

Equal protection for all victims of hate crime

The case of people with disabilities

FRA FOCUS

Hate crimes violate the rights to human dignity and non-discrimination enshrined in the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights. Nevertheless, people with disabilities often face violence, discrimination and stigmatisation every day.

This paper discusses the difficulties faced by people with disabilities who become victims of hate crime, and the different legal frameworks in place to protect such victims in the EU's Member States. It ends by listing a number of suggestions for improving the situation at both the legislative and policy levels.

Key facts

- People with disabilities face discrimination, stigmatisation and isolation every day, which can be a formidable barrier to their inclusion and participation in the community
- Disability is not included in the EU's hate crime legislation
- Victims of disability hate crime are often reluctant to report their experiences
- If incidents of disability hate crime are reported, the bias motivation is seldom recorded, making investigation and prosecution less likely

FRA Opinions

- EU and national criminal law provisions relating to hate crime should treat all grounds equally, from racism and xenophobia through to disability
- The EU and its Member States should systematically collect and publish disaggregated data on hate crime, including hate crime against people with disabilities
- Law enforcement officers should be trained and alert for indications of bias motivation when investigating crimes
- Trust-building measures should be undertaken to encourage reporting by disabled victims of bias-motivated or other forms of crime

"[We want] to stop them being racist against us and stop bullying us on the streets. Every time you go anywhere you have people calling us nasty names or talking behind our backs calling us stupid or calling us crazy; we're not crazy."

Woman with an intellectual disability, United Kingdom, age unknown¹

Introduction

People with disabilities have been excluded from mainstream society for centuries, and still face discrimination, stigmatisation and isolation even today. Research by the EU Agency for Fundamental Rights (FRA) shows that violence, harassment and abuse are common experiences for many people with disabilities, creating a formidable barrier to their inclusion and participation in the community.² An age-old assumption that disabled people should be pitied, rather than respected as individuals with the right to live free from violence, often detracts from the severity of the violence they face, making it more difficult to recognise either its causes or its consequences.

Violence and crimes motivated by racism, xenophobia, religious intolerance or by prejudice towards a person's disability, sexual orientation or gender identity are all forms of hate crime. While hate crimes linked to race, ethnicity or religion have been on the EU's agenda for a number of years, disability is less often taken into consideration when hate crime legislation is drafted.

The UN Convention on the Rights of Persons with Disabilities (CRPD) is the first and to date only UN Treaty that the EU itself and all but three Member States – Finland, Ireland and the Netherlands – have signed and ratified.³

According to the CRPD, "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (Art. 1.2.).⁴

One in six people in the EU has a disability that ranges from mild to severe, which makes

some 80 million people in total. These numbers are set to rise as the EU's population ages.⁵

Not all hostility against people with disabilities is criminal. However, intentional and targeted violence, hostility or hate crimes against people with disabilities all have one factor in common: they are motivated by prejudice. Victims are targeted simply because they are disabled, are perceived as disabled, or are associated with a disabled person. Offenders thus convey a particularly humiliating message, as they victimise people for who they are (or are perceived to be), and the victim remains at risk of repeat victimisation and at the same time repeat humiliation.

Hate crime therefore does not only affect individual victims, but damages society as a whole by undermining the basic democratic principles of equality and respect for human dignity.

Everyday reality

"When I'm on the bus ... just normal people. When I stand there or sit there perfectly normally, the normal people say 'The disabled, the disabled,' and it really gets on my nerves, I almost wanted to get up and ask them what they've got against disabled people, but then I didn't have the guts, but I will do next time."

Man with an intellectual disability, Germany, 39 years old⁶

FRA has demonstrated in a number of studies that violence and crimes motivated by racism, xenophobia or homophobia are a daily reality for many people in the EU.⁷ While there is a lack of data on the prevalence of crimes against people with disabilities, FRA research suggests that people with intellectual disabilities or mental health problems are at a particularly high risk of victimisation. Interviews conducted by FRA in nine EU countries paint a picture of discrimination, harassment, bullying and abuse.⁸

Preliminary findings of FRA's current research into violence and hostility against children with disabilities indicate that incidents of verbal, physical, sexual and emotional violence, harassment and abuse are commonplace both at school and in the wider community.⁹



In general, official statistics on disability hate crime are available in only a few EU Member States, for example Croatia, Finland, Netherlands and the United Kingdom.¹⁰ To improve this situation, the OSCE's Office for Democratic Institutions and Human Rights has produced a guide to hate crime data collection and monitoring that provides 'ten practical steps' to improve recording systems, provide a better understanding of the extent of underreporting, and encourage victims to report hate crimes.¹¹

Promising practice

Disability-related harassment and its impact on UK policy

Following a 2011 enquiry by the Equality and Human Rights Commission (EHRC) into disability-related harassment,¹² which demonstrated the high level of harassment and violence against people with disabilities, the UK government took steps to tackle disability hate crime more effectively.

A progress report was published in late 2013, highlighting action already taken and that planned for the future.¹³ One change was an amendment to the Criminal Justice Act raising the minimum sentence for bias-motivated murders of people with disabilities to the same level as that for racially motivated murders. The Law Commission also examined other offences, such as incitement to hatred on the grounds of disability, for which it held consultations with a number of civil society organisations. The Code of Practice for Victims of Crime was reviewed with a view to improving services for persistently harassed victims, and the Crown Prosecution Service updated its disability hate crime action plan. In the area of education, the school inspectorate surveyed bullying and its consequences.

For more information, see the UK government's response and progress update to the EHRC report 'Hidden in Plain Sight', available at:

<https://www.gov.uk/government/publications/government-response-hidden-in-plain-sight-report>

Underreporting

"No, I was simply scared. Because other patients there said that if you complained, you would be treated badly. Yes, by the same orderly. So I just kept my mouth shut."

Man with mental health problems, Latvia, age unknown.¹⁴

Victims of crime from minority groups are often reluctant to report incidents and unable or unwilling to seek redress.¹⁵ In the case of people with disabilities, poor rights awareness and a lack of support structures or accessible complaints mechanisms exacerbate the problem. Incidents of disability hate crime reported to the police or made public by the media are thus only the tip of the iceberg.

According to British research, people with disabilities may decide not to report hate crimes for fear of the possible consequences, concerns they will not be believed, or fear of recrimination.¹⁶ Other reasons often given include the belief the crime may not be regarded as serious enough, or that the complaint would not be believed because of the victim's disability.¹⁷ Furthermore, many of the people FRA interviewed for its research on the situation of people with intellectual disabilities or mental health problems showed low levels of rights awareness or knowledge about filing complaints.¹⁸

Promising practice

Guiding the police when assisting people with disabilities

In Spain, the *Guardia Civil* has developed a specialised guide for police officers to help them provide a better service to people with intellectual disabilities.

For more information, see 'Guía de intervención policial con personas con discapacidad intelectual' available at: <http://eprints.ucm.es/20207/>

If incidents of hate crime are not reported and perpetrators are not held accountable, victims are at a high risk of repeat victimisation and bias-motivated harassment. This can take many forms, from name-calling in the street to mistreatment on public transport, theft in schools, online abuse, threats of violence at

work, or violence and sexual abuse in institutions or by service providers.

The legal framework

The CRPD requires parties to the Convention “to take all legislative, administrative, social, education and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects” (Article 16). It also addresses the need for information and education on how to avoid, recognise and report incidents, the provision of protection services, the monitoring of facilities and programmes by independent authorities, victim support and, finally, the investigation and prosecution of violence and abuse.

At the level of European legislation, hate crimes violate the rights to human dignity and non-discrimination enshrined in the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union. The European Court of Human Rights (ECtHR) has thus obliged states to make the bias motivation behind hate crimes explicit.

In the European Union, hate crime legislation¹⁹ does exist, but only when the crimes are motivated by race, colour, religion, descent or national or ethnic origin. FRA has recommended that legislation adopted at Member State level should cover all forms of bias motivation equally, including disability.²⁰

Dordevic vs. Croatia: Authorities failed to halt escalating violence

In 2012, the European Court of Human Rights examined a complaint by a mother and her disabled son, who had been harassed for more than four years by a group of children and youths living in the neighbourhood. Incidents ranging from name-calling, spitting, yelling, insulting drawings on the pavement and damage to family property occasionally escalated into more serious acts of physical violence against the young man with physical and intellectual disabilities, when for example the man’s hands were burnt with cigarettes or his head banged against a wall. After the applicants’ requests for protection from various authorities met with no response, they

eventually asked the ECtHR to clarify the state’s obligations under the European Convention on Human Rights.

The ECtHR ruled that by failing to act, the Croatian authorities had violated the applicants’ rights under Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to private life), Article 13 (right to effective remedy) and Article 14 (prohibition of discrimination).²¹

For more information, see: ECtHR factsheet ‘Persons with disabilities and the European Convention on Human Rights’, June 2014, available at:

http://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf

In late 2013, EU justice and home affairs ministers stated their resolve to combat hate crime in the EU, inviting Member States to consider extending their criminal legislation to include other bias motivations. Member States were also asked to ensure effective prosecution, facilitate reporting of hate crimes, develop measures to build trust in police and other state institutions, and collect and publish comprehensive and comparable data on hate crime.²²

Recognition of disability hate crime in national law

“[The policeman said] ‘Did you not do it?’ ‘Did you not break your own window? Or chuck paint and eggs at your window?’ You must be joking!! And that’s how they treat you, because you have a learning difficulty. They have no respect for us. And sometimes some police say, ‘you shouldn’t be out here, you should still be locked up.’”

Man with intellectual disability, United Kingdom, 63 years old²³

Legal responses to hate crime differ considerably across the EU. As EU legislation covering bias-related crime is presently restricted to race, colour, religion, descent or national or ethnic origin, it is left to EU Member States to decide whether and which other grounds to cover in criminal law. While many countries have already included sexual orientation or sexual identity in their legislation, this has been more seldom the case with disability in the past.

However, recent changes to national criminal codes show a trend towards including disability as a protected characteristic. As of October 2014, a number of EU Member States explicitly recognise a disability bias motivation in their criminal law, including Austria, Belgium, Croatia, Finland, France, Hungary, Lithuania, Netherlands, Romania, Slovenia, Spain, and the United Kingdom.

Member States have also criminalised public incitement to violence or hatred, known as ‘hate speech’, sometimes but not always including disability. Public incitement is, however, beyond the scope of the present paper, which limits itself to a discussion of crimes committed with a bias motivation.

EU Member States have taken a number of different approaches to penalise hate crime against people with disabilities.

- 1) **Enhanced penalties:** The practice of handing down enhanced penalties stresses the severity of bias-related offences, and clearly separates the hate motivation from the basic offence. For instance, Belgium, Hungary and Slovenia currently use the ‘enhanced penalty’ approach with regard to disability hate crime.

In Belgium, Article 398 of the Criminal Code allows for a prison sentence to be doubled in the case of intentional assault of a person with disability. The increased penalties for hate crimes based on disability are the same as those for hate crimes based on other grounds.

- 2) **Aggravating circumstance:** Although bias motivation can also be defined as an aggravating circumstance, it may be only one among many, with the result that police reports and court proceedings are less likely to consider this motivation alone. The bias element may therefore remain invisible, which increased the victim’s suffering and at the same time reduces the chances that perpetrators will be deterred from committing bias-related offences in the future. For example, Austria, Croatia, Finland, France, Lithuania, the Netherlands, Romania, Spain and the United Kingdom currently use this approach with regard to disability hate crime.

In Spain, committing a crime motivated by the victim’s disability is considered a general aggravating circumstance (Article 22 (4) of the Criminal Code). If one or more general aggravating circumstances are present in a given case, criminal courts have to impose a sentence from the upper half of the penalty range.

In the past, some Member States have sentenced more lightly in cases concerning disabled victims. For example, until 2013 Austria handed down lighter sentences for crimes in which the victim is a defenceless or a “psychologically impaired” person.²⁴

Victim support

The availability of accessible and free victim support services are vital for anyone whose rights have been violated. In its research on victim support in the EU, FRA examined provisions made by the police and victim support services for victims of crime, including those with a disability.²⁵ These range from emergency calls by fax or text message for people with a hearing impairment, sign language interpreting services, easy-read information, making police officers available to visit victims at home, accessible websites and police stations, and guidelines or training for police officers on appropriate treatment of victims with disabilities. The findings show that approximately a third of police services in EU Member States have special measures for victims with a disability, while approximately one quarter of victim support services also have such measures in place. Nonetheless, extra support is most likely to be provided on an ad-hoc basis, and does not always accommodate all disabilities.

FRA Opinions

Addressing disability hate crime in the EU calls for a decisive and coordinated response at all levels, including the criminal justice system.

Acknowledging victims of hate crime

Criminal law provisions relating to hate crime in EU Member States should cover all grounds of

discrimination equally, including disability, as stipulated in Article 21 of the Charter and Article 14 of the European Convention on Human Rights. Merely including a disability bias motivation in a list of aggravating circumstances is neither the most effective way to acknowledge victims nor to ensure public visibility of hate crime. Legislators should consider the introduction of enhanced penalties for disability hate crimes in order to stress the added severity of these offences.²⁶

At EU level, the Framework Decision on Racism and Xenophobia should be replaced by legislation that covers *all* protected grounds.²⁷

Data collection

Legislation should be adopted at both EU and national levels that obliges Member States to collect and publish disaggregated hate crime data.

Official data collection of disability hate crimes should be supplemented by crime victimisation surveys that include questions on bias-motivated crime in order to shed light on the nature and extent of underreporting, the experiences of disabled victims of crime with law enforcement, reasons for not reporting incidents of hate crime, and rights awareness among people with disabilities.²⁸

Investigation and prosecution

National law enforcement agencies and criminal justice systems should be attentive to any indication of bias motivation when investigating and prosecuting crimes. Hate crime incidents should be recorded in detail to assist the identification of specific bias motivations so they can be taken into consideration when investigating and prosecuting hate crimes.²⁹

Encouraging reporting

Victims must be encouraged and enabled to report their experiences to the police. For disabled victims of crime, accessible services are crucial. People with disabilities often decide against reporting incidents because of a sense of fear, shame and guilt. Creating a culture of policing based on transparency, cooperation, and accountability would do much to increase public trust in the police.³⁰

Conclusion

Hate crime against people with disabilities does not only affect individual victims, but as with other forms of hate crime conveys a negative message to an entire group. This paper has cited research by FRA and others showing that people with intellectual disabilities or mental health problems who experience bias-motivated violence suffer from long-term consequences that impede their full integration into society. The paper has also discussed the fact that while hate crime legislation in the EU's Member States has developed over recent years, it still does not fully cover disability.

The final section of the paper suggests measures that could be taken at the national and EU level to improve the situation, for example by ensuring that data on hate crime against people with disabilities is collected regularly and that victims are encouraged to report their experiences to the authorities. Some countries have introduced positive initiatives in this regard, such as training police officers to better understand the particular needs of people with disabilities. It is to be hoped that through these and other measures, it will be possible to combat disability hate crime effectively and sustainably throughout the EU.



- ¹ From interviews conducted during FRA's fieldwork research on people with intellectual disabilities or mental health problems.
- ² FRA (2012), *Choice and Control: the right to independent living*, Luxembourg, Publications Office of the European Union (Publications Office), available at: <http://fra.europa.eu/en/publication/2012/choice-and-control-right-independent-living>.
- ³ For a list of EU Member States that have acceded to the CRPD and its Optional protocol, see: <http://fra.europa.eu/en/node/4424>
- ⁴ United Nations, Convention on the Rights of Persons with disabilities, (CRPD), 13 December 2006.
- ⁵ European Disability Strategy 2010-2012: A renewed Commitment for a Barrier-Free Europe, COM (2010) 636 final, 15.11.2010.
- ⁶ FRA (2012), *Choice and Control: the right to independent living*.
- ⁷ For more information on discrimination and violence suffered by different groups, see FRA research on racism, and related intolerances, people with disabilities, Roma, and LGBT: <http://fra.europa.eu/en/themes>.
- ⁸ FRA (2012), *Choice and Control: the right to independent living*.
- ⁹ For more information on the project, see <http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility>.
- ¹⁰ For information on data collection on other forms of hate crime, see Table 4 in FRA (2012) *Making hate crime visible in the European Union: acknowledging victims' rights*, Publications Office of the European Union, Luxembourg, available at: <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>.
- ¹¹ OSCE/ODIHR (2014), *Hate Crime Data-Collection and Monitoring Mechanisms. A practical Guide*, available at: <http://www.osce.org/odihr/datacollectionguide>.
- ¹² UK, Equality and Human Rights Commission (2011), *Hidden in plain sight – inquiry into disability-related harassment*, p. 59, available at: <http://www.equalityhumanrights.com/publication/hidden-plain-sight-inquiry-disability-related-harassment>
- ¹³ UK, Ministry of Justice and Home Office (2013), *Government response to 'Hidden in Plain Sight'*, available at: <https://www.gov.uk/government/publications/government-response-hidden-in-plain-sight-report>.
- ¹⁴ FRA fieldwork research on the fundamental rights of people with intellectual disabilities and people with mental health problems, unpublished.
- ¹⁵ For more information, see the following FRA reports: *European Union Minorities and Discrimination Survey (EU-MIDIS)*, available at <http://fra.europa.eu/en/publication/2012/eu-midis-main-results-report>, *The situation of Roma in 11 EU Member States*, available at <http://fra.europa.eu/en/publication/2012/situation-roma-11-eu-member-states-survey-results-glance>, *Violence against women: an EU-wide survey*, available at: <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report> and *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, available at: <http://fra.europa.eu/en/publication/2013/discrimination-and-hate-crime-against-jews-eu-member-states-experiences-and>.
- ¹⁶ UK, Scope (2008), *Getting Away with Murder – Disabled people's experiences of hate crime in the UK*
- ¹⁷ Institute for Conflict Research (2009), *Hate Crime against People with Disabilities-a baseline study of experiences in Northern Ireland*, available at: <http://www.iccl.ie/categories/victims-project.html>.
- ¹⁸ FRA (2012), *Choice and Control: the right to independent living*.
- ¹⁹ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008F0913&rom=EN>.
- ²⁰ FRA (2013), *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*, available at: <http://fra.europa.eu/en/opinion/2013/fra-opinion-framework-decision-racism-and-xenophobia-special-attention-rights-victims>.
- ²¹ European Court of Human Rights, *Dordevic v. Croatia*, Application no. 41526/10, 24 July 2012, Strasbourg, available at: European [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-112322#{"itemid":\["001-112322"\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-112322#{)

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- ²² Council conclusions on combating hate crime in the European Union, available at: http://www.google.at/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.consilium.europa.eu%2Fuedocs%2Fcms_data%2Fdocs%2Fpress_data%2Fen%2Fjha%2F139949.pdf&ei=dTsRVamOC4zlariyqrAB&usq=AFQjCNEJ-fwlsRXVCh-o1BAoobxbh61wuA&bvm=bv.89184060,d.d2s
- ²³ FRA (2012), *Choice and Control: the right to independent living*.
- ²⁴ Austria, Parliament (Parlament) (2013), Government Bill – Federal law to change the criminal code and the criminal procedures act 1976 to improve the protection of sexual integrity and self-determination, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02319/fname_303304.pdf.
- ²⁵ FRA (2015), *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg, Publications Office, available at: <http://fra.europa.eu/en/publication/2014/victims-crime-eu-extent-and-nature-support-victims>.
- ²⁶ FRA (2012), *Making hate crime visible in the European Union: acknowledging victims' rights*, Luxembourg, Publications Office, page 11, available at: <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>.
- ²⁷ FRA (2013), *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*, available at: <http://fra.europa.eu/en/opinion/2013/fra-opinion-framework-decision-racism-and-xenophobia-special-attention-rights-victims>.
- ²⁸ FRA (2012), *Making hate crime visible in the European Union: acknowledging victims' rights*, page 11.
- ²⁹ Ibid.
- ³⁰ Ibid.

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