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The crucial role of intersectional and victim-centred approaches to confronting bias-motivated violence.

TRANSNATIONAL REPORT

CounterHate
Improving the assistance of victims of hate crimes
through a victim-centered and intersectional approach



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2023



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CounterHate

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INDEX

INTRODUCTION 5

CHAPTER 1 6

Hate crime in Europe: legal framework and national implementation

- 1. European framework against hate crimes**
- 2. Legal framework on hate crimes at national level**
 - 2.1. Legal framework on non-discrimination
 - 2.2. Legal framework on hate crimes
 - 2.3. Is further legal development needed?
- 3. Victims' rights: Implementation of the Directive 29/2012/EU**

CHAPTER 2 15

Hate crime from a victim-centred approach

- 1. Challenges concerning statistics and data on hate crimes' victims**
- 2. The complexity of the delineation of the most vulnerable groups**
- 3. Intersectionality as a crucial factor of victimisation**
- 4. The harmful effect of hate-based violence on victims**

CHAPTER 3 23

Victim care in the context of hate crimes

- 1. Outstanding needs of victims of hate crimes**
 - 1.4. Listening and personalised reception
 - 1.5. Reliable and understandable information
 - 1.6. Psychological support
 - 1.7. Legal assistance
- 2. Support services and available assistance**
 - 2.1. The prominence of Civil Society Organisations (CSOs)
 - 2.2. Horizontal cooperation between CSOs
 - 2.3. Improving cooperation between the public and private sector

CHAPTER 4 31

Judicial mechanisms for countering hate crimes

- 1. Judicial conflict resolution from a victim centred-approach**
 - 1.1. Key issues on reporting procedures and initial support
 - 1.2. The victim as part of the judicial proceedings
 - 1.3. Measures to combat revictimisation
- 2. Restorative justice and hate crimes**
- 3. Major training topics for practitioners in the context of hate crimes**

CONCLUSIONS 38

INTRODUCTION

Hate crimes are a growing phenomenon in our plural societies. Despite the fact that European countries are evolving towards greater integration of minority groups, they are still affected by criminal behaviour based on prejudice. Migrants, people with disabilities, members of religious minorities, LGBTQIA+ community, Roma people are currently some of the collectives at risk of being identified as targets of hate crimes. Underreporting accompanies this phenomenon, as well as the lack of identification of the hate motives underlying these crimes. In addition, victims of hate crimes often feel alone and subjected to institutional discrimination that discourages them from claiming their rights before public authorities.

Discriminatory violence severely affects the social and personal sphere of victims, and is often intensified by the intersectionality that accompanies many of these people. Thus, overlapping vulnerability factors result in further victimisation and added difficulties in coping with discrimination. Given this situation, a review of legislative measures and victim support policies is needed, taking into account the particular vulnerability of hate crime victims, in order to put the affected persons and their needs at the centre of the jurisdictional and assistance policies of each country. As an added value, an intersectional approach to victims is also crucial to adequately understand their needs and its effective satisfaction.

The following pages present the results of the comparative analysis of the national reports¹ developed in the framework of the project “*COUNTER.HATE: Improving the assistance of victims of hate crimes through a victim-centred and intersectional approach*”, which covers the current state of play in the six participating countries: Spain, Slovenia, Greece, Hungary, Italy and Lithuania. The national reports which constitute the basis of this comparative transnational report were developed after a deep research carried out during the first 8 months of the project. Following the phase of desk research, qualitative and quantitative data-collection (through in-depth interviews and an online survey) was conducted in all participating countries to analyse the experiences and opinions of victims and key professionals. This target group of professionals included public security and justice practitioners (prosecutors, lawyers, judges, law enforcement authorities), anti-discrimination professionals (anti-discrimination public bodies and NGOs, human rights organisations), and professionals working on victims’ assistance.

The main priority of this project is to contribute to the effective and coherent application of EU criminal law in the rights of victims of crime, especially the effective application of the Victims’ Directive. Through the adoption of a victim-centred and intersectional approach, the project shares the objectives of the Directive considering the special vulnerability of hate crimes’ victims and addresses the art. 1 (which guarantees the provision of appropriate information, support, and protection to victims), the art. 8 and art. 9 regarding the assistance services, and the art. 10, which guarantees the right of the victim to be heard.

In the first chapter, the report contains the common normative context regarding discrimination, assistance of victims and major aspects related to the categorisation of hate crimes. Findings on the most vulnerable groups, profile of victims and the dominant social prejudices in the current European context can be found in the second chapter.

In the third chapter, the report focuses on the common challenges related to victim assistance. It summarises the predominant needs of victims according to the research carried out, and reflects the current state of victim’s support service structure, provided by both the public and private sectors. Finally, the fourth chapter analyses the progress and current disadvantages of criminal proceedings from a victim-centred approach². The report concludes with a series of final considerations that aim, without being exhaustive, to show a picture of possible future lines of improvement and action.

1 “*The crucial role of intersectional and victim-centred approaches to confronting bias-motivated violence*” (2023), Available at: <https://zenodo.org/record/7802736#.ZC2QMXZBzIU>

2 *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*

CHAPTER I



Hate crime in Europe: legal framework and national implementation

I. European framework against hate crimes

In order to address the phenomenon of hate crime in European society in general and, specifically, in the countries participating in the project “COUNTER.HATE: Improving the assistance of victims of hate crimes through a victim-centred and intersectional approach” it is essential to provide a correct understanding and delimitation of what we call hate crime. In this preliminary area of clarification of terms, some issues arise that are difficult to resolve, as the delimitation between hate crime and other non-criminal discriminatory conducts is neither easy nor peaceful. This difficulty arises from the important sociological and cultural connotation that underlies the phenomenon of discrimination and hate crimes, which requires a much broader and deeper approach than that which can be carried out strictly from the perspective of criminal law. What is currently known as hate crime falls within the context of discriminatory bias-motivated conduct and is defined by the OSCE as follows:

“Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people, which comprise two elements: a criminal offence and a bias motivation”¹.

Thus, although hatred as a human feeling could be present at the basis of many crimes, not all criminal acts committed against a person fall within the definition of hate crimes, but those that are rooted in the phenomenon of intolerance and rejection of certain persons or communities on the basis of their personal conditions. These conditions have given rise to various grounds of potential discrimination such as race, nationality, religion, ideology, sex, functional diversity or disability and, more recently, sexual orientation, gender identity and sexual characteristics.

The vagueness and subjective connotation of the concept of hatred, as well as the enormous variety of conducts in which it can manifest itself, has meant that, until now, hate crimes have not explicitly existed in the national criminal systems analysed in this project under the specific title “hate crimes”, although they are foreseen in the penal codes under other pertinent titles. Regarding the European legislation, it also refers to them from the more general field of discrimination. This explicit absence of hate crimes in Criminal Codes does not prevent the essential legal goods, such as social tolerance, freedom and equality, from being provided for and protected by both European and national legislation and case law. Starting with the European Convention on Human rights, article 14 prohibits discrimination and states that:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

On the other hand, Additional Protocol No. 12 to the ECHR, adopted in 2000, was able to put an end to an interpretative deficit concerning the aforementioned principle of equality of Art. 14 ECHR, which did not recognise the right to equality before the law, but merely prohibited discrimination in the exercise of the specific rights recognised in the Convention². As a welcome addition, article 1 of this Additional Protocol sets out the general prohibition of discrimination:

“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

At a more specific level, the European Union has established new bodies such as the European Union Agency for Fundamental Rights (FRA) and the European Institute for Gender Equality (EIGE), which have accompanied developments to promote fundamental rights and equality. Anti-discrimination

1 [Home | HCRW \(osce.org\)](https://www.osce.org/hcrw)

2 *Explanatory Report to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, European Treaty Series, no. 177, p.1.*

directives have been also developed, such as the Employment Equality Directive (2000/78/EC)³, the Racial Equality Directive (2000/43/EC)⁴, the Gender Goods and Services Directive (2004/113/EC)⁵, and the so-called Gender Equality Directive (2006/54/EC)⁶. When discrimination reaches the criminal sphere through criminal actions such as hate speech, attacks on property, physical integrity, threats, abuse, harassment, or even murder, these offences require a specific criminal response⁷. As already mentioned, hate crimes as such are not included as a category in their own right and in a uniform manner in the criminal legislation of the countries participating in this project. In a comparative approach, it can be seen that its provision is limited and adjusted to the terms established by the European Council, in the Framework Decision of the European Council of 28 November 2008⁸. These guidelines take the form of two state-level provisions⁹:

1. The provision of hate speech as a specific offence.
2. The provision of a criminal aggravating circumstance on discriminatory grounds.

The above-mentioned Framework Decision does not explicitly incorporate disabilities, sexual orientation, gender identity and sex characteristics as grounds on which discrimination may take place. In this regard, as the *Handbook on European Discrimination Law* points out¹⁰, “the only EU legal instrument that currently protects lesbian, gay, bisexual, transgender and intersex (LGBTI) victims of hate crime is the EU’s Victims’ Rights Directive”¹¹. Indeed, in its recital no. 9, the Framework Decision states that “Hatred should be understood as referring to hatred based on race, colour, religion, descent or national or ethnic origin”. However, such a limited definition does not mean that the above-mentioned grounds are not foreseen in an overall interpretation of the European anti-discrimination corpus. Moreover, under the ECHR, the prohibition of discrimination entails an obligation to combat crimes motivated by racism, xenophobia, religious intolerance or by a person’s disability, sexual orientation or gender identity¹². On

3 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000.

4 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000.

5 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004.

6 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006.

7 European Parliament resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime (2013/2543(RSP)).

8 Council Framework Decision 2008/913/JHA of 28 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, 6.12.2008, p. 55.

9 Guidance Note on the Practical Application of Council Framework Decision 2008/913/Jha on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, (2018) p.3.

10 European Union Agency for Fundamental Rights and Council of Europe (FRA), *Handbook on European non-discrimination law*, (Luxembourg: Publications Office of the European Union, 2018), p. 82.

11 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.

12 Numerous decisions of the European Court of Human Rights (ECtHR) in Strasbourg have held that Article 14 covers disability and indeed other health conditions, within the words “or other status”. See *G. L. v. Italy*, ECtHR, 2020, *Kiyutin v. Russia*, ECtHR, 2011 and *Glor v. Switzerland*, ECtHR, 2009, among others. The Court has also repeatedly included sexual orientation and gender identity among the “other grounds” protected under Article 14. See *A.M. and Others v. Russia*, 2021,

the other hand, recital no. 10 of the Framework Decision of 2008 itself states that:

“(10) This Framework Decision does not prevent a Member State from adopting provisions in national law which extend Article 1(1)(c) and (d) to crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.”

It is therefore recognised that the Decision leaves open the possibility for European states to incorporate any other grounds they deem appropriate. However, it is worth noting that the ambiguity and lack of specific mention of these grounds depending on the European legal instrument is one of the reasons why the motives for discrimination covered by the legislation of the different countries are not homogeneous, and why in some countries certain groups, such as transgender people, are still excluded from a more active protection and a more specific response to the phenomenon of hate.

2. Legal framework on hate crimes at national level

2.1. Legal framework on non-discrimination

Currently, all EU member states have in their constitutions the right to equality and, consequently, a general prohibition of discrimination on grounds such as race, nationality, religion or personal convictions in the broad sense. Therefore, the countries participating in this study declare at the constitutional level that all persons on their national territory are equal and cannot be discriminated against¹³. Although the concrete formulation of the grounds for discrimination may vary from one country to another, all countries also recognise at the interpretative and jurisprudential level that the grounds listed do not constitute a *numerus clausus* and should therefore be interpreted broadly, in order to protect the equality of all persons regardless of their specific personal conditions¹⁴.

As far as national legislation is concerned, countries have transposed the European Equality and Anti-Discrimination Directives into their legislation¹⁵ and, albeit somewhat later than the agreed deadlines, broader legal instruments have also been adopted for their implementation and development. In this regard, Slovenia's anti-discrimination legislation is noteworthy¹⁶, which includes, as the main Law, the 2016 Protection Against Discrimination Act (PADA)¹⁷, along with other laws such as the 2013 Employment Relationship Act¹⁸, the 2004 Vocational Rehabilitation and Employment of Disabled Persons Act¹⁹, the 2010 Act on Equal Opportunities for Persons with Disabilities²⁰, and the Freedom of

Fretté v. France, 2002 and Salgueiro da Silva Mouta v. Portugal, 1999, among others.

13 Art. 3 of the Italian Constitution, art. 14 of the Spanish Constitution, art. 5§2 of the Greek Constitution, art. 14 of the Slovenian Constitution, art. 29 of the Constitution of the Republic of Lithuania, art. XV of the Fundamental Law of Hungary.

14 As an example, the Spanish Constitutional Court have stipulated that discrimination on the grounds of sexual orientation and gender identity represent an infringement of article 14 (principle of non-discrimination). Also, Slovenian Constitution, in its article 14 indicates that the list of personal grounds is open-ended, using the closing words “or any other personal circumstance”.

15 Directives 2000/78/EC, 2000/43/EC, 2004/113/EC and 2006/54/EC.

16 Slovenian National Report, in “The crucial role of intersectional... (2023), ob. cit., p. 107.

17 Protection Against Discrimination Act (*Zakon o varstvu pred diskriminacijo*), 21 April 2016, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273>.

18 Employment Relationship Act (*Zakon o delovnih razmerjih*), 5 March 2013, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944>.

19 Vocational Rehabilitation and Employment of Disabled Persons Act, 21 May 2004, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841>.

20 Act on Equal Opportunities for Persons with Disabilities (*Zakon o izenačevanju možnosti invalidov*), 16 November 2010, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZA->

Religion Act²¹. In Spain, the legal framework for fighting discrimination was reinforced in July of 2022 with the Equal Treatment and Non-Discrimination Act, for better implementation of the EU Directives 2000/43/EC and 2000/78/EC. As highlighted in the Counter-Hate Spanish National report²², this new Act introduces the concepts of “multiple discrimination” and “intersectional discrimination”, even though none measures for practical address of this intersectionality are subsequently foreseen.

Greece has also incorporated the four abovementioned anti-discrimination directives by laws 4443/2016, 3769/2009, 3896/2010, and 4097/2012. For its part, Italy has progressively adopted legal instruments to develop the constitutional anti-discrimination mandate and to transpose European Anti-discrimination Law²³. The key legislative Italian provisions are Legislative Decree 215/2003 and Legislative Decree 216/2003, enacted by the Government in 2003 in order to implement Directives 2000/43/EC and 2000/78/EC²⁴. However, in the Italian case, the heterogeneity in the provision of the grounds of discrimination are noteworthy, which has led to the recent controversy over the incorporation of the grounds of disability, sexual orientation and gender identity in all legal instruments of anti-discrimination law, a controversy that has not yet been resolved at a political level²⁵.

2.2. Legal framework on hate crimes

Focusing on the field of criminal law, to which hate crimes belong, European national legislations have been updated in accordance with the lines of Framework Decision 2008/913/JHA of 28 November 2008, which imposed the need to the criminalisation of certain forms of hate speech and hate crimes. The precepts of the Penal Code relating to the criminalisation of acts of incitement to hatred and violence against minorities and specially protected groups, as well as the aggravating circumstance of discrimination generally applicable to the commission of criminal acts, have been identified in the six systems analysed.

a) Slovenia: discrimination is prohibited in the Criminal Code (CC-1)²⁶, in various articles regarding violations of the principle of equality (article 116, 131, 135a, 197, 198, 202 CC-1). These crimes are not defined as hate crimes, but link the punishability of the described unlawful conduct to the violation of equality and the discriminatory motivation behind it. On the other hand, article 297 CC-1 contains the description and punishability of hate speech, which incorporates a list of open-ended motives²⁷. Regarding the individualisation of the punishment, under article 49 paragraph 2 CC-1, courts have to take into consideration hate motive as a mandatory aggravating circumstance when determining the sentence²⁸. Also article 20 of the Slovenian Protection of Public Order Act imposes an aggravated

KO4342.

21 *Freedom of Religion Act (Zakon o verski svobodi)*, 2 February 2007, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4008>.

22 *Spanish National Report*, in “*The crucial role of intersectional... (2023)*”, *ob. cit.*, p. 147.

23 *Specially*, Legislative Decree no. 205/1993, known as “*Legge Mancino*”, Legislative Decree 215/2003 implementing Directive 2000/43/EC, Legislative Decree 216/2003 implementing Directive 2000/78/EC and Legislative Decree 286/1998, on *Immigration and the Status of Foreign Citizens*.

24 *Legislative Decree 215/2003 covers only racial and ethnic discrimination, while Legislative Decree 216/2003 concerns religion and belief, disability, age and sexual orientation.*

25 *All attempts to amend the legislation to extend the grounds of hate/discrimination have so far failed. The last attempt was made in 2021, but the proposed Bill that would expand current anti-discrimination laws to protect women, disabled people and members of the LGBTQ+ community did not achieve final approval from Senate.*

26 *Criminal Code (Kazenski zakonik; KZ-1)*, 20 May 2008, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050>.

27 *Article 297 (1), Slovenian Criminal Code: “Whoever publicly provokes or stirs up ethnic, racial, religious or other hatred, strife or intolerance, or provokes any other inequality on the basis of physical or mental deficiencies or sexual orientation, shall be punished by imprisonment of up to two years.”*

28 *Measure introduced by a proposal for an amendment to the Slovenian Criminal Code adopted*

penalty for certain acts envisaged in the Act when “*they are committed with the intention of inciting national, racial, sexual, ethnic, religious, political, or sexual-orientation based intolerance*”.

b) Greece: the legal provision concerning the notion that is internationally known as hate crime is article 82A of the Penal Code, which defines it as a “*crime with racist characteristics*”. This article actually establishes the biased motivation of the crime as an aggravating circumstance. For the application of this aggravating circumstance, the key element is that the victim “*was selected on the basis of their race, colour, national or ethnic origin, genealogical descent, religion, disability, sexual orientation, gender identity or sex characteristics*”. In addition, hate speech is also foreseen as a crime by means of the law 4285/2014²⁹, which incriminates the “*public incitement of hatred or violence*”, which was an amendment of Law 927/1979 (A 139) in order to adapt Greek legislation to the above-mentioned Decision 2008/913/JHA.

c) Spain: neither the Spanish Criminal Code explicitly mention the category “hate crime”, but some of its provisions references to discrimination, such as articles 134, 512, 170.1 and 173 of the Criminal Code (CC)³⁰. In a more general way, the aggravating circumstance applicable to bias crimes and discrimination is referred to in the article 22.4 CC. Regarding hate speech, the article of reference is art. 510 CC, amended in 2015 in order to include the incitement of hatred to certain protected groups. This article not only punishes hate speech and incitement to discrimination, but also some violent conducts consisting in damaging the dignity of persons belonging to these protected collectives³¹.

d) Italy: Legislative Decree no. 21/2018 introduced a new section (Section I-bis “Crimes Against Equality”) in the part of the Penal Code dealing with “Crimes Against the Person”, and more specifically, in the sub-section concerning “Crimes Against Individual Liberty”. This new section consists of two articles: 604-bis and 604-ter. The substantive provisions introduced by article 604-bis punish behaviours that refer mainly to hate speech, even though no reference is made to sexual orientation and gender identity. As in the case of other countries, an aggravating circumstance is provided for in art. 604-ter which imposes a general penalty enhancement for every crime motivated by hate or by a discriminatory intent which again only apply to discrimination and hate motivated by bias on the grounds of race, ethnicity, nationality, or religion, with no mention neither to the ground of disability.

e) Lithuania: Hate speech in the Criminal Code of the Republic of Lithuania (CC) can be punished under article 170 CC, which condemns the incitement of hatred in different ways, and cover ridicule, expression of contempt, incitement of discrimination and hatred, violence and physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, beliefs or opinions. Not only hate speech is covered by the Criminal Code, but it also references certain criminal actions based on discrimination of hatred, committed, for example, for racist, nationalist or religious reasons³². It also must be noted that the motive of hatred and prejudice may not always be qualified as a criminal offense by itself but may constitute, in most cases, an aggravating circumstance³³ or a qualifying characteristic of criminal acts³⁴.

f) Hungary: following the aforementioned tendencies, Hungarian criminal law does not refer to “hate crimes” or “hate speech” *per se*, nor is there a specific crime for bias motivated discrimination³⁵. The Criminal Code, however, does define and punish bias-motivated criminal acts against national, ethnic, racial or religious groups, or of a certain societal group, with explicitly mentioning the grounds of

in November 2022.

29 Government Gazette A/191/10.09.2014.

30 Aguilar, M.A, (2015), *Manual práctico para la investigación y enjuiciamiento de delitos de odio y discriminación*. Barcelona: Centre d’Estudis Jurídics i Formació Especialitzada, Generalitat de Catalunya.

31 Art. 510.2 Spanish Criminal Code: “a) Those who harm the dignity of persons through actions that entail humiliation, disregard or discredit of any of the groups outlined in the preceding Section, or of a part thereof, or against a certain person for belonging to such a group”.

32 Articles 99, 169, 1701, 171, 312 CC of the Republic of Lithuania.

33 Article 60 (1) (12) CC of the Republic of Lithuania.

34 Articles 129 (2) (13); 135 (2)(13); 138 (2)(13).

35 Hungarian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 178.

disability, gender identity and sexual orientation. Also in this criminal system, it is necessary to make a distinction between acts in which the discriminatory motivation is intrinsic to the crime itself and therefore an essential element of it (*sui generis* acts related to hate crimes³⁶), and criminal acts listing malicious motive as a qualifying circumstance and which take into account, albeit only as an aggravating circumstance, discriminatory or hateful motives, called “*malicious motive*”³⁷.

2.3. Is further legal development needed?

It can be concluded that it is difficult, in the current state of European criminal law, to clearly discern which specific criminal conducts are those to which we refer when we speak of hate crimes, as they are not explicitly foreseen as such. Hate speech, due to its nature as a concrete conduct of incitement to hatred through specific acts, has been susceptible to be included as a separated category in all legal systems, and therefore identifiable and punishable as a crime in itself, as well as some other specific conducts related to violence against minority groups. On the contrary, the nature of hatred or discriminatory motivations as an internal element of the aggressor allows its presence in a wide variety of other unlawful conduct, as a motivation for the commission of a crime which uses the violence as an expression of the hatred itself. For this reason, the resistance and technical difficulty that states face in incorporating new criminal conducts based on hate motivation is understandable, as most of these conducts are already covered by the Criminal Code as common crimes.

As a consequence of the above, the introduction of new hate crimes could be reiterative in the criminal sphere, generating duplication and even more interpretative and evidentiary difficulties. If these new hate crimes were to be created, the key to their identification as opposed to ordinary crimes would be based on the discernment of the presence of the discriminatory motive. However, this discernment is precisely the difficult task that legal operators, essentially prosecutors and judges, are carrying out today in order to identify and apply the aggravating circumstances foreseen for hate or discrimination, a task that is still carried out in a superficial and insufficient manner³⁸. As a consequence, it is likely that the introduction of new offences, without an implementation of a thorough training programme, would not solve the current problem. Therefore, the current common solution in the comparative context is not the development of further legislative material, which is abundant, but the improvement of the implementation of existing anti-discrimination laws, and thus the improvement of the identification and implementation of all provisions on violence against minorities contained in the European Criminal Codes. It is the lack of training of law enforcement bodies in the correct identification of discriminatory and hate motives, as well as the lack of homogeneous judicial criteria for the application of hate crimes and their aggravating factors, which generates an under-categorisation and a subsequent under-sentencing of these crimes once these incidents have been reported.

36 Arts. 216 CC (violence against a member of a community) and 332 CC (incitement against a community). For a more extended insight, see Hungarian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, pp. 178-180.

37 Sections 160, 164, 194, 226, 304, 449 of Hungarian Criminal Code.

38 As declared by an Italian judge working on the field of vulnerable victims, “the assessment, verification and effective application of discriminatory aggravating circumstances is a very complicated task, which is often superficially assessed or simply overlooked by judges and prosecutors. Much more training and research is still needed to promote and to standardise this task within the judicial activity”. Italian National Report, (Interview with P11), in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 57

3. Victims' rights: Implementation of the Directive 29/2012/EU

The so-called Victims' Directive³⁹, has been an important step forward in raising the standards of protection and assistance to victims of crime in Europe, as it has promoted the development of legislative improvements, mainly at the level of criminal procedure, from a victim-centred approach. From the analysis of the legislative changes and improvements that this Directive has brought about in the European legal systems referred to in this report, three of them are common and particularly noteworthy:

1) Broadening of the definition of victim⁴⁰, which also includes some members of the family of the victim who died as a result of the offence⁴¹.

2) Extending the status of victim⁴², that it is not limited to some specific types of criminal offences and includes, thus, the whole span of victimisation forms (physical, mental, emotional harm and economic loss caused by a criminal offense), regardless of whether a prosecution has been previously duly initiated⁴³. In the phenomenon of hate crime, the reluctance of the victims to prompt recourse to the judicial proceedings is a very common and widespread attitude. It is therefore essential that people who have suffered from this type of crime can benefit from the rights and assistance they require and can be redirected to support services once the authorities or other public servants become aware of the criminal act, regardless of the existence of a formal complaint, the actual criminal prosecution of the crime and the subsequent eventual conviction.

3) The incorporation of the concept of "victim with special protection needs"⁴⁴ and which prompts greater action by the authorities to ensure the avoidance of secondary victimisation⁴⁵. Victims of hate crimes can be considered as falling under the provision of article 22 of the Directive, which states the need to carry out an individual assessment of the victims in order to determine their specific needs and, where appropriate, to assign them the prerogatives applicable to particularly vulnerable victims. Specifically, in this individual assessment of the victims, the Directive establishes the need to pay special attention to certain criteria, specifying that individual assessments "should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime or a bias crime or a crime committed with a discriminatory motive"⁴⁶. This, therefore, does not imply the automatic application to these victims of the rights granted to victims with special protection needs, but recognises the potential vulnerability of these victims. As will be seen below, such an assessment is essential for victims of hate crimes, especially when it comes to multiple discrimination arising from the presence of intersectional factors.

The results of this research and its comparative study make it possible to highlight two areas for improving

39 Directive 2012/29/EU 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.

40 Art. 2.1 (a) of the Directive.

41 Slovenian National Report, in "The crucial role of intersectional..." (2023), *ob. cit.*, p. 109. In Slovenia the amendment extending the definitions of a victim was adopted through The Act amending the Criminal procedure (Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku, ZKP-N), adopted in 2019.

42 Art. 3.1 of the Directive establishes the application of victim's rights since the first contact with authorities.

43 Greek National Report, in "The crucial role of intersectional..." (2023), *ob. cit.*, p. 15. Greece adopted the Directive by law 4478/2017 (articles 54-71) (Government Gazette A/91/23.06.2017).

44 Directive 2012/29/EU, Chapter 4.

45 Slovenian National Report highlights the impact of the Directive in including the definition of a victim with special protection needs in Slovenian procedural legislation (Art. 144 of CPA). In "The crucial role of intersectional..." (2023), *ob. cit.*, p. 109.

46 Recital no. 56 of the Directive 2012/29/EU.

the application of this Directive. Firstly, the transposition of the Directive has made it possible to verify that even today the criminal justice system does not include sufficient victim-centred perspective and most of the provisions on victims contained in the Codes of Criminal Procedure are focused on their role as parties to the proceedings, from a strictly technical procedural approach. Secondly, it should be noted that, despite the general satisfaction of practitioners and key professionals with the legislative framework, a shortfall in the practical implementation of the Directive's content has been detected in relation to the effective provision of assistance to victims, linked to the lack of a solid and coordinated structure of victim support services and a more concrete legislative development on their functioning. In this regard, the initiative carried out in Slovenia is noteworthy, which in addition to adapting its procedural code in terms of victims' rights, in 2019 developed the European requirements by means of the Social Assistance Act, which was amended to transpose the requirements set out in arts. 8 and 9 of the Victims' Directive⁴⁷. Although it is a general support service for victims and does not have a specialised application to hate crime, the development of legislation and policies in the social and welfare field is an initiative from which other countries can learn, as most legislative changes have been limited, as mentioned above, to the adaptation of some procedural aspects in relation to victims' participation in proceedings⁴⁸.

⁴⁷ *Social Assistance Act (Zakon o socialnem varstvu)*, 4 November 1992, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO869>.

⁴⁸ *This concrete legislative initiative has no parallel in the other countries participating in this project, which have transposed the Directive only at a procedural level.*

CHAPTER 2



Hate crime from a victim-centred approach

I. Challenges concerning statistics and data on hate crimes' victims

In the countries that belong to the consortium, there has been a notable difference between the actual violent incidents and the statistical data regarding hate crimes. It is widely believed that the discrimination experienced by those who were victimised is more severe than the complaints received. Underreporting of instances of discrimination and hate crime is therefore a persistent issue. It is worth mentioning that the complexity and sensitive nature of reporting a hate crime can make it difficult for victims to freely express their identity and personal conditions. This is especially true for those who identify as LGBT, as disclosing their identity may put them at risk. Along with this underreporting, the difficulty to obtain reliable statistics on the frequency and severity of these crimes is noteworthy.

In **Italy**, due to the lack of protocols and uniformity in the registration of biased violence, the data collected about hate crimes by the Observatory for Security against Acts of Discrimination (OSCAD) and sent annually to the ODIHR can be considered incomplete. Likewise, since there are no regulations or protocols that require police officers to record bias indicators, the actual recording and recognition of these can vary depending on the officer's personal sensitivity and knowledge. This issue is considered a serious problem since it can affect the quality of the investigation and the prosecution of hate crimes. Without the proper training, officers are more likely to miss key elements that can help them assess the victims' needs and identify the aggressor.

The Racist Violence Recording Network (RVRN) is the primary source of information about hate crime statistics in **Greece**. In 2021, the Network recorded 72 cases of bias-motivated violence. Out of the 72 recorded incidents, only one incident had been reported to the police, and one incident had been reported to the Greek Ombudsman, at the time they were recorded by RVRN, while 45 survivors noted that they would not proceed with their actions due to fear and bureaucratic issues. An observation that can be made by taking into account the RVRN's Annual Reports over time is that the majority of the attacks were made by groups of two to 10 people. The fact that the attacks are usually made by more than one person has as consequences: on the one hand that each perpetrator believes that has a smaller share of responsibility, and on the other hand that more serious harm is usually caused.

The official statistics of **Lithuania** show only recorded crimes, which include the number of criminal procedures that the country's law enforcers carry out. However, this doesn't take into account the actual number of hate crimes. For instance, hate crimes aren't reported in cases where the victims don't want to report the incident to the authorities. This could also be substantiated by the lack of strategic instruments directly to counter discrimination and its various forms. Factors that affect the classification and statistics of hate crimes in Lithuania are also contributing to the distorted picture of the country's hate crime rate. For instance, some hate crimes are regarded as violations of the public order, even though the motivation behind them is obvious. Also, the lack of reliable data regarding the online activities of hate speech has prevented the public from properly understanding the nature of these crimes. However, it must be noted that in 2020-2021 sexual orientation was a prevailing motive among the registered hate crime cases.

In **Slovenia**, it is not possible to collect data on hate crimes since there is no specific monitoring mechanism in place. The records of criminal activity are kept according to the Criminal Code, and there is no general condemnation of hate crimes. As a result, there are gaps in the availability of information and the perception of its scale. Although the Police can collect data on certain types of hate crimes, such as those motivated by racial or religious prejudice, they are not able to provide data on other bias-related offenses. In Slovenia, the State Prosecutor's Office only keeps a register of the offenses that were committed, and it does not record the motive for the crime. This means that no comprehensive data on the victims' personal circumstances is available. However, In July 2020 the State Prosecutor General issued an order stipulating that the relevant prosecutors' case files falling under the above-mentioned 'crimes with an element of hate' be additionally marked with a general label ("SOV").

In **Spain**, the Interior Ministry¹ issues a special report on hate crimes every year. Although the data

¹ The last available report can be consulted at:
<https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/delitos-de-odio/estadisticas/INFORME-EVOLUCION-DELITOS-DE-ODIO-VDEF.pdf>

collected is based on various factors, such as the type of offense, the victim, and the place where it occurred, intersectionality and discrimination are not included in the statistics. Furthermore, the report only reflects on the cases that were reported to the authorities, which means that it does not address the issue of under-reporting. In addition, the report only reflects the cases reported to the authorities, and therefore does not address the problem of under-reporting. Additionally, the National Office to Combat Hate Crimes (ONDOD in Spanish) of the Ministry of the Interior published, in 2021, the results of a survey carried out amongst 437 victims of hate crimes. Over the past five years, the number of hate crimes has increased significantly. According to the survey, 60% of respondents consider that hate crimes have increased in the last five years, while almost half of them are afraid of it. In addition, over 70% of the respondents have experienced some form of discrimination, and more than half have been the target of online threats or abuse. The most common types of discrimination that the respondents have experienced are sexual orientation, gender identity, and ideology. However, over 80% of them did not report the incident to the authorities.

In **Hungary**, the data on all criminal offenses, including hate crimes, are collected through the database ENYÜBS that is maintained by the country's prosecutors and police agencies. In 2018, two new fields were added to the database that allow the investigators to ask about the nature of the crime and whether it is a hate crime. These include a yes-or-no question regarding whether the offense is a hate crime and a yes-or-no question regarding the protected category. This feature is a significant improvement over the previous system, as it allows investigators to ask about the nature of the offense and whether it is a hate crime. However, it is still problematic since the authorities have no room for dispute if they deem the crime to be a hate crime. Moreover, the system only contains data on investigation and prosecution, but not on sentencing, for which a separate statistical system is in place that is significantly less detailed. Finally, while there is a public interface making ENYÜBS data available on the internet, the protected categories are not included in the data tables published, so the specific hate crime data is only available if a freedom of information request is submitted.

2. The complexity of the delineation of the most vulnerable groups

As research revealed, the determination of the social groups most often targeted by hate crimes can be difficult for several reasons:

- ✿ *Underreporting*: hate crimes can be underreported by victims, as they may fear further retaliation or not trust the authorities. This can lead to an underestimation of the frequency and severity of hate crimes against certain social groups.
- ✿ *Identification*: it can be difficult to identify whether a crime was motivated by hate or other reasons, as the motive for the crime is often not recorded or can be difficult to establish.
- ✿ *Definition*: the definition of a hate crime can vary from country to country and even within a country. For example, some jurisdictions may only include crimes based on race, while others may also include those based on religion, sexual orientation, or gender identity.
- ✿ *Awareness*: many victims of hate crimes may not be aware of reporting options or means of obtaining support, which can affect the representativeness of collected data.
- ✿ *Stereotypes*: biases and stereotypes can influence the perception of the frequency and severity of hate crimes against certain social groups, leading to an underestimation or overestimation of the same.

Due to the refugee and migrant influx in **Greece**, people on the move are more prone to experiencing hate crimes. This is an opinion endorsed by the majority of interviewees, who also noted that these people tend to avoid reporting these types of crimes due to various reasons. Some interviewees also claimed that Roma women were among the most vulnerable groups within the country. They are also hesitant at reporting hate crimes because they have different community values and modus operandi. Apart from the mentioned groups, LGBTQIA+ people are also identified as vulnerable. In contrast to

the above groups however, LGBTQIA+ people tend to report more often, because most of the time, these individuals come from Greece, they are aware of their rights and they are in contact with a Civil Society Organisation.

Over the past decade, the term “vulnerable subject” has been used in **Italy** to describe individuals who are considered to be at risk. This legislation provides a variety of protection measures for these individuals. The legislative study conducted by the researchers revealed though several weaknesses in the protection measures that are designed to help vulnerable individuals. These include the lack of a collaboration between the judicial and social assistance bodies to recognize the vulnerability of the individuals. Also, the lack of a specification regarding when and how these measures should be implemented. Due to the increasing relevance of the term “vulnerable subject” to the victims, it has been suggested that a more concrete protocol be developed to address the specific aspects of this condition. According to the legal experts interviewed, this declaration of vulnerability usually happens automatically in cases involving minors and victims of gender violence. Although the vulnerability of victims is often linked to criminal proceedings, it is also not limited to this area. According to the health care professional who was interviewed, this phenomenon is a complex issue that can be affected by various factors. Therefore, a case-by-case analysis is necessary to properly address the needs of the victims. Although being a migrant or woman can be considered a vulnerability, it does not automatically mean that they are vulnerable. They may have the necessary resources and personal conditions to live independently.

According to the research conducted in **Lithuania**, most cases of hate speech and discrimination are registered on the basis of race, sexual orientation, and nationality. This suggests that there are various groups in the country that are more prone to experiencing hate attacks. Although the results of the study support the findings of the interviews, it is important to note that more vulnerable groups were identified. These include people with disabilities, sexual orientation, and gender identity. Traditional family structures still have an impact on the behavior and attitudes of men and women. In Lithuania, there is a lack of formal measures to address the issue of prejudice and gender stereotypes. In addition, the existing paternal leave schemes are not able to address the gender equality gap or counter stereotypes. They perpetuate the idea that fathers are only helpers in childcare. Due to the lack of recognition of the rights of transgender individuals and people who do not fit into the traditional image of a heteronormative society, they are more prone to experiencing hate crime attacks. In addition, the implementation of the “Anti-Gay Propaganda” provision in the law is also contributing to the negative attitudes toward the LGBTI community.

Based on the desk, online and field research in **Slovenia**, the following groups were identified as the most vulnerable and most at risk of experiencing hate crime in Slovenia (not necessarily in this order): LGBTQIO+ (especially transgender persons), migrants and refugees (the darker the skin colour the worse the discrimination), veiled Muslim women, migrant women victims of (domestic/gender based/sexual) violence, and migrant women victims of trafficking, Roma (especially young girls who often face discrimination or violence also inside their community), homeless persons (especially women), persons with disabilities, sex workers (especially migrants, transgender, racialized minorities). Persons at the crossroads of various identified groups are even more at risk of experiencing hate crime or at least bias-motivated discrimination.

The research carried out in **Spain** shows that violence against certain social groups, such as LGBT and/or racialized people, is rooted in social structures that create hierarchies and inequalities. Thus, a structural reading must be carried out in order to understand that material and symbolic violence, beyond specific crimes, intersects the daily life of many people. Due to the existence of symbolic and structural violence, which are so anchored in our social unconscious that we no longer see it, it is difficult for people to recognize its existence and some subaltern individuals tend to internalize violence until they see it as normal or unavoidable. This lack of recognition and the belief that the institutions are responsible for the inequalities and oppressions that they see in their lives can lead to distrust of public agents. According to experts, the underreporting of hate crime is mainly due to the victims’ lack of confidence in the law enforcement and judicial authorities, as well as the fear of experiencing revictimisation.

According to reports and interviews, there are seven groups in **Hungary** that are most likely to be victims of hate crime. These include the Roma, Muslims, Jews, LGBTQI individuals, homeless people, and disabled people. It is hard for the Roma to get recognized as victims due to how the police often only

treat them as perpetrators. Moreover, their complaints and reports are frequently not taken seriously. Members of the LGBTQI community are likely to avoid reporting hate crimes due to their fears of having their sexual orientation and / or gender identity revealed which they often keep secret even from their family. Family rejection can also make it hard for LGBTQI victims to find support. Members of religious communities who express their religious affiliation in their dress and appearance are more likely to become victims of hate crimes. Most of the time, vandals attack Jewish cemeteries, synagogues, and Holocaust memorials. Some of these sites are in Budapest, and the state only provides security for a few of them. Being Jewish can be hard for older individuals or people with family trauma to talk about with the police. Many foreigners in Hungary avoid filing police reports due to their fears that their stay in the country might be in danger. This is especially true for those who are undocumented. The biggest issues that people encounter when reporting are language proficiency and cultural differences. The latency of hate crimes against people with disabilities is extremely high, especially those living in closed residential institutions cannot file a report and participate in the procedure.

3. Intersectionality as a crucial factor of victimisation

The concept of intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. It can help identify the vulnerability of individuals who are victims of these crimes and the specific needs of those who are affected. Although intersectionality isn't a determining factor when it comes to suffering discrimination, it can still generate heightened vulnerability situations. Through this research, the two main perspectives on intersectionality have been resulted:

- ✿ Factors that can contribute to the development of an abstract vulnerability are also taken into account. It is believed that intersectionality can lead to an increase in the isolation of victims and the vulnerability they have to experiencing different forms of violence. This vulnerability can be found in various aspects of a person's daily life. Having more risk factors in their system can make their social situation more complex.
- ✿ Although intersectionality does not create a single separated vulnerability, it can still contribute to the increasing number of victims who are affected by crime. This is because the lack of uniform regulations and the management of situations that are connected to each other can contribute to the increase of crime rates. One of the most important factors that people can consider when it comes to improving the care for their loved ones is the creation of a comprehensive strategy that takes into account all of their individual needs. This strategy should be able to identify the multiple risk factors that can affect them and their personal needs. Unfortunately, it is not feasible to implement this concept at the legislative level due to the theoretical nature of intersectionality.

In **Greece**, the potential diversity in victims' experience, as a result of intersectionality, has been overlooked. Intersecting elements of discrimination may not only increase the risk of victimisation and revictimisation, but also reduce a victim's likelihood of reporting their experiences. According to the research conducted, those elements can indeed exacerbate the impact of hate crimes on the victims. In fact, as it was found out they have a multiplying effect, which can lead to the development of more discrimination and vulnerability factors. As research pointed out, the more vulnerable the victims are, the harder it is for them to report the crimes they have endured.

In **Italy**, according to organisations that focus on the LGBTI+ community, the main vulnerabilities that individuals encounter when it comes to sexual orientation are their migrant and minority status. These factors can prevent them from fully understanding their rights. The increasing insecurity that victims feel when they are minors has been highlighted in the research. In terms of gender-based violence, it has been reported that although some victims can come from varying social backgrounds, the phenomenon is more common in women who have less education and economic independence. Being from a foreign

community can make foreign women more vulnerable to experiencing violence. This issue is also exacerbated by the different motives that influence these individuals. Racial prejudice is known to increase the risk of women being victimized by violence as it can add to their condition and make them more susceptible to attacks. Being from a foreign community can also make it harder for victims to turn to the authorities. According to workers in the fields of racist crimes, there is a fear that migrants will not report incidents to the authorities. This issue is most apparent when the victims are women. The intersection of skin color and gender is considered to be the most vulnerable.

In terms of understanding intersectionality, the research conducted in **Lithuania** revealed that most of the respondents had good general comprehension of the concept. They were able to name various applications of intersectionality, such as working with diverse communities. Most of the respondents to a survey said they understood the concept of intersectionality, but they didn't know if it was applied to their organisations. They also didn't provide examples of how it was done. According to some professionals, intersectionality can be linked to the profiles of perpetrators. They noted that those from high-risk backgrounds tend to commit crimes due to various factors such as poverty and substance abuse. Most of the time, interviewed professionals state that people with multiple vulnerable characteristics are more prone to experiencing discrimination or hate crime. This could also affect their willingness to report the incident to the authorities.

In **Slovenia**, the professionals and victims of CSOs noted that intersectionality is a risk factor that can affect their work. On the other hand, the lawyers and public institution employees who have handled such cases said that discrimination or hate crime usually only occurs when a specific individual's personal ground is targeted. According to one of the interviewees, law enforcement officials do not pay much attention to the various discriminations that occur in judicial and police procedures. He also noted that discrimination is prevalent in his experience and that of others.

In **Spain**, most of the people interviewed experienced discrimination and/or intersectional violence. Most of the professionals who participated in this study are familiar with the concept of intersectionality and apply it to understand the variety and complexity of the situations of victims. They also believe that it is important for social organisations and authorities to take into account these intersections to ensure that they are able to provide the necessary support and assistance to victims. However, some experts believe that intersectionality's theoretical and practical application can be challenging to translate into policies and laws.

It is difficult to determine how prevalent intersectionality is in hate crimes in **Hungary**. Although most of the interviewees knew about intersectionality, a significant portion of them did not have a good understanding of it. According to experts, however, being part of more than one group is known to increase the likelihood that a person will become a hate crime victim. Intersectionality can make the impact of a crime more severe and re-victimizes the victim. The research also revealed that most of the time, race or ethnicity intersects with other protected classes, like sexual orientation. Factors such as gender, politics, and poverty can also contribute to the rise of hate crime cases. In some cases ethnicity (being Roma) intersected with belonging to a sexual or gender minority. Commonly, in these cases the perpetrators start with homophobic comments, and if the victim responds, they start making racist slurs too. In far-right ideologies, anti-gypsyism and homophobia are closely linked.

4. The harmful effect of hate-based violence on victims

Hate crimes have long-term and short-term consequences. Victims may experience psychological, economic, and physical damages. One of the most significant effects of hate crimes is psychological distress, as it can trigger feelings of fear and terror. The effects of hate crimes are different for different people. Besides the type of violence, other factors such as the victim's psychological and economic conditions are also taken into account to determine their needs.

In **Greece**, during a focus group, participants stated that they experienced terrifying scenarios for several days following the incident. According to the focus group members, the consequences further involved loss of profit, damage to premises and loss of work. Most interviewees stated that the most important needs of hate crime victims are access to medical assistance, legal support, and psychological counselling. They also said that finding employment and accommodation were their other major needs. Focus group participants also mentioned the need for public support, as well as self-care and identification of personal limits, in terms of promotion and exercise of their rights. As far as the satisfaction of victims' needs in Greece is concerned, psychological support is considered as the most easily accessible, whereas the services of accommodation, work and interpretation are the hardest to access. Furthermore, professionals who were interviewed reported that the services offered by NGOs -and thus the private sector- are considered more effective than those of the public sector.

According to the people interviewed in **Italy**, there are two main factors that need to be taken into account when it comes to providing victims with the necessary information and accompaniment. These are 1) ensuring that they have the necessary resources to make informed decisions and 2) guaranteeing that they are receiving the support they need. They noted that the information that is provided to victims through mass media is not as effective as it is when it is presented in a more personal manner, especially during the time leading up to the start of legal proceedings. Most of the victims who are reluctant to come forward usually take a step toward reporting their situation after meeting other people. They feel supported by individuals from various care services and anti-discrimination groups, and they know that they will receive the necessary help. The government should provide the necessary resources and support to help vulnerable individuals in Italy who are already supported by third-sector organisations. According to the representatives of various CSOs interviewed, these services are already operational and are able to provide the necessary assistance to victims. However, they noted that they are not able to effectively coordinate their resources and are not visible to the public. It is also important that the victims receive the necessary psychological support, which includes a variety of self-affirmation processes. These services can help them detect the signs of abuse and inform the authorities. According to the lawyers who were interviewed, the success of the victims in their legal battle depends on having the proper support and guidance. They also noted that having a lawyer who can guide them through the process can help prevent secondary victimisation. The importance of accompaniment and legal assistance has been acknowledged by the various groups that are working to help people with disabilities.

Even professionals in **Lithuania** are usually aware of the significance and impact of hate crime. It is a type of message crime that targets a person's identity and is more humiliating than theft. It should not be overlooked that victims of this type of crime need support. The respondents stated that the quality of services should be improved in order to help victims of hate crimes. They said that experiencing such crimes can be very unsettling and difficult to forget. Even though the victim try not to think about it, s/ he eventually realize that it was the person who was targeted.

Although there are similarities between victims of different types of crimes in **Slovenia**, those who suffer from hate crimes tend to be victimized in a different way than other people. This is because they are perceived to be different and are usually targeted for their identity. Most interviewees stated that the psychological effects of hate crimes are severe and have a lasting impact on their lives. It has a negative effect on victims' sense of security. Victims tend to avoid certain places and become more cautious when they're outside. Different strategies can be used to protect oneself from the effects of a hate crime. For instance, if a person is gay, they might hide their identity by living a double life. This type of behavior has negative effects on the mental health of the victim. After experiencing a hate crime, many victims and professionals stated that they need to be taken seriously. They also noted that they need psychological and psychiatric support. Many of them have experienced states of anxiety and paranoia that they had not expected. The fear of being alone and not being able to feel safe affects the reporting of crime. Very often, victims of hate crime or bias-motivated discrimination cannot afford the costs for the legal representative in the proceedings. Another need that was often mentioned was the need for more comprehensive and tailored information.

Many of the professionals who were interviewed in **Spain** said that the psychological effects of hate crime are one of the most important factors that need to be considered in order to help the victims get back on track. A psychologist noted that providing adequate support is also very important in order to help the victims feel better and make informed decisions regarding their actions. Having the psychological

support to help the victims get back on track is also very important in order to help them take legal action against their attackers. This is because, even though they may be capable of doing so, they may not be able to do so due to their lack of confidence. According to some professionals, it is additionally important to provide them with a space to talk about their experiences and the harm they have suffered. One of the most important factors that needs to be considered is the psychological effects of structural discrimination and violence, as it can often make victims feel guilty about their experience. This is because they may have internalized this as normal. Another important aspect of this is to empower the victims so that they can identify when they are suffering from this type of discrimination and violence. In addition, comprehensive information about the steps involved in reporting incidents and taking legal action is required. This will help counteract the various factors that can make it difficult for victims to do so.

According to the research in **Hungary**, many of the victims of hate crimes in Hungary experienced lasting effects. They said that they needed counseling and psychological support, but the State did not provide them with this type of assistance. Although victims may not require immediate assistance from the State, it is still up to them to decide on their own needs and the state cannot remain inactive. The legislation introduced an opt-out system that allows victims to refuse the sharing of their data with other support services. This system, in principle, automatically activates once they have no objection. Although the system was implemented in 2021, no professional interviewed said that it had changed the practice of failing to provide adequate and timely support to victims of hate crimes. The victims also confirmed the opinions of the interviewees, who noted that there was a lack of information about available support services.

CHAPTER 3



Victim care in the context of hate crimes

I. Outstanding needs of victims of hate crimes

The study carried out through interviews with professionals working in the field of hate crimes, as well as with the victims of these crimes, shows a majority of common elements in relation to the needs perceived as most urgent in the care of survivors after suffering a crime of these characteristics. At the base of these similarities lies the nature of hate crime as an act that violates the dignity of the person who suffers it, as they have been targeted because of the personal characteristics linked to their identity, a fact that has an enormous and long-lasting repercussion in different areas of their personal lives.

The areas of need that have been highlighted as most important can be grouped into four main areas (listening and personalised reception, reliable and understandable information, psychological support and legal assistance), as well as other complementary needs as the guarantee of a safe environment far away from the area of abuse, financial means to start a more independent life, contact with other victims or job training courses to facilitate the integration in the community. Based on the online survey launched among representatives of anti-discrimination organisations, the services most frequently offered by these organisations¹ and more accessible to victims are “providing information” (95,58%) and “legal advocacy” (58,41%), followed by “psychological support” (53,1%) and “reporting for analysis and documentation” (40,71%). Services provided to a lesser extent are “housing” (23%) and “financial support” (15,9%).

1.1. Listening and personalised reception

The need for victims to be heard and taken seriously, not only by the authorities, but also by those closest to them, has been mentioned by both victims and professionals as a fundamental need. In the field of hate crime, there is a first level related to the victim’s own acquisition of knowledge of the degrading or discriminatory treatment they are suffering. The fact that some of these discriminatory behaviours stem from internalised social discourses or cultural prejudices means that some victims have suffered this discrimination, to a greater or lesser extent, recurrently throughout their lives. This phenomenon of daily victimisation means that the victims have internalised hostility, exclusion or psychological violence against them as a normal occurrence and, when this violence takes on more serious or damaging nuances, reaching the level of crime, they themselves justify it or take responsibility for the harm, being unable to understand the seriousness of the crime they have suffered or are still suffering².

This need for environments or people who can help victims to realise that the situation they are suffering can and must end is particularly important in the case of migrants, especially women, who come from cultures where the submission of women is socially integrated and accepted³. It is also important in the case of minors, especially in the school environment, and in the case of people with disabilities, whose cognitive limitations may reduce their understanding of the nature of the harm. In these cases, care for these victims requires first of all more training for the people in charge of their care, such as teachers, tutors or psychologists in the school environment, and professionals from institutions dedicated to supporting people with disabilities⁴, who can detect situations of violence mainly through observation and active listening.

Secondly, victims of hate crime often act passively regarding the crime because of a sense of guilt or shame, so that they come to feel that they themselves or their behaviour has been the cause of the attack⁵.

1 Percentage based on 216 responses.

2 “There are people whose discrimination is so normalised that if they experience a crime, they see it as something so normal that they don’t even realise that they are victims”. Spanish National Report, Interview with P1, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 152.

3 Italian National Report, Interview with P5, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 49.

4 OSCAD; Direzione Centrale della Polizia Criminale, “La violenza contro le donne con disabilità” (2022), pp. 7-8. Available at:

https://www.interno.gov.it/sites/default/files/2022-12/la_violenza_contro_le_donne_con_disabilita.pdf

5 Spanish National Report, Interview with P9, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 153.

In this context, despite being aware of the harm suffered, they often relativise its importance or simply hide it for fear of a revictimisation which could come from the attribution of responsibility or by the minimisation of the crime, mainly by the law enforcement authorities⁶. Listening spaces, mostly offered by civil society organisations, allow victims to express their story without feeling judged and to gain more confidence to take the first steps to confront the situation of violence.

1.2. Reliable and understandable information

The possibility for victims and society in general to access adequate and comprehensible information was unanimously highlighted as an extremely major need in the research carried out. This information should not be understood as the simple publicity of the totality of information on accessible platforms or through information campaigns, as the overabundance of information has also been singled out by the professionals interviewed as a hindering element for correct understanding. The right to information must imply a selected and progressive deployment of information, according to the situation and needs of the victims, with the objective that they can, on the one hand, assume and understand it correctly and, on the other hand, that the information received at each moment is useful for decision making corresponding to each phase of the process.

The provision of information, therefore, encompasses a first phase of prevention and general information, aimed at society as a whole and facilitated mainly by the well-known awareness-raising campaigns. In this first phase, the content that has been highlighted as most essential is related to 1) awareness of the existence of these crimes and the possibility of their prosecution, 2) the interlocutors available to victims of hate crimes, which includes the existence of anti-discrimination organisations and support for certain minority groups and other initial care services for victims, as well as the existence of official public channels for collecting complaints, 3) the transmission of a message of welcome and support for victims by the public authorities and 4) the existence of the right to legal aid.

In a second phase, information should be targeted in a more individual and personalised way to the persons concerned by the offence and their close environment where necessary, and may cover the following three areas:

✿ **Information on access to criminal proceedings:** Effective access to criminal proceedings is a major step forward in restoring harm to victims, but victims often never participate in them due to a lack of information on the channels of access to justice and the resources available to meet the costs that the judicial process may entail⁷. It has been widely noted by legal professionals, mainly lawyers, that awareness of free legal aid is minimal among the victims who come to them, as well as information about what their role in the process should be⁸. It is therefore necessary that both civil society organisations and all competent authorities that may come into contact with victims, including primary health care services and other care institutions, have sufficient resources to convey basic notions regarding this information and to redirect victims to specialised legal services.

✿ **Information during criminal proceedings:** There is a general feeling among practitioners that this area has improved a lot in recent years and that law enforcement authorities are generally performing their task of providing information, especially due to the transposition of the Victims' Directive, although the detail and quality of this information depends to a greater extent on the individual sensitivity of each operator. Providing victims with a leaflet listing their rights is a widespread practice in all states participating in this project, but sometimes the effective

6 "The police do not inform the victim properly, and they tell the victims that they better leave it, that they cannot report this, when they can". Extracted from Spanish National Report, Interview with P3, in "The crucial role of intersectional..." (2023), *ob. cit.*, p. 157.

7 "If the victim gets into the legal procedure, things move ahead. It is, however, difficult to get to the point where a legal procedure is commenced. The lack of information is a big problem". Extracted from Hungarian National Report, Interview with P7, in "The crucial role of intersectional..." (2023), *ob. cit.*, p. 191.

8 Spanish National Report, Interview with P3, in "The crucial role of intersectional..." (2023), *ob. cit.*, p. 157.

understanding of these rights is not guaranteed and victims, after receiving the information, do not know how to effectively apply them to their situation. The shortcomings most frequently pointed out by the interviewees in this project have been: 1) the lack of concreteness and detailed explanation about the development of the process, which victims receive mainly through the active task of the lawyers, 2) the information materials available at the police stations are in some cases outdated or are written in a non-accessible language for those who lack a higher level of education and 3) the differences in the quality of the information material depending on the geographical area where the police stations are located⁹.

✿ **Information on the available victim support services:** In the framework of this research project, countries such as Hungary, Lithuania, Greece and Italy have reported that law enforcement authorities often provide very general, fragmented and sometimes outdated information on the assistance services available to victims¹⁰. In other cases, this information is only provided if requested by the victim or their representatives¹¹. It would be a highly recommendable practice for all police stations to have an updated list of victim support services, as well as of all third sector organisations dedicated to the field, as in many occasions these organisations are the best equipped to provide updated information to the victim in later stages¹².

1.3. Psychological support

The proven psychological consequences of hate crimes on the victims make it clear that the offer of psychological support should be an automatic response of the victim assistance system. As a Greek professional stated¹³, “[*Psychological support*] should be provided directly so as the victim will find the inner power to report the crime suffered and endure the proceedings that will follow”. Psychological support has therefore an empowering effect on survivors and can be a very powerful tool to diminish the current phenomenon of underreporting¹⁴.

Currently, most of the psychological support available is provided through CSOs, which have their own network of professionals. However, it has been pointed out by some of these organisations that providing this service is not always possible, due to a lack of resources and the fact that many of the professionals who collaborate with these organisations do so on a voluntary basis¹⁵. Thus, victims can often find collective support groups, and can benefit from group therapies, but the provision of specialised and individual psychological support is much scarcer, as well as its permanence over time, which should be more lasting. Beyond the offer of CSOs, the current generalised collapse of public health services means that access to psychological support is limited to the financial resources of the victims¹⁶, and leads to greater inequality of means to cope with the consequences of crime. This fact reinforces the phenomenon that underreporting affects, to a greater extent, people with scarce economic

9 “The administrative and judicial authorities do not offer adequate information but there is considerate differentiation depending on the areas. In bigger cities, things are better, although in villages, smaller communities and in the countryside the situation is generally worse”. Extracted from Greek National Report, Interview with P3, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 29.

10 “The crucial role of intersectional...” (2023), *ob. cit.*, pp. 197-198 (Hungary), 62-63 (Italy); 23-25 (Greece), and 94-96 (Lithuania).

11 Hungarian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 197.

12 “The publications [prepared by non-governmental organisations] are more specific and tailored to the needs of victims”. Extracted from Slovenian National Report, Interview with V2, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 198.

13 Greek National Report, interview with P12, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 20.

14 “The crucial role of intersectional...” (2023), *ob. cit.*, pp. 20, 155.

15 Italian National Report, interview with P10, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 60.

16 Slovenian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 117.

resources, thus generating a greater victimisation of the latter and the impossibility to break out of spirals of violence or to effectively repair the damage.

1.4. Legal assistance

Experiences explained from victims and practitioners participating in this research show the crucial need for professional legal representation for all victims, which was strongly underlined by most of them. As a complementary aspect, the right to free legal aid is a necessary prerequisite for achieving the right to effective judicial protection, constitutionally recognised by all EU member states¹⁷, is effectively ensured in practice. It has been established through this research that all victims of crime have the general right to be represented by a counsel in criminal proceedings and to legal aid, provided that they meet the conditions prescribed by the national law concerning free legal aid. Actually, it has been found that free legal aid is currently the most widely guaranteed service to victims offered by public structure and resources.

The functions of legal aid that have been pointed out as most valuable by the interviewees are: 1) the assurance of adequate information to the victim about the process¹⁸, which reduces their uncertainty and stress, 2) the avoidance of actions that may lead to secondary victimisation of the victim¹⁹ and 3) the effective application of victim's rights during the process, which are often not guaranteed automatically. It has also been highlighted that access to case file is much easier in instances where victims have official legal representation or at least are supported by CSO experts with procedural experience. Due to their background, victims of hate crime or bias-motivated discrimination are not able to afford the cost of legal representatives in the judicial proceedings, so it is absolutely essential that there is accessible, adequate and practical information about free legal aid for all victims.

In addition to the lack of information about this public service, difficulties that have been noted are the lack of economic incentives and the lack of specialisation in anti-discrimination law of public defenders, which lead to the perception that legal representation offered through this public service is often of lower quality²⁰. On the other hand, none of the participant countries cover free legal advice prior to the reporting or the formal commencement of criminal proceedings under the right of free legal aid, which is often essential in order to understand the situation and decide on the possibility of going to court. This barrier is currently overcome thanks to the legal advice service provided by the multiple third sector organisations and NGOs, which offer, at the same time, more specialised legal representation in discriminatory matters. Other promising practice detected in some countries -Spain and Italy- in this matter which could be further developed is the existence of legal clinics that provide free legal advice and assistance to victims of crime²¹.

17 Art. 47 of the EU Charter of Fundamental Rights; art. 6 ECHR.

18 Italian National report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 62.

19 “The lawyer can stop or manoeuvre hard questioning from the perpetrator’s lawyer and translate the client’s interests into action in the judicial procedure, in the courtroom. Extracted from Slovenian National Report, interview with P5 and V1, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 130.

20 Italian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 56.

21 Some examples are the Legal clinic of the University of Brescia (<http://www.clinicalegale.jus.unibs.it/>) and the Legal clinic of the University of Barcelona, in collaboration with the Bar Association of Barcelona (<https://www.ub.edu/portal/web/derecho/clinica-general>).

2. Support services and available assistance

2.1. The prominence of Civil Society Organisations (CSOs)

Research on organisations and institutions active in this field has shown that there is a large number and variety of organisations offering support to victims of hate crime in the different participating countries. In some of these countries, especially Spain, Italy and Slovenia, the number of organisations is very considerable and communication with them was accessible, while in other countries such as Hungary, Greece and Lithuania the existence of these organisations has been verified, although the number of organisations is smaller and contact was more difficult, possibly due to a lack of funding, publicity and resources in some cases, as well as a certain lack of political will in others²². Given the existence of both public and private entities, it is worth noting that the common result shows a greater prominence of CSOs, which offer victim assistance services in a more affordable and specialised way than those that depend on the public structure²³. The comparative reading of the results of the interviews with practitioners and victims conducted in all countries, shows that the majority of supporting services to survivors of hate crimes, especially information, psychological accompaniment and legal counselling are offered by civil society organisations.

From a closer insight into the configuration and services offered, a number of common elements can be drawn from the victim assistance structure in all participating countries:

- 1) Public victim services are not specialised in the specific type of hate crime, but offer assistance through the generic structures for assistance to victims of crime²⁴. Thus, victims of hate crime who turn to public support services receive little individualised accompaniment in relation to the nature of the hate attack. This is one of the reasons, together with the scarcity of information and poor follow-up, why victims often do not turn to these services or prefer to turn to the services offered by CSOs.
- 2) Most CSOs that offer assistance to victims are not organisations directly or solely dedicated to hate crimes, but dedicated to offering different types of support and empowerment to people belonging to minorities or socially marginalised groups, in areas that go beyond the criminal field.
- 3) Among the organisations working in the field of discrimination and hate crime, only very few of them offer all the necessary services for victims²⁵. Some of them offer a wide range of services, others offer a smaller range of services, while others are only involved in advocacy or research.
- 4) Only some organisations have an intersectional or transversal approach regarding the target group, so they can address all kinds of discrimination, and they tend to be national or regional organisations with location in capitals. In most cases, victim support is provided through organisations specialised in specific areas of discrimination. This presents a challenge in dealing with intersectional cases, in which people are targeted by multiple factors of discrimination.

22 *In Hungary, a number of 100 organisations working in discriminatory field, private and public, were contacted, while only 18 of them were able to give an effective response. In this country, the unwillingness to collaborate was particularly noticeable in public sector institutions. See Hungarian National Report, in “The crucial role of intersectional...” (2023), ob. cit., pp. 173-174.*

23 *In Greece, professionals who were interviewed reported that the services offered by NGOs -and thus the private sector- are considered more effective than those of the public sector.*

24 *Some specific victims’ support services exist for certain crimes such as human trafficking, sexual child abuse, gender violence or terrorism.*

25 *According with the Slovenian National Report, in this country CSOs can be divided in two groups: CSOs focusing on a specific group of people, which usually also provide support services to these groups, and CSOs fighting for human rights and against discrimination in general, mainly working in research and advocacy, which usually do not work directly with and do not provide direct services to specific groups.*

2.2. Horizontal cooperation between CSOs

The previous points mean that there is not just one single entity that offers the whole range of services necessary for victims²⁶. As a consequence, the fact that the services offered to hate crimes' survivors are fragmented gives prominence to the necessity of horizontal collaboration between the organisations, to allow the victims to avail themselves of all the services they need in the same local area. Collaboration between CSOs has been highlighted as fundamental²⁷, and it is an existing reality reflected in some of the practices collected through this research. The perception of the level of collaboration between CSOs by the representatives of the organisations is generally satisfactory, although there is space for improvement. Of the total number of the organisations that responded to the online survey question "Does your organisation actively collaborate with other organisations to combat hate crimes?", 26% of the organisations answered that the statement was "Totally" applicable, while 38% selected the option "Quite" and 20% chose for "Somehow". Only 3% of the respondents recognised not working in collaboration with other organisations.

In Hungary, the most notable cooperation of CSOs related to hate crimes is the Working Group Against Hate Crimes (WGAHC). Established in 2012, CSOs Amnesty International Hungary, Háttér Society, Hungarian Civil Liberties Union (TASZ), and Hungarian Helsinki Committee join forces for a more effective approach against hate crimes²⁸, with the objective of fighting hate crimes. In Greece, one of the most significant initiatives in the fight against hate crimes was the establishment of the Racist Violence Recording Network (RVRN) in October 2011, with the purpose to systematically record acts of violence with a racist incentive. It currently consists of a group of 52 non-governmental Organisations, that provide legal, medical, social, psychological services and come in contact with victims of racist violence or other violent attacks motivated by hate or prejudice. As another notable cooperation, Civil society in Lithuania formed the Coalition of Human Rights Organisations (HROC), which successfully carried out a project to strengthen institutional cooperation between non-governmental organisations, financed by the Ministry of Social Security and Labour (MSSL).

Although not mentioned here, other good practices of cooperation between NGOs exist in all participating countries, especially in the form of networks that group together organisations or associations by fields of action, mainly for the purposes of communication, advocacy, research and organisation of events. However, in relation to the area of victim service provision, collaboration is less structured and depends on the particular organisations' ability to establish a network of contacts and agreements in order to offer coordinated services.

2.3. Improving cooperation between the public and private sector

The proven fact that civil society organisations are of vital importance in assisting victims of hate crime imposes an ever more pressing need for collaboration between the private and public sector and, therefore, greater state involvement in the support and coordination of NGOs. The results of this research show that there is some public funding of these organisations in all countries, both from the various levels of public administration and through European programmes. However, as stated in the Spanish National Report "*some of them NGOs, especially the smaller ones, do not have any kind of public resources, and so they must subsist using the resources provided by their members and have a perspective of volunteering*". This is the situation of numerous organisations in all countries, which need to work relying on temporary-project funding. As highlighted by a representative of the General Secretariat for Demography and Family Policy and Gender Equality in Greece, the inadequate provision of services on the part of the NGOs is the result of their underfunding and this may also lead to the

26 *As explained by a Greek Representative of an NGO, "In Greece, there is not a single agent that provides services to the victims of hate crimes. There are various CSOs that provide specific types of services and they are also horizontally involved in hate crimes". Extracted from Greek National Report, interview with P13.*

27 *P2, P5, P6, P9, P12 from Spanish National Report; P1, P5, P9 from Italian National Report, P13 from Lithuanian National Report, P3 from Slovenian National Report, among others.*

28 *For more details, see Hungarian National Report, in "The crucial role of intersectional..." (2023), ob. cit., p. 194.*

dismissal of people and discontinuity of politics of reference on hate crimes²⁹.

Cooperation between public and private sector and more public funding would benefit both parts, as the States could improve and optimise their current structure of Victims assistance³⁰ by integrating all these private existent realities. Although the Victims' Directive has favoured a greater development of victim assistance services, the concrete articulation of this structure is left in the hands of the States, and this implies that a general Public Victim Support Service does not exist in the majority of them as an unified and coordinated reality, or they are only dedicated to victims of very specific crimes³¹. On the other hand, public involvement could enable private initiatives to develop a higher quality of services. As reflected from research in Slovenia, CSOs that are supporting and representing persons from individual marginalised groups *"generally do not have experience in providing support to victims of crime. (...) CSOs would need to strengthen their knowledge of the criminal justice system and would need additional staff (lawyers, psychologists), additional funding and additional office space to be able to provide victim support services"*³². This cooperation between private and public sector is also important for a better coordination of all available services for victims in the territory, which can only be effectively achieved through the involvement of the public sector through specialised bodies or offices. This coordination can also improve the ability of law enforcement bodies and other authorities to refer victims effectively to the services available in the area.

On the other hand, this cooperation also reflects the willingness of governments to actively participate in measures to combat discrimination. As stated by a representative of a NGO in Greece, *"a lack of warmth from the state's part is observed"*³³. Also, the lack of cooperative attitudes from public entities in other participant countries, such as Hungary and Lithuania, may be a sign of the need for a further government commitment to combating the phenomenon of hate Crimes. Despite this fact, notable promising practices regarding this cooperation have also been detected in all countries, such as the Victim Support Service established in the District Court in Ljubljana in 2019, which is a special victim support service as an additional mechanism to improve the realisation of victims' rights and whose aim is in helping victims, judges and court staff to communicate with victims and develop measures to protect them³⁴.

In Lithuania, the Working Group to increase the effectiveness of the fight against hate crime and hate speech was established by the order of the Minister of the Interior of the Republic of Lithuania in 2020 by bringing together public authorities and non-governmental sector organisations. In the same line, the National Council against Racism and Intolerance (NCRI) was established in Greece in 2015, which a collective body that aims at the prevention and combat of hate crimes³⁵. Finally, Hungary has adopted an opt-out model in the assistance of victims, which implies that information about the victim are directly shared with the support service bodies automatically, if victims do not wish to receive such support, they need to opt-out. As reflected in the Hungarian National Report³⁶, the amendment – according to the authorities – meant to facilitate effective contacts between the authorities and the victim support services, although professionals interviewed have not noted much change in practice. In general, these initiatives are well appreciated by practitioners as they have implied a step forward in the cooperation, and it would be highly advisable to extend and strengthen them.

29 Greek National Report, in *"The crucial role of intersectional..."* (2023), *ob. cit.*, p. 25.

30 *Social Work Centres in Slovenia, Anti-violence centres in Italy, Victim Support Services and Victim Support Centres in Hungary and Offices for Victims' Assistance in Spain can be underlined as public services.*

31 *As an example, in Slovenia Victim support networks, which connect public authorities and CSOs are especially dedicated to victims of domestic violence and of human trafficking and other forms of abuse (forced prostitution, forced marriage).*

32 *Mirovni inštitut (2021), ARVID - Advancing Access to Rights under Victims' Directive for Persons with Disabilities, National Report for Slovenia, Ljubljana: Mirovni inštitut.*

33 Greek National Report, interview with P1, in *"The crucial role of intersectional..."* (2023), *ob. cit.*, p. 20.

34 *For further details, see Slovenian National Report, in "The crucial role of intersectional..."* (2023), *ob. cit.*, p. 126.

35 *Stablished by Law 4356/2015 (Government Gazette A 181/24.12. 2015).*

36 *Hungarian National Report, in "The crucial role of intersectional..."* (2023), *ob. cit.*, p. 189.

CHAPTER 4



Judicial mechanisms for countering hate crimes

I. Judicial conflict resolution from a victim centred-approach

1.1. Key issues on reporting procedures and initial support

It is a well-known phenomenon that large-scale underreporting is a fact that accompanies hate crimes. Recent statistics indicate that a very significant number of victims of these crimes do not formally file a complaint to the courts¹. Given this situation, the first stage to take into account in order to counteract this underreporting is the degree of accessibility of the channels for reporting throughout the territory, as well as the facilities for filing a complaint. A second variable concerns a more subjective sphere, which has less to do with the objectivity of available channels but with the appropriate interaction of these channels with victims. This second aspect is the area in which the research carried out points out the most deficiencies, and which this report highlights as a central area in which to develop and promote new policies and protocols.

The main conclusion is that there is widespread accessibility in all countries for the filing of a complaint, including various and sufficient channels and public bodies to turn to in order to formalise the complaint; as well as flexibility in the way it can be filed, which can be done in person, by telephone or in other online formats². As alternatives that facilitate reporting, there is also the possibility for persons or private entities other than the victim to alert the authorities, so that once the *notitia criminis* has reached the responsible bodies for prosecution, the crime is prosecuted *ex officio*³. However, the *ex officio* prosecution of hate crimes without the initial cooperation or activation of the victim often ends prematurely, as without the victim's cooperation, the identification of the perpetrators and the collection of appropriate evidence is hindered.

On the other hand, the observation of existing anti-discrimination platforms and organisations in all countries allows us to affirm that there are also public and private bodies to which a person can report bias-motivated crimes and/or discrimination, and which will register the complaint with the aforementioned authorities⁴. These platforms, which depend on third sector organisations, have, as mentioned, a fundamental role, as the collection of the complaint is usually accompanied by the support and empowerment of the victim so that she/he is the one who finally takes part in the judicial process. Another good practice developed in most countries is the specialisation of Police Departments in this typology of crimes⁵, with staff trained to handle and investigate these cases, as well as specialised prosecutors' offices⁶, who can also receive complaints directly.

1 European Union Agency for Fundamental Rights (2021) "Encouraging hate crime reporting: the role of law enforcement and other authorities" (Luxembourg: Publications Office of the European Union). The report shows that Up to 9 in 10 hate crimes and attacks in the EU still go unreported.

2 In all 6 countries analysed anonymous reports via telephone and emergency number, email or website are available.

3 In the countries participating in this study, it is not necessary for the victim to be the one to file the complaint in order for the crime to be prosecuted. The arrival of the *notitia criminis* to the authorities, through other channels will also trigger the criminal investigation. Among others, article 146.1 of the Slovenian Criminal Procedure Act and art. 105 of the Spanish Code of Criminal Procedure. Also in Hungarian law violence against a member of a community is a crime that shall be investigated *ex officio*, thus if the police receive information of any incident raising the suspicion of a hate crime, it needs to proceed without a motion from the victim.

4 A major good practice in Greece, for example, is the cooperation and the networking between the services and organisations involved and the functioning of the RVRN (Racist Violence Reporting Network).

5 The establishment of police departments against racist violence has been considered as a great initiative from the part of the Greek state. In Spain, Police forces such as the Mossos d'Esquadra, the regional police of Catalonia, have a specific Unit against Hate Crimes and Discrimination, in place since 2021, with officers duly trained to act against this type of crime.

6 Special Prosecutor for Hate Crimes and Discrimination in Spain.

The factors behind high levels of under-reporting are not strictly linked with the lack of channels to denounce, but mainly with other structural and personal weaknesses of judicial proceedings detected through this research. These shortcomings manifest a lack of a victim centred-approach and are connected with the following factors:

- ✿ **The language barrier is not taken into account in the relevant procedures:** Despite the existence of some rights leaflets in English, most police officers do not have extensive knowledge of languages and the search for translators and interpreters, both at the beginning and during court proceedings, has been reported as still a very slow process⁷, which discourages victims and increases their sense of helplessness and vulnerability.
- ✿ **Racial or discriminatory treatment by the police officers due to lack of special training and awareness:** The police departments specialising in this type of crime have been highly valued, although their implementation is not widespread in the territory, and the lack of sensitivity of the authorities in receiving complaints from victims is greater in rural areas or small population centres. It is noteworthy that a great improvement has been detected regarding this area, and positive experiences of victims and professionals in relation to contact with the authorities have been reported⁸. However, experiences have also been gathered from victims expressing a clear sense of institutional discrimination⁹ and unresponsiveness of the police¹⁰. As reported by a Spanish professional dealing with victims of hate crime, some victims “do not trust the justice system or the police. They are afraid of going through a process of revictimisation in which they are questioned and doubted, and made to feel bad again”¹¹. In the same way, a Greek representative of an NGO highlighted that a significant problem of the reporting mechanism is the “institutional contestation of the reported crimes and the people who report them”¹².
- ✿ **Delays and bureaucracy that render the whole procedure ineffective:** As stated by a Greek stakeholder¹³ “the procedure is time-consuming, to the point that the [foreign] victim may leave the country before justice is attributed”. The slowness of procedures provokes very uncomfortable sensation of uncertainty for the victims, as well as profound lack of trust and “by the time the case finally reaches a court, so many years have passed that the sanction imposed does not have any deterring function any longer”¹⁴.

1.2. The victim as part of the judicial proceedings

Once the criminal act has been reported, it begins a long journey through the judicial process until its completion, which, only in some cases, materialises in a conviction. The way how participation of the victim is articulated in criminal proceedings varies in the different member states of the European Union, so that in some of them, as in Spain, the victim can be an active and prosecuting party in the criminal proceedings, regardless of whether there is a public prosecutor or not¹⁵. In other countries, such as Italy, the Public Prosecutor’s Office has a monopoly on criminal prosecution¹⁶ and the victim has no

7 Hungarian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 193.

8 “The crucial role of intersectional...” (2023), *ob. cit.*, pp. 192 (Hungary), 56 (Italy), 121 (Slovenia).

9 “The crucial role of intersectional...” (2023), *ob. cit.*, pp. 22-23 (Greece), 121 (Slovenia).

10 Slovenian National Report, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 121
Also practices of discouraging the victim from filing a report where detected during the field research in Hungary.

11 “The crucial role of intersectional...” (2023), *ob. cit.*, p. 153.

12 “The crucial role of intersectional...” (2023), *ob. cit.*, p. 22.

13 “The crucial role of intersectional...” (2023), *ob. cit.*, p. 23.

14 Hungarian National Report, interview with P3, in “The crucial role of intersectional...” (2023), *ob. cit.*, p. 193.

15 Art. 101 Spanish Code of Criminal Procedure.

16 Arts. 50 and 405 Italian Code of Criminal Procedure. For a deeper insight, LUPARIA, L., GIALUZ, M., “The Italian Criminal Procedure Thirty Years after the Great Reform”, in *Roma Tre Law*

power over the action except in his or her right to oppose the closing of the case. In other systems, the victim has a limited role over the action, as in the case of Slovenia¹⁷ and Hungary¹⁸, where the victim can institute or take over the proceedings and act as private prosecutors only in the case of certain crimes. Despite these differences, there is not a structural obstacle to the reorientation of the process with the aim of paying more attention to victims, as dominance over the prosecution is not, in fact, the priority need for optimal victim reparation. From the comparative study carried out, it is clear that in all the systems of the participating countries, victims can:

- Propose witnesses and be heard as a witness
- Provide evidence
- Be accompanied by a lawyer covered by free legal aid
- Request information on the progress of the case
- Request protective measures and file a compensation suit

Within criminal proceedings, it is essential and also feasible to develop a series of measures, accompanied by specific protocols, to safeguard psychological and moral victims' integrity during the proceedings. The common aspects that could be improved in all the systems analysed are as follows:

1) Information on the progress of the process to the victim: so far, victims receive automatic information only on their right to be informed of the case when they request it¹⁹, as laid down in the Victims' Directive. In such important acts as for example any decision not to proceed with or to end an investigation or not to prosecute the offender, information is still provided only at the explicit request of the lawyers.

2) Multiple interrogations of the victim: this fact derives mainly from the lack of communication between the actors involved in the process and the lack of adequate precautionary safeguards for the evidentiary materials. This phenomenon causes the victim to testify at least in the reporting phase, in the preliminary police investigation, in the investigation led by the prosecutor, and in the trial²⁰. The victim should be able to testify as many times as he or she requests, but the mandatory nature of his or her testimony should be reduced to the minimum. As highlighted by a Slovenian lawyer, "*it would be best if their interrogation was recorded so that other people can watch the recordings during the proceedings. And, if necessary, to be questioned further only on any matter that turns out to be important*".

3) Rational duration of the criminal investigation. It is necessary to increase the training of police forces and the close monitoring of the investigation by prosecutors, so that the investigation phase is reduced to the minimum possible. This means that the investigation should be oriented towards the urgent collection of evidentiary material, avoiding the practice of proceedings that can be carried out in the oral trial phase. To this aim, it is of vital importance that police forces detect the discriminatory motive of the offence at an earlier stage, so the investigation will be better oriented towards the collection of evidence that can support this aggravating circumstance at the trial stage, avoiding the subsequent frustration of the whole process. As reported in the Lithuanian National Report, "*despite positive developments, adequate classification of hate crimes and the identification of the motive of hatred remains a relatively large obstacle to the effective investigation of hate crime*".

4) Financial compensation procedures: these procedures are still slow and often require subsequent civil proceedings to determine the amount and enforce it, a process for which victims often do not have sufficient financial or psychological resources. In addition, the outcome of these proceedings has been described as unsatisfactory for victims on a quantitative level. This problem is common to all participating states, and reflects the fact that the capacity of states to create adequate victim compensation funds that

Review, no. 1 (2019), pp. 24-71.

17 European judicial systems: Efficiency and Quality Justice, (cepej Studies no. 20, Brussels: coe, 2014), p. 96.

18 KISS, Anna, "The Rights of the Victim in Hungarian Criminal Proceedings" Hungarian Year-book of International Law and European Law (2019), p. 513.

19 Art. 6 (a) of the Directive 29/2012/UE:

20 Spanish National Report, Interview with P13, in "The crucial role of intersectional..." (2023), ob. cit., p. 159.

are quickly and efficiently accessible, as required by Directive 29/2012/EU, is still very limited.

1.3. Measures to combat revictimisation

In general terms, it can be argued that both the phenomenon of underreporting and the reluctance of victims to actively collaborate in criminal proceedings is related to the capacity of the justice system to deal with victims in a way that avoids revictimisation²¹. The experience of revictimisation provokes that “*there is a lack of trust. It is very difficult for them to go to the police to report [an incident] because they are people who have normally also been discriminated against by the police*”²². In preventing this phenomenon, the standards set by the Victims’ Directive have led to improvements and policy development in different countries. Some notable measures that have been implemented and can be further developed in all countries are the following:

- ✿ **Individual assessment of victims at early stage:** The Directive provides for several measures to protect the victims and one such mechanism is the individual assessment of victims to identify specific protection needs. A good practice in this area can be found in the Hungarian Law, which provides further safeguards for victims in need of special treatment. The Code on Criminal Procedure created additional guarantees for this class of victims in order to compensate for the disadvantages and barriers such persons encounter and ensure their effective participation in the criminal procedure. As explained in the Hungarian National Report, classifying a victim as someone in need of special treatment may happen *ex officio* or upon the motion submitted by the person assisting the victim²³. For this individual assessment, there is still a need for more professionals specialised in the area of victimology and psychology.
- ✿ **Close support to the victim in all stages of the proceedings:** Throughout the process, many questions arise and victims experience moments of doubt about the procedures or the outcome of the proceedings. It is a great help for victims to have clear and close interlocutors to turn to at these moments. A good practice highly appreciated by practitioners in Slovenia is the Victim Support Service of the District Court in Ljubljana. It was established in 2019 and consists in a special victim support service as an additional mechanism, whose aim is in helping victims, judges and court staff to communicate with victims and develop measures to protect them²⁴.
- ✿ **Possibility of accompaniment by persons of trust:** moral support is very valued in all stages of the proceedings, so the possibility for victims of being accompanied by close people or relatives should be guaranteed by authorities. Although some bad experiences have been reported regarding this possibility – specially in Hungary²⁵ – the application of Directive’s standards in this area is highly achieved.
- ✿ **Good-quality training on dealing with vulnerable victims:** as the sensitivity and training of professionals have been proven to be the crucial element to protect victims from re-victimisation, structural training at all levels needs to be promoted. This training must reach all public authorities and should be part of the curriculum, as comparative research so far has shown that courses tend to be optional in most countries. Taking into account discrimination based on gender identity,

21 *Revictimisation refers to victimisation that takes place at multiple points in time after suffering the crime.*

22 *Spanish National Report, Interview with P2, in “The crucial role of intersectional...” (2023), ob. cit., p. 159.*

23 *Hungarian National Report, in “The crucial role of intersectional...” (2023), ob. cit., p. 186.*

24 *Slovenian National Report, Interview with P4, in “The crucial role of intersectional...” (2023), ob. cit., p. 122.*

25 *The Hungarian National Report reflected that the law allows the presence of an adult chosen by the victim during the procedure, however, the police often disregard this possibility. A victim interviewed explained: “I had to go in alone, my girlfriend could not accompany me, that was very stressful for me. It would have been better if both of us could be present (V1, on the file with the authors)”.*

sexual orientation and sex characteristics, training on how to deal with people belonging to these collectives is particularly necessary. It would also be advisable to promote training among lawyers, e.g. through the bar associations, because their involvement in the different steps of the procedure can prevent and avoid unnecessary victimising actions.

2. Restorative justice and hate crimes

The Victims' Directive establishes that victims may be informed about and have the possibility to access Restorative Justice services²⁶. In this respect, the comparative study shows that there is still a significant imbalance between the orientations of the Directive and its practical implementation. The research has shown that there are different entities that offer the possibility of restorative justice mechanisms, mainly dedicated to mediation, but they are far from being part of a structured and public service. In the participating countries, Restorative Justice Services are little known by society in general, and in particular by victims and practitioners themselves²⁷, although many argue that these could be beneficial mechanisms²⁸.

There is an underdevelopment of these mechanisms at both the structural and legislative levels, experts have little confidence in their effectiveness, and in most countries their implementation is not a policy priority, as it is perceived as a phenomenon away from the traditional conflict resolution of a jurisdictional nature²⁹. In Spain, for example, alternative dispute resolution mechanisms have more applicability in civil and commercial matters, while mediation in criminal law is possible but as a complementary tool, always linked to a parallel judicial proceeding. In Italy and Slovenia, such services are underdeveloped and the so-called restorative mechanisms are not exactly restorative justice tools, but some procedural institutions already foreseen within criminal proceedings in order to relieve the courts of the burden of cases³⁰. In Hungary, the National Crime Prevention Strategy (2013-2023)³¹ set as an aim to be realized by the state that victims had more information on and access to restorative justice instruments. Despite good intentions, it failed to elaborate on the concrete steps that are to be taken in order to implement the aspirations contained in the strategy³².

The comparative analysis of the results show that these measures are frequently applied in the field of minors, with good outcomes, but have much less application in adult crimes. Spanish National Report points out that greatest difficulties in applying penal mediation in the case of hate crimes is “*to counteract the existing asymmetry of power between the offender and the victim*”³³. It is precisely this

26 Directive 29/2012/UE recital 9, 21, 46, 64 and arts. 1, 12, 25.

27 Most of the victims and professionals interviewed stated not being familiar with restorative justice.

28 Hungarian National Report, Interview with Professionals 1, 3, 4, and 5; Italian National Report, Interview with professionals 5, 8, 11, in “*The crucial role of intersectional...*” (2023), *ob. cit.*, pp. 64, 195.

29 Some opinions collected regarding this phenomenon were: “*The legislation does not provide for restorative justice. There would have to be a modification of the Criminal Procedure Law to permit the possibility of restorative justice (Spain)*”; “*We are not ready socially and as a culture to deploy the values and mechanisms of restorative justice, so that justice will be attributed (Greece)*”; “*These mechanisms are “alien” to the Hungarian legal system, and it would be difficult to integrate them in a meaningful and efficient way (Hungary)*”.

30 In the Slovenian system, these alternatives are the suspension of prosecution, settlement, penalty order and plea bargain (Art. 161 CPA). In the Italian System, similar figures can be found, such as the figure of the probation and some forms of negotiated justice, known as *patteggiamento* (art. 464-bis to 464-novies ss., and art. 657-bis, Codice di Procedura Penale).

31 Government Decision no. 1744/2013. (X. 17.) on the National Crime Prevention Strategy (2013-2023).

32 Hungarian National Report, in “*The crucial role of intersectional...*” (2023), *ob. cit.*, p. 196.

33 Spanish National Report, interview with P15, in “*The crucial role of intersectional...*” (2023), *ob. cit.*, p. 165.

asymmetry that led legislators to expressly prohibit restorative justice in cases of gender violence, the same prohibition which applies in the Italian system. In the Greek legal system, on the contrary, such practices are specifically provided in the field of the minors' criminal treatment and domestic violence. Thus, much more research is needed in this field to clarify to which crime typology restorative justice can be successfully applied, without generating further re-victimisation or reinforcing imbalances between the parties. Taking into account the shortcomings of judicial proceedings, that hate crimes often reflect cultural dynamics learned by offenders that can be reconstructed, and the fact that communication and dialogue with victim has been proven as a crucial factor for desistance of crime, some recent studies state that hate crimes could be a suitable field for the implementation of such restorative mechanisms³⁴.

3. Major training topics for practitioners in the context of hate crimes

With the aim of establishing more coordinated and uniform training in all the countries of the European Union, the training topics for which there has been the greatest demand and consensus are as follows:

- ✿ Social prejudices and discriminatory discourses against minorities.
- ✿ Vulnerable victims and vulnerable intersections.
- ✿ Social, emotional and psychological victim support.
- ✿ Specific needs of victims of multiple/intersectional hate crimes.
- ✿ Strategies to avoid revictimisation.
- ✿ Identification of hatred as a possible motivation in criminal acts.

³⁴ European Forum for Restorative Justice (2020). *Restorative Justice in cases of Violent extremism. A policy paper by the EFRJ Working Group on Violent Extremism*, (Leuven: European Forum for Restorative Justice) p. 3-4.

CONCLUSIONS



Conclusions

The result of the research carried out shows that the legal framework against hate crime and discrimination is generally adequate and sufficient in all states of the consortium, although some additional measures would be advisable. Some of them include a legislative improvement in order to unify the criteria on the basis of which conduct can be considered discriminatory, as well as the homogenisation at European level of specially protected groups or collectives, without prejudice to their extension according to the particularities of each State. It would be appropriate for European institutions to promote the explicit incorporation, at all levels, of disability, sexual orientation and gender identity as key grounds for hate attacks.

The current dissatisfaction with anti-discrimination law and victim care is due to its incomplete practical application. Among the shortcomings detected is, firstly, the lack of political commitment and investment of resources for the effective and coordinated prosecution and registration of these crimes. Secondly, the lack of training of law enforcement bodies for the correct identification of discriminatory motives and for the proper investigation of these crimes from the early stages of the procedure is noteworthy. Thirdly, it would be highly advisable to address the lack of homogeneous judicial criteria for the application of hate crimes and their aggravating circumstances, which leads to the under-categorisation and under-sentencing of these unlawful behaviours. In many cases, this leads to the conviction of such behaviour being imposed under the category of ordinary offences, such as public disorder offences, without recognition of the discriminatory motive and therefore without a direct deterrent effect against hatred.

Tackling hate crimes and adopting appropriate policies also requires the improvement of appropriate collection of official hate crime statistics, as all countries of the consortium present difficulties in the collection of data, the transparency and the homogeneity of channels and protocols to register it. This leads to an opacity of information that does not allow for an adequate response, especially in terms of prevention and protection of vulnerable minorities. It would be advisable to standardise these processes in all European countries, imposing the duty to publish detailed data including data related to the number of reports, and clarifying which are the grounds which need to be taken into account in hate crime data collection.

Areas for improvement have been identified in state coordination and financial support to organisations working on daily care of victims of hate crime and the prevention of discrimination. In addition to more coordinated work, one of the areas where early investment of resources is needed is the additional training for competent authorities in the field of victim-support. Raising awareness is urgently needed to reduce the mistrust and secondary victimisation that many victims experience when they turn to institutional channels. This training should include all actors involved in the process of receiving victims of hate crime, as well as those who have contact with them and their case files throughout the criminal procedure.

The formation and implementation of support policies can no longer ignore the needs of victims, which are long-standing and require continuous and long-term follow-up, with special mention of psychological support. On the other hand, a correct analysis of the particular personal conditions of each victim and, in particular, of the intersectional factors is essential, since intersectionality can increase the risk of revictimisation, as well as decrease the likelihood of victims reporting their experiences. Intersectionality has a multiplying effect and can indeed exacerbate the impact of hate crimes on the victims. Despite the difficulty of incorporating this concept at the legislative level, due to its theoretical nature, it is possible to increase knowledge and awareness of the importance of this circumstance in assistance policies, as well as the coordination of victim care services. Victims need immediate access, not only to general assistance services, but also to specific services focused on their needs and aimed at further redressing the consequences of the crime, in the multiple areas of life that may have been damaged by the crime.



CounterHate

Improving the assistance of victims of hate crimes
through a victim-centered and intersectional approach



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