contains rules of conduct, covering first interventions through continued assistance to victims. It also notes specific details on hate crime to be included in police reports and addresses the formal handling of these cases.<sup>86</sup>

The Discrimination Instruction of the Public Prosecution Service of the **Netherlands** requires the police to maintain a list of discrimination incidents. For every notification of an incident involving discrimination, the police officer should carefully consider whether the incident constitutes a criminal offence and whether criminal proceedings could follow. If so, the person notifying the police should be asked to consider filing a report. The instructions also state that police officers need to pay attention to possible discriminatory elements in incidents even when the person reporting them does not indicate any such elements. In the police report, the discriminatory circumstances need to be mentioned explicitly.<sup>87</sup>

In 2008, **Sweden** introduced a mandatory field to the police computer system for registering filed police reports (Rational Reporting Routine – RAR). When a police officer registers a report in RAR, a pop-up window appears, asking the officer whether the crime in question could be a hate crime. This marking system helps monitor the investigation process of the case. The Swedish National Council for Crime Prevention states that 8 out of 21 police authorities use the information provided by the mark to map local hate crime, generate statistics and analyse crime trends.<sup>88</sup>

In **France**, the Ministry of Justice issued a circular concerning hate crime based on sexual orientation or gender identity, requesting investigators to ensure that it is established whether or not such bias motives were involved, and, if so, to record this fact.<sup>89</sup>

Several interviewees noted that the police's failure to realise offenders' bias motives has negative consequences. When the police overlooks such motives, it is unlikely that the issue will resurface at a later stage

86 Directorate-General of Police (2010).

87 Netherlands, Public Prosecution Service (2007, 2011).

88 Sweden, National Council for Crime Prevention (2011), pp. 11 and 58.

89 France, Ministry of Justice (2003).

of proceedings. The police thus lay crucial groundwork for appropriate classification and punishment of the offence (Austria, Belgium, Denmark, Portugal, Romania). Police officers in a few Member States also mentioned that identifying the bias motive is essential for prevention purposes. If a criminal act is grounded in prejudice, it very likely will be committed again – so it is also the police’s duty to prevent the offender from doing so (Finland, Poland). Experts from victim support services emphasised that hate crime makes victims feel unwelcome in society, and, if police fail to take bias motives seriously, the entire minority group will lose its trust in the police (Belgium, Ireland, Slovakia).

### 4.3. Specialisation as a means of improving investigations

Interviewees from victim support services in Finland highlighted the benefits of specialisation and emphasised the importance of pooling expertise and contacts to NGOs and organisations that provide victim support services. They also noted that the establishment of specialised units already sends a signal that the police take hate crime seriously. Professionals from victim support services and the judiciary from the Netherlands also stated that appointing contact officers for specific groups, such as LGBTI people, enhance victims’ trust in the police.

In Belgium, following a Circular of 17 June 2013, the federal police appointed specialised officers tasked with raising awareness of, and providing information and training to, other police officers. They also monitor cases of discrimination and hate crime and ensure that police officers handle hate crime appropriately and provide victims with efficient support.<sup>90</sup>

In Greece, two specialised police departments (Departments for Racist Violence) were established in 2012 in Athens and Thessaloniki, as were 68 specialised police offices across the country (Offices for Racist Violence).<sup>91</sup> These units receive reports and are entitled to investigate cases, inform the Prosecutor of Racist Crime, coordinate missions, record data on hate crime and collaborate with relevant services and organisations.<sup>92</sup> Similarly, in Cyprus, the Office for Combating Discrimination – operating under the Cyprus Police – monitors investigations of complaints or reports that relate to incidents of discrimi-

nation, racism, or xenophobia, and cooperates with police investigators for better handling of such incidents.<sup>93</sup>

In Hungary, the Police Hate Crime Network was established in 2012. The network consists of individual investigators who specialise in hate crime at each county police and a co-ordinator at the National Police Headquarters. The network operates as a platform for gathering information and spreading knowledge. Member officers remain part of their regular police units. They oversee investigations relating to hate crime conducted at their respective police headquarters, even if they do not personally investigate the cases. The network is currently of limited visibility both within the police and among potential victims, but there are plans to further develop the network via trainings and better sharing of information.<sup>94</sup>

In the United Kingdom, many forces have appointed specialist hate crime officers or teams. Good examples include West Mercia<sup>95</sup> and Lancashire Constabulary.<sup>96</sup> In Northern Ireland, specialist hate crime officers have been appointed for each police district.<sup>97</sup>

While specialisation is generally recognised as a positive move towards improving investigations, interviewed police officers broadly acknowledged that the responses of non-specialist staff are equally important.

#### FRA Opinion on the Framework Decision on Racism and Xenophobia

##### Action 10

“EU Member States should consider the benefits of setting up specialised units in police services, or other approaches such as community policing, to coordinate work to address hate crime and to deal with hate crime committed against a range of different groups of victims.

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, p. 17

### 4.4. Skills training

Most Member States have at some point introduced initiatives to provide targeted training to police officers. Interviewed experts reported that in 22 out of 28

90 Belgium, Ministry of Justice (2013). ECRI (2014b) discusses the circular as concerns contact officers in § 89.

91 See the official [website](#) of the Greek police.

92 The decree establishing these entities – Greece, Decree 132/2012 on Organizing departments of response to racist violence, art. 1 – and two circular orders of the Head of Hellenic Police – 7100/4/3/24-05-2006 and 7100/11/21-st/21-02-2012 – describe these duties.

93 Cyprus, Office for Combating Discriminations of the Cyprus Police.

94 Hungary, Police Hate Crimes Network (2012).

95 West Mercia Police, Hate Crime Guidance.

96 Lancashire Constabulary, Diversity and Equality.

97 For more information, see the [website](#) of the Police Service of Northern Ireland.

Member States some sort of hate crime training had been organised for police officers. In almost all Member States, however, these courses are not implemented on a regular basis but are rather ad hoc. Consequently, professionals in several Member States – including Malta, the Netherlands, Poland, Slovakia, and Sweden – emphasised the need for more training to equip officers with the skills needed to properly deal with hate crime.

*“Well, one important thing for me as a prosecutor is that the police arriving first at the crime scene document for example the specific characteristics of the offender or questions the victim and witnesses about what they believe was the motive or cause of the crime. These primary measures are important so that we can secure enough evidence to prosecute the case as a hate crime. Let me say that, if I should point out one important measure is that the training for police officers must also include primary measures.”* (Public Prosecutor, Sweden)

Belgium is possibly the only Member State in which training on hate crime issues for police forces takes place on a regular basis. Since 1996, the Interfederal Centre for Equal Opportunities (formerly the Belgian Centre for Equal Opportunities and Opposition to Racism) concludes yearly cooperation agreements with the federal police, within the framework of which the centre provides training on discrimination and diversity to police officers. In 2013, the centre provided various training sessions on anti-racism and discrimination and more specific ones on LGBTI and how to react to discriminatory comments by colleagues. 866 police officers across Belgium have taken one of these courses since their introduction.<sup>98</sup>

In the United Kingdom, the National Association of Chief Police Officers (ACPO) published a document entitled ‘Hate Crime: Delivering a Quality Service - good practice and tactical guidance’, which is provided to individual forces as a training guide.<sup>99</sup> It has also been adapted at local level – for example, in Greater Manchester<sup>100</sup> and Wiltshire.<sup>101</sup> The Wiltshire guidelines cover procedure under nine headings: definitions; critical incidents and repeat victimisation; incidents within the organisation; reporting; deployment of staff to incidents; staff attending hate incidents and crimes; reviews of police activity; and multi-agency forums. A similar training initiative was launched in Spain. The Observatory on Racism and Xenophobia published a Handbook for the Training of Security Forces in Identifying and Recording Racist or Xenophobic Incidents in 2012.<sup>102</sup> This handbook deals with issues of police methodology, i.e. how to provide evidence for racist motives, as well as with good practices in prevention.

In France, practical guides for investigators on the fight against discrimination, racism, antisemitism, xenophobia and homophobia have been developed at both the police and gendarmerie level in partnership with the Public Defender of Rights. These are available to investigators via their intranet systems, and include specific information about various forms of hate crime. Several training sessions have also been held on identifying and managing stereotypes and on police identity checks, in cooperation with the Committee to fight racism and antisemitism.<sup>103</sup>

In Croatia, LGBTI NGOs have been cooperating with the police academy to educate police officers in relation to hate crime since 2006. As a result of this cooperation, in 2013, training on hate crime against LGBTI people was for the first time incorporated into the academy’s official curriculum.<sup>104</sup>

## FRA Opinion on the Framework Decision on Racism and Xenophobia

### Action 8

“All officials ‘likely to come into contact with victims [of hate crime], such as police officers and court staff, [should] receive both general and specialist training to a level appropriate to their contact with victims’ enabling them to identify crimes committed with a discriminatory motive, to understand the rights of victims of bias-motivated crimes, to assess and respond to the particular needs of such victims and to ensure that such victims are offered the best possible assistance and support available (Article 25 (1), Victims’ Rights Directive).”

*Source: FRA, Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime, FRA Opinion – 02/2013, Vienna, p. 16*

In 2013, the OSCE’s Office for Democratic Institutions and Human Rights (OSCE-ODIHR) and the Italian Ministry of the Interior signed a memorandum of understanding for the implementation of the programme ‘Training against Hate crime for Law Enforcement’ (TACHLE).<sup>105</sup> Within the framework of this programme, a training event for 33 police and Carabinieri officers took place in Rome in summer 2014, focusing on responding to and investigating hate crime, as well as on applicable national legislation and international standards.<sup>106</sup> Poland has been part of the same OSCE-ODIHR programme since 2006. The programme entailed ‘trickle-down’ or ‘cascading’ training for police officers: law enforcement officials

98 Centre inter-fédéral pour l’égalité des Chances (2014).

99 ACPO (2005).

100 Greater Manchester Police (2014).

101 Wiltshire Police (2013).

102 Antón et al. (2012). The handbook is available [online](#) in Spanish.

103 France, Committee to Fight Racism and Anti-Semitism (2013).

104 Croatia, Ministry of Interior (2013).

105 Information on the programme is available on the Carabinieri Corps’ [website](#).

106 For more information, see the OSCE’s [website](#).

who pass through the programme then go on to train their colleagues. The first training session at the central level took place in November 2009. Since 2010, training on hate crime has also been conducted at the local level for police officers from, among others, prevention departments, including community support officers.<sup>107</sup> According to the Ministry of the Interior's website, as of 30 April 2011, 64 coaches were trained at the central level and about 20,000 police officers at the regional level.<sup>108</sup> According to the Commander in Chief's Plenipotentiary for Human Rights Protection, this number is currently higher and may reach 60,000 police officers.<sup>109</sup>

In Latvia, training and capacity building projects aimed at improving the police's ability to deal with hate crime have been NGO-driven, and not on the police's own initiative. Upon the initiative of the LGBTI association 'Mozaika', five seminars on identifying and preventing hate crime were organised in cooperation with the State Police College (*Valsts policijas koledža*) between 2011 and 2013. The seminars focused on the relevant hate crime legislation in Latvia, the importance of raising awareness of hate crime, the particular impact of these crimes on victims, and ways of promoting cooperation between law enforcement and NGOs. In total, around 250 representatives of law enforcement bodies, including 100 police officers from the state police, attended the seminars.<sup>110</sup>

### Committee on the Elimination of Racial Discrimination (CERD) on training

"States parties should pursue national strategies the objectives of which include the following:

[...] To develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel, persons working in the system of justice, prison institutions, psychiatric establishments, social and medical services, etc. [...]"

Source: *UN Committee on the Elimination of Racial Discrimination, General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 20 August 2004, pp. 3-4*

## 4.5. Sensitisation

Enabling police officers to respond to hate crime in an appropriate and professional manner is not a matter of skills alone. It also requires a profound understanding of discrimination and its causes,<sup>111</sup> as well as of the complex traumatising of victims of violent crimes committed with a discriminatory motive. General training on how to deal with victims of crime does not suffice. While several Member States – for example, Belgium<sup>112</sup> and Slovenia<sup>113</sup> – have policies and practices directed at enabling police officers to deal with victims in a sympathetic and supportive manner, such guidelines do not address the specific situation of hate crime victims.

Several respondents from law enforcement agencies and human rights NGOs in Spain, for example, noted that defective police and justice training on human rights and diversity is one reason why victims of hate crime are poorly treated. In Finland, experts believe that, even if the police leadership is committed, conditions for properly implementing a coherent anti-hate crime policy are not in place; specifically, they highlighted that no training modules on the issue are implemented.

*"It seems to me that the problem..., one of the problems is to achieve ease in terms of reporting such incidents, that is, for individuals to report it. And the second one relates to the first contact of individuals with the agents of state. And that, of course, is the police. It seems to me that we should work on increasing sensibility there. And on education and continuous training in that respect."* (Judge, Croatia)

However, in Poland a practical guide on police anti-discrimination measures defines and describes various forms of discrimination. The manual of good anti-discrimination practices gives advice on how to deal with hate crime and discrimination cases in a sensitive manner. The manual – published by the National Network of Police Plenipotentiaries for Human Rights Protection and funded by the Polish Police – benefited from input from a number of stakeholders, including the Polish Human Rights Defender, the Government Plenipotentiary for Equal Treatment and several civil society organisations representing LGBTI persons, religious minorities, people with disabilities and older persons.<sup>114</sup>

In the United Kingdom, police training programmes on discrimination increasingly include hate crime victims. The West Midlands Force introduced victims of

107 Further information is available on the [website](#) of Poland's Ministry of the Interior.

108 Further information is available on [Poland's Ministry of the Interior website](#).

109 Poland, information obtained during a conversation with the Police Commander in Chief's Plenipotentiary for Human Rights Protection, 4 October 2013.

110 Information provided to Latvian Center for Human Rights by LGBT Alliance Mozaika and their Friends, 17 September 2013.

111 For police training on non-discrimination, see FRA (2013c), pp. 133-170.

112 Belgium, Ministry of the Interior (2007); for more information, see Gallala (2014).

113 Slovenia, Information provided by the General Police Directorate (*Generalna policijska uprava*) upon request (written response of 17 October 2013).

114 Poland, Plenipotentiary of the Commander Chief of Police for the Protection of Human Rights (2013).



race-based hate crime into training programmes.<sup>115</sup> In many cases, NGOs – such as Stop Hate Crime UK – provide training.<sup>116</sup> The London Metropolitan Police Service has developed an interactive disability hate crime training package for recruits, holds regular meetings – which it makes open to persons with a disability – and uses ‘intermediaries’ and trained specialist interviewers to get the best possible evidence from victims who have difficulty communicating.<sup>117</sup> Stonewall, a lesbian, gay and bisexual charity, also provides resources to the police with regard to offences against LGBTI persons.<sup>118</sup>

Some experts from victim support services noted that initiatives that highlight the experiences of gay and lesbian police officers could enhance victims’ trust in the police and contribute to the sensitisation of police officers. The Youtube video recently published by the English “Association of Chief of Police Officers”, in which LGBTI officers explain their professional experiences working for the police, is an example.<sup>119</sup>

*“(Police) forces that are performing well as gay friendly employers are more likely to be taking LGBT issues into consideration in the context of police work. They are more likely to be taking action to tackle homophobic hate crime in the area, they are more likely to be engaging with LGBT people in the community through independent advisory groups or drop-in sessions... challenging homophobic attitudes internally, that has a knock-on effect in terms of policing.”*  
(Expert from victim support services, United Kingdom)

A similar initiative has been implemented in Belgium. In the framework of the training agreement between the federal police and the Interfederal Centre for Equal Opportunities, the ‘Rainbow Cops’ –an association of LGBTI police officers – present their association and actions in specific workshops dealing with LGBTI hate crime.

In Slovenia, an initiative called ‘Awareness of stereotypes, prejudices management and prevention of discrimination in a multicultural community’, which was launched about a decade ago, provides training for the police on working in multicultural communities. The programme places particular emphasis on Roma communities. Officers attend Roma language courses and are acquainted with Roma culture, history and mentality, and generally learn about the Roma way of life and reasons for living such a way of life. One interviewed expert believes that the police made significant progress in their approach to Roma communities and that this type of training helped considerably reduce police prejudice towards the Roma.

It should be noted that relatively little is known about how the various training curricula implemented in Member States have been evaluated, and that thoroughly assessing their effectiveness would require further research.

## Conclusions and FRA opinions

FRA has previously highlighted the importance of ensuring that police officers are aware of their tasks and abilities to meet their respective duties – including in its report on *Making hate crime visible* (FRA 2012/2011) and its October 2013 Opinion on the Framework Decision on Racism and Xenophobia. The latter stressed the importance of using substantive criminal law to express the significance of the distinction between offences committed with and without a discriminatory motive (Action 3) and the absolute necessity of training (Action 8); it also advised Member States to consider setting up specialised units in police services (Action 10). In principle, there is no need to repeat these statements. However, the present research – which makes clear that the reality in the majority of Member States significantly fails to meet these standards in terms of legislation, measures of internal organisation and training – suggests that some recommendations should be reinforced and updated.

With victims deeply reluctant to come forward, it is crucial for police services to take action to lower the reporting threshold. Relevant measures adopted in various Member States include, among others, IT applications that allow victims to report their victimisation to the police online and the establishment of specialised police units that proactively reach out to victims and ensure that victims who report incidents are treated in a sympathetic and non-discriminatory manner. While reliable evaluations of such measures are scarce, Member States should be encouraged to adopt whatever mechanism they consider most promising and to ensure a reliable assessment of the adopted measures’ impact on the number of victims who report hate crime to the police.

### FRA opinion

*EU Member States should consider stepping up their efforts to reach out proactively to victims of hate crime and to encourage their reporting, including by introducing online reporting tools and establishing specialised police units.*

Previous FRA publications have highlighted the important difference between specific hate crime definitions and discriminatory motives being taken into account as an aggravating factor in sentencing. The present

<sup>115</sup> West Midlands Police (2013).

<sup>116</sup> For more information, see Stop Hate UK’s webpage on [training](#).

<sup>117</sup> Learning Disability Today (2012).

<sup>118</sup> Ashworth (2013).

<sup>119</sup> ACPO and College of Police (2013).

research underscores the practical significance of this distinction. As noted by many interviewed professionals, if substantive criminal law definitions do not distinguish between crimes committed with a discriminatory motive and crimes without such a motivation, law enforcement officers cannot be expected to pay much attention to this distinction.

Given that this has practical implications for the effectiveness of access to justice for hate crime victims, criminal law provisions should reflect the fundamental difference between an offence that, in addition to infringing a victim's other rights, also violates the individual's right not to be discriminated against, and an offence that does not involve this discriminatory aspect.

#### FRA opinion

*EU Member States should assess to which extent specific criminal law definitions covering the most frequent forms of hate crime, including assault, vandalism and insult, can be applied to ensure that discriminatory motives of offenders are not overlooked. They should further raise awareness among professionals of the necessity to acknowledge victims of hate crime as victims of severe discrimination.*

The lack of strict protocols to prevent offenders' bias motives from being overlooked should be seen in the context of EU Member States' obligation to ensure that, when implementing the Victims' Rights Directive, procedures and protocols are established to make sure that victims' protection needs are individually assessed. Such assessments take into account the nature and circumstances of a crime. According to paragraph 3 of Article 22 of the directive, particular attention shall be paid to victims who have "suffered a crime committed with a bias or discriminatory motive." Hence, it is crucial that, when setting up procedures to ensure the individual assessment of victims' specific protection needs in line with Article 22, Member States pay attention to the question of any indications that offenders were motivated by discriminatory attitudes.

#### FRA opinion

*When implementing Article 22 of the Victims' Rights Directive concerning the individual assessment of victims' protection needs, it is crucial for EU Member States to pay attention to the question of whether there are any indications that the offence was committed with a discriminatory motive.*

One of the main findings of this research is the lack of sufficient systematic training for police officers. Available training falls short in: conveying the basic legal categories in which public hate crime policies are framed; sensitising police officers; and imparting the necessary skills for effectively recording and investigating hate crime. Such shortcomings account for the difficulties encountered by officers in identifying hate crimes and reacting appropriately when there are clear indications of discriminatory motives of offenders.

#### FRA opinion

*In line with Article 25 of the Victims' Rights Directive, which obliges EU Member States to train professionals, EU Member States must ensure that all police officers, public prosecutors and criminal judges fully understand the basic concepts of hate crime, incitement to hatred, and negationism – as applicable under national law – and are trained to deal with hate crime and its victims in a professional manner. To this end, training needs to promote awareness of, and sensitisation to, the phenomena of hate crime and its impact on victims; and the skills required to recognise, record and investigate such incidents.*

The research also reveals a general lack of robust evaluations of the measures adopted by EU Member States. The vast majority of Member States has taken action in one or more contexts – developing information campaigns, specialised units and reporting channels, and tools for online reporting, for example. However, the impact of these measures is often unknown because reliable, methodologically sound assessments of whether they actually increased victim reporting to the police are lacking. In any event, despite the adopted measures, experts still believe that underreporting potentially undermines the effectiveness of the criminal justice system. It is not clear whether this attests to the ineffectiveness of the measures or only to a lack in quantity – and thus whether the initiatives should count as promising practices or failed schemes.

#### FRA opinion

*When adopting measures to enable or encourage victims to report hate crime to the police, EU Member States should ensure that the measures' impact on numbers of victims reporting to the police is assessed in a robust, methodologically sound manner.*



# 5

## Trust in the police and institutional aspects of police organisations

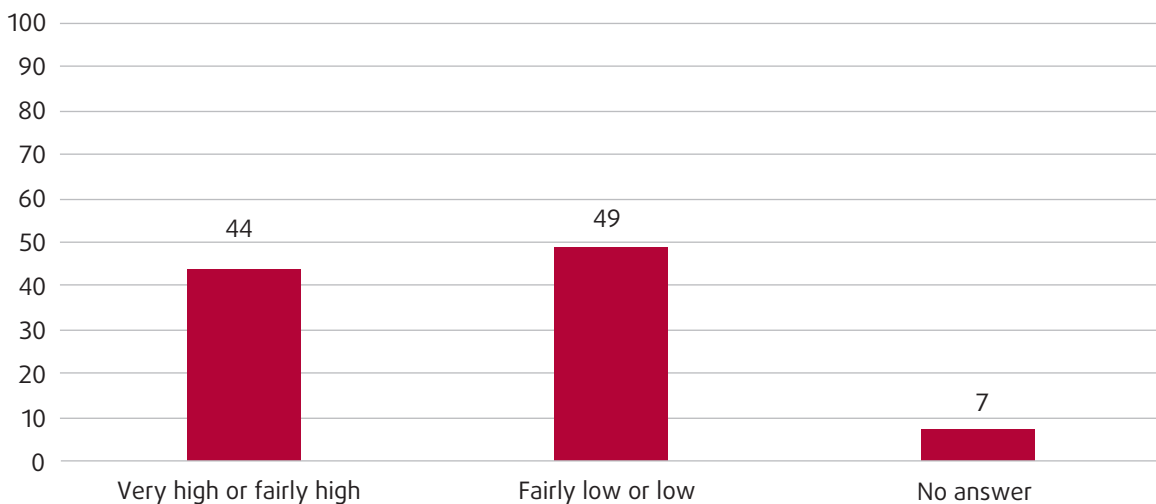


### 5.1. A lack of trust in the police

The police are gatekeepers of the criminal justice system. In practice, the effectiveness of a victim's right to access criminal justice is premised on the victim's confidence in the police's ability to respond to the victim's report in a professional and sympathetic manner that unconditionally and unambiguously acknowledges the wrong done to the victim. On the other hand, distrust in the police can prevent victims from reporting to the police and from accessing criminal justice.

Experts in 21 out of 28 Member States reported low levels of trust of victims in public institutions, and particularly in the police. Three out of four respondents believe that victims do not trust the police to treat them in a sympathetic manner. This finding has to be read in the context of a striking result of the interviews: when asked whether they believe that there is a risk that police officers to whom victims would report could share the discriminatory attitudes of offenders, more than two out of five interviewed experts rated this risk as either fairly or even very high.

Figure 9: Interviewed experts from all professional groups assessing the risk that police officers could share discriminatory attitudes (N=263, %)



Question: The risk that police officers could share discriminatory attitudes is [...].

Answers: A. Very high; B. Fairly high; C. Fairly low; D. Low. E. No answer.

Figure 9 groups together the percentage of respondents who selected answers A and B, as well as C and D.

Source: FRA, 2016

There are significant differences among EU Member States. For example, in Denmark, Estonia, Luxembourg and the Netherlands, the percentages of experts who believe in a very or fairly high risk of discriminatory attitudes among the police are less than half the average figure.

The interviewed professionals agreed that it is particularly important to tackle potential discriminatory attitudes within the police to enhance victims' trust in the institution. They highlighted that hate crime victims' trust and confidence in the police is crucial to ensure that reports are made and charges pursued. If one victim belonging to a marginalised group has a negative experience with the police, this can become known across the community and can undermine the trust of that group in the institution, discouraging victims from reporting further hate crime offences.

The interviewed professionals from civil society organisations had predominately critical views in this regard. If victim support services do not trust the police to deal with victims in a sympathetic manner and are not confident that the police will distance themselves from the discriminatory attitudes of hate crime offenders, then they may, to prevent secondary victimisation, be very reluctant to advise victims to report to the police.

*"Significant part of cases is not reported to police because of a fear from prejudices from police, in small cities the people know the policemen and how they handled the situation in the past. Based on this they could have more or less legitimate fears that their report would not be taken seriously."* (Victim support service, Slovakia)

*"Nobody is ever found guilty, and we have examples – the case of the young people aggressed in the metro train; it [the way the criminal investigation authorities handled the case] sent a very discouraging message to all LGBT persons. [...] I think that if a few people who report to the police are treated well, in a respectful manner and their complaints are investigated correctly, that would count very much..."* (Victim support service, Romania)

*"We know that 1 in 5 lesbian, gay and bi-sexual people expect to be treated worse than a heterosexual person if they report a crime, any sort of crime to the police, and if the police officers know that they are gay. And a quarter of people said that they would expect to experience discrimination if they reported a homophobic hate crime specifically."* (Victim support service, United Kingdom)

*"If one looks at the cases how Viennese police officers deal with Africans, how they deal with Roma - so if I do not need to go there, I won't go there...there are the cases of torture and violence exercised by the police against asylum seekers, there is the case of a Roma, who was abused massively by the police, who was insulted as a 'gipsy' ('Zigeuner'). My own flatmate reported a burglary to the police and the first question was: 'Well? Was it a nigger?' Therefore, I believe that racism is very prevalent among the police force."* (Victim support service, Austria)

Interviewees gave varied reasons for the low levels of trust in the police. Experts mentioned the lack of accountability and training. Others stressed that enhancing trust in the police is difficult when migrants bring with them preconceptions stemming from negative experiences with, or images of, the police in their countries of origin. However, the opposite view was expressed as well: that immigrants display a strong confidence in the police.

*"Frequently victims of hate crime who are third country nationals have a prejudice toward police forces because police officers in their former country are part of non-democratic and repressive regimes."* (Police officer, Italy)

*"Sometimes the police is prejudiced against immigrants, but sometimes civil society and immigrants are prejudiced against the police."* (NGO, Spain)

*"It is crazy, how can they still have confidence when many times they are turned away. Honestly, police officers should realize how much people with an immigrant background trust them, it is crazy."* (NGO, France)

FRA surveys that directly asked victims why they did not report to the police strongly corroborate the current research findings. For example, FRA's 2008 survey of minorities (EU-MIDIS) indicates that the majority of victims of assault or threats did not report their experiences to the police, even though the majority characterised these as 'serious'. Significant numbers of Roma and Turkish victims said they did not report the incidents because of their 'negative attitude towards the police': 33% and 24%, respectively. Of those who did report the assault or threat to the police, 54% of Roma said they were 'dissatisfied' with how the police dealt with the matter. Perhaps most worryingly, 7% of Turkish respondents and respondents with a Russian background identified police officers as the perpetrators of the most recent assault or threat. Other ethnic groups identified police officers as perpetrators in 4% or less of the most recent incidents. These findings need to be kept in mind when looking at reporting to the police.<sup>120</sup>

120 FRA (2012), *EU-MIDIS 06: Data in Focus Report. Minorities as Victims of Crime*, Luxembourg, Publications office of the European Union, p. 13.





In FRA's EU LGBT survey, a third of respondents said that fear of a transphobic or homophobic reaction from the police was a factor in their decision not to report an incident of hate-motivated violence to the police.<sup>121</sup>

*„That is the preconception of police, which is still only a part of society and when there is general acceptance of behaving in certain ways towards certain minorities, it is possible to conclude that there will be such attitudes also among policemen.“* (Victim support service, Slovakia)

*“The police are a reflection of society. In every profession there are people with prejudices and people without them. And when you put on the uniform, it doesn't mean that you have erased prejudices. Prejudices are marked by emotions and you cannot switch them off. When you see someone who is black-skinned and if you're a racist some fuse turn on even if you are a police officer, a doctor, or I don't know, a social worker. The police are not an organisation where diversity is respected, so there are many prejudices towards different groups.“* (Police officer, Netherlands)

*“A police officer is part of the society. He cannot break away from it. If the society says about an attack against a gay or lesbian person: ‘it's his fault, he would not have been slapped, if he hadn't been gay or lesbian’ [...] if society reacts like that, what do we expect from the police [...] Well we expect him to stand above these things, but currently he can't. He acts in the way he was socialized into.“* (Police officer, Hungary)

*“The media builds an image of Islam and Muslims which does not correspond with reality, they are fantasized, and they are demonized. And as a matter of fact, this association of the media with politicians leads to a hostile atmosphere. [...] The issue is that it also pervades minds and it leads some magistrates and police officers to also be polluted.“* (NGO, France)

*“There is a perception among immigrants that since the police are Cypriots and share the same attitudes and beliefs with a great part of the general population, they will not handle the case seriously and they will not provide the requested support to them. Also, considering that the LGBT people are already stigmatized in Cyprus, the possibilities of a person reporting to the police that he/she was abused because of his sexual orientation are very limited.“* (NGO, Cyprus)

### FRA Opinion – Acknowledging victims of hate crime

“To encourage hate crime reporting, confidence should be instilled among victims and witnesses of hate crime in the criminal justice system and law enforcement.”

Source: FRA (2012), *Making hate crime visible in the European Union: acknowledging victims' rights*, Luxembourg, Publications Office, p. 11

## 5.2. Ensuring that policing is based in local communities

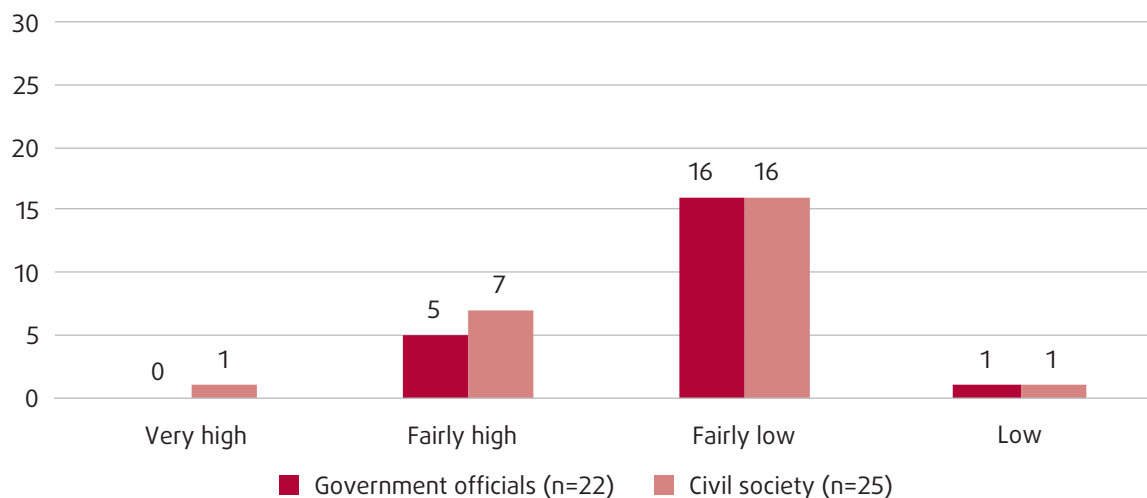
Police force culture and styles differ across the EU. The current research asked interviewees about the risk that police officers share the discriminatory attitudes of offenders. Interviewees could choose between five possible answers, namely that this risk is very high, fairly high, not very high, non-existent or unknown to the interviewee. In general, the number of interviewees per country is too small to allow for country comparisons, but the differences in answers given to this particular question are striking enough to justify mentioning.

Two clusters of countries were formed on the basis of patterns that surfaced in the research, and compared. The first cluster consists of five Member States – Denmark, France, Luxembourg, Netherlands and the United Kingdom. The second group comprises eight other Member States – Bulgaria, Cyprus, Greece, Latvia, Malta, Poland, Portugal and Romania. Of the 51 professionals interviewed from the first cluster, 13 (25 %) viewed the risk that police officers share discriminatory attitudes as either very high or fairly high. However, of the 71 interviewees from the second cluster, 41 (58 %) rated this risk as very or fairly high. Hence, according to the professionals interviewed in this research, the risk that police officers to whom hate crime victims report share the discriminatory attitudes of offenders is more than twice as high in the second cluster of Member States compared to the first.

In addition, interview findings from the first cluster of Member States show that the various professional groups share a clear and consistent view, but this is not the case in the second group. Instead, the interviews paint two strikingly different pictures, one provided by civil society actors – victim support NGOs and bodies with a human rights remit – and the other by government representatives – police officers, public prosecutors and judges.

<sup>121</sup> FRA (2014), *EU LGBT survey – European Union lesbian, gay, bisexual and transgender survey. Main results*, p. 68, Table 6.

**Figure 10: Number of respondents who assess the risk that police officers could share the discriminatory attitudes of offenders in five selected EU Member States, by professional groups (n=47)**



*Question:* Rate the level of risk that police officers in your Member State to whom victims report have discriminatory attitudes.  
*Answers:* A. Very high; B. Fairly high; C. Fairly low; D. Low.  
*Selected Member States:* Denmark, France, Luxembourg, the Netherlands and the United Kingdom.  
*Source:* FRA, 2016

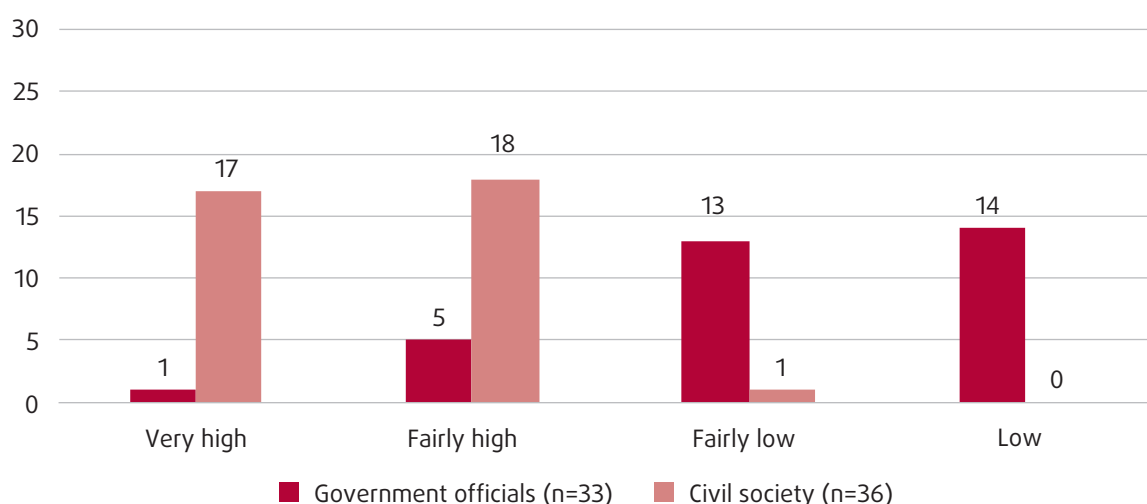
Figure 10 illustrates the responses from the first cluster of Member States, divided into two groups of respondents: government representatives (police officers, public prosecutors and judges) and civil society actors (victim support services and bodies with a human rights remit).

As shown in Figure 10, the views of civil society actors and law enforcement officers or criminal justice actors

hardly differ. This could indicate that police services in these Member States operate as transparent and accountable organisations that allow citizens to see and understand how they work and thus build trust in the way the police perform their functions.

However, as shown in Figure 11, the same comparison for the second cluster of Member States yields quite different results.

**Figure 11: Number of respondents who assess the risk that police officers could share the discriminatory attitudes of offenders in eight selected EU Member States, by professional groups (n=69)**



*Question:* Rate the level of risk that police officers in your Member State to whom victims report have discriminatory attitudes.  
*Answers:* A. Very high; B. Fairly high; C. Fairly low; D. Low.  
*Selected Member States:* Bulgaria, Cyprus, Greece, Latvia, Malta, Poland and Portugal  
*Source:* FRA, 2016

In these Member States, the assessment of government officials differs considerably from that of persons working for civil society organisations, indicating that in these societies there is no shared understanding of the services delivered by the police and that the police operate at a certain distance from civil society. Such conclusions can only be tentative and hypothetical. However, the lack of coherent and shared view of the police per se calls for an explanation.

*Regarding whether there is a risk that the police shares the attitudes of offenders:*

*Answer: "Very high"*

*Question: "Why is that?"*

*Answer: "I think it goes with the very nature of this profession, they are in their majority conservative persons, but I think that they are also trained this way."*

*Question: "Trained meaning?"*

*Answer: "They are trained by their superiors that, I'll say it again, a white Christian man is more important as a victim compared to anyone else. And everyone else go to subcategories."*

*Question: "Do you believe that these discriminations on behalf of the police depend on the victim's category?"*

*Answer: "Yes."*

*Question: "To which categories of victims does this behaviour apply more?"*

*Answer: "Immigrants mostly, people with issues of gender identity a lot, homeless, drug users."*

(NGO, Greece)

This raises questions about how the police are situated relative to communities they police. If a police service is embedded in society, is transparent and accountable to its community, and cooperates with civil society actors in carrying out its tasks, reviewing its performance, in training, or in developing policies and strategies for cooperation, it is less likely that government officials and civil society actors will have radically divergent perceptions of its services. While this issue is beyond the scope of this report, it is obviously highly relevant for establishing or reinforcing citizens' trust in 'their' police service.

Police services in EU Member States differ considerably in terms of their history, organisation and style. Some have adopted a 'vision' of policing as a service to the public and to local communities in particular, while others continue to operate as traditional police 'forces'. For example, police services in the UK have a long tradition of community-based policing, which is reflected in how the police are organised and to whom they are accountable. In addition, police forces are embedded in a wider framework and culture of governance and

administration underlying the relationship between public authorities and citizens.

### MacPherson report on 'institutional racism'

6.4 "Racism" in general terms consists of conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form. [...]

6.34 "Institutional Racism" consists of 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.

Source: Sir William MacPherson of Cluny (1999), *The Stephen Lawrence Inquiry – Report of an inquiry*

*Question: "Do you understand the fact that the victims sometimes might have the impression that the policemen share the same prejudice with the offenders?"*

*Answer: "I do not believe that any policeman has given that impression to the citizens, that is that we share prejudice against victims of racist attacks etc. I believe that there are no such incidents to the police. We do the exact opposite which is everything in our power in order to bring these people before justice."*

*Question: "So you believe that this kind of behaviour does not exist within the Police."*

*Answer: "Yes I believe there are no such cases to the police and that victims have never been treated with any prejudice."*

*Question: "So do you believe that these cases do not exist at all, or that sometimes they appear but are treated properly by the police. Because it's not exactly the same."*

*Answer: "Yes I believe that right now they don't exist at all. I don't believe that it ever happens."*

*Question: "However, you do understand that some of the victims may have that impression?"*

*Answer: "Yes I do."*

*Question: "Why do you think this is happening?"*

*Answer: "Because when I go to a public service I never think that they will deal with me the way I want them to or that they will do what I want." (Police officer, Greece)*

Community-based approaches to policing hate crime involve partnerships and cooperation at various levels. For example, the police in Luxembourg consistently work with groups perceived to be vulnerable to hate crime and have established a stable working relationship with the Support Association for Migrant Workers

(*Association de Soutien aux Travailleurs Immigrés, ASTI*).<sup>122</sup>

In the Netherlands, efforts have been made to integrate the police in local or regional networks. In 2010, nearly all (10 out of 11) police units established expert groups on multiculturalism (*Expertgroep Multicultureel Vakmanschap*). Such groups consist of a culturally diverse team of police officers who support their colleagues in dealing with broad issues concerning diversity. In a few units (such as the Zeeland-West-Brabant unit), the expert group is specifically charged with supporting colleagues who deal with reports or cases involving discrimination. The experts coordinate discrimination cases and make sure they are dealt with accurately (including being properly registered). An expert group also maintains a regional network of NGOs representing the target groups and aims to make the police more accessible to these groups.<sup>123</sup> For example, 'Pink in Blue' teams maintain networks with local/regional LGBTI organisations.<sup>124</sup>

Some Member States that have more recently joined the EU face the challenge of developing a civil society basis from a communist past and have less of a history of immigration; in some of these, attempts are being made to bring the police closer to their communities. In Poland, several Voivodeship Commanders' Plenipotentiaries for Human Rights Protection have taken action to improve cooperation with groups vulnerable to hate crime (as part of implementing the Police strategy for the development of the system of human rights protection for the years 2013 – 2015).<sup>125</sup> In addition, the Team for Human Rights Protection (*Zespół ds. Ochrony Praw Człowieka*) was established within the Ministry of the Interior (which is responsible for supervising the police) in 2011. After reporting a crime to the police, hate crime victims can notify this team of their case. The team then contacts relevant bodies, gathers information on the case and relates this to the victim. Victims can also report human rights violations committed by police and border guard officers to the team.<sup>126</sup> Continuing the work of the Team for Monitoring Racism and Xenophobia (*Zespołu Monitorowania Rasizmu i Ksenofobii*), the team coordinates the implementation of the Programme of Combating Hate Crime for Law

Enforcement Officers, which is prepared in cooperation with OSCE-ODIHR.<sup>127</sup>

In other Member States, such signs of governmental determination to improve the relationship between citizens and the criminal justice system generally, and the police in particular, are still anticipated. For example, as concerns underreporting of racist violence in Bulgaria, the Council of Europe's European Commission against Racism and Intolerance (ECRI) in June 2014 reiterated its earlier recommendation "that the Bulgarian authorities wage campaigns to encourage victims of racist violence to lodge complaints and to foster awareness of the seriousness of racist crime and of the fact that the perpetrators will be duly punished". ECRI noted "that racist violence has escalated since its last report. It is not aware of any campaign being waged according to its recommendation."<sup>128</sup>

Hence the interviewed civil society representatives' view that there is a risk that hate crime victims who report to the police may encounter officers who share the discriminatory attitudes of offenders arguably points to a wider institutional issue of police culture and discrimination in some Member States.

## Conclusions and FRA opinions

When planning and evaluating state policy measures to address hate crime, it is vital to take into account institutional aspects of anti-discrimination. This relates to victim support services as well as to all public institutions that deal with hate crime victims, particularly the police.

*"It is unquestionable that not enough is being done to eradicate discriminatory behaviour in the security forces."*  
(NGO, Spain)

In the United Kingdom, an inquiry into the police's work following the racially motivated murder of Stephen Lawrence was concluded in 1999. The inquiry report famously highlighted the necessity to look at discrimination not only in terms of the quality of police conduct considered in isolation but also in terms of the quality of the response of an entire institution - in this case, the police's response to incidents involving racial aspects.

This institutional perspective on discrimination is important when it comes to deciding on the level of measures adopted to counter discrimination in a police service. All elements of an organisation can be assessed based on whether and how they contribute to ensuring that the services delivered by a police force are not

122 Information was provided upon request during a face-to-face interview at a police department in Luxembourg (done for the purpose of this report) on 9 October 2013. Supplementary clarifications and information were provided during a telephone call on 15 October 2013, and through email on 15 October 2013.

123 Netherlands, The Police Diversity Expertise Centre (2012).

124 According to a representative of the Police Diversity Expertise Centre, 10 October 2013.

125 Poland, Main Police Headquarters.

126 Information available on the [Polish Ministry of Interior website](#).

127 *Ibid.*

128 ECRI (2014a).

discriminatory. This ranges from human resources management to the culture and styles of leadership to many aspects of a police service's performance and relations to the public and to local communities.

### FRA Opinion on the Framework Decision on Racism and Xenophobia

#### Action 11

"Member States should assess existing safeguards against institutional forms of discrimination, including clear mission statements, robust systems of performance review with regard to preventing institutional discrimination and inclusive and effective independent complaint mechanisms."

Source: FRA, *Opinion on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, FRA Opinion – 02/2013, Vienna, p. 17

While this report does not address organisational aspects of policing, it is important to stress the particular significance of these aspects for effective policies against hate crime. Any attempt to encourage victims to report to the police has to take into account victims' trust in the police. However, eliminating discriminatory attitudes of police officers cannot be viewed in

isolation, but would have to be assessed within the framework of existing policing strategies. Unless the police display their absolute determination to enforce the human rights of all individuals, hate crime victims will hardly be confident that police officers are unbiased. As long as victims lack confidence that the police will clearly and unequivocally respect human dignity and, as part of their internal culture, condemn discrimination and sympathize with hate crime victims, significantly improved reporting rates are not expected. Hence creating a culture of policing based on cooperation, transparency and accountability could improve public confidence in the police and encourage victims to report.<sup>129</sup>

#### FRA opinion

*In line with their obligations – under Article 1 of the Victims' Rights Directive – to ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, EU Member States must see to it that victims of hate crime can report to the police without fearing that police officers share the discriminatory attitudes of offenders. They must adopt whatever measures are necessary to prevent and eradicate such attitudes among police officers, including by changing the prevailing police culture.*

<sup>129</sup> See FRA (2015a).



## Concluding remarks

While previous FRA publications have highlighted shortcomings in reporting and recording hate crime, this report completes the picture by sharing significant professional insights on the institutional aspects of these deficiencies. These include weaknesses and patchiness of the legal framework, difficulties in grasping and working with the concept of hate crime, uncertainties as to the concept's significance and meaning to the organisation in which a professional works, and risks of institutional discrimination, which can have a devastating impact on the trust of victims and their readiness to report to the police.

The interviews with professionals reveal, in some EU Member States, the need for a comprehensive and coordinated policy against hate crime, including:

- legislation that covers equally all categories of discrimination in line with Article 21 of the EU Charter of Fundamental Rights, fully transposes Article 1 of the Framework Decision against Racism and Xenophobia, and provides specific criminal law definitions that cover the most frequent forms of hate crime where such definitions would enhance the recording of hate crime and prevent the police from overlooking bias motives;
- setting up a reliable network of support services;
- targeted training for police and criminal justice professionals;
- organisational measures to facilitate victims' reporting and ensure that police officers recognise discriminatory motives;

- strengthening institutional safeguards in police services to ensure that hate crime victims can report to the police without risking facing police officers who sympathise with the offenders' attitudes rather than with victims.

The institutional factors that foster the police's ability to respond sympathetically and professionally to victims' reporting would merit further analysis. A clearer understanding of the targets and standards a police service has to meet to ensure that hate crime victims do not have to fear officers siding with offenders rather than victims would be helpful. Article 1 of the Victims' Rights Directive acknowledges the rights of all crime victims to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner. In addition, Article 25 of the directive requires professionals to be trained to ensure that they "deal with victims in an impartial, respectful and professional manner"; this obligation concerns the police as well as judges and prosecutors. If victims do not have access to justice, this may result in the downplaying of hate crime, in victims not being fully acknowledged as victims of human rights violations and in insufficiently dissuasive sanctions for offenders. Criminal justice must respond to hate crime in a manner that reflects the criminal offence's severity and signals to high-risk individuals as well as to the wider public that hate crime is taken seriously, and that the right of individuals not to be discriminated against is effectively protected.

This report presents a long list of challenges that have to be met to encourage reporting and ensure recording of hate crime, but meeting these challenges is the only way to make hate crime victims' fundamental right to access justice a reality. The many promising practices outlined in the report serve as examples of measures that can contribute to achieving this important goal.





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# Annex: Methodology

The presented findings are based on desk research and interviews with professionals in all 28 EU Member States.

Data were collected through FRA's multidisciplinary research network Franet. This network consists of contractors in each EU Member State who, upon request, provide relevant data on fundamental rights issues to FRA to facilitate the agency's comparative analyses.<sup>130</sup>

## Desk research

Desk research looked into the legal and organisational framework of measures addressing hate crime in Member States. In addition to information about legislation and procedures in place to tackle hate crime and enhance victims' access to justice, relevant case law was examined and information was gathered concerning available support services to hate crime victims. Information about promising practices or initiatives relating to the provision of support specifically to hate crime victims that can serve as possible models for enhancing victims' access to justice were also collected. The main purpose of the desk research was to understand how Member States implement the Framework Decision on Racism and Xenophobia and to what extent they go beyond it – for example, by including other discrimination characteristics (as is the case in many Member States).

## Field research

Research was conducted from August 2013 to February 2014. Franet contractors gathered publicly available information in each EU Member State, drew on available literature on the subject, and made a small number of data requests to public authorities and victim support organisations. In addition, based on a set of detailed – closed and open – questions prepared by FRA, primary data were gathered through semi-structured interviews in each Member State with three categories of professionals with knowledge and experience in hate crime. Three categories of experts were interviewed:

- police officers;
- public prosecutors and judges from criminal courts;
- experts working for victim support services or civil society actors with a human rights remit.<sup>131</sup>

<sup>130</sup> For more information on FRANET, see FRA's [website](#).

<sup>131</sup> Such victim support services need not be organisations that focus solely on supporting crime victims but can also include organisations with a broader mandate to support individuals belonging to a certain group vulnerable to acts of crimes committed with a discriminatory motive, or institutions with a human rights remit that support victims at an individual level.

Overall, 263 experts were interviewed across all three groups in the 28 EU Member States; an average of just over nine interviews per Member State. The interviews were conducted face to face or, in rare cases, by telephone, using a topic guide FRA developed. Interviewees were made aware that they were expected to base their answers on their professional expertise and not on common views and assumptions.

## Topics examined in the interviews

The purpose of the interviews was to find out how experts assess various forms of hate crime, where they see deficiencies in policies, institutions and measures responding to hate crime, and where they believe improvements would be particularly important, with a focus on improving victims' access to justice. More precisely, interviews covered:

1. **Experts' views, based on their professional experience, on the gravity of the problem:** general views on the severity of various forms of hate crime, including which forms of bias-motivated crimes have been identified as, at present, constituting a serious problem.
2. **Victims reporting their victimisation to the police:** experts' assessment of whether the criminal justice system's response to hate crime is significantly impaired by underreporting of victims to the police; whether experts believe it is more difficult for hate crime victims to report compared with other victims of comparable crimes; factors that account for victims not reporting; measures that may encourage victims to report; and the level and forms of psycho/social assistance available to victims.
3. **Experts' views on the role of police and of the criminal justice system:** experts' views as to whether or not the police consider it important to assess whether an offence was motivated by bias; (perceived) risk that police have discriminatory attitudes towards some categories of hate crime victims.



## COMPENDIUM OF PRACTICES



See a collection of good practices from across the European Union on combating hate crime in FRA's online compendium at [fra.europa.eu/en/promising-practices](http://fra.europa.eu/en/promising-practices).

The compendium is the key output of the Working Party on Improving Reporting and Recording of Hate Crime in the EU that FRA established to combat hate crime. It aims to help policymakers and practitioners understand what is being done elsewhere in the EU to combat hate crime, and which elements could be adapted for use in their own national contexts.

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## HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Hate crime is the most severe expression of discrimination, and a core fundamental rights abuse. Various initiatives target such crime, but most hate crime across the EU remains unreported and unprosecuted, leaving victims without redress. To counter this trend, it is essential for Member States to improve access to justice for victims. Drawing on interviews with representatives from criminal courts, public prosecutors' offices, the police, and NGOs involved in supporting hate crime victims, this report sheds light on the diverse hurdles that impede victims' access to justice and the proper recording of hate crime. It also presents promising developments across the EU, and identifies the institutional preconditions necessary to develop effective policies against hate crime. By focusing on the perspective of professionals, the report offers important field-based insights that can help strengthen efforts to empower victims of crime.

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