

Victim Support Europe Contribution

INCLUSION OF HATE SPEECH AND HATE CRIME TO
THE LIST OF EU CRIMES

Victim Support Europe

APRIL 2021 | <https://victim-support.eu/>



With Financial support from
the Justice Programme
of the European Union

About Victim Support Europe

Victim Support Europe (VSE) is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 62 member organisations, providing support and information to more than 2 million people affected by crime every year in 30 countries.

Founded in 1990, VSE has been advocating for 30 years for a Europe, and a world, where all victims have strong victims' rights and services, whether they report the crime or not. We work towards this mission through advocacy to improve European and International laws, through research and knowledge development and through capacity building at the national and local level.

Introduction

As recognised in the EU Commission's consultation document and through numerous reports, the level of discrimination and hate continues to increase within the EU and worldwide. Groups which are targeted by acts of hatred are wide ranging and do not include only people from religious and minority groups, but also the LGBTI community, women, people with disabilities and many others. With the continual development of online social platforms and arguably an increasingly enabling environment for hate speech and division, the targets of hate acts are not just victims in a single country but across the EU and across borders.

Victims of hate speech and hate crimes face multiple problems from the basic recognition of the act as criminal behaviour, to the recording of hate incidents, ability to report these incidents, lack of action to protect victims and afford them the support and assistance they need.

The EU currently has a very limited range of action to ensure that across all Member States minimal responses are taken for victims of hate to recognise them, treat them with respect and dignity, to support and protect them, and to give them access to justice and compensation

For this reason, we support the European Commission's initiative to include hate crime and hate speech on the list of EU crimes (article 83(1) of the Treaty on the Functioning of the European Union)(1). However, we strongly encourage the Commission to continue its work in improving the situation and rights of victims of hate crime and hate speech, regardless of the advancement of the procedure mentioned above (2).

1/ Inclusion of Hate speech and hate crime to the EU list of Crime

Because of the nature, scale and impact that hate speech and hate crime have, Victim Support Europe supports the inclusion of hate speech and hate crime to the EU list of crimes (article 83(1) of the TFEU). The grounds of disability, age, gender, sex and sexual orientation must particularly be included, in line with the discrimination grounds listed in Article 19 of the Treaty on the Functioning of the European Union (TFEU).

In the current context of a global pandemic, recent research shows a worrying trend of increasing xenophobia and hate speech against religious and ethnic groups. Online hate speech is exponentially growing as our lives have been switched online, and victims are left more vulnerable and isolated than ever before and, in a high number of cases, in a cross-border situation due to the online dimension of the crime.

As of today, there is no doubt that hate crime can be considered as a serious crime, based on the impact and nature of trauma it has on its victims and on the community affected. In 2012, **the Victims' Rights Directive recognised victims of hate crime as 'particularly vulnerable victims'** and at high risk of experiencing secondary and repeat victimisation. While repeated attacks and discrimination have been continuously increasing in Europe for the last years, the level of protection and support provided to their victims has only been slowly increasing. We believe that the EU can have an important role to play in improving this situation.

Disability: Becoming a victim of hate speech or hate crime for a person with disability can create fear, anxiety and trauma, while impeding their inclusion to the society¹. Victims with disability encounter higher risks to be subject to secondary victimisation or repeated abuse, consequently aggravating the importance or length of the trauma. It is crucial that hate crime on the ground on disability is recognised as such and that measures are taken to empower victims, help them victims to come forward and report crime.

Age: Because they are considered as vulnerable and 'easy targets', hate crime particularly threatens older people. In that context, crime can create an aggravated psychological and physical impact, even more aggravated by the fact that elderly people will have more difficulty accessing information and support services.

Gender, Sex characteristic and Sexual orientation: Despite advances in recognition of the human rights of LGBTI+ people, including in terms of social acceptance as shown in the 2019 Eurobarometer, LGBTI+ people across Europe continue to experience discrimination, hate and violence, while gender-based hate speech continues to be a daily phenomenon for many women. The European Commission and Member States should ensure that sexual orientation, gender identity, gender expression and sex characteristics are recognised as bias-motivations and that LGBTI-phobic hate crimes or hate speech are criminalised across the EU. With the increase use of new technology and the Internet, some crimes have move from the offline world to online platforms. The LGBTI community is particularly targeted by online hate speech and therefore particularly prone to becoming in cross-border victims.

¹ EDF Recommendations on EU initiatives on hate speech and hate crime, European Disability Forum, 2021, Available [online](#).

In line with the Article 19 of the TFEU, we believe that the EU should therefore be able to take action for combating hate speech and hate crime on the grounds mentioned above. Should the EU list of crimes be extended to include hate speech and hate crime, the Commission should focus on establishing a **common legal definition of hate crime** as well as minimum rules on the definition of criminal offences and sanctions. Because more than half of hate speech and hate crime is conducted online, we recommend that these measures should pay particular attention to online dimension of these crimes. In addition, any legislation covering hate crimes should include measures for the proper support and safe access to justice of victims.

2/ Additional measures to improve the situation of victims of HS/HC

While we support the Commission's initiative to include Hate speech and Hate crime to the list of EU crime, we highlight the particular complexity, length and political sensitivity of this procedure. Focusing on this procedure will be resource intensive and there should be a careful examination of the feasibility of achieving success versus whether great real gains for victims could be achieved through alternative or complementary actions.

Over the last years, an important progress and advancement has been made in the recognition, protection and support of victims of hate crime, notably since the adoption of the 2012 Victims' Rights Directive. However, there remain significant gaps in the proper implementation of the Directive which if rectified could benefit victims of hate crime.

For example, numerous countries either have limited or no national generic victims support services, with lack of funding being a key factor. Failure to effectively co-operate between government and civil society also slows positive developments. In many Member States, victim support structures are still not available to victims of hate crime. Their **specific needs² are often not recognised at the State level** (government, police, justice entities), leading to the absence of support services able to offer tailored support answering to those needs.

For this reason, we **call on the European Commission to continue its work in improving the situation for hate crime and hate speech victims**, regardless of the advancement of the procedure of hate crime and hate speech's inclusion on the list of EU crimes. Particular attention should be paid to assessing the implementation of the Victims' Rights directive regarding the development of support services and their availability to victims of hate crime. We need to make sure that victims are being provided with the necessary tools, information and support to help them to cope, regardless of whether the victim decided to report the crime or not.

We encourage the collection of data on hate speech and hate crime at the national and European levels and call on the Commission to request mandatory reporting from Member States with detailed information and data regarding hate speech and hate crime. In addition, the Commission must continue to support **mandatory training for national authorities** that are most likely to be in contact with victims

² Need for personal safety and security; practical help; emotional and psychosocial support; confidentiality and trust; information and advice; help in navigating criminal justice systems and respectful and dignified treatment. More in 'Understanding the needs of hate crime victims', EsTAR, OSCE/ODHIR 2020, available [online](#))

of hate crime: the police, justice (judges, lawyers) and law enforcement authorities, medical and psychological services, social services etc. This training must include core skills applicable to all victims of crime as well as specific training on understanding the specific needs of victims of hate crime and hate speech, the impact of hate crime³ on its victims and how to support them. Training is particularly important for the police, as their understanding and recognition of the discrimination bias used against the victim when the crime was committed, will determine the identification of hate crime during the criminal processes and the application of hate crime laws in court⁴.

Finally, it is fundamental that the protection and support provided to victims of hate speech and hate crime is **included in a comprehensive approach for responding to hate crime** at the national level. Recent research show that a number of Member States still lack a needs-based approach to victims' rights, undermining the response to hate speech and hate crime. In addition to creating support services themselves, victims' rights, support and policies need to be integrated to a victim-centered system including justice and law enforcement, societal services, the private sector, that have a role to play in developing victim-friendly policies and approaches.

³ Hate crime's impact can be much more important than crime committed without a bias motive, notably because it directly impacts the community or group targeted. For more information, please consult 'Understanding the needs of hate crime victims, EsTAR, OSCE/ODHIR 2020, available online.

⁴ Hate crime recording and data collection across EU, EU FRA, 2018, available [online](#).