

# English summary

## **1. Introduction**

More and more attention is being paid to the heterogeneity of victims of crime. Different groups of victims encounter different problems during criminal proceedings and victim support. In this respect they have different 'vulnerabilities'. This is also true for victims of hate crime (in this study hate crimes are defined as generic criminal offences with a discriminatory aspect or CODIS offences). Hate crime victims are specifically mentioned in the 2012 EU Victims' Rights Directive as potentially vulnerable victims, who might feel the need for and have a right to additional protective measures during criminal proceedings (Article 22(3) of the Victims' Rights Directive).

The Netherlands has transposed the Victims' Rights Directive into national legislation and regulations, yet the question remains whether the current corpus of generic and specific protection measures and victim support within the context of the Dutch criminal procedure, meets the special needs of the (various types of) hate crime victims. This research aimed to investigate this matter, while taking into account that the distinctive grounds (or strands) for discrimination – heterosexuality or homosexuality; race; physical, or mental disability; religion; and gender identity – can be related to different needs of the victims.

## **2. Problem and Research Questions**

This study primarily aimed to find an (explorative) answer to the question what procedural and supportive needs victims of hate crime have within the context of criminal proceedings, and to what extent the Dutch criminal procedure and victim support currently meet those needs. In order to answer this question, first an inventory was made of the impact of hate crime on various groups of victims, as well as their needs regarding and experiences with criminal proceedings and victim support. The procedural rights and provisions developed for victims of hate crime in foreign jurisdictions were also studied. The research was structured along the lines of seven research questions, subdivided into the following three categories:

### Questions concerning the different groups of victims:

- 1) Which different groups of victims of hate crime are there?
  - a. Which groups are currently distinguished in Dutch legislation and regulation and in the Dutch prosecution policy?
  - b. Which groups are distinguished in certain foreign jurisdictions?

### Questions concerning the impact and victims' needs:

- 2) According to empirical studies and literature, what is the impact of hate crime on the different types of victims, even when the offence is not (being) recognised as such?
- 3) What are the needs of the different groups of victims of hate crime regarding criminal proceedings and victim support?
- 4) To what extent does this call for special measures when victims, for example, notify or report to the police and, subsequently, make use of victim support services?

Questions concerning the domestic and foreign measures:

- 5) To what extent are the (current) measures for stimulating the reporting of hate crime, offering protection against secondary and repeat victimisation, reducing fear, and supporting the processing of the offence, perceived as sufficient?
- 6) How do the findings relate to the measures already implemented as a result of the Victims' Rights Directive, especially the individual assessment of vulnerability at the reporting stage?
- 7) What can the Netherlands learn from foreign examples of protection, reception, and support, adjusted to the needs of these particular groups of victims?

### **3. Research Methods**

In this study, several research methods were used:

- 1) Systematic literature review. Despite the fact that relatively little research has been conducted on this particular topic, a systematic literature review found 18 quantitative studies on the impact of hate crime and/or the needs of victims of hate crime with regard to criminal proceedings.
- 2) Interviews with representatives of Dutch organisations. In order to map the Dutch situation, 21 interviews were held with – in total – 24 persons connected to organisations that deal with this issue. These organisations are both organisations that promote the interests of a specific community that is disproportionately affected by hate crime, such as LGBTI rights organisation COC or Transgender Network the Netherlands (*Transgender Netwerk Nederland*), as well as the police, the public prosecution service, and general victim support organisations, such as Victim Support the Netherlands (*Slachtofferhulp Nederland*).
- 3) Comparative study. This research's comparative part was conducted by using 1) a short written survey, in which experts from 21 different EU Member States took part, supplemented with 2) a more extensive description of the system in the United Kingdom, which was based on (online) literature and four interviews with experts in this field.

### **4. Results**

This paragraph contains the results for each group of research questions.

#### *4.1. Questions Concerning the Different Groups of Victims*

- 1) Which different groups of victims of hate crime are there?
  - a. Which groups are currently distinguished in Dutch legislation and regulation and in the Dutch prosecution policy?
  - b. Which groups are distinguished in certain foreign jurisdictions?

In the Netherlands, the concept of hate crime has not been incorporated as such into the Criminal Code (*Wetboek van Strafrecht, WvSr*), nor is the term *hate crime* used in criminal justice practice. As this research is based on the so-called *CODIS offences* (generic criminal offences with a discriminatory aspect) and the Prosecutorial Discrimination Guideline (*Aanwijzing Discriminatie*) it is nevertheless possible to make a demarcation of the groups of victims who enjoy (special) protection. The *Aanwijzing Discriminatie* applies to generic offences law with a discriminatory aspect, as long as this aspect corresponds with one of the discriminatory grounds summed up in Article 137c WvSr. As of the 1<sup>st</sup> of January 2019, a gender identity that does not match a person's sex at birth (*genderidentiteit die niet past bij het geboortegeslacht*) also constitutes a ground of discrimination. This means the Dutch prosecution policy applies to victims of hate crime on the basis of:<sup>1</sup>

- Race
- Religion or belief
- Heterosexual or homosexual orientation
- Physical, psychological or intellectual disability
- Gender identity which does not match the birth sex

The survey in the 21 EU Member States revealed which grounds enjoy protection in foreign jurisdictions. With regard to the protected grounds, most countries have chosen for an exhaustive list of victim categories. This is similar to the Netherlands. The survey also brought to light that the grounds of 'race', 'religion', and 'national or ethnic origin' enjoy protection against hate crime in almost all of the Member States. The Member States are more divided as far as 'sexual orientation' and 'mental or physical disability' are concerned. Still, these grounds are protected in a vast majority of the countries investigated. 'Gender identity' is protected in approximately half of the Member States, but this ground is clearly becoming more important. Therefore, the acknowledgement of gender identity as an official ground of protection in the Netherlands is in line with a European trend.

Grounds of protection which the Netherlands does not acknowledge, but which are nonetheless included in the national definition of hate crime in several other EU Member States, are: 'language', 'sex', 'age', and 'ideological or political opinion'.<sup>2</sup> Unique grounds – i.e., grounds acknowledged by only one or two Member States – are 'citizenship' (Malta) and 'social status' (Germany and Lithuania).

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<sup>1</sup> The exact delineation of these grounds of protection – e.g., the question of whether all LGBTI categories are protected – is described in paragraph 1.2.3 (chapter 1).

<sup>2</sup> The work instruction document for the Individual Assessment also includes alternative "grounds", such as political opinion, that could be relevant in order to establish the victim's vulnerability. These unofficial "grounds" are, however, not included in official registrations, nor does the public prosecution service attach any consequences to these unofficial "grounds".

## 4.2. Questions Concerning the Impact and Victims' Needs

- 2) According to empirical studies and literature, what is the impact of hate crime on the different types of victims, even when the offence is not (being) recognised as such?
- 3) What are the needs of the different groups of victims of hate crime regarding criminal proceedings and victim support?
- 4) To what extent does this call for special measures when victims, for example, notify or report to the police and, subsequently, make use of victim support services?

### 4.2.1. Results of the Systematic Literature Review

The 18 included studies confirmed that the discriminatory aspect influences the severity and duration of the psychosocial effects of the offence. Compared to 'regular' victims, victims of hate crime, on average, suffer more as a result of the offence. They, for instance, experience symptoms of depression, anger, fear, and stress more often and for a protracted period of time. Possible explanations for this difference could be that the discriminatory aspect makes the offence more personal than offences without this aspect, that victims of hate crime are – to some extent – 'interchangeable' and, hence, more powerless, and that a lot of these victims are repeatedly confronted with hate crime during their lives. It is this cumulative impact that can cause severe effects.

In addition, some studies showed that victims of hate crime also differ from each other with regard to the physical and mental impact the crime can have on them. This concerns differences between the different protected groups ('between group differences'), but even differences were found *within* one ground ('within group differences'). Experiences of victims of hate crime belonging to multiple vulnerable groups could also deviate from the experiences of victims who were targeted on the basis of only *one* ground of discrimination.

Foreign victim studies also show that, on average, victims of hate crime are less satisfied with their experiences with the criminal justice system in comparison to 'regular' victims, and that the risk of secondary victimisation is higher for this group of victims.<sup>3</sup> The problems of hate crime victims can roughly be categorized into three themes:

- Low reporting rates: Victims of hate crimes are usually less willing to report the offence to the police than other types of victims, because of: the low perceived severity of the offence; the fear not to be taken seriously; shame; fear of retribution; previous negative experiences with the police; a(n) (anticipated) lack of training and knowledge on the part of the police; and normalisation of hate crime. Some victims have additional, group-specific reasons not to report hate crimes.<sup>4</sup>
- Limited access to services: It is also harder for victims of hate crime to access certain rights or services. This has to do with the fact that some victims do not realise they

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<sup>3</sup> Secondary victimisation can be defined as 'the deterioration of suffering or increase of damage as a consequence of the criminal procedure as such' (K.D. Lunneman & A.G. Mein, *Maatregelen ter voorkoming van secundair en herhaald slachtofferschap*, Verwey-Jonker Instituut 2014, p. 10-11, onder verwijzing naar Wijers & De Boer, 2010).

<sup>4</sup> Mentally disabled people, for example, fear they will not be taken seriously because of their disability.

actually are victims of *hate crime*, or they are not aware of the existence of several specific services available to them.

- Lack of recognition and acknowledgement: Because of the lack of specialist knowledge on the part of police and justice authorities, the discriminatory aspect is not always recognised or sufficiently acknowledged in some cases, for example when the generic offence is perceived as a less severe one. Discriminatory attitudes and behaviour coming from of police and justice officials themselves are also mentioned in this context.

#### 4.2.2. Results of the Interviews with the Representatives of Dutch Organisations

Because of the relatively limited number of interviews, the results of this part of the research are of an explorative nature. Still a lot of the problems described by the foreign literature also feature in the Dutch interviews.

According to the interviewees, the low reporting rates hate crimes are caused by a normalisation of the phenomenon, by (stories about) a lack of proper treatment by the police, by a lack of recognition and acknowledgement of the discriminatory aspect, and by the perception that filing a report is useless since it does not contribute to special and general prevention. An aspect which did not feature (prominently) in the foreign literature, but which was mentioned relatively often in the Dutch interviews, was the difference between registering the incident as a notification (*melding*) or an official report (*aangifte*) and the problems that can arise for victims as a result of this difference. The mere notification of the police is – in contrast to the filing of a report (Article 161 Sv) – not a codified legal concept and many victims are unaware of the difference between both concepts. If the victim intends to file a report, while in practice the incident is registered as a notification, this could give rise to false expectations regarding the reaction from the police or the criminal justice system, because notifications usually do not result in a criminal investigation or prosecution. Some victims also regret having to make an appointment at the police station to file a report, because of the additional time and energy involved.

Some problems concerning the unwillingness to report the crime are only or disproportionately experienced by specific groups of victims, such as feelings of shame (LGBTI), problems with the legal jargon (mentally disabled people), dependence on others for reporting the crime (mentally disabled people) or too widely dispersed victim support organisations that lack coordination (Muslims and mentally disabled people). In addition, transgender persons are possibly more fearful than other hate crime victims of not being taken seriously, they run a higher risk of repeat victimisation, and they experience more often additional problems such as depression, fear, feelings of inferiority, and intersectional problems.

When victims *do* decide to report the crime, some of the problems feared become reality: police officers do not always treat them with sufficient sensitivity, knowledge, or empathy; the discriminatory aspect is insufficiently recognised or acknowledged; or the incident is registered as a notification to the police, whereas the victim intended to officially report the crime. The complex legal jargon and a lack of understanding how the criminal procedure works constitutes a problem for some victims as well.

Insufficient recognition or acknowledgement of the discriminatory aspect is also problematic in later stages of the criminal process. Several interviewees observe that the discriminatory aspect disappears along the way, either because it is hard to prove, or because the police,

public prosecutor, or judge do not take it sufficiently into account. The interviewees reckon that sometimes this aspect may be difficult to prove indeed, but even in cases with adequate evidence victims perceive insufficient acknowledgement of the discriminatory dimension. The difficult legal jargon and unclarity regarding certain legal decisions also play a role in this phase.

Regarding victim support, the interviewees sometimes observe a lack of specific expertise, resulting in problems with proper treatment. Some interviewees are also of the opinion that there are too many and too widely dispersed support organisations in the Netherlands. Problems with registration systems are reported by authorities on all levels: the police, the public prosecution service, and Victim Support the Netherlands (*Slachtofferhulp Nederland*).

The needs mentioned by the interviewees often correspond with the problems mentioned above. During the reporting stage, for example, there is a need to be taken seriously and a need for empathetic and sensitive treatment by a police official who has sufficient hate crime-specific knowledge. Furthermore, the discriminatory aspect needs to be recognised and acknowledged during all stages of the criminal process. As it could be difficult to substantiate the discriminatory aspect with sufficient evidence, victims feel the need for expectation management and explanation during both the reporting stage and the later stages. Furthermore, incidents should – in principle – always be registered as having been reported to the police, unless the victim takes a well-informed and conscious decision to only notify them.<sup>5</sup> Some of the interviewees also mention the need for clarification of the legal jargon and explanation of certain (legal) decisions, which goes for all stages of the criminal procedure. As far as victim support is concerned, a need for proactive, empathetic and knowledgeable victim support workers is reported. Some communities prefer to receive victim support from within their own communities instead of general services provided by, for instance, Victim Support the Netherlands.

#### 4.3. Questions Concerning the Domestic and Foreign Measures

- 5) To what extent are the (current) measures for stimulating the reporting of hate crime, offering protection against secondary and repeat victimisation, reducing fear, and supporting the processing of the offence, perceived as sufficient?
- 6) How do the findings relate to the measures already implemented as a result of the Victims' Rights Directive, especially the individual assessment of vulnerability at the reporting stage?
- 7) What can the Netherlands learn from foreign examples of protection, reception, and support, adjusted to the needs of these particular groups of victims?

##### 4.3.1. The Dutch Policy Framework Regarding Victims of Hate Crime

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<sup>5</sup> Some victims prefer the mere notification of the police over the filing of a report, because a notification can be done anonymously, it provides a sense of control (at least I did something) without the ordeal of having to go through a criminal procedure, and the threshold for making a notification could be lower than that for filing a report.

For an overview of the rights of victims of hate crime, the following legal instruments are important: the EU Victims' Rights Directive, the Articles 51a-51h of the (Dutch) Code of Criminal Procedure, the Prosecutorial Guidelines regarding Victims' Rights (*Aanwijzing slachtofferrechten*), the Decree regarding Victims of Crimes (*Besluit Slachtoffers van strafbare feiten*),<sup>6</sup> the Prosecutorial Guidelines regarding Discrimination (*Aanwijzing Discriminatie*) and – as of June 2018 – the Individual Assessment (*Individuele Beoordeling*).<sup>7</sup>

Next to generic victims' rights – i.e., rights applying to all victims – there are certain procedural rights which have been developed specifically for victims of hate crime and other vulnerable victims. Pursuant to the *Aanwijzing Discriminatie*, for example, victims have the right to be informed about decisions (including the reasons for these decisions) not to prosecute (or to discontinue prosecution), to dismiss or conditionally dismiss a case.<sup>8</sup> The Individual Assessment (*Individuele Beoordeling*) is of particular importance as well. During their first personal contact with the police, the need for protection is now structurally assessed for *all* victims. This is done with the help of an introductory conversation, by assessing the context in which the crime occurred, by checking available information in police systems, and by checking a list of indicators which could point to an additional need for protection against secondary and repeat victimisation, intimidation, and retribution. As follows from the EU Victim Directive – and from the *Besluit slachtoffers van strafbare feiten* – victims of prejudice and discrimination are regarded as vulnerable: there is a strong assumption that these victims will benefit from special protection measures. Subsequently, the police discusses with the victim whether there is a need for protective measures and they will have to register the *Individuele Beoordeling* data obtained.<sup>9</sup> An overview of the specific protective measures can be found in Appendix 1.

Other special provisions for victims of hate crime (and other forms of discrimination) are: 'Pink in Blue' (*Roze in Blauw* – these are police officers specialized in taking down reports from members of the LGBTI community) and similar provisions within the police organisation for other communities; double-checking, in certain cases, whether or not the authorities have overlooked a discriminatory aspect; specialised (discrimination) public prosecutors and other specialised PPS personnel, and specialised police officers; (voluntary) courses and training on discrimination and hate crime for the police and prosecution; police outreach and contacts with relevant communities; and specialised anti-discrimination bureaus (*antidiscriminatievoorzieningen*, ADVs). One needs to realise, however, that despite the existence of specialised public prosecutors and police officers, many hate crime cases are handled by "regular", non-specialized officials. The Dutch criminal justice system does not acknowledge the mandatory assignment of hate crimes (CODIS-crimes) to specialists, albeit that the specialists – depending on their availability – can provide the generalists with information and help, should that be needed. Every two weeks, specialists from the police, the public prosecution service and anti-discrimination bureaus gather in a regional anti-discrimination meeting. During this meeting *all* cases that came to the attention of the police with a possible discrimination-aspect are discussed in order to decide, for example, whether

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<sup>6</sup> Besluit van 24 augustus 2016, houdende regels voor de rechten, de ondersteuning en de bescherming van slachtoffers van strafbare feiten (Besluit slachtoffers van strafbare feiten), *Stb.* 2016, 310.

<sup>7</sup> See 'Ketenwerkproces Beoordelen en Beschermen van slachtoffers' (internal document).

<sup>8</sup> 'Regular' victims are only informed of these decisions at their request.

<sup>9</sup> If necessary, the police can also impose a protection measure *ex officio*, regardless of what the victim desires.

an anti-discrimination bureau needs to be involved, or whether the case should be taken up by a specialised discrimination public prosecutor or by a regular prosecutor.

#### 4.3.2. Results of the Interviews with the Representatives of Dutch Organisations

During the interviews with the Dutch experts, particular attention was paid to the special services and rights developed for victims of hate crime or hate crime cases. What were the interviewees' thoughts on these (special) rights and services?

In order to meet the needs of victims of hate crime, it is crucial for the discriminatory aspect to actually be recognised as such. In order to improve hate crime recognition, a specialist team was established that retrieves certain cases from the national police registers (with the help of a query) and double-checks these cases in order to see whether a discriminatory aspect has accidentally been overlooked (recognition 'in hindsight' or *herkenning aan de achterkant*). Ideally, however, recognition takes place 'upfront' (*herkenning aan de voorkant*), from the moment a hate crime victim contacts the police for the first time, and in *all* cases. Perhaps the application of the Individual Assessment (*Individuele Beoordeling*) will improve recognition 'upfront'. After all, the application of the IB requires that all victims are structurally assessed on whether or not a discriminatory aspect is at stake.

Furthermore, the IB training could enhance police officers' sensitivity and alertness to discriminatory aspects, yet additional hate crime training may remain necessary to also ensure proper treatment of this group of victims. Currently, dedicated courses are offered, which policemen and public prosecutors can take on a voluntary basis, but obligatory courses are being (further) developed as well, as a part of the mandatory police academy curriculum. Training of generalist police officers remains important, because despite the existence of specialists (e.g., in dealing with mentally disabled people or *Roze in Blauw*) most hate crime victims are dealt with by 'regular', non-specialist officers.

Proper registration is also important. Most interviewees support registering and tagging hate crime as such on the basis of the victim's perception. Whether or not the discriminatory aspect can be legally upheld, can be established at a later stage. It is unclear whether hate crime is currently (always) being registered on the basis of the victims' perceptions, or whether police officers make their own assessment at the reporting stage whether the discriminatory aspect can be legally upheld. In addition, the special 'tag' for hate crimes should be easily registered and transferred in all subsequent stages of the criminal procedure (police, prosecution, victim support). The current digital registration systems of the different organisations seem to be insufficiently equipped for this, but, since the entry into force of the *Individuele Beoordeling*, one should at least be able to find the discriminatory aspect in the IB data (provided that everything functions as it should).

The interviewees do not feel the need for privileged information rights for victims of hate crime. Information is very important, but this is true for all victims of crime. On paper, the current information rights meet victims' needs, but in practice problems can be observed, e.g. with regard to providing case-specific information. Furthermore, case-specific information for victims of hate crime could be personalised to a greater extent (more personal contact; not only standard letters) and more attention could be paid to using simple language when communicating with mentally disabled victims.



The police, in particular, invest in establishing and maintaining contacts with relevant communities (and vice versa). This is regarded as a positive initiative by the interviewees.

Most interviewees had little insight in or (personal or by proxy) experience with the support provided by the anti-discrimination bureaus (ADVs) and Victim Support the Netherlands. Some representatives from interest groups voiced the need for (more) specialised support from within their own communities. Once established, hate crime victims stemming from those communities could be re-directed to the community-specific support organisations with the help of Victim Support the Netherlands.

Nearly all interviewees consider associations such as Roze in Blauw to be of great value to LGBTI victims of hate crime, and they encourage (further) development of similar provisions for other affected communities. Such provisions remain necessary as long as the ideal situation – in which every criminal justice official has sufficient knowledge, experience, and sensitivity to deal with these cases in a proper manner – has not become reality yet. *Roze in Blauw* seems to be firmly rooted in the police organisation, and interest groups are more familiar with its existence than they are aware of the existence of similar provisions for other communities. Unfortunately, *Roze in Blauw* officers are not always (directly) available when an LGBTI victim wishes to report a hate crime.

Regarding the recently introduced Individual Assessment (*Individuele Beoordeling*) it is still too early to tell whether or not it lives up to expectations. When implemented properly and applied in practice in compliance with policy documents, the IB could – according to the interviewees – contribute to the recognition of the discriminatory aspect, the selection of tailor-made protection measures, and the use of more effective alternatives to prosecution. Whether or not the willingness of victims to report hate crimes will increase as a result of the IB, also remains to be seen at this stage.

In relation to the needs of victims and the protection measures following from the EU Victims' Rights Directive (research question 6) the following observation can be made. Taking into account all victims' rights – so the generic victims' rights, the special provisions for victims of hate crime, and the IB protection measures – and juxtaposing them to the needs expressed by the interviewees, it appears that most of the special needs of victims of hate crime have already been addressed. This, however, is only true *when those rights are also applied correctly in practice!* Future endeavours will mainly have to focus on the correct implementation of (special) victims' rights in in practice.

In order to *fully* comply with the victims' needs, more attention could also be paid to training regular police officers, expectation management (for example with regard to the chances of upholding the discriminatory aspect throughout the criminal process), help with understanding the legal jargon, and default registration of incidents as having been reported to the police (unless the victim consciously and unequivocally prefers a notification). These needs have been voiced by the interviewees, but do not form part of the legal instruments that were studied in this research (the EU Victim Directive, articles 51a t/m 51h of the Criminal Code of Procedure, the PPS Victims' Rights Guideline (*OM Aanwijzing Slachtofferrechten*), the Victims

of Crime Decree (*Besluit Slachtoffers van strafbare feiten*), the PPS Discrimination Guideline (*OM Aanwijzing Discriminatie*) and the Individual Assessment.<sup>10</sup>

#### 4.3.3. Results of the Comparative Study

Most countries have not developed *exclusive* rights or provisions for victims of hate crime. Almost every measure is also offered to other vulnerable victims. Below, the most important findings will be presented.

Higher sentences and mediation. In all Member States, higher sentences are prescribed when hate crime is at stake, usually by means of a statutory provision rather than prosecutorial or policy guidelines. Mediation is also allowed in most EU Member States. In this regard, the Dutch policy to allow for forms of mediation and restorative justice in hate crime cases is in conformity with European trends.

Training and specialisation. Some Member States employ specialised police officers (n=8) and/or specialised prosecutors (n=7), but, in practice, many hate crime cases are being dealt by generalists in those countries as well. As far as training is concerned, the countries usually work with elective courses that police officials can take on a voluntary basis. In some countries, however, mandatory courses are prescribed for new or specialised police officers. Compared to the training facilities for the police, specialised training for *prosecutors* seems to be available to a much lesser extent.

Provisions in the pre-trial phase. The survey furthermore showed that the individual assessment of protection needs; the referral to specialised anti-discrimination bureaus or victim support organisations; the provision of additional general information; or the provision of special assistance during an interrogation or at the reporting stage, are widely applied in the EU Member States. Victims of hate crime are offered these provisions in many of the EU countries.

(Dutch) provisions such as the possibility of the choice of domicile at the police station, third-party reporting, or leaving the victim's name and contact information out of the dossier, are available in fewer EU Member States. Provision such as 'reporting centres' (designated places other than police stations where victims can file a report, for instance, sports or community centres) exist in several EU Member States, but do not exist in the Netherlands.<sup>11</sup> The possibility for victims to request for a police official with a similar background or to have only one contact-person within the police organisation, also exist in several Member States, but – similar to the Dutch situation – depend on practical (im)possibilities. In six Member States, victims of hate crime are informed earlier and/or more frequently about case-specific information than other victims. The Dutch system does not have comparable, privileged information rights.

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<sup>10</sup> The new PPS Discrimination Guidelines mention that the police, 'in principle, have to take down and take care of reports concerning discrimination, unless alternative agreements were made with the public prosecution service in an individual case or in a category of cases.' According to the Guidelines, it is also a responsibility of the police to 'inform victims properly of the difference between filing a report (*aangifte*) and merely notifying the police of the incident (*melding*)'.

<sup>11</sup> It is possible for victims to have their reports taken down at a different location (e.g., the victim's home), but there are no dedicated reporting centres available.

Provisions at the trial phase. Most Member States have introduced similar protection measures at trial as the Netherlands, e.g., measures to avoid eye contact between the suspect and the victim or the option to make a witness statement via a video connection. There is, however, a difference regarding the right to make a Victim Impact Statement (or Victim Personal Statement) (*spreekrecht*). Five Member States have awarded this right to *all* victims of *hate crime*. In the Netherlands, hate crime victims are only eligible to make a Victim Personal Statement depending on the seriousness of the ‘underlying’ generic offence committed against the victim (i.e., the offence without the discriminatory aspect).

It is safe to conclude that the Netherlands have already implemented many of the measures available in foreign legal systems as well. Foreign provisions that the Netherlands has not implemented (at least not structurally) – such as specialised police officers or prosecutors, privileged information rights, or reporting centres – are being offered in only a few Member States and often encounter practical difficulties.

#### 4.3.4. *The Anti-Hate Crime Policy in the United Kingdom*

Of all EU Member States, the United Kingdom has the most comprehensive hate crime policy. The UK has chosen for a holistic approach, which, for example, also focusses on protection and surveillance measures for places of worship and general prevention through education. The UK has also introduced some special measures in the context of criminal proceedings:

- Victims are not obliged to go to a police station in order to report hate crime. They can also have recourse to easily accessible ‘reporting centres’ in, for example, sporting centres or clubhouses.
- Through the Hate Crime Operational Guidance, police officials are being instructed on how to register hate crime. A crime is always registered as a hate crime on the basis of the victim’s perception. This perception-based registration aims to prevent police officers making their own assessment of whether or not there is a bias element present.
- Certain police stations work with specialised hate crime departments and/or specialised officers. Most cases, however, are still being dealt with by regular police officers.
- When it comes to prosecution, all victims of hate crime are entitled to a conversation with a prosecutor. They are also allowed to visit the court beforehand.
- There are additional rights for mentally disabled victims of hate crime when summoned in court as a witness or when having to make a statement at the police station (e.g. help from ‘Registered Intermediaries’).
- Furthermore, victims of hate crime have privileged information rights. They receive information about important decisions in their case (including the reasons for these decisions) at an earlier stage than regular victims (and they, possibly, also receive more information). They are also informed about so-called special measures (when relevant), and they can receive information about specialised supporting organisations, pre-trial therapy, and counselling.
- When a suspect is not prosecuted, the police should ask the victim whether or not (s)he would like to be informed if the investigation is re-opened at a later stage.
- When testifying in court, all victims are entitled to make a Victim Personal Statement. This is being encouraged by the prosecution service. Victims of hate crime are also allowed to make a Victim Personal Statement at the police station, before the court hearing, regardless of whether or not they will have to testify later on.

- All departments of the prosecution service have a so-called Hate Crime Lead. This prosecutor is specialised in the field of hate crime and is responsible for (supervising) all prosecutions of hate crime in his or her area. On a national level, there are special hate crime Senior Policy Advisors.
- Also for prosecutors, several work instructions have been developed (*prosecution guidances*) concerning hate crime. These include the factors that should be taken into account when prosecuting hate crime. These documents also include additional provisions for victims of hate crime, such as:
  - The possibility to contribute to a so-called Community Impact Statement (CIS). Through this CIS, (local) communities have the opportunity to indicate what impact the specific offence or a series of hate crime offences has had on the community. The CIS can play a role throughout the entire proceedings.
  - If the victim refuses to support the prosecution any longer once it has commenced (e.g. by refusing to testify), the police have to inquire why the victim no longer supports the prosecution and they have to investigate options to support the victim.
  - When dealing with LGBTI and disabled victims, prosecutors have to use appropriate and non-offensive language. They also need to be aware of certain sensitivities or vulnerabilities, for example that certain victims have not yet had their 'coming out'.<sup>12</sup> When in doubt, they should ask how (as a male or a female) a victim wishes to be addressed.

## **5. Recommendations and discussion**

Finally, some additional recommendations and points of discussion were mentioned in the report.

A first point of discussion was whether or not the Netherlands should expand the categories of protected grounds or strands, e.g. by adding additional grounds of protection or by using an 'open' definition of the concept 'hate crime'. Because of legal certainty (*lex certa*) and clarity, a definition containing an exhaustive list of protected grounds is considered better than an open norm (at least for now). It would be interesting, though, to study the experiences of other countries with alternative grounds, and to keep a close eye on hate crimes committed against groups that are not yet protected. In the future, this may lead to an extension of the current list of protected grounds.

It is, however, recommended to already align the Criminal Code with some proposals from a currently pending bill that aims to alter the (Dutch) Equal Treatment Act (*Algemene wet gelijke behandeling*). This bill, *inter alia*, wants to change the term 'heterosexual and homosexual orientation' into the more general term 'sexual orientation' in order to clarify that lesbian women, bisexuals, and asexuals also (need to) enjoy protection. This clarification would also be appropriate within the context of Article 137c WvSr. The same applies to the clarification of the fact that the term 'gender' includes the concepts of 'gender characteristics', 'gender identity', and 'gender expression' as well.

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<sup>12</sup> For example, when making a phone call with an LGBTI victim, prosecutors are instructed to talk directly to the victim, and not communicate with his or her family members about the case.

Another recommendation would be to clarify to which support organisation hate crime victims should be referred, who come to the police station to make a notification or report a hate crime. The previous Prosecutorial Discrimination Guidelines (*Aanwijzing Discriminatie*) prescribed that those who had notified the police of hate crime, had to be referred to an anti-discrimination bureau (ADV). In the new *Aanwijzing Discriminatie*, this stipulation has been left out. Because of the multitude of widely dispersed support organisations and because of the limited (specialised) capacity within the police organisation, it is indeed better to refer both those, who have notified the police of hate crime, and those, who have reported hate crime, to *Slachtofferhulp Nederland*.<sup>13</sup> In turn, this organisation could refer the victims to more specialised organisations.

Furthermore, more attention should be paid to the difference between registering the incident as a notification versus an official report. In the case of a notification, the notifier only wants to inform the police of an incident, whereas in the case of reporting a crime, the person concerned (implicitly) asks for prosecution. Several interest groups have complained about the fact that victims intended to report hate crime, whereas the incident was only registered as a notification. On the basis of the research methods used in this study, we could not verify how often the police – contrary to the victims’ intentions – registered an incident as a mere notification. The importance of registering an incident properly, however, has only increased since the introduction of the new prosecutorial guidelines *Aanwijzing Discriminatie*. While the previous *Aanwijzing Discriminatie* (nearly) always prescribed prosecution in cases of hate crime – regardless of the fact whether or not the incident had been reported – the new *Aanwijzing Discriminatie* reserves prosecution, in principle, only for cases in which the hate crime incident *was reported*. Because of this policy change, the incidents should, in principle, always be registered as having been reported to the police.<sup>14</sup> This should be the default manner of registration. Only after the victim has been properly informed about the difference between notifying the police and reporting a crime, and only after (s)he subsequently has *consciously and explicitly* chosen not to report the incident, it can be registered as having been notified. At this stage, it is undesirable to provide police officers discretionary leeway to make their own choice based on the perceived relevance of the incident or its evidentiary substantiation. A similar consideration goes for the question of whether or not to tag an incident as a hate crime or as a regular offence under general criminal law without a discriminatory aspect. At the reporting stage, the victims’ perceptions should be guiding in this respect as well.

Then the question of whether or not The Netherlands should opt for the mandatory involvement of specialised hate crime police officers and prosecutors in *hate crime* cases. This is considered a ‘best practice’ by many foreign respondents, and some interviewed interest groups are equally supportive of this idea. At the moment the Netherlands has chosen to make hate crime part of the generic task of the police – with *Roze in Blauw* and specialised police officers as a ‘backup’ – and this system also has its advantages. Choosing for hate crime to be dealt with within the police’s generic task does not have to be problematic, *provided that certain requirements are met*. For example, a certain level of specialist knowledge and skills of all officials should be ensured through obligatory training for all (front office) police officers. Whether or not the IB training already sufficiently provides for this and to what extent the

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<sup>13</sup> Obviously, only when the people concerned have given permission for this referral.

<sup>14</sup> This is being endorsed by the new *Aanwijzing Discriminatie*.

training is followed-up in everyday practice, is unclear. Future research into the (implementation of the) IB is recommended.

A final remark has to do with the difference between the 'law in the books' and the 'law in practice'. A common factor in most interviews was the importance of the proper implementation of existent rights. It seems that the experienced problems have less to do with a lack of procedural rights – developing many new victims' rights or provisions does not stand to reason – but mainly revolve around the correct implementation of these rights in practice and guaranteeing sufficient capacity of the organisations responsible for the enforcement of these rights.