

# Support system for victims of hate crime in Croatia

## RESEARCH REPORT

## IMPRESSUM

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## Summary

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## Foreword

This report documents the findings of a research carried out in four EU countries, in the framework of a transnational project financially supported by the Directorate-General Justice and Consumers of the European Commission. This project, 'V-START. Victim Support Through Awareness Raising and neTworking', implemented by COSPE – Cooperation for the Development of Emerging Countries (Italy), Human Rights House Zagreb (Croatia), ZARA - Civil Courage and Anti-Racism Work (Austria), and efms – European Forum for Migration Studies (Germany) -, focuses on the protection of victims of crime, in particular, racist and homophobic hate crimes.

The protection of victims of crime has long been at the centre of EU policy. The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, underlines the need to protect victims of crime independently from the status of the offender. As highlighted in Recital 9 of the above Directive, "Crime is [...] a violation of individual rights of victims. 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 [...]. 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." This is particularly true of hate crimes because besides violating individual rights, they have negative impact on individuals belonging to targeted groups and threaten cohesion in local communities.

Hate crimes, whether physical or psychological, against persons, property or symbols, are increasingly daily realities throughout the EU and sources of social alarm in affected communities. In many EU countries, policies meant to counter hate crimes focus more on apprehending the offender and less on protecting the victim, partly due to limited understanding of the specific character of such crimes and their consequences for vulnerable groups.

This report focuses on 'victims of crime' as defined in Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. Throughout this report, the word 'victim' means (i) "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered as a result of that person's death". The choice of using the above definition of 'victim' does not ignore the existence of a broad sense of the term and that stereotypical perceptions and representation of the word abound. In popular discourse, the word 'victim' is often portrayed as a helpless and passive individual, leading to a situation where some individuals who have been victimised refuse to identify as such due to the negative connotation. It is important to underline here that the status of being a 'victim of crime' is important in terms of the legal measures and entitlements attached to it.

The V-START Project situates the protection of victims of racist and homophobic hate crimes within the broader framework of protection of victims of crime as outlined in EU and national legislation. Building on previous research findings indicating, among others, that many victims do not report their experiences of victimisation, the project has tried to close the gap in the knowledge of existing measures that victims can use to protect their rights. In particular, the aims and objectives of the project are to strengthen awareness of support services among victims and to facilitate access to existing legal remedies. Specifically, the project focuses on

improving the system of support services for victims of hate crimes; enhancing knowledge and skills of professionals working with victims; and promoting cooperation and exchange of experiences between the different actors involved in the provision of support services.

The project will contribute to creating national networks of victim support services, which will strengthen the present capacity of CSOs advocating for victims' rights. Through the networks, victims will be encouraged to report incidents and made aware of their rights and the opportunities offered by specific victim support services.

The main project activities, common to all four partners, include:

- mapping of existing support services outlining the characteristics of the national systems of such services;
- establishing an exchange (and referral) mechanism between local networks of CSOs engaged in countering racist and homophobic hate crimes and general victim support services, in order to improve their knowledge base and enhance their support activities;
- Pilot training of CSOs, public services workers, legal practitioners and police officers on racist and/or homophobic hate crimes and how to counter them and support victims;
- Information and awareness raising activities on the existing victim support services and the assistance they offer, targeting vulnerable groups.

Equally, common to all four partners is the research methodology used in collecting and collating information, specifically, a qualitative approach using desk research and a limited number of semi-structured interviews. As provided for in one of the project work packages, common guidelines, questionnaires and specific templates have been used for the inventory of support services and the semi-structured interviews of key actors. Following a preliminary desk research used to collect information on existing victim support services and the characteristics of their activities, a number of these organisations have been identified for detailed analysis, using a semi-structured interview to collect further information.

We hope that other stakeholders engaged in countering hate crimes in the four countries and in all other EU countries, will find the information provided in this report and indeed, the overall output of the project, useful for their work.

Udo C. Enwereuzor  
Transnational Coordinator  
V-START Project  
Florence, October 2018

## Introduction and methodology

This report on the support system for victims of criminal offences, and specifically the victims of hate crimes in Croatia, is the result of a qualitative study conducted by the Human Rights House between October 2017 and March 2018 as part of the "V-START – Victim Support through Awareness-Raising and Networking" project. The goal of the report is to contribute to improving the system of support for victims of hate crimes and increasing awareness of the problem of non-reporting of hate crimes, through an analysis of the current system of legal and/or psycho-social support for all victims of criminal offences and the legislative framework for the protection of their rights.

Hate crime is insufficiently recognised in Croatia, both by the bodies in whose purview it is to participate in identifying, monitoring and prosecuting it, and by the society as a whole, including its very victims. There is a significant problem of non-reporting of hate crime because the victims are insufficiently informed that it is a criminal offence, fear of retaliation by the perpetrator and lack of trust in the efficiency of the system, that is, that the crime will be adequately prosecuted, the perpetrator punished and the victim protected.

In order to obtain a comprehensive picture of the support system for victims of hate crimes, we conducted a qualitative research. The first stage of research comprised an overview and analysis of the existing legal framework for combating hate crime (which was introduced into Croatian legislation with the 2006 amendments to the Criminal Code<sup>1</sup>), for rights of all victims of criminal offences (introduced with the transposal of the Directive establishing minimum standards on the rights, support and protection of victims of crime<sup>2</sup> into the Criminal Procedure Code<sup>3</sup> of 2017), and the accompanying laws and other legal acts allowing victims to exercise their rights. Such as the Crime Victims Compensation Act<sup>4</sup> and the National Strategy for Developing the Victim and Witness Support System in the Republic of Croatia for the period 2016-2020.<sup>5</sup>

The second stage of research concerned mapping the existing associations that provide legal and/or psycho-social support to victims of criminal offences as a form of non-institutional support, as well as court departments for victim and witness support as a form of institutional support (hereinafter: court department). Based on the mapping of the available victim

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<sup>1</sup> Amendments to the Criminal Code, OG 71/2006, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2006\\_06\\_71\\_1706.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2006_06_71_1706.html) [Croatian only] (accessed July 2018)

<sup>2</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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0029> (accessed July 2018)

<sup>3</sup> Criminal Procedure Act, OG 70/17, available at: <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku> [Croatian only] (accessed July 2018)

<sup>4</sup> Crime Victims Compensation Act, OG 80/08, 27/11, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_80\\_2603.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_80_2603.html) [Croatian only] (accessed July 2018)

<sup>5</sup> Decision on adopting the National Strategy for Developing the Victim and Witness Support System in the Republic of Croatia for the period 2016-2020, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2015\\_07\\_75\\_1437.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2015_07_75_1437.html) [Croatian only] (accessed July 2018)



support, information on the existing support system in the Republic of Croatia were collected, which was a precondition for determining which provider-associations and court departments will make up the sample for the qualitative research. It was found that in Croatia there are no associations providing support exclusively to hate crime victims, although there are several whose work is dedicated to protecting and promoting the rights of at-risk social groups (in Croatia this primarily pertains to members of the Serb national minority, LGBTIQ persons and migrants and asylum seekers), who provide certain forms of legal and psycho-social support and, consequently, encounter hate crime victims in the course of their work.

In the third stage of the study, a total of 10 semi-structured interviews were conducted – with three court departments (in county courts in Zagreb, Split and Vukovar), five associations providing support and two victims of hate crimes. Although the intention was to include as many victims as possible, the low rate of reporting hate crimes and victims' unwillingness to share their experiences were also reflected on the number of victims who agreed to participate in the study. Providers of legal and/or psycho-social support gave us information on their experiences working with victims and cooperation with other associations and the relevant state institutions, such as the Ministry of the Interior (MI), state attorney's offices and courts. With the victims of hate crime we talked about their experiences with police officers and courts, seeking to establish the degree to which the victims have access to exercising their legally mandated rights. In order to protect the identity of the persons who agreed to be interviewed for the needs of the study, in reproducing their statements, that is, for their quotes, codes were used, in the form of an abbreviation, V or P, with an accompanying number. Hence, V indicates a victim, a P mark indicates a person working for a court department and provider-association, while # indicates the interviewee's number.

P/# - worker in the association/court department / number

V/# - victim / number

In the fourth stage, we analysed the work of the *Zagreb Pride* association, which provides legal support to LGBTIQ persons, and the work of three court departments set up within county courts in Zagreb, Split and Vukovar, which provide emotional support to all victims of criminal offences and misdemeanours, and supply general information on their rights and ways of exercising them.

Based on the interviews with victims of hate crimes, diagrams were designed, demonstrating the conduct of police workers in cases of hate crimes. Although the primary intention was to encompass the entire procedure – from the commitment of the crime to the sentencing – experiences of the victims we talked to primarily concerned police conduct, and only partly the court proceedings, as both proceedings were still ongoing. Nevertheless, in conversations with associations providing support to all victims we have managed to find out about some cases of victims' rights violations in court proceedings.

# 1. Hate crime in Croatia

The legislative development of the legal concepts of hate crime and victims' rights in Croatia was significantly influenced primarily by the harmonisation of Croatian legislation with the European *Acquis* in the process of Croatian accession to full membership of the European Union, as well as transposing the relevant Directives, and indirectly the rulings of the European Court of Human Rights, in the *Šečić versus Croatia* case of 2007.<sup>6</sup>

## 1.1. The legal framework for combating hate crime

Hate crime was introduced into Croatian legislation with the 2006 amendments to the Criminal Code,<sup>7</sup> as any criminal offence committed on the basis of race, colour of skin, sex, sexual orientation, language, belief, political or other conviction, national or social origin, property, birth, education, social status, age, health status or other characteristics. However, the legislation at the time did not specify the substantive elements of hate crime, and hate only represented an aggravating circumstance with regard to a single criminal offence – murder.<sup>8</sup>

With entry into force of the new Criminal Code in 2013,<sup>9</sup> the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law was transposed into Croatian legislation,<sup>10</sup> thus explicitly citing an offence committed out of hate as an aggravating circumstance in sentencing for a series of criminal offences, unless the law prescribes more severe sanctions for the offences in question, while in certain criminal offences<sup>11</sup> the motive of hate was introduced as a special, aggravated form. This amendment expands the legal basis for determining hate crime to include a person's gender identity, which is considered a significant progress in protecting LGBTIQ persons.

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<sup>6</sup> This case was the first time that the Court established a breach of the art. 14 of the Convention (the ban of discrimination) in conjunction with the art. 3 of the Convention (the ban of torture); the Court found the Republic of Croatia responsible for the failure to conduct effective investigation and to complete an inquiry into an ethnically motivated crime because of the complainant's Roma origin. After the judgment, a number of changes took place in the national legal framework for suppression of discrimination and hate crime. (European Court of Human Rights, *Šečić v. Croatia*, no. 40116/02, 31 May 2007, available at: <https://uredzastupnika.gov.hr/UserDocImages//arhiva//728SECIC,.pdf>)

<sup>7</sup> See footnote 1, art. 14.

<sup>8</sup> Kos, Damir, Osnovne karakteristike šeste novele Kaznenog zakona, p. 16, available at: [http://www.vsrh.hr/CustomPages/Static/HRV/Files/DKos\\_Osnovne-karakteristike-6-novele-KZ\\_2006.pdf](http://www.vsrh.hr/CustomPages/Static/HRV/Files/DKos_Osnovne-karakteristike-6-novele-KZ_2006.pdf) [Croatian only] (accessed July 2018)

<sup>9</sup> Amendments to the Criminal Code, OG 144/2012, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_144\\_3076.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html)

<sup>10</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133178>

<sup>11</sup> This includes the following criminal offences: Bodily injury, art. 117; Serious bodily injury, art. 118; Particularly serious bodily injury, art. 119; Coercion, art. 138; Threat, art. 139; Felonies against sexual freedom, art. 154; Causing riots, art. 324; Public instigation of violence and hate, art. 325; Murder, art. 111; Mutilation of female sexual organs, art. 116 of the Penal Code, O.G. NN 101/17.



The most significant innovation in terms of combating hate crime was the adoption of the Protocol for procedure in the case of hate crimes<sup>12</sup> (hereinafter: the Protocol). The aim of the Protocol is to ensure that the competent bodies participating in uncovering, proceeding against and monitoring the prosecution of hate crime operate efficiently, in order to enhance the system of monitoring hate crime and protection of victims of hate crimes and their fundamental human rights.<sup>13</sup> The Protocol describes in detail the duties of the competent bodies participating in uncovering, acting on and monitoring prosecution of hate crime, the modes and substance of cooperation between them, and the remaining duties and activities such as education on combating hate crime.<sup>14</sup> Among all else, the duty of all bodies involved in the process – The Interior and Justice Ministries, the state attorney general's office and criminal and misdemeanour courts – is to isolate and specially classify hate crime cases in order to strengthen interinstitutional cooperation on their monitoring, led by the Government Office for Human Rights and the Rights of National Minorities (hereinafter: GOHRRNM), as the central body whose purview it is to gather, consolidate and publish data on hate crime.

In addition to the aforementioned Protocol, a Hate Crimes Monitoring Working Group (hereinafter: The Working Group) was also established, to collect and consolidate data from the police, attorney general's office and crime and misdemeanour Courts on hate crimes, and hate-motivated misdemeanour offences. The Working Group is coordinated by GOHRRNM. Its membership consists of representatives of the Ministry of the Interior, Ministry of Justice, Ministry of Foreign and European Affairs, the Attorney General's Office, the High Misdemeanour Court of the Republic of Croatia, the Municipal Criminal Court in Zagreb, the Police Academy, the Faculty of Law in Zagreb, the Ombudswoman's Office, the Council for the Development of Civil Society and a representative of civil society organisations.<sup>15</sup> The Working Group analyses and monitors the implementation of anti-discrimination legislation relating to hate crime, and coordinates the process of collecting data on hate crime and interinstitutional cooperation with regard to its prevention.<sup>16</sup> Meetings are held several times a year, which enables members to exchange data on hate crime and discuss cases, challenges and future initiatives.<sup>17</sup>

Nevertheless, in spite of the aforementioned changes to the legal framework and positive shifts, there are still practical problems. Thus, in 2017, in the Škorjanec case,<sup>18</sup> the ECHR again issued a ruling that found Croatia to bear responsibility for failing to conduct an effective investigation in a case where the racial motive was evident, reiterating that state authorities

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<sup>12</sup> Protocol for procedure in the case of hate crimes, Office for Human Rights of the Government of Republic of Croatia, 2011. Available at: <https://pravamanjina.gov.hr/UserDocsImages/arhiva/protokoli/Protocol%20on%20procedure%20in%20cases%20of%20hate%20crime.pdf> (accessed July 2018)

<sup>13</sup> Ibid., articles 2 and 3.

<sup>14</sup> Ibid., article 4.

<sup>15</sup> European Union Agency for Fundamental Rights, available at: <http://fra.europa.eu/en/promising-practices/hate-crimes-monitoring-working-group> (accessed July 2018)

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> European Court of Human Rights, the case of Škorjanec versus Croatia, no. 25536/14, 28 March 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-172327> (accessed July 2018)

are duty-bound to undertake all reasonable measures to guarantee an effective investigation within the framework of an individual case, which implies in particular gathering and securing evidence, use of all practical means of uncovering the truth, and adopting a well-reasoned and impartial ruling.

Consequently, it is clear that while the legislative framework ostensibly does guarantee an adequate level of protection for victims of hate crime, the fact is that victims' rights are still illusory, since the bodies in charge of criminal procedures and prosecuting criminal offences still do not recognise the motive of hate as a grounds for conducting an effective investigation. The Committee of Ministers of the Council of Europe also warned about this in its opinion on the execution of the rulings on *Šečić v. Croatia* and *Škorjanec v. Croatia*.<sup>19</sup> The result of this is that the low number of reported hate crimes reflects the inefficiency of the system and the victims' lack of trust in the system and that their reports will be correctly categorised and prosecuted.

## 1.2. Development of victim's rights

The Criminal Procedure Code (hereinafter: CPC) of 1997<sup>20</sup> did not recognise the concept of victim, or regulate the rights of the victim as a specific participant in the process. The victim could exercise its procedural rights only in the role of the injured party in the trial. Changes in the treatment of victims of criminal offences began to take place with the enactment in 2008 of the CPC,<sup>21</sup> which first explicitly introduces the concept of victim as participant in the criminal procedure, as well as the obligation of all bodies that come into contact with the victim in the course of the procedure to treat him/her with special care and attention.<sup>22</sup> Victims are no longer viewed merely as a means of establishing the facts, but as persons to

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<sup>19</sup> „The introduction of 'hate crime' in the Criminal Code and the adoption of the Anti-Discrimination Law should be highlighted as important measures to prevent similar violations. In its recent judgment in the case of *Škorjanec* (judgment of 28 March 2017, not final yet), ... Although the Court found that 'the Croatian legal system provided adequate legal mechanisms to afford an acceptable level of protection to the applicant', it examined 'whether the manner in which the criminal-law mechanisms were implemented in the instant case was defective to the point of constituting a violation of the respondent State's obligations under the Convention' (§ 62).

The European Court in *Škorjanec* indicated that the new legislation was not being implemented effectively. It found in particular that the prosecuting authorities' failure to identify whether the applicant was perceived by the attackers as being of Roma origin or to establish the link between the racist motive for the attack and the fact that the applicant's partner was of Roma origin resulted in a deficient assessment of the circumstances of the case (*Škorjanec*, §§ 70-71). The Court therefore held that this investigation breached Article 3 under its procedural aspect in conjunction with Article 14 of the Convention. The Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities, in its Fourth Opinion on Croatia (ACFC/OP/IV(2015)005), noted the surprisingly low numbers of hate crimes registered in the first six months of 2015. It was considered that such 'low numbers did not demonstrate an absence of hate crime in Croatia but rather reflect an insufficient application of the available legal framework' (§ 47 of the Opinion). available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=090000168070e8ac](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168070e8ac)

<sup>20</sup> Criminal Procedure Code (OG 110/97), available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/1997\\_10\\_110\\_1669.html](https://narodne-novine.nn.hr/clanci/sluzbeni/1997_10_110_1669.html) [Croatian only] (accessed July 2018)

<sup>21</sup> Criminal Procedure Code (OG 152/08), available at: [http://pak.hr/cke/propisi,%20zakoni/o-kaznenom-postupku-\(2008\)/HR.pdf](http://pak.hr/cke/propisi,%20zakoni/o-kaznenom-postupku-(2008)/HR.pdf) (accessed July 2018)

<sup>22</sup> Ibid., article 16, paragraph 2.

whom certain fundamental rights belong, rights which have to be respected. Thus, the victim can actively take part in the procedure in the role of injured party, in the sense of gathering and presenting evidence,<sup>23</sup> attending evidential hearings, which is especially important in cases of hate crimes, whose successful prosecution hangs upon the collection in the earliest stage of the proceedings of evidence pointing to the motive of hate.

These changes were necessary not only because of the need to harmonise Croatian legislation with the European *acquis* (as in the period in question, Croatia was embarking on its process of accession to the European Union), but also due to the need to introduce global standards in the development of victim and witness protection in criminal procedures,<sup>24</sup> above all harmonising with the European Convention on the Compensation of Victims of Violent Crimes, with the recommendations R(85)11, R(87)4, R(87)21 and R(06)8, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Council Framework Decision on the standing of victims in criminal proceedings.<sup>25</sup> Another contributing factor to the development of victims' rights was the passage of the Law on Free Legal Aid,<sup>26</sup> which enabled victims of punishable offences, human trafficking and domestic violence to access legal aid under legally specified conditions.<sup>27</sup>

Further shifts in terms of the status and rights of victims in Croatian legislation started with 2013 amendments to the CPC,<sup>28</sup> which introduced a number of new procedural and extra-procedural victims' rights. The victim also gains the right to be informed by the state attorney as to the steps taken following its reporting of the offence, as well as the right to submit a complaint to the senior state attorney if no such notice was forthcoming or if the notice or the steps taken were unsatisfactory.<sup>29</sup> The legal changes also explicitly anticipated the victim's right to review the case file.<sup>30</sup>

In addition, with entry into force of the 2013 Crime Victims Compensation Act,<sup>31</sup> all victims of premeditated violent criminal offences, including hate crime victims, gain the right to submit a request for compensation. This right does not only belong to the person directly suffering the grave consequences of a violent criminal offence, but also to their marital or extra-marital partner, formal or informal life partner, child, parent, foster parent or child, stepmother and

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<sup>23</sup> Brnetić, Damir, *Žrtva kaznenog djela pred policijom* [Victim of a criminal offence facing the police], available at <https://bib.irb.hr/datoteka/474181.zbornik.pdf> [Croatian only] (accessed July 2018)

<sup>24</sup> Balgač, I., Borovec, K. (2010). *Besplatna pravna pomoć žrtvama kaznenih djela - činimo li dovoljno? Policy analiza* [Free legal aid to victims of criminal offences – are we doing enough? A policy analysis]. *Policijska sigurnost*, 19(4), pp. 447-460, available at: <https://bib.irb.hr/prikazi-rad?rad=513969> [Croatian only] (accessed July 2018)

<sup>25</sup> The final draft of the Criminal Procedure Code, second reading, P.Z.E. on. 116, pp. 170 and 172, Croatian Parliament, available at: <http://www.sabor.hr/Default.aspx?art=25692>

<sup>26</sup> Law on Free Legal Aid, OG 62/08, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_05\\_62\\_2098.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2008_05_62_2098.html) [Croatian only] (accessed July 2018)

<sup>27</sup> *Ibid.*, article 5, paragraph 2.

<sup>28</sup> Amendments to the Criminal Procedure Code, OG 145/2013, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_145\\_3090.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_145_3090.html) [Croatian only] (accessed July 2018)

<sup>29</sup> *Ibid.*, article 29, paragraph 3; article 96.

<sup>30</sup> *Ibid.*, article 76, paragraph 2.

<sup>31</sup> See footnote 4.

stepfather, step-child, as well as indirect victims if the criminal offence resulted in the death of the immediate victim.<sup>32</sup>

Nevertheless, it was only with the 2017 amendments to the CPC<sup>33</sup> and the transposition of the Directive establishing minimum standards on the rights, support and protection of victims of crime<sup>34</sup> that the status of the victim in Croatian legislation has changed so as to strengthen its legal status and the mechanisms of its protection in criminal procedures, as well as beyond them, stipulating a greater scope of rights belonging to it in accordance with the Law. In addition to markedly greater level of protection of victims' procedural rights, pursuant to the CPC, victims are now guaranteed a broad spectrum of extra-procedural protections, primarily the protection from secondary victimisation that may occur in the course of the proceedings. Changes to the concept and rights of victims are explained in more detail in the next chapter.

### 1.3. Victims rights pursuant to the criminal procedure code

The CPC in force (OG 70/17) clearly distinguishes between the basic rights of all victims of all criminal offences, and those specific to victims of particular criminal offences or to particular categories of victims.<sup>35</sup> The rights that belong to all victims, regardless of the gravity of the criminal offence and the victim's personal characteristics, comprise the right to access support services for victims of criminal offences, the right to effective psychological and other professional help, to protection from intimidation and retaliation, protection of dignity during questioning as witnesses, the right to a hearing without unnecessary delay upon submitting a report (further hearings are to be carried out only in the extent to which they are necessary for the needs of the proceedings), the right to take part in the criminal procedure as the injured party, the right to submit proposals to prosecute and institute civil proceedings, the right to accompaniment by a person of trust at various stages of the procedure, to receiving notification if the criminal complaint is rejected and the state attorney abandons the criminal prosecution, and, related to this, the right to take on the criminal prosecution, to be notified of steps taken by the state attorney following the victim's report of the offence, as well as to submit a complaint to a senior state's attorney in case steps were not taken or no satisfactory response (or none at all) was received, and has the right to be notified upon request if the accused's detention has been cancelled, if the accused has escaped or been released from jail, as well as measures undertaken for his/her protection, as well as other rights defined in the CPC.<sup>36</sup>

Along with the abovementioned rights, victims of crimes the mandatory sentence for which is five or more years' imprisonment also have the right to an advisor paid for by the state in submitting compensation claims (in case the victim has suffered grievous psychological and physical injuries as a consequence of a criminal offence), as well as the right to compensation

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<sup>32</sup> Ibid., article 5, paragraphs 2, 5 and 6.

<sup>33</sup> Amendments to the Criminal Procedure Code, OG 70/2017, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2017\\_07\\_70\\_1661.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_70_1661.html) [Croatian only] (accessed July 2018)

<sup>34</sup> See footnote 2.

<sup>35</sup> See footnote 3, article 43, paragraphs 1, 2 and 3; article 44, paragraphs 1 and 4.

<sup>36</sup> See footnote 3, article 43.

for material and non-material damage to be paid for by the state, under the conditions and in the way stipulated by the aforementioned Crime Victims Compensation Act.<sup>37</sup>

The CPC recognises the following special categories of victims: children, victims of crimes against sexual freedom and sexual morality, and victims of human trafficking.<sup>38</sup> In addition to the abovementioned rights belonging to all victims, children also have a right to a state-funded legal representative, the right to confidentiality of personal data and the exclusion of the public,<sup>39</sup> while victims of crimes against sexual freedom and sexual morality, as well as victims of human trafficking, in addition to the general rights, also have the right to speak with a counsellor prior to being interviewed, with the cost covered by the state, to be interviewed by a person of the same sex at the police station or state attorney's office, the right to refuse to answer regarding questions of a strictly personal nature, and the right to demand to be interviewed using an audiovisual device.<sup>40</sup>

In order to determining the necessity of applying special measures of victim protection, the amendments to the CPC introduced the legal concept of individual victim assessment,<sup>41</sup> which all bodies are mandated to carry out for all victims during preliminary proceedings and criminal trials, starting with police workers, through state attorneys to judges. The conditions and method of assessing individual cases are regulated in detail by the Ordinance on conducting individual victim assessments.<sup>42</sup>

Pursuant to the Ordinance, all bodies that come into contact with victims need to assess whether the victim needs special measures of procedural protection, with a view to the victim's personal characteristics, type or nature of crime committed and circumstances of commitment, and what special measures need to be applied to give the victim additional protection (such as a special method of interviewing the victim or the use of communication technologies in order to avoid direct contact between the victim and the perpetrator).<sup>43</sup> The law explicitly lists which victims are to be afforded special attention in conducting individual assessments and determining special measures of protection: victims of gender-based violence, hate crimes, human trafficking, terrorism, violence in intimate relationships, sexual violence and abuse, organised crime, and victims with disabilities.<sup>44</sup> In order to carry out individual assessments of victims' needs, the bodies conducting the individual assessments may gather the necessary information from social welfare centres and other bodies, organisations and institutions providing help and support to victims of criminal offences, especially the victim and witness support departments at county courts where they have been set up.<sup>45</sup> Having collected the data, the bodies conducting individual assessments will consider

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<sup>37</sup> See footnote 4.

<sup>38</sup> See footnote 3, article 44, paragraphs 1 and 4.

<sup>39</sup> See footnote 3, article 44, paragraphs 1, 2 and 3.

<sup>40</sup> Ibid., article 44, paragraph 4, items 1 to 7.

<sup>41</sup> Ibid., article 43a, paragraph 1.

<sup>42</sup> Ordinance on conducting individual victim assessments, OG 106/2017, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2017\\_10\\_106\\_2426.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2017_10_106_2426.html) [Croatian only] (accessed July 2018)

<sup>43</sup> See footnote 3, article 43a, paragraph 2.

<sup>44</sup> Ibid., article 43a, paragraph 3.

<sup>45</sup> Ibid., article 3, paragraph 2.

recommendations to determine a witness protection measure, in case any have already been drafted by the organisations and institutions based on their work with the victims.<sup>46</sup>

Furthermore, all bodies participating in the proceedings (courts, state attorney's office, investigators and the police) who come into contact with victims (especially police officers, who are still most frequently those who first come into contact with a victim) have a duty to inform the victims as to their rights, as well as what participating in the process as an injured party<sup>47</sup> means, after which they must make sure that the victim understood this information.<sup>48</sup> In this regard, the Ministry of Justice has drafted a written notification on victims' rights, while on 11 November 2014 the General Police Directorate issued an instruction to all police departments that they are obligated, in addition to notifying them of their rights, to give victims a written notification containing contact information for the court departments for victim and witness support, the National call centre for victims of criminal and misdemeanour offences, and civil society organisations engaged in victim support and protection within a police department's area of jurisdiction. The written notification on victims' rights has been translated into multiple foreign languages, and in addition, in order to acquaint them with their rights, victims can also be provided with a court interpreter for the duration of the proceedings.<sup>49</sup>

It is important to stress that the CPC does not expressly recognise victims of hate crime as a separate category, as hate crime is not a discrete criminal offence, but the motive of hate is an aggravating circumstance or element comprising aggravated form of a criminal offence. Hence, victims of hate crime have all the general rights appertaining to all victims of criminal offences, with additional rights if additional special protection measures were granted at their request, which may include the right to special methods of interviewing victims, the use of communication technologies in order to avoid visual contact with the perpetrator, exclusion of the public from the hearings, being interviewed by persons of the same sex and, if possible, in case of re-interviewing, that the same person conducts the repeated questioning, accompaniment by a trusted person, confidentiality of personal information, possibility to consult with a counsellor at the state's expense, as well as other measures determined by the law.<sup>50</sup> On the other hand, if they are victims of a criminal offence with a mandated sentence of a minimum of five years in prison and have suffered grievous consequences, or were victims of premeditated criminal offences with elements of violence, as well as if they belong to a specific legally recognised category of particularly sensitive groups (children, victims of criminal offences against sexual freedom, victims of human trafficking), they will also enjoy the aforementioned, additional legal rights guaranteed to these categories of victims.

In addition to the aforementioned rights, the Protocol also prescribes the particular mode of proceeding by police officers upon receiving a report of a hate crime or a request to provide assistance to a person who is a victim of a hate crime. Thus, a police officer must urgently and without delay head to the scene of the events in order to intervene, that is, to look into a report or request. On the basis of observations of the scene, the police officer must

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<sup>46</sup> Ibid., article 3, paragraph 3.

<sup>47</sup> The victim's statement whether he/she wishes to participate in the procedure as an injured party is also recorded in the minutes, see footnote 3, article 43, paragraph 6.

<sup>48</sup> See footnote 9, article 21.

<sup>49</sup> See footnote 5.

<sup>50</sup> See footnote 42, article 9, paragraph 2.



immediately undertake measures and steps to instantly protect and provide special medical and other assistance to a person harmed in a hate crime, and stop the perpetrator further committing the hate crime. Furthermore, the police officer must collect data and information necessary to clarify and prove a hate-based misdemeanour or criminal offence, with special emphasis on establishing whether the injured person belongs to a group membership of which would have been the motive for a hate crime, the motive for committing a hate crime, the consequences, mode of establishing hate-motivated events and qualification of the events. In this, the privacy and personal data of the participants in the event must be protected.<sup>51</sup> Moreover, the Protocol imposes an obligation to cooperate with other bodies that could be of help in the specific case, such as civil society organisations, faith communities and experts dealing with the relevant issues, so that the case is processed as well as possible.<sup>52</sup> Furthermore, the Protocol mandates that bodies that participate in uncovering, proceeding against and monitoring the results of prosecution of hate crimes specially mark such cases, and record data on the criminal or misdemeanour offence, perpetrator, injured persons and motive in the Hate Crimes Register.<sup>53</sup>

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<sup>51</sup> See footnote 12, article 7, paragraphs 1, 2 and 3.

<sup>52</sup> Ibid., article 7, paragraph 4.

<sup>53</sup> See footnote 12, article 7, paragraphs 5 and 6.

## 2. Development of the system of support for victims of criminal offences

Provision of support to victims in Croatia has changed, developed and intensified in parallel to the process of shifting the focus that was traditionally exclusively on the accused and their rights, to the victim as the person affected by the criminal offence, who experienced a certain trauma and needs adequate support and assistance.

Associations as an uninstitutionalised form of support have been the initiators of victim and witness support, having provided it both during the war, and especially after it. Some organisations have more than 20 years of experience working with victims, and have greatly contributed to provision of support to victims of war, sexual violence and domestic violence, but also in the sphere of enhancing the legislative framework, public policy and raising public awareness on the issues surrounding the status of victim.<sup>54</sup> Thus, in 1990, the first shelter for women victims of violence was opened by the *Autonomous Women's House Zagreb* association, which in 1997, together with the *Centre for Women Victims of War*, opened a counselling centre for women victims of violence, while in 2003, the *Women's Room – Center for Sexual Rights* association opened the first centre for victims of sexual violence.<sup>55</sup> Since 1995, the association *B.a.b.e. (Be active. Be emancipated)* has provided free legal aid to women victims of violence, while the *Victim and Witness Support Service* association has provided legal and psycho-social assistance to victims and witnesses since 2006.

As far as the institutional system of assistance and support provision is concerned, no developed awareness existed of the need to instruct victims or witnesses as to various forms of assistance at their disposal, including the associations equipped to provide them certain psycho-social or legal support – a need that was very real. This was shown by the results of a 2007 study conducted under the auspices of the United Nations Development Programme (UNDP), which has shown that 94.6% of witnesses-interviewees were not offered contact details for an organisation or service that might provide practical and/or psychological assistance, with 69% saying that they would have found such contact useful. Furthermore, 81.8% of judges observed 'psychological vulnerability in a witness, but 68.2% said that they had no information on the organisations and individual professionals in the area of their courts' jurisdictions to whom they might turn for assistance in providing support to witnesses, including psychological and emotional support.<sup>56</sup> Based on the results of this study, in 2007

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<sup>54</sup> Burić Z., Lucić B., *Pravni i institucionalni aspekti položaja žrtve kaznenog djela u RH* [Legal and institutional aspects of the status of victim of a criminal offence in the RC], Croatian Law Centre 2016, p. 17, available at <http://www.hpc.hr/wp-content/uploads/2017/12/TEVNAS-1PravniiinstitucionalniaspektipolozajazrtvekaznenihdjelaRH.pdf> [Croatian only] (accessed July 2018)

<sup>55</sup> Mamula M., *Organizacije civilnog društva koje pružaju specijalizirane servise ženama žrtvama nasilja kao ključni akteri u procesu demokratizacije društva* [Civil society organizations which provide specialized services to women victims of violence as key actors in the process of democratization of the society], Women's Room – Center for Sexual Rights, 2010, available at: [http://www.zenskasoba.hr/docs/OCD\\_i\\_kljucni\\_akteri.pdf](http://www.zenskasoba.hr/docs/OCD_i_kljucni_akteri.pdf) [Croatian only] (accessed July 2018)

<sup>56</sup> Turković K., Ajduković D., Mrčela M., Krešić M., *Pregled rezultata istraživanja o podršci žrtvama i svjedocima kaznenih djela u Republici Hrvatskoj* [Study on support to victims and witnesses of criminal acts in the Republic of Croatia – an overview of results] (UNPD 2007), available at: <https://www.bib.irb.hr/727557> [Croatian only] (accessed July 2018)

the UNDP initiated a project called "Assistance to the development of a witness and victim support system in Croatia".<sup>57</sup>

The project has resulted in amendments to the Law on Courts<sup>58</sup> in 2008, which provided the legal grounds for establishing the court departments for victim and witness support as the institutionalised form of provision of support in Croatia. Such departments were initially set up within courts in Zagreb, Osijek, Vukovar and Zadar, and during 2011 the system continued to expand with the establishment of such departments in Split, Rijeka and Sisak.<sup>59</sup> It's worth noting that the Department for provision of support at the County Court in Zagreb has subsidiaries at the Municipal Criminal and Misdemeanour courts in Zagreb.

In July 2013, the National call centre for victims of criminal and misdemeanour offences was established, as the result of a joint project of the Victim and Witness Support Service, the Justice Ministry and the UNDP. The National Call Centre phone line is completely free and anonymous, and is available to all victims in Croatia on a single, standardised number, 116-006. Its sphere of work includes informing victims and witnesses about their rights, providing emotional support, directing individuals at institutions and associations providing support, informing on the conditions and ways of exercising the right to financial compensation for victims of criminal offences and monitoring changes to legislation pertaining to victims' and witnesses' issues.<sup>60</sup>

In 2015, the Independent Service for Victim and Witness Support of the Ministry of Justice (hereinafter: the Independent service) was established to coordinate the work of court departments for victim and witness support. Furthermore, the Independent service also receives and processes requests for financial compensation of victims of criminal offences and performs all administrative and technical tasks for the Committee on compensation to crime victims, which is the competent body in determining victims' right to compensation. The Independent service is also authorised to prepare tenders and grant financial support to associations providing support within the framework of the Justice Ministry's programme of financing them from the public sources. The Independent service is also tasked with informing the victim if a prisoner has been released from their prison sentence<sup>61</sup> and, if the victim so requests, notifying it if the accused's custody or remand has been cancelled, or if the accused has escaped, as well as on the measures undertaken for the victim's protection.<sup>62</sup> Among the Independent service's other competences are providing support to victims and witnesses and informing them on their rights, responding to victims' written and oral requests, sending

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<sup>57</sup> Stojanović, M., Priručnik za rad volontera [Volunteers' handbook], Victim and Witness Support Service, Vukovar 2014, available at: <http://pzs.hr/wp-content/uploads/sites/560/2016/08/PRIRU%C4%8CNIK-ZA-RAD-VOLONTERA-2014.pdf>

<sup>58</sup> Amendments to the Law on Courts, OG 113/2008, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_10\\_113\\_3287.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2008_10_113_3287.html) [Croatian only] (accessed July 2018)

<sup>59</sup> See footnote 54., p. 14.

<sup>60</sup> National Call Centre website: <http://pzs.hr/2-nacionalni-pozivni-centar-za-zrtve-kaznenih-djela-i-prekršaja-informativna-i-emocionalna-podrska/> [Croatian only] (accessed July 2018)

<sup>61</sup> Enforcement of Prison Sentences Act, OG 56/13, article 164, paragraph 4, available at: <https://www.zakon.hr/z/179/Zakon-o-izvr%C5%A1avanju-kazne-zatvora> [Croatian] (accessed July 2018); [English, unofficial translation: The Execution of Prison Sentence Act, available at: <http://pak.hr/cke/propisi,%20zakoni/en/Executionof%20PrisonSentenceAct/Execution.pdf>]

<sup>62</sup> See footnote 3, article 43, paragraph 1, item 10.

informative letters to witnesses from the Republic of Croatia called to testify in courts abroad and foreign witnesses called to testify in Croatian courts, as well as acting as intermediary in organising transport and police escort for witnesses in war crimes cases called to testify abroad, by means of international legal assistance.<sup>63</sup>

The same year, the National Strategy for Developing the Victim and Witness Support System in the Republic of Croatia for the period 2016-2020 (hereinafter: National strategy)<sup>64</sup> was adopted, with the aim of allowing the victim or witness to access adequate support and assistance from the moment the criminal or misdemeanour offence was committed to the completion of the judicial proceedings, in order to avoid additional trauma for the victim and to empower victims and witnesses to recover and establish their rights that were violated.<sup>65</sup> The National strategy was drafted jointly by the Justice Ministry, Interior Ministry, Veterans' Ministry, Ministry of Social Policy and Youth, Health Ministry, the GOHRRNM, the State's Attorney's Office of the Republic of Croatia, representatives of the non-governmental sector and other experts, with the Ministry of Justice being tasked with monitoring its implementation.

## 2.1. Structure of the victim support system

The victim (and witness) support system in Croatia comprises institutional support through state bodies and institutions, as well as non-governmental organisations. As noted above, provision of assistance to all criminal offence victims in Croatia at the institutional level has been organised through court departments for providing support to victims and witnesses established in county courts in seven cities, whose work is coordinated and monitored by the Independent service, which is also authorised to provide support to victims and witnesses and inform them about their rights.<sup>66</sup> A much broader form of victim support is provided by civil society organisations, which are much more numerous. Searching through data available on the Internet, we mapped 18 associations in the Republic of Croatia currently providing forms of assistance to victims (legal and/or psycho-social), nine of which also provide legal and/or psycho-social support to at-risk social groups.

Victim and witness support departments in county courts provide general procedural information to victims of all criminal offences, witnesses and their family members on what are their rights. In addition, their staff are also tasked with clarifying the meanings of certain legal concepts for the victims, such as compensation claims. Court departments offer victims essential emotional support, as well as general information regarding their rights, while for legal advice they direct victims to associations that provide legal assistance for victims. An important form of support that falls under the purview of court departments is accompaniment for the victims when testifying, if such a need exists or the victim itself requested it. Accompaniment by a trusted person is extremely important to the victims as it encourages them and makes the entire process of participating in the proceedings easier. In the course of the execution of this report, the information was obtained from the interviewed employees of the court departments that each department employs two staff,

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<sup>63</sup> See footnote 5.

<sup>64</sup> See footnote 5.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

although there is also a certain number of volunteers who also participate in providing assistance and work shifts on duty. The work of the court departments is defined by the Ordinance on the work of victim and witness support departments,<sup>67</sup> which determines the overall, professional and administrative tasks of department staff, conduct with regard to victims and witnesses, and procedures for selecting, educating and organising volunteers and their work. The Justice Ministry systematically organises various forms of professional training for court department workers, such as education, trainings, workshops, expert and scientific conferences and similar.

One of the tasks of the court departments is realising and fostering cooperation with associations providing legal and/or psycho-social support, so that victims can be pointed to the right place, where they will be given all the necessary information and support. The departments cooperate with associations throughout the country, although due to territorial proximity, such cooperation is largely realised with associations working within the city where the departments themselves operate. In addition, the departments provide support and general information on rights through publicly available telephone numbers.

As far as non-institutional forms of victim support are concerned, as stated above, we have established that currently there are 18 associations in Croatia that provide legal and/or psycho-social support for victims. Associations that provide victim support are spread out throughout the country, and several years ago, the Ministry of Justice started a programme called "Support and cooperation network for victims and witnesses of criminal and misdemeanour offences", to grant funds to associations providing support in counties where there are no court departments as forms of institutional support. The Independent service is tasked with publishing tenders and granting funds, which as part of the aforementioned programme are allocated to providers in five counties – Brod-Posavina, Požega-Slavonia, Koprivnica-Križevci, Šibenik-Knin and Dubrovnik-Neretva. The programme lasted for three years and because of its success, the Ministry again launched a tender to award funds, meaning that from 1 January 2018 until 31 December 2020, financial support will be granted to 10 civil society organisations from 13 counties – Bjelovar-Bilogora, Brod-Posavina, Dubrovnik-Neretva, Istrian, Karlovac, Koprivnica-Križevci, Krapina-Zagorje, Lika-Senj, Požega-Slavonia, Šibenik-Knin, Virovitica-Podravina, Varaždin and Međimurje. In addition to immediate support for victims and witnesses, the chosen partnership network of civil society organisations is also tasked with coordinating the work of members and supporting them, educating workers and volunteers providing support to victims and witnesses, media campaigns and publicising certain activities, as well as monitoring the implementation of project activities.

Provider associations mostly offer assistance throughout the country (through publicly available phone numbers or electronically), and some work on the ground in smaller towns and villages where no form of support is available. Those working in associations providing legal and psycho-social assistance often participate in various forms of professional training in the form of education, workshops and seminars, where they have the opportunity to meet and exchange information and experience with other providers. Hence, it can be said that there is a high degree of networking and cooperation between the associations, especially

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<sup>67</sup> Ordinance on the work of victim and witness support departments, OG 133/2015, available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2015\\_12\\_133\\_2490.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2015_12_133_2490.html) [Croatian only] (accessed July 2018)

those within the same county. Besides, conversations with the court departments have showed that there also exists a very high quality inter-sectoral cooperation between departments and associations within the same city or county.

## 2.2. Support for victims of hate crimes and at-risk social groups in Croatia

In the Republic of Croatia there is no system of support intended exclusively for victims of hate crimes, but the existing forms of institutional and non-institutional support for all victims of criminal offences are also available to victims of hate crimes. However, certain forms of legal and/or psycho-social support for members of at-risk social groups, including victims of hate crimes, are provided by nine associations dealing with the issue of protecting and promoting their rights (such as LGBTIQ persons, victims of gender-based violence, members of national minorities and migrants).

The lesbian association *Kontra* has an open legal counselling centre for lesbians, the lesbian association *LORI* provides services of psychological counselling for members of sexual and gender minorities. The *Zagreb Pride* association provides legal assistance to the LGBTIQ population, while the *Centre for Peace Studies* association provides legal assistance in cases of discrimination, particularly on the basis of race/colour of skin, ethnic affiliation, religious belief and national origin, as well as in status issues regarding citizenship, residence, asylum and subsidiary protection in Croatia. Members of the Serb national minority can receive free legal assistance from the *Serb National Council* association, through its network of legal advisors and administrative collaborators. The *Autonomous Women's House Zagreb* provides legal and psychological assistance to women victims of violence, as does the *B.a.b.e.* association, while the *Women's Room* association provides legal and psycho-social assistance to victims of sexual violence. The *Women's Help Now* association operates an emergency phone line for women and children victims of violence, which is open 24 hours a day.

According to GOHRRNM statistical data for 2017<sup>68</sup> regarding the criminal offences of hate crime and public incitement to violence and hatred, the MoI has recorded 25 cases, the state's attorney's office acted in 32 cases, and a total of 12 criminal convictions were rendered for the aforementioned criminal offences. As far as misdemeanour hate crime is concerned, in 2017 there were a total of 9 misdemeanours recorded and nine final guilty verdicts in misdemeanour proceedings.

According to MoI statistical data for 2016,<sup>69</sup> 23 out of a total of 28 criminal offences committed out of hatred were motivated by a person's national origin, 3 its race, 1 its sexual orientation, and 1 criminal offence was motivated by a person's religion. MoI data for 2017<sup>70</sup>

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<sup>68</sup> The Government Office for Human Rights and the Rights of National Minorities website:

<https://pravamanjina.gov.hr/suzbijanje-zlocina-iz-mrznje/602> [Croatian only] (accessed July 2018)

<sup>69</sup> Statistički pregled temeljnih sigurnosnih pokazatelja i rezultata rada u 2016. godini [Statistical survey of security indicators and work results in 2016], Ministarstvo unutarnjih poslova, Služba za strateško planiranje, analitiku i razvoj [Ministry of Interior, Office for strategic planning, analysis and development], p. 41, available at

<http://stari.mup.hr/UserDocsImages/statistika/2016/Pregled%20sigurnosnih%20pokazatelja%20u%202016.%20godini.pdf> [Croatian only] (accessed July 2018)

<sup>70</sup> Statistički pregled temeljnih sigurnosnih pokazatelja i rezultata rada u 2017. godini [Statistical survey of security indicators and work results in 2017], Ministarstvo unutarnjih poslova, Služba za strateško planiranje, analitiku i razvoj [Ministry of Interior, Office for strategic planning, analysis and development], p. 44, available



indicate a fall in the number of criminal offences committed out of hate, with 11 motivated by national origin, 5 by sexual orientation, 1 by gender identity, 1 by race and 2 by persons' religion, out of a total of 20 criminal offences (difference between data published by MoI and by the GOHRRNM). Although this might suggest that there has been a fall in criminal offences recorded as hate crimes during 2017, in her 2017 report, the Ombudsman has pointed out that there has not really been a de facto reduction in the number of criminal offences, but that there has been a single extended criminal offence prosecuted as a series of individual criminal offences (an event that took place in 2016, when the same perpetrator, on a single occasion, drew 12 pieces of graffiti containing messages of hate, each of which was prosecuted as a separate criminal offence).<sup>71</sup>

Furthermore, SAO<sup>72\*</sup> reports show that during 2016, 24 reports of various hate-motivated criminal offences were received, and that in the course of that year 9 verdicts were issued, 20 persons charged, decisions to conduct an investigation were issued for 2 persons, and decisions to dismiss criminal charges were issued for 9 persons.<sup>73</sup> The 2017 SAO report shows that 18 reports of various hate-motivated criminal offences were received, and that during that year courts issued 5 verdicts, 6 persons were charged, and in 6 cases the decision was issued to dismiss criminal charges.<sup>74</sup>

While according to the Ombudsman's report the SAO acted on 37 cases in 2016, the number is different from the MoI data, as the police did not file criminal charges in all cases, but submitted reports based on which the state's attorney's office decided whether the specific cases involved criminal offences.<sup>75</sup>

Although in her 2016 and 2017 reports, the Ombudsman herself refers to MoI, Ministry of Justice and SAO data, consolidated by the GROHRRNM, she highlights the incidence of inconsistent data, as the data in question concern various stages of proceedings from which it is not always possible to discern which offences and motives were involved due to the different methods of collecting them used. Thus, for example, the Ministry of Justice does not put forward data on types of offences committed out of hatred, but it does collect data on the characteristics of the victims; MoI has data on criminal offences, but not all motives for

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at: [http://stari.mup.hr/UserDocsImages/statistika/2018/Statisticki%20pregled\\_2017.pdf](http://stari.mup.hr/UserDocsImages/statistika/2018/Statisticki%20pregled_2017.pdf) [Croatian only] (accessed July 2018)

<sup>71</sup> Ombudsman's report for 2017, p. 34, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu> [Croatian only] (accessed July 2018)

<sup>72</sup> State's Attorney's Office (*translator's note*)

<sup>73</sup> State's Attorney's Office of the Republic of Croatia report for 2016, p. 54, available at: [www.dorh.hr/fgs.axd?id=2650](http://www.dorh.hr/fgs.axd?id=2650) [Croatian only] (accessed July 2018)

<sup>74</sup> State's Attorney's Office of the Republic of Croatia report for 2016, p. 56, available at: [www.dorh.hr/fgs.axd?id=2650](http://www.dorh.hr/fgs.axd?id=2650) [Croatian only] (accessed July 2018)

<sup>75</sup> Ombudsman's report for 2016, p. 29, available at: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/854-izvjesce-pucke-pravobraniteljice-za-20> [Croatian only] (accessed July 2018)

the commitment of the offence are clear from the data;<sup>76</sup> while SAO data represent cases in the previous stage of the proceedings, that is, before the beginning of judicial proceedings.<sup>77</sup>

In view of the statistical data from MoI, SAO, the Ministry of Justice and the Ombudsman outlined above, it is clear that we are witnessing low numbers of recorded hate crimes, although the social reality is different, as confirmed by the latest European Commission Against Racism and Intolerance (hereinafter: ECRI) recommendation for Croatia, of May 2018. In its recommendations, ECRI has signalled concern over the increasing presence of racist and intolerant hate speech in public discourse, primarily directed at Serbs, the LGBT population and the Roma, as well as of recorded physical attacks on members of these groups and their property. ECRI singled out for special critique the inadequate action taken by the Croatian authorities in response to the rise in such intolerance, especially the fact that the majority of incidents of hate speech and crimes are treated as misdemeanour, rather than criminal offences, while the insufficient level of education and expertise for recognising hate crime in the justice system leads to the racial motive rarely taken into consideration as an aggravating circumstance. Not undertaking criminal action against perpetrators of hate crimes leads to the absence of a preventative effect, that is, deterrence from further committal of such criminal offences, which in turn leads to victims' loss of trust in the legal system. In spite of the existence of a satisfactory anti-discrimination legal framework, prejudice against LGBT persons is still very widespread, exposing them to various forms of discrimination in everyday life.<sup>78</sup> ECRI has made a priority recommendation to Croatia to introduce compulsory human rights education into the overall school curriculum, especially on the issues of equality and prohibition of discrimination.<sup>79</sup>

In recent years, with the arrival in power of conservative, rightwing political parties, anti-minority rhetoric in public discourse has grown, and it is not always publicly and promptly condemned. As a consequence, the number of attacks on members of national minorities in Croatia has increased, especially members of the Serb and Roma national minorities.<sup>80</sup> Indeed, the Council of Europe has highlighted the wave of radicalism and nationalism in Croatia in its 2015 report on Croatia,<sup>81</sup> which highlighted that the public debate is dominated by prejudice and anti-minority rhetoric, especially in war-affected areas. Migrants and asylum seekers are also exposed to violence and hate speech. Due to the stereotypes and prejudice they are exposed to, they are usually denied the right to participate in social life, for instance, access to services or employment.<sup>82</sup>

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<sup>76</sup> Ibid., p. 29.

<sup>77</sup> See footnote 74, pp. 34-35.

<sup>78</sup> ECRI report on Croatia, issued 15 May 2018, p. 9, available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Croatia/HRV-CbC-V-2018-017-ENG.pdf> (accessed July 2018)

<sup>79</sup> Ibid., p. 10.

<sup>80</sup> See footnote 74.

<sup>81</sup> Fourth Opinion on Croatia, adopted on 18 November 2015, ACFC/OP/IV(2015)005 rev, Council of Europe, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c268b> (accessed July 2018)

<sup>82</sup> See footnote 74., p. 55.

### 3. Analysis of an association and institutions providing support for victims and the perspectives of victims of hate crimes

#### 3.1. Analysis of an association providing legal support to LGBTIQ person

As already mentioned, in Croatia there is no developed system of support specifically intended for victims of hate crimes. Therefore, we set out to analyse associations providing legal and/or psycho-social support to at-risk social groups, including victims of hate crimes.

*Zagreb Pride* was chosen for the first analysis, an association headquartered in Zagreb which provides legal support to LGBTIQ persons, including victims of hate crimes based on sexual orientation or gender identity. The reasons for choosing this association were its longstanding provision of legal assistance to the LGBTIQ population, its situation in the capital – and most populous city – of Croatia, and the assumption that, considering that they are one of a small number of associations also providing support to victims of hate crimes, they would have a large number of users.

*Zagreb Pride* has been active in the field of advocating the equality of LGBTIQ people, and are engaged on issues of hate crime and speech through monitoring existing legislation, regulations and public policy, providing legal assistance to and representing victims of discrimination and hate crimes, reporting on the state of LGBTIQ people's human rights, and particularly public advocacy and education. The organisation was established as a queer feminist and anti-fascist association advocating an active society of solidarity and equality, free of norms and categories of gender and sex, as well as any other kind of oppression. At first, since 2002, it operated as an informal organisation, but from 2008 it has been registered as a non-governmental organisation. Four persons are employed in the association, and legal support is provided in cooperation with a law firm and legal experts.

*Zagreb Pride* have also closely cooperated with other associations likewise dedicated to protecting the rights of LGBTIQ people, and are mostly satisfied with their cooperation with associations, although they believe it could be even more systematic and better.

*"Cooperation with other associations exists and it's good. We hold joint meetings and communicate through e-mail, but I believe that with good and continuous cooperation and communication within civil society it could even be better."* P/5

One of the more successful co-operations realised was on educating police officers. Specifically, since 2011, *Zagreb Pride* has conducted education, that is, workshops for police officers on the existence of, and recognising hate crime directed against LGBTIQ people through better understanding of the circumstances because of which such crimes happen. Attendees were given instruction about the criminal law framework of such crimes and the manner of their *processing*, and are acquainted with examples of real cases which they had encountered, but which were not properly processed. In the past seven years, more than 500 policemen and women in Zagreb and Split attended and completed such education, while last year, in cooperation with the *LORI* association, such an education was also carried out in Rijeka. Be that as it may, in the *Zagreb Pride* association they state that discriminatory views

among police officers towards LGBTIQ victims of hate crimes are still not infrequent, and consider them a reflection of the overall social climate concerning this social group.

*"We met with institutions, but also with police officials whose attitudes towards victims of hate crimes were discriminatory. We are very aware of the general social attitude towards LGBTIQ people, and sometimes it's clear that there's no serious will for someone to deal with it. Although we also encounter individuals who care and who are willing and ready to cooperate." P/5*

Moreover, *Zagreb Pride* have stated that over the course of the educations, they have developed good inter-sectoral cooperation with the Ministry of the Interior, the Judicial and Police Academies, the State's Attorney's Office in Zagreb and the Independent Service for Victim and Witness Support of the Ministry of Justice.

*Zagreb Pride* has provided free legal assistance, but also services of representation in court, from 2010, in cooperation with a law firm and legal experts. In 2016, in cooperation with attorneys and other legal experts, the association has worked on a total of 56 cases, 25 of which concerned criminal proceedings, 11 misdemeanour proceedings, and the rest civil procedures in the field of work and employment, informal living partnership<sup>83</sup> and similar. Hate crime, discrimination or violence may be reported by telephone, electronically or personally, at the association's office, and is completely anonymous.

Due to the high level of homophobic and transphobic attitudes observed in the education system, in 2016, *Zagreb Pride*, in partnership with the *LORI* association from Rijeka, carried out an education of pupils in the education system, with an emphasis on secondary schools, in order to educate young people on LGBTIQ identities, discrimination and violence against this group and LGBTIQ people's human rights in Croatia. The education was conducted in three Zagreb secondary schools, with similar activities also planned for the future.<sup>84</sup>

The positive aspects of the *Zagreb Pride* association's work supporting victims of hate crimes are legal assistance and representation of victims in court by the law firm with which the association cooperates. The inexistence of psycho-social support as part of the association's activities can be considered a drawback.

### 3.2. Analysis of the work of court departments for victim and witness support

Three court departments (in Zagreb, Split and Vukovar) were selected for conducting the analysis of the institutional form of support for victims of hate crimes, in order to gain an insight into the experiences of working with victims of hate crimes.

Although the number of staff in each support department depends on the size of the court's jurisdiction, each court department employs two people who provide support to victims and witnesses. The support includes the essential emotional support important to the victims, and

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<sup>83</sup> In Croatia, informal living partnership is the name for an unregistered union between same-sex partners.

Formal and informal living partnerships are regulated by the Law on Same-Sex Living Partnerships, OG 92/14.

<sup>84</sup> See footnote 75.

giving general information regarding their rights. Besides, the court department workers are authorised to accompany the victim in court hearings as persons of trust. It was established in conversations with department staff that this form of support is highly valued by the victims, as it creates an atmosphere of trust and support that makes the traumatic and stressful situation of participating in judicial proceedings more bearable. Department workers have a long experience of providing support and approach victims professionally, but also humanely and emphatically.

*"Our role is, among other things, to enter the courtroom with the victim and witness, if we estimate that such a need exists or if the court orders it or the victim requests it." P/1*

*"Victims value emotional support above all, the first approach and conversation, active listening, relaxing, unjudgemental and informal conversation. This is the condition for gaining a person's trust." P/1*

One of the tasks of the department is to point the victims to associations that provide legal and/or psycho-social support, with all the departments we interviewed citing great cooperation with the civil sector. Department employees are very well acquainted with the existence and work of associations providing support in their city or county, but also beyond, and therefore always know where to direct a victim for legal advice and/or conversation with a psychologist.

*"We have great cooperation with many association throughout Croatia. And if a victim from another county contacts us, we know where to direct them, depending on which county it is and which associations are active in that region." P/3*

*"We cooperate with associations from around Croatia. Of course, cooperation with Zagreb associations is stronger and better, often due to geographical proximity. Cooperation with associations is extremely important. For instance, if the victim asks for something we don't provide, it's important for us to know where to point them." P/1*

*"We cooperate a lot with the departments, and we instruct any victim in the proceedings to go directly to the departments for any request or communication with the judge in the case, because they are part of the court and have cooperation and long experience with judges in this court." P/4*

As far as cooperation with other relevant bodies is concerned, workers in the department mainly judge it as satisfactory, although they stress that it might be better. Cooperation with judges and other court officials is very good, not only due to the fact that the departments are themselves situated within the court buildings, making it easy to expedite things when necessary, but can also be seen in realising the victim's rights. Thus, in carrying out individual victim assessments, department staff inform judges as to the victims' emotional and psychological condition, degree of trauma and the observed specific needs that ought to be satisfied. According to department staff, judges largely respect their assessments and based on them allow certain requests to be fulfilled, such as the victim needing to be interviewed using an audio-video device, or it needing accompaniment by trusted persons when giving a statement in court. As far as cooperation with the state's attorney's office, staff have confirmed that it exists and is mostly good, while cooperation with police officers is rated as

very good. This is especially evident in smaller communities, as the relevant stakeholders often know each other personally as well, which in many ways eases cooperation and provision of prompt and good-quality support for victims.

*"We have excellent cooperation with the police, so if an oversight by police officers does happen, for instance, delivering the victim a written notification of its rights, such oversights are very quickly resolved and corrected in communication with them." P/1*

Court departments also have volunteers, who are selected, educated, and whose work is coordinated by department staff. On-call rotas are arranged with the volunteers and logged in a specific register. The volunteers work under daily mentorship by department staff, keep record of their activities, and participate in joint evaluation meetings. Department employees are obliged to participate in various forms of professional training (educations, seminars, professional conferences, roundtables and similar), and also have a role advocating and promoting victims' rights, highlighting their position in the system and the observed shortcomings that need to be removed, as well as the observed good practices that need to be continued.

The positive aspects of court departments' activities are good emotional support and liaising with court officials, as well as good cooperation with all the relevant bodies involved in judicial proceedings, considering that developing and maintaining cooperation with them is one of the duties of the department defined by the Ordinance itself.<sup>85</sup> It is also a positive that the departments are already situated inside court buildings, which significantly accelerates the process of submitting various requests to which the victim is legally entitled. It is also positive that the employees are in close contact with judges, which can have a significant influence on realising victims' rights, as the judges, in the words of the employees themselves, largely accept the individual victim assessments conducted by the court department. Nevertheless, the court departments' lack of capacity represents a significant deficiency. As they themselves report, the volume of work is huge, and there are only two employed workers. Although each department also employs volunteers, everyone agrees that successfully carrying out an activity as important as this, which is provided by the state itself, cannot depend on volunteers' goodwill and their greater or lesser motivation to do this work.

### 3.3. Analysis of hate crime victims' perspectives

In order to investigate the conduct of the relevant stakeholders in cases of hate crimes (primarily police officials who generally first come into contact with victims), it was necessary to also interview the victims themselves. Including victims of hate crimes, that is, their experiences with public authorities, has afforded us a deeper insight into both the positive and negative aspects of their conduct in situations of hate crimes.

As highlighted in the introduction, the primary goal was to include as many victims as possible. However, some of the victims we contacted refused to share their experiences with us due to fear of their identity being revealed, while one of the victims pointed out that for her, merely retelling her experiences creates immense anxiety and shame. Overall, carrying out this

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<sup>85</sup> See footnote 69, article 10, paragraph 13.



segment of the study represented a great challenge as victims (due to fear, shame and mistrust) are uninclined to speak out about their experiences. Thus, in order to analyse the perspective of victims of hate crimes, we talked to two victims who agreed to speak about their experiences.

## EXPERIENCE OF VICTIM 1

Victim 1 was attacked in Zagreb, first verbally, and then physically, because of her sexual orientation. There were two attackers. The police was called by a member of staff of the restaurant where the attack took place, and two police officials quickly arrived at the scene of the crime. Victim 1 tells how the attackers were immediately apprehended by the police, who then took her and several witnesses' statements.

Victim 1 has stated that police officers had a great deal of understanding, and treated her gently and considerately. The victim was not given a written notification of her rights, and statements were taken from the victim and five witnesses. The assault was recorded in the police report as a misdemeanour, rather than criminal offence, although at the time the report was being written, the attackers were present, shouting offensive words that clearly alluded to the motive of hatred, which the police officers should have recognised.

As the procedure of prosecuting the abovementioned hate crime initially began as a misdemeanour proceeding, the next day, Victim 1 went to the Misdemeanour Court, where she made her statement in the presence of her attackers, who were in the same room. The victim by then still had not been given a written notification of her rights.

Moreover, several days after giving her statement, Victim 1 found out about the legal support provided by the *Zagreb Pride* association and contacted them. Victim 1 states that she had never before heard that such a form of support existed, although she herself moves in activist circles.

*"Why don't victims report hate crimes? Because they're uninformed. My case would also have gone through as a report of a minor offence against public peace and order if an acquaintance didn't get in touch with information that I could contact their organisation which provides legal assistance to victims of hate crimes." V/1*

Thanks to the legal advice she eventually received and the service of representation the association provides in cooperation with a law firm, the misdemeanour proceeding was abandoned, and a criminal charge submitted for a criminal offence motivated by hatred. The assault occurred in 2016, the proceedings are still ongoing, and no verdict has yet been issued. The answer given by Victim 1 to the question what ought to be done to make it easier for victims of hate crimes to report criminal offences was unreserved – inform them.

*"These informations on victims' rights and available support should probably be much more emphasised. Maybe put up ads in trams. Or tram stations. Or as billboards. I mean, there are very many ways to make it visible." V/1*

## EXPERIENCE OF VICTIM 2

Victim 2 experienced a verbal and physical assault motivated by hate based on sexual orientation in a small town on the western part of the Croatian coast. There were likewise two attackers. During the assault, the victim was approached by two security guards, who escorted her out of the club (as a culprit involved "in the scrap") outside the club, another physical attack on her ensued, after which the attackers took flight, and the security physically prevented the victim from catching up with them.

*"The security saw everything, and they still held my hands behind my back while the attacker ran away, as if I was the one who attacked them." V/2*

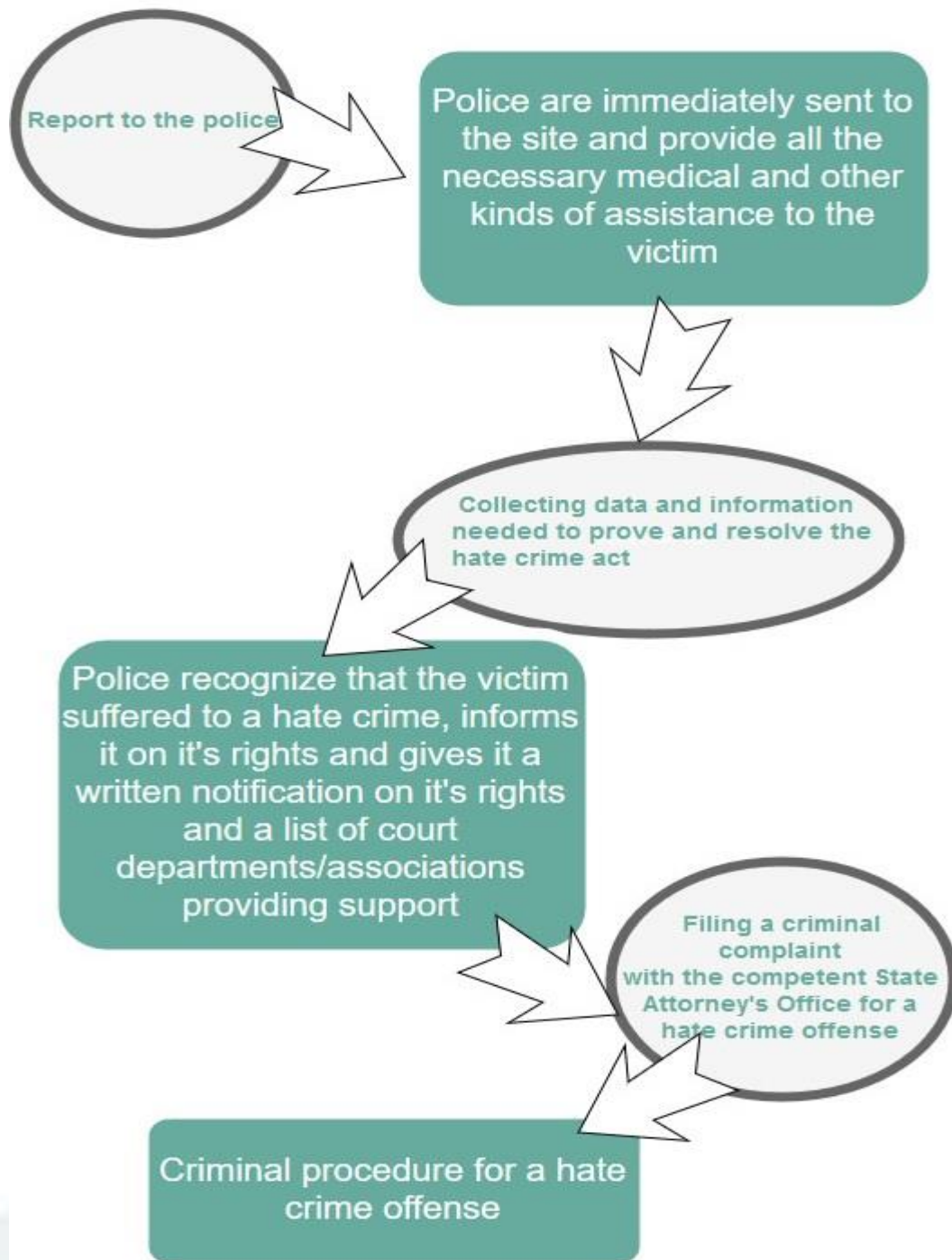
A police officer arrived at the scene of the crime, and took a statement from Victim 2 and persons who were present along with her. The witnesses to the event immediately reacted to the policeman's statement that it was an offence against peace and order, correcting his claim and stating that it was no misdemeanour, but a hate crime. To this, the policeman replied that he thought that a hate crime can only be committed against members of national minorities. According to the victim, the young policeman was respectable in his approach, with no discriminatory attitude, which is commendable, but not recognising the crime in hand is a serious error.

Victim 2 did not receive written notification informing her of her rights and containing a list of associations providing legal and psycho-social assistance – information which she still did not receive in the course of subsequent communication with the same police officer. Victim 2 was informed that the attackers were apprehended and interviewed, records of which were handed over to a superior in the police department, who was to "see what to do with it". As of the writing of this report, the misdemeanour proceedings against the attackers on Victim 2 are still ongoing, and the victim still has not received an invitation to testify.

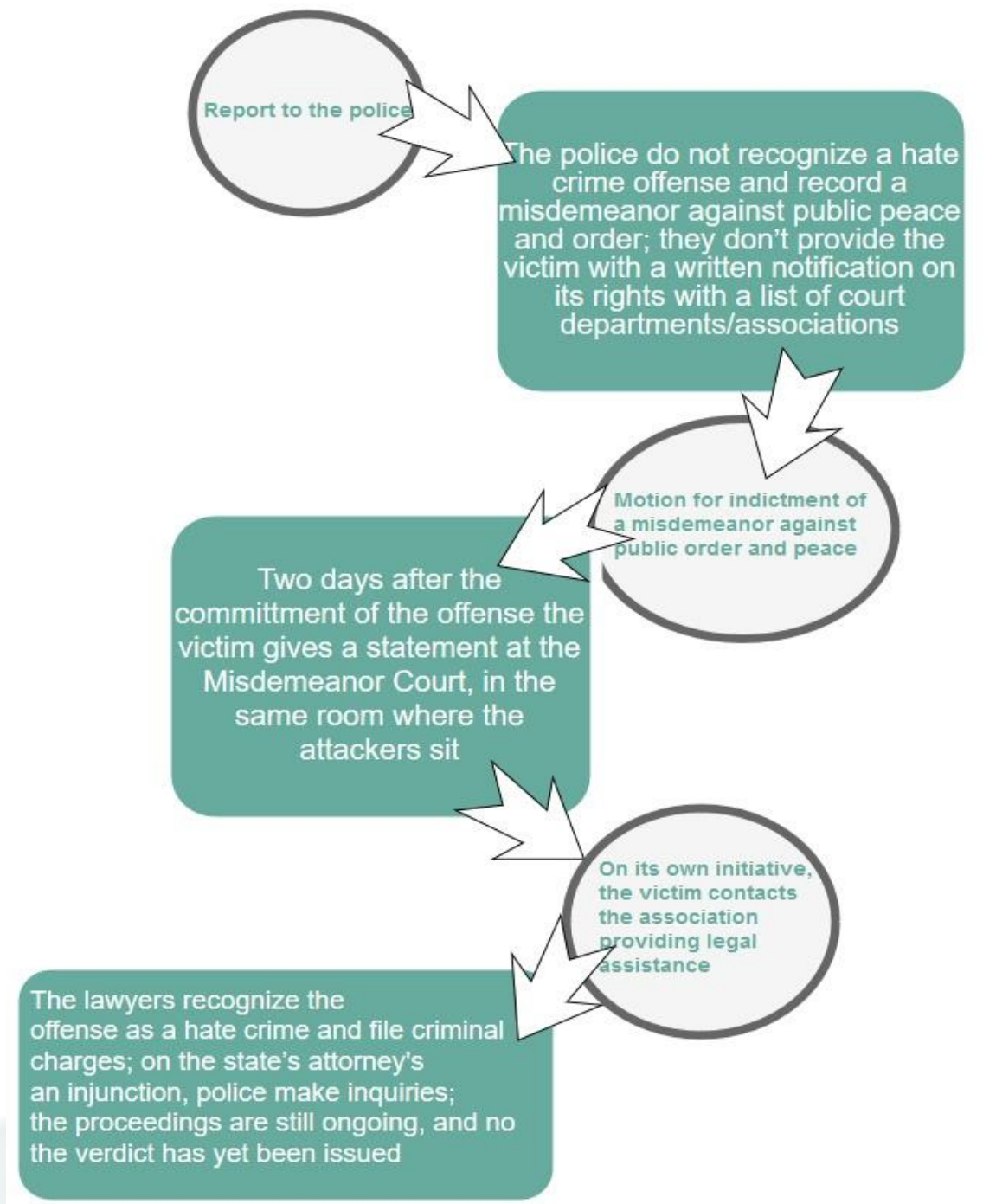
### 3.4. An overview of actions taken by relevant actors in hate crime cases (from the victims perspective)

Below is a graphic representation of ideal type and real course of action taken by the police as the primary relevant stakeholders in prosecuting hate crimes. Both diagrams show the described real experiences from the previous chapter on the quality of police conduct and treatment of the victims. The first diagram shows a case of a hate crime committed in 2016, while the other concerns a crime committed in 2018.

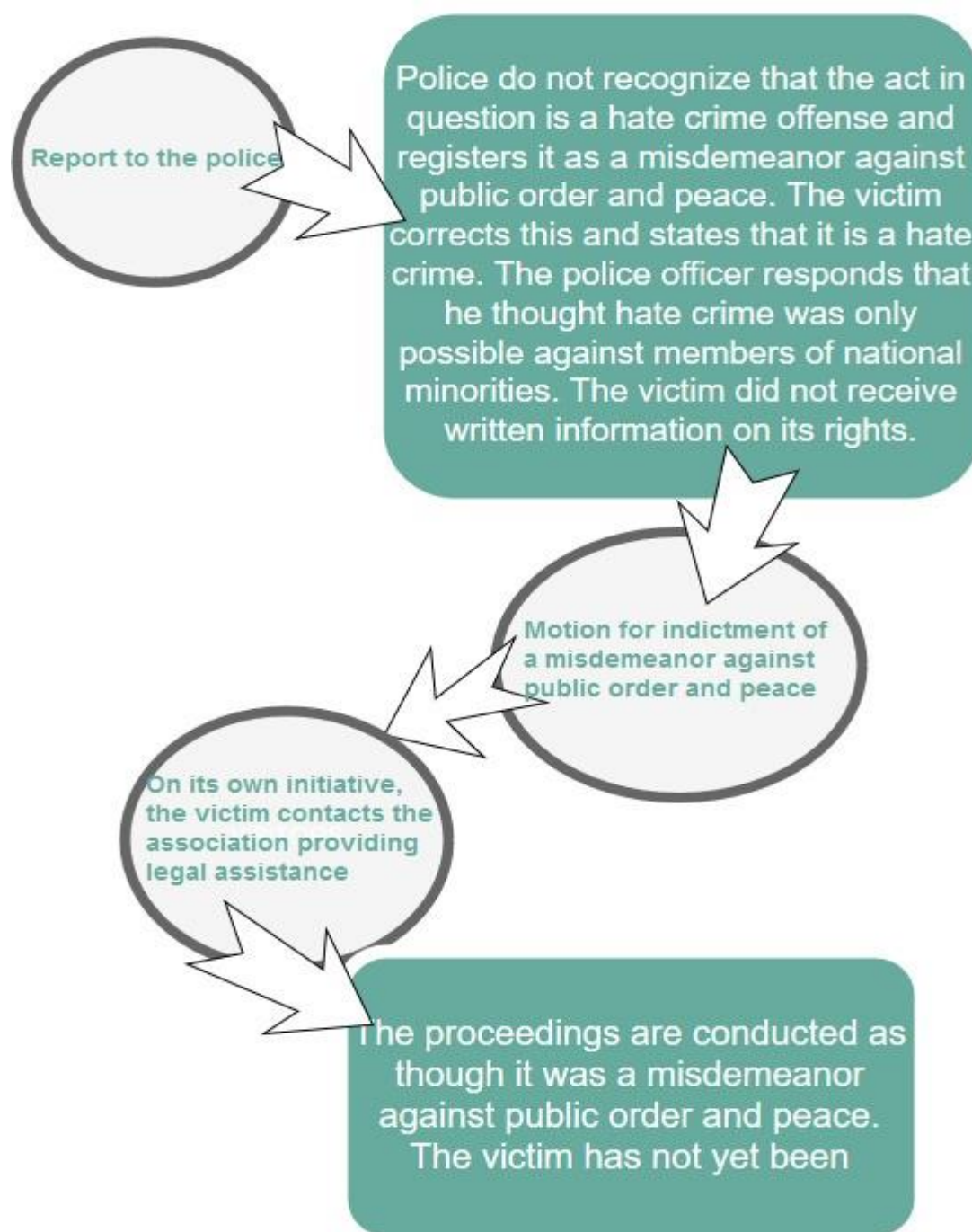
## Ideal type case



## Experience of victim 1



## Experience of victim 2



As can be seen from the diagram of real cases, in both instances, the police officials failed to recognise a hate crime, and thus failed to act in accordance with the Protocol. It is highly

problematic that in neither of the cited cases did the victims have their rights explained to them, nor were they directed to services or organisations for victim support, where they might get legal advice or psychological assistance. In both cases the proceedings are still ongoing (it should be noted that the first case, that of Victim 1, took place two years ago, while the case of Victim 2 happened several months ago). In both cases, the positive aspect is that the victims had nothing but good experiences with police officers, citing that they were not treated in a discriminatory manner, but with consideration and empathy.



## 4. Deficiencies and problems in the system and in practise

Although the legislative framework for combating hate crime in Croatia can be considered relatively good, there are many deficiencies in the system, which illustrate the situation in the society when it comes to recognising and prosecuting hate crime, but also a suitable approach to supporting victims of such crime. There are two basic problems regarding hate crime. One is non-recognition, both by the bodies whose competences involve uncovering and prosecuting hate crime, as well as the society overall, including victims themselves. The second problem is improper prosecution of hate crime.

As a key actors in prosecuting hate crime, the police often does not recognise its elements, as confirmed by associations providing support to victims of hate crimes. As the Protocol stipulates that the police must quickly access the location of the events and gather as much evidence as possible that would indicate a motive of hate in the commitment of the crime, its consequences and consequently the duty to properly categorise the events, it is clear that a satisfactory legal framework exists. However, practical problems emerge due to insufficient level of knowledge of the issues surrounding the concept of hate crime as well as the concept itself, which leads to an improper qualification of events and thus their unsuitable prosecution – most often as misdemeanours, rather than criminal offences with an aggravating circumstance of hatred as a motive or as an aggravated form of criminal offence. This can be precisely seen in the experience of Victim 2, where the police officer stated that he thought hate crime could only be committed against members of national minorities, which shows the abysmal level of acquaintance with the concept of hate crime and the surrounding issues.

*"Misdemeanour proceedings were initiated instead of criminal, and so, in lay terms, the offender gets off with a lighter punishment, say merely a fine." P/9*

*"Police officers with whom we had experiences really do their job well, but mistakes can happen. They are not lawyers, although they should have some legal knowledge to properly classify an offence as a hate crime." P/3*

*"Systematic education is needed, both of the police and other stakeholders, on the issue of hate crime – what's more, such education needs to be systematically repeated for those who had already attended in order to sensitise them, for them to better understand the concept." P/4*

Despite the existence of the Protocol mandating cooperation between all bodies tasked with uncovering, acting on and monitoring prosecution of hate crime, it is problematic that the competent bodies are either late supplying data, or the data that are supplied are incomplete, and sometimes even inaccurate. It has happened that criminal offences without the characteristics of hate crimes as defined by the Criminal code are found among the official data received by the GOHRRNM.<sup>86</sup> All this creates difficulties in realising good quality cooperation, and actually undermines the very purpose of the Protocol.

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<sup>86</sup> See footnote 71.

In addition, there are differences in figures in the official data supplied to the GOHRRNM in relation to the data published by the bodies in their statistics or reports. For example, according to the aforementioned statistical report of the MoI, the number of reported criminal offences of hate crime in 2017 was 20,<sup>87</sup> while according to GOHRRNM data, the number of cases recorded by the MoI that year was 25.<sup>88</sup>

Moreover, from conversations with associations providing legal and/or psycho-social support for victims, as well as with court departments, it was established that they barely had any experience working with victims of hate crimes. This would suggest a certain level of ignorance of what even constitutes a victim of hate crime, especially if it is taken into account that we also conducted interviews with associations and departments active in war-affected areas, where it would be legitimate to assume that there is a certain amount of intolerance towards members of the Serb national minority, which might lead to an increased number of hate-motivated criminal offences. Furthermore, as mentioned above, over the past few years, there has been a steady increase in the number of assaults on members of the Serb national minority, both according to the Ombudsman's report and MoI statistical data.

*"We had no experience with victims of hate crimes, although I think that it's very important for the police to recognise them, because of their further processing. I believe that it is often not recognised that these are hate crimes." P/8*

The fact that the majority of associations and court departments we talked to have confirmed that they had no experience providing support to victims of hate crimes may also suggest that the victims themselves are not acquainted with the notion of hate crime, or do not report it. The experience of Victim 1 would favour the non-recognition hypothesis, as she did not even know the assault on her constituted in fact a crime.

*"Hate crime is not something completely unfamiliar, but at that moment I didn't know whether it was a misdemeanour or a criminal offence. I had no idea that there were associations providing legal assistance, or any kind of assistance. And I'm not an outsider, I mean, I'm an activist myself, have been for nearly a decade." V/1*

Beside insufficient awareness among citizens about the existence and meaning of the concept of hate crime, victims of hate crimes also frequently do not report them. From what we have established by conducting interviews with associations that encountered hate crime and its victims in their work, the most common reason for non-reporting is the fear of re-victimisation and reprisal by the perpetrator, as well as lack of trust that the relevant institutions will offer them an adequate degree of protection. These reasons correspond to those listed in an OESS publication on collecting data on hate crime and the mechanisms of its monitoring, where the following were listed as possible reasons for non-reporting: fear of victimisation and retaliation, mistrust in the system, feelings of humiliation and shame, and fear of deportation for persons lacking the necessary papers, fear of revealing one's identity

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<sup>87</sup> See footnote 73.

<sup>88</sup> See footnote 70.

when it comes to the LGBT population, language barriers and not recognising the incident as indictable.<sup>89</sup>

*"Victims most usually don't even know if it is a criminal offence, or they don't have the information who to turn to. There's also shame, an absence of support from their surroundings. They aren't empowered enough." P/1*

*"Owing to mistrust in the judiciary and the great stress the proceedings cause for the victims, unfortunately there's a lot of giving up on reporting." P/9*

Providers of legal assistance for victims of hate crimes also confirm that there is a significant number of failures to report the incidents, that is, perpetrators, especially in smaller communities.

*"We had a situation where a person who systematically experienced attacks on the basis of her sexual orientation, when we suggested filing a criminal complaint, stated that she simply didn't want to enter any proceedings after all the previous unsuccessful and unsatisfactorily prosecuted hate crimes she had already been part of." P/9*

Although the Republic of Croatia adopted the National Strategy in 2015, committing to enhance and upgrade the existing normative, institutional and organisational system of victim and witness support, an accompanying Action Plan, which follows the strategy and determines the modes of realising the measures for the development and specific tasks given to individual implementing authorities has still not been drafted, although it should have been adopted within six months from the adoption of the Strategy.<sup>90</sup> The inexistence of an Action Plan as an accompanying document to the National Strategy also means that the measures determined in the Strategy cannot be implemented.

Although court departments exist as a form of institutional support for victims, the fact that they have been set up in only seven Croatian cities means they are inadequate for achieving full territorial coverage. This way, support remains inaccessible for many victims, thus denying them their rights guaranteed by law.

Also highly problematic is the court departments' lack of capacity. Although staff do a good job, the volume of their tasks is huge, and the number of employees absolutely does not match the amount of work they are expected to do. As already noted, although each department also employs a certain number of volunteers who also provide support, an activity as important as this should by no means depend on voluntary engagement.

*"More people should be employed to make it possible to provide support equally in municipal courts and the Misdemeanour Court in Zagreb. I believe that lack of capacity is the fundamental obstacle in providing support." P/1*

*"Lack of capacity at victim and witness support departments in county courts is also a large problem. People we cooperate with who work at these departments are great and try really*

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<sup>89</sup> Hate Crime Data-Collection and Monitoring Mechanisms: A Practical Guide, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) 2014., p. 5.

<sup>90</sup> Ibid.

*hard, but there's simply a lack of capacity. It is a huge problem and obstacle in provision of support for victims." P/6*

*"Volunteering always has this drawback in that it isn't an obligation, which itself makes it unreliable. My personal opinion is that there should be a much larger number of employed workers providing support." P/1*

Although pursuant to the Crime Victims Compensation Act,<sup>91</sup> victims are entitled to submit requests for financial compensation of damage resulting from a criminal offence, the procedure for fulfilling such requests is drawn out and overcomplicated, with barely any compensation being paid out to victims. In 2016 there were no compensation payouts,<sup>92</sup> while in 2017 only 5000 HRK were paid out in a single case.<sup>93</sup> Although the relevant Act is very restrictive and only pertains to premeditated criminal offences with elements of violence,<sup>94</sup> the fact that only 161 requests were submitted between 2013, when it came into force, and the end of 2017 indicates a near-total lack of knowledge among victims about its existence.<sup>95</sup>

Unfortunately, in practice there are cases of violations of the rights of all categories of victims, including victims of hate crime, which leads to an inability to exercise their legally guaranteed rights, as providers of legal support for victims have stated. For instance, a case has been recorded where a victim of a hate crime that took place in a small settlement was not allowed by the court to make a statement to the appellate court in the capital, where the victim lives. Although the request to be questioned by an appellate court was filed precisely to avoid the victim encountering the perpetrator and eliminate the possibility of influencing the victim, the victim, visibly traumatised, was questioned in the presence of the perpetrator and his attorney.

*"We submitted these requests in written form, but none responded to them, so we had to refile our petitions, even try to get an answer by phone." P/9*

Furthermore, there were cases recorded where the court did not grant the victim accompaniment by a trusted person when giving a statement although the need for accompaniment was established on the basis of an individual assessment carried out by a support provider.

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<sup>91</sup> See footnote 4, articles 5 to 9.

<sup>92</sup> Ombudsman's report for 2016, p. 19, available at: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice-za-2016-godinu> [Croatian only] (accessed July 2018)

<sup>93</sup> Ombudsman's report for 2017, p. 31, available at: <http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu> [Croatian only] (accessed July 2018)

<sup>94</sup> See footnote 4, article 1.

<sup>95</sup> Report on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on the establishment of minimum standards of the rights, support and protection of victims of crime in the Republic of Croatia, Documenta, Zagreb, 20 November 2017. Available at: [https://www.documenta.hr/assets/files/Godisnji%20izvjestaji/Report-on-the-implementation-of-Directive-2012\(1\).pdf](https://www.documenta.hr/assets/files/Godisnji%20izvjestaji/Report-on-the-implementation-of-Directive-2012(1).pdf) (accessed July 2018)

*"I had experiences where the victim's mother requested to be a person of trust in giving a statement, but wasn't allowed. The judge's comment was that it wasn't a football game that so many people could attend." P/7*

The case of violating a victim's right to be interviewed using an audio-video device is also common. We found out from interviews with some providers of legal and psycho-social support that many judges have an aversion to such a method of questioning as they prefer to directly question the victim.

## 5. Good practice

In spite of its abovementioned deficiencies, the existing Protocol should by all means be highlighted as an example of good practice in terms of development of the system of victim support. The Protocol has set up a very important system of monitoring hate crime cases establishing a Hate Crimes Monitoring Working Group, in whose work all the relevant stakeholders of the process participate, from the Ministry of the Interior, State's Attorney's Office to the courts, with, it should be noted, a seat reserved in the Working Group for a representative of civil society organisations. In line with the provisions of the Protocol, Working Group meetings, where practical challenges are discussed, are convened by the Government Office for Human Rights and the Rights of National Minorities, as the central body which coordinates the work of all participants involved in the process of monitoring and uncovering cases of hate crimes.

It is certainly important to highlight that associations providing support to all victims cooperate very well with each other, which includes cooperation with court departments and, mostly, with the police. In addition, all associations providing support do so throughout the country, electronically or by phone, with some also doing work on the ground, in smaller towns and settlements where no form of support is otherwise provided.

Education of police officers, carried out as a result of long-term cooperation between individual civil society organisations and the Police Academy in the field of protecting and promoting human rights, is also an example of good practice. However, although the experiences of the victims we interviewed show that the police officers were sensitive in their approach to the victims and had no discriminatory attitudes, providers of support for LGBTIQ persons note that discriminatory attitudes and prejudice are still widespread, which shows that there is a need for further, continuous and systematic implementation of such education, which would involve all those who come into contact with victims of hate crime in the course of their work.

The aforementioned Ministry of Justice programme entitled "Support and cooperation network for victims and witnesses of criminal and misdemeanour offences", which grants funds for associations providing support in counties without court departments as an institutional form of support, should also be highlighted as an example of good practice. Accessibility of support for victims is a precondition for exercising their legally guaranteed rights, so in that sense, engagement on the part of the relevant state institutions allowing victims to exercise their rights is essential.



## 6. Conclusion and recommendation for developing the system of support of victims of hate crime

Hate crime as a criminal offence that entails certain effects under substantive law is a relative novelty in criminal legislation, which police officials often fail to recognise, and consequently commit mistakes in their handling of the matter. Police officers do not have the necessary knowledge about the legal concept of hate crimes, nor the competences for correctly classifying it, which in practice results in hate crimes being prosecuted as minor offences against public peace and order. The Police Academy should therefore systematically educate police officers throughout the Republic of Croatia. The Judicial Academy should also carry out educations for judges, state's attorneys and all other relevant stakeholders who encounter victims in their work.

Recognising hate crime is a precondition for securing adequate support for victims. The CPC<sup>96</sup> foregrounds hate crime victims, to whom special attention ought to be afforded, which should be taken into account when carrying out individual victim assessments in order to determine the need to apply special protection measures. If the motive of hate remains unrecognised, these victims too will remain unrecognised, victims for whom the CPC explicitly specifies special measures of protection, such as, for instance, special methods of questioning, excluding the public from hearings or use of communication technologies to avoid visual contact with the perpetrator.

Furthermore, the bodies tasked by the Protocol with uncovering, acting on and monitoring prosecution of hate crime should seriously apply themselves to keeping a harmonised record of cases of hate crimes, primarily by establishing a common methodology for collecting and monitoring these data, which would subsequently be supplied to the GOHRRNM – complete, accurate, and on time. Enhancing the system of monitoring hate crime can only be done through active, intense and high quality cooperation between competent bodies, cooperation that can only be realised by means of systematic exchange of the aforementioned data, as anticipated in the Protocol.

Through conversations with associations providing support to victims of all criminal offences, we have observed that the majority never encountered victims of hate crime – with the exception of those associations whose work was focussed on protecting and promoting the rights of at-risk social groups. Such information favours the thesis that in a large number of cases, hate crimes remain unrecognised, or recognised but unreported. On the other hand, the victims themselves are often ignorant of the fact that, for instance, an attack they experienced on the basis of a personal characteristic of theirs represents a hate crime. All this suggests that it is necessary to continuously work on informing the society as a whole.

One of the effective ways of raising the level of social awareness of hate crime and the support available to victims is to systematically collect the data and make them available to the wider public, by conducting various forms of campaigns, for instance in the media or through social networks. Unlike other criminal offences, hate crimes have consequences that go far beyond the mutual relationship between the perpetrator and the victim. A crime committed against someone on the basis of hatred is committed due to this person's belonging to a certain social

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<sup>96</sup> See footnote 3.

group, which is thus sent a threatening message that it is unwelcome in the society. Therefore, raising the level of society's awareness on the concept of hate crime and the impact it has on the overall community is an exceptionally important task for the state, a task that is currently inadequately addressed.

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## Annex 1 – Interviewees

1.	Victim one
2.	Victim two
3.	The Victim and Witness Support Department of a county court in Zagreb
4.	The Victim and Witness Support Department of a county court in Vukovar
5.	The Victim and Witness Support Department of a county court in Split
6.	Lesbian Organization Rijeka – LORI
7.	Zagreb Pride
8.	Association Hera Križevci
9.	Victim and Witness Support Service Croatia
10.	The Serbian National Council



## Annex 2 – Literature

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