JUSTICE

Making hate crime visible in the European Union: acknowledging victims' rights

FRA
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

This report addresses matters related to human dignity (Article 1), freedom of thought, conscience and religion (Article 10), the principle of non-discrimination (Article 21) and the right to an effective remedy (Article 47) under the Chapters I 'Dignity', II 'Freedoms', III 'Equality' and VI 'Justice' of the Charter of Fundamental Rights of the European Union.

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Foreword

Despite the best efforts and commitments of Member States of the European Union (EU) to counter discrimination and intolerance, including manifestations of hate crime, there are indications that the situation in the EU is not improving. On the contrary, in the last few years, we have witnessed continued and renewed violations of the fundamental rights of people living within the EU – not least of all their right to human dignity – through verbal abuse, physical attacks or murders motivated by prejudice.

The targets of abuse cover EU society in all its diversity. Members of ethnic groups, national minorities, immigrants, visible minorities, people practicing their religions, those with different sexual orientations or gender identities or with disabilities, have all fallen victim to prejudice.

While (violent) expressions of prejudice are often thought to emanate from people with extremist sympathies, there is ample evidence to suggest that those who commit such offences are drawn from across society. In addition, the vast majority of victims or witnesses of such incidents or offences tend not to report them, enabling perpetrators to carry out their actions with relative impunity. In other cases, the almost exclusive focus on the behaviour of extremists keeps 'everyday' forms of prejudice and abuse – such as the bullying of persons with disabilities – to remain unnoticed and therefore unaddressed.

The pervasiveness of prejudice and the damage it causes to its victims, to their relatives and to society as a whole make it ever more urgent to consider how EU Member States respond to it. In this report, prejudice is approached from the perspective of what is often described as 'hate crime', a loose term that captures a troubling reality. People throughout the EU are indeed the targets of abuse simply because of their (perceived and real) origins, beliefs, life choices or physical appearance.

It is the duty of EU Member States to protect the fundamental rights of these persons and to see to it that those who violate these rights are brought to account. This report aims to help EU Member States to continue their push in that direction with renewed vigour and commitment, so as to safeguard the fundamental rights of all of those who live in the EU.

Morten Kjaerum
Director

Country codes

Country code	EU Member State
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

Contents

Executive summary

Violence and crimes motivated by racism, xenophobia, religious intolerance or by a person's disability, sexual orientation or gender identity – often referred to as 'hate crime' – are a daily reality throughout the European Union (EU), as data collected by the FRA consistently shows. Such crimes not only harm the victim, they are also generally prejudicial to fundamental rights, namely to human dignity and with respect to non-discrimination.

Victims and witnesses of hate crimes are reluctant to report them, whether to law enforcement agencies, the criminal justice system, non-governmental organisations or victim support groups. As a result, victims of crime are often unable or unwilling to seek redress against perpetrators, with many crimes remaining unreported, unprosecuted and, therefore, invisible. In such cases, the rights of victims of crime may not be fully respected or protected and EU Member States may not be upholding the obligations they have towards victims of crime.

The EU and its Member States can combat hate crime and address the related fundamental rights violations by making them both more visible and holding perpetrators accountable. This entails encouraging victims and witnesses to report crimes and incidents, while increasing their confidence in the ability of the criminal justice system to deal with this type of criminality decisively and effectively.

Hate crime: a fundamental rights perspective

The European Court of Human Rights (ECtHR) has ruled in a number of cases that states are obliged to 'unmask' the motivation behind racist crimes or crimes committed because of the religious belief of the victim. If the criminal justice system overlooks the bias motivation behind a crime, then this amounts to a violation of Article 14 of the European Convention of Human Rights (ECHR).

The ECtHR puts such emphasis on the bias motivations underlying hate crime because offenders who victimise persons for what they are or are perceived to be convey a particularly humiliating message. The offender demonstrates that, because a certain characteristic can be attributed to the victim, the victim's rights matter less.

The message conveyed by the offender sends a signal not only to the individual victim, but also to other persons who feel that they are at risk of being labelled and treated like the victim. Moreover, the bias-motivated offence, when understood as a statement about persons who (are thought to) bear a certain characteristic, has the potential to incite followers. The impact of hate crime thus reaches far beyond the immediate interaction between offender and victim. Hate crimes call into question the basic concept and self-understanding of modern pluralist societies, which is based on the notion of individual human dignity.

EU legislation should help guide legislators in EU Member States and work in parallel with the standards set by the ECtHR. This is in line with the guidelines annexed to the Warsaw Declaration of 2005, which commits states to "greater complementarity between European Union and Council of Europe legal texts. The European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law". In reality, policy responses to hate crime differ widely in EU Member States. Reflecting this, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law allows for this diversity, leaving open options for how law makers tackle hate crime in their criminal codes.

Classifying official data collection mechanisms pertaining to hate crime

Official data collection mechanisms pertaining to hate crime in place in the 27 EU Member States can be classified into three categories, based on their scope and transparency: *limited data*; *good data*; *comprehensive data* (Table 1). 'Official data' is understood in this report as encompassing data collected by law enforcement agencies, criminal justice systems and relevant state ministries.

Table 1: Classification of official data collection mechanisms pertaining to hate crime, by EU Member State

Limited data	Good data	Comprehensive data
Few incidents and a narrow range of bias motivations are recorded *Data are usually not published*	*A range of bias motivations are recorded* *Data are generally published*	*A range of bias motivations, types of crimes and characteristics of incidents are recorded* *Data are always published*
Bulgaria Cyprus Estonia Greece Hungary Ireland Italy Latvia Luxembourg Malta Portugal Slovenia Spain	Austria Belgium Czech Republic Denmark France Germany Lithuania Poland Slovakia	Finland Netherlands Sweden United Kingdom
Romania*		

Notes: *No evidence on hate crime data collection was found for Romania.
Information as of September 2012.
Source: FRA desk research and FRA analysis of data provided by the FRA's research network

The 27 EU Member States differ in the data they record and publish on bias motivations, which results in gaps in data collection across the EU (Table 2). These gaps mean that official data collection mechanisms on hate crime in the 27 EU Member States often fail to capture the real situation on the ground.

EU Member States with comprehensive data collection mechanisms – where victims report incidents, law enforcement agencies record them and the criminal justice system prosecutes them – do not necessarily have the highest rates of hate crime. These mechanisms simply record the incidence of hate crime more efficiently and are more transparent when it comes to publishing data. In contrast, EU Member States with limited data collection – where few incidents are reported, recorded and therefore prosecuted – can be said to be failing in their duty to tackle hate crime.

Table 2: Official data pertaining to hate crime published in 2010 by bias motivation, by EU Member State

EU Member State	Racism / Xenophobia	Antisemitism	Sexual orientation	Extremism	Religious intolerance	Islamophobia	Anti-Roma	Disability	Gender Identity	Other / Unspecified
AT	✓ 64	✓ 27		✓ 335		✓ 8				✓ 146
BE	✓ 924	✓ 2	✓ 58							✓ 49
BG	✓ n/a									✓ n/a
CY	✓ 32									
CZ	✓ 226	✓ 28		✓ 252			✓ n/a			
DE	✓ 285	✓ 1,166		✓ 20,811						
DK	✓ 62		✓ 30		✓ 10					✓ 37
EE										✓ 86
EL	✓ n/a									
ES	✓ n/a		✓ n/a							
FI	✓ 741	✓ 4	✓ 43		✓ 52	✓ 15		✓ 20	✓ 5	
FR	✓ 886	✓ 466		✓ 127		✓ 100				
HU	✓ n/a									✓ n/a
IE	✓ 122	✓ 12								
IT	✓ n/a									✓ n/a
LT	✓ n/a	✓ n/a								✓ n/a
LU	✓ 24									✓ n/a
LV	✓ n/a									✓ n/a
MT	✓ n/a									
NL	✓ 1,168	✓ 286	✓ 660	✓ 139	✓ 108	✓ 93	✓ 4	✓ 7	✓ 17	✓ 668
PL	✓ n/a	✓ n/a	✓ n/a			✓ n/a	✓ n/a	✓ n/a		✓ n/a
PT	✓ n/a									✓ n/a
RO										
SE	✓ 3,786	✓ 161	✓ 770	✓ 444	✓ 552	✓ 272	✓ 145		✓ 31	✓ 818
SI	✓ n/a				✓ n/a					
SK	✓ 114			✓ 51						
UK	✓	✓	✓		✓			✓	✓	
UK – England, Wales & Northern Ireland	31,486	488	4,883		2,007			1,569	357	
UK – Scotland	4,513	448			693			50	14	

Notes: *Data are **not** comparable between EU Member States.*
Data are included for 2010 as later data for all EU Member States that publish official data were not available at the time of printing.
"n/a" means that data for this bias-motivation were not published in 2010.
Data for Scotland cover the fiscal year: April 2010 to March 2011.

Source: *FRA desk research and FRA analysis of data provided by the FRA's research network*

Broadening the scope of official data collection on hate crime: crime victimisation surveys

The variation in provisions of national legislation in EU Member States relating to hate crime has a direct effect on how EU law enforcement agencies and criminal justice systems deal with this type of criminality. Narrow legal definitions of what constitutes hate crime, for instance, tend to lead to under-recording of incidents, which translates into low numbers of prosecutions, thereby affording victims of crime fewer opportunities for redress.

There are, however, many challenges inherent to recording data on hate crime. The principal ones relate to: the nature of what is recorded; the time frame of that recording; changes in data collection mechanisms from one year to the next; changes in the law that necessitate changes in data collection; the socio-historical context of data collection in EU Member States; and, the degree to which EU Member States acknowledge and effectively respond to hate crimes.

Broadly speaking, the scope of official data collection on hate crime needs to be expanded in most EU Member States for three reasons: to make hate crime visible in the EU; to afford victims of hate crime the possibility to seek redress against perpetrators; and, to ensure that EU Member States effectively respond to hate crime as an abuse of fundamental rights.

To achieve these three objectives, national law makers need to introduce clear-cut definitions in national legislation of what constitutes hate crime. In addition, crime victimisation surveys encompassing questions on hate crime, such as those the FRA performs on specific populations, must be carried out. The FRA surveys include: the European Union Minorities and Discrimination Survey (EU-MIDIS); the survey on perceptions and experiences of antisemitism in the EU; the survey on discrimination and victimisation of lesbian, gay, bisexual and transgender (LGBT) persons; and the survey on gender-based violence against women.

Not only do such surveys shed light on the unreported, or dark figure, of crime, they also allow for an analysis of victimisation experiences and of the nature of victims' contact with law enforcement agencies when reporting crime. Such surveys offer a useful complement of information to actors in the field to enable them to address hate crime more effectively and decisively. This, in turn, can serve to offer victims of hate crime the level and quality of support they are guaranteed under the provisions of legal instruments binding EU Member States.

Opinions

The FRA formulated the following opinions based on the analysis contained in this report.

Acknowledging victims of hate crime

In conformity with Article 14 of the European Convention on Human Rights (ECHR) and Article 21 of the Charter of Fundamental Rights of the European Union, criminal law provisions pertaining to hate crime in EU Member States should deal with all grounds of discrimination on an equal footing.

Legislation should be adopted at the EU and national levels that would oblige EU Member States to collect and publish data pertaining to hate crime. This would serve to acknowledge victims of hate crime, in line with the duty of EU Member States flowing from the case law of the European Court of Human Rights to unmask bias motivations underlying criminal offences. These data would not allow for the identification of individuals but would be presented as statistics.

At a basic minimum, statistical data should be collected and published on the number of incidents pertaining to hate crime reported by the public and recorded by the authorities; the number of convictions of offenders; the grounds on which these offences were found to be discriminatory; and the punishments served to offenders.

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

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

Ensuring effective investigation and prosecution

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

Details on hate crime incidents should be recorded to allow for the identification of specific bias motivations, so that these can be followed up when investigating and prosecuting hate crimes.

Convicting hate crime offenders

Legislators should look into models where enhanced penalties for hate crimes are introduced to stress the added severity of these offences. This would serve to go beyond including any given bias motivation as an aggravating circumstance in the criminal code. The latter approach is limited in its impact because it risks leading to the bias motivation not being considered in its own right in court proceedings or in police reports.

Courts rendering judgments should address bias motivations publicly, making it clear that these lead to harsher sentences.

Making hate crime visible

Where possible under national law, data collected on hate crime should be disaggregated by gender, age and other variables, thereby enabling a better understanding of patterns of victimisation and offending.

Official data collection mechanisms pertaining to hate crime should be supplemented by crime victimisation surveys that encompass hate crime to shed light on: the nature and extent of non-reported crimes; the experiences of victims of crime with law enforcement; reasons for non-reporting; and rights awareness among victims of hate crime.

1 Acknowledging victims of hate crime

Crimes motivated by racism, xenophobia, antisemitism, extremism and intolerance of the other remain a daily reality across the European Union (EU), as evidence collected by the FRA consistently shows.[1] These types of crimes can extend to persons with different sexual orientations and gender identities, as well as to persons with disabilities. In fact, a person need not have any of these characteristics to become the victim of a crime motivated by bias or prejudice, often referred to as 'hate crime'. It is sufficient for offenders to perceive that someone has a certain characteristic to motivate attacks.

In addition to whatever individual harm they cause, hate crimes violate the rights to human dignity and non-discrimination enshrined in the European Convention of Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union. The effective protection of and full respect for these fundamental rights and the ability of victims of crime to seek redress are predicated on criminal justice systems and law enforcement agencies acknowledging victims and holding perpetrators to account.

There remains, however, a lack of confidence among victims and witnesses of hate crimes that the authorities are able to afford them the protection they are guaranteed. This often makes them reluctant to report hate crimes, whether to law enforcement agencies, the criminal justice system, non-governmental organisations or victim support groups.[2] The result is that many hate crimes remain unreported, unprosecuted and therefore invisible. This brings with it a risk that the rights of victims of crime are not fully respected or protected, whereby EU Member States would fail to uphold obligations they have towards these persons.

Addressing hate crime and fundamental rights violations inherent to it can, nevertheless, be achieved through making both the crimes and the violations more visible. This entails encouraging victims and witnesses to report crimes and incidents, while increasing their confidence in law enforcement and, in turn, the criminal justice system. It also means making incidents and convictions on hate crime visible, while acknowledging the specificity of hate crime, as this report argues.

EU institutions, EU Member States and other interested parties are also faced with the problem that much official EU Member State data pertaining to hate crime often fail to reflect the reality on the ground. Not only do official data collection mechanisms tend to underestimate the incidence of hate crime, but they also often focus on a narrow range of both bias motivations and of incident characteristics, as this report shows.

Before discussing official data collection mechanisms pertaining to hate crime that are in place in the 27 EU Member States, the report outlines a fundamental rights approach to hate crime. This approach posits that hate crime is a form of criminality that calls for particular attention from the authorities. The discussion will draw on case law of the European Court of Human Rights (ECtHR) to illustrate why hate crime deserves a different response from other types of crime. After reconstructing what constitutes hate crime, the report moves to consider the impact of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law[3] on the visibility of hate crime. This Framework Decision is due for review by November 2013.

1 FRA (2010a); FRA (2012a); FRA (2012b); FRA (2012c).
2 FRA (2010b).
3 Council Framework Decision 2008/913/JHA, OJ 2008 L 328, p. 55.

The report then compares the official data collection mechanisms pertaining to hate crime in place in EU Member States, and highlights challenges inherent in recording the incidence of hate crime. This analysis classifies official data collection mechanisms pertaining to hate crime into three broad categories, based on their scope and transparency: *limited data*, *good data* and *comprehensive data*.

The report concludes by considering how to broaden the scope of official data collection on hate crime to enable EU Member States to meet obligations they have toward victims of hate crime. The focus in this final section of the report lies on crime victimisation surveys that encompass hate crime, such as those conducted by the FRA on the experience of discrimination of migrant and ethnic groups (EU-MIDIS);[4] on perceptions and experiences of antisemitism;[5] on discrimination and victimisation of lesbian, gay, bisexual and transgender (LGBT) persons;[6] and on gender-based violence against women in the EU.[7]

4 Publications derived from the results of EU-MIDIS are available at: http://fra.europa.eu/eu-midis.

5 For more information on the research project, see: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2012/pub-factsheet-antisemitism-survey_en.htm.

6 For more information on the research project, see: http://fra.europa.eu/fraWebsite/research/projects/proj_surveys-lgbt-persons_en.htm.

7 For more information on the research project, see: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-vaw-survey-factsheet_en.htm.

2

Making hate crime visible – a fundamental rights perspective

Hate crimes are particular in that they matter not only to the offender and to the victim, but also to society at large. This particularity has implications for how policy makers and criminal justice systems should deal with this type of crime. In addition, criminal justice data collection in the field is necessary as a "symbol of individual states' recognition of and response to the problem" of hate crime.[8]

This report makes the case for making hate crime visible, emphasising the responsibility of criminal justice systems to identify and highlight cases of hate crime and to collect and publish related data, whether on police investigations, prosecution, convictions or sentencing. The guiding questions are:

- Why should state institutions – police, criminal justice system and policy makers – care particularly about hate crime?
- If a person abuses another, why does it make a difference whether the offence was motivated by prejudice, as is the case with hate crimes, or by other motives, such as anger, indifference or greed?

Answers to these questions are given in three steps. First, it is recalled that the ECHR, as interpreted by the ECtHR, obliges EU Member States to identify, punish and publicly condemn any bias motivation of crimes. This duty is well defined. Less clear is *why* states have a human rights obligation to pinpoint bias motives of criminal offences.

Next, the report examines the components of hate crime. This requires determining the specific ingredients or elements of hate crime that account for the need to highlight publicly an incident of hate crime, both in open court and through official statistics.

Finally, the report considers relevant EU legislation in the field, namely the Framework Decision on racism and xenophobia. This Framework Decision provides that EU Member States are obliged to take the necessary measures to ensure that offences motivated by racism or xenophobia are punished more severely than others. The Framework Decision is considered here in relation to obligations on EU Member States that stem from ECtHR case law. This EU legislation should guide the action of EU Member States, ensuring a homogenous approach by national legislators to hate crime that meets the benchmarks set by the ECtHR.

Hate crime in the case law of the European Court of Human Rights: the obligation to 'unmask' bias motives

Over the last decade, the ECtHR has consistently argued that hate crime victims have the right not only to be generally acknowledged as victims of crime, but also as having suffered victimisation specifically because of the biased attitudes of an offender or, very often, offenders. The guidelines annexed to the Warsaw Declaration of 2005 commit to "greater complementarity between European Union and Council of Europe legal texts. The European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law".[9] EU Member States are therefore committed to bringing their legislation in line with obligations that flow from the ECHR.

8 Goodey, J. (2007), p. 424.

9 Council of Europe (2005).

European Convention on Human Rights

Article 14

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

Under well-established ECtHR case law, Article 14 of the ECHR is to be read as obliging EU Member States to render visible – or as the ECtHR says to 'unmask' – bias motives leading to criminal offences by highlighting and punishing hate crimes more severely than others, as the following analysis shows.

In May 2003, the ECtHR declared inadmissible the case of *Mr Alex Menson and Others v. the United Kingdom*. The complainants, or applicants, were the children and siblings of Michael Menson, a Ghanaian man killed in a racist attack in January 1997, when four white youths set fire to his back resulting in his death.[10] As a result of several undisputed flaws in the police investigation, the applicants complained the United Kingdom had breached its obligation, under ECHR Article 2 on the right to life, to conduct an effective investigation into the attack on and the killing of Michael Menson.

The ECtHR agreed and added that "where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence."[11] It ruled, however, that the application was inadmissible because, in spite of the investigation's initial shortcomings, all four culprits were convicted in 1999 and received long prison sentences.

Later judgments upheld the ECtHR's emphasis on the need to investigate vigorously all racially motivated crimes, referring explicitly to the *Menson* case. Two cases from 2005, *Nachova*,[12] and *Bekos and Koutropoulos*[13] for instance, concern the obligation of authorities to investigate the racist motivation of violent police officers.

The particulars of the *Nachova* case relate to a member of the Bulgarian military police who, during an arrest attempt, killed two Bulgarian nationals of Roma origin in July 1996. A Chamber of the First Section of the ECtHR (the Chamber) rendered a first verdict in the *Nachova* case in February 2004, unanimously holding that there had been violations of Article 2 and Article 14 of the ECHR. The Chamber also referred the case to the Grand Chamber, which confirmed in a July 2005 judgment that Bulgaria had failed to comply with its obligations under Article 2 of the ECHR, in that the relevant legal framework on the use of force was fundamentally flawed.[14]

The Grand Chamber also ruled that the victims' right to an effective criminal investigation into their killing had been violated.[15] State authorities have the duty to take all reasonable steps to unmask any racist motive in an incident involving the use of force by law enforcement agents, it said. Despite evidence indicating racist verbal abuse by the police, Bulgarian authorities undertook no such investigation. The Grand Chamber further concluded that there had been a violation of Article 14 of the ECHR,[16] because the ECtHR had, in previous cases, also found that Bulgarian law enforcement officers had subjected persons of Roma origin to violence resulting in death.

Although both judgments found a violation of Article 14, they differ in their reasoning. There are two possible strands of argument here. One is to consider that by overlooking racist motivation and treating a hate crime as an ordinary offence, the state violates the rights of the victim under Article 14, which is seen as obliging states not to be blind to forms of racism that impact upon the enjoyment of rights under the ECHR. This was the approach taken by the Chamber:

10 ECtHR, *Menson and Others v. UK*, No. 47916/99, decision as to the admissibility, 6 May 2003.
11 *Ibid.,* p. 8.
12 ECtHR, *Nachova and Others v. Bulgaria*, No. 43577/98 and 43579/98: chamber judgment of 26 February 2004, and judgment of the Grand Chamber of 6 July 2005.
13 ECtHR, *Bekos and Koutropoulos v. Greece*, No. 15250/02, 13 December 2005.
14 ECtHR, *Nachova and Others v. Bulgaria (2005),* cited above, para. 109.
15 *Ibid.,* para. 119.
16 ECtHR, *Nachova and Others v. Bulgaria (2004),* cited above, para. 168.

"When investigating violent incidents […] State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention."[17]

This argument, however, requires that the Court assumes that racist motives had already been established in the case under consideration. The Chamber did arrive at this assumption but only by taking the view that the failure of the authorities to carry out an investigation into the racist motivation behind the killings shifted the burden of proof to the state.[18]

The Grand Chamber did not follow this path. It considered that the racist attitudes had not been established as playing a role in the two killings. It followed another strand of argument, assuming that Article 14 of the ECHR – just like Article 2 – comprises two components: one substantive and one procedural. The obligation on states to secure the enjoyment of the rights under the ECHR without discrimination entails a right to effective investigations into racist attitudes motivating an act of violence. The police and the prosecutor had sufficient information to alert them to the need to investigate possible racist overtones in the events that led to the death of the two victims. Their failure to carry out such an investigation violated the procedural aspect of Article 14 of the ECHR.[19]

This approach emphasises the right of individuals to be protected against discrimination; it also includes the right of persons who can arguably claim to be victims of discrimination to see that a thorough and effective investigation is carried out with a view to unmasking bias motivation, thereby reinforcing their protection against discrimination. In general, the ECtHR has underlined these rights of victims in well-established case law, mainly based on Article 13 on the right to an effective remedy of the ECHR.[20]

As a result, victims of crime may legitimately expect to be acknowledged as persons whose rights have been violated, and who can therefore demand the criminal justice system take action against this violation. An appropriate response will reassure victims that the criminal justice system takes their rights seriously and protects them effectively.

The *Bekos and Koutropoulos* case concerns the arrest by the police of two Greek nationals of Roma origin while they were attempting to break into a kiosk. During questioning, police severely abused the two. Based on the evidence, the ECtHR concluded that the applicants had been subjected to inhuman and degrading treatment within the meaning of Article 3 of the ECHR, which prohibits torture.[21]

In its assessment of Article 14 of the ECHR in this case, the ECtHR closely followed the line of argument developed by the Grand Chamber in *Nachova*. The ECtHR considered that when investigating violent incidents, state authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.[22]

This obligation to investigate possible racist overtones to a violent act is an obligation to use 'best endeavours', which means that the authorities must do what is reasonable in the circumstances to collect and secure the evidence; explore all practical means of discovering the truth; and, deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence.[23]

In this case, the authorities had before them the sworn testimonies of the first applicant, who said the police had subjected him to racial abuse and ill-treatment, in addition to statements from international organisations and national human rights groups. Despite this information, the authorities had not examined the question of racist motives of the investigating police officers. The ECtHR again concluded that the procedural aspect of Article 14 had been violated.[24]

Other cases concern racist violence by non-state actors. In the *Šečić* case,[25] Semso Šečić alleged that the Croatian authorities had failed to undertake a thorough investigation of a skinhead attack on his person. Although it was undisputed that skinhead ideology is extremist and racist, the authorities mounted no effective investigation to establish whether ethnic hatred had motivated the attack on Mr Šečić.[26]

17 *Ibid.*, para. 158.
18 *Ibid.*, para. 171.
19 ECtHR, *Nachova and Others v. Bulgaria (2005),* cited above, paras. 166-168.
20 This line of well-established case law begins with ECtHR, *Aksoy v. Turkey,* No. 21987/93, 18 December 1996, para. 98; ECtHR, *Aydin v. Turkey,* No. 23178/94, 25 September 1997, para. 103; recent judgments include ECtHR, *Isayev and Others v. Russia,* No. 43368/04, 21 June 2011, para. 186.
21 ECtHR, *Bekos and Koutropoulos v. Greece*, cited above, para. 52.
22 *Ibid.*, para. 69.
23 *Ibid.*, para. 69.
24 *Ibid.*, para. 75; for a similar case see ECtHR, *Turan Cakir c. Belgique,* No. 44256/06, 10 March 2008.
25 ECtHR, *Šečić v. Croatia,* No. 40116/02, 31 May 2007.
26 ECtHR, *Šečić v. Croatia,* cited above, paras. 68-70.

In the *Angelova and Iliev* case,[27] seven teenagers severely injured Angel Iliev, a man of Roma origin, in the town of Shumen, Bulgaria. As the assailants later admitted, they attacked Mr Iliev because of his Roma ethnicity. What is particular in this case is that the ECtHR, after again pointing to the failure of Bulgarian authorities to investigate and prosecute the racist motivation behind the crime effectively, reflected upon the legal causes of this failure. It observed that Bulgarian law failed to "separately criminalise racially motivated murder or serious bodily injury [...] nor did it contain explicit penalty-enhancing provisions relating to such offences if they were motivated by racism".[28] This decision points to the obligation of law makers to clearly mark in substantive law the significant differences that exist between hate crimes and other crimes.

In similar cases, the ECtHR found, however, that the authorities did not have sufficient information before them to trigger the duty to further investigate offenders' motivation. In *Ognyanova and Choban v. Bulgaria*,[29] the ECtHR dealt with the death of Zahari Stefanov, a man of Roma origin who fell to his death from the third floor window at the Kazanluk police station while in custody in June 1993. Numerous injuries were found on his body. The investigation concluded that Mr Stefanov had voluntarily jumped out of the window of the interrogation room and that all his injuries resulted from the fall.

While the ECtHR found that Bulgaria had violated the obligation under Article 2 of the ECHR to conduct an effective investigation into Mr Stefanov's death, it was not convinced that the authorities had enough information to trigger an investigation into possible racist overtones in the events that led to his death.[30] Similarly, in other cases, the ECtHR found that the authorities did not have sufficiently compelling reasons to suspect racist motives.[31]

To date, the ECtHR has addressed the bias motivation of a crime in only two cases beyond racism. In a judgment rendered in *Milanović v. Serbia*,[32] the ECtHR extended its case law to cover violence motivated by the victim's religious affiliation. The case concerned a series of violent attacks against a member of a Hare Krishna community. The ECtHR considers "that, just like in respect of racially motivated attacks, when investigating violent incidents state authorities have the additional duty to take all reasonable steps to unmask any religious motive and to establish whether or not religious hatred or prejudice may have played a role in the events".[33]

In a case concerning the allegation of torture during police custody in Armenia, the ECtHR had to decide on the applicant's claim that his ill-treatment was motivated by his political opinion. Extending the formula that the Court developed in cases concerning racist violence, the ECtHR considered that, when investigating violent incidents, state authorities have the duty "to take all reasonable steps to unmask any political motive and to establish whether or not intolerance towards a dissenting political opinion may have played a role in the events".[34]

Although the text of Article 14 of the ECHR does not explicitly mention sexual orientation, this article can be invoked in the context of homophobic crimes in cases where sexual orientation is a 'status' (the French term is *situation*) or at least a 'ground' in the sense of Article 14.[35] As regards sexual orientation, the ECtHR has found that it is "undoubtedly" covered by Article 14.[36] The Court, in a case concerning incitement to hatred, stressed that "discrimination based on sexual orientation is as serious as discrimination based on 'race, origin or colour'".[37]

Reconstructing hate crime

The obligation of EU Member States under Article 14 of the ECHR not to ignore that crimes are motivated by hatred or prejudice but instead to investigate, unmask and punish any such motivation forms the cornerstone of any analysis of hate crime. Several questions remain, however. The first is to know why exactly the bias motivation of the offender makes such a difference. The answer lies in the implications of hate crime, which go beyond interactions between victims and offenders. Given this resonating nature of hate crime, the question then becomes: what forms of criminal conduct does the concept of 'hate crime' refer to?

27 ECtHR, *Angelova and Iliev v. Bulgaria*, No. 55523/00, 26 July 2007.
28 *Ibid.,* para. 104.
29 ECtHR, *Ognyanova and Choban v. Bulgaria*, No. 46317/99, 23 February 2006.
30 ECtHR, *Ognyanova and Choban v. Bulgaria*, cited above, para. 148.
31 ECtHR, *Beganović v. Croatia,* No. 46423/06, 25 June 2009, para. 95-98; ECtHR, *Vasil Sashov Petrov v. Bulgaria*, No. 63106/00, 10 June 2010, para. 73; ECtHR, *Seidova and Others v. Bulgaria,* No. 310/04, 18 November 2010, para. 74; ECtHR, *Mižigárová v. Slovakia,* No. 74832/01, 14 December 2010, para. 122; ECtHR, *Soare and Others v. Romania,* No. 24329/02, 22 February 2011, para. 208.
32 ECtHR, *Milanović v. Serbia*, No. 44614/07, 14 December 2010.
33 ECtHR, *Milanović v. Serbia*, cited above, para. 96-97.
34 ECtHR, *Virabyan v. Armenia,* No. 40094/05, 2 October 2012, para. 218.
35 ECtHR, *Kiyutin v. Russia,* No. 2700/10, 10 March 2011, para. 56-57.
36 ECtHR, *Salgueiro da Silva Mouta v. Portugal*, No. 33290/96, 21 December 1999, para. 28; with regard to disability as a ground under Article 14 of the ECHR see ECtHR, *Glor v. Switzerland*, No. 13444/04, 30 April 2009, para. 80.
37 ECtHR, *Vejdeland and Others v. Sweden,* No. 1813/07, 9 February 2012, para. 55.

Hate crimes, in fact, impact upon the rights of persons at three levels: individual, 'group' and societal. At the individual level, hate crimes openly discriminate against individuals and violate their human dignity. At the 'group' level – a term that is used here to capture individuals who are prone to similar acts of discrimination – hate crimes have the potential to reverberate among the followers of the offender and therefore to spark discrimination and to spread fear and intimidation. In this way, hate crimes jeopardise the fundamental rights of persons at risk of being labelled and treated in the same way as the victim. At the societal level, hate crimes matter as they reinforce distinctions and boundaries forming social structure and run counter to the very ideas of human dignity, individual autonomy and a pluralistic society.

The relevance of hate crime at the individual level: hate crimes are discriminatory

Person A, in the midst of a heated argument, beats up and injures Person B. In a second incident, C publicly injures D in a manner very similar to the way A treated B, except that C's motivation is different from A's. By uttering homophobic slurs, C makes it clear that he is attacking D because he is gay or, more precisely, because C believes D is gay.[38]

The ECtHR claims that C's motivation justifies more severe punishment than for A and demands the particular attention of authorities. Why is this? What is the difference between these two situations? A's violence arises out of the heated argument; it is situational, not personal. In the second case, however, C did not injure D because of what took place between them. Instead, C committed the offence because of how he perceived the victim as a person. It is as if C's behaviour would demonstrate to D and bystanders that D is being injured because there is something inherently wrong with him; so wrong that – in C's view – it is justifiable to hurt D.

A's violent behaviour disregards B's fundamental right to physical integrity. In this respect, the wrong B experienced is comparable, for the sake of argument, to the harm suffered by D. What is different is the *offensive message* conveyed by C, who abuses D on the basis of the assumption that the right of gay persons to physical integrity matters less than the same right of persons who are not gay. C's bias motive adds an insult to the assault; it adds a form of symbolic or moral violence to the physical violence. It is this discriminatory and abusive meaning behind C's action that justifies why he should be punished more severely.

Hate crimes thus stress a link between an offence and a feature the offender attributes to the victim. Hate crime could therefore be understood as follows: *a person is victimised – killed, raped, abused, assaulted, threatened, insulted etc. – for being X*. In other words, the term 'hate crime' would denote all *crimes motivated by the victim's being perceived as X*. Victims of hate crimes are victimised for what they are perceived to be: this implies that the offender would not have committed the offence if he or she had not assumed the victim to be X.

The phrase '*for* being X' implies more than causation. In this regard, it is useful to think of a mugger (M) who preys solely on white victims because he concluded on the basis of his experience that white people, on average, carry more money than non-whites. M selects his victims on the basis of their skin colour but does so without bias motivation.[39] M does not mug whites for being white; the selection of white victims does not carry a message of disdain. What matters to M is profit, while what matters to C is D's presumed homosexuality, with all the normative implications he attaches to that. What distinguishes hate crime from other types of crime is that the offender's actions are not just caused but directly motivated by the victim's perceived being X.

The thinking advanced here is that 'hate' refers to a form of discrimination and humiliation. At this stage, it is useful to recall and highlight a crucial difference between discrimination and unequal treatment. Discrimination is more than unequal treatment. While it is true that M mugs white persons and does not mug others this differential treatment is not an expression of contempt for whites and, therefore, is not a form of discrimination.

This argument can be approached from another angle. Sometimes 'hate' results in an aggravated penalty. Care must be taken here to avoid using the same argument to justify a harsher punishment as was already used to punish the basic crime. In other words, any construction of 'hate' as an aggravating factor has to respect the fundamental principle that all aspects that already constitute a basic crime may not be taken into account once again to justify an aggravated penalty.

The reason why C should be punished more harshly than A, however, is not that he treated D differently from other persons. Rather, C should be punished more severely because of why he discriminated against D: on the basis of his perceived sexual orientation.

38 The personal pronouns used in this report's examples do not determine the sex of the persons.

39 Lawrence, F. M. (2002), p. 31.

While discrimination *leads* to unequal treatment, it starts one step earlier. It begins with the unjustified attribution to a person of a characteristic that undermines the social status of that person. This attribution can potentially influence the behaviour of others towards that person. Discrimination does not mean to treat others differently in a random fashion; instead, it means to enact and wield a distinction powerful enough to structure society. By treating D according to his perceived being gay, C gives life to a distinction that defines a "difference in value" that affects the formation of his society.[40]

Article 14 of the ECHR, as mentioned earlier, states that, "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, [...] birth or other status." The concept of discrimination therefore encompasses two elements: a certain distinction – a 'ground' in the Article's wording; and, an impact of that distinction on social status, or in legal terms, on the enjoyment of rights. In addition, Article 1 of Protocol No. 12 of the ECHR introduces a general prohibition of discrimination by extending the scope of protection beyond the rights guaranteed by the ECHR to "any right set forth by law", but does not otherwise deviate from the meaning or structure of Article 14.[41]

To give another example, racial discrimination according to Article 1 of the UN Convention on the Elimination of All Forms of Racial Discrimination means any "distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Again, this reflects the dual structure mentioned above: firstly, a distinction operated by racially labelling a person; secondly, the intended or real impacts of this distinction on the equal enjoyment of human rights in public life by the person so labelled.

Understanding the impact of hate crimes on individual victims can also serve to inform the provision of support and healthcare services. Every traumatised victim has the right to benefit from medical treatment, as stipulated by Article 35 of the ECHR. This understanding can also feed into the training of those who work with victims, such as police officers, public prosecutors or judges.[42]

Victims of hate crime are abused for what they are perceived to be. Evidence shows that hate crimes strongly impact victims, in part because they cannot attribute their victimisation to bad luck. Instead, they are forced to accept that their social identity was targeted and that they remain at risk of repeat victimisation.[43] Victims of hate crimes may, therefore, experience symptoms of severe trauma such as depression, suspicion of others, self-blame and a profound sense of isolation. Not surprisingly, however, it is in the intensity of feelings of fear, anxiety/panic attacks and loss of confidence/feeling vulnerable where their experiences differ most significantly from those of victims of other types of crime.[44] The physical harm resulting from violence motivated by prejudice is often less significant than the powerful accompanying sense of violation and humiliation.[45]

Hate victimisation not only affects victims but also their families and their wider communities. Fear can be contagious, due to the shared social identity of a family.[46]

The relevance of hate crime at the individual level: name calling and human dignity

The ECtHR has, in several cases, underlined that racist violence is a particular affront to human dignity.[47] It has repeatedly held that discrimination can in and of itself amount to degrading treatment within the meaning of Article 3 of the ECHR, an article that captures particularly severe violations of human dignity.[48] In considering whether a certain treatment is 'degrading' within the meaning of Article 3, the ECtHR will pay attention to whether its object is to humiliate and debase the persons concerned and whether it adversely affected their personality.[49]

To appreciate fully the ECtHR's position on hate crime, the link between discrimination and the underlying concept of human dignity needs to be explored and clarified. In other words, one must first examine why C's calling D 'gay' would have the power to debase D, as well as why this act would adversely affect D's personality – because personhood is initially constituted by others in terms of language, and people remain vulnerable to symbolic interaction.

40 Spencer-Brown, G. (2011), p. 1.
41 ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina,* Nos. 27996/06 and 34836/06, 22 December 2009, para. 55.
42 Glet, A. (2011).
43 Hall, N. (2005), p. 68.
44 Iganski, P. (2008), pp. 81-82. See also McDevitt, J. *et al.* (2001).
45 Lawrence, F. M. (2002), p. 40; Margalit, A. (1998), pp. 85-88; Margalit, A. (2002), p. 120; Wemmers, J. *et al.* (2008), pp. 59-61.
46 Wemmers, J. *et al.* (2008), pp. 61-62.
47 ECtHR, *Nachova and Others v. Bulgaria*, cited above, para. 145; ECtHR, *Bekos and Koutropoulos v. Greece*, cited above, para. 63.
48 ECtHR, *East African Asians v. the United Kingdom*, Nos. 4403/70, and others, Commission report adopted on 14 December 1973, para. 208; ECtHR, *Cyprus v. Turkey* [GC], No. 25781/94, 10 May 2001, para. 310; ECtHR, *Moldovan and Others v. Romania*, Nos. 41138/98 and 64320/01, 12 July 2005, para. 111; ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina*, Nos. 27996/06 and 34836/06, 22 December 2009, para. 58.
49 ECtHR, *Moldovan and Others v. Romania*, cited above, para. 101.

While individuals shape their identities through their own choices and actions,[50] the process of self-constitution is neither a monologue nor is it initiated by themselves. Instead, this process responds to the call of others, who challenge us to act, to cooperate and thereby to constitute ourselves as responsible and autonomous persons and as members of a society defined by its norms and culture.[51] Self-constitution is the result of symbolic interaction within a social and normative framework, beginning between a child and their parents or other caretakers.

This process never comes to a halt; the self remains fluid and "in the making".[52] Throughout their lives, persons engage in interactions that construct, question and reformulate their identities.[53]

Personhood is social in nature and emerges from interaction. Forcing powerful labels and stigmas upon others constitutes degrading treatment that denies individual self-definition or social 'visibility' and can, therefore, impinge upon, distort or even revoke one's sense of self. While the law deems human dignity inviolable, in reality it is fragile and precarious, in need of protection and defence.

Human dignity, conceived as the right of individuals to be initiated as persons in society and as protecting the autonomous formation of personal identities,[54] implies the right to be the 'author' of one's own personality and the necessity to protect individuals against alienating or degrading definitions others attribute to them.[55]

Any analysis of hate crime has to take into account the meaning of actions and how this meaning impacts on social identities. Hate crimes cannot be understood unless one listens to what they say, with all forms of hate crimes essentially conveying a common message. What they express is that some persons may – whether they like it or not – be labelled as X and that the rights of these people matter less because they are X. This message is both debasing and dangerous to persons so labelled.

Those who commit hate crimes are punished for what their actions express, not for what they think. The thoughts, sentiments or feelings of offenders are irrelevant, as long as they are not transformed into actions. Unless there are objective indications of discrimination, the motivation of the offender should not be enquired into.

An example to illustrate this point: if E punches F in the nose and exclaims, "I don't like you!", this constitutes assault. However, if E punches F in the nose and exclaims instead, "I don't like you because you are Jewish!" then E is liable for hate crime. In the second scenario, E is not being punished more severely for what he was thinking.[56] Rather, E is punished more harshly for what he expressed out loud in clear terms, not for his 'subjective motivation'.

Now, in the first case, one might wonder whether when E exclaimed "I don't like you!", he was actually *thinking* "[...] because you are Jewish!". But, as long as there is no objective indication of such a motive, there is no reason or right to be suspicious. The ECtHR is therefore right to hold that the motivation of the offender must be explored only if there are sufficient reasons to suspect bias motives.[57]

Turning back to the previous example, C's action violates D's rights to physical integrity and to the respect of his human dignity, as protected by Article 14 of the ECHR. The criminal court must clearly repudiate *both* of these rights' violations in order to reaffirm D's fundamental rights and, in general, D's social status as a person.

Is, then, criminal law an effective means of addressing bias?[58] The answer will depend on another question: an effective means to what end? From a fundamental rights perspective, the starting point is D's human dignity; in other words, his entitlement to be treated as a person enjoying – not only in law but in practice – basic rights. Effective protection against grave violations of human rights requires, where fundamental values are at stake, efficient criminal law provisions implemented with resolution and monitored with care.[59]

Courts are required to censor and punish C for violating D's fundamental rights because of D's status as a person and society's resolve to acknowledge and defend D's rights. The Criminal Code and criminal court judgments can be an effective means of addressing bias as they express society's disapproval and reprobation of rights violations – like in the situation between C and D – as well as reassert public support for the victim's rights.[60] In addition, holding C liable for his actions reaffirms C's status as an autonomous and responsible actor. This means that C is recognised as capable of independently making choices and being held accountable for the actions that result from those choices.

50 Koorsgard, C. (2009), p. 45 and passim; similar Jaeggi, R. (2005), pp. 225-226.
51 Althusser, L. (1970), pp. 67-125; Butler, J. (1997); Butler, J. (2005).
52 Jaeggi, R. (2005), pp. 198-199.
53 Alexander, J. and Thompson, K. (2008), pp. 125, 129-131, 158, 527; Dornes, M. (2012), pp. 156-200.
54 Ladeur, K.-H. and Augsberg, I. (2008) p. 13.
55 Benn, S.I. (1988), p. 155.
56 MacNamara, B.S. (2003), p. 537.
57 ECtHR, *Vasil Sashov Petrov v. Bulgaria*, cited above, para. 73; ECtHR, *Mižigárová v. Slovakia,* cited above, para. 122.
58 For an overview, see MacNamara, B.S. (2003).
59 Compare for instance ECtHR, *M.C. v. Bulgaria,* No. 39272/98, 4 December 2003, para. 150.
60 See Höffe, O. (1999); Höffe, O. (2010); Reemtsma, J.P. (1999).

The obligation to unmask bias motivation arises, in the words of the ECtHR, from "the need to reassert continuously society's condemnation of racism"[61] or other bias motivations. This assertion is addressed to the victim, whose right to non-discrimination and human dignity is reaffirmed; to the offender, who is made responsible and called upon to respect the victim and the victim's rights; and to the public. In our societies, it is courts that must perform this symbolic function, as they have a monopoly on defining criminal offences.[62]

The impact at 'group' level: hate crime matters to others

While bias motives justify harsher sentences, do they also account for the ECtHR's particular emphasis on unmasking and highlighting bias motivation? Are there no other equally vicious motives that need to be taken into account by criminal courts and yet have not prompted similar demands by the ECtHR? Why do bias motives matter particularly? The answer to these questions lies in the fact that C's behaviour expresses disdain not for D alone but also for all other persons C would label as 'gay'. Hate crimes are not simply something that occurs between the persons immediately involved.

If C's motivation is not addressed and rebutted in criminal proceedings, then he is denied the chance to learn, or have it reaffirmed, that it is wrong to discriminate against persons. This creates a risk that other persons C perceives to be gay will be victimised. Hate crime offenders typically do not know their victims; they select on the basis of one characteristic only. The victims are, to a certain extent, interchangeable. Offenders need only perceive their victims as having a certain characteristic;[63] the violence against D does not address him only, but also any other person likely to be perceived to be gay. C's conduct has the potential to spread fear and intimidation to other persons whom he might label as gay.[64] Therefore C's behaviour may affect other persons at risk of similar labelling. These persons may become aware that they too could have been or could be victimised, which is a process known as a vicarious traumatisation effect.[65]

While states are obliged to protect, with due diligence, the fundamental rights of every person living in their territory, they must devote particular care to the protection of those who are at an added risk of being victimised. Otherwise, states would fail to provide equal protection to everyone, meaning the same level, not the same measures, of rights protection.

Individuals at risk of being discriminated against have a legitimate interest in the implementation of specific, targeted protection measures, including a robust police and judicial reaction to incidents of hate crime. States' due diligence must reflect the distribution of victimisation risks in their societies. All positive obligations on EU Member States to protect and secure the rights of individuals to life and to the respect of their human dignity have, when linked to Article 14 of the ECHR, a specific meaning in relation to persons at risk of discrimination.

C's conduct should not be assessed in isolation but as representative of widespread attitudes. After all, it was not C who invented the label 'gay'. In fact, the offence only 'speaks' to D because C's action is not 'drafted' in private but in common language. The word 'gay' and its synonyms exist in the language of the society in which C lives, learned to speak and, more generally, to act. It was in this environment that he or she grasped a certain biased meaning of 'gay', a lesson that later harmed D. It is likely that C affiliates himself with certain groups, a political party or another faction of society that despises gay persons, or that he pays attention to political leaders or media advocating a notion of 'gay' that C endorses. If his action goes unchallenged and resounds in individuals and groups who may be ready to share such attitudes, then this message has the potential to compromise the rights of many more persons.

That is to say: hate crime transcends the context of the individuals directly involved; it relates to categories – whether real or imagined – of individuals divided and shaped by a particular societal discourse of bias. Homophobic, just like racist and sexist, crimes happen between 'us' and 'them' rather than just between 'me' and 'you'. In this way, hate crime 'speaks', and matters not only to the immediate victim. It also matters to persons who sympathise with the offender and whose biased attitudes the offender confirms and reinforces. It also matters to 'others' who understand that they are at risk of similar labelling and victimisation.

Both audiences should be imagined as looking to the state for a reaction: will the police and the courts brand and forcefully reject hate crimes as particularly inacceptable or overlook the discriminatory component? The ECtHR gives a clear answer: states may not overlook bias motivation because if they do, the message sent by offenders would go unchallenged.

61 ECtHR, *Nachova and Others v. Bulgaria* (2004), cited above, para. 160.
62 Glet, A. (2011).
63 Lawrence, F. M. (2002), pp. 9, 14.
64 *Ibid.,* p. 42; Hall, N. (2005), p. 67.
65 Wemmers, J. *et al.* (2008), p. 61.

Building on an argument the ECtHR first introduced in the *Menson* case, the Chamber judgment in the *Nachova* case highlights this aspect (paras. 157-158). The Grand Chamber upheld the judgment as follows:

"Where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. [T]reating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."[66]

The Court's consideration for the interests of vulnerable persons and for the need to maintain their confidence in the effective protection of their rights explains why hate crimes require particular attention from the police and the criminal justice system.

The scope of Article 14 of the ECHR still remains to be clarified: what are the characteristics that qualify as grounds of discrimination in the sense of Article 14 of the ECHR? In order to answer this question we must widen the horizon one final degree: hate crime matters not only to individuals and 'groups' of persons clustered around a certain label but also to society as a whole.

Hate crime: the impact on society at large

Consider G, the bigoted member of a football team's fan club, who beats up H, whom he perceives as a rival team's fan; G's action targets H because he is perceived as a member of a group. G firmly believes that supporters of this rival club are by nature contemptible and that there is, therefore, nothing wrong with beating them up. Hence, other members of this 'group' could be well-advised to take into account a certain inclination of G to occasionally beat them up as well. Moreover, other fans of G's team could feel encouraged or even be challenged to live up to G's example. Therefore, if there is no objection to G's behaviour from, say, a criminal court, then practically all fans of the rival football club have a reason to fear violent acts from virtually all supporters of G's team. The impact of G's act at 'group' level is apparent and undisputable.

So why is G not punished for committing a hate crime? The answer is that what is a significant distinction to him does not make an equally important difference to society at large. The affiliation to football supporter clubs does not structure society, while, in contrast, distinctions such as sex, age, gender, disability, race, religion or sexual orientation do. It is these characteristics that trigger social fissures and impact upon the social status of persons.

This insight equips us to answer the question on the scope of Article 14 of the ECHR. This article obliges EU Member States to secure the enjoyment of the rights under the ECHR "without discrimination on any ground such as sex, race [...] or other status". With this wording, an interpretation seamlessly ties in that limits the terms of 'ground' and 'status' to the formative fissure lines of social structure in a certain country at a certain time, that is, to characteristics that have the potential to influence the social status of persons.

Discriminating against a person (whether in their favour or to their disadvantage) always implies drawing on a certain distinction, where, in a given context, there are not sufficient reasons to do so. In the long run, discrimination affects perceptions at large. In a society that permanently categorises persons as being or not being X, it will be difficult or even impossible to perceive others unaffected by this categorisation. Hence, once the issue of being or not being X permeates social interactions, this will restrict the ability of individuals to determine autonomously who they are.[67]

Hate crime reflects inbuilt tendencies and predispositions of societal structures. For this reason, it would be misleading to picture offenders of hate crimes as belonging to 'extremist' groups that exist only at the margins of society. The pervasiveness and 'normality' of hate crime must instead be highlighted: "the sentiments that inform offending are intricately woven into the structural fabric of society and constitute a key component of 'common sense' [...] which for many individuals lies below the surface of coherent cognition, but given the right circumstances, bursts to the surface [...] The ordinariness of many of the offenders is striking, and also extremely discomforting."[68]

66 ECtHR, *Nachova and Others v. Bulgaria* (2005), cited above, para. 160; see also ECtHR, *Angelova and Iliev v. Bulgaria,* cited above, para. 105.

67 Perry, B. (2001), pp. 46-47 and passim.
68 Iganski, P. (2008), pp. 42-43.

Addressing and counteracting discrimination is a crucial means of promoting a social system based on the ideas of human dignity, individual autonomy and societal pluralism. Referring again to the ECtHR's *Nachova* judgment, the Grand Chamber considers that "the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment."[69] In *Chapman*, the Grand Chamber also observed that the obligation to protect the security, identity and lifestyle of minorities has to be recognised "not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community".[70] In a judgment of October 2012, the ECtHR stressed that "political pluralism, which implies a peaceful co-existence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law."[71]

69 ECtHR, *Nachova and Others v. Bulgaria*, cited above, para. 145; the phrase is repeated by ECtHR, *Dimitrova and Others v. Bulgaria*, No. 44862/04, 27 January 2011, para. 95.

70 ECtHR, *Chapman v. the United Kingdom* [GC], No. 27238/95, 18 January 2001, para. 93.

71 ECtHR, *Virabyan v. Armenia,* No. 40094/05, 2 October 2012, para. 210.

3

The impact of the Framework Decision on Racism and Xenophobia on the visibility of hate crimes

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law defines a common EU-wide criminal law and criminal justice approach to combating racism and xenophobia. It aims to ensure that similar behaviour constitutes an offence across EU Member States and that effective, proportionate and dissuasive criminal penalties are provided. This section will explore the effect of the Framework Decision on the visibility of hate crimes.

The Framework Decision, in Article 1 (a), requires EU Member States to take measures to punish public incitement to violence or hatred directed against a person or persons belonging to a group defined by reference to race, colour, religion, descent or national or ethnic origin and the commission of such acts by public dissemination or distribution of tracts, pictures or other material. It also requires EU Member States to take measures to punish any conduct publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes, when the conduct is carried out in a manner likely to incite to violence or hatred against a person or persons belonging to one of the groups listed in Article 1 (a).

For other criminal offences motivated by hatred or prejudice, the Framework Decision, in Article 4, gives law makers at Member State level two options: "For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties."

The situation at Member State level

While this Framework Decision is restricted to race, colour, religion, descent or national or ethnic origin, many EU Member States have opted to include other grounds such as antisemitism, sexual orientation or disability in criminal definitions protecting against discrimination. In the spirit of non-discrimination, it is certainly preferable to widen criminal law provisions to include equally all grounds of discrimination covered by Article 14 of the ECHR or Article 21 of the Charter of Fundamental Rights of the European Union.

Charter of Fundamental Rights of the European Union

Article 21

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

The readiness of legislators in EU Member States to extend definitions of hate crimes to a wide range of categories is a clear trend observable in Austria, Belgium, Croatia, Finland, Latvia, Lithuania, Malta, the Netherlands, Romania and Spain. Other EU Member States, like Denmark, Hungary, Sweden and the United Kingdom have included at least sexual orientation as an additional category of discrimination.

Offences concerning racism and xenophobia

1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:
   (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
   (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
   (c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;
   (d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.
2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.
3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.
4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1 (c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.

Article 1, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

This broad range of grounds of discrimination should, however, not lead to bundling all forms of discrimination into one global and abstract category. Various target audiences have different issues and expect their concerns to be heard and responded to. In identifying instances of hate crime, courts should be attentive to all relevant grounds of discrimination and react to the concrete issues emerging in a given case.

Two stages of criminal conduct need to be distinguished. So far, this report has focused on situations where a person victimises another by labelling him or her as X in a discriminatory manner and by, often though not necessarily, violating additional rights of the victim. But there is possible criminal activity before such direct interaction. A person could threaten or incite others to commit hate crimes. Given the precarious situation of persons being discriminated against, there are sufficient reasons to take such threats seriously.

Therefore Article 1, paragraph 1 (a) and (b) of the Framework Decision obliges EU Member States to make it a criminal offence to publicly incite, in certain cases, to violence or hatred against a group of persons or a person motivated by racism in the broader sense of the Framework Decision. Such a criminal definition requires that the offender intends to incite to violence or hatred for racist motives.

Article 1, paragraph 1 (c) and (d) further extends the protection from discriminatory acts to include very particular forms of behaviour, namely, publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity or war crimes, when the criminal conduct is carried out in a manner likely – although possibly without the offender's intent – to incite to racist violence or hatred.

If the offender acts with the intention of inciting to violence or hatred against a certain group covered by Article 14 of the ECHR, as is the case with all behaviour falling under Article 1, paragraph 1 (a) and (b), then this conduct comprises what this report has identified as the nucleus of all hate crime: expressing or demonstrating that an individual or a group is less deserving of respect and protection of their fundamental rights, for being X, where X refers to any ground of discrimination under Article 14 of the ECHR.

Conduct referred to under Article 1, paragraph 1 (c) and (d) of the Framework Decision, however, does not necessarily require intent on the part of the offender and cannot therefore be globally classified as hate crime. If the individual offender does not intend to express disdain for a group protected by Article 14 of the ECHR, there would have to be additional reasons to explain why this behaviour is criminal, but the question falls beyond the scope of this report.

What is referred to as hate crime is intimately linked to Article 14 of the ECHR and to the corresponding concept of human dignity. In the case law of the ECtHR, expressions inciting to hatred, because they are directed against the values underlying the ECHR, are prevented by Article 17 of the ECHR on the prohibition of abuse of rights from enjoying any protection under Article 10 of the ECHR on freedom of expression.[72] In the *Vejdeland* case, the ECtHR assessed a case of incitement to hatred under Article 10 of the ECHR, finding that national authorities could regard interference with the applicants' exercise of their right to freedom of expression as necessary in a democratic society for the protection of the reputation and rights of others.[73]

Criminal law provisions in EU Member States

In order to capture the broad range of other forms of hate crimes, Article 4 of the Framework Decision, as previously mentioned, allows for the adoption of one of two methods. The first is to create qualifications – enhanced penalties – either for all crimes or for those perceived to be most relevant or serious, such as murder, injury, insult or vandalism. A small group of EU Member States – Belgium, Bulgaria, Czech Republic, Lithuania, Portugal, Slovakia and the United Kingdom – have opted for this approach.

A much larger group – Austria, Croatia, the Czech Republic, Denmark, Finland, France, Greece, Italy, Latvia, Lithuania, Malta, the Netherlands, Romania, Spain and Sweden – opted instead to make racist and xenophobic motivation an aggravating circumstance, sometimes in addition to qualified criminal law definitions.

When it comes to visibility, this second technique bears clear risks. Even if judges take the bias motivations of offenders into account, these motives are still unlikely to later be visible in any official statistics, which often refer only to the crime type and penalty applied. Further, when bias motivation is reduced to a mere aggravating circumstance among many others, court proceedings or police reports are less likely to consider this element in its own right, which adds to the risk that the proceedings do not take into account the bias motivation of an offender.

In addition, if the bias motivation of a crime means the victim was insulted and his or her dignity violated then it is not sufficient to punish the offender more harshly after the fact. A state must instead provide for criminal law provisions that deter hate crimes and protect an individual's human dignity. A mere aggravating circumstance may not prove to be a sufficient deterrent, as the increase in sentence length is typically left unspecified. It is therefore unclear whether the increase of sentence length is commensurate with the violation of rights suffered by the victim. In contrast, the use of an enhanced penalty makes visible the difference to the basic offence.

A state falls short of meeting its obligations under Article 14 of the ECHR if its legal situation leaves it to the judge's discretion to decide whether or not to take the bias motivation that forms the aggravating circumstance of a crime into account. The obligation to unmask bias motivation is unconditional and not left to the discretion of states.

Hate crime and 'disturbing public order'

When EU Member States restrict the reach of criminal definitions of hate crime, they may also limit the recognition of the rights of victims of severe forms of discrimination – rights safeguarded by Article 14 of the ECHR.

Article 1 (2) of the Framework Decision, which allows EU Member States to limit legal protection to conduct (that is, behaviour) "carried out in a manner likely to disturb public order", may carry such a risk. From a fundamental rights perspective, it is debatable whether the legal protection of a person targeted in public by incitement to violence should depend on whether or not this conduct disturbs public order. Racist expressions do not always encounter opposition on the part of the audience, sometimes they are even welcomed. In cases where bystanders show solidarity with offenders rather than with victims, the risk that victims suffer trauma is significantly increased.[74]

The legislative apparatus of two EU Member States – Austria and Germany – resorts to such a restricted definition. Despite reforms, both states have maintained restrictions limited to instances when public order is disturbed.

72 ECtHR, *Pavel Ivanov v. Russia*, No. 35222/04, 20 February 2007.
73 *Vejdeland* case, cited above, paras. 47 – 60.
See also Oetheimer, M. (2009), Weber (2009).

74 Fischer, G. and Riedesser, P. (2009), pp. 348-350.

Austria amended Article 283 of the criminal code on incitement to violence against a protected group or an individual of such a group (*Verhetzung*), and the reform entered into force on 1 January 2012.[75] The amendment widened the list of grounds of discrimination to cover not only race, ethnicity and religion but also colour, language, ideology, sex, disability, age and sexual orientation. The protection offered by Article 283 (1) is still limited to conduct likely to compromise public order *(auf eine Weise, die geeignet ist, die öffentliche Ordnung zu gefährden)*.

In March 2011, the German parliament enacted legislation transposing both the Framework Decision and the Additional Protocol to the Convention on Cybercrime.[76] This reform concerns Article 130 of the criminal code entitled "Incitement of the people" (*Volksverhetzung*). The definitions under Article 130 (1) now also expressly relate to groups defined by criteria of nationality, race, religion or ethnic origin as well as to members of these groups. Still, the protection granted is restricted to conduct capable of disturbing public peace *(in einer Weise, die geeignet ist, den öffentlichen Frieden zu stören)*. In the final analysis, these definitions are primarily concerned with public order rather than with the fundamental rights of individuals.

The Framework Decision and support for victims

State Parties of the ECHR, which includes all EU Member States, must ensure that individual rights are effective in practice and not just mere words on paper: the ECtHR insists in established case law "that the rights guaranteed by the Convention should not be theoretical or illusory but practical and effective".[77] States therefore must be concerned with any obstacles impeding the practical implementation of victims' rights.

Article 8 of the Framework Decision on Racism and Xenophobia stipulates that investigations into or prosecution of crimes shall not depend upon a victim's report or accusation. In practice, however, unless victims are encouraged to report crimes and are assisted in court proceedings, no investigation may take place.

Initiating an investigation or prosecution

Each Member State shall take the necessary measures to ensure that investigations into or prosecution of the conduct referred to in Articles 1 and 2 shall not be dependent on a report or an accusation made by a victim of the conduct, at least in the most serious cases where the conduct has been committed in its territory.

Article 8, Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

Broad legal definitions, although they are an important step towards the recognition of victims, do not necessarily lead to the conviction of offenders and to the recognition of victims. For criminal law, definitions often come to life only when victims are encouraged to report incidents to the police.

The Framework Decision, however, pays little attention to the rights of victims to support before, during or after criminal proceedings. In contrast, the Trafficking Directive[78] clearly and unambiguously obliges EU Member States to take the necessary measures to ensure that assistance and support are provided to victims in its Article 11. While the Framework Decision on the standing of victims in criminal proceedings[79] also relates to victims of hate crime, its Article 13 does not go beyond asking EU Member States to promote the involvement of victim support systems.

Even the most comprehensive legislation does not guarantee effective implementation.[80] Other powerful factors are: victims' rights awareness; victims' readiness to report to the police; effective support services available to victims; the responsiveness and ability of law enforcement agencies to understand and thoroughly investigate hate crime;[81] and the extent to which court proceedings are shaped in line with the rights and needs of victims.

75 Germany, *Bundesgesetz, mit dem das Strafgesetzbuch zur Verhinderung von Terrorismus sowie das Strafgesetzbuch und die Strafprozessordnung 1975 zur Verbesserung des strafrechtlichen Schutzes der Umwelt geändert werden*, BGBl. I. Nr. 103/2011.

76 Germany, Law for the transposition of the Framework Decision 2008/913/JI etc. and of the Additional Protocol of 28 January 2003 etc., BGBl. I Nr. 11.

77 ECtHR, *Stanev v. Bulgaria*, No. 36760/06, 17 January 2012, para. 142.

78 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ 2011 L 101, p. 1.

79 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, OJ 2001 L 82, p. 1.

80 Goodey, J. (2008), pp. 16-28; Garland, J. and Chakraborti, N. (2012).

81 Glet, A. (2011), pp. 280-1; Bowling, B. and Phillips, C. (2002), pp. 40-1; Webster, C. (2008), pp. 69-73.

The EU has taken a step, however, toward such effective implementation with its non-binding Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Council of Europe's Committee of Ministers in March 2010. This recommendation suggests that Member States should take appropriate measures to ensure that victims (and witnesses) of hate crimes or incidents related to their sexual orientation or gender identity are encouraged to report, and that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.[82]

Conclusions

One effect of applying restrictive criminal law definitions and interpretations of hate crime is that official data collection mechanisms pertaining to hate crime are "unable to capture the full range of victimisation experiences".[83] The net effect is that official data collection mechanisms often tend to under-record the incidence of hate crime, which can translate into low numbers of prosecutions, thereby limiting opportunities for victims of hate crime to seek redress and to experience that justice is done.

The continued existence of gaps in data collection carries the risk that the rights of victims of hate crime are not fully respected, and EU Member States fail to uphold the obligations they have towards victims of crime. To give but one example, the criminal justice systems in most EU Member States fail to recognise crimes motivated by a person's disability as a fully-fledged bias motivation. Persons with disabilities are therefore often unable to seek redress. The offenders may be tried on the basis of, say, grievous bodily harm, leaving the bias that motivated their attack unaddressed. Against this backdrop, the report moves to provide an overview of official data collection mechanisms pertaining to hate crime in the 27 EU Member States.

82 Council of Europe (2010), Appendix I. A. 3.
83 European Monitoring Centre on Racism and Xenophobia (2005), p. 60.

4

The visibility of hate crime: official data collection in the European Union

The 27 EU Member States record and publish a great variety of data on bias motivations resulting in gaps in data collection across the EU, as this section of the report shows.[84] These gaps mean that the Member States' official data collection mechanisms pertaining to hate crime often fail to capture the reality on the ground. This can prevent victims of hate crime in many EU Member States from being able to seek redress against perpetrators and can impede upon the ability of criminal justice systems to prosecute offenders.

Differing legal approaches and interpretations of what constitutes hate crime influence the depth and breadth of official data collection mechanisms when recording and detailing its incidence. These differences also result in the measuring of different realities in individual EU Member States, which complicates any comparative analysis of the incidence of hate crime across the EU.

Data collected by the FRA consistently show that persistent gaps exist in data collection when it comes to recording the incidence of crimes motivated by racism, xenophobia, antisemitism and extremism in EU Member States.[85] The same is true for crimes motivated by another person's sexual orientation, gender orientation or disability.

The data for this report were mainly collected through FRA staff desk research and the FRA's research networks – previously Raxen[86] and currently Franet.[87] Up-to-date print and electronic sources were consulted to identify all available data and information pertaining to hate crime in each of the 27 EU Member States. Official sources consulted included law enforcement and criminal justice agencies, such as the police, prosecution services, courts or prisons services; ministries; national statistical offices; national equality bodies; and national human rights institutes.

The analysis of the collected data shows that different authorities record and publish a range of different data (Table 3) on a range of bias motivations (Table 4). As Table 4 shows, not all EU Member States publish all the data they collect. In this respect, many EU Member States fall short of making hate crime visible, a situation that needs addressing.

Official data are recorded most often for racist/xenophobic crime (25 EU Member States), followed by antisemitic crime (12), crime motivated by someone's sexual orientation (8), extremist crime (7), religiously motivated crime (6) and then Islamophobic crime (6). Four EU Member States each record official data on crime motivated by someone's gender identity, being a Roma or having a disability.

84 See also Goodey, J. (2008), pp. 16-28; Garland, J. and Chakraborti, N. (2012); Organization for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights (2012).
85 See for example, FRA (2012a); FRA (2012b).
86 For more on Raxen, the FRA's previous research network, see FRA (2007), pp. 5-7.
87 For more on Franet, the FRA's current research network, see: http://fra.europa.eu/fraWebsite/research/franet/franet_en.htm.

Table 3: Summary overview of officially recorded data pertaining to hate crime, by EU Member State

EU Member State	Recorded data, According to the recording authority's own definition	Recording authority	Publication of data
AT	Politically motivated crimes (*Politisch motivierte Kriminalität*): committed offences (*Tathandlungen*) and cases reported to the court (*Anzeigen*)	Ministry of Interior, Federal Agency for State Protection and Counter-terrorism (*Bundesministerium für Inneres, Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*)	Annual report on the protection of the Constitution (*Verfassungsschutzbericht*)
BE	Incidents/crimes recorded by the police	Federal Police, Centre for Equal Opportunities and Opposition to Racism, Prosecution services	Centre for Equal Opportunities and Opposition to Racism: annual report on discrimination/diversity
BG	Victims of criminal offences against the rights of citizens recorded by the police	Ministry of Interior	Data not published
CY	Serious offences – racial incidents and/or court cases	Cyprus Police	Data on serious offenses – racial incidents and/or cases published on the website of the Cyprus Police
CZ	Crimes with an extremist context (*Trestná činnost s extremistickým podtextem*)	Ministry of Interior, Security Police Department	Annual report on the issue of extremism in the Czech Republic (*Zpráva o problematice extremism na území České Republiky*)
DE	Politically motivated crime (*Politisch motivierte Kriminalität)*: criminal offences (*Straftaten*); acts of violence (*Gewalttaten*)	Ministry of Interior (*Bundesministerium des Innern*)	Annual report on the protection of the Constitution (*Verfassungsschutzbericht*)
DK	Crimes with a possible extremist background (*Kriminelle forhold med mulig ekstremistisk baggrund*)	Danish Security and Intelligence Service (*Politiets efterretningstjeneste*)	Annual report on crimes with a possible extremist background (*Kriminelle forhold […] med mulig ekstremistisk baggrund*)
EE	Crimes against civil and political rights	Ministry of Justice	Annual crime statistics
EL	Incidents of racist violence	National Commission for Human Rights and Office of the UN High Commission for Refugees in Greece	System established October 2011 No data published at the time of going to print
ES	*National level, Basque Country, Catalonia and Navarra:* racist and xenophobic acts *Catalonia*: homophobic crime	*National level, Basque Country, Catalonia and Navarra*: Ministry of Labour and Education (*Ministerio de Trabajo e Inmigración*) *Catalonia*: Barcelona provincial prosecutor (*Fiscalía Provincial de Barcelona*) hate crime and discrimination service (*Servicio de Delitos de Odio y Discriminación*)	System reformed November 2011 No data published at the time of going to print

Table 3: (cont'd)

EU Member State	Recorded data, According to the recording authority's own definition	Recording authority	Publication of data
FI	Hate crime incidents recorded by the police	Police College of Finland	Annual report on hate crimes reported to the police in Finland (*Poliisin tietoon tullut viharikollisuus Suomessa*)
FR	Cases of racist, anti-religious and antisemitic crimes registered by tribunals; racist, xenophobic and antisemitic incidents	National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme*)	Annual report on the fight against racism, antisemitism and xenophobia (*La lutte contre le racisme, l'antisémitisme et la xénophobie*)
HU	Number of criminal cases	Unified Investigation and Prosecution Statistical Database (*Egységes Nyomozóhatósági és Ügyészségi Bűnügyi Statisztika*)	Data not published
IE	Racist crime	Central Statistical Office	Data on reported racist crime published on the website of the Office for the Promotion of Migrant Integration
IT	Discriminatory acts against minorities motivated by ethnic or racial origin, religious beliefs, sexual orientation, gender identity and disability	Italian National Police (*Polizia di Stato*), Observatory for security against discriminatory acts (*Polizia di Stato, Osservatorio per la sicurezza contro gli atti discriminatori*)	Data published as an aggregated figure of discriminatory acts
LT	Cases, pre-trial investigations and number of court cases/ people sentenced in relation to discrimination on grounds of nationality, race, sex, descent, religion or belonging to other groups, and in relation to incitement against any national, racial, ethnic, religious or other group of persons	Information Technology and Communications Department, Ministry of the Interior (*Informatikos ir ryšių departamentas prie Vidaus reikalų ministerijos*)	Statistical reports on crimes published on the website of the Information Technology and Communication Department, Ministry of the Interior
LU	Offences against persons, racial discriminations (*Infractions contre les personnes, discriminations raciales*)	Luxembourg Police (*Police grand-ducale*)	Annual activity report of the police (*Rapport d'activité de la Police grand-ducale*)
LV	Number of criminal cases initiated in relation to incitement to national, ethnic and racial hatred	Information Centre of the Ministry of Interior (*Iekšlietu ministrijas Informācijas centrs*)	Data published as an aggregate figure of criminal proceedings initiated regarding incitement of national and race hatred during the previous year
MT	Racist crime	Malta Police Force	Data not published

Table 3: (cont'd)

EU Member State	Recorded data, According to the recording authority's own definition	Recording authority	Publication of data
NL	Incidents of criminal discrimination (*Door de politie geregistreerde en aangeleverde incidenten met een discriminatoir karakter*)	Police's National Expertise Centre on Diversity (*Landelijk Expertisecentrum Diversiteit van de Politie*)	Data published: annual report on criminal discrimination (*Criminaliteitsbeeld discriminatie*)
PL	Initiated proceedings and ascertained crimes relating to hatred based on national, ethnic, racial or religious differences; cases with racist or xenophobic motives handled by prosecutorial offices; final convictions pursuant to relevant articles of the criminal code	Temida, Police Crime Statistics System; State Prosecution; National criminal register	Data published on the websites of the national police and of the General Prosecutor
PT	Crimes of racial and religious discrimination recorded by the police	Ministry of Justice	Data not published
RO	Number of criminal cases	General Public Prosecutor's Office	Data not published
SE	Offences reported to the police with an identified hate crime motive (*polisanmälningar med identifierade hatbrottsmotiv)*	Swedish National Council for Crime Prevention (*Brottsförebygganderådet*)	Annual report on statistics relating to offences reported to the police with an identified hate crime motive (*Statistik över polisanmälningar med identifierade hatbrottsmotiv*)
SI	Criminal offences including racial, ethnic or religious intolerance as a motive	Police Directorate (*Policijske uprava*)	Data not published
SK	Racially motivated crime, prosecuted and investigated persons (*rasovo motivovaná trestná činnosť, údaje o stíhaných a vyšetrovaných osobách*); extremist crime	Ministry of Interior, Police (*Ministerstvo vnútra, Polícia*)	Monthly report on crime statistics (*Štatistika kriminality v Slovenskej republike*)
UK	*England, Northern Ireland & Wales*: recordable crimes under Home Office recording rules *Scotland*: racist incidents recorded by the police; racist hate crime charges	*England, Northern Ireland & Wales*: Association of Chief Police Officers *Scotland*: Procurator Fiscal	*England, Northern Ireland & Wales*: recorded hate crime from regional forces in England, Wales and Northern Ireland *Scotland*: annual report on hate crime

Source: FRA desk research and FRA analysis of data provided by the FRA's research network

Table 4: Official data pertaining to hate crime published in 2010 by bias motivation, by EU Member State

EU Member State	Racism/ Xenophobia	Antisemitism	Sexual orientation	Extremism	Religious intolerance	Islamophobia	Anti-Roma	Disability	Gender identity	Other/ unspecified
AT	✓ 64	✓ 27		✓ 335		✓ 8				✓ 146
BE	✓ 924	✓ 2	✓ 58							✓ 49
BG	✓ n/a									✓ n/a
CY	✓ 32									
CZ	✓ 226	✓ 28		✓ 252			✓ n/a			
DE	✓ 285	✓ 1,166		✓ 20,811						
DK	✓ 62		✓ 30		✓ 10					✓ 37
EE										✓ 86
EL	✓ n/a									
ES	✓ n/a		✓ n/a							
FI	✓ 741	✓ 4	✓ 43		✓ 52	✓ 15		✓ 20	✓ 5	
FR	✓ 886	✓ 466		✓ 127		✓ 100				
HU	✓ n/a									✓ n/a
IE	✓ 122	✓ 12								
IT	✓ n/a									✓ n/a
LT	✓ n/a	✓ n/a								✓ n/a
LU	✓ 24									✓ n/a
LV	✓ n/a									✓ n/a
MT	✓ n/a									
NL	✓ 1,168	✓ 286	✓ 660	✓ 139	✓ 108	✓ 93	✓ 4	✓ 7	✓ 17	✓ 668
PL	✓ n/a	✓ n/a	✓ n/a			✓ n/a	✓ n/a	✓ n/a		✓ n/a
PT	✓ n/a									✓ n/a
RO										
SE	✓ 3,786	✓ 161	✓ 770	✓ 444	✓ 552	✓ 272	✓ 145		✓ 31	✓ 818
SI	✓ n/a				✓ n/a					
SK	✓ 114			✓ 51						
UK	✓	✓	✓		✓			✓	✓	
UK – England, Wales & Northern Ireland	31,486	488	4,883		2,007			1,569	357	
UK – Scotland	4,513	448			693			50	14	

Notes: *Data are **not** comparable between EU Member States.*
Data are included for 2010 as later data were not available at the time of print for all EU Member States that publish official data.
"n/a" means that data for this bias motivation were not published in 2010.
Data for Scotland cover the fiscal year: April 2010 to March 2011.

Source: *FRA desk research and FRA analysis of data provided by the FRA's research network*

On this basis, official data collection mechanisms pertaining to hate crime in the 27 EU Member States can be classified into three broad categories (Table 5). 'Official data' is understood here as encompassing data collected by law enforcement agencies, criminal justice systems and relevant state ministries. The categories relate to the scope and transparency of these mechanisms.

- *Limited data*: data collection is limited to a few incidents and to a limited range of bias motivations. The data are not usually published.
- *Good data*: data are recorded on a range of bias motivations and are generally published.
- *Comprehensive data*: a broad range of bias motivations, types of crimes (such as assault, threat, etc.) and characteristics of incidents are recorded. The data are always published.

EU Member States with comprehensive data collection mechanisms do not, necessarily, have the highest rates of hate crime. These mechanisms simply record the incidence of hate crime more efficiently and are more transparent when it comes to publishing data. In contrast, EU Member States with limited data collection – where few incidents are reported, recorded and therefore prosecuted – can be said to be failing in their duty to effectively tackle hate crime in all its diversity.

EU Member States with limited data collection mechanisms pertaining to hate crime

Thirteen EU Member States can be said to operate limited data collection mechanisms pertaining to hate crime: Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Slovenia and Spain.

Judicial and law enforcement bodies in Bulgaria use data collection mechanisms based on the classification of crimes listed in the criminal code. Bulgaria included violence or hatred motivated by someone's race, nationality, ethnicity, religion or political convictions in the criminal code as distinct forms of crimes in May 2011. Prior to this, crimes that would now fall under these categories were treated as 'hooligan violence', a category that covered several offences, such as propagating racial or ethnic hostility or perpetrating acts of violence based on someone's political convictions.

While Bulgarian police statistics on crimes against national and racial equality record the type of crime as well as the sex, age, citizenship and ethnicity of offenders and victims, specific statistics on racist crime are not collected separately. These statistics are

Table 5: Classification of official data collection mechanisms pertaining to hate crime, information current as of September 2012, by EU Member State

Limited data	Good data	Comprehensive data
Few incidents and a narrow range of bias motivations are recorded *Data are usually not published*	*A range of bias motivations are recorded* *Data are generally published*	*A range of bias motivations, types of crimes and characteristics of incidents are recorded* *Data are always published*
Bulgaria Cyprus Estonia Greece Hungary Ireland Italy Latvia Luxembourg Malta Portugal Slovenia Spain	Austria Belgium Czech Republic Denmark France Germany Lithuania Poland Slovakia	Finland Netherlands Sweden United Kingdom
Romania*		

Notes: *Limited data refers to data collection which is limited to a few incidents and to a limited range of bias motivations. The data are not usually published.*
Good data refers to data collection which records a range of bias motivations are the data are generally published.
Comprehensive data refers to data collection which covers a range of bias motivations, types of crimes and characteristics of incidents are recorded and data are always published.
** No evidence on hate crime data collection was found for Romania.*

Source: *FRA desk research and FRA analysis of data provided by the FRA's research network*

aggregated with data on other crimes, including those against political rights, the inviolability of premises and vehicles, privacy of correspondence or freedom of assembly. These data are not published.

The Cyprus police collect data on 'Serious Offences – Racial Incidents' which it publishes on its website. The police publish data on racist crimes against persons, against property and verbal assaults, hate speech/acts/threats as well as court rulings on their website, with data current up to the year 2010.

Official statistics in Estonia relate to a limited number of offences that are not directly related to hate crime. The Ministry of Justice records these offences under the heading of crimes against civil and political rights: incitement to hatred; violations of equality; discrimination based on genetic information; and violations of freedom of religion.

A network of non-governmental organisations (NGOs) for the collection of data on incidents of racist violence was established in Greece in September 2011, on the initiative of the National Commission for Human Rights and the United Nations High Commissioner for Refugees (UNHCR). In time, this network aims to encourage the authorities to formalise hate crime monitoring and reporting mechanisms.[88]

Six types of offences included in Hungary's criminal code can be indirectly related to hate crime: genocide; segregation; violence against members of a community; incitement against a community; using totalitarian symbols; and denying, doubting or trivialising genocide/crimes against humanity committed by totalitarian regimes. When consulted, the Unified Investigation and Prosecution Statistical Database (*Egységes Nyomozóhatósági és Ügyészségi Bűnügyi Statisztika*), however, returns only a small number of cases related to crimes with these motivations. Nevertheless, a new criminal code is due to come into force on 1 July 2013, which will include provisions relating specifically to crimes motivated by sexual orientation or gender identity.

Little official data are available on hate crime in Ireland, with the aggregated figure the Central Statistical Office (CSO) publishes yearly relating to racially and religiously motivated crime. The CSO also collects data on antisemitic incidents, which are available upon request. In 2006, when the CSO assumed responsibility for data previously published by the police, restrictions were put in place on what data can be made publicly available. Although some information on recorded offence categories are available upon request, detailed data on hate crime, such as victim and offender characteristics, types of offences or court rulings or convictions, can no longer be identified as a result of this change.

Data collection in Ireland is also limited because criminal law does not define racist or related hate offences as specific offences, nor does it expressly provide for the taking into account of racist motivation as an aggravating factor. Offences where racism is a motivating factor are usually prosecuted as generic offences. Furthermore, the 2008 Irish Crime Classification System, which classifies criminal offences, does not cover offences with a suspected hate motivation.

The Observatory for security against discriminatory acts (*Osservatorio per la sicurezza contro gli atti discriminatori*, Oscad) established in Italy in September 2010 allows for the official monitoring of discriminatory acts against minorities motivated by ethnic or racial origin. Oscad is housed at the Department of Public Security within the Ministry of Interior and works under the authority of the Central Direction of the Criminal Police. Among other activities, Oscad determines whether discriminatory acts against minorities motivated by ethnic origin can be prosecuted as criminal offences.

The Italian Parliament voted down a bill that would have set rules to protect victims of crime motivated by homophobia or transphobia (*Norme per la tutela delle vittime di reati per motivi di omofobia e transfobia*) in July 2011, the predecessor of which had been rejected in October 2009.[89] This vote means that crimes motivated by sexual orientation or transgender identity will still not appear in official statistics; the police will still not record homophobia or transphobia as crime motives, as these are not covered by criminal law, nor will they be considered aggravating circumstances in the commission of other crimes.

The police forces in Latvia collect data on the number of criminal cases initiated in relation to incitement to national, ethnic and racial hatred. The Information Centre of the Ministry of Interior (*Iekšlietu ministrijas Informācijas centrs*), which maintains the national crime register, collects data on the number of cases relating to incitement to religious hatred and to interference with religious rituals.

In its annual report on crime, the Luxembourg police report the number of incidents of racial discrimination that occurred in the country, without further elaboration. The criminal code contains provisions relating to all forms of discrimination that could relate to hate crime under the same title (Section VI: Of racism, revisionism and other discriminations – *Chaptire VI: Du racisme, du*

88 Greece, National Commission for Human Rights and UNHCR Greece (2011).

89 Italy, Italian Parliament (2011).

révisionnisme et d'autres discriminations).[90] Information as to the number of cases brought before the courts in relation to that title is available only upon request from the prosecution services, without detail as to the motives underlying these cases.

Official data in Malta are recorded solely for racist crimes. The police collect this information, making it available upon request.

The Portuguese Directorate-General for Justice Policy (*Direcção-Geral da Política de Justiça*) at the Ministry of Justice collects data on crimes with racist and religious motives and on related forms of discrimination. What little information is available relates to the number of crimes the police register and the number of court cases per year, without elaboration on the type of offence or the legal provisions they fall under. The legal database of the Institute for Information Technologies in the Judicial System *(Instituto das Tecnologias de Informação na Justiça*) provides limited information on criminal cases brought before second instance courts or the Supreme Court. This information is presented in the form of percentages of the total number of cases that relate to racial and religious discrimination.

The Slovenian police is the only state agency that collects data on racially and religiously motivated offences and that only for a limited number of cases. Other state agencies keep records in accordance with relevant provisions of the criminal code, but this information is generally not disaggregated by motive. The Statistical Office is the most comprehensive source of data on criminal offences handled by the prosecution service and the courts. However, due to the methodology of data collection adopted by the service, the system in place cannot account for hate crimes. The prosecution service and the courts simply record the number of persons against whom proceedings have been concluded without reference to the number of cases or to the nature of the criminal offences.

The crime statistics system in Spain was amended in 2011, resulting in the recording of racist/xenophobic acts at the national level as well as in the autonomous regions of the Basque Country, Catalonia and Navarra.[91] No national data collection mechanism pertaining to other bias motivations existed when this report went to print, although the autonomous region of Catalonia also collects data on homophobic incidents. The latter stems from the appointment, at the beginning of 2008, of a dedicated prosecutor charged with investigating cases of discrimination on grounds of sexual orientation and gender identity in Barcelona. In 2009, the Barcelona provincial prosecutor (*Fiscalía Provincial de Barcelona*) set up a hate crime and discrimination service (*Servicio de Delitos de Odio y Discriminación*), the first such body in Spain;[92] it became operational in October 2009.

EU Member States with good data collection mechanisms pertaining to hate crime

Nine EU Member States have good official data collection mechanisms pertaining to hate crime that record data on hate crimes with different bias motivations. These data are generally made publicly available: Austria, Belgium, Czech Republic, Denmark, France, Germany, Lithuania, Poland and Slovakia.

Official data collection mechanisms pertaining to hate crime in Austria record data on crimes motivated by racism/xenophobia, right-wing extremism, antisemitism and Islamophobia. In its annual report on the protection of the constitution (*Verfassungsschutzbericht*),[93] the federal agency for state protection and counter-terrorism at the Ministry of the Interior (*Bundesministerium für Inneres – Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*) publishes data on the numbers of recorded politically motivated criminal offences and prosecutions initiated in the preceding year. The prosecution services in Austria record data covering cases relating to incitement to hatred (*Verhetzung*); to the Prohibition Statute (*Verbotsgesetz*) and other behaviour connected with Nazi ideology, including that covered by the law on insignia (*Abzeichengesetz*); and to other relevant crimes covered by the criminal code, such as damage to property, bodily injury or dangerous threats.

Official data concerning hate crimes in Belgium are collected by the national equality body (Centre for Equal Opportunities and Opposition to Racism, CEOOR), the prosecution services and the federal police. Each of these bodies uses different criteria when recording hate crime. Despite the discrepancies, these data collection mechanisms all record hate crimes based on race, skin colour, ethnicity, nationality, language, religion, sexual orientation, gender, disability, wealth, political or philosophical convictions, social origin and health condition. In addition, the prosecution services apply specific registration codes for crimes motivated by racism and homophobia; CEOOR uses specific registration codes for antisemitic and Islamophobic acts; and the federal police maintain a database on acts connected with xenophobia and racism.

90 Luxembourg, Grand Duchy of Luxembourg (2011).
91 Spain, Ministry of Labour and Immigration (2011).
92 Spain, Barcelona Provincial Prosecution Service, Hate Crimes and Discrimination (2010).
93 Austria, Ministry of Interior, Federal Agency for State Protection and Counter-terrorism (2011).

Three independent bodies collect official data on hate crime in the Czech Republic: the police, the public prosecution services and the courts. For the police, data on hate crime incidents are recorded by the public order service (*Pořádková služba Policie ČR*), the department for the detection of organised crime (*Útvar pro odhalování organisovaného zločinu*), the general crime unit (*orgán obecné criminality*), the municipal police (*obecní policie*), customs officers (*celní správa*) and the transport police (*dopravní policie*). Official data collection on hate crime covers racism/xenophobia, extremism and those motivated by anti-Roma considerations.

The Security and Intelligence Service (*Politiets efterretningstjeneste*, PET) in Denmark records criminal acts with an extremist background covering five motives: racism; religion; political orientation; sexual orientation; and uncertain extremist motive. Local police forces have provided data to the PET since 1992. The reporting procedure was reformed in 2001 and again in 2008 (coming into force on 1 January 2009), with the result that the PET's annual report now refers to criminal acts with a possible extremist background (*Kriminelle forhold med mulig ekstremistisk baggrund*)[94] rather than to the previous: criminal acts with a possible racist or religious background (*Kriminelle forhold med mulig racistisk eller religiøs baggrund*).[95]

In 1990, the national consultative commission on human rights (*Commission nationale consultative des droits de l'homme*, CNCDH) in France was mandated with compiling an annual report on the incidence of racism, antisemitism and xenophobia. This report collates and analyses data gathered by the police and the ministries of the Interior, Justice and Education on the numbers of incidents and on court cases involving racism, antisemitism and xenophobia. The report also comprises data collected by leading NGOs active in the field. Data are reported on the numbers and types of racist and antisemitic acts and threats and where they take place on the national territory, as well as on court cases and on governmental activity in the fight against racism, xenophobia and antisemitism.

Official data collection mechanisms in Germany record the incidence of politically motivated crimes inspired by left-wing considerations (*Politisch motivierte Kriminalität – links*), right-wing considerations (*Politisch motivierte Kriminalität – rechts*), or when committed by foreigners (*Politisch motivierte Ausländerkriminalität*). The Ministry of Interior (*Bundesministerium des Innern*) publishes information on these crimes in its annual report on the protection of the constitution (*Verfassungsschutzbericht*),[96] which also provides detailed breakdowns of extremist crimes (*Extremistische Straftaten*) committed by left- and right-wing sympathisers and by foreigners.

Germany's official data collection system also distinguishes between violent and non-violent crimes, with both further categorised according to the nature of the crime committed, such as attempted murder, arson or bodily harm. Violent crimes with an extremist background (*Gewalttaten mit extremistischem Hintergrund*) are further broken down into: xenophobic violence; antisemitic violence; violence against (presumed) left- or right-wing extremists; violence against other political opponents. The breakdowns detail the provinces (*Länder*) where extremist violent crimes are committed, though this level of detail is not provided for non-violent crimes. Data on other forms of hate crime motivated by a person's homelessness, sexual orientation or disability were published as a one-off in April 2009, in answer to a parliamentary question relating to German police recording of crimes motivated by hate in the period 2001–2008 (*Polizeiliche Erfassung hassmotivierter Delikte seit 2001*).[97]

The introduction of the concept of hate crime and the adoption of the Framework Decision on Racism and Xenophobia into national law in Lithuania broadened the scope of what legally constitutes a bias motivation to include age, gender, sexual orientation, disability, race, nationality, language, ethnicity, social status, religion, beliefs or convictions. The Ministry of Interior set up a system of data collection on crime and criminal investigations in 2006. The system collects data in relation to several articles of the criminal code, which foresees liability for discrimination on grounds of nationality, race, sex, descent, religion or belonging to other groups; incitement against any national, racial, ethnic, religious or other groups of persons; and activities of groups and organisations aiming at discriminating against other groups of persons or inciting against them. All of these articles include, as prohibited grounds of discrimination, gender, sexual orientation, race, nationality, language, descent, social status, religion, convictions or beliefs.

Furthermore, Lithuania considers motivation based on hatred towards persons due to their gender, sexual orientation, race, nationality, language, descent, social status, religion, convictions or beliefs as aggravating circumstances in the commission of crimes. Detailed information on the bias motivation of a crime or on the characteristics of the victim and the offender is, however, not publicly available, although disaggregated

94 Denmark, Security and Intelligence Service (2010).
95 Denmark, Security and Intelligence Service (2009).
96 Germany, Ministry of Interior (2011).
97 For the parliamentary question, see German Parliament (2009a); for the answer, see German Parliament (2009b).

data extracted from the registry can be obtained upon written request.

Several official data collection mechanisms are used to monitor hate crime in Poland: the police's crime statistics system, *Temida*; the general prosecution service, based on data provided by prosecutorial appeals offices; and the national criminal register. Each of these mechanisms uses different methods to collect data on hate crime.

Temida records data in relation to provisions of the criminal code, and can generate detailed information on the gender, age and citizenship of the perpetrators of ascertained crimes, as well as on the citizenship of the victims of hate crime. It can also provide information on the number of cases where charges were pressed, on how many cases were referred to family courts, and on the number of motions to dismiss for failure to establish perpetrators of a given act.

Prosecutors in Poland are required to review cases with racist or xenophobic motives handled by their offices on a quarterly basis. The general prosecution then compiles the results of these reviews into biannual reports detailing the number of proceedings, new cases, cases in progress and completed cases with the reason for completion, such as indictment, refusal to initiate preparatory proceedings or dismissal. These reports sometimes also refer to the nature of the reported crimes, for example, whether they were committed using the internet or if they were related to the behaviour of sports fans.

The Ministry of Justice maintains the national criminal register and records information on those who were convicted of crimes, including their gender, age, citizenship, criminal record and where the crime was committed. The national criminal register can return data on crimes motivated by homophobia, antisemitism, Islamophobia, anti-Roma considerations and disability.

Slovakia collects official data for racist and extremist crimes. Statistical data are collected by: the national equality body, the National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*); the police, through the Ministry of the Interior, which discloses monthly statistics on criminal offences on its website; and the General Prosecution Service, which does not specify the motivations underlying criminal offences. The information it records relates to the type of crime, the provisions of the law it relates to and whether or not racially motivated criminal offences were of a violent nature. Judicial decisions must be published and freely available on the internet since 1 January 2012, as a result of the coming into force of an amending piece of legislation on 1 May 2011.[98] Since 1 January 2012, courts are also obliged to make judgments and procedural decisions accessible to whomever requests this information, on the basis of the Act on Free Access to Information (*Zákon o slobodnom prístupe k informáciám*).

EU Member States with comprehensive data collection mechanisms pertaining to hate crime

Comprehensive data collection mechanisms recording a variety of bias motivations, characteristics of victims and perpetrators and further information on incidents are in place in Finland, the Netherlands, Sweden and the United Kingdom.

Prior to 2008, the only official data source on hate crime in Finland, the annual report of the Police College, dealt exclusively with racist crime and violence. Since then, the report has been extended to include crimes motivated by someone's religious background, sexual orientation, transgender identity or disability. All the data collected for this report stem from the police information system, which records detailed data on crimes and misdemeanours and on the persons concerned. Information is extracted from the system using a predefined word list relating to 89 crimes. The information system is set up in such a way that, when searched, it returns data on the types of incidents, such as assault and battery or threat, and on the country of birth, age group and gender of the victims and of the suspected perpetrators.

In Sweden, data on hate crime are compiled annually by the national council for crime prevention (*Brottsförebyggande rådet*, Brå) in its report on hate crime (*Hatbrott*). This report consists primarily of statistical summaries of hate crimes reported to the police. Brå identifies hate crimes based on searches and examinations of the narrative included in police reports. In 2008, hate crime was redefined, expanding its scope to include offences between minority groups and offences by minority groups against majority groups. New motives were also added to the definition of hate crime, such as that targeting 'Afro-Swedes' and Roma. Overall, official data collection mechanisms account for crimes motivated by: xenophobia/racism, including

98 Act no. 33/2011 Coll. that amends and supplements Act No. 385/2000 Coll. on judges and lay judges and on amending and supplementing certain Acts, as amended, and that amends and supplements certain Acts *(Zákon 33/2011 Z.z. ktorým sa mení a dopĺňa zákon č. 385/2000 Z. z. o sudcoch a prísediacich a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony).*

Afrophobic, anti-Roma; religion, including Islamophobia, antisemitism and others; sexual orientation, including homophobia, biphobia, heterophobia; and, transgender identity, or transphobia.

Data collection mechanisms in Sweden account for the nature of the contact between the victim and the perpetrator, such as direct contact, vicinity, and distance; the scene of the crime; the relationship between the victim and the perpetrator; the type of crime; and the regional distribution of crimes.

The official data collection system in the Netherlands relates to acts of criminal discrimination and covers a broad range of bias motivations. Since 2008, the Netherlands has mandated each of its 25 police regions to keep a register of criminal acts of discrimination, with the police's national expertise centre on diversity (*Landelijk Expertisecentrum Diversiteit van de Politie,* LECD) responsible for recording these incidents centrally since 2009. In its annual report (*criminaliteitsbeeld discriminatie*),[99] the LECD covers eight bias motivations, most of which comprise sub-categories:

- sexual orientation: homosexual, heterosexual;
- origin/ethnicity: indigenous (*autochtoon*), Western foreigner (*westers allochtoon*), Turkish, Surinamese, Moroccan, Antillean, of white skin colour, dark-skinned (non-white), Roma/Sinti, other or not specified;
- antisemitism;
- religion/belief: non-religious, Muslim, Christian, other or not specified;
- gender: male, female, transsexual, transvestite, other or not specified;
- political conviction: fascism or right-wing extremism, other or not specified;
- disability: physical, mental, physical and mental, other or not specified;
- other grounds.

A single recorded incident can cover several of these grounds. The annual report provides disaggregated data on the gender of victims and perpetrators, on the grounds of discrimination (sexual orientation, disability, etc.), on the type of discrimination (threat, insult, etc.), and on the geographical (25 police regions) and spatial (school, mosque, synagogue, etc.) locations where incidents occur.

While the United Kingdom has comprehensive data collection mechanisms pertaining to hate crime, the situation there is complicated by the fact that Scotland records official statistics separately and differently than England & Wales and Northern Ireland.

99 Netherlands, Police's National Expertise Centre on Diversity (2011).

In England & Wales and Northern Ireland, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service use the following definition of hate crime: "Any criminal offence which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender."[100]

The ACPO collects and publishes data on the total number of recorded hate crimes from regional forces in England & Wales and Northern Ireland, covering the following bias motivations: racism, religion, sexual orientation, transphobia, disability and antisemitism. Police forces in England & Wales and Northern Ireland have been collating data on these strands of hate crime since April 2008.[101]

The Crown Prosecution Service publishes an annual report on hate crimes and crimes against older people, focusing on the outcomes of prosecutions. Next to crimes against older people, the report focuses on racially and religiously aggravated hate crime, homophobic and transphobic hate crime, and disability hate crime.[102]

The Scottish government collects and publishes data on racist incidents recorded by the police, while the services of the Prosecutor Fiscal collect and publish data on a range of bias motivations: racism, religion, disability, sexual orientation, transgender identity.

Challenges and complexities in official data collection on hate crime

The previous section has shown that many gaps exist in official data collection on the incidence of hate crime in the EU. The absence of official data on any given type of hate crime is due to a number of factors, such as a mistrust of reporting incidents to the authorities by individuals or groups vulnerable to such crime, or authorities' lack of capacity to record incidents as 'hate crimes'. The existence of such gaps does not imply that every EU Member State should introduce data collection categories relating to every possible bias motivation; instead, categories of bias motivations recorded at the national level should, as much as possible, reflect the reality on the ground. There are many challenges and complexities inherent to recording data on hate crime.

100 Crown Prosecution Service (2012).
101 Association of Chief Police Officers (2012).
102 Crown Prosecution Service (2012).

These challenges relate to the types of events that are recorded, to the time frame when they are recorded, to changes in the law that lead to changes in what data are collected, to changes in data collection mechanisms from one year to the next, to the socio-historical context of data collection in each EU Member State, as well as to the degree to which Member States have acknowledged and effectively responded to hate crimes, as the examples below illustrate.

Although the United Kingdom is often held up as an example of how official data collection on hate crime could be carried out elsewhere, Scotland implements a different system of data collection to the one used in England & Wales and Northern Ireland. This makes it difficult to generate comparable data on the incidence of hate crime in the United Kingdom as a whole.

In other EU Member States, such as the Netherlands, the same incident can be recorded in several categories, although available records do not show where this has been done. Similarly, in Austria, a single politically motivated crime can be recorded as relating to several offences, which can result in the filing of separate complaints before the courts in relation to the same incident.

Another complicating factor when considering hate crime is that sometimes it is not possible to make within-country comparisons from one year to the next, which compromises trend analyses. This is the case because EU Member States can, and often do, change the rules under which they record crime. The Czech Republic, Poland, the Netherlands and, within the United Kingdom, Scotland all altered their rules in 2010. Still within the United Kingdom, Northern Ireland modified data collection practices in April 2011 to align them with England & Wales.[103] The Republic of Ireland also changed its classification, compilation and dissemination systems between 2005 and 2009.

The Netherlands published the first national annual report on criminal discriminatory incidents recorded by the police in 2009. Prior to that, the Netherlands did not have a uniform national recording system; instead, each of its 25 police regions used its own. In 2010, the recording system was again changed, resulting in differences between that year and previous ones that could have reflected those changes rather than an actual evolution on the ground.

Finland changed its recording system in 2008, when the police academy began recording not only incidents motivated by the victim's ethnic or national origin, but also incidents motivated by the victim's religious background, sexual orientation, transgender identity or disability. Similarly, Sweden reformed its hate crime recording system for the third time in a decade in 2008, expanding the scope of hate crimes to a broader variety of categories.

In 2009, the Security and Intelligence Service (*Politiets efterretningstjeneste,* PET) in Denmark collapsed three types of 'extremist crime' into a single category of 'racially motivated crime' incorporating actions by Danes against non-Danes, actions by non-Danes against Danes, and actions by non-Danes against non-Danes.[104] This change was applied retroactively to incidents recorded in 2008. However, PET also added two new categories of 'extremist crime' in 2009, without applying that change retroactively: crime motivated by the perpetrator's extremist political orientation and crime motivated by the victim's sexual orientation. This means that although aspects of extremist crime that occurred in 2008 can be compared against what occurred in 2009, changes in the absolute numbers of extremist crimes recorded in Denmark between these years and previous years are not comparable.

Conclusions

This section has shown that there is a great degree of variation in how the 27 EU Member States deal with hate crime. This variation reflects how such criminality is approached, which has a direct effect on how law enforcement agencies and criminal justice systems handle it. Narrow legal definitions of what constitutes hate crime, for instance, tend to lead to under-recording of incidents, which translates into low numbers of prosecutions, thereby affording victims of crime fewer opportunities to seek redress.

The report has also shown that there are many challenges inherent to recording data on hate crime. As a result, while it is possible to map official data collection mechanisms pertaining to hate crime in the 27 EU Member States, only a patchy picture of the incidence of this type of crime can emerge from the data that are currently recorded in the EU (see Table 4, p. 35). If systems to record hate crime are inadequate, EU Member States may be unable to meet the obligations of the national and international legal instruments to which they are party and afford people the protection they are guaranteed.

Against this backdrop, the overview presented here of official data collection mechanisms pertaining to hate crime in the 27 EU Member States must be read with care and caution; attention must be paid to avoid drawing comparisons that cannot be made. As the European Commission points out, "Different expert groups and organisations compile available national

103 Police Service of Northern Ireland (2011).

104 Denmark, Security and Intelligence Service (2010), p. 5.

[crime] statistics and make efforts to compare levels and trends. However, national statistics differ on so many factors that comparisons between countries, even with extensive efforts to make them comparable, are almost impossible."[105]

This does not mean abandoning any attempt at drawing the contours of the situation of hate crime in the EU. On the contrary, other avenues to make hate crime visible are available to policy makers, law enforcement agencies and criminal justice systems, thereby ensuring that victims of hate crime are able to seek redress. Next to including clear-cut definitions in national legislation of what constitutes hate crime, EU Member States can rely on crime victimisation surveys to supplement official data collection to gather data on hate crime; these surveys "ask people in the community directly about their experiences of crime. Counts of victims identified through surveys may not appear in official police statistics, as the crime may not be reported and/or recorded by police, therefore victimization estimates produced from surveys are likely to be higher than data sourced from police records".[106] Not only can such surveys shed light on the dark, or unreported, figure of crime, but they also provide invaluable data on the experiences of victims of hate crime, as the final section of this report shows.

105 European Commission (2006), p. 3.

106 United Nations Office on Drugs and Crime/United Nations Economic Commission for Europe (2010), p. 5.

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Broadening the scope of official data collection on hate crime: the role of crime victimisation surveys

One of the principal benefits of crime victimisation surveys is that "administrative sources (such as police or judicial statistics) cannot provide a sufficiently reliable and comprehensive analysis of crime on their own. Victimization surveys [...] are now a recognized tool that help governments and their public understand their crime problems and how better to address them."[107] An added benefit of these surveys is their focus on the experiences of victims. By interviewing representative samples of members of the general public and/or of particular populations as to their experiences of crime, such surveys provide practical tools with which to gauge the incidence of crime in the population with more precision. This, in turn, can provide stakeholders with evidence upon which to formulate policies to counter crime and to deal with criminal victimisation more effectively.

In time, "the value of victimisation surveys [has come] to be seen as twofold. First, they [have] an intrinsic capacity to bring into focus the extent of crime problems that affect and trouble ordinary citizens most often [...] Secondly, if surveys [are] conducted at regular intervals with the same methodology, they [have] the capacity to estimate changes in levels of crime over time; the same [goes] for trend measurement of fear of crime and confidence in (components of) the criminal justice system."[108]

Victimisation surveys – both large-scale and small-scale and encompassing different questions – have been carried out in nearly all 27 EU Member States, at more or less regular intervals.[109] Some EU Member States have also carried out victimisation surveys within the framework of the International Crime Victims Survey (ICVS), which serves "to monitor and study volume crimes [that is, crimes with the greatest impact on the community], perception of crime and attitudes towards the criminal justice system in a comparative, international perspective."[110] ICVS 2004/2005 consisted of two parts: one focused on countries outside the EU; the other, the European Survey on Crime and Safety (EU ICS), which was funded by the European Commission, looked at the then 15 EU Member States, plus the then newly acceded Estonia, Hungary and Poland.

Both parts of ICVS 2004/2005 related to 10 common crimes: theft of a car, theft from a car, theft of a motorcycle or moped, theft of a bicycle, burglary, attempted burglary, theft of personal property, robbery, sexual offences, and assault and threat. The survey also collected evidence of people's experiences of "reporting [crimes] to the police, satisfaction with the police, distribution and need of victim support, fear of crime, use of preventive measures and attitudes towards sentencing".[111] In addition, the EU ICS in 2005 asked questions for the first time relating specifically to hate crime. The results of this survey indicate that, in 2004, about 3 % of respondents "experienced hate crimes against themselves or their immediate families",[112] that is, crimes motivated by someone's nationality, race or colour, religious beliefs or sexual orientation.

Immigrants – who represented 15 % of the respondents to the survey – were found to be the most likely to have been the victims of hate crime, with a 10 % victimisation rate against 2 % among non-immigrants.[113] The victimisation rate for immigrants who practice a religion

107 United Nations Office on Drugs and Crime/United Nations Economic Commission for Europe (2010), p. 1.
108 International Victimology Institute Tilburg (2010), p. 2.
109 See Aebi and Linde (2010), for a detailed review of victimisation surveys administered in Europe between 1970 and 2010.
110 van Dijk, van Kesteren and Smit (2007), p. 5.
111 *Ibid.*, p. 12.
112 *Ibid.*, p. 93. See also Figure 19, on the same page, for a detailed breakdown of the percentages by EU Member State.
113 van Dijk, van Kesteren and Smit (2007), p. 94.

(12 %) was found to be higher than that for those who do not (9 %), although religious beliefs in their own right were not found to lead to more or less criminal victimisation; no differences were found between the victimisation rate of respondents who claimed to practice a religion and that of those who claimed not to.

Victimisation rates were found to be consistently higher among immigrants for all forms of crime; "immigrant status enhances the risk of being criminally victimised by any of the ten crimes, independent of other known risk factors such as young age and urban residence. The phenomenon of crimes motivated by racism seems a factor propelling levels of common crime, especially threats & assaults in some European countries."[114]

There are caveats, however. "Prevalence rates of victimisation of immigrants by hate crimes per country are based on very small numbers and large confidence intervals make comparisons less meaningful. On the face of it, immigrants in Belgium, Greece, Spain and Denmark perceive to be victimised by hate crimes most often. Immigrants in Finland, Portugal and Italy reported such crimes least often. The results of the ongoing surveys commissioned by the EU Fundamental Rights Agency can act as a check on these tentative findings."[115] One of these surveys was EU-MIDIS, which is now completed.

EU-MIDIS focused on experiences of discrimination and criminal victimisation; on people's experiences when reporting crime; and on their awareness of the rights they hold when attempting to access or engage with the justice systems. It was the first EU-wide survey relating to victimisation to interview random samples of members of immigrant and ethnic minority groups in the 27 EU Member States.[116] Using a standardised questionnaire, the survey asked a representative sample of 23,500 respondents about their experiences of discrimination based on their status as migrants or as members of ethnic minority groups; their experiences of criminal victimisation and of policing; the extent to which they reported incidents of which they were victims; what were the reasons underlying non-reporting; and their awareness of their rights.

'Racially motivated' or 'racist' crime

These terms are used as shorthand to capture those experiences of crime that interviewees considered happened in whole or part because of their ethnic minority or immigrant background. The terms do not acknowledge the existence of distinct 'races' (see paragraph 6 in the preamble to the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Racial Equality Directive*).[117]

EU-MIDIS shows that sizeable proportions of members of minority and immigrant groups in the EU perceive themselves to be the victims of 'racially motivated' criminal victimisation. Most of these did not report the crimes of which they were victims to any organisation, institution or body. The two most commonly cited reasons for not reporting crimes were a lack of confidence in the police being able to do anything about them and the perception that incidents were too trivial to be worth reporting.

Specifically, the *EU-MIDIS Data in Focus 6* report on 'Minorities as victims of crime' shows that: "On average, 18 % of all Roma and 18 % of all Sub-Saharan African respondents [...] indicated that they had experienced at least one 'in-person crime' in the last 12 months (that is – assault or threat, or serious harassment) that they considered as being 'racially motivated' in some way."[118] The groups with the highest perceived rates of racially motivated in-person criminal victimisation were the Roma in the Czech Republic, Greece, Hungary, Poland and Slovakia; Somalis in Finland and Denmark; and Africans in Ireland, Italy and Malta (Table 6). The overall non-reporting rates for assault or threat ranged from 57 % for ex-Yugoslav respondents to 74 % for Turkish ones, while those for serious harassment ranged from 75 % for ex-Yugoslav respondents to 90 % for Turkish ones (Table 7).

114 *Ibid.*
115 *Ibid.*
116 FRA (2010); FRA (2012c).

117 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of 'racial' or ethnic origin, OJ 2000 L 180 (*Racial Equality Directive*).
118 FRA (2012c), p. 3.

Table 6: In-person crime (assaults, threat or serious harassment) with a perceived racist motive, top 10 most targeted minority and immigrant groups in the 27 EU Member States, 2008

Surveyed group	EU Member State	Percentage of victims
Roma	CZ	32 %
Somali	FI	32 %
Somali	DK	31 %
African	MT	29 %
Roma	EL	26 %
Roma	PL	26 %
Sub-Saharan African	IE	26 %
North African	IT	19 %
Roma	HU	19 %
Roma	SK	16 %

Source: FRA (2010a), p. 67

Table 7: Non-reporting rates of in-person crime by minority and immigrant group in the 27 EU Member States, 2008

	Central and East European	Ex-Yugoslav	North African	Sub-Saharan African	Roma	Russian	Turkish
Assault or threat	69 %	57 %	62 %	60 %	69 %	69 %	74 %
Serious harassment	89 %	75 %	79 %	84 %	84 %	84 %	90 %

Source: FRA (2010a), p. 73

Other FRA work encompassing criminal victimisation includes the following surveys on:

- perceptions and experiences of antisemitism in nine EU Member States;[119]
- discrimination and victimisation of lesbian, gay, bisexual and transgender (LGBT) persons in the 27 EU Member States and Croatia.[120]
- gender-based violence against women across the EU and Croatia.[121]

Taken together, the FRA survey findings provide a more complete picture of the incidence of criminal victimisation in EU Member States and offer a comparative perspective on the situation of hate crime in the EU. The results of the surveys provide stakeholders with concrete evidence upon which to develop and formulate responses to fundamental rights violations or criminal victimisation.

The survey on Jewish people's experiences and perceptions of antisemitism collected information necessary to assessing the effectiveness of the protection afforded by Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Racial Equality Directive*) and the Framework Decision on racism and xenophobia. The scope of the survey and the questions it covers, however, go beyond these instruments, in that it will allow for a comprehensive analysis of the lived experience of antisemitism and its effect on the lives of Jewish people in the nine EU Member States surveyed: Belgium, France, Germany, Hungary, Italy, Latvia, Romania, Sweden and the United Kingdom.

119 See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2012/pub-factsheet-antisemitism-survey_en.htm.
120 See: http://fra.europa.eu/fraWebsite/research/projects/proj_surveys-lgbt-persons_en.htm.
121 See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-vaw-survey-factsheet_en.htm.

This survey is the first of its kind and it will collect comparable data on a number of issues, including:

- perceptions of the extent to which antisemitism is widespread in the public sphere;
- perceived threat of becoming victims of antisemitic attacks;
- experiences of antisemitic attacks against the self and family members;
- experiences of specific forms of harassment, for example through the use of emails, text messages, or the internet and social media;
- experiences of crimes motivated by antisemitism, such as vandalism, or physical assault or threats;
- the reporting of antisemitic incidents to the police or any other organisation and, in cases of non-reporting, the reasons for this;
- awareness of laws against discrimination;
- lived experiences of discrimination.

The survey will provide evidence to assist FRA stakeholders in formulating policies to tackle hate crime, discrimination, the lack of rights awareness and, where relevant, causes underlying non-reporting of incidents of discrimination and antisemitism among Jewish populations. The results of this survey will be published in 2013.

The need for a survey on discrimination and victimisation of LGBT persons was borne out of evidence the FRA collected showing that LGBT persons throughout the EU experience discrimination, bullying and harassment, whether expressed verbally through insults and hate speech, or physically through attacks and assault.[122] This survey covers all 27 EU Member States, plus Croatia. The survey will provide evidence to support the case for introducing EU legislation requiring EU Member States to regulate homophobic and transphobic crime and speech through criminal law. As such, it will gather data on, among others:

- safe environment and 'avoidance behaviour';
- rights awareness;
- knowledge of organisations that can offer support or advice to people who have been discriminated against on the basis of their sexual orientation or gender identity;
- reporting and non-reporting of incidents, and reasons for non-reporting;
- levels of confidence in the authorities;
- behaviour of public servants;
- types of perpetrators, etc.

The data collected in the framework of the survey will, in addition, assist law enforcement agencies in combating crime motivated by someone's sexual orientation or gender identity, by helping them gain a better understanding of the extent of non-reporting of incidents because of, among others, distrust in the police. The data collected as part of the survey will also show whether acts of discrimination by police officers are a frequent occurrence and will indicate in which contexts crimes motivated by someone's sexual orientation or gender identity tend to occur most frequently. The results of this survey will be published in 2013.

Gender-based hate crime often targets women, who can be the victims of various forms of verbal and physical violence across all spheres of society. While surveys on violence against women have been carried out in the past, much of the collected data does not allow for inter-country comparisons, principally because of differences in how violence is defined, in the timeframe when data are collected, in the wording of questions or in methods of data collection. The FRA survey on gender-based violence against women will contribute to addressing these obstacles to comparison by collecting data on women's experiences of violence in all 27 Member States, plus Croatia. Representative samples of 40,000 women in total will be interviewed on their experiences of physical, sexual and psychological violence; the extent to which they report incidents of violence to the police; and, where relevant, the reasons for non-reporting. The results of the survey will provide stakeholders with an evidence base upon which to formulate and implement policies and actions to combat violence against women more effectively. The results will be published in 2013.

Another important contribution to acknowledging victims of crime is the EU Safety Survey (SASU), which has been developed by the statistical office of the EU, Eurostat.[123] If it were to be deployed, SASU would provide comparable data on the situation of criminal victimisation at the level of the EU as whole, including data on trends in victimisation. Next to leading to a better understanding of the situation on criminal victimisation on the ground, SASU would also feed directly into policy processes related to the development of a Victim's Package and a Victims' Roadmap at the EU level.[124]

122 FRA (2009) and FRA (2008).

123 For more information on Eurostat, see: http://epp.eurostat.ec.europa.eu/portal/page/portal/about_eurostat/introduction.

124 See FRA (2012b), pp. 218-219.

Conclusions

This report has shown that making hate crime visible and acknowledging the rights of victims entails taking action at three levels: legislation, policy and practice. At the level of legislation, this means recognising hate crime, the bias motivations underlying it and the effect it has on victims in both national legislation and European law. At the policy level, this means implementing policies that will lead to collecting reliable data on hate crime that would record, at a minimum, the number of incidents of hate crime reported by the public and recorded by the authorities; the number of convictions of offenders; the grounds on which these offences were found to be discriminatory; and the punishments served to offenders. At the practical level, this means putting mechanisms in place to encourage victims and witnesses to report incidents of hate crime as well as mechanisms that would show that authorities are taking hate crime seriously.

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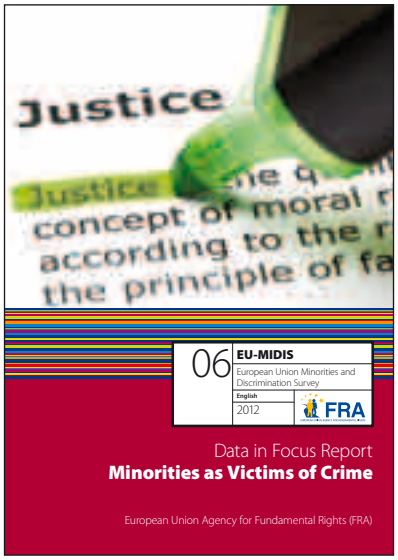

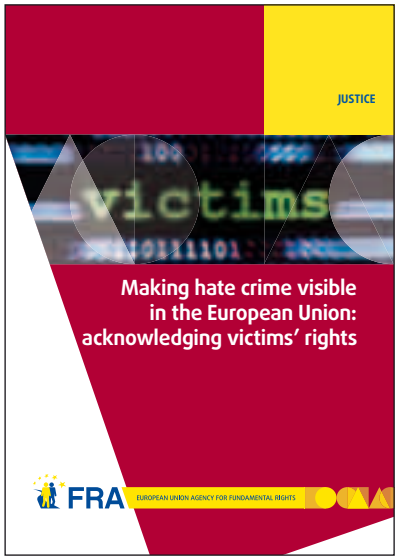

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FRA
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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

Discrimination and intolerance persist in the European Union (EU) despite the best efforts of Member States to root them out, FRA research shows. Verbal abuse, physical attacks and murders motivated by prejudice target EU society in all its diversity, from visible minorities to those with disabilities. Those who commit such 'hate crimes' – a loose term for this troubling reality – are drawn from across society; their crimes cause incalculable damage to victims, families and society as a whole, making it ever more urgent to consider how best to respond. This FRA report is designed to help the EU and its Member States to tackle these fundamental rights violations both by making them more visible and bringing perpetrators to account. This involves encouraging victims and witnesses to report these crimes and increasing their confidence in the criminal justice system's ability to deal with them decisively and effectively.

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