

March 2011

ILGA-Europe's position ahead of the Victims' Rights Package to be presented in May 2011¹

The European Commission's, in the Communication on the Action Plan Implementing the Stockholm Programme, as well as its Work Programme for 2011, has committed to present a Victims' Rights package in May 2011. The Commission has repeatedly confirmed that this package will include both legislative and non-legislative measures to prevent victimisation and to protect and assist victims.

ILGA-Europe, in its contributions to various consultations organised by the Commission in the area of Justice and Home Affairs², has called on the European Union to more actively combat bias violence and hatred against lesbians, gays, bisexual, trans and intersex people. The Victims' Rights package is one of the opportunities for EU institutions to deliver, within their area of competence.

KEY MESSAGE:

On the grounds of previous submissions and policy documents, ILGA-Europe believes that the Victims' Rights package to be presented in May by the European Commission should include measures aiming at:

- ➔ Reinforcing the existing EU legislation on the rights of victims by providing a clear definition of the concept of "vulnerable victim" that would include victims of bias crimes, on the basis of European and international instruments adopted by all Member States at the OSCE and at the Council of Europe;
- ➔ Developing EU policies in order to define high European standards in the areas of data collection, support to victims and training of law enforcement officers, prosecutors and judges. These policies should take into account the role of civil society victim support organisations and include a strong focus on victims of bias violence and hatred.

1. All victims of bias crimes and hatred must be protected by EU legislation

Since the earliest consultations on the preparation of the Stockholm Programme, ILGA-Europe has supported the idea to build on existing EU instruments, such as the *Framework Decision on Combating Racism and Xenophobia*, to introduce legislation to combat all forms of bias violence. The extension of this Decision's provisions to homophobia and transphobia was proposed in 2008 by the Fundamental Rights Agency in its report on

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² See in particular [ILGA-Europe's Response to the Commission Consultation "Freedom, Security and Justice: what will be the future?" \(December 2008\)](#) and [ILGA-Europe's contribution to the consultation on the EU strategy for combating violence against women 2011-2015: 'Concrete proposals towards the Action Programme'](#).

Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States.

In its submission to Commission's consultation on the EU strategy for combating violence against women 2011-2015³, ILGA-Europe has provided a detailed account of the gender-based violence suffered by lesbians, bisexual women, and trans people in both the domestic and social spheres, emphasizing the need to address the situation of bias crimes targeting vulnerable groups.

ILGA-Europe acknowledges that the Victims' Rights package will not include the appropriate instruments as regards the approximation of the definition of offences in all Member States. However, EU legislation and policies to protect the rights of victims should address a number of particular situations such as bias crimes/discriminatory violence.

All EU Member States have acknowledged the need to combat bias violence, for example in the OSCE's Ministerial Decision No. 9/09 on combating hate crimes. The *Feasibility Study* carried out for the European Commission's Directorate General for Justice and published in November 2010⁴ explores the concept of discriminatory violence in the case of gender. It recognizes that such violence carries a message to the whole society, and endangers fundamental European values, as it is linked to "*long-standing social inequalities, discrimination and power relations, within which patterns of violence are located*".

2. Strengthening the existing EU legislation on the rights of victims

a) The concept of "vulnerable victim" must be defined

The *Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA)* provides a definition of the concept of victim. A number of the Decision's provisions refer to the case of "vulnerable victims": article 2 on respect and recognition, article 8 on the right to protection, article 14 on training for personnel involved in proceedings or otherwise in contact with victims. However, the Decision does not provide a definition of the concept of vulnerable victim.

This situation has resulted in a problematic transposition and implementation of the Decision. Although its implementation has been generally unsatisfying, the Commission's reports on the implementation measures taken by the Member States⁵ show particular discrepancy as regards the transposition of article 2. In some Member States, victims are said to be vulnerable as a consequence of personal characteristics, while in others, the nature of the offence they suffered is the determining factor of vulnerability. Some Member States reported no specific provisions on the protection of vulnerable victims. As a result, the application of the relevant provisions of articles 8 and 14 also produces unclear and heterogeneous effects.

In its recent answer to a parliamentary question on the EU strategy on violence against women⁶, the Commission also made use of the concept of vulnerable victim, and promised

³ See [ILGA-Europe's contribution to the consultation on the EU strategy for combating violence against women 2011-2015](#)

⁴ *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence*, available at <http://ec.europa.eu/social/BlobServlet?docId=6336&langId=en>.

⁵ Reports from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings SEC (2004)102 and SEC(2009)476.

⁶ Question on an EU strategy to combat violence against women, submitted by MEPs MArije Corlenissen, Ilda Figueiredo, Antonyia Parvanova, Eva-Britt Svensson and Marc Tarabella on 17

that the Victims' Rights package “will address the protection of particularly vulnerable victims, such as women and children”.

ILGA-Europe believes that the legislative proposals including in the package should provide a clear definition of the concept of vulnerable victim.

b) All victims of bias crime are vulnerable victims

There is currently no universal concept of hate crime or bias crime in the EU Member States' national criminal law. However, all EU Member States have recognised that such crimes can be defined as “offences committed with a bias motive” where such a bias is linked to a fundamental personal characteristic of the victim. This general definition has been recognised in the Ministerial Decision No. 9/09 of the OSCE on combating hate crime⁷. Other instruments adopted by all EU Member States include commitments to address particular forms of bias crime. The recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity⁸ includes detailed commitments to tackle homophobic and transphobic crimes.

In these instruments, all EU Member States have recognised that bias crimes carry a stigmatising message which goes further than direct victimisation, and that this message not only goes against the safety of the victim and his or her community, but also endangers the European fundamental values of equality and non-discrimination.

ILGA-Europe believes that the Commission's legislative proposals should make clear that all victims of bias crimes are to be considered as vulnerable victims, replicating the language of the existing international instruments already adopted by the Member States. At the same time, the same proposals should seek to ensure that other provisions of the EU legislation on the rights of victims, such as the right to receive information or the role of specialist services and victim support organisations, take into account the situation of vulnerable victims.

The fact that Member States have heterogeneous criminal law provisions as regards the definition of bias offences should not hinder action to improve the situation of victims. In its report on *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I (2008)*⁹, the EU's Fundamental Rights Agency had already noted that bias crime phenomena “may result in serious obstacles to the possibility for individuals to exercise their free movement rights and other rights in a non-discriminatory manner”.

3. Promoting EU non-legislative measures to better protect victims' rights

a) Reporting and data collection should be encouraged at EU level

When it comes to bias crime and hatred, all the instruments adopted by Member States at the OSCE and at the Council of Europe make clear that addressing underreporting should be a priority. Similarly, they recognise that the competent public authorities have the responsibility to develop effective official reporting systems to collect and make public reliable data and statistics.

January 2011, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=/EP/TEXT+WQ+E-2010-011027+0+DOC+XML+V0//EN&language=EN>.

⁷ http://www.osce.org/documents/cio/2009/12/41853_en.pdf

⁸ <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>

⁹ http://fra.europa.eu/fraWebsite/attachments/FRA_hdgs_report_Part%201_en.pdf

However, in its Annual Report for 2009 on *Hate Crimes in the OSCE Region*¹⁰, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) mentions that 18 participating States, including 11 EU Member States, collect data on bias crime against lesbian, gay, bisexual and/or trans people, using different methodologies and standards. The same report provides evidence that, only a very small number of European countries produce reliable data on the various forms of bias violence, while some others simply don't have data at all.

To address this situation, ILGA-Europe calls on the European Union to actively promote data collection by:

- Identifying the best national practices and disseminate them, for instance by means of a set of indicators on offer to Member States¹¹;
 - Build on the existing studies and on-going research projects of the EU Fundamental Rights Agency to make data compilation available at EU level.
- b) The EU should adopt guidelines to better support victims and cooperate with civil society organisations

Providing adequate support to victims is at the core of the Victims' Rights package. In the case of bias crimes, it is also an essential condition to make reporting actually possible and accessible. Confidence and trust between law enforcement agencies and the communities, including the general community as well as potentially victimised communities, are necessary conditions to safety, access to justice and the prevention of secondary victimisation.

The existing Framework Decision on the standing of victims in criminal proceedings recognises the role of civil society organisations as "*victim support organisations*". Conform to OSCE and Council of Europe commitments to which all Member States have subscribed¹², it should be acknowledged that community NGOs can play an important role as victim support organisations in the case of bias crimes, and are also a key player in policies aiming at increasing confidence in law enforcement authorities. These points are essential to ensure an adequate recognition of bias crime victims.

ILGA-Europe considers that EU institutions and agencies (CEPOL, FRA, EIGE) should propose should promote actions aiming at building a policy relevant knowledge base¹³¹⁴. As a result, EU guidelines should be established to define a high standard of support to victims, emphasizing the potential of dialogue and partnership between civil society organisations and the relevant public authorities.

- c) An EU policy should be developed to train law enforcement officers, prosecutors and judges

Providing adequate training to all law enforcement officers is a condition to ensure an effective application of European and national legislations and policies on the rights of

¹⁰ Hate Crimes in the OSCE Region – Incidents and Responses, Annual Report for 2009, ODIHR: http://www.osce.org/publications/odihr/2010/11/47692_1563_en.pdf

¹¹ This is consistent with Recommendation 10 of the *Feasibility Study* published in November 2010.

¹² See the above mentioned OSCE Ministerial Decision Ni. 9/09 and the Recommendation adopted by the Committee of Ministers of the Council of Europe.

¹³ See for instance ILGA-Europe's publication on *Joining forces to combat homophobic and transphobic hate crime, Cooperation between police forces and LGBT organisations in Europe*: http://www.ilga-europe.org/home/publications/reports_and_other_materials

¹⁴ This is consistent with Recommendations 5 and 12 of the *Feasibility Study* published in November 2010.

victims. Again, the above mentioned OSCE and Council of Europe instruments particularly insist on the training needs as regards combating bias crime. So did the FRA in its report on *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part II* (2009).

EU agencies already have competence to develop policies in this area, in particular in the case of CEPOL. ILGA-Europe believes that more common training curricula should be developed, while the existing curricula on domestic violence and trafficking in human beings should be fully implemented at national level. In the area of bias crime, research on existing good practices could again be particularly useful to define curriculum priorities as regards the rights of victims.

To ensure that the specific nature of bias crimes is fully taken into account, ILGA-Europe also believes that cooperation and pooling of relevant knowledge should be structurally encouraged between EU agencies. As an example, CEPOL and other agencies could benefit from a regular cooperation with the FRA and, in the near future with the EIGE.

In addition, ILGA-Europe believes that the European Union has alternative resources to promote higher training standards within police services and the judiciary. For example, the current *Prevention of and Fight against Crime* and *Criminal Justice* programmes already provide a framework for the EU to support projects in the frame of law enforcement, protection of victims. These instruments should begh reinforced and they should seek to particularly address issues related to the situation of vulnerable victims, including victims of bias violence.