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SUPPORT TO VICTIMS OF HATE CRIME

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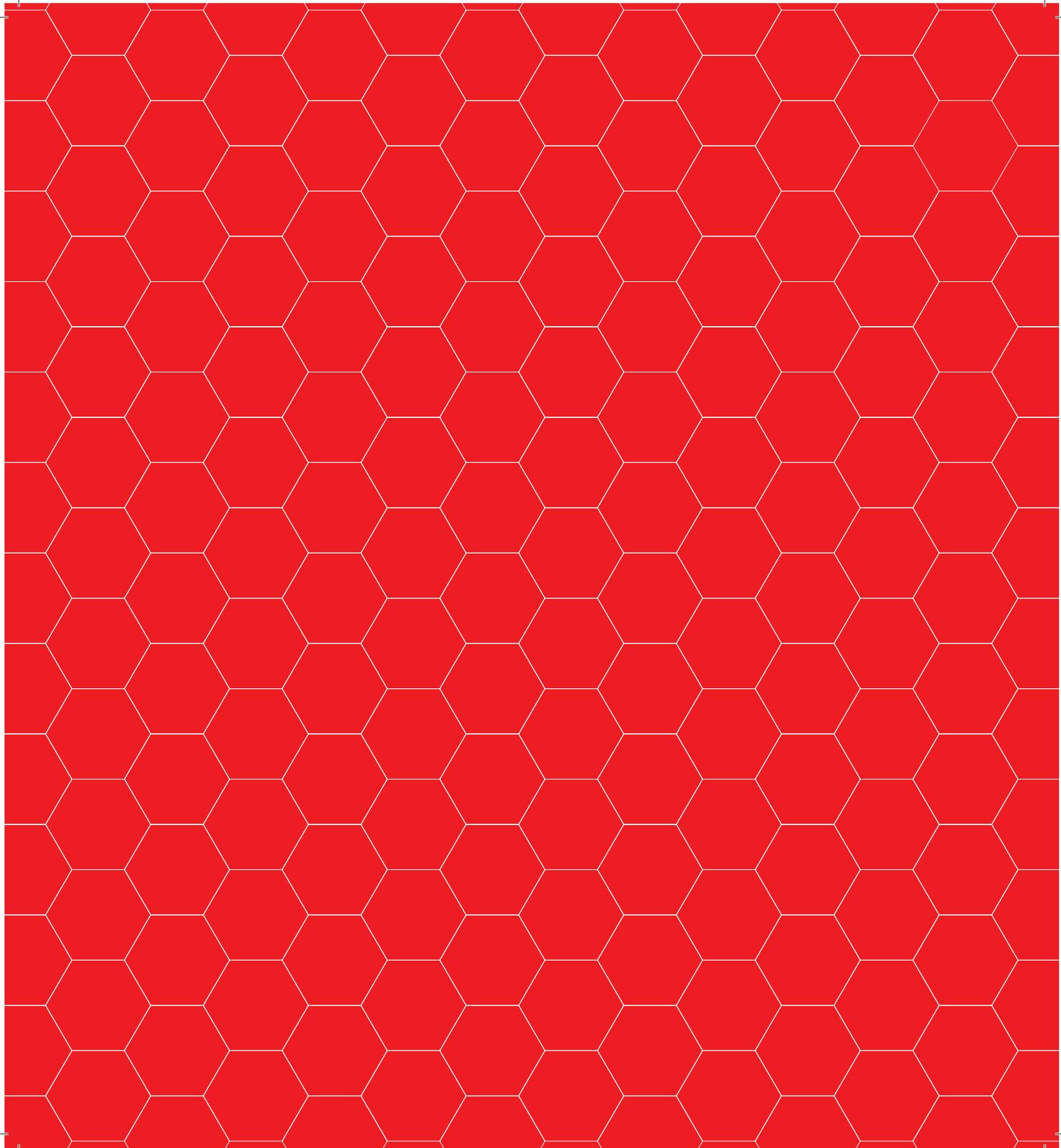
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HATENMORE
TRAINING AND AWARENESS RAISING TO COMBAT
HATE CRIME AND HATE SPEECH



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Introduction



Every year, violence motivated by bias or hate affects a significant part of the population of the European Union (E.U.). This type of violence has repercussions not only on its direct victims and their communities but also on society as a whole. It is mainly the most vulnerable groups and communities that fall direct victims to this phenomenon that is currently in the forefront of the European agenda.

According to the Special Eurobarometer Discrimination in the E.U. 2015 (European Commission, 2015), in comparison with data from 2012, the proportion of interviewees with friends or acquaintances that have a religion or belief other than their own increased 3%, and 9% of all interviewees had friends who are transsexual or transgender individuals (+2 percentage points). As stated in this report, approximately one in eight interviewees viewed themselves as part of a minority group (religious minority, ethnic minority, people with disability, LGBTQ+ community or other).

Findings from official statistics or large scale surveys conducted in Europe show concerning levels of incidence of discriminatory violence/offences (eg. hate crimes, hate speech). Racist and xenophobic behaviours towards refugees, asylum seekers and migrants have increased in the latest years in the majority of the E.U. Member States.

Adding to the data showing the raise in discriminatory incidents and violence throughout Europe, discrepancies between the number of incidents reported to authorities and the real amount of victims of this type of violence are highly noted. For instance, following the trend established in other surveys on discrimination against LGBTQ+ people, the 2016 report of the Discrimination Observatory (ILGA Portugal) revealed that more than 60% of respondents to the survey had not reported episodes of discrimination they suffered to any authority or official entity.

According to the European Union Agency for Fundamental Rights (FRA, 2016), lack of reporting to authorities by the majority of victims of discriminatory incidents or violence contributes to the invisibility of the phenomenon. There are many factors and reasons highlighted in literature as to why the number of reports of discriminatory incidents or violence is so low. Among others are some that both victims and authorities frequently point out: lack of information or understanding of the victim regarding what constitutes discriminatory incidents or violence; victims' lack of information on their rights and services available to them; lack of knowledge of where to go and/or how to report the episode; lack of knowledge regarding the applicable legislation or the criminal proceedings; language barriers; lack of trust on the support system (police, etc.); lack of alternative



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ways of reporting anonymously; diminishing of the severity of the incident/act of violence; specifically regarding migrants or asylum seekers, problems concerning their legal status in the country (e.g: FRAa, 2016; FRAb, 2016; FRA, 2013).

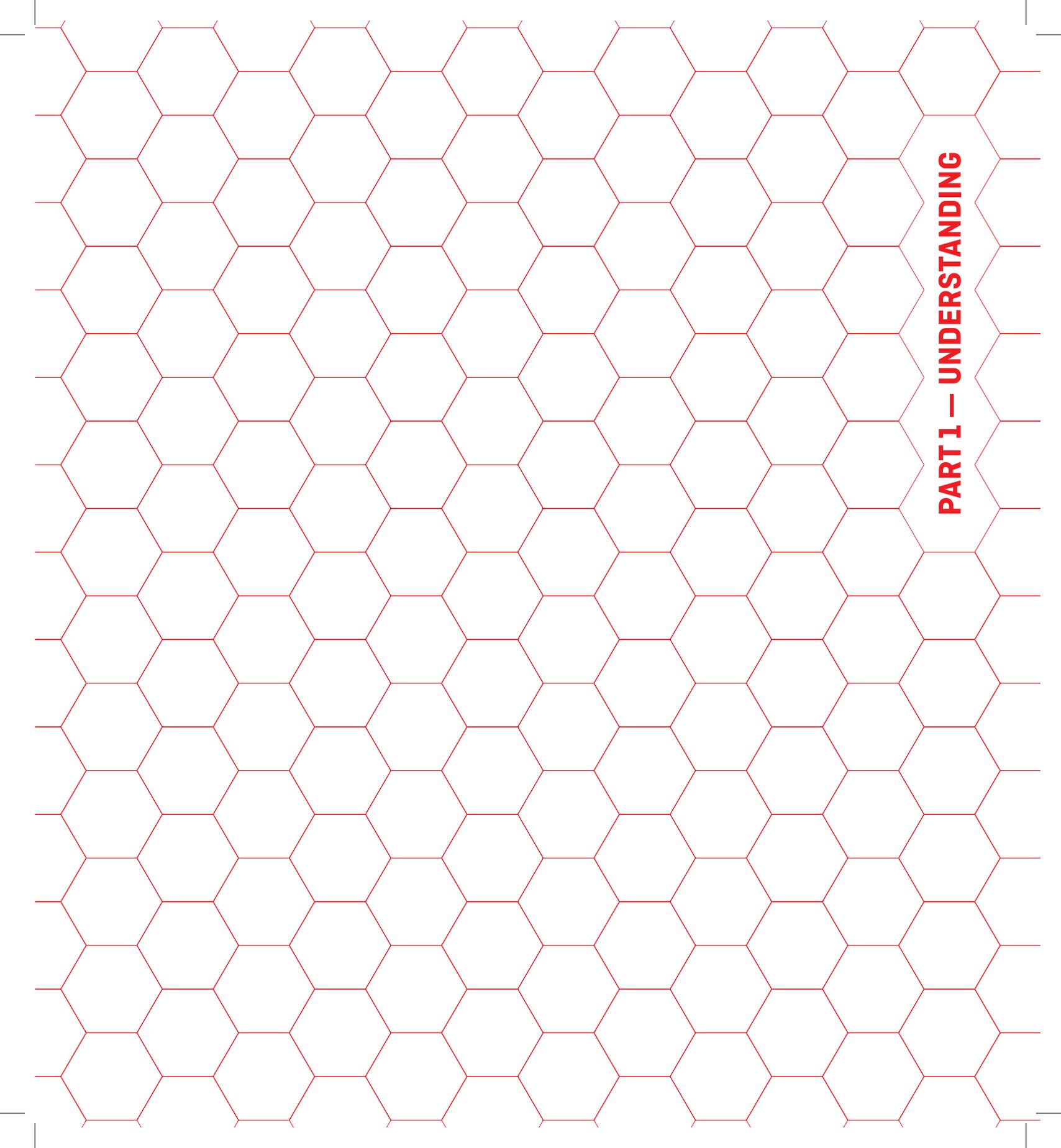
The project “Hate no More – training and awareness raising to combat hate crime and hate speech was developed with the aim of creating multidisciplinary tools for awareness raising and training to combat hate crime and hate speech, using a victim-centred approach.

This project was coordinated by APAV (Portuguese Association for Victim Support) in partnership with, on a national level, the Judiciary Police, the General Prosecutor’s Office and Citizenship and Gender Procuradoria-Geral da República (all Portugal); and on an international level with Faith Matters (United Kingdom), Solidarcy (Italy), Victim Support Malta (Malta), Swedish Crime Victim Compensation and Support Authority (Sweden), Victim Support Austria (Austria), Spanish Confederation of Police (Spain) and Victim Support Europe. The project, co-financed by the European Commission (JUST/2015/RRAC/AG/9036), aimed to raise the awareness of society at large as well as potential victims of this type of crimes in particular.

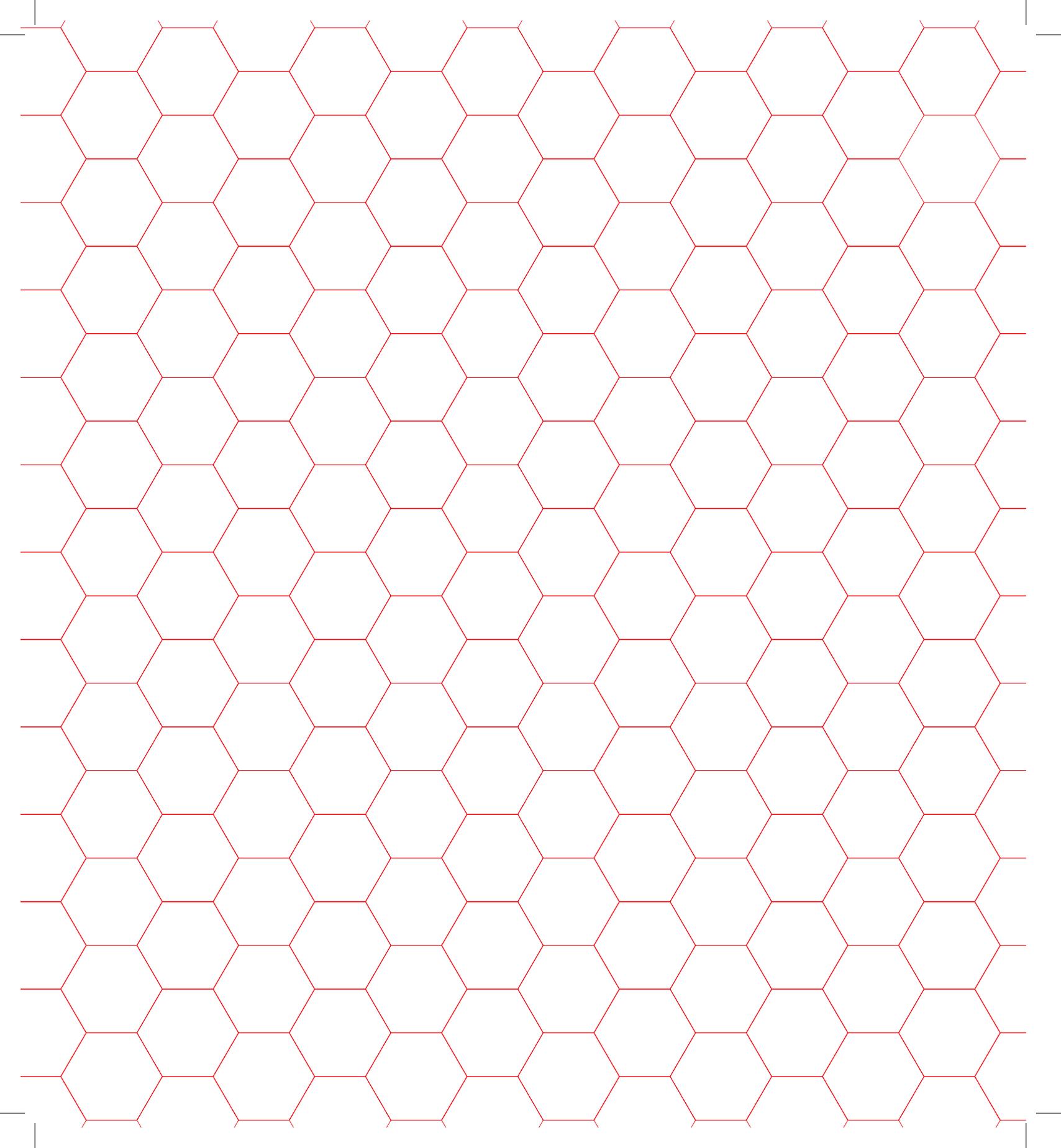
The **Handbook HATE NO MORE – handbook for support to victims of hate crime** introduces a set of procedures suitable for appropriate contact, assistance and support to victims of hate crimes. This handbook is thought for professionals that, throughout the E.U., may contact with victims of hate crime or related violence in a wide variety of services and institutions. Among these professionals are victim support workers, but also police officers and judicial practitioners.

The handbook HATE NO MORE addresses a range of crucial contents for understanding the phenomenon of hate crime (Part 1) and presents some appropriate procedures to contact with and support victims of this type of crimes (Part 2).

This handbook does not intent to be detailed but instead to present general guidelines. The operational use of such guidelines depends highly on the reality of each Member Stat



PART 1 -- UNDERSTANDING



Hate crimes: in pursuit of a definition



The term 'hate crime' immediately suggests that it is a crime motivated by hate, a manifestation of intolerance with great impact not only on the direct victim but also on the social group with which the victim identifies. There is no universally accepted definition of hate crime. The concept has evolved significantly in literature and the legal definitions adopted vary widely and are limited in their scope. However, certain acts, motivated by bias or hate, are considered criminal offenses in accordance with the criminal justice system of the country where they occur. Considering the existing legal definitions, what first and foremost differentiates hate crimes from other types of crimes is the motive behind them (OSCE/ODHIR, 2009).

The term 'hate crime' is limited if we consider the phenomena that is behind it. The use of the designation 'hate' has been disputed. Hate crimes are not necessarily offences committed because the author of the crime hates the victim. 'Hate' is a feeling associated to manifestations of extreme violence, hostility or abuse against the social identity of an individual. When within the framework of 'hate crimes' or 'violence motivated by hate', the term acquires an emotional connotation that is difficult to prove and, sometimes, makes the judicial proceedings more complicated (OSCE/ODHIR, 2009).

However, crimes do not need to be motivated by hate to be classified as a hate crime (Gerstenfeld, 2013). In fact, the author of the crime can act, for instance, moved by resentment, jealousy or desire of approval by his/her peers, and not necessarily based on 'hate'. The author of this type of crime may not have feelings towards the victim but, instead, hostile feelings or thoughts regarding the social group the victim belongs to or feel hostility towards every person who belongs to social groups different than his/her own (OSCE/ODHIR, 2009).

Hate crimes have been defined in a way that presumes that what mainly characterizes them is the (real or perceived) sense of belonging of the victim to a certain social group, and not the existence of hate by the perpetrator. It is important to take into account not only individual aspects of the victim, but also aspects related to the social and political, historical or contemporary, power dynamics within society. This is so considering that society attributes privileges, rights and prestige in accordance with social or biological groups, and hate crimes are expressions of hate against those who do not belong to such groups (Sheffield, 1995).

According to Perry (2001, p10), this type of offences entail "*acts of violence and intimidation that are not always technically criminal in nature, and that are usually directed towards*



Hate crimes: in pursuit of a definition

already stigmatized and marginalized groups. As such, it is a mechanism of power and oppression, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to re-create simultaneously the threatened (real or imagined) hegemony of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group".

In other words, the author of the hate crime selects his/her victim based on the victim's real or perceived belonging to a particular social group (religious, 'race', ethnic, LGBTQ+, etc.). Perry considers hate crime a dynamic social problem, in which an offense occurs within the specific social and cultural context and within the social structures of power, which conditions the impact hate crime has on its victims and their communities. Perry therefore focuses on the group and not on the individual, recognising that the attack is aimed at the group as a whole and thus the individual victim does not play a central role, as he/she is only a representation of something. Hence, this type of crime sends a message that the individual is not or was not the victim of a random crime, but his/her inherent or fundamental and identity characteristics - that usually he/she cannot change - are the decisive factors for the act of violence to be committed. This is so because in the perception of the perpetrator these characteristics represent a threat to his/her quality of life (that is to say, economic stability and/or physical safety).

The Organisation for Security and Cooperation in Europe (OSCE) provides a definition of 'hate crime' that does not resolve the limitations of the word 'hate':

- Criminal acts motivated by bias or prejudice towards particular groups of people;
- "Any **criminal act**, namely against **people or property**, in which the victims or targets of the crime are **selected based on their connection (real or perceived), bond, affiliation, support or real or presumed association with a certain group**" (OSCE/ODIHR, 2006).

In order to be considered a hate crime, the offense shall correspond to:

- a. A **crime** according to the legal framework of the country where it took place;
- b. The author of the crime acted under **bias motive**, meaning that he/she **deliberately selected** the victim because of his/her **personal characteristics** that the author **associated with a social group** other than his/her own (usually with less power and lower in number within society at large). ODIHR defines bias motive as "preconceived negative opinions, stereotypical assumptions, intolerance or hatred directed to a particular group that shares a common characteristic, such as race,



ethnicity, language, religion, nationality, sexual orientation, gender or any other fundamental characteristic”.

Hate crimes are, therefore, defined as ‘crimes of identity’, considering that they target an aspect of the victim’s identity, be it an unchangeable one (ethnicity, disability, sexual orientation, gender, etc.) or a fundamental one (religion, cultural traditions, etc.) (OSCE, ODIHR, 2009).

Often the victim is, to a certain extent, instrumentalised by the author of the crime as a means to pass a “message” to the social group the victim belongs (or appears to belong) to in order to tell them they are not welcome or safe. Insofar, hate crimes have a collective impact in certain social groups and can even create a sense of generalised social unsafety. When the criminal act targets the destruction of patrimony, this is selected because it is associated to the group of victims (e.g. community centers, refugee camps, shops, family houses, etc.). Hate crimes can affect not only individual spheres (e.g. health, physical and psychological integrity, honour, liberty and even life), but also collective spheres that belong to the whole community the victim is a part of.

However, the OSCE definition, which is the most widely accepted, still contains some problems within it. Firstly, the fact that it only considers criminal acts according to state legislations, which excludes several forms of hate speech, particularly when they do not constitute threats. Secondly, it also does not include incidents in which the victim is not specifically chosen as the target of a premeditated act of violence based on bias, but instead that motive is secondary or arises from a daily encounter between the future perpetrator and the future victim (Kees, 2016).

It is also important to highlight that it is not de fact of pertaining to a certain social group that necessarily determines the choice of the victim as the target of a hate crime. The author’s perception based on bias can lead him/her to attribute to symbols or characteristics a given meaning that would link the victim to the group he/she rejects, even if they are in fact not a part of it (for instance, men from the Sikh community have fallen victim to hate crimes because they were perceived as Muslims; or some people who does not express themselves according to social constructions of a given gender, for example by the way they dress, are perceived as trans people when they are actually not) or the author can also commit a violent act against a person who is associated to a certain social group (even if not belonging or appearing to belong to it) because that person defends the rights of those communities or are otherwise associated with a certain community.



Hate crimes: in pursuit of a definition

Finally, the scholar debate around hate crimes has paid attention to the rigid nature imposed by the creation of a set of categories of groups that can be subject to hate crimes, which is a simplification of reality. This was made particularly visible in the case of Sophie Lancaster, an English young woman who was brutally murdered in 2007 because of her physical appearance perceived as different (goth). Hence, some authors have claimed the need to understand that hate crimes are essentially attacks towards what is perceived as “different” and vulnerable. These authors defend that is not so much the identity of the victim itself that makes he/she vulnerable in the eyes of the perpetrator, but instead the way in which their identity connects and intertwines with other situational and context factors (Chakraborti & Garland, 2012). The most recent opinions in literature have thus placed more focus on the experience of the victim, recognising the impact of hate crime regardless of the identity attacked, instead of only focusing on minority social groups, historically and/or currently marginalised targeted in order to maintain the privilege of other groups (Mason, 2014). Other groups can then be considered as potential victims of bias driven crime, such as elderly people, homeless people or sex workers.

Linked to the attempts of defining or studying hate crimes, frequently other terms that are directly or indirectly connected to them arise and it is therefore important to briefly clarify what they mean.

2.1. Hate incidents

Hate crimes are acts committed by the author because of his/her bias towards the victim and that, according to national laws, are considered a criminal offence. Nonetheless, the legal framework of a given country might not incorporate within the definition of hate crime a wide range of other violent behaviours that may also be based on bias and serve the same purposes for the perpetrator. This type of behaviour and/or offense may involve the destruction of property, or threats, or intimidation, or physical abuse, or verbal abuse and insults, or physical attacks, or rape, or sexual abuse, or torture, or even homicide. In order to counteract the limitations in practice of the term “crime” in combatting this type of phenomena, some authors have suggested using the term “hate incidents” instead. This term refers not only to violence in the form of physical acts but also to other forms of violation of individual liberty and property - including hate speech. The use of the term “hate incidents” allows for a broader concept of the phenomena, with the aim of going beyond the reach of criminal law. Although the term “hate crime” is preferred by authorities, due to its wide scope, the term “hate incidents” is overwhelmingly used by civil society.

2.2. Hate speech

This term means any negative remark about a group or individual, usually based on bias, that disseminates, incites, promotes or justifies hate, hostility or violence against a person or group on the basis of their perceived identity (among others, ethnic background, nationality, religion, gender, gender identity, sexual orientation, handicap, as well as human rights defenders and those who support the promotion of rights of certain groups and of democratic values). Hate speech may or may not be a crime depending on the context in which it was said and the legislation of the country.

2.3. Discriminatory violence

Recently, the European Forum for Urban Security (EFUS, 2017) introduced the concept of discriminatory violence as a definition for acts conducted on the basis of hate, intolerance

or bias. This definition comprises the intertwined connection between this type of acts (that also sustain wider forms of discrimination, such as marginalisation, social exclusion and ostracism) and social processes of construction of power and social order. It therefore avoids the limitations of the concept of criminal acts (inasmuch as not to use the term “crime”), as well as those of the term hate, stressing the discriminatory and hostile motives.

“Discriminatory violence” shall therefore be understood as every “violent incident which the victim, a witness or any other person perceives as being motivated by prejudice, intolerance, bias or hate, and which may or may not constitute a criminal offence under the valid penal code” (EFUS, 2017).

Hate crimes are defined by their underlying motive, which is also what makes them differ from other crimes. That is to say they are characterised by social bias. It is thus important to distinguish other concepts that are associated to it and understand how opinion is built on biases regarding a certain social group, or regarding difference in general, and how this can determine certain behaviours (criminal or not).

In spite of the multiple definitions of ‘attitude’, all existing conceptualizations refer to it as a mental representation based on an evaluation made concerning a certain object (Leyens & Yzerbyt, 2011). These individual evaluations allow giving a certain meaning and knowledge about the world, reflecting lived experiences that even allow us to predict the behaviour one should take to face certain realities.

Considering these are evaluations, attitudes can be positive, negative or neutral and present three components:

- a. **Emotional** (emotions and feelings about the whole or parts of the object under review; e.g. ‘I like that soda’ ou ‘I do not like that soda’);
- b. **Cognitive** (beliefs regarding specific characteristics or the object as a whole; e.g. ‘This soda has high levels of sugar’);
- c. **Behavioural** (behaviour intents with regards to specific characteristics or the whole of the object; e.g. ‘I tend to drink a soda every time I feel warm’). It is noteworthy that the behavioural component concerns the global intent that guides the action in a certain way, but not necessarily the behaviour that is ultimately manifested. For instance, an individual may present the intent to vote in a given political party with a certain type of views on society and economy, but in practice this may turn out not to happen, due to social or context circumstances.

As above mentioned, attitudes do not always help to accurately predict a visible behaviour adopted by a given subject (Fishnein & Ajzen, 1974). Various factors may influence the relationship between behavioural intent and effectively observed behaviour (Fishbein & Ajzen, 1975; 1980):

- **Behavioural intent** – the attitude will only influence behaviour if there is a real intent of behavioural action at that given time;
- **Cost-benefit and awards-disadvantages evaluation of the behaviour** – to act according to an evaluation of attitudes shall also consider the cost-benefit evaluation of the behaviour that the subject does of the need to act or not to act in a certain

Das atitudes aos crimes de ódio

situation ('What is in this for me?'; 'If I act this way, what will be the consequences of my actions?');

- **Normative concerns** – normative influences may deter a given subject from acting in accordance with the cognitive and emotional evaluation previously made of a certain object ('What will others think if I act in this manner?').

The segmentation of the components of an attitude together with the variables that can influence the relationship between an attitude and the manifested behaviour lead us to conclude the importance of:

- a. Regarding attitudes towards more vulnerable groups, giving real, specific and reliable information about such populations in order to influence in a neutral or positive way the cognitive component of such attitudes;
- b. Presenting in a clear manner the consequences of adopting certain discriminatory behaviours, above all when the behavioural intent is discriminatory;
- c. The authority figures / social influencers and of the social group the person belongs to in building one's attitudes and, ultimately, the behavioural action.

Therefore, attitudes are the basis for other concepts and behaviours that directly relate or can turn into serious offense behaviours, such as, for instance, hate crimes:

- **Stereotypes:** Beliefs or generalized thoughts (i.e. shared with other people) about other groups of people, which can be positive, negative or neutral. In other words, these are attitudes directed at groups of people and not only at one sole social object, and that do not even correspond to reality (for instance, 'all Asian people are excellent in math');
- **Prejudice:** Prejudice entails a specific stereotype that contains an evaluation or judgement (usually negative);
- **Discrimination:** Discrimination always comprises a behavioural action that makes a specific group incapable or less capable of enjoying its human rights. (Adapted from *References - Handbook for fighting hate speech online through Human Rights Education*, 2016).

What impact does it have on victims?

A hate crime entails an attack to social identity characteristics of the victim (and/or the social group to which they belong), violating the principle of equality and seriously affecting the self of the victim (Iganski, 2002).

It is crucial to understand that hate crimes are complex realities with legal definitions that imply a certain level of simplification. Such simplification arises from the fact that the actual impact they have on its victims, often not including acts of violence considered of “lesser intensity” that, in the context in which they occur, effectively contribute to victimization (Kees, 2016).

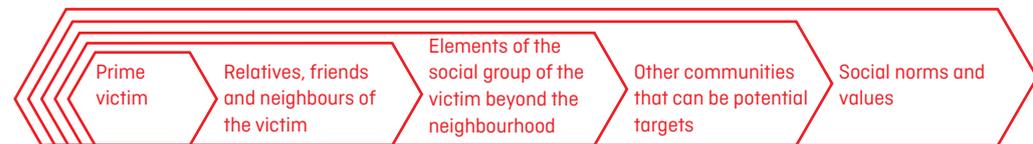
Assaults based on bias are seen as a form of aggression with qualitative characteristics that differ from other forms of aggression: on the one hand, for the perpetrator the offense serves instrumental purposes; on the other hand, it also has a symbolic function. Often there is a symbolic message of bias that, through the offense towards one victim, is communicated to a whole community, neighbourhood or group. In other words, when considering the impact this type of crime has on one victim, it is important to consider: the type of offense; the impact of the motive behind the criminal act had on the self-image of the victim (that was attacked because of “what he/she is” and cannot change or is a fundamental part of his/her social identity); and the impact the act had on the community the victim belongs to and that shares the same characteristics.

Moreover, beyond the primary victimisation caused by the criminal act, a victim can also suffer secondary victimisation (or double victimization) in the relationship he/she establishes when contacting with the criminal justice system (law enforcement, judicial system, etc.), health system and media, among others (Herek & Berril, 1992). The risk of secondary victimization comes not only from the problems faced by the systems themselves (for example, the frequent repetition of declarations made to the authorities) but also from the fact that professionals themselves may also share the stereotypes or even prejudices that prevail in society regarding some social groups. The latter can affect, even if unconsciously, the behaviour of professionals towards the victim. Situations of this sort have the potential of feeding feelings of lack of hope and/or trust of the victim (and even on his/her community) on institutions.

The impact of hate crimes and discriminatory violence has some particular features. Ignaski (2001) developed the concept of “waves of harm” through which she attempts to explain the way this type of incidents affects different victims, not only the direct victims but also indirect victims, from family members and friends to other members of

What impact does it have on victims?

the neighbourhood community and even people outside of the victim's circle, including people that belong to the same social group and members of other groups, usually minority groups. A hate crime can send the message that a specific community/social group is not welcomed or accepted. This is so regardless of whether they are close to the place where the incident occurred or not or whether they are known to the victim or not. For instance, an attack to a mosque can interfere with the feeling of safety of all Muslims that live or are in the town where the incident occurred, even if they do not go to that specific mosque. The framework developed by Ignaski had the following (adapted) configuration:



We will now focus more in depth on the impact that hate crimes and discriminatory violence can have on its direct victims and on the community/social group the victim belong to or seems to belong to. However, it is noteworthy that there are also particularities in the impact on society at large. For starters:

- Lack of investigation or accusation within this type of crime increasing feelings of impunity, which can motivate others to commit such types of offenses and generate increase in violence levels;
- Lack of trust in law enforcement and/or state institutions due to a lack of adequate protection measures, incentivising marginalisation of certain communities;
- In extreme cases, increase in vindictive violence between different social groups.

4.1. Impact on direct victims

Although we cannot talk about a standard impact, since crime and violence affect each victim differently, in general the socio-emotional and psychological impact on direct victims of hate crime are comparatively higher than those felt by similar offenses without a bias motive (Klees, 2016).

These victims, due to the attack suffered on their most fundamental rights, are more prone

to suffer from psychological distress and discomfort than victims of other violent crimes (APA, 1998; Herek, Gillis, & Cogan, 1999; McDevitt Balbonic, Garcia, & Gui, 2001).

At the socio-emotional level, in the immediate aftermath of a violent incident victims are more likely to face problems at work or in school and even to have more inter personal conflicts, namely with family members and friends. Feelings of lack of trust, inability to concentrate, less proximity to those close to them and mistrust towards new acquaintances and decrease of social networks are but examples of the possible immediate effects of a situation of hate crime or discriminatory violence (Klees, 2016).

Psychologically, international studies indicate that physical and psychological consequences tend to be more serious (Ignaski & Lagou, 2015), symptoms more protracted (Klees, 2016) and that there is an increase in the probability of showing the following symptoms:

- Higher levels of anxiety and distress symptoms (McDevitt et al., 2001);
- Loss of trust and feeling of vulnerability (Ehrlich, 1992);
- Difficulties in concentration/focus (McDevitt et al., 2001);
- Increased sleep difficulties (McDevitt et al., 2001);
- Anger;
- Fear and reduction of feeling of safety (McDevitt et al., 2001), as well as feelings of lack of control.

In addition, these victims show higher risks of developing conditions such as:

- Depression (McDevitt et al., 2001);
- Anxiety disorders (Ehrlich, 1992);
- Posttraumatic stress disorder (Boeckmann & Turpin-Petrosino, 2002).

Another important aspect is the fact that the recovery process is longer for these victims when compared with victims of crimes of the same nature but not driven by bias (Gillis & Cogan, 1999).

One other point worth mentioning is the relationship between the emotional reactions of the victims and the reactive behaviours they develop. Paterson et al. (2018) conclude that an increase in levels of anxiety tends to generate avoidance behaviours, for instance avoiding certain locations; and an emotional reaction of anger tends to increase the victims' feeling of belonging to a certain community. These reactions can be both felt by the same victim in different moments.

4

What impact does it have on victims?

It is worth highlighting that, in fact, an incident of this sort can limit the victims' spatial mobility (Dzelme, 2008), avoiding places they fear to be more dangerous in order to avoid new episodes of bias violence. This can entail specific places, certain streets, a whole town or even a country, therefore being very restrictive to the victim's movements.

The avoidant behaviours some victims may adopt can also mean altering certain aspects of their physical appearance in order not to be identified or stand out as members of a given social group.

Victims of hate crimes based on race or ethnic origin can suffer a particularly complex impact. The implications that this type of crime can have to the victim's self-image, perception of the community and feeling of safety are particularly complicated. This is so because they understand that the offense could only happen to them because of a distinctive identity characteristic that is identifiable and visible. Since often these victims are part of highly stigmatised groups, frequently associated by the general population to negative prejudices, their feeling of hopelessness can increase (Craig-Henderson & Sloan, 2003).

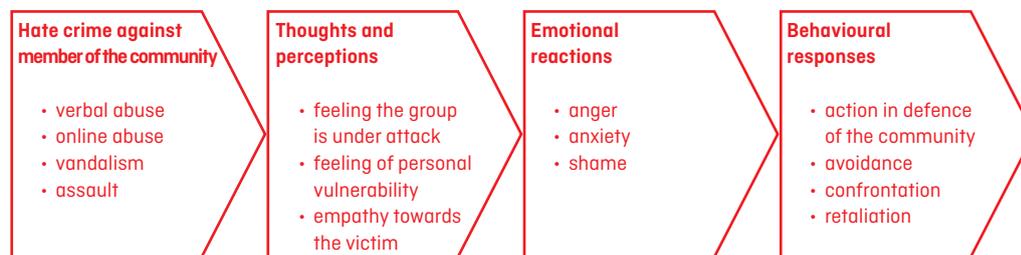
It is important to understand that the impact that this type of crime has on its direct victims goes beyond their psychological well-being and emotional balance. Like any other type of victimization, regardless of the motives behind the offense, victims can also be affected in (Doerner & Lab, 2012):

- Their physical functioning (physical harm, more or less permanent, including disability);
- Their financial/economic state (total or partial destruction of property, medical expenses, etc.);
- Their social functioning (changes in routines, altered patterns of social interactions, social stigma, etc.).

4.2. Impact on the community of belonging

Considering that the aim of and the message usually associated to the commitment of a hate crime, the feeling of safety and protection of the community the victim belongs to is reduced (Boeckmann & Turpin- Petrosino, 2002). Discriminatory acts against members of a certain group can influence in a negative manner the well-being and self-esteem of the rest of its members (McCoy & Major, 2003). These indirect victims can thus reveal some of the same socio-emotional and psychological consequences that the direct victims do, as well as their avoidance behaviours.

Paterson et al. (2018) present the following diagram as illustrating how hate crimes affect people in the community other than the direct victim(s).



The mere fact of knowing the victim can generate a feeling of being under threat, vulnerable, angry, anxious, pro-active, avoidant or behave focused on personal safety. These indirect victims can hence be affected in similar ways as direct victims are, although with less intensity. Their feeling of safety diminishes and can increase their feelings of stigmatization and rejection of the community, potentially leading to tensions and social isolation. Even members of the community who do not know the victim personally can suffer from these consequences.

4.3. Needs of victims

In order to appropriately intervene in this field, it is important to understand the specific needs of victims of these types of crime. Bearing in mind that each victim has his/her own individual needs, and that many of their needs will be common to victims of other types of crimes, still some most common specific aspects can be identified and are noteworthy. The list below shows only some of these possible needs (Kees, 2016, adapted):

- Support for immediate consequences (for e.g., emergency shelter or temporary accommodation - this is because the victim may, for instance, be particularly at risk in a certain neighbourhood where the perpetrators also live);
- Medical assistance (depending on the type of offense);
- Information and explanations about their rights, about the criminal procedure (when a lawsuit is started/ongoing), regarding the release of the offender;
- Information about where and how to seek help, services and support groups to

What impact does it have on victims?

- increase resilience;
- Respect for their dignity and appropriate treatment, believing in what they say and the experiences they report (lack of belief in the victim by professionals is a problem common to other types of crimes, but it is particularly felt by victims of hate crimes and discriminatory violence and the impact it has on them is especially acute since it can lead to isolation and even marginalization);
- Time to express their own needs, considering the socio-emotional and psychological impact that is particularly high in this type of crimes;
- Opportunity to express what and how they feel (impact of the crime);
- To be accompanied by a person of trust that can help not only in terms of emotional support but also to better articulate their needs when communicating them;
- Financial or practical support to guarantee preservation of property;
- Often they also need security measures next to their residence or the place where the crime occurred, due to the high possibility of new violent episodes.

4.4. Important aspects for the recovery of the victim

Similar to other victims with post-traumatic stress disorder, victims of hate crimes show better recovery from the event when the appropriate support and resources are made available immediately after the traumatic event.

From a psychosocial perspective, there are several support resources (past, current and potentially future) that can positively influence the reaction and recovery of a victim of hate crime, namely (Fingerle & Bonnes, 2013):

- **Existing family support** (nuclear or extended family; emotional support and basic needs support, for instance the possibility of temporary housing, accompaniment to health facilities or police station, etc. by relatives);
- **Existing support by the community to which the victim belongs** (support by neighbours, group of belonging, etc.);
- **Existing institutional social support** (judicial system, police, physicians, etc., sensitive to their real needs).

When a given legal system does not contemplate ‘hate crime’ as an autonomous type of crime (as is the case in some countries), in the moment of reporting it is not possible to register the bias motive inherent to the offense. For this reason the statistical information of this type of crime is often restricted to statistics collected by organisations parallel to the justice system (e.g. NGOs), through their own projects and that can, eventually, not reflect the reality in full. The lack of statistical data makes this phenomenon even more invisible and ends up affecting the design and implementation of public policies to combat hate crimes.

OSCE is an example of an organisation that, through its Office for Democratic Institutions and Human Rights (ODIHR), gathers statistical data concerning the dimension of hate crimes in its several Member States. The data in question is collected in two different manners: through national contact points - criminal police officers, magistrates and judges nominated by the governments of the Member States, which share the official number of hate crimes and the type of hate incidents they have registered; through civil society organisations, intragovernmental organisations and the Vatican – which provide such information after receiving an annual invitation to present data and reports about hate incidents. It is noteworthy that ODIHR considers the information presented as “incidents” and not as hate crimes, acknowledging the impossibility of verifying case by case if an offence constitutes a criminal one or not. Besides this difficulty, ODIHR acknowledges that the data collected by civil society is not easily comparable with data collected by the national contact points, most often than not differing between each other. This can be explained by the fact that some incidents of hate, criminal or not, are reported to civil society organisations but not to state authorities.

Following the methodology briefly explained above, ODIHR publishes, annually, data about hate crimes. Data of 2016, published in November of 2017, was submitted by authorities of 44 member countries and 128 civil society organisations that cover a total of 48 participating States of the OSCE, focusing not only on the number of bias incidents/crimes but also on disaggregated data, namely regarding the discriminatory motives of such data. Currently, data presented by ODIHR can be disaggregated into the following categories: racism and xenophobia; discrimination against Roma and Sinti populations; anti-Semitism; discrimination against Muslims; discrimination against Christians; discrimination against members of other religions; discrimination against people with disabilities; and discrimination on the basis of sexual orientation or gender identity.

Considering the lack of official statistical data, the collection and annual publishing of data by the ODIHR is one of the main sources of information regarding the extent of such crimes and/or incidents in the OSCE member states. Insofar, we briefly present data regarding the countries partner to this project.

What do statistics show?

Austria

In Austria, in 2016, there were 425 hate crimes officially registered, most of them (356) due to racism and xenophobia. Civil Society and intergovernmental organizations have registered 194 incidents of hate, being 71 of them motivated by racism and xenophobia and the other 71 by antisemitism.

Italy

In Italy, a total of 803 hate crimes were registered by the national contact points. Civil society and intragovernmental organisations registered, in 2016, 103 hate incidents – 39 of racism and xenophobia motivations and 32 of discrimination against Christians.

Portugal and Malta

Both regarding Portugal and Malta there is no data for 2016 or any previous years (the only data available for Portugal refer to official data of 2014, which indicates that 21 hate crimes were registered). The lack of registered incidents certainly does not correspond to the inexistence of such incidents in either of the countries, but instead the absence of shared information with ODIHR, both by state authorities and civil society, which is reflected in the observations made by ODIHR itself that affirms both countries do not present reliable data.

United Kingdom

In the United Kingdom, in 2016, official data indicated the occurrence of 80 763 hate crimes, 20 321 of which went to trial. The majority (around 78%) of these crimes was motivated by racism or xenophobia. Civil Society and NGOs registered 562 hate incidents. However, in this case antisemitism was the motive behind most of them (528).

Sweden

According to ODIHR, in 2016 official data collected by national contact points indicated that 4862 hate crimes were registered, 257 of which went to trial. Regarding motive, the majority (3439) was driven by racism and xenophobia. Civil society and intragovernmental organisations registered, in that year, 21 hate incidents, 15 of which were based on sexual orientation or gender identity bias.

Depending on the country, the inclusion or exclusion/omission of certain fundamental and/or unchangeable in the legal definition of hate crime depends, above all, on the historical context of the country, current social problems and incidence of certain crimes against personal liberty in particular.

Some characteristics show up with greater frequency (such as ethnicity, “race”, sexual orientation, gender identity, sex, gender, age, disability), while others (such as political ideology or affiliation) appear with less frequency.

Terminology discussions around the terms “minority groups” and “vulnerable groups” persist (e.g. Carmo, 2016). A minority can be defined by the single out of a certain group, since a majority is defined by a generalised group that establishes a supposed standard of normality, considered majority with regards to the other that differentiates from it. Vulnerability arises from pressure by that given pattern of normality, leading to relationships of social asymmetry (economic, educational, cultural, etc.). However, from a legal perspective, both are groups that suffer discrimination and are victims of intolerance and other forms of prejudice, with common characteristic elements, even if they are conceptually distant (Séguin, 2002).

In fact, minorities are more prone to legal-social vulnerability (because they are not protected by public policies, for instance); fight on a daily basis against the discourse of the majority group that holds more power (Sodré, 2005).

Taking into account the intersections between the two terms, in this handbook we opted to use the terms “minority groups”, “vulnerable groups” or “selected groups” as synonyms, thus as groups of individuals that, owing to their size and/or power and social control inferiority, are in a position of greater vulnerability (social, financial, cultural, etc.) and, insofar, become preferable targets to those who commit crimes based on intolerance, prejudice and hate, often members of majority groups which hold power.

The groups that will be mentioned in the following sections were selected because these are often categories used in the majority of legal systems and groups towards which there are high levels of discrimination and hate crime registered in the EU.

It is important to bear in mind that these are not fixed categories and these are not the only fundamental/identity characteristics for which victims have fallen victim to crime or that that entails their whole experience of discrimination.

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In fact, it is important to understand the concept of intersectionality in this context as well. This concept was first introduced within the feminist movement led by authors such as Kimberlé Crenshaw and it is a concept used in different areas, namely in sociology. It is an analytical tool that aims at identifying power systems that affect marginalised groups, considering that the various forms of social stratification are not independent between themselves, but rather interconnected.

Without entering into the complexity of scholar debates around this topic and in a brief and adapted manner to the context of hate crimes, intersectionality can be understood as the complex way in which different forms of discrimination (racism, sexism, classism, among others) overlap and inform each other, particularly in the experiences of groups and/or individuals who are marginalised. In a simplified manner, this means that a black lesbian woman will have a different experience from that of a white woman or of a black man because her identities as a woman and as a black person intersect, as well as the social prejudice against one and the other.

This reality can also imply the particular vulnerability of some groups within the social groups that tend to be more vulnerable, such as the fact that migrant Muslim women tend to be particularly affected by discriminatory violence based on ethnic origin; or that Black trans people are more prone to suffer hate crime than other trans people or other Black people; or that LGBTQ+ asylum seekers are likely to suffer more episodes of discriminatory violence, both due to their situation as asylum seekers, or for their LGBTQ+ identities, including from offenders who are also asylum seekers. It is crucial to take into account these multiplicities of identities and experiences when one contacts and supports these victims. This is important in order to understand the extent of the impact the crime had or can have on the victim, as well as their specific vulnerabilities. It is also relevant to appropriately identify the bias motives of the perpetrator.

6.1. LGBTQ+ community

This community is referred to in different manners by different organisations and groups. It is thus possible to find different acronyms such as LGBT, LGBT+, LGBTTTIS, LGBT*, among others. In general it is assumed that the letter T encompasses all gender identities that are designated starting with that letter (Transgender, Transsexual, and Transvestite). However, particularly in the English language, the symbol star is often used (LGBT*) to indicate that the T has a more plural meaning. In this handbook we will adopt the term

LGBTQ+ that represents all those who identify as Lesbian, Gay, Bisexual, Transsexual, Queer and others that belong to the LGBT through the use of the symbol “+”, namely Transgender, Intersex, Asexual, Pansexual, etc.

A European survey launched by the European Union Fundamental Rights Agency (FRA) in 2012 inquired more than 93.000 members of this community throughout the European Union and revealed that almost half of the respondents felt discriminated against or in some way threatened because of their sexual orientation or gender identity. Besides, in the last five years that preceded the date of response to the survey, a quarter of all the participants said they had been a target to discriminatory violence or threat of this type of violence. Concerning trans people surveyed, the number of people experiencing such situations rises to 35%. This evidence is in line with what research has shown, that is to say that 3 in every 4 trans people are victim to this type of crime each year, and trans women are particularly affected as they tend to be more visible (Jamel, 2018).

To allow for better understanding of the problems around discrimination against LGBTQ+ people, it is important to bear in mind some basic concepts (definitions contained in ILGA Europe’s glossary):

Cisgender

Term used to refer to a person who identifies with the sex assigned at birth.

Coming out

Expression used to refer to the process of a person revealing their identity as lesbian, gay, bisexual, trans or intersex.

Gender

Refers to a social construct which places cultural and social expectations on individuals based on their assigned sex.

Gender expression

Refers to people’s manifestation of their gender identity to others, by for instance, dress, speech and mannerisms. People’s gender expression may or may not match their gender identity/identities, or the gender they were assigned at birth.

Gender identity

Refers to each person’s deeply felt internal and individual experience of gender, which may

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or may not correspond to the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. For some people, this part of their identity falls outside the gender binary, and related norms.

Intersex

A term that relates to a range of physical traits or variations that lie between stereotypical ideals of male and female. Intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male. Many forms exist; it is a spectrum or umbrella term, rather than a single category.

That is why intersex activists frequently prefer to use the term sex characteristics (for example, when talking about grounds that can be protected against discrimination). There is not one static state, so using the term sex characteristics reflects the fact that it is a bodily experience and only one part of a person's identity.

Outing

When the identity of a person as a lesbian, gay, bisexual, trans or intersex is revealed without their consent.

Queer

Previously used as a derogatory term to refer to LGBTI individuals in the English language, queer has been reclaimed by people who identify beyond traditional gender categories and heteronormative social norms. However, depending on the context, some people may still find it offensive. Also refers to queer theory, an academic field that challenges heteronormative social norms concerning gender and sexuality.

Sex

The classification of a person as male or female. It is assigned at birth and written on a birth certificate, usually based on the appearance of their external anatomy and on a binary vision of sex which excludes intersex people.

A person's sex, however, is actually a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.



Sex characteristics

A term that refers to a person's chromosomes, anatomy, hormonal structure and reproductive organs. OII Europe and its member organisations recommend protecting intersex individuals by including sex characteristics as a protected ground in anti-discrimination legislation. This is because many of the issues that intersex people face are not covered by existing laws that only refer to sexual orientation and gender identity.

This is seen as being a more inclusive term than 'intersex status' by many intersex activists, as it refers to a spectrum of possible characteristics instead of a single homogenous status or experience of being intersex.

Sexual orientation

Refers to each person's capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Trans

Is an inclusive umbrella term referring to people whose gender identity and/or gender expression differ from the sex/gender they were assigned at birth.

It may include, but is not limited to: people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant, gender non-conforming, or with any other gender identity and/or expression which does not meet the societal and cultural expectations placed on gender identity.

Transsexual

An older and medicalised term used to refer to people who identify and live in a different gender. The term is still preferred by some people who intend to undergo, are undergoing, or have undergone gender reassignment treatment (which may or may not involve hormone therapy or surgery).

Discriminatory violence against LGBTQ+ people can be based on the following types of prejudice:

- a. **Homophobia:** This is a prejudicial attitude against people who are attracted to people of the same gender, including lesbian, gay and bisexual people. It can include the belief that LGB people are deviant, unhealthy, damage society, should hide their identity, are humorous or deserve ridicule;

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Lesbophobia can manifest as stereotypes about masculine behaviour, dress, personality or lifestyle. Also, unwanted sexual questions, advances, or sexual assault; including ‘corrective rape’.

Homophobia can include prejudicial stereotypes about behaving in a feminine way, assuming someone is sexually attracted to all men, conflation with paedophilia, and expressions of disgust about sex between men.

Biphobia is a prejudicial attitude toward bisexual people. It includes the belief that bisexual people are confused, greedy, deceitful and promiscuous or spread disease. It is linked with ‘bisexual erasure’, where the needs of bisexual people are downplayed or their existence is denied altogether. Biphobia can be perpetrated by lesbian and gay people as well as heterosexual people.

b. Transphobia: This is a prejudicial attitude against trans people. It is an intolerance of gender diversity and includes the belief that there are two rigidly defined genders and that everyone should retain the gender they are assigned at birth. It can also be viewed as the enforcement of social rules about how people should express their gender.

Common expressions of transphobia include purposely mis-gendering someone (using the wrong female or male term about them), refusal of goods or services (such as access to changing rooms) and sexualised or generally unwanted touching or attention.

Homophobic, lesbophobic, biphobic and transphobic prejudices are present in societies at large; hence it can be seen at both an individual and an institutional level. These wider manifestations of prejudice are relevant to construe bias. This means that a heterosexist culture (i.e. the belief system that stigmatizes behaviour, identities, relationships and non-straight communities) influences the homophobic and transphobic prejudice (Chakarborti & Garland, 2017). Herek (2009) developed the concept of ‘sexual stigma’, which provides greater understanding of the way homophobia and transphobia manifest themselves structurally in institutions and individuals. These prejudices reinforce social values that normalize heterosexuality to the detriment of other sexual orientations, ensuring a system of behaviour and identity norms based on heterosexuality - heteronormativity (CIG, 2016), and the cisgender identity in detriment of trans identities.

Discrimination against LGBT+ has some particularities.

LGB people grow up and develop in a context of insult, which is particularly damaging

as it targets a fundamental part of their identity, including sexuality and conjugality (internalised homophobia). Until very recently there were not even words without a negative connotation to designate LGB identities, so non-straight people would grow up associating insult to their identity. Therefore, LGB need to find mechanisms to reject this negative impulse for themselves. Sexual orientation is not a visible identity characteristic and thus, to be recognised as such, LGB people need to “come out” in the process of developing their identity. Both due to difficulties in rejecting the insult and in order to avoid discrimination, many LGB people keep invisible, either in general or in certain contexts. The invisibility of LGB people also comes from heterosexism, since heterosexuality is often presumed, and insofar LGB people may have to tell their identity or sexual orientation in multiple circumstances, including when seeking support. Finally, most LGB people’s upbringing and development happen in mainly heteronormative environments, with few or no other LGB persona round (at least that they know of). This can make their path marked by isolation, by a difficulty in contacting or maintaining relationships with other LGB people, as a result of invisibility (CIG, 2016).

In spite of the great diversity within the community, there are specific problems and difficulties that are common to all trans people and that come from the difference between their gender identity and the sex assigned at birth.

Firstly, the need to fit gender expressions, social roles and their own bodies to their identity. Trans people can go through processes of transition (social, medical, legal) or not, opting not to do so either by not feeling the need to go through such physical changes, or by social reasons (family, work or financial issues) (CIG, 2016).

Trans people may or may not reveal their gender history or trans status. Studies indicate the importance of coming out for LGB people, for their self-acceptance and empowerment, but it is not so clear on whether it is equally beneficial for trans people. Outing situations are also common among trans people, for instance in moments of production of documents when these do not yet correspond to the names or references therein do not match their gender (Office for Victims of Crime, 2014).

It may be relevant to know of these aspects in order to know how to appropriately contact LGBTQ+ people who fall victims to hate crime. Hate crime can lead to instability in developing the victim’s identity and even make them try to again hide aspects of their identity or even revolt against the LGBTQ+ community.

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6.2. Ethnic, cultural and religious minorities

“Racist” hate crime is still wrongfully the most commonly associated with hate crime. Hate crime motivated by the ethnic identity of the victim is still the type of hate crime most frequently reported and the most addressed in public and political speech and by scholars.

It is important for starters to clarify some concepts to a better understanding of this theme.

Ethnicity

The term ethnicity does not have one only and consensual definition, it is commonly used to describe a shared culture (practices, values and beliefs) of a certain group of people. It can be a shared language, religion, tradition, among other points of contact. Schermerhorn (1978) defines ethnicity as a collective within a society at large that shares certain (real or supposed) aspects, such as ancestors, history and cultural elements.

Race

The term ‘race’ is a social construction that lacks scientific basis, it is controversial in several aspects (biological, anthropological, sociological, etc.), and it can cause problems in legal interpretations. According to Bowling & Phillips (2002), the concept of ‘racism’ echoes in the European Enlightenment, when ‘race’ was viewed as a way to distinguish cultural superiority of White Europeans in contrast with non-White people from outside Europe. This view gained roots during the expansion of the transatlantic trade of slaves (Bhavani et al., 2006).

However, the use of expressions connected to ‘racism’ and ‘racial discrimination’ persist and have acquired symbolic and historical value, as FRA has noted “there is not a term that, until now, effectively encapsules ethnic discrimination the same way that “racism” continues to capture a series of ideologies and discriminatory Practices” (EUMC, 2005).

Migrants, descendants of migrants and minority ethnic groups often suffer from various forms of discrimination and hate crimes or discriminatory violence. The second European Union Minorities and Discrimination Survey (EU-MIDIS II, FRA, 2017) showed that the people who responded felt that the main reason why they suffered discrimination/violence/crime was their ethnic or migrant background, but that their names, skin colour or religion were added factors that led that type of phenomenon. The Survey identified Roma communities (30%) and migrants of North African origin (23%) as the most affected groups by hate crime and racist violence.

Roma communities, ethnic minorities in many European countries, are highly stigmatised through restrictive public policies and public resentment throughout Europe. Prejudice against these communities is rooted in cultural stereotypes that portray them as dangerous elements of society with an alternative way of living different from the majority of the population. This belief and sentiment led to marginalization from many areas of public life throughout the centuries, including access to public services, healthcare, education and employment, as well as in aggressive policing and discrimination all over Europe (ODIHR, 2010).

The European Commission Against Racism and Intolerance (ECRI) acknowledges that discrimination against Roma people is a specific form of racism: *historically persistence, geographically widespread, systematic and frequently accompanied by acts of violence. Following Valeriu Nicolae, ECRI also recognises it as an ideology of racial supremacy, a form of dehumanization and institutional racism, fostered by historical discrimination* (ECRI, 2012).

Although these communities form the smallest minority in Europe, official and unofficial data consistently shows that they are subjected to disproportionately high levels of hate crime, prejudice and other forms of discrimination (James, 2014).

According to EU-MIDIS II (FRA, 2017), on average, 41% of Roma people in the nine Member-States surveyed felt discriminated against due to their gipsy background at least once in the previous five years and at least in one aspect of their daily lives (for instance, when searching for a job, accessing housing, healthcare or education). 26% mentioned that the last incident of discrimination based on their background had happened sometime in the 12 months prior to the survey.

On the other hand, attention paid to hate crimes against religious groups was overshadowed for a long time by the almost exclusive focus on hate crimes based on racial or ethnic bias. The non-differentiation made led to a possible invisibility of religious bias motives, consequently entailing the non-identification of certain behaviours as hate crime or discriminatory violence. Moreover, invisibility was also fostered by homogenization of often diverse realities, such as, for instance, discrimination experiences lived by people of south Asian origin depending on whether they are Muslim, Hindu or Sikh (Chakraborti & Garland, 2015).

Muslim communities represent the second biggest religious group in the European Union and face discrimination in many areas - job search, work place and accessing public or private services. Muslim communities are very diverse within themselves, consisting of different ethnicities, religious affiliations (different strands of Islam), philosophical

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beliefs, political ideologies, languages and cultural traditions. It is estimated that around 20 million Muslims live in the E.U., representing approximately 4% of its total population - with considerable diversity in population size among the different Member States (mostly represented in countries like France and Germany).

The levels of anti-Muslim violence have increased along the years, both in physical abuse against Muslim people and attacks to places of worship, namely mosques and other Islamic institutions and in hate speech disseminated through social media. The majority of such incidents are not reported to the authorities (Awan, 2013; Copsey et al., 2013).

Violence and discriminatory acts against Muslims can be based on an Islamophobic or an anti-Muslim bias. The term 'islamophobia', defined by Runnymede Trust (1997) entails any unfounded hostility against Islam (including experiences of discrimination and social and political exclusion of Muslims). It became particularly used in the end of the 1980s.

Recently the term anti-Muslim hate/bias started to be used, acknowledging that "many attacks against Muslims seem to be motivated by a strong political belief that Muslims are a threat to security instead of any fear or hatred towards Islam per se" (Githens-Mazer & Lambert, 2010).

The Council of Europe defines "islamophobia" as the prejudice or hate or fear of the Islamic religion or of Muslim people (Council of Europe, 2015).

The EU-MIDIS II (FRA, 2017) collected information of 10,527 individuals in 15 E.U. countries who identified as Muslims when questioned about their religion. Around 27% of the Muslim participants said to have been harassed due to their ethnic or national background in the 12 months prior and 45% of those individuals suffered six or more incidents during the same time period. More than 200 participants affirmed they were physically attacked because of their ethnic background and religious affiliation in the same period.

Members of the community who have more 'visible' markers, such as Muslim dress or name, that allows identifying their religious affiliation are particularly affected (Awan & Zempi, 2015). Members of other communities, such as the Sikh community, have also been targeted in anti-Muslim attacks for being mistaken by Muslims (as was the famous case of Baldir Singh Sohdi). The EU-MIDIS II survey reveals that, within the study participants, 31% of Muslim women who are veiled or wear a niqab had already lived situations of harassment because of their ethnic or migration background, whereas only 23% of Muslim women who did not wear such markers fell victim to such incidents (EU-MIDIS II, FRA, 2017).

Literature on islamophobic hate has pointed out that Muslim identity has suffered a process of ‘racialization’, meaning that both dimensions (religion/‘race’) combine in anti-Muslim prejudice, with skin colour, ethnicity and religion being considered intertwined and inextricable by the perpetrator. “the Muslim identity has been subject to a process of racialisation whereby this identity is defined on the basis of the individual’s race rather than exclusively on the basis of their religion (...)” (Awan & Zempi, 2015). One participant in the study Awan & Zempi (2015) even says that “*although they use religion because I am identifiable as a Muslim woman, the words that come out of their mouth have to do with race, so the race and the religion are tied up together in people’s minds*”.

The incidence of anti-Muslim hate crime tends to increase in specific moments that work as a trigger for that type of violence, such as the terrorist attacks in Paris, Tunisia or the death of Lee Rigby (Awan & Zempi, 2015).

Aside from the Muslim communities who in the last years have been particularly affected, other religious or spiritual communities are also victims of hate crime and discriminatory violence in the E.U. For instance, in the last years there has been an increase in the number of antisemitic incidents in several European countries. Although Jewish communities are present in Western societies for centuries, and of having less visible markers, beliefs and religious practices when compared to other minority groups (Hunt, 2005), anti-Semitism is still a significant problem in the E.U. Explanations for anti-Semitic hate crime are often based on ideologies and activities of organised far-right groups. Many far-right groups incite violence against Jewish communities under their beliefs of “White race” superiority; perceiving Jewish communities as a threat to the “purity” of the White race (Perry, 2003).

In a survey conducted by FRA (2012) to 5.900 of Jewish respondents, 26% had suffered and incident or incidents involving verbal abuse or harassment because of their Jewish identity, and 4% had been target to physical violence or threats of violence in the prior 12 months. 64% of victims of violence or threat of violence had not reported the crime they fell victims to.

6.3. People with disabilities

According to W.H.O. (2001) disability is an umbrella term for impairments, activity limitations and participation restrictions. It denotes the negative aspects of the interaction between an individual (with a health condition) and the individual’s contextual factors (environmental and personal factors).

The WHO establishes that impairments are any losses or abnormalities of psychological,

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physiological or anatomical structure or function; whereas disabilities are any restrictions or lacks of ability (resulting from an impairment) to perform an activity in the manner or within the range considered normal for a human being (WHO, 1976).

Prevalence studies have shown that, regardless of the type, disability contributes to an increased risk of victimisation. However, intellectual disability, communication disabilities and behavioural disabilities, as well as the presence of multiple disability types (e.g.: intellectual and physical impairments) seem to potentiate the risk of victimisation (Sullivan & Knutson, 2000).

There are several prejudices within society regarding the health of people with disabilities, which often puts them in a disadvantaging position, subject to multiple forms of discrimination and, at times, hate crime or discriminatory violence. Some of these stereotypes are related to the misconception that people with disabilities are dependent, have a low or no level of education, are unproductive and cannot find jobs, and that insofar need to be institutionalised and are dependent on social support (OSCE, 2015).

When we speak about disability hate crime we can talk about crimes committed based on some of these prejudices. Victims can hence be targeted because the perpetrator considers them vulnerable due to some of the symptoms of their health conditions. Prejudice manifests itself both in the expressions of hostility and in the motivation for the selection of the victim, for instance because the perpetrator perceives them as “easy targets” (OSCE, 2015).

People with disabilities can fall victim to hate crimes with, among others, the following elements: physical violence against disability aids, such as canes; humiliation and degrading treatment related to the nature of their disability; false accusations of “paedophilia”, informing on or spoiling fun for others; excessive violence; among many others (OSCE, 2015).

6.4. Migrants, asylum seekers and refugees

The migration situation in the E.U., particularly after 2015, has led to a polarised public and political discourse, instigating both support and rejection. This social environment has led way to the rise of hate speech and hate crimes and discriminatory violence against migrants, refugees and asylum seekers.

In order to better understand the particular situation of migrants, refugees and asylum seekers in what regards hate crimes, it is important to differentiate between some main concepts.

The International Organization for Migration (IOM), in its Glossary of Migration (2009) defines:

Migrant

Any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. IOM concerns itself with migrants and migration related issues and, in agreement with relevant States, with migrants who are in need of international migration services.

Asylum seeker

A person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments. In case of a negative decision, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds.

Refugee

A person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. (Art. 1(A)(2), Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol). In addition to the refugee definition in the 1951 Refugee Convention, Art. 1(2), 1969 Organization of African Unity (OAU) Convention defines a refugee as any person compelled to leave his or her country "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality." Similarly, the 1984 Cartagena Declaration states that refugees also include persons who flee their country "because their lives, security or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order."

Undocumented migrant

A non-national who enters or stays in a country without the appropriate documentation. This includes, among others: a person (a) who has no legal documentation to enter a country but manages to enter clandestinely, (b) who enters or stays using fraudulent documentation, (c) who, after entering using legal documentation, has stayed beyond the time authorized or otherwise violated the terms of entry and remained without authorization.

Hate crimes against selected groups

This distinction is not only important to understand the possible realities behind each term and the type of prejudice that each group may suffer, but also the differences in legal status in a given country, which is important in the moment of reporting a crime.

In this handbook the term ‘migrant’ shall be used in its broad meaning to include all these groups, unless specific mentions are to be made.

Incidence of hate crimes and discriminatory violence against migrants in the E.U. is worrisome. In several European countries an alarming number of violent crimes against migrants also belonging to ethnic minorities have been identified (including threats, intimidation and even homicide). The perception of a big part of the European population is that the response provided to this type of incidents is weak and insufficient (FRA, 2016). Migrants are thus particularly at risk of racist violence or ethnic discrimination. Moreover, also their situation in the country, the fact that they are not nationals (or so it is perceived by the perpetrator), the status they have for being legally in the country or the fact that they are undocumented in the country, can also be part of the motive of the author of the crime. Another factor frequently associated with the commitment of the crime is their religious affiliation. In some countries the political discourse presumes that asylum seekers are Muslims and an inflammatory discourse is used against them based on anti-Muslim prejudice (FRA, 2016).

According to FRA (2016), some of the most often offenses against migrants are, among others, the following: verbal abuse, harassment or threats, including in neighbourhoods where migrants live, attacks to reception centers and accommodation facilities for asylum seekers (including arson). This FRA report points out that there are concerning developments in Germany with a rise of attacks targeting refugee children.

This type of violence and of discourse is serious and persistent and widespread in the E.U. They are committed both by individuals and by state authorities and groups of vigilantes. Also defenders of the rights of migrants have been target to hate crimes (FRA, 2016).

The risk of incidence of hate crimes against migrants tends to increase in urban areas, and the consequent risk of marginalisation and exclusion is particularly high for this group (UNODC, 2015).

Some of the main factors identified as potential reasons for under-reporting among migrants are: lack of knowledge of the national system, the situation of exclusion they often fall into, the frailty of their legal status in the country (and fear of deportation or



of negative impact on an asylum procedure), the lack of access to information, mistrust towards authorities, lack of comparable systems in the countries of origin (regarding the functioning of the justice system), language barriers and fear of retaliation (FRA, 2016). The unavailability of statistical data on the phenomenon in most E.U. countries contributes to its great invisibility (FRA, 2016).

6.5. Other minority and vulnerable groups

The origin of the term ‘hate crime’ goes back to the 1960s and was based on the shared suffering of the LGBTQ+ community and ethnic minorities (Gerstenfeld, 2013). The conceptualisation of the term fostered a feeling of shared solidarity between different groups and the common drafting of social fights for civil rights and equality to combat their historical disadvantage and exclusion of decades or centuries long. However, in the last couple of years the term has attempted to include other social groups that, owing to common risk factors, difference and vulnerability may also be at risk of suffering hate crime but have been invisible in the efforts to combat it. Among such groups are, for instance, elderly people, homeless people, sex workers, minority political ideologies, among others.

For instance, inclusion of elderly people as a group vulnerable to hate crime can demonstrate that, in spite of not being a minority in Western societies, they present a greater vulnerability risk and are in a social position perceived as inferior. Crimes against the elderly tend to happen in more “secluded” environments, such as their homes or within institutions. The invisibility of crimes against the elderly, often committed by people of trust, shows similarities to the experiences of other more traditional groups of victims of hate crime.

As mentioned above, considering some groups as more prone to fall victim to hate crimes, when pondering on the term “hate crime”, one shall take into account both the history of victimisation these groups have always been subject to and updated official statistics.





7.1. Hate crimes in international law

The punitive regulation of unlawful conducts with a discriminatory basis is very important to safeguard fundamental rights affected by hate crime. Appropriate hate crime laws condemning explicitly discriminatory motivations send a clear signal to perpetrators that a fair and humane society will not tolerate these behaviours (OSCE/ODIHR, 2009). This has been the concern of the international community and many efforts have been developed in international law to tackle discrimination and hate crimes (Belchior da Silva, 2016).

International law, or international public law, is the body of legal rules governing relations between sovereign states. It should be noted that the subjects of international law are States themselves, not individuals under their jurisdiction. Thus, this branch of law does not impose any obligations on citizens, nor does it regulate the legal relations between them. This could mean that it is not necessary to cover the international legal framework in this handbook. However, international law creates effective obligations on States – often requiring the creation, amendment and/or repeal of national laws and policies in accordance with internationally agreed principles and obligations assumed by each State – which, in turn, directly affect their citizens. In addition, since its inception, international law has been a strong influence in the construction and development of national legal systems. Hence the importance of a presentation, albeit succinct, of the legal instruments that create obligations on States in matters of discrimination and hate crimes.

The international human rights system, driven by a response to the atrocities committed during World War II and developed from the International Bill of Human Rights¹, is based on principles such as equality and non-discrimination (Belchior da Silva, 2016):

“Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Article 2, Universal Declaration of Human Rights

Subsequently, a series of universal treaties were adopted, forming what we call today the core international human rights instruments². All of these treaties are founded on the principle of non-discrimination outlined above. However, three of the treaties – the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities – focus on combating specific

1 The International Bill of Human Rights is constituted by the Universal Declaration of Human Rights, adopted by the United Nations General Assembly resolution 217 A (III) of 10 December 1948, by the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly resolution 2200 A (XXI) of 16 December 1966.

2 The core international human rights treaties are (by date of adoption): the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly resolution 2106 (XX) of 21 December 1965; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly resolution 34/180 of 18 December 1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly resolution 39/46 of 10 December 1984; the Convention on the Rights of the Child, adopted by the United Nations General Assembly resolution 44/25 of 20 November 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by the United Nations General Assembly resolution 45/158 of 18 December 1990; the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly resolution A/RES/61/116 of 13 December 2006; and the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly resolution A/RES/61/177 of 20 December 2006.

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forms of discrimination. The first of these conventions was particularly decisive for the criminalisation of discrimination practices in several countries.

The International Convention on the Elimination of All Forms of Racial Discrimination is based on the belief that “(...) *any doctrine of superiority on racial differentiation is scientifically false, morally condemnable, socially unjust (...)*” (International Convention on the Elimination of All Forms of Racial Discrimination, 1965) and that “(...) *discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples (...)*” (ibid). Article 2(d) of the Convention determines that the signatory States “*shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization*”. The expression “*as required by circumstances*” is of extreme importance, since it determines the obligation to adopt legislative measures. New legislation prohibiting racial discrimination in the signatory States would only be unnecessary if racial discrimination did not exist or the laws of the States already included such a prohibition (Schwelb, 1966). This article establishes that the incrimination of discriminatory behaviour has to occur even though measures to combat discrimination outside of the penal framework are in place (Belchior da Silva, 2016).

Besides this obligation, the States Parties also have an obligation to criminalise the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and any acts of violence or incitement to violence against any race or groups of persons of another colour or ethnic origin, as well as the assistance to racist activities, including their financing³.

Lastly, in the sense set out by Article 2 mentioned above, Article 6 of the Convention creates an obligation on signatory States to assure that victims of acts of racial discrimination which violate their human rights and fundamental freedoms have access to effective protection and remedial measures through the national courts and other State institutions.

This Convention, when adopted by the United Nations General Assembly, was received with great enthusiasm and high expectations from the international community, and many of its articles established obligations beyond the merely promotional impositions of previous international instruments (Schwelb, 1966).

The prominence of this Convention and its influence in the criminalisation of discriminatory conducts in various legal systems, such as Portugal, does not obscure the relevance of other international legal instruments, notably European ones, which deserve mention.

³ International Convention on the Elimination of All Forms of Racial Discrimination adopted by the United Nations General Assembly resolution 2106 (XX) of 21 December 1965, Article 4(a).



7.2. Hate crimes and the European Convention on Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as European Convention on Human Rights, was the first treaty adopted by the Council of Europe and the first instrument to give binding effect to some of the rights provided by the Universal Declaration of Human Rights. Considering the above, the ECHR is our first reference to European instruments containing non-discrimination clauses⁴.

The ECHR contains an original catalogue of rights and freedoms that has been extended by successive protocols⁵. In addition to the provision of rights, the ECHR also lays down prohibitions, such as the prohibition of slavery and forced labour and, particularly relevant to the topic under consideration, the prohibition of discrimination.

Article 14 establishes the rights and freedoms set forth in the Convention that shall be secured without discrimination on any ground such as “*sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*” Thus, this article imposes on the signatory States an obligation not to discriminate on the basis of the grounds mentioned or “any other status” (O’Connell, 2009).

Although this norm does not contain a restrictive list of discriminatory motivations and has a broad scope of application, since it includes the expression “or other status”, it is limited by being an ancillary norm in relation to the rights and freedoms protected by the ECHR (Arnardóttir, 2007).

Of the abovementioned protocols and with regard to the prohibition of discrimination, it is worth mentioning Protocol No. 12⁶, which overcame the limitations of Article 14 of the ECHR. This Protocol agrees a true general prohibition of discrimination, by any public authority, in relation to all rights set by law, and not limited to the enjoyment of the rights and freedoms established by the Convention⁷.

Article 1 of Protocol No. 12⁸ extends the scope of the prohibition of discrimination to cases in which an individual is discriminated: (i) in the enjoyment of any right conferred by national law; (ii) in the enjoyment of a right that can be inferred from a clear obligation imposed on any public authority by national legislation; (iii) by a public authority in the exercise of its discretionary power; and (iv) by any other act or omission of a public authority (Council of Europe, 2000).

The brief analysis above allows clarifying the important difference between Article 2 (d) of the International Convention on the Elimination of All Forms of Racial Discrimination

4 Adopted and open to signatures by the Member States of the Council of Europe on 4 November 1950 in Rome.

5 The Convention for the Protection of Human Rights and Fundamental Freedoms was, from its entry into force in 1953, amended by a total of 16 protocols, being the last protocol adopted and open to signatures in Strasbourg on 2 October 2013.

6 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 2000 and entering into force in international law on 1 April 2005.

7 Article 1 of Protocol No. 12 establishes that: “*The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*”

8 Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by only 20 Member States of the Council of Europe, which do not include Austria, Italy, the United Kingdom and Sweden.

and Article 14 of the ECHR. Indeed, the scope of the former continues to exceed the latter insofar as neither Article 14 of the ECHR, nor its Protocol No. 12, impose a positive obligation on the signatory States to prevent and remedy discriminatory conducts in the relationships between individuals (Council of Europe, 2000). The jurisprudence of the European Court of Human Rights (ECtHR) admits that Article 14 of the Convention imposes on the signatory States an obligation to “unmask” the discriminatory motivations behind criminal offences, punishing hate crimes more severely than other crimes (FRA, 2012), but does not require the introduction of national legislation specifically regarding hate crimes (OSCE/ODHIR, 2009).

International treaties such as those mentioned above, in conjunction with the ECHR, led the European Union to take action against discrimination (Belchior da Silva)⁹.

7.3. Hate crimes in European Union law

At European Union (EU) level the principle of equality was initially integrated with the principle of equality of gender. The Treaty establishing the European Economic Community (1957) forbade discrimination on the basis of gender on the work place and established the necessary competency for the approval of the first directives regarding equality¹⁰.

Since then several instruments to enlarge the power of the Member States to combat discrimination on the basis of a wider range of factors were adopted. This process culminated, in 2000, with the adoption of two important Directives: the Council Directive 2000/43/EC of 29 June implementing the principle of equal treatment between persons irrespective of racial and ethnic origin¹¹ and the Council Directive 2000/78/EC of 27 November, establishing a general Framework for equal treatment in employment and occupation¹².

The first Directive prohibits discrimination in access to employment, to self-employment and to occupation; access to vocational training; employment and working conditions; membership of and involvement in a workers or employers’ organisation ; social protection, including social security and health; granting of social benefits; access to education; access to and supply of goods and services, including housing¹³. This Directive establishes a broader set of sectors in which Community law prohibits discrimination (ERA, s/d).

The second Directive, despite protecting against discrimination a broader group of people (on the grounds of religion, sexual orientation, disability or age), only applies in the context

of employment, occupation and related areas, such as vocational training and involvement in organisation of workers (ERA, s/d).

The Treaty of Lisbon, which entered into force on 1 December 2009, significantly altered the EU's constitutional framework. Currently, and in line with the restructuring carried out by the Lisbon Treaty, there are three documents governing the powers and duties of the EU: the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union.

The Treaty on European Union, which regulates the objectives of the EU, establishes non-discrimination as one of the common values of the Member States on which the Union itself is based¹⁴. In turn, the Treaty on the Functioning of the European Union, which regulates the competencies of the EU, establishes the necessary powers to combat discrimination on the part of the European institutions: “(...) *the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*”¹⁵

The Charter of Fundamental Rights of the European Union, despite being adopted in December 2000, only gained binding force with the Member States with the approval of the Treaty of Lisbon. It prohibits, by means of Article 21, discrimination “(...) *based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.*”

The Charter summarises all the rights dispersed until then in legal instruments in the national sphere, the EU, the United Nations and the International Labour Organisation (Belchior da Silva, 2016). However, its scope is still limited: Article 51 of the Charter determines that its provisions apply to institutions, bodies, offices and agencies of the Union and to the Member States “*only when they are implementing Union law.*”

As was the case with the ECHR, the Community instruments mentioned above, while condemning and prohibiting acts of discrimination, do not place a positive obligation on Member States to criminalize conducts motivated by hatred.

After seven years of negotiations, in November 2008 the Member States of the EU approved the Council Framework Decision 2008/913/JHA on combating certain forms

¹⁴ Article 2 of the Treaty on European Union establishes that: “*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*”

¹⁵ Article 19 of the Treaty on the Functioning of the European Union.



Legal framework

and expressions of racism and xenophobia by means of criminal law. Recognizing the wide differences in Member States' legal systems regarding the framework for racist and xenophobic behaviour, the Council acknowledges that it is not yet possible to fully harmonize the criminal law of States in this respect. Recognizing also that the fight against racism and xenophobia requires various types of measures not limited to criminal matters, the Framework Decision stresses that it is essential to bring the legislative provisions of the various legal systems closer together. Thus, unlike the Community instruments described above, this Framework Decision requires Member States to ensure that certain conducts are punishable by effective and proportionate criminal penalties.

The Framework Decision establishes in Article 1 that Member States shall ensure the criminal punishment of the following conducts, if they are intentional:

- Publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
- Publicly inciting to violence or hatred by public dissemination or distribution of tracts, pictures or other material;
- Publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court; and
- Publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945¹⁶.

From this article it emerges that there is an obligation of the Member States to criminalise these conducts. However, Article 1(2) indicates that Member States “(...) *may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting*”, thus allowing a certain freedom to the Member States to make the criminal punishment of the act dependent on the disruption or threat and not covering situations falling short of that criterion. On the other hand, paragraph 1 of the same article states that the acts listed must be punished in the legal system of the Member States as ‘criminal offences’, which does not necessarily involve the criminalisation of hate crimes, and may be dealt with, as it happens in several national laws, as regulatory offences.

Monitoring the implementation of the Framework Decision and assessing the transposition of the provisions into the Member States' legislation is a task of the European Commission.

¹⁶ The Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, COM(2014) 27 final, of January 2014, p. 5, explains that “The Framework Decision obliges Member States to criminalise the public condoning, denial and gross trivialisation of crimes against peace, war crimes and crimes against humanity committed by major war criminals of the European Axis countries. Such conduct can be considered as a specific manifestation of antisemitism when it takes place in a way that is likely to incite to violence or hatred.”

In their 2014 report on the implementation of the Framework Decision, the European Commission concludes that “*The majority of Member States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the Framework Decision.*” (European Commission, 2014). The Commission identifies gaps in transposing provisions in relation to the offences of denying, condoning and grossly trivialising certain crimes, the racist or xenophobic motivation of crimes – covered in Article 4 of the Framework Decision - and the liability of legal persons and jurisdiction – set in articles 5 and 6 of the Framework Decision (European Commission, 2014).

This Framework Decision effectively sets a direct and positive obligation on the Member States to criminalise behaviours motivated by racism and xenophobia, which was previously absent in Community law.

This and other international instruments previously mentioned influenced the national legal systems, and nowadays there is a European consensus on the need for protection against discrimination at the criminal level (Belchior da Silva, 2016). However, as allowed by the 2008 Framework Decision, the various States have chosen to incorporate this protection differently and it is therefore of interest to examine the various options taken by criminal lawmakers, especially in the countries participating in this project.

7.3.1. The hate crime victims and the Directive 2012/29/EU

The strengthening of the rights, support and protection of victims of crime is a priority for the European Union (European Commission, 2013). The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 is a significant advance by establishing the minimum standards on the rights, support and protection of victims of crime, and replacing the Council Framework Decision 2001/220/JHA. The Directive (often referred to as the Victims’ Directive) was approved and published in November 2012 and established 16 November 2015 as the deadline for the transposition of its dispositions into the legal frameworks of the Member States.

The Directive establishes a set of minimum rights for all victims of crime, irrespective of their nationality and of the Member State in which the crime occurs. These rights relate to access to support services, to the enjoyment of basic procedural rights - such as the right to be heard, the right to access interpretation and translation services, among others - and access to protection measures (Human Rights Monitoring Institute, 2013). The Directive recognises the specificities of hate crimes and those of their victims and grants them special attention and protection.

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The text of the Directive refers specifically to victims of hate crimes, allowing them specific protection needs, due to the type, nature or circumstance of the crimes¹⁷. Eligibility for these specific protection measures is dependent on an individual assessment aiming to determine whether the victim is particularly vulnerable to secondary and repeat victimisation (European Commission, 2013). According to the Directive, the victims of hate crimes should be carefully assessed in this respect as they have a higher risk of suffering from these types of victimisation (Human Rights Monitoring Institute, 2013).

Thus, the Directive, besides ensuring that victims of hate crimes are provided with general protection measures, also allows for special protection measures. The victims are free to reject these special measures in accordance with Article 22(6) of the Directive, which establishes that victims' wishes must be taken into account.

The Directive foresees two types of specific protection measures: measures available during criminal investigations and measures available during court proceedings. The first group of measures are aimed at ensuring that victims enjoy a more favourable and less stressful environment during their contacts with the investigating authorities. The second group of measures seeks to minimize the psychological harm of the victim if they need to confront the offender, to prevent possible physical and psychological assaults, and to safeguard the victim's privacy (Human Rights Monitoring Institute, 2013).

¹⁷ Point 56 and Article 22 (3) of the Directive 2012/29/EU.

The following table details those measures and the corresponding articles of the Directive:

Type of protection measure	Measure	Article
Available during criminal investigations	Interviews carried out in premises designed or adapted for that purpose	23(2)(a)
	Interviews carried out by or through professionals trained for that purpose	23(2)(b)
	All the interviews being conducted by the same persons	23(2)(c)
	In certain circumstances, all interviews with victims of sexual violence, gender-based violence or violence in close relationships, being conducted by a person of the same sex as the victim	23(2)(d)
Available during court proceedings	Avoid visual contact between victims and offenders, by appropriate means including the use of communication technology	23(3)(a)
	Ensure that the victim may be heard in the courtroom without being present	23(3)(b)
	Avoid unnecessary questioning concerning the victim's private life not related to the criminal offence	23(3)(c)
	Allowing a hearing to take place without the presence of the public	23(3)(d)

It is important to highlight that the application of these measures is subject to the following exceptions, listed in Article 23(1): operational and practical constraints; where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

Access to support services is important for all victims and particularly for hate crime victims. These are established in Article 8 of the Directive, considered one of its most important provisions (European Commission, 2013). Recognising the fundamental importance of support services for victim recovery, this article states that Member States should ensure that victims and their families have access to free, confidential and quality support services.

The Directive stipulates that victims should have access to support services according to their individual needs and, in this sense, the European Commission considers that victims of hate crimes, due to their personal vulnerability and increased risk of secondary and repeat victimization, intimidation and retaliation require specialised support (European Commission, 2013).

In conclusion, the Victims' Directive, establishing minimum standards on the rights of all crime victims in the EU, expressly considers the particular vulnerability of the victims of hate crime and their higher risk of secondary and repeat victimisation, of intimidation and of retaliation, providing for the application of special protection measures and for the access to specialised support services. This extra layer of protection is relevant because it creates an obligation in the Member States to properly consider victims of hate crimes, and it is particularly important in those Member States where criminal law and public policies do not yet adequately accommodate the increased needs of protection of these victims.

7.4. Hate crime in Europe

7.4.1. Austria

According to ODIHR, in 2016, Austrian police, which reports aggregated data for hate crime and hate speech, registered 425 occurrences that year – 356 motivated by racism and xenophobia, 41 by anti-Semitism and 28 by bias against Muslims¹⁸.

Austria has, at both constitutional and criminal levels, several provisions to combat hatred

¹⁸ OSCE/ODIHR, *Hate Crime Reporting* (available at <http://hatecrime.osce.org/austria>, accessed 20 March 2018)

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and discrimination. Some of these were approved after the ratification in 1974 of the International Convention on the Elimination of All Forms of Racial Discrimination in order to fulfil its obligations.

In the criminal law sphere, there is no separation for hate crimes. The bias motivation for any conduct constituting a crime is, according to the Penal Code, Section 33, paragraph 5, treated as an aggravating circumstance of the crime, which increases the penalty applicable to the perpetrator of the crime.

On the other hand, public incitement to violence and hatred are autonomously criminalised in the Austrian Penal Code, with the particularity that the crime of incitement to violence (not to hatred) is dependent on it being likely to disturb the public peace (European Commission, 2014).

The European Commission report mentioned above also informs that Austria has not adopted criminal provisions related to the public condoning, denial or gross trivialisation of the crimes of genocide, crimes against humanity and war crimes, and that, in what concerns the public condoning, denial or gross trivialisation of the crimes defined in Article 6 of the Charter of the International Military Tribunal, there is reference to the *National Socialist regime* or *Nazi Germany* as the relevant perpetrators of these crimes.

7.4.2. Italy

In Italy, during 2016, 803 hate crimes were recorded, and of these: 338 were motivated by racism and xenophobia, 204 motivated by bias against people with disabilities and 38 motivated by bias against sexual orientation or gender identity¹⁹.

In 1993, Italy approved its main legal provision concerning hate crime: Law No. 205/1993, referred to as *Mancino Act*, and later altered by Law No. 85/2006. Article 3 of this law considers hatred an aggravating circumstance while in the perpetration of other crimes, allowing for a penalty increased up to one half.

Incitement to violence and hatred are, as in the case of Austria, criminalised by the *Mancino Act* and by Article 415 of the Italian penal code.

Regarding the criminalisation of the public condoning, denial and gross trivialisation of

¹⁹ OSCE/ODIHR, *Hate Crime Reporting* (available at <http://hatecrime.osce.org/italy?year=2016>, accessed 20 March 2018)

genocide, crimes against humanity and war crimes, foreseen in Article 1 of the Council Framework Decision 2008/913/JHA, the European Commission notes Italy does not expressly refer to all three types of conduct, but only to condoning genocide and not the other crimes (European Commission, 2014). In relation to the public condoning, denial or gross trivialisation of the crimes defined by Article 6 of the Charter of the International Military Tribunal, Italy has no specific provisions for criminalising this form of conduct (European Commission, 2014).

7.4.3. Malta

Until recently, the Maltese legal system did not include provisions related to crimes motivated by hatred or discrimination. In 2013, the criminal code was amended to include, in article 83B, hatred as an aggravating circumstance of all other penal offences.

Malta now confers a considerable legal protection from hate crimes, discrimination and hate speech (Muskat, 2016). Incitement to violence and hatred are criminalised in Article 82A of Criminal Code of Malta²⁰. Thus, the European Commission considers that Malta conforms to the Council Framework Decision of 2008 in what concerns the description of potential victims of this crime, expressly mentioning groups and individual members; however, it omits references to descent and national origin from the motivation of the incitement to violence and hatred (European Commission, 2014).

The Commission also notes that Malta criminalises the public condoning, denial or gross trivialisation of genocide, crimes against humanity and war crimes, making express reference to the relevant articles of the Statute of the International Criminal Court. On the other hand, in what concerns the public condoning, denial or gross trivialisation of the crimes defined in Article 6 of the Charter of the International Military Tribunal, Malta has no specific provisions criminalising this form of conduct, as it is the Italian case.

7.4.4. United Kingdom

According to the data reported to ODIHR, 80,763 cases of hate crime were recorded by the police authorities and, of these, 20,321 were prosecuted in the United Kingdom (UK)²¹. For several decades, the UK has had a rather fragmented approach to hate crime, which resulted in an extensive and complex legal framework (WALTERS et al., 2017).

20 OSCE/ODIHR, *Hate Crime Report in Article 82A(1) of the Criminal Code* establishes that: "Whoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months."

21 OSCE/ODIHR, *Hate Crime Reporting* [available at <http://hatecrime.osce.org/united-kingdom>, accessed 20 March 2018]

Legal framework

The current definition of hate crime in the UK was established by agencies of the criminal justice system in 2007²². In their understanding, hate crimes are “*any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice towards someone based on a personal characteristic.*” (Home Office, Office for National Statistics and Ministry of Justice, 2013).

In 1998, the *Crime and Disorder Act 1998* included provisions to aggravate certain penal offences when motivated by racism. According to Sections 29 to 32, these offences are: offences to physical integrity, harm, offences to public order, and offences of harassment and stalking. In 2001, the *Crime and Disorder Act* was amended by the *Anti-terrorism, Crime and Security Act 2001* which added to the aggravation motives related to discrimination in relation to the religion or religious beliefs of the victim.

Soon after the *Criminal Justice Act 2003* was approved. It determined that offence motivations related with the presumed sexual orientation or disability of the victim should be considered by the courts when determining the sentence. This was amended in 2012 to include the motivation by discrimination or hatred towards transgender persons. From the above, we conclude that while the *Crime and Disorder Act* determines the aggravation of only some of the offences motivated only by hatred to the race and religion of the victim, the *Criminal Justice Act* covers all criminal offences but only concerns the determination by the court of the concrete sentence.

The penal regime applicable to incitement to hatred is also fragmented. From the different legal instruments, we highlight: the *Public Disorder Act 1986*, amended by the *Racial and Religious Hatred Act 2006* – which added the criminalisation of incitement to racial and religious hatred -, the *Malicious Communications Act 1988*²³, the *Football (Offences) Act 1991*²⁴ and the *Communications Act 2003*²⁵.

In the UK, as was the case of Austria, there are no criminal-law provisions for the public condoning, denial or gross trivialisation of genocide, crimes against humanity or war crimes. As in the case of Italy and Malta, also in the UK, there is no criminalisation of the public condoning, denial or gross trivialisation of the crimes defined in Article 6 of the Charter of the International Military Tribunal (European Commission, 2014).

²² Police Service, Crown Prosecution Service (CPS), National Offender Management Service and others.

²³ Section 1 of the *Malicious Communications Act 1988* considers an offence sending letters and any type of similar communication intended to cause distress or anxiety.

²⁴ Section 3 of the *Football (Offences) Act 1991* establishes that indecent or racist chanting at football matches constitute an offence.

²⁵ Section 127 of the *Communications Act 2003* considers an offence the improper use of public electronic communications network.

7.4.5. Sweden

In Sweden, in 2016, 4,862 cases of hate crimes were recorded by the police authorities, of which 257 were prosecuted, according to the ODIHR²⁶. The majority of these crimes were motivated by racism and xenophobia (3,439).

Section 2 of Chapter 29 of the Swedish Penal Code²⁷ determines, similarly to the cases examined above, the aggravation of the criminal offences motivated by hatred and discrimination by reason of race, colour, national or ethnic origin, religious belief, sexual orientation, gender identity or expression or other similar circumstances.

Additionally, Section 8 of Chapter 16 of the same Code penalises the dissemination of threats or expressions of contempt with allusion to race, colour, national or ethnic origin, religious belief or sexual orientation with a sentence of imprisonment up to two years or, in the case of petty crime, to a fine. Further, in Section 9, the Swedish penal law criminalises discrimination on grounds of the same motivation plus gender identity or expression, in the context of public service, private economic activities and public gatherings.

The European Commission indicates that Sweden does neither criminalise the public condoning, denial and gross trivialisation of genocide, crimes against humanity and war crimes, nor the crimes defined by Article 6 of the Charter of the International Military Tribunal (European Commission, 2014).

This is a summary of the hate crime legal framework for the countries participating in this project. The following table provides a systematic, albeit not exhaustive, account of what was described, including information on legislation - this does not preclude the need to consult the different legal instruments to obtain more detailed information.

²⁶ OCSE/ODIHR, *Hate Crime Reporting* (available at <http://hatecrime.osce.org/sweden>, accessed 21 March 2018)

²⁷ The Swedish Penal Code, Chapter 29, Section 2, Paragraph 7, determines that: "In assessing penal value, the following aggravating circumstances shall be given special consideration in addition to what is applicable to each and every type of crime [...] whether a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation, gender identity or expression or other similar circumstance."

Country	Legal definition of hate crime	Autonomy of hate crime	Hate crime as an aggravating circumstance	Incitement to hatred, discrimination and violence	Legal regime of offences
Austria	No	No	Yes – Section 33(1)(5) StGB – particular aggravating circumstances	Yes – Section 283 StGB – incitement to hatred and violence	
Italy	No	No	Yes – Article 3, Law No. 205/1993, <i>Mancino Act</i> , amended by Law No. 85/2006	Yes – Article 415, Penal Code – criminalises incitement to hatred among social classes (historical context – post fascist period) Law No. 205/1993, <i>Mancino Act</i> , amended by law No. 85/2006	Yes – Article 43, Law No. 3000/1970 regarding employment Law No. 286/1998 on Immigration, known as the <i>Turco-Napolitano Act</i> Laws No. 215/2003 and 216/2003, transposing the Directives 2000/43/EC and 2000/78/EC Article 724, <i>Libro III: contravvenzioni</i> , Penal Code – blasphemy and religious insults against the deceased (NOTE – Amended to encompass, not just catholic religion, but all religions – no court convictions)
Malta		No	Yes – Article 83B, Penal Code	Yes – Article 82A, paragraph 1, 82B and 82C, Penal Code	
Portugal	No	No	Yes – Article 132(2)(f) – homicide Article 145(2) – qualified offence to physical integrity Due to the referencing in Article 155(1)(e): Article 153 – threat; Article 154 – coercion; Article 154A – persecution; Article 154B – forced marriage; Article 154C – preparatory acts, all in the Penal Code	Yes – Article 240, Penal Code – Discrimination and incitement to hatred and violence	Yes – Law No. 39/2009, of 30 July – legal framework to combat violence, racism, xenophobia and intolerance in sports events, with the amended of Law No. 52/2013, of 25 July Law No. 93/2017, of 23 August, regarding the legal framework for the prevention, prohibition and combat of discrimination
Sweden	From 1 January 2015, there is a common definition of hate crime, approved by police and prosecutors (governmental commission report, 2015-01-23). A hate crime is an <i>agitation against a national or ethnic group</i> (Chapter 16, Section 8), <i>unlawful discrimination</i>	No	Yes – Chapter 29, Section 2, paragraph 7, Penal Code	Yes – Chapter 16, Section 8, Penal Code	In accordance with column 1, a certain number of offences can be considered hate crimes.



	(Chapter 16, Section 9, Penal Code) and any other crime where the motive is to aggrieve a person, ethnic group or any group by reason of race, colour, national or ethnic origin, faith, sexual orientation or other similar circumstances.				
United Kingdom	There is no legal definition of hate crime but legal authorities such as the Crown Prosecution Service, agreed to an indicative definition. Hate crime is any criminal offence which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person's race or perceived race; religion or perceived religion, sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender by the perpetrator.	No	Yes – <i>Crime and Disorder Act 1998</i> , amended by <i>Anti-terrorism, Crime and Security Act 2001</i>	Yes – <i>Public Order Act 1986</i> , amended by <i>Racial and Religious Hatred Act 2006</i> <i>Malicious Communications Act 1988</i> <i>Communications Act 1993</i>	

7.5. The legal framework of hate crimes in Portugal

Before presenting the legal framework for hate crimes, we revisit the concept and the reality it captures. This might seem unnecessary as the expression ‘hate crimes’ places it immediately in a legal dimension. However, the multiplicity of realities covered by the concept transcends the protection provided by the existing types of criminal offence – particular attention should be given to regulatory offences law – and the expression ‘hatred’ is not absolutely applied transversally to crimes motivated by “*race, colour, ethnic or national origin, descent, religion, gender, sexual orientation, gender identity or physical or mental disability*”²⁸.

We referred earlier to the OSCE’s definition of hate crime, which does not refer to hatred, and instead highlights the idea that the victim belongs to a particular group²⁹. This idea of belonging, which for ease of expression we call ‘prejudice’, is extremely useful as it allows a broader analysis of the social phenomenon and its legal dimension. Researching ‘hatred’ as a legal type of crime is necessarily more limited than choosing to look at what types of crime have attributed criminal relevance to prejudice.

As an illustration, the crime of genocide, enshrined in Article 8 of Law No. 31/2004, of 22 July³⁰, applies to:

28 We choose to cite, at this point, Article 240 of the Penal Code instead of Article 132(2)(f) since the latter does not refer to “physical or mental disability” (added to Article 240 of the Penal code by the amendment brought by Law No. 94/2017 of 23 August), and thus it is a provision with a narrower classification of illicit conducts.

29 For a deeper understanding of the concept of hate crimes, and particularly the definition adopted by OSCE, see section 1 of this handbook.

30 The mentioned crime of genocide, along with the crime of racial discrimination, was foreseen in Article 189 of the 1982 Penal Code, approved by Decree-Law No 200/82 of 23 September. With the amendment of the 1995 Penal Code, by Decree-Law No. 48/95 of 15 March, the crime of genocide was distinguished from the crime of discrimination, being regulated by Article 239 of the Penal Code. The referred article would be repealed by Law No. 31/2004 of 22 July and is currently contained in Article 8 of the Criminal Law on violations of international humanitarian law.

Legal framework

“1 - Anyone who commits any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- a) Homicide of members of the group;***
 - b) Causing serious bodily harm to members of the group;***
 - c) Inflicting on the group conditions of life or cruel, degrading or inhuman treatment likely to bring about its physical destruction in whole or in part;***
 - d) Forcibly transferring children of the group to another group;***
 - e) Imposing measures intended to prevent procreation or births within the group.***
- (...)”*

The crime of genocide incorporates in its description of a typical offence a set of elements related to the victims’ nationality, ethnicity, race or religion, but does not include hatred motivated by the connection between the victim and a particular group. Despite this omission, and that currently this crime falls within the scope of international law, it must be recognised that the crime of genocide has the characteristics previously attributed to hate crimes. This example shows the risk of impoverishing the results of a study focusing on the concept of hatred as the basis for defining hate crimes.

We should point out that the Portuguese legislator adhered to a concept of ‘hatred’ closed to that of the OSCE: not attaching legal relevance to the concept in isolation – hatred as emotion. The various types of criminal offence that contain ‘hatred’ among their typical elements, place it alongside a set of causes (according to Article 240 of the Penal Code, *“race, colour, ethnic or national origin, descent, religion, gender, sexual orientation, gender identity or physical or mental disability”*). Thus, hatred that is not motivated by one of the mentioned prejudices will be considered irrelevant for the purpose of being classified as a legally punishable conduct.

Finally, in line with what was said in relation to the irrelevance of hatred unaccompanied by certain typically relevant causes, André Lamas Leite emphasises another dimension of hatred that deserves reflection (Lamas Leite, 2012):

“Hatred translates into a feeling of revulsion, a desire to harm others, that they will face misadventures in their life at various levels. Now, of course, since we are dealing with a de facto Criminal Law and considering that mere cogitations are not legitimate, it is essential that this incitement to hatred is, on the one hand, materialised in actions, writings, gestures, and on the other hand, that these are objectively able to cause the feeling of hatred.”

This author highlights the idea that criminal law requires that, for a conduct dictated by hatred to be punishable; it must be translated into actions executing a given type of crime – which is required by Article 22 of the Penal Code. This implies the inexistence of an autonomous hate crime and that ‘hatred’ consists in a feeling that is, first of all, experienced internally, and that may never be externalised in a way that should be considered criminally relevant.

7.5.1. Hate crimes in Portuguese criminal law

Although hate crimes are framed in the Portuguese Penal Code in different ways, the most common are: the crime of discrimination, incitement to hatred and violence, enshrined in Article 240, and the role attributed to hatred motivated by prejudice as a qualifying circumstance, described in Article 132(2)(f) and Article 145(2). However, hatred is currently also an aggravating circumstance, according to Article 155(1)(e), and may also be considered by the courts when determining the sentence. Finally, examining the different types of crime included in the Portuguese Penal Code, we can identify some crimes that, although not making reference to hatred, include, in their typical elements, references to political, religious or philosophical convictions, party or trade union affiliation, private life, or ethnic origin³¹. The different ways in which hate crimes are framed in Portuguese criminal law deserve an individual analysis, as follows.

Considering its central place in the Portuguese criminal law framework, we start by analysing the crime of discrimination described in Article 240 of the Penal Code. This type of crime seeks to protect the legal interest ‘equality’, enshrined in Article 13 of the Constitution of the Portuguese Republic. Although there are no doubts that equality is protected as a legal interest, there is the question of whether other interests are also being protected. Maria João Antunes (Antunes, 1999) argues that the legislator aims only to protect the legal interest ‘equality’³², while Paulo Pinto de Albuquerque claims that this type of crime protects also legal interests such as bodily integrity, honour and freedom (Pinto de Albuquerque, 2015). André Lamas Leite mentions that the legislator protects equality and notes that what is at stake is defending the free development of the human personality (Lamas Leite, 2012). Taking a stand on this discussion has consequences for the interpretation and future amendment of the legal provision. Not wishing to take sides, we would like to note that defending the position that equality is the only protected legal interest, may raise coherence issues since the same legal system protects the legal interest ‘equality’ via two routes: as criminal offence and as mere social ordering, without a clear distinction between what is the criminal and the regulatory offences law sphere. By

31 E.g. Article 193 and, in what concerns religious discrimination: Articles 204(1)(c), 213(1)(e), 251 and 252, all Portuguese Penal Code.

32 This was also the understanding of Ruling 14/10/2008, by the 1st Criminal Division of Lisbon (Case No. 1706/04.OPTLSB): “Having analysed in detail the incriminating precept (as detailed when the facts took place), there is no doubt that the legal interest being protected is that of the equality amongst all citizens.”, published in *Justiça e Sociedade* (Co-ordinators: Rui Rangel and José Eduardo Sapateiro), Coimbra: Almedina, 2009, pp. 255 to 375.



Legal framework

33 Article 189 of the Portuguese Penal Code of 1982 established that: “1 – Anyone who commits any of the following acts with the intent to destroy, in whole or in part, a national, ethnic, racial, religious or social community or group, as such:

- a) Homicide of the members of the community or group;
- b) Causing serious physical or mental harm to members of the community or group;
- c) Inflicting on the community or group conditions of life or inhuman treatment, likely to destroy the community or the group;
- d) Forcibly transferring children of the group to another community or group;

2 – Shall be punished with a term of imprisonment of 1 to 5 years those who, in public gatherings, in writings for public circulation or via any mass media:

- a) Defamation or insult a person or a group of people or expose them to public contempt because of their race, colour or ethnic origin;
- b) Cause acts of violence against a person or groups of people of another race, colour or ethnic origin.

3 – Shall be punished with a term of imprisonment of 2 to 8 years, those who:

- a) Found or establish organisations or develop activities of organised propaganda inciting or encouraging racial discrimination, hatred or violence;
- b) Participate in organisations or in the activities listed in the previous subparagraph or provide assistance to any racist activities, including its financing.”

34 Portugal’s accession to the International Convention on the Elimination of All Forms of Racial Discrimination was approved by Law No. 7/1982, of 29 April. For a detailed study of the obligations of the Portuguese State following the accession see Section 9.1 of this Handbook.

35 On the concept of “organisation”, André Lamas Leite says: “note that the legislator demands that the association of people and resources has a certain stability and a certain degree of functioning, because only in that case we will be in the presence of an organisation [...]”; *Direito Penal e discriminação religiosa – subsídios para uma visão humanista* in *O Direito*, Year 144 (2012), IV, Coimbra: Almedina, 2013, p. 892.

associating equality with other legal interests, it becomes clearer where to draw the line on what should be protected by each branch of the law.

The crime of discrimination was enshrined in Article 189³³ of the Portuguese Penal Code of 1982, in a version associated with the crime of genocide, and that fulfilled the obligations of criminalisation assumed by the Portuguese State for the accession to the International Convention on the Elimination of All Forms of Racial Discrimination³⁴. As Francisca Van-Dunem points out, with the reform of the Penal Code by the Decree-Law 48/95, of 15 March, the crime of discrimination was made autonomous from the crime of genocide, and is now included in Article 240 (Van-Dunem, 2001). The same author notes that, in paragraph 2 of that article, intentional misconduct became a requirement, translated in the expression “*with intent to incite or encourage racial, religious or sexual discrimination*” (Van-Dunem, 2001). This point relating to specific intentional misconduct, which was a requirement across all subparagraphs in Article 240(2), remained unchanged until the approval of Law No. 94/2017, of 23 August, in which intentional misconduct became the new subparagraph (d). This change had a highly relevant double effect: on one level, it enlarged the typical action punishable by the crime and, on another level, made the criminalisation less demanding by removing a specific subjective element to what is considered crime.

In addition to this major change, Article 240 of the Penal Code – which in its initial version only referred to race-motivated hatred – was subject to successive amendments by Laws No. 65/98, of 2 September (new reference to religion), 59/2007, of 4 September (new references to colour, ethnicity and national origin, gender and sexual orientation), and 19/2013, of 21 February (new mention to gender identity), in order to broaden the typical types of prejudice that are relevant to hatred covered by the provision. The last amendment introduced by Law No. 94/2017, of 23 August, besides covering intentional misconduct, also added “*physical or mental disability*” to hatred motivated by bias/prejudice. This amendment created a mismatch between the motivations determining hatred in this provision and those contained in Article 132(2)(f) of the Penal Code. As we shall discuss below, this discrepancy is particularly relevant for the reference made by Article 155(1)(e) of the Penal Code to Article 132(2)(f) of the same code.

This type of objective unlawful act, particularly in Article 240(1), involves three types of actions regarding organisations³⁵ inciting or encouraging discrimination, hatred or violence against a person or group due to their race, colour, ethnic or national origin, descent, religion, gender, sexual orientation, gender identity or physical or mental disability: the organisation’s foundation, constitution or participation in the organisation. In relation to activities with

these same objectives, there are two modes of action: development or participation. With regard to the objective unlawful act set out in Article 240(2), there is a requirement that the conduct is public, and uses means intended for circulation. This excludes from the scope of this provision any conduct that, although under the remit of any subparagraph of Article 240(2), occurs in an interaction between the perpetrator and the victim that is not public or that, taking place in public, is not susceptible of being disseminated.

Considering the requirement for the unlawful act to have an objective element determined by the expression “*publicly, by any means purported to be disseminated*”, one should question whether the legislator has gone too far in dispensing the specific intentional misconduct – “*intent to incite or encourage racial, religious or sexual discrimination*”. This is now covered by the objective element of Article 240(2)(d), which allows the crime to be applied to truly negligent conducts. To understand this better, let us look at a recent news story: a group of people of Roma ethnicity allegedly caused disturbances in a hospital in the north of the country. Let’s imagine that the director of the hospital gave an interview acknowledging that the problem had occurred, that it had been caused by a group of people of Roma origin, and also noting that the problem was resolved and that it had been of minor importance. Now let’s imagine that a group of people in the north of the country, motivated by the interview, had assaulted a group of Roma people. The director of the hospital would have been liable under Article 240(2)(a) of the Penal Code without having had a discriminatory intent³⁶. His intention may even have been the opposite, as noted in the example. Introducing a reasonable interpretation about the type of crime may take the path suggested by André Lamas Leite regarding Article 240(1). He says:

“Despite Article 240 not making reference to a “social adequacy” criterion, the Article derives from a teleologic-based hermeneutics oriented for the protection of the identified legal interest - propaganda material can only discriminate when they do not fulfil “educational, artistic or scientific aims, research or teaching aims, description of historical events or similar aims.”

It should be recalled that Article 240(1), throughout its historical evolution, has never established in its various wordings the requirement for a specific intentional misconduct (discriminatory intent), allowing for the punishment of conducts not foreseen by the legislator. The author cited above seeks to limit these results through the conduct’s social adequacy. The same applies to No. 2 of the same article.

Article 240(2), with the amended by Law 94/2017, of 23 August, includes the wording:

36 André Lamas Leite would disagree with this conclusion, arguing that the type of illicit foreseen in Article 240(2)(a) had not been committed, since the expression “*incite*”, is used in Article 240(1)(a) in the same sense as the concept of instigation [Article 26.º of the Penal Code], and then considering an equation with “*incite*” and “*cause*” – which should not be agreed – as demonstrated in “Direito Penal e discriminação religiosa – subsídios para uma visão humanista” in *O Direito*, Year 144 (2012), No. IV, Coimbra: Almedina, 2013, p. 902. Instigation and the idea of incitement share a high degree of intentionality. The same is not true for the expression “*cause*”, which means “*be the cause of*”, in a logic of causal link without necessarily including the dimension of intentionality. The choice of a word without such a reference to intentionality is consistent with a provision that made intentionality autonomous through a specific intentional misconduct.

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“namely by condoning, denial or gross trivialisation of crimes of genocide, war or of crimes against peace or humanity”. The passage quoted was included by the legislator immediately after the mention to *“means purported to be disseminated”*. This legal formulation might suggest that the first segment mentioned would make the second one more concrete. However, this conclusion confuses the medium with the content disseminated. In fact, this expression, until the entry into force of Law No. 94/2017, of 23 Agosto, was associated with the crimes of defamation and insult contained in Article 240(2)(b). This expression, introduced by Law No. 65/98, of 2 September, was intended to cover the phenomenon of negationism and historical revisionism³⁷. The last legislative amendment – Law No. 94/2017, of 23 August – addresses this issue by covering the conducts described in the subparagraphs of Article 240(2). This legal technique can cause doubt since it gives examples of the forms of action before defining the typically relevant action. Further, particularly for groups affected by crimes that are object of negation, if negationism can easily be configured as a cause of violence (Article 240(2)(a)), of defamation and insult (Article 240(2)(b)), and of inciting to violence and hatred (Article 240(2)(d)), then it is not as clear that, by defending negationism, at least immediately, one can threaten a person or a group (Article 240(2)(c)).

In what concerns the subjective element of the unlawful act, since we have already made several considerations about it when discussing the legal amendments of the provision, it is only necessary to highlight that currently the crime can only be punished when committed with intentional misconduct due to the requirement set out in the second part of Article 13 of the Penal Code, according to which punishment by negligence must be expressly prescribed in the law.

Having concluded the analysis of Article 240 of the Penal Code, we now turn our attention to Article 132(2)(f), which establishes as aggravated homicide, death provoked under particularly censurable or malicious circumstances, when the murder is determined *“by racial, religious or political hatred or motivated by colour, ethnical or national origin, gender, sexual orientation or the gender identity of the victim”*. The analysis of the aforementioned provisions examined the two central types of crime related to hate crimes. This does not exhaust our object of study; it only highlights the central role played, on one hand, by Article 240, making it an autonomous crime and, on the other hand, by Article 132(2)(f) as a paradigm for enshrining a qualifying circumstance that will be reproduced in other types of criminal offence throughout the Penal Code. However, in relation to Article 132(2)(f), this centrality is not without issues, which will be dealt with next.

³⁷ In a similar way, Francisca Van-Dunem, “A discriminação em função da raça na lei penal” in *Estudos em Homenagem a Cunha Rodrigues*, Volume II, Coimbra: Coimbra Editora, 2001, p. 948.

As mentioned in relation to Article 240 of the Penal Code, Article 132(2)(f) was also amended over time to widen the range of prejudices that motivate hatred. In its first version after the reform of the Penal Code of 1995³⁸, the subparagraph (d) of Article 132(2) – which corresponds to the current subparagraph (f) – only contained a reference to “*racial, religious or political hatred*”. As a result of the new wording resulting from Law No. 65/98, of 2 September, the mentioned subparagraph (d) became (e), with no further amendments. However, a decade later, the provision was greatly changed by Law 59/2007, of 4 de September. First of all, a new subparagraph in Article 132(2) was introduced, resulting that the then subparagraph (e) was moved to subparagraph (f) – the latest amendments have not added new subparagraphs to paragraph 2 of the cited article. In what concerns the prejudices motivating hatred, the following were added to the initial list: “*colour, ethnic and national origin, gender or sexual orientation of the victim*”. More recently, Law No. 19/2013, of 21 February, seeking to reflect the prejudices manifested in society, included a mention to the “*gender identity of the victim*”. This historical overview of the development of the provision shows the legislator’s constant concern in widening the range of legally relevant prejudices motivating hatred. However, the analysis of Article 132(f)(2) of the Penal Code also leads us to note that the provision is out of step with Article 240 of the same law in what concerns the list of prejudices susceptible of generating hate. This circumstance is not particularly serious in what concerns Articles 132 or 145 of the Penal Code, as we shall demonstrate. However, this is of special relevance in the analysis of Article 155, which aggravates a vast range of crimes. This problem will be dealt with in the section analysing Article 155 of the Penal Code.

We mentioned above that Article 132(2)(f) is of particular importance to hate crimes as it is referred to by Articles 145 and 155. That important role also implies a contagion effect of potential problems that can be raised about it. Before developing this analysis further, and to avoid repetition, we note that the considerations made in relation to Article 132 are identical to those raised in respect to Article 145³⁹. This is different from what can be said about Article 155 of the Penal Code, which requires a separate examination as it uses a different legislative technique from the other two mentioned precepts.

The similarity between Articles 132 and 145 of the Penal Code arises from the fact that the legislator used the standard examples technique. This technique, enshrined in paragraph 2 of Articles 132 and 145, uses a set of circumstances (listed on paragraph 2 of Article 132) to fulfil the indeterminate concepts of “*particular censurable or malicious*” (mentioned in paragraph 1 of both articles). However, the use of the expression “*among others*” in paragraph 2 of Articles 132 and 145, implies that neither the listed circumstances are the only ones that fulfil the indeterminate concepts mentioned, nor that their verification – as

38 Reform undertaken by the approval of Decree-Law No. 48/95, of 15 March.

39 Similarly, Paulo Pinto de Albuquerque annotates Article 145 by constantly referring to the notation of Article 132, both of the Penal Code, *Comentário do Código Penal – à luz da Constituição da República e da Convenção Europeia dos Direitos do Homem*, 3rd edition updated, Lisbon: Universidade Católica Portuguesa, 2015, pp. 564 and 565.



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indicated by the use of the expression “*may disclose*” in paragraph 2 of Articles 132 and 145 – implies they are automatically fulfilled. From the perspective of our study, this means that from a theoretical point of view, it is possible to have a case in which the hatred motivation is verified but where aggravated homicide is not applicable. Additionally, considering that the list of circumstances capable of revealing special censorship or perversity is not exhaustive, and the identified gap between the prejudices identified in Article 240 but not in Article 132 (specifically “*physical and mental disability*”), it is also possible that a homicide motivated by hatred generated by a prejudice against persons with a physical or mental disability may be punished as an aggravated homicide provided that the actual conduct reveals special perversity or censorship. Not seeking here to discuss the merits and demerits of the legislative technique in question, it should be noted that it has, in respect of hate crimes, obvious advantages and disadvantages.

Further, in what concerns Articles 132 and 145 of the Penal Code, we should mention a divergence in the doctrine because of its relevant practical consequences. It has been deeply controversial, mostly in discussions about Article 132, whether the provision enshrines a type of guilt, a type of offence or, in an intermediate position, whether some circumstances refer to guilt and others to illegal conduct⁴⁰. Revising that discussion would take too much space, thus we shall only address the theoretical consequences of applying those extreme positions⁴¹, which are the most important for hate crimes in practical terms.

The two positions relative to Articles 132 and 145 defend that, on one side, we are dealing with a type of guilt, and on the other, that we are dealing with a type of illegal conduct. The consequences of these two positions is dictated by Articles 28 and 29 of the Penal Code. According to the latter, when there is co-participation (when the contributions to the crime originate from more than one agent), each of the participants is punished according to their individual guilt. When there is an illegal act, in accordance with Article 28, this can be transmitted between participants. Illustrating with an example in the scope of our study: A decides to kill B because he/she is transsexual, and A perceives these people as aberrations that should be eliminated. To execute his/her criminal plan, A is aided by C, who provides A with a weapon to be used to carry out the crime. Once the crime is consummated, it is covered by Article 132(2)(f) and would therefore fulfil the concepts of “*particular censurable or malicious*”. There are no doubts that A, as principal author (first part of Article 26 of the Penal Code), would be punished by the crime of aggravated homicide. In what concerns B, an accomplice in accordance with Article 27(1) of the Penal Code, two positions could be taken. On the one hand, if we understand that Article 132 of the Penal Code enshrines a type of guilt (and since, as mentioned, each of the participants is responsible for their own guilt), then B could

⁴⁰ For an overview of the current state of the discussions see Paulo Pinto de Albuquerque, *Comentário do Código Penal – à luz da Constituição da República e da Convenção Europeia dos Direitos do Homem*, 3rd edition updated, Lisbon: Universidade Católica Portuguesa, 2015, pp. 509 and 510 and also Figueiredo Dias/Nuno Brandão, *Comentário canimbricense ao Código Penal*, 1, 2nd edition, Coimbra: Coimbra Editora, 2012, pp. 48 to 54.

⁴¹ Following the rationale for the intermediate position would be of limited interest, as the conclusions would be the same but restricted to each paragraph. We chose to contrast the thesis that deals with the problem as a whole since the results are similar and only vary in scale.

only be punished as an accomplice of a simple homicide (i.e. wilful and intentional murder; Article 131 of the Penal Code). On the other hand, if we side with the thesis that Article 132 of the Penal Code constitutes a type of illegal conduct, which can be extended to B, then B would be punished as an accomplice to an aggravated murder.

Now that the consequences of the main problems posed by Article 132 have been examined, it would be only logical to look at Article 145 as we proceed in our study of the different types of crime. However, as mentioned previously, the conclusions would be identical to those reached regarding Article 132 of the Penal Code. Thus, we will proceed directly to the study of article 155 of the Penal Code.

Article 155(1)(e) of the Penal Code, as amended by Law No. 83/2015, of 5 August (which fulfilled the obligations of the Portuguese State vis-à-vis the Istanbul Convention), enshrines hatred motivated by prejudice as an aggravating circumstance of the crimes established in Articles 153, 154, 154A, 155B and 155C of the Penal Code, and uses a different legislative technique from that used in Articles 132 and 145 of the Penal Code.

The legislator refers in Article 155(1)(e) of the Penal Code to a circumstance covered in Article 132(2)(f) but does not use the standard examples technique. This excludes the possibility of attributing relevance to other prejudices as hatred motivators other than those expressly mentioned, and highlights the importance of the discrepancy between Article 132(2)(f) and Article 240. This discrepancy is less important in Articles 132 and 145 of the Penal Code because the standard examples technique is not based on a limited set of circumstances for describing the indeterminate concepts of “*particular censurable or malicious*” but is in accordance with Article 155(1)(e), where this is not applicable.

Contributing to this serious consequence, and under the principle of legality, there is also the prohibition of using analogy to extend the scope of application of the types of offences set out in Article 1(3) of the Penal Code. However, by moving away from the standard examples technique, the legislator, ensures that, unlike what happens with the article above, the penalty is automatically aggravated once the content of Article 132(2)(f) of the Penal Code is verified – as defined in Article 155(1)(e) of the Penal Code.

Thus, in relation to crimes under Articles 153 and 154C, it is concluded that, on one hand, hatred motivated by “*physical or mental disability*” (provided for in Article 240 of the Penal Code) cannot assume the role of aggravating circumstance and, on the other hand, once fulfilled the provision of Article 132(2)(f) of the Penal Code, the penalty is automatically aggravated.

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We now turn to crime of computer-related invasion of privacy covered in Article 193 of the Penal Code, which, although not related to hatred or discrimination, aims to protect informational self-determination in relation to a set of matters that can be object of prejudice. André Lamas Leite refers to these matters as being “*of a sensitive nature (...) because they concern aspects of the citizens’ private life that these, as a rule, do not wish to disclose, as these aspects associate them with certain groups, and that may have disadvantageous consequences to their everyday life*” (Lamas Leite, 2012).

To understand better the interest in studying such a crime in the context of hate crimes, let’s imagine that a racist group creates a database about the race of a particular group of people. This type of conduct would satisfy the type of crime described in Article 193 of the Penal Code. Thus, although this is not a hate crime, considering the elements of the type of crime, it is closely connected.

Before starting the analysis of the historical development of the provision, we need to note a doctrinal and jurisprudential divergence arising from the fact that this provision was tacitly revoked through the approval of Law No. 67/98, of 26 October. In favour of this interpretation are Damião da Cunha and the Ruling of the Évora Court of Appeal of 05/11/2013 (Case No. 679/05.7TAEVR.E2) (Cunha, 2012). Against this interpretation, arguing that the precept still remains in force, is Paulo Pinto de Albuquerque (Pinto de Albuquerque 2015).

As mentioned regarding Articles 132(2)(f) and 240 of the Penal Code, Article 193 has also been subject of legislative changes to extend the scope of the type of information relevant to define that type of crime, although less frequent. The original version of the article (then Art.181 of the Penal Code) was established by Decree-Law No. 400/82, of 23 September and it only mentioned “*personal data*” in (1), then elaborated in (2), which stated that it could include “*political, religious and philosophical beliefs, as well as others concerning privacy*”. With the reform of the Penal Code of 1995 – through the approval of Decree-Law No. 48/95, of 15 March – the crime of computer-related invasion of privacy became enshrined in Article 193, with added references to data regarding “*party or trade union affiliations, of private life or ethnic origin*”.

One should also note the objective type of offence enshrined in Article 193 of the Penal Code. The conduct typified includes the creation, maintenance and use of an automate file of individually identifiable data and in relation to the types of information covered by the historical development of the provision. Expected difficulties concern the concepts of ‘*automate file*’ e ‘*individually identifiable data*’. The former was defined in Law No. 10/91, Article 2(d) – the revoked personal data protection law – as “*the structured set of data*

40 Para um panorama geral sobre o estado da discussão vide Paulo Pinto de Albuquerque, *Comentário do Código Penal – à luz da Constituição da República e da Convenção Europeia dos Direitos do Homem*, 3.ª Edição atualizada, Lisboa: Universidade Católica Portuguesa, 2015, págs. 509 e 510 e ainda Figueiredo Dias/Nuno Brandão, *Comentário conimbricense ao Código Penal*, Tomo I, 2.ª Edição, Coimbra: Coimbra Editora, 2012, págs. 48 a 54.

41 Não se revestiria de particular interesse percorrer o mesmo caminho em relação à posição intermédia que referimos no corpo do texto porque se alcançariam as mesmas conclusões mas em âmbitos de aplicação – cada uma das alíneas – mais restrito. Dito de outra forma, optamos por confrontar as duas teses que tratam o problema em bloco uma vez que os resultados são similares apenas variando a escala.

object of automated treatment, centralised or dispersed in different locations". The current personal data protection law – Law no. 67/98, of 26 October – defines ‘personal data file’ in Article 3(c) as “*any structured set of personal data, accessible according to particular criteria, be it centralised, decentralised or dispersed functionally or geographically*”, and should also be a reference for the application of Article 193 of the Penal Code. The concept of ‘*individually identifiable data*’, is equivalent to “*identified or identifiable single person*” defined in Article 3(a) of Law No. 67/98, of 26 October, as “*a person that can be directly or indirectly identified, namely through an identification number or to one or more specific elements of their physical, physiological, mental, economic, cultural or social identity*”.

We should also note a group of crimes specifically connected to religious matters that, although not expressly referring to a feeling of hatred or discriminatory intention, can easily include conducts motivated by discriminatory intentions of a religious nature. These are: the crime of aggravated theft (Article 204(1)(c)), crime of damage (Article 213(1)(e)), religious insults or desecrating a place or object of cult (Article 251) and the crime of preventing, disrupting or insulting an act of cult (Article 252).

Before closing the chapter on crimes typified in the Penal Code that can be relevant to hate crimes, we should note an interesting reflection by Francisca Van-Dunem. Regarding the possibility of race discrimination becoming a crime of defamation (Article 180 of the Penal Code) or insult (Article 181 of Penal Code), this author states that “*the integration of the so-called racial offences in the general typology of crimes against honour may, in some circumstances, prove less linear*” (Van-Dunem, 2001).

We can start by clearly distinguishing between two groups of cases: those where committing the crime of insult or defamation is motivated by a prejudice, but in which the content of the offence is not related to the prejudice; and those that, besides being motivated by prejudice, the prejudice is also present in the content imputed insult. In order to clearly understand these groups of cases, let us think of two examples. In a first case, A knowing or thinking that B is homosexual, and motivated by that reason, spreads in a community that B makes his living out of theft. In a second case, A knowing or thinking that B is homosexual, spreads in a community that B is homosexual. It is clear that, in the first case, the prejudice is in the motivation of the crime, but not in the imputed content. In these cases, that motivation, although not part of the conduct described as a crime, must be reflected in determining the penalty – Article 71 of the Penal Code, which we will look at next. In the second case, it would be the content arising from the prejudice that would serve as an object of imputation. This raises the problem that crimes of insult and

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defamation require that the content used towards someone is “*offensive of their honour or reputation*”; however, certain content resulting from prejudice may not be considered an attack to honour and reputation as this would imply that the criminal justice system would consider offensive something that is not considered as such by society. Following from our prior example, spreading that someone is homosexual or calling a person “*African*”, for the purpose of Articles 180 and 181 of the Penal Code⁴², cannot be considered “*offensive of their honour or consideration*”, as this would institutionalise the prejudice.

Francisca Van-Dunem, without advancing a conclusive answer, indicates a solution by saying that “*certain expressions intending to characterize individuals according to their race, or ethnicity, acquire a noticeable social connotation of negative value that, if uttered in a particular context, are objectively injurious*” (Van-Dunem, 2001).

Lastly, hatred motivated by prejudice can still be considered, according to Article No. 71(2)(c) of the Penal Code, when the judge determines the sentence for the penalty. This possibility is not specific for hate crimes but is instead a transversal mechanism used when applying criminal law, and, consequently, allows reflecting special concerns in the sentences. In fact, independently of the legislation, the large majority of crimes may ultimately, in a more or less obvious way, involve racial motivations⁴³, in what concerns the selection of the victim of the crime.

This finding may lead the legislator to consider referring the qualifying or aggravating circumstances throughout the Penal Code. However, in terms of the existing law, granting relevance to hatred based on prejudice as the motivation of the crime or feelings expressed during the committing of the crime when determining the sentence ensures a transversality that would be difficult to achieve through a legislative amendment.

Having noted the main advantages of considering hatred motivated by prejudice in the process of determining the sentence, we need to highlight a limitation deriving from Article 29(5) of the Constitution of the Portuguese Republic. This legal document enshrines the principle of *ne bis in idem*, according to which no criminal relevance can be assigned twice for the same conduct. This principle is enshrined in common law, in Article 71(2) of the Penal Code: “*all circumstances that, not being elements of the type of crime, are in favour of the agent or against him*”. Thus, if hatred based on prejudice has already been considered the basis for the type of crime – which will happen, for example, when the crime of aggravated homicide is imputed by virtue of a circumstance listed in Article 132(2)(f) – it cannot be considered again for the process of concretely determining the sentence, as it would be a double criminal assessment of the same behaviour.

⁴² The conducts described may also qualify as other types of crime, such as private life abuse (article 192 of the Penal Code) or crime of persecution (article 154A of the Penal Code).

⁴³ This concern is also obvious in the Law of Criminal Policy for 2017-2019, Law No. 96/2017, of 23 August, which highlights, in what concerns the priority prevention crimes in Article 2(a), the “*crimes motivated by racial, religious and sexual discrimination*”, using a more inclusive formula instead of an express mention to penal illegal conduct associated with hate crimes.

7.5.2. Hate crimes in Portuguese criminal procedural law

This section discusses the impact hate crimes can have in Portuguese criminal procedural law. This impact is less obvious than in the case of criminal law but is still relevant, namely for the daily judicial practice. It can be identified in areas such as: the nature of certain crimes that can be viewed as hate crimes; requesting the role of assistant in the criminal proceedings and the existence of special norms in separate pieces of legislation; restrictive measures and the special suitability to fulfil some of its requirements; and lastly, provisions established by the Cybercrime Law on this matter. We will now examine each of these points.

The nature of the crimes, as a rule, does not raise doctrinal or jurisprudential divergences. This matter tends to be clear in the Penal Code: cases where the legislator demands a private prosecution constitute private crimes; crimes where the legislator demands the filling of a complaint are semi-public crimes; and where there are no guidelines, cases are public crimes. Such distinction would be a mere theoretical question except for its implications in criminal proceedings.

Francisca Van-Dunem also emphasizes the relevance of this question, exemplifying its implications in what regards crimes of honour: *“in fact, it should be borne in mind that honour, as an eminently personal legally protected interest, is held by natural persons, which means that, as a rule, only natural persons can initiate criminal proceedings. On the other hand, since defamation and insult are particular crimes, it is the person with a protected interest that holds the right to the decisive action to prosecute, it is their decision to submit a complaint, to request the role of assistant in the criminal proceedings and to present a private prosecution”* (Van-Dunem, 2001).

If the above does not present many difficulties, the same cannot be said for Article 155, which because of paragraph I(e), as mentioned above, is relevant to hate crimes. This article aggravates the acts foreseen in Articles 153 and 154C of the Penal Code. This does not happen in relation to the crimes in Articles 154B and 154C since they are public crimes. However, in relation to the crimes in Articles 153, 154 and 154A, since they constitute – or can constitute – semi-public crimes, the doubt is whether, when aggravated by Article 155, they will become public crimes. This is the understanding of Paulo Pinto de Albuquerque in his annotation to Article 155 of the Criminal Procedure Code (Pinto de Albuquerque, 2015). Similar view is shared by the majority of the jurisprudence⁴⁴. However, in what concerns the crime foreseen in Article 153 of the Penal Code, the Court of Appeal of Porto, in Judgement of 13/11/2013 (Case No. 335/11.7GCSTS.PI)⁴⁵, held the view that we would be in the presence of a semi-public

44 In this regard, see, for example, the Judgement of the Court of Appeal of Coimbra of 10/07/2013 (Case No. 187/11.7GBLSA.C1), the Judgement of the Court of Appeal of Guimarães of 09/05/2011 (Case No. 127/08.0GEGMR.C1) and, finally, the Judgement of the Court of Appeal of Coimbra of 10/12/2013 (Case No. 183/09.4GTFVIS.C1), all available for consultation at www.dgsi.pt.

45 Available at www.dgsi.pt.



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crime. The consequences of the lack of complaint in a crime in which it is deemed necessary, by virtue of the position taken regarding the referred divergence, will be the lack of legitimacy of the Public Prosecution for criminal action (Article 49 of the Criminal Procedure Code) and, if this happens at the time of the trial or appeal, the consequent acquittal of the defendant.

The general regulation about the request for the role of assistant in criminal proceedings is enshrined in Article 68 of the Criminal Procedure Code, and its paragraph 1 foresees the possibility of special regimes. Further, Law No. 20/96, of 6 July, enshrines the possibility of “*associations of immigrant communities, anti-racism or human rights defence*” to take the role of assistants in the criminal proceedings in relation to “*crimes motivated by a discriminatory attitude based on race or nationality*”, without having to pay the judicial fee.

In this respect, the legislator used a legislative technique similar to the one used in Articles 132(2) (f) and 240 of the Penal Code, by determining which prejudices are relevant for the purpose of discrimination. In fact, if the choice had been to refer to the grounds of discrimination mentioned in other articles of the Penal Code, it could avoid the need for successive legislative changes.

Still on the matter of legislative technique, and while recognising the difficulty of finding an optimal solution, there are two problems raised by the reference made by Law No. 20/96, of 6 July, to “*crimes motivated by discriminatory attitude*”, followed by mentions to Articles 132 and 240, both of the Penal Code. The first problem concerns the connection made by the legislator in relation to the motivation of the crime, which can be configurable, as a psychological impulse that determines the author of the crime, for most of the crimes foreseen in the Penal Code – for example, a victim of a crime against property can be chosen because of race, although such an element is not criminalised. The second problem arises from Article 132(2)(f) not mentioning the discriminatory motivation, and the fact that the legislator has equated the hatred motivated by prejudice to discrimination as if it was the same phenomenon and not just two phenomena with a common cause: prejudice.

Since the legislator did not opt to refer to the articles of the Penal Code connected with the determination of the relevant prejudices, Law No. 20/96, of 6 July, currently enshrines a provision quite divergent from the mentioned articles⁴⁶. However, Law No. 20/96, of 6 July, by mentioning discrimination based on race and nationality, hints at a provision whose content was not only aligned but also went further than the provision in Article 240 of the Penal Code, which, in the wording conferred by Decree-Law No. 48/95, of 15 March, only made reference to race. Thus, we can conclude that not updating Law No.20/96, of 6 July, in relation to Articles 132(2)(f) and of the Penal Code, demonstrates, more than

46 André Lamas Leite requests that religion receives the same treatment as race and nationality: “*in fact, we are, in the same way, in the face of attitudes in which a certain crime with a specific motivation is punished, in which the defendant chose the plaintiff because of a characteristic or their belonging to a particular group, in this case a religious group. Where the ratio legis is the same, the same legislative treatment should be provided.*”, “Direito Penal e discriminação religiosa – subsídios para uma visão humanista” in *O Direito*, Year 144 (2012), Volume IV, Coimbra: Almedina, 2013, p. 903.

the legislator’s stand, how much this provision has been forgotten, maybe due to its low practical application or its peripheral systematic insertion.

On the matter of requesting the role of assistant in criminal proceedings, there is jurisprudential divergence, in the light of Article 240 of the Penal Code, on whether the victim of crime has the legitimacy to request the role of assistant. The Supreme Court of Justice, through its Judgement of 17/06/1998 (Case No. 98P217)⁴⁷, took the position to not accept the request for the role of assistant by the victim of the crime, since we are dealing with a public crime that is not intended to protect private legally protected interests. However, the opposite position was taken by the Court of Appeal of Lisbon, in its Judgement of 18/07/1996⁴⁸, (Case No. 0081825), where it was argued that Article 240 of the Penal Code also has an individual protection dimension.

André Lamas Leite, supporting the position of the Court of Appeal of Lisbon, states that “*in fact, it is often the case that there are public crimes in which there is an interest to criminally protect the person offended, with the same (or close) importance to the collective dimension, and thus deserve to acquire the procedural status of assistant to the Public Prosecutor. This is not because of the State’s “magnificence”, but because of one’s own right, since, when the provision was conceived, it would have been the intention of the legislator to revert partially ownership of the interest affected by the crime to the offended part (...) Article 240 foresees one of those cases, since, by its own nature, this is also a personal interest, related to basic aspects of human personality and its free development, which are protected within the principle of equality protected by the State*” (Lamas Leite, 2012). This allows for the interpretation of Article 240 of the Penal Code as allowing a victim of crime to acquire the status of assistant.

Now let’s turn our attention to restrictive measures and their relation to hate crimes. Hate crimes, independently of the exact type as described in 9.6.2, are by their nature particularly suited to fulfil the requirement set by Article 204(c) of the Criminal Procedure Code: “*danger, due to the nature and circumstances of the crime (...) of (...) serious disturbance of the public peace and order*”.

There are several interpretations of this paragraph. Fernando Gama Lobo states that “*an emotional attitude of popular disturbance is anticipated here, capable of generating a negative effect in the wider social context, such as a revolt or intimidation, which may undermine social peace*” (Gama Lobo, 2015). Maia Costa, in turn, requires “*the verification of particular circumstances that lead to predictable changes to the public peace and order, rather than being convinced that certain crimes may in abstract cause emotion of public disturbance*”⁴⁹.

47 Available at www.dgsi.pt.

48 Available at www.dgsi.pt.

49 See comment by Maia Costa in *Código de Processo Penal Comentado* (AA.VV.), Coimbra: Almedina, 2014, p. 880.

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As mentioned in section 1 of this handbook, hate crimes are characterised particularly by not being directed to that specific victim, but to the victim as an integral part of a group. André Lamas Leite, referring to discrimination on the grounds of religion, notes that *“one can say that, more than considering the victim per se, as a natural person from a legal point of view, the aggravation is justified if and to the extent that the victim is part of a group characterised by a set of values”* (Lamas Leite, 2012).

Disregarding the victim’s individuality and overvaluing their relationship of belonging (real or pretended) to a particular group will imply that all the other people part of that group are, automatically, potential victims of the same crime. This trait of automaticity coupled with the fact that hate crimes are, by their nature, crimes characterised by a deep rooted prejudice that transpires from the world of ideas to the real world, explains that, at least in the cases in which hatred is particularly noticeable, the crime has a special aptitude to unleash fear in the whole group that shares with the victim the characteristic that motivated the crime.

There is also an opposing perspective, which opens up space for reflection – let’s look at an example taken from the Portuguese jurisprudence. Paulo Pinto de Albuquerque, in an annotation to Article 204(c) of the Criminal Procedure Code states that *“the “public” peace or order is not of the social group to which the defendant or the plaintiff belong, but the peace and order of society in general”* (Pinto de Albuquerque, 2011). In a famous case in 1995, decided by the Supreme Court of Justice in its Judgement of 12/11/1997 (Case No. 97PI203)⁵⁰, a group of individuals associated with far-right movements assaulted multiple people for racial reasons in Bairro Alto (Lisbon) and adjacent areas, causing the death of one of the victims of those aggressions. All the victims of that night’s violence shared racial characteristics and, in that sense, formed a particular group. However, it is defensible that such an incident will be able to disrupt public peace and thereby support the application of restrictive measures.

Finally, we make a brief reference to the Cybercrime Law – Law No. 109/2009, of 15 September –, which in Article 19 extends the regulation of undercover operations of Law No. 101/2001, of 25 August. This law is circumscribed to the set of crimes described in its Article 2. Article 19(1)(b) of the Cybercrime Law allows undercover operations in connection with crimes of “racial, religious or sexual discrimination” when these are committed by means of a computer system. It should be noted that discrimination is limited to racial, religious and sexual factors, and does not correspond to the scope of Article 240 of the Penal Code. This discrepancy between the provisions is particularly relevant in criminal proceedings. In fact, Article 19(1)(b) of the Cybercrime Law allows the use of means of investigation that is restrictive of the rights of the suspects/defendants. In this sense, it is

a provision of substantive and procedural law that, because it is restrictive of rights, is not subject to analogy, and consequently the principle of criminal law is applicable (Article 29 of the Constitution of the Portuguese Republic)⁵¹.

The Cybercrime Law's concern about discrimination is visible and is connected to the Additional Protocol to the Convention on Cybercrime, approved by Resolution of the Assembly of the Republic No. 91/2009, of 15 September. This protocol expresses a concern with “*the risk of misuse or abuse of such computer systems for the purpose of spreading racist and xenophobic propaganda*”.

7.5.3. Statute of the Victim

The previously mentioned Victims' Directive was transposed to the Portuguese legal system by Law No. 130/2015, of 4 September, which amended by the twentieth time the Criminal Procedure Code and approved the Statute of the Victim.

This law, contrary to the Directive, does not expressly mention victims of hate crimes. It is thus important to discuss the transposition of the most relevant points of the Directive in regards to the victims of hate crime.

Concerning the specific protection needs, the Law does not foresee the individual assessment of the needs in the same way as the Directive. In the Directive, the individual assessment is intended to determine whether a victim is particularly vulnerable to secondary and repeat victimisation, to intimidation and to retaliation in the course of criminal proceedings (European Commission, 2013). The individual assessment is comprised of two distinct phases. Firstly, it is necessary to identify whether the victim has specific protection needs, according to the criteria listed in Article 22(2) of the Directive. Secondly, if this need is confirmed, it is necessary to determine which measures should be applied to that victim – from the list of measures in Article 23, and in the case of children in Article 24 of the Directive (European Commission, 2013). In this regard, Article 20(1) of the Statute of the Victim only mentions that this individual assessment determines if particularly vulnerable victims should benefit from specific protection needs and does not tackle the second phase. There is therefore no provision in Law No. 130/2015 for an exact, careful and individual assessment of the type of measures to be applied to each victim. This gap is also evident in the fact that the wording of Article 20 designates as “statute” the set of specific protection measures for victims with specific protection needs. The use of the

⁵¹ See Maria João Antunes, *Direito Processual Penal, Coimbra: Almedina, 2016, p. 24.*

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term “statute” indicates that the specific protection measures will be applied as a whole to the victim, without a careful consideration of their needs, that is, only the necessary and adequate measures will be applied, as required by the Directive.

The specific protection measures provided for in Article 21 of the Statute of the Victim do not transpose the measures of Article 23(2)(b) and (c) of the Directive regarding all interviews being conducted by trained professionals and by the same ones for a given case.

The Law also omits the right to access victim support services provided for in Article 8 of the Victims’ Directive, with the exception of the right of the victim to be informed about what services can be accessed and the types of support available.

We can therefore conclude that the transposition enacted by Law No. 130/2015 does not fully mirror the cases where the Victims’ Directive makes express mention to the rights of victims of crime. Perhaps the Portuguese legislator has missed here an opportunity to provide victims of hate crime the special protection they need – since these victims are more susceptible and vulnerable to situations of secondary and repeat victimisation, intimidation and retaliation because of the characteristics and motivations of the crimes they are subjected to.

7.5.4. Regulatory offences law

Prejudice is the common root evident in the two ways in which hate crimes have been transposed to the Portuguese criminal justice system. The first is prejudice as a source of hatred which is relevant as a qualifying circumstance – Articles 132 and 145 of the Penal Code – or an aggravating circumstance – Article 155 of the Penal Code. The second manifestation is the crime of discrimination and incitement to hatred and violence as provided for in Article 240 of the Penal Code. It was in this manner that we systematized the matter of hate crimes in Portuguese criminal law.

Now turning our attention to regulatory offences law, the systematization previously used no longer applies, as in this area only discrimination is unlawful. It is thus immediately clear that discrimination has a dual treatment in the Portuguese legal system – through criminal law and regulatory offences law. This dual treatment, as previously mentioned⁵², represents the adoption by the Portuguese legislator of a model enabled by the European Union Law, under Article 1(2) of the Council Framework Decision 2008/913/JHA.

The treatment of discrimination in the scope of regulatory offences law arose with Law No. 134/99, of 28 August⁵³. Subsequently, by virtue of the transposition into the Portuguese legal order of Council Directive No. 2000/43/EC, of 29 June 2000, Law No. 18/2004⁵⁴, of 11 May, was approved, which had as its objective “*to establish a legal framework for combating discrimination based on racial and ethnic origin*”. Both legal documents’ scope, which overlap to a degree, was limited to discrimination on grounds of “race, colour, nationality or ethnic origin”⁵⁵. Such delimitation omitted the reference to political and religious prejudice that, at the time of the approval of the mentioned laws, already featured in Articles 132 and 240 of the Penal Code. Also, in the scope of labour law there is special concern with discrimination, which features in Articles 23 and 28 of the Labour Code. Special attention to discrimination in the workplace was already present in Council Directives 2000/43/EC, of 29 June 2000, and 2000/78/EC, of 27 November 2000. This latter Directive evidences that labour law recognised gender discrimination before criminal law, possibly as a consequence of the many years of labour relations affected by it. Criminal law, only with the approval of Law No. 59/2007, of 4 September, included in Articles 132 and 240 of the Penal Code a reference to the relevance of gender as a prejudice relevant to generate hatred or discrimination.

Considering the duplication of the provisions in terms of regulatory offences, Joel Belchior da Silva, in 2016, argued that “*making the regulatory offences regime on discrimination more uniform in a single piece of legislation could be a better solution*”. Through the approval of Law No. 93/2017, of 23 August, repealing Laws No. 134/99, of 28 August, and 18/2004, of 11 May, the legislator has partially adopted that solution, by concentrating the matter in those two laws in a single one. However, there are still sectorial regimes that punish discriminatory conducts through regulatory offences law. Examples of this include the Labour Code; Law No. 39/2009, of 30 July, governing against violence, racism, xenophobia and intolerance at sports events⁵⁶; and the television law – Law No. 27/2007, of 30 July⁵⁷. In order to understand, whether, through the approval of Law No. 93/2017, of 23 August, we see a true unification of the regime of regulatory offences law in what concerns discrimination, we should, besides noting that the sectorial regimes have been maintained, also establish whether the remit of the revoked Laws No. 134/99, of 28 August, and 18/2004, of 11 May, has been fully covered by the law which followed them. A brief comparison of Law No. 93/2017, of 23 August, with the revoked Laws No. 134/99, of 28 August, and 18/2004, of 11 May, makes it possible to understand that the former is a synthesis of the latter two concerning content and legislative technique. The novelty introduced by Law No. 93/2017, of 23 August, is extending its application to culture, in Article 2(1)(e), which was not the case in Article 2 of Law No. 134/99, of 28 August (this latter law’s scope only referred to the personal scope rather than to the material scope) – and Article 2 of Law No. 18/2004, of 11 May. This is even more relevant because the current Article 2 of Law No. 93/2017, of 23 August, is a copy of the latter.

53 See in particular Article 9 of Law No. 134/99, of 28 August.

54 See regarding regulatory offences, Article 10 of Law No. 18/2004, of 11 May.

55 See Article 1 of Law No. 134/99, of 28 August, and Article 3 of Law No. 18/2004, of 11 May.

56 Specially relevant on this matter are Articles 39, 39A and 39B of Law No. 39/2009, of 30 July.

57 See articles 27(2) and 77(1)(a) of Law No. 27/2007, of 30 July.

To conclude the analysis of Law No. 93/2017, of 23 August, it is worth mentioning its Article 12, which is new in relation to the revoked Laws Nos. 134/99, of 28 August, and 18/2004, of 11 May. Article 12(1) presents the possibility of “associations and non-governmental organisations whose statutory purpose is essentially to prevent and fight discrimination” to request the role of assistants in regulatory offences proceedings. This is a legislative solution similar to the one established in the single article of Law No. 20/96, of 6 July, in what concerns the possibility of associations whose purpose is the fight against racism or the defence of human rights to request the role of assistants in criminal proceedings.

This innovation may have constituted a legislative reaction to a jurisprudential positioning, which can be exemplified by the Judgement of the Court of Appeal of Guimarães of 03/05/2011 (Case No. 3056/10.4.TBBCL.G1)⁵⁸ from which we transcribe the summary:

- I. Under the general regime of the regulatory offences procedure, approved by Decree-Law No. 433/82, requesting the role of assistant is not admissible;*
- II. Contrary to what happens in the area of labour regulatory offences, where trade unions can request the role of assistants - which also confirms that the legislator does not allow this in the general regime - there is no special provision allowing for this to happen in regulatory offences breaching the principle of equality of treatment between persons, irrespective of racial or ethnic origin.”*

This legislative amendment has given legitimacy to the abovementioned associations to request the role of assistants to the regulatory offences proceedings - nowadays a judge cannot take a decision in the exact same terms as that transcribed above. However, the legislator missed an important dimension. The regulatory offences provided for in Law No. 93/2017, of 23 August, are applied, by virtue of its Article 26, through the general regime of regulatory offences - Decree-Law No. 433/82, of 27 October -, which does not provide for the role of assistant and, by default, does not attribute powers to a party it does not recognise. That being said, it is clear that the innovation contained in Article 12 of Law No. 93/2017, of 23 August, is procedurally meaningless. The mentioned associations can request the role of assistant but they will not have procedural powers and will thus be reduced to the position of mere observers.

Lastly, regarding the criminalisation of discriminatory conduct in relation to access to basic goods and services, which has been introduced in some European countries, André Lamas Leite says that “*we believe, however, that the criminalisation of those conducts would lead to an extension of Criminal law to illegal acts that, in general, find a satisfactory answer in the regulatory offences law. Not only do we find it difficult to discern a true legal-criminal interest*

in such cases, but we also believe that, in practice, the application to commercial companies supplying gas, electricity, water, etc, of a high fine is sufficient and adequate to guarantee the rights of the offended persons and prevent recidivism” (Lamas Leite, 2012).

The aforementioned author alludes to a problem regarding the legal interest protected by Article 240 of the Penal Code, which was mentioned before. The issue is the difficulty that the authors defending that Article 240 of the Penal Code only seeks to protect equality as enshrined in Article 13 of the Constitution of the Portuguese Republic have in recognising coherence in a legal system that offers a dual treatment to discrimination – as a criminal offence and as a regulatory offence.

Some systemic coherence can be found in one of the following three solutions: criminalising any discriminatory act; deal with all discriminatory acts under regulatory offences law; treat discrimination as a regulatory offence; and recognising penal relevance when there is harm or endangerment of relevant legal interests. The latter seems to be the solution adopted by Article 240 of the Penal Code. This was also the solution put forward at European level by Article 1(2) of Council Framework Decision 2008/913/JHA, which notes that the Member States “(...) *may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting*”. It is important to recall Paulo Pinto de Albuquerque’s view on the legal interest protected by Article 240: “*legal interests protected by incrimination are equality amongst all citizens, bodily integrity, honour and freedom of other people*” (Pinto de Albuquerque, 2015).

Following the criteria presented to differentiate dealing with discrimination in criminal or regulatory offences law, we propose a final reflection, from a *de iure condendo point of view*. This regards whether the crime of a doctor refusing to treat provided for in Article 284 of the Penal Code exemplifies a conduct motivated by discriminatory intent, which can be associated with levels of condemnation or intensity of the illegal act that should lead to the aggravation of the sentence or the qualification of the crime.

The above example already foresees a penal sentence. Thus, there would be no doubts regarding that for the fulfilment of the above mentioned demand of attributing legal relevance to the protection of equality as a legal interest, it would have to be associated to another criminally relevant legal interest⁵⁹. Also, in favour of condemning the medical conduct of discrimination, there is Article 4(5) of the Code of Ethics of the Portuguese Medical Association – approved by Regulation No. 707/2016, of 21 July – and Article 135(50) of the Statute of the Portuguese Medical Association – approved by Law No. 117/2015, of 31 August, which prohibits discrimination in the professional practice of medicine.

59 Paulo Pinto de Albuquerque, in an annotation to Article 284 of the Penal Code, states that “*the legal interests protected by incrimination are the life and physical integrity of other people.*”. *Comentário do Código Penal – à luz da Constituição da República e da Convenção Europeia dos Direitos do Homem*, 3rd edition updated, Lisbon: Universidade Católica Portuguesa, 2015, p. 1012.

7.6. Hate crimes as an autonomous crime: the best way forward?

The above analysis of the legal framework of hate crimes allows the reader to have a deeper knowledge of the relevant international and national instruments dealing with behaviours considered as hate crimes. This knowledge is needed for the discussion of hate crimes as autonomous crimes, which is one of the most debated questions regarding hate crime law at international and national level. The next section will analyse the advantages and disadvantages listed by OSCE (OSCE, 2009).

Beginning with a description of the advantages of autonomising the criminalisation of hate crimes, it must be said, first of all, that the adequate criminalisation of hate crimes demonstrates the clear rejection by society of crimes motivated by prejudices.

It should also be emphasised that those who defend the autonomous typification of hate crime and the heavier sentencing of their perpetrator, say that this is a necessary step in responding to the more serious impact hate crimes have in victims in comparison to other crimes, and that beyond a more significant impact on victims, these crimes impact also on the group to which the victim belongs.

Approving criminal legislation to make hate crimes autonomous involves a public and governmental discussion of these behaviours. Thus, appropriate legislation can raise awareness of issues relating to hate crimes.

Once approved, the implementation of these laws necessitates the training of professionals, namely of law enforcement officials, magistrates and judges, which, in turn, improves the responses of the criminal justice system to situations of hate crime.

The autonomy of hate crimes in criminal law allows, on one hand, a more adequate data collection for statistical analysis. A good quality data collection gives visibility to the true magnitude of hate crimes in each country, which can enable a correct distribution of resources for the training of professionals and for the investigation of hate crimes, as well as for the prevention and raising of awareness for this phenomenon.

Despite these apparent advantages, there are also disadvantages or difficulties that may result from the autonomy of hate crimes. Firstly, there is the difficulty in proving the intention of the offender. One of the greatest difficulties for criminal investigation authorities and for the courts when dealing with hate crimes is to infer and prove, through

the behaviour of the author of the crime, something that is in the intimate realm of the person who practised an act contrary to the law.

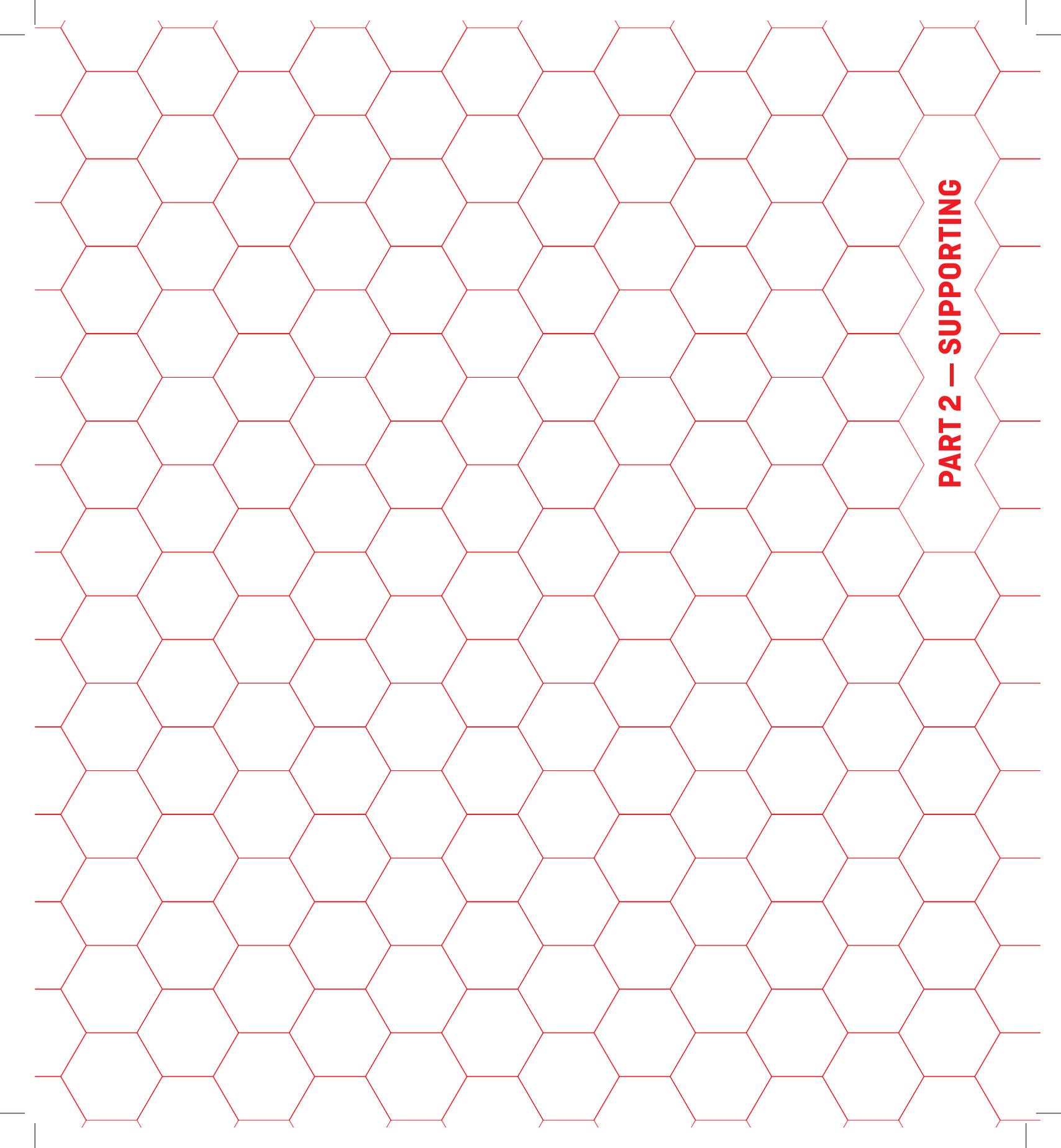
Additionally, the autonomy of hate crimes has another disadvantage, which can be simultaneously seen as a favourable argument for considering hatred as an aggravating circumstance of the crime. The autonomy of hate crimes implies investigating hatred as the basis of the act and requires proof of this motivation, which, if lacking, will lead to the non-fulfilment of the legal requirements needed for a conviction. This will result in the defendant not being accused or being acquitted. On the other hand, if hatred is seen as an aggravating circumstance, in the event that it is not possible to prove the discriminatory intent or the offender's hatred, the offender can be punished only for the main crime, and without aggravation of the applicable sentence. In this case, the accusation and possible conviction of the defendant will not be jeopardized.

In addition to the advantages that can be a *contrario* inferred from the above, the fact that hatred as a motivation for a crime can be a 'mere' aggravating circumstance presents some advantages. One of the main ones is the fact that aggravating circumstances can be applied to the majority of the crimes foreseen and punished by criminal law. This removes the potential danger caused by the autonomous criminalisation of hate crimes, since it is impossible to make autonomous all the criminal types that hatred motivated behaviours can constitute.

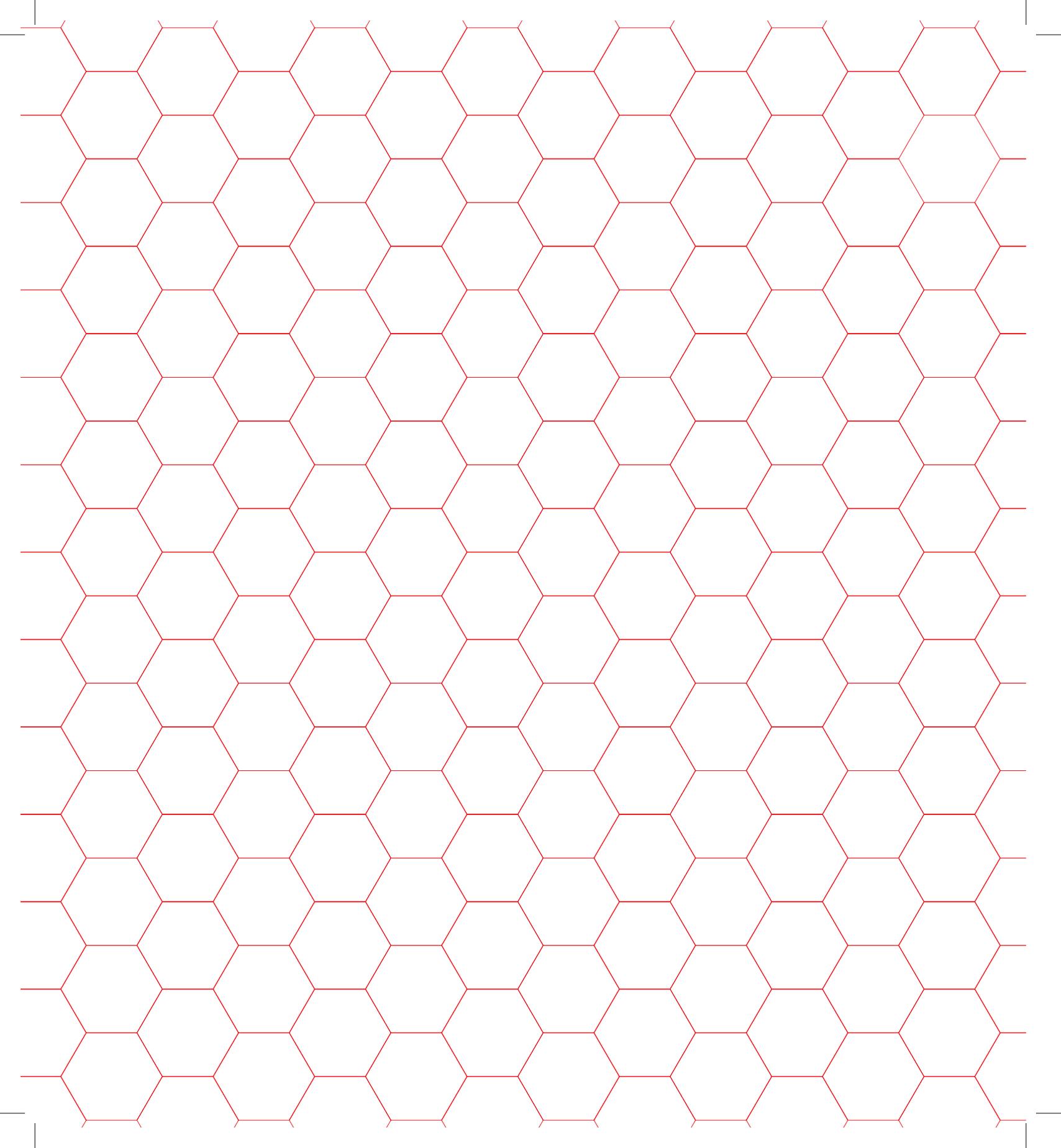
However, associating hatred as an aggravating circumstance of another crime, presents disadvantages as well. Failure to recognise hate crimes as a special and distinct category of crime leads, in most cases, to inadequate treatment of the situations covered by the criminal justice system. If hate crimes are not autonomous, the responsible criminal investigation authorities may fail to investigate (or investigate at all) the allegations and clues that the crime was motivated by prejudice against the victim(s). Further, hatred is not an aggravating circumstance for all the crimes in the Penal Code. This implies that the Public Prosecutor runs the risk of minimizing the offence committed by the author of the crime in case there is a decision to accuse them of the practice of a crime for which aggravation by hatred is not foreseen. Finally, the lack of recording mechanisms for the possible prejudice motivation against the victim and the insufficient investigation of that motivation may lead the courts not to use their powers to weigh the motive when determining the actual sentence.

This concludes the list of advantages and disadvantages of possible options that the criminal legislator can take in matters of hate crimes.





PART 2 — SUPPORTING



Contacting and interacting with victims of hate crimes



The victim of a hate crime can suffer from primary victimisation resulting directly from the criminal act, and from secondary (or double victimisation) in their relation with the criminal justice system (police forces, legal system, etc.), the health system, the media, etc (Herek & Berril, 1992). Therefore, it is important that the professionals supporting this type of victim minimise the possibility of secondary victimisation. This is done by establishing with the victim an interaction that is adjusted to their real needs and understands their characteristics, which may have been the cause of the offence.

1.1. Fundamental aspects

When dealing with victims of hate crimes, all professionals should consider some fundamental aspects regarding the experience of the victim and their own personal positioning (Kees et al., 2016; Hill, 2009). Some of the most relevant are the need to:

Reflect on personal prejudices and relations of power: all professionals dealing with victims of hate crimes should reflect on their own prejudices and on how they influence their perceptions and the meaning they attribute to things. It is fundamental to be aware of one's own prejudices in relation to the community to which the victim belongs to or their cultural values, which may affect one's attitudes, to be able to avoid inadequate behaviours and to build a working relationship based on trust and respect. It is also important to reflect on the differences, inequalities and different relations of power that may exist between the professional and the victim (in relation to age, gender, skin colour, ethnicity, culture, religion/belief, nationality, sexual orientation, gender identity, social class, etc.).

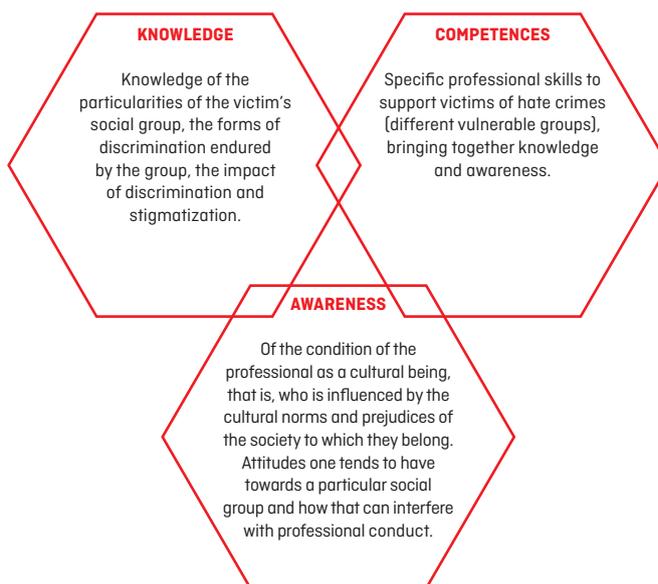
Address questions arising from multiple and overlapping social identity characteristics: It will be fundamental to consider how the social identity characteristics of the victim are interrelated, both in the victimisation experience, as well as in experiences of discrimination or disadvantage (intersectionality). This dimension is relevant to a better understanding of how the experience of the victim can be conditioned by several factors, including the possible impacts of the victimisation.

Not make value judgements: Professionals should always accept the victims as they are, without making value judgements about any of their characteristics, behaviours or experience, and respect their dignity.

Contacting and interacting with victims of hate crimes

Take a non-discriminatory approach: Professionals should ensure that the victims of hate crimes (or other associated forms of violence) are not treated differently from others because of their identity and social characteristics. A non-discriminatory positioning requires personal reflection from the professionals regarding their practices and the way their own social identity interferes with their work of supporting the victims of crimes motivated by prejudice. It is important, however, that the non-discriminatory treatment should not be confused with providing the same treatment for all the victims. In addition to the need to always take into account the individual dimension of each victim, it is important not to be insensitive in relation to specific issues and experiences of the victim's community.

In order to ensure a treatment that is respectful and attentive to the needs of the victims of hate crimes, professionals dealing with these victims should bear in mind the triad of competences for individual and cultural diversity (CIG, 2016 - adapted).



1.2. Non-verbal behaviour

Active listening implies paying attention to the content of the message, as well as to the way in which it is transmitted, that is, the tone of voice and the body language (Jacobs et al., 2011) and requires empathy and commitment in the conversation. By empathy it is meant the ability of the interlocutor to understand how the other person feels, including feelings, thoughts, points of view and motivation for their behaviour, and to respond appropriately, with affective resonance (Batson, 2009). Empathy allows individuals to communicate effectively, creates a relationship between the professional and the victim and encourages the victim to provide the necessary information and evidence (Sommers-Flanagan and Sommers-Flanagan, 2014; Themeli, 2014; Morrison, 2014).

In order to be a good listener, certain verbal and non-verbal behaviour must be taken into account. It is important to minimise distractions and interruptions, demonstrate openness and not to make value judgements, encourage the victim to express themselves freely, to give clear signals (verbal and non-verbal) that one is paying attention to what the victim says, ask clear and open questions focusing on what is important for the victim. Active and empathetic listening implies, when dealing with victims of hate crimes and discriminatory violence, some humility on the part of the professional, to be aware of their own limitations and the specific needs and circumstances of the victim. This requires attention to aspects of verbal and non-verbal communication, and to become informed about issues that may be relevant for the interaction with the victims that belong to certain social groups with whom the professional is not so familiar (Chahal, 2016).

Symbolic language is also of great importance. Attention must be given to spatial issues (for example, cleanliness, arrangement of objects, comfort and privacy of the meeting room) as well as to the way the professional is dressed or how they behave (punctuality, etc) (Chahal, 2016).

In terms of non-verbal language, it is important to consider how to create an environment of safety and trust that allows the victim to feel comfortable talking about the violence suffered, as well as ensuring sensitivity to their reality, and, in some cases, communicating in an interculturally sensitive way.

A model used in non-verbal communication with victims of hate crimes is SOLER (Egan, 2014), which states that the professional should: face the victim Squarely, thus immediately allowing for direct visual contact; adopt an Open posture (for example, avoiding cross arms or turning their back to the victim); Lean towards the victim; maintain good Eye contact,



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demonstrating interest and being attentive to their experience, while also being sensitive so not to force the contact if the victim shows discomfort or avoids it; Relax the body posture and the facial expression, while maintaining attention on the victim, without giving the impression of being distracted.

It is important to note the cultural symbolism of some elements of non-verbal language. For example, in some cultures, direct eye contact may not be regarded as respectful, or the form of initial greetings may vary, for example according to the gender of the interlocutors. As a result, symbolic communication, body language (visual contact, facial expressions, posture, tone of voice, body position and gestures), active silence and interpersonal distance, may be understood differently in different cultures (Chahal, 2016).

Finally, as with any other victim of any type of crimes, using nods and smiles help demonstrating that the professional empathises with the victim, helping to validate their emotions and feelings. However, generalisations, false hope, clichés and stereotyped expressions (such as “I know how you feel” or “I understand your position”) should be avoided.

1.3. Good practices for contacting and interacting with LGBTQ+ victims

LGBTQ+ victims are subject to a double stigma: a negative evaluative judgment about their sexual orientation and the stigma surrounding situations of violence (Moleiro et al., 2016). In addition to the stigma attached to this group, which is multidimensional, there are also a number of prejudices and myths about LGBTQ+ people, such as homosexuality being a disease or not being natural or that trans people have a mental illness.

It is then recommended that, when contacting and interacting with LGBTQ+ victims, one should pay attention to the following factors, amongst others (adapted from CIG, 2016):

- i. Do not assume that the victim is heterosexual or cisgender;
- ii. Use inclusive language regarding gender and sexual orientation;
- iii. Use non-pathologizing and inclusive language (avoiding expressions such as ‘normal’, ‘natural’, ‘problem’, ‘sexual option’, ‘sexual choice’, ‘the travesti’ or derogatory expressions);
- iv. Do not behave too intimately just to show that you are not being judgmental;
- v. Do not avoid a direct approach to sexual orientation (don’t act as if it were a taboo subject);
- vi. Do not inquire or seek the reasons for the person being LGBTQ+, do not seek for causes for the victim’s sexual orientation or gender identity and do not seek to infer

- them based on the way the victim expresses their gender;
- vii.** Avoid making assumptions or statements based on common stereotypes and aim at understanding that gender is a non-binary construct that allows for multiple identities and that these may not be consistent with the gender attributed at birth;
- viii.** Do not show dismay when unofficial personal identification cards (driving license, insurance cards) do not display the same gender as expressed by the victim (in the case of trans persons);
- ix.** Especially in the contact with trans victims, you should avoid expressions such as ‘Mr.’ or ‘Mrs./Miss’ that fall into gender binarism, unless the victim has expressed a preference for their use. A gender label can be particularly painful for transgender victims, and, in some cases, victims may choose not to seek the support they need (medical services, police, victim support) because they do not want to be wrongly classified in a gender category. For example, instead of “Madam, did you hear any word or adjective at the time of the aggression?”, use a more neutral formulation such as “Did you hear some word or adjective at the time of the aggression?”.

If a person uses a specific gender ‘label’ (because they expressed it voluntarily or because they were asked about their preference), that label should be the one used. Do not feel uncomfortable asking the victim how they prefer to be addressed (which pronoun or title). For example, if a victim says, “I identify myself as a transgender woman,” then the victim should be treated using the feminine. Preferably, the victim should be referred to by their proper name without a gender ‘label’.

For legal procedures purposes (e.g. referral to sheltered housing), it is the legal identity that should prevail, even though the victim may be referred to using the opposite gender according to their wishes. In any direct contact with the victim, it is the victim’s preferred identity that should be used.

1.4. Good practices for contacting and interacting with victims with disabilities

The acquisition of knowledge about the specific points to keep in mind when interacting with victims with intellectual disabilities is essential for the daily practice of victim support professionals, police or other entities supporting victims of crime. However, due to the complexity of intellectual disabilities and the multiplicity of associated phenotypes (ranging from total dependence to minimal dependence on others), there is no room in this handbook to deepen this theme. Nonetheless, as a general and basic recommendation,



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it is important to understand that one must act naturally when addressing a person with cognitive or intellectual disability, showing respect and consideration and addressing the person according to their age, rather than treating them as a child (SNPD, 2015).

To understand better how to interact with these victims, we suggest the following resources, which cover good practices in the contact and interaction with victims of intellectual disability:

SART Toolkit – Resources for Sexual Assault Responses Team:

<https://ovc.ncjrs.gov/sartkit/focus/culture-vwd-d.html>

The National Center for Victims of Crime:

<http://victimsofcrime.org/library/resource-directory-victims-with-disabilities/crime-victims-with-disabilities>

1.4.1. Visual impairment

When talking about visually impaired people, we may be referring to both blind and visually impaired people. Although the clinical definition states that a person is blind when their visual acuity is lower than 0.1 (Classification ICD-9-CM), a person is considered blind, even if they have subnormal vision, when they need braille instruction. A person with subnormal vision (close to blindness or low vision) may be able to rely on optical resources or be able to read when the print is enlarged.

In the case of visually impaired people, it is important to remember that they will need to touch objects and people in order to identify their surroundings; they will also need a specific description of the environment around them to be aware of paths and being able to avoid obstacles and, consequently, to move around more safely (Domingues & Carvalho, 2014). For example, to help a blind person sitting down when they express that need, the victim support professional should guide the person to the chair, place the person's hand on the chair, inform whether the chair has arms or not and let the person sit down on their own.

Regarding mobility, you should ask if the person needs help to move around in a space and, if so, place their hand on your bent elbow or on your shoulder to guide them, adjust your speed when walking and not speak loudly as if they had hearing difficulties. To facilitate the movement of the visually impaired person, they can use support such as walking sticks, guide dogs, audio guide, among others.



It is also important to consider lighting, because certain special contrasts allow people with visual impairment a greater degree of autonomy (Domingues & Carvalho, 2014).

When explaining directions to a blind person, you should indicate the distances in meters or feet and inches.

When responding to a blind person (with complete vision loss or reduced vision), avoid using gestures, nodding or pointing. When you need to leave, you should inform the person with a visual impairment; otherwise they may not realise that you left.

Guide dogs are responsible for guiding their owner, so they should not be distracted, patted or fed without their owner's consent.

1.4.2. Motor impairment

People with a motor impairment need information about how accessible the place they want to go is (whether there are steps, ramps or elevators, how wide the doors are, whether there are adapted sanitary facilities, etc.).

It is also necessary to consider the need for other types of support, such as assistance for transporting baggage, transferring from the wheelchair to another place, dealing with obstacles, and also respect the person's pace (Domingues & Carvalho, 2014).

It is important to ask the person whether they need help and how to do it before helping. Attention should also be paid to the fact that a wheelchair, walking stick or crutches, if used, function as an extension of the person's body, and therefore it is necessary to respect that space and not to move them without the person's permission.

It can become uncomfortable and tiring for someone in a wheelchair to look up for a long period, so you should get yourself at the same eye-level as the person using the wheelchair by sitting, for example.

When starting a conversation with someone, be sure to turn the chair the right way so that the person can also participate in the dialogue.

Be careful when moving a person in a wheelchair:



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- Be careful with the person’s feet and arms, especially in narrow spaces or places difficult to access;
- To climb stairs, you should tilt the wheelchair backwards so as to lift the front wheels and support them on the elevation;
- To go down a step, it is safer to do it from backwards;
- To climb or go down more than one step in a row, it is important to look for ramps; if they do not exist, it is better to ask for the help of one more person to perform the task.

When the victim relies on walking sticks or other mobility aids (other than a wheelchair), their crutches/walking stick (or any other aid) should always be kept close to them.

If a person moving with the aid of a walking stick or crutches falls, you should offer help but not do anything immediately without knowing how to do it; therefore, you should ask the person first about their need for help and how to do it in the most appropriate way.

People with cerebral palsy may have difficulties moving, walking, or talking, or they may make involuntary movements with their arms or legs. Cerebral palsy does not equate to cognitive or intellectual impairment; a person with cerebral palsy has an injury, which is associated with specific needs, and most often they have difficulty speaking. As such, it is important to respect their rhythms, and when you do not immediately understand what they are saying, ask them kindly to repeat (SNPD, 2015).

1.4.3. Hearing impairment

For people who have hearing impairment, eye contact with those they are interacting with is very important, and also facilitates lip reading, so good illumination is required.

You should avoid putting your back to the light (to the window for example), as it will be difficult to read your face.

Speak slowly, articulate the words clearly and keep eye contact with the person as you speak with them.

Be expressive when speaking, as people with a hearing impairment cannot hear subtle changes in the tone of voice indicating emotions; thus, facial expressions, gestures, and other forms of non-verbal language are of great importance.

Not all people are able to lip read, as only about 15-25% of what we say is in fact visible in the lip movements. Many people with hearing impairment are accompanied by an interpreter. Address the person and not their interpreter.

Another way to help people with hearing impairments is to have basic knowledge of your national sign language or International Sign language, when the victim knows it, or, if you do not know sign language, try to find another alternative way of communicating and conveying information (Domingues & Carvalho, 2014).

1.5. Good practices for contacting and interacting with victims who are migrants, asylum seekers or refugees

Migrants, asylum seekers and refugees, alongside persons belonging to ethnic minorities, are particularly affected by hate crimes and discriminatory violence throughout the European Union (FRA, 2016).

Often these victims present some additional difficulties in accessing support services due to the lack of familiarity with the country's existing structures; they also tend to distrust the authorities and institutions; they have more difficult access to information, often not mastering the local language; and, in some cases, because they are in disadvantaged socio-economic situations.

Some aspects to consider when promoting an adequate contact and interaction with these victims are:

- Ensure that the information is provided to the victim through different means (written and oral) that take into account the victim's language requirements, as well as other existing needs (for example, those derived from a disability). Ensure that the communication with the victim is done in a language that the victim understands, and through which they can effectively communicate and assimilate properly the information transmitted. When looking for a suitable interpreter to assist with this task, choose carefully. Often the interpreters belong to the victim's community, to the same social networks, and you should ensure as best as you can that the chosen interpreter is impartial and suitable;
- Take into account the possibility that the victim may experience a culture shock that had not been felt before the incident. Cultural shock is a process associated with a temporary feeling of maladaptation and frustration, of confusion and uncertainty,

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sometimes causing some anxiety, which can affect people exposed to an unfamiliar culture or environment who are not prepared for it;

- Be careful when using terminology, choosing appropriate terms from a human rights and non-stigmatizing point of view (for example, do not use the term illegal immigrant);
- Take into account the cultural specificities of the victim;
- Differentiate between migratory experience and victimisation experience. In addition, issues related to the legal status of the person in the territory of the country (related to residence permit, regularization process or asylum process) should be addressed but differentiated from the victimisation situation;
- Do not express any opinions about the victim's personal aspects, identity characteristics, behaviour or life history.

1.6. Aspects to consider when contacting and interacting with victims from ethnic, cultural and religious minorities

In order to better understand which cultural aspects may be involved in the interaction with victims belonging to certain minorities, and because there is no universal definition of culture, it is important to settle on one.

UNESCO refers to the following definition as being commonly accepted:

“[Culture] is that complex whole which includes knowledge, beliefs, arts, morals, laws, customs, and any other capabilities and habits acquired by [a human] as a member of society.” (Tylor, 1986).

Culture is thus a complex set of values, traditions, worldviews, experiences, meanings, political and social relationships that, being changeable, are shared by a group of people intertwined by the combination of a number of factors (language, common history, geographical location, religion, social class, among others) and that is accumulated over generations.

A person's cultural identity, is formed by aspects such as ethnicity, gender, age, beliefs, and espoused values. Intercultural communication encompasses the different forms of verbal and non-verbal communication between people from different cultural backgrounds (Hybels, 2009).

Culture can affect how we communicate, when and how we explain things (in a more or less

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direct way), which gestures are considered polite or not, symbols or gestures to which we attach meaning (for example, looking directly into someone’s eyes is considered a sign of respect in some cultures and in others seen as intimidating or even aggressive), and our own behaviour.

When contacting with victims of hate crimes from ethnic, cultural or religious minorities, failure to respect or understand the cultural (and identity) specificities of a hate crime victim may aggravate the crime’s potential impact on the victim.

It is therefore essential to understand that the support is being delivered to individuals acculturated to certain social norms. On the other hand, although acculturated to these social norms, categorizing a victim in a cultural group and ignoring their individual differences could be equally harmful.

Key aspects of interpersonal communication that vary considerably with the communities’ cultural norms are social distance and what is considered adequate physical contact. An adequate social distance will depend on a variety of factors such as culture and ethnicity, but also on the victim’s gender, whether they have a disability, their religion, and other circumstances of a more spatial nature (the room’s characteristics) or related to the victim themselves (fear or distrust). However, distinct cultural norms accept closeness and physical contact in different ways, so, when in doubt, one should adopt an empathetic posture but maintain a respectful distance and be alert to the signs of openness and proximity conveyed by the victim. For example, in the so-called ‘western’ cultures it is common to use a handshake as a neutral greeting; however, for some Muslim women this gesture may be seen as inappropriate.

It is important to note the cultural symbolism of some elements of non-verbal language. For example, in some cultures direct eye contact may not be regarded as respectful, or the initial greeting may vary, also according to the interlocutors’ gender. Aspects such as symbolic communication, body language (visual contact, facial expressions, posture, tone of voice, body position and gestures), active silence and interpersonal distance can be understood differently in different cultures (Chahal, 2016).

When contacting with people with different cultural references, it is important, first of all, to acknowledge one’s knowledge limitations and seek further information. But it is also important not to start from preconceived ideas or embark on generalizations. It is advisable to contact someone who can effectively explain some cultural-based codes in order to acquire a generic understanding of the cultural specificities of the most representative minority communities in the country where the crime occurred.



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The fact that hate crimes have such a significant impact on their victims is one of the reasons justifying the need for establishing specific procedures for supporting these victims. An inappropriate or incorrect response by a victim support professional will lead to an ineffective support process and, at worst, to secondary victimisation, which is particularly serious in victims who are already in a vulnerable situation.

The German organization RAA Sachsen, in partnership with other European partners, proposes in its publication *Hate Crime Victim Support in Europe - A Practical Guide* (2016) a set of basic principles for providing support to this type of victims and which should guide the whole victim support professionals' intervention:

- **Anonymity and confidentiality** – in order to ensure the victims safety and their trust, all information conveyed throughout the support process should remain confidential and victims have the right to remain anonymous. The victim should receive all the information pertaining to their case and provided to third parties (e.g. official authorities involved in the criminal investigation process). In some countries those who are in contact with victims are not legally obliged to guarantee the confidentiality of their clients' data; despite this, respecting confidentiality and anonymity are advised as a principle;
- **Partiality** – all victim support professionals in contact with victims of hate crimes should have an attitude of total acceptance and solidarity guiding their actions towards their clients. The victims' perspective is the one that matters for the support process, and the professionals supporting these victims must respect and take into account their desires and interests. It is further advised that all those who support victims of hate crimes do not work directly with the perpetrators of the crimes;
- **Independence** – In order to comply with the partiality principle, the financial and organisational independence of the professionals is essential;
- **Accepting difference, socio-cultural diversity and intersectionality** – supporting victims of hate crimes, due to their specificities, requires professionals to reflect constantly on their own prejudices, acknowledging that we live in a society with prejudices, which influence everybody's perceptions and the meaning we attach to things. It is important to identify these prejudices so that they do not interfere with how the victim support is provided. Therefore, it is important for victim support professionals to assess their own capacity and knowledge to deal with the social group in question and that they offer in their appointments a safe space, open for the understanding of less familiar dimensions. In order to build a working relationship based on trust and respect, it is essential to be aware of one's own prejudices about

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the victim’s community (or whose perception of belonging has motivated the crime) or their cultural values, as well as one’s own social position in relation to the victim, and how this may affect one’s attitudes.

It is also important to reflect on the differences, inequalities and different power relations that may exist between the professional and the victim (regarding age, gender, skin colour, ethnicity, culture, religion/belief, nationality, sexual orientation, gender identity, social class, etc.). It will also be essential to take into account the way in which the social identity characteristics are interrelated with the victim’s experience of the situation of violence to which they were subjected, as well as with experiences of discrimination or disadvantage (intersectionality).

This dimension is relevant to a better understanding of how the victim’s experience can be conditioned by several factors, which can also influence the possible impacts of the victimisation. A professional supporting a victim of hate crime should understand, for example, that:

- a. The victim may have cultural beliefs and needs different from their own;
 - b. The victim may have physical requirements for access and contact conditions that are different from those of other victims of other crimes;
 - c. The victim may not wish to be questioned about their sexual orientation and may wish to be assured that they have the professional’s full understanding when the victim’s family and other social support groups show rejection after their sexual orientation has been disclosed.
- **Holistic approach** – professionals supporting victims of hate crimes should consider not only the victims’ individual needs, but also the social, cultural and political environment these victims are in contact with. It is important to have a close collaboration with relevant social partners (e.g. schools, local government) and representatives of the victim’s community (e.g. family members, neighbours, religious leaders, associations, etc.). This multisystemic work allows the professional to build an appropriate environment for the total recovery of the victim through the creation of a multi-level support network;
 - **Non-discriminatory approach** – it is the victim support professional’s responsibility to ensure that victims of hate crimes (or other associated forms of violence) are not treated differently from other victims because of their social identity characteristics. Just as accepting difference and socio-cultural diversity requires professionals to question themselves constantly, a non-discriminatory positioning also requires the professional to reflect on their practices and the way their social identity interferes

with their support work with victims of crimes motivated by prejudice. It is important, however, that non-discriminatory treatment is not confused with equal treatment for all victims. In addition to the need to always take into account each victim's individual dimension, it is important not to fall into situations of insensitivity to the specific issues and experiences of the victim's community;

- **Acritical positioning** – The professional should adopt a position free of judgements, and accept their clients as they are, and their decisions and actions in a genuine and empathetic way. In practice, such a treatment implies accepting the victim as they are; accepting their version of the facts and their account of the victimisation experience; not making judgements about the victim's behaviour; not making decisions on the victim's behalf; not trying to impose their own ideas on the victim; and being cautious in the recommendations provided to the victim. It is also necessary to promote a safe, open and receptive environment, which requires the professional to respect difference. Many victims of hate crimes belong to minority or disadvantaged social groups, and they may show some initial mistrust or that they do not expect to be understood or even listened to. This may be due to past discriminatory situations, or to the victim's experience of violence that has led to them seeking support, so building trust with these victims could be particularly challenging.

The aim of this victim-centred approach is to enable developing an intervention of support services with victims of hate crimes that (Kees et al., 2016):

- Promotes believing in the victim's experience and validates it;
- Takes immediate action to support the victim and responds to their needs;
- Provides emotional support;
- Makes representation available (where possible and appropriate);
- Refers the victim to specialised support services, when necessary and appropriate;
- Supports problem resolution, through the promotion of empowerment and informed decision-making processes;
- Acknowledges the limitations of the remit (of the support service and/or the victim support technique) or the intervention (the victim support professional will neither be able to solve all the problems of a victim nor solve all issues related to hate crimes).

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2.1. Initial appointments – Collecting information and assessing

2.1.1. Building rapport for collecting information efficiently

Before starting collecting any information, it is important to create an environment where the victim feels safe and comfortable to share their experience (Yuille et al., 1999). Rapport refers to establishing cooperative closeness, harmony, empathy, attention, mutual understanding of feelings and ideals, and openness for a synchronized sharing of expectations (Coan, 1984; Morrison, 2014). Building this type of interpersonal relationship, which is guided by empathic synchrony, increases the amount of information provided by sources or informants, increases trust and produces more cooperation (Collins, Lincoln e Frank, 2002). These are key elements for collecting information from victims or eyewitnesses, regardless of who conducts the interview (victim support professional, police officers or others).

2.1.2. Collecting information and identifying hate crimes and/or discriminatory violence

To promote an efficient way of collecting information and to address the need for the victim to remember the traumatic event several times, it is advisable that the victim support professional creates all the conditions necessary for the victim to recall all events at their own pace and with as many details as possible (Paulo, Albuquerque, & Bull, 2015), preferably only once.

Although victims of hate crimes or discriminatory violence are often aware of the discriminatory motives - prejudice, intolerance, or hatred - at the origin of the crime against them, they may not always be able to identify them. Thus, victim support professionals should be able to recognize specific indicators for a correct identification of the nature of the crime.

On the other hand, it is difficult to define what may legally constitute a hate crime. Also, according to the current legislation, only certain acts constitute a 'hate crime', and generally they correspond to offences considered more serious or more extreme. It is thus necessary for the victim support professional to understand that there may be circumstances in which the victim, while not being targeted by a premeditated act motivated by prejudice, was nevertheless a victim of acts considered of lesser importance (in the understanding of the law), but which constitute discriminatory violence (Kees et al.,

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2016). In this regard, it is important to underline that, regardless of each country's specific legal framework, it is essential that a range of acts of violence are understood as possible hate crimes: violence against people - physical violence (offences to physical integrity, sexual violence, persecution, homicide, etc.); verbal violence (threats, discriminatory statements, graffiti or messages, attacks on social networks); insults that may not be verbal (e.g. offensive gestures or use of symbols); violence against property (destruction and/or theft of the victim's property, of sacred symbols and/or of symbols representing an identity or a group, arson, etc.) or any other form of violence that occurs on discriminatory grounds.

(Note: a list of indicators for a correct identification of the discriminatory motive can be found in this handbook's section *Victim-centred criminal investigations – principles and recommendations about how to collect and record data on hate crimes* (Part II: Supporting – 6).

Identifying correctly a hate crime is fundamental for developing a support process that addresses the effective needs of the victim and affected communities, and that complements the possible complaint and judicial process. Similarly, understanding that certain acts that legally do not constitute hate crimes can have the same impact on victims and communities is essential for victim support services to be able to provide adequate support and to contribute to their recovery.

After the victim provides a free narrative of the event (or when the victim is emotionally unstable, and unable to construct a narrative of the experienced events in a structured way), the professional should ask them about additional but essential aspects for the support process that have not yet been covered in their free narrative of the events. These questions allow the professional to collect additional information (or information not provided by the victim) about the event and obtain a more comprehensive perspective of the possible impact on the victim (Sommers-Flanagan, 2014). Questions that might help identify the cause of the crime are especially important for defining the intervention plan and strategies.

We suggest some questions to help collect information in a structured way during a first appointment with a victim of hate crime (Adapted from OSCE/ODIHR, 2009):

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WHO?	<p>VICTIM Victim identification data and contact information (it can include address, telephone number and/or email address of the victim or of an institution or person who may mediate this contact) - Respect the victim's wishes if they wish to remain anonymous.</p> <p>PERPETRATOR Any identification data of the perpetrator of the crime (name, address, workplace, etc.); any distinguishing sign that allows the identification of the perpetrator(s); information on whether it was the first time the victim was a victim of a crime of this nature and, if not, whether previous acts were perpetrated by the same offender(s).</p> <p>WITNESSES Identification and contact details of possible witnesses</p>
WHERE?	Place where the incident occurred
WHEN?	Date and time of the incident
HOW?	Description of what happened and what was said (it is particularly important to ask the victim to remember insults or what was said and the sequence of events); identify whether there was physical violence, use of weapons and/or destruction of property
WHY?	Identify the presence of discriminatory motives, either via the victim's account or in the details reported by the victim
INTERACTION WITH OTHER ORGANISATIONS?	Information about organisations with whom the victim may have had contact (authorities, health services, support services) and a short description of this contact

2.1.3. Risk assessment

Victims' risk assessment is a complex process involving the interaction of many variables, which are not always possible to predict or analyse. The degree of risk or insecurity of the victim and/or other persons can be determined to some extent by their own perception; however, their assessment should, whenever possible, be guided and structured by the professionals' experience, literature and relevant statistics.

The initial risk assessment (and to some extent, of the impact) should clarify to what extent the victim's safety may be compromised in the following dimensions (Dunbar, 2001):

- Risk of new threats by the identified perpetrator(s);
- Risk of self-destructive behaviour;
- Risk of retaliatory aggression;
- Level of decline in the ability to perform basic daily tasks.

This type of assessment, which can be more or less formal, is essential to increase the victim's sense of security while reducing the number of risk situations.

Although the development of specific hate crime risk assessment tools or questionnaires is still at a very early stage, there is a structured questionnaire used by the Nottinghamshire's Police⁶⁰ that forms the basis for the list of dimensions and issues we suggest the victim support professional (or other professional) should consider and assess:

1. Questions about the hate incident/hate crime:

- Assess the victim's perception of why they were targeted: Does the victim consider that the crime could only have happened to them or their family? Does the victim consider that the crime could have happened to anyone like them in their community? Why?;
- The place where the crime occurred: home, workplace, school, transport, online or at a specific location in the victim's community;
- Relationship between the crime and the victim's professional activity: Is the incident related to the victim's job? If yes - Does the victim consider that the crime affected their ability to work?;
- Direct consequences: What type of consequences does the victim feel the incident has had on them and on others (other victims or indirect victims) - physically; emotionally; materially; economically; any other consequences specific to each situation?;
- Occurrence of other incidents: Is the victim aware of other similar situations that occurred in the same area at the same time and/or with similar victims?;
- Relation to other incidents or events: Does the victim consider that the incident occurred as a consequence of or in connection with other incidents or events that occurred around the same time?;
- Use of weapons and/or objects;
- Specific symbols: Has the victim been able to identify symbols that may be related to organized ideologies and/or groups?;
- Perception of the seriousness of the crime: How does the victim rate the seriousness of the incident?

2. Questions about the perpetrators:

- Relationship between the victim and the perpetrator: Does the victim know the perpetrator(s) of the crime? If yes: How do they know them?/ From where?/ Do they know whether the perpetrator lives in the victim's neighbourhood?;
- Other crimes committed by the same offender(s): Has the victim or someone the victim knows been the target of other violent behaviour by the same offender(s)? If the victim knows other victims: are they from the victim's social network (family and/or friends) and/or

60 Available at: <http://nottscounty.pb.org/wp-content/uploads/2016/08/7a.-Risk-Assessment-March-2016-28-July-2016.pdf>.

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- do they share some of the victim’s characteristics (e.g. dressing, ethnicity, disability, etc.);
- Victim’s perception about the possibility of similar crimes occurring again: To what extent does the victim consider that the offender(s) or people connected to them may target them or other people again? (a scale may be used).

3. Questions about previous hate incidents (if any):

- Other hate crimes or discriminatory violence: Has the victim previously been the target of this type of crimes or violence?;
- Frequency of victimisation situations: How often do similar situations happen to the victim?;
- Details about the most recent previous situation: Ask the victim to describe the most recent incident and ask them to summarize the remaining previous incidents;
- Previous complaints: Have the previous incidents been reported to the competent authorities? If not, why;
- Relation between incidents: Does the victim consider that there is any relationship between the previous incidents and the current incident?;
- Increased frequency of similar situations: Does the victim think that this type of incidents is occurring more frequently? If the response is affirmative, ask for more information about the victim’s perception.

2.1.4. Needs and impact assessment

The authors who have studied the impact of hate crimes have concluded that the traumatic effect of such acts can be devastating, not only to the victim’s quality of life, but also to the quality of life of their friends, family and community both in the short and long-term.

When the crime or act of violence happens, the most obvious impact will be on the physical well-being of the victim, in case of physical assaults that result in injuries, and also in their psychological balance, particularly if the crime is especially violent and caused intense physical and psychological reactions related to traumatic stress. (Craig-Henderson & Sloan, 2003). On the other hand, hate crimes can have direct or indirect consequences on other dimensions of the victim’s life: behaviours, routines and daily activities; social and family life; economic situation; work and/or school.

Therefore, we propose aspects that should be assessed by the victim support professional in order to understand the impact of the hate crime on the victim and to identify the

victim's most immediate needs (adapted from the risk assessment questionnaire used by the Nottinghamshire's Police):

- To what extent and in what way(s) does the victim feel that they have been affected;
- How is the impact of the incident affecting the victim and how serious is it (in terms of psychological balance and well-being);
- How is the impact of the incident affecting other people and how serious is it (in terms of psychological balance and well-being);
- Who else is being affected (family, friends, community);
- How has the incident affected the victim's social life and relationships (family, friends, work, community);
- To what extent has the incident affected the victim's sense of security;
- How has the incident affected the health of the victim or other people (mental health, physical health and general well-being);
- To what extent and in what way has the victim or someone in their social network or family changed their routines (and in what dimensions) after the incident;
- How has the victim changed their perception of their home (e.g. does not feel like going out, does not feel secure, or is considering moving house);
- What other effects does the victim feel that the incident had on their life;
- To what extent and how is the victim concerned about what may happen in the future;
- Has the victim experienced feelings and behaviours of isolation and/or to which extent does the victim feel supported or feel lack of support (from family, friends and/or the community);
- To what extent and in what way does the victim think that the incident may have repercussions on other people in the community, who are they, and why does the victim think they might be especially affected;
- In what ways does the victim consider that the incident (and previous incidents) had a general impact on their life (health, well-being, day-to-day activities, safety, etc.);
- What does the victim want and need to happen after the incident?

2.1.5. Defining intervention strategies

The information collected during the initial phase of the support process informs the intervention plan and the choice of strategies and measures more appropriate to the specific situation.

More immediately and after assessing the issues listed above, it may be necessary to (Chahal, 2017):

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- Advise the victim to seek medical attention immediately;
- Refer the victim to the competent authorities for the collection of photographic evidence for future proof;
- Advise the victim about reporting the incident to the authorities and inform them how the victim support professional can help;
- Refer the victim to the relevant services and organisations;
- Assess the need for temporary emergency shelter and refer the victim to appropriate organisations or help the victim locate friends or family with whom they feel safe.

The victim support professional should help the victim at formulating a personal safety plan to cope better with the insecurity caused by this life experience. This plan will include strategies for preventing violence/revictimisation (knowing how to predict it, setting up behaviours, considering the best reaction to have, etc.) and surviving violence (how to defend oneself when attacked, where to escape to, what one should always carry, etc.). In this matter, family members and/or friends' collaboration is important because they can be with the victim throughout the day, staying with them overnight and accompanying them when they go out. The victim's insecurity may be real, that is, there may be a real danger of being assaulted again by the aggressor or it may be a natural psychological reaction after the traumatic event. In both situations, it is important to follow-up the victim closely (Craig-Henderson & Sloan, 2003).

At the individual level, the definition of other intervention strategies will depend on the victim's willingness to continue the support process and their specific needs. The support provided should follow certain procedures and guidelines that will be discussed later in this handbook.

Regarding the community intervention, victim support services may take measures following from the risk assessment and the hate crime impact assessment to strengthen the community, respectively:

- If there is a perceived risk to other members of the community, the victim support professional should consider alerting the authorities to the need for increased policing in specific areas or for specific groups (e.g. adopting security measures in relation to the victim's group or the residents of a given neighbourhood);
- The victim support service should establish proximity and trust with other relevant community organisations (support services, advocacy organizations, cultural and/or religious associations, community associations, etc.) and community leaders, with the following goals in mind:

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- Disseminate information on support services and rights of hate crime victims;
- Promote the exchange of specific knowledge;
- Develop activities promoting people of the community coming together to show support to the direct victim(s) and/or enabling moments of mutual help and coping with the impact of the hate crime;
- Encourage joint action by community members for developing hate crime prevention measures;
- Create mutual support groups for community members who feel most affected by the incident.



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3.1. Crisis intervention

In the first contact with a victim, it may be possible to identify the need to take an emergency approach. The initial psychological support is, in this perspective, a first practical and non-invasive support response in a crisis or emergency situation. The first task for the professional contacting a victim of hate crime is to determine the service user's safety and ability for self-care in potentially traumatic situations.

Crisis/emergency situations are all those that threaten the individual's physical and/or emotional integrity, and violence motivated by hatred/prejudice is definitely not an exception. Victims of violent behaviour motivated by hatred/prejudice may display symptoms typically characteristic of severe psychopathology, even when their pre-event level of functioning was highly adaptive.

An immediate intervention with a victim of a traumatic event (including hate crime) may lead to the reduction of acute stress symptoms within 30 days of the event. On the contrary, in the absence of an immediate action aimed at reducing the acute symptoms associated with the traumatic event, the symptoms may evolve into a psychopathological condition such as Post Traumatic Stress Disorder and, subsequently, lead to an increased risk of comorbidity with other psychiatric disorders (Moreno et al., 2003).

A victimisation experience is sudden or surprising and affects the victim's life and/or physical and/or psychological integrity (in a real or perceived way). Consequently, and regardless of its nature, it is a potentially traumatic event that can generate a crisis situation (APAV, 2013).

The crisis duration and intensity depend essentially on three factors:

- Degree of violence against the victim;
- The victim's ability to cope with the problem;
- Help (formal and informal) received after the traumatic episode.

The crisis situation can be detected through the following manifestations:

- Psychological reactions, such as crying, panic, confusion, anguish, shame, low self-esteem, guilt, revolt, psychosomatic disorders, predominance of memories about the event;
- Social and economic pressures that favour blocking out the episode, associated with the victim being unaware of their rights.

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These two aspects define how negative the crisis situation is. However, the crisis intervention must focus on the opportunity for change brought by the crisis situation.

Thus, in emergency situations, it is necessary to deliver an urgent, immediate, intensive, focused, time-bound intervention addressing the problems of the here and now, and aiming at: reducing the intensity of emotional, mental, physical and behavioural reactions; helping victims to return to their pre-crisis level of functioning; and developing collaboratively new coping strategies for the situation the victim is experiencing. This first intervention should be (APAV, 2013):

Simple – the communication with the victim should be simple and pragmatic;

Brief – this is an immediate intervention and can take a few minutes (a maximum of 60 minutes per contact), involving a single meeting or up to 5 contacts (on average) depending on the needs of the victim;

Innovative – the professionals responsible for this type of intervention will need to be creative when designing solutions and providing information to the victim;

Pragmatic - for the suggestions to work, they should be practical and immediately applicable;

Close to the victim - The most effective contacts are closer to the operational zones;

Immediate - A state of crisis (identified after the assessment process) requires a rapid intervention.

In a process of crisis intervention, the professional is responsible for helping the person to find their potential for solving problems, reinforcing their abilities and empowering them, while validating the victim's decisions and informing them about their rights, and making available the key resources for their recovery. Thus, a crisis intervention should meet the following objectives (APAV, 2013):

- Help the victim deal with thoughts about the impact of violence, avoiding catastrophising;
- Deal with the immediate search for explanations;
- Deal with the possible victim's negative self-directed feelings;
- Avoid silencing or pressure 'to forget' or to forgive;
- Avoid attempts to 'take justice into one's own hands';
- Promote hope in the recovery and resolution of the problem;
- Explain the necessary legal and medical procedures.

Crisis intervention involves two phases (APAV, 2013):

- In the first phase, the professional should be available to:

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- Listen to the victim’s version of the facts and circumstances of the crime;
 - Validate the victim’s lived experience;
 - Respect the victim’s psychological reactions, values, difficulties, living conditions and needs;
 - Facilitate and promote the release of negative emotions and feelings;
 - Acknowledge that the reactions presented are understandable, possible and natural in the context of a difficult life experience.
- In a second phase it is important to:
 - Have a positive attitude towards the victim’s potential;
 - Encourage the victim to have a more insightful and realistic view of their condition and promote safety and prevention of revictimisation.

It should also be noted that, when providing specific information to help the victim coping with the experienced event, the professional should consider the main concerns of victims of hate/prejudice or discriminatory violence (Saucier et al. 2006):

- Fear of deportation (when they are in irregular situations);
- Afraid to have their sexual orientation revealed/exposed;
- Difficulties in establishing effective communication;
- Fear of retaliation by the perpetrator (retaliation directed at themselves or at those closest to them);
- Fear of being discredited by the support system;
- Lack of knowledge of the laws of the host country as well as the functioning of the support system;
- Fear of having to accept services and laws that contradict their religious beliefs or cultural habits;
- Experience prejudice against them during the support process;
- Fear that their income will be reduced, which also compromises the well-being of family members residing in the host country or in country of origin;
- Retaliation by their own primary support network if the victims decide to report the crime or after disclosing their sexual orientation.

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3.1.1. Crisis intervention strategies

We suggest using the following strategies in crisis intervention, without prejudice to other forms and models of intervention in crisis (APAV, 2013):

- Explore the characteristics of the acute (reorganization) phase: During this period, the victim in crisis responds easily to help, so an initial contact is critical. The victim support professional should try to gain the victim's trust, building understanding and clearly identifying the most relevant recent events, especially those that have led to the victim's request for help. In a conversation about the last 48 hours, the professional will be able to obtain much useful information that will allow identifying the key issues;
- Clarify: It is important to clarify which demands the victim has to face, including practical obligations. The victim support professional should be aware of the victim's mental health condition, such as suicidal ideation, anxiety, agitation and distress, and in particular whether the victim's mental health condition allows them to respond appropriately to the practical obligations associated with the victimisation;
- Assess: The victim support professional should assess the existence and quality of support provided by the primary support network (family and/or friends). In this way, it is possible to gain a broad perspective on the victim's functioning, both past and present, on how they address or addressed their problems and the quality of available resources;
- Decrease arousal and distress: It is common for the victim to be in a situation of arousal and distress. Talking to the victim in a safe and reassuring way is an appropriate strategy to reduce these symptoms;
- Reinforce adequate communication: One should communicate naturally with the victim (without neglecting the seriousness of the situation), paying attention to them and discouraging agitated, persistent or noncommunicative behaviour;
- Show interest and encourage: The victim support professional should demonstrate interest, availability to listen and understand, and empathy. It should stimulate hope in a positive (albeit realistic) resolution, which will promote the self-confidence of the victim.

In addition to the intervention strategies outlined above, there are more specific interventions for victims of hate crimes that can be used by the victim support professional (Craig-Henderson & Sloan, 2003):

- Empowerment: The support professional should help the victim finding their own potential for problem solving by strengthening their abilities and their decision-making. The first aspect to mention can be the victim's courage in breaking the

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- silence, asking for help;
- Validating victims' rights and decisions: The victim support professional should duly inform the victim about their rights and legal proceedings, as well as the various constraints that may arise, respect their decisions, in particular regarding not presenting a criminal complaint, but help them to understand the advantages and disadvantages of each potential decision. One of the advantages associated with the decision to report the crime may be the victim feeling reassured by taking an active attitude towards the crime. Another advantage that may be pointed out by the professional is the fact that the victim, in filling in a complaint, is contributing preventively so that other people do not become victims of the same aggressor. The disadvantages are the difficulties that the victim may encounter during the judicial process, including the possible difficulties of the criminal investigation and their own emotional difficulties;
- Understanding the oppression felt by the victim: During the decision-making process, given that the victim is more vulnerable and considering their uncertainties and fears, decision-making may become difficult and insecure, being possible that the victim steps back or feels uncertain about decisions previously made;
- Preserving the evidence of the crime: The victim support professional should alert the victim to the need to preserve the evidence of the crime if they intend to file in a criminal complaint;
- Referring to the Police and hospital emergency, to the Medical Legal Office (if there are injuries or body marks);
- Optimizing all existing organisational resources: The victim support professional should make available to the victim all the resources (e.g. material, human, etc.) that are available in their organisation or service to facilitate the support process and promote a close relationship. It will be important, for example, the use of discreet physical spaces within the organisation, the use of telephone or other means of communication to contact family and/or friends.
- Facilitating contacts: The victim support professional can help the victim contacting family and/or friends, who could become very important in the support process. At the request of the victim, a specific person, friend or relative, whom the victim wishes by their side for support at this difficult time, may be contacted. It is natural for the friend or family member to ask questions about the crime, which the professional can respond by indicating the nature of the crime, but should not reveal any details (it is important that the professional reassures the relative or friend, saying that it was the victim who asked the professional to contact them as the victim is very fragile to do that themselves, stressing that the victim is being supported and is not alone);
- Agreeing with the victim to continue the intervention.

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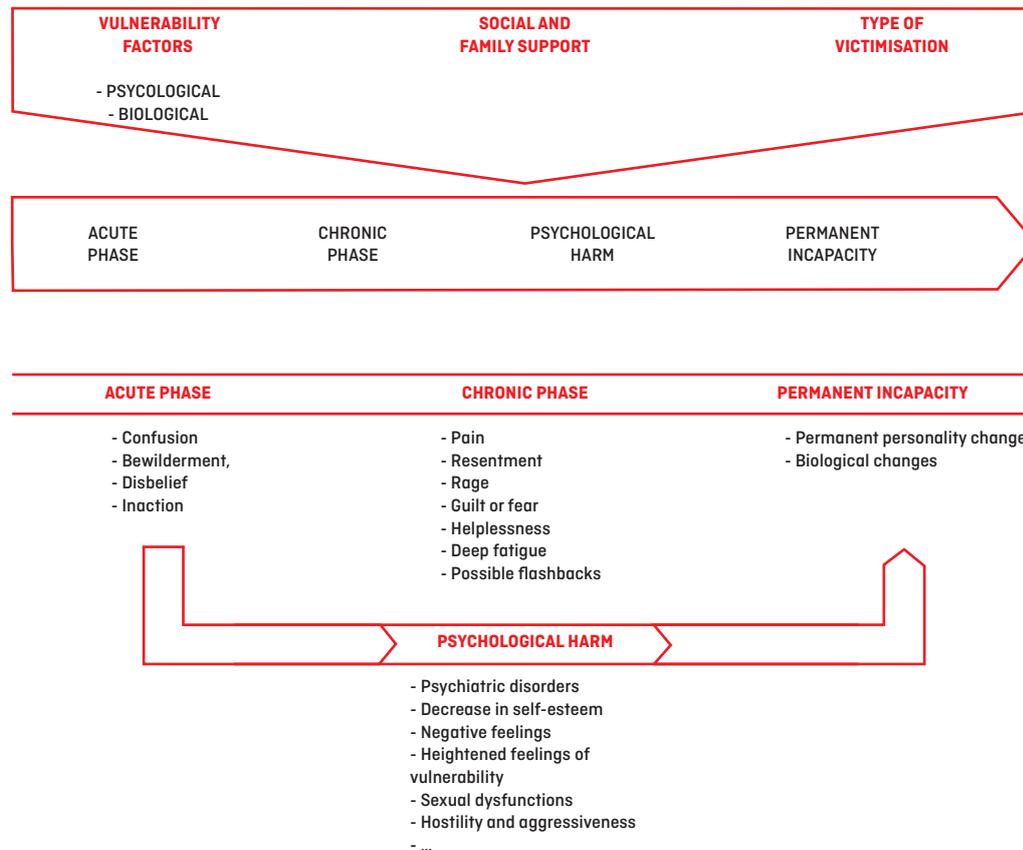
Suggesting a specific model of intervention in crisis: The *Critical Incident Stress Management* (CISM, Mitchell & Everly, 1995) is an example of a comprehensive, integrated, systematic and multidimensional programme of crisis intervention. Although its effectiveness has not yet been fully accepted in academic circles (for example, Barboza, 2005), its principles and proposed first-line intervention strategies have been widely used since the 1980s and seen as effective by the victims who undertook the programme (Carlier, Voerman, & Gersons, 2000; Everly & Mitchell, 1999).

3.2. Assessing psychological distress and impact

The multidimensional understanding of the impact of victimisation is crucial in assessing the situation of each victim, thereby meeting their needs and, in this way, providing them with adequate support, minimizing their suffering and helping them to successfully overcome the consequences of victimisation.

As shown in the following diagram (adapted from Esbec, 2000), a crime victim tends to present a range of emotional and cognitive reactions that can evolve over time, depending on whether the event is experienced as traumatic or not, whether specialized support and/or social support networks are available or not, and on the victim's individual dispositions and perceptions:

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Those reactions regarded as ‘standard’ emotional and cognitive reactions in a crime victim (e.g. confusion, perplexity, disbelief or inaction - 1 to 3 months after the event) may linger and get worse with time, evolving, for example, to more intense feelings of anger, pain, helplessness, profound fatigue or even more or less frequent experiences of flashbacks. An event can turn into trauma in situations where the victim feels both unable to control it and assigns a high negative significance to the situation. At this moment, and fuelled by lack of specialised support, assistance from third parties or by the victim’s dispositional characteristics, the professional may have to deal with situations of psychological harm (for

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example, psychiatric disorders, changes in self-esteem, etc.), which may eventually develop into permanent incapacity (e.g. permanent changes in personality traits or even permanent changes in the victim’s biological balance).

As important as collecting information on the victim’s history, collecting data on the victim’s psychological functioning can ensure the success of the victim support strategies.

The high levels of psychological distress experienced by victims of hate crimes compared to victims of other violent crimes have been acknowledged (Herek, Gillis, & Cogan, 1999; McDevitt, Balboni, Garcia, & Gu, 2001). Assessing psychological distress should be based on complete or partial interview scripts and/or self-report questionnaires with good psychometric characteristics and validated for the country’s population (or for foreign populations with high proportions in that country’s population. These tools should cover:

- Anxiety symptoms and nervousness;
- Levels of self-confidence;
- Concentration levels;
- Healthy sleep patterns.

On the other hand, and considering the psychiatric disorders most prevalent among victims of hate crimes, trainers could suggest interviews or self-report questionnaires (validated and with good psychometric indicators) for assessing the presence or severity of psychological harm for:

- Depression;
- Anxiety disorders;
- Post-Traumatic Stress Disorder.

Which evaluation tools to use should always be considered against the assessment of their relevance to the process, the procedures of each victim support association/organization, and the possibility of using other sources of information (family, friends, neighbours, etc.). Possible vulnerability and protection factors (history of emotional disorders prior to the event, family history of psychiatric disorder, relational patterns with the social and family support networks, etc.) should also be considered (and assessed).

3.3. Specific aspects of psychological support to victims of hate crimes

After assessing the victim's safety level, conducting the initial assessment and defining crisis intervention measures (if necessary), the victim support professional should address systematically with the victim the cognitive, affective and behavioural after effects of the experienced event. In fact, the right to receive psychological support by all victims is contained in art.9(1)(c) of Directive 2012/29/EU.

The professional providing psychological support should always bear in mind that, since hate crimes target the victim's identity characteristics, they lead to a set of consequences in terms of psychological impact and emotions that are not the same as those experienced by victims of other types of crimes (Craig-Henderson & Sloan, 2003):

- In some cases, victims are able to keep going with their lives and routines and eventually overcome the victimisation experience; however, in the specific case of victims of hate crimes, although they are sometimes able to do so, they often report living with feelings of intense fear since the incident;
- Victims of hate crime may feel that, in order to protect themselves from future victimisation situations, they have to make unwanted changes in their lives (e.g. change where they work or study, move home or to another town);
- Victims of other crimes often find comfort in the fact that the crime that victimised them may have happened or been directed at any other person. On the other hand, victims of hate crime must learn to deal with the fact that they have been targeted because of identity characteristics that are visible and/or easily identifiable.
- An attack that results from a person's visible and intrinsic (as well as unchanging) identity characteristic can lead to a set of reactions, precisely because it affects the person's identity and their perception of themselves and their community, and also shakes deeply their perception of security.

Therefore, regarding the specific problems experienced by hate crime victims, the professional should be prepared to intervene in order to:

- Desensitise the victim to hate crime-related intrusions;
- Help the victim reformulate their beliefs about the victimisation (denial, catastrophic beliefs, etc.);
- Training the victim in anger/affect regulation;
- Training the victim in techniques to confront the perpetrators in situations where

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- the victim is not able to avoid contact with them (for example, at work);
- To reinforce the reduction of symptoms and avoidance behaviours;
- To reinforce the experiences of intra and intergroup contact.

It should also be understood that victims of hate crimes often experience feelings of frustration and disappointment, especially in relation to the justice system and criminal procedures, which often do not meet their expectations or are discriminatory and revictimising. Thus, the professional may find it necessary to empathise with these feelings and, to some extent, to support them, but within a clear boundary so that these feelings do not increase excessively and become negative for the recovery process of the victim and, consequently, prevent the search for constructive strategies.

The provision of support to victims of hate crimes should be structured in a few key areas:

- 1. Help the victim focussing on the crime situation and its consequences:** this process will help the victim confronting their reactions and starting the recovery process. Talking about the crime experience can help the victim face the reality of their situation and develop strategies that allow them to progress emotionally. This first report may also be an opportunity for the professional to assess whether the victim is suffering from symptoms that require referral to other types of services (see referral to other services);
- 2. Assume a partnership role with the victim, while promoting their independence:** The victim support professional's role should be that of a partner in overcoming obstacles, promoting and encouraging the development of strategies and empowering the victim to seek solutions (e.g. providing emotional support during the process of moving home, rather than looking for a home for the victim);
- 3. Inform:** Provide information, support materials and make referrals which help the victim acknowledge what happened with their life history - support groups, community associations; artistic expression activities, etc.;
- 4. Recognise the importance of changing routines:** the victim's changing their previous routines and developing new ones can be very important for the recovery process; do not judge and support the decisions made by the victim, identify inappropriate choices and decisions.

Craig-Henderson & Sloan (2003) recommend some strategies to address the needs of hate crime victims in terms of psychological support that we find useful to guide and structure interventions:

- **Build a trusting relationship:** It is natural that the victims have some initial difficulty and do not feel comfortable reporting the details of their experience. It is important to

demonstrate empathy, understanding and patience. It is also important to have some familiarity with the victim's reality (cultural, sexual, ethnic, religious) and to not react with surprise to situations, to prevent the victim interpreting your behaviour as prejudiced or discriminatory. The professional should make the victim feel safe in their company;

- **Psychoeducation:** Provide information materials (on the incidence of hate crimes, common types of incidents, perpetrators' profiles, psychology of prejudice and discrimination, impact on victims and their reactions) and help the victim understanding them and reflecting on their own experience;
- **Reflecting about the legal implications and options:** It is important that victims are informed about how hate crimes and discriminatory violence are legally defined and what kind of options they have. While it is not up to the professional providing psychological support to also provide legal support, they can still help the victim exploring their options;
- **Establishing support networks:** Victims of hate crime may experience feelings of isolation and alienation, especially if they feel "different" or "distinct" from their family and friends. The psychologist can help the victim feel socially integrated again. Referral to support groups may be appropriate in some situations, since the victim has the possibility to share their experience with people who have experienced something similar, and that helps them realise that their feelings are normal. It may also be adequate to refer the victim to organisations fighting hate crimes. This form of recovery promotes the victim's empowerment, who takes an active role in preventing hate crimes and protecting the community;
- **Revisiting the crime/hate incident:** It is important that the victim is able to revisit the memory of the incident. This process can be particularly painful, but it is an essential part of the post-victimisation recovery process. The professional can help the victim by encouraging them telling the incident or even to listen to others' similar experiences in sharing groups. These processes always require the victim's free participation, and the professional should take extreme caution and assure the victim that, if the experience becomes very painful, it should stop.

3.4. Need for referral to more specialised support

Psychological support provided to victims of crime in general and hate crimes in particular by a victim support organisation should respect that organisation's competencies and expertise, and it is essential that the professional understands their own skills limitations, as well as the limitations of their service/organisation. Thus, it is necessary to assess signs that the victim may need referral to another specialised support structure – specialised

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psychological support, psychotherapy and/or psychiatry.

Depending on the greater or lesser specialisation of the support service where the psychologist is embedded, the following indications may be useful:

- a)** There are a set of signs and symptoms that the victim can present and that should be considered by professionals as indicators of the need for referral to specialised support. A detailed collection of information, as well as the contact with the support network (if possible) can facilitate ‘reading’ these indicators (Manual de Apoio Psicossocial a Migrantes [Psychosocial Support Manual for Migrants], 2016):
 - 1.** Disturbing and intrusive memories or recurring dreams about the incident;
 - 2.** Feeling disturbed by memories;
 - 3.** Physical stress reactions;
 - 4.** Avoidance and escape behaviours;
 - 5.** Sleep problems;
 - 6.** Increased agitation or aggression;
 - 7.** Feelings of impending doom or anxiety for no seemingly reason;
 - 8.** Mood changes;
 - 9.** Concentration problems;
 - 10.** Increase in the consumption of alcohol or other substances;
 - 11.** Problems in daily routines (at work and at home);
 - 12.** Feelings of guilt or shame.

- b)** If victim support services can provide more specialised psychological support, it will be important that, regardless of the school or psychotherapeutic model followed, counselling/intervention practices are based on empirically validated models and that the professional has skills to apply them.

In case there is a need for referral, the support professional should inform and explain to the victim the reasons for this and the advantages of obtaining more specific support.

The victim support professional should be informed about the most appropriate organisation providing specialised psychological and/or psychiatric support and support the victim contacting them and scheduling an appointment. If there is a referral protocol with the specialised support organization, the support professional should inform the victim and request their permission for the referral and sharing information with other professionals.

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‘Hate’ is a feeling usually associated with manifestations of extreme violence, hostility or abuse against an individual’s social identity. According to the ODIHR’s OSCE, for a crime to be considered a hate crime, it must cumulatively meet two criteria: first, it must be considered a criminal act in the light of criminal law; second, the act must have been motivated by prejudice (bias). This prejudice or bias, although it may be addressed only to an individual or a small group of persons, is directed at the perceived victim’s identity or group of belonging. Nevertheless, it is important to consider the numerous incidents in which the act is not premeditatedly motivated by prejudice but is peripheral to the crime and arises from the interaction between the ‘future person victim’ and the ‘perpetrator of crime’. Also, according to the ODIHR, “hate crimes can include threats, property damage, assault, murder or any other criminal offence committed with a bias motivation.”

When the motive for the crime is interpreted within ‘hate crimes’ or ‘hate-motivated violence’, it acquires an emotional connotation that is difficult to prove and that sometimes hinders the whole judicial process. In addition, the perpetrator may have acted out of resentment, jealousy or a desire for social approval by peers, not necessarily out of ‘hatred’. It is therefore essential for the victim support professional to have knowledge of the national legal framework and other European Union and international legal instruments that can be applied, including complementary and separate pieces of legislation. It is also important to be aware that certain acts of discriminatory violence may constitute a hate crime incident not defined as a hate crime under the law, but still have a high psychological and social impact. It is therefore the professional’s perception of the situation that allows identifying the hate motive, and this is based on information from the victim’s perception of prejudice and/or discrimination, on the crime characteristics or circumstances in which it occurred or by something that the perpetrator of the crime or act of violence transmitted (uttered words, the perpetrator’s clothing or symbols, etc.).

It is also essential for the victim support professionals to be aware of the various stages of the criminal process and to what extent they can inform and support the person victim of a hate crime in each stage of the proceedings and inform them about their rights as a victim of crime.

The provision of legal support comprises a set of information and procedures that enable the victim support professionals to support a crime victim and, in particular, the victim of hate crimes or discriminatory violence before, throughout and following the various stages of criminal proceedings. In brief, legal support is based on:

1. Information on types of hate crimes and different manifestations of discriminatory violence;

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2. Information and advice on the rights of the victim of hate crimes and discriminatory violence and the ways in which the victim can access and exercise the rights enshrined in criminal law, criminal procedure and other legislation;
3. Support analysing judicial notifications and drafting responses;
4. Support in requesting reimbursement of expenses resulting from participation in the process;
5. Support in drafting requests justifying absences from legal acts;
6. Support in writing and filing a complaint;
7. Support in lodging a complaint in person (accompanied by the victim support professional);
8. Support in writing and filing a civil claim (when the victim can present it themselves, that is, without a solicitor or lawyer);
9. Support in requesting the application of protective measures.

4.1. The rights of the victims of crime

An essential starting point in supporting the victim of crime, and in particular the victim of hate crimes and discriminatory violence, is to ensure that, at any stage of the criminal process, the victim has effective access and can exercise their rights as a victim of crime in an informed manner. Referring to the legal framework set out in Chapter 9 of Part 1 of this handbook, one of the key legislative instruments derives from the transposition of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 into the Member States of the European Union's national law, which establishes minimum standards for the rights, support and protection of victims of crime.

Transposed into the national legal systems, the Victims' Directive strengthens the victim and their individual needs for support and protection through the criminal justice system, emphasizing States' duty to protect victims of crime, their families and friends from secondary or repeat victimisation, intimidation or retaliation. The Directive also reinforces the essential role of victim support organizations, either in their complementary role or in place of the State itself, in ensuring access to qualified, free and confidential support services, or as a catalyst enabling the victims of crime exercising their rights in an effective and informed manner.

While some of the rights enshrined in the Directive are of particular relevance to victims of hate crimes and discriminatory violence, it is important that there is full knowledge of the various rights covered by this instrument.

4.1.1. Right to information

Regarded as one of the basic and essential rights, the Right to Information is fundamental for the victim of crime to be able to participate in the criminal process in an informed way and exercise their rights. The victim of crime has the right to receive information on their rights from when they first contact the police forces or judicial authorities, namely about:

- What types of support can be obtained and who can provide them, such as medical care, psychological support, specialist support and, where appropriate, sheltering;
- How to file a complaint or report a crime and where;
- How and under what circumstances can the victim request protection measures;
- How to obtain legal advice or legal aid;
- How and under what circumstances can they require compensation from the perpetrator of the crime;
- If it concerns a violent crime or a crime of domestic violence, how and under what circumstances can they require compensation from the State;
- If the victim does not speak the language used in the proceedings or has a disability, how can they benefit from interpretation and translation services;
- If the victim is not a resident in the Member State in which the crime occurred, what procedures exist to enable them from exercising their rights in that country;
- If the authorities do not respect the rights of the victim, where can they file a complaint;
- Which contacts can be used to obtain about the case or add information to it;
- What mediation services are available;
- How and under what circumstances can the victim claim reimbursement of the costs incurred by their participation in the proceedings.

Regarding the criminal proceedings, the victim has the right to receive information if the case is closed or if the defendant is not prosecuted. If an accusation is made, the victim is entitled to receive information about its content as well as the day, time and place of the trial.

If the victim is a civil party or has requested the role of assistant in the process, they have the right to be informed of the status of the case or sentence, except when that may affect due development of the case or prevent judicial secrecy. If the victim does not wish to obtain information on the state of the proceedings, they are entitled to request not to be informed, except when their role in the proceedings (whether as a civil party or assistant) requires being notified in order to proceed with the defence of their rights and interests. If the defendant or accused is released, or escapes, and this constitutes a danger to the

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victim, the victim has the right to be informed. Any information must be provided by the responsible authority at each stage of the proceedings.

4.1.2. Right to receive a receipt of the complaint

The victim reporting a crime or filing a complaint to the competent authorities has the right to receive a written acknowledgement of their formal complaint, which also describes the facts about the crime, date, place, and damage caused. This document does not need to be requested and, if the victim does not know the language used in the criminal proceedings, they have the right to receive it in a language they can understand.

4.1.3. Right to translation

Any documents and acts of the criminal proceedings are, as a rule, in the language of the country where they take place. It is a right enshrined in the Directive and, subsequently, it is a right of any victim in any Member State that they can participate in the criminal proceedings, either orally or in writing, in a language they understand. Therefore, the authority responsible for specific acts in the criminal proceedings should request an interpreter or translator who understands both the language of the proceedings and the victim's language. Depending on the victim's role in the proceedings, that is, if the victim is a civil part or has an assistant role, they are entitled to receive translations of all the information in the file and that is essential for them exercising their rights in a language they understand. When the victim has a disability, they are entitled to interpretation in a form that allows them to participate effectively in the proceedings, that is, a sign language interpreter should be requested as well as written responses to oral questions. It should be emphasized that the interlocutor's role is essential and that the request for interpretation or translation does not incur any costs to the victim.

4.1.4. Right to access victim support services

Under the Directive, victims have the right to access victim support services that, are free of charge and confidential, even if they have chosen not to file a formal complaint or report the crime.

4.1.5. Right to be heard

In the course of the criminal proceedings, the victim has the right to be heard, to make important information available for the investigation and to provide evidence. Furthermore, when lodging a complaint, the victim must provide the maximum amount of information that allows the responsible authority to build a body of evidence. Nevertheless, during the investigation phase the victim may add additional elements when summoned to make statements to the Public Prosecution Service. In addition, if the perpetrator of the crime becomes defendant and the process goes to court, the victim may add additional or omitted information and answer questions from the parties involved in the proceedings.

It is also possible for the victim, due to their particular vulnerability, to be heard during the investigation or pre-trial phase, and their statement to be recorded and used in later stages of the criminal proceedings, thus avoiding a repetition of the victim's testimony. For this purpose, the Public Prosecutor, the Judge, the defendant and their lawyer must participate in this questioning. It should be noted that in the Portuguese case, however, it is not uncommon for the trial judge to require the hearing of witnesses, so that even if declarations have already been made for future use, the victim will be called to participate in a new hearing.

Despite the safeguards described above, both the victim and the authority responsible for the criminal proceedings can request to be heard or to provide additional information at any time.

4.1.6. Rights when the defendant is acquitted

If at the end of the investigation phase the Public Prosecutor finds that the evidence is not enough to accuse the defendant of the crime and go to court, the criminal case is closed. If several crimes were committed, the defendant may only be accused of some crimes, and the case is closed for the other crimes. In this situation, and if the victim disagrees with the decision, they have the right to request the investigating judge to start the pre-trial phase anyway. In Portugal, the deadline for this request is 20 days from the notification of the Public Prosecution decision, and the victim has to request taking the role of assistant to be able to do it. The victim can also request that the evidence is reassessed or that the investigation continues and, in this case, can present new evidence. If the victim chooses this course of action, in Portugal, they need to request it within 20 days from the date in which the pre-trial phase can no longer be requested; in this situation, the victim does not need to require the role of assistant in the criminal process.

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4.1.7. Right to mediation services

In situations of low and medium seriousness, such as crimes of threat, minor damage, assault or other, the law allows the case to be resolved through mediation between the victim and the defendant, if the latter has acknowledged committing the crime. This being the case, the Public Prosecution Service can, by its own decision or upon the victim's request, refer the case to mediation, informing the parties that they will be contacted by a mediator. The mediator is a professional specifically trained for delivering mediation, whose role is to facilitate communication between the parties. The mediation process should be free of charge, confidential and voluntary, that is, the victim can choose to participate or to withdraw at any time. The purpose of this process is to provide the parties with a communication space where, with the support and facilitation of an impartial interlocutor, the victim can communicate the impact and/or the damage caused by the crime and the accused can assume responsibility for the act committed. If there is no agreement, such as compensation, community services, services to the victim or an apology to the victim, the Public Prosecutor's Office is informed and the criminal proceedings continue. Otherwise, that is, if any of the above conditions is fulfilled, the case is closed.

4.1.8. Right to legal information or protection

The system of access to the law and to the courts is designed to ensure that no one, due to their cultural or social background, insufficient economic means or lack of knowledge, has difficulties or is prevented from being able to exercise and defend their rights. Therefore, the victim has the right to legal advice and advice on their role in criminal proceedings. If the victim takes the role of assistant or is a civil party, or when the victim wishes to be accompanied by a lawyer and cannot afford that, they are entitled to legal aid, which may consist of:

- Total or partial exemption from the payment of justice fees;
- Appointment of a lawyer and payment of their fees;
- Payment of justice fees or lawyer fees in instalments.

In Portugal, requests for legal aid are decided by the Social Security Services on the basis of a formula taking into account the victim's assets, income and expenses. This request is free of charge and can be submitted in person, by post, fax, or online. The request must be accompanied by documents supporting the economic insufficiency of the recipient, and the decision will be taken within 30 days. If the application requires appointing a solicitor/

lawyer and is granted, Social Security Services contact the Bar Association, which then appoints a solicitor/lawyer to represent the victim in the proceedings.

4.1.9. Right to compensation for participating in the proceedings and to reimbursement of expenses

Any victim who participates in a criminal process is entitled to compensation for the time spent and to be reimbursed for the expenses arising from such participation. In the case of Portugal, this compensation must be requested through a form available in the courts.

4.1.10. Right to the return of property

If any of the victim's objects or property had to be retained by the competent authorities as evidence, they must be returned without delay as soon as no longer necessary for the adequate development of the proceedings. This restitution must take place as soon as possible so that the victim is not deprived of their property beyond the time strictly necessary and essential for the purposes of the criminal proceedings.

4.1.11. Right to compensation

It is only fair that anyone suffering damages from a crime should be compensated for them. The duty to compensate lies with the offender. In circumstances where the practice of the crime places the victim in a difficult financial situation and it is not possible to obtain compensation from the offender within a reasonable time, the State can pay for this compensation in advance.

Compensation from the perpetrator of the crime

The person victim has the right to compensation by the offender for the material and moral damages suffered.

In Portugal, compensation should be claimed for as part of the criminal proceedings. Victims should thus inform the Public Prosecutor during the investigation phase that they intend to file a claim for compensation, and they can do this when they provide evidence.

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The claim for civil compensation does not involve special formalities: it is a request that should contain a brief description of the facts supporting the request and the resulting damages and respective values. Material damages include damages directly caused by the crime, for example, the costs of hospital treatments, medication expenses, travel to medical appointments, damaged clothes, etc. Also included are the benefits that the victim lost due to the crime, for example income not received resulting from incapacity to work. Moral (or non-material) damages include those not possible to assess financially since they refer to health, well-being, honour and reputation; they can only be compensated by legally obliging the offender to pay a certain amount to the victim. Moral damages are, for example, physical pain, psychological distress, emotional suffering, loss of prestige and reputation, etc.

Compensation from the State to victims of violent crimes

Protection to victims of violent crimes includes the payment of compensation by the State, where the offender is unable to pay and the damage caused to the quality and level of life of the victim has been considerable.

In Portugal, compensation is paid to:

- Victims of grievous bodily harm (i.e. permanent incapacity, temporary total incapacity to work of at least 30 days, or death) directly caused by acts of violence;
- Those who have a legal right to maintenance if the victim dies - for example, their children and the partner who lived together with the victim;
- Those who helped the victim or collaborated with the authorities preventing the crime, pursuing and arresting the offender for damages incurred as consequence of that.

The requirement of permanent incapacity or temporary total incapacity to work of at least 30 days for claiming compensation does not apply to sexual crimes. Although this type of crime does not, as a rule, cause incapacity to work of at least 30 days, this exception is justified by the seriousness of the crime.

The compensation claim can be submitted up to a year from the occurrence of the crime or, if criminal proceedings take place, up to a year after their final decision. A victim who is under-age at the time of the crime can claim for compensation up to a year after reaching the age of majority (adulthood) or emancipation.

The claim should be sent to the Commission for the Protection of Victims of Crime. A specific form for that purpose is available from the Commission services, the APAV's Victim

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Support Offices and online.

This claim is exempt from any costs or fees, and all necessary documents for filing the claim can also be obtained free of charge.

If the crime took place in another Member State of the European Union, the claim for compensation from that Member State can be presented to the Commission for the Protection of Victims of Crime as long as the person requesting compensation usually lives in Portugal.

Victims of domestic violence have the right to receive cash benefits from the State when, as a consequence of endured domestic violence, they find themselves in a situation of serious economic insufficiency.

The claim is sent to the Commission for the Protection of Victims of Crime. It should be filed in a specific form available from the Commission services, the APAV's Victim Support Offices and online. Along with the request, the victim should present a copy of the police report. The claim must be presented within one year from the date of the crime.

The amount of the monthly benefits cannot be higher than the national minimum wage. These benefits are provided for a period of three months and can be extended for another three months. In special situations, they can be extended for another six months, up to an exceptional maximum of 12 months.

Exceptionally, in duly substantiated cases, where there is a special situation of deprivation and a lack of means of subsistence, the amount of the advance payment may be granted in a single instalment.

4.1.12. Right to protection

Victims and their family members have the right to safeguards from retaliation, intimidation or continued criminal activity against them. They have the right of protection against acts that can endanger their lives, physical integrity, emotional and psychological well-being, and dignity when providing evidence and testifying.

Whenever authorities consider that there is a serious risk that acts of vengeance occur or there is strong evidence that the victim's security and privacy may be seriously and

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intentionally compromised, they should provide an adequate level of protection to the victim and those close to them.

If, for security or protection reasons, the victim does not wish to provide their home address, they have the right to choose another address to which notifications or summons can be sent to. It can be their work address or the APAV's Victim Support Office where the victim is being supported.

The safety and security of the victims can be safeguarded by imposing restrictive measures against the defendant. A restrictive measure is a restriction to the defendant's freedom. It can be imposed during the criminal proceedings if there is a risk that the defendant might flee, risks to collecting and preserving evidence, danger to the public order and/or a risk that the criminal activity continues.

There is a variety of restrictive measures, such as:

- Proof of identity and address - the defendant must neither move from the address provided to the criminal proceedings nor be absent from that address more than 5 days without reporting in advance the contact details of the new address or the place in which they can be found;
- The defendant must periodically report to a named police station, usually in the area where they live;
- The defendant must suspend their professional activity, functions and rights;
- Restrictions to and impositions on behaviours, for example the defendant must not contact the victim;
- The defendant must stay at their address and not leave, with or without electronic monitoring;
- Provisional detention.

If the victim considers that the imposition of a restrictive measure can safeguard adequately their protection, they should present the case and request the imposition of a restrictive measure. The authority to which the case should be presented depends on the phase of the criminal proceedings: to the Public Prosecutor during the investigation phase, to the investigating judge during the pre-trial phase or to the court judge during the trial phase.

When the restrictive measures are revoked or replaced, and when the judge considers it necessary, the victim should be heard.

Whenever the lives of the victim or another witness, their physical or psychological integrity, freedom or material assets of considerable value are compromised due to their participation in the investigation and providing evidence, they can request protection measures.

Protecting the Victim and other Witnesses

The following protection measures are exceptional and can only be deployed if, in practice, they are necessary and adequate for the protection of the people concerned and the criminal proceedings purposes:

- Concealment: if circumstances indicate a high level of intimidation to the witness, the court can decide that the public hearings should take place using image concealment, with or without voice-altering, so that the witness is not recognised;
- Teleconference: in the case of serious crimes, and whenever there are strong protection reasons, teleconference can be used; that is, the witness will provide their testimony not in the court room but from another location, preferably in the judicial, police or prison services and in the presence of a judge. This testimony can also be made using image concealment and voice alteration;
- Restriction on revealing the identity of the victim or of another witness: not disclosing the identity of the victim or of another witness can take place in some or all the phases of the criminal proceedings. The victim or witness whose identity is not revealed can testify using image concealment (in addition or not to voice alteration) or teleconference;
- Special protection measures: in the case of serious crimes, and always in the presence of strong protection reasons, a victim or other witness can benefit from special security measures that may include, for example, the use of official transportation to participate in the criminal proceedings, police protection or relocation to a new address;
- Special protection programme – in some cases amongst the most serious crimes, the witness, their partner, ascendants, siblings and other close relations, in particular circumstances and if they wish, may receive special protection during or after the criminal proceedings. The special protection programme includes the deployment of one or more protection and support administrative measures, namely supplying “new identity” documents to the victim or witness, alteration of features and body appearance, relocation to a new address, in the country or abroad, for an agreed period of time or the provision of a living allowance for a defined period.

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Privacy

The victim and their family members have a right to privacy during the criminal proceedings.

Criminal proceedings being public does not mean that the private life details of those involved that do not constitute evidence of the crime are also public.

In addition, the media cannot disclose details of the criminal proceedings before the sentence unless they have a legal authorisation for that. They are also not allowed to transmit images or sound of a procedural act, namely the trial, unless the judge authorises it and none of the participant objects to it.

In criminal proceedings concerning sexual crimes or human trafficking, the public cannot attend the procedural acts. In these processes, as well as in the case of crimes against honour and right to privacy, the media are not allowed to disclose the victims' identities.

If a media provider does not respect these norms, the victim should present a complaint of criminal contempt. The victim should also inform the media regulatory body, the *Entidade Reguladora da Comunicação* [Regulatory Authority for the Media].

Not contacting the suspect or defendant

The victim has the right not to meet or contact the defendant, namely in the court building and police stations. For that purpose, whenever possible, there should be separate entries and exits and waiting rooms for victims and defendants, and for their family members and others close to them.

Unfortunately, many courts are neither prepared nor have facilities to fully ensure this right. However, whenever the victim has sound reasons to avoid contact with the defendant, they should demand, that, as much as possible, the court provides an alternative exit and entry, as well as a waiting room not used by the defendant and their family members.

4.1.13. Rights of the victims with special protection needs

A victim with special protection needs is someone who is particularly vulnerable to repeat victimisation, secondary victimisation, intimidation or retaliation, given their personal characteristics, the type or nature of the crime endured, and the circumstances in which it occurred. Thus, the victim needs special measures, particularly in what concerns protection.

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This vulnerability should be assessed on a case-by-case basis, and particular attention should be paid to victims who suffered considerable harm due to the severity and seriousness of the crime. These are victims of crimes committed with a discriminatory motive related to their personal characteristics such as victims of hate crimes and discriminatory violence and victims whose relationship to and dependence on the offender make them particularly vulnerable. Consequently, special care should be given to victims of terrorism, organised crime, human trafficking, gender violence, violence in close relationships, sexual violence and hate crimes. Independently of the type of crime, children, the elderly and people debilitated by illness or with disabilities should be given particular attention when their level of vulnerability is assessed.

When a particularly vulnerable victim has to participate in a procedural act, the Public Prosecutor or the judge should, alongside any other measures already in place, make provisions to ensure that the proceedings take place under the best possible conditions. Their purpose is to guarantee that the victim answers with spontaneity and sincerity:

- Statements of particularly vulnerable victims should be taken as soon as possible. Interviews should be conducted by a trained professional and, if the victim needs to be heard more than once, interviews should, in principle, be conducted by the same professional;
- Interviews of victims of sexual violence, gender violence or violence in close relationships, when not conducted by a judge or a prosecutor, should be conducted by a person of the same sex as the victim, if the victim prefers;
- Procedural acts should be organised in such a way that particularly vulnerable witnesses never meet specific participants, namely the defendant;
- When it is justifiable to avoid visual contact between the victim and the defendant, the victim should be heard using appropriate means of concealment or teleconference, and may even be allowed not to be present in the courtroom;
- The victim should be interviewed by the judge, and following that, other judges, the public prosecutor, the defendant's lawyer and the lawyers of the civil parties may request the judge to formulate additional questions, that the judge will then ask the victim;
- Questions concerning the victim's private life and not related to the criminal offence must not be asked;
- In some cases, the procedural acts, including the trial, can take place without the presence of the public.

As soon as the competent authority identifies a special vulnerability in the victim, they should assign a social worker or qualified professional to support the victim and, if

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necessary, provide psychological support.

At any stage of the proceedings, the judge, at the request of the Public Prosecutor, can decide on the temporary removal of a particularly vulnerable victim from their family or close social group and place them in an institution.

All these measures can also be applied to witnesses who are considered particularly vulnerable under the conditions we have described so far.

Rights of victims resident in another EU Member State

Suffering a crime in a foreign country places victims in a particularly vulnerable situation: they lack knowledge about the criminal proceedings and the available support resources, they have difficulties understanding another language and their usually short stay in the country where the crime was committed makes both their participating and keeping informed on the proceedings difficult.

Those who suffer a crime in a country where they do not reside should be provided with measures addressing the difficulties associated with that and particularly focussed on the progress of the criminal process, such as provision of all the necessary information by the authorities and being assigned an interpreter to ensure that the victim fully understands the proceedings in which they participate.

Residents of a European Union Member State who suffered a crime in another Member State can report the crime to the authorities of the country where they reside, if they have not reported it in the country where the crime was committed. In this case, the authorities of the victim's country of residence should promptly transmit the complaint to the competent authorities of the country where the crime was committed.

In the European Union, the victim of a crime occurred in a country that is not the one where they reside can make a statement immediately after the crime was committed. In Portugal, the victim residing in another country can make a statement that can be used as evidence in trial, thus avoiding the victim having to return to Portugal. This statement is called a statement for future memory (*declarações para memória futura*).

However, if it is necessary to hear the victim again and they are no longer in the country where the crime was committed, they can be heard through telephone or videoconference from the country where they reside.

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Victims of a violent crime perpetrated in a Member State of the European Union who usually reside in another Member State can present their claim for compensation to the authority in their State of residence with competence to assess and decide on these types of requests. This authority should transmit the request to the competent authority of the State in which the crime occurred. In Portugal, the authority with competence both to receive requests of people residing in other countries and who were victims of crime in Portugal and to send requests of residents in Portugal who were victims of crime in other countries of the European Union is the *Comissão de Proteção às Vítimas de Crimes* (Commission for the Protection of Victims of Crime).



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5.1. Social and practical support

According to the International Federation of Social Workers (2005), social work aims at promoting social change and problem solving in the context of interpersonal relationships and people's ability to improve their well-being. Social work, therefore, seeks to introduce positive changes in the psychological and social functioning of individuals, groups and communities, reducing vulnerabilities and providing opportunities for a more satisfactory social life.

Social work has a range of purposes, namely:

- Promote the inclusion of social groups that are vulnerable, marginalized or at-risk;
- Promote well-being and solve problems by intervening with individuals, groups and communities;
- Develop dynamics that promote the participation of the population in defending and building better social conditions;
- Defend and promote changes in structural constraints related to social exclusion and marginalization;
- Initiate procedures to protect people who, due to their condition or situation, are not able to do so autonomously.

Social work is based on active participation processes, involving the population with whom one intends to work. In this sense, the target population and the social worker are partners in the problem-solving process.

Social work is therefore fundamental in supporting victims of hate crime and should be provided by qualified victim support professionals to respond adequately to social needs brought by violence/crime.

Social support, in the context of supporting victims of crime in general and victims of hate crimes in particular, is aimed at defending and promoting human and social rights. It seeks to promote the well-being of individuals, groups and communities affected by violence/crime, identifying and promoting resources that meet the individual and collective needs raised by the crime/violence endured. Regarding this topic, see further information on the impact on direct and indirect victims in Part I of this handbook.

For the intervention with the victim of hate crime to succeed, the victim support professional needs to know well the theoretical-conceptual framework of social problems

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associated with discrimination, discriminatory violence and hate crimes. In addition, the professional should have adequate knowledge of the characteristics and dynamics associated with hate crimes and their impact on direct and indirect victims. Knowledge and understanding of the problem under analysis will allow the professional to identify/diagnose correctly the problem(s) and justify their intervention and the need for coordination between the various services involved in the support process.

If, at any point, the professional thinks that they are not the person best suited to support that victim of hate crime, due to communication difficulties (different languages), lack of understanding of the dynamics associated with hate crimes, any doubts or bias regarding the victim's ethnicity or gender identity (for example, the professional must respect the fundamental rights of the victim, and not show any lack of understanding or disrespect), then they should refer the victim to a colleague.

It is important that the professional informs the victim about the professional's role in the support process, clarifying their functions and limitations. This explanation should be provided right at the start of the process, so it is not interpreted later by the victim as a refusal to help.

5.2. Key aspects of social support

5.2.1. The importance of social diagnosis

For ensuring a correct intervention, minimizing the risk factors for victimisation, the vulnerability of the victim and promoting their well-being and security, the victim support professional should conduct a **social diagnosis**.

According to Ander-Egg & Idáñez (1999), social diagnosis is a process of elaboration/systematisation of information about a situation, understanding its problems and requirements, as well as their causes and evolution. By using social diagnosis, it is possible to establish priorities and intervention strategies, involving available resources and social actors.

Social diagnosis should be one of the first stages of support and it is a key element for any subsequent intervention. It is a continuous process, aiming at the knowledge of the reality experienced by a particular person, group or community, as well as their constant evolutions/modifications. A social diagnosis is based on action research methodology, which requires ongoing collection and analysis of information, in an attitude of permanent curiosity.

5.2.2. Intervention models

Only after diagnosing the victim’s social situation, should the professional start an intervention, which should be based on a model. For example.

The Crisis Intervention Model (Payne, 2002) focus on immediate action, with specific steps that the professional should follow, namely:

- Assess the risk and safety of the victim;
- Establish an adequate relationship and communication;
- Identify key problems;
- Normalize the victim’s symptoms and reactions;
- Explore possible alternatives (e.g. mobilising the informal support network - social/family networks);
- Create an action plan;
- Suggest a type of specialised support and promote the victim’s capacity to find strategies to address/manage their problems.

The Task-Centred Model (Martínez, 2005; Payne, 2002) is based on five basic elements: problem, objective, task, time and contract. It focusses on the selection of a specific problem and the definition of particular tasks to address it. It is a directive model, based on the present and on very specific solutions to solve the problems identified and is based on a partnership work between the professional and the victim, who set up a contract or commitment for a defined period of time.

The Psychosocial Model supports intervention focussed on the person, particularly on the victim’s personality and their capacity to find within themselves the necessary resources for the resolution or response to their needs. It is, therefore, centred on the person’s psychological and social aspects, in their strengths and weaknesses, and in their resources and problems. Social support aims, based on this intervention model, at helping the person acquiring the necessary skills/conditions for their reorganization, by mitigating vulnerability factors and promoting protection factors.

5.2.3. The need for individualised intervention

Alongside any of these intervention models, the professional should also use the **Casework Method**, which consists of an individualised and personalised intervention with each victim,

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adapting the intervention to the specific needs of that particular victim, and ensuring adequate mediation between the victim and the support networks used in the support process.

The Case Method can be summarised in four basic steps (García & Romero, 2012):

- Study and diagnosis of the problem;
- Program/Design of the intervention;
- Delivery/Implementation of the intervention;
- Evaluation.

From the start of the support process with the victim of crime, collecting information is essential to **elaborate a diagnosis** of the victim's relational, institutional and social situation. Only through this study will it be possible to evolve, in a sustained way, to the next stages of the intervention, involving the victim of crime and their primary and secondary support networks in the support process and intervention. This engagement aims to promote access to services and assets that contribute to the victim's autonomy, thus addressing the social needs triggered by victimisation.

In order to diagnose/study the problem, to design the intervention and its implementation, it is important for the victim support professional to be able to:

1. Identify the crime/violence

It is important that, at the start, the victim support professional seeks information to identify the victim of a hate crime such as name; date of birth; gender; nationality; mother tongue and, if the victim does not know the language of the victim support professional, which other language(s) they know; address, and other relevant information.

In this first stage, it may also be important to obtain information about the crime such as the name(s) of the perpetrator(s), where it occurred, forms of violence used and the victim's perception about the reasons behind them being the targets of that crime (e.g. believe that they have been a victim of violence because of their sexual orientation, gender identity, ethnicity, colour, religion, nationality, physical condition, among others).

2. Assess the needs of the victim

During the diagnosis and support process, the victim support professional should make

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an effort to understand the victim’s individual and social needs in order to adapt their intervention and provide an adequate response to the needs previously identified.

This assessment should be done from a perspective focussed on the interests of the victim and taking into account that the needs vary from person to person, according to their situation, cultural and/or personality characteristics, as well as the specific issues associated with the case. Therefore, it is important that the professional respects the victim’s values, beliefs and perceptions, and avoids any discriminatory or prejudicial remarks.

At this stage, the professional should:

- Allow the victim to express what they want and what they need;
- Clarify and reformulate expressed needs, so as to ensure correct understanding;
- Provide continuously information on the victim’s rights, resources and support services, allowing the victim to identify their own needs.

The crime may give rise to a range of needs, which could require a more or less urgent intervention. Notwithstanding the nature of the needs assessed initially or in the first contact with the victim of hate crime, the professional should reassess them during the support process, and update the intervention plan/strategy accordingly.

In the first contact with the crime victim, it is essential that the professional identifies the most pressing needs, in order to tailor the responses. Urgent needs include: safety, basic needs (food, clothing, medication), medical and/or psychological care, sheltering and legal support. Medium and/or long-term needs may include: financial support, school support, (re) integration support, skills training and job placement.

In social terms, the victim may present different types of basic needs:

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SHELTERING	<p>Sheltering can either be unpredictable or planned and is a usual request. The victim support professional has three functions: to value the act of asking for help, providing the necessary emotional support to the victim in crisis; to elaborate a diagnosis (identify the primary support network - friends, family members and other trusted persons - or the need to activate secondary support networks); and to assess the situation's degree of risk. The need for sheltering does not necessarily imply referral to institutional sheltering: the primary support network, whenever it meets the necessary security conditions, can represent a fundamental resource, and using it should always be analysed with the victim of crime.</p> <p>The professional should know which organisations in the country can respond to the sheltering needs of the victim of a hate crime. This may include contacting/referring to social emergency lines, non-governmental organisations, social security services, among other available responses/resources.</p>
FOOD	<p>The victim of a hate crime, due to the crime, can be in a situation of fragility and vulnerability, and see themselves running out of basic goods, including food. It is the professional's responsibility to map the organisations in their area of intervention, including the organisations' objectives, procedures and operating norms, in order to refer the victim adequately, and then follow-up the victim's case closely with the organisations involved.</p> <p>For this purpose, the professional should know which organisations can be used to respond to the food needs of the victim of hate crime. This may involve contacting/referring to non-governmental organisations, social security services, among other available responses/resources.</p>
HEALTH	<p>Violence/crime can give rise to (physical and mental) health needs that the professional should address. Professionals should be able to identify the most appropriate organisations and responses in their country to support these needs, which may involve contacting/referring to health/emergency lines, public health services, non-governmental organisations or other health responses.</p>
PROFESSIONAL SITUATION	<p>In view of the potential effects of crime/violence on the occupational situation of the victim of hate crime, it may be necessary to find a new way of ensuring their livelihood. Professional (re)integration becomes paramount in order to allow a greater level of autonomy. The professional must assess the victim's qualifications, their professional experience, their preferences regarding the labour market sectors and any training needs. The victim must be referred to competent organisations, such as employment and vocational training centres, which can assist and promote professional reintegration.</p>
SCHOOL/TRAINING SITUATION	<p>The violence/crime suffered may also jeopardize the education/school situation of the direct victim or their dependent children (if this applies to the particular case). It is important to work together with current training organisations or schools to implement actions addressing the training needs of direct and indirect victims, such as the transfer to another training organisation or school, in a confidential way, in order to ensure the safety of direct and indirect victims.</p>

These basic needs (and the response to them) are important areas of social support intervention, and the professional should include specific strategies in their implementation plan. Considering the identified needs and the scope of the support service, the victim support professional may establish/define the need for referral/collaboration with other organisations/community responses in the implementation plan.

3. Referring and collaborating

The victim support professional (and their organisation/support service) should have, for each intervention area, contacts for national and regional secondary support networks, which may be activated for the benefit of victims of hate crimes, such

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as: contacts of social and medical emergency lines; contacts of temporary shelters to address situations where the reorganization of the victim's life project requires geographical separation from their primary support network; contacts of organisations responsible for legalisation and regulation of migrants; etc.

In order to respond to and address the needs identified above, the victim support professional may have to refer the victim to another service/organisation when trying to find specific responses.

Interagency collaboration can increase understanding of abusive dynamics and/or the crime's characteristics, as well as existing social responses addressing the victim's needs and can contribute to improve the quality of the support provided.

To do this, it is important to take into account the following procedures in the referral and/or request for collaboration:

- Understand the scope of action of one's organisation and the limits of its capacity to intervene;
- Be aware of existing specialised services and organisations, for an effective collaboration and referral;
- Inform the victim about this possibility and assess their willingness for that;
- Do not take initiatives without the victim's consent;
- Ensure that the victim understands the information provided and that, at any moment, they don't feel that their support is being removed or their situation is devalued;
- Assess risks and factors that may make victims more vulnerable before being referred to other services;
- Avoid multiple referrals to different specialised organisations, preventing duplicating interventions;
- Respect the victim's right to privacy and confidentiality when seeking collaboration from other professionals and/or other organisations/services;
- Maintain the confidentiality of information, especially with third parties who do not identify themselves properly and seek information about the victim, which can put the victim's safety at risk;
- Ensure the continuity and quality of the services provided.

So, in order to respond to the victim's needs and maximize the quality of the support provided, it may be necessary to collaborate with other sectors/areas, namely:

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- Social Security and Social Protection (such as social security services and private social solidarity institutions/charities/non-governmental organisations);
- Labour and Unemployment (including employment and professional training centres);
- Health (such as hospitals, health centres/units and mental health institutions);
- Education and Schools or Training Centres;
- Local Authorities (municipal councils and parish councils);
- Justice (such as police forces, courts and legal and forensic medicine services);
- Human resources departments of companies and other local organizations or commissions.

Equally important is the collaboration with local entities/partners in communities commonly affected by hate crimes, as they may be important in the victim's recovery, protection and responding to their needs. At the same time, opening up these channels of communication could uncover other situations of discrimination, discriminatory violence and hate crimes that may be affecting other people in the community (Kees, Iganski, Kusche, Swider & Chahal, 2016).

The previous stages, while important for responding adequately to the needs of victims of crime, should not be understood as a rigid or unchanging sequence of intervention phases. There may be social emergency situations that require a fast and effective intervention, where the professional acts immediately and executes/implements a particular course of action/intervention without conducting a study or a diagnosis of the situation. This is the case when, for example, the victim support professional supports a crime victim in a crisis situation.

Some situations do not seem to include a social emergency, in spite of the experience of victimisation, its severity and the resulting consequences. In these cases, the success of the intervention is dependent on the correct study and diagnosis of the problem. This is elaborated using the information collected during the first contact(s) and should be readjusted or updated throughout the support process.

5.3. Referral systems

The referral process can be formalised by establishing protocols between organisations, which include the mechanism in which one organisation transmits to the other information on the occurrence of crimes and their victims, with the victims' consent and for the purpose of providing them with support.

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This is distinguished from the more informal referral approach (more based on signposting and discussed earlier) because it is proactive and is an integral part of victim support procedures for a particular service or support organization.

Referral systems can be important when supporting the victim of crime, as they make it easier for the victim of crime to have access to a more specialised or specific support, given their identified needs.

It should be noted, however, that this will only be possible if there are mechanisms of interinstitutional collaboration established previously between the support service/organization and the organisations expected to receive the referrals.

Assuming that partnerships or protocols between the organizations are already in place, referring a victim always requires respecting their will and ensuring their consent.

How the information used for making referrals is collected and transmitted between organisations should also be defined and agreed by the organisations involved in the referral mechanism.

Regardless of the method(s) for collecting and transmitting information, it is essential that the information transmitted covers central aspects of the victimisation situation experienced by the victim of hate crime and their identification, minimizing the risk that the victim will have to report again the episode(s) that motivated the contact with the service/support organization.

Some aspects/baseline information should therefore be included in the referral process:

- Name of the victim;
- Victim contact details and preferred contact time;
- A brief description of the situation (type of crime, relationship with the perpetrator, where it occurred, what steps have already been taken and consequences of victimisation);
- Observations and support provided by the organisation (e.g. psychological counselling, legal advice and comments about the support provided).

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5.4. Information about the process for supporting victims of crime

It is very important that the professional produces reports about the support process, since these should contain all the information on the case. Moreover, these reports can be an important tool for eventual referral to other services/organisations during the intervention, as they bring together key information about the support provided so far to a particular victim of crime, avoiding or minimising the need for the victim having to repeat information about the experience of violence/crime.

To this end, it is important that support services have their own information recording system/mechanisms (e.g. session/support forms) for collecting all the information from the start of the support process with a victim of crime.

Which information was collected and which interventions were carried out are important points to be covered in the report about the support process.

The preparation of the report should:

- Present a logical structure, with central and relevant thematic areas, including specific topics that include: identification of the victim; the description of the crime/violence and the perpetrator of the crime (if there is information available); the support provided by the organisation;
- Be consistent, precise and objective, clearly describing the assessment/diagnosis done and the needs identified, as well as the intervention and support conducted and their objectives;
- Be flexible, tailored to the needs of the recipient/organisation to whom it will be sent.

When preparing the report, the professional should also:

- Include a reflection on the reason for elaborating the report, which includes the general objective, the specific objectives and the recipient/organisation to whom it will be sent;
- Align the report's content with the reasons for its elaboration, which does not imply omitting information or providing false information;
- Ensure the confidentiality and respect for the victim's privacy, making the reason and relevance of the report clear to the victim and always requesting the victim's authorisation to send it.

5.5. The characteristics of frontline social support

Social work, has always favoured in loco intervention in the contexts of people's lives, focussing on housing, professional/educational interventions or others.

When supporting victims of crime in general and victims of hate crimes in particular, victim support services or organizations, within their remit, can deliver frontline interventions in the victims' life situations.

This possibility of intervention should be analysed by the victim support organisation or service, taking into account the following criteria:

- The safety of the professional and the persons involved in the intervention, including the victims of crime, anticipating the risk that the intervention on the ground could jeopardise the safety and physical integrity of the victim and the professional(s) involved (e.g. is there a risk that the victim and/or professional will be taken by surprise by the arrival of the perpetrator?);
- Difficulties in accessing the victim and their settings (e.g., more closed groups/communities) or even the victim having difficulties of accessing the place of the intervention (for example, a person with motor difficulties can have difficulty accessing a place without adequate access);
- The team intervention, including elements/organisations of the victim's community. Collaboration with local partners/organisations already integrated locally where the intervention is taking place facilitates access to less open communities and the involvement/participation of stakeholders.

Some of the forms of field intervention that may be used are home visits and visits to other settings used by the victim (such as their educational/training places or professional workplace).

Frontline intervention requires:

- A clear definition of objectives, i.e. the purpose of the intervention should be aligned with the victim's diagnosis and the identified needs;
- Preparing and having a strategic definition, that is, the intervention should be planned and scheduled in advance and the safety conditions (for the professional, team and victim) should be analysed;
- An authorisation for visiting the settings, namely from those responsible for

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managing/coordinating the places used by the victim, safeguarding the privacy of the victim and the sensitivity of the situation;

- Empathy, respect and cordiality for the places to be visited, anticipating that, despite the preparation done, the team and/or the professional will always be perceived as external elements to those places or community.

Victim-centred criminal investigations – principles and recommendations about how to collect and record data on hate crimes

As covered in Chapter 6 of Part I of this handbook, hate crimes have a more pronounced impact on their victims than crimes committed without a discriminatory motive. It is essential that police and judicial authorities are prepared to deal with the victims of these crimes throughout the criminal proceedings. However, despite some efforts already made in a number of countries regarding such crimes, there are gaps from the outset - and especially at this stage - of the proceedings.

In this context, there is an almost total absence of binding legislation requiring the police or judicial authorities to systematically record prejudice-based motives (FRA, 2017). This means that, even if the crime is reported to the authorities by the victim or by a third party, it may not be treated as a hate crime throughout the criminal proceedings as an adequate recording is missing.

Thus, proper identification and recording of hate crimes is the first step to ensure that offences are properly investigated and their perpetrators criminally held accountable (European Commission, 2017). This correct identification and recording includes the identification of the discriminatory motive.

6.1. Identifying the discriminatory motive

Reporting a hate crime to the competent authorities is one of the most important steps in identifying and supporting victims of this specific type of crime. What members of criminal police agencies do and say in the first moments of contact with a victim may affect their recovery or even the outcome of the investigation. A correct identification and qualification of hate crimes guarantees a good start of the investigation process, while transmitting a fundamental message acknowledging the seriousness of the phenomenon.

However, one of the greatest difficulties in the process of investigating hate crimes is precisely the identification of this type of criminal conduct. The ODIHR, as well as other entities, consider it essential that the authorities potentially in contact with potential victims of hate crimes are provided with a set of indicators that can facilitate and improve the identification of the discriminatory motive that resulted in the crime. These indicators are “objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender’s actions were motivated in whole or part by bias, prejudice or hostility” (OSCE/ODIHR, 2014).

Recently, the Sub-group on methodologies for recording and collecting data on hate

Victim-centred criminal investigations – principles and recommendations about how to collect and record data on hate crimes

crime from the European Commission’s Directorate-General for Justice and Consumers, coordinated by the European Union Agency for Fundamental Rights, has presented a list of indicators identified on the basis of systematic consultations, bringing together contributions from representatives of relevant national authorities, the European Commission, FRA, ODIHR, ECRI and civil society organizations.

These indicators cover a wide range of aspects and are divided into indicators on the victim’s or witness’s perception; the comments, written statements, gestures or graffiti by the perpetrator(s) of the crimes; the ethnic, religious or cultural differences between the perpetrator and the victim(s); the organised groups; the location and time of the crime; the standards or frequency of the crime or hate incident; the nature of the violent act and the absence of other motives.

As already mentioned, using and disseminating these indicators among investigating authorities is crucial for the correct identification and qualification of an incident as a hate crime. Therefore, it is considered important that this handbook reproduces the indicators presented by the Subgroup.

The victim/witness’s perception

- Does the victim or witness perceive that the crime was motivated by prejudice/bias?
- Was the victim involved in activities promoting the rights of their group when the crime was committed?

Comments, written statements, gestures or graffiti

As covered in Chapter 1 in Part I of this handbook, hate crime perpetrators(s), by committing the criminal act, aim to disseminate a message of intolerance towards the victim and their group, making this message clear before, during or after carrying out the criminal act. Thus, the attitudes/messages of the perpetrator(s) of the crime can be an important indicator of their motivation to commit the crime.

- Has the suspect made comments or gestures regarding the victim’s group or the group the victim perceives themselves to belong to;
- Have drawings, marks, symbols or graffiti been found in the place where the crime occurred;
- In a crime against property, did the object or place in question have a religious or cultural significance for a certain group;
- Does the suspect have hate propaganda in their home?

Victim-centred criminal investigations – principles and recommendations about how to collect and record data on hate crimes

Differences between the perpetrator of the crime and the victim

- Do the victim and the perpetrator of the crime differ on the colour of their skin, religious beliefs, ethnic/national origin, sexual orientation, among other characteristics;
- Is there a history of animosity between the victim's group and the perpetrator's group;
- Does the victim belong to a disproportionately smaller group in the area where the crime occurred?

Organised groups

It should be noted that not all hate crimes are committed by organised groups, although often members or people associated with such groups are involved in the practice of hate crimes.

- Were objects or articles that suggest that the crime was committed by members of an organised group left at the crime scene;
- Is there is evidence (posters, leaflets, graffiti, etc.) that the organised group suspected of committing the crime is active in that area;
- Has the suspect displayed behaviours normally associated with organised groups, for example, greetings used by a certain group;
- Did the suspect have clothing, tattoos or other insignia usually associated with an extremist or hate group;
- Does the usual meeting place of the organised group contain objects and articles of extremist propaganda;
- Has the incident occurred during or shortly after a rally, a demonstration or a meeting of an organised group?
- Has the group in question threatened a particular group of people recently and publicly?

Place and time of the crime

- Has the crime occurred on a particularly significant date, for example a religious holiday or national holiday;
- Was the victim in a place normally frequented by a particular group, such as community centres or places of worship;
- Has the incident occurred during a specific part of the day when the victim or other members of their group are usually in the area where the incident took place, for example during prayer time?

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Patterns or frequency

- Have similar incidents occurred in the same area against the same group;
- Is there a recent escalation in the number and severity of incidents against the group in question;
- Has any recent incident occurred that may have triggered a retaliatory response against a particular group;
- Have the victim or other members of their group received threats or been subjected to other forms of intimidation?

Characteristics of the violent act

- Did the crime involve extreme violence or degrading treatment;
- Was the act committed publicly or in a way that makes it public knowledge, for example, through its filming and online dissemination;
- Has the violence involved the mutilation of racist symbols or damage to property by symbols designed to degrade and/or humiliate, such as excrement or animal parts?

Absence of other motives

- Given the nature of the violent act, was there any other apparent motive for the crime, especially when there are other potential indicators of prejudice/bias, such as the cultural, ethnic or religious difference between the perpetrator and the victim(s)?

Although the presence of some of these indicators does not automatically mean the existence of a hate crime, their dissemination and enforcement by the police and judicial authorities may contribute to the correct and quick identification of a victim of hate crime. It also ensures the activation of essential procedures in the contact with the victim and collection of information, which is also an essential phase in the investigation.

6.2. Inquiry and collection of information

All crime victims should feel confident to report any crime or incident to the police, as well as to make sure that any of their reports will be properly interpreted and investigated in a professional and thorough manner. It is essential that all elements of the security forces know the importance of a correct collection of information. An inadequate collection of information can result in serious consequences for victims and even disrupt the confidence

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of their community and society in general.

A good collection of information aiming at detecting whether act of violence was motivated by bias can be supported by several sources (ACPOS, 2010):

- Victim’s statement;
- Witnesses’ statements;
- Information provided by the victim’s family, friends or neighbours;
- Interview with the defendant.

However, it should be emphasized that police officers can identify a hate crime even when the victim or others do not perceive it as such. In addition to victims who are not aware that they themselves have been the target of a hate crime (for example, they are not aware of the phenomenon), there are others that may omit the discriminatory motive that led to the crime. This may happen because they are not willing to reveal the motives (real or perceived) for the crime when they perceive them to be associated with their identity, for example, their sexual orientation or association with an identifiable group.

6.2.1. Verbal and non-verbal communication with a victim of hate crimes

Collecting information adequately is directly dependent on using good verbal and non-verbal communication techniques in the relationship with the victim(s).

From the outset, communication with victims depends on two important elements: active listening - which implies attention to the content of the message as well as the way it is transmitted (tone of voice and body language) - and empathy - the ability of the interlocutor to understand what the other person feels, including thoughts, points of view and motivation behind their behaviour.

When present, these two elements may promote a good relationship between the victim and their interlocutor, encouraging the victim to communicate effectively and provide the necessary information.

Please refer to Chapter 1 of Part I of this handbook for more information and good practice in the contact with victims of hate crimes.

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6.3. Principles and recommendations for recording data about hate crimes

When presenting the indicators of prejudice mentioned above, the Subgroup on methodologies for recording and collecting data on hate crimes has also established a set of principles for correct and effective data collection and reporting of hate crimes (European Commission, 2017).

Recognizing that the various States have different mechanisms for registering hate crimes, the Subgroup considered the following minimum criteria for these mechanisms:

- Operational procedures of criminal police agencies should support police officers taking into account possible discriminatory grounds for a particular criminal act, and there must be appropriate ways and tools to signal these cases;
- A list of indicators of prejudice, such as that proposed by the Sub-Group and presented above, should be made available to members of criminal police bodies so that they can more easily and structurally recognise the presence of a discriminatory motive;
- The mechanisms used to record occurrences should allow a detailed record of the motive that led to the crime.

Three other guiding principles for the correct collection of information on hate crimes and consequent recording of data at the national level proposed by the Subgroup are: the dissemination of a culture of human rights within police and judicial authorities, the development or adaptation of mechanisms for recording hate crimes that address national needs and capacities and, finally, the activation of tools for active cooperation with the civil society.

Strengthening a human rights culture means, according to the Subgroup, that all criminal police staff, irrespective of their hierarchical position, should understand the importance of recording hate crimes properly and this should not be considered an additional burden. In this context, the Subgroup considers essential that professional training integrates the human rights language and focuses on conscious or unconscious bias/prejudice of police officers.

Regarding the adaptation of mechanisms for recording hate crimes, the Subgroup suggests that the police and judicial authorities in each State, because they are better positioned to identify gaps and inconsistencies in the mechanisms with which they work daily, should evaluate the effectiveness of these mechanisms and, consequently, make the necessary changes to ensure that hate crimes recording is done properly. This ensures taking an adequate approach from the outset of the investigation process.

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PART 2 – SUPPORTING



Finally, on the active collaboration between the police and judicial authorities, on one hand, and civil society organisations, on the other, the Subgroup recognises that civil society organisations, by supporting victims of crime or representing populations that are more vulnerable to the practice of hate crimes, can contribute positively to the work of police and judicial authorities. By being closer to victims of hate crime, civil society organisations can provide relevant knowledge about the impact that hate crimes have on their victims and their communities to the police and judicial authorities. These organisations are also an important communication bridge between victims of hate crimes and members of criminal police agencies and judicial authorities and can facilitate the dialogue between both parties.



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