

# Protection of Hate Crime Victims' Rights: the case of Lithuania

STUDY

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Strategic aims of HRMI include:

- 1) Developing the capacity of Lithuanian civil society to influence human rights policies;
- 2) Fostering environment, respectful of human rights, and promoting public debate and dialogue on human rights;
- 3) Encouraging people to exercise their rights and aiding in defending those rights in case of violations;
- 4) Advocating for continuous improvement of national laws and policies to make them serve for better protection of inherent human dignity and for increased accountability of the government.

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HRMI is a member of the EU Fundamental Rights Platform, EuroChild, UNITED for Intercultural Action, JUSTICIA and OSCE Civil Solidarity Platform. Members of HRMI staff have been working in several national and international human rights bodies such as UN Committee on the Rights of the Child and National Judicial Selection Committee, and have served as experts for the Council of Europe and OSCE.

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## Summary

This study seeks to determine whether Lithuanian legal system – both in theory and in practice – is ready to respond efficiently to hate crimes while taking into account the victims' rights. It is primarily aimed at the Lithuanian decision-makers, tasked with ensuring compliance of Lithuanian laws with the provisions of the EU Directive on Victims' Rights, and law-enforcement agencies, first of all, the pre-trial investigation officers and prosecutors dealing with the incidents of hate crimes.

The study is divided into three sections, the first of which assesses Lithuanian legal framework against the standards of victims' rights protection and victim support as set out in the EU Directive on Victims' Rights. The second section takes an in-depth look at the way law-enforcement officials respond to hate crimes and guarantee the victims' rights and the way hate crimes victims assess their performance. The third section summarizes the research findings, as well as provides several recommendations.

The research reveals a gap between the EU legal standards and their implementation in Lithuania where both regulation and practice are concerned.

Current Lithuanian legislation falls far short of realising the guarantees and rights afforded to crime victims under the EU Directive on Victims' Rights. The procedural rights of crime victims set out in the Directive, even though available under Lithuanian law, suffer from very narrow and vague coverage. This is especially true where the protection of vulnerable victims, including hate crime victims, is concerned, as there is no systematic approach to victims' protection.

The practice of victims' rights implementation suffers from a number of distinct problems as well. Offence classification is often inaccurate where hate crimes are concerned leading to instances of hate crime being labelled as hooliganism rather than bias motivated, while law-enforcement officers also tend to overly rely on the opinions of outside experts when determining whether an act constitutes hate crime. Law-enforcement officers also lack training and often fail to adequately ensure hate crime victims' procedural rights and their physical protection.

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# Introduction

The European Union (EU) is founded on the shared principles of democracy, rule of law, liberty and respect for human rights and fundamental freedoms. Common to all European societies is a fundamental recognition that every individual is of equal worth and should have fair access to the opportunities in life. These shared values, however, are undermined by a daily reality of hate crimes throughout the EU. Hate crimes – be they violent or not – harm not only those targeted but also the whole group defined by a specific feature and the whole society as such. Furthermore, they strike at the very heart of EU values, i.e. its commitment to democracy, human rights and the fundamental principles of equality and non-discrimination.

**Hate crime** is a generic term used to define violence and criminal offence motivated by racism, xenophobia, religious intolerance or by a person's disability, sexual orientation, gender identity or other inalienable personal trait.<sup>1</sup> The data collected by the EU Fundamental Rights Agency (FRA) shows how wide-spread hate-motivated crimes across EU are:

- Between 16% and 32% of Roma and between 19% and 32% of persons of African origin in the EU-MIDIS survey reported to be victims of assault, threat or serious harassment with a perceived racist motive in the 12 months leading up to the survey;
- 25% of LGBT people surveyed in the EU-27 and Croatia experienced violence in the five years preceding the survey, with the figure rising to one in three for transgender people;
- Up to a third of Jewish people in another survey personally experienced verbal or physical anti-Semitic violence.<sup>2</sup>

To counteract a hate-crime phenomenon, a Council Framework Decision of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of

criminal law was adopted. The Framework Decision defines a unified EU-wide criminal law and criminal justice approach to combating racism and xenophobia, leaving, however, Member States a wide leverage to define what “effective, proportionate and dissuasive criminal penalties” for bias motivated crimes are. As a minimum, the Framework Decision requires to punish public incitement to violence or hatred,<sup>3</sup> any conduct publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes,<sup>4</sup> while for other offences it prescribes merely “[to] take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.”<sup>5</sup>

Lithuanian law-makers, who have been repeatedly criticized for their inaction,<sup>6</sup> have enacted legislative amendments necessary to comply with the Framework Decision and beyond.<sup>7</sup> With the aim to familiarize the law-enforcement officials with hate speech, hate crimes and their investigative techniques, the General Prosecutor's Office drafted the *Hate Crimes Guidelines*<sup>8</sup> and organized a handful of trainings. However,

1 Also often referred to as „bias-motivated crimes“. EU Fundamental Rights Agency (FRA), Making hate crime visible in the European Union: acknowledging victims' rights, at [http://fra.europa.eu/sites/default/files/fra-2012\\_hate-crime.pdf](http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf), p. 7.

2 FRA, FRA brief: Crimes motivated by hatred and prejudice in the EU, at [http://fra.europa.eu/sites/default/files/fra-brief\\_hatecrime\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-brief_hatecrime_en.pdf).

3 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, OJ 2008 L 328, Article 1(a).

4 Ibid., Article 1(a).

5 Ibid., Article 4.

6 Lithuania was called upon to introduce biased motivation as an aggravating circumstance, prior to the 2008. For example, in 2005 the European Commission against Racism and Intolerance of the Council of Europe in its third report on Lithuania urged Lithuania to adopt a legal provision recognizing the racial motive as the aggravating circumstance. The United Nations Committee on the Elimination of Racial Discrimination also urged Lithuania to adopt such provision. On the seventh United Nations Human Rights Council's session, the UN special rapporteur on racism Mr Doudou Diene presented the assessment of his visit to Lithuania in 2007 and made a specific proposal to supplement the Criminal Code by including racial motive as an aggravating factor, Jolanta Samuolyte. What do the racist attacks against Berneen make us think about? Delfi.lt, 2008-04-17, <http://www.delfi.lt/news/ringas/lit/article.php?id=16685685>.

7 Article 60(1)(12) (bias-motivation as an aggravating circumstance), Article 129(2)(13) (murder with bias-motivation); Article 135(2)(13) (severe health impairment with bias motivation); Article 138 (non-severe health impairment with bias motivation); Article 169 (discrimination); Article 170(1)-(3) (incitement of hatred, violence, dissemination of materials inciting hatred, violence); Article 170.1 (creating of an organized group aiming at discriminating against or inciting violence); Article 170.2 (public approval of international crimes, the crimes of the USSR or Nazi Germany against the Republic of Lithuania and its people, and denial or gross denigration of those crimes); Article 171 (disturbance of religious ceremonies) of the Criminal Code. Criminal Code of the Republic of Lithuania, Official Gazette 2000, Nr. 89-2741, at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453631](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453631).

8 Office of the Prosecutor General of the Republic of Lithuania, Methodical recommendations on the organization, directing and carrying out of investigations into criminal offences under racial, nationalist, xenophobic, homophobic and other discriminatory motives, 23

it appears that a comprehensive legal framework alone is not enough to effectively respond to hate motivated crimes in Lithuania. Although the lack of readily-accessible hate crimes statistics prevents from estimating the actual scale of these crimes, the experts have warned that in general, bias-motivated crimes remain widely underreported.<sup>9</sup> FRA survey shows that victims and witnesses of such crimes often do not report to law enforcement agencies. The underreporting is attributed primarily to the lack of trust that the authorities are able to afford them the protection they are guaranteed by the law.<sup>10</sup> The bi-annual public opinion poll in Lithuania has also shown that more than 80% of persons who believed their rights were violated refrained from reporting or seeking help, the primary reason being disbelief that the situation could have been improved.<sup>11</sup>

Although being indicative of a deeply rooted problem, the cited surveys do not provide much insight on what happens to hate crime victims when they make an attempt to report bias-motivated incidents and how the criminal justice system responds to it. The aim of this study is to fill in the knowledge gaps and assess whether Lithuanian legal system – both in theory and in practice – is ready to respond efficiently to hate crimes while taking into account the victims' rights.

The study is structured as follows:

- **Section I** assesses Lithuanian legal framework against the standards of victims' rights support and protection as set out in the *EU Directive on Victims' Rights*.<sup>12</sup> The Directive is a product of a long-lasting EU's attempt to harmonize victims' rights protection across the Union and is the most comprehensive legal instrument on victims' rights available so far.<sup>13</sup>
- **Section II** aims at translating existing legal standards into practice by taking an in-depth look at (i) the way law-enforcement officials respond to hate crimes and guarantee the victims' rights and (ii) the way hate crimes victims assess the performance of the law enforcement institutions responsible for combating hate crimes and the way they protect their rights as the victims of bias-motivated incidents.
- **Section III** summarizes the findings of the research and provides recommendations for enhancing hate crimes victims' participation in the criminal justice process, their protection and support.

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December 2009, order No. 12.14-40, at <http://www.prokuraturos.lt/nbspnbspnusikaltimai%CS%BEmoni%CS%A1kumui/tabid/221/Default.aspx> (hereinafter – Prosecutor General's Recommendations on Hate Crimes).

<sup>9</sup> FRA, FRA brief: Crimes motivated by hatred and prejudice in the EU.

<sup>10</sup> Ibid.

<sup>11</sup> Please note that the survey was designed to cover all human rights violations, and not specifically hate crimes or hate speech. Human Rights Monitoring Institute, Public Opinion Poll 2012, at [http://www.hrmi.lt/uploaded/PDF%20dokai/TYRIMAI/Vilmorus%20visuomones%20nuomones%20apklausa\\_Santrauka\\_2012.pdf](http://www.hrmi.lt/uploaded/PDF%20dokai/TYRIMAI/Vilmorus%20visuomones%20nuomones%20apklausa_Santrauka_2012.pdf), p. 9.

<sup>12</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315/57.

<sup>13</sup> Due to the limited scope of the report, it does not include the in-depth analysis of the European Court of Human Rights (ECtHR) case-law. The authors, however, acknowledge the importance of the standards set by the ECtHR in this field. For further information see FRA, *Making hate crime visible in the European Union: acknowledging victims' rights*, pp. 15-18.

The study is recommended for the Lithuanian decision-makers, in particularly, the government agencies charged with the task of ensuring the compliance of Lithuanian laws with the provisions of the *EU Directive on Victims' Rights*. It is also recommended to the law-enforcement agencies and specifically the pre-trial investigation officers and prosecutors dealing with the incidents of hate crimes. The society at large, including policy and decision makers, scholars, journalists, and others are also very much invited to familiarize themselves with the findings of the study.

# I. Rights of Hate Crime Victims under Lithuanian and EU Law: comparative analysis

## 1.1. Protection of the Hate Crime Victims' Rights under the EU Law

In the *Stockholm Programme - An open and secure Europe serving the citizen*, the European Council stressed the importance to provide special support and legal protection to those who are the most vulnerable or find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents. It has also urged to take an integrated and coordinated approach to victims.<sup>14</sup>

The Council has reiterated its commitment to strengthening the rights and protection of victims in criminal proceedings in 2011 by adopting a "Budapest Roadmap".<sup>15</sup> The Roadmap specifically called on reviewing and enhancing the contents of the 2001 Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. It has been acknowledged, that by and large the Member States failed to implement the Decision and thus this EU legislation had not been effective in achieving minimum standards for victims across the EU.

With the aim of establishing common minimum standards on the rights, support and protection of victims of crime throughout the EU, the *Directive on Victims' Rights* was adopted on 25 October 2012.<sup>16</sup> It not only strengthens the rights enshrined in the Framework Decision, but also includes new rights not previously included in the European legislation. As the guiding principles, the Directive establishes that:

*As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.*<sup>17</sup>

As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health.

- EU Victims' Rights Directive

14 The Stockholm Programme – An open and secure Europe serving and protecting citizens, OJ 2010 C 115, para. 2.3.4.

15 Resolution of the Council on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, OJ 2011 C 187/1 (hereinafter – „Budapest Roadmap”).

16 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315/57 (further - the Victims' Rights Directive), Recital 7.

The Directive is to be transposed to national law of all the Member States no later than by 16 November 2015.

17 Recital 9 of the Victims' Rights Directive.



The Directive sets out victims' right of access to victim support,<sup>18</sup> basic procedural rights during the criminal proceedings, such as right to be heard, right to interpretation and translation, right to information,<sup>19</sup> and victims' rights to protection.<sup>20</sup> The latter rights are aimed to safeguard the victim from recurrent victimisation, intimidation and retaliation.

The Directive provides for general protection measures applicable to all victims and additional protection of vulnerable victims, i.e. victims especially prone to *secondary and repeat victimisation, to intimidation and to retaliation*.<sup>21</sup> Eligibility for the extra protection measures is subject to individual assessment by national authorities, which should take into account the personal characteristics of the victim, as well as the type, nature and circumstances of the crime.<sup>22</sup>

The text of the Directive specifically refers to hate crime victims indicating them as suffering from high risk of secondary and repeat victimisation, as well as intimidation and retaliation.<sup>23</sup> Thus, hate crime victims should be afforded both general and special protection measures under the Directive during the course of criminal proceedings.

### 1.1.1. Procedural Rights

The Directive establishes basic procedural rights of crime victims, that must be respected in all of the jurisdictions within the EU. Some of these rights, such as the right to receive information and the right to interpretation and translation, are especially relevant to hate crime victims due to the nature of the crime. Hate crimes often target persons of foreign nationality who do not speak the language of a majority and/or have difficulties understanding it and are thus in a disadvantaged position where criminal proceedings are concerned.

The **right to interpretation and translation** is essential in enabling the victim to participate in the proceedings. The Directive enshrines the right to interpretation for victims who do not understand or speak the language of the proceedings in both the stage of criminal investigation and adjudication before the court or other judicial authority.<sup>24</sup> The interpretation must be provided free of charge. The Directive also provides for the use of communication technology in ensuring interpretation.<sup>25</sup>

The Directive also obligates the State to provide victims with translations of essential procedural documents in a language they understand.<sup>26</sup> This must also be done free of charge. These documents must include any decision ending the criminal proceedings including the reasons for such decision, if the victim so requests. The victim is also allowed

to submit requests to consider other documents as essential and translate them.<sup>27</sup>

The State must also ensure that an assessment is carried out whether the victim requires interpretation and translation services.<sup>28</sup> The victims must also have a right to challenge the decision not to provide the services.

The **right to information** is another right instrumental in allowing the victim to fully participate in the proceedings, as the knowledge of the rights and their content is essential in exercising them. This is particularly true of victims who are foreigners and in most cases will have very limited understanding of how the criminal procedure is conducted in that particular State.

The Directive requires the State to ensure that competent authorities offer the crime victims the information on their rights set out in the Directive and how to exercise them.<sup>29</sup> This must be done on the victim's first contact with the authority. It includes information on victim support; procedure for making complaints regarding the criminal offence; protection measures; access to legal aid; access to compensation; a right to interpretation and translation; a right to make complaints; restorative justice services; conditions for reimbursement of expenses, and other.

It is important to note that under the Directive all of the information must be provided to the victim in simple and accessible language so as to allow the victim to understand both the rights he or she has and the essence of those rights.<sup>30</sup>

### 1.1.2. General Protection Measures

The protection measures envisaged in the Directive include the measures aiming to protect the victims from emotional and psychological harm as well as means of protection of the victims and their family from physical attacks.

In order to achieve this, the Directive first establishes the requirement of **minimal contact between the victim and the offender**.<sup>31</sup> The State is required to ensure that there is as little contact as possible between the victim, her or his family members and the offender in the premises where the criminal proceedings are conducted.<sup>32</sup> This, however, does not apply when criminal proceedings specifically require such contact, e.g. during cross-examination or court hearings.

The Directive does not specify how the contact is to be kept to a minimum. Thus the State is free to choose the means it sees fit and can employ relatively simple solutions, such as ensuring that times when the victim and the offender are present at the criminal proceedings premises do not overlap; alternatively more complex measures can be chosen, such as arranging separate premises for victims and offenders.

18 Articles 8, 9 of the Victims' Rights Directive.

19 Articles 6, 7 and 10 of the Victims' Rights Directive.

20 Article 18 of the Victims' Rights Directive.

21 Article 22(1) of the Victims' Rights Directive.

22 Article 22(1), (2) of the Victims' Rights Directive.

23 Recital 57 and Article 22(3) of the Victims' Rights Directive.

24 Article 7(1) of the Victims' Rights Directive.

25 Article 7(2) of the Victims' Rights Directive.

26 Article 7(3) of the Victims' Rights Directive.

27 Article 7(5) of the Victims' Rights Directive.

28 Article 7(7) of the Victims' Rights Directive.

29 Article 4(1) of the Victims' Rights Directive.

30 Article 3 of the Victims' Rights Directive.

31 The term "offender" is used in the broad sense in the Directive, and includes suspects and accused persons as well as convicted offenders. Recital 12 of the Victims' Rights Directive.

32 Article 19 of the Victims' Rights Directive.

The criminal proceedings are also to be conducted in a way as to ensure minimal emotional harm to the victim and protect her or his dignity.<sup>33</sup> **Interviews with the victim** in the criminal proceedings have to be carried out without unjustified delay after the victim made a complaint regarding the offence to the competent authority. The number of the interviews has to be kept to a minimum and the interviews should only be carried out where strictly necessary during the criminal investigation.

The same principle also applies to **medical examinations of the victim**. When taking into account the aim to avoid emotional harm to the victim, these principles could reasonably be assumed to apply both to the number and the scope of such interviews and examinations, as extensive procedures are very likely to cause the victim significant stress.

The Directive also obligates the State to protect **privacy of the victim** during criminal proceedings.<sup>34</sup> However, the text of the Directive lays down a very general requirement to *ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy [...] and images of victims and of their family members*. This results in a rather vague obligation for the State, which can be interpreted as a general principle on how the proceedings should be conducted rather than a precise requirement. The State is also required to encourage media's selfregulation where victims' privacy protection is concerned.<sup>35</sup>

### 1.1.3. Special Protection Measures

The Directive envisages a number of special protection measures for crime victims *with specific protection needs*.<sup>36</sup> The need for these special protection measures is decided by carrying out an *individual assessment*, which seeks to establish if and what special protection measures should be applied. The assessment takes the characteristics of the victim and the crime into account. The text of the Directive stresses the need to pay particular attention to victims that suffered from bias or discrimination motivated crime, and especially hate crime victims, in the course of the assessment.<sup>37</sup>

It is worth noting, however, that the victim is under no obligation to accept these measures: the State has a duty to take into consideration the wishes of the victim regarding the special measures, including the cases when the victim refuses the special measures.<sup>38</sup>

There are two types of special protection measures listed in the Directive. The first group is **measures available during the criminal investigation**. These are:

- carrying out of interviews with the victim in specially designed or adapted premises;

- carrying out of interviews with the victim by or with participation of a specially trained professional;
- carrying out of all interviews with the victim by the same persons.<sup>39</sup>

These measures are aimed at ensuring a favourable and less stressful environment for vulnerable victims during their contacts with the investigating authorities. These measures also impose corresponding obligations on the State to ensure the availability of special premises and trained professionals. The latter obligation is expressly covered in the Directive: the State must ensure that officials who come into contact with crime victims receive training enabling them to deal with the victims in an impartial and professional manner.<sup>40</sup> The extent of the required training is dependent of the level of contact the official has with crime victims.

The second group is **measures available during court proceedings**. It includes:

- measures to avoid visual contact between victims and offenders including during the giving of evidence;
- measures to ensure that the victim may be heard in the courtroom without being present;
- measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence;
- measures allowing a hearing to take place without the presence of the public.<sup>41</sup>

The first two measures minimize the contact between the victim and the offender during court proceedings. This in turn reduces the psychological harm, which may be caused to the victim by confronting the offender, as well as prevents possible physical and psychological assaults on the victim. The text of these clauses directly suggests that this could be achieved by employing appropriate communications technology.

The third and fourth measures are aimed at safeguarding the victim's privacy. These measures reduce the emotional harm caused to the victim by the court proceedings, as well as prevent the disclosure of details of the victim's private life to the public, which could potentially lead to further harm to the victim.

It must be noted, however, that application of these special protection measures is subject to exceptions. Even if a victim is deemed to be in need of these measures by the individual assessment, the measures can be renounced if operational or practical constraints make this impossible or if failure to urgently interview the victim could cause harm to her or him, or another person, or could prejudice the course of the proceedings.<sup>42</sup>

33 Article 20 of the Victims' Rights Directive.

34 Article 21(1) of the Victims' Rights Directive.

35 Article 21(2) of the Victims' Rights Directive.

36 Article 22 of the Victims' Rights Directive.

37 Article 22(3) of the Victims' Rights Directive.

38 Article 22(6) of the Victims' Rights Directive.

39 Article 23(2) of the Victims' Rights Directive.

40 Article 25(1) of the Victims' Rights Directive.

41 Article 23(3) of the Victims' Rights Directive.

42 Article 23(1) of the Victims' Rights Directive.

## 1.2. Protection of the Hate Crime Victims' Rights under the Lithuanian Law

Lithuania has yet to transpose the *EU Directive on Victims' Rights* to its national law. At the moment there are no official suggestions or bill proposals for the Directive's transposition.

### 1.2.1. Compliance with Procedural Rights

The Lithuanian Code of Criminal Procedure (hereinafter – the CCP)<sup>43</sup> enshrines the victims' right to translation and interpretation as well as a right to information in criminal proceedings. However, these rights are not guaranteed to the extent the Directive prescribes.

The CCP covers the **right to interpretation and translation** in a rather vague way. It lays down a general principle that all participants of the criminal proceedings who do not know Lithuanian have a right to use the services of an interpreter/translator<sup>44</sup> in the course of the criminal proceedings, including when accessing case files.<sup>45</sup>

Interpretation and translation services are always provided free of charge to the suspect.<sup>46</sup> Yet the CCP is silent on the matter where the same services for the victim are concerned. Even though, to the best knowledge of the authors, crime victims are not charged by the authorities for these services, this should be explicitly stated in the CCP.

Where translation services are concerned, the CCP provides that all documents, which are presented to the participants of the proceedings, must be translated.<sup>47</sup> These are mostly the core procedural documents such as judgements and decisions of courts, as well as decisions refusing to open a criminal investigation and decisions terminating it. Even though the CCP complies with the requirement to translate documents ending the criminal proceedings, it fails at providing for any procedure for submitting a request to consider other documents essential as required under the Directive.

There is no formal procedure laid down in the CCP for assessing whether the victim needs interpretation/translation services. The decision rests solely with the investigating officer with whom the victim comes into contact. No special procedure to contest a negative decision regarding the interpreter/translator exists. However, the decision can be appealed under the general procedure for contesting the actions and decisions of the officers who conduct the criminal investigation.<sup>48</sup>

The CCP provisions on the **right to information** are similarly sparse. The officers in the criminal proceedings are under a general obligation to *inform the participants of the*

*criminal proceedings of their procedural rights.*<sup>49</sup> To decide on what exactly falls under the *procedural rights* appears to be at the discretion of each officer. However, since such services as general victim support,<sup>50</sup> individual victim assessment or restorative justice are not laid down in Lithuanian laws, no victims are ever informed about their rights to access these services. The victim must be informed about her or his right to compensation; however, this applies only in cases of violent crimes.<sup>51</sup>

There are no requirements in national law to inform the victim of her or his rights on the first contact in the criminal proceedings with the competent authority. There are also no requirements on how and in what language the informing must be carried out, thus leaving it at the complete discretion of the relevant officer dealing with the victim.

### 1.2.2. Compliance with General Protection Measures

The CCP and other legal acts regulating the criminal procedure do not lay down any general principles on the treatment and rights to protection of hate crime victims, or any crime victims for that matter, during the course of criminal proceedings. Instead, the regulation related to crime victims is laid down in specific, context-sensitive clauses. Where the **contact between the victim and the offender** is concerned the Lithuanian legislation contains no specific obligations for the investigating authorities to avoid such contact, nor does it offer any general guidance on how the criminal proceedings should be conducted in that regard. The sole exception to this is the regulation on interviews of juvenile crime victims. The CCP provides that the offender can be prevented from attending any of the interviews with the juvenile victim, if her or his presence could influence or pose a threat to the victim.<sup>52</sup>

However, this regulation only applies to interviews conducted during criminal investigation. It does not concern other possible instances of contact in the premises where the criminal investigation is conducted, nor does it set any broader principles on how the proceedings should be carried out on a whole.

The situation regarding **the number of interviews and medical examinations** is very similar – the CCP does not contain a general principle of a minimum number of procedures involving the crime victim. The only exception again is interviews with juvenile crime victims. The CCP establishes that a juvenile crime victim *is normally interviewed no more than once in the course of pre-trial investigation.*<sup>53</sup>

The CCP does contain provisions on **the protection of crime victims' privacy in the criminal proceedings.** As a precaution, personal data of crime victims must be kept separately

43 *Code of Criminal Procedure of the Republic of Lithuania*, Official Gazette, 2002, No. 37-1341, last amended on 10 October 2013, at [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=457977](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=457977) (hereinafter – CCP).

44 *Interpreter and translator* is the same word in Lithuanian.

45 Article 8(2) of the CCP.

46 Article 44(7) of the CCP.

47 Article 8(3) of the CCP.

48 Articles 62-65 of the CCP.

49 Article 45 of the CCP.

50 Currently only support centers dealing with a specific type of crime victims function in Lithuania, e.g., special assistance centers for domestic violence victims, support centre for human trafficking victims, and there are no general victim support centers nor centers intended for the hate crime victims.

51 Article 46(2) of the CCP.

52 Article 186(2) and (3) of the CCP.

53 Article 186(2) of the CCP.

from the case file.<sup>54</sup> The offender and her or his representative are not allowed to access this data.<sup>55</sup> Furthermore, they are not allowed to make copies of the case material related to the private life of a crime victim.<sup>56</sup>

### 1.2.3. Compliance with Special Protection Measures

The Lithuanian legislation regulating the conduct of criminal proceedings currently contains no provisions on **individual victim assessment** in order to identify especially vulnerable victims which are in need of additional, or *special*, protection measures as envisaged by the Directive.

The closest alternative to this measure under Lithuanian law is protection afforded to a crime victim under the *protection from criminal action*<sup>57</sup> scheme. This is a range of measures intended to protect victims, witnesses and other participants of the criminal proceedings from criminal activities directed at them as a result of their participation in the proceedings. Crime victims protected under this scheme can be interviewed using communications technology during the criminal investigation and court proceedings.<sup>58</sup>

However, victims are only eligible for this protection if there is *verified information from public or confidential sources* that the victim's life or health, or property is in threat.<sup>59</sup> Also the protection can only be granted in cases concerning crimes punishable by a custodial sentence in excess of 3 years.<sup>60</sup> The majority of hate crimes, which occurs in Lithuania, do not fall into this category. Furthermore, these measures are intended for the physical protection of the victim and her or his property.<sup>61</sup> Therefore, Lithuanian legal rules fail to fulfil the requirements set out in the Directive.

There are several individual provisions in the CCP that establish measures similar to those required under the Directive. The **requirement to carry out interviews with the victim by or with participation of specially trained professionals** is partially covered in the cases of juvenile crime victims. If a victim under the age of 18 years is interviewed in the criminal investigation, a psychologist may be called upon to participate in the interview.<sup>62</sup> However, no such support is available to other vulnerable victims, including hate crime victims.

The Lithuanian legislation also covers to some extent measures that allow avoiding **visual contact between victims and offenders during court proceedings**. The CCP allows for the removal of the offender from the courtroom if he or she

might hinder the victim to give evidence.<sup>63</sup> However, this is only for the duration of evidence giving stage.

The CCP comes closest to realising the special measure allowing a **hearing to take place without the presence of the public**. A non-public hearing can be ordered in order to protect the private life of a victim.<sup>64</sup> None the less, there are no grounds in the law to order a non-public hearing for the benefit of a vulnerable victim, other than her or his privacy protection. Thus the current regulation cannot be regarded as fully compliant with the requirements of the Directive as well.

54 Articles 181(1), 183(3) and 185, 220 of the CCP.

55 Articles 181(1), 218(3), 237 of the CCP.

56 Article 181(6) of the CCP.

57 In Lithuanian, *apsauga nuo nusikalstamo poveikio*.

58 Article 183(4) and 185, 279(6) and 283(2) of the CCP.

59 Law on the protection of participants of criminal proceedings and criminal intelligence, and justice and law enforcement institutions' officers from criminal action of the Republic of Lithuania, *Official Gazette* 1996, Nr. 20-520, Article 5.

60 Article 11 of the Lithuanian Criminal Code.

61 Law on the protection of participants of criminal proceedings and criminal intelligence, and justice and law enforcement institutions' officers from criminal action, Article 3.

62 Article 186(5) of the CCP.

63 Article 274 of the CCP.

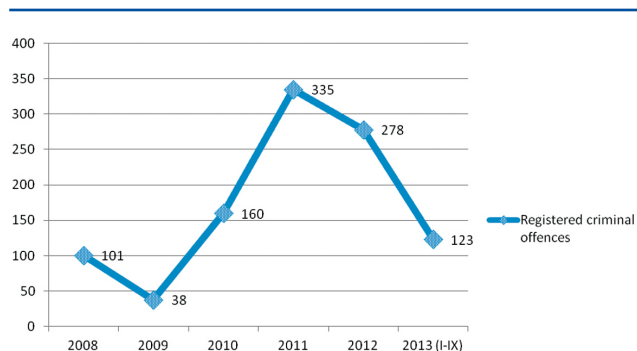
64 Article 9(3) of the CCP.



## II. Hate Crime Victims' Rights in Practice: testimonies from the law enforcement officers and the victims in Lithuania

The absolute majority (over 96%) of hate crimes in Lithuania fall under Article 170 of the Criminal Code (hereinafter – the CC), i.e. *the incitement against any national, racial, ethnic, religious or other group of persons*, otherwise known as “hate speech”.

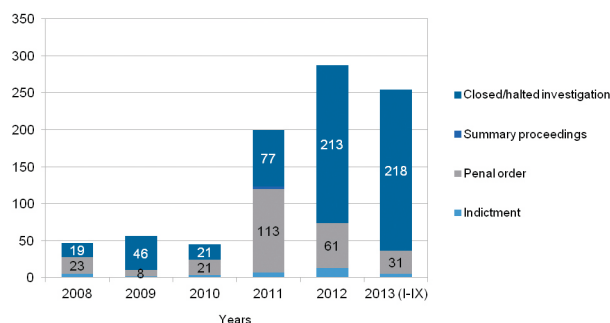
A sharp increase in reported hate crimes starting from 2009 up to 2011 is noticeable. This is likely to be related to the increased society's awareness on criminal liability for inciting hatred as well as to the intensified law enforcement institutions' activity in this area. Information published by media regarding cases of persons convicted for hate inciting online comments might have played a role too. The statistics for the last two years indicate that there is a perceivable stabilization of the number of registered criminal offences.<sup>65</sup>



Graph 1. Dynamics of discrimination and hate incitement related crimes in Lithuania.<sup>66</sup>

Graph No. 2 below indicates that criminal investigations into hate crimes resulting in indictment are relatively rare.

In 2012 the number of such cases was the highest – 13. In the majority of cases these investigations are concluded by issuing a penal order.<sup>67</sup> The largest number of cases that reached the court in some form (indictment, penal order or summary proceedings) was in 2011, while the number of closed or halted investigations was relatively low that year. This coincided with the sharp increase in the number of complaints and the heightened public's response to hate crimes.



Graph 2. Results of concluded criminal investigations into hate crime.<sup>68</sup>

As to the victims of hate crimes, graph No. 3 below clearly indicates the dynamics regarding the grounds on which the complaints are received. The data is only available from 2010, thus the period for comparison is rather short. At the beginning of the period there was a clear prevalence of offences of hate incitement on the grounds of sexual orientation. An assumption can be made that the sudden leap of registered offences in 2011 was essentially determined by the increased attention to this type of crime by the public. From 2012 a considerable increase in the number of instances of hate incitement on the

<sup>65</sup> The fact that data for 2013 includes only the first three quarters of the year, January to September, should be taken into account.

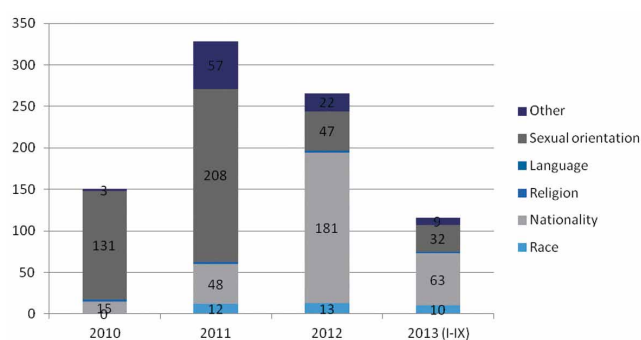
<sup>66</sup> Statistical data available from the Information Technology and Communications Department under the Ministry of Interior, at [http://www.ird.lt/infusions/report\\_manager/report\\_manager.php?lang=lt&rt=1](http://www.ird.lt/infusions/report_manager/report_manager.php?lang=lt&rt=1).

<sup>67</sup> A type of summary proceedings, when the offender does not contest her or his guilt.

<sup>68</sup> Statistical data available from the Information Technology and Communications Department under the Ministry of Interior, at [http://www.ird.lt/infusions/report\\_manager/report\\_manager.php?lang=lt&rt=1](http://www.ird.lt/infusions/report_manager/report_manager.php?lang=lt&rt=1).

grounds of nationality can be observed. This type of crime has been drawing relatively little attention in previous years.

A larger number of hate incitement instances might have been officially recorded due the active work of minorities' rights defenders (the first LGBT demonstration, the media attention to this topic, etc.). Where the increased attention to the issue of nationality is concerned, this might have been caused by the increased tension in Lithuanian-Polish relations and the problems concerning the Polish minority in Lithuania, and the questions regarding Jewish burial grounds and restitution of pre-war Jewish property.



Graph 3. Registered instances of incitement against national, racial, ethnic, religious or other group of persons – breakdown of grounds. <sup>69</sup>

## 2.1. Responding to Hate Crimes and Ensuring Hate Crime Victims' Rights in Practice: perspective of the Lithuanian law enforcement officers and main challenges

The drafters of the “Budapest Roadmap” emphasized that a particular attention should be paid to the process of implementation of legislative instruments.<sup>70</sup> To this end, the *Directive on Victims' Rights* recognizes the crucial role of the officials involved in criminal proceedings who come into personal contact with victims and prescribes to take measures in order to enable them to respond to the victim's needs in a “respectful, sensitive, professional and non-discriminatory manner.”<sup>71</sup>

In order to determine how Lithuanian law-enforcement officers respond to hate crimes and ensure hate crime victims' rights in practice, a series of structured interviews with eleven prosecutors and seven police officers were conducted.<sup>72</sup>

The interview questionnaire was comprised of 22 questions, aimed at indicating how the officers treat the victims of hate crimes in practice, what are their views *vis-à-vis*

bias-motivated crimes, and what difficulties they encounter in the course of the criminal investigation.

In the vast majority of reported cases, hate crimes are committed online, more specifically – in the comments sections of the main news websites. In these cases, the complaints to the law enforcement institutions are submitted by the non-governmental organizations or individuals who come across them.

Given the nature of the reported offences, the main difficulty in conducting the research into officers' attitudes was that very few of the interviewees have had direct contact with hate crime victims. Essentially, officers who specialize in this type of crime rarely encounter the victims and, thus, are not acquainted with the particularities of conducting the investigation and special needs that the victims might have.

Two target groups – prosecutors and police officers – compared, it transpires that the prosecutors are better informed about the hate crime phenomenon. This can be explained not only by higher qualification of the former group but also by their narrower specialization and larger number of conducted investigations into hate crimes. Even though only officers who have conducted criminal investigations into hate crimes have been interviewed, not all of them were familiar with the concept of hate crime, and the term itself is not well established among the representatives of law-enforcement.

The absolute majority of the interviewees concluded that this type of crime is dangerous and criminal liability is a suitable means of reaction by the State. Admittedly, the attitude depends partly on precisely which offences are considered. Such offences as severe health impairment motivated by hate or non-severe health impairment motivated by hate are considered by the interviewed practitioners very dangerous without exception. On the other hand, opinions on offences against a person's equal rights and freedom of conscience (Chapter XXV of the Criminal Code)<sup>73</sup> are more polarized. For example, one interviewee stated: “Each crime is different. Violent crime committed out of hatred is very dangerous; it resonates in the society and causes great suffering for the victim, while discrimination on grounds of sex, nationality etc. is significantly less dangerous. The consequences of this crime are firstly felt by the victim, while society, and sometimes the courts, often refrain from calling these types of offences a crime.” Several interviewees indicated that in some milder instances administrative, rather than criminal, liability could be applied, since – according to them – in some cases activities, which formally match the description of criminal offences, are indicative of a lack of tolerance rather than present a real danger to the society.

The majority of interviewees identified all of the grounds of hate crimes listed in the law as equally important and significant. Three grounds were indicated as the most common in the officers' practice: hate crimes based on the victim's

<sup>69</sup> Statistical data available from the Information Technology and Communications Department under the Ministry of Interior, at [http://www.ird.lt/infusions/report\\_manager/report\\_manager.php?lang=lt&rt=1](http://www.ird.lt/infusions/report_manager/report_manager.php?lang=lt&rt=1).

<sup>70</sup> „Budapest Roadmap”, Recital 11.

<sup>71</sup> Article 25(1) of the Victims' Rights Directive.

<sup>72</sup> The interviews with the law-enforcement officers were conducted by the Institute of Law. The Institute of Law is a research establishment, founded in 1991 by the Government of the Republic of Lithuania seeking to coordinate the reform of the legal system and law institutions, to combine it with the economic and social reorganization carried in the country. The founder of the Institute is the Ministry of Justice of the Republic of Lithuania. See more information at [http://teise.org/About\\_us.html](http://teise.org/About_us.html).

<sup>73</sup> These include: Article 169 (discrimination); Article 170(1)-(3) (incitement of hatred, violence, dissemination of materials inciting hatred, violence); Article 170.1 (creating of an organized group aiming at discriminating against or inciting violence); Article 170.2 (public approval of international crimes, the crimes of the USSR or Nazi Germany against the Republic of Lithuania and its people, and denial or gross denigration of those crimes); Article 171 (disturbance of religious ceremonies) of the Criminal Code.

nationality, race and sexual orientation; thus they were considered most important by a part of interviewed officers.

The following section lists the main challenges to the effective investigation of hate crimes and adequate protection of victims' rights.

Each crime is different. Violent crime committed out of hatred is very dangerous; it resonates in the society and causes great suffering for the victim, while discrimination on grounds of sex, nationality etc. is significantly less dangerous. The consequences of this crime are firstly felt by the victim, while society, and sometimes the courts, often refrain from calling these types of offences a crime

- law enforcement officer, Lithuania

### 2.1.1. Obligation to Take Measures to Uncover a Bias Motive

The ECtHR has held on numerous occasions that States are under positive obligation to investigate bias-motivated crimes, and, specifically, pay a particular attention to unmask any racist or other motive.<sup>74</sup> This obligation was found to be implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 or Article 3 to secure the enjoyment of the right to life and prohibition of torture without discrimination.<sup>75</sup>

The obligation to investigate possible racist overtones to a violent act means that the authorities must do what is reasonable in the circumstances to collect and secure the evidence; explore all practical means of discovering the truth; and, deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence.<sup>76</sup> Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.<sup>77</sup>

However, the interviews conducted confirm the tendencies not to qualify certain acts as hate motivated crime but rather as a crime committed out of hooliganism motives. One interviewee talked about an instance where the investigators were instructed to find out whether an offence of severe health impairment motivated by hate (Article 135(2)(13) of the Criminal Code) was committed. The incident involved a Roma person and, according to the evidence given by the latter, at the outset of the conflict the suspect verbally expressed his animosity towards the Roma people. However, the actual assault occurred later at a different place when the victim and the suspect encountered each other, therefore the law

<sup>74</sup> *Nachova and Others v. Bulgaria*, 6 July 2005, ECtHR [GC], App no 43577/98 43579/98, at para. 160.

<sup>75</sup> *Ibid.*, para. 161; *Bekos and Koutropoulos v. Greece*, 13 December 2005, ECtHR, App no 15250/02, para. 52.

<sup>76</sup> *Ibid.*, para. 69.

<sup>77</sup> *Nachova and Others v. Bulgaria*, para. 160.

enforcement officers concluded it was not a crime motivated by hate towards Roma people.

As statistical data reveals, the official numbers of hate crimes in Lithuania are relatively low. The high-level of hate crimes underreporting in Lithuania is not only due to victims' reluctance to report the incidents, but also due to the inaccurate classification of the offences committed. Inaccurate classification itself is a result of non-compliance with the State's obligation to unmask a bias motive, be it a racial, ethnic, homophobic or any other.

When investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.

- case of *Nachova v. Bulgaria*,  
European Court of Human Rights

### 2.1.2. Obligation to Investigate Thoroughly

The Lithuanian Criminal Code of Procedure (CCP) provides for a possibility to seek an expert's opinion when dealing with issues that require special knowledge of a subject, e.g. scientific knowledge, art expertise, technical knowledge.<sup>78</sup> *The Prosecutor General's Recommendations on Hate Crime* provide that a law-enforcement officer has a duty to address experts for an opinion regarding linguistics, history or background information when the officer's legal knowledge is not sufficient to investigate the crime properly. Nevertheless, when a law enforcement officer addresses experts for their opinion, in particular, as far as hate speech incidents are concerned, he or she should not formulate a question in a way that would allow an expert to make a conclusion about legal qualification of the act as, ultimately, it is the conclusion that the officers themselves should make.<sup>79</sup> This means that, for example, a question whether a particular act, symbol, sign or article incites hatred against a particular group of people, cannot be posed. Instead, the officer should require the expert's opinion on the content of the expression, its interpretation from a linguistic, semiotic, social or historical perspective.

However, contrary to these recommendations, law enforcement officers refrain from determining themselves whether an act incites hatred and thus constitutes an offence, leaving this for the external experts. The interviewees acknowledged that they rely on the conclusions of the external experts completely. Officers noted that since the line between expressing one's opinion and a crime is fragile, "person's liability completely

<sup>78</sup> Articles 28-29 of the CCP.

<sup>79</sup> *Prosecutor General's Recommendations on Hate Crime*, para 63.

*depends on the findings of an external expert, who enjoys a wide margin of interpretation.”*

This finding is particularly concerning given a noticeable inconsistency in the assessments of experts who are usually representatives of the Office of the Inspector of Journalist Ethics, occasionally – other institutions, such as the Equal Opportunities Ombudsperson or the Lithuanian Social Research Center. As noted by one of the interviewee, “*the elements of the offence in the Article 170 of Criminal Code are phrased in a difficult way, thus a person’s liability completely depends on the findings of an external expert, who enjoys a wide margin of interpretation, even though I lack the expertise to comment on their methods. However, different specialists evidently assess comments differently. Even the ones that are manifestly violence-inciting are not considered such and vice versa. Criminal liability, I think, requires a more precise wording*”.

The discussed practice is usually followed when investigating hate speech offences and is less relevant to other hate crimes. Nevertheless, given that the reported hate crimes in Lithuania are predominantly manifested as online hate incitements, their thorough investigation is of ultimate importance. This issue has been also highlighted by Judge Myer in his partly dissenting opinion in the case of *Balsyte-Lideikiene v. Lithuania* decided by the ECtHR. The judge stressed that “[w]hen an expert is needed to explain if a painting is a real Rembrandt or not, an expert opinion will be very relevant, and if there is a disagreement between experts there is every reason to question these experts in open court. The same happens for instance when complex technical or medical issues are at stake. Then indeed special knowledge is required for solving a case. However, [in deciding whether the calendar contained information material promoting national, racial or religious hatred] the experts’ opinions are just certain views from different scientific angles on an issue which ultimately only a judge has to decide on as a legal issue”.<sup>80</sup>

[In hate speech cases] person’s liability completely depends on the findings of an external expert, who enjoys a wide margin of interpretation.

- law enforcement officer, Lithuania

### 2.1.3. Obligation to Ensure Victims’ Protection

During the interviews, several officers stressed that in some hate crime cases, the work with the victim may have certain particularities. For example, one interviewee mentioned that in some cases of violent hate crime a long-term victim protection is necessary, as the victim might be intimidated and feel threatened for a significant period of time after the crime was committed. Though it was pointed out that in some instances the protection is lacking, at least just after the crime was committed and until the conflict is resolved, the majority of respondents indicated that in principle the protection measures in many cases are unnecessary.

<sup>80</sup> *Balsyte-Lideikiene v. Lithuania*, 4 November 2008, ECtHR, App no 72596/01.

Shortage of interpreters was indicated as one of the most common technical problems. This sometimes hinders prompt and effective investigation of hate crimes.

Where the information provided to hate crime victims is concerned, it was indicated that hate crime victims receive essentially the same information as victims of other types of crime, even though due to the nature of the offence the required information might differ. The interviews revealed that the victim might also be referred to various centres, which provide information to crime victims. According to prosecutors and police officers there are no significant problems when communicating with hate crime victims.

The fact that the investigating officers acknowledge a special nature of hate crime cases in encouraging, however, the lack of in-depth understanding regarding the hate crimes victims’ needs is noticeable. It might be explained by the minimal encounter with individual victims. However, lack of sensitivity on the part of the officers as well as insufficient victim protection system seems to explain why the victims are discouraged from reporting.

### 2.1.4. Obligation to Organize Trainings of Practitioners

The *EU Directive on Victims’ Rights* provides that States are to ensure that officers, who are likely to come into contact with victims, receive trainings to increase awareness of the needs of victims and to enable them to deal with victims in professional manner.<sup>81</sup>

Out of all the interviewees only a couple of prosecutors indicated that they have participated in trainings on discrimination and hate crimes, organized by the National Courts Administration. Meanwhile police officers have not had any training in that regard, even though they feel and have expressed the need for it.

The need is also reflected by the fact, that the majority of prosecutors, especially from regions other than Vilnius, were not aware of the *Prosecutor General’s Recommendations on Hate Crimes* and stated that their main guidelines are the case-law. It was also noted, however, that the case-law in this area is not sufficient and interviewees lack clearer guidance.

## 2.2. Responding to Hate Crimes and Ensuring Hate Crime Victims’ Rights in Practice: personal experiences of the hate crimes victims

The personal experience of the hate crime victims collected via the interviews offer rather a different perspective towards the protection of their rights. Seeking to get an assessment of the law enforcement institutions’ performance in combating hate crimes, twelve victims that claimed to have suffered hate motivated crimes were interviewed.<sup>82</sup> All of them claimed to

<sup>81</sup> Article 25(1) of the *Victims’ Rights Directive*.

<sup>82</sup> Interviews were conducted by the Human Rights Monitoring Institute.



have suffered from verbal abuse and intimidation; seven of them suffered from physical attacks; three also experienced damage to or loss of their property. Five persons were targeted because of their race; two – because of their nationality; three – because of their ethnic origin; one – because of his sexual identity; and one – because of his sexual orientation.

The interview questionnaire was comprised of 27 questions, aimed at indicating how the hate crime victims were treated by the law enforcement officers in practice, what views *vis-à-vis* hate crime officers demonstrated, how well they informed the victims of their status and related rights, as well as what difficulties victims encountered in the course of the criminal investigation.

All the hate crimes committed against the interviewed persons were committed in public, i.e. in the streets, cafés, shops, public transport or online, in the period of 2006-2013. The most severe incident took place in 2009, when a person of Arab origin and his wife were attacked and robbed in Vilnius suburbs when returning home at night. They were approached by three persons, and following such comments as “Arab”, “Arab, go back”, the interviewee was severely beaten, sustained rib injury, and thus ended up being hospitalized for a couple of months. The incident was reported to the police, and the interviewee was called to give testimony, however he was never informed about the progress of the investigation.

An example of an incident not involving physical attacks but rather verbal threats, abuse and intimidation was provided by a person of foreign nationality. On 11 March, 2011 – the Day of Restoration of Lithuanian Independence – right after the nationalistic rally, the interviewee was verbally threatened and intimidated in his shop by a group of *skinheads* shouting “Lithuania for Lithuanians”. “In front of my shop guys started assaulting me, saying that I should leave because Lithuania belongs to Lithuanian people. All those sorts of things. Later they sent me a message on Facebook saying that they will come back,” explained the interviewee.

Nine interviewees contacted pre-trial investigation institutions; one addressed the Equal Opportunities Ombudsperson Office. Five cases were covered in the media to some extent.

The following section analyses what the victims consider to be the main challenges to the implementation of the specific rights.

In front of my shop guys started assaulting me, saying that I should leave because Lithuania belongs to Lithuanian people. All those sorts of things. Later they sent me a message on Facebook saying that they will come back.

-victim of a hate crime, Lithuania

stated that they did not receive any kind of information from the pre-trial investigation officers upon bringing a complaint. Only one person noted that he was informed about the right to access legal aid; right to receive compensation; and right to interpretation and translation, however this was done at a later stage of the investigation, i.e. after Vilnius prosecution office took over the investigation from the regional police office after the case received considerable attention from the media. However, upon bringing a complaint the interviewee did not receive any kind of information on his rights from the regional law enforcement officers. As regards the further information that must be provided to the victim, four interviewees noted that they did not know the exact charges against the offender.<sup>83</sup>

According to the data provided by the interviewees, the law enforcement institutions open a pre-trial investigation shortly after the submission of the complaints, however, in two cases out of nine, investigations were terminated shortly after, two investigations have been halted, and in one case the interviewee was not informed about the progress of the investigation at all. Only two cases have reached the court. In one case, the court convicted three persons for hate motivated crimes. The judgment of the court was appealed against and is currently pending. Other case is still pending as well.

As to **the right to interpretation and translation**, seven interviewees who addressed the law enforcement institutions did not speak Lithuanian. Three of them could submit a complaint in Russian language without the interpreter present. Other four who were speaking English could not submit a complaint in a language they understand, nor did they receive any language assistance when submitting a complaint. As one of the persons noted, “The barrier of language really affects you. You don’t know what your rights are. Either you bring a translator with you or you rely on your Lithuanian friends. Luckily, I had Lithuanian friends who assisted me.” Likewise, all the information, if any, law enforcement officers were providing to the victims upon submission of the complaint was in Lithuanian only.

During the later stages of the investigation, i.e. during the interviews, only two persons noted that they were provided with interpretation services by the law enforcement institutions. Others were again assisted by their friends or relatives.

The barrier of language really affects you. You don’t know what your rights are. Either you bring a translator with you or you rely on your Lithuanian friends. Luckily, I had Lithuanian friends who assisted me.

- victim of a hate crime, Lithuania

### 2.2.1. Procedural Rights in Practice

Regarding **the right to receive information on the procedural rights**, the interviewed victims were critical of its implementation in practice. The majority (88,9 %) of victims

<sup>83</sup> Article 6 of the Victims’ Rights Directive provides that victims must receive information regarding the nature of the charges against the offender.

## 2.2.2. General Protection Measures in Practice

In order to ensure protection of victim's rights during criminal investigation, **the number of interviews of the victim should be kept to a minimum.**<sup>84</sup> Lithuanian national law does not contain a general principle of a minimum number of procedures with the crime victim, nor is this principle complied with in practice. One victim noted that he had been questioned six times during the pre-trial investigation stage by both regional police and Vilnius prosecution offices, which obviously contradicts the requirements set in the Directive.

**The right to be accompanied by a person of victim's choice** is not always observed in practice. The investigating officers occasionally state that persons who are not legal representatives or family members of the victim will not be accepted with the victim when submitting a complaint or being questioned. For example, when in 2012 a group of victims arrived to the Vilnius police office for the interviews, they were accompanied by a representative of the Lithuanian human rights NGO. The police officer, however, refused to allow the representative of the NGO to come with the victims for the interviews, without providing reasons for such a decision.

As revealed by the interviews, law enforcement officers also lack understanding of **the requirement of minimal contact between victims and the offender** within premises where criminal proceedings are conducted. A good example of this malpractice is illustrated by an incident described by an interviewee. He explained that once in the police office he had been sat down next to his offender to wait for the interviews. The victim felt threatened by mere sitting next to the offender, and the moment the offender reached out for something in his pocket, the victim thought he was going to be attacked, and thus sprayed the offender with gas.

Another interviewee was brought together with the offender at the police office by surprise in order for the law enforcement officers to pose a question of a possibility to make a friendly settlement.

## 2.2.3. Special Protection Measures in Practice

Though the EU Directive provides that victims and their family members have **a right to access victim support services**,<sup>85</sup> in Lithuania, no such general victim support services exist. Currently only support centers dealing with a specific type of crime victims function in Lithuania (e.g., special support centers for domestic violence victims, support centre for human trafficking victims). Therefore, contrary to the testimonies of the law enforcement officers that victims might also be referred to various centres, which provide information to crime victims, none of the victim interviewed confirmed that they were indeed informed about such possibility.

84 Article 20(b) of the Victims' Rights Directive.

85 Article 8(1) of the Victims' Rights Directive.

Given that there are no national procedures in place allowing to perform **an individual assessment** and identify the specific victim's needs, none of the interviewees were assessed or even informed of a possibility to get an assessment.

Similarly, no comprehensive system of victims' and their family members' **protection from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm**<sup>86</sup> exists in Lithuania. Seven out of nine victims stated to have suffered repeated incidents of hate crime after they submitted the first complaint.

Eleven persons out of twelve mentioned that they have other friends or acquaintances who had experienced some type of hate crime in Lithuania as well.

## 2.2.4. Implementation of the Right to be Treated in an Impartial, Respectful and Professional Manner

77,8 % of the interviewed hate crime victims who had had contact with pre-trial investigation officers claimed that they were not treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.<sup>87</sup> The average evaluation of the overall investigation process in Lithuania by interviewees equals to 2,3 points out of five.

One interviewee acknowledged to have lost the trust and respect in the law enforcement institutions in Lithuania, thus had he been targeted by hate motivated crime again, he would not see the point in contacting pre-trial investigation institutions again. Another person could not say for sure would he address the Lithuanian police ever again or not. His main doubt was of the effectiveness of the investigation.

Finally, almost all the interviewed persons stated that Lithuanian law enforcement officers lack relevant training on combating hate crime and ensuring the protection for hate crime victims, and that in general more awareness on the harm caused by hate crime is necessary in Lithuanian society. *"Hate crimes are linked to stupidity and ignorance"*, stated an interviewee of Asian origin. *"This anger, this hatred comes from a frustration; the basis of racism is putting your problems on others"* complemented another interviewee. Each of the interviewees emphasized that education is the first step when dealing with the issue.

Hate crimes are linked to stupidity and ignorance. This anger, this hatred comes from a frustration; the basis of racism is putting your problems on others.

- victim of a hate crime, Lithuania

86 Article 18 of the Victims' Rights Directive.

87 Article 1(1) of the Victims' Rights Directive.

### III. Conclusions and Recommendations

The comparative analysis of the Lithuanian and EU law and the data collected from the victims and law enforcement officers reveal a gap between the EU legal standards and their implementation in practice in Lithuania.

**Regarding current Lithuanian legislation**, it falls far short of realising the guarantees and rights afforded to crime victims under the *EU Directive on Victims' Rights*. The procedural rights of crime victims set out in the Directive, even though available under Lithuanian law, suffer from very narrow and vague coverage. Thus, the current protection of even the basic procedural rights, such as right to information and right to interpretation and translation, is not up to par with the standards under the Directive.

This is especially true where the protection of vulnerable victims, including hate crime victims, is concerned. The Lithuanian criminal procedure regulation does not offer a consistent and systemic approach to victims' protection.

The single instance in which a more comprehensive approach to a vulnerable victim's rights protection is offered is that of juvenile crime victims. The protection afforded to them covers some of the general measures – minimum contact with the offenders and minimum number of interviews with the victim. It also covers one of the special measures – participation of a specially trained professional, a psychologist, in the interviews during the criminal investigation. However, all of these measures are yet to be extended to other vulnerable victims; and they are still far from meeting the requirements under the Directive.

The only other aspect of victims' rights, which enjoys a more extensive coverage, is the right to privacy. Under the CCP the privacy of the victim is protected both in the criminal investigation, by limiting the offender's access to personal data of the victim, and court proceedings, by allowing nonpublic hearings to protect the victim's private life.

Thus, the review of regulation compliance to the *EU Directive on Victims' Rights* indicates that Lithuanian law needs to undergo significant changes in order to comply with the EU standards of hate crime victims' protection.

**Regarding the implementation of hate crime victims' rights in practice**, the *first problem* that hinders effective response to hate crimes is the inaccurate offence classification done by the law enforcement institutions. Quite often law enforcement officers qualify the criminal offence not as a hate motivated crime but rather as a crime committed out of hooliganism motives.

The *second problem* when dealing with the hate crimes and hate speech, in particular, is that of a decision-making power shift. A conclusion whether an act constitutes a hate crime or hate speech, and thus breaches a law, is to be reached by the officers conducting investigation, and not by external experts. In practice, however, the decision of the police or prosecution officer is solely and completely based on the opinion of external expert.

Inadequate protection of the victims' rights is the *third problem*. It includes lack of physical protection for the victim as well as non-existence of support centers for hate crime victims; no procedures on individual assessment of the victim; shortage of interpreters and translators; authorities' disregard of their obligations to provide necessary information to the victims; to avoid contact between victim and the offender; to allow victim to be accompanied by a person of a victim's choice.

The *fourth problem* is the apparent lack of any kind of trainings on hate crimes for all the relevant authorities, starting with the police and prosecution officers. The need for the trainings was pointed out by both law enforcement institutions and the victims and should be implemented in accordance with the EU Directive provisions. Also, stronger awareness on the *Prosecutor General's Recommendations on Hate Crimes* should be raised and the document should be applied in practice to serve as guidelines.

The training of practitioners should also include instructions enabling officers to deal with victims in respectful and professional manner. Since the average evaluation of the overall investigation process in Lithuania by interviewees equals to 2,3 points out of five, and 77, 8% of hate crime victims claimed to have not been treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, basic sensitivity training to the officers has to be organized without undue delay.

