

# Participation of Hate Crime Victims in Criminal Proceedings: The ECHR Perspective

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*Opinions expressed personal*



# Two types of victims' rights

- Functional rights
  - Bearing on the architecture of criminal process
  - The right *to* criminal process
- Participatory rights
  - Social and procedural assistance in criminal proceedings
  - The rights *in* criminal process
- See *Y. v. Slovenia* (2015); *J.L. v. Italy* (2021)\*

\*HUDOC [www.hudoc.echr.coe.int](http://www.hudoc.echr.coe.int)

# Victims' rights in international law

- Selected UN sources on victims' rights
  - Principles to Combat Impunity (2005)
  - Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2006)
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
  - International Convention for the Protection of All Persons from Enforced Disappearance (2006)



- Selected COE sources on victims' rights
  - Recommendation Rec(85)11 on the position of the victim in the framework of criminal law and procedure (1985)
  - Guidelines on eradicating impunity for serious human rights violations (2011)
  - Convention on Action against Trafficking in Human Beings (2005)
  - Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (“Lanzarote Convention”) (2007)
  - Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) (2011)
  - Convention on the Prevention of Terrorism (2005)



- Selected EU sources on victims' rights
  - Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2012)
  - Directive 2004/80/EC relating to compensation to crime victims (2004)
  - Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2011)
  - Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography (2011)
  - Directive (EU) 2017/541 on combating terrorism (2017)



- The ECHR – general principles
  - The proceedings must be accessible to the victims to the extent necessary to safeguard their legitimate interests
  - Specific requirements:
    - To inform and give the possibility to take part in the proceedings
    - The possibility to challenge the decision not to prosecute
    - The request for the taking of investigative actions
    - Protection from secondary victimisation
    - Special care towards vulnerable victims
  - The respect for the rights of the accused
  - See *Giuliani and Gaggio v. Italy* [GC] (2011); *Armani Da Silva v. the United Kingdom* [GC] (2016); *X and Others v. Bulgaria* [GC] (2021)



# The rights of hate crime victims under the ECHR

- The duty to recognise the victim as a hate crime victim
  - The victim's actual or perceived personal status or characteristics
  - The victim's actual or presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic
- The duty to elucidate all suspected racist attitudes
  - “Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights”
  - The necessity to be aware of possible mixed motives



- The duty to ensure the hate crime victim's effective participation in the proceedings
  - To inform about the proceedings
  - The possibility effectively to challenge the decision not to prosecute as regards any hate crime motive
- The duty to take the hate crime motive in sentencing
- See *Abdu v. Bulgaria* (2014); *Škorjanec v. Croatia* (2017); *Lakatošová and Lakatoš v. Slovakia* (2018); *Sabalić v. Croatia* (2021)





Thank you for your attention!

