



EU High Level Group on combating racism, xenophobia and other forms of intolerance

December 2017

ENSURING JUSTICE, PROTECTION AND SUPPORT FOR VICTIMS OF HATE CRIME AND HATE SPEECH: 10 KEY GUIDING PRINCIPLES

This document is not legally binding and is intended for guidance only. It can therefore neither provide legal advice on issues of national law nor an authoritative interpretation of EU law, which remains within the sole remit of the Court of Justice of the EU.

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1. PURPOSE OF THIS PAPER

Crime is a wrong against society as well as a violation of the individual rights of victims. Hate crimes, as criminal offences where perpetrators act based on a bias or ill against the victim's characteristics, not only give rise to the violation of the individual rights that the crime committed may have affected, but also constitute a manifestation of discrimination against the victim as well as against the group or community to which the victim belongs or is perceived to belong. Ensuring justice, protection and support for victims of hate crime and hate speech (hereinafter 'hate crime victims') therefore requires taking into account the specific nature of hate crime as well as the ability to appreciate the experience and harms of hate crime victimisation on victims as well as on the concerned group or community, hate crimes being "message crimes".

While an exhaustive mapping has not yet to date been carried out, information gathered by the European Commission's services indicates that the understanding of the specific needs of hate crime victims in terms of justice, protection and support, including in relation to the requirements of relevant EU legislation, and the level and quality of their implementation on the ground, varies greatly across the Member States.

Taking into account the existing EU legal framework and the information gathered, the European Commission fostered a thematic discussion on "Ensuring justice, protection and support for victims of hate crime and hate speech" at the third meeting of the EU High Level Group on combating racism, xenophobia and other forms of intolerance ('the High Level Group')¹ on 1 June 2017.

This paper, drafted by the European Commission's services (DG JUSTICE and CONSUMERS), constitutes the key conclusions of such a discussion. It is the result of a process of consultation gathering input from Member States and a range of stakeholders, including civil society organisations, the EU Agency for Fundamental Rights (FRA), OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's European Commission against Racism and Intolerance (ECRI).

The purpose of this paper is to provide Member States' authorities and other relevant stakeholders with a compilation of key guiding principles on ensuring justice, protection and support for hate crime victims. All Member States are encouraged to build on these guiding principles with a view to addressing the needs of hate crime victims, adapting as needed the implementation of such guiding principles to their specific national legal and policy framework. These principles could also inform targeted discussions and good practice exchange within the European Network on Victims' Rights.²

This paper is not legally binding and is intended for informal guidance only, with a view to contributing to competent national authorities' efforts in setting in place appropriate non-legislative and policy measures which can facilitate the achievement of the objectives of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter 'the Victims Rights' Directive')³ as well as of Framework Decision 2008/913/JHA on combating certain forms and expression of racism and xenophobia by means of criminal law⁴.

¹ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3425>

² The Network was set up with the support of the European Commission in 2016, with a view to improving the practical application of victims' rights legislation in EU Member States, upon initiative of the Netherlands, as well as France, Ireland and Slovakia.

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0913>

2. INTRODUCTION TO THE KEY GUIDING PRINCIPLES

In order to ensure a minimum level of victims' rights in all Member States, the EU has adopted several EU legal instruments setting up common rules aimed at protecting and assisting victims of crime.⁵ Among these, the **Victims Rights' Directive**, which Member States⁶ had to transpose into their national laws by 16 November 2015, provides for common rules dealing with victims' rights in general. Other EU legal instruments provide for common rules on protection measures and financial compensation to victims of crime.⁷

The Victims Rights Directive is particularly relevant for the purpose of this paper. The Directive is aimed at ensuring that persons who have fallen victim of crime are recognised, treated with respect and receive proper information, protection, support and access to justice including through participation in criminal proceedings. A **guidance document issued by DG JUSTICE and CONSUMERS** provides further clarifications on its provisions to facilitate practitioners' understanding of what is required to make the rights set out in the Directive a reality in practice (hereinafter, the 'Guidance on the Directive').⁸

The Directive acknowledges the specificities of hate crime victims' needs, pointing at particular aspects to be taken into account for these victims to be:

- (1) enabled and encouraged to access justice, starting from reporting their experiences to competent institutions;
- (2) be offered effective protection, and
- (3) have access to adequate victim support services.

The Directive also establishes a number of general principles aimed at ensuring quality and sustainability and coordination, some of which bear particular importance in terms of meeting the needs of hate crime victims.



Having in mind the standards set by the existing EU legal framework, the **10 key guiding principles** compiled in this paper are intended to inform national authorities and practitioners over the implementation of such standards as regards the specific category of hate crime victims.

Positive national practices as well as **case studies** are referred to by way of example, to inform and prompt reflections on how to address some of the challenges which may be encountered in practice in the implementation of the principles identified.

⁵ For more information: http://ec.europa.eu/justice/criminal/victims/rights/index_en.htm

⁶ All except Denmark, in accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaties.

⁷ In particular, Directive 2011/99/EU on the European Protection Order (EPO), Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters, Directive 2004/80/EC relating to compensation to crime victims.

⁸ DG JUSTICE Guidance Document related to the transposition and implementation of Directive 2012/29/EU, available at http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

3. 10 KEY GUIDING PRINCIPLES

GENERAL PRINCIPLES

✓ *Ensuring quality, sustainability, coordination*

The quality of the services provided to hate crime victims in the areas of access to justice, protection and support relies greatly on the awareness and ability of national authorities and practitioners in contact with such victims to **recognise and treat hate crime victims in a respectful, sensitive, tailored, professional and non-discriminatory manner** (Article 1). In this context, the importance of ensuring **full respect of the principle of non-discrimination** in the enjoyment of victims' rights, which is expressly recognised by the Victims' Rights Directive, assumes particular relevance as regards hate crime victims, in terms of: ensuring that authorities and practitioners have a respectful and non-discriminatory attitude towards victims; taking into account all victims' personal characteristics, including the existence of intersectional and multiple grounds, to facilitate the enjoyment of victims' rights and better target protection and support measures; fulfilling the authorities' responsibility to ensure that there are no barriers or obstacles to the effective enjoyment of victims' rights.

Case study: Undocumented migrants victims of hate crime

The Victims Rights Directive expressly states that the rights set out therein shall apply to victims in a non-discriminatory manner, including with respect to their residence status. Limitations depending on the victim's residence status can pose significant challenges, for example, for undocumented migrants which may likely fall victims of racist and xenophobic crime. Such limitations may hamper access to justice both due to a lack of awareness of their rights and the unwillingness to report the crime due to the fear of approaching authorities, in particular the police, also because of possible punitive measures related to their status, especially where information sharing practices between law enforcement and immigration authorities exist. This affects in turn the possibility for them to enjoy protection and support. In this respect, ECRI has recommended that States "*establish safeguards ensuring that irregularly present migrants who are victims of crime are aware of their rights and are able to report to law enforcement authorities, testify in court and effectively access justice and remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement*" (General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination, Recommendation 33).

*In **Greece**, for example, a ministerial decision provides for residence permits to be issued - on humanitarian grounds - by the Minister of Interior to third country nationals who are victims or witnesses of racist offences; the permits are valid until the case is closed or a final court judgment is issued. Similar measures providing for residence permits on humanitarian grounds for hate crime victims exist at regional level in **Germany** (federal states of Berlin and of Brandenburg). In **the Netherlands**, a scheme was introduced allowing persons with no identification papers to report a crime to the police as a victim or witness without being arrested or prosecuted on the grounds of their irregular status.*

The obligation provided by the Victims' Rights Directive to ensure appropriate **general and specialist training of practitioners** (Article 25) should also be targeted, in particular as regards hate crime victims, to the need of **developing a professional, non-discriminatory and empathic approach**, to ensure that practitioners, and in particular police, prosecutors and judges, are able to recognise and acknowledge hate crime victims and to ensure that victims who come in contact with the authorities always

receive a fair and non-biased treatment.⁹ The effectiveness of such targeted training measures will normally depend on the existence of a broader strategy aimed at addressing structural issues of racism and intolerance, where they exist, within the authorities, including but not limited to frontline services, and at promoting diversity within authorities and institutions.

Increased coordination is also key. As reaffirmed in DG JUST Guidance on the Directive, **extensive national coordination among competent authorities and horizontal inter-agency cooperation** is generally important to facilitate the achievement of the Victims Rights Directive's objectives, which require a coherent and comprehensive approach combining legislative, administrative and practical measures. While the implementation of relevant standards is first and foremost the responsibility of law enforcement and criminal justice authorities, including police, public prosecution authorities and the courts, it also entails the active involvement of and cooperation with public bodies in charge of equality, non-discrimination, health and social welfare, as well as other relevant actors and in particular victims support organisations, including state and non-state actors, civil society and/or community based organisations. This can be facilitated through the creation of **multi-agency coordination entities**.

*In **Ireland**, for example, a Victims Services Group exists within the criminal justice system, including representatives of the judiciary and the Courts Service, the Criminal Injuries Compensation Tribunal, the Legal Aid Board, the Public Prosecution Service, the Probation Service, the Prison Service, the police, the Central Mental Hospital as well as relevant divisions and offices of the Department of Justice and Equality.*

Coordination and cooperation with non-state actors is particularly relevant as regards hate crime victims, considering the role of civil society and/or community based organisations not only in terms of delivering support services, but also in order to address underreporting and ensure effective access to justice. Initiatives such as the setting up of **frameworks of cooperation between civil society and/or community based organisations providing support hate crime victims and national authorities responsible for protection, investigation and other stages of the criminal justice process** should be further explored as they can allow for a more systematic and relationship-building approach to cooperation. These may include elements such as training, support in individual cases and data sharing on reported and recorded hate crimes.

*In **Luxembourg**, for example, the police established a stable working relationship with the Support Association for Migrant Workers (ASTI). In the **UK**, the civil society organisation Disability Equality North West created a partnership that includes the police, Crown Prosecution Service, local government officers and other civil society groups to increase the reporting and awareness of disability hate crime.*

Finally, in order to ensure sustainability, the impact of processes and tools should be regularly monitored through the **collection of data and statistics showing how victims have accessed their rights**, as required by the Victims Rights Directive (Article 28). In fulfilling their obligation to regularly communicate available data, Member States should, to the extent possible, provide specific data on different categories of vulnerable victims, including hate crime victims. Monitoring is key also to enable the authorities to uphold their **responsibility to proactively identify and remove any barriers** to hate crime victims' enjoyment of their rights and access to justice, protection and support. **Victimisation surveys** can also contribute to better assess victims' enjoyment of their rights, including by gathering information on underreporting, reasons for underreporting, as well as victims' experiences with the criminal justice system.

⁹ See also the High Level Group's paper "Hate crime training for law enforcement and criminal justice authorities: 10 key guiding principles", available at http://ec.europa.eu/newsroom/document.cfm?doc_id=43050

ENABLING AND ENCOURAGING ACCESS TO JUSTICE

✓ **Addressing actual or perceived barriers to reporting**

The widespread underreporting of hate crimes, demonstrated and documented by vast research¹⁰, has a significant impact not only on the level of awareness and prosecution of these crimes, but also on the number of victims accessing support services. Targeted measures should be in place to **encourage reporting of hate crimes**, taking into account the specific nature of this kind of victimisation.

An **effective and targeted implementation of the obligation to raise awareness about victims' rights**, provided for upon Member States in the Victims Rights' Directive (Article 26) would contribute to this objective.

As stated in the Directive, such an obligation may be fulfilled through information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, to raise awareness of the rights set out in the Directive, reduce the risk of victimisation, minimise the negative impact of crime and the risks of secondary and repeat victimisation, intimidation and retaliation. Research shows that professionals themselves believe that measures are needed to improve victims' awareness of their rights and of victim support services available to them as hate crime victims.¹¹ Targeted awareness raising campaigns should be carried out to that aim.

*In the **UK**, for example, the Police Service Northern Ireland, as part of a broader strategy to enabling and encouraging access to justice for hate crime victims, published and disseminated a booklet to raise awareness about local support services, which also includes information targeted to specific groups of victims and groups at risk. Similar information campaigns were recently developed in other Member States, such as **Denmark** and **Croatia**.*

In the design and rolling out of such campaigns, particular attention should be paid to the importance of **reaching out to vulnerable groups and marginalised or isolated communities** (for example, racial, ethnic and religious minorities, migrant communities, homeless people, persons with disabilities but also rural communities), which experience more barriers or simply have limited possibilities in terms of accessing justice and support. Campaigns should contribute to raising, at the same time, the awareness of the general public of the incidence and trends of criminal manifestations of hatred and intolerance.

Case study: Homeless people victims of hate crime

Hate crime targeting homeless people can often be ignored and thus remain invisible. The very low awareness of this phenomenon by the authorities, the general public and the victims and potential victims themselves leads to very high underreporting and underrecording of these crimes, and can hamper victims' access to justice and the enjoyment of their rights. The lack of research and data is a key challenge, which in turns hampers the elaboration of effective measures.

This is an example where the development of evidence-based and targeted awareness raising measures could contribute making the issue more visible for victims and potential victims, the general public and the authorities, therefore prompting reflections on the necessary legal and/or policy responses.

¹⁰ See for example the findings of FRA surveys EU-MIDIS I and II, EU LGBTI survey, Survey on discrimination and hate crime against Jews in selected Member States I and II, and Violence Against Women survey – all accessible at <http://fra.europa.eu/en>

¹¹ See FRA report "Ensuring justice for hate crime victims: professional perspectives", available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

Awareness raising measures should also aim at **introducing vulnerable groups and individuals to the criminal process**, which many may not be familiar with.

*In **Finland**, for example, the police, the national victim service (Victim Support Finland) and the Finnish Red Cross took part in a project aimed at training members of minority communities to introduce them to the criminal process and raise awareness on services available to victims.*

Improving public authorities' relations with communities is equally crucial with a view to encourage reporting, given that underreporting of hate crimes, as research shows, is very often motivated by a lack of victims' trust in the authorities, including the fear that they would not treat them in a sympathetic manner and may share the discriminatory attitudes of offenders, and that court proceedings may expose victims to further discriminatory attitudes.¹² Training of competent authorities at all levels is, in this context, crucial, as it is more broadly any measure which contributes to build a **respectful and non-discriminatory institutional culture**, in particular in terms of attitudes of the authorities towards minorities. Targeted measures such as the setting up of **liaison or contact officers** within police that proactively reach out to local communities and victims may also be considered, as this can both improve cooperation between police and support services and boost victims' confidence that they will be understood and acknowledged.

*In **Ireland**, for example, a nationwide network of 240 Ethnic Liaison Officers as well as special LGBT Liaison Officers are appointed within the national police force, whose role includes working at front-line level to build trust with minority communities and to encourage ethnic minority individuals to come forward and report any form of crime, including hate crimes.*

Making available **schemes and tools to ensure easy and trustful reporting to the authorities** can also contribute to address underreporting. This can consist in the setting up of specific contact points (specialised entities/trained officials), third party and anonymous reporting tools, informal reporting mechanisms as well as online reporting mechanisms administrated directly by the police or by the prosecution services.

*In **the Netherlands**, for example, a special police helpline/reporting point was established for LGBTI hate crime or LGBTI-related issues, and a specialised local police network was created to protect and liaise with the LGBTI community in Amsterdam ("Pink in Blue"); in **Lithuania**, hate crime victims may directly contact specialised prosecutors; in **Italy**, the Observatory for Security Against Discriminatory Acts (OSCAD) has in place since 2010 an online reporting system through which victims, organisations and institutions can report incidents; while in **Greece**, a 24-hour police hotline that can be reached anonymously was established in Athens and Thessaloniki. In the **UK**, the police developed "True Vision", a web tool to advocate and facilitate, among others, the reporting of hate crime. This system inspired the creation of online reporting systems in other Member States.*

Other bodies such as **equality bodies or national human rights institutions** can also be tasked of managing reporting tools and liaise on that basis with the authorities.

*In **Italy**, for example, the National Office against Racial Discrimination (UNAR) established a reporting mechanism, which includes a website and a helpline; when incidents reported constitute a criminal offence, UNAR immediately reports them to the police.*

¹² See FRA report "Ensuring justice for hate crime victims: professional perspectives", available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

✓ **Facilitating participation in criminal proceedings**

The general obligation to **ensure that victims are offered certain minimum information about rights and procedures from their first contact with a competent authority**, as provided for in the Victims Rights' Directive (Article 4) recognises the important role of such authorities, in particular frontline police, as point of contact throughout the investigative process, to enable victims to access their rights.

Particular attention shall be paid first and foremost to the victim's **right to understand and to be understood** (Article 3 of the Victims Rights' Directive). Communications with hate crime victims shall take into account the personal characteristics of the victims and any obstacle which may affect the ability to understand or to be understood (language barriers, disability, etc), as well as their specific vulnerability. Having regard to the potential impact of the crime, consideration should also be made of the need to **allow the victim to be accompanied by a person of their choice in their contacts with competent authorities**, including during the police questioning.

The extent or detail of information may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. The fact that a victim has suffered from a bias motivated crime should be taken into account in this context, as the criminal justice process can be particularly intimidating and emotionally draining for hate crime victims.

The implementation of the obligation relating to the **victims' right to information about one's case** (Article 6) should also be declined taking into account that hate crimes are "message crimes" whose impact and consequences also affect the group or community to which the victim belongs or is perceived to belong.

*In **Poland**, for example, the Unit for European Migration Network and Combating Human Trafficking, which is part of the Migration Analyses and Policy Department within the Ministry of Interior, can receive notifications from hate crime victims who report a crime to the police, to gather information on the case and relating it to the victim. In **Spain**, a Service of Hate Crimes and Discrimination was established within the Prosecutor's Office in Barcelona, also in order to ensure a more direct access by victims to authorities during the investigation and prosecution phase. In **Ireland**, the 'Garda Bureau of Community Diversity and Integration' takes care of, among others, providing hate crime victims with information throughout the investigative process.*

Similarly, the **victim's rights in the event of a decision not to prosecute** as provided for in the Victims Rights' Directive (Article 11) assume specific relevance in the case of hate crime victims, given the existence of potential obstacles and difficulties in ensuring that the crime is prosecuted as a hate crime, i.e. the bias motivation is duly identified and investigated. The relevance and effective implementation of this right should be further explored as regards specifically hate crime victims, considering the different ways the bias motivation is taken into account in national criminal law provisions (i.e. existence of specific hate crime offences or sentencing provisions such as general or specific aggravating circumstances).

Ensuring the effectiveness of the **victim's rights to be heard** (Article 10 of the Directive) is equally important, also to give the victims the opportunity to provide evidence in particular as regards their perception and the impact of the crime, which bears a specific relevance in the case of hate crimes. Fostering a **victim-centred approach** can contribute to better addressing hate crime victims' needs and can be very beneficial to investigations to unmask the bias motivation of crimes, too.

*In the **UK**, for example, when a victim reports an incident to the police, they may ask him or her to if they want to write a 'victim personal statement' (VPS), which gives victims a chance to talk about the impact of the crime on them, physically, emotionally, psychologically, financially or in any other way. The VPS helps authorities to understand how a crime has affected the victim and is taken into account by the court when deciding upon an appropriate sentence, if a defendant is found guilty.*

✓ **Ensuring adequate redress and exploring the role of restorative justice services**

Redress should be targeted as much as possible in light of the nature and impact of the crime and the characteristics of the victim. This targeted approach is particularly relevant as regards hate crime victims.

Research shows that the **potential benefits of restorative justice measures to tackle hate crime offending** may be explored further, in particular in cases of less serious or minor crimes and where it may help tackle root causes and social tensions.¹³

Mediation and any other type of restorative justice should, however, be resorted to only if offered in a **coherent, consistent and competent manner** by practitioners with an in-depth understanding of the nature of hate crime, its impact on victims and how to respond effectively to the needs of victims. Referral to restorative justice services should, in any case, be subject to the **victim's informed consent** and based on a **case by case assessment**, subject to all necessary considerations in terms of victim's safety and interests, as well as the risk for the victim but also for those affiliated or perceived to be affiliated to the victim to be exposed to further victimisation, intimidation or retaliation as a result of the process, in each specific case.

PROVIDING EFFECTIVE PROTECTION TO VICTIMS AND THEIR FAMILY MEMBERS

The fact that a crime is committed with a bias or discriminatory motive is an important element to be taken into account when **identifying the necessary measures to protect victims and their family members** from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying, as required by the Victims Rights' Directive (Article 18). This is in particular because these crimes directly target the victim's personal characteristics, can often point at a specific relationship between the victims and the offender and are generally symptomatic of the particular social reality in which the crime was committed.

Case study: Victims of transphobic crime

Providing effective protection to hate crime victims is extremely challenging where there is very low awareness among authorities and the general population of what the victim's personal characteristics are and mean. This is particularly the case for transgender people. Even in the very few cases where transphobic crimes are reported, the lack of awareness and capacity on the part of the authorities, both within the police and the judiciary, to assess the victim's needs can significantly prevent effective measures from being taken to protect victims and their family members from secondary and repeat victimisation, intimidation, retaliation, and to protect their dignity. Targeted training of police, prosecutors and judges is crucial, and should ideally be accompanied by the development of specific guidelines or standards of care. This in turn implies efforts to significantly improve cooperation between trans community groups and civil society organisations and the authorities.

¹³ See for example Mark Austin Walters, "Hate Crime and Restorative Justice - Exploring Causes, Repairing Harms", Clarendon Studies in Criminology, 2014.

✓ **Ensuring timely and individual assessment to identify specific protection needs**

The Victims Rights' Directive expressly states that in the context of the individual assessment, **particular attention shall be paid to victims who have suffered a crime committed with a bias or discriminatory motive which could be related to their personal characteristics** (Article 22).

The assessment of protection needs and of whether and to what extent special protection measures are needed should be regular and, unless the victim wishes otherwise, include a psychological examination to assess the risk of emotional and psychological harm, also taking into account specificities related to the nature and type of victimisation suffered (such as, for example, in the case of sexual or domestic violence).

✓ **Ensuring protection from secondary victimisation and protecting the victim's dignity**

The standards set in the Victims Rights' Directive as regards **protection of victims during criminal investigations and interviews** (Article 20), **protection of the victim's privacy during criminal proceedings** (Article 21) and **special measures** which a victim may benefit from as a result of an individual assessment of specific protection needs during criminal proceedings (Article 23), are particularly relevant to guide the behaviour of criminal justice authorities during investigations and court proceedings in the case of hate crimes.

Specific attention should be paid to ensuring in particular that **hate crime victims are treated in a sensitive and professional manner and are not subject to intrusive and/or unnecessary questioning** which can expose them to secondary victimisation and emotional and psychological harm, or are exposed to prejudice which make them feel treated as potential offenders rather than victims. Access to **effective complaint mechanisms** which victims can refer to when they feel that law enforcement or criminal justice authorities have not respected their rights should be ensured.

In addition, measures should be in place to ensure that **hate crime victims' privacy, personal integrity and personal data are protected**, including by means of allowing a hearing to take place without the presence of the public and/or of measures encouraging the ethical conduct of media.

Case study: Roma victims of hate crime

Secondary victimisation and further harm to the victim's dignity during criminal proceedings is more likely to occur when victims belong to disadvantaged and vulnerable groups or minorities. This can be the case for Roma, in relation to whom prejudice, discrimination and manifestations of hatred may often be normalised, including within institutions and in the public sphere. Authorities may as a result often deny or minimize the seriousness of reported hate crimes, leading to further humiliation and preventing the application of protection measures, including special measures where needed. A lack of awareness and understanding of the consequences of marginalisation and exclusion such as poverty and illiteracy can exacerbate these behaviours in the authorities' contacts with the victims. This in turn can expose victims to secondary victimisation by third parties and the public during criminal proceedings. Targeted measure to address similar situations should be developed, including the appointment of trained frontline officers and specialised prosecutors units and the development of guidelines for the conduct of criminal proceedings. Their impact will however depend on genuine efforts to also improve the authorities' attitudes with a view to building a respectful and non-discriminatory institutional culture towards Roma.

✓ **Ensuring protection from repeated victimisation, retaliation, intimidation**

In the case of hate crimes, **protection measures to prevent and avoid further victimisation, retaliation and intimidation**, as provided for in the Victims Rights' Directive (Article 19 and, for victims regarded as having specific protection needs, Article 23) should take into account not only the type and nature of the crime, but also the victim's personal characteristics targeted by the crime and the particular social reality in which the crime was committed (social tensions, lack of acceptance, hostile environment, social impact of the crime, etc).

These elements could point at the need of **specific safety and security needs** at court premises, at the victim's residence and in public.

*In **Croatia**, for example, a Protocol for Procedure in Hate Crime Cases was adopted by the government in 2011, which requires the police, among others, to take immediate measures and actions to protect the victim against repeated victimisation by the perpetrator.*

Incidents of violent hate crime can more generally be an important indicator of fissures in society, and might be an early warning of the **escalation of violence against the victim and the victim's group or community**, as well as **retaliatory attacks by the victim's group or community**, which should be addressed through preventative measures.

*In **Bulgaria**, exchanges between authorities and Roma leaders led to an agreement, among others, to ensure increased police protection and to create special "social police centres" to protect the Roma community from racist violence.*

ENSURING ADEQUATE SUPPORT SERVICES

✓ **Targeting support to hate crime victims' needs**

Victim support is crucial to the recovery of victims, their families and their communities. It can also influence the victims' decision to report the crime and their cooperation with police investigation and trial. The implementation of Member States' obligations under the Victims Rights' Directive as regards the **right to support from victim support services** (Article 9 of the Directive) shall, when it comes to hate crime victims, take into account the **particular nature of these crimes and the social reality in which they are committed** (social tensions, lack of acceptance, hostile environment, social impact of the crime, etc.).

These considerations should be reflected, first and foremost, in a **general needs' assessment**, looking at what actual and potential hate crime victims would expect and need from a support service before, during and for an appropriate time after criminal proceedings, in terms of, for example: attitude aspects; information and advice; emotional and psychological support, including long-term counselling to address post-victimisation impact; practical support: safety advice, personal safety equipment, shelters or safe and accessible alternative accommodation; flexibility and adaptation in accessibility (support at home, online, phone, face-to-face, etc.). Structural considerations may relate to the extent to which support should be delivered by **general or specialised support services**, and who would be best placed to deliver them (trained professionals, volunteers, peers, e.g. someone who also experienced hate

crime).¹⁴ **Evaluation** processes should be in place as regards the availability and provision of support services and the challenges met during delivery.

Ensuring adequate support services will, secondly, depend on the development of tools and processes allowing for an **individual approach aimed at tailoring support to the specific needs of the individual as hate crime victim**, which will vary greatly depending on a range of different situational factors and individual traits, including:

- the type of crime experienced or how often the victim has been targeted;
- the nature and severity of the crime;
- the relationship between victim and perpetrator(s);
- the victim's vulnerabilities, also taking into account intersectional and multiple grounds or characteristics which may render the victim particularly vulnerable (for example, the presence of health issues, or of mental and/or physical disabilities);
- the victim's social and economic position within society, and the wider social environment where the crime was committed, including the existence of support networks.

Case study: Persons with disabilities victims of hate crime

Fulfilling the responsibility to adequately meet support needs of persons with disabilities victims of hate crime requires genuine efforts by the authorities and by victim support services to balance the provision of targeted assistance – in terms of accessibility needs, tailored support and protection, including from the high risk of repeat victimisation – with the importance of promoting confidence and avoid imposing a sense of further control over people's lives. This implies a profound awareness of the complexity surrounding the notion of vulnerability and the understanding of key aspects of disability in those providing support services, which only trained professionals can offer. The direct involvement of organisations of persons with disabilities and their cooperation with the authorities plays a crucial role in this context. The adequacy of support also depends on the existence of broader and structured care policies supporting people with disabilities to overcome powerlessness, passivity and dependency, and awareness raising initiatives challenging disablist attitudes within society.

✓ **Facilitating effective access to support services**

While it is an obligation under the Victims Rights Directive to ensure that victims and their family members, in accordance with their needs, have **access to free of charge confidential general and specialist victim support services** (Article 8), FRA research shows that Member States are less advanced in the field of support for hate crime victims in comparison to other categories of crimes.

The fragmented and patchy nature of appropriate support services available to hate crime victims, often provided by small organisations covering limited topical and geographical areas, emerges as a factor significantly impeding victims' access to justice.¹⁵ Such fragmented approach can be prevented by supporting the creation of **coordinated support structures or networks**.

¹⁴ FRA research identified some promising practices in its report "Victims of crime in the EU: the extent and nature of support for victims", available at <http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims>

¹⁵ FRA report "Victims of crime in the EU: the extent and nature of support for victims", cited above.

*In **Germany**, for example, a support structure for hate crime victims was progressively developed since 2000, leading in 2015 to an agreement between the federal government and local governments to build up specialized hate crime victim support centers in every federal state, as part of a broader nationwide programme for the development of a regional advice network of "Federal State Democracy Centres".*

As hate crime victims may present specific needs making targeted and integrated support necessary, **coordination mechanisms between general and specialised support services** can help avoid duplications and ensure effectiveness, while allowing victims to be able to access different forms of support from different organisations without feeling bombarded by different agencies and services, as this can be confusing and overwhelming. Mapping existing services, as well as increased cooperation in the form of agreements, networks and/or cross-referral arrangements, including targeted at specific categories (e.g. for migrants/reception centres; for transgender/health services; for persons with disabilities/social or care services; etc.) can play a crucial role.

*In **France**, the Ministry of Interior and the International League against Racism and Antisemitism (LICRA) signed a convention which aims, among others, to increase the number of referrals to victim support services. In **Germany**, regional professional counselling services working with victims of right wing, racist and Antisemitic violence formed, with the support of the federal government, an umbrella coalition ("German Association of Support services for victims of right-wing, racist and antisemitic violence" (VBRG)) to coordinate their work, establish common standards, share good practices and represent their interests at national level.*

Research also shows that very low numbers of hate crime victims access support services. The **obligation to facilitate the referral of victims** by the competent authority that received the complaint and by other relevant entities to victim support services, is therefore particularly relevant in the case of hate crime victims. Referral mechanisms, but also protocols and other arrangements, within and between police and/or other relevant entities (hospitals, schools, embassies, consulates, welfare or employment services) can contribute, with the consent of the victim, facilitating access to support services, at the first contact with the victim, at the moment of the reporting and/or at a later date. These mechanisms shall take due account of the obligation to ensure that access to any victim support services is **not dependent on a victim making a formal complaint to a competent authority**, which is particularly relevant for hate crime victims given the high underreporting rates.

✓ **Ensuring sustainability of civil society and/or community based organisations providing support**

Current practices show that victims support for hate crime victims is provided mainly by civil society and/or community based organisations working on a voluntary basis.

While support services provided by these organisations can offer invaluable, tailored support, including emotional, advocacy and practical support, the **limited financial or other required resources** often represent a barrier to the provision of quality support services. Ways to ensure the allocation of adequate resources so as to guarantee the sustainability of these organisations should therefore be explored, including the **establishment of partnerships**, the **conclusion of formal service agreements**, or the **establishment of national funds**.

*In **Finland**, for example, the main national victims support organisation, Victim Support Finland (RIKU) is based on a cooperation agreement and is almost entirely funded by the Ministry of Justice.*