



## Racist violence and support to victims

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This fact sheet provides a state of play on racist violence in the EU and a conceptual framework to 'hate crime'. It also explains the human rights and EU legal framework on racist violence and support to victims and how best to use these legal provisions. Finally, it examines ways forward in tackling racist violence and providing support to victims, and gives examples of good practice in these areas.

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## State of play on racist violence in the EU

Every day ethnic and religious minority groups face racist crime and violence. Often this reality is at worst denied, and at best underestimated. The most pervasive racist violence in Europe is also perhaps the most banal and unorganised, however that is not to suggest that serious and organised racist crime does not exist. There are many examples of racist crime both existing and emerging, targeting communities including migrants, and Roma and Travellers. Despite the lack of data and information on racist crime and violence there is no doubt that they are serious concerns in the European context. ENAR's 2007 Shadow Reports on racism from a number of countries report an increase in racist violence and crime including Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Greece, Ireland, Italy, Lithuania, Luxembourg and the UK.<sup>1</sup>

The EU Fundamental Rights Agency's 2009 Annual Report states that there has been an overall increase in racist crime during the period 2000 to 2007<sup>2</sup>. FRA's recent EU-Midis survey of minorities' experiences of discrimination shows that racist crime continues to be under-reported, under-recorded and under-prosecuted by law enforcement and criminal justice agencies. One in five Roma and Sub-Saharan African respondents indicated that they had been the victim of a racially/ethnically motivated assault, threat or harassment in the last 12 months.<sup>3</sup> Similarly, ODIHR's 2007 report on hate crime in the OSCE region finds a continued pattern of attacks on visibly identifiable groups, often intended to degrade or humiliate the victims.<sup>4</sup>

Despite problems of data collection, some generalisations can be noted with regard to the nature of victims of racial violence within the EU. Some groups are particularly vulnerable to racist violence and crime. These include asylum seekers, refugees and undocumented workers which are often used as scapegoats for a country's political, social and economic situation and the tone of the political debate on immigration in many EU member states is a concern in this respect. In addition, the temporary status of asylum seekers, refugees and the lack of status of undocumented workers makes them less likely to report victimisation. Anti-Semitic violence continues to be a reality in many member states, whether it is physical violence, vandalism and damage of property. While manifestations of anti-Semitism violence are often linked to neo-Nazi and extreme right activities, other reasons are more complex and linked to the instrumentalisation of the Middle East conflict. Muslim communities are since September 11 and in the aftermath of the London bombings a key target of racial violence. Even if mechanisms of unofficial data collection on Islamophobic incidents are in their infancy across the EU, monitoring mechanisms by NGOs confirm increasing cases of verbal and physical assaults against Muslims, in particular targeting Muslim women wearing headscarves; and cases of vandalism against Mosques or desecration of Muslim graves. The Roma experience racist violence and crime throughout the EU, but their victimisation is noted most often in central and eastern Europe and in southern European member states where there is a sizeable Roma population.

Perpetrators of racist violence and crime vary. Some of those identified by ENAR's shadow reports include police, Neo-Nazi groups and members, men, youth and young men. Another

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<sup>1</sup> ENAR, *2007 Shadow report on racism in Europe* (2008)

<sup>2</sup> European Fundamental Rights Agency, *Annual report 2009*

<sup>3</sup> European Fundamental Rights Agency, *European Union Minorities and Discrimination Survey* (2008)

<sup>4</sup> Office for Democratic Institutions and Human Rights (OSCE), *Hate crimes in the OSCE region - incidents and responses. Annual Report for 2007*(2008)

group of offenders included private security personnel, notably those employed in the entertainment industry.<sup>5</sup>

### **Challenges in data collection**

Current issues regarding data collection limit the assessment of the impact of legislation in the area of racist crime and the effective identification of key problematic areas and appropriate responses. The existence and capacity of relevant data collection systems as well as the availability of data varies considerably from one EU member state to another. A first, general problem is that in most EU member states there is no data collection related to a person's ethnicity and/or religion making it difficult to collect data on racist violence. In addition, where there is no legislation defining racist crime as an aggravating factor, crime statistics do not mention whether the crime had a bias element. Even when hate crimes are registered, hate incidents with low levels of violence are often not reported to official channels and are therefore rarely recorded.<sup>6</sup> Further, the recording process is also problematic due to a lack of awareness of some police as to what is racism and an unwillingness sometimes to record a crime as racist.

The accuracy of data also needs to be considered given the general problem of underreporting. Underreporting occurs for a number of reasons, including the vulnerability of the victims or a lack of faith in the criminal justice system and/or the police. There has not been a consistent or comprehensive approach to addressing this issue across Member States.

### **Responses in the EU member states**

There are a range of laws designed to combat at least some aspects of racist crime in most EU Member States. However, it should be noted that there are very different approaches to recognising racism as a crime and the scope of national legislation varies greatly. In some Member States for example, legislation refers only to extremism, e.g. in Germany while in the UK for example, police use the following definition of a racist incident: "A racist incident is any incident which is perceived to be racist by the victim or any other person"<sup>7</sup>. There is increasing recognition given to racism as an aggravating circumstance with a number of countries' legislation now allowing for aggravating sentencing, including for example in the Czech Republic, Finland and Latvia.<sup>8</sup> Regrettably, the effectiveness of most laws to address racist crime comes into question across EU Member States. Where a law might exist, the infrastructure and political will to enable and ensure effective implementation of the law does not necessarily exist.

The response from police to racism as a crime varies within and between countries. In some instances, there has been a positive response including the development of measures at an institutional level to develop organisational capacity to measure and combat racism as a crime through data collection, awareness raising and police training programmes. Police training programmes have been developed for example in Germany, Greece and Ireland amongst others. In other instances, however, underreporting remains an issue and often police may not record or recognise the racist aspect of a crime. Indeed, reports by ENAR members make reference to situations where the police themselves or others in authority may be guilty of racism and evidence not only a lack of support but times when victims became the subject of investigation when reporting their attacks or made to feel that the harassment is self provoked given that a

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<sup>5</sup> ENAR, *2007 Shadow Report on racism in Europe* (2008)

<sup>6</sup> Office for Democratic Institutions and Human Rights (OSCE), *Hate crimes in the OSCE region - incidents and responses. Annual Report for 2007* (2008)

<sup>7</sup> Crown Prosecution Service, *Racist and Religious Monitoring, Annual Report 2006-2007* (December 2007)

<sup>8</sup> ENAR, *2007 Shadow Report on racism in Europe* (2008)

failure to integrate causes anger and frustration in others.<sup>9</sup> FRA's report on policing racist crime and violence finds that overall there is a general lack of a comprehensive policing response to racist crime across most member states, with only a minority having what can be considered as "good practices" in this area.<sup>10</sup>

### Forms of racist violence

- **Harassment and violence:** Racist violence illustrates the extent to which discrimination, dislike or hatred towards others can result in substantial harm and even loss of life. Physical violence and verbal harassment are the most recognised forms of racist violence. This includes public insults, threats, and incitement to racial violence and hatred, as well as assault, murder, or property damage, such as arson, desecration or vandalism. Sporting events are particularly prone to racist, anti-Semitic or xenophobic incidents, especially in the world of football. These include racist chanting and banners, Nazi salutes, racist insults and vicious hate-motivated physical assaults before, during, and after matches.
- **Hate speech:** This area is one of the most difficult to tackle as perpetrators hide behind their right to express themselves as a license to degrade others. It is also important to recognise that hate speech, especially if it is consistent, is just as harmful and damaging as a physical attack. In some cases even more so as having to deal with emotional pain increases the stress of the individual and as a consequence can result in the breakdown of the family unit. Additionally, the use of racist language is often a red flag indicating potential escalation to physical attacks, as the language contributes to the devaluing of groups as less than human and therefore acceptable to harm.
- **Racism in the media:** The media continues to have a major influence on the perceptions of minority communities. While media reports have gone some way to raising awareness of racism and racist incidents, there are too often occurrences of biased and inaccurate reporting which serves only to scapegoat the minority community and scaremonger within the majority. In addition, with the rise of new technology comes new ways for groups and individuals to express their prejudices and racism. The inability to effectively police websites has led to a proliferation of racism and hate speech easily accessed by all on the web. There is widespread hate discourse in millions of fora linked to specific causes, events and specifically media outlets. Even if there is some degree of monitoring, hateful or borderline comments nevertheless make their way through the main media and are accessible to a vast number of readers, giving the impression that hate speech is acceptable. In addition, there is a rising movement of neo-Nazi and fascist groups using internet to promote racism/xenophobia among specific audiences.
- **Racism in politics:** This can be particularly damaging as the figures of the political arena set the tone and standard for a country as a whole. With the acceptance and promotion of racism by those who are meant to represent the feelings and beliefs of the "common man", there is a direct attack on the cohesion of a community. Further it undermines the faith of target groups in the ability and willingness of the state to protect them. These beliefs being propagated by politicians can also lead to a general belief that racist attacks and violence are acceptable and may even be condoned or rewarded. Additionally, it threatens to drastically undermine any legislation or protection laws and render them ineffective in practice. As with

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<sup>9</sup> See ENAR, *Combating racist crime and violence: testimonies and advocacy strategies* (2009)

<sup>10</sup> EU Fundamental Rights Agency, *Policing racist crime and violence - A comparative analysis* (2005)

verbal harassment in society, the occurrence of such speech at this level may often go unchallenged.

- **The impact on individuals, families, communities and society:** When individuals experience racism there is a ripple effect; not only does the individual have to deal with the hurt and isolation but everyone who shares that person's identity becomes a potential target. This community then has a shared fear and sometimes feel they are vulnerable to harassment and violence because of their identity. On a wider scale this serves to isolate and polarise groups creating tensions within society. The feeling of isolation also reinforces the sense of victimisation at the time of the incidents and afterwards. Many times, attacks take place without witness, but what hurts even more is the fact that, when there are people around, they usually do not intervene. Victims feel that they have to deal with their fate completely by themselves, without support available because society in general seems to be indifferent to their experiences.

## Concepts and definitions

### Definitions of 'hate crime' and 'racist violence'

"Hate crime" is a broad-based concept which encompasses race/ethnicity/religion, as well as gender, disability and sexual orientation. This approach is increasingly being adopted by member states and there have been recent moves in some jurisdictions to punish racist crime and violence under the generic heading of 'hate crime'. A working definition on hate crime was developed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), with input from law enforcement experts. This definition was designed to take national differences into account in terms of legislation, resources, approach and needs, and thus allows each state to amend the definition as it sees fit. Hence, a hate crime can be defined as:

(A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership of a group as defined in Part B.

(B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.<sup>11</sup>

In addition, ODIHR's 2009 handbook on hate crime laws notes that hate crimes are "criminal acts committed with a bias motive". The second element means that that the perpetrator intentionally chose the target of the crime because of some protected characteristic, i.e. a characteristic shared by a group such as "race", language, religion, ethnicity, etc.<sup>12</sup>

Each member state's criminal law or penal code includes definitions of prohibited actions that constitute "violence". In most EU member states, however, legal definitions of violence are limited in the sense that they do not always include reference to the racist motivation. Most jurisdictions do not have a definitive legal classification for racist violence. The European Monitoring Centre on Racism and Xenophobia (EUMC) (which preceded the European Union Agency for Fundamental Rights) reflects the variety of interpretation of "racist violence" amongst member states through its analysis of the term. Although there may be much disparity between

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<sup>11</sup> For more information, see [www.osce.org/odihr/20052.html](http://www.osce.org/odihr/20052.html)

<sup>12</sup> Office for Democratic Institutions and Human Rights (OSCE), *Hate crime laws - A practical guide* (2009)

individual member states, the EUMC has stated that NGOs and social scientists usually define racist violence as “racially motivated criminal acts against the person and/or property, and include public insults and defamation, threats, and incitement to racial violence, hatred or discrimination, etc.”<sup>13</sup>

In an analysis of whether an incident can be perceived as a racially motivated crime, generally speaking the NGO best practice experience will use the perception of the victim as the guiding indicator. In 1999, an inquiry in the United Kingdom headed by Sir William MacPherson examined the original Metropolitan police investigation into the murder of black British teenager, Stephen Lawrence. The report states that “A racist incident is any incident which is perceived to be racist by the victim or any other person”.<sup>14</sup>

### **Conceptualising hate crime from a victim-centred approach, by Paul Iganski**

The UK Home Office states on its website that “Hate crime is any criminal offence committed against a person or property that is motivated by an *offender’s hatred* (emphasis added) of someone because of their race, colour, ethnic origin, nationality or national origins, religion, gender, or gender identity, sexual orientation, disability.”<sup>15</sup> As with all conceptual labels though, the words ‘hate’, or ‘hatred’, do not mean very much until they are defined. Compared with ‘anger’, which is often seen as a temporary emotional state, ‘hatred’ can be regarded as a persistent state of mind driving aggressive impulses. Hence while we might think in terms of the heat of anger, by contrast we might think of ‘cold hatred’: not a short-lived emotional condition, but an enduring disposition.

There is a problem though with thinking about the motivating impulses of hate crime offenders in this way. While hate crimes involve expressed animus toward some aspect of the victim’s identity, with offenders commonly acting out the bigotry and prejudice that are intricately woven into the social fabric, other impulses and motivations than ‘hate’ are often at work, such as a sense of grievance, a desire for retaliation, and sometimes just the fun of it.

Looking deep into offenders’ souls for whether ‘hate’ is at work arguably does not bring us close to the lived reality of ‘hate crime’ as experienced by victims. While ‘hate crime’ victims are subject to a range of incidents that occur in interpersonal offending more widely, there is a common denominator in that ‘hate crimes’ hurt more than the same types of crimes where offenders are acting on other impulses.

The notion that hate crimes inflict greater harms upon their victims provides a fundamental dimension in what is understood by the term ‘hate crime’. While all crime hurts in one way or another, the very essence of a hate crime is that it hurts more than a parallel crime. It is clear that individual victims suffer distinct harms compared with victims of similar crimes that are not motivated or aggravated by an offender’s bigotry, bias or prejudice. In case of racist incidents, evidence from the British Crime Survey shows that higher proportions of victims in incidents believed to be racially motivated, compared with victims of other comparable crimes, reported feelings of shock, fear, depression, anxiety, panic attacks, loss of confidence, vulnerability, difficulty sleeping and crying. And the consequences of hate crime can spread well beyond the victimized individual. Hate crimes can terrorise communities. Other people who share the

<sup>13</sup> See EU Fundamental Rights Agency, *Racist violence in 15 EU member states* (2005)

<sup>14</sup> For more information, see [www.archive.official-documents.co.uk/document/cm42/4262/4262.htm](http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm)

<sup>15</sup> <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/hate-crime/>

victim's identity and live in the neighbourhood - and even beyond - and who hear about the crime, are likely to be fearful that they could be targeted too. A similar sense of fear can be spread amongst other communities who are commonly victims of hate crime. More diffusely, each act of hate crime also brings particular societal-wide consequences: hate crimes offend against a respect for, and a commitment to, diversity.

Each act of hate crime therefore inflicts numerous hurts and involves many victims. Understanding the greater hurts involved not only provides the justification for the greater punishment of hate crime offenders, it is also vitally important to inform effective intervention and support with victims and victimised communities.

## The legal and human rights framework on racist violence and support to victims

### a. Human rights framework

- **United Nations**

The **International Covenant on Civil and Political Rights (ICCPR)** requires governments to prohibit by law any "national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (article 20). The **Convention on the Elimination of Racial Discrimination (CERD)** states that government policies based on racial superiority or hatred violate fundamental human rights, endanger friendly relations among peoples, co-operation among nations, and international peace and security. It thus outlaws racism at a horizontal level from the state (for example from the police or the justice system) towards its citizens as well as at a vertical level between citizens. Article 4 of the CERD obliges States to adopt "immediate and positive measures" to combat racism. It requires states to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof". The relevant Committee for this Convention encourages the passing of laws which punish the dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination including racist propaganda encouraging violence, as well as acts of violence and assistance to racist activities. Under article 14 individuals may lodge complaints to the committee on their relevant country. State parties who are signatories to the ICCPR and the CERD are obliged to create specific criminal legislation directed at bias-motivated conduct including brutality and violence.

The United Nations **Declaration of basic principles of justice for victims of crime and abuse of power** was adopted in 1985 and recommends measures to be taken on behalf of victims of crime at the international, regional, and national levels to improve access to justice and fair treatment, assistance to victims, restitution and compensation. It also notes that its provisions will be applicable to all, without any distinction such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability (article 3) and that in providing assistance to victims, particular attention should be paid to these groups 'with special needs' (article 17).

- **European Convention for the Protection of Human Rights (ECHR)**

Rights with particular significance in the fight against racist violence include the right to be free from torture or inhuman or degrading treatment or punishment (article 3). Article 8 states that everyone has the right to respect for his private and family life, his home and correspondence. Article 10 holds a particular significance as the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority. The right to freedom of expression is not an absolute right, which means that it is restricted by certain duties and responsibilities. Such limitations justify the intervention of public authorities to prevent crime and protect public safety or the rights of others. The European Court of Human Rights has frequently found restrictions on freedom of speech in relation to racist activity to be justified because of the effects of such activity on a democratic society and the rights of those who suffer because of such activity.

Article 14 articulates equal protection norms defined in a non-exhaustive list including racial, religious, gender, linguistic, political and other discrimination grounds. Any claim brought under Article 14 must be linked to a right or freedom guaranteed by another article in the convention. Article 14 is significant in light of violence at the hands of state agents. State authorities have a duty to take all reasonable steps to establish whether any racist motivation was involved in the circumstances surrounding a crime. A failure to recognise and efficiently handle the difference in the way in which racist situations essentially differ from those without racist bias may meet the requisite threshold for unjustified treatment irreconcilable with Article 14. Unfortunately the reality is that article 14 is not evoked as frequently as it should be if it were to adequately reflect the situation of racist violence in Europe. Frequently the Court does not determine whether there has been a violation of Article 14 if it has already considered that there has been a violation of the substantive right pleaded in conjunction with Article 14, rather it is the practice of the Court to consider first if there has been a violation under the substantive article alone.<sup>16</sup>

- **European Convention on Cyber Crime**

As the explanatory report of the Council of Europe's Convention on Cyber Crime states, the rise of internet based technology challenges existing legal concepts. Information flows more easily around the world and as such borders are no longer boundaries to this flow. Those who wish to disseminate racist and xenophobic material are increasingly located in places other than where their acts produce their effects. As domestic laws are generally confined to a specific territory, it is necessary to turn to international law and adequate international legal instruments than can resonate beyond territorial boundaries.

The Convention on Cyber crime was therefore drawn up by the Council of Europe in Strasbourg with the active participation of the Council of Europe's observer states Canada, Japan and USA. The Convention entered into force on 1 July 2004. On 1 March 2006 the Additional Protocol to the Convention on Cyber crime came into force. Those States that have ratified the additional protocol are required to criminalise the dissemination of racist and xenophobic material through computer systems, as well as of racist and xenophobic-motivated threats and insults.

- **European Convention on the Compensation of Victims of Violent Crimes**

This Convention was drawn up by the Council of Europe in 1983 and entered into force in 1988. It contains minimum provisions for compensation to crime victims from the state, in cases where the offender is not identified or has no resources.

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<sup>16</sup> See ENAR, *European Strategies to combat racism and xenophobia as a crime* (2003), Chapter C



## b. EU legal framework

- **Framework Decision on combating racism and xenophobia**<sup>17</sup>

With the rise of new technologies and greater information sharing in the early nineteen nineties there had been clear evidence of difficulties arising within the EU internal market linked to differences in the substance of EU member states' criminal law provisions on racism and xenophobia. Inconsistencies with regard to the laws of member states led to scenarios whereby, for example, racist literature could be published in a country where it was not an offence to do so with the objective of dissemination in a state where it was an offence. The initial response to such cases was for the European Council to issue a "Joint Action concerning action to combat racism and xenophobia" in 1996<sup>18</sup>, which had the objective of encouraging judicial cooperation in relation to a range of offences linked to racism and xenophobia. However, this measure was particularly weak because the European Court of Justice has no jurisdiction to interpret a Joint Action. It also failed to specifically address the distribution of racist material via the internet.

The Framework Decision on combating racism and xenophobia was proposed in 2001 with the aim of remedying some of these shortcomings. The 1999 Treaty of Amsterdam enabled more comprehensive measures thus allowing such proposals to evolve into stronger instruments, notably with Article 29 to the EU Treaty, which charged the Union with the objective of "preventing and combating racism and xenophobia in the field of 'police and judicial cooperation in criminal matters". Although generally matters of criminal law do not fall within the European Community's remit, the Council of the European Union can determine minimum rules relating to the elements of criminal acts and their accompanying penalties. As such "Framework Decisions" are binding on member states as to the result to be achieved but leave it up to national authorities to decide on the forms and methods through which to achieve these results.

The Framework Decision on combating racism and xenophobia provides an estimation of the laws and regulations which member states should adhere to regarding offences involving racism and xenophobia. The decision advocates that such behaviour must constitute a criminal offence in all member states and be punishable by effective, proportionate and dissuasive penalties. The main focus of the Decision is on the prevention of public incitement to violence and hatred against persons on the grounds of racism and xenophobia. It aims at harmonising the criminality of racist conduct throughout all the countries of the EU. Provided that member states adopt and implement it fully, it will ensure that the various national anti-racist laws are sufficiently comprehensive and severe and that effective judicial cooperation can be developed EU-wide.

- **Framework Decision on the standing of victims in criminal proceedings**<sup>19</sup>

This Framework Decision, adopted in 2001, aims to harmonise the protection of victims of crimes across the EU member states and provides minimum standards in this area. It does not relate specifically to victims of racist crime, rather it covers all victims of crime, but it does specifically mention vulnerable victims of crime. It requires EU member states to improve the rights of victims, such as the right to be treated with due respect for their dignity, the right to receive information, communication safeguards, the right to protection during the proceedings - in

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<sup>17</sup> 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/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF>

<sup>18</sup> [1996] OJ L185/5

<sup>19</sup> Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings

particular for the most vulnerable victims, and the right to be awarded compensation in criminal proceedings. In addition, the Framework Decision requires member states to work with victim support organisations and to provide training for legal practitioners and police officers who work with victims.

The European Commission published a report in 2009 assessing the implementation of this framework decision which shows there is a lack of implementation of the Decision by EU member states.<sup>20</sup> The report shows that:

- Transposition has not yet been completed and some Member States are continuing to adapt their legislation and codes of criminal procedure to bring them into line with the Framework Decision;
- A number of Member States have stated that they have fulfilled their obligations through non-binding acts such as guidelines on best practices, charters and instructions to public prosecutors. The Commission questions the extent to which a non-binding measure can give rise to a satisfactory result for victims since such instruments are not always complied with in full;
- Victim support organisations are satisfied with the content of the Framework Decision and consider it to be a good start, but they believe that the work must be continued, particularly by granting them the funds needed to carry out their tasks. Some Member States do not guarantee funds to victim support organisations. There would also appear to be a discrepancy between the provision made in national legislation and what actually happens in practice.

- **Directive relating to compensation to crime victims<sup>21</sup>**

The EU Directive relating to compensation to crime victims, adopted in 2004, ensures that each EU member state has a national scheme in place which guarantees fair and appropriate compensation to victims of crime. The definitions of what compensation should be paid out to each victim are left to member states' discretion, provided that it is fair and appropriate. The directive also ensures that compensation is easily accessible in practice regardless of where in the EU a person becomes the victim of a crime by creating a system for cooperation between national authorities, which is operational since 1 January 2006.

### **c. Opportunities and limitations of legal protection**

- **Framework Decision on combating racism and xenophobia**

The Framework Decision is fundamental in that it has the potential to complement and influence current EU standards - but it remains only a first legal step, not the end of the European legislative process in the area. In addition, the Council of the European Union reduced the range of offences addressed by the Decision, thus limiting its potential impact. It is therefore important for anti-racist civil society to continue to campaign and lobby on a national and European level for the highest attainable standards of protection and to ensure that weaknesses can be strengthened in the national transposition of the legislation. As the Decision establishes minimum common standards, nothing prevents member states from adopting higher level of protection in the course of the two-year implementation period following the official adoption of the Decision on 28 November 2008. NGOs will have a crucial role to play in lobbying their

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<sup>20</sup> See

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/549&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>21</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

respective national governments to transpose into national law and implement the Decision in the most consistent and effective way to ensure the protection of minority people against potential hate crimes - and even to offer protection beyond the minimum Decision requirements.

In a second phase, NGOs will have also a key responsibility in monitoring the transposition in national law and implementation of the Decision, and in reporting failure or success to umbrella organisations like ENAR that will provide transversal advocacy and lobbying on these issues at European level. Cooperation and exchange of information between national NGOs and pan-European networks such as ENAR will be vital to the development of a coordinated answer based on sound monitoring and informed analysis of the national transposition and implementation process of the Decision with the view to further level up those European standards in the future.

As mentioned above, the initial proposal was gradually watered down during the years of negotiations. Much of the content of the original proposal has been removed, and many escape clauses have been introduced to allow member states to circumnavigate their responsibilities. Some of the limitations of the Decision include:

- **Types of activities targeted:** The Framework Decision does not provide an accurate definition of the types of racist and xenophobic activities and or behaviours which it seeks to target.
- **Public incitement/public dissemination:** The scope of public incitement/dissemination is not addressed in the Framework Decision. Article 1 criminalises public forms of incitement/dissemination to hatred without providing a definition of the public sphere. As a result, it is difficult to identify the type of conduct which is the object of criminalisation in the absence of such a definition. In addition to this, the Decision does not address activities and behaviours which constitute a threat for private individuals.
- **Public figures and representatives of state authority:** The Decision does not address punishment of public figures and representatives of state authorities who engage in racist and xenophobic activities and behaviours.
- **Non-regression clause:** The Decision does not contain a non-regression clause. Such a clause is necessary to ensure that member states whose legislation provides for a higher level of protection abide by the standard of their obligations and do not fall below these.
- **Provision on international obligations:** The Decision does not include a provision reminding member states of their international obligations concerning the criminalisation of racist and xenophobic activities and behaviours. Such a provision would highlight the existing binding obligations of the international community on combating racism and xenophobia in international standards such as those contained in CERD.
- **Monitoring the implementation:** The Decision does not include a provision establishing a mechanism to monitor the implementation of the Framework Decision by member states.
- **Specific omissions:** The Decision does not address cyber hatred or racist violence targeting particularly vulnerable groups, such as Roma, Muslims and Jews.
- **Framework Decision on the standing of victims in criminal proceedings**

The Framework Decision on the standing of victims of crimes does not specifically cover victims of hate crime, and as such might be too general to provide a valuable framework of protection for such victims. However, it could nevertheless be useful in the context of racially motivated crime given that it mentions vulnerable victims of crime in particular.

It also offers useful opportunities to victim support organisations as it requires member states to work and financially support such organisations. Given the lack of implementation of the Framework Decision, civil society organisations working to support victims of hate crime could

advocate for a stronger implementation of the provision on collaboration with victim support organisations.

## Tackling racist violence and providing support to victims: ways forward

- Map out specific areas of interest to exchange best practices and set up joint projects with other actors in this field;
- Training local communities to empower them to report hate crimes;
- Map out and identify NGO actions in the field of racist violence;
- Monitor the implementation of the Framework Decision on combating racism and xenophobia in each EU member state;
- Apply in collaboration with other NGOs for EU funding available for projects linked to racist violence (e.g. DG Justice, Liberty and Security provides funding for citizenship projects);
- Focus work on anti-racist education of young people but also integrate anti-racist modules in all vocational training and lifelong learning schemes for adults;
- Work together and develop cooperation with academics working on racist crime, possibly even joint projects.

## Examples of good practice

**NICEM project to develop regional support services for victims of racial hate crime:** Few victims of racist incidents report them to the police in Northern Ireland, reflecting the barrier that people within black and ethnic communities feel concerning the equality of access to police services. The Northern Ireland Council on Ethnic Minorities (NICEM) has therefore proposed to develop such services to break this barrier by providing free, confidential and comprehensive support to victims of racial hate crime. For more information: [www.nicem.org.uk](http://www.nicem.org.uk)

**International Network Against Cyber Hate:** The International Network Against Cyber Hate (INACH) aims to combat hate speech on the Internet. It does by uniting organisations fighting against cyber hate and exchanging information to enhance the effectiveness of these organizations, lobbying for international legislation to combat cyber hate on Internet, supporting groups and institutions who want to set up a complaints bureau, and by providing information and training on cyber hate. For more information: [www.inach.net](http://www.inach.net)

**Leap - 'Confronting conflict':** Leap is a UK charity that specialises in conflict resolution and young people. Leap's Peer Educators and Trainee Youth Workers can focus on a range of topics, one being identity and belonging. This training aims to help young people lower racial intolerance to prevent racist violence among the young people they will work with. One method is through a short workshop on the theme of conflict and identities, where they help young people develop the skills and confidence to have 'dangerous conversations' in 'safe spaces'. Leap also offers certified training and development for adult frontline professionals working with young people aged 11 to 21 years to prevent racist violence. For more information: [www.leapconfrontingconflict.org.uk](http://www.leapconfrontingconflict.org.uk)

**DVD on hate crime:** A DVD tackling the issue of racism in Northern Ireland was produced in partnership between Craigavon police, Craigavon Community Safety Partnership, the District

Policing Partnership and Craigavon Borough Council. The DVD helps police officers and professionals in community safety and youth services, by educating and informing young people and community groups in an effective manner about hate crime. The initiative was developed to help reduce the number of victims of racist incidents through education and discussion. It comes with an additional resource of key messages for debate in the classroom in order to challenge attitudes in a safe environment and discuss potential positive options. For more information: [www.psni.police.uk/cc\\_annual\\_report\\_2008.pdf](http://www.psni.police.uk/cc_annual_report_2008.pdf)

**“Ultrà” project against violence in football:** The project “Ultrà” in Italy works with football supporters with the main aim of reducing violence, racism and intolerance in football through social work which targets fans and is carried out together with them. For over ten years it has organised the Anti-racist World Championship, with the participation of teams, supporters and activists from all over the world. For more information: [www.progettoultra.it](http://www.progettoultra.it)

**Stop Hate Line 24-hour helpline, SMS, chat and online reporting:** This is a free, independent and confidential service which is available for victims of hate crime who want to access support, or who want to make a report but do not want to go directly to the police. Stop Hate UK is a national charity and provides the service in different areas of the UK. Information about hate crime and how to report it is available in over 40 languages. Victims can report online at [www.stophateuk.org](http://www.stophateuk.org), by SMS, email and web-chat, as well as via a 24-hour telephone helpline.

**The Hate Crime Research Group:** This is an alliance of academics, activists, policy makers at various levels of governance, practitioners, researchers and students. It is committed to engagement with all appropriate statutory and voluntary agencies to achieve a reduction in the social, emotional and cost impacts of hate crime on victims and on wider society by researching and promoting best practice in challenging prejudice and hate. Amongst others, it offers a network of expertise that might provide pro bono support for non-governmental organisations working against hate crime. It has also launched a **Hate Crime Blog**. For more information: [www.lancaster.ac.uk/fass/groups/hate-crime/index.php](http://www.lancaster.ac.uk/fass/groups/hate-crime/index.php)

## Resources

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*ENAR is a network of some 600 NGOs working to combat racism in all EU member states and acts as the voice of the anti-racist movement in Europe. ENAR is determined to fight racism, racial discrimination, xenophobia and related intolerance, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national and European initiatives.*