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# Policy Brief

## Hate Crime Victim Support



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Policy Brief

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# 1. Introduction

This policy brief condenses the knowledge and key findings of the Enhancing Stakeholder Awareness and Resources for Hate Crime Victim Support (EStAR) project, implemented by the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), in partnership with the Association of Counseling Centers for Victims of Right-Wing, Racist, and Antisemitic Violence in Germany (VBRG). It distils the guidance contained in the project's publications related to the establishment and strengthening of hate crime victim support into a single accessible set of policy recommendations.

The policy brief identifies gaps in policy related to hate crime victim support and makes recommendations to the participating States of the OSCE that can also be useful for the international policy community.<sup>1</sup> The brief is designed for decision- and policymakers, advisers and analysts at the national, regional and international levels who are responsible for designing, improving and providing protection and support services for victims of hate crime. Moreover, as it summarizes the knowledge from the EStAR project about working with hate crime victims, the brief is intended to be helpful to criminal justice practitioners, advocates working with hate crime victims and bodies concerned with human rights, equality, non-discrimination, inclusion and diversity. The brief also notes the need for the more systematic collection of evidence to further inform hate crime victim support policy and practice. It suggests future research that policymakers, academic and other experts might consider.

OSCE participating States have committed themselves to improving support for hate crime victims. Specifically, they have agreed to:

- take steps to encourage victims to report hate crimes;<sup>2</sup>
- provide hate crime victims with access to counselling and legal assistance, as well as effective access to justice;<sup>3</sup>
- promote the capacity-building of law enforcement authorities through training and the development of guidelines on the most effective and appropriate ways to respond to bias-motivated crime, in order to increase a positive interaction between police and victims to encourage reporting by victims of hate crime;<sup>4</sup> and
- facilitate the capacity-building of civil society to assist victims of hate crimes.<sup>5</sup>

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1 The meaning the international policy community' as used in this policy brief, refers collectively to intergovernmental and international organizations involved in shaping hate crime policy in states, such as the UN, OSCE, European Commission and ECRI .

2 OSCE Ministerial Council, Decision 9/09 "[Combating Hate Crimes](#)", Athens, 2 December 2009.

3 *Ibid.*

4 OSCE Ministerial Council, Decision 13/06 "[Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding](#)", Brussels, 5 December 2006.

5 *Ibid.*

OSCE participating States that are also European Union (EU) Member States are also mandated to transpose the EU's Directive 2012/29, which establishes minimum standards on the rights, support and protection of victims of crime.<sup>6</sup> The EU's Victims Rights' Directive was adopted to improve Member States' responses to the needs of victims and to ensure that victims across the EU enjoy their rights and have equal access to support services. Furthermore, it called on Member States to establish specialized victim support services, either as an integral part of or in addition to a generic victim support service, and stated that these services must offer support depending on the type of victim and type of crime, and required the engagement of multiple actors to ensure specialist services are available to victims.

Based on the above-mentioned legal and political frameworks, ODIHR published in 2020 "Hate Crime Victims in the Criminal Justice System"<sup>7</sup> and subsequently launched the EStAR project together with VBRG, which aims to equip state and civil society actors with the necessary tools and resources to ensure that hate crime victims are protected, enjoy full access to justice and receive tailored specialist support.<sup>8</sup> The project has produced 13 guides, including this policy brief, to inform and enhance hate crime victim support systems.<sup>9</sup>

While this policy brief is intended to be read as a stand-alone document, consulting the other EStAR publications, referenced throughout this brief, will enable a deeper understanding of the rationale for the recommendations made.

## A victim-centred approach

An important contribution made by the EStAR project is the articulation of the "victim-centred approach" to working with hate crime victims. This approach is also valuable for working with victims of other types of crime. The victim-centred approach underpins and informs the recommendations made in this policy brief, and is explained in the EStAR guide *Understanding the Needs of Hate Crime Victims*.<sup>10</sup>

The victim-centred approach acknowledges the hate crime victim as an authority about their own victimization experience, aware of their own needs and wants. It also acknowledges that, although people affected by hate crimes may share a common identity or a range of identities and characteristics, they are individuals with specific and unique needs. The victim-centred approach also recognizes that hate crime victims are

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6 See: "Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA", 25 October 2012.

7 For more information, see: *Hate Crime Victims in the Criminal Justice System* (Warsaw: OSCE/ODIHR 2020).

8 For more information on visit EStAR's project webpage on the [OSCE website](#).

9 *Ibid.*

10 *Understanding the Needs of Hate Crime Victims* (Warsaw: OSCE/ODIHR 2020), pp. 33-36.



not passive and powerless people simply in need of help from others. They have the potential to exercise their own agency – the capacity to act autonomously and make their own decisions and choices. Accordingly, despite being considered a “victim” from a legal standpoint, some victims refuse to identify themselves as such. The term often carries a negative connotation, and is often associated with weakness. Thus, the term “victim” risks denying affected individuals’ resilience, agency and ability to overcome the consequences of victimization. Because of this, the term is used cautiously throughout this policy brief.<sup>11</sup>

A requisite of the victim-centred approach is that any hate crime victim is treated as an equal partner in progressing their case through criminal justice or other rehabilitation processes. Through this approach, they are considered active participants in planning and shaping the required support. This includes victims being party to decisions and playing an active role in the processes that affect them. The principle of “doing with” – rather than “doing for” – the victim is integral to the victim-centred approach. This departs from the common practice of criminal justice professionals and other practitioners who come into direct contact with victims, and make decisions on their behalf. The implication of the victim-centred approach is that the victim and their wants are at the centre of any action, approach or measure undertaken by criminal justice bodies, victim support service providers and practitioners working with victims.

Central to the victim-centred approach is the recognition that hate crime victims have fundamental rights<sup>12</sup> that are protected under international and national law. When these rights are violated, victims have a right to effective remedy, including rehabilitation.<sup>13</sup> This understanding lies at the core of this policy brief.

## Hate crimes are different

A victim-centred approach involves a recognition that hate crimes are different in some key respects from many other types of crime. This insight also lies at the heart of the EStAR project and, hence, this policy brief. A key difference, lies in the perpetrator’s bias against one or more identity characteristics of the victim that motivated their actions. But the difference goes much further. The impact of hate crimes on individual victims and

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11 While caution is exercised in using the term “victim”, it is still made use of in this policy brief for the purpose of consistency with the terminology employed in the main international documents and discourse on hate crime.

12 As noted in the EStAR’s *Policy Brief: Specialist Support for Hate Crime Victims* (Warsaw: OSCE/ODIHR 2022), “international human rights law safeguards hate crime victims’ fundamental rights to dignity, equality, integrity and private life, including protection from repeat and secondary victimization”. The UN “[Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#)” of 29 November 1985 obliges Member States to adopt measures that secure universal recognition and respect for the rights of victims of crime.

13 See, for example: *Victims’ Rights as Standards of Criminal Justice: Justice for Victims of Violent Crime - Part I* (Luxembourg: Publications Office of the European Union, 2019).

communities can be deeper and more profound than that of other types of crimes. This is also explained in the EStAR guide on *Understanding the Needs of Hate Crime Victims*.<sup>14</sup>

A recognition of the differences between hate crimes and other types of crimes underpins and informs the recommendations made in this policy brief. Even so, despite the fact that hate crimes are different from other types of crimes in some critical respects, the policy recommendations made in this brief for hate crime victim support necessitate that some form of generic crime victim support system exists. Moreover, they are also predicated on the recognition that victims of all types of crimes have rights to effective remedies.<sup>15</sup>

## Structure of this policy brief's recommendations

The recommendations in this policy brief are distilled from the essential elements of the EStAR project and are organized in line with the six critical building blocks of a robust hate crime victim support structure, as outlined by the project's Diagnostic Tool for Assessing National Hate Crime Victim Support Systems:<sup>16</sup>

- Legal and policy frameworks, hate crime victims' status;
- Hate crime victims in criminal proceedings and the justice system;
- Sensitive and respectful treatment of hate crime victims;
- Assessing hate crime victims' needs and referrals;
- Hate crime victim support system and structures; and
- Specialist support services for hate crime victims.

The status of crime victims in criminal justice processes and proceedings varies across states. Because of this, the recommendations in this policy brief cannot always currently be translated directly into operational practice. They are intended, therefore, as forward-looking guiding principles for policymaking. Criminal justice systems are constantly evolving. In this context, the guiding policy principles for hate crime victim support recommended in this brief aim to contribute to such an evolution.

Figure 1 summarizes the arrangement and themes of the policy recommendations. Certain themes apply to more than one building block, and they have here been placed

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14 *Understanding the Needs of Hate Crime Victims*, op. cit., pp. 11-15.

15 All UN Member States have obligations concerning crime victims' rights under the UN "[Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#)", op. cit.; and for EU Member States crime victims' rights are spelled out in the Directive 2012/29/EU, op. cit.,

16 See: *Diagnostic Tool for Assessing National Hate Crime Victim Support Systems* (Warsaw: OSCE/ODIHR 2021).

where they have the greatest relevance, in order to avoid repetition. For a quick reference, an overview of all the recommendations offered in this brief can be found in Annex I.

The EStAR project was responsible for the work of the subgroup on hate crime victim support under the European Commission's High Level Group on Addressing Hate Speech and Hate Crime. Based on the learnings and recommendations coming from the EStAR project, some key suggestions for actions to enhance European norms and standards for hate crime victim support are offered in Annex II.

# Figure 1: EStAR Project Themes of Policy Recommendations on Hate Crime Victim Support



## 2. Legal and Policy Frameworks

It is a basic principle of justice that it is as much the responsibility of the state to protect, support and assist victims, and to safeguard victims' rights to effective redress and compensation, as it is to deal with offenders.<sup>17</sup> It is common practice in law for victims of certain categories of crime to be recognized as requiring enhanced protection. Accordingly, given the difference between hate crimes and other crimes, a fundamental foundation to a hate crime victim support system is the recognition of hate crime in law as a distinct type of crime. This enables states to recognize and acknowledge hate crime victims as a distinct category of crime victim, with enhanced protection and support needs, and to make provisions accordingly.<sup>18</sup>

### Ensuring protection for all victims of hate crime

**States should stipulate which core protected characteristics are included in hate crime law and policy and provide guidance about further extending the scope of protected characteristics according to a state's historical, social and cultural context as well as international legal norms.<sup>19</sup> Such guidance should also make it clear that many victims are targeted because of intersections of more than one protected characteristic.**

The EStAR project found that there are significant differences among OSCE participating States in their recognition of, and responses to, hate crime and its victims.<sup>20</sup> Hate crime laws specify protected characteristics. There are inconsistencies between states, however, regarding core protected characteristics, such as race, ethnicity, language, religion or belief, nationality, gender, sexual orientation and disability, that are included in the scope of hate crime law and policy. In consequence, some victims in some states are protected by hate crime provisions, while others are not. Also inconsistent is the

17 Council of Europe, "Recommendation Rec(2006)8 of the Committee of Ministers to Member States on Assistance to Crime Victims", 14 June 2006.

18 See: *Diagnostic Tool for Assessing National Hate Crime Victim Support Systems*, op. cit., pp. 15-21.

19 For a useful resource on which protected characteristics to include, see: *Hate Crime Laws. A Practical Guide* (Warsaw: OSCE/ODIHR 2009), pp. 37-46.

20 *The State of Support Structures and Specialist Services for Hate Crime Victims* (Warsaw: OSCE/ODIHR 2022), p.4.

acknowledgement that many victims may be targeted based on bias motivations against one or more protected characteristics. It is the intersection of these characteristics that deepen the impact and may result in varying support and protection needs. Guidance should, therefore, be formulated and provided to ensure that every victim of a hate crime is entitled to the same level of protection under law.

The list of protected characteristics should also be subject to periodical scrutiny and enlarged in light of prevailing socio-cultural circumstances. Particular attention should be paid to making hate crime laws uphold the right to access to justice for hate crime victims who experience victimization on intersecting grounds.<sup>21</sup>

Establishing hate crime in law as a distinct type of crime prompts criminal justice policy and practice to recognize and acknowledge hate crime victims as a distinct category of crime victims, and to make provisions accordingly.<sup>22</sup> Critically, through the establishment of procedural rules and practices, such provisions will guarantee access to justice, protection and support for hate crime victims. Procedural rules and practices stipulate a role for hate crime victims to actively participate in criminal justice processes and proceedings, and if a victim so chooses, to enable them, at a minimum, to present for consideration by the courts the harm they have suffered, and to seek redress, including appropriate compensation and rehabilitation.

## Enabling a safe space to encourage hate crime reporting

**Criminal justice authorities in OSCE participating States should devise and implement policies and directives that promote an institutional culture that guarantees safe reporting.**

Establishing a legal code that holds perpetrators accountable and provides access to justice for hate crime victims must be complemented by measures that guarantee victims' rights are not only enshrined in law, but are also implementable in practice. The state's duty to protect and support hate crime victims, therefore, includes protection of hate crime victims' safety and dignity in all interactions with public authorities.<sup>23</sup> States must ensure that the necessary first step in the adjudication of a hate crime – the report of the

21 For more information, please see: ENAR, *Hate Crime Provisions in EU Member States: The Importance of an Intersectional Approach to Ensure Victims' Rights*, 26 October 2020.

22 *Diagnostic Tool for Assessing National Hate Crime Victim Support Systems*, *op. cit.*, pp. 15-21.

23 See more in: "Encouraging Hate Crime Reporting - The Role of Law Enforcement and Other Authorities", European Union Agency for Fundamental Rights, 2021.

crime to the police – can take place in a safe and respectful environment and without further harm caused by secondary victimization.

Many hate crime victims choose not to make a report to the police and engage with criminal justice processes and support structures.<sup>24</sup> The reasons for under-reporting of hate crimes are well known from the testimony of victims and criminal justice practitioners.<sup>25</sup> Some victims feel shame and embarrassment; some are too upset. While some other victims might be inclined to make a report to the police, there is a lack of awareness about their rights and the support services available. Some are also reluctant to get involved in potentially time-consuming bureaucratic procedures. Another significant reason victims choose not report hate crime to police is due to a lack of trust with the criminal justice system and a belief that they may not be believed taken seriously or treated sympathetically.<sup>26</sup> Some victims even fear a negative reaction from the police if they do report a hate crime as they fear that the police officers themselves hold similar biases against them. Others may fear detention and deportation. The lack of reporting results in hate crime victims unable to secure justice and access to the support they need. Such a lack of trust can be rooted in past and ongoing challenging relations between police and particularly minority or marginalized communities. It is essential, therefore, to encourage victims to report their victimization to the police and other organizations, and to promote confidence that they will be taken seriously.

This requires that states train the individuals who come into contact with hate crime victims accordingly. Furthermore, it requires state agencies to proactively reach out and engage with communities, notably those at risk, to build confidence in their response, with the aim of encouraging reporting.

Given the consequences of a lack of reporting of hate crimes, it is imperative that criminal justice authorities engage with communities at particular risk of hate crime. Community outreach can be a tool in encouraging the reporting of hate crimes and should, therefore, be part of a comprehensive strategy against hate crime. Community engagement by the police and other criminal justice authorities in OSCE participating States to encourage the reporting of hate crime has involved:<sup>27</sup>

- Using specially trained police officers to develop working relationships with communities to raise awareness of hate crime and promote confidence that reports will be taken seriously, and that victims will be supported. Such police officers are usually part of specialist units dedicated to receiving reports and investigating cases of hate crime;

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24 *Hate Crime Victims in the Criminal Justice System, op. cit.*, p. 31.

25 *Ensuring Justice for Hate Crime Victims: Professional Perspectives* (Luxembourg: Publications Office of the European Union, 2016), pp. 28-33; and “*Encouraging Hate Crime Reporting - The Role of Law Enforcement and Other Authorities*”, *op. cit.*, pp. 30-39.

26 “*Encouraging Hate Crime Reporting - The Role of Law Enforcement and Other Authorities*”, *op. cit.*, pp. 27-28.

27 *Ibid.*, pp. 42-44.

- Providing free-of-charge telephone helplines and online reporting for hate crimes, along with information and advice;
- Co-operating and partnering with community organizations and specialist CSOs which support hate crime victims;
- Supporting third-party hate crime reporting initiatives, whereby victims might feel more comfortable contacting community organizations and/or independent CSOs, which then liaise with criminal justice authorities and refer victims to specialist support or provide support themselves, if they possess the necessary skills;
- Engaging community representatives in external consultation groups about criminal justice policy and practice;
- Undertaking public relations and media campaigns at the national, regional and local levels to raise awareness about hate crime and how victims can seek assistance and support. The EStAR publication *Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System* provides a list of basic awareness-raising information for hate crime victims and communities;<sup>28</sup> and
- Publicizing court decisions and outcomes of successful prosecutions of hate crime.

In order to maximize its effectiveness, community outreach should be part of a comprehensive communication strategy against hate crime, and not be performed on ad hoc basis. Additionally, as few evaluations on community outreach efforts have been carried out for policy learning and practice, the international policy community should commission reviews of the impact of community outreach measures for hate crime reporting as a means of sharing good practices.

## Ensuring access to protection and support

**Law and policy should clearly articulate a victim's right to access protection and support, regardless of hate crime victims' involvement in criminal justice processes and participation in criminal proceedings.**

Access to hate crime victim support should not be contingent upon a report being made to the police or another organization, or upon victims engaging in criminal proceedings. This is because hate incidents can have an impact regardless of whether they are reported and prosecuted.

<sup>28</sup> *Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System* (Warsaw: OSCE/ODIHR 2021), p. 43.



Access to hate crime victim support should also not be dependent on whether the incident qualifies as a crime, as non-criminal hate incidents can have just as much impact. Furthermore, service seekers must also be able to access support regardless of their nationality, residency or citizenship status. Importantly, immediate and long-term support should also be available free of charge to service seekers, so that financial barriers do not prevent them from seeking help.

## Establishing hate crime victim support policies and procedures as part of national hate crime action plans

**To ensure access to hate crime victim support, it is imperative that all OSCE participating States develop and implement a hate crime action plan that includes an effective strategy to ensure specialist support.**

States should establish a national policy document incorporating a hate crime action plan to provide strategic guidelines for action against hate crime. An understanding of how hate crime victims and their support needs are different from other types of crime victims should be outlined in the policy document. At a minimum, the plan should include the following:

- Introducing in training curricula and ongoing professional development for police, prosecution and legal professionals which increases knowledge and awareness on how to respond to hate crime victims, interact effectively with communities, and how to build public confidence and co-operation with law-enforcement and other criminal justice agencies. Examples of resources to provide such skills are ODIHR's Training Against Hate Crimes for Law Enforcement (TAHCLE) and Prosecutors and Hate Crimes Training (PAHCT) programmes, and also the ESTAR project's *Sensitive and Respectful Treatment of Hate Crime Victims: Training Course for Criminal Justice Professionals* and *Model Guidance on Individual Needs Assessments of Hate Crime Victims*;<sup>29</sup>
- Ensuring that Individual Needs Assessment (INA) systems are established, with the necessary guidance and training and multi-stakeholder engagement for all involved;<sup>30</sup>

29 See detailed information here: "Training against Hate Crimes for Law Enforcement" (TAHCLE) and "Prosecutors and Hate Crimes Training" (PAHCT) programmes, and also *Sensitive and Respectful Treatment of Hate Crime Victims: Training Course for Criminal Justice Professionals* (Warsaw, OSCE/ODIHR 2022); and *Model Guidance on Individual Needs Assessments of Hate Crime Victims* (Warsaw, OSCE/ODIHR 2021).

30 *Model Guidance on Individual Needs Assessments of Hate Crime Victims* (Warsaw, OSCE/ODIHR 2021).

- Planning the provision of specialist support, available to all hate crime victims wherever they reside;
- Structuring knowledge exchange at the national level, and participation in international knowledge exchange activities on best practices in supporting hate crime victims; and
- Hate crime prevention activity to promote respect for human rights and counter discrimination and violence, online and offline, using the relevant specialist expertise of education professionals and civil society organizations (CSOs).

Measurable targets and timelines should be included in the plan. Plans must also specify how funds will be obtained, and adequate and sustainable funding must be allocated.

For a successful hate crime action plan, it is essential to consult with and involve all stakeholders, including justice and interior ministries, police and prosecutors, equality bodies, national human rights institutions, health and social welfare services, CSOs and communities affected by hate crimes.

Supervision, monitoring and review of the implementation of the plan should be undertaken by a high-level governmental authority, such as the Ministry of Justice, Ministry of the Interior or equivalent Ministry responsible for oversight of national criminal justice policy. Follow-up of the action plan is crucial, in order to evaluate the extent to which strategic objectives are being achieved. Progress should be publicly reported in periodic or annual reports, with the plan revised or modified as necessary.

# 3. Hate Crime Victims in Criminal Proceedings and the Justice System

For hate crime to be treated as a separate category of crime and for hate crime victims to be treated as a specific category of victims, hate crimes reported to the police and other authorities need to be formally and systematically recorded and processed as crimes that are distinct from other crimes.<sup>31</sup> That distinction will need to be preserved and communicated as the crime progresses through criminal justice processes, from the police, to the prosecution and to the courts.

## Working with the victim's perception of bias motivation

**A victim-centred approach requires that the victim's perception of the bias motivation for the crime is taken into account, along with other bias indicators, when categorizing and flagging the complaint in crime recording systems, so as to prompt specialist investigation and support for the victim.**

A system of standardized procedures for recording hate crimes is required to enable the prosecution of hate crime offenders according to the law and to enable hate crime victims to access protection and support, according to their needs. At a minimum, a designated hate crime "flag" on crime records, making note of the bias indicators perceived and reported by the victim, will serve to distinguish hate crimes from other crimes. The victim's view of bias motivation for the crime forms the basis of categorizing and flagging the complaint in crime recording systems.

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<sup>31</sup> *Hate Crime Victims in the Criminal Justice System*, *op. cit.*, pp. 40-42.

# Investigating bias indicators

**Investigators and prosecutors and, in some states, investigative judges must recognize and give additional weight to the bias element of hate crimes. They require expertise to identify and collect evidence of bias motivation for presentation to the courts.**

Whether a hate crime perpetrator's bias is treated by law as an aggravating factor to a base crime or it is used as an integral part of the legal definition of a specific substantive offence of hate crime, courts must be presented with evidence of bias motivation. As much as criminal law provisions serve to uphold the victim's right to access justice, the state has an equal duty to guarantee thorough and effective investigation of not only the base crime, but also the bias motivation, and to ensure that all criminal justice officials engaged in investigation are trained accordingly.

Expertise is required by police, investigators and prosecutors to understand the type of evidence that can show the bias elements of crimes, so that they can probe for indicators of bias motivation when collecting and recording evidence. Acknowledgment of the victim's perspective about bias motivation from the moment the crime is reported is critical, therefore, to effective detection by flagging the need for the collection of appropriate evidence for prosecution of the case as a hate crime. Specialist expertise on bias indicators can be developed through dedicated training, written guidance and standard operating procedures.<sup>32</sup>

## Ensuring access to justice and criminal proceedings, recognition as a victim

**Hate crime victims must be accorded the status of victim/injured party, rather than that of witness, in criminal proceedings.**

OSCE participating States have committed themselves to explore the provision of effective access to justice for victims of hate crimes.<sup>33</sup> Meaningful access to justice involves

32 *Ibid.*, pp. 40-41; and *Prosecuting Hate Crimes: A Practical Guide* (Warsaw: OSCE/ODIHR 2014), pp. 46-48. See also: *Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System*, *op. cit.*, "Annex III: More on Bias Indicators" for a list of potential bias indicators.

33 OSCE Ministerial Council, Decision No. 9/09, "Combating Hate Crimes", *op. cit.*

more than just testifying as a witness in court. Authorities must recognize the hate crime victim as the “injured party” through procedural rules, so that they can actively participate in criminal proceedings. In order to participate meaningfully, hate crime victims must be given access to the case materials, be able to take legal action, such as filing a motion or appealing a decision, and be able to present an impact statement to the court.

**OSCE participating States should ensure that all criminal justice agencies keep hate crime victims informed about investigation and prosecution decisions that impact the progress of their cases.**

After reporting a crime to the police or another authority, one of the things that victims most want is to be kept regularly up to date about the progress of their case, even if there has not been any progress.<sup>34</sup> Police, prosecution services and the courts are all responsible for keeping victims informed.

A lack of communication generates suspicion about a lack of action. It can be even worse when the victim knows the perpetrator. For example, if the victim makes a hate crime complaint about a neighbour or someone else in their neighbourhood, the lack of action owing to poor communication can make them worried about their immediate safety. Victims may feel unprotected against reprisals. A lack of contact about their case, or inappropriate contact<sup>35</sup>, can exacerbate the marginalization and exclusion already felt as a result of being a victim of hate crime. Keeping victims uninformed is a form of secondary victimization, aggravating the damaging impact of the hate crime.<sup>36</sup> For communities at particular risk of hate crime keeping victims uninformed can further erode their lack of trust in the criminal justice system and discourage participation in criminal proceedings.

For victims who wish to actively participate in the investigation and prosecution of hate crimes, it is imperative that the criminal justice system maintains regular communication with them and consults with them about key decisions that have a bearing on their position. Consultation is fundamental to a victim-centred approach. Victims must also have a right to access the investigation file on their case. Providing victims with this level of agency can help heal the harm of hate crime, as it allows victims to exercise some control over the victimization experience.

Staff from the police, prosecutor’s office and courts can be assigned the responsibility of keeping victims up to date, either in person or by telephone. Specialist hate crime victim

34 *Left in the Dark: Why Victims Need to Be Kept Informed* (London: Victim Support).

35 Contact with a hate crime victim made in a way that discloses their characteristic or exposes them to further victimization, e.g., LGBT+ community members.

36 This is victimization that occurs not directly as a result of the crime, but as a result of treatment the victim receives from institutions or individuals. Secondary victimization is discussed at length in the EStAR publications *Understanding the Needs of Hate Crime Victims*, *op. cit.*, pp. 13-15, and *Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System*, *op. cit.*, pp. 9-11.

liaison staff can be assigned to cases. Online services can even be provided, so that victims can track the progress of their case at any time. The key requirement, though, is that all criminal justice agencies adopt and implement policies to keep hate victims regularly informed and consulted about their case, to the extent possible in a given jurisdiction.

**Protection and support measures should be provided for hate crime victims based on their identified needs, as determined through an individual needs assessment (INA).**

Hate crime victims should be provided with protection and support, based on immediate and ongoing assessments of their individual needs to determine what kind of protection and support they require. These assessments should be followed by effective referrals to victim support organizations and other service providers able to provide the appropriate services. (Please refer to Chapter 5: Assessing Hate Crime Victims' Needs and Referrals for specific recommendations).

**Procedural rights enabling full participation in court should be established for hate crime victims, in order to present the impact of the crime and claim compensation or other forms of reparation and rehabilitation.**

The recognition of hate crime in law as a distinct category of crime provides for the greater harm associated with hate crime to be proportionately and appropriately addressed by the courts. Whether the perpetrator's bias is treated as an aggravating factor to a base crime, which is the case for the majority of hate crime laws in the OSCE region, or bias is used as an integral part of the legal definition of a specific substantive offence of hate crime, or general sentencing provisions are used,<sup>37</sup> the essence of justice in the case of hate crime involves the potential imposition of a penalty proportionate to the greater harm suffered by victims. It is greater than the penalty for the same type of crime without a bias motive. Courts need, therefore, to be presented with the impact of hate crime upon victims and communities to inform sentencing decisions. Offenders also need to be given the opportunity to hear the consequences of their actions when the impact is presented in court. Moreover, when courts are presented with testimony about a hate crime's impact, they are better equipped to judge appropriate and proportionate compensation or other forms of reparation for victims.

The active participation of hate crime victims in criminal proceedings should allow them to present the impact of their victimization experience in court, if they wish, with their own voice. Alternatively, if they so prefer, the impact can be presented on their behalf.

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<sup>37</sup> For a useful summary discussion of models of hate crime law, see: *Prosecuting Hate Crimes: A Practical Guide*, *op. cit.*, pp. 26-29; and also *Hate Crime Laws. A Practical Guide*, *op. cit.*, pp. 32-36.

The impact upon family members and close relations, where relevant, should also be heard. Where the victim is a child or young adult, a parent or carer should be allowed the opportunity to present the impact. Furthermore, given that hate crimes can also have a damaging impact upon communities, opportunity needs to be provided for the community impact to be heard by the court. An impact statement can describe how the crime affected the victim and their close ones and the emotional, social and economic impact it had, and can also include recommendations of how the perpetrator/s should be dealt with.

Victims should be fully informed about the purpose and form of a victim impact statement, so that they can make a considered decision whether to make one, and for it to be used in court. Providing a statement about the impact of crime can be traumatic for victims. There is also a risk of further victimization, in the event the expectations of the victim are not met, and the statement presented is not taken into consideration by the court to the extent that the victim had hoped for. Emotional support may be necessary.

**Hate crime victims' rights to appeal decisions and complain about their treatment should be specified in law and/or policy.**

OSCE participating States should establish complaint mechanisms in both the law enforcement and judiciary that allow victims to seek information about the progress of their report/case and judicial procedures, to have court decisions explained to them, and to file complaints if they feel treated inappropriately and want to challenge an officer's behaviour towards them.

Closely linked to the right to be informed and the status of the victim in criminal proceedings is the right to appeal court decisions. A victim must receive victim status early enough in the proceedings to provide them with an opportunity to appeal a prosecutor's or court's decision. Legal provisions should also be made to allow victims to challenge the police or prosecutor's decision to discontinue a case.

In addition, all states should guarantee independent complaint mechanisms with powers to investigate a victim's complaint of bias-motivated misconduct by police officers and other criminal justice professionals, so that they can be held accountable.

In order for victims to be able to exercise their right to file a complaint effectively, each criminal justice agency handling their case should inform them about the steps in making a formal and informal complaint. Victims who are dissatisfied with the decision made about their complaints should have the right to appeal to an independent body that has the power to review and take a final decision.

# Exploring the use of restorative justice to repair the harm of hate crime victims

**OSCE participating States should explore extending the use of restorative justice for cases of hate crime, ensuring that adequate safeguards for hate crime victims are in place to prevent further victimization.**

Restorative justice programmes are being developed and implemented by OSCE participating States. A restorative justice process could bring together the hate crime victim, their close relations and others from their community in a supported meeting with the offender. The meeting depends upon the fully informed consent of all involved. A trained practitioner facilitates the meeting. The victim has the opportunity to explain the impact upon them of the offender's actions, to hear what motivated the offender to perpetrate the crime, and to receive a genuine apology.

Restorative justice approaches must protect victims from secondary victimization. The facts of the case or the offender's bias motivation should not, therefore, be subject to negotiation. This also means creating a safe space, ensuring that an offender does not use the opportunity to re-offend, discriminate against – or even attack – the victim. To identify appropriate and relevant safeguards further research into the application of restorative justice solutions to hate crime cases is recommended.

If appropriate protections are put in place, the process can be empowering for victims and improve their emotional well-being, and can also address the indirect impact of hate crime on communities.<sup>38</sup> Restorative justice can, if managed wisely, give victims and communities the opportunity to regain some control over the victimization. Restorative justice solutions use a conflict prevention lens and offer an avenue for individuals and communities to confront and address the root causes of hate crime.

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38 See: *How Do We Build Community Cohesion When Hate Crime Is On The Rise?* (London: APPGHateCrime 2019), pp. 36-38.



## 4. Sensitive and Respectful Treatment of Hate Crime Victims

Hate crime victims have the right to be treated with respect and professionalism, and without discrimination, by all individuals they come into contact with. Hate crime victimizes entire sections of society by sending a message of exclusion to potentially anyone and everyone who shares the victim's identity. Victims and members of affected and other marginalized communities can experience acute feelings of isolation. When hate crimes are not properly addressed and those who have been victims of hate crime are not adequately supported, or are treated poorly when seeking protection and support, this reinforces the message that different sections of society have different value and worth. When victims of hate crime are treated with respect and sensitivity, and their needs and wants are placed at the forefront, a positive inclusive message is sent that everyone is equal and belongs to society. Being listened to and heard without pre-judgement or bias, as well as being given the opportunity to voice concerns, are hallmarks of respect. Furthermore, this means that the victim is taken seriously, as their victimization experience is acknowledged and validated.

Supporting hate crime victims in a sensitive and respectful manner will reduce the chances of re-victimization.<sup>39</sup> The sensitive and respectful treatment of the victims of hate crime does not conflict with a fair and impartial criminal investigation, nor does it interfere with the rights of the offender.

Given the damaging impact of hate crime, emotional and psychosocial support are essential for many victims. Those working with hate crime victims need to understand the impact of hate crime and have the skills to offer emotional support. Law enforcement and criminal justice official and others working with hate crime victims should recognize that recalling a traumatic event can itself be traumatic. The prevention of secondary victimization is crucial. Sensitive and respectful treatment of hate crime victims needs to include empathy and care in dealing with trauma and potential re-traumatization in criminal justice processes and victim support.

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<sup>39</sup> Such re-victimization is commonly referred to as "secondary victimization". See note 37.

# Developing capacity and skills for working with hate crime victims with sensitivity and respect

**All organizations and government bodies that engage and work with hate crime victims should develop guidance and implement regular obligatory training for all practitioners on the sensitive and respectful treatment of hate crime victims that places a victim's needs and rights at the centre of any action.**

Comprehensive hate crime victim support requires the involvement of a range of organizations — criminal justice and other public authorities, such as housing, welfare, health and social services, and CSOs. As part of their continuous learning programmes, individuals engaging with hate crime victims should be required to undertake guidance and training about working with hate crime victims in a sensitive and respectful manner. Such ongoing learning should be evaluated by supervisors when reviewing staff professional development and learning plans.

Guidance and training on how to work with hate crime victims in a respectful and sensitive way should emphasize a victim-centred approach. Treating hate crime victims in a sensitive and respectful manner involves acknowledging the victim as an equal partner in progressing their case through criminal justice processes and as an active participant in planning support, if they need it, within and outside of the criminal justice system.

The EStAR checklist “Sensitive and respectful essentials during the criminal justice process”<sup>40</sup> provides a model summary tool to inform training and guidance of police and prosecution services. The checklist while designed for use by criminal justice staff, offers a foundation that can be further developed for use by practitioners working with hate crime victims beyond the criminal justice system.<sup>41</sup>

Staff development for how to treat hate crime victims with sensitivity and respect focuses around some core themes:

- Skills in empathic active listening;
- Understanding of hate crime victims’ needs;
- Providing victims with information, so they can make informed choices while participating in criminal justice processes; and
- Empowering victims to make informed decisions.

40 *Model Guidance on Sensitive and Respectful Treatment of Hate Crime Victims in the Criminal Justice System*, *op. cit.*, pp. 44-48.

41 *Ibid.*, pp 49-50.

## Integrating civil society expertise into training on the sensitive and respectful treatment of hate crime victims

**CSOs who work with hate crime victims should be engaged in devising and delivering guidance and training on the sensitive and respectful treatment of hate crime victims.**

Practitioners who work with hate crime victims have extensive knowledge of the trauma of hate crime, and of the needs of hate crime victims. With such experience, they can effectively design and deliver guidance and training on working with hate crime victims, once having acquired the necessary pedagogical and interpersonal training skills. A similar case can be made for involving victims of hate crimes in the design and delivery of training, as long as appropriate safeguards are in place to prevent re-traumatization. Due to their experience of working with hate crime, CSOs supporting hate crime victims have a unique role to play in designing and providing training to police and prosecution services, as well as to other public authorities and community organizations.

## Promoting an institutional culture of sensitivity and respect for hate crime victims

**Sensitivity and respect for hate crime victims must be ensured at the institutional level.**

Sensitivity and respect for hate crime victims is not just a matter for those who work with or otherwise come into contact with victims directly. It is imperative that all organizations working with hate crime victims ensure respect and sensitivity at the institutional level, so that this is embedded in organizational culture as part of a whole-of-institution response. An organization's culture is expressed through ingrained behaviours and influences organizational policies, procedures and processes for responding to hate crimes.<sup>42</sup> To address structural biases it is important to focus on: community outreach and awareness raising about hate crime; accessible reporting systems and co-operation with hate crime victim support organizations; informing and consulting hate crime victims; ensur-

<sup>42</sup> For a more comprehensive discussion, see *ibid.*, pp. 34-43.

ing victims' rights to challenge decisions and file complaints about their treatment; and staff recruitment, professional development and training for front-line staff on sensitive and respectful treatment of hate crime victims. Moreover, sensitive and respectful treatment of hate crime victims should also be rooted in general non-discriminatory practices in policing.

This issue goes beyond the right of victims to be treated properly by criminal justice agencies and other organizations. Ensuring an inclusive and constructive experience for victims can be helpful for repairing the harm caused by hate crime, by countering the sense of exclusion and marginalization that many victims will feel.

To promote a culture of sensitive and respectful treatment at the institutional level, guidance and training should be focussed on all members of the organization, including senior management, and not just on staff who work with or otherwise come into contact with hate crime victims in person. It is also vital that institutions develop a protocol for working with hate crime victims<sup>43</sup> and conduct an institutional needs assessment to identify where changes, modifications or improvements are required to build and strengthen sensitive and respectful institutional measures for protecting and supporting hate crime victims.<sup>44</sup>

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43 *Ibid.*, p. 36.

44 *Ibid.*, pp. 34 and 35.

## 5. Assessing Hate Crime Victims' Needs and Referrals

An INA is an interview process that gathers the necessary information to guide the delivery of support tailored to the needs of the individual. An INA should be conducted upon first contact with the victim, and then updated as circumstances change. It is critical that victims understand the purpose of the INA process and that INAs are conducted in active partnership with the victim. Victims' wishes must be respected, including whether or not they want special protection measures or other types of services.

Victims of hate crimes will also share some of the same needs as victims of other crimes. As such, general victim services can provide some support. Nonetheless, services that specialize in supporting victims of hate crime will be better able to address their specific needs. In particular, there is a special need for hate crime victims to be heard and listened to, for their perspective on the bias motivation of the crime to be taken seriously, and for the impact of the crime to be acknowledged and understood. To counter the sense of marginalization and social exclusion that can be exacerbated by hate crime victimization, victims of hate crimes need to feel solidarity from criminal justice authorities and victim support service providers.

### Assessing immediate risk to hate crime victims' safety and security

**Law enforcement and other criminal justice authorities who come into first contact with a hate crime victim should ensure that an initial INA is conducted, focused on the victim's immediate safety and security.**

A victim-centred approach to addressing the needs of hate crime victims begins with an initial INA.<sup>45</sup> Through such an assessment, victims' immediate needs can be better understood. The assessment is used to identify communication, protection and support needs, and to determine appropriate action. It can lead to effective referrals to specialist support providers.

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45 A comprehensive guide to individual needs assessments is provided in the EStAR publication *Model Guidance on Individual Needs Assessments of Hate Crime Victims*, *op. cit.* Illustrations of good practice are provided in the EStAR publication *Compendium: Practices on Structural Frameworks for Individual Needs Assessment (INA) of Hate Crime Victims and Referrals* (Warsaw: OSCE/ODIHR 2021).

The INA is separate from the investigation. Rather than gathering evidence for use in a criminal trial, it is meant to ensure the victim's safety, by identifying the risk of secondary and repeat victimization, intimidation and retaliation.

An assessment of immediate risks should be conducted at the earliest opportunity, so the service seeker can be advised about and take personal security measures, or agree to measures that are taken in partnership with them. Hate crime victims are more likely to experience repeat victimization than victims of other types of crimes. In particular, this is true when the perpetrators are family members, close relations, neighbours, people who attend the same school or college, co-workers or other individuals who are otherwise known by the victim in some way and, therefore, have the opportunity to target them on a repeated and ongoing basis. There are additional dangers if the perpetrators are members of organized hate groups that aim to systematically retaliate and intimidate victims. Child protection needs must also be considered, where relevant.

**Law enforcement authorities should ensure that all first response officers are trained in sensitively conducting an initial INA with hate crime victims.**

In conducting an initial INA, law enforcement officers should be aware of the impact of hate crime and the common needs of hate crime victims, as well as the physical and security requirements associated with hate crimes, such as repairs to property damaged by an attack, the need for strengthening home security, and security measures for communal property, such as places of worship. In some cases, relocating the victim to another place of residence might be needed to avoid repeat victimization.<sup>46</sup>

Assessing any potential community impacts and concerns should also be part of the INA. Obtaining information about the wider impact of the hate crime on the community may be crucial to community engagement to reassure and protect affected communities and prevent possible retaliation or escalation.

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<sup>46</sup> *Understanding the Needs of Hate Crime Victims*, *op. cit.*, pp. 16-18.

## Conducting comprehensive, in-depth INAs with hate crime victims

**A comprehensive, in-depth INA to address psychosocial support and other needs of the victim should be conducted by trained specialist support providers or hate crime unit law enforcement specialized in hate crime victimization.**

After a victim's safety and security needs have been addressed by an initial INA, a more comprehensive assessment of a victim's psychosocial and other needs should be undertaken. Because of the sensitivities involved, the in-depth assessment should be conducted by specifically trained victim support professionals within criminal justice services, practitioners working with general victim support services, and/or practitioners working with CSOs specializing in hate crime victim support.

Criminal justice and CSOs must provide training for staff conducting INAs with hate crime victims. Conducting a comprehensive, in-depth INA requires that all stakeholders have a clear understanding of how to implement an INA process, the steps involved, the requirements of various sectors, and the recording and sharing of sensitive information.

Importantly, this also requires that the assessment be conducted in a victim-sensitive manner. Practitioners who work with hate crime victims, whether they be criminal justice professionals or victim support practitioners, should have knowledge of the common needs of hate crime victims. With such an understanding, once having acquired pedagogical and interpersonal training skills, they should be able to effectively design and deliver training on conducting comprehensive, in-depth INAs. Such assessments play a key role in support related to the short- and long-term needs of hate crime victims. Many victims will require ongoing assistance to cope with the consequences and impacts of hate crime. This can involve legal advice, medical assistance, repairs to property, security arrangements for victims and their relatives, and family support. There will also be victims who require specialized psychosocial support to deal with the impact and consequences of the crime.

# Assessing hate crime victims' needs on an ongoing basis

**Criminal justice authorities and victim support providers should ensure that victims have their needs assessed on an ongoing basis after reporting a crime or approaching service providers for support.**

The needs of a victim can change. In the immediate aftermath of an incident, during pre-trial investigations, during the trial process, and after a court ruling, different types of protection and support may be required. To meet the changing and evolving needs of a victim, the INA process must be repeated throughout the case. It is imperative that the ongoing INA process is not repetitive in nature; repeating questions and other forms of over-interviewing must be avoided. Follow-up should be initiated by criminal justice authorities and the relevant support services, and ensure that the victim support measures they manage are revised and adjusted to reflect the victim's changing needs. The victim should be encouraged to contact support providers if and when their needs change, but they should not be expected to manage their own case.

## Creating an effective referral system

**Law enforcement, other criminal justice authorities and other organizations providing support for hate crime victims should establish protocols and set up channels of communication to work together and share information relevant to victim protection and support needs, while respecting the confidentiality of victims.**

In order to meet the protection and support needs of hate crime victims identified by INAs, the input and co-operation of a variety of organizations will be necessary, including criminal justice and other public authorities, such as housing, psychological counselling, health and social services, and CSOs providing specialist hate crime victim support. It is crucial that victims are referred, with their consent, to appropriate support, based on their needs, through effective referral mechanisms. Individuals conducting assessments of individual needs must know what specialist support services are available, be confident in the quality of those services, and know how to access them. To allow victims to make informed choices about the support they would like to receive, information about available services to which they may be referred must be presented in a way they can understand.



For effective referrals, states should map and maintain current information about support providers for hate crime victims and the types of services they offer, as well as their geographic and daily availability. The information should be readily accessible to those working in the criminal justice system and in other organizations that might seek to refer hate crime victims to specialist support. States should also work to fill gaps in services, as needed, and monitoring mechanisms should be put in place to verify whether the needs of referred victims have been met.

# 6. Hate Crime Victim Support Systems and Structures

The nature and impact of hate crimes on individuals, communities and wider society requires laws, policies, guidance and a wide range of services that address the harms these cause. Effective hate crime response that includes comprehensive support to victims foresees effective co-operation and co-ordination among many actors, both within and outside of the criminal justice system. Establishing and institutionalizing multi-agency working relationships is crucial to ensuring that victims receive the support they need. Policy frameworks should be developed for referrals and structured casework co-operation between criminal justice and other public agencies, as well as with CSOs. Guidelines and practices for co-operation should be incorporated into operational protocols and inter-agency agreements.

## Proactively developing multi-agency collaboration and co-operation

**Criminal justice and other authorities must include CSO support providers in their response structures and develop partnerships for multi-agency co-ordination and collaboration to ensure effective hate crime victim support.**

An effective response to hate crimes requires a combination of specialized competencies that go beyond the capacity of a single agency. Collaboration among agencies is not limited to casework with victims of hate crimes. It also applies to policymaking, as well as to strategic response and planning. States should support systematic and sustainable collaboration among criminal justice authorities and with other organizations that provide support to hate crime victims, including specialist organizations. A co-operation plan that specifies the mechanisms for collaboration on hate crime victim policy, casework and training is essential for structuring this co-operation.

Because of their professional expertise, specialist hate crime victim support services play a special role in inter-agency collaboration.<sup>47</sup> They should be enabled to co-operate on hate crime prevention, capacity-building, and providing victims with services. They can serve as points of contact for communities affected by hate crimes.

<sup>47</sup> *Developing Inter-Agency Co-operation Plans to Address Hate Crime: A Methodology* (Warsaw: OSCE/ODIHR 2018), pp. 29-30.

Furthermore, they can also help develop institutional guidelines on supporting hate crime victims and contribute to the design and delivery of training. But their role should extend beyond co-operation. As advocates for hate crime victims, all those providing specialist support services should actively identify and partner with key stakeholders in areas they serve, set up effective referral processes, and build and maintain relationships with public agencies, including police and prosecutors, health, social welfare and local government and community services, and religious or belief communities, as well as with other CSOs.

## Building specialist expertise for hate crime victim support

**OSCE participating States should build hate crime victim specialist expertise within the criminal justice system and civil society.**

While the EStAR project identified many good practices for generic crime victim support in the OSCE area, in many participating States current responses to hate crime victims and their needs fall short of meeting international commitments and obligations.<sup>48</sup> There is a lack of comprehensive specialist hate crime victim support services, and these are provided unevenly across the OSCE region. CSOs and equality bodies take the lead in providing specialist hate crime victim support in some countries, but are often outside of state victim support structures and are insufficiently funded. The project also found that CSO specialist victim support providers, victim support units or specialist police staff are not available in many states.<sup>49</sup> In other states, specialized hate crime victim support provided by CSOs is, in many cases, ad hoc and unco-ordinated.

Because hate crimes are different from many other crimes in terms of their impact and the associated needs of victims and communities, specialist input and expertise are required for criminal justice professionals and other practitioners, including from health, housing, social welfare, local government and community services, working with hate crime victims. The need for such specialist input specifically on the part of criminal justice organizations is addressed in this policy brief particularly in the discussions of working with the victim's perception of bias motivation, investigating bias indicators, working with hate crime victims with sensitivity and respect, staff development and training for treating hate crime victims with sensitivity and respect, and assessing hate crime victims' immediate and ongoing needs.

<sup>48</sup> *Policy Brief: Specialist Support for Hate Crime Victims*, op. cit., p.7.

<sup>49</sup> *Model Guidance on Individual Needs Assessments of Hate Crime Victims*, op. cit., p. 10.

Specialist hate crime victim support services might be provided by the state through designated units or staff in police, prosecution, crime victim support and social work services. They might be provided by independent CSOs as core services or as specialist parts of general crime victim, community and human rights-based services. The specialist hate crime victim support provided might include practical support, legal advice and representation, emotional support, psychological counselling and medical care. Building such professional structures requires co-ordination and appropriate long-term financial resources.

## Funding specialist civil society hate crime victim support

**OSCE participating States should recognize the vital role CSOs play in providing specialist support to hate crime victims, by allocating adequate financial and other resources to ensure the availability of services and their sustainability.**

In the first instance, some hate crime victims prefer to seek assistance from services with which they can identify. In view of their knowledge and, possibly, previous experience of stigmatization, discrimination and exclusion, some hate crime victims feel more at ease engaging with professionals, practitioners and services that share their particular social identities and/or that, perhaps, have first-hand experience of hate crime victimization themselves and can offer genuine empathy.

CSOs that specialize in hate crime victim support have a crucial role to play in this respect. Their deeper understanding of hate crime victimization, acquired through their relationships with targeted communities, sets them apart from other sources of support. The more a specialist service is connected and representative of the communities it serves, the more likely it is to be able to understand and meet the needs of hate crime victims. Professional specialist services can, additionally, provide valuable expertise and guidance, based on their practical experience, to help states build their capacity for hate crime victim support. Maintaining an uninterrupted delivery of specialist hate crime victim support services requires stable and long-term financial support.

# Setting minimum quality standards

**To ensure that service seekers receive quality and consistent hate crime victim support, OSCE participating States, together with practitioners and experts, should adopt and promote minimum quality standards.**

As part of the development and strengthening of specialist hate crime victim support, establishing quality standards centred around ensuring a high standard of professional service delivery is crucial. These serve as benchmarks to identify the quality of services required to fulfil a state's obligations towards victims. They can be used as guidelines for the development of new services, as well as criteria for assessing the quality of existing services. Measures of quality standards determine how well organizations and services are organized and deliver, as well as areas in need of improvement.

Standards of quality should address the entitlements of the victim and the competencies of staff delivering support services, as well as the organization of the service. The EStAR project's *Model Quality Standards for Hate Crime Victim Support*<sup>50</sup> provides a practical resource that can be adapted by states for the adoption of minimum quality standards.

Common standards of quality could be tied to conditions for the accreditation, licensing and funding of specialist services. While it is critical that such services achieve these standards, they must also be able to exercise autonomy, so they are able to act on behalf of service seekers regardless of financial or accreditation accountability to the state. Specialist state-provided services for hate crime victims should follow a similar arrangement. Because they are embedded in state agencies, they cannot be autonomous, but they need to be able to exercise enough operational independence to support and defend the rights of hate crime victims within their own organizations and to challenge secondary victimization.

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<sup>50</sup> *Model Quality Standards for Hate Crime Victim Support* (Warsaw OSCE/ODIHR 2021).

# 7. Specialist Support Services for Hate Crime Victims

Many hate crime victims have needs for which they would benefit from professional assistance and support. Hate crime victims' needs are comprehensively outlined in the EStAR publication *Understanding the Needs of Hate Crime Victims*.<sup>51</sup> Due to the distinct and severe impact hate crimes have on individuals and communities, victims require access to professional support that is specifically designed to meet their needs. There are several distinctive elements of specialist hate crime victim support such as proactive outreach to victims, community engagement, hate crime monitoring, advocacy, cross-cultural understanding among staff, and inclusiveness in recruitment and retention policies, to ensure that staff of specialist support providers reflect the diversity of their clients and society.<sup>52</sup>

## Meeting the needs of hate crime victims and communities

**Hate crime victim support should be based on the specific needs of individual victims and affected communities.**

The EStAR project found that, in many OSCE participating States, the support offered to hate crime victims remains inadequate and is not based on a full understanding of their needs.<sup>53</sup> The project's findings demonstrate the need to develop and expand specialist support services aimed at addressing the harmful impact hate crimes can have on individuals.<sup>54</sup> Specialist support is required to meet the specific needs of hate crime victims and communities affected by hate crimes. For individuals, this includes psychosocial, emotional and medical support, as well as legal advice and representation that is provided by experts who understand the specifics of hate crime victimization and hate crime victims' needs.<sup>55</sup> All these professional services should be provided free of charge.

51 *Understanding the Needs of Hate Crime Victims, op. cit.*

52 For more please refer to: *Policy Brief: Specialist Support for Hate Crime Victims, op. cit.*

53 *The State of Support Structures and Specialist Services for Hate Crime Victims, op. cit.*

54 *Policy Brief: Specialist Support for Hate Crime Victims, op. cit.*

55 For a more comprehensive account of hate crime victims' support needs, see: *Model Quality Standards for Hate Crime Victim Support, op. cit., p. 18.*

# Fulfilling quality standards

**Specialist hate crime victim support services should work to fulfil minimum professional quality standards for service delivery, staff competencies, and organization and management.**

A high standard of professional service delivery is crucial to meeting the needs of victims of hate crimes. Standards of quality for hate crime victim support must be applied by specialist services, irrespective of whether they are a requirement of accreditation or funding by the state. Quality standards specify the quality of services provided and provide guidelines for setting up new services, as well as criteria for evaluating the quality of the services delivered. In supporting hate crime victims, it is imperative to meet minimum quality standards, in order to offer uniform, consistent services across the country, regardless of where the victim lives, their legal status in the country or the specialist support provider's size and capacity.

A victim-centred approach situates the victim at the centre of the response to hate crime. The same applies to quality standards for specialist hate crime victim support. It is the victim's right to receive quality support services concerning access to services, confidentiality, informed consent, protection of personal information, respect, making their own decisions about services and to be kept generally informed about all matters pertaining to their case.<sup>56</sup> To ensure high levels of service delivery, specialist hate crime victim support services must apply minimum quality standards of competency for all staff working with hate crime victims, and provide ongoing support and training to ensure that those standards are met.<sup>57</sup> For victim support services, minimum quality standards must also be met in terms of their management and organization.<sup>58</sup> Periodical monitoring and evaluation procedures should be established that support the implementation of quality standards and measure the degree to which service seekers' needs and expectations are being met.

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56 See: *Model Quality Standards for Hate Crime Victim Support*, *op. cit.*, pp. 9-19.

57 *Ibid.*, pp. 20-25.

58 *Ibid.*, pp. 26-36.

# Working to address the root causes of hate crime

**Hate crime victim support services should engage in partnerships for hate crime prevention.**

As part of a holistic approach to addressing hate crime victimization, efforts should be made to prevent hate crimes from occurring and to raise public awareness of the prevalence of hate crimes and their impact. Because of their expertise, hate crime victim support services should be consulted when law enforcement agencies design their community engagement initiatives. They should also be proactively involved in public events designed to foster public solidarity when they witness hate crimes, to encourage bystanders to report hate crimes and to serve as witnesses, and to encourage supportive environments during public trials. Victim support providers are well-placed to partner with local residents and other agencies and organizations to provide evidence-based preventive interventions against hate crime.

Additionally, specialist hate crime victim support providers advocate, in partnership with victims and communities, to deconstruct and delegitimize the prejudices that fuel hate crime and systemic injustice in general. Such advocacy can include working with the media to counter hateful narratives and report hate crimes more sensitively. Specialist hate crime victim support providers should reach out to the media to promote sensitive news coverage to protect against the vicarious impact of hate crimes. Thoughtful reporting is necessary to reduce the collateral damage that can be caused to communities affected by hate crimes. Specialists in the field of hate crime victim support can advise the media regarding the focus, sources and terms used in news reports about hate crime, by sharing their understanding about the impact of hate crime and the needs of hate crime victims and communities.



# Annex I: List of Recommendations for OSCE Participating States

## Legal and policy frameworks

1. States should stipulate which core protected characteristics are included in hate crime law and policy and provide guidance about further extending the scope of protected characteristics according to a state's historical, social and cultural context as well as international legal norms. Such guidance should also make it clear that many victims are targeted because of intersections of more than one protected characteristic.
2. Criminal justice authorities in OSCE participating States should devise and implement policies and directives that promote an institutional culture that guarantees safe reporting.
3. Law and policy should clearly articulate a victim's right to access protection and support, regardless of hate crime victims' involvement in criminal justice processes and participation in criminal proceedings.
4. To ensure access to hate crime victim support, it is imperative that all OSCE participating States develop and implement a hate crime action plan that includes an effective strategy to ensure specialist support.

## Hate crime victims in criminal proceedings and the justice system

5. A victim-centred approach requires that the victim's perception of the bias motivation for the crime is taken into account, along with other bias indicators, when categorizing and flagging the complaint in crime recording systems, so as to prompt specialist investigation and support for the victim.
6. Investigators and prosecutors and, in some states, investigative judges must recognize and give additional weight to the bias element of hate crimes. They require expertise to identify and collect evidence of bias motivation for presentation to the courts.
7. Hate crime victims must be accorded the status of victim/injured party, rather than that of witness, in criminal proceedings.

8. OSCE participating States should ensure that all criminal justice agencies keep hate crime victims informed about investigation and prosecution decisions that impact the progress of their cases.
9. Protection and support measures should be provided for hate crime victims, based on their identified needs determined through an individual needs assessment (INA).
10. Procedural rights enabling full participation in court should be established for hate crime victims, in order to present the impact of the crime and claim compensation or other forms of reparation and rehabilitation.
11. Hate crime victims' rights to appeal decisions and file complaints about their treatment should be specified in law and/or policy.
12. OSCE participating States should explore extending the use of restorative justice for cases of hate crime, ensuring that adequate safeguards for hate crime victims are in place to prevent further victimization.

### **Sensitive and respectful treatment of hate crime victims**

13. All organizations and government bodies that engage and work with hate crime victims should develop guidance and implement regular obligatory training for all practitioners on the sensitive and respectful treatment of hate crime victims that places a victim's needs and rights at the centre of any action.
14. CSOs who work with hate crime victims should be engaged in devising and delivering guidance and training on the sensitive and respectful treatment of hate crime victims.
15. Sensitivity and respect for hate crime victims must be ensured at the institutional level.

### **Assessing hate crime victims' needs and referrals**

16. Law enforcement and other criminal justice authorities who come into first contact with a hate crime victim should ensure that an initial INA is conducted, focused on the victim's immediate safety and security.
17. Law enforcement authorities should ensure that all first response officers are trained in sensitively conducting an initial INA with hate crime victims.
18. A comprehensive, in-depth INA to address psychosocial support and other needs of the victim should be conducted by trained specialist support providers or hate crime unit law enforcement specialized in hate crime victimization.

19. Criminal justice authorities and victim support providers should ensure that victims have their needs assessed on an ongoing basis after reporting a crime or approaching service providers for support.
20. Law enforcement, other criminal justice authorities and other organizations providing support for hate crime victims should establish protocols and set up channels of communication to work together and share information relevant to victim protection, and to support needs, while respecting the confidentiality of victims.

### **Hate crime victim support system and structures**

21. Criminal justice and other authorities should include CSO hate crime providers in their response structures and develop partnerships for multi-agency co-ordination and collaboration to ensure effective hate crime victim support.
22. OSCE participating States should build hate crime victim specialist expertise within the criminal justice system and within civil society.
23. OSCE participating States should recognize the vital role CSOs play in providing specialist support to hate crime victims, by allocating adequate financial and other resources to ensure the availability of services and their sustainability.
24. To ensure that service seekers receive quality and consistent hate crime victim support, OSCE participating States, together with practitioners and experts, should adopt and promote minimum quality standards.

### **Specialist support services for hate crime victims**

25. Hate crime victim support should be based on the specific needs of individual victims and affected communities.
26. Specialist hate crime victim support services should work to fulfil minimum professional quality standards for service delivery, staff competencies, and organization and management.
27. Hate crime victim support services should engage in partnerships for hate crime prevention.

# Annex II: Suggestions for Action to Enhance European Norms and Standards for Hate Crime Victim Support

As noted in the introduction to this policy brief, OSCE participating States have committed to improving support for hate crime victims, and ODIHR is mandated with assisting participating States in implementing their commitments. The EStAR project was established pursuant to this mandate. Further to this, the EStAR project was responsible for the work of the subgroup on hate crime victim support under the European Commission's High-Level Group on Addressing Hate Speech and Hate Crime. Based on the lessons learned from implementing the EStAR project as well as the various recommendations it has put forward, some key suggestions for actions to enhance European norms and standards for hate crime victim support are offered here.

## Enhancing legal frameworks

As part of the EU's commitment to ensuring victims of hate crimes are protected consistently, the initiative to extend the list of 'EU crimes' to hate speech and hate crime is very important.<sup>59</sup> The recognition in law is essential to enhancing the protection and support structures for hate crime victims.

In addition, it may be important to consider a stronger EU framework for defining hate crimes— in primary and/or secondary EU law. This could harmonize the conceptualization of hate crimes in the Council Framework Decision (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia, by means of criminal law, with the provisions of the Victims' Rights Directive. Without a stronger hate crime definition that includes clarity on EU-sanctioned protected characteristics, it is likely that access to enhanced protection and support for victims of hate crimes, provided for in the Victims' Rights Directive, will continue to be implemented unevenly across the EU. This may result in victims of hate crime without access to these rights and a contradiction of the Directive's anti-discrimination clause (Recital Art. 9).

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<sup>59</sup> See: European Commission "The Commission Proposes to Extend the List of 'EU Crimes' to Hate Speech and Hate Crime", European Commission website, 9 December 2021.

## Enhancing the Victims' Rights Directive

EU rules for specific provisions for hate crime victim support, of the type recommended in this policy brief, could be used to complement and build on the Victims' Rights Directive, in a similar way to how specific EU legal and policy frameworks have been established for victims of human trafficking, for child victims of sexual exploitation and child pornography, and for victims of terrorism.<sup>60</sup> The following clusters within the Directive's provisions as outlined in the European Commission's report to the European Parliament and the Council on the implementation of the Directive<sup>61</sup> could potentially be enhanced.

### (1) Scope and definitions (Article 2)

Article 2 of the Victims' Rights Directive provides key definitions, including the definition of "victim". This could be expanded by:

- Providing a definition of what constitutes a hate crime victim. The definition could stipulate which core protected characteristics should be included in hate crime law and policy, to ensure that all hate crime victims receive the same protection wherever they reside in the EU, unless a stronger EU framework defining hate crimes is adopted separately, as per earlier recommendation;
- Guidance about further extending the scope of protected characteristics, according to a state's historical, social and cultural context;
- Noting that victims can be targeted because of intersections of more than one protected characteristic;
- Without taking a "group-differentiated" approach, strengthening across the Directive the guarantees of access to justice for victims of hate crime that belong to communities suffering long-term discrimination or marginalization (for example, on account of language differences, residence in excluded communities, or physical or mental disability). Current provisions do not, in practice, ensure the access of such groups to reporting, information, investigation, prosecution and court; and
- Introducing the obligation to specifically mention victims of hate crime in national laws or policy documents, and establishing the overview of their typical needs, as the foundation for operationalization of protection and support.

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60 Learn more at the following websites on the EU legal and policy frameworks established for [victims of human trafficking](#), [for child victims of sexual exploitation and child pornography](#), and for [victims of terrorism](#).

61 "Report from the Commission to the European Parliament and the Council on the Implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA", 11 May 2020.

## **(2) Access to information (Articles 3-7)**

Provisions on the right to access information are specified in Articles 3-7 of the Directive. They could be enhanced by:

- Introducing a provision requiring all criminal justice agencies to keep hate crime victims regularly informed and consulted, using a communication channel of their choice if possible, about investigation and prosecution decisions concerning their case.

## **(3) Procedural rights (Articles 10, 11, 13, 16 and 17)**

These articles relate to procedural rights concerning the role that victims play in the criminal justice system. They could be strengthened with specific reference to hate crime victims to:

- Make it clear that the victim's perception of the bias motivation for the crime must be taken into account, along with other bias indicators, when categorizing and flagging the complaint in crime recording systems to prompt specialist investigation and support for the victim;
- Provide opportunity to victims and communities for the impact of hate crime to be heard by the courts; and
- Ensure that hate crime victims' rights to dispute decisions and file complaints about their case are specified in law and/or policy.

## **(4) Access to support services (Articles 8 & 9)**

Articles 8 and 9 ensure that victims and their family members have access to free and confidential general and specialist support services, in accordance with their needs, before during and after criminal proceedings. It could be made clearer that access to hate crime victim support should not be contingent upon whether an incident qualifies as a crime. It could also be specified that service seekers must be able to access support regardless of their nationality, residency or citizenship status.

## **(5) Restorative justice (Article 12)**

While Member States are not obliged to provide restorative justice services, Article 12 ensures that appropriate safeguards are in place, if restorative justice provisions are made, to prevent further victimization. This could be strengthened by encouragement to Member States to explore extending the use of restorative justice solutions specifically for cases of hate crime, with adequate safeguards for hate crime victims and the communities they represent.

## **(6) Right to protection (Articles 18-24)**

Articles 18-24 ensure the protection of victims, including the recognition of victims with specific protection needs. The rights to protection could be strengthened for hate crime victims, by ensuring that:

- Law enforcement authorities train all relevant officers in sensitively conducting an initial INA with hate crime victims;
- All hate crime victims have their individual needs assessed on an ongoing basis after reporting a crime or approaching service providers for support;
- INA conclusions/results are directly linked to and used for: (i) immediate protection; (ii) determination and implementation of special protection measures; (iii) determination of required support; and (iv) referral for such support;
- All organizations working with hate crime victims develop and issue guidance and implement regular obligatory training for all practitioners on the sensitive and respectful treatment of hate crime victims;
- Law enforcement, other criminal justice authorities and other organizations providing support for hate crime victims establish protocols and set up channels of communication to work together and share information relevant to victim protection and support needs, while respecting the confidentiality needs of the victims;
- Specialist hate crime victim support services are provided and funded by the state. The state maps and keeps an up-to-date overview of existing providers of specialist support to hate crime victims and the services they offer, including geographical and temporal availability of these services. The state works to fill any gaps identified to ensure that specialist support is available across the territory at all times; and
- The state determines what specialist support services for victims of hate crime entail. Minimum quality standards for hate crime victim support are promoted and adopted as conditions for the accreditation, licensing and funding of specialist services.

## **Creating a sustainable platform for cross-national leadership and exchange**

An EU Centre of Expertise for Hate Crime Victim Support could be established by the European Commission (DG JUST), with the support of the expertise of CSO and state hate crime victim support providers.<sup>62</sup> The focus of their activities could be co-ordinated alongside the implementation of the EU Strategy on Victims' Rights (2020-2025), the work of the High-Level Group on Addressing Hate Speech and Hate Crime, and its

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62 The [EU Centre of Expertise on Victims of Terrorism](#) provides a model to inform the development of an EU Centre for Hate Crime Victim Support.

working group on hate crime victim support. The mandate of the proposed new Centre of Expertise might include:

- Providing a platform for national authorities and hate crime victim support providers for the exchange of knowledge and experience, including on training on hate crime victim support;
- Offering expertise, guidance and support to national authorities and victim support organizations on quality standards for hate crime victim support;
- Promoting the exchange of best practices among hate crime victim support practitioners, policy specialists and researchers specializing in hate crime victim support; and
- Producing an EU Handbook or Practical Guide on Hate Crime Victim Support.

## Co-ordinated monitoring and evaluation of hate crime victim support

The Council of Europe could strengthen the monitoring work of the European Commission on Racism and Intolerance (ECRI)<sup>63</sup> by dedicating a chapter in its country reports on state policy and provisions for hate crime (*hate-motivated violence*) victim support. In discharging this function, this proposed new stream of ECRI monitoring could include:

- Monitoring and evaluating state policy and provisions for hate crime victim support;
- Documenting civil society provisions for hate crime victim support;
- Publishing findings, conclusions and recommendations specifically concerning provisions for hate crime victim support;
- Focusing on access to justice and support for all targeted groups, and specifically for victims of disablist hate crime;
- Assessing victim-centred approaches in the provision of hate crime victim support and access to justice; and
- Examining intersectional perspectives and a gender sensitive approach to monitoring and evaluating the provision of hate crime victim support.

## Expanding cross-national research for evidence-based practice

A holistic approach to hate crime victim support involves measures to prevent hate crimes from occurring and actions to mitigate the harm of hate crime. The design, delivery and effectiveness of hate crime prevention activities need much more systematic exploration, however, to understand what is effective. Promotion and funding for cross-national research is essential, and annual calls, such as those through the European Commission and others, could be created for submissions by academic and other professional researchers. Organizations, including but not limited to ODIHR, the Council of Europe and the EU Agency for Fundamental Rights should continue to systematically explore and

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<sup>63</sup> Learn more about ECRI here: [European Commission on Racism and Intolerance](#).



share good practices in addressing hate crime and providing hate crime victim support. Some suggestions for continued and further research include:

- Community hate crime prevention activities and, particularly, the contribution that specialist hate crime victim support services can make;
- Training initiatives for safe bystander intervention against hate crime, and the possible role of community-based specialist hate crime victim support services in the design and delivery of such training;
- The role that community-based organizations play in addressing the harmful impacts of hate crime and in building social cohesion;
- Supporting refugee victims of hate crime and understanding their specific needs, especially those related to their right to stay;
- Addressing the specific support needs of children and young people affected by hate crime; and
- Addressing the specific needs for particular vulnerable groups subject to hate crime, such as people with disabilities, and supporting victims of hate crime associated with homelessness, etc.