



# Hate Crime Victims in the Criminal Justice System

A Practical Guide

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A Practical Guide



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## Foreword

Hate crimes target people for their identity – for who they are. But they do not impact individuals alone. Hate crimes are message crimes, and the message of rejection in each attack resonates throughout the community, from family members, to those sharing the identity of the victim, to the public. They can also target people who are simply perceived by the perpetrator to belong to a particular group, demonstrating clearly that hate crimes are motivated solely by prejudice. If unaddressed, hate crimes can turn communities against one another and lead to conflict and violence.

No country is immune to hate crime, although different groups are targeted depending on the national context and attacks differ in form and scale. However, we do see clearly that countries across the OSCE differ in their willingness to acknowledge and act to combat hate crime.

Civil society and community organizations have an important role to play, as they are often the ones on hand to get victims back on their feet. But it is governments who are primarily responsible for ensuring that victims of hate crimes are protected, enjoy full access to justice and can receive the support they need. The OSCE participating States have not always lived up to these responsibilities, sometimes leaving victims of hate crimes vulnerable and unprotected, without appropriate or adequate support.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has long supported OSCE participating States in their efforts to address hate crimes. This Guide adds to ODIHR's tools for legislators, law-enforcement officers, prosecutors, judges and civil society organizations. It is aimed at those working on the ground with hate crime victims, such as police officers and prosecutors, as well as to help governments and policymakers responsible for the development and design of hate crime and victim support policies, and the civil society that often implements these.

I am confident this will prove a useful tool that will help ensure victims are at the centre of work to counter hate crime. ODIHR is always ready to help national authorities as well as those working directly with victims to make the best possible use of the suggestions contained in the Guide, for the ultimate benefit of hate crime victims throughout the OSCE region.

*Ingibjörg Sólrún Gísladóttir*  
*ODIHR Director*



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The Office acknowledges its network of National Points of Contact on hate crime for their ongoing support and readiness to share knowledge, as well as for facilitating information exchange between ODIHR and national experts from participating States.

In particular, ODIHR appreciates the contributions throughout the drafting process by the following members of the core expert group:

Martina Bajto	Service for Victim and Witness Support, Ministry of Justice, Croatia
Olena Bondarenko	Social Action Centre, Ukraine
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Tamás Dombos	Háttér Society, Hungary
Rocío Gómez	Council of Victims of Hate Crime and Discrimination (COVIDOD), Spain
Klára Kalibová	In IUSTITIA, Czech Republic
Stephan Kees	Association of Counseling and Support Services for Victims of Right-Wing, Racist and anti-Semitic Violence (VBRG), Germany
Robert Kusche	Support for Victims of Right-Wing Violence Department, RAA Sachsen, Germany
Levan Meskhoradze	Office of the Public Defender, Georgia

## Overview

This *Hate Crime Victims in the Criminal Justice System: A Practical Guide* (the Guide) advances the fulfilment of the OSCE commitments in the area of assistance for hate crime victims. Developed in consultation with civil society and government experts, and based on good practice identified across the region, the Guide responds to a need in many OSCE participating States, where victims of hate crime often do not receive adequate protection and support. Civil society, specialized victim support structures and independent government bodies have been providing support to the victims of hate crime and have developed considerable expertise. However, gaps remain in integrating these assistance efforts with criminal justice processes.

This Guide is therefore designed primarily for hate crime victim support practitioners, criminal justice officials and policymakers responsible for developing and maintaining victim support systems. It has been conceived as a tool to provide practical recommendations on adapting procedures, policies and laws, while taking into account the realities and complexities of criminal justice and victim support systems. This summary provides an overview of the main themes addressed in the Guide. The Guide itself includes 42 detailed recommendations for policymakers and practitioners, which have been synthesized below for this summary.

ODIHR will work to implement this Guide's principles and recommendations through its capacity building initiatives with partners from OSCE participating States, in order to enhance state responses to hate crime and in particular efforts to protect and support the victims of hate crimes.

Hate crime victims are individuals who have suffered harm as a result of a hate crime and consequently require protection, specialist support and the opportunity to receive compensation.

Because hate crimes target features of one's identity, their victims suffer unique consequences that result in specific protection and support needs. Evidence shows that the emotional and psychological impact of hate crimes is much deeper and more far-reaching than in the case of other crimes – beyond victims themselves to the community that shares the identity traits targeted in a hate crime. The impact is further compounded when more than one protected characteristic such as gender and race are targeted in intersectional hate crimes.

Hate crime victims require protection from perpetrators. Their treatment by the criminal justice system needs to be sensitive and free from bias in order to prevent victims from re-living the experience of the crime itself. Victims of hate crime often belong to groups that already face discrimination or marginalization – often on multiple grounds – on a daily basis. All hate crime victims' identities, and specific needs stemming from their identity, should inform their treatment. Addressing the bias motivation of the perpetrator throughout the criminal justice process is important for most victims.

This Guide suggests the following ten practical steps that provide a foundation for a robust system of protection and support for hate crime victims.

**Step One:** Establish a system for recording hate crimes. Activate a hate crime victim protocol or mechanism as soon as a potential hate crime is first identified.

Identifying and recording the bias motivation underlying criminal offences, i.e., recording them as hate crimes, is a prerequisite for adequate treatment of victims of hate crimes. Where hate crimes are not recorded as such, officially there are no hate crime victims, thus no support. This Guide does not go into detail regarding recording requirements for hate crimes, as other ODIHR tools address this problem. However, it emphasizes the importance of encouraging victims to report, and suggests ways in which authorities can involve the victims, civil society and broader community in these processes.

**Step Two:** Recognize victims of hate crime as a distinct and particularly vulnerable category of victims, in law and/or policy. Define a hate crime victim for the purposes of providing protection and support. Define a hate crime victim for the purpose of enabling effective participation in the proceedings.

Hate crime victims need to be recognized as a distinct and particularly vulnerable category of victims. This should translate into relevant policies to ensure that hate crime victims can (i) receive protection and support, and (ii) participate in the criminal justice process, whether as a party to the proceedings or otherwise.

The victim is a harmed individual who requires assistance, which should be accessible with minimal or no restrictions imposed by law. In particular, access to protection and support should not require reporting the hate crime to the authorities, identifying or apprehending the suspect or victim's formal

participation in the proceedings. At the same time, the victim may choose to participate in criminal proceedings against the offender in order to present the harm they have suffered and to receive compensation, in which case the necessary procedural conditions must be met. This Guide therefore suggests that two sets of criteria are developed, which take into account both the need for protection and support and for participation in the criminal justice process.

**Step Three:** Adopt measures to eliminate manifestations of all bias, including gender bias, among officers working with hate crime victims. Develop and implement guidance and train officers on sensitive and respectful treatment of victims of hate crimes.

Given the particular harm victims of hate crimes suffer, they need to be treated with sensitivity and respect throughout their contact with police and other criminal justice bodies. This can help them heal and can, in turn, give them the sense of safety necessary to take engage in the judicial process and provide substantive evidence. Crude treatment or exposure to further bias at the hands of the police, on the other hand, can further the trauma victims are facing. The nature and location of the interview needs to be determined based on an understanding of hate crime victimization mechanisms and the needs of hate crime victims.

Guidance and training for police officers and other officials working with hate crime victims needs to reflect this. The specific needs of different targeted groups also need to be taken into account, including guidance and training on the need to be gender sensitive in working with victims. While all officers should be sensitised to hate crime, hate crime or victim specialists or other expert support should be available when victims of hate crimes are interviewed.

**Step Four:** Conduct a tailored, individual needs assessment, based on a methodology adapted to the situation of hate crime victims and the specific identity of the assessed individual. Conduct assessment on first contact and reassess throughout the case's lifecycle.

In order to protect victims of hate crimes and provide adequate support, their needs must be assessed. Such assessment needs to be conducted on an individual basis and to consider the targeting methods, personal risks, the identity and vulnerabilities of the victim, as well as the typical needs of hate crime victims. As part of a protocol or mechanism triggered when a hate

crime is recorded, the assessment should be followed by a referral to appropriate support providers. The needs of hate crime victims also evolve in the post-victimization period, lasting throughout – and even extending beyond – criminal proceedings. Therefore, an individual needs assessment should not be a one-time exercise. A system should be developed for a continuous, or at least repeated, victim assessment, enabling the victim to actively engage with the justice process.

**Step Five:** When implementing the recommendations contained in this Guide, understand and take into account the gender impact of hate crimes, as well as those of measures taken by the authorities for individual victims, at all stages of the criminal justice process.

Hate crimes impact members of different groups and those belonging simultaneously to several targeted identity groups differently, resulting in specific needs. Measures taken by officials in the criminal justice process also affect victims, both women and men, differently.

**Step Six:** Regularly identify organizations providing specialist support for hate crime victims, and develop the capacity of such organizations to fill any gaps. Develop quality standards for the main specialist services, provide guidance, certify and fund organizations providing specialist hate crime support.

Participating States have the responsibility to ensure that hate crime victims have full access to justice, including protection and support. However, civil society organizations often bear the brunt of supporting the victims of hate crime and have, therefore, often developed expertise, good practice and standards in dealing with these victims. Consultations undertaken during work on this Guide revealed a frequent disconnect between these main providers of support and the criminal justice processes and bodies. National structures for supporting victims of crime determine how well identification, investigation or prosecution of hate crimes can be integrated with robust support for these victims. While individual police units, prosecutor's offices or courts can improve how they work with victims, a systemic change to victim support structures might also be needed in many places to bring victim support and criminal proceedings closer together.

Specialist support for victims of hate crime is usually provided by state, civil society or private actors. These providers can be generalist, specialize on victims of hate crime, or on the type of service required by these victims.

Criminal justice bodies need to know these organizations to be able to refer victims of hate crimes to these services and, in order for the support to be available across the country and at all times, the providers require funding. States could also consider developing, or facilitating the development of, quality standards for specialist support for victims of hate crimes to ensure quality and standardization of services.

**Step Seven:** Provide hate crime victims with the highest standards of protection, assistance and procedural rights available to other categories of crime victims. Provide hate crime victims with protection (including shelter), urgent medical assistance, psychological counselling, legal consultation and representation, interpretation and translation services, free of charge.

Victims of hate crimes should be entitled to the highest standard of rights, protection and support available to victims of crime in a given context.

**Step Eight:** Explicitly address all the bias motivations of the crime, the victim's perception of the crime as a hate crime and the impact of the crime on the victim in the authorities' actions and decisions throughout the proceedings.

This Guide addresses a number of ways to ensure hate crime victims have full and effective access to justice throughout the proceedings. All the procedural rights of victims are equally relevant for victims of hate crime and should be applied in a way that empowers and involves the victims, rather than use the victim as a mere source of evidence. Most importantly, the authorities, including first responders, investigators and prosecutors, should focus on understanding and addressing the bias nature of the crime and its impact on the victim – including its gender implications – in recording, investigating and prosecuting hate crimes. Victims should be able to present an impact statement in court that feeds into the final sentencing.

**Step Nine:** Explicitly address the bias motivation and impact of a hate crime in the sentencing judgment and other judicial and out-of-court outcomes.

Judgments and other types of judicial and out-of-court outcomes for criminal proceedings should always consider the bias nature of the crime (if this is established). The judgment should also clarify when aggravated sentencing has been applied directly because of the bias motivation.

**Step Ten:** Introduce broad and flexible criteria for determining the moral damages for hate crime, thus enabling consideration when awarding compensation of the harm to human dignity inherent in all hate crime, as well as all other aspects of the impact on the individual.

Compensating victims for the damage and other forms of harm they have suffered is another way of demonstrating the fact that the state takes hate crimes seriously. This Guide documents a number of approaches to compensation, for example by the perpetrator, by the state or by insurance companies, in criminal or civil proceedings. Ineffective (partial, delayed or incomplete) compensation can intensify the suffering of victims. For hate crime victims, it is crucial that compensation types and amounts reflect each aspect of their identity, including gender, that was targeted and any additional harm that caused.

# Introduction



## ODIHR's mandate

Hate crimes pose a threat to the security of individuals, and, if unaddressed, can give rise to wider scale conflict and violence. Recognizing this, the OSCE participating States have committed to putting in place a range of measures to address hate crime.<sup>1</sup>

As part of these measures, participating States have agreed to:

- Take steps to encourage victims to report hate crimes;<sup>2</sup>
- Provide hate crime victims with access to counselling and legal assistance, as well as effective access to justice;<sup>3</sup>
- Build the capacity of law enforcement authorities to facilitate hate crime reporting and to increase a positive interaction between police and victims of hate crimes by training front-line officers, including in providing referrals for victim assistance and protection, and by implementing outreach programmes;<sup>4</sup> and
- Facilitate the capacity of civil society to assist victims of hate crimes.<sup>5</sup>

OSCE participating States have acknowledged that the primary responsibility for addressing acts of intolerance rests with state authorities, while also recognizing the valuable role of civil society in responding to hate crimes. ODIHR has been mandated to, “strengthen [...] its assistance programmes, in order to assist participating States upon their request in implementing their commitments.”<sup>6</sup>

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1 Please consult Annex I for an overview of the OSCE commitments on hate crimes and hate crime victim support.

2 OSCE Ministerial Council, Decision 9/09, “Combatting Hate Crimes”, Athens, 2 December 2009, <<https://www.osce.org/cio/40695>>.

3 *Ibid.*

4 OSCE Ministerial Council, Decision 13/06, “Combatting Intolerance and Discrimination and Promoting Mutual Respect and Understanding”, Brussels, 5 December 2006, <<https://www.osce.org/mc/23114>>.

5 *Ibid.*

6 *Ibid.*

## Why this Guide is needed

ODIHR's reporting on hate crimes,<sup>7</sup> its work with civil society partners and its capacity-building work on a national level<sup>8</sup> demonstrate that overall, most OSCE participating States do not fully meet the commitments to support hate crime victims.

Where hate crimes are not recorded, hate crime victims become invisible. Adequately supporting victims depends on the ability of states to recognize hate crimes, and then investigate, prosecute and sentence the perpetrators. In most OSCE countries, criminal justice bodies have developed these basic abilities, often in co-operation with ODIHR. Where relevant, these efforts should be further strengthened.

Even where such national responses exist, however, victims of hate crimes are not at their centre. The voices of victims are not always heard, while the systems and processes in place may be or feel disempowering. ODIHR has observed that victims often lack effective access to justice, or have a procedurally weak position, not allowing them to fully assert their rights in the criminal justice process. This can be because:

- Even when victims report, the authorities do not recognize incidents as hate crimes, despite the presence of bias indicators;
- Criminal procedure is often centred on the defendant and their rights;<sup>9</sup>
- Victims are accorded standing too late to be able to effectively participate, sometimes due to presumption of a perpetrator's innocence and unwillingness to declare the incident a hate crime until confirmed by courts;

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7 "Hate Crime Reporting", OSCE/ODIHR, <<http://hatecrime.osce.org/>>.

8 Particularly through its training programmes on hate crime for police (*Training Against Hate Crimes for Law Enforcement (TAHCLE): Programme Description* (Warsaw: OSCE/ODIHR, 2012), <<https://www.osce.org/odihr/tahcle>>) and prosecutors (*Prosecutors and Hate Crimes Training (PAHCT): Programme Description* (Warsaw: OSCE/ODIHR, 2014), <<https://www.osce.org/odihr/pahct>>), as well as its programme to improve national systems for hate crime recording and data collection (*Information Against Hate Crimes Tool Kit (INFAHCT): Programme Description* (Warsaw: OSCE/ODIHR, 2018), <<https://www.osce.org/odihr/infachct>>).

9 "Ensuring Justice for Hate Crime Victims: Professional Perspectives", European Union Agency for Fundamental Rights (FRA), 2016, p. 33 <[http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-justice-hate\\_crime-victims\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf)>, quotes a Lithuanian judge as saying: "comparing suspected and accused people on one hand, and victims on the other hand, the main focus in Lithuania is on the rights of accused people. There is no focus on the rights of victims. Nobody emphasises that."

- The criminal justice process relies predominantly on retributive rather than restorative approaches; consequently, victims can be instrumentalized or “used” merely as witnesses but with limited regard for their needs; and
- Adversarial criminal justice systems without built-in protection measures can be hostile to victims.

The fact that general victim support systems are only now being built up in some countries adds to these difficulties. In many OSCE participating States, the notion of victims’ needs does not extend beyond the minimum required for the purposes of criminal proceedings. Such systems tend to emphasize procedural rules and the support victims can provide to the police and prosecutors, rather than the support victims require.

Victims in many OSCE countries have also reported exposure to secondary victimization<sup>10</sup> through biased and uninformed remarks, as well as overall unprofessional treatment at the hands of the police. Thus, some criminal justice agencies have increased the victim’s trauma, in breach of the “do no harm” principle.

This Guide responds to these and other shortcomings.

### **Existing victim support instruments**

Other intergovernmental organizations have also supported national responses to hate crimes. Relevant international instruments are referenced throughout this Guide. While it presents a cohesive overview of international good practices, not all the international standards are equally binding on or in all OSCE participating States. Users of this Guide should look carefully at these international references and distinguish between those that are mandatory for their country and those simply constituting good international practice.

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<sup>10</sup> Secondary victimization, or re-victimization, is when a victim receives a negative or prejudiced response from authorities that reinforces the victim’s experience of the crime, potentially worsening the trauma suffered. An example of re-victimization would be when, upon reporting a racist hate crime to the police, the victim is subject to racist epithets and/or the bias motivation is ignored or diminished. Another example is when a Muslim woman is targeted with both anti-Muslim and sexist comments, has her hijab ripped off and the police fail to take the gender aspect of the crime into account.

The following international and non-governmental organizations deal specifically with hate crime victim support or other related aspects.

The United Nations' work has been centred around its basic *Principles of Justice for Victims of Crime*.<sup>11</sup> The United Nations Office on Drugs and Crime (UNODC) has produced useful guidelines on restorative justice approaches.<sup>12</sup>

The Council of Europe's Committee of Ministers has issued recommendations on the victim in the criminal justice process, as well as on victim assistance.<sup>13</sup> The Council of Europe's Convention on the Compensation of Victims of Violent Crimes<sup>14</sup> has also been adopted.

The hate crimes case law of the European Court of Human Rights, the Court of Justice of the European Union, the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Elimination of the Discrimination against Women (CEDAW) also provide an indispensable source of standards that are relevant for the countries under the respective tribunals' jurisdictions.

In 2012, the European Union (EU) adopted a Victims' Rights Directive, which provides minimum standards of victim protection in the EU and explicitly recognizes the particular vulnerability and needs of hate crime victims.<sup>15</sup> In 2013, the European Commission's Directorate-General for Justice and Consumers complemented the directive with a guidance document interpreting its

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11 United Nations, General Assembly Resolution 40/34, "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, <<https://www.ohchr.org/Documents/ProfessionalInterest/victims.pdf>>.

12 UN Office on Drugs and Crime, *Handbook on Restorative Justice Programme* (New York: United Nations, 2006) <[https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf)>.

13 Council of Europe, Committee of Ministers Recommendation No. R (85) 11, "On the Position of the Victim in the Framework of Criminal Law and Procedure", 28 June 1985, <[https://ec.europa.eu/civiljustice/comp\\_crime\\_victim/docs/council\\_eur\\_rec\\_85\\_11\\_en.pdf](https://ec.europa.eu/civiljustice/comp_crime_victim/docs/council_eur_rec_85_11_en.pdf)>; Council of Europe, Committee of Ministers Recommendation Rec(2006)8, "On Assistance to Crime Victims", 14 June 2006, <[https://victimsupport.eu/activeapp/wp-content/uploads/2012/09/Recommendation-Rec20068-of-the-Committee-of-Ministries\\_Council-of-Europe11.pdf](https://victimsupport.eu/activeapp/wp-content/uploads/2012/09/Recommendation-Rec20068-of-the-Committee-of-Ministries_Council-of-Europe11.pdf)>.

14 Council of Europe, "European Convention on the Compensation of Victims of Violent Crimes," 24 November 1983, ETS 116, < <https://rm.coe.int/1680079751>>.

15 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 [hereafter: EU Victims' Rights Directive], <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>>.

provisions.<sup>16</sup> The Commission’s High Level Group on combating racism, xenophobia and other forms of intolerance has developed several guidance documents that assist EU member states with hate crime training, data collection and hate crime victim support.<sup>17</sup> The EU’s Fundamental Rights Agency has published extensive research, surveys and reports on discrimination across the EU, including hate crime.<sup>18</sup>

Many CSOs have worked to support hate crime victims and developed relevant resources. This Guide particularly builds on the work of RAA Saxony, a member organization of a network of 14 German providers of specialist support services to victims of hate crime. RAA Saxony co-ordinated the work of CSOs from 18 European countries and several academics, resulting in a guide for CSO providers of hate crime victim support launched in 2016.<sup>19</sup> The work of Victim Support Europe, a network of organizations supporting victims of crime across Europe, has also inspired this Guide.

The Guide also builds on national good practices, some of which are referenced in the text. The multinational project “Evaluation of Victims” led by the Ministry of Justice of France has been of particular importance, resulting in the 2015 guidance and template questionnaire for the individual evaluation of victims (EVVI),<sup>20</sup> which this Guide uses and incorporates as Annex III.

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16 “Directorate General Justice Guidance Related to the Transposition and Implementation of Directive 2012/29/EU”, European Commission, 19 December 2013, <[http://victimsupport.eu/activeapp/wp-content/uploads/2014/04/EC-Guidance-Document\\_Feb201411.pdf](http://victimsupport.eu/activeapp/wp-content/uploads/2014/04/EC-Guidance-Document_Feb201411.pdf)>.

17 “Overview of Resources and Initiatives to Support Progress on Ensuring Justice, Protection and Support for Victims of Hate Crime and Hate Speech in the EU Member States”, European Commission, December 2017, <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=37189&no=2>>; “Ensuring Justice, Protection and Support for Victims of Hate Crime and Hate Speech: 10 Key Guiding Principles”, European Commission, December 2017, <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=37188&no=1>>.

18 “Ensuring Justice for Hate Crime Victims”, FRA, *op. cit.*, note 9. In 2019, the FRA launched a four volume series: *Justice for Victims of Violent Crime Part I-IV*, <<https://fra.europa.eu/en/publication/2019/justice-victim-crime-standards>>.

19 Stephan-Jakob Kees, Paul Iganski, Robert Kusche, Magdalena Świder, Kusminder Chahal, *Hate Crime Victim Support in Europe – A Practical Guide* (VBRG e.V. 2016), <<https://www.verband-brg.de/guidelines-hate-crime-victim-support-in-europe>>.

20 The EVVI project was implemented in co-operation with the French Victim Support and Mediation Institute (INAVEM), the French National School for the Judiciary (ENM), the Crown Prosecution Service (United Kingdom), the Polish Ministry of Justice (Poland), the ‘Secretaria General de la Administracion de Justicia’ (Spain), the ‘Associação Portuguesa de Apoio à Vítima’ (APAV, Portugal), and ‘GIP-JCI – Justice Coopération Internationale’ (France). “EVALUATION OF VICTIMS”, Criminal Justice Program of the European Union, 2015, <[http://www.justice.gouv.fr/publication/evvi\\_guide\\_en.pdf](http://www.justice.gouv.fr/publication/evvi_guide_en.pdf)>.

## Aims of the Guide

This Guide maps the position of hate crime victims in the criminal justice system. Each chapter introduces a set of guiding principles, followed by detailed recommendations and examples of how criminal justice and victim support system practitioners and policymakers can effectively implement these principles. CSOs working with hate crime victims, as well as those advocating for improved hate crime policies, may also find this Guide helpful.

These basic principles are based on OSCE commitments and other international standards. The recommendations contained in this ODIHR Guide are thus informed by both international standards and good practices.

Some criminal justice practitioners with whom ODIHR spoke during work on this Guide expressed disagreement. First, they argued that “too much care for the victims of hate crime goes against the needs of a quick and efficient criminal procedure.” Second, they asserted that “it costs a lot of money, which our country cannot afford.” Finally, some noted that “these ideas require amending laws and developing comprehensive policy frameworks.”

While it is true that hate crime victim support may require funding and legal or policy changes, ODIHR believes that it is impossible to effectively address hate crimes without intensively engaging with the victims. Police officers and prosecutors rely on victims for evidence. Acknowledging the vulnerability of hate crime victims and responding to their needs is essential for victims to provide the best, substantive evidence needed for the case. Supporting victims of hate crimes is therefore an integral part of a comprehensive national response to hate crimes.

This Guide is both based on and seeks to advance human rights approaches to criminal justice and victims of crime, embedded in the principles of (i) preventing further harm to hate crime victims, (ii) co-operating with hate crime victims, (iii) protecting and supporting hate crime victims, and (iv) empowering hate crime victims as a result of the process.

## Methodology and scope

ODIHR developed this Guide between 2017 and 2019 through a series of four expert consultative meetings. Two meetings brought together a mixed government-civil society audience, one involved only government experts and one included only civil society experts. ODIHR also conducted an email consultation on the Guide's structure and recommendations. In the summer of 2018, a questionnaire survey (referred to as "ODIHR's questionnaire") was conducted through ODIHR's network of National Points of Contact (NPC). NPCs were also consulted during their Annual Meeting in Vienna in 2017. Throughout this process, ODIHR was supported by a small "core group" of several experts who provided input in different formats and on a number of occasions. A consultation meeting was organized in Warsaw in September 2018 to discuss implementation needs and priorities.

This Guide covers a broad range of issues related to the position of hate crime victims in the criminal justice process. It combines thematic and "chronological" approaches in order to address the framework issues (such as definitions, victim support structures or hate crime reporting and recording) while proceeding through the main stages of the life cycle of a hate crime. Consequently, some of the issues covered may be included in two different places, while other issues are the focus of a single chapter.

Each chapter of the Guide starts with an overview of the relevant issue(s), particularly those faced by victims if relevant recommendations are not implemented. The chapter then introduces a thematic principle that frames responses to the problem. The chapter sub-sections discuss different aspects of the issue and illustrate the solutions available with good practice examples. Each chapter goes on to formulate detailed recommendations, which are presented throughout the relevant sub-sections and also on a page adjacent to each chapter's opening for ease of use by policymakers and practitioners.

The first chapter introduces the basic concepts, such as the definition of a hate crime and a hate crime victim, as well as discussing hate crime victimization and victims' needs.

Chapter 2 deals with recording hate crimes and suggests ways of encouraging victims to report hate crimes through specific measures and increased outreach to the targeted communities.

Chapter 3 explains the differing circumstances of victims in different legal systems and proposes that victims should be viewed from two perspectives – as individuals requiring assistance and support, but also as entities involved in the criminal proceedings.

Chapter 4 provides guidance on how to treat victims and ensure their access to justice. It includes principles applicable throughout the criminal justice process, but focuses on the first contact between a hate crime victim and the authorities.

Chapter 5 discusses how to assess the needs of hate crime victims through an individual needs assessment in order to refer them directly to the relevant providers of specialist support services.

Chapter 6 discusses the organization of victim support systems and, in particular, how to better co-ordinate civil society support for hate crime victims with existing government-run processes. It elaborates on the services that hate crime victims should receive, focusing on specialist support.

Chapter 7 looks more closely at the criminal proceedings and identifies at which points hate crime victims can and should be involved, providing guidelines for how to involve victims.

The final chapter discusses different possible outcomes of the judicial process and suggests several alternative outcomes. It goes on to offer guidance on compensation issues.

The Guide includes three annexes, numbered I-III and referenced throughout the text. The annexes provide an overview of OSCE commitments on hate crime victim support, guidance on interviewing the victims of hate crimes and an individual evaluation of victim questionnaire for individual needs assessment.

A few remarks on the scope of this work are due. Firstly, as hate crime victims are victims of crime, the support they receive corresponds to the level and quality of overall victim support, as well as the hate crime response, in a given country. Where one or both of these two elements are seriously underdeveloped, a comprehensive reform should first address these issues before adding a focus on hate crime victims in line with this Guide.



Similarly, defining (and providing for) hate crime victims depends on the definition of a hate crime in a given jurisdiction. For example, the hate crime provisions in the criminal code of any given country list the protected characteristics that will determine who will receive protection from a hate crime or support as a hate crime victim. ODIHR observes that the most common protected characteristics include: race, ethnicity, nationality, religion or lack thereof, sexual orientation, gender identity, sex/gender and disability. If this list is insufficient, some victims of hate crimes will be excluded. While including an open-ended list may help address this issue, in some contexts, the resulting diminished legal certainty can also significantly weaken the provision as a whole.

In this context, it is important to emphasize that broadening the definition of victims of hate crimes for policy (as opposed to law) purposes might help ensure that a greater number of victims receive additional protection and support.

Approaches to hate crime, both in terms of victim support and in the criminal justice system, differ vastly from country to country. The Guide takes this diversity into account by offering solutions applicable across the board and/or explaining which legal context they come from. However, there are fundamental differences in the position of victims between the continental (civil) and common law systems of law. While these differences are explained in the Guide, some of its chapters, particularly regarding the procedural rights of victims participating in proceedings, may be less relevant for common law jurisdictions.

While the focus of this Guide is on specific issues relevant to hate crime victims, this is sometimes only possible after a discussion on general issues of victim support. Therefore, the Guide addresses some more generic issues as a means to reach those relating specifically to hate crime victims.

While criminal justice systems are normally understood to comprise the police, prosecutors and courts, this Guide also includes all the agencies and organizations that are a part of the victim support system.

## Comprehensive and strategic approach

The protection and support of hate crime victims is only one piece in the mosaic of a national response to hate crimes. The situation of hate crime victims will significantly improve if other pieces are also in place. ODIHR can support participating States in meeting all their commitments on hate crime through the tools referred to in this introduction or elsewhere in the Guide.

Efforts to address hate crimes need to be comprehensive in order to be effective. This means that agencies must co-ordinate and unify their approaches and concepts, ideally under the umbrella of a cross-government hate crime policy.

While this Guide enables users to select a combination of the solutions it offers, a robust hate crime victim support system cannot be built without a comprehensive hate crime framework. Users of the Guide are encouraged to consider the practicality of their chosen solutions against the background of their national hate crime frameworks.

Specialized victim support institution-building requires a strategic approach. While this Guide does not address the formal aspects of interagency co-operation that such an approach requires, good practice from across the OSCE region shows that integrating schools, hospitals or social workers into hate crime victim support schemes would also be beneficial. In particular, integrating CSOs from the hate crime support field might be especially valuable in participating States where victim support systems are only developing, are fragmented, or do not exist at all.

When implementing the Guide's recommendations, policymakers are encouraged to thoroughly assess their current victim support systems. Enhanced assistance exists in many participating States for certain victims, for example, for the victims of violence against women, trafficking in human beings or terrorism. Making use of, adapting or replicating these approaches for the benefit of hate crime victims may help to implement many of the Guide's recommendations.

A strategic approach to hate crime victim support also requires specific measures to be part of any national victim support strategies. One of these is the need for continuous specialized training for officials and CSOs, and to this end the training systems and curricula used in police academies or judicial schools can be modified to integrate learning about hate crime victims,

their needs, protection and support mechanisms and the corresponding duties of officials.

It is primarily the responsibility of the authorities to implement the principles of this Guide. While some changes might be relatively easy to put into practice, others could require amending laws, developing policies, or dedicating funds and resources. In line with its mandate, ODIHR stands ready to assist OSCE participating States in implementing the Guide's recommendations.

In the process of developing this Guide, the following priority issues were identified and will form the focus of ODIHR's capacity-building work:

1. Assess each victim's needs, and the risks they face, on a case-by-case basis, while taking gender into consideration;
2. Strengthen referrals to specialist service providers;
3. Strengthen training and guidance for the police on respectful and sensitive treatment of victims of hate crimes, including gender-sensitive approaches;
4. Develop, fund and standardize specialist services provided to victims of hate crimes;
5. Integrate civil society providers of specialist support to hate crime victims more closely with criminal justice bodies; and
6. Address country-specific structural aspects of victim support systems.

ODIHR's "Enhancing Stakeholder Awareness and Resources on Hate Crime Victim Support" project, implemented across the OSCE region in 2020–2021, develops practical tools for practitioners to address these priority areas.

1.

Hate crime victimization  
and victims

## 1.1 Hate crime and its impact

A hate crime is a criminal offence committed with a bias motivation.<sup>21</sup> Hate crimes comprise two elements. The first element of a hate crime is that the act committed is a crime. Hate crimes always require a base offence to have occurred; if there is no underlying crime, there is no hate crime. Hate crimes could include murder, acts of intimidation, threats, property damage, physical assaults, arson, robbery or any other criminal offence whose commission requires intent. The second element of a hate crime is that the perpetrator must commit the criminal act with a particular motive – a bias. This bias motive of the perpetrator distinguishes hate crimes from ordinary crimes.

Practically, the bias motive means that: (i) the perpetrator intentionally chose the target of the crime because of some protected characteristic; or (ii) while committing an ordinary crime, immediately before or after, the perpetrator expressed hostility towards the protected characteristics of the targeted person, group or property. A protected characteristic is a common feature shared by a group, such as race, ethnicity, language, religion, nationality, sexual orientation, gender identity or any other similar common factor that is fundamental to their identity. As all people have protected characteristics, anyone – both members of majority and minority groups – can become targets of a hate crime.

Hate crimes can target one person, multiple people or property associated with a group that shares a particular characteristic. The perpetrator might target the victim because of actual or even perceived membership in, or association with, a group. For example, a perpetrator may attack someone because they think the victim is Jewish. The attack can still be prosecuted as a hate crime, even if the victim was not Jewish, simply because the perpetrator selected the victim because of a perceived religious or ethnic background.

Unlike other manifestations of intolerance (e.g., some criminal forms of hate speech), hate crimes usually have a direct victim – a person harmed as a result of the crime. Due to the discriminatory nature of hate crimes and the fact that multiple identity traits can be targeted at once, victims of hate crimes have different needs than victims of other crimes.

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21 OSCE Ministerial Council, Decision 9/09, *op. cit.*, note 2, agreed to by all OSCE participating States, states that “hate crimes are criminal offences committed with a bias motive.”

Hate crimes are high-impact crimes; their impact on individual victims is more severe than that of ordinary crimes. Hate crimes cause greater psychological distress for their victims because one or more aspects of their identity have been targeted.<sup>22</sup>

In addition to the destructive effect on direct victims, hate crimes are message crimes. The offenders choose the individual victim or property – often anonymous, unknown and randomly selected – as representative of a group, in order to send a message of rejection or superiority to that group. Hate crimes, thus, reach beyond individual victims to include family, friends and all other members of the community who share the same protected characteristic as the victim.

This mechanism explains the danger hate crimes pose to societies. If not adequately addressed, hate crimes can multiply and escalate, pitting one group against another and leading to retaliatory violence, civil unrest or even conflict on a wider scale. As such, hate crimes are a serious threat to principles of equality and non-discrimination but also to societal cohesion.

To minimize these risks, authorities need to work to prevent hate crimes, and a strong response is key. Authorities need to act swiftly against hate crimes and acknowledge the biased nature of these crimes to send a message back to the targeted community that hate crimes will not be tolerated.

## 1.2 Victimhood and victimization

Victimological discourse and some victim organizations increasingly use the term “survivor” in place of “victim”, arguing that the former better reflects the trauma suffered, while the latter can be perceived as disempowering. This Guide refers to persons affected by crime as “victims”. This terminology is in line with the main international documents. The word “victim” is also more appropriate for a discussion about procedural and substantive rights in the criminal justice process, which are one of the foci of this Guide. Referring to victims or “potential victims” also enables addressing situations prior to the incident.

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22 See for example: Paul Iganski, Abe Sweiri, *How ‘hate’ hurts globally*. In: Jennifer Scheppe, Mark Walters (Eds.) *The globalisation of hate: internationalising hate crime?* (Oxford: Oxford University Press, 2016).

Anyone can become a victim of a hate crime. Depending on national and local demographics, members of groups that are already marginalized or discriminated against are more likely to be targeted than others.

Each victim of a crime is different – suffering different harm and requiring different assistance. Victims of hate crimes describe their victimization in different terms: as individuals (but also owing to the group they come from); the type of incident that targeted them; their previous experience with discrimination and hate; and other factors. But there are also common traits. At the core of all hate crime victimization is the fact that the victim has been targeted for who they are and what they represent to the perpetrator, rather than what they have said or done. Understanding the gendered implications of hate crimes is especially important not to further victimize, stigmatize and marginalize a hate crime victim.

A survey of hate crime victims in the United Kingdom found that 95 per cent of victims felt that their quality of life had worsened as a result of the attack. The same project<sup>23</sup> reported four main ways in which hate crimes affect victims:

**Fear of victimization** – Realizing that they have been targeted for characteristics they cannot change, victims conclude that this can happen again, at any time;

**Emotional and physical impacts** – Victims relay that hate crime victimization made them upset, fearful, anxious, vulnerable, angry or distrustful of other people;

**Wider impacts** – Some victims note that their relatives were also targeted in the same or other incidents; many testify that the incident caused arguments within their family, while others describe the emotional consequences for their parents and children;

**Coping strategies** – Victims often use coping mechanisms.

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23 “Leicester Hate Crime Project”, University of Leicester, 2012-2014 <<https://le.ac.uk/hate-studies/research/the-leicester-hate-crime-project>>.

Those most often described are:

- Normalizing hate – some victims perceive devaluation, discrimination and intolerance as an everyday and “normal” state of being;
- Retaliating – many report responding aggressively (verbally or physically) to the attack;
- Concealing one’s identity or changing appearance – this can range from not wearing religious or cultural symbols, to changing attire, to not mentioning one’s place of origin or sexual orientation in casual conversations;
- Avoiding certain areas at certain times – victims fear going out at night or partying, avoiding places where attackers might be gathering;
- Improving their home security or carrying personal security devices; and
- Turning to alcohol or drugs.

Victims of hate crimes often feel that the authorities do not do enough to respond to hate crimes and can sometimes perceive them as outright hostile towards their group. These perceptions can in turn translate as extremely cautious approaches to the authorities by victims themselves, their immediate surroundings and the regularly victimized communities.

As a result, hate crimes are severely under-reported to the authorities. Victimization surveys should be conducted to arrive at accurate estimates, but some surveys suggest that 50 to 80 per cent of all hate crimes are never reported to the police.<sup>24</sup>

The impact on victims and the fear of reporting also make the treatment of victims of hate crimes who come forward, fundamentally important. As this Guide explains in detail, states need to prioritize developing an

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24 For example, EU FRA’s EU-MiDis II survey (September 2017) found that 77 per cent Muslim victims of a violent hate crime across the EU member states never reported this incident anywhere. “Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings”, European Union Agency for Fundamental Rights (FRA), September 2017, p. 41, <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf)>. The Crime Survey for England and Wales (2014-2016) found that around 50 per cent of hate crimes have not been reported. “Number of Incidents of Hate Crime, by Strand of Hate Crime and Percentage of those Incidents Reported to the Police, Years Ending March 2014 to March 2016, Combined”, Crime Survey for England and Wales, 25 September 2017, <<https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/adhocs/007533numberofincidentsofhatecrimebystrandofhatecrimeandpercentageofthoseincidentreportedtothepolicecrimesurveyforenglandandwalesyearsendingmarch2014tomarch2016combined12monthaverages/final.xls>>. ODIHR’s own victimization survey conducted in Poland from 2018 to 2019 shows even higher non-reporting rates, see <<http://hatecrime.osce.org/infocus/new-study-reveals-scale-underreporting-hate-incidents-poland>>.



understanding of hate crime victimization, dealing with the victims sensitively and with respect, and preventing secondary victimization by the authorities.

Victim organizations – be they civil society or community-based organizations – often have vast experience and knowledge, capacity to support the victims, and more trust of the victims than law enforcement. For these reasons, collaboration between the authorities and civil society is vital to increasing the reporting of hate crimes, developing evidence-based policies and providing adequate support.

### 1.3 Hate crime victims

Victims of crime are people who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws. A person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm.<sup>25</sup>

The EU Victims’ Rights Directive defines a victim as: “(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death.”<sup>26</sup>

In line with this definition, a hate crime victim, for the purposes of this Guide, is a natural person who suffered harm as a result of a hate crime. Consequently, hate crime victims require protection, support and should be able to receive compensation for the harm suffered.

The “harm” can include injury or loss of life, material (property) and moral damage (including pain, physical, mental or emotional suffering), economic loss and loss of income, and loss of maintenance for dependants.

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<sup>25</sup> United Nations, General Assembly Resolution 40/34, *op. cit.*, note 11.

<sup>26</sup> EU Victims’ Rights Directive, *op. cit.*, note 15, Article 2.

This Guide does not define which family members should automatically be considered victims of a hate crime.<sup>27</sup> Inasmuch as they have suffered as a result of the incidents, however, family members should be able to claim relevant protection and support.

Hate crimes also include crimes targeting property, including that owned or rented by legal entities, such as a community centre owned by an LGBTI association. A biased attack on an organization can victimize its members or individuals associated with it and can have a chilling effect on the work of the organization. However, the characteristic forms of harm suffered by individuals as a result of a hate crime (such as emotional and psychological suffering) cannot be experienced by an organization. For this reason, this Guide does not include legal entities in the definition of a hate crime victim.<sup>28</sup>

When a victim's assistance needs are the highest (immediately after the incident and at the first stages of interaction with the authorities), the least amount of information is usually available about the crime and its perpetrator (with investigation just beginning). That is why protection and support cannot be made conditional upon establishing causation between the crime, reporting of the crime, identification or apprehension of the perpetrator, and the harm suffered by the victim. Participation by the victim in the proceedings, on the other hand, is usually subject to additional criteria. For these reasons, this Guide differentiates between the status of a hate crime victim for protection and support purposes, and for participation in proceedings (standing).

While victims of hate crimes have similar protection and support needs across the OSCE region, procedural rules for their involvement in criminal justice processes are fundamentally different between the common law and continental legal systems. These differences are addressed in Chapter 3.

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27 Some national laws include such definitions, identifying eligible family victims. See for example the Czech Act on Victims of Crime, section 2 para 3, <<https://www.zakonyprolidi.cz/print/cs/2013-45/zneni-20170401.htm?sil=1>> (in Czech).

28 While legal entities are not “hate crime victims” for purpose of protection and support, they should be able to participate in the proceedings as an “injured party” to claim damages. The difference between these two statuses of hate crime victims is discussed in detail in Chapter 3. This is also the approach of the Court of Justice of the EU, which held that the concept of a “victim” does not include legal persons who have suffered direct harm by violations of the criminal law, and of the EU Victims’ Rights Directive. See “DG Justice and Consumers Guidance document related to transposition and implementation of the VRD”, 2013, *op. cit.*, note 16.

This Guide deals with victims of hate crimes, excluding incidents that do not reach a criminal level. Yet, “victims” of bias motivated “misdemeanours” or “administrative offences” may face similar realities and have similar needs as victims of criminal behaviour. While this is not explicitly addressed in the Guide, authorities should consider extending the protections for hate crime victims to those who suffer as a result of hate incidents.

#### **1.4 The needs of hate crime victims**

State authorities should consider and address the following needs when implementing the recommendations outlined in this Guide:

- Victims need to have their experience acknowledged and validated by law enforcement and criminal justice agents. They need to be believed and have their experiences recorded in the case file. Victims should see the bias motivation addressed in the proceedings and in public statements;
- Victims’ personal security, safety and well-being must be guaranteed. Authorities should ensure protection from the offender, including minimizing contact between the victim and the suspect or providing shelter, as required. Psychological counselling for victims and others affected, such as family members, should be provided;
- Victims should be protected from re-victimization. Authorities should avoid manifesting the same biased attitudes that the victim experienced in the incident;
- Victims should be treated sensitively and with respect. Principles of sensitive interviewing, considering the identity of the victim, should apply and victims should not be interviewed excessively;
- Victims’ needs must be assessed on a case-by-case basis to identify appropriate protection and support measures. All aspects of the victim’s identity and resulting differences in the support needs should be considered in this process;
- Victims’ privacy needs must be met. In particular, authorities should not, for example, reveal the victim’s religion, ethnicity, immigration status, sexual orientation or gender identity without informed and explicit consent;
- Victims need to be informed and involved. Authorities should inform victims of the main developments in their case and consult them on certain decisions, for example, when entering plea bargaining, resorting to restorative justice processes or if bias motivation is dropped;

- Victims' language needs must be met, including through the use of interpreters, easy-to-read language, and intermediaries or having important documents translated into the language they speak and understand; and
- Victims must have access to the proceedings, both procedurally and physically. Authorities should define the participation rights of victims of hate crimes, ensure access for victims with disabilities, and make funds available for their travel to court.

Authorities' attitudes to victims of hate crimes also need to be based on a recognition of the trauma victims of hate crimes may cope with throughout criminal justice process. Deep traumatization can manifest or be interpreted as lacking trust, indecisiveness, unco-operativeness, or "trouble-making". It is important that the authorities acknowledge these as symptoms of the coping process.

### **1.5 A victim-centred approach to addressing hate crimes**

This Guide advances the principle that victims of hate crimes should always be at the centre of any action, approach or measure undertaken by criminal justice bodies throughout the lifecycle of a hate crime case.

Acknowledging and accommodating the needs of hate crime victims is an important, but insufficient, part of this. Across the OSCE region, hate crime victims are claiming their rights and should be treated as people with their own agency, who can play an active and self-empowering role throughout the criminal justice process.



2.

Reporting and recording  
hate crimes

## Guiding Principles

The authorities should:

- ✓ Record hate crimes upon first contact with victims;
- ✓ Facilitate victims' reporting of hate crimes; and
- ✓ Work proactively to engage victim communities.

## Overview of chapter recommendations:

- Establish a system of standardized procedures for recording hate crimes (as detailed in ODIHR's *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide*);
- Activate a hate crime victim protocol or mechanism as soon as a potential hate crime is first identified;
- Provide additional reporting mechanisms that do not require direct contact with the police, such as reporting via online forms or in writing. Enable hate crime reporting by third parties, such as civil society organizations or an equality body. Explore the possibility of allowing victims to report hate crimes without revealing their identity (anonymous reporting);
- Publish information about hate crime policies, procedures and disaggregated statistics;
- Pro-actively and correctly communicate about hate crime cases that are progressing through the criminal justice system; and
- Involve communities and civil society organizations in hate crime policing, criminal justice processes, education and awareness-raising efforts. Introduce hate crime and/or community liaison officers in the police at the local or regional level.

Data collected on ODIHR’s Hate Crime Reporting website indicate that hate crimes are often under-reported.<sup>29</sup> When a hate crime is reported, the authorities do not always register it as a hate crime or they omit critical bias indicators in the registration process; this is referred to as “under-recording”. Both under-reporting and under-recording are major obstacles to ensuring that those who commit hate crimes are prosecuted and punished.

Victims may be reluctant to come forward and report hate crimes for several reasons. Key among these reasons is a lack of trust in the ability of police and prosecutors to recognize the bias motivation.<sup>30</sup> Victims may be more likely to report hate crimes when their contact with the police is indirect or mediated by a third party.

Co-operation with communities frequently targeted in hate crimes can help build trust and increase hate crime reporting. Authorities should engage in proactive communication with target communities regarding hate crime policies and individual hate crime cases, while exploring other channels of co-operation with these communities.

The rights and needs of the victims of hate crimes will only be met if the authorities recognize the bias motives and record these crimes as hate crimes. In doing so, the authorities can help validate the victim’s experience and provide the victim with the necessary support.

This chapter provides guidance for the authorities on recording hate crimes. It suggests ways to increase the reporting of hate crimes, including improving communication regarding government responses to hate crimes and involving communities affected by hate crime. This information is key to establishing a framework where the needs of hate crime victims can be met throughout the criminal justice process.

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29 “Hate Crime Reporting”, *op. cit.*, note 7.

30 “Ensuring Justice for Hate Crime Victims”, FRA, *op. cit.*, note 9, pp. 29-30.



## 2.1 Recording hate crimes

The correct identification and recording of hate crimes by the police and other authorities is central to combating hate crime. ODIHR's publication, *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide*, addresses the problem of under-recording in-depth.<sup>31</sup> Since 2014, ODIHR has provided OSCE participating States with technical assistance to improve the recognition and recording of hate crimes, developing an assistance programme to provide support.<sup>32</sup> Drawing on these resources, the following section addresses only those aspects critical to hate crime victim identification.

There are three main reasons for recording hate crimes as a specific category of crime:

- First, the correct recording of hate crimes enables application of the relevant hate crime provisions in legislation and punishment of perpetrators;
- Second, correctly recording hate crimes improves the authorities' understanding of the problem and provides information needed to prevent hate crimes, monitor trends and measure the effect of efforts applied to counter hate crimes; and
- Last, but not least, the correct recording of hate crimes is necessary to identify the victims of such crimes and meet the victims' specific needs.

The perpetrator's bias motivation is what distinguishes hate crimes from other crimes, as acknowledged by OSCE Ministerial Council Decision No. 9/09. For this reason, the European Court of Human Rights established a specific duty to "take all reasonable steps to unmask" bias motivation when investigating crimes. A similar approach is also present in the CERD Committee decisions.<sup>33</sup> The Court's case law has also recognized bias indicators as the main instrument police use to recognize potential bias motivation in a criminal offence.<sup>34</sup> Bias indicators are "objective facts, circumstances, or patterns attending a criminal act(s), which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated,

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31 *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide* (Warsaw: OSCE/ODIHR, 2014), <<https://www.osce.org/odihr/datacollectionguide>>.

32 *INFAHCT: Programme Description*, *op. cit.*, note 8.

33 See, for example: *Angelova and Iliev v. Bulgaria*, ECtHR Application No. 55523/00, 26 July 2007. See also CERD committee decision in *Mahali Dawas and Yousef Shava v. Denmark*, CERD/C/80/D/46/2009, 2 April 2012.

34 *Balázs v. Hungary*, ECtHR Application No. 15529/12, 20 October 2015.

in whole or in part, by any form of bias.”<sup>35</sup> As such, recording hate crimes means recording bias indicators. One indicator that is immediately visible – and that should be given special consideration in the recording process – is the victim’s perception of the incident as a hate crime.

### Perception-based recording of hate crimes

In the United Kingdom, the perception of the victim alone should lead police to record an incident as a potential hate crime. This is based on the definition of hate crime agreed upon by the police and the Crown Prosecution Service for recording purposes:

“Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person’s disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.”

Source: “Hate Crime”, Crown Prosecution Service website, <<https://www.cps.gov.uk/hate-crime>>.

The authorities can find out about a hate incident through various channels, including victim reports, media reports or information provided to the authorities by civil society organizations. Recording a hate crime spans several different stages of criminal proceedings, from the initial police record and investigation of a potential hate crime case to a prosecutor’s decision on whether sufficient evidence exists to bring charges for a hate-motivated offence. Therefore, it is critical that hate crimes are recorded systematically and coherently and that hate crime data is communicated throughout the criminal justice system. To that end, it is recommended that a comprehensive recording and data-collection policy be developed.

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35 See the discussion on the concept and use of bias indicators in *Prosecuting Hate Crimes: A Practical Guide* (Warsaw: OSCE/ODIHR, 2014), p. 46, <<https://www.osce.org/odihr/prosecutorsguide>>.

## Cross-government policy for dealing with hate crimes

In Greece, an *Agreement on inter-agency co-operation on addressing racist crimes in Greece* was developed by public bodies responsible for recording, investigating, prosecuting and collecting data on hate crimes, by civil society and with support by ODIHR. The Agreement sets out procedures to ensure that hate crimes are recognized and recorded in a coherent manner, and that the country's hate crime data collection is centralized. The Agreement was signed on 6 June 2018 between representatives of Ministry of Justice, Transparency and Human Rights; Ministry of Interior; President of the Supreme Court of Greece; Prosecutor of the Supreme Court of Greece; Ministry of Health; Ministry of Migration Policy; National School of Judges; Racist Violence Recording Network; and the National Point of Contact of OSCE/ODIHR on Racist Crimes for Greece. Its implementation is supervised by a working group led by the Ministry of Justice, Transparency and Human Rights.

*Source:* "Agreement on inter-agency co-operation on addressing racist crimes in Greece", <<https://www.osce.org/odihr/402260>>.

A hate crime victim's needs can only be identified and met if the authorities are able to recognize the incident as a hate crime. The first recording of an incident as a potential hate crime is a decisive moment, as this is when hate crime victims are identified. From this moment on, the authorities should consider the victim a potential hate crime victim, and treat them sensitively and respectfully including in a gender – and diversity-sensitive fashion, assess the needs of the victim and refer them to appropriate support services. Such responsibilities will usually be implemented through a series of standardized steps by the police, victim support entities or others. These follow-up assessment, referral, protection and support steps can be established by a hate crime victim protocol or mechanism that is initiated as soon as a potential hate crime case is recorded. More information on the support that authorities should provide hate crime victims is contained in subsequent chapters.

**Recommendation 1:**

**Establish a system of standardized procedures for recording hate crimes (as detailed in ODIHR's *Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide*).<sup>36</sup>**

**Activate a hate crime victim protocol or mechanism as soon as a potential hate crime is first identified.**

## **2.2 Facilitating the reporting of hate crimes**

Hate crimes are among the most under-reported crimes.<sup>37</sup> A lack of hate crime reporting by victims can mean that the scope of the problem is underestimated, resulting in under-developed support mechanisms and hindering victims' access to available support. As noted above, a lack of trust in law enforcement's ability and willingness to pursue a hate crime complaint seriously – as well as a fear of re-victimization – is the most common reason hate crime victims do not report such crimes to the authorities. In particular, victims have described their initial contact with the police as the most stressful experience in the criminal justice process.<sup>38</sup> For that reason, an increase in the number of reported hate incidents is often a result of increased trust in the authorities rather than an upsurge in the number of hate crimes.

To increase reporting rates, a good practice is to provide victims with means of reporting a hate crime that do not require them to appear at a police

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36 *Hate Crime Data-Collection and Monitoring Mechanisms, op. cit.*, note 31. States are also encouraged to make use of ODIHR's programme to improve hate crime recording and data collection (INFAHCT). *INFAHCT: Programme Description, op. cit.*, note 8.

37 In findings published in 2017, the European Union Agency for Fundamental Rights (FRA) noted that 77 per cent of Muslims living in the European Union who suffered a violent attack in the past 12 months never reported the incident, while only 14 per cent reported it to the police. See "Second European Union Minorities and Discrimination Survey", *op. cit.*, note 24.

38 For more information on the causes of under-reporting, see *Hate Crime Data-Collection and Monitoring Mechanisms, op. cit.*, note 31, p. 5.

station or approach a police officer directly. Other reporting mechanisms can include:<sup>39</sup>

- (1) Reporting via an online form or in writing (such as by email or letter). The victim or person submitting the report may be required to provide details about the victim.
- (2) Third-party reporting, where the victim reports a hate crime incident to a civil society organization, a community group, an equality body or other entity, which then communicates with the police on the victim's behalf. These entities, in particular civil society organizations, might also provide other types of support to the victim, such as legal aid or representation.

### **Reporting hate crimes to/through equality bodies**

In Belgium, victims can report hate crime to the relevant equality body dealing with a specific type of bias-motivated crime. These bodies treat the case independently and confidentially and, together with the victim, determine the next steps. If a hate crime has occurred, the equality bodies can, among other activities:

- Deliver case-by-case advice based on the individual's situation;
- Submit a complaint;
- Start proceedings (civil or criminal), together and with the consent of the victim; and
- Advise the victim on the possible judicial procedures.

If necessary, the equality bodies will refer the victim to specialized social or legal services or organizations.

*Source:* Belgium's response to ODIHR's questionnaire, received on 10 July 2018.

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39 The EU Victims' Rights Directive advises that: "practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organizations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints." See EU Victims' Rights Directive, *op. cit.*, note 15.

It should be mentioned that, in both the reporting scenarios described above, police will try to identify the victim of the crime. Indeed, police may be required to know the victim's identity in order to open the investigation.

Anonymous reporting – either by a third party, the victim or other person – that allows information about the victim to be withheld from the police.<sup>40</sup> This practice can be useful when the police are seeking information about hate crime incidents to improve prevention policies but do not insist on prosecuting perpetrators. While this scenario can be recommended in some contexts, the police are generally under a legal obligation to investigate a potential crime, and the absence of information about the victim will complicate their efforts to process the case.

### Data-sharing agreements

In 2015, police in the United Kingdom entered into information sharing agreements with two community-based organizations that monitor anti-Semitic and anti-Muslim hate crimes and support the victims of such crimes—the Community Security Trust and Tell MAMA—as well as with GALOP. In 2018, a fourth agreement was concluded with Stop Hate UK. The four agreements establish procedures for exchanging data and reports on hate incidents and crimes between the organizations and the relevant police force. This includes the exchange of anonymous information on incidents and crimes for the purposes of identifying trends and measuring the impact of reporting policies, among other aims.

*Source:* “Information Sharing Agreements”, True Vision website, <[http://www.report-it.org.uk/information\\_sharing\\_agreements](http://www.report-it.org.uk/information_sharing_agreements)>.

The True Vision website is the United Kingdom's official police hate crime portal and also serves as a library of resources on hate crime, offering a secure on-line reporting facility for registering incidents (including anonymous reporting). See “Other Ways to Report”, True Vision website, <[http://www.report-it.org.uk/report\\_a\\_hate\\_crime](http://www.report-it.org.uk/report_a_hate_crime)>.

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40 This can be made possible by expanding the lists of professions that are legally permitted to withhold their clients' identities from the authorities to include journalists, lawyers and priests, as relevant to the country context.

### ***Recommendation 2:***

**Provide additional reporting mechanisms that do not require direct contact with the police, such as reporting via online forms or in writing. Enable hate crime reporting by third parties, such as civil society organizations or an equality body. Explore the possibility of allowing victims to report hate crimes without revealing their identity (anonymous reporting).**

## **2.3 Community outreach**

To ensure the effective reporting, investigation and prosecution of hate crime cases, it is beneficial to promote regular information exchanges and a relationship of trust between the authorities, the general public and communities targeted by hate crime. Co-operation between the authorities and targeted communities can improve the quality of evidence provided, facilitate the identification of witnesses, prevent potential retaliatory violence and equip law enforcement with the information needed to fulfil its duties. This section discusses measures and approaches that the authorities can implement to strengthen their co-operation with communities and to better protect hate crime victims. Specifically, it highlights the importance of communicating government hate crimes policies and information about individual hate crime cases, as well as ways to engage communities targeted by hate crime.<sup>41</sup> As some communities may have very specific internal power dynamics at play, it is recommended to include in such outreach, in addition to the leaders, other members of the community; ensuring that both women and men are consulted.

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41 Throughout this Guide, the term “community” refers to those segments of the public—organized or not—that share the identity markers and/or characteristics that are protected by national hate crime provisions and that are frequently the target of hate crimes. This is without prejudice to national provisions, which may or may not formally recognize this definition of “community”. Even where constitutional or legal principles do not formally use this term, the *de facto* existence of communities as described above can still be considered in day-to-day policing and co-operation with the public.

### 2.3.1 Communicating hate crime policy

Knowledge of the government's policies to address hate crime can be a decisive factor in determining whether or not a victim will report an incident to the authorities. For that reason, it is important that information reflecting the government's efforts in this field is made public, including new policies, legislative amendments or hate crime reports. This can demonstrate the government's determination to seriously address hate crimes – both on a legal and policy level and as individual incidents – and help increase the public's trust in the government's ability to properly handle hate incidents.

Many OSCE participating States publish periodic reports about hate crime incidents. Such reports often include an analysis of hate crime causes and trends that detail the government's efforts to prevent and respond to hate crimes.

#### Publicizing hate crime data and trends

In Spain, the Ministry of the Interior publishes an annual report on hate crime incidents. The 2017 edition included: an overview of national hate crime data, disaggregated by bias motivation; a breakdown of hate crime data by region; information about hate crime victims; information about hate crime perpetrators; a section on hate speech; and a summary of the main hate crime trends. Detailed statistics and a methodological overview are annexed to the public report.

*Source:* "Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España", Ministerio del Interior de España, 2017, <<http://www.interior.gob.es/documents/10180/7146983/ESTUDIO+INCIDENTES+DELITOS+DE+ODIO+2017+v3.pdf/5d9f1996-87ee-4e30-bff4-e2c68fade874>>.

Some states have opted to publish policy statements, methodologies and guidance documents on countering hate crime. In doing so, the government aims to convince the public and targeted communities that it takes hate crimes seriously, and to explain precisely how the authorities deal with such incidents.



### **Publicizing hate crime policies**

The United Kingdom's Crown Prosecution Service (CPS) runs a dedicated website that defines and explains hate crimes and includes a video message by the Director of Public Prosecutions. The page links to annual statistics of hate crimes processed by the CPS. It also provides access to guidance documents for prosecutors on relevant elements of hate crimes and links to partner organizations and projects.

*Source:* "Hate Crime", Crown Prosecution Service website, <<https://www.cps.gov.uk/hate-crime>>.

All related information and documents can be concentrated in one location, such as a government-run hate crime portal or website

### ***Recommendation 3:***

**Publish information about hate crime policies, procedures and statistics.**

### **2.3.2 Communicating about hate crime cases**

Publishing information about ongoing or completed investigations into hate crimes – and about the outcomes of such cases – can help build public trust in the criminal justice system. Such information can include stories of successfully resolved cases, examples of restorative justice solutions or other positive examples.

Hate crimes are message crimes and their impact resonates throughout the victims' communities and the wider public. As such, they often attract media attention. Communities expect information about the government's response. Not informing the public about efforts to address hate crime feeds the climate of impunity, which can lead to increase in hate crime offending. Silence by the authorities can also lead communities to take retaliatory action against perceived perpetrators or their community, or result in other

negative consequences. In some cases, particularly in hate crimes based on bias against gender, sexual orientation, or gender identity, the victims can be re-victimized when their identity is outed in the aftermath of the attack. Authorities' involvement and communication can help prevent this.

At the same time, maintaining the integrity of the investigation – including non-disclosure of certain facts – can be vital to successfully building a criminal case. Communicating imprecise or biased information about a case can also contravene the purpose of communication and may have legal consequences, both for the spokesperson and for the outcome of the case.

### **Publicizing information about open cases**

In line with France's Code of Criminal Procedure (Article 11, paragraph 3), prosecutors can deviate from the principle of secrecy and publicize some information about ongoing investigations "in order to prevent the dissemination of partial or inaccurate information or to put an end to a disturbance of public order."

*Source:* France's response to ODHR's questionnaire, received on 23 July 2018.

Therefore, authorities should keep in mind the potential risks of communicating information about hate crime cases. These risks can be offset by developing communication strategies or policies that comprehensively address public communications about hate crime cases. Such policies should cover co-operation with the media and provide guidance regarding what information can be conveyed and how. Below are some of the "do's and don'ts" of communicating about hate crime cases:

- Inform the public about cases that are already being covered in the media, cases that have a particularly significant impact or when not communicating about cases carries high risks;
- Refer to the incident as a "potential hate crime" until the courts determine the motivation of the suspect. It may be referred to as a "hate crime" so long as the speaker clearly indicates which body made this determination and at which stage of the criminal justice process;
- Be aware of potential adverse consequences if the facts provided cannot be verified later (avoid "saying too much too soon");

- Use hate crime terminology and vocabulary when referring to potential bias motivations, rather than (or in addition to) referring to the relevant legal provisions;
- Mention the seriousness of the offence and underscore its harmful impact;
- Reassure the audience that the incident is being investigated and treated seriously; and
- Protect the victim and their privacy. Apply personal data protection rules and do not discuss the victim's identity unless necessary and only with the specific consent of the victim. Focus instead on the suspect's potential motivation.

***Recommendation 4:***

**Pro-actively and correctly communicate about hate crime cases that are progressing through the criminal justice system.**

### 2.3.3 Additional ways to engage communities

While the benefits of pro-actively engaging communities whose members are statistically targeted by hate crime more often have already been explained, this section provides some good practices.

Frequent and extensive contact between the authorities (in particular, the police) and targeted communities is an essential part of an effective hate crime response. Implementing a community or proximity policing model, which focuses on establishing partnerships between the police and the local community to prevent and combat crime, can increase reporting, facilitate investigations (such as identifying witnesses) and enable targeted preventive work.<sup>42</sup>

42 "Community policing, or police-public partnerships, can be defined as a philosophy and organizational strategy that promotes a partnership-based, collaborative effort between the police and the community to more effectively and efficiently identify, prevent and solve problems of crime, the fear of crime, issues of physical safety and security, social disorder, and neighbourhood decay in order to improve everyone's quality of life." *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach* (Warsaw: OSCE/ODIHR, 2014), <<https://www.osce.org/atu/111438>>.

## Proximity policing

As part of an EU-funded project, municipal police forces and other local authorities in eight EU member states (Bulgaria, Estonia, Finland, Italy, Latvia, Portugal, Spain and the United Kingdom) have sought to combat hate crime in their jurisdictions by applying proximity policing models. The project included the publication of a comparative report on existing proximity policing practices, which discusses the best structures, services, strategies and methodologies for proximity policing to counter hate crime.

*Source:* “Best Practices and Comparative Study: Services, Structures, Strategies and Methodologies on Proximity Policing against Racism, Xenophobia and other Forms of Intolerance”, Rights, Equality and Citizenship Programme of the European Union, 2015, <[http://www.proximitypolicing.eu/sites/default/files/files/Report\\_EN.pdf](http://www.proximitypolicing.eu/sites/default/files/files/Report_EN.pdf)>.

Communities and civil society organizations can also be important partners in developing hate crime policies.

## Meetings between police and communities

In Finland, the police regularly reach out to various ethnic and religious communities, as well as to sexual minorities, to encourage reporting and strengthen prevention and awareness of hate crimes. This is done on both regional and national levels and through organizations representing such communities. The National Police Board chairs a discussion forum for various ethnic and religious communities to obtain first-hand information about their needs and to gain an accurate understanding of the hate crime situation.

Using these channels, the communities were also consulted about the *Preventive Policing Strategy* drafted by the Ministry of the Interior and the Police in 2018. The strategy’s objectives include improving support for hate crime victims and strengthening prevention.

*Source:* Finland’s response to ODIHR’s questionnaire, received on 25 June 2018.

Appointing hate crime specialists, community liaison officers or human rights co-ordinators in the local or regional police force will also help bring the police closer to the community. Meanwhile, civil society organizations, community groups and leaders can serve as important contacts and sources of information about the community. Gender considerations are important here, and ensuring that both women's and men's voices are heard should be specifically included as part of the outreach. By establishing contact with these groups and individuals, the police can draw on valuable information received from these sources while also making it easier for the communities they serve to reach them.

### **Police community liaison officers and hate crime specialists**

Ukraine's National Police added a hate crime specialization to regional criminal investigation units. The responsibilities of hate crime specialists include taking practical measures to uncover, document and prosecute persons preparing to commit or who have committed hate crimes.

In districts where national minorities reside, community liaison officers have been appointed in order to strengthen the prevention and reporting of hate crimes.

*Source:* Ukraine's response to ODIHR's questionnaire, received on 4 July 2018.

A number of OSCE participating States have conducted nationwide, regional or local campaigns to raise awareness of hate crimes, available government resources and ways to report such crimes. It is important that civil society and/or local communities are engaged in awareness raising initiatives to ensure that these efforts are targeted and effective.

## Awareness raising campaign

In 2014, the authorities in Poland collaborated with civil society on a three-month campaign to raise awareness of hate crimes. The campaign, called “Racism – Say it to fight it”, intended to inform minority groups—especially those from outside the EU—of the country’s hate crime reporting mechanisms.

The campaign was delivered via different channels, including a website, leaflets, billboards, posters and television adverts. The leaflets and website were translated into the most common foreign languages found in Poland: Arabic, Armenian, English, French, Mandarin Chinese, Russian, Turkish, Ukrainian and Vietnamese. Leaflets were distributed among the targeted groups by CSOs, universities and public institutions. The website contained a contact form for reporting hate crimes directly to the Ministry of the Interior and Administration’s Unit for European Migration Network and Combating Human Trafficking.

*Sources:* “Immigrants Against Hate Crimes: How to Effectively Assert your Rights Project”, European Union Agency for Fundamental Rights (FRA) website, <<http://fra.europa.eu/en/promising-practices/immigrants-against-hate-crimes-how-effectively-assert-your-rights-project>>; “Zgłoś rasizm na policję!”, Poland’s Ministry of the Interior and Administration website, <<https://mswia.gov.pl/pl/aktualnosci/11850,Zglos-rasizm-na-policje.html>>.

In light of the broader impact of hate crimes, targeted communities can also be directly involved in criminal proceedings, including designing or implementing restorative justice programmes. In some states, such as Canada, communities impacted by a hate crime can present a community impact statement during criminal proceedings.<sup>43</sup>

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43 Canada’s response to ODIHR’s questionnaire, received on 5 July 2018.

***Recommendation 5:***

**Involve communities and civil society organizations in hate crime policing, criminal justice processes, education and awareness-raising efforts. Introduce hate crime and/or community liaison officers within the police agency at the local or regional level.**

3.

The status  
of hate crime victims



## Guiding Principles

The authorities should ensure that:

- ✓ Ensure that hate crime victims are recognized as such;
- ✓ Guarantee hate crime victims can claim protection and support as a consequence of the harm they have suffered; and
- ✓ Ensure hate crime victims can participate in, or have access to, criminal proceedings in order to seek compensation and present the impact a crime has had on them.

## Overview of chapter recommendations:

- Recognize victims of hate crime as a distinct and particularly vulnerable category of victims, in law and/or policy;
- Establish a definition of a hate crime victim and define relevant criteria for early access to relevant protection and specialist support. Disassociate the attainment of victim status for the purposes of protection and support from the act of reporting a crime to the authorities and from the victim's participation in criminal proceedings; and
- Define a hate crime victim for the purpose of their effective participation in criminal proceedings. Provide hate crime victims with effective and early access to criminal proceedings to enable them, at a minimum, to present the harm they have suffered and to receive compensation.

Owing to the broader impact of hate crimes and the lasting harm these crimes cause individuals and communities, as well as the associated risk of re-victimization, hate crime victims are often particularly vulnerable. Consequently, they require enhanced protection and specific support. For these needs to be met, victim support rules and criminal procedures must recognize hate crime victims as a specific category of victim.

Most OSCE participating States recognize the injured party, provide for their involvement in criminal proceedings and enable the victim to seek compensation through formal processes. However, in many participating States, the victim status is granted too late. This adversely impacts effective investigation and weakens victims' positions in criminal proceedings, limiting their access to criminal case materials, their ability to file motions or appeal the prosecutor's decisions, etc. Lack of standing also affects victims' chances of receiving full compensation. Additionally, the specific impact of hate crimes is often not reflected in the levels of compensation or support victims receive throughout the proceedings.

Many countries have introduced rules to facilitate victims' access to protection and support services, some of which are provided free of charge. However, such arrangements often fall short of meeting the needs of hate crime victims who, in addition to the support afforded other crime victims, require specific protection and assistance immediately following the incident, throughout criminal proceedings and beyond.

This chapter discusses the importance of recognizing hate crime victims as a separate category of victim and a vulnerable victim group. This will help ensure that hate crime victims are provided with the protection and support they need and are able to effectively participate in criminal proceedings.

### **3.1 Defining hate crime victims**

As noted in the previous chapter, hate crime victims only formally exist when hate crimes are recorded. Recognizing the specific situation of hate crime victims is a prerequisite to addressing their needs in the criminal justice process. Victims of hate crimes can only be distinguished from other crime victims if the system provides separate categorization for hate crime victims. See Chapter 1 for the definition of hate crime victim used in this Guide.

International documents recognize hate crime victims as a specific category. The Council of Europe refers to “victims of special categories of crime, for example [...] crimes motivated by racial, religious, or other prejudice.”<sup>44</sup> For the purposes of determining “specific protection needs”, the EU Victims’ Rights Directive singles out “victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristic” as an example of victims who are “particularly vulnerable to secondary and repeat victimization, to intimidation and to retaliation during criminal proceedings.”<sup>45</sup>

Four main approaches in law and policy differentiate between victim categories and establish different levels of protection. Such categorizations can be based on: (i) listing especially serious offence types, with significant impact on the victims; (ii) distinguishing between violent and non-violent crimes; (iii) differentiating between victims based on their vulnerability – due to personal characteristics or type of victimization; and (iv) identifying the degree of harm a victim suffered. Most jurisdictions combine several of these approaches.

Many countries single out victims of **certain crimes** as requiring enhanced protection or rights. Such categories often include the victims of trafficking in human beings, terrorism, gender-based violence and violence in close relationships, among others. Where this approach is adopted, it is recommended that victims of hate crimes are added to the list.

Defining victims of hate crimes as a category based on their **vulnerability** reflects the increased harm these victims typically suffer. However, it does not do justice to differences in harm suffered due to different bias motivations or different impacts on different individuals. Systems using this approach to define hate crime victims, therefore, need to emphasize the individual needs assessment (see more in Chapter 5).

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44 Council of Europe, Committee of Ministers Recommendation Rec (2006)8, *op. cit.*, note 13, Article 12.3.

45 EU Victims’ Rights Directive, *op. cit.*, note 15, Article 22.

### Hate crime victims defined by their vulnerability

Italy's Code of Criminal Procedure (Article 90) covers hate crime victims in the definition of vulnerable status. Thus, when assessing the vulnerable status of a victim, "it is necessary to consider whether the crime has been committed with violence or with racial hate against the victim" [or] "if it is characterized by discrimination".

*Source:* Italy's response to ODIHR's questionnaire, received on 19 July 2018.

In other countries, victims are categorized according to the **personal level of harm suffered**. Such an approach represents an extension of the vulnerability model, adding an individual harm/risk/needs assessment element. As such, it is the most comprehensive of the four approaches presented here.

### Hate crime victims defined by degree of harm suffered

In France, victims of hate crimes are recognized as a distinct category and undergo a personalized needs assessment, which considers several criteria to determine the specific protective measures granted during criminal proceedings. Under Article D1-3 of the Code of Criminal Procedure, the needs assessment takes into the consideration the following:

- The degree of harm suffered by the victim;
- The circumstances of the offence, in particular the existence of a bias motivation or a relationship between the victim and the perpetrator;
- A particular vulnerability of the victim, e.g., as a result of age, pregnancy or a disability; and
- The risk of intimidation or retaliation.

*Source:* France's response to ODIHR's questionnaire, received on 23 July 2018.

In some contexts, enhanced protection is reserved only for the **victims of violent crime**. Notably, many hate crimes target property and feature threats or threatening behaviour. They do not, therefore, always qualify as

violent, despite the resulting victimization of individuals and communities according to the definition used in this Guide. For that reason, enhanced protections extended to victims of all hate crimes are recommended.

### **Hate crime victims as victims of violence**

In Portugal, according to Article 67-A (3) of the Code of Criminal Procedure, victims of violent crimes are considered especially vulnerable. This definition takes into account the vulnerability of victims owing to their age, state of health or disability, as well as crimes where the type, degree and duration of the victimization has resulted in serious injuries and a negative impact on the victim's psychological state or conditions of social integration. A particularly vulnerable victim must be subjected to an individual assessment to determine if he/she will benefit from specific protection measures.

*Source:* Portugal's response to ODIHR's questionnaire, received on 10 July 2018.

### ***Recommendation 6:***

**Recognize victims of hate crimes as a distinct and particularly vulnerable category of victims, in law and/or policy.**

## **3.2 Hate crime victim status: “protection and support” and “participation”**

In order to secure access to justice, procedural rules must allow the victims of hate crimes to participate in and make claims as part of criminal proceedings. At the same time, justice cannot be realized without the provision of security measures, legal aid, psychological counselling and material or linguistic support, among other forms of protection and assistance. Such support is essential for the victim's recovery, and is instrumental in the victim's ability to provide evidence and participate in criminal proceedings.

There is an important difference in victims' access to criminal proceedings and protection in civil (continental) law and common law systems. In the former, victims usually enjoy procedural guarantees that enable them to participate in the proceedings as an injured party. In these civil law jurisdictions, victims are allowed to contribute to the investigation and present an impact statement in court as part of their testimony. However, in many civil law jurisdictions, procedural rules and their implementation often impede victims' effective participation, such as when victim status is granted too late.

Common law jurisdictions, on the other hand, apply the adversarial system and do not usually involve victims as a party to the proceedings. Instead, the state, represented by the prosecution, acts as a surrogate victim, although the actual victim may be allowed to appear in court to testify about the harm they suffered and inform the sentencing. Victims may also have other rights, as set out in a bill of rights.

### **Uniform victim definition – for both protection and participation rights**

The Canadian Victims Bill of Rights defines a victim as “an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence.” It gives every victim the right to information, protection, participation and the right to seek restitution.

Under the right to protection, any victim may request a testimonial aid when testifying in a criminal court. Testimonial aids are recognized in the Criminal Code and allow victims and witnesses to testify via closed circuit television or behind a screen, or to have a support person present while testifying.

*Source:* Canada's response to ODIHR's questionnaire, received on 5 July 2018.

In both the civil and common law systems, hate crime victims are considered a potential source of evidence and usually benefit from witness status and the protection afforded to witnesses. However, the confrontational nature of

criminal proceedings, which in some jurisdictions may include the defence cross-examining victims, can be distressing for already vulnerable victims. In many national contexts, police and prosecutors handle hate crime cases without consulting victims and considering their preferences beyond necessary procedural steps requiring such contact.

Regardless of the type of legal system applied in a given jurisdiction, criminal law and policy should grant hate crime victims the relevant status to enable them to (i) actively participate in proceedings, and (ii) be eligible to receive the required protection, support and assistance. Both types of victim status – that which affords protection and assistance, and that enabling participation in criminal proceedings – should be explicitly recognized, and criteria should be established for victims to receive each status. Victims should also provide input into whether and how they want to participate in the proceedings.

### **Victims defined for protection and support only**

The EU Victims' Rights Directive does not explicitly explain the two purposes of granting victim status. Recital 20 of the Directive refers to the "role of victims in the relevant criminal justice system" (equivalent to victims' participation in criminal proceedings), but does not define any criteria for granting or acquiring such role.

Article 2, on the other hand, provides a definition of the victim similar to the one used in this Guide for the purposes of protection and support.

*Source:* "Directorate General Justice: Guidance Related to the Transposition and Implementation of Directive 2012/29/EU", European Commission, 19 December 2013, <[http://victimsupport.eu/activeapp/wp-content/uploads/2014/04/EC-Guidance-Document\\_Feb201411.pdf](http://victimsupport.eu/activeapp/wp-content/uploads/2014/04/EC-Guidance-Document_Feb201411.pdf)>.

Implementing the principle of "two functions-two statuses" may mean that, in some contexts, victims of hate crimes will be defined twice: once for protection and support purposes, and once for the purpose of securing participation in criminal proceedings.

**Two separate victim definitions:  
Victim of offence and injured party**

In Croatia, according to the Criminal Procedure Act (Article 202):

*A victim of a criminal offence* is a natural person who has suffered physical and mental health consequences, pecuniary damage or a substantial violation of their fundamental rights and freedoms as a direct consequence of the criminal offence. The victim of a criminal offence is also the spouse, common-law spouse, life partner or informal life partner, descendant and, if there are no descendants, ancestor and sibling of the person whose death is the direct consequence of the criminal offence and the person whom the latter was required by law to maintain.

*An injured party* is the victim of a criminal offence and the legal person to whose detriment the criminal offence was committed, who participates as the injured parties in the proceeding.

*Source:* Croatia's response to ODIHR's questionnaire, received on 30 July 2018

Separate criteria will usually be applied to grant each type of victim status. As a result, some hate crime victims may be eligible for assistance but unable to participate in proceedings (such as when the suspect has not been identified or apprehended and the case cannot be prosecuted), while others – such as legal entities – can participate in proceedings but will not be granted protection and support.

### **3.2.1 Victim status for the purposes of protection and support**

The official (usually a law enforcement officer) that first comes into contact with a hate crime victim is responsible for providing assistance centred on the victim's needs. As recommended in the previous chapter, a hate crime victim protocol should be activated as soon as the authorities identify a potential hate crime case.



The protection and support offered to hate crime victims should be based on both their needs as a category and the specific needs of individual victims. Since hate crime victims' needs differ from those of other crime victims, the authorities should refer victims to appropriate and relevant services. In turn, the authorities must ensure that these services are accessible to all hate crime victims. More information on this process is contained in Chapters 5 and 6 of this Guide.

Access to protection and support services for hate crime victims should be governed by law or other regulation, and the threshold for granting access to such services should not be unreasonably high. The situation of hate crime victims is often precarious (such as in the case of undocumented migrants), and this can be further exacerbated by their hate crime victimization. Access to protection and support services should not require that a causal link to a hate crime be definitively established, that the victim report the crime to the authorities,<sup>46</sup> or that the victim applies to participate in the criminal proceedings.

Instead, deciding whether to grant such services should be based on the harm suffered by a hate crime victim as a consequence of a hate crime. It can rely on the victim's self-identification as a hate crime victim, either in the form of a simple declaration or by applying the "arguable claim" standard (i.e., a statement that is provable by facts and logic) to establish this status. The same criteria should apply across the entire victim support system irrespective of whether the victim first approached a government-run victim support centre, the police or a relevant civil society organization.

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46 See also EU Victims' Rights Directive, *op. cit.*, note 15, Recital 40: "the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police."

### Claiming victim status

In the Czech Republic, the Act on Protecting Victims of Crime (Article 3) provides the following definition of a victim for protection and support purposes: “Every person who feels they are a victim of a criminal offence shall be considered a victim unless the contrary is proven, or except in cases of abuse of the status of a victim pursuant to this Act. In case of doubt about the status of especially vulnerable victims, s/he shall be considered as such. The lack of identification or sentencing of a perpetrator shall not have any bearing on the status of the victim.”

Source: “The Act on Protecting Victims of Crime”, Zákony pro lidi [Laws for people] website, <<https://www.zakonyprolidi.cz/cs/2013-45>>.

### ***Recommendation 7:***

**Establish a definition of a hate crime victim and define relevant criteria for early access to relevant protection and specialist support. Disassociate the attainment of victim status for the purposes of protection and support from the act of reporting a crime to the authorities and from the victim’s participation in criminal proceedings.**

### 3.2.2 Victim status for the purpose of participation in criminal proceedings

A victim's participation status or "standing" is the ability of the victim to participate in criminal proceedings as an injured party, and to make claims, including compensation, for the harm suffered as a consequence of the crime. Criteria for granting participation status need to be defined in law.

Countries differ in terms of how victims come to participate in criminal proceedings. In some jurisdictions, victims may be required to make a declaration or application, which may be vetted by a criminal justice official (such as a police investigator, prosecutor or the court).

#### Granting victim status

In Armenia, under Article 58 of the Criminal Procedure Code, "the person is recognized as *injured*, in respect to whom moral, physical or property damage has been caused by an act prohibited by the Criminal Code. A person is also recognized as *injured*, to whom moral, physical or property damage could have been caused, if the act prohibited by the Criminal Code had been completed. The decision on recognition as an *injured* is passed by the body of inquiry—the investigator, the prosecutor or the court." The injured party has clearly stipulated rights and duties in the proceedings.

*Source:* Armenia's response to ODIHR's questionnaire, received on 6 June 2018.

Access to protection and support should not be made conditional on a victim being granted procedural standing and vice versa. Procedural status in criminal proceedings should, however, be provided as soon as possible. This is to ensure that victims can access the investigation and information they need to safeguard their rights,<sup>47</sup> and that they can present their perception of the crime, harm suffered and impact of the hate crime early in

47 For ECtHR case law on victims' and their relatives' access to investigation, see for example: *Güleç v. Turkey* ECtHR Application No. 21593/93, 27 July 1998, *Hugh Jordan v. UK*, ECtHR Application No. 24746/94, 4 August 2001, *Giuliani and Gaggio v. Italy*, ECtHR Application No. 23458/02, 24 March 2011, *Mustafa Tunç and Fecire Tunç v. Turkey*, ECtHR Application No. 24014/05, 14 April 2015.

the proceedings, allowing authorities to adjust investigation and prosecution strategies accordingly.

Granting a victim procedural status is common in most civil law criminal justice systems. However, it often only happens quite late in the process, hindering the ability of the victim to participate effectively. Possible arguments given for the delay can include the stated need to first determine objectively that a crime has been committed. This approach must be rejected as the existence of a crime can only be finally determined by a court.

However, some causation between the crime, the suspect and the harm suffered can be required.

### **Linking victim status to the offence and the perpetrator**

In the Czech Republic, the Code of Criminal Procedure defines the “injured party” as a person who suffered harm to health or property, or suffered immaterial harm, and where such harm is causally linked to a criminal offence and was caused by a culpable perpetrator (this is a different type of “victim” than the one for protection purposes—see section 3.2.1). The criminal law recognizes two types of injured parties in criminal proceedings—one that claimed compensation for harm and one that did not – and accords different rights on this basis. For example, those claiming compensation are entitled to free legal representation. Hate crime victims, however, have this right irrespective of whether they have applied for compensation.

*Source:* Office of the Supreme Prosecutor, <<http://www.nsz.cz/index.php/cs/ohroene-osoby-a-pokozeni/57>>.

Granting procedural status could require a police or prosecutorial assessment concluding that a crime was likely committed. It might also require that the authorities decide to initiate an investigation or proceedings against a suspect, even if he or she is unknown, or that similar procedural steps are undertaken in the early stages of the criminal process. The specific procedural rights of hate crime victims are discussed in Chapter 7.

In a number of continental jurisdictions, there are several ways victims can be involved in the proceedings.

## Avenues for victim participation in proceedings

In Belgium, a victim can have a different status and rights, depending on whether the victim only submitted a complaint or submitted a declaration to be an “injured party” and/or a claim to be a “civil party” to the proceedings.

*Claimant:* In the event of prosecution, if the victim chooses not to take any further steps beyond making the report to the police, the victim will only be informed by the public prosecutor of the date, time and place of the court hearing. Furthermore, the claimant can request that certain investigative actions are carried out by the police. The claimant can also ask that certain witnesses are heard. However, submitting a complaint is not sufficient to be involved in the entire criminal proceedings.

*Injured party:* If the victim wishes to receive information about any other action related to the case, they have the legal right to register as an injured party. After receiving confirmation of their report, the victim can submit a declaration as an injured party, either personally or through a lawyer. As an injured party the victim will receive information in writing about the decisions taken by the public prosecutor, as well as the reasoning, and the date of any hearing before the court. The victim will also have the right to add any document they deem useful to the file. The victim will have the right to request access to and obtain a copy of the file.

*Civil party:* The victim will always be asked if he or she wants to make a claim for damages, or obtain further rights (e.g., the right to information). To do so, the victim would need to enter a claim as a civil party to the criminal proceedings by submitting an express declaration to that effect, personally or through their lawyer, at any stage of the proceedings. As a civil party, the victim can request access to and obtain a copy of the case file, ask for additional investigative steps to be taken, claim damages, bring legal challenges against the decisions reached and be consulted and informed regarding the imprisonment of the offender.

*Source:* Belgium’s response to ODIHR’s questionnaire, received on 6 June 2018.

Participation as a civil party in the criminal proceedings can carry the risk of a heightened burden of proof, as civil and criminal procedures use different standards.

### **A victim as a civil party: pros and cons**

In Sweden, in cases prosecuted by the state, both the criminal action and the victim's claim for damages can be, and usually are, tried in the same litigation. This is done in the interests of judicial economy and to prevent the victim from having to go through two trials. However, when these two actions are combined, the civil tort claim is often tried under the same standard of proof as the criminal case—beyond a reasonable doubt—as opposed to the typical civil tort claim burden of proof requiring a preponderance of the evidence. If the defendant is found not guilty, usually no liability for damages in tort is imposed.

*Source:* Görel Granström and Karin Åström, "Lifecycle of a Hate Crime: Country Report for Sweden", December 2017, <<http://www.diva-portal.org/smash/get/diva2:1244821/FULLTEXT01.pdf>>.

Additionally, victims can initiate or lead the prosecution as a private, substitute or auxiliary prosecutor. Some legal systems allow third parties to intervene in or institute the criminal proceedings on behalf, or in support, of a victim (a public interest action, or *actio popularis*).

### **Popular prosecution in support of the victim**

In Spain, a key element of the criminal procedure is the popular prosecution, which allows CSOs to participate in the judicial process and support the victim in their private prosecution as part of the same proceedings. However, this possibility is rarely used as it involves significant costs for the CSO. The CSO *Movimiento contra la Intolerancia* has contributed to such popular prosecutions in support of hate crime victims since 1995.

*Source:* Spain's response to ODIHR's questionnaire, received on 2 July 2018.

***Recommendation 8:***

**Define a hate crime victim for the purpose of their effective participation in criminal proceedings. Provide hate crime victims with effective and early access to criminal proceedings to enable them, at a minimum, to present the harm they have suffered and to receive compensation.**

4.

Authorities' contact  
with hate crime victims



## Guiding Principles

The authorities should:

- ✓ Engage with hate crime victims in a respectful and sensitive manner, integrating gender- and diversity-sensitive approaches; and
- ✓ Facilitate victims' participation in criminal proceedings and their access to services.

## Overview of chapter recommendations:

- Remove obstacles to and facilitate effective access, contact and communication for hate crime victims with the authorities, such as through universal design of facilities, use of accessible language, translation and/or intermediaries;
- Identify officers in the police force (“approachable specialists”) that hate crime victims can approach with enquiries or when their needs change. Set and communicate a predictable gender-sensitive schedule (“office hours”) and ways to contact these officers. Adopt measures to encourage diversity in the criminal justice system;
- Create environments where victims of hate crimes can feel safe;
- Formulate an institutional commitment to sensitive and respectful treatment of hate crime victims. Have police leadership (president, police chief, unit commanders) communicate this to the force. Adopt measures to eliminate manifestations of bias among victim specialists and officers interviewing hate crime victims;
- Develop and implement guidance and train officers on sensitive and respectful treatment of victims of hate crime based on the principles contained in this Guide. Provide both generalist (for all officers) and specialized (for victim and hate crime specialists) training and guidance;

- Avoid over-interviewing victims and make use of technology and other tools to protect them from re-victimization;
- Enable victims to be accompanied by a trusted person of their choice (emotional/expert support), in addition to a legal representative, for any contact with the authorities. Allow such persons to be present and provide translation or interpretation during initial interviews and other contact with the police;
- Prevent the disclosure of hate crime victims' personal data and identity. In the case file, ensure concealment of the victim's identity (unless the victim consents to disclosure), undocumented status, contact details (where risks to safety were identified) and/or name (where risks to safety were identified and the victim is a witness); and
- On first contact with a hate crime victim, provide initial general information about rights and next steps. Provide information about available specialist support providers. Have initial information for hate crime victims available in all relevant languages and communicate it in a comprehensible and clear manner, relying on a combination of written, verbal and online resources.

Chapter 2 introduced the problem of hate crime under-reporting and cited some of the reasons. Some victims cannot report a hate crime due to language barriers, their irregular legal status, gender considerations or difficulties accessing police stations (especially those with disabilities). Others may fear – often based on experience – that their treatment by police will require reliving the victimizing experience (secondary victimization), and that their privacy, along with one or more identity traits for which they were targeted, will not be preserved. Many victims that report hate crimes to the authorities are met with insensitive and disrespectful treatment or outright prejudice. Others have complained about facing a hostile environment, scepticism about their story or over-interviewing by the authorities.

Such treatment – or the fear of such treatment – does not help hate crime victims provide their best testimony. As crucial witnesses in a case, hate crime victims can provide indispensable evidence for the effective investigation and prosecution of hate crimes.

This chapter introduces the main principles that the authorities (usually law enforcement officers) should observe when first coming into contact with a hate crime victim. This chapter addresses ways to facilitate hate crime victims' access to the authorities, the principles of sensitive and respectful treatment and relevant victim rights. Victims' rights and the good practices discussed here (some of which are revisited later in this Guide) are essential to creating space that allows victims to turn to the authorities, report hate crimes and provide evidence. This does not diminish the importance of these principles for later stages of the criminal justice process.

## **4.1 Accessibility**

Accessibility, in this section, is understood broadly as covering all aspects that can hinder or facilitate access of hate crime victims to the authorities.

The distance and accessibility of the facilities where victims can report, testify and receive services is very important. Considering the vulnerability and trauma of many hate crime victims, the overall “friendliness” of the environment where interaction with the authorities occurs is crucial. This aspect is addressed in the following subsection of this chapter on sensitive and respectful treatment.

For example, the European Court of Human Rights has formulated standards on the permissible distance of courts. All police and criminal justice agencies' facilities for hate crime victims should use universal design (no barriers), enabling access for reduced mobility groups. Measures should be taken to improve situations where such access is not possible – both by making structural changes to the buildings, and by aiding victims that require additional assistance.<sup>48</sup> New facilities should be built with these principles in mind.

Equally important, especially around post-reporting and in the early stage of the proceedings, the victims should know how to contact authorities or how authorities will contact them. This should be clearly explained during the first contact, including the identification of the contact person in the police. A victim's wish not to be contacted in a certain way should be seriously considered. For example, a victim fearing retaliation of the offender or disclosure of their sexual orientation may not be comfortable with officers visiting their home. At the same time, the victim's preferences for certain ways of communication should be respected to the extent possible. Predictability is key; victims should not have to chase the police for information and should be informed about when and how they will be asked to provide further information. When scheduling contact with the victims or setting "office hours", authorities need to adopt a gender-sensitive approach, allowing for contact after regular working hours, ability to bring children, and accommodative of other gender-specific needs.

All victims have a right to understand and be understood. This requires that criminal justice bodies not communicate in a formalistic manner. Use of clear, simple (non-legalistic) language and a combination of written and verbal form is necessary to ensure understanding. For victims of hate crimes, it is particularly important that their personal characteristics are considered, especially those characteristics for which the victim has been attacked. Inappropriate forms of communication or ignoring the victim can amount to secondary victimization.

Some witnesses/victims may not speak the official or main language of the country. Victims of disability hate crimes can have developmental disabilities, be hard of hearing or be blind. The police receiving the victim should

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48 See also Art. 13 (Access to Justice) of the UN Convention on the Rights of Persons with Disabilities (CRPD). <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>>.

be prepared for all these scenarios and be able to provide interpretation, translation or intermediaries for both verbal and written communication, as well as for communication in easy-to-understand language (see further in subsection on right to information).

### **Translation and interpreting at first contact**

In Germany, officers use special forms, legally prescribed information materials and, where appropriate, other media (such as handouts, brochures and QR codes) available in many languages. At the first contact with the authorities, victims should be informed of their rights, as well as possible protection and compensation; at the latest, officers must inform them during further investigations. Depending on the individual case, officers involve interpreters (including for sign language) and/or persons that victims trust.

*Source:* Germany's response to ODIHR's questionnaire, received on 25 July 2018.

### ***Recommendation 9:***

**Remove obstacles to and facilitate effective access, contact and communication for hate crime victims with the authorities, such as through universal design of facilities, use of accessible language, translation and/or intermediaries.**

All police officers can potentially come into contact with victims of hate crimes. The specificity of hate crime investigations and prosecutions may require specialization within the police force. A number of participating States appoint specialized investigators and prosecutors to deal with hate crime. The same can be recommended for contact with victims of hate crimes. At a general level, as other chapters of this Guide recommend, at each stage of the criminal justice process, the victims should have clarity on where to turn for information and support.

### Victim hotline

In the EU, a hotline is available for all crime victims in any member state. The 116 006 (victims of crime) hotline was introduced in 2009 by the European Commission. When dialled, these nationally operated hotlines should inform victims of their rights and how to exercise their rights, offer emotional support and refer victims to relevant organizations. As a single access point, they should provide information about local police and criminal justice proceedings, possibilities for compensation and insurance matters, as well as other sources of assistance for victims of crimes.

*Source:* Press Release, European Commission, “European Commission reserves phone numbers for victims of crime and non-emergency medical hotlines in Europe”, 30 November 2009, <[https://europa.eu/rapid/press-release\\_IP-09-1842\\_en.htm](https://europa.eu/rapid/press-release_IP-09-1842_en.htm)>.

As a good practice, the authorities should consider nominating experts knowledgeable about hate crime victimization and the needs of hate crime victims, calling on these specialists in suspected hate crime cases. Such specialists should also be approachable to victims.

### Approachable specialists

In France, the National Police designates specialized “reception officers”. Because of their expertise in matters of reception and their positioning within the public security services, the reception officers also receive reports of racism, anti-Semitism and discrimination. Their task is to provide victims with the necessary support and assistance by referring them to partners attached to a particular police station, namely:

- 261 social workers who accompany and guide victims and people in situations of social distress, responding to issues arising at times when standard social services are not available (at nights and on weekends);
- 73 psychologists who can support victims;
- Professionals from victim support associations working in 123 offices in police stations.

During their training, conducted jointly with victim support associations, municipalities and emergency services, reception officers learn how to manage relationship difficulties and how to deal with different categories of victims by applying the provisions of the *Charter for the Reception of the Public and Assistance to Victims*.

*Source:* France's responses to ODIHR's questionnaire, received on 9 and 23 July 2018.

### **Hate crime specialists and liaison officers**

Over the past four years, the United Kingdom's London Metropolitan Police Service (MPS) has embedded over 900 specialist hate crime investigators in all 32 of its dedicated hate crime Community Safety Units. Data drawn from the same period suggests significant improvements in reporting, identifying and recording certain hate crimes. Initially part of an overall hate crime reduction strategy introduced by the Mayor's Office for Policing and Crime, the MPS's introduction of Hate Crime Liaison Officers includes an intensive 18-week training on skills such as recognizing hate crimes, supporting survivors and preventing re-victimization. These officers are not only the central point of contact for anyone reporting a hate crime, but also provide a wealth of knowledge to the rest of the force, building the capacity of other officers to recognize these crimes and helping enforce the zero-tolerance policy for homophobic or transphobic language within the police force.

*Sources:* "How to Report Hate Crime", Metropolitan Police website, <<https://www.met.police.uk/advice/advice-and-information/hco/hate-crime/how-to-report-hate-crime/>>; "A Hate Crime Reduction Strategy For London, 2014-2017", Mayor's Office for Policing and Crime, Dec. 2014, <[https://www.london.gov.uk/sites/default/files/mopac\\_hate\\_crime\\_reduction\\_strategy.pdf](https://www.london.gov.uk/sites/default/files/mopac_hate_crime_reduction_strategy.pdf)>.

To avoid the risks of secondary victimization and furthering trauma, criminal justice agencies should encourage diversity in all the relevant forces. Racial, ethnic, religious, gender and cultural diversity corresponding as closely as possible to that of the society at large – besides other benefits

– will contribute to an environment where victims of hate crimes do not feel excluded and are more likely to support the criminal justice process.<sup>49</sup>

***Recommendation 10:***

**Identify officers in the police force (“approachable specialists”) that hate crime victims can approach with enquiries or when their needs change. Set and communicate a predictable gender-sensitive schedule (“office hours”) and ways to contact these officers. Adopt measures to encourage diversity in the criminal justice system.**

## **4.2 Sensitive and respectful treatment**

To minimize risks of secondary trauma and victimization, victims of hate crimes need to be addressed with special care. This includes paying attention to their vulnerability as victims of hate crimes, the identity or identities for which they may have been targeted, the risks they face and the needs they have as individuals. All these factors make interviewing and collaborating with hate crime victims a complex task. To appropriately handle interaction with victims, criminal justice and victim support systems first need to be aware of the specificities of these victims; measures should be put in place to accommodate these victims, referred to as **sensitive and respectful treatment**.

The previous section introduced the notion that the environment where authorities interact with hate crime victims plays a role. This is true especially when victims of hate crimes are asked to provide testimonies and recount their experience. Such interviews usually take place in police stations, prosecutor’s offices or court buildings. These environments tend to be busy, with officers in uniforms, often armed, and criminal suspects being brought in and out. This environment is not a safe space for the victim to provide their best testimony. Practice shows positive effects of adapting facilities where victims will be interviewed with the aim of creating a gender- and

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49 This principle is not to be understood or construed as a recommendation that complaints should be handled by officers with the same personal characteristics as the victim, or as a suggestion to modify existing rules on non-discrimination in employment.



diversity-sensitive, friendly and non-intimidating environment, such as a quiet and secluded room without the typical police artefacts, or providing for childcare while the victim is interviewed. Where possible, the victims should be offered the possibility of being interviewed in a place of their choosing, be it their home or another place. Considering the lack of trust some victimized communities have in the police, victims of hate crimes may also appreciate the interviewer not wearing a uniform.

### **Interviewing vulnerable victims in a friendly environment**

In Italy, several local investigative bureaus have especially discreet and comfortable spaces, dedicated to interviewing vulnerable victims. Such facilities are furnished to make victims feel safe and at-ease. Specific technical tools are used for recording interviews.

*Source:* Italy's response to ODIHR's questionnaire, received on 19 July 2018.

In some jurisdictions, the victims considered especially vulnerable may choose the sex of the police officer conducting an interview. This approach, while not necessarily applicable in all contexts due to limited staffing and resources, is commendable as a good practice.<sup>50</sup>

### ***Recommendation 11:***

**Create environments where victims of hate crimes can feel safe.**

As mentioned earlier, many hate crime victims come from communities that, in addition to being targeted for hate crimes, suffer consistent societal marginalization, and sometimes discrimination on multiple grounds. Some may have even experienced mistreatment or biased attitudes from the police. Expressing biased views when dealing with victims of hate crimes contributes to secondary victimization and is likely to lead to deepened mistrust and withdrawal of the victim from the criminal justice process.

The authorities, and in particular the police, should therefore pay attention to this issue and take measures to eliminate any (expressions of) bias when

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<sup>50</sup> Czech Act on Victims of Crime, *op. cit.*, note 27, section 19

dealing with victims. Being a hierarchically organized structure, a strong commitment from the leadership to a bias-free environment in the police can go a long way to achieving a safe environment for the victims of hate crimes. Police presidents, chiefs and unit commanders could communicate the importance of this principle through personal example, policies and regular reminders, and enforce it through disciplinary action when problematic behaviour of officers comes to light.

Additionally, officer training should include modules on the importance and adverse effects of biased approaches in policing. Lastly, commanders should exercise managerial discretion to ensure that interviews are only conducted by officers who have received the relevant training and are sensitized to the needs of a particular hate crime victim.

***Recommendation 12:***

**Formulate an institutional commitment to sensitive and respectful treatment of hate crime victims. Have police leadership (president, police chief, unit commanders) communicate this to the force. Adopt measures to eliminate manifestations of bias among victim specialists and officers interviewing hate crime victims.**

Respectful and sensitive treatment means approaches by officers, which are, at all times:

- Professional, respectful, and non-discriminatory;
- Informed of the hate crime victimization mechanism, and as such conducted by specifically trained interviewer(s);
- Individualized, respectful of the victim's choice of identity, free of bias and devoid of "labelling";
- Empathic;
- Conducted with sensitive language and correct terminology when referring to protected characteristics underlying the bias motivation at stake and the victim's identity; and
- Reflective of other points listed in the following text box.<sup>51</sup>

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<sup>51</sup> Adapted and taken from materials for ODIHR's Training against hate crimes for law enforcement. *Training Against Hate Crimes for Law Enforcement (TAHCLE)*, *op. cit.*, note 8. These principles are complemented by the victim interviewing guidance in Annex II.

## Interviewing hate crime victims

- Request the assistance of translators when needed;
- Remain calm, objective and professional;
- Express your regret to the victim that he or she was the target of a crime;
- Let the victim defer questions if they are too distraught;
- Ask the victim if they have any idea why this happened to them;
- Reassure the victim that they are not to blame for what happened;
- Voice support of any actions the victim took to protect themselves and defuse the situation;
- Allow the victim to vent feelings about the incident or crime;
- Encourage the victim to tell the story in their own words;
- Ask the victim to recall, to the best of their ability, the exact words of the perpetrator(s);
- Ask the victim if they have family members or friends who can support them;
- Inform the victim of what efforts can be made to enhance their safety;
- Reassure the victim that every effort will be made to ensure the confidentiality of the investigation;
- Tell the victim about the steps that will follow and probable sequence of events in the investigation; and
- Provide information about agencies and organizations that can provide protection and support for the victims, their families and members of the community.

Those conducting interviews with victims should be properly trained. A generalist training for all police officers should provide minimum standards and also explain basic concepts such as hate crimes and the impact of hate crimes on victims and communities. It can even be implemented through a check-list of “do’s and don’ts.”

However, for especially vulnerable victims of crime, facing greater trauma and risks, a specialized training for police officers (and prosecutors and judges) is required and mandated by international instruments.<sup>52</sup> Guidance and training on sensitive and respectful treatment of victims of hate crimes

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52 EU Victims’ Rights Directive, *op. cit.*, note 15, Article 25

should be – where possible – developed in collaboration with the concerned communities and experts from civil society organizations working with these victims.<sup>53</sup>

The advanced training for (i) victim specialists, (ii) hate crime specialists, and/or (iii) hate crime victim specialists, should build skills to address the items in the above list, and in addition:

- Explain why and how hate crime victims differ from other crime victims (impact of hate crimes, needs of hate crime victims, risks they face), including from a gender perspective;
- Explain relevant terms (such as “gender”, “LGBTI”, and others that are often misunderstood) and introduce appropriate terminology;
- Discuss hurtful language and interview questions to be always avoided (victim blaming – “Why did you do...?” or unrelated questions that can be perceived as biased – “Do you have a job?”);
- Provide step by step guidance for an empathic approach, complemented by practical exercises (listening, expressing acknowledgement, offering sympathy, what to do first, what to do later);
- Offer minimum guidance for dealing with emotions and trauma;
- Provide information on rights and next steps, managing the expectations of the victim; and
- Suggest applicable procedures, where relevant, such as the hate crime victim protocol referenced in section 2.1, individual needs assessments, referrals and specialist support organizations.

### **Training on working with victims**

In Germany, throughout their training, police officers learn to treat victims with sensitivity and respect, especially those with particular vulnerabilities such as hate crime victims. This approach is reflected in instructions on interventions, actions when victims report a crime, how to draw up a report and how to establish a person’s identity and conduct a bodily search/examination, among others. Police officers also undergo refresher courses that cover victim protection, hate

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53 ODHR’s Enhancing Stakeholder Awareness and Resources on hate crime victim support project, implemented jointly with CSOs supporting hate crime victims in 2020-2021, is supporting the development of such training modules for the authorities.

crimes, equal treatment and protection against discrimination, while receiving special training to deal with victims and survivors.

Courses on “How to work with victimized witnesses” are offered at regular intervals, raising officers’ awareness about the importance of interaction with victimized witnesses. For instance, several hours of teaching time are dedicated to “victim care”. When hate crimes are assessed, police officers must consider the victim’s perspective.

*Source:* Germany’s response to ODIHR’s questionnaire, received on 25 July 2018.

### ***Recommendation 13:***

**Develop and implement guidance and train officers on sensitive and respectful treatment of victims of hate crime. Such guidance and training should be based on the principles contained in this Guide and provided in two versions: generalist for all officers and specialized for victim and hate crime specialists.**

Victims may be suffering from post-traumatic stress disorders, and this is important to bear that in mind when speaking and communicating with the victim. Post-traumatic states can manifest in sudden outbursts of emotion or anger, in victims not showing up as agreed, not answering the phone when called, or in other ways. It is important for officers to recognize this and to give the victim as much control as possible, if allowed by procedural rules. The assistance of a psychologist might be required in some situations.

Section 6.3.1 provides additional ways to protect the hate crime victims from further traumatization, including issues caused by delays, repeated interviewing or over-interviewing, or being made to appear next to or confront the perpetrator.<sup>54</sup> Technological solutions, such as using separate rooms or introducing barriers in the courtroom, conducting remote interviews and others should be considered.

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54 EU Victims’ Rights Directive, *op. cit.*, note 15, Article 20.

***Recommendation 14:***

**Avoid over-interviewing victims and make use of technology and other tools to protect them from re-victimization.**

Victims should be provided recourse if they feel the principles in this Guide have not been respected. A complaint and review mechanism should be implemented to investigate shortcomings.

### **4.3 Right to be accompanied**

Victims have a right to legal representation, which is discussed in the following chapters. Additionally, a victim of a hate crime may wish to bring a trusted person (different from the representative) to provide emotional and/or expert support during the investigation or other part of the proceedings. According to the EU Victims' Rights Directive, victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;<sup>55</sup> such right extends to any interview.

While a legal representative can be nominated in some jurisdictions, the freedom of the victim to select an accompanying person of their own choosing is crucial. Such emotional/expert support must be allowed to sit in at all the interviews and the victim should be allowed to consult the support person.

Often, the emotional/expert support is a CSO representative. Given the CSO's expertise, their presence might significantly facilitate the victim's interaction with the authorities.

***Recommendation 15:***

**Enable victims to be accompanied by a trusted person of their choice (emotional/expert support), in addition to a legal representative, for any contact with the authorities. Allow such persons to be present and provide translation or interpretation during initial interviews and other contact with the police.**

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<sup>55</sup> *Ibid.*, Article 20.

## 4.4 Privacy and personal data protection

A hate crime victim's privacy needs to be safeguarded throughout the proceedings. Hate crimes are often high on the media's agenda and victims can be exposed to aggressive and sometimes unethical reporting or other risks if their personal information leaks to the press or other persons, such as the perpetrator's relatives or members of a hate group. Officers in charge of investigations and others involved should strictly follow the law on personal data protection, paying special attention to the aspects discussed below.

The EU Victims' Rights Directive emphasizes the need to protect victims' privacy including personal characteristics considered in the individual needs assessment.<sup>56</sup> Such personal characteristics particularly refer to the protected characteristics and the (perceived) identity for which the victim was attacked. As hate crimes are defined by the motivation of the offender, putting information about the victim's ethnic, religious or other identity on the record or in the criminal file is not necessary. While each jurisdiction follows a different set of rules, in principle, victims should not be asked to divulge their identity, although a victim can do so on their own. As a subjective feature of one's identity, personal characteristics are based on self-perception and should, therefore, only be recorded if the victim decides to share them voluntarily – and subsequently treated confidentially.

An example of the risks involved in revealing the identity of the victim could be repeat victimization of an LGBTI victim at the hands of their family, after family members find out from the police that the victim was attacked for their sexual orientation. Concealing certain facts might be impossible in some circumstances, such as when parents are legal guardians of a juvenile victim. As a principle, however, information on the identity of the victim should not be shared beyond what is legally permitted, where it is necessary, and with the victim's informed consent.

In some circumstances, revealing personal data to the perpetrator might present serious risks to the victim, especially when the perpetrator remains at large or when a hate group committed to an extremist ideology underlies the incident. Such risks should be identified through a diligently conducted victim's needs assessment (see Chapter 5) and personal data – in particular contact details, residence, name – should not be disclosed.

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<sup>56</sup> *Ibid.*, Article 21.

Specific issues often arise when undocumented migrants become victims of hate crimes. When their status is revealed to the authorities, they often risk deportation. Fear of this exposure hinders their willingness to co-operate with the criminal justice system – as the victim and/or the witness. Non-disclosure of personal data (and by implication, legal status) of the victim to immigration authorities in cases of anti-migrant hate crime is, thus, critically important.

The needs of the criminal proceedings require that the authorities have access to information about the victim while the rights of the defence demand that the defendant has full access to the criminal file. Practical solutions are therefore needed to both ensure the right to a fair trial for the defendant and simultaneously protect the privacy of the victim.

All victims should have the right to hide their contact information and other details from the criminal file, particularly where risk of revenge exists. In some systems, contact details of a CSO representing or supporting the victim can be listed (and made available) in the file instead. Where a clear risk to the victim's safety exists, victims should also have the right to conceal their name – similar to the rights of a victim or witness under protection.

In addition, access rights to the criminal file need to be very clearly and cautiously defined. As a good practice, the file can be divided into different segments, with access rights for relevant actors (the court, judicial clerks, victim support organization, defence counsel, prosecutor, etc.) limited only to specific parts of the file. Where electronic file management is implemented, IT solutions can be employed to define access rights.

### **Concealing victim's address in the criminal file**

In Poland, victims have a right to prevent disclosure of information on their place of residence and work in case files. This information should be placed in a separate file annex, which is only accessible for the authority conducting the proceedings. It can only be disclosed in exceptional cases. In the event of a threat to the life or health of the injured party or their relatives, the victim(s) may receive police protection for the duration of the proceedings. If the degree of threat is high, they may receive personal protection or assistance in changing their place of stay.

*Source:* Poland's response to ODIHR's questionnaire, received on 11 July 2018.



To address the situation of undocumented migrants and facilitate their co-operation within the criminal justice process, The Council of Europe's European Commission against Racism and Intolerance (ECRI) recommends that states "establish safeguards ensuring that irregularly present migrants who are victims of crime are aware of their rights and are able to report to law enforcement authorities, testify in court and effectively access justice and remedies without the risk of the sharing of their personal data or other information with immigration authorities for the purposes of immigration control and enforcement."<sup>57</sup> The creation of so-called "firewalls", separating criminal justice and immigration officials for the duration of the proceedings, is discussed in section 7.2.1.

***Recommendation 16:***

**Prevent the disclosure of hate crime victims' personal data and identity. In the case file, ensure concealment of the victim's identity (unless the victim consents to disclosure), undocumented status, contact details (where risks to safety were identified) and/or name (where risks to safety were identified and the victim is a witness).**

## **4.5 Right to information**

All victims of crime have a right to be informed about proceedings, about their rights in the proceedings and about their case. While details are included in the following chapters, this section provides principles relevant to the initial contact between the victim and the authorities.

Access to information is important for victims of hate crimes, as noted in Chapter 2, yet under-reporting remains an issue. In addition to being less likely to report, victims of hate crimes can also have a more limited understanding of the criminal justice system. For these reasons, the victims can be less likely to support the criminal justice process.

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57 Council of Europe, ECRI General Policy Recommendation No. 16, "On Safeguarding Irregularly Present Migrants from Discrimination", 10 May 2016, Recommendation 33, <<https://rm.coe.int/ecri-general-policy-recommendation-no-16-on-safeguarding-irregularly-p/16808b5b0b>>.

## Information on victims' rights

The European Commission's e-Justice portal includes an overview of the rights that victims of crime enjoy in each EU Member State. Information on the Portal is based on self-reporting by Member States to the Commission. The information provided is structured into the following categories: (i) my rights as a victim of crime; (ii) reporting a crime and my rights during the investigation or trial; (iii) my rights after a trial; (iv) compensation; and (v) my rights to support and assistance.

*Source:* "Rights of victims of crime in criminal proceedings", European e-Justice, 18 January 2019, <[https://e-justice.europa.eu/content\\_rights\\_of\\_victims\\_of\\_crime\\_in\\_criminal\\_proceedings-171-en.do](https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-en.do)>.

General information about victims' rights should be broadly accessible on government and relevant agencies' websites. Many civil society organizations, equality bodies and/or victim support organizations also provide relevant information online. Online information should be clear and presented in line with the accessibility standards in section 4.1.

## Information available online

The homepage of Germany's federal and state police crime prevention programme (<https://www.polizei-beratung.de/>) provides general information and handouts for victims of hate crime. The "information for victims" section addresses the following areas: rights and entitlements (including coverage of costs, "victim lawyer", private accessory prosecution, psychosocial support in proceedings and compensation for victims) and victim support (contact information for victim support or counselling organizations such as Weisser Ring, and a helpline for women or children and adolescents who have become victims of violence).

Furthermore, the Federal Criminal Police Office provides leaflets informing victims and their relatives about their rights, assistance for and representation of the injured party and the help available from

victim support institutions. The leaflets are written in accessible language and are available in ten languages.

Victims are given further information materials from other institutions, including about benefits schemes and specialized victim support associations. The information system is designed to enable the victims to select a suitable protection or support organization. The website of the Federal Ministry of Justice and Consumer Protection ([www.bmjuv.de/opferschutz](http://www.bmjuv.de/opferschutz)) includes a brochure for victims of crime, including victims of hate crime, informing them of their rights. The brochure has been translated into 27 languages.

*Source:* Germany's response to ODIHR's questionnaire, received on 25 July 2018.

The type of general information each victim requires on first contact is typically:

- Contact information (Where do I go to report?);
- Information about rights (What can I do and what can I achieve by doing it?);
- Information about procedures, stages of criminal proceedings and next steps (How can I participate?); and
- Information about available support (Which organizations can I turn to and what can they do for me?; Where can I find legal representation?; Do I have to pay for it or can I get funding?).

### **Information provided upon reporting**

In Austria, each victim (including a victim of a hate crime) is informed about their rights when making a complaint. The victim is informed about the right to be represented by another person, to receive a written confirmation of the complaint and, most importantly, the right to receive an assessment of protection needs as soon as possible, as well as the right to make use of a translator. Furthermore, the victim is informed about the possibility of psychological and legal assistance.

This information is given both orally and in written form during the interview. In case of a language barrier, a translator is present and translates the victim's rights.

*Source:* Austria's response to ODIHR's questionnaire, received on 6 July 2018.

Specifically, for hate crime victims, information about available specialist service providers needs to be given. This is discussed in detail in Chapter 6.

It is important that all information is communicated in a way the victim can comprehend. Providing standardized information or handing over leaflets will usually not suffice – the victim of a hate crime may not speak the language, may not understand the legal terms, or may not be able to read.

All resources and information should be available in the main language(s) of the country and also in the common minority languages. Information must be conveyed, both in writing and orally, in a comprehensible, gender- and diversity-sensitive manner. Officers providing explanation should ensure that the victim understands.

***Recommendation 17:***

**On first contact with the hate crime victim, provide initial general information about rights and next steps. Provide information about available specialist support providers. Have initial information for hate crime victims available in all relevant languages and communicate it in a comprehensible and clear manner, relying on a combination of written, verbal and online resources.**



5.

Assessing hate crime  
victims' needs  
and referrals

## Guiding Principles

The authorities should:

- ✓ Ensure that the needs of each victim are assessed on a case-by-case basis; and
- ✓ Ensure that each victim is granted protection and referred to the relevant support service provider as soon as possible.

## Overview of chapter recommendations:

- Conduct individual needs assessment for each hate crime victim to determine the protection and support required and to refer them to the relevant specialist support service provider;
- Conduct an individual needs assessment on first contact with the victim. If a possible hate crime is established, conduct further needs assessments and continue to do so throughout the lifetime of the case;
- Establish a system for conducting individual needs assessment with the involvement of public bodies, civil society organizations or both. Ensure adequate funding is available for organizations conducting such assessments. Ensure that all actors involved in the needs assessment process receive guidance. Ensure communication channels exist among the entities involved in the process;
- Appoint a contact point responsible for the individual needs assessment for each victim, or several contact points for each stage of the proceedings. Ensure that the victim can reach out to the contact point when needed;
- Once hate crime victim status has been determined, trained hate crime victim specialists should conduct specialized needs assessments;
- Obtain the victim's consent to participate in the individual needs assessment. Gather information for the needs assessment by using all available communication channels agreed upon with the victim;

- Use a standardized methodology when conducting individual needs assessments. Base the content of the needs assessment on the information provided in this Guide, customized to the national context. Adapt the individual needs assessment form and content to the situation of hate crime victims and the specific identity of the victim being assessed;
- Limit access to the needs assessment's conclusions by keeping them separate from the case file or restricting access. In particular, prevent access to the conclusions by the defendant; and
- Develop and update the list of relevant support service providers. Include information on contact details, geographic reach and the types of services provided. Effectively refer the hate crime victim to a relevant specialist support provider. Respect the victim's right not to seek support.



Hate crime victims face increased risks and have specific protection and support needs following a victimizing event. These risks and needs differ depending on the bias motivation of the perpetrator and the identity of the victim. Furthermore, each individual experiences victimization differently, requiring customized support. The victim's family members or others may also require assistance as a result of the hate crime. The assistance needs of those affected by hate crimes evolve with time and over the course of criminal proceedings.

Most hate crime victims do not receive the specialist support they require. Officers or organizations handling a hate crime complaint may often not be aware of what support is needed and the organizations that can provide support.

To determine the relevant protection measures and assistance required, and to identify available providers of such services, the needs of each hate crime victim should be established through an individual needs assessment.<sup>58</sup>

This chapter addresses individual needs assessments as a tool to determine what support to provide hate crime victims. It discusses the structures that need to be in place for individual needs assessments to be effective, the form and content of such assessments and the referral of hate crime victims to the relevant support service providers.

## **5.1 Establishing an individual needs assessment system**

An individual needs assessment is a process that aims to gather and evaluate information about the victim to determine their protection and support needs. The needs assessment usually takes the form of an interview or a series of interviews, although relevant information can also be collected through other channels. The assessment should result in a set of conclusions about a hate crime victim's needs and the corresponding protection and support measures that must be taken to meet those needs. This is followed by the victim's referral to the relevant specialist support services.

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58 In some jurisdictions, the term "risk assessment" is used. The term "needs" is used here as it covers all a victim needs, including the specific risks.

***Recommendation 18:***

**Conduct individual needs assessments for each hate crime victim to determine the protection and support required and to refer them to the relevant specialist support service provider.**

The individual needs assessment should be conducted as soon as the victim contacts or is contacted by the authorities, or as soon as the victim approaches a civil society or community-based organization or other support service. Prior reporting of the crime to the authorities should not be a prerequisite for the needs assessment to be initiated. As the authority that most often has first contact with hate crime victims, though, the police play a crucial role in setting the needs assessment process in motion.

**Initial individual assessment and in-depth evaluation of needs**

In France, the EU Victims' Rights Directive has been transposed into the Code of Criminal Procedure (Article 10(5)), which provides that "victims are subject to a personalized assessment, to determine whether they need specific measures protection during the criminal proceedings."

The victim must be assessed as soon as possible following the complaint. Conducting a personalized assessment is the responsibility of the police investigator. The assessment is recorded through questions added to the interview protocol. To this end, an evaluation framework was incorporated into the National Police Procedure System (LRPPN) and an information form, generated and provided at the end of the interview to the victim, was also updated. Social workers at police or gendarmerie stations may be involved in this initial assessment phase to assess the victim's vulnerability and any needs for immediate protection measures.

The results of this first evaluation are communicated to the judicial authority, which may, depending on the protection needs of the victim, decide on the need for an in-depth evaluation, conducted by a victim assistance association designated by the magistrate.

The Ministry of Justice has created and funds a network of victim associations to run such assessments and provide services:

- Generalist victims' aid associations, the majority of which are federated in a "victims' network" (21 at the central and 166 at the local level); and
- Specialized associations (including 16 specialized CSOs supporting victims of racism and discrimination).

*Source:* France's responses to ODIHR's questionnaire, received on 9 and 23 July 2018.

Who conducts the needs assessment, and the service providers or organizations where victims are referred, depends on how the victim support system is organized in a given jurisdiction. In some contexts, victim support is provided solely by public bodies, such as the police, the prosecution, the courts, victim support centres and social services. Elsewhere, a combined system is in place, whereby public authorities provide some services and delegate others to civil society organizations or private entities. In some countries, the authorities provide only the basic services – those offered to all victims – while relying on specialized civil society organizations to provide additional support to the victims of hate crimes. This is often the case where the authorities lack mandate, or the expertise, experience and/or resources to properly meet hate crime victims' specific needs. Similarly, depending on the victim support system in place, the assessment may be conducted by a public body, a civil society organization or both.

### **Police and civil society collaboration**

In Finland, according to the Criminal Investigation Act, the police must assess each victim in order to identify specific protection needs and to refer the victim to a crime victim support body. The National Police Board has issued guidelines to the police on a victim's right to protection, an individual assessment and a referral. The main referral body is the Victim Support Finland (RIKU)—an independent organization,

financially supported by the Government. RIKU provides information about the victim's rights, criminal procedure and legal issues, and offers support online and offline. Services are also available in other languages, such as Somali and Russian.

*Source:* Finland's response to ODIHR's questionnaire, received on 25 June 2018.

The needs of hate crimes victims evolve over time. This is due to two processes: the victim's recovery from a traumatic experience, and developments in the criminal proceedings, which often require the victim's involvement. In some cases, the victim's needs can extend beyond the judicial outcome of the case; for example, the victim should be informed when the perpetrator is due to be released from prison.<sup>59</sup> For these reasons, individual needs assessments should not be a one-time exercise. They should be conducted when contact with the victim is first made, and then repeated throughout the lifetime of the case or for as long as the victim requires.

### **Repeating the needs assessment throughout the case**

In Croatia, individual needs assessments are carried out by the public bodies responsible for each stage of the pre-trial and criminal proceedings (the police, the prosecution service and the court). Such assessments can also be conducted based on information obtained from the Centres for Social Welfare, Victim and Witness Support Departments in the county courts where they are established, as well as from other relevant institutions and victim support providers. In order to determine the protection measures provided to each victim, the assessments also consider recommendations made by organizations, including civil society organizations, that have already been in contact with the victim.

*Source:* "Ordinance on the means of implementing an individual needs assessment for victims", Official Gazette of the Republic of Croatia No. 106/2017. Croatia's response to ODIHR's questionnaire, received on 30 July 2018.

<sup>59</sup> EU Victims' Rights Directive, *op. cit.*, note 15, Article 6 (paragraph 5).

***Recommendation 19:***

**Conduct an individual needs assessment on first contact with the victim. If a possible hate crime is established, conduct further needs assessments and continue to do so throughout the life of the case.**

The authorities should develop and apply a standardized methodology for individual needs assessments to ensure a consistent approach by all actors involved. This is necessary because the assessments may be conducted by different persons and agencies and at different stages of the criminal proceedings. The civil society organization that establishes contact with the victim may conduct the first assessment, or undertake a specialist assessment following a general assessment conducted by the police. Alternatively, in some jurisdictions, the police are tasked with gathering information from the victim and other sources, which is then supplied to a victim support centre that analyses the information and refers the victim to a specialist civil society organization for a detailed assessment. Importantly, all actors involved in the process must be able to share the conclusions of an individual needs assessment.

Assessing and meeting the needs of hate crime victims is a primary responsibility of the state, including in jurisdictions that rely on civil society to conduct individual needs assessments. In addition to developing a methodology and ensuring co-ordination among the actors involved, the state should also provide appropriate funding for the civil society organizations involved. Furthermore, quality standards should be introduced and application of these standards monitored.

***Recommendation 20:***

**Establish a system for conducting individual needs assessment with the involvement of public bodies, civil society organizations or both. Ensure adequate funding is available for organizations conducting such assessments. Ensure that all actors involved in the needs assessment process receive guidance. Ensure communication channels exist among the entities involved in the process.**

Victims should not be interviewed or required to provide information unnecessarily as part of the assessment. The purpose of the individual needs assessment should be explained when contact with the victim is first made. The authorities should strive to ensure that only one actor is responsible for contact with the victim at each stage of the proceedings or throughout the case.

***Recommendation 21:***

**Appoint a contact point responsible for the individual needs assessment for each victim, or several contact points for each stage of the proceedings. Ensure that the victim can reach out to the contact point when needed.**

All actors involved in conducting the assessment – including social services staff, civil society representatives, victim support centre specialists or police officers – must be trained in handling victims. Those providing a specialist needs assessment of hate crime victims must receive hate crime training and understand hate crime victimization mechanisms and the specific needs of hate crime victims.

***Recommendation 22:***

**Once hate crime victim status has been determined, trained hate crime victim specialists should conduct specialized needs assessments.**

## **5.2 Individual needs assessment: form and content**

As previously explained, the purpose of the individual needs assessment is to arrive at conclusions regarding an individual victim's needs, and to determine the corresponding protection measures and support required. All victims should have their needs assessed via a general individual needs assessment. When it is determined that an individual is a hate crime victim, a more detailed assessment should be conducted to identify the victim's specific needs and the relevant support services. As such, the individual

needs assessment for hate crime victims will, in most cases, be a two-step process. Ideally, these assessments will be conducted simultaneously, but the hate crime assessment should be conducted by interviewers specifically trained for that purpose.

The individual needs assessment should be a participatory process that treats the victim as a partner. Before conducting the assessment, the interviewer should explain its purpose and obtain the victim's consent. In cases where the victim does not agree to undergo the assessment, their needs can still be evaluated and some conclusions can be reached.

To ensure a comprehensive needs assessment, all sources of information should be used and, with the victim's consent, several channels of communication can be employed. For example, questions can be asked and answered over the phone, by email and in person. The victim's lawyer or other intermediaries can also provide information, if the victim agrees. The interview can take place at a place of the victim's choosing or in a specifically designated space, which should be as gender- and diversity-friendly and safe for the victim as possible.

***Recommendation 23:***

**Obtain the victim's consent to participate in the individual needs assessment. Gather information for the needs assessment by using all available communication channels agreed upon with the victim.**

As noted above, the needs assessment should be based on a standardized methodology applied by all actors and entities involved. It can take the form of an interview with the victim, with questions based on a standardized questionnaire. Other formats are also possible, and can be less burdensome for the victim, such as a dialogue where the specialist asks open-ended questions and builds on the answers while taking into consideration the purposes of the needs assessment.

## Conducting individual needs assessments without a questionnaire

In Croatia, instead of prescribing a standardized questionnaire for the individual needs assessment, the person conducting the assessment is required to take into account the personal characteristics of the victim and whether the victim faces actual or perceived risks, including the severity or nature of the criminal offence and the circumstances in which the incident occurred. These factors are intended to serve as guidelines when interviewing victims as part of the needs assessment.

*Source:* “Ordinance on the means of implementing an individual needs assessment for victims”, Official Gazette of the Republic of Croatia No. 106/2017. Croatia’s response to ODHR’s questionnaire, received on 3 August 2018.

While this guide does not prescribe a single format for the individual needs assessment, Annex III provides a sample questionnaire that can be used for a general assessment of most victims’ needs. The Evaluation of Victims (EVVI) questionnaire was developed in 2015 by criminal justice and victim support organizations from across the EU. It follows the requirements set out by the EU Victims’ Rights Directive and is currently used in several EU member states. The EVVI questionnaire consists of general questions as well as more detailed ones, designed for use with particularly vulnerable victims of crime, including hate crime victims.<sup>60</sup>

The general part of the EVVI questionnaire captures information about the following:

- Information about the victim and their consent, including: name, gender, age, nationality, socio-professional status, contact details and preferred channels of communication;
- Personal vulnerability, including information on any disabilities, pregnancy, communication difficulties, language, ability to understand the criminal justice process, previous victimization, economic vulnerability, number of children or dependants, health condition and alcohol/drug abuse; and

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<sup>60</sup> See “Evaluation of Victims”, *op. cit.*, note 20.



- Risks and fear of harm, including the type and circumstances of the crime, the victim’s relationship to the perpetrator, whether the victim fears further harm from the perpetrator and whether the perpetrator committed a previous offence against the victim.

At the end of the general evaluation, the victim’s needs should be summarized. In some cases, the specialist protection needs may be apparent from the outset or after the general assessment has been completed. It is important to record the conclusions of the general assessment, as it may be followed by a detailed assessment conducted by a different specialist. If that is the case, interim protection measures may be required before the final conclusions about the victim’s needs can be reached.

The detailed assessment should be conducted for all hate crime victims, and should focus on the specifics of the victim’s identity and the nature of the attack.<sup>61</sup> The following main issues should be addressed:

- The victim’s current situation: whether the victim is experiencing depression, suicidal thoughts or feelings of isolation; whether the victim is undocumented, fears contact with the officials and is at risk of flight; whether LGBTI victims or victims targeted because of their religion may fear being “outed” about their sexual orientation or religion;
- Offence history, such as whether there have been any prior incidents; and
- Questions about the perpetrator including whether additional safety measures (e.g., relocation) are required to protect the victim and their family members, such as when an extremist group has been implicated in the attack.

***Recommendation 24:***

**Use a standardized methodology when conducting individual needs assessments. Base the content of the needs assessment on the information provided in this Guide, customized to the national context. Adapt the individual needs assessment form and content to the situation of hate crime victims and the specific identity of the victim being assessed.**

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61 The EVVI questionnaire included in Annex III is not designed for assessing the needs of hate crime victims specifically.

The final conclusions about the victim's needs and the required protective and support measures should be specific to: (i) the stage of the criminal proceedings; (ii) the risks facing the victim; and (iii) the victim's identity. The conclusions should also identify other persons victimized in the same hate crime and what their needs might be, particularly family members. The person conducting the specialized needs assessment should ensure that the victim has understood the conclusions, which should be signed by both the victim and the evaluator.

When the needs assessment is complete, the conclusions should be recorded on a form or in the victim's file. Access to the conclusions regarding the victim's needs should be restricted to those who require it (such as the court administration or victim support organizations), particularly when the victim is at risk of retaliation or further harm from the suspect or others. A mechanism should be in place to allow the relevant criminal justice system actors to access the file while preventing access by the defendant.

***Recommendation 25:***

**Limit access to the needs assessment's conclusions by keeping them separate from the case file or restricting access. In particular, prevent access to the conclusions by the defendant.**

### **5.3 Identifying support service providers and referring victims**

The authorities are responsible for ensuring the availability of relevant support services, including those specializing in assistance for hate crime victims. To that end, a list of support service providers across the country must be compiled to facilitate victim referrals, where relevant. The list must be kept up-to-date, include contact information and should, at a minimum, detail the types of services and geographical reach of each organization. In some countries, such lists are published on government websites.

## Public list of accredited specialist victim support providers

In the Czech Republic, the Ministry of Justice runs a portal that lists specialist victim support providers, accredited by the state. The register includes a description of the provided services, the capacity to assist (namely, their geographical scope, opening hours and the number of specialists) and contact details. The descriptions specify if a provider can assist victims of hate crimes.

In addition to specialist support providers, the portal also includes lists of generalist social service providers and attorneys.

*Source: Registr poskytovatelů pomoci obětem trestných činů [Register of providers of assistance to hate crime victims], Ministry of Justice of the Czech Republic, <<https://otc.justice.cz/>>.*

Once a victim's needs and required services have been determined, the relevant providers must be identified. Protection measures are generally provided by the authorities. If, during an assessment, a civil society organization has determined that protection measures are necessary, the organization should transfer the assessment conclusions to the authorities using the designated contact points and communication channels (see section 5.1).

Police and other public bodies are obligated to refer hate crime victims to specialist victim support providers. Therefore, where relevant specialist support is available, the victim's referral to a specialist support provider should take precedence over referral to a general support provider. Specialist support is explained in Chapter 6.

The victim must be provided with the contact information of the support providers available. A combination of written and oral instructions on how to contact such organizations will be more effective than providing website links, and will help ensure that the victim understands and utilizes the provider's services. It should be remembered that the victim has a right not to seek support.

### **Contacting support organizations for referral**

In Germany, victims are given lists of victim support organizations. If necessary, police officers contact a victim support organization on behalf of the victim. For instance, the Land of Brandenburg has set up a central point of contact at the level of the police headquarters. It deals with the concerns of victims of politically motivated criminal offences, in particular hate crimes, and seeks to meet all demands of victims. The commissioner is the point of contact for the relevant victim support and advice organizations, and for the victim protection commissioners within the police force.

*Source:* Germany's response to ODIHR's questionnaire, received on 25 July 2018.

There are three basic models of referrals by law enforcement to a non-state support provider:

- Police provide the victim with the contact details of the organization;
- Police act as mediator by contacting the provider and connecting them with the victim;
- Police, with the consent of the victim, give the provider the victim's contact details and the provider contacts the victim. The advantage of this scenario is that the provider is better able to explain to the victim the kind and scope of the support they offer.

### **Referral for support**

In Belgium, the police offer initial contact, practical assistance, information, official reports and referrals to the appropriate unit. The attending police officer will ask the victim if they want specialized police victim units to provide the necessary support. In emergency or serious situations, the attending police team will ask for the assistance of these specialized services. The police forces or the judicial authorities will, where appropriate, refer the victim to specialized services.

- The *victim support services* provide further assistance in dealing with the consequences of the crime: emotional and psychological support, information (on their rights, reparation of loss, the trial and the availability of legal assistance) and assistance in contacting various institutions (such as insurance companies, the police, judicial authorities, lawyers and hospitals). Usually, the victim is referred to these services by the police or judicial assistants, although the victim can also contact them directly.
- *Victim reception offices* are located in every judicial district and provide victims with procedural information about the case, as well as the necessary support and assistance throughout the legal proceedings. If necessary, staff at the victim reception office will refer the victim to additional specialists. Victim reception offices support victims during emotionally difficult moments in the proceedings, and provide help with access to their file and the return of documentary evidence, assistance during the court hearing and support during a reconstruction of the crime. They can also help the victim draft a victim statement.

If a hate crime is prosecuted, the office of the prosecutor is obligated to immediately contact the victim support services. The prosecutors transfer the details of the case and the contact details of the victim, so support services can contact the victim independently.

In some regions/municipalities (e.g., Antwerp), the equality bodies (Unia and the Institute for the Equality of Women and Men) work together with victim support services. Local victim support services received training and automatically refer victims of hate crimes to Unia. Furthermore, Unia co-operates with the unit for hate crime victims of the local police district of Antwerp in order to ensure legal support for victims of hate crimes.

*Source:* Belgium's response to ODIHR's questionnaire, received on 10 July 2018.

A complaint mechanism should be put in place to enable the victim to challenge a non-referral or faulty referral to support services. Victims should also always have the ability to opt-out and not seek support.

***Recommendation 26:***

**Develop and update the list of relevant support service providers. Include information on contact details, geographic reach and the types of services provided. Effectively refer the hate crime victim to a relevant specialist support provider. Respect the victim's right not to seek support.**



6.

Protection and support  
for hate crime victims



## Guiding Principles

The authorities should:

- ✓ Ensure the availability of protection and general support services; and
- ✓ Provide or co-operate with civil society to facilitate the provision of specialized support services to hate crime victims.

## Overview of chapter recommendations:

- Set up and co-ordinate a victim support system, consisting of state bodies and/or civil society organizations, including organizations that can provide specialist support to hate crime victims. Regularly identify organizations providing specialist support for hate crime victims, and develop the capacity of such organizations to fill any gaps;
- Develop quality standards for the main specialist services offered to hate crime victims. Provide guidance and audit adherence to these standards. Certify and fund organizations providing specialist hate crime support;
- Define in law and/or policy the specialist support services and the providers of such services for hate crime victims;
- Provide hate crime victims with the highest standards of protection, assistance and procedural rights available to other categories of crime victims, as relevant to hate crime victims;
- Provide, or ensure the provision, free of charge, of protection (including shelter), urgent medical assistance, psychological counselling, legal consultation and representation, interpretation and translation services. Provide the same to the family members of hate crime victims, where relevant; and
- Consider taking other measures to provide hate crime victims with enhanced support and/or to prevent their secondary victimization.

Hate crime victims have specific needs, which require specific protection and specialist support. These needs are reflected in the decision to grant an individual victim status for the purposes of protection and support, as discussed in Chapter 3. In addition, hate crime victims also require access to the services available to all crime victims.

A victim support system determines how services, including specialist services, are provided. As mentioned above, there are multiple ways to organize the provision of such services, including by public bodies, civil society organizations or both. The key functions of a victim support system are: (i) that the relevant service providers exist and have the capacity to support hate crime victims; (ii) that the service offered is based on the findings of the individual needs assessment and facilitated by effective communication and co-ordination between state and non-state service providers; and (iii) that state funding is allocated for the provision of general services (at a minimum).

The purpose of this section is to identify those components of a national victim support system that are key to ensuring that hate crime victims' needs are met through the provision of relevant support. This section further discusses general and specialized support services for hate crime victims, as well as the main features of specialized support services.

## **6.1 Victim support systems**

In most OSCE participating States, governments operate a system to support the victims of crimes. Such systems should not only focus on the procedural protections necessary for the victim's participation in proceedings, but should also cater to the needs of the victim as an individual who suffered harm, including of an intersectional nature (for more information on the different types of victim status, see Chapter 3).

Similar to individual needs assessments, a victim support system (of which the needs assessment forms a part) can be entirely state-run or can also procure the services of non-state actors, including civil society organizations or private entities. In the context of the OSCE, victim support systems that are mixed or rely on civil society organizations seem to be the most prevalent.

### **A geographically decentralized model of victim support**

In Canada, the responsibility for providing victim services falls mostly to the provinces and territories. Each jurisdiction uses a different model for victim service delivery, with some providing victim services through the provincial government or the Crown prosecutors office. Other jurisdictions provide funding to community-based victim service organizations, while others use a volunteer model. The assessment of victims' needs and referral protocols varies from jurisdiction to jurisdiction. The federal government provides funding to the provinces and territories to assist with the implementation of federal legislation, such as the Canadian Victims Bill of Rights and the Criminal Code provisions that allow for testimonial aids.

*Source:* Canada's response to ODIHR's questionnaire, received on 5 July 2018.

As this Guide shows, supporting victims is a task extending beyond any one entity involved in the criminal justice process. As such, extensive national co-ordination among competent authorities and horizontal interagency co-operation is key. Where CSOs provide services, they need to be integrated into the system as well.

### **A mixed model of victim support: state and civil society-run**

In Croatia, the victim support system consists of a combination of state-run Victim and Witness Support (VWS) Departments and a network of civil society organizations that are financially supported by the Ministry of Justice. Seven VWS Departments operate out of county courts and also provide support at municipal courts in those counties. Victims, witnesses and members of their families can turn to VWS Departments for emotional support, detailed information on their rights, criminal and misdemeanour proceedings and other practical information, as well as referrals to specialized support.

In the remaining 13 counties where VWS Departments are not established, the Ministry of Justice is funding a network of 11 civil society organizations selected through a public tender to provide support to

victims and witnesses. These CSOs provide the same types of support as the VWS Departments, as well as psychological and legal counselling and accompanying victims to the courts and other relevant institutions.

In addition, the National Call Centre for Victims of Crime, which can be contacted via a toll-free number (116 006), is run by the Victim and Witness Support Service Croatia (a CSO), funded and otherwise supported by the Ministry of Justice. It provides emotional support and information to victims and witnesses on their rights. The call centre also refers victims to other relevant services and organizations that provide specialized support.

The VWS Departments, the network of CSOs and the National Call Centre also engage specially trained volunteers to provide victim support.

The Service for Victim and Witness Support of the Ministry of Justice provides certain types of direct support, such as information to victims on the release of perpetrators from prison, testifying in international cases and financial compensation for victims of crime.

*Source:* The Ministry of Justice of the Republic of Croatia, Victim and Witness Support Service; Croatia's response to ODIHR's questionnaire, received on 3 August 2018.

Even where a combined system is in place, the state is responsible for ensuring the availability of all services, including specialist services. To that end, the state (through a victim support centre or similar entity) must possess a detailed overview of relevant service providers, the geographic area they cover and their availability. In addition to regularly mapping the services provided across the country, the state should constantly look to fill any gaps in available services.

Furthermore, the state should co-ordinate the victim support system and facilitate the provision of services by partner civil society organizations. In particular, this might require:

- Setting up a co-ordination centre and creating a policy framework for co-operating with civil society partners that covers information sharing, referrals, etc.;

- Defining the main services provided, including specialist hate crime support;
- Defining qualifying criteria for providers of specialist services and setting up a mechanism for selecting the civil society organizations included in the support system;
- Defining criteria for individuals who assist victims, including training (with gender- and diversity-mainstreaming components), educational or licensing requirements for certain types of services and staffing requirements (accepting only staff members and not unpaid volunteers);
- Developing quality standards and enforcing and auditing the application of those standards. Such standards should include privacy protection clauses;
- Developing the capacity of relevant service providers, including those offering specialist support. This includes:
  - Providing sufficient funding to cover the duration of the services provided, and linking such funding to the application of the quality standards; and
  - Providing methodological guidance or facilitating training opportunities on applying the quality standards; and
- Concluding a contract or accrediting/licensing civil society organizations to provide the relevant services.

### **Specialist support accreditation system**

In Slovakia, general and specialized victim support services are provided by specialized organizations and CSOs. The Victims of Crime Act distinguishes between those organizations providing social services, and those providing all necessary services and accredited by the Ministry of Justice.

Organizations accredited by the Ministry must meet certain legal criteria to obtain accreditation to ensure that high quality and complex services are provided. Organizations applying for accreditation must prove that they can provide both psychological and legal aid. They must employ experts with the appropriate education (e.g., in social science, psychology and law) and work experience in the relevant field. To provide for complete legal services, the organization must contract a lawyer who is a member of the Bar Association.

Such victim support organizations choose and present their specialization—one or more of the particularly vulnerable victim groups listed in law. This measure ensures that victim support considers the particular needs of different groups.

Accredited organizations can apply for financial support from the Ministry of Justice. By law, accredited organizations that receive financial support are obliged to perform selected services free of charge.

*Source:* Slovakia's response to ODIHR's questionnaire, received on 6 July 2018.

### ***Recommendation 27:***

**Set up and co-ordinate a victim support system, consisting of state bodies and/or civil society organizations, including organizations that can provide specialist support to hate crime victims. Regularly identify organizations providing specialist support for hate crime victims, and develop the capacity of such organizations to fill any gaps.**

Integrating civil society providers of specialist assistance clearly requires setting standards. Such quality standards can be developed by the authorities autonomously, but it is advisable that civil society organizations be consulted in the process. Quality standards can also be developed by civil society organizations.

### **Quality standards for hate crime victim specialist support**

In Germany, the Association of Counselling and Support Services for Victims of Right-Wing, Racist and anti-Semitic Violence (VBRG) is the national umbrella organization for 14 independent and specialized victims' support and counselling projects in Germany. The VBRG and its member organizations have developed and implemented quality

standards in this relatively new field of social work, which ensures a professional, client-oriented service to all those seeking assistance and support following a bias-motivated attack.

The VBRG offers training to its members, and all member organizations must comply with set standards. The VBRG is a recipient of the German Government's federal funding, aimed at improving the quality of support to hate crime victims.

*Source:* "Ensuring Justice, Protection and Support for Victims of Hate Crime and Hate Speech: 10 Key Guiding Principles", European Commission, December 2017, <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=37188&no=1>>.

### ***Recommendation 28:***

**Develop quality standards for the main specialist services offered to hate crime victims. Provide guidance and audit adherence to these standards. Certify and fund organizations providing specialist hate crime support.**

Hate crime victims should be able to access the support system at any stage of the criminal proceedings. The system in place should include contact points for victims, including either officers appointed at each stage of the proceedings or a dedicated body, such as a victim support centre.<sup>62</sup> Victims' access to the system should be facilitated, for example by introducing a helpline or text messaging service available around the clock and across the country.

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62 EU Victims' Rights Directive, *op. cit.*, note 15, Recital 62.

## Ensuring availability of support across the country

In Switzerland, the Victims of Crime Act requires at least one Victims' Counselling Centre in every canton. Some are general counselling centres, while others are specialized counselling centres (for example, aimed at children and adolescents).

*Source:* Switzerland's response to ODIHR's questionnaire, received on 5 July 2018.

### 6.2 General and specialist support services for hate crime victims

Hate crime victims require all the standard services available to any other crime victim. The services required by hate crime victims are both "specialized" (owing to the specific group targeted) and provided by "specialists" (or experts with an understanding of hate crime victimization and victims).

The EU Victims' Rights Directive includes an obligation for states to ensure that victims and their family members, in accordance with their needs, have access to free and confidential general and specialist victim support services.<sup>63</sup> FRA research has shown, however, that EU Member States are less advanced in the field of support for hate crime victims when compared to other categories of crimes.<sup>64</sup>

The Directive provides a broad concept of specialist support that considers "the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment." The types of support that such specialist support services should offer can include "providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims."<sup>65</sup>

63 *Ibid.*, Article 8.

64 "Victims of Crime in the EU: The Extent and Nature of Support for Victims", European Union Agency for Fundamental Rights (FRA), January 2015. <<https://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims>>.

65 EU Victims' Rights Directive, *op. cit.*, note 15, Recital 38.



## General and specialist services

In Slovakia, the distinction between victim and particularly vulnerable victim gives rise to a different set of rules with respect to providing assistance and the rights of victims.

Victims, in general, have a right to information and to access professional services. General assistance includes providing basic information, legal aid (including legal aid for exercising victim's rights), psychological help and consultation on avoiding secondary and repeat victimization.

Specialized assistance can be provided to particularly vulnerable victims (including victims of hate crime) and includes general assistance services (all of the above) as well as crisis intervention, risk assessment and social services, such as shelter. Specialized assistance is provided for at least 90 days (with a possibility of prolongation) and is free of charge and available regardless of whether criminal proceedings have been opened.

*Source:* Slovakia's response to ODIHR's questionnaire, received on 6 July 2018.

A specialist support provider for hate crime victims can be one of the following:

- An organization defined as such in the adopted standards (where such exist) that meets all the criteria listed therein;
- An organization that provides support to all victims of hate crimes;
- An organization that caters specifically to one or more targeted groups, either as a community-based organization or as a provider of a specific service required by a particular group;
- An organization that provides a narrowly-focused general service and hires another provider to offer additional services for hate crime victims (for example, an organization providing legal representation that employs an interpreter or psychologist); or
- An organization that has trained its staff to provide support on hate crimes and hate crime victimization.<sup>66</sup>

<sup>66</sup> The Council of Europe recommends that: "specialised training should be provided to all personnel working with child victims and victims of special categories of crime, for example, domestic or sexual violence, terrorism, crimes motivated by racial, religious or other prejudice, as well as to families of murder victims." Council of Europe, Committee of Ministers Recommendation Rec(2006)8, *op. cit.*, note 13, Article 12.3.

The family members of the victim and other persons affected by the hate crime are entitled to receive specialist support to the extent that they can be considered victims of hate crimes according to the definition provided in this Guide.

**Recommendation 29:**

**Define in law and/or policy the specialist support services and the providers of such services for hate crime victims.**

### 6.3 Minimum services for hate crime victims

Many jurisdictions afford enhanced rights to certain categories of victim. In particular, victims of terrorism, domestic violence, sexual violence or trafficking in human beings are often singled out. The trauma that hate crime victims experience is comparable to the trauma experienced by these categories of crime victims. Therefore, in jurisdictions where such a hierarchy exists, hate crime victims should be entitled to the same level of support.<sup>67</sup>

**Recommendation 30:**

**Provide hate crime victims with the highest standards of protection, assistance and procedural rights available to other categories of crime victims, as relevant to hate crime victims.**

The following are general services that should be provided to hate crime victims free of charge:

- Protection, including shelter and safe accommodation, as well as protection from the offender (especially where an extremist group is involved) and re-victimization;
- Immediate medical support;
- Psychological counselling and trauma care;
- Legal aid, including advice and representation; and
- Interpretation and translation services.<sup>68</sup>

<sup>67</sup> See for example the Czech Act on Victims of Crime, *op. cit.*, note 27, section 2 para 4d.

<sup>68</sup> EU Victims' Rights Directive, *op. cit.*, note 15, Recital 38.

## Types of legal aid

In Belgium, victims receive initial legal advice from a front-line legal assistance team, whose lawyers provide free advice at certain times on specific days and, where appropriate, can refer victims to specialist services. Consultations are organized in court buildings, civil magistrates' courts, law centres and municipal administrations, among others. Law centres can be found in any judicial district, or victims can contact a victim support service.

For detailed legal advice, assistance and representation, victims need to enlist the services of a lawyer. Depending on income, some or all of this assistance may be provided free of charge under second-line legal assistance arrangements. Certain categories of people in specific situations, such as minors or persons with a mental disability, are always entitled to free legal representation.

*Source:* Belgium's response to ODHR's questionnaire, received on 10 July 2018.

As with specialist services, these general services should also be provided to the family members of the victim, as per the needs assessment conclusions.

### ***Recommendation 31:***

**Provide, or ensure the provision, free of charge, of protection (including shelter), urgent medical assistance, psychological counselling, legal consultation and representation, interpretation and translation services. Provide the same to the family members of hate crime victims, where relevant.**

### 6.3.1 Protection

Hate crime victims have a right to security and safety. The police have a crucial role to play in providing protection and guaranteeing the safety of victims. The EU Victims' Rights Directive requires states to ensure that "measures are available to protect victims and their family members from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members."<sup>69</sup> Due to risks to the victim, such protective measures should be put in place immediately or as soon as possible.

#### Urgent protective measures

In Armenia, Article 98 of the Criminal Procedure Code stipulates that "upon discovery of the need to protect the injured, witnesses, the accused and other persons participating in the criminal proceedings, a criminal justice body, upon request of these persons or on its own initiative, takes necessary protective measures. The request for protective measures is considered immediately—within 24 hours. The applicant is informed of the decision and receives the copy of the decision."

*Source:* Armenia's response to ODHR's questionnaire, received on 6 July 2018.

The victim is usually a key witness in criminal proceedings. As such, hate crime victims should be entitled to the highest available standards of protection, usually those afforded to "protected witnesses".

Hate crime victims can be particularly vulnerable to intimidation and secondary victimization upon contact with the offender. Therefore, the authorities need to provide solutions enabling the victim to avoid contact with the offender, such as separate waiting rooms or testimonies via video link. If the criminal proceedings require contact between the victim and the defendant, this contact should be kept to a minimum.

<sup>69</sup> EU Victims' Rights Directive, *op. cit.*, note 15, Article 18.

## Procedural measures in high-risk situations

In Germany, certain procedural measures can be applied in cases where the victim is deemed “high risk”.

*Exclusion of the public:* Hearings are normally public. However, if particularly distressing facts from an individual’s personal life need to be shared, the court can or must exclude the public in order to ensure that privacy is protected. The public can also be excluded if a person’s life, limb or liberty are endangered. The person in question can request that the public be excluded in the main hearing. The respective decision lies with the court. For this reason, the court requires all relevant information regarding risks.

*Examination of witnesses:* The German Code of Criminal Procedure permits witnesses to provide a business, work or other address instead of stating a place of residence if there is a well-founded reason to fear the consequences of disclosing their home address. If the risks remain at the main hearing, the presiding judge shall permit the witness not to state their place of residence. If there is a well-founded reason to fear that revealing the identity or the place of residence or whereabouts of a witness would endanger their or another person’s life, limb or liberty, the witness may be permitted to not provide personal identification data or to provide such data only in respect of an earlier identity. Insofar as the witness was permitted not to provide data, it must be ensured that the data are not made known to other persons, unless the danger appears to be ruled out.

*Testimony in the absence of the accused:* If a witness is exposed to particularly serious levels of risk or distress, the courtroom examination can be conducted in the absence of the accused. It is not sufficient, however, for a witness to simply want to avoid a confrontation with the accused. In such situations, the court is required to balance the interests of the witness with the rights of the accused (to hear any potentially incriminating evidence). However, where there is an imminent risk of serious harm to the witness’s health—for example due to excessive psychological strain—the interests of the witness should take precedence.

*Video conference:* In particularly severe cases, where there is an imminent risk of serious harm to the witness's physical or mental well-being, the law allows for witness testimony to be transmitted via video conference.

*Source:* Germany's response to ODIHR's questionnaire, received on 25 July 2018.

Hate crime victims or their family members can also be at risk of repeat victimization at the hands of the perpetrator's friends or group members. Some victims may fear their identity being revealed, particularly members of religious or sexual minorities. In such cases, the specialist support services should provide protected housing or a shelter, while restrictions can also be imposed on the accused.

### **Protective measures for hate crime victims and restrictions for the suspect**

In Croatia, the individual needs assessment considers the severity or nature of the criminal offence. In hate crime cases, based on that assessment, a victim that has been granted special protective measures has the following additional rights:

- To speak to a counsellor/advisor before the interrogation/hearing, the cost of which is covered by the state budget;
- To be interviewed by a person of the same sex in the police and the state attorney's office; another interview is conducted by that same person;
- To refuse to answer questions that have no connection to the criminal offence and that are related to the personal life of the victim;
- To demand to be interviewed with audio-visual equipment;
- To protect the confidentiality of personal data; and
- To request that the public be excluded from the hearing.

Precautionary measures that can be set for the defendant with the goal of protecting the victim, include:

- A prohibition on leaving the place of residence;
- A prohibition on visiting certain places or areas;

- An obligation to report routinely to a specified person or government agency;
- A prohibition on approaching a specific person;
- A prohibition on establishing or maintaining contact with certain people;
- A prohibition on stalking or harassing the victim or other people; and
- Removal from the home.

*Source:* Croatia's response to ODIHR's questionnaire, received on 30 July 2018.

A victim's privacy must also be protected, particularly if the incident has been reported in the media. This issue is discussed in section 4.4.

### **6.3.2 Psychological assistance**

The physical and psychological trauma that hate crime victims experience can be long-lasting and devastating. Psychological and psychosocial counselling should be provided for as long as necessary, including throughout the proceedings and beyond. Continuous individual needs assessments should actively search for symptoms of stress in the victim. It is important to provide psychological and psychosocial support to any family members affected by a hate crime (as identified in the needs assessment), and to investigate others who may also require such support.

### **6.3.3 Legal aid**

Legal aid encompasses legal consultation, advice and representation, and can help victims of hate crimes understand the case. Victims of hate crimes should be included among those entitled to legal aid provided by the state.

The provision of legal aid is subject to national regulations. The rules governing the authorization of legal representation for hate crime victims are often restrictive. In many jurisdictions, a lawyer working for a specialist civil society organization that provides legal support cannot represent the victim in the proceedings unless they are an attorney. Such limitations can decrease the quality of legal support the victim receives. As a good practice, the victim should be represented by a person of their choice.

Legal aid provided by specialist civil society organizations is often closely linked with other relevant services, and can create a complex specialist solution for the client.

### **Legal aid provided by a specialist civil society organization**

In the Czech Republic, In-IUSTITIA (<<https://en.in-ius.cz/about-us>>) is the only organization specializing specifically in assistance to victims of hate crime. As such, it has been accredited by the Czech government. It provides legal assistance, including representation in criminal proceedings, to victims of hate violence in the country and co-operates with other organizations to facilitate provision of complex support. It has issued guidance on provision of legal aid, on social work and other areas of hate crime victim support.

*Source:* Klára Kalibová, *Bias Crime Victims and the Right to Legal Aid* (In IUSTITIA 2018) <<https://www.in-ius.cz/dwn/legal-aid-manual/legalaid-manual-blok1.pdf>>.

The following good practice, valued highly by the victims who made use of it, illustrates that legal counsel can play a broader role than just legal support.

### **Legal counsel: more than just legal support**

In Sweden, victims of serious crime are entitled to free counsel and support services in connection with the preliminary investigation and trial in the form of an injured party counsel. Legal counsel not only prepares victims for the proceedings, but also provides strategies to cope with being in the same room as the offender—such as where to look and how to think about things that the offender might possibly say or do. Legal counsel can also help victims handle the press, refer them for counselling from other professionals and ensure that the victim understands the judgment.

*Source:* Görel Granström and Karin Åström, “Lifecycle of a Hate Crime: Country Report for Sweden”, December 2017, <<http://www.diva-portal.org/smash/get/diva2:1244821/FULLTEXT01.pdf>>.



### 6.3.4 Immediate financial aid

Hate crime victims often find themselves in financial difficulties as a result of their victimization. To remedy this, several jurisdictions offer immediate support to victims to compensate for lost income or to address pressing financial needs.

Such assistance can be built into a broader compensation scheme provided by the state. In some cases, it can be limited to victims of violent crime.<sup>70</sup> In other contexts, the victim can be compensated upon proving the material damage and minimal moral damages suffered. The state will then attempt to be reimbursed by the perpetrator.<sup>71</sup>

#### Immediate financial aid for victims of hate crime

In Germany, in addition to regular victim compensation provided under the Victims Compensation Act, victims of hate crimes can qualify for a hardship compensation for the victims of terrorist and extremist attacks. This scheme, introduced in 2001 and expanded in 2010 to cover all victims of extremist violence, applies to all terrorist and extremist attacks in Germany. Hardship benefits are granted for reasons of fairness and take the form of immediate support for victims. The benefits present an act of solidarity from the state and its citizens with the victims of right-wing extremist crime.

Attacks covered by the hardship benefits scheme are primarily bodily injuries inflicted by right- or left-wing extremists, xenophobic or anti-Semitic offenders. Massive threats or character assassinations may also qualify. It is not necessary to establish the extremist nature of the attack beyond any doubt; a high probability suffices.

The level of compensation depends on the nature and seriousness of the injuries and can vary accordingly. Eligible people include victims of extremist attacks and their survivors (e.g., parents, children or siblings), as well as emergency helpers—persons who were injured while trying to fend off an extremist attack or while helping victims of

70 “European Convention on the Compensation of Victims of Violent Crimes”, *op. cit.*, note 14.

71 Council of Europe, Committee of Ministers Recommendation Rec(2006)8, *op. cit.*, note 13.

extremist attacks. A relative of someone killed in a terrorist or extremist attack can receive a fixed sum as hardship compensation.

Hardship compensation is paid upon application. While survivors receive a lump sum, the hardship payment for victims may vary according to the individual impact of the assault on the victim. Hardship payments are made as compensation for injuries, as well as for the invasion of personal privacy, which includes insults. Hardship payments are not granted for damage done to property or other pecuniary losses; however, detriments to maintenance payments and disadvantages in career advancement may be considered when assessing the amount of the hardship payment.

*Source:* Germany's response to ODIHR's questionnaire, received on 25 July 2018.

***Recommendation 32:***

**Consider taking other measures to provide hate crime victims with enhanced support and/or to prevent their secondary victimization.**

Where a victim's right to a particular support service has been established, a corresponding complaint mechanism should be set up in case the service has not been provided or has not been delivered in full.



7.

Acknowledging  
and involving  
hate crime victims  
in criminal proceedings

## Guiding Principle

The authorities should:

- ✓ Ensure that hate crime victims can play an active role in criminal proceedings and that their experience is acknowledged and validated throughout investigation, prosecution and trial.

## Overview of chapter recommendations:

- First responders, investigators and prosecutors should explicitly address the crime's bias motivation, the victim's perception of the crime as a hate crime and the impact of the crime on the victim in their actions and decisions;
- Facilitate victims' active involvement in the proceedings, including the claim of compensation. Enable victims to present an impact statement in order to inform the sentencing. Where possible, avoid cross-examination of impact statements by the defence;
- Keep the victim informed of key developments in the case in a timely manner, and consult them about key investigation and prosecution decisions that impact their position. Provide the victim with access to the case file to the extent necessary for the exercise of their rights;
- Set up complaint and redress mechanisms to enable the victim to challenge all decisions affecting the victim rights stipulated in this Guide or in national law; and
- Establish in law and/or policy an effective mechanism for the victim to challenge the decision not to investigate or not to prosecute a crime as a hate crime.

Many hate crimes are investigated and prosecuted as ordinary crimes, with no recognition of the bias motivation of the crime. Denying the victim's experience of hate crime victimization sends a negative message to both the victim and their community.

A hate crime victim's experience must be recognized by the criminal justice system. When criminal justice agencies expressly confirm or acknowledge a potential hate crime case, this sends a message that hate crimes are treated seriously and can be immensely important in preventing such crimes.

Victims' active participation in the proceedings – including by presenting an impact statement and seeking compensation – can help validate their experience, and forms part of an official acknowledgement of the seriousness of hate crimes. Procedural guarantees ensuring victims' active involvement give meaning to the “procedural status” or “standing” referenced in Chapter 3.

This chapter introduces ways in which criminal justice agencies can reflect the bias-motivated nature of a hate crime throughout criminal proceedings. It discusses the procedural rights that enable the victim to play an active role in seeking redress for the wrong committed against them, including challenging the authorities' decisions. This chapter does not deal with the outcomes – judicial or out-of-court – of hate crime cases, which will be addressed in the next chapter.

## **7.1 Addressing bias motivation and the impact of hate crime**

Immediately upon first contact with the victim, the authorities should recognize the victim as a potential hate crime victim. Their perception of the incident as bias motivated should be recorded in the case file and should trigger the application of a hate crime victim protocol (as discussed in Chapter 2). The victim should receive written acknowledgement of the complaint that lists the basic elements of the offence. As good practice, this written acknowledgement could also contain a record of the harm suffered and the victim's perception.

There are a number of ways in which the authorities can acknowledge the victim's status as a hate crime victim. Triggering a hate crime victim protocol – and conducting a general, then detailed, needs assessment, and referring the victim to specialist services – sends a strong message and can help reassure the victim that the authorities are responding appropriately.

Most importantly, police investigators and prosecutors should treat the incident as a potential hate crime when taking decisions that shape the course of the proceedings. The bias motivation and the impact of the crime should be made explicit in the preliminary legal qualification and in the indictment, and should be used as an argument by prosecutors in court.

A predominant type of hate crime provision in criminal codes across the OSCE region is a sentencing provision (usually in the form of a circumstance aggravating the penalty), invoked by the court at the sentencing stage, after the guilt of the perpetrator has been established. For this reason, if police do not collect all the relevant evidence pointing to the bias motivation of the offender, and the prosecutors do not argue forcefully for the court to consider this motivation, the likelihood of a judgment that addresses the incident as a hate crime, can be quite small.

In several OSCE jurisdictions, law (statutory or judge-made) instructs police to consider the impact of the crime on its victim when determining the best legal qualification, and in considering whether to allow victims to participate in the proceedings.

### **Considering hate crime impact when initiating investigation**

In the Czech Republic, a 2019 decision of the Constitutional Court concerning a hate crime case imposed on police, prosecutors and courts a duty to consider the harm suffered by individual victims when determining the seriousness of the offence and providing a legal qualification for the perpetrator's conduct.

The Court refuted the claim that, because some offences listed in the Criminal Code target public interests rather than individual victims, those who feel victimized by such crimes cannot participate in the proceedings as an injured party. According to the Constitutional Court, even in cases of such typically "victimless" crimes, the authorities must take a victim-centred approach, assess the alleged harm and, if relevant, allow victims to participate in the proceedings with full rights.

*Source:* Czech Constitutional Court Judgment, 2 April 2019,  
<[https://www.usoud.cz/fileadmin/user\\_upload/Tiskova\\_mluvci/  
Publikovane\\_nalezky/III\\_US\\_3439\\_17\\_an.pdf](https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/III_US_3439_17_an.pdf)>.

Where insufficient evidence or public interest prevent an incident from being prosecuted as a hate crime, prosecutors should inform the victim, provide a reason and mention the victim's right to challenge such a decision (see section 6.2.3).

***Recommendation 33:***

**First responders, investigators and prosecutors should explicitly address the crime's bias motivation, the victim's perception of the crime as a hate crime and the impact of the crime on the victim in their actions and decisions.**

## **7.2 Select procedural rights for hate crime victims**

Specific procedural rights stemming from a victim's status as a hate crime victim are necessary for the victim to actively and effectively receive compensation. The specific procedural rights that apply differently to hate crime victims are described below.

As discussed in Chapter 3 of this Guide, the procedural position of the victim is fundamentally different in common law and civil law systems. Please note that some of the recommendations contained in this section may have limited applicability in common law jurisdictions, where the victim does not participate as a party to the proceedings.

### **7.2.1 Right to active participation in proceedings**

Victims can expect to achieve several things through the criminal justice process. First, victims can receive compensation for the harm suffered. Second, they can get the court and other authorities to acknowledge that they were victimized in a bias-motivated crime. Finally, they can have the harm they suffered – and the increased culpability of the perpetrator of a bias-motivated crime – reflected in a sentencing judgment or other outcome.

In most civil law jurisdictions, the hate crime victim can participate as an injured party in the proceedings, so long as they meet the legal criteria and are granted participation status. As a participant, the victim applies for



compensation or reparation from the perpetrator and expects to receive a judgment ordering such recompense. In some common and civil law jurisdictions, the victim or a representative organization can institute a private prosecution or join as an accessory or subsidiary prosecutor (see also section 2.2.2). Such prosecutions can usually only be initiated in cases of petty offences. The victim also has a right not to participate and not to make a claim in the proceedings. In such cases, the prosecutor is still tasked with realizing the victim's rights.

### **The victim as an accessory prosecutor**

In Germany, under the Code of Criminal Procedure, some hate crime victims may join the prosecution as a “private accessory prosecutor”. Victims can become a private accessory prosecutor if they are the victim of a violent crime, including rape, sexual abuse or attempted murder, or if the crime resulted in the death of a close relative. The role affords the victim special rights, including participation in all parts of the trial.

*Source:* Germany's response to ODIHR's questionnaire, received on 25 July 2018.

### **The victim as a subsidiary prosecutor**

In Poland, every victim, including the victim of a hate crime, has the right to act before the court as a subsidiary prosecutor (under Chapter 5 of the Code of Criminal Procedure). During the trial, the subsidiary prosecutor has the right to present evidence and submit motions related to the penalty and penal measures.

*Source:* Poland's response to ODIHR's questionnaire, received on 11 July 2018.

The victim's active role in the process is often necessary to reach a sentencing judgment and ensure that a hate crime is duly recognized and compensated. In particular, victims can submit evidence, participate in fact finding, attend preliminary hearings and ask questions in trial.

The right to participate can be hindered when the victim does not feel confident or fears contact with the authorities, such as in cases where victims are undocumented migrants or people accepting payment for sex. In line with international standards and recommendations, all states should consider granting legal status to people involved in criminal proceedings as victims or witnesses, and creating “firewalls” (procedures and standards separating criminal justice and immigration officials) to enable undocumented migrants access to criminal justice process.<sup>72</sup> In several OSCE participating States, these principles have been successfully implemented and undocumented migrant victims are able to participate actively in the proceedings without fearing deportation.

### **Temporary residence permits on humanitarian grounds**

In Greece, a ministerial decision provides residence permits on humanitarian grounds for third country nationals who are victims or witnesses of racist offences. The permits are valid until the case is closed or a final court judgment is issued.

Source: “Ensuring Justice, Protection and Support for Victims of Hate Crime and Hate Speech: 10 Key Guiding Principles”, European Commission, December 2017, <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=37188&no=1>>.

As part of the right to be heard, victims of hate crimes should be allowed to present the harm they suffered to the court. A victim impact statement (or personal statement) should ideally be submitted to the court in writing and read out loud. The court is then bound to take the statement into consideration when deciding on the sentence. The defence should not be permitted to cross-examine the victim impact statement. However, this expectation cannot be met in many civil law jurisdictions, where the victim is permitted to present a statement in court as a witness.

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72 See principle 3 in “Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations”, UN OHCHR and Global Migration Group, 2017, <<https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>>.

## Victim impact statement

In Canada, following a finding of guilt, victims have the right to present a victim impact statement for the court to consider in sentencing (section 722 of the Criminal Code). A victim impact statement is a written statement drafted by the victim that describes the physical or emotional harm, property damage or economic loss that they suffered as a result of the offence. The Court must take the victim impact statement into account when sentencing an offender.

*Source:* Canada's response to ODHR's questionnaire, received on 5 July 2018.

In addition to personal victim statements, a number of OSCE participating States allow for the community impact statements to be presented, to provide a fuller picture of the consequences of the crime in question.<sup>73</sup>

### **Recommendation 34:**

**Facilitate victims' active involvement in the proceedings, including the claim of compensation. Enable victims to present an impact statement in order to inform the sentencing. Where possible, avoid cross-examination of impact statements by the defence.**

## 7.2.2 Right to information about the case

The right to be informed of the case is a precondition to effective participation. Under the EU Victims' Rights Directive,<sup>74</sup> victims have the right to "effectively understand" the information provided by the authorities. This means that information must be communicated in plain language with the aim of ensuring that the victim understands. To that end, information should be communicated both in person (orally) and via written materials, including

<sup>73</sup> This was briefly addressed in Chapter 2. See also "Community Impact Statements and Their Use in Hate Crimes Cases", UK Crown Prosecution Service, 15 August 2018, <<https://www.cps.gov.uk/legal-guidance/community-impact-statements-and-their-use-hate-crime-cases>>.

<sup>74</sup> EU Victims' Rights Directive, *op. cit.*, note 15, Article 4.

booklets, leaflets and online resources. Furthermore, information regarding the victim's entitlements should be communicated as soon as possible.

In particular, the victim should receive the initial crime report, including a description of the crime and the harm inflicted. The victim should be granted access to the case file to the extent necessary for the exercise of their rights, unless investigation needs or personal data protection requirements prevent this. The European Court of Human Rights has confirmed this approach in relation to victim's relatives when observing that the "disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement."<sup>75</sup>

### **Victims and the sentenced offender: parole hearings and information about release**

In Canada, the federal government provides financial assistance to eligible victims to attend Parole Board hearings of the offender who harmed them. At these hearings, victims are entitled to provide a statement for consideration by the Parole Board.

Victims of offenders serving a federal sentence (two years or more) are eligible to receive information from the Correctional Service of Canada and the Parole Board of Canada. The information available to these victims is outlined in the *Corrections and Conditional Release Act* (CCRA), and includes information about the location where the offender is serving their sentence, information on the offender's correctional plan and the progress the offender has made towards meeting the objectives of the plan, as well as information about the date, conditions and destination of the release of an offender. The CCRA also entitles victims to access a recording of a parole hearing if they did not attend in person, and stipulates that the Parole Board of Canada must attempt to contact and consult with victims before it removes or varies any conditions placed on an offender to protect the victim.

*Source:* Canada's response to ODIHR's questionnaire, received on 5 July 2018.

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75 The Court also suggested that instead, the requisite access of the victim's relatives may be provided in other (later) stages of the procedure. See, for example, *McKerr v. UK*, ECtHR Application No. 28883/95, 4 May 2001.

As good practice, and where necessary and appropriate, the authorities should keep the victim continuously informed during proceedings, while also respecting the victim's wishes as to information they want or do not want to receive.<sup>76</sup>

**Recommendation 35:**

**Keep the victim informed of key developments in the case in a timely manner, and consult them about key investigation and prosecution decisions that impact their position. Provide the victim with access to the case file to the extent necessary for the exercise of their rights.**

### 7.2.3 Challenging police and prosecutorial decisions

The victim should have the possibility to make a complaint, including about their treatment by the police, deficiencies in the needs assessment, problems with their referral and the services provided, failure to grant them hate crime victim status or any other procedural right stipulated in this Guide. Such complaints should be addressed to an independent body, inside or outside of the criminal justice system. If the complaint is about a decision made by the authorities, the complaint should not be addressed to the body that issued the decision.

**Recommendation 36:**

**Set up complaint and redress mechanisms to enable the victim to challenge all decisions affecting the victim rights stipulated in this Guide or in national law.**

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<sup>76</sup> See "Directorate General Justice Guidance Related to the Transposition and Implementation of Directive 2012/29/EU", European Commission, *op. cit.*, note 16. Although recommended by the Guidance Document, the EU Victims' Rights Directive does not take this approach but instead lists the authorities' specific information duties.

Police and prosecutors must always investigate and prosecute incidents that display bias indicators as hate crimes, by addressing both the base offence and the bias motivation.<sup>77</sup> Various international instruments, e.g., Art. 6 of CERD, mandate the victim's right to seek redress in the form of adequate reparation or satisfaction for harm suffered as a result of a bias-motivated attack. As explained in the following chapter, the added emotional harm that hate crimes cause victims needs to be reflected in the increased compensation victims can claim.

At the same time, without investigating or prosecuting cases as potential hate crimes, victims can never claim adequate compensation. Therefore, it is the decision of the authorities not to pursue the bias motivation in investigation/prosecution that leads to victims being deprived of their right. As such, the victim should also be able to challenge the decision not to investigate and/or not to prosecute a case as a hate crime,<sup>78</sup> while giving due regard to the model of applicable hate crime legislation.<sup>79</sup>

***Recommendation 37:***

**Establish in law and/or policy an effective mechanism for the victim to challenge a decision not to investigate or not to prosecute a crime as a hate crime.**

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77 This duty can be derived from the CERD Committee or European Court of Human Rights case law, with a positive obligation of states to unmask bias motivation in investigation into hate crimes (based on Articles 3 and 14 of the Convention). See for example *Balazs v. Hungary*, ECtHR Application No. 15529/12, 20 October 2015.

78 This reasoning was also confirmed in the CERD committee decision in *Mahali Dawas and Yousef Shava v. Denmark*, CERD/C/80/D/46/2009, 2 April 2012, paragraph 7.5.

79 Implementing this principle might be more difficult in jurisdictions where bias motivations can only be addressed in the sentencing stage through the application of aggravating circumstance provisions. However, even in these circumstances, investigation/prosecution should include collection and presentation in court of evidence of perpetrator's bias.



8.

Validating hate crime  
victims' experience:  
outcomes of the criminal  
justice process



## Guiding Principle

The authorities should:

- ✓ Ensure that hate crime victims have their experience acknowledged and validated in judicial and out-of-court outcomes of the criminal proceedings.

## Overview of chapter recommendations:

- Explicitly address the bias motivation and impact of a hate crime in the sentencing judgment.
- Provide compensation to victims of hate crimes. Set up a mechanism enabling full and effective compensation for the suffered harm by the perpetrator or by the state, in criminal or civil proceedings or otherwise;
- Introduce broad and flexible criteria for determining the moral damages for hate crime, which enable consideration of the harm to the dignity inherent in all hate crime victims (including physical and mental suffering and emotional harm), and the individual impact;
- Prevent exclusion of the bias element as part of a plea bargain. Ensure that the bias element is included in plea agreements and reflected in the sanction. Require consent or at least knowledge of the victim when entering into a plea negotiation; and
- Require informed consent of the victim for restorative justice measures (including mediation) and ensure that the process and agreement address the bias motive. Train restorative justice officers on hate crimes and the needs of hate crime victims. Involve communities and civil society groups in the development of restorative justice programmes.

In many cases, judgments and other decisions made in hate crime cases fail to reflect the bias motivation of the perpetrator. More often than not, any compensation afforded to the victim does not account for the increased harm the victim suffers as a result of the hate crime.

One of the key needs of a hate crime victim is the criminal justice system confirming the victim's experience of hate crime victimization. The most compelling validation of a victim's experience often comes in the form of a sentencing judgment or other type of judicial or out-of-court outcome that specifically describes the crime as bias-motivated.

This section addresses how judicial outcomes can clearly communicate the existence of a hate crime, and provides guidance on compensation in hate crime cases. It also discusses some alternative dispute resolution approaches and how these can serve to validate hate crime victims' experiences.

## **8.1 Judgment and sentencing**

When a court hands down a ruling, it represents a powerful statement about the nature of the conduct, subject to that ruling. Vast differences exist among participating States regarding how a court's pronouncement of the crime, the guilt of the accused and the sentencing is organized. In many jurisdictions, different regimes are in place depending on the seriousness of the crime and other factors. The court can consist of a single judge, a panel of judges, a combination of lay and professional judges or a jury. The guilty verdict and sentencing can take place in short sequence, during the same sitting, or they can be split into separate stages, with significant time in between.

This section reflects on the importance of a judgment as a public decision and publicly communicated outcome of a hate crime case, arrived at following a public trial. It focuses on court findings regarding the guilt of the accused and the sentencing, as basic features common to all jurisdictions.

Victims of hate crimes often emphasize the need to have the reasons for the attack reflected in a judgment.<sup>80</sup> However, this often does not happen. The

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80 Görel Granström and Karin Åström, "Lifecycle of a Hate Crime: Country Report for Sweden", December 2017, p. 59 <<http://www.diva-portal.org/smash/get/diva2:1244821/FULLTEXT01.pdf>>.

court may find the accused guilty of the base offence and not address the motives of the perpetrator at all, or conclude that the bias motivation has not been proven. This can stem from poor police work, prosecutor preparation or a number of other factors.

As the previous chapter mentioned, this is often due to the type of hate crime provision national criminal codes use. An aggravating circumstance applicable to all crimes is the most prevalent type of hate crime law found in OSCE participating States' criminal codes. With these laws, courts address the bias motive as part of the balancing of aggravating and mitigating factors, in order to individualize the sentence to best match the offender and the crime they have committed. (Jurisdictions that make use of other types of hate crime laws – substantive offences or specific penalty enhancements, making the bias motive an integral element of the crime that has to be established to convict the accused – will not face these issues.) This process of balancing mitigating and aggravating factors can, as a result, blur the outcome. The court should explain in its judgment how it arrived at a given sentence, but this is often not done sufficiently and the resulting sentencing judgments can be ambiguous as to the biased nature of the crime.

A few countries provide specific sentencing instructions on the mandatory use of hate crime sentencing provisions, which in turn makes the bias motives of perpetrators stand out and leaves no doubt that the case was decided as a hate crime case.

### **Hate crime sentencing guidelines**

In the United Kingdom, when sentencing any bias-motivated offence, the *Magistrates' Court Sentencing Guidelines* instructs judges/sentencers to follow these principles:

- Sentencers should first determine the appropriate sentence, leaving aside the element of aggravation related to race, religion, disability, sexual orientation or transgender identity but considering all other aggravating or mitigating factors;
- The sentence should then be increased to consider the aggravation related to race, religion, disability, sexual orientation or transgender identity;

- The increase may mean that a more onerous penalty of the same type is appropriate, or that the threshold for a more severe type of sentence is passed;
- The sentencer must state in open court that the offence was aggravated by reason of race, religion, disability, sexual orientation or transgender identity; and
- The sentencer should state what the sentence would have been without that element of aggravation.

*Source:* "Approach to sentencing", Sentencing Council website, <<https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/hate-crime/3-approach-to-sentencing/>>.

The part of the judgment that provides reasoning for the finding on guilt and for the sentence imposed, should be explicit about the bias motivation underlying the offence. The judgment should explain what evidence led the court to conclude that a hate crime occurred and should also explicitly address the impact of the crime on the victim and how that impacted the sentencing decision.

Detailing the impact on the victim is also important in order to clearly substantiate the decision on compensation, which may be part of the sentencing judgment (more on this issue in the following section).

Considering that hate crimes send a message and impact whole communities, decisions in hate crime cases should be publicly communicated. When issuing public statements or communicating with the media, relevant court officials should not use overly legalistic language but rather (or in addition) explain the impact of the case and specifically address the motivation of the perpetrators, while explaining that this has been reflected in a harsher sentence (see section 2.3.2).

***Recommendation 38:***

**Explicitly address the bias motivation and impact of a hate crime in the sentencing judgment.**

## 8.2 Compensation

Where the victim has been a party to the proceedings, the judgment or another court decision will most likely address the victim's claim for compensation due to suffered harm. In contexts where a victim is not a participant in the proceedings, compensation can be claimed outside this process.

The term “compensation” has slightly different meanings in different jurisdictions. Often, it refers only to material compensation provided to victims of crime by the state.<sup>81</sup> Some international instruments prefer the term “reparation”,<sup>82</sup> which also covers other types of redress and remedies that go beyond materially compensating victims of crime for the harm they have suffered (such as restitution, rehabilitation, satisfaction/recognition or guarantees of non-repetition).<sup>83</sup>

This Guide uses the term “compensation” to collectively refer to various models of materially remedying the harm the victim suffered.<sup>84</sup> As such, compensation can cover, for example, the following forms of redress: compensation for economic loss and loss of income, material damage, moral damages (including emotional harm, pain and suffering), injury or loss of life, medical, hospitalization and funeral expenses, and loss of maintenance for dependants.

There are three main schemes for claiming compensation:

- Sentenced perpetrator is ordered to compensate the victim as part of the criminal proceedings;
- Perpetrator is sentenced in the criminal proceedings and the victim can pursue compensation from the perpetrator through a civil lawsuit; and
- State compensates the victim.

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81 See, for example, the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0080&from=EN>>.

82 As a reflection of the internationally recognized right to remedy and redress.

83 For more information on the compensation aspect of the future EU's victims' rights strategy 2020-2025, see the report Joëlle Milquet, “Strengthening Victims' Rights: From Compensation to Reparation”, European Commission, March 2019 <[https://ec.europa.eu/info/sites/info/files/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation\\_rev.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf)>.

84 See also “European Convention on the Compensation of Victims of Violent Crimes”, *op. cit.*, note 14.

Each of these models has advantages and disadvantages for the hate crime victim. For example, the first model may be the most expedient but the standard of proof in a criminal trial is usually higher than in a civil lawsuit. In both the first and second models, the execution of judgments might be complicated, especially if the awarded amount is high and the perpetrator does not have the financial means, particularly while serving a prison term.

The state compensation scheme is often subsidiary and only used if the perpetrator cannot compensate the victim. It can also be limited in scope, for example, it may only compensate victims of violent crimes for certain types of damages. Lastly, state compensation funds are derived from public budgets and, as such, the available funds can be limited, influencing the criteria for award of compensation. The compensation provided by the state should be always available, whenever a crime has been committed (as established through investigation or decisions of criminal justice agencies). This should apply even in cases where the offender cannot be prosecuted or punished.<sup>85</sup>

The examples that follow illustrate the functioning of these models in some of the OSCE jurisdictions.

### **Types of compensation: from state and from offender – criminal and civil proceeding**

In Croatia, there are several types of compensation.

**Financial compensation from the state:** In accordance with the Crime Victims Compensation Act, the victim of a violent criminal offence committed with intent has the right to financial compensation from the state. The victim can exercise the right to compensation for:

- The costs of medical treatment;
- Lost earnings;
- The loss of legal maintenance (claimed by a close relative of a deceased victim); and
- Funeral costs.

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85 “European Convention on the Compensation of Victims of Violent Crimes”, *op. cit.*, note 14, art. 2.

The police, the state attorney and the court are obligated to inform the victim of the right to compensation and to provide the forms required to submit the request. At the victim's request, the police will also issue a confirmation of the filing of a criminal complaint. The request for financial compensation is submitted to the Ministry of Justice within a period of six months after the commission of the criminal offence (extended to three years in exceptional and justified circumstances). The Committee on Compensation to Crime Victims makes decisions regarding such requests.

### **The right to compensatory damages from the defendant:**

- *Claim for indemnification in a criminal proceeding*

The victim of a criminal offence, who has committed to participating in the proceeding as an injured party, has the right to submit a claim for indemnification during the criminal proceeding—at the latest by the completion of the evidentiary proceeding (hearing). In this claim, the injured party can seek compensatory damages from the defendant, the return of items or the annulment of a particular legal transaction. If the victim files the request during the criminal proceeding, the prerequisite for its acceptance is that the court finds the defendant guilty.

- *Compensatory damages in a civil proceeding*

If the victim does not obtain compensatory damages from the defendant in the criminal proceeding, the court will instruct the victim to seek compensatory damages in a civil proceeding by filing a lawsuit.

*Source:* Croatia's response to ODIHR's questionnaire, received on 30 July 2018.

### **Types of compensation: from state, from offender and from insurance**

The Swedish system of compensation for injuries caused by a criminal act consists of three kinds of compensation: damages from the offender, insurance compensation and criminal injuries compensation from the state. If an offender cannot pay the damages and the crime victim does not have sufficient insurance to fully cover the injuries, the victim may be entitled to compensation from the state, known as criminal injuries compensation.

*Source:* Sweden's response to ODIHR's questionnaire, received on 18 June 2018.

All types of compensation should be effective in practice and result in the victim receiving a monetary award. If this is not the case, the mechanism may create frustration in victims, deepen their victimization and weaken the trust in the criminal justice system. Compensation should also be based on a clear policy, setting out criteria and a rates/calculation mechanism to arrive at a final compensation amount. This also applies to cases where judges alone determine the respective amounts.

### ***Recommendation 39:***

**Provide compensation to victims of hate crimes. Set up a mechanism enabling full and effective compensation for the suffered harm by the perpetrator or by the state, in criminal or civil proceedings or otherwise.**

The compensation rates and the criteria for calculating and awarding compensation should always reflect the level of harm suffered. For hate crime victims, the rules should reflect both the increased harm suffered by victims of hate crimes as a category, and the individual harm suffered by each victim. Specifically, the costs of treatment for both physical and psychological injuries must be reimbursed and moral damages awarded. Moral damages for hate crime victims amount to compensating for the harm to the victim's dignity, suffered as a result of targeting one or several protected characteristics. In particular, moral damages encompass physical suffering, mental



anguish, fright, serious anxiety or trauma, besmirched reputation, wounded feelings, moral shocks, social humiliation and similar injuries.

In order for the compensation to be awarded, the types of harm need to be documented and presented in the proceedings – see more in Chapter 5 (on individual needs assessments) and Chapter 7 (on presenting victim impact statements).

***Recommendation 40:***

**Introduce broad and flexible criteria for determining the moral damages for hate crime, which enable consideration of the harm to the dignity inherent in all hate crime victims (including physical and mental suffering and emotional harm), and the individual impact.**

### **8.3 Agreements and restorative justice solutions**

#### **8.3.1 Settlements, plea agreements**

In many contexts, prosecutions can be terminated and cases settled without reaching any of the other conclusions listed in this chapter. In such cases, however, it is important that the needs of the victim are duly considered, especially with regard to compensation and the interest in an official pronouncement on the bias motivated nature of the crime. As a rule, victim needs to be involved and agree to a settlement.

### Termination of prosecution: victim consent

In Slovakia, the Code of Criminal Proceedings allows the termination of criminal prosecution for certain type of crimes (with an upper penalty limit not exceeding five years) by settlement. The prerequisites include consent of the victim, compensation of damages caused by the offence and deposit of a monetary sum in the bank account intended by the Ministry of Justice for the protection and support of victims of criminal offences.

*Source:* Slovakia's response to ODHR's questionnaire, received on 6 July 2018.

Plea agreements (or bargains) are a deal between the prosecution and the accused, in which the accused pleads guilty to (some of) the charges in exchange for a reduced sentence. Plea agreements need to be approved by the court; as such, they do not involve the victim directly.

Where evidence of bias motivation exists, such deals should not result in the bias element being dismissed. For example, the United Kingdom Crown Prosecution Service guidance on prosecuting hate crimes stipulates that “it is CPS policy not to accept pleas to lesser offences, or a lesser basis of plea, or omit or minimise admissible evidence of racial or religious aggravation for the sake of expediency.”<sup>86</sup>

When considering pleas, prosecutors and the court should also not ignore the victim. Prosecutors should consult the victim, inform them and preferably secure their informed consent. At a minimum, however, the victims should always be informed and their needs (as identified through the individual needs assessments) given due consideration. The agreements reached should not diminish the victim's compensation claim substantively (diminish the claimable amounts) or procedurally (their ability to claim the compensation).

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86 “Racist and Religious Hate Crime – Prosecution Guidance”, UK Crown Prosecution Service, 21 October 2019, section on accepting pleas, <<https://www.cps.gov.uk/legal-guidance/racist-and-religious-hate-crime-prosecution-guidance>>.

### **Plea agreement: victim informed**

In Canada, if a plea agreement is reached in a hate crime that involves a serious personal injury offence, the court is required to ask if reasonable steps were taken to inform the victim of the agreement. In cases where the offender is charged with an indictable offence that carries a maximum penalty of five years or more, the court must ask whether any victims requested to be informed of a plea agreement and, if so, whether reasonable steps were taken to inform victims of the agreement. In both cases, the prosecutor must take reasonable steps to inform the victim of the plea agreement after it is accepted by the court—if this was not done beforehand.

*Source:* Canada's response to ODIHR's questionnaire, received on 5 July 2018.

### ***Recommendation 41:***

**Prevent exclusion of the bias element as part of a plea bargain. Ensure that the bias element is included in plea agreements and reflected in the sanction. Require consent or at least knowledge of the victim when entering into a plea negotiation.**

### **8.3.2 Restorative justice measures: victim-offender mediation**

Restorative justice solutions may be available and used in some OSCE participating States' jurisdictions. Restorative justice is an approach that focuses less on retributive aspects of criminal justice (represented by the punishment of the offender) and instead emphasizes the need to repair the harm caused by criminal conduct. Restorative justice solutions can also involve communities.

Across the OSCE region, restorative justice programmes have not been widely used, but continue to develop. Considering the interests of criminal justice, restorative solutions should not be implemented in place of regular proceedings in cases of very serious, particularly violent offences. They may,

however, be implemented for less serious infractions or in parallel to the regular proceedings.

International guidance on implementing restorative justice programming into criminal justice systems includes the 2006 *UNODC Handbook on Restorative Justice Programmes*<sup>87</sup> and the 2002 *UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*.<sup>88</sup>

A diversion to the restorative process should be made available at any stage in the criminal proceedings. An agreement between the victim and the offender is typically an outcome of restorative processes. Such agreements can include restitution, community service and any other programme or response designed to repair the victim and community, and reintegrate the victim and/or the offender,<sup>89</sup> in addition to monetary compensation, education to prevent recidivism, and/or expression of remorse. Reaching an agreement can be assisted by a trained facilitator, appointed or selected by both parties.

Restorative processes usually consist of a series of meetings between the victim and the offender. Free, informed and voluntary consent of both parties is, therefore, a precondition. The victim should also be free to not provide or even withdraw consent at any time during the process. Both the victim and the offender should acknowledge the basic facts of the case as a basis for participation. In cases of hate crimes, such basis should include also the bias motivation underlying the attack in question. If criminal proceedings continue, participation in restorative processes should not be construed as evidence of admission of guilt.

Restorative justice approaches put the victim of a crime in the centre and seem to be a beneficial option for the victims of hate crimes as well. They can (i) empower victims and make their voices heard, this can be particularly important when cases are not dealt with in court (e.g., with bias-motivated misdemeanours), (ii) explore underlying causes and the harm suffered beyond what would be possible in often formal criminal proceedings, and (iii) involve the community, thus lowering the secondary impact and security

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87 UN Office on Drugs and Crime, *Handbook on Restorative Justice Programme*, *op. cit.*, note 12.

88 UN Office on Drugs and Crime, Resolution 2002/12, “Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters”, 24 July 2002, <[https://www.unodc.org/pdf/criminal\\_justice/Basic\\_Principles\\_on\\_the\\_use\\_of\\_Restorative\\_Justice\\_Programs\\_in\\_Criminal\\_Matters.pdf](https://www.unodc.org/pdf/criminal_justice/Basic_Principles_on_the_use_of_Restorative_Justice_Programs_in_Criminal_Matters.pdf)>.

89 *Ibid.*, para 3.

risks. Research suggests effective restorative justice programmes have improved the emotional well-being of many hate crime victims.<sup>90</sup>

### Hate crime victims' support for restorative justice

A 2012 to 2014 Leicester University-run project on hate crime victimization, based on extensive surveys of victims of hate crimes, observed that:

“[P]articipants showed an overwhelming preference for the use of educational interventions and restorative approaches to justice, as opposed to extended prison sentences or harsher regimes. Moreover, this preference was shared by victims of different types for violent and non-violent hate crime and from different communities, ages and backgrounds. Many participants spoke of wanting the offender to understand the impact that their behaviour had on them, their family and in some cases their wider community, and believed that this could be achieved through the use of facilitated mediation. [...] Overall, participants felt that the use of smarter punishment – and not harsher punishment – offered a more effective route to challenging underlying prejudices, and therefore to preventing future offending.”

Source: “Victims’ Manifesto”, The Leicester Hate Crime Project, University of Leicester, September 2014. <<https://le.ac.uk/~media/uol/docs/research-centres/hate-studies/our-reports/victimsmanifesto.pdf?la=en>>.

The critique of restorative solutions claims problematic value neutrality and moral balance of parties it involves, as opposed to a strong statement that is often included in a sentencing judgment. This Guide recommends using restorative justice solutions when the bias motive can be acknowledged and the victim can be compensated and attends the meetings voluntarily.

Victim-offender mediation is one form of restorative justice, which is more frequently used in practice. It follows all the principles stated above and requires the willingness of the perpetrator to accept responsibility for the offence. It can be implemented instead of, or in addition to, a judgment. Often

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90 Mark Austin Walters, *Hate Crime and Restorative Justice – Exploring Causes, Repairing Harms* (Oxford: Oxford University Press, 2014).

the prosecutor's office will terminate the case if a mediation has been successfully conducted. If a successful offender-victim mediation is reported, the court can also mitigate the sentence to be imposed or, in less serious cases, dispense with punishment altogether.

Victim-offender (or transformative) mediation requires assistance of a trained specialist facilitator. Restorative justice officers should be trained to understand hate crime victimization.

### **Victim-offender mediation**

In Denmark, a victim-offender mediation is a meeting between a victim and his or her offender. It is voluntary for both parties to attend the meeting, which is held by an impartial third person (a mediator) serving as moderator. Victim-offender Mediation is not a substitute for punishment, but is in addition to punishment. The Danish National Police is the central authority for the Victim-Offender Program and is responsible for the overall co-ordination, further development and ongoing evaluation of the programme. Furthermore, the Danish National Police is responsible for the training of mediators assigned to the police districts.

*Source:* Denmark's response to ODIHR questionnaire, received 4 July 2018.

### ***Recommendation 42:***

**Require informed consent of the victim for restorative justice (including mediation) and ensure that the process and agreement address the bias motive. Train restorative justice officers on hate crimes and the needs of hate crime victims. Involve communities and civil society groups in the development of restorative justice programmes.**

# Annexes

## **Annex I: OSCE commitments on hate crimes and supporting hate crime victims**

### **Participating States' main commitments on hate crime victim support:**

- “take appropriate measures to encourage victims to report hate crimes, recognizing that under-reporting of hate crimes prevents States from devising efficient policies. In this regard, explore, as complementary measures, methods for facilitating the contribution of civil society to combat hate crimes” (MC.DEC/9/09);
- “in co-operation with relevant actors, explore ways to provide victims of hate crimes with access to counselling, legal and consular assistance as well as effective access to justice” (MC.DEC/9/09);
- “promote capacity-building of law enforcement authorities through training and the development of guidelines on the most effective and appropriate way to respond to bias-motivated crime, to increase a positive interaction between police and victims and to encourage reporting by victims of hate crime, i.e., training for front-line officers, implementation of outreach programmes to improve relations between police and the public and training in providing referrals for victim assistance and protection” (MC.DEC/13/06);
- “facilitate the capacity development of civil society to contribute in monitoring and reporting hate-motivated incidents and to assist victims of hate crime” (MC.DEC/13/06).

### **Participating States' main commitments on hate crime:**

- “collect, maintain and make public, reliable data and statistics in sufficient detail on hate crimes and violent manifestations of intolerance, including the numbers of cases reported to law enforcement, the numbers prosecuted and the sentences imposed. Where data-protection laws restrict collection of data on victims, States should consider methods for collecting data in compliance with such laws” (MC.DEC/9/09);
- “enact, where appropriate, specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes” (MC.DEC/9/09);



- “introduce or further develop professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes” (MC.DEC/9/09);
- “promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership” (MC.DEC/9/09);
- “ensure co-operation, where appropriate, at the national and international levels, including with relevant international bodies and between police forces, to combat violent organized hate crime” (MC.DEC/9/09);
- “conduct awareness raising and education efforts, particularly with law enforcement authorities, directed towards communities and civil society groups that assist victims of hate crimes” (MC.DEC/9/09);
- “nominate, if they have not yet done so, a national point of contact on hate crimes to periodically report to ODIHR reliable information and statistics on hate crimes” (MC.DEC/9/09);
- “consider drawing on resources developed by ODIHR in the area of education, training and awareness raising to ensure a comprehensive approach to the tackling of hate crimes” (MC.DEC/9/09);
- “calls on participating States to increase their efforts, in co-operation with civil society to counter the incitement to imminent violence and hate crimes, including through the Internet, within the framework of their national legislation, while respecting freedom of expression, and underlines at the same time that the opportunities offered by the Internet for the promotion of democracy, human rights and tolerance education should be fully exploited” (MC.DEC/10/07);
- “collect and maintain reliable data and statistics on hate crimes and incidents, to train relevant law enforcement officers and to strengthen co-operation with civil society” (MC.DEC/10/07);
- “collect and maintain reliable data and statistics on hate crimes which are essential for effective policy formulation and appropriate resource allocation in countering hate motivated incidents” (MC.DEC/13/06);

- “[s]trengthen efforts to collect and maintain reliable information and statistics on hate crimes and legislation, to report such information periodically to ODIHR, and to make this information available to the public and to consider drawing on ODIHR assistance in this field, and in this regard, to consider nominating national points of contact on hate crimes to ODIHR” (MC.DEC/10/05);
- “[s]trengthen efforts to provide public officials, and in particular law enforcement officers, with appropriate training on responding to and preventing hate crimes, and in this regard, to consider setting up programmes that provide such training, and to consider drawing on ODIHR expertise in this field and to share best practices” (MC.DEC/10/05);
- “consistently and unequivocally [speak] out against acts and manifestations of hate, particularly in political discourse” (MC.DEC/10/05);
- “[c]ombat hate crimes which can be fuelled by racist, xenophobic and anti-Semitic propaganda in the media and on the Internet, and appropriately denounce such crimes publicly when they occur” (MC.DEC/12/04);
- “condemn publicly, at the appropriate level and in the appropriate manner, violent acts motivated by discrimination and intolerance” (MC.DEC/4/03).

### **Ministerial Council Decisions tasking ODIHR to:**

- “strengthen, within existing resources, its early warning function to identify, report and raise awareness on hate-motivated incidents and trends and to provide recommendations and assistance to participating States, upon their request, in areas where more adequate responses are needed” (MC.DEC/13/06);
- “continue its close co-operation with other relevant intergovernmental agencies and civil society working in the field of promoting mutual respect and understanding and combating intolerance and discrimination, including through hate crime data collection” (MC.DEC/13/06);
- “continue to serve as a collection point for information and statistics on hate crimes and relevant legislation provided by participating States and to make this information publicly available” (MC.DEC/13/06).

## Annex II: Guidance on interviewing victims of hate crimes

### Move fast

It is important to meet with victims soon after the hate crime occurs:

- Victims may need immediate assistance, including medical treatment, repair of damaged property and new housing;
- Victims' memories about the details of hate crimes will be clearer the sooner they are interviewed; and
- Some perpetrators of hate crimes continue to commit hate crimes and increase the level of violence if they are not identified and apprehended. Beginning an investigation soon after a hate crime is committed increases the chances that the perpetrator(s) can be stopped before another attack occurs.

### Explain and refer

The investigating officer should explain at the outset of the first meeting who they are, what they can and cannot do, and what others can do. Being clear on the limits of what can be done and not raising false expectations is essential to building trust:

- Explain the purpose of the interview and how what is learned will be used on behalf of the victim;
- Explain that the interviewee's name and other identifying details will be kept confidential unless the interviewee agrees otherwise, such as for use in an official complaint;
- Explain the various forms of support that are available;
- Refer the victim of a hate crime to appropriate resources, which may include support from civil society organizations, counselling and medical care;
- If information gathered from the interview will be used to combat hate crimes more broadly, explain how this will be done; and
- Tell victims they will receive updates on the progress in the investigation. However, do not make this statement if you do not think you will be able to provide them with this information because you will not continue to work on the case. The anxiety of hate crime victims rises and the reputation of the police decreases when victims go weeks or even months without receiving updates from police.

## **Listen**

In meeting with victims, it is important to provide a safe space, a trained interviewer and, above all, to listen to the victim. Describing a hate crime is often difficult and upsetting for the victim, so trained interviewers should conduct the interviews in a space where the victim will feel safe and confident that the interview will not be overheard. If the person with whom the victim makes initial contact is unable to conduct an interview (or if the victim does not want to be interviewed by that person), then that person can suggest alternatives and, if possible, assist the victim in contacting the appropriate person.

The most effective way to conduct an interview is to listen to the victim's story without offering advice or telling the victim that you know how they feel. It is, however, completely appropriate to offer verbal support, such as: "I'm sorry this happened to you" or "No one should have to feel like this." Document the details of the incident as the victim reports them (see below "Taking Notes").

## **Validate**

Those involved in interviewing victims should take into account that one of the victim's biggest fears is that he or she will not be believed. The response from the first person a victim reports to may be very important in determining whether the victim continues seeking the assistance he or she needs. Police officers – as well as civil society organizations and others – can respond to victim accounts by saying that they are sorry about what happened. This validates the victim's feelings without prejudging the results of further investigation and reassures the victim that he or she is valued as a person.

## **Taking notes**

A record of the interview is important for subsequent action. As standard formats for interviews can facilitate note taking as well as ensure that basic information is covered, it is important to take handwritten notes of interviews with victims of hate crimes or hate-motivated incidents. It is very difficult to help a victim if there is no clear record of what occurred. While using audio or video recording can be practical, and in some instances even mandatory, these methods can be perceived as intrusive and can affect the comfort and openness of the interviewee. Where audio/video recording must be employed, the victim should be notified. If it is used as an optional tool, victim's consent should be sought.

Interviewers should keep in mind that it can sometimes be important to record direct quotations precisely in their notes. These may include particular descriptive phrases used by the interviewee to describe the attack or his or her feelings during or after the attack. Similarly, the interviewee's memory of the precise words used by his or her attackers before, during or after an attack may be important to record as a direct quote, without summarizing or paraphrasing. Such quotes can provide a key indication of whether the victim was the target of a hate crime. Moreover, if the interviewee decides to file a complaint with police or other public authorities, or decides that elements of the case can be used in media or campaign action, these statements may be important to have on record.

After interviewing the victim, it is important to prepare a typed interview summary. This avoids the difficulty that others may have in reading handwritten notes.

### **Critical details to obtain**

Interviewers of hate crime victims should elicit detailed information about the incident. The basic elements of who did what to whom, when, where and why are important parts of the victim's account. Interview records should be kept secure. Basic details to obtain in an interview include:

- The victim's name and how to contact her or him (this may include an address and telephone number, or an institution or person in the local community who can contact the victim);
- The date, time and location of the incident;
- A clear description of what happened and what was said. It is particularly important to include the victim's memory of exactly what the perpetrators said, including any offensive or degrading language or slurs. Write the language used by the perpetrator in your official report. The exact language that the victim heard the perpetrator use may be the strongest evidence of the bias motivation for the crime;
- The impact on the victim, including any physical injuries, loss or destruction of property and emotional distress;
- The names, addresses and telephone numbers and description of any witnesses to the incident;
- Details of any prior contact made with local government or (other official bodies) in order to report the incident or to seek medical or other attention, as well as the responses of such bodies.

## **Overcome language barriers**

Interviewing victims or witnesses who do not speak the same language as the interviewer presents special challenges. It is important to have competent interpreters who have been trained in the sensitivities of the interview process and can be trusted to translate the actual words of the interviewee. Interpreters should have the confidence of interviewees. The contact details of interpreters need to be kept in case of a future trial.

If using bilingual members of the community with no training as interpreters, the interviewer should ensure they understand beforehand what the process entails and that they are to interpret faithfully what the interviewee says (without explanation or other interruption). In some cases, members of the victim's family may prefer to interpret. In such cases, the interviewer should clarify that the interpreter must carefully interpret the interviewee's own words without interruption, and that if they wish to add information they can do so in a separate interview.

Having children interpret for their own family members should be avoided, if possible. Children, who may already be traumatized by an incident, may suffer renewed trauma in translating family members' accounts of abuse and the interviewer's questions. They may also make significant errors when interpreting, such as omitting graphic or uncomfortable details.

## **Cultural and gender awareness**

Police officers, civil society organizations, and others who deal with the victims of hate crimes must be able to work effectively and appropriately with culturally diverse communities and take into account issues of gender, as well as gender dynamics and power structures within these communities. Competence in dealing with cultural differences (sometimes called "cultural competence") is particularly important when addressing hate-motivated crimes.

Those working with victims of hate crimes should have good understanding of gender issues and cultural differences that affect how or whether a victim reports a hate crime and whether he or she seeks access to support services. When dealing with hate crimes, law enforcement and other criminal justice personnel should take into account cultural differences and gender considerations and dynamics at play within groups facing discrimination.

## Annex III: Individual Needs Assessment – sample questionnaire

This template questionnaire, developed as part of the EVVI project and reproduced here, should be read and used in the context of the accompanying report and guidance.<sup>91</sup>

**File number:**

**Nature of the offence:**

**Date of the offence/last offence:**

**Assessment Date:**

### QUESTIONNAIRE

(CONFIDENTIAL WHEN COMPLETE)

### VICTIMS' ASSESSMENT FOR SPECIAL MEASURES

#### *Initial questionnaire of victim*

*Note: The questions contained within this needs assessment are for guidance only and should not be read out in questionnaire style to the victim. This questionnaire aims to detect possible risks of secondary and repeat victimisation, intimidation and retaliation, as well as to detect victims' support and communication needs.*

*The recommendations section at the end of the document should be completed for all cases.*

*The victim agrees for an evaluation to take place:*  Yes  No

#### Personal characteristics of the victim

#### General information

**Last name:**

**First name:**

**Gender:**

**Date of birth/reported age:**

**Contact:**

- Address:
- E-mail address:
- Phone number:
- Lawyer/contact person:

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<sup>91</sup> "EValuation of Victims", *op. cit.*, note 20.

**Socio-professional status (may select more than one response):**

- Employed
- Unemployed
- Retired
- Student

**Specific observations (clarify if necessary):**

.....

**Nationality:**

.....

***Personal vulnerability***

- Child
  - Pregnant
  - Disability (please clarify):
    - Mental

.....

  - Physical
- .....

**Victim of a crime in the past twelve months?**

- Yes (please clarify and assess if the victim still has problems with that victimisation)  
.....
- No

**Mother Tongue:**

**Difficulty speaking:**

- Yes (clarify if necessary)  
.....
- No

**Difficulty reading:**

- Yes (clarify if necessary)  
.....
- No

**Other communication difficulties (please clarify):**

.....

**Dependent children:**

- Yes (number: ... age: .....)
- No



**Are you (or your children) supported by a social worker or other agency?**

- Yes  No

**If yes, which?**

.....

**Other vulnerabilities (please clarify, i.e., health problems, alcohol, drug dependence, ...)**

.....

**Risks and fear of harm**

**Type or nature of crime  
(may select more than one response)**

- Human trafficking
- Violence in a close relationship
- Hate crime
- Organized crime
- Gender-based violence
- Sexual violence
- Child abuse or exploitation
- Terrorism

**Circumstances of the crime**

- Does the victim have a personal connection with the suspect?  Yes  No
- Does the victim fear further harm from the suspect?  Yes  No
- Does the suspect have previous offending history against the victim?  Yes  No

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*I hereby certify that the information given above is accurate.*

*Date:*

*Signature of victim:*

Identity of the evaluator:

Identified needs (to be completed if a different person is completing the rest of the document):

**File number:**

**Nature of the offence:**

**Date of the offence/last offence:**

**Assessment Date:**

## VICTIMS' ASSESSMENT FOR SPECIAL MEASURES

### *Detailed evaluation*

Please fill this section if:

- the offence is one of the crimes specified above; or
- you have answered 'yes' to any of the questions under circumstances of the crime; or
- you consider it appropriate, taking into account any identified vulnerability.

*Note:*

*The questions contained within this needs assessment are for guidance only and should not be read out in questionnaire style to the victim.*

The victim agrees for a detailed evaluation to take place:     Yes                       No

<b>Current situation</b>	<b>Yes</b>	<b>No</b>
1. Has the current incident resulted in injury? If so, please clarify.		
2. Is the victim frightened?		
3. Does the victim have relatives/friends/community resources (cultural, religious, other) to support her/him?		
4. Does the victim feel isolated?		
5. Is the victim feeling depressed or having suicidal thoughts?		
6. Is the victim in contact with the suspect? If so, please clarify.		
7. Does he/she try to intimidate the victim?		
8. Does the victim live with the suspect?		
9. Is there any conflict over financial issues? (if applicable)		
10. Is there any conflict over children? (if applicable)		

11. Has the suspect ever committed acts of violence against others within the family (children, relatives, etc.) or against pets?		
12. Is the victim still able to access his/her personal documents/money?		
13. Is the victim free to move around in and/or leave her/his house?		
<b>Offence history</b>	<b>Yes</b>	<b>No</b>
14. Has the suspect ever threatened or committed acts of violence against the victim? If so, please clarify.		
15. Has the suspect ever used a weapon against the victim? If so, please clarify.		
16. Has the victim ever filed a complaint against the suspect?		
17. Has there been an escalating series of incidents?		
18. Are other persons potentially at risk? If so, please clarify.		
19. Has the victim been threatened by any other person? If so, please clarify.		
<b>Suspect</b>	<b>Yes</b>	<b>No</b>
20. Is the suspect identifiable?		
21. Is the suspect a child (under 18 years old)?		
22. Does the suspect have access to weapons? If so, please clarify.		
23. Has the suspect ever been convicted of any offence against the victim? If so, please clarify.		
24. Are there any outstanding court orders against the suspect? If so, please clarify.		
25. Has the suspect ever been convicted of any serious offence? If so, please clarify.		

26. Does the suspect have/has the suspect had problems with drugs and/or alcohol? If so, please clarify.		
27. Does the suspect have/has the suspect had mental health problems? If so, please clarify.		
28. Has the suspect ever threatened or tried to commit suicide?		

Additional information regarding victim/suspect:

.....

.....

.....

Views of the victim on what support they require during criminal proceedings:

.....

.....

.....

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*I hereby certify that the information given above is accurate.*

*Date:*

*Signature of victim:*

**RECOMMENDATIONS OF THE EVALUATOR REGARDING  
VICTIM'S NEEDS ASSESSMENT**

**(TO BE COMPLETED IN ALL CASES)**

- a) Victim's protection needs (needs related to victim's protection and/or related to improving the quality of the evidence):

.....  
.....  
.....

- b) Support referral needs (counselling legal services, victim support services, community services...):

.....  
.....  
.....

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*Identity of the evaluator:*

*Date:*