

FRA brief: Crimes motivated by hatred and prejudice in the EU

The situation on the ground according to FRA data

Despite EU Member States' efforts to combat discrimination and intolerance, data collected by FRA consistently show that violence and crimes motivated by racism, xenophobia, religious intolerance or by a person's disability, sexual orientation or gender identity – often referred to as 'hate crime' – are a daily reality throughout the EU.

FRA survey findings show that:

- between 16 % and 32 % of Roma in the EU-MIDIS survey (23,500 respondents in total from various ethnic minority and immigrant groups in the EU-27) were victims of assault, threat or serious harassment with a perceived racist motive in the 12 months leading up to the survey, when considering the EU Member States placed in the 'top ten' with the highest rates of such crime;¹
- between 19 % and 32 % of persons of African origin in the EU-MIDIS survey were victims of assault, threat or serious harassment with a perceived racist motive in the 12 months leading up to the survey, when considering the EU Member States placed in the 'top ten' with the highest rates of such crime;
- a quarter of the 93,000 LGBT people surveyed in the EU-27 and Croatia experienced violence in the five years preceding the survey, with the figure rising to one in three for transgender people;²
- up to a third of Jewish people in another survey (5,900 respondents in total in nine EU Member States) personally experienced verbal or physical antisemitic violence.³

1 *EU-MIDIS: European Union Minorities and Discrimination Survey*, available at: <http://fra.europa.eu/en/survey/2012/eu-midis-european-union-minorities-and-discrimination-survey>.

2 The FRA EU-LGBT survey results will be published in May 2013.

3 The FRA survey results on Jewish people's perceptions and experiences of antisemitism will be published in the autumn of 2013.

FRA survey findings also show that victims and witnesses of such crimes often do not report them, whether to law enforcement agencies, the criminal justice system, non-governmental organisations (NGOs) or victim support groups. Specifically, the survey findings show that:

- between 57 % and 74 % of incidents of assault or threat suffered by members of minority or migrant groups in the EU were not reported to the police by their victims (EU-MIDIS);
- between 75 % and 90 % of incidents of serious harassment were not reported to the police (EU-MIDIS);
- eight out of 10 LGBT persons in the EU and Croatia who were victims of crimes motivated by bias or prejudice did not report them to the police;
- three quarters of those Jewish people who said they were victims of antisemitic harassment did not report this to the police or any other organisation.

The main reasons for non-reporting among Jews, Roma, persons of African origin or LGBT persons include that "nothing would change" as a result of reporting incidents, that "such incidents happen all the time" or that they "did not trust the police".

The legal framework

Victims of crimes motivated by bias and prejudice are often unable or unwilling to seek redress against perpetrators. As a result, many of these crimes remain unreported, unprosecuted and, therefore, invisible. In such cases, EU Member States may not be upholding their obligations towards victims of crime. In addition, such crimes affect the extent to which people in the EU can enjoy the fulfilment of their fundamental rights to human dignity and non-discrimination.

The European Court of Human Rights (ECtHR) has ruled that states are obliged to 'unmask' the motivation behind racist crimes or crimes committed because of the religious belief or political conviction of the victim. The ECtHR puts such emphasis on the bias motivations underlying hate crime

because offenders who victimise persons for what they are (or are perceived to be) convey a particularly humiliating message. The offender demonstrates that, because a certain characteristic can be attributed to a victim, the victim's rights matter less.

The message conveyed by the offender sends a signal not only to the individual victim, but also to other persons who feel that they are at risk of being labelled and treated like the victim. Moreover, the bias-motivated offence, when understood as a statement about persons who (are thought to) bear a certain characteristics, has the potential to incite followers. In this sense, the impact of hate crime reaches far beyond the individual offender and the individual victim, creating social divides and rifts.

In parallel to the standards set by the ECtHR, EU legislation should guide Member States. Currently, legal and policy responses to combating hate crime differ across Member States, as FRA has documented in its report on *Making hate crime visible in the European Union: acknowledging victims' rights*. The Council's Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law allows for this diversity, leaving options open for how law makers tackle hate crime in their criminal codes.

The framework decision is restricted to race, colour, religion, descent or national or ethnic origin. Many EU Member States have, nonetheless, opted to include other grounds in criminal definitions protecting against discrimination, such as antisemitism, sexual orientation or disability. In the spirit of non-discrimination, it is preferable to widen criminal law provisions to include equally all grounds of discrimination covered by Article 14 of the European Convention on Human Rights (ECHR) or Article 21 of the Charter of Fundamental Rights of the European Union.

Article 8 of the 2008 framework decision stipulates that investigations into or prosecution of crimes shall not depend on a victim's report or accusation. Unless victims are confident, however, that the response of the criminal justice system will be sensitive to their rights and needs they will not be likely to report such incidents to the police. The effectiveness of the criminal justice system therefore depends on victims being encouraged to report incidents to the police and support prosecution by giving an account of what they experienced. It is thus important to actively promote policies and practices that facilitate hate crime reporting.

The 2008 framework decision pays little attention to the rights of victims to support before, during or after criminal proceedings. Furthermore, Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings – which also relates to victims of hate crime – does not go beyond asking EU Member States to promote the involvement of victim support systems in its Article 13. In contrast, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing

and combating trafficking in human beings and protecting its victims clearly and unambiguously obliges EU Member States to take the necessary measures to ensure that assistance and support are provided to victims.

Gaps in data collection

Variation in provisions of national legislation in EU Member States relating to hate crime has a direct effect on how law enforcement agencies and criminal justice systems in the EU deal with this type of criminality. Narrow legal definitions of what could fall under the category of 'hate crime', for instance, can lead to under-recording of incidents; this translates into low numbers of prosecutions, thereby affording victims fewer opportunities for redress. Moreover, EU Member States that have mechanisms enabling victims to report incidents facilitate the work of the criminal justice system to prosecute them.

Few EU Member States, however, have mechanisms in place to record hate crime comprehensively. Such mechanisms can produce valuable data on hate crime that can assist policy makers in tackling hate crime more efficiently and effectively. In contrast, EU Member States with limited data collection – where few incidents are reported, recorded and therefore prosecuted – can be said to be failing in their duty to tackle hate crime.

Currently, four EU Member States operate comprehensive mechanisms of data collection, where a range of bias motivations, types of crimes and characteristics of incidents are recorded and with the data always being published: Finland, Netherlands, Sweden and the United Kingdom.

Ten EU Member States operate good mechanisms of data collection, where a range of bias motivations are recorded and data are generally published: Austria, Belgium, the Czech Republic, Denmark, France, Germany, Lithuania, Poland, Slovakia and Spain.

Thirteen EU Member States operate limited mechanisms of data collection, where few incidents and a narrow range of bias motivations are recorded, and these data are often not published: Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Romania and Slovenia.

Across the 27 EU Member States, official data are recorded most often for racist/xenophobic crime (25 Member States), followed by antisemitic crime (12), crime motivated by a person's sexual orientation (8), extremist crime (7), religiously motivated crime (6) and Islamophobic or anti-Muslim crime (6). Four Member States each record data on crime motivated by a person's gender identity, Roma identity or because of a person having a disability.

In this light, official criminal justice data that are currently recorded in the EU provide only a patchy picture of the prevalence and nature of this type of crime. If systems to

record hate crime are inadequate, EU Member States may be unable to meet the obligations of the national and international legal instruments to which they are party and afford people the protection they are guaranteed.

Ways forward

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

It also entails expanding the scope of official data collection on hate crime, both to make hate crime visible across the EU and to ensure that EU Member States effectively respond to hate crime as an abuse of fundamental rights. Action therefore needs to be taken at three levels.

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

FRA opinions

These are reproduced from the FRA report *Making hate crime visible in the European Union: acknowledging victims' rights*.

Acknowledging victims of hate crime

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

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

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

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

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

Ensuring effective investigation and prosecution

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

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

Convicting hate crime offenders

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

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

Making hate crime visible

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

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

Relevant FRA publications

FRA (2009), *EU-MIDIS Data in Focus report 1: The Roma*, Luxembourg, Publications Office of the European Union (Publications Office).

FRA (2010a), *EU-MIDIS – European Union minorities and discrimination survey: Main results report*, Luxembourg, Publications Office.

FRA (2010b), *EU-MIDIS Data in Focus report 4: Police stops and minorities*, Luxembourg, Publications Office.

FRA (2011), *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States*, Luxembourg, Publications Office.

FRA (2012a), *Making hate crime visible in the European Union: acknowledging victims' rights*, Luxembourg, Publications Office.

FRA (2012b), *EU-MIDIS Data in Focus report 6: Minorities as victims of crime*, Luxembourg, Publications Office.

FRA (2012c), *Antisemitism. Summary overview of the situation in the European Union 2001–2011*, Working Paper, June 2012, available at: http://fra.europa.eu/fraWebsite/attachments/FRA-2012-Antisemitism-update-2011_EN.pdf.

FRA (2012d), *Fundamental rights: challenges and achievements in 2011*, Luxembourg, Publications Office.

Further information:

For FRA's reports on hate crime – *Making hate crime visible in the European Union: acknowledging victims' rights* and *EU-MIDIS Data in Focus 6: Minorities as victims of crime* – see: <http://fra.europa.eu/en/publications-and-resources>

An overview of FRA activities on racism and related intolerances is available at: <http://fra.europa.eu/en/theme/racism-related-intolerances>

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