EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

HELPING TO MAKE FUNDAMENTAL RIGHTS
A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Promoting respect and diversity
Combating intolerance and hate

Contribution to the Annual Colloquium on Fundamental Rights

The European Union continues to witness challenges to its core principles and values, through violence motivated by hate and intolerance, through terrorist attacks against soft targets such as the media and cultural or religious facilities, and through the discrimination and exclusion of those regarded as 'different' because of what they believe in or where they come from.

Regardless of ethnic origin, religion or belief, everyone living in the Union has a fundamental right to be treated equally, to be respected and to be protected from violence. This contribution paper provides evidence of the fact that such respect is lacking, and suggests ways in which governments can ensure they fulfil their duty to safeguard this right for everyone living in the EU.

Key facts

- Evidence collected by FRA shows that racism, xenophobia and related intolerance are widespread, despite measures taken by government and civil society across the EU
- The social and political climate is growing ever more tolerant of extremist, racist and xenophobic agendas that exploit fears about youth unemployment and security in the face of terrorism and other geopolitical challenges
- Overall, this situation has a negative impact on social cohesion, as well as on respect for fundamental rights
- Political action is necessary to ensure full implementation of the EU's existing legal framework in order to afford effective protection from discrimination and hate

To improve the situation, measures should be taken to:

- Improve victims' access to justice, including steps to facilitate reporting of hate crime to the police and discrimination to equality bodies
- Improve hate crime recording by law enforcement and prosecution by criminal justice
- Ensure that relevant penalties and sanctions are effective, proportionate and dissuasive
- Develop targeted media campaigns and training courses about the principles of equality and non-discrimination as well as combating racism and prejudice in daily life in order to empower a range of key people involved, such as justice officials, law enforcement, social partners and educators
- Support efforts to welcome the ethnic, linguistic, cultural and religious diversity in our societies and make use of it to bolster social cohesion and growth.

Discrimination and hate crime: the evidence

The paucity of official data

The Agency has all too often pointed to the variation and resulting lack of comparability between statistics on hate crime and discrimination in the EU. This is largely due to historical experience in some Member States, which now hesitate to collect data disaggregated by ethnic origin or religious belief.

Another factor that influences the extent and detail of available data is the significance attached by Member States to empirical data collection as a tool to inform policy development. This means that some Member States, such as the United Kingdom, the Netherlands or Germany, report much higher figures on ethnic discrimination and 'racist' crime, simply because their laws and data collection mechanisms allow for broader categories of data. Other Member States, such as Greece or Portugal, either don't publish such data on a regular basis, or issue limited data that represents only a handful of cases.

The availability of data is also of course influenced by victims' willingness to report incidents of discrimination and hate crime to the authorities; this, in turn, will be limited if the reporting system is not 'user friendly', recognising the needs and rights of victims, particularly those from especially vulnerable groups. On the other hand, the willingness of individuals to come forward and report also depends on the capacity of public authorities, in particular law enforcement, to record and deal with such incidents efficiently. Only in this way is it possible to provide effective access both to victim support and to redress mechanisms.

Official figures on discrimination and hate crime therefore often tell us more about the nature of data collection mechanisms, and the use of data for policy development and action to tackle discrimination and hate crime, than they do about the true extent and nature of these phenomena in a given Member State.

Filling the data gap: FRA surveys

The core task of the Agency is to collect and analyse data on fundamental rights issues. In order to address the absence of comparable data on discrimination and hate crime, the Agency carried out the first ever EU-wide survey (the 'European Union Minorities and Discrimination Survey' or EU-MIDIS) of migrants and minorities to investigate their experiences of discrimination and criminal victimisation. The survey of a random sample of 23,500 migrants and minorities in 2008 was conducted just as EU criminal law on combating certain types of hate crime was introduced in the form of the 2008 Council Framework Decision on racism and xenophobia.

The survey, which is in the course of being repeated in order to analyse trends over time, provides evidence of incidents of discrimination, as well as crimes such as assault, threat or serious harassment. Respondents, many of whom were Muslims, noted the use of racially or religiously offensive language used against them.

- Overall, 37% of migrants and minorities surveyed across the EU said they had personally experienced discrimination in the 12 months preceding the survey, while 12% had personally experienced a racist crime. However, 80% of these did not report the incident to the police.
- The highest levels of discrimination were reported by Roma, with one in two respondents saying they had been discriminated against in the last 12 months. High levels of discrimination were also noted by Sub-Saharan Africans (41%) and North Africans (36%).
- On average, 18% of all Sub-Saharan African and 18% of all Roma respondents indicated that they had experienced at least one 'in-person crime' (assault, threat, or serious

harassment) in the last 12 months that they considered to be 'racially motivated.

Of the respondents who identified themselves as Muslims (originating from North and Sub-Saharan Africa, Turkey, Iraq, or ex-Yugoslavia and stating that religion played a 'very important' or 'fairly important' role in their lives), 11% had fallen victim of racially motivated 'in-person crime' at least once in the 12 months preceding the survey. Of those who said they had been victims of in-person crime, between 53% and 98%, did not report their experience to the police, many saying there would have been no point as in their opinion the police would not have been able to do anything.

Trust in law enforcement is influenced by methods of policing. EU-MIDIS showed that on average, 1 in 4 Muslim respondents had been stopped by the police in the previous 12 months, and 40% of these believed that this was specifically because of their immigrant or minority status. On average, 37% of Muslim respondents stopped by customs or border control in the previous 12 months believed the checks had taken place specifically because of their immigrant or minority background. This compared with 19% of non-Muslim minority respondents surveyed in EU-MIDIS.

In sum, the findings of EU-MIDIS indicated a clear need to strengthen protection against discrimination and hate crime, and to improve access to justice and more comprehensive victim support. At the same time, the findings also demonstrated a profound lack of trust in law enforcement that necessitate an examination of the impact of law enforcement methods on relations with ethnic minority groups. In addition, the findings point to an urgent need to improve the reporting and recording of incidents of hate crime and discrimination.

These results were largely reflected in the findings of a survey conducted by FRA in 2012 on the experiences of discrimination and hate crime of Jewish people. While the survey showed that Jewish people are significantly affected by hate crime and discrimination, again the majority of victims did not report to the authorities.

- In the 12 months preceding the survey, 21% of respondents had experienced physical attacks, serious harassment or verbal insults motivated by antisemitism.
- A majority of victims of harassment (76%), of physical violence or threats (64%), or of personal property vandalism (53%) did not report the most serious incident in the past five years to the police or any other organisation.
- Approximately a third of respondents were worried about becoming a victim of physical attack, while some 40% were concerned that family members may become the victim of a physical attack.
- Nonetheless, almost two-thirds of the respondents who had experienced physical violence or threats of violence did not report the most serious incident to the police or any other organisation.
- The majority of respondents who did not report incidents of hate crime or discrimination to the police or any other organisations said this was because "nothing would happen or change" by doing so.

The question of perpetrators

Surveys provide robust information on perceptions and experiences of victims. However, it is more difficult to acquire such information on perpetrators. The identity of those who discriminate on grounds of ethnic origin is available, if the case is taken up by courts and/or equality bodies, but their characteristics are neither systematically collected nor analysed. FRA is currently addressing this gap through the second EU-MIDIS survey, which includes questions on offenders.

In the case of hate crime, official data rarely include detailed information on perpetrators (with the exception of aggregate data collected by some Member States). However, survey respondents can provide information based on their perception of perpetrator characteristics.

Interestingly, both EU-MIDIS and the survey of Jewish people found that respondents did not confirm the widespread assumption that crimes motivated by hate are usually committed by right-wing extremists.

For example, only 13% of Turkish victims and 12% of Roma victims of assault or threat identified perpetrators as members of right-wing extremist groups. The survey of Jewish people also found that 27% of respondents perceived the perpetrator of the most serious incident of antisemitic harassment they had experienced in the last five years to be someone with a Muslim extremist view, 22% someone with extremist left-wing political views and 19% someone with extremist right-wing political views. In both surveys, the results vary greatly between Member States.

EU-MIDIS also sought to ascertain whether the last incident of assault and threat experienced by the survey respondents had been at the hand of someone from the same or another ethnic group. As many as 71% of Sub-Saharan Africans said perpetrators had been members of the majority population, which would seem to indicate 'racist' victimisation. In general, a high percentage of the victims surveyed in EU-MIDIS had experienced assault or threat at the hands of another ethnic group, but this finding is not, by itself, an indication of hate crime. It does show, however, that in-person crime is a complex issue that can involve different people from various ethnic backgrounds. One view of this reality might see the majority population perpetrating crimes against minorities, while another might see inter-ethnic conflict manifesting itself as hate crime.

The question of perpetrators is politically sensitive, but it is nevertheless essential in order to formulate effective responses. In this respect, the available evidence suggests that community relations can benefit from local level initiatives to bring together members of different minority ethnic and religious groups as well as the general (non-minority) population, in order to have a frank and open discussion of issues of social inclusion, respect and community relations that affect their daily life.

Intolerance and hate in the public sphere

Open expressions of racism draw the attention of the media, especially when made by politicians or other opinion makers in public discourse. Even when repudiated by other politicians or the media, their message is nonetheless unavoidably multiplied.

In recent years there have been several such cases, with black government ministers or professional athletes compared to apes, statements made to the effect that maybe Hitler did not kill enough *gens du voyage*, and claims that Jewish Zionists financed and organised the Holocaust, etc.

These messages are all too often picked up and further disseminated via social media on the internet, triggering outbursts of anonymous hate speech that magnify their effect still further.

These racist statements do not appear in a vacuum. They find reference points in a xenophobic discourse that is becoming more socially acceptable and politically mainstreamed across the EU, building on old and new dichotomies between 'us and them' - not only in terms of skin colour or nationality, but also with relation to culture and a willingness to adopt 'European values'.

In this way, xenophobic discourse justifies its claim to 'difference' by postulating the cultural superiority of 'Europe' vis-à-vis 'other' countries, which are often those from which migrants and their descendants originate. Much has been written on Europe's historical claims of cultural-ethical hegemony and how these fed into the racist discourse of 19th and 20th century Europe. However, seventy years after the Second World War, it is apparently still necessary to remind ourselves of the efforts by the United Nations to declare precisely the values of democracy, human rights and the rule of law as universal.

The cacophony of racist and intolerant discourse influences mainstream politics at national, and more importantly at local level, eroding trust and social cohesion, and contributing to a climate of fear and insecurity among members of ethnic and religious minorities.

Intolerance online

The online universe, especially social media, provides a forum for the free and open expression of ideas and as such promotes democracy and, in particular, freedom of expression. Conversely, though, the lack of any effective self-regulation also allows this forum to be used for promoting extremist and intolerant views. 73% of respondents to FRA's antisemitism survey thought that antisemitism online had increased over the past five years.

However, the anonymity afforded to internet users does not necessarily mean they can post racist or xenophobic material with impunity: in 2013, the Supreme Court in Italy found that managing a blog inciting racial hatred is equivalent to participating in a criminal association.

Similarly, a court in France held in 2013 that Twitter should provide information to the plaintiffs enabling them to identify the authors of tweets posted under antisemitic hashtags. The court's judgment also required Twitter to enable users of its French platform to report content that falls under the category of crimes against humanity and incitement to racial hatred.

Prosecutors in the United Kingdom can call upon legal guidance for how to prosecute online content of a racist nature. The *Guidelines on prosecuting cases involving communications sent via social media*, drafted by the Crown Prosecution Office, describe the action necessary in order for such a prosecution to be initiated.[1]

The first stage requires sufficient evidence, while the second involves a consideration of the public interest. Before bringing charges, prosecutors are encouraged to take into account the context in which the interactive social media dialogue takes place and to carefully consider whether a given prosecution would not constitute a breach of the right to free speech as protected by the European Convention on Human Rights.

In establishing this, Member States can draw on rich case law of the European Court of Human Rights (ECtHR).[2] In a number of cases, the Court has ruled speech of a racist, xenophobic, antisemitic or aggressively nationalist nature and speech discriminating against minorities and immigrants to be offensive and contrary to the European Convention on Human Rights. However, the ECtHR is careful in its judgements to distinguish between hate speech on the one hand and the right of individuals (including journalists and politicians) on the other to express their views freely, even if they offend, shock or disturb others.

---

1 Crown Prosecution Service (2013), *Guidelines on prosecuting cases involving communications sent via social media*, www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/.

2 For a good overall view see the factsheet of the European Court of Human Rights (2014), *Hate speech*, available at: www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

In its recent case *Delfi v. Estonia*[3], the ECtHR ruled that the Estonian news site Delfi may be held liable for anonymous and defamatory comments posted online from its readers. A similar responsibility would probably be recognised in the case of hate speech.

In the EU context, the European Commission has called on Member States to intervene in cases of online hate speech in line with Article 9 of the Framework Decision on Racism and Xenophobia, which stipulates: *"When establishing jurisdiction over conduct committed within their territory, Member States must ensure that their jurisdiction extends to cases where the conduct is committed through an information system, and the offender or materials hosted in that system are in its territory."*[4]

Given the particular characteristics of online and social media as well as online communication – in which we have seen the increasing involvement of young children – more needs to be done to prevent expressions of hate and intolerance. One means would be to support initiatives such as Insafe, a European network of national awareness centres in all Member States that works closely with youth and runs awareness campaigns and a helpline. Exchange of promising practices to address online intolerance should also be further encouraged.

Countering intolerance and hate

The work of international organisations such as the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) has shown that a mixture of varied measures is needed in order to counter hate and intolerance effectively. These range from legislation and measures to ensure that it is effectively implemented, to raising rights awareness, confronting racism and intolerance in public discourse, improving reporting and recording of hate crime, providing effective operational training to law enforcement, and programmes to promote dialogue between communities.

The first step, however, as FRA's work has shown, is to acknowledge the existence and recognise the impact of racism and xenophobia. Although such recognition is a prerequisite to building effective responses, governments often find it difficult to acknowledge, even in the face of evidence presented by European and international human rights bodies and organisations.

An important element in recognising the extent and impact of racism is raising awareness among public authorities, in particular law enforcement agencies and the criminal justice system, statutory human rights bodies and civil society organisations about the need to respect and protect the ethnic, religious and cultural diversity of European societies. In this context, it is crucial to discuss racism and xenophobia as threats to social cohesion rather than as phenomena that only affect 'foreigners'. Such an approach could foster the successful social inclusion of members of minority groups, an issue that concerns not only minorities, but society as a whole.

Increasing public trust in law enforcement and criminal justice is indispensable in the fight against hate crime and racism. In this light, it would be useful to consider independent investigations into forms of 'institutionalised racism' that have taken place around the EU as a means of developing more effective responses to racism. One example is the 1999 Inquiry in the United Kingdom into the death in 1993 of Stephen Lawrence, a young Black British man, in order to identify lessons to be

[3] European Court of Human Rights, *DELFI AS v. ESTONIA*, No. 64569/09, 16 June 2015

[4] European Commission (2014), *Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*.

learned for the investigation and prosecution of racially motivated crimes.[5] The inquiry, which uncovered "a combination of professional incompetence, institutional racism and a failure of leadership by senior officers", eventually led to reforms in law enforcement, criminal justice and the state's response to racism. In the fifteen plus years since the Lawrence Inquiry, it would be encouraging to see other Member States systematically reviewing institutional cultures and practices in an effort to root out discriminatory behaviour.

Implementing legislation

In its report on the implementation of the Framework Decision on Racism and Xenophobia (2008/913/JHA), the European Commission addressed the issue of penalties for hate speech and hate crime by means of criminal law. It found that although the majority of Member States penalise incitement to racist and xenophobic violence and hatred, their legal provisions do not always fully transpose the offences covered by the framework decision. In addition, the report identifies *"some gaps […] in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction"*.[6] The Commission engaged in bilateral talks with Member States in 2014 to ensure full and correct transposition of the framework decision.

As of 1 December 2014, the European Commission can launch infringement proceedings against Member States that have not fully transposed the framework decision. Since then, the Commission has sent a number of administrative letters to Member States concerning gaps in its transposition and implementation into national law.

Member States have means at their disposal to address open manifestations of racist, xenophobic and related intolerance in the form of EU and national legal provisions. Their implementation can be improved by strengthening the mandate and the capacity of national human rights mechanisms, such as Equality bodies, Ombuds and statutory human rights institutions, to better enforce these provisions.

In addition, the coordination of these mechanisms with public authorities and civil society could be improved by adopting a multi-agency approach that fosters the cooperation of all these actors in practical ways to achieve commonly agreed goals. This could be operationalised in national action plans or strategies specifically addressing racism, xenophobia and related intolerance.

In addition, Member States could consider adopting or strengthening existing legal provisions to hold back public funding for political parties whose members have committed racist or discriminatory acts, as recommended by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe.[7] They could also consider preventing the activities of organisations that promote and incite hatred by disbanding them and declaring them illegal as recommended by the United Nations Committee on the Elimination of Racial Discrimination.[8] The ECtHR set a precedent when it confirmed the dissolution of the Hungarian Guard Association (*Magyar Gárda*) because of the activities of its

---

5 Home Office (24-02-1999), Independent report: The Stephen Lawrence Inquiry, available at https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry

6 European Commission (2014), *Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*.

7 European Commission against Racism and Intolerance (2013), *ECRI report on Finland (fourth monitoring cycle)*, Strasbourg, Council of Europe.

8 Committee on the Elimination of Racial Discrimination (2013), Concluding observations on the ninth to the tenth periodic reports of Slovakia, adopted by the Committee at its eighty-second session (11 February–1 March 2013), CERD/C/SVK/CO/9-10.

Hungarian Guard Movement, in *Vona v. Hungary*.[9] These included paramilitary rallies in villages with Roma populations across Hungary, as well as advocacy for racist policies. The Court found that the Hungarian authorities were entitled to take preventive measures to protect democracy and ban the *Magyar Gárda*. It ruled that, if the activities of an association amount to widespread racist intimidation of a group, then banning it does not contravene the European Convention on Human Rights.

Disbanding such organisations may not change the behaviour of individual members or prevent them from gathering and acting collectively in a hostile and discriminatory manner toward certain groups. It would, however, send a clear signal that racism and hate are not tolerated by society at large.

Raising awareness

In its report on the implementation of the racial and employment equality directives, the European Commission stated: "the main challenge now is to increase awareness of the already existing protection and to ensure better practical implementation and application of the [equality] Directives".[10]

Awareness-raising measures are vital to counter the myths that feed racism, xenophobia and related intolerance with facts. For instance, the following facts would be useful to bring to a discussion on the issue of migration:

- out of 19.5 million refugees worldwide at the end of 2014, it is not an EU country but Turkey that hosts the largest number (1.59 million at the end of 2014, rising to approximately 2 million by September 2015)
- a recent study[11] revealed that in the UK, more than 60% of new migrants from western and southern Europe are university graduates, while 25% of recent arrivals of east Europeans to Britain have a degree compared with 24% of the UK-born workforce.
- EU migrants made between 2000 and 2011 a net contribution of £20bn to UK public finances – £15bn more in taxes than they received in welfare.

Awareness-raising programmes are also needed to inform the public in general, and victims of discrimination or hate crime in particular, about their rights and the redress mechanisms available to them. FRA and Eurobarometer finding show that rights awareness in the EU is worryingly low. And laws work well only when people know them and use them.

Comprehensive and concerted awareness-raising activities can therefore be effective tools for improving social cohesion and inclusion. Awareness-raising measures that aim at producing a shift in the way societies deal and live with each other would have to bring about a change in attitudes and behaviour. Knowledge and rights awareness alone are therefore not sufficient, and measures must go beyond traditional information sharing. For this purpose, it will be necessary to develop tailor-made tools that can reach out to citizens and also to groups particularly vulnerable to discrimination and crimes motivated by bias.

Not knowing where to turn to seek redress in cases of discrimination is often the first barrier to fully exercising the fundamental right to equal treatment. Given the complexity of organisations and institutions in Member States that are responsible for offering information and support to victims

[9] CASE OF VONA v. HUNGARY (Application no. 35943/10) Final judgment 9 July 2013, available at FINALhttp://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122183#{"itemid":["001-122183"]}

[10] European Commission (2014), *Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*.

[11] Centre for Research & Analysis of Migration, University College London, http://www.cream-migration.org/files/FiscalEJ.pdf

of discrimination, it is often difficult for victims to know where to turn. Evidence shows that most victims do not seek redress, which leads to impunity for perpetrators and creates a climate in which their behaviour is considered acceptable.

Awareness must therefore be raised about the ethnic, religious and cultural diversity that is the reality of the EU today, about the extent of discrimination and hate crime, about existing laws, and about where and how victims can receive support. This should take place in cooperation with and through public authorities, statutory human rights bodies and civil society organisations.

Improving reporting - increasing trust in law enforcement

As mentioned above, FRA research shows that a lack of trust in the authorities is a key reason for victims of crime not to report their experiences. However, such a lack of trust and sense of insufficient protection have potentially far-reaching implications, both as a possible factor in any radicalisation process and also as a further obstacle to effective communication between the authorities and particular communities. Building more confidence in the police and criminal justice is thus a precondition not only for increasing reporting of hate crime, but also for positive community relations. These, together with greater rights awareness and a decreasing sense of discrimination, could help reduce the risks of social marginalisation and radicalisation.

Measures taken to increase reporting and recording of hate crime serve to build trust in law enforcement agencies and other institutions, making it easier for victims or witnesses to report their experiences.

In this context, Member States could consider testing and establishing systems of third-party reporting (as foreseen by the Racial Equality Directive, Art. 7 (2)), as well as making it possible for incidents to be reported at any time and in a location other than a police station. Such systems enable victims and witnesses to report racist, xenophobic and related incidents online, by phone, by text messaging or through social networks, as well as by contacting civil society organisations or statutory human rights bodies. Cases could then be brought to the police or the criminal justice system for further investigation and, where relevant, prosecution. Establishing such systems would entail close cooperation between law enforcement agencies, statutory human rights bodies and civil society organisations.

Community policing also offers Member States a way to increase trust in public authorities among members of ethnic and religious minorities. Developing such practices can help restore relations between the police and local communities, and build trust in law enforcement. At the same time, police officers need training to be sensitive to particular issues, while the make-up of the police force should reflect as far as possible the cultural and ethnic mix of the communities it serves.

Ethnic profiling, when it is discriminatory, offers fertile ground for the (sometimes violent) expression of intolerant views through its accompanying effect of negative stereotyping of the population groups targeted. It also offers fertile ground for the radicalisation of those targeted by the practice. Member States should therefore ensure that any profiling they implement is not discriminatory and consider replacing the practice with intelligence-based policing that complies fully with fundamental rights.

FRA's Working Party on Hate Crime

Enabling victims to seek redress against perpetrators is the lynchpin of the FRA-initiated Working Party on Encouraging Reporting and Improving Recording of Hate Crime. This working party was set up in direct response to a call from the Council of the EU for FRA "to work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes". The working party

brings together FRA, 28 EU Member States, the European Commission, ODIHR, and ECRI. Its activities cover four areas, areas (reporting, recording, multi-agency partnerships and training) predicated on an exchange of practices between staff from ministries, prosecutors' offices, law enforcement agencies, police training institutions and national parliaments.

Improving monitoring and recording

For Member States to address hate crime successfully, they need reliable data from courts of last instance on the outcomes of relevant cases. The lack of such data renders authorities unable to devise and implement policy responses that address hate crime effectively.

In order to ensure the bias motivation underlying hate crime is recognised and to stress the gravity of the offence, legislators should consider introducing enhanced penalties, rather than leaving bias motivation as a mere aggravating circumstance in the criminal code. This should allow more detailed recording and result in a greater number of investigations and prosecutions of perpetrators, thereby leading to the acknowledgement of more victims.

Civil society organisations have a particular role to play in combating hate crime, as the *Facing Facts!* project testifies.[12] The main objective of this project is to improve monitoring and recording of hate crimes and incidents throughout the EU. It is led by CEJI – A Jewish contribution to an inclusive Europe, in partnership with the Community Security Trust in the United Kingdom, the Dutch Centre for Information and Documentation Israel, the Federation of Dutch Associations for the Integration of Homosexuality, and the International Lesbian and Gay Association in Europe (ILGA-Europe).

Facing Facts! aims to standardise criteria for comparable data collection on hate crime, train civil society organisations to gather, analyse and report data; hold governments accountable to existing international agreements, and improve cooperation between different socio-cultural groups. The project has already resulted in a number of train-the-trainers programmes and guidelines on how to monitor hate crime.

Closer cooperation and exchange of practices

Closer and better cooperation is a prerequisite for combating hate crime effectively. This includes enhancing multi-agency partnerships to create synergies in combating hate crime. This requires an integrated approach, with close cooperation between relevant agencies and organisations at national and international level, including law enforcement agencies, the criminal justice system, relevant ministries, EU institutions and agencies, international organisations and civil society, including victim support services.

One goal of FRA's working party is to facilitate the exchange of guidelines and protocols used by law enforcement agencies and criminal justice systems in Member States to recognise, investigate and prosecute hate crime. In the same way, the working party is helping Member States to share hands-on training and capacity building modules to increase the operational skills of frontline police officers and to increase prosecutors' ability to address hate crime.

Training

To make hate crimes visible, alternative routes have to be considered to enable and empower victims of hate crime to come forward to report. Ownership by police of such models can be created by training and

[12] www.facingfacts.eu.

sharing experiences from other countries, where they are applied.

The identification and recording of hate crimes require filing officers to have a specific set of knowledge and skills. Knowing to ask certain questions and check particular information, looking for key words etc. can enable them to quickly identify and categorise a potential hate crime as such.

Drawing inspiration from the Victims' Directive, which must be transposed into national law by November 2015, victims should be placed at the centre of investigations and police should be and stay closely engaged with the respective communities and civil society organisations. Both, the targeted investigations and the modes of equal engagement with all parts of society and cooperation with civil society organisations can be achieved via training.

Specialised training on hate crime is therefore a useful means of building the necessary skills within the police and prosecution, enabling them to:

- Improve reporting mechanisms, thereby helping to reveal the scale of hate crime in a respective country
- Identify and record hate crimes as such
- Use a victim-centred approach to investigate hate crimes
- Prosecute hate crimes based on the biased motivations.

The fourth area covered by FRA's working party involves training for law enforcement and criminal justice staff. A mapping of existing training and capacity building programmes and practices at the national and international levels will help to identify training gaps and needs. This exchange will inform operational training for law enforcement agencies and the criminal justice system and enable staff to recognise incidents of hate crime and investigate them, equipped with the necessary skills, and deal with them appropriately. Training practices that lead to an increased awareness of potential victims and general awareness-raising programmes on hate crime will also be reviewed.

Stepping up dialogue

More honest and open dialogue between and among communities, and between and among faith groups, is a crucial step to fostering understanding and subsequently acceptance and inclusion. Some important steps have been made, in particular at the local level. The European Commission also hosts a high level inter-faith dialogue every year.

However, so-called 'intercultural/interreligious dialogues' are often not a dialogue, but a mere presentation of each party's views. The use of dialogue (facilitation) methods to enable truly respectful dialogue would therefore be a significant move way forward.

Given that a significant proportion of crimes are attributed by victims – or rather certain groups of victims – as being perpetrated by people with an ethnic minority or immigrant background, an open dialogue should allow such issues to be addressed within the broader context of recognising discrimination and hate crime perpetrated by members of the general population.

In conclusion

Twenty years on, many of the recommendations made by the Consultative Commission on Racism and Xenophobia, also known as the Kahn Committee, "on cooperation between governments and the various social bodies in favour of encouraging tolerance, understanding and harmony with foreigners" remain relevant, especially in regard to educational measures that teach respect for diversity and mutual loyalty, to training for occupational groups, and to measures for "difficult districts", where socio- economic deprivation is

pervasive.[13] The Kahn Committee's terms of reference to make recommendations "geared as far as possible to national and local circumstances" also remain relevant. The EU has adopted legislation to tackle discrimination, hate speech and hate crime, and it has funded many large and small-scale transnational projects. Many Member States have also taken similar action. However, much more can be done at local level, particularly in school settings, with law enforcement, social partners and the media.

The fight against discrimination, racism, xenophobia and related intolerance, as well as efforts to respect and protect fundamental rights must be an ongoing effort in the face of new challenges.

This effort requires political will, efficient operational coordination and sharing of expertise and experience among all those involved, from EU bodies, through national, regional and local authorities, law enforcement agencies, the criminal justice system, educational authorities, statutory human rights and equality bodies, to service providers and civil society organisations.

FRA publications

FRA (2015), *Antisemitism – Summary overview of the data available in the European Union 2004–2014*.

FRA (2015), *Embedding fundamental rights in the security agenda*, available at: http://fra.europa.eu/en/publication/2015/embedding-fundamental-rights-security-agenda.

FRA (2015), *Fundamental rights: challenges and achievements in 2014 - Annual report 2014*, Luxembourg, Publications Office of the European Union.

FRA (2015), *Reactions to the Paris attacks in the EU: fundamental rights considerations*, available at: http://fra.europa.eu/en/publication/2015/reactions-paris-attacks-eu-fundamental-rights-considerations.

FRA (2014), *Fundamental rights: challenges and achievements in 2013 - Annual report 2013*, Luxembourg, Publications Office of the European Union.

FRA (2014), *Working party on improving reporting and recording of hate crime in the EU – inaugural meeting report*.

FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experiences and perceptions of antisemitism*, Luxembourg, Publications Office of the European Union.

FRA (2013), *Fundamental rights-based police training – A manual for police trainers*, http://fra.europa.eu/en/publication/2013/fundamental-rights-based-police-training-manual-police-trainers.

FRA (2013), *Fundamental rights: challenges and achievements in 2012 - Annual report 2012*, Luxembourg, Publications Office of the European Union

FRA (2013), *Opinion of the European Union Agency for Fundamental Rights on the situation of equality in the European Union 10 years on from initial implementation of the equality directives*, Luxembourg, Publications Office of the European Union.

FRA (2013), *Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime*, Luxembourg, Publications Office of the European Union.

FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary*, Luxembourg, Publications Office of the European Union.

FRA (2012), *EU-MIDIS Data in Focus Report 6: Minorities as victims of crime*, Luxembourg, Publications Office of the European Union.

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

[13] Consultative Commission on Racism and Xenophobia (1995), Final Report, available at http://aei.pitt.edu/1588/1/Kahn_report.pdf

FRA (2012), *The European Union as a community of values: safeguarding fundamental rights in times of crisis*, Luxembourg, Publications Office of the European Union.

FRA/UNDP (2012), *The situation of Roma in 11 EU Member States. Survey results at a glance*, Luxembourg, Publications Office of the European Union.

FRA (2010), *Data in focus report – rights awareness and equality bodies, strengthening the fundamental rights architecture in the EU*, Luxembourg, Publications Office of the European Union.

FRA (2010), *EU-MIDIS data in focus report 4: police stops and minorities*, Luxembourg, Publications Office of the European Union.

FRA (2010), *Towards more effective policing, understanding and preventing discriminatory ethnic profiling: a guide*, Luxembourg, Publications Office of the European Union.

FRA (2009), *EU-MIDIS main results report*, Luxembourg, Publications Office of the European Union.

All publications are available at fra.europa.eu/en/publications-and-resources.

FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel: +43 158030-0 – Fax: +43 158030-699
fra.europa.eu – info@fra.europa.eu
facebook.com/fundamentalrights
linkedin.com/company/eu-fundamental-rights-agency
twitter.com/EURightsAgency