



# Running through Hurdles:



*Obstacles in the Access*



*to Justice for Victims of  
Anti-LGBTI Hate Crimes*



*Edited by Piotr Godzisz and Giacomo Viggiani*



# **Running through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes**

*Edited by Piotr Godzisz and Giacomo Viggiani*

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# Come Forward partner organizations





# No one will lose out if LGBTI people get equal rights

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Imagine being attacked in the street just because of who you are, just because of whom you love.

Hatred sadly, is part of everyday life for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in the EU. As research shows, the rates of hate crime based on sexual orientation and gender identity remain high. Most incidents are never reported, leaving victims invisible to the criminal justice system, suffering in silence and left without support and redress.

Hate crimes are “message crimes”: not only do they violate the victim’s individual rights; they are also a manifestation of hatred and discrimination against the group or community to which the victim belongs or is perceived to belong. To improve our responses, we need concrete actions which can bring about change.

To promote that change the European Commission, in 2015, drew up a List of actions to advance LGBTI equality.<sup>1</sup> The document reflects the commitment of the Commission to lead by example and advance efforts to make sure that LGBTI people enjoy the same rights as everyone else in the EU. Preventing and countering hate crimes against LGBTI people, upholding the rights of victims and countering underreporting feature prominently in the List of actions.

Two years since I presented the List of actions, I was pleased to report that we are making progress in fulfilling our commitments.<sup>2</sup> The Commission is closely monitoring the implementation of EU legislation on the rights of victims of crime; including rights enshrined



1 [https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/discrimination/lesbian-gay-bi-trans-and-intersex-equality/list-actions-advance-lgbti-equality\\_en](https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/discrimination/lesbian-gay-bi-trans-and-intersex-equality/list-actions-advance-lgbti-equality_en)

2 [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=615032](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=615032)

therein which are particularly relevant for LGBTI people. We stepped up our support to Member States' efforts in ensuring better identification, recording, investigation and prosecution of hate crimes and improving access to justice, protection and support for victims, by fostering expert discussions, providing guidance, and strengthening alliances and cooperation.<sup>3</sup> Supporting civil society initiatives to counter homophobia and transphobia also remains among our funding priorities, as we believe that progress can only be achieved by joining efforts and by empowering and supporting those independent actors like civil society organizations which promote and advocate for that progress and make it a reality on the ground.

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The *Come Forward* project, which we proudly co-funded as part of our *Rights, Equality and Citizens Programme*, is a good example of how our commitment and framework to tackle hate crime and ensure justice for victims can be translated into practical guidance and initiatives for the benefit of victims themselves and for policy makers.

Promoting and building on such initiatives is as important as ever. The need to protect and empower LGBTI people against hatred and intolerance has not gone away. As I said when first presenting the List of actions, no one will lose out if LGBTI people get the rights that everyone else already enjoys. I still stand by those words and pledge my ongoing support and commitment to defending and promoting our common values of equality and tolerance, the values on which the EU is founded.

Věra Jourová  
*European Commissioner for Justice, Consumers  
and Gender Equality*



## Need for a holistic approach in addressing incidences of hate crime

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Throughout Europe, lesbian, gay, bisexual, trans and intersex (LGBTI) people continue to be victimized for their sexual orientation, gender identity, gender expression and/or sex characteristics; their courage in living lives true to themselves still too often makes them targets of hate-motivated abuse, discrimination and violence, even in today's modern societies. Not only do hate crimes undermine the dignity and value, and negatively impact the victims themselves, they also send a message to all people belonging to the wider social group of the victims – the LGBTI community, their supporters and the rest of society – that they do not deserve recognition, respect, or equality.

Addressing the problem of hate crimes is vital for ensuring the wellbeing of LGBTI people and their ability freely to enjoy their fundamental human rights in the same way as everyone else. Reaching a sustainable solution, however, requires a concerted effort from across society: from policymakers and legislators, also from law enforcement and other public authorities, from civil society, educators, public figures and private individuals. We are all equally responsible for creating a world free of bias-motivated hate. Supportive policies and legislation alone are not enough if they are not complemented with proper implementation, and if LGBTI people continue to be stigmatized by the society around them.

This need for a holistic approach is clear in one of the primary obstacles to addressing incidents of hate crime targeting LGBTI people – the issue of underreporting. Even where supportive policies and legislation are in place, persistent stigma, shame and fear, as well as distrust of law enforcement agencies and officers, means that many LGBTI people remain reluctant to report such incidents to the authorities. This not only contributes to a lack of a proper understanding of

the experiences of LGBTI people but also inhibits their ability to access the support services for hate crime victims to which they are entitled, such as under the Victim's Rights Directive of the EU (2012/29/EU).

The *Come Forward* project takes on this very issue, raising awareness about homophobic and transphobic hate crimes and highlighting good practices, as well as delivering training for civil society and public authority stakeholders better to support and empower victims of LGBTI-phobic hate crimes at the local and national levels. ILGA-Europe is proud to be an Associate Partner of the *Come Forward* project, and is glad to support its work towards making Europe a safer place for LGBTI people to live, work, travel and simply be.

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Evelyne Paradis  
*Executive Director, ILGA-Europe*



## At a glance



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On behalf of all project partners, we would like to acknowledge and thank the interviewees – volunteers and employees of organizations and institutions from all 10 project countries where victims of anti-LGBTI hate crimes may report incidents and receive support – who so generously offered their time and agreed to share their knowledge and experience.

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# Foreword

*Giacomo Viggiani and Piotr Godzisz*

Across the European Union, LGBTI people face discrimination and violence based on their sexual orientation, gender identity, gender expression or sex characteristics. Most incidents are not reported which impedes the possibility to investigate hate crimes and prosecute offenders. The lack of reports renders the problem of anti-LGBTI hate crimes invisible to the public and may prevent authorities from acknowledging and addressing the problem. As a result, victims often suffer in silence and their rights may not be fully respected.

By reviewing the legal and policy frameworks and analyzing the institutional deficiencies in reporting and recording anti-LGBTI hate crime and access to victim support in ten EU countries, the report sheds much needed light on the obstacles to the accessing justice faced by victims of anti-LGBTI hate crimes in the EU. Specifically, the report responds to the following key questions: (1) Why is the number of reported anti-LGBTI crimes in Europe so low? (2) What are the barriers to reporting? (3) How are victims' rights protected? (4) What do states do to encourage victims and witnesses to come forward? (5) How are police, NGOs and support services prepared to deal with anti-LGBTI hate crimes? (6) What regional differences in the response to anti-LGBTI hate crime can be observed?

The research underpinning this report represents a core activity of the two-year project *Come Forward: Empowering and Supporting Victims of Anti-LGBT Hate Crimes*, co-financed by the European Commission's Rights, Equality and Citizenship (2014-2020) program. The project aims at addressing a common need within the European Union to increase reporting of homophobic and transphobic hate crimes through building the capacity of civil society and official partners and empowering victim communities. It has six objectives:



1. Identify institutional obstacles in the access to justice for victims of anti-LGBTI hate crime;
2. Assess the training needs of reporting centers and victim support service providers working with victims of anti-LGBTI hate crime;
3. Increase the number of dedicated front-line reporting centers by building capacity of civil society organizations and public institutions;
4. Improve access to specialized support by building the capacity of victim support service providers;
5. Share good practices, strengthen cross-border and multi-agency partnerships;
6. Raise awareness and empower victims.

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The project is co-led by the Department of Law of the University of Brescia (coordinator) and the NGO Lambda Warsaw (scientific leader). It is divided into four workstreams: research and analysis, training, outreach and dissemination. As part of the first workstream, we have analyzed the legal and policy frameworks on anti-LGBTI hate crime in 10 countries and assessed the preparedness of police and victim support services. The present report and the collection of good practices are the product of desk-based research and interviews with 195 professionals representing law enforcement agencies, prosecution services, equality bodies, victim support services, and LGBTI and generalist human rights organizations (for details of methodology, see Annex). As part of the second workstream, training curricula for institutions and organizations where victims may report hate crimes and seek support were prepared, based on the needs identified through the interviews and additional web-based surveys. In April 2018, 26 international trainers were trained to deliver training on anti-LGBTI hate crime in their home countries. By the end of 2018, over 1000 professionals across 10 EU member states will receive training adequate to their roles and needs. Participants will receive the newly-developed handbook for professionals *Working with Victims of Anti-LGBT Hate Crimes*, which provides information on how to accommodate the specific needs of LGBTI victims. As part of the outreach activities, booklets allowing victims to understand anti-LGBTI hate crimes and the criminal justice procedure will be developed, customized for each country and distributed by partner organizations. The project will conclude with a final conference, the proceedings of which will be

published. Through this set of activities, the project helps to build a stronger, more adequate response to anti-LGBTI hate crimes in partner countries and the EU by identifying key factors which either enhance or hinder access to justice for victims, highlighting examples of good practices, building capacity of professionals and raising awareness among victims.

# Executive summary

## Legal Framework

The consortium represents a patchwork of different legal frameworks. While there is, for example, no legal definition of hate crime and there are no penalty enhancements for crimes motivated by anti-LGBT bias in the Polish Criminal Code, Belgian law includes several penalty-enhancement provisions for specific offenses if the motive for a crime is hatred, contempt or hostility towards a person because of a protected characteristic such as sexual orientation, but not gender identity or expression. Hungarian law does not refer to “hate crimes” or “hate speech” per se; the Criminal Code, however, defines and punishes bias-motivated criminal acts with explicit reference to sexual orientation and gender identity. Italy has hate crime laws but sexual orientation and gender identity (SOGI) are not recognized as protected grounds. The same applies in Bulgaria where, if reported, hate crimes targeting LGBT people are treated as hooliganism. Generally, results show that, in the surveyed countries, the protection offered by hate crime legislation is illusory or ineffective, but for some notable exceptions such as the United Kingdom or Belgium, and that sexual characteristics or intersex status is not often treated as a protected ground.

All countries in the sample have formally transposed the Victims’ Rights Directive, although not always within the deadline set by the European Commission, as in the case of Belgium. Despite this, in practice the transposition has improved the situation of anti-LGBT hate crime victims only minimally or has been insensitive to the support and protection needs of LGBT people. In Poland, the rights enshrined in the Directive have not been fully implemented and victims of homophobic and transphobic violence still face legal obstacles in accessing justice. Problems persist in Croatia, especially in

organizing an adequate victim support system and similar difficulties are faced by victims in Hungary where the implementation is often limited due to lack of human capacity and for financial or technical reasons.

### **Professionals and Anti-LGBT Hate Crimes**

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Levels of knowledge about the legal definition of hate crime may vary across the consortium and among the professionals interviewed; some representatives from reporting centers and victim support services have a basic knowledge of the topic. Spanish interviewees showed a limited knowledge of exactly what hate crimes are, while the concept of a hate crime is becoming established among professionals in Belgium and the Italian sample displayed a good degree of consciousness about what anti-LGBT hate crime is. However, there are indications that the general level of knowledge might be lower, especially among law enforcement professionals, especially because of the lack of official data on anti-LGBT hate crimes and the low reporting rates of victims. For example, Lithuanian police officers have difficulties in distinguishing between hate crimes and hate speech, which suggests that the skills and knowledge, on anti-LGBT hate crimes, of the local reporting centers are still limited and fragmented.

To overcome this problem some NGOs have put in place awareness raising activities and training sessions, but these are provided on an irregular basis due to the lack of funding and cover a very small proportion of professionals who might come into contact with anti-LGBT victims. In the majority of the countries surveyed there are no guidelines on dealing with anti-LGBT hate crimes for police or prosecutors and no state-organized training courses. However, some examples of best practice exist, such as in Poland, where the police have recently set up a network of hate crime coordinators, and in Croatia, where the Ministry of Interior has recently introduced regular courses on the issue at the Police Academy.

## Reporting Anti-LGBT Hate Crime

Despite various ways of reporting which have been put in place, in the countries analyzed, there is general agreement and concern among research participants that anti-LGBT hate crimes are either not reported, or only reported on an incidental basis, to either the police or to NGOs. In some contexts, low rates of reporting are said to be an effect of the lack of anti-hate crime legislation, which leads victims to perceive reporting as ineffective or pointless. However, even in United Kingdom or in Belgium, where hate crime laws are in force, substantial levels of underreporting remain. This suggests that reasons for not reporting are varied and not limited to the legal framework as such but range from distrust of the police to internalized homophobia/transphobia or fear of secondary victimization. Lack of confidentiality and secure pathways to report are also an issue highlighted by some respondents, while online and third-party reporting is rarely possible.

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Low rates of reporting reinforce the idea among police respondents that anti-LGBT violence is not a serious issue in their own country, leading them to dismiss the need for specific measures addressing the needs of the LGBT community. This was clearly demonstrated by the interviews carried out in Lithuania. However, as Belgian law enforcement agencies show, there are also some examples of good practice which are able to support and minimize underreporting. In other countries, such as Hungary, some civil society organizations have implemented small-scale campaigns to combat underreporting, but their efficacy, necessarily, has been limited.

## Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process

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As a general rule, the transposition of the Victims' Rights Directive into national legislation has led to an improvement in hate crime victims' rights, such as being able to give a statement accompanied by a person of trust, or by granting special protection to victims within judicial proceedings through, for example, the use of video technology. Spain has also set up victims' support officers in several courts to coordinate the entire range of support measures. However, this shift has not always affected specific laws which still lack reference to SOGI, as in Italy, Hungary or Bulgaria, due to the restrictive interpretation by public authorities or courts. As a consequence, this group of victims often remains invisible to criminal justice agencies and victim support services or, where specific measures or policies exist, they are extremely limited.

Overall, the results of the study show that victims of anti-LGBT hate crimes still face many challenges in relation to reporting, investigation and lack of support in the criminal justice process; furthermore, they are seldom referred to LGBT-inclusive support services. This also applies partly, to the United Kingdom, where the elevated levels of protection and victim-focused measures which are available are framed in a manner that makes them difficult to enforce. Guidelines for avoiding secondary victimization are still lacking; any initiative being left to the personal sensitivity and expertise of individual law enforcement professionals, who do not always perceive victims of anti-LGBT hate crime as vulnerable subjects or, as in Croatia, who must face systemic impediments that do not allow him/her continuity of work with the victim.

### *Recording Anti-LGBT Hate Crime*

Not all countries surveyed in this study collect data or provide reliable statistics on the number of anti-LGBT hate crimes reported. In Poland, some official figures are regularly published, but they contain only a handful of cases per year. In Italy, Lithuania and Bulgaria protocols or guidelines about how to record anti-LGBT hate crimes do not exist and no binding regulations and protocols oblige police officers

to record possible bias indicators. Furthermore, the absence of a specific law against homophobia/transphobia impacts negatively on the possibility of recoding cases effectively.

With regard to the United Kingdom, which records a much higher number of anti-LGBT hate crimes compared to other jurisdictions, the recording successes are due in large part, to the introduction of victim-focused recording policies alongside cooperation and strong partnerships with NGOs.

Insofar as hate crimes are reported to the public institutions and recorded by them properly, LGBT NGOs register very few hate crimes. In those countries where public recording is not efficient, NGOs try to record data on bias-motivated incidents themselves but, with the notable exception of Hungary, recording systems are usually not very advanced or detailed. Publication of reports containing data and numbers collected by NGOs is also irregular, due to a lack of resources.

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#### *Support for Victims of Anti-LGBT Hate Crime*

State-sponsored support services for crime victims are rarely LGBT-inclusive or -sensitive in the countries of the consortium. For example, in Hungary there is a relatively well-developed victim support system with victim support and legal aid services offered as a public service alongside a network of victim protection officers in the police and witness care officials at the court. However, they have no specific protocols or measures in place for victims of anti-LGBT hate crimes, nor do they receive training on the topic.

Specific support services for anti-LGBT hate crime victims are mainly provided by LGBT NGOs, often without the support of public funding and limited to big towns. Due to the lack of resources, services are usually limited to legal assistance and referrals; dedicated emergency housing or shelters for LGBT victims of violence are rare. The awareness of existing services among members of the LGBT community is generally low and the fear of disclosing one's sexual orientation prevents some victims from seeking assistance.



# Introduction

*Piotr Godzisz and Giacomo Viggiani*

## **About Hate Crime**

### What is an Anti-LGBTI Hate Crime?

There is no agreed definition of “hate crime” used in all EU member states. State authorities and international bodies have conceptualized the problem in several ways for the purpose of reporting and recording, policing and prosecuting, as well as providing victim support. Some of the key issues that continue to be debated include: (1) whether discriminatory or insulting speech or stirring up hatred based on race, ethnicity, sexual orientation or other similar grounds should be seen as a type of hate crime; and (2) which victim categories should be selected for protection.

Considering the first question, the OSCE defines hate crimes as “criminal offenses committed with a bias motive” (OSCE 2009). Since an act of speaking, without the enactment of the prohibited content, is not a crime (unlike, e.g. homicide, physical assault or damage of property), the OSCE argues that this conceptualization excludes hate speech (ODIHR 2009:25). On the other hand, FRA (2016a), taking stock of the fact that all EU member states ban incitement to violence and hatred, argues that “[i]ncitement to violence or hatred against a protected category of persons – commonly referred to as ‘hate speech’ – is both a criminal offense and an expression of discrimination and hence a sub-category of the wider concept of hate crime” (P. 15).

The lack of agreement at the international level has consequences at the national level. For example, Croatia adopted a legal definition of hate crime deriving from that of the OSCE while Poland uses a working definition which is similarly based on that of the OSCE, but is inclusive of hate speech (see chapters four and 10). Most other countries either do not use the term hate crime at all, use it without defining it, or have come up with their own conceptualizations (e.g. the United Kingdom; see chapter 11). As there is no agreement among member states, the

term “hate crime” is used in this report as a floating (empty) signifier, unless otherwise defined by the authors of the respective country chapters. Some authors chose to speak of hate crime only in the way it is understood by the OSCE; others consider also, the issues connected with criminal discrimination and hate speech. In contrast, the understanding of the term “hate-motivated incident” (or “hate incident”) is uniform. It follows the definition proposed in the *Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity* (CoE 2010), where the term is “used to encompass any incident or act – whether defined by national legislation as criminal or not – against people or property, that involves a target selected because of its real or perceived connection with or membership of a group.”

As mentioned above, the bias motive of a crime refers to a protected characteristic. While all hate crime laws define which characteristics are protected in a specific jurisdiction, the catalogue usually includes categories related to racism and xenophobia (e.g. race, national or ethnic origin) and religion, and, increasingly, sexual orientation, disability, gender identity and other grounds.<sup>1</sup>

Protected characteristics are usually enumerated but rarely defined, in national hate crime laws. In this report the understanding of sexual orientation, gender identity, gender expression and sex characteristics follows the definitions proposed by international experts on LGBTI rights in the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2006) and *Yogyakarta Principles +10* (2017). According to these documents:

- Sexual orientation refers “to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with individuals of a different gender or the same gender or more than one gender”;
- Gender identity refers “to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth”;



1 Excerpts of hate crime laws from across the OSCE region, including protected grounds, are available at the [Legislationline.org](http://Legislationline.org); service operated by the OSCE Office for Democratic Institutions and Human Rights.

- Gender expression is understood “as each person’s presentation of the person’s gender through physical appearance”; and
- Sex characteristics are understood “as each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty”.

The victim categories included in hate crime laws are usually abstract (e.g. “religion” instead of “Catholicism” or “Sikhism”; “sexual orientation” rather than “homosexual orientation”) to avoid creating group-specific rights. For example, while sexual or gender majority people may become victims of hate crimes based on sexual orientation, gender identity, gender expression or sex characteristics, the perpetrators usually seek to target LGBTI people. For this reason, in this report we understand the expression “anti-LGBTI hate crime” as pertaining to bias motivation (i.e. negative attitudes towards LGBTI persons) not the identity of victims. In this sense, people who do not identify themselves as LGBTI can also be targeted.

The language used by authors of the national chapters, and specifically the acronyms describing the community (LGBT, LGBTI or LGBTQ, etc.) has been an object of reflection and discussion among authors and between authors and editors. Collectively, we have decided that rather than be standardized, the acronyms should reflect the different legal and social realities in the countries. As a result, the language of each chapter reflects the differing levels of recognition of sexual orientation, gender identity, gender expression and sex characteristics as protected grounds, as well as preferences of the communities as to how they like to call themselves.

### **What is the Impact of Anti-LGBTI Hate Crimes?**

Hate crimes are often described as signal or message crimes. They are designed to spread fear, anger, insecurity and the feeling of vulnerability among targeted communities. They negatively influence the mental health and social life of victims and impact on vicariously targeted communities.

There is an accumulation of research revealing the harms caused by hate crimes. Multiple studies show that the psychological consequences of hate crimes are likely to be more severe than those caused

by similar but otherwise motivated crimes (Corcoran, Lader, and Smith 2015; Herek 2009; Iganski and Lagou 2015). According to Chakraborti, Garland, and Hardy (2014:41), repetitive, “normalized” victimization, only known to those who experience it and relatively insignificant for outsiders, can be particularly detrimental. The *Sussex Hate Crime Project* found that hate crimes, regardless of the type, were often linked to “[i]ncreased feelings of vulnerability, anxiety, anger, and sometimes shame” with victims “[b]eing more security conscious, avoidant, and more active within the community” (Paterson et al. 2018:1).

Hate crimes also have indirect effects on the targeted communities and the society. If unaddressed, they may impact negatively on the security level of communities and neighborhoods and lead to a heightened sense of security risks. Some communities may feel targeted, which leaves them feeling vulnerable and angry (Bell and Perry 2015). Inadequate responses to hate crimes experienced by community members can be linked with lower trust in the criminal justice system (Paterson et al. 2018:1). There is also an economic dimension to hate crime; for individual victims, time off from work due to injuries may result in loss of income. For minority community centers, replacing broken windows or installing security cameras cost time and money which could otherwise be spent on programmatic activities. For the government, more hate crimes mean increases in the costs of policing, prosecuting and sentencing, as well as the cost of providing mental health and victim support services.

### What Do We Know About Anti-LGBTI Hate Crime Laws and Policies in the EU?

There are a growing number of national and cross-national comparative studies looking at the situation of victims of hate crimes or LGBTI people in the EU. With the speed of development in the legal and policy frameworks, such reports quickly become outdated. For example, the number of EU member states that recognize homophobic intent as an aggravating factor in common crimes increased from 10 to 15 between 2008 and 2015 (FRA 2009:126, 2015:62).<sup>2</sup> The victims’ situation



2 In addition, FRA noted (2015:63) that the courts in Austria and the Netherlands apply enhanced penalties for crimes motivated by homophobia, despite the lack of relevant legal provisions.

further changed following the entry into force of the Victims' Rights Directive in 2015. However, while some countries seem to be well researched we know relatively little about others. For example, while Latvia has been examined in several in-depth reports on hate crime laws and policies (Kamenska 2017; Kamenska and Brands-Kehris 2008; Oakley 2008), Italy and Greece have been an object of researchers' interest less often.

When research for this project commenced, we aimed to build upon the results of various national reports along with the research conducted within the *HateNoMore* project (KPH 2016), two FRA reports based on interviews with professionals (2016a, 2016c) and FRA's comparative legal analysis (FRA 2015). In addition to these however, this report also builds on a number of findings from the recent *Lifecycle of Hate Crime* report (Schweppe, Haynes, and Walters 2018). All the above use different methodologies and cover different topics and geographical areas but each of them touches upon the legal and policy situation of victims of anti-LGBTI violence.

FRA's legal analysis of protections against discrimination based on sexual orientation, gender identity and sex characteristics (2015) provides a short, pan-EU overview of legal responses to anti-LGBTI hate crime. As the deadline for the implementation of the Victims' Rights Directive coincided with the publication of the report this issue is not covered there. Also not covered are the views of professionals on the barriers victims face in reporting, or the organizational and procedural factors which impede recording or access to justice for victims. The *HateNoMore* research (KPH 2016) analyzes the levels of the transposition of the Victims' Rights Directive with regard to LGBT victims of crimes but it covers only select, Central and East European countries (Croatia, Hungary, Latvia, Lithuania and Poland). Meanwhile, comparative analysis of professionals' opinions on reporting and recording hate crimes, as well as procedural and organizational aspects of access to justice, are discussed in the reports *Ensuring justice for hate crime victims: professional perspectives* (FRA 2016a), covering all of the EU; and in the comparative report from the *Lifecycle of Hate Crime* project (Schweppe et al. 2018), which covers the Czech Republic, Ireland, Latvia, Sweden and the United Kingdom.

## Common Obligations and Commitments to Fight Anti-LGBTI Hate Crime

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The need to address hate crimes is grounded in the obligations set out in international and regional agreements. These obligations can be general, referring to notions such as the right to life or the ban on torture, or specific, referring to gender-based violence or the rights of hate crime victims.

Under the International Covenant on Civil and Political Rights (UN General Assembly 1966) States must address acts of violence and deprivation of life by adopting laws and other measures to ensure that everyone is protected from such acts. Article 20 of the ICCPR bans some forms of hate speech while Article 26 prohibits discrimination. The International Convention on the Elimination of all Forms of Discrimination (UN General Assembly 1965) provides that “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin” shall be prohibited (Article 4).

At the level of the Council of Europe, Article 14 of the European Convention on Human Rights (CoE 1950) guarantees the enjoyment of the rights and freedoms guaranteed in the Convention (including the right to life and security) without discrimination on any ground. The European Convention on Preventing and Combating Violence against Women and Domestic Violence (so called Istanbul Convention) (Council of Europe 2011) requires signatory states to “take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention” (Article 12). This includes gender-based violence and violence affecting women because they are women (including violence against LBT women).

At the level of the EU, the 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 (Council of the European Union 2008), requires states to adopt all necessary measures to ensure that any racist and xenophobic motivation of a crime is considered an aggravating circumstance under the national legal framework. Minimum standards regarding the rights, support and protection of victims of crimes are set out in Directive 2012/29/

EU of the European Parliament and the Council of the European Union of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime (Victims' Rights Directive) (European Parliament and Council of the European Union 2012). The Directive recognizes victims of hate crimes and victims who are vulnerable because of a protected characteristic (including gender, gender identity or expression and sexual orientation) as a specific category of victims deserving special treatment. It requires member states to assess victims' support and protection needs and protect them from secondary victimization, intimidation and retaliation.

In addition to the above instruments, commitment to fight against discrimination, hate speech and hate crimes is expressed in numerous OSCE commitments, notably the Ministerial Council Decision No. 9/09 on Combating Hate Crimes (OSCE 2009), as well as ECRI's general policy recommendations (ECRI 2002, 2016). The specific need to address hate crimes based on sexual orientation and gender identity is recognized in the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CoE 2010).

### Case Law of the European Court of Human Rights

The European Court of Human Rights has ruled on issues connected with hate crime and hate speech on numerous occasions.<sup>3</sup> In *Vejdeland and others v. Sweden* (ECtHR 2012b) the Court applied for the first time, the principles relating to hate speech in the context of sexual orientation, holding that prosecution of applicants for the distribution of leaflets with homophobic content did not violate their freedom of expression. In the landmark case *Identoba and others v Georgia* (ECtHR 2015b), concerning violence during the celebrations of the International Day Against Homophobia in Tbilisi, the Court recognized, for the first time, the state's duty to address hate crimes based on sexual orientation. The Court ruled that



3 Some important cases where the Court ruled on racist violence include: *Nachova and others v Bulgaria* (ECtHR 2005), *Šečić v. Croatia* (ECtHR 2007b), *Angelova and others v Bulgaria* (ECtHR 2007a), *Abdu v Bulgaria* (ECtHR 2014) and *Balázs v. Hungary* (ECtHR 2015a). In *Đorđević v. Croatia* (ECtHR 2012a) the Court found a violation of the ECHR in a case concerning violence based on disability.

*... [w]hen investigating violent incidents, such as ill-treatment, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives. Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.*

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In *MC and AC v. Romania* (ECtHR 2016) the Court found that the authorities had not taken reasonable steps to unveil the possible homophobic motives behind the attack on participants in a Pride event, failing to ensure adequate investigation and violating Article 3 taken in conjunction with Article 14 of the Convention.

### **Supranational Mechanisms and Initiatives Used to Tackle Anti-LGBTI Hate Crime**

At the international level, hate crimes against LGBTI people are conceptualized as a human rights issue. For example, the EU Fundamental Rights Agency (2012) argues that, if a member state's "criminal justice system overlooks the bias motivation behind a crime, then this amounts to a violation of Article 14 of the European Convention of Human Rights" (P. 7). According to the Agency, hate crimes violate "fundamental rights, namely to human dignity and with respect to non-discrimination", and like other international human rights bodies, it fights with hate crime as part of its mandate. Below, we present briefly, the international and regional legal framework relevant to anti-LGBTI hate crimes, human rights review and monitoring mechanisms, as well as key policy initiatives to tackle anti-LGBTI hate crimes.

### **Human Rights Monitoring and Review Mechanisms**

While particular UN human rights monitoring and review bodies differ in their mandates and activities, discrimination and violence targeting LGBTI people is increasingly becoming a topic of discussions and consequently, a source of recommendations provided to UN member states. There are several international bodies to which NGOs can provide evidence on the human rights situation of LGBTI people, including on discrimination and violence. This information is then used in as-

sessing the human rights record and implementation of commitments of the country in question. The institutions include several UN treaty bodies<sup>4</sup> and the UN Human Rights Council. Within the UN Human Rights Council, LGBTI issues are discussed as part of the Universal Periodic Review, where countries are peer-reviewed by representatives of other states.<sup>5</sup> In addition, they fall within the mandate of several so called “special procedures”, i.e. independent experts charged with working on a specific human rights topic or specific regions. The first independent expert on issues related to sexual orientation and gender identity was appointed in 2016.

At the regional level, the Council of Europe’s Commission against Racism and Intolerance (ECRI), until recently, largely concerned with racism, has started to include the issue of intolerance against LGBTI people in its country monitoring exercises, beginning from the fifth monitoring cycle.

### Supporting States in Implementing Obligations

Apart from the human rights monitoring and review role described above, supranational institutions have taken up work to help states build professional responses to hate crime and hate speech, including those targeting LGBTI communities. In particular, the OSCE Office for Democratic Institutions and Human Rights, the EU Fundamental Rights Agency, ECRI and the European Commission are active in this field.

ODIHR’s mandate, based on the OSCE commitments to tolerance and non-discrimination (see above), includes collecting data and statistics on hate crimes in OSCE participating states, reviewing existing



- 4 The Committee against Torture; the Human Rights Committee; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination against Women; the Committee on the Rights of the Child; and the Committee on the Rights of People with Disabilities. All documents related to the monitoring process, including shadow reports submitted to the treaty bodies by NGOs, are available on the website of the Office of the UN High Commissioner for Human Rights at <https://www.ohchr.org/EN/pages/home.aspx>.
- 5 Inputs for the UPR process coming from civil society groups, as well as reports of the working groups with recommendations for states, are available on the website of the Office of the UN High Commissioner for Human Rights at <https://www.ohchr.org/EN/pages/home.aspx>.

and proposed legislation, and building the capacity of governments and civil society organizations to tackle this kind of victimization. One of ODIHR's strengths is that it has a lot of in-house expertise and can work with governments in individual states (e.g. Poland, Italy and Lithuania).<sup>6</sup>

The European Union Agency for Fundamental Rights documents the levels of racism, intolerance and hate crime in the EU (FRA 2014), carries out analysis of the legal and policy frameworks (FRA 2015, 2016c), as well as providing assistance and expertise at both EU and national levels. The Agency has had a pivotal role in making hate crime visible in the EU, documenting gaps in national hate crime data collection mechanisms (FRA 2012) and encouraging the sharing of good practices.<sup>7</sup>

ECRI, ODIHR and FRA increasingly coordinate and cooperate on issues surrounding hate crime. Since 2016, this has been carried out through the EU High Level Group on combating racism, xenophobia and other forms of intolerance, a multi-agency body tasked with assisting the European Commission with the preparation of legislative proposals and policy initiatives.<sup>8</sup> The High Level Group deals with; *inter alia*, the training of law enforcement services, recording hate crime, ensuring justice, protection and support for victims. Apart from the work of the High Level Group, the Commission provides financial support to states and NGOs in the area of hate speech and hate crime through the *Rights, Equality and Citizenship* program, whose objectives include combating racism, xenophobia, homophobia and other forms of intolerance.<sup>9</sup>



6 One of the authors of this text – Piotr Godzisz – was previously an intern at ODIHR.

7 FRA's compendium of good practices is available at <http://fra.europa.eu/en/theme/hate-crime/compendium-practices> (retrieved 2018-06-17).

8 Information about the group's meetings and activities can be found at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3425> (retrieved 2018-06-01).

9 Information about the program can be found at [http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index\\_en.htm](http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index_en.htm) (retrieved 2018-06-01).

## Structure of the report

This report consists of 11 chapters – 10 country reports covering Belgium (Flanders), Bulgaria, Croatia, Greece, Hungary, Italy, Lithuania, Poland, Spain and the United Kingdom and a comparative chapter. The annex contains a note on methodology.

To facilitate reading and allow comparisons, all chapters follow the same structure:

1. The first section focuses on the legal framework. It covers current hate crime law provisions, other legal provisions applicable to anti-LGBTI hate crimes and incidents, as well as attempts to amend the law. The section also discusses the implementation of the provisions of the Victims' Rights Directive.
2. The second section focuses on professionals and anti-LGBTI hate crimes. It covers the various understandings of hate crime among law enforcement professionals, NGOs and other actors, and discusses the weaknesses of conceptual frameworks. It also covers vocational training and sensitization.
3. The third section covers reporting. Specifically, it presents reasons for underreporting given by interviewed professionals; discusses the accessibility of various types of hate crime reporting centers and presents existing policies and guidelines governing reporting, as well as awareness-raising activities. Professionals' views on what is most needed to improve reporting are also discussed.
4. The fourth section focuses on the rights of victims of anti-LGBTI hate crimes in the criminal justice process. It covers the rights guaranteed by the Victims' Rights Directive, existing policies and guidelines governing victims' rights, and guarantees of protection for victims.
5. The fifth section covers recording. Specifically, it reports findings on the various techniques and systems used by state agents and civil society organizations to record hate crimes, as well as the public availability of hate crime statistics.
6. The final, sixth section focuses on issues surrounding victim support. Specifically, it covers referrals, the availability, accessibility and inclusivity of various support services, as well as the issue of funding.

Special attention is paid to intersectional issues such as gender, as well as victimization on multiple grounds. Findings are illustrated by examples of promising practices identified in the course of the research. Each national report concludes with a series of recommendations for future policy and practice

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# Belgium



*At a glance*

## Attitudes

- Attitudes towards LGBT people in Belgium are better than in most other European countries. According to the Eurobarometer (437/2015), no less than 81 percent of Belgians believe that LGBT people should have the same rights as heterosexual people. 61 percent of respondents would feel comfortable or indifferent seeing a gay male couple showing affection in public, compared with 80 percent in the case of heterosexual couples.
- Considering trans people, attitudes are only marginally better than the European average: 36 percent would feel comfortable with sons or daughters in a relationship with a trans person, while 41 percent would feel uncomfortable.

## Victimization levels

Many LGBT people have faced various levels of discrimination and violence. Of those respondents surveyed by the Fundamental Rights Agency, who had experienced violence in the previous year, more than half (55 percent) believed the incident was motivated by hate (European Union Agency for Fundamental Rights 2014:58). Only a quarter (24 percent) of victims of bias-motivated violence had reported the incident to the police, although this is slightly better than the European average of 17 percent (European Union Agency for Fundamental Rights 2014:67).

## Official Statistics on Anti-LGBT Hate Crime

Belgium has not routinely reported reliable information and statistics on hate crimes to ODIHR since 2013. However, according to publicly available police statistics, there have been 187 registered cases of homophobia in 2016 and 107 in 2017. No statistics are available on transphobic hate crimes.

## Summary

- If the motive for a crime is bias, that is, hatred, contempt or hostility towards a person because of a protected characteristic such as sexual orientation, penalty enhancements are applicable. However, the enhancement is applicable only to a limited number of types of crime. Gender identity or gender expressions are not included in the Penal Code as bias motives. This legal conceptualization of hate crime is not aligned with the general, more intuitive one and as a result, creates problems for some victims who seek out help.
- According to some professionals, cooperation between police and prosecutors with regard to discrimination and hate crime has improved. However, more effort is needed. Not many professionals have regular experience of victims of anti-LGBT hate crime.
- Underreporting of anti-LGBT hate crime is a problem despite initiatives by, among others, law enforcement agencies. This problem might need a more overarching approach that combines the efforts of various stakeholders.
- Within law enforcement, homophobic hate crimes (sexual orientation only) have a proper recording code, from which the Federal Police service generates basic statistics. Numbers remain relatively low, partly because of inaccurate registration. LGBT NGOs do not systematically record anti-LGBT hate crimes.
- Victim support service providers generally don't want to make distinctions between LGBT victims and other victims within their services although this doesn't mean they are opposed to specific approaches for victims of anti-LGBT hate crimes.



# Dancing in the Dark: Professionals' Experiences with Victims of Anti-LGBT Hate Crime in Flanders (Belgium)

*Kenneth Mills*

## Legal Framework

The Penal Code includes several penalty-enhancement provisions for specific offenses if the motive for a crime is hatred, contempt or hostility towards a person because of a protected characteristic such as sexual orientation. Gender identity or gender expression is not included. Belgium failed to meet the deadline to implement the Victims' Rights Directive. While the position of victims has strengthened over past decades and many provisions of the Directive already existed in Belgian law, no explicit mention of sexual orientation, gender identity or sex characteristics exists in legislation regarding victims' rights and victim support services.

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The Penal Code does not provide a definition of hate crimes. However, it does provide a specific aggravating circumstance to which penalty enhancements (can or will) apply when one of the motives for a crime is hatred, contempt or hostility towards a person because of one or more of a list of protected characteristics. This is also commonly referred to as the "reprehensible motive" and is found in these sections of the Code:

- Indecent assault and rape (art. 377 bis)
- Manslaughter and intentional inflicting of bodily harm (art. 405 quater)
- Negligence (art. 422 quater)
- Deprivation of liberty and trespassing (art. 438 bis)
- Stalking (art. 442 ter)
- Slander, defamation and desecration (art. 453 bis)
- Arson (art. 514 bis)
- Destruction of buildings, trains, ships, machinery (art. 525 bis)
- Destruction of, or damage to edibles, merchandize or other movable property (art. 532 bis)
- Graffiti and damage to immovable property (art. 534 quater)

While all of those articles include sexual orientation none of them includes gender identity, gender expression or sex characteristics. For example, Article 405 quater of the Penal Code (Penal Code, Article 405 quater, Title VIII, Section II), reads:

*If one of the motives of the crime consists of hatred, contempt or hostility towards a person because of his so-called race, his skin color, his origin, his national or ethnic descent, his nationality, his gender, his sex change, sexual orientation, marital status, birth, age, wealth, religion or beliefs, current or future state of health, disability, language, political conviction, syndicalist conviction, physical or genetic trait or his social origin, the punishments are as follows (...).*

The other articles differ slightly (reasons for which are explained in the next section):

- They do not include the protected characteristic “sex change”.
- They have a penalty enhancement that “can” be applied, leaving the matter in the hands of judges.

A parliamentary commission charged with the evaluation of this legislation noted in 2017 that the reprehensible motive should apply to other crimes as well (Federaal Parlement 2017:32-33). In its evaluation of legislation on discrimination, equality body Unia advises the inclusion of crimes such as torture or extortion and the re-inclusion of murder (Unia 2017:84).

### Evolution of the Legal Framework to Fight Hate Crime

In 2003, the Belgian federal legislator introduced into the Penal Code, the “reprehensible motive” in nine articles, corresponding to different types of crimes (Act of 25 February 2003 on combating discrimination, and to amend the law of 15 February 1993 establishing a Center for Equal Opportunities and Opposition to Racism). In 2007, while intending to harmonize and improve existing legislation on combating discrimination and hate crimes, the Penal Code was amended, adding a 10<sup>th</sup> article and expanding the list of protected characteristics (Act of 10 May 2007 on combating certain forms of discrimination).

One more notable change occurred. The Act of 14 January 2013, amending Article 405 quater of the Penal Code and Article 2 of the Act of 4 October 1867 on the mitigating circumstances, changed art. 405 quater, in three ways. Firstly it added “sex change” to the grounds for discrimination. Secondly, it removed references to art. 394-397, thus losing the applicability of this aggravating circumstance, to acts such as murder. Thirdly, and most importantly, it changed the penalty enhancement from the optional doubling of the minimum punishment to fixed penalty enhancements of the minimum and maximum punishments.

While in 2014, the notion of direct discrimination on the basis of gender was expanded to include gender identity and gender expression (Act of 22 May 2014 amending the law of 10 May 2007 to combat discrimination between women and men with a view to their extension to gender identity and gender expression), the Penal Code has not been amended to include references to gender identity and gender expression. Apart from art. 405 quater, the Penal Code does not take into account transphobic motives.

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### Implementation of the Victims' Rights Directive

Attention to the needs of victims was in part fuelled, during the nineteen nineties, as a consequence of the Belgian political crisis following the Dutroux paedophilia case<sup>1</sup>. The *Act of 12 March 1998 for the improvement of the administration of criminal justice at the stage of the investigation and the judicial inquiry* (“Franchimon Act”) expanded the procedural rights of victims and introduced the possibility for victims to register as an injured party. During the same period victim support services emerged at the public prosecutor’s office to improve the contact between victims and the judicial system. A more active role for victims was established.



1 Marc Dutroux was arrested in 1996 after having kidnapped, tortured and sexually abused six girls, only two of whom were saved. Shortcomings in the investigation and allegations of a cover-up caused a widespread public outcry, culminating in the so-called White March of an estimated 300 thousand people protesting in Brussels in 1996 to achieve better protection for children and a better functioning justice system.

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Because these and other developments regarding victims' rights were already happening, the impact of EU laws on victims' rights has been limited. Belgium failed to meet the deadline for the transposition of the Victims' Rights Directive in 2015. It should be noted here that this directive affects not only the Federal State but also the Communities and Regions. The Flemish government reported the timely implementation of the articles for which it is responsible. This included articles 3, 8, 9, 25 and 26 of the Directive (Minister-President van de Vlaamse Regering, Vlaams minister van Buitenlands Beleid en Onroerend Erfgoed 2015:46). These respectively, refer to the right to understand and be understood, the right of access to victim support services, victim support, training of practitioners and cooperation and coordination of services. The Federal Justice Department however, reported a partial transposition because it still needed to implement the provisions regarding interpretation and translations. Then, in 2016 two acts were passed to complete the implementation of the Directive (Act on the further transposition of Directive 2010/64/EU and Directive 2012/29/EU and Act on certain rights of persons being interrogated). One Act was meant to improve existing legislation on interpretation so that the same provisions would be applicable in all criminal courts, and to improve legislation on written translations, so that the right to translation would be extended to more situations and documents, and to languages other than the three official ones. The other Act was meant to improve the hearing of persons who are unable to understand or speak the language of the procedure. Neither the federal nor the Flemish legislation regarding victims' rights or victim support services explicitly mentions sexual orientation, gender identity or sex characteristics in the context of the specific needs of vulnerable victims.

### **Professionals and Anti-LGBT Hate Crimes**

**The concept of a hate crime is becoming established among professionals. However, two different conceptualizations exist, namely a strictly legal one and a broader, intuitive one. Several initiatives have been undertaken, especially within the police and judiciary, to increase awareness of legislation. However, few professionals report regular, actual experiences with victims of anti-LGBT hate**

**crime, apart from those who, because of their specific role or organizational mission, are more dedicated to working on discrimination and hate crimes.**

The professionals interviewed in this study tend to have at least an intuitive understanding of what hate crime is and recognize that it is distinct from other crimes because of the motivation of the perpetrator. However, we found in practice that professionals operate with two distinct conceptualizations of a hate crime, one strictly following the national legal framework, the other being broader and more intuitive. This leads to a certain tension, as illustrated by the following quotes:

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*For us, hate crimes are defined by the legislation, but of course this limits our action radius, because we are stuck when there is a crime or a reprehensible motive that isn't part of our responsibility. (Equality body, interview 2)*

*We consider it a hate crime when there is a criminal act where, in principle, the penalty enhancement should apply on the basis of [bias against] sex change or gender identity. Whether or not [these characteristics] are already included [in the Penal Code] we assume that the intention is that they will be included. (Equality body, interview 5)*

In certain situations this can become very confusing for victims who seek assistance for something that *should* be considered a hate crime but are unable to obtain certain types of support because professionals are bound by the limited definition of the legal framework. While, as the second quotation above shows, professionals can be creative and circumvent this problem, nevertheless they cannot circumvent the criminal procedure, nor can they prevent feelings of injustice among those who believe they are not fully recognized as victims of a hate crime.

Within the police service and judiciary, a crucial step to improve legal awareness came in 2013, when the prosecutor general published the circular COL 13/2013 (College van procureurs-generaal 2013) that provides a framework to investigate and prosecute hate crime. Its goals are to improve:

- legal awareness on hate crimes and discrimination
- cooperation between police forces and public prosecutors

- involvement of equality bodies
- registration and statistical analysis

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To achieve this, the act ordered the appointment of persons who are points of reference for discrimination and hate crimes within local and federal police forces and public prosecution services. It established norms for proper police intervention, prosecution and victim assistance. It also provided instructions on training and the role of the equality bodies, Unia and the Institute for the Equality of Women and Men<sup>2</sup>. Those institutions provided initial training for the reference persons at the police service and judiciary. Such reference persons have the explicit role of providing information to colleagues on the content of the circular and to increase awareness. In some police districts, they are involved in providing training to other police officers and civilian staff.

Multiple law enforcement professionals interviewed in the study reported a continued need to sensitize people to the contents of this circular, even after four years. The parliamentary commission charged with the evaluation of the legislation on discrimination noted in 2017 that although many stakeholders acknowledge that the circular improved cooperation, in practice its goals are not met everywhere (Federaal Parlement 2017:101). It stated that too few Crown Prosecutors had started to elaborate a criminal policy in the area of discrimination and hate crime, and that few police chiefs included an approach to racism and discrimination in their policy plans (Federaal Parlement 2017:101).

Besides training, regular, actual experience with victims of anti-LGBT hate crime is a necessary component of a full understanding of anti-LGBT hate crime. As one professional stated, “I think we have added value in the legal domain; not only for the victim but also for the lawyer; we deal with this matter on a daily basis” (Equality body, interview 2).

However, many of the professionals interviewed said they have only limited, actual experience of dealing with victims of anti-LGBT hate crime: “It’s the tip of the iceberg that we see” (Police, interview 3).



2 Both institutions promote equality and aim to reduce discrimination. While Unia has expertise in discrimination on the basis of sexual orientation, the Institute has expertise in gender-related discrimination.

Well over a third of the officially registered homophobic incidents in Flanders were recorded, between 2013 and 2016, in its two biggest cities<sup>3</sup>. Taking into account that many of the professionals we interviewed operate in those cities, we assume that in other areas, such experiences would be even less common.

## Reporting Anti-LGBT Hate Crime

**Many hate-motivated incidents are not reported in Belgium. Law enforcement agencies have undertaken initiatives to increase reporting and to improve the hearing of a victim. While such initiatives each have their merit and are valued by the professionals we interviewed, currently the problem of the “dark number” of hate crimes persists.**

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Flemish research by D’haese, Dewaele, and Van Houtte (2014), on homophobic violence, found low reporting rates (10 percent). The reasons for not reporting included:

- Being able to solve the incident by oneself
- Wanting just to move on after the incident
- Not believing the perpetrator would be apprehended and punished

Another study by Motmans, T’sjoen, and Meier (2015) on transphobic violence in Flanders, recorded reporting rates as low as 6 percent in cases of verbal or psychological violence and 20 percent in cases of physical or material violence. Recurring reasons for not reporting were the minimization of the incident (“not serious enough”) and lack of trust that the police and judicial system would be of any help.

Fear of coming out to the police, is a less common reason; nevertheless, 10 percent of victims of homophobic violence didn’t want to disclose their sexual orientation and 7.5 percent to 18.4 percent (depending on the type of violence) of victims of transphobic violence didn’t want to disclose their gender identity.

The professionals we interviewed from the reporting centers were generally well aware of the fact that victims of anti-LGBT hate crimes often do not report. They gave various reasons for this:



<sup>3</sup> All statistics are available at <http://www.stat.policefederale.be/criminaliteitsstatistiek/rapporten/>.

- Victims don't understand hate crime legislation and/or their rights, or they are unaware of the steps they can take and/or of the services they can draw upon.
- They think that the incident is not serious enough to report it, or they do not (want to) recognize it as a hate crime.
- They believe that their case will be dismissed, or that law enforcement agencies won't be able to provide a satisfactory resolution of their situation.
- They fear not being taken seriously, or even being victim-blamed.
- They fear coming out, or losing their anonymity.

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While some victims deem certain crimes not serious enough to report, it is the most serious hate crimes that are reported. One police officer we talked to believes that for many victims, physical violence is a sort of threshold that makes them report (Police, interview 3).

### Quality of Police Reports

D'haese et al. (2014:60) found that nearly one in five survey respondents who reported a homophobic incident to the police, didn't mention the homophobic motive. One third asserted that the officer didn't ask any questions about the motive and half said that the homophobic motive had not been mentioned in the report. This suggests it is crucial that the motive of a crime is systematically detected and recorded during the hearing of a victim.

In some judicial and police districts instruments have been developed to improve the hearing of the victim in this regard. However, such developments are not as systematic as they might be, because they are the result of the commitment of individuals or individual departments in certain districts. The professionals we interviewed referred to such instruments, if they were available and some identified a number of indicators that help them recognize an anti-LGBT motive: (1) remarks made prior to or during the incident, (2) the place where it occurred and its connection to the LGBT community and, (3) any relevant or related prior hate incident. However, in many cases doubt about the motive may remain. In any case the public prosecutor has the final authority when classifying a crime. As one police officer highlighted, "sometimes we don't know ourselves [whether or not something is a hate crime]. But when in doubt, it's best to aim higher, as the public prosecutor is able to reclassify" (Police, interview 3).

The parliamentary commission charged with evaluation of the legislation on discrimination has noted that police reports lack quality, mostly because facts are presented too briefly, or because officers do not ask enough questions and do not pay enough attention to the constitutive elements of a crime. Also, contrary to the provisions of COL 13/2013, officers continue to draft a so-called “simplified report”, which is meant for certain crimes that are not deemed serious (Federaal Parlement 2017:105).

It appears that, despite training initiatives and the development of useful instruments, still more work needs to be done. One police officer mentioned, during our interview, that some fellow officers still fail properly, to follow the instructions of the circular (Police, interview 3). It was also pointed out that standard instruments or instructions to improve a hearing also have their limitations when it comes to improving practices. Nevertheless, there seemed to be a general agreement that such instruments and instructions have their merit.

It might very well be that a lack of experience with anti-LGBT hate crime victims inhibits the proper implementation of instructions and instruments. Moreover, this in turn, makes it difficult for trainees actually to practice and consolidate what they have learned during training on such issues.

### Ways Forward

Professionals have varying views on what is most needed to improve reporting; for instance, setting up a specific, specialized service, team or department, or providing training for staff. Other views involve victim communities, such as specific campaigns, or police proximity and visibility (for instance, at LGBT-oriented events).

In some police districts additional efforts have already been made to reach out to the local LGBT community, to raise awareness on hate crime and to increase willingness to report. The local police of Antwerp, for instance, participate in, and/or are visibly present at activities organized by the local LGBT community. The local police of Ghent have set up a contact point to make it easier for victims of anti-LGBT hate crime to make inquiries and to report (see the box below).

### **Good Practice: Ghent police contact point, homophobia and transphobia**

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The local police of Ghent have set up a contact point for LGBT-related hate crime. This is staffed by two, specifically trained people and can be reached through a specific e-mail address and a telephone number. Anyone can make inquiries, even anonymously. It is not meant for situations that require immediate police intervention. Sometimes people are persuaded to file an official complaint at the office (as this requires identification). There is close cooperation between the contact point, the public prosecution services, city services, the equality bodies and the LGBT community. Efforts have been made to promote this contact point among the LGBT community.

Although most professionals interviewed believe that the best way to expose the problem of anti-LGBT hate crime is to encourage victims to report, one LGBT organization noted that, from a victim's perspective, in some cases it might not be feasible to report because the possible gains are outweighed by the costs. A police officer mentioned another barrier that reporting campaigns alone cannot circumvent when dealing with hate crimes: "We operate within criminal law, but in many cases this doesn't restore feelings of justice" (Police, interview 3). These opinions illustrate how the criminal justice system is not always able to restore a victim's feeling of justice, because of the many barriers that they have to overcome. As one professional summed it up, "You have to have evidence, a suspect, and so on. But also the facts should be punishable and the facts have to be significant enough" (Equality body, interview 2).

### **Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process**

**Crime victims have a number of rights, some of which depend on the role they wish to take on during the criminal procedure. Entering a claim as a civil party provides the most rights (e.g. claim for compensation). Specific measures or policies for victims of anti-LGBT hate crime are limited.**

A victim of a crime has a number of rights at all stages of the criminal proceedings. If victims want to take a more active part in the proceedings they register as an injured party<sup>4</sup>, or they can enter a claim as a civil party to the criminal proceedings. This is explained in the attestation that a victim receives after filing a complaint with the police; the process also includes a referral to victim support services, legal assistance or aid and mediation services.

Victim's fundamental rights are as follows:

1. Victims of a crime, as well as their relatives, including those of a deceased victim, have to be treated in a respectful and correct manner, in particular, by providing them with information and referrals to specialized services and justice assistants.
2. Victims are entitled to information about: the criminal procedure and their rights, developments in the case, ways to obtain legal assistance and specialized support.
3. Victims are entitled to provide all elements necessary for proper investigation. This includes the right: to be heard, to provide information necessary to assess moral and material damage and to provide information on the incident and its consequences.
4. To ensure access to the right to legal assistance and legal aid, a system of primary legal assistance and legal advice was put into place. A victim can receive free initial legal advice and in certain cases the costs of the lawyer and court fees are compensated.
5. Victims are entitled to have their moral and material damages compensated within a reasonable time. They have to demonstrate the extent of the damage. In certain cases victims can apply to a fund for aid to victims of intentional violence.
6. Victims are to be protected from threats and reprisals for the duration of the investigation. The investigation should be conducted with respect for the privacy of the victim.
7. Victims are entitled to medical aid and psychosocial help from victim support services.

During the hearing, victims will be asked whether or not they want to register as an injured party, or if they want to consider this. They



4 This possibility was introduced by the Franchimont Act (art. 5 bis of the Preliminary Title of the Code of Criminal Procedure).

will be informed about the rights of an injured party and a special form will be attached to the attestation. They will also receive a brochure on victims' rights provided by the Department of Justice. Circular 5/2009 (College van procureurs-generaal, 2014) describes, in detail, this procedure and the model documents to be used.

If, during the hearing, a victim wants to register as an injured party, a form will be filled in and attached to the report. The form asks for personal data, data on the incident, and any kind of damage or any personal interest in case there is no damage.

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As an injured party, a victim will receive information in writing, about the decisions taken by the public prosecutor and the date of any hearing before an examining court. The victim will have the right to add any document that they deem useful to the case, and to request access to the case file and to obtain a copy of it.

As a civil party a victim can claim compensation from the offender. A victim also has additional rights:

- to access the criminal case file and obtain a copy
- to request additional investigative steps
- upon request, to be heard by the investigating judge
- to be present at a reconstruction

If a victim chooses to be neither, s/he will be informed by the public prosecutor only of the date, time and place of the court hearing.

During the trial, the role of a victim is limited to the civil claim. As a civil party, victims are heard to claim compensation. They will have to prove the damage suffered and their civil claim will be assessed by the court. Only as a civil party, will a victim automatically be informed of the court's judgment.

The Dutroux pedophilia case fuelled a discussion about probation, just as it had for victims' rights. This led to various changes that influenced the legal position of victims. Under certain conditions, victims have three rights:

- to be informed of decisions related to the application of the sentence
- to propose specific conditions that might be imposed on the offender
- to be heard in relation to specific conditions that might be imposed on the offender in their interest

To exercise these rights, victims whose civil claim was declared admissible and well-founded, have to submit a victim statement in which they can ask to be informed about certain decisions and/or to propose specific conditions. They can get assistance from a House of Justice. Some other categories of victims will have to send a written request to the sentencing court.

Independent of the criminal proceedings, victims can also request mediation. A legal framework was introduced by the Act of 22 June 2005 making provision on mediation in the Preliminary Title of the Code of Criminal Procedure and in the Code of Criminal Procedure. In this case, the victim can contact an officially recognized mediator (in Flanders: “moderator”). This process can start at any time during the criminal procedure but requires that all involved parties agree. If the parties reach a written agreement, a judge can take this into account.

Antidiscrimination legislation protects victims of anti-LGBT hate crime against discrimination on grounds of sexual orientation, gender identity or gender expression by public officers or anyone with public authority in the performance of their duties (and is punishable). This provides protection against certain forms of secondary victimization by law enforcement officials.

In 2013, federal and regional governments, together, launched their first action plan against discrimination and violence against LGBT people. However, at the time of writing this still needs to be renewed. It is not yet clear if the second plan, which is currently being drafted and will be launched in 2018, will contain specific measures or policies in the criminal justice process, for victims of anti-LGBT hate crime.

### **Recording Anti-LGBT Hate Crime**

**Recording of hate crime is mostly undertaken by the police and equality bodies. The Federal Police make national statistics on hate crime publicly available, disaggregated by bias motivation. Unia and the Institute for the Equality of Women and Men produce yearly reports on discrimination and hate crimes; insofar as they are reported at these institutions. LGBT NGOs register very few hate crimes.**

The circular COL 13/2013 introduced a new registration policy intended to correct the prior problem that anti-LGBT hate crimes were difficult or impossible to distinguish from other hate crimes within

the officially registered data. From then on, a base crime has had to be registered into ISLP (software used by the police) by its own designated code (e.g. assault and battery, code 43) and a reprehensible motive, by adding a secondary code 56A to 56F (homophobia was attributed its own code, 56E). The public prosecutor can, if necessary, reclassify a police report by adding or removing the secondary code<sup>5</sup>.

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Despite these efforts, the parliamentary commission charged with the evaluation of the legislation on discrimination has confirmed that hate crimes are not always registered properly, because of technical or organizational problems. Some of the professionals we talked with confirmed that additional efforts to create awareness about the procedures of COL 13/2013 were necessary, for instance suggesting that problems with registration by the police persist.

Police statistics show no overall, consistent increase in reported cases of homophobia since 2013. In fact, the biggest rise was in 2012, a year before the circular was even published. There might be an underlying structural problem; the parliamentary commission charged with the evaluation of the legislation on discrimination believes that “the beautiful results and initiatives that are undeniably seen here and there in the field, are the merit of individual case and/or reference magistrates and/or their police chiefs, rather than the result of the driven approach of an entire organization” (Federaal Parlement 2017:102). It also points out that some, mostly larger, police districts are committed to combating discrimination and hate crime and that in those districts, reference officials design a type of questionnaire and other checklists and take initiatives to increase willingness to report.

### Availability of Anti-LGBT Hate Crime Statistics

The Federal Police make national statistics publicly available, including violations of the legislation regarding discrimination and hate crimes. Incidents with code 56E started appearing in the statistical data from 2008. However, they do not provide much contextual information and, as transphobia doesn't have its own dedicated code, it also remains invisible in the statistics.



5 Although they use different software, the same codes are being used.

Equality body, Unia records inquiries and reports on homophobic discrimination and hate crimes while the Institute for the Equality of Women and Men does this for transphobic discrimination and hate crimes. The latter suggested that they seldom receive any reports on transphobic hate crime (Equality body, interview 5). Both institutions have their own registration systems and produce yearly reports.

Çavaria records anti-LGBT hate crimes through a mobile phone application that was developed with partners of other European countries during the *UNI-FORM* project. Holebifoon, a Flemish LGBT helpline, is an official partner of Unia, for people who want to report discrimination or hate crimes through the helpline. As such, it has access to the registration system that is being used by Unia. In general however, LGBT NGOs receive a very low number of reports.

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### **Support for Victims of Anti-LGBT Hate Crime**

**There are three major types of victim support services: at the Police services, at the Houses of Justice and at the Centers for General Wellbeing; each has their own characteristics and all work in a complementary manner. These victim support services tend not to have a specific approach in dealing with victims of anti-LGBT hate crime, although they are receptive to considering it. As LGBT NGOs are unable to provide similar services, cooperation between victim support services and LGBT NGOs could benefit victims.**

The police victim support services provide initial, short-term support to victims of crimes and usually refer people on to the Center for General Wellbeing (below) for long-term follow-up. This short-term support can be psychological, but also practical, such as bringing a victim fresh clothes, providing information (e.g. on criminal procedure) or contacting relatives. Victim support workers can be present at a police intervention.

Centers for General Wellbeing (CGW) provide various services to people related to; their wellbeing, family & relationships, financial problems, violence and abuse. Among other services, they provide free (long-term) counseling to victims of violence, whether or not they have filed a complaint. They also provide safe houses.

While victims are not obliged to file a complaint with the police in order to get access to their services, if they do choose to report, they are referred to the CGW by the police. During the hearing, the police ask the victim for permission to make a referral, in case the victim experiences psychological distress or needs any other follow-up (this can be practical, for example, insurance). A CGW worker then receives a request from the police to contact the victim. However, according to some of the professionals we spoke to, sometimes police officers do not provide victims with an explanation of these services, or they do not explicitly ask a victim if they want to be referred (note however that the attestation contains information about the CGW).

The police are not the only point through which victims can be referred; hospitals and doctors, schools and employers can also make referrals. The CGW indicate that they have made efforts to promote their services with these and other relevant professionals. They also provide training to professionals on issues such as the healing process, how to avoid secondary victimization and how to work in a manner that is respectful towards victims.

It is important to note that victim support services at the police services or Houses of Justice (below) are linked to or focused around the criminal procedure; this is not the case for the CGW. This gives the CGW a degree of freedom where clients can remain anonymous and where even the factual story isn't necessarily relevant – the focus is on creating a safe environment and using the principles of psycho-education to help clients better understand and cope with certain trauma.

Houses of Justice have various responsibilities related to the judicial processes; they provide legal advice and specific services for victims, for example, information about legal procedures and decisions of courts, access to files, (emotional) support and guidance in court. A magistrate can ask a House of Justice to contact the victim, in which case the initial contact, typically, is through a letter. In some types of cases there are agreements to make this standard procedure, but in many cases it depends on the individual judgment of the magistrate. Sometimes the victim her/himself contacts a House of Justice, for instance when a complaint has been shelved, when a suspect has been released or when a trial is scheduled.

## Victims of Anti-LGBT Hate Crimes

A recurring theme in the interviews was the issue of having specific approaches to dealing with victims of anti-LGBT hate crime. Often, we could detect a duality in the responses. On the one hand, many professionals stressed the similarities between different kinds of victims, often saying they don't make a distinction between victims of anti-LGBT hate crimes and other victims of crimes; they treat everybody the same way or they don't put people into boxes. For example:

*I don't think we should make a distinction with other victims. Everything depends on your basic human approach. (Police, interview 3)*

*A crime is a crime, and we see the same returning needs and questions with all those different victims. (Center for General Wellbeing, interview 10)*

*We don't make any distinctions. If you're a victim of a crime, you can ask us a question. (Center for General Wellbeing, interview 13)*

*For us everybody is a person, we are not going to push people into boxes. (Center for General Wellbeing, interview 10)*

The underlying assumption is that LGBT victims have the same basic needs as other victims. But providing support to victims of anti-LGBT hate crime requires from such professionals, some LGBT-specific knowledge, skills or attitudes.

On the other hand however, these professionals also acknowledged that a specific approach might be necessary in order to provide support that better matches the needs of victims of anti-LGBT hate crime.

The gist of most responses is best illustrated by this specific quote: "Every victim is treated the same way; except for domestic violence, because that's a specific problem. But even then they receive the same information. But maybe, there are specific things that we should know and tell victims, things that we tend to overlook" (Police, interview 7).

It has to be noted that the resources and capacities of LGBT NGOs are limited and they are not able to provide legal help but offer only very basic victim support, largely by trained volunteers. It is crucial that the general victims support services are able to work in an LGBT-inclusive manner (taking intersectionality into account), that they have up-to-

date information related to being LGBT and they reach out to the LGBT community. It would benefit victims of anti-LGBT hate crimes if there could be cooperation between these services and the LGBT NGOs.

## Funding

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Due to the 6th state reform, the Houses of Justice's victim support services became the responsibility of the Communities on January 1<sup>st</sup> 2015, no longer falling under the competence of the Federal Minister of Justice, but in Flanders, of the Minister of Wellbeing, Public Health and Family. This reflects a shift in policy. Since the reform, while the police and its victim support services remain the responsibility of the Federal State, the Houses of Justice, like the Centers for General Wellbeing, are now funded by the Flemish government.

The transition is still ongoing, bringing both opportunities and questions for the professionals working in this sector. It left some of the professionals we spoke to wondering how this would affect inter-agency cooperation, as they expect to see an evolution to more synergy between victim support services<sup>6</sup>.

## Conclusions and Recommendations

Advances have been made over the past few decades, to improve the rights and support of victims of crime and to establish solid cooperation between law enforcement and stakeholders on the issue of hate crimes. However, there is still much that can be done to improve the situation of victims of anti-LGBT hate crimes specifically, both at a legal level and in practical terms.

The current legal conceptualization of a hate crime fails to address all incidents that professionals would intuitively consider to be a hate crime. As it forms the basis upon which procedures, policies and institutions in this field are built, the legal framework should be carefully revised with its practical consequences in mind. Discussions should not be limited to which protected characteristics should be added to the Penal Code and which types of crimes should be considered.



6 At the time of the interviews, a proposal for a decree on the workings of the Houses of Justice had not yet been written and, at the time of writing, is still being discussed in the Flemish Parliament.

More cooperation should be facilitated between LGBT NGOs, victim support service providers and law enforcement. Existing initiatives and valuable efforts within the police and public prosecution service, to tackle hate crime more effectively, should be reinforced and should involve LGBT NGOs. Underreporting of anti-LGBT hate crime should be considered a nationwide problem that needs a more concerted effort, instead of being left to a few initiatives in a small number of districts. This, however, will require more sensitization and training of professionals. Without this, for most professionals within law enforcement or victim support services, it will remain easy to turn a blind eye to anti-LGBT hate crime, especially while the reported numbers remain low.

In light of the above discussion we make the following recommendations:

1. Include gender identity and gender expression in the hate crime provisions of the national Criminal Code and expand the applicability of the “reprehensible motive” to other crimes such as torture, extortion and murder.
2. Ensure the effective prosecution of anti-LGBT hate speech by adapting art. 150 of the Constitution to include an exception for press offenses that are motivated by anti-LGBT bias.
3. Evaluate the transposition of the Directive 2012/29/EU in the context of anti-LGBT hate crime, and take necessary measures to ensure effective enjoyment of the rights of victims of anti-LGBT hate crime.
4. Step up the efforts to promote and implement circular COL 13/2013 in all police and judicial districts, specifically with regard to its goal to improve registration and statistical analysis.
5. Develop and implement training for professionals working with victims of anti-LGBT hate crime. This training should include the impact hate crimes can have on victimized communities.
6. Develop an overarching policy to tackle the underreporting of anti-LGBT hate crimes including, but not limited to, proper registration and detection of hate crimes by law enforcement, outreach and reporting campaigns.
7. Strengthen cooperation between LGBT NGOs and victim support services.

*In memory of Joppe*

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# Bulgaria

*At a glance*

## Attitudes

According to the Special Eurobarometer (437/2015), 51 percent of the Bulgarians think that gay, lesbian and bisexual people should have the same rights as heterosexual people, but only 19 percent would feel comfortable with a couple, of two men, showing affection in public. Only 7 percent would feel comfortable with or indifferent to their child being in a love relationship with a transgender or transsexual person, which is the lowest level of acceptance in the EU.

## Victimization levels

According to the EU LGBT survey (2013), 31 percent of respondents from Bulgaria declared they had been physically/sexually attacked or threatened with violence in the previous five years; however, only 14 percent of Bulgarian LGBT respondents reported the most recent incident to the police.

## Official Statistics on Anti-LGBT Hate Crime

Bulgaria does not record anti-LGBT violence as hate crimes. No official data on the number of anti-LGBT hate crimes is available.

## Summary

- Anti-LGBT hate crimes in Bulgaria remain unrecognized by the law and, if recorded, they are usually treated by the police as acts of hooliganism. In only one case so far, has the court recognized the anti-gay motivation of the crime; in 2017 following a seven-year long trial.
- The transposition of the Victims' Rights Directive generally, has been insensitive to the needs of victims who may be vulnerable because of their sexual orientation, gender identity or gender expression, or because they have experienced a bias motivated crime.
- There is currently no state-endorsed prevention, recording, classification and analysis of anti-LGBT hate crimes, nor support for victims. In the absence of official statistics, the only data about anti-LGBT hate crimes is collected by LGBTI organizations and a small number of other human rights NGOs.
- Civil society organizations which provide services to victims of domestic violence and human trafficking are open also to supporting victims of anti-LGBT hate crime but acknowledge the need for training on this topic. LGBTI NGOs provide legal services, safe space and psychological support to victims.
- ODIHR and the Bulgarian Police Academy have trained some police officers and prosecutors to enable a better response to bias-motivated crimes but more capacity building on specifically anti-LGBT violence is needed.
- An effective response to anti-LGBT hate crimes in Bulgaria requires changes in the Penal Code; that is, introducing bias based on sexual orientation and gender identity, as an aggravating factor, as well as enhancing the collaboration between LGBTI NGOs and official stakeholders.



# Invisible Crimes – Anti-LGBT Hate Crimes in Bulgaria

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## Legal Framework

While Bulgarian law recognizes some hate crimes, the list of motivations constituting aggravating circumstances does not include sexual orientation, gender identity or gender expression. If reported, hate crimes targeting LGBT people are treated as hooliganism. LGBT victims' rights are not assured: the transposition of the Victims' Rights Directive has been insensitive to the support and protection needs of this group.

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The Penal Code (*Penal Code of the Republic of Bulgaria*, 1968, amended 2017) proscribes hate crimes in *Chapter III: Crimes against the Rights of the Citizens*. In the absence of a definition of "hate crime", the term which is used is "crimes against the rights of the citizens". There is no general penalty enhancement for hate crimes although the law criminalizes some deeds motivated by hatred, or instigating hatred towards people based on race, ethnicity or nationality, religious or political belief. These are as follows:

- Article 162 imposes legal sanctions on the incitement and proselytizing of discrimination, violence and hatred based on race, nationality or ethnicity, by means of speech, print or other mass media.
- Paragraph 2 of Article 162 penalizes any deeds of violence or damage to the property of someone, based on race, nationality, ethnicity, religion or political belief.
- Article 163 criminalizes participation in crowds that attack other groups of the population, based on their race, nationality or ethnicity.
- Articles 164 to 166 criminalize actions against religious freedoms and actions which incite hatred on the basis of religion.

The Penal Code does not contain any substantial provisions describing an act as a hate crime and/or hate speech based on sexual orientation, gender identity, gender expression or sexual characteristics. There are also no provisions characterizing this bias as an aggravating circumstance. Some level of protection against insults based on sexual orientation may be obtained from administrative or civil law, under the Law on Protection against Discrimination (Protection against Discrimination Act [Bulgaria], in force since January 2004), but the latter does not provide protection on the basis of gender identity and/or gender expression.

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One of our interviewees indicated that the police are generally insensitive to the hate motives of any crimes, even those that are covered by the law. “The big problem is the masking of discriminatory motives as ‘hooliganism’ This happens with all characteristics, even those that are included in the law” (Investigating police officer, interview 9).

The only case in which the homophobic bias of a crime has been recognized by the judiciary was the murder of Mihail Stoyanov in 2008, which was under investigation for 7 years, despite the fact that the perpetrators were arrested soon after the crime was committed.

*With this conclusion, Sofia Appellate Court admits for the first time, that a homophobic hate crime has been conducted, recognizes that the motive for the committed crime is the sexual orientation of the person, as well as the higher level of public danger of the defendants. But the court cannot apply a law on heavier criminal offense (although there is justification for such) because such law does not exist, nor does it exist in the Penal Code on aggravating circumstance that provides more severe punishment for homophobic offenses. (Appellate Court Sofia, Decision № 330/12.072017)*

The recognition of the homophobic motive for the murder came after an international advocacy campaign by the Bulgarian Helsinki Committee and Amnesty International which, in September 2012, started to draw attention to the slow investigation of the case and demand justice. The Amnesty International report on hate crimes in Bulgaria (published in 2015) also uses the above case as an example of the inadequate treatment of anti-LGBT hate crimes in the country.

In spite of several revisions of the Penal Code which have taken place since 2012, homophobic and transphobic motives are still not included as aggravating circumstances.

The recognition and investigation of anti-LGBT hate crimes was not improved with the transposition of the Victim's Directive, accomplished in 2016. Bulgaria has officially reported changes in 16 laws in relation to the transposition of the EU/2012/29 Directive. They provide improvements for the rights of victims in general, but no specific provisions for victims of bias-motivated crimes have been included.

The process of preparation for the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as "*The Istanbul Convention*", presented an opportunity for introducing homophobic and transphobic motives into the Penal Code. The convention was expected to be ratified at the beginning of 2018, but after a strong social and media campaign against it, it was withdrawn at the beginning of March of that year.

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### The Murder of Mihail Stoyanov

The 25-year-old medical student Mihail Stoyanov was murdered in 2008 in Borisova Garden Park in Sofia, which is a cruising area. In 2010, two young men were arrested as suspects. In their testimony to the police, they admitted that they were "clearing the park of gays" and were regularly assaulting gay men who were meeting there.

The two defendants were found guilty on 13.07.2017 by the Sofia Appellate Court, which ruled that their initial verdicts from June 2015 had been unreasonably lenient. In explaining its decision, the Sofia Appellate Court recognized – for the first time – the anti-gay motive of the crime, stating that the perpetrators were driven not by hooligan motives, but by strong and unreasonable hate against the victim's perceived identity and their own feeling of superiority over those they consider to be different (Appellate Court Sofia, Decision № 330/12.072017 r. on appeal, criminal case of general nature № 84/2016 r.).

## Professionals and Anti-LGBT Hate Crimes

All interviewed professionals from reporting centers and victim support services had a basic knowledge of the topic of hate crimes. Representatives of NGOs dealing with victims were more likely than police officers and prosecutors to acknowledge the necessity of special training on anti-LGBT hate crimes. Existing capacity-building opportunities for police and prosecutors on recognizing, understanding and investigating hate crimes so far, have covered only a small number of professionals.

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Hate crimes are understood as a concept, but are rarely dealt with in practice by professionals working at public and private reporting centers and in victim support services. Interviewed professionals, from both groups had a basic knowledge of hate crimes, in spite of the lack of definition in Bulgarian law. Only one respondent was insecure in defining the term and asked the interviewer to provide the definition for him/her (Interview 14) while everyone else gave adequate explanations of the term and included not only physical violence, but also recognition that hate crimes can be non-physical and include such things as hate speech, threats or damage to property.<sup>1</sup> However, some respondents were uncertain whether or not homophobic and transphobic motives are subject to sanction by the law (Interviews 6 and 13).

Only one of our respondents, who had formerly been working in the police service and was currently a lecturer at the Police Academy, had previously participated in in-service training on hate crimes. When asked if the different sub-groups affected by hate crimes (for example sexual or ethnic minorities) were addressed in the training program, the respondent answered: “No, because of the simple reason that the lawmaker did not see any difference [between them]” (Investigating police officer, interview 9).

This explains the overall lack of sensitivity to the special needs of victims of anti-LGBT crimes which was evident from the interviews with police officers; the general belief that all victims should be treated the same way prevailed. Because of this, respondents from the police



1 It is worth noting that four respondents (reference: interviews 11, 13, 15 and 18) admitted that they had searched online for information on hate crimes before the interview.

and the prosecution services did not acknowledge the necessity of additional training on understanding the needs of victims of anti-LGBT hate crimes. One of them, (Prosecutor, interview 19) gave no answer to this question, while the other did not answer directly, but explained that everyone would receive help, regardless of their sexual orientation. “Foundations like yours need to let those people (LGBTI) know, that when a crime is committed, they will receive attention, and their dignity will not be harmed” (Police officer, interview 17).

Professionals from NGOs, working with victims of gender-based violence and/or trafficking, showed a higher level of sensitivity towards the needs of different groups of victims, and acknowledged the necessity of receiving additional training on the special needs of victims of anti-LGBT hate crimes. Except for those respondents who were LGBT activists, everyone else admitted that they had received no training on the topic of anti-LGBT hate crime. When asked if anyone from their team underwent training on working with victims of hate crimes, one respondent, from a crisis center for women and children victims of violence, reported: “No one had; we encounter this topic for the first time through your organization” (Interview 14).

The respondents who had more in-depth knowledge of the topic, (Lawyer, interview 4 and investigating police officer, interview 9) underlined that there is a general problem with the treatment of hate crimes in Bulgaria, because the hate motives which lie behind them are misunderstood and neglected. The Investigating Police Officer (Interview 9) suggested that very often, hate crimes on grounds such as ethnicity or religion (which, unlike sexual orientation and gender identity, are included in the law) are not classified as crimes with discriminatory motives, but rather, as hooliganism. The same respondent believed that what matters in a case of hate crime, is the discriminatory motive and not the actual identity of the victim. He did not believe that collecting information about the identity of the victim was at all important.

While we did not identify any professionals who specialized in working with victims of anti-LGBT hate crimes (except for the experts who are LGBT activists), all respondents from NGOs who were providing support services expressed a willingness to expand their knowledge and skills for dealing with this group of victims. Unlike them, the professionals from public reporting centers were not interested in dealing with aspects of a crime which are not formally regulated by the law.

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A common view among the respondents from NGOs was that the training of police officers on human rights related issues is the key to better reporting by and better provision of help to the victims of hate crimes. Training courses for police officers and prosecutors have already been delivered by ODIHR and by the Academy of the Ministry of Interior, but so far, they have not produced a systemic effect. We learned about two training modules offered by the Academy of the Ministry of Interior (Investigating officer, lecturer at the Academy, interview 9). In 2012, a discipline titled *“Protection from discrimination”* was introduced in the Master’s program for police officers where LGBTI issues were also included. For police officers on the Bachelor’s Program, there was a discipline titled *“Protection of human rights”*. The Police Academy had also organized 3 conferences on protection from discrimination and human rights within the last 6 years and had published two handbooks for police officers on the same topics. These initiatives were part of internationally-funded projects in which the Academy was a partner. None of the tools that we heard about were available online.

### **Good Practice: Joint training on hate crimes for police officers and prosecutors**

In July 2015, Bulgaria’s National Institute of Justice signed an agreement with ODIHR to train prosecutors in recognizing, understanding and investigating hate crimes. This followed the police training on hate crime which has taken place in Bulgaria since 2012.

At the beginning of 2018, both programs were combined and a series of joint training programs brought together prosecutors and police officers in three towns (75 people were trained altogether). Some aspects of anti-LGBT hate crimes were covered in the training.

Training sessions were also implemented as part of the project, *Building a Comprehensive Criminal Justice Response to Hate Crimes*.

See:

<https://www.osce.org/projects/criminal-justice-response-hate-crime>

## Reporting Anti-LGBT Hate Crime

Hate crimes against LGBT people in Bulgaria are rarely reported to the police. The LGBT community is hesitant to report incidents of violence because of fear of a homophobic reaction and/or secondary victimization, and a general lack of trust in the public institutions. LGBT organizations are the only ones collecting data on anti-LGBT hate crimes, by means of an online platform that encourages reporting within the community and by means of face-to-face meetings.

In Bulgaria, crimes are expected to be reported to the police in order to be investigated further. They can be reported to any police officer in any police station, or to regional police inspectors. According to one respondent (Police inspector, interview 17) it is also possible to report crimes by e-mail. All reports are verified, even those which are anonymous. This was confirmed by another respondent (Lawyer, interview 4) but does not seem to be a consequence of any formal law or regulation.

In theory, anyone can report a crime to the police but in practice, many people from the LGBT community fear doing so because they expect to encounter homophobic, biphobic and transphobic attitudes. This fear has its roots in numerous cases when police officers have actually behaved in negative ways towards LGBT people including sometimes, cases of police brutality. For example, the participants at Sofia Pride have heard homophobic remarks from police officers protecting the street march. In 2015, Bilitis Resource Center found, in research, that some police officers not only failed to protect but actually abused trans women sex workers who had reported assaults by clients (*Domestic and Dating Violence against LBT Women in the EU*, 2016).

According to one respondent, when a hate crime is reported to the police, the victims fill out a form where they add information about their biological sex and their ethnicity (Police inspector, interview 17). The form does not include options for sexual orientation or gender identity. He hinted that victims who are LGBT often feel reluctant to share their identity because they do not want to be outed if the case is publicized. One respondent, working at the Bulgarian Helsinki Committee, who is also an LGBTI activist, suggested, in fact, that one of the main reasons for LGBT people not reporting crimes to the police is the fear of coming out (Interview 12).

Underreporting, resulting from shame and fear of coming out was confirmed by another interviewee who works at an NGO for HIV prevention and reported that in his work he had met victims of anti-LGBT hate crimes on many occasions:

*I know many people who have suffered hate crimes. In the beginning, when I started in our organization, I thought that these things happen to 1 out of 1000 people and the victim “was asking for it”, but actually that’s not true at all... Victims seek protection very rarely, firstly they search for the guilt in themselves ... they feel ashamed even to say that something like this has happened to them, this (anti-LGBT hate crimes) is basically a taboo topic. (Interview 16)*

In relation to outreach activities, there has never been a state-organized, or a state-supported campaign aimed at encouraging victims to report crimes motivated by SOGI, whereas LGBT organizations have been actively encouraging this since 2015. In that year, GLAS Foundation created the online reporting service, *tolerantni.com* (initially named *wearetolerant.com*) for anti-LGBT hate crimes, accessible to people from all over the country. The foundation also held an outdoor and online awareness-raising campaign called “*Bulgaria – country without homophobia*”.

*Tolerantni.com* was upgraded in 2017 with support from ILGA-Europe, which provided the methodology for collecting, classifying and analyzing the data. It collects information about the type of crime, place of occurrence, relationship between the victim and the offender, and whether the crime has been reported to the police. The reports can be anonymous or they may include personal data (personal information is required if the victim wishes to receive further support). The 33 completed, unique reports show that the most common type of incident which occurred in 2017 was threat, followed by physical assault (*Report on anti-LGBT Hate Crimes and Incident in Bulgaria in 2017*, GLAS Foundation, 2018). In the same year, another NGO, Youth LGBT Organization “*Deystvie*”, also researched and collected information about anti-LGBT hate crimes, by means of interviews with 25 victims.

In the absence of any official data on anti-LGBTI hate crimes (see section 3.8), the information collected by GLAS Foundation and “*Deystvie*” demonstrates that LGBT people are common victims, and hate

crimes against them remain both underreported and under-investigated. While there are no official records of anti-LGBT hate crimes in the last 2 years, the LGBT organizations have collected information on over 55 incidents which have taken place in the last 12 months. None of the 33 victims who reported to GLAS, and only 1 in 25 victims who spoke to “Deystvie” had reported the incident to the police. In fact, the only case in which the victim has reported to the police has not yet been investigated, and the lawyer who consulted the victim thinks that it will not be taken any further because there was only a mild body injury (Interview 4). While various reasons for not reporting to the police were provided many victims said that they felt too uncomfortable to report, either because they did not believe the incident would be taken seriously and effectively investigated, or because they feared they might experience additional harassment from police officers. Witnesses of the crimes have also suggested that the victims did not report the incidents because of lack of trust that the police could help them and for fear of secondary victimization (*Hate Crimes and Incidents Based on Sexual Orientation, Gender Identity and Gender Expression; Carried Out in Bulgaria in 2017*, Youth LGBT Organization “Deystvie”, 2018).

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The fear that investigation into the case would neither be seamless nor unproblematic is not exaggerated. The ineffective and very slow investigation of the most serious cases such as the murder of Mihail Stoyanov in 2008 (see section on law, above), which took seven years to investigate, discourages the victims of anti-LGBT hate crimes from reporting and seeking justice. The fact that anti-LGBT hate crimes are not recognized by the law is also well-known in the LGBT communities.

The above findings suggest that, except for the capacity building and sensitization efforts in the police force (see previous section) the authorities need to ensure that victims feel empowered and safe in approaching law enforcement agencies.

## Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process

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The transposition of the Victims' Rights Directive into national legislation led to the improvement of some legal texts concerning the rights of victims. However, no specific mention of SOGI is to be found in the revised laws. The results from our research do not show any specific strategies for providing support to victims of anti-LGBT hate crimes and avoiding secondary victimization. Victims of anti-LGBT hate crimes face many challenges in relation to reporting, investigation and lack of support in the criminal justice process which creates a vicious circle of underreporting, low levels of investigation, and inadequate criminal law.

Bulgaria transposed the Victims' Rights Directive into national law, albeit with some delay, in 2016/2017. The transposition does not recognize SOGI as factors contributing to the vulnerability of some victims and there is no mention of the specific need for protection of victims of anti-LGBT hate crimes. In addition, none of the interviewed professionals from the public reporting centers had personal experience of victims of anti-LGBT hate crimes. We therefore found no official information on how such victims are treated and whether they are directed to appropriate support centers. Since access to trial depends on the timely reporting of a crime and the collection of sufficient evidence, we can only assume that the lack of specific measures of support and empowerment for victims of anti-LGBT hate crimes also leads to diminishing access to justice for them.

The "Right to Protection", guaranteed by the transposition of the Directive, requires the police to assess each individual victim to find out whether they are likely to suffer further damage during criminal proceedings. In order to do this effectively, the police should be sensitive to the specific needs for protection of the different groups of victims. We found no evidence that the Bulgarian police are using this approach with victims of anti-LGBT hate crimes. The invisibility of SOGI-biased crimes within the current legal framework creates a vicious circle of underreporting, inadequate assessment of the specific needs of the victims, and inadequate follow-up support, which in turn leads to low awareness of this type of crime and inadequate criminal laws to combat it.

*The police are not sensitive at all to any hate crimes. There are only a few cases which were handled as general hate crimes in Bulgaria. Furthermore, the police are even less sensitive to anti-LGBTI hate crimes. (Lawyer at Youth LGBT Organization “Deystvie”, interview 4)*

The lawyer continued by saying “[a]nti-LGBTI crimes are treated the same as any other crime” (Interview 4). If the victim has suffered from a mild body injury, the crime is further investigated only on the basis of a private complaint. This places enormous pressure on the victim to collect sufficient evidence to file a complaint, and to find a lawyer for the court case. If the crime has resulted in medium or severe body injury, the process of investigation is led by the prosecution. “Medium and severe body injuries are treated as offenses of a public criminal nature,...[B]ut it does not mean that if there was a homophobic motive, it would be adequately registered. Anti-LGBT hate crimes are usually registered as other crimes of a general nature, and sometimes ‘hooliganism’ is mentioned as an aggravating factor” (Lawyer, interview 4). We believe that hooliganism does not provide an adequate framework for responding to anti-LGBT hate crimes (see next section).

There are no strictly established procedural means for the police to handle cases of anti-LGBT hate crimes. As a co-organizer of Sofia Pride, Bilitis Resource Center collects information about pride-related incidents. We have information about one specific case in which the victim of anti-LGBT hate crime has been discouraged from using a lawyer when she reported to the police. This individual case suggests that the police were not interested in starting a further investigation of a crime with an obvious homophobic motive. The interviewed lawyer (Interview 4) also spoke about other cases in which the police have registered anti-LGBT hate crimes consisting of mild body injury or verbal threats and the latter have not been further investigated. She concludes:

*The victims of anti-LGBT hate crimes do not have equal access to justice in Bulgaria... The absence of a law which takes into account their specific needs is a prerequisite for discrimination and works against the principle of equal treatment by the law. It is a prerequisite for unequal treatment and deprivation of human rights, including the right to life. (Lawyer, interview 4)*

## Recording anti-LGBT Hate Crime

The law-enforcement institutions in Bulgaria do not record the bias motivations of hate crimes and no official records are available on anti-LGBT hate crimes. According to our research respondents, when reported, anti-LGBT hate crimes are mostly classified as “hooliganism”. The only existing records of hate crimes were provided by LGBTI organizations who collected data online and during community meetings.

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The authorities responsible for collecting hate crime data in Bulgaria are the Interior Ministry’s Co-ordination, Information and Analysis Directorate; the Supreme Judicial Council’s Commission on Professional Qualification, IT and Statistics; the Supreme Court of Cassation’s Criminal College; the Supreme Prosecutor of Cassation’s Analysis Unit; and the National Statistical Institute.

The law-enforcement institutions only record data on hate crimes which are formally recognized in criminal law. In 2016, a total number of 28 hate crimes were reported by the state, to ODIHR. However, they are not sufficiently disaggregated and the bias motivations are not recorded (Human Rights First, Anti-Defamation League, 2016). One of our respondents, a police inspector, confirmed this lack of disaggregation;

*I asked my colleague who works with this, to extract (information) specifically about bodily harms on racist, hooligan, and xenophobic motives, but they are under the same section. I checked them right before I came here: there are 60 cases in total for the last year and a half, but in the annotation for all of them is written “hooligan motive”. We have not had any racist or xenophobic (crimes) in a long time. (Police inspector, interview 17)*

*Data on hate crimes are not published. The police create records for all of the cases they work on but their reports are not available to the public, not even with anonymized data: Everything stays here with us... these reports contain a lot of personal data... we don’t have such a practice. (Police inspector, interview 17)*

There are no official data on anti-LGBT hate crimes. As part of the data collection process, Bilitis Resource Center requested official information from the Minister of the Interior, the Chief Prosecutor, and the Director of Sofia Directory of Internal Affairs, on the number of reported and investigated anti-LGBT hate crimes in 2015 and 2016. They also asked for information on protection and support services for LGBT hate crime victims. The responses from the Minister of Interior and the Chief Prosecutor stated that these institutions are not obliged to collect, analyze, classify and disclose such information while the Sofia Directory of Internal Affairs stated that the number of registered cases was zero.

Our research shows that in the rare cases when homophobic attacks were recorded by the police, or criminal proceedings have been instituted, the perpetrator has been charged with causing bodily harm because of hooliganism (Art. 131, para. 1, item 12 of the Criminal Code). The case of Mihail Stoyanov (see box in section on law) is the notable exception here. Previous reports also indicate that the homophobic motives of the crime are usually not taken into account (Amnesty International, 2012, 2015). Our Police Inspector respondent suggested another way to record homophobic and transphobic crimes: "There are no such terms (homophobic and transphobic motives), but yes (they can be registered as xenophobic crimes), based on hate" (Interview 17). But even if anti-LGBT hate crimes are classified as xenophobic crimes we will not have statistics on the number of anti-LGBT crimes committed in the country, because they will be in the same group as other xenophobic crimes.

Hooliganism is defined as an act of anti-social behavior, brutally violating public order and manifesting in obvious disrespect for society. It does not provide an adequate frame for treating hate-crimes because it neglects and hides the bias motives, and makes them invisible. The consequence is that specific, vulnerable groups of victims will not receive adequate evaluation of their needs during the investigation process, and their rights will not be guaranteed.

ODIHR reports on two national developments which are expected to improve recording of hate crimes in the Bulgarian context. The first is a training workshop on the practical difficulties of investigating crimes with discriminatory motives, held for 85 investigating police officers from the Investigation Department at the Regional Office of

the Ministry of Regional Development and Public Works. This training programme was conducted by ODIHR. The second is the development of two curricula prepared by the Ministry of Interior for both new recruits and experienced police officers. The curricula focused on working in multicultural environments, the use of force, aids and weapons from police authorities, anti-discrimination and hate crimes. The program prepared 41 officers as trainers to further cascade the courses (ODIHR 2017).

In the context of civil society recording, information collected from the NGOs is not used to create national statistics. Just eight incidents were reported to ODIHR by civil society organizations in 2016 but none of these were anti-LGBT hate crimes. The number of organizations collecting data on this kind of victimization however, is growing. Notably, the GLAS foundation (see the section on reporting above) started to collect data in 2015. The two most recent reports published by GLAS Foundation and Youth LGBT Organization “Deystvie” at the beginning of 2018 feature over 55 individual cases recorded by the LGBT organizations in 2017.

Some NGOs interviewed in this research, who provide support for victims, keep their own records, every year classifying the cases they worked on by type of crime – domestic violence, gender-based violence, sexual assault and human trafficking. However, these NGOs, so far, have no data about victims of anti-LGBT crimes because the latter have not turned to them for support.

#### **Good Practice: Collecting data and awareness-raising on anti-LGBT hate crimes by Youth LGBT Organization “Deystvie”**

In the period from May to October 2017, Youth LGBT Organization “Deystvie” organized community meetings in 4 major cities of the country, to encourage reporting of anti-LGBT hate crimes and hate-based incidents. Over 350 people took part. They were encouraged to fill in an online reporting form if they had personally been affected, or if they had witnessed a hate-based incident. Two different online questionnaires were distributed, one for victims and one for witnesses. In addition to the questionnaires, representatives of “Deystvie” held face-to-face meetings with all individual victims and witnesses who reported, to get further details about the cases. The organization

combined data collection with awareness-raising among different professionals on the topic of anti-LGBT hate crimes. They organized meetings with regional police departments in several major cities as well as meetings with prosecutors and NGO experts (lawyers, psychologists).

### **Support for Victims of Anti-LGBT Hate Crime**

**The existing support services for victims of anti-LGBT hate crimes are provided exclusively by NGOs which rely on private funding. State-subsidized victim support centers are under-resourced and unable to provide adequate services to victims of anti-LGBT hate crimes, although they have shown good will in attempting to do so.**

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The law-enforcement and criminal justice agencies fail to consider that diverse groups of victims of hate crimes have different needs. While police are currently receiving a lot of training, including on hate crimes (see section 3.5), the issue here is that these training events cover hate crimes in general and do not discuss the specific needs of different vulnerable groups of victims. “The lawmakers and we also, do not think that those people, when they have suffered a crime, are somehow different from anyone else who is also a victim of the same kind of crime. They will receive support; for us it doesn’t matter what their sexual orientation is” (Interview 17). A respondent who works as a prosecutor echoed this, saying: “What does it mean ‘specific needs’? According to the current legislation all citizens are equal” (Interview 19).

The above quotes reflect the reality that the specific needs of victims of anti-LGBT hate crimes are not recognized; the professionals at reporting centers and victim support centers are not informed about them and the victims do not receive adequate help.

Attempts to familiarize regional police departments with the needs of victims of anti-LGBT hate crimes have been made by Youth LGBT Organization “Deystvie” through a project implemented in 2017, but the effect is very limited in scope. The efforts of NGOs to train the police to recognize the specific needs of victims of anti-LGBT hate crimes will not produce sustainable change in the practice of law-enforcement institutions unless there is an official policy which requires this approach to be used consistently, across the country.

Our research on victim support centers managed by civil society organizations included mainly shelters and crisis centers which provide services to victims of domestic violence, gender-based violence, and human trafficking, because these are the main types of services subsidized by the state. Within the country, there are several such shelters and emergency housing facilities which provide psycho-social support, as well as legal counseling. These NGOs have shown great willingness to help victims of anti-LGBT hate crimes but they reported that such victims have never yet turned to them for support.

The NGOs managing victim support centers usually work closely with the police and in both the capital as well as in smaller towns, the police know the organizations and redirect victims there. They give the victims information brochures, contacts or take them directly to a shelter, depending on the case. When asked why, in their opinion, LGBT people hesitate to ask for help from victim support service centers, the respondents suggested that one of the reasons might be because the NGOs had never openly stated that they work with this group:

*If they worry and are afraid to ask for help, this will give them freedom to forget these concerns and they will ask for support. At least in this way they will be assured that the people here are familiar with the problem and can help them. (Manager of crisis center, interview 2)*

A good practice in this respect was announcing, on their website and in social media, as well as in brochures and other information materials that the organization would accept and provide support for LGBT people. This practice was found in the work of the IMAGO Association and the Bulgarian Helsinki Committee.

All the respondents from shelters and crisis centers admitted that they need further training on working with LGBT people who are victims of hate crimes. For example, one respondent stated:

*In my work practice I didn't have access to such training [on anti-LGBT hate crimes]; it is interesting to know more, to have more comprehensive information and a way of working, because when a person stands in front of you, you don't know who they are... As in working with victims [of domestic violence] there are specifics*

*[in working with LGBT] as well; anything said on this topic will be new for me and I'm open to developing and learning about methods and techniques of work, even about how to lead the conversation with such people, the behavior you need to have, their exemplary reactions... Certainly, everything that can be used to work with these [LGBT] people will be interesting to me... There must be awareness at least among the specialists. (Social worker, interview 13)*

When it comes to housing and shelters, a number of respondents shared a concern that since the organizations' shelters are only for women, if a male victim of hate crime or domestic violence looked for shelter there, this would be a problem. For example, the manager of one of the crisis intervention centers said:

*If it's a man victim, such a shelter and crisis center – we don't have any; they are all for women. And if there is an elderly man, a victim of violence, or in a homosexual relationship, there is nothing to do; there is no place to redirect them. Our crisis center is only for women and children, its capacity is so small – for 8 people – and there is no way to adapt male and female parts. (Interview 2)*

Because of the problem with the housing, the respondent stated that a male victim will not receive shelter, but will receive psychological support in their organization. In a similar vein, a respondent, working in a reporting service, said: "Here in the region there is a crisis center; the work with them is very easy-going; we redirect there, mainly women, victims of domestic violence, but a man will not receive shelter there" (Police inspector, interview 17).

Another concern shared by most of the respondents from victim support providing centers, was that they did not have enough capacity to work with victims of hate crimes. They did not have enough staff or funding, and when it comes to victims of anti-LGBT hate crimes, they were not adequately trained. Such organizations commonly receive very low government funding in Bulgaria and their existence depends on grant funding, so they spend a lot of their staff time on preparation of grant proposals. They typically do not have enough rooms, beds, sanitary products, and other supplies, and often they house more people than their capacity allows (Interviews 1, 2, 5, 10 and 13).

Against this background, we identified two examples of good practice, featured in the box below; the online psychological consulting service, provided by the IMAGO Association, and the intersectional approach to victims of hate crimes, applied by the Bulgarian Helsinki Committee.

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### **Good Practices: Online Consultation by IMAGO Association**

IMAGO Association, based in Sofia, provides the service of online psychological counseling. Their psychologist has at least one meeting in person with the client, in order to build trust between them and afterwards they continue their meetings online. This is a very good example of accessibility since, in many cases the victims don't have the financial or physical ability to go continually to the office of the association. This is very suitable for people who live outside of the capital city, and even for people who live abroad.

### **An Individual and Intersectional Approach in every Case**

The Bulgarian Helsinki Committee, which has experience of working with LGBTI people, has developed good practice in considering the individual situation of each person seeking help. They consider not only the sexual orientation and gender identity of the person but also, whether the person is out or not, if they are in contact with their family, and they keep in mind the awareness that femininity and masculinity can vary. This helps them to provide help without causing any extra harm to or victimization of the person, and builds trust.

## Conclusions and Recommendations

The lack of any legal mechanisms to deter and deal with hate crimes based on homophobic, biphobic and transphobic motives is the main barrier to maintaining official statistics on anti-LGBT hate crimes, and to providing adequate support to the victims.

Based on our research findings, the following recommendations have been formulated for consideration by the Bulgarian state. Bulgaria should:

1. Introduce hate crime legislation into the Penal Code, covering discrimination based on sexual orientation and gender identity.
2. Make more effective, the investigation and prosecution of hate speech and violence, including those against persons, based on their sexual orientation or gender identity.
3. Intensify its efforts to protect individuals from homophobia, biphobia, transphobia, and hate crimes by encouraging reporting and ensuring proper recording of anti-LGBT hate crimes, as well as ensuring that bias motives are fully taken into account in the investigation, prosecution and sentencing of offenses.
4. Ensure appropriate training for public servants in the police and prosecution services, and the legal system, with the purpose of raising their awareness of anti-LGBT hate crimes and how to support victims.
5. Recognize that LGBTI organizations can be an important ally of the police and other law-enforcement bodies in the process of anti-LGBT hate crimes reporting, recording, investigation, and offering assistance to the victims.
6. Build the capacity of service providers working with victims of crimes by sensitizing them to the specific needs that victims of anti-LGBTI crimes have.
7. Build the capacity of service providers working with victims of crimes by better funding for these services, to enable provision of support to diverse and vulnerable groups.

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# Croatia

*At a glance*

## Attitudes

- Less than a half of the respondents (48 percent) in the Eurobarometer survey (437/2015) show positive attitudes towards gay, lesbian and bisexual people having the same rights as heterosexual people. Only 23 percent of the respondents are comfortable with seeing public displays of affection between gay couples (and 27 percent for lesbian couples), while the proportion for a heterosexual couple is significantly higher (50 percent).
- Findings about discrimination towards transgender persons show that only 27 percent of the respondents would be at ease or indifferent with a son or daughter having a relationship with a transgender person.

## Victimization levels

According to the EU LGBT survey (2013), 35 percent of respondents from Croatia declared themselves to have been physically/sexually attacked or threatened with violence in the previous five years; however, only 20 percent of Croatian LGBT respondents reported the most recent incident to the police.

## Official Statistics on Anti-LGBTIQ Hate Crime

In 2016, the police recorded and reported, to ODIHR, 35 cases of hate crimes without disaggregating them based on bias motivation. A year earlier, Croatia recorded and reported 24 hate crimes, out of which five were motivated by bias based on sexual orientation or gender identity.

## Summary

- Sexual orientation and gender identity are recognized in the Croatian legal system as protected grounds, and legal measures for victims of hate crimes are provided.
- The provisions of the Victims' Rights Directive were implemented in Croatia in July 2017 through the new Criminal Procedure Act.
- Most interviewed professionals working with hate crime victims in Croatia have a satisfying level of knowledge about the legislative regulations regarding hate crime – fourteen out of 20 interviewed professionals recognize the motive as an essential element of the offense.
- More than half of the interviewed professionals express the opinion that there is a need for education and sensitization of professionals about LGBTIQ victims.
- Difficulties exist, in practice, since there are no state-coordinated and financed support services which would specifically target victims of anti-LGBTIQ hate crimes.
- Information about the victims' rights is often given without practical information on how to realize these rights, and without an awareness of the specific needs of LGBTIQ persons.
- Neither NGOs (non-LGBTIQ) nor public institutions have any protocols, training programs or persons sensitized for working with LGBTIQ victims
- Data on hate crime are collected by the Government's Office for Human Rights and Rights of National Minorities but no official data on anti-LGBTIQ hate crime is publicly available.



# Making it Work: Implementing Anti-Hate Crime Regulations in Croatia

*Mia Gonan and Katarina Jaklin*

## Legal Framework

The Croatian legal system recognizes sexual orientation and gender identity as protected grounds and provides other legal measures to support the victims of anti-LGBTIQ hate crimes. The recently implemented Victims' Rights Directive (2012/29/EU) has made it possible for the victims of anti-LGBTIQ hate crimes to receive special protection measures during criminal proceedings. However, problems persist in transposing the Directive's requirements into practice, especially in organizing an adequate victim support system. Another major problem identified in Croatia's legal framework is the absence of recognition and protection of intersex persons.

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## Hate crime laws

In the Croatian legal system hate crime is recognized and defined by the Criminal Code (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17). It was introduced in 2006 with new amendments to the Code. The first statutory definition of hate crime was in the form of an open catalogue and it explicitly included the grounds of sexual orientation amongst other grounds. The law established hate crime as a qualified form of crime only in the case of the criminal offense of murder. Yet, the introduction of hate crime did not lead to harsher penalties or significant changes in practice or the way the criminal cases were processed (Bandalo et al 2011: 56).

The improvements in protection against homophobic and transphobic hate crimes came with a new Criminal Code that entered in force in January 2013 and has since then, defined hate crime as "... a criminal offense committed on account of a person's race, color, religion, national or ethnic origin, disability, gender, sexual orientation

or gender identity” (Article 87.21). The new law expanded the grounds for hate crime and explicitly mentioned sexual orientation and gender identity as a potential hate bias. However, sex characteristics were not introduced as a protected ground and intersex persons are still not explicitly protected by any law in the Croatian legal system. In addition to the improvement of the definition, the Criminal Code, from 2013, introduced hate crime as a qualified form of crime for a number of criminal offenses, specifically, in cases of the criminal offense of aggravated murder (Article 111), female genital mutilation (Article 116), bodily injury (Article 117), serious bodily injury (Article 118), aggravated assault (Article 119), serious crime against sexual freedom (Article 154) and provoking riots (Article 324). The new law prescribes harsher penalties than the previous version (of the same law) and establishes hate bias, in conducting a criminal offense, as an aggravating circumstance (unless a more severe penalty is not prescribed by the Criminal Code). Enhancements are also visible in cases of criminal offenses of coercion (Article 138) and threat (Article 139). When those offenses are motivated by hate, the law prescribes that the criminal procedure is initiated by an official authority and not, as before, through a private lawsuit.

To supplement the Criminal Code, the Protocol for Procedure in Case of Hate Crimes was adopted in 2011 by the Croatian Government, in order to regulate the work of all official bodies involved in detection and prosecution of hate crimes, as well as to ensure the monitoring of the outcomes of hate crime proceedings (Government of the Republic of Croatia 2011). The Protocol emphasizes the need for particular care for the victims of hate crimes, and for respecting their dignity in order to avoid secondary victimization. Cooperation with civil society organizations and experts is advised if it would help the victim or the proceedings of hate crime cases.

In addition to the discussion above, the Criminal Code makes other legal provisions that are applicable to anti-LGBTIQ incidents. The first is the criminal offense of violation of equality (Article 125) and states that,

*whoever, on the basis of race, ethnic affiliation, skin color, gender, language, religion, political and other convictions, national or social origin, property, birth, education, social status, marital or*

*family status, age, state of health, disability and genetic inheritance, expression of gender identity, sexual orientation or other characteristics, denies, limits or conditions another, the right to acquire goods or receive services, the right to carry out an activity, the right to employment and promotion, or whoever on the basis of any such characteristic gives another privileges or advantages, shall be punished by imprisonment not exceeding three years. (Criminal Code, Article 125, Section 11)*

It also includes penalties for persecution of individuals or organizations that promote inequality between people. The second provision is Article 325 on public incitement to violence and hatred. This article includes and explicitly mentions hate speech on the grounds of sexual orientation or gender identity and it also covers different forms of media and public incitement, from the internet to printed media and public announcements.

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### **The Implementation of the Victims' Rights Directive**

The provisions of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, were implemented in Croatia in July 2017 through the newest amendments to the Criminal Procedure Act (Official Gazette 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17). The most significant novelty that can have implications for the protection of victims of anti-LGBTIQ hate crimes is the inclusion of individual assessment of the victim in order to determine if special protection measures are needed. This provision expanded the possibility of granting special protection measures to, among others, victims of gender-based violence, violence in close relationships, sexual violence and sexual exploitation, and hate crime, if the conclusion of the individual assessment process is that such measures are necessary (Article 43a and Article 44 (5)). The implementation of this measure is also regulated by the Ordinance on the manner of conducting individual victim assessments (Official Gazette 106/17) that came into force on 31 October 2017. Even though the recognition of victims of hate crimes represents an improvement, the law and additional regulations are still relatively vague in defining the specific measures. For example, the Criminal Procedure Act and the Ordinance define the

bodies responsible for the implementation of the measure of individual assessment of the victim in different ways, which makes these regulations not only vague but also discrepant. Furthermore, the law and the Ordinance did not specify who are the persons authorized to perform an individual assessment, what the necessary professional qualifications are, or if there is a need for specialist education in order to be qualified for this task. The imprecision of the regulations can lead to different interpretations and consequently, does not guarantee that victims of hate crimes, or specifically anti-LGBTIQ hate crimes, will be assessed properly and that their needs for special protection measures will be recognized.

Apart from formal transposition of the Directive's provisions into the national legal system, most of the problems regarding the transposition are connected to actual practice. The major difficulty is the lack of an adequate system of victim support services. Even though special offices for support of victims were established in seven courts in Croatia in 2017 and five NGOs were financed to provide support services in regions where court support is not available, the territorial coverage of support is not complete. This decreases the availability of, and access to, systems of support. Regarding victims of anti-LGBTIQ hate crimes, there is no systematic support or a plan for systematic support that would target victims of homophobic or transphobic hate crimes or accommodate their specific needs. Another problem is that the transposition of the Directive in the Criminal Procedure Act only applies to criminal offenses. Since a great number of anti-LGBT hate crimes are not recognized as such and are often processed as misdemeanor offenses, the victims cannot qualify for support services or special protection measures.

To conclude, since the implementation of the Victims' Rights Directive is relatively new, it is hard to assess at this point, if this has improved the situation of victims of anti-LGBTIQ hate crimes, and if so, to what extent. Thus, further research is needed, as well as monitoring and evaluation, and/or studies on the effectiveness of transposition.

## Professionals and Anti-LGBT Hate Crimes

The professionals interviewed for the purposes of this research showed an intermediate level of knowledge about the legislative regulations regarding hate crime. This knowledge does not always imply a wider understanding, either of hate crime as a social problem, or of the impediments that LGBTIQ victims face when accessing justice. Furthermore, more than half of the interviewed professionals expressed the opinion that there is a need for education and sensitization of professionals about LGBTIQ victims. Concrete steps in this direction have so far only been taken by the Ministry of Interior, which has introduced regular courses on LGBTIQ victims at the Police Academy.

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Croatian professionals were included in the research studies, *Ensuring Justice for Hate Crime Victims: Professional Perspectives*, which included findings and professional opinions about the rights of LGBTIQ victims in Croatia, and *Professionally Speaking: Challenges to Achieving Equality for LGBT People*, both published in 2016 by the European Union Agency for Fundamental Rights (FRA). In addition, insights about the state of rights of LGBTIQ victims of hate crime can be found in the report, *Legal protection of LGBT People – Victims of Crime: The Level of Transposition of the Victims' Rights Directive in Central and Eastern Europe*, (KPH 2016) produced in 2016 by civil society organizations working on the international project *Hate No More*<sup>1</sup>, which dealt with the state of implementation of the Victim's Rights Directive. These sources indicate that there are problems with the implementation of the existing legislation which derive from, the legal regulation being ambiguous and unclear, a lack of knowledge and awareness among professionals, and a lack of coordination between different institutions.

In the *Come Forward* research study, professionals were asked to provide their own understanding and interpretation of hate crime in



1 Full title of the project: *Hate No More: Accommodating the needs of the victims of homophobic and transphobic hate crimes – raising the competences of law-enforcement institutions*; coordinated by the Campaign Against Homophobia (Poland) and implemented by six other partner organizations from five countries: Hungary, Lithuania, Latvia, Croatia and Poland.

Croatian legislation. Fourteen of 20 interviewed professionals (two did not offer their understanding of hate crime) recognize the motive as an essential element of the offense, although only five of them explicitly mention the motive while nine define hate crime as violence committed against somebody based on their real or perceived characteristics. Four professionals demonstrated a very vague understanding of hate crime while four, working in victim support NGOs and in victim support services, believe that the legislative definition of hate crime should encompass more types of violence and abuse. However, three other professionals from reporting centers underlined that the legal definition of hate crime does not list the types of offenses but regards the motive of hatred as an aggravating circumstance. Two professionals from reporting centers stated the view that the fact that the victim identifies as LGBTIQ, or their physical appearance indicates they might be LGBTIQ, is enough to classify the offense as a potential hate crime. However, one person asserted that the victim's identity is not the focus, but it is the context of the event that should be investigated thoroughly.

Five professionals, three working in reporting centers and two at support services, showed a high level of awareness of the laws that regulate hate crime (Interviews 1, 3, 7, 12 and 14). However, most interviewed professionals showed uncertainty about the protected grounds listed in the Criminal Code; some were not aware of all the grounds while some confused the grounds prescribed by the Criminal Code with those prescribed by the Anti-Discrimination Act. Four respondents mentioned sexual orientation and gender identity as the grounds prescribed by the Criminal Code (Interviews 3, 4, 6 and 12), and two mentioned only sexual orientation (Interviews 1 and 6). However, all respondents demonstrated awareness that hate crimes were also directed against LGBTIQ persons, and four people talked about intolerance towards difference as an element of hate crime in general (Interviews 3, 4, 13 and 18). Hate speech and public incitement to violence and hate were mentioned by two professionals working in reporting centers and two at support services (Interviews 7, 8, 13 and 14). One of these believed that the Criminal Code defined hate crime in a "hybrid" way, since Article 87 refers only to the motive of hate as an aggravating factor without mentioning the offenses, and then, several other articles speak about specific offenses (Interview 14).

Persons working in NGOs perceived the problem of anti-LGBT hate crime as more severe than those from public institutions. Furthermore, the interviewees from public institutions were more optimistic and believed that progress regarding combating hate crime was being made. Only two interviewees from public institutions were aware that persons who experienced hate crime were not satisfied with the reactions of the legal system, while four were aware that most of their colleagues show prejudiced and disrespectful behavior toward LGBTIQ persons.

Eleven out of 20 interviewed professionals (four from reporting centers and seven from support services) believed that additional education on working with LGBTIQ victims is necessary. Two thought that it is very important that education programs for public institutions be initiated by the relevant ministries rather than NGOs because this has a better effect on the entire system. According to one person, “[i]t [education] should not be left to the individual’s consciousness, but should be a professional requirement” (Independent Service for Victim and Witness Support at the Ministry of Justice, interview 17).

As also emphasized in previous research (KPH 2016 and FRA 2016b), only the Ministry of Interior is open to implementing education programs on hate crime against LGBTIQ persons. Indeed, LGBTIQ NGOs have been cooperating with the Police Academy since 2006, and as a result of the continuity of this cooperation, hate crime against LGBTIQ people was incorporated into the Academy’s official curriculum. However, the Croatian public officials interviewed in one of the studies implemented by FRA (2016b:10), emphasized that a hostile social climate and political opposition in the recent years form important barriers to the effective implementation of national equality legislation and policies.

### Good practice: Police academy

Regular obligatory courses on hate crime against LGBTIQ persons are being implemented at the police academy, at all levels of education: in the basic course for police officers, during specialization, in the specialized study of criminalistics and as part of the hate crime course. The lectures focus on hate crime and working with LGBTIQ victims and are sometimes held by LGBTIQ activists.

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### Reporting Anti-LGBT Hate Crime

**The professionals interviewed in this research demonstrated awareness of the problem of underreporting among LGBTIQ victims of hate crime, and listed various psychological, societal and institutional impediments. Both NGOs and public institutions use a variety of ways in which victims can access the reporting process. However, neither NGOs (non-LGBTIQ) nor public institutions have any particular protocols, training or staff specialized in working with LGBTIQ victims. Furthermore, public institutions rarely engage in awareness raising activities regarding SOGI-based hate crime; these are mostly implemented by LGBTIQ NGOs.**

Almost all interviewed professionals demonstrated awareness of the problem of underreporting among LGBTIQ victims of hate crime, although the opinions of three respondents from institutions indicated both a lack of awareness of the problem itself and of the severity of anti-LGBTIQ hate crime. All respondents believed that reporting hate crime is an important step in combating it. However, the responses of two professionals working at NGOs reflect skepticism about the satisfaction that victims can get from the entire process, since they believed that the criminal and judiciary proceedings are too long and expensive, and can cause secondary victimization. At the same time, both believed that all crimes should be reported to NGOs in order for victims to access psychological support.

Interviewees mentioned a range of reasons for not reporting including: the fear of coming out and experiencing discrimination and mistreatment, both from officers and from family members who are not supportive; distrusting public institutions; lack of time; lack of will;

not being aware of the types of crime that hate crimes encompass; avoiding secondary victimization; not seeing the point and benefit of reporting; the fear deriving from not being acquainted with the process of reporting; and its duration and cost. According to one professional, "...once you enter the system, you enter into this whole machinery and become completely exposed. So if persons are not ready to be exposed to public judgment, the chances that they will report are very small" (The Victims and Witnesses Support Section at the Rijeka County Court, interview 18).

*I think it is because of the general social climate, plus the lack of education among all state officials. ...of course that there are people who are ok everywhere, but the general impression is that everything is so catastrophic that I completely understand that people are afraid to report if they believe that they would create even more problems for themselves and that they would not receive any help, not be understood nor taken seriously. It is also because the perpetrators in these cases are rarely punished. I do not have the data now but I believe there are many people who reported but their case did not even pass the State Attorney, did not get to court, no one was found guilty or the sentence was too low. When they hear about such experiences, I understand they see no reason for reporting. (Independent Service for Victim and Witness Support at the Ministry of Justice, interview 17)*

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In Croatia, a hate crime can be reported to NGOs, the police and the State Attorney Office (SAO). Victims can report a crime to the police by phone, in person at the stations and via a mobile application of the Ministry of Interior called "MOI – Safety and Trust", which includes the possibility of sending a photograph or video of the event. Reporting can also be anonymous.

Regarding the State Attorney's Office, a crime can be reported in writing and sent by post, by e-mail, fax, or in person at the municipal State Attorney's Offices, county State Attorney's Offices or the State Attorney's Office of the Republic of Croatia. However, as one respondent who works there emphasized, most cases are forwarded to the SAOs from the police or NGOs, because people are not usually aware of the possibility of reporting there directly. Charges for hate crime and threats based on hate are raised ex officio, which is done as a

practice of general prevention. The office also raises charges for hate crime which they find out about through the media, the public or some other indirect way, even if no one has reported it.

Besides the traditional means of contact, non-governmental organizations can also be reached by social media. All respondents from NGOs say that most victims report crimes by phone, social media and e-mails. The victims turn to them on their own initiative, without being referred from a public institution. They most commonly find the information about the NGO online or by recommendation from another user.

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Awareness raising activities and research are rarely implemented by public institutions, but are mostly undertaken by NGOs. When public institutions work on raising their visibility and awareness of the problem of hate crime, this work is very rarely focused on or targeted at LGBTIQ victims. One exception is an awareness raising campaign about the importance of reporting among LGBT victims, implemented in 2012 by the Police Academy and LGBT NGOs Kontra and Iskorak. Most institutions use only their websites as a place where persons can find information about reporting. Professionals from the SAO and Municipal SAO in Zagreb say they work on raising visibility by attending various events regarding hate crime where they promote the role of the Office in reporting. In 2012, the Police Academy raised awareness among LGBTIQ persons about the importance of reporting through an EU project. In contrast, NGOs use a variety of methods to raise awareness: using banners with contact details for reporting at the annual Pride March, at public appearances, involving the media in their celebration of international days, direct actions and events, by educating high school students, collaborating with persons from public institutions and equality bodies, and distributing promotional materials such as leaflets and stickers etc. Two interviewees from NGOs report the problem of a lack of funding for awareness-raising activities.

Besides awareness-raising campaigns in mainstream media and the systemic education of all persons from public institutions who get in touch with the victims, some interviewed professionals identified a specific measure they believed could significantly improve reporting, an online system in which the victims could select what kind of support they want. It was suggested this would make it easier for the

victims to articulate their needs and guarantee their anonymity while at the same time it would make it possible to collect data about the incidence of anti-LGBTIQ hate crime. This system, it was suggested, should also include the possibility of delaying the sending, so that victims can write their message immediately and save it, to give them time to make the final decision about reporting. Professionals working in public institutions also emphasize the importance of collaboration with LGBTIQ NGOs that can encourage and offer assistance to the victims through the process of reporting.

**Good practice: Pink Megaphone – Zagreb Pride’s system for reporting and victim support.**

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When hate crimes are reported to Zagreb Pride, they assist the victim with reporting the violence to a public institution, offer free legal support and primary psycho-social support, and accompany victims to police stations, courts, centers for social services etc. as a person of trust (as defined by the Criminal Procedure Act). This system provides a friendly mediator between victim and institutions.

**Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process**

**The rights of victims of anti-LGBT hate crimes are not systematically implemented in Croatia. The right of the victim to receive information about their case is only partially implemented. Victims often receive only basic information, in formal language, without constructive and practical information on how to realize their rights. The information on available support that is provided does not reflect the needs of LGBTIQ persons. Measures relating to the protection of victims of hate crime during the proceedings exist, but it is uncertain how they work in practice for victims of anti-LGBT violence. Most public institutions and NGOs do not have a prescribed follow-up process. Professionals working in institutions face systemic impediments that do not allow them continuity of work with one victim, which is one of the factors contributing to secondary victimization.**

The Croatian legal system recognizes the term victim in a way that reflects its meaning in the Victim's Rights Directive. In order to obtain the status of victim, a person has to be recognized as such by the person directing the pre-trial proceedings, or during the court proceedings (KPH 2016:13). Victims are informed about their rights in three institutional settings: at the police service, at the victims' and witnesses' support services (county courts and Ministry of Justice) and at the municipal, county and general State Attorney's Offices. On first contact with the police, victims are informed, verbally, about their rights and given the *Notification on the Rights of Victims of Crime*, a small brochure which contains all the rights of the victim and relevant contacts, including the contacts of NGOs that offer legal and psychological support. However, no LGBTIQ NGOs are currently on the list. The county and municipal state attorney's offices use a form that prescribes all the rights about which victims must be informed, before they give a statement. The Victims and Witnesses Support Sections at the County Courts are thus also points where victims may be informed about their rights. When informing the victims, public institutions use formal legal language, they do not provide sufficient information about the available support from NGOs and the information provided does not reflect the needs of LGBTIQ victims. In addition, there is a lack of sufficient interpreter services for victims who do not speak Croatian (KPH 2016:18).

Regarding the protection of the victims from secondary victimization, the recently introduced measure of individual assessment of victims serves to identify their specific protection needs and should provide all the institutions in the process with a clear and unambiguous statement about them. The specific measures that can be used, and that are now explicitly available also for victims of hate crime include: using telecommunication technologies in order to avoid visual contact with the accused, being interrogated by a person of the same gender, talking to a consultant before the interrogation, paid for through the state budget (it must be noted, however, that the victims have the right to the consultant only before the questioning, and not during the entire proceeding), and the public being excluded from the hearings. Since this measure has only recently been introduced, it is hard to say if it is benefiting the victims of anti-LGBT hate crimes. The Ministry of Justice, which is responsible for the implementation of the Victims' Rights Directive, will be monitoring its implementation.

The Office for Human Rights has adopted the *Protocol for Procedure in Case of Hate Crimes*, which requires the police to take immediate measures and actions to protect the victim against repeated victimization (The Human Rights Office of the Government of the RC 2011:3). However, one interviewed professional who works at a police station was of the opinion that avoiding secondary victimization in the present conditions is impossible because the victim is interrogated at least twice at the police station, then again at the court (Interview 8). Another interviewee (Interview 6) believed that secondary victimization is the result of the mechanization of the system which again, is the result of the system being overloaded (especially the justice system). This professional believed that education and sensitizing of the institutions is needed, but it is not enough; more drastic changes must be made on a systemic level and in working conditions.

Professionals from NGOs work on the prevention of secondary victimization primarily by informing the victims about their rights, guiding them through the process of reporting and accompanying them to the police station and other institutions. Most of them believe that being informed about one's rights and the process at an early stage is crucial for preventing secondary victimization. Three respondents mentioned negative experiences with the police and the length of the process as the factors that most contribute to this problem (Interviews 9, 11 and 12).

As with some other measures concerning the protection of victims and prevention of secondary victimization during proceedings, the national legislation provides the right to remove the accused from the courtroom while the victim is testifying. However, the accused has the right to access the testimony of the witness, given in their absence. After that, the accused has the right to pose questions to the witness and there is even the possibility of confrontation (KPH 2016:46). Victims can also be entitled to the provisions of Article 294 of the Criminal Procedure Act which guarantees some specific measures, such as the opportunity to be questioned by video-call, which is also an option for witnesses who might be endangered because of their testimony. One of the interviewed professionals believed that the measures for protection – such as using a video call, having an assignee, being accompanied by a person of trust or the removal of the accused from

the hearings – which, until recently, were prescribed only for victims of sexual violence and victims of human trafficking, should also be used for victims of hate crime and other vulnerable groups.

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The process of informing victims about their case is insufficiently implemented. Victims are contacted without warning (without being previously informed that they will be contacted at a certain stage of the process) and in a very formal manner. From the experience of one interviewee working at a court support service, most victims become frightened and confused when they get a call from the court (Interview 18). They are not given the option not to be informed about the case. The follow-up process in most public institutions and NGOs is not strictly prescribed and formalized (except in one support service NGO) but depends on the needs of the victims and the stage of the process in which they approach the service. Only one interviewed professional said that she attended a training course for special guides who assist the victims through the entire process of reporting and processing of hate crimes. All respondents said that the amount of time devoted to each case depends on the case; they take as much time as it takes to process the case thoroughly. However, the public institutions are bound by the deadlines prescribed by the Criminal Procedure Act. The courts and the police cannot ensure that the victim always has contact with the same person, because the officers handle cases during their shift, often without previous knowledge of them unless they were in charge of the case from the outset. Because of the working conditions, working in shifts and not being paid for overtime work, there is no continuity in the work between a professional and a victim; the victim, each time, is handled by a different officer. Magistrate's Courts face similar problems because of case overload.

## Recording Anti-LGBT Hate Crime

**Data on hate crime are systematically collected by the Government's Office for Human Rights and Rights of National Minorities, which gathers statistics from several institutions, the Ministry of Interior, the State Attorney's Office and the Ministry of Justice. All these institutions, except the Ministry of Justice, make their reports publicly available but without the data on hate crime being segregated by grounds. Therefore, no official data on anti-LGBT hate crime are available. Data on anti-LGBT hate crime victimization are provided by NGOs.**

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For all public institutions, the personal information that is taken from victims is prescribed by the Criminal Procedure Act (Official Gazette, NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17). For non-governmental organizations providing legal aid, this is prescribed by the Free Legal Aid Act (OG, 143/13). Regarding the recording of the victim's sexual orientation, gender identity and/or gender expression, all interviewed professionals working in public institutional reporting centers said that they are marked down if the person is open about it. If the person is not open, but there is a suspicion, they are never forced to come out but are asked further questions so that it can be deduced from the description of the event (context and the words the perpetrator used). Even if the person explicitly denies that they are LGBTIQ, but there remains a suspicion about their identity, it is recorded in the description.

However, even when the victims clearly state that they have experienced an anti-LGBT hate crime there is still a tendency for the police to classify hate motivated offenses against LGBTIQ persons as misdemeanor rather than as hate crime. The existing regulations still confuse the difference between criminal and misdemeanor offenses which creates difficulties in practice (KPH 2016:40; European Court of Human Rights 2013). As a measure for preventing this problem, one interviewed professional thought that the first point of contact with the victim should be able clearly to mark that it is a case of hate crime, so that the superiors and persons who are taking over the case have a formal statement and unambiguous information about the classification of the case, as a hate crime, on a specific basis. This is especially important for police officers.

None of the interviewed professionals from public institutions attended any training sessions for identifying and registering hate crimes and taking statements from hate crime victims. When reporting at police stations, the personal information that is noted is the person's national identification number, date and place of birth, and names of the parents. Their sex is not recorded. Access to this information is available to the police, courts and social welfare centers. The data is stored in the Ministry of Interior's data base, thanks to which, cases marked as hate crime can be searched by grounds, by proceedings and other criteria although only certain employees can access this data, by logging into the database with a password. However, cases of violation of privacy of LGBTIQ victims of hate crimes, by state officials during the investigation phase, have been recorded by national LGBTIQ organizations (KPH 2016:42).

At the county and municipal State Attorney's Offices, reports are received by the deputy counselor. There is no specific form for hate crime, but a general form for filing a criminal report. Unless the report is anonymous, the personal information is taken from the person's identity card and this information is only available to the employees of the office. Officials working on a particular case are obliged to report on the cases they are working on so that from these joint reports and statistics can be compiled. When a case is forwarded from the police, they report on the phase of the process and investigation and all cases are monitored from the initial receipt of the criminal report until the final completion of the criminal proceedings and the lawful verdict. The State Attorney's Office of the Republic of Croatia gathers and centralizes all the information from the county and municipal offices and compiles the data about verdicts. The SAO compares their data with the Ministry of Interior's, twice a month. Also, the SAO is a member of the Hate Crime Monitoring Working Group (part of the Government's Office for Human Rights and Rights of National Minorities) which gathers together professionals from different institutions and NGOs, and which created the Protocol for Procedure in Case of Hate Crimes (The Human Rights Office of the Government of the RC 2011).

The Government's Office for Human Rights and Rights of National Minorities holds the most comprehensive data on hate crime. Twice a year they collect reports from the State Attorney's Office, the Ministry of Interior and the Ministry of Justice. These are compared and

compiled as a joint national report on hate crime. However, only the aggregated data is publicly available, not the numbers, segregated by grounds. More information is provided in the annually published statistical report of the Ministry of Interior and the SAO, but again, without the information on the grounds for the crimes. The reports by the Ministry of Justice are not publicly available. In addition, one interviewed professional emphasized that statistics were not being collected systematically by courts, and only included data for the cases that received a lawful verdict. The interviewee attributed this problem to the fact that courts have some level of autonomy from the Ministry of Justice and therefore do not have a uniform system of data collection.

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All interviewed professionals working in NGOs say they hold an internal record of cases reported to them. One NGO also collaborates with a lawyer's office on monitoring cases and compiling reports. However, most NGOs collect only the basic data, or the data required by donors. One LGBTIQ NGO does not collect any data unless it is necessary for the case in question while another uses practices for registration recommended by the Office for Democratic Institutions and Human Rights (ODIHR). Regarding confidentiality, in most NGOs the data is available only to certain members of the working team who have signed data protection and confidentiality contracts. Several NGOs also practice the coding of cases which are then electronically and physically locked. Confidential data is never forwarded outside the organization but statistics, in publicly published annual reports, are available to the membership of the organization and to some donors.

## Support for Victims of Anti-LGBT Hate Crime

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**In Croatia, victims are entitled to certain types of legal aid depending on the nature of the criminal offense. There is no state-coordinated and financed support which would target victims of anti-LGBT hate crimes specifically. Information on available support is offered to victims at an insufficient level. Most services have no protocol, training or person specialized in working with LGBTIQ victims. There are neither shelters nor emergency accommodation for LGBTIQ persons in need. Both public institutional and non-governmental support services are centralized in the capital or larger cities.**

Victims have the right to legal aid in specific cases (children, victims of trafficking in human beings, and victims of criminal offenses against sexual freedom) and the Ministry of Justice supports non-institutional, specialized services for these victims. Victims who have been assessed as needing special safety measures (including hate crime victims) are entitled to legal aid only before testifying in court, leaving them without such support in the investigative phase. These victims can seek support at special departments providing support to victims and witnesses at county courts, centers for social welfare, and non-governmental organizations. The Independent Service for Victim and Witness Support at the Ministry of Justice is an umbrella office of all victims and witnesses support sections at the county courts; in the regions where there are no sections at courts (there are only seven of them in the country) they ensure that support is provided by NGOs to which they give funding. Thanks to the adoption of the *Free Legal Aid Act* in 2013, 42 organizations were registered for providing direct legal support. However, none of them is an LGBTIQ organization. Furthermore, even though special funds for subsidizing organizations working in the field of protection of crime victims were established, currently no organization claiming help to LGBTIQ victims receives grants from these funds (ibid 2016:5).

The referral of victims to support services is not implemented by public institutions in a systematic way, but often depends on the knowledge and networks of the individual professional. The FRA research has found that there is a lack of agreement, awareness and clarity among professionals regarding the availability of support services (2016a:38). At police stations, victims are referred to support

services by the *Notification on the Rights of Victims of Crime*. This document contains the contacts of the services for victim and witness support at county courts, at the Ministry of Justice, and of NGOs providing legal and psychological support (no LGBTIQ NGOs are currently on the contact list). Victims are also referred to the services at the courts and at the Ministry of Justice when reporting a crime at the State Attorney's Offices. Before giving the statement, victims are told that they can first go to the Service for Victims and Witnesses Support for consultation, and then come back accompanied by a person from the Service and give the statement in the presence of a person of trust.

At the Independent Service for Victim and Witness Support at the Ministry of Justice, in most cases, after the needs of the victims are estimated, they are referred to the relevant NGO, according to the place of residence of the victim and only to services that are free of charge. The Independent Service collaborates with the police, prisons, probation services, centers for social services, the National Team for Combating Violence Against Women and different NGOs, including two LGBTIQ NGOs in Zagreb and Rijeka. They are part of the Committee for Combating Trafficking in Human Beings, the National Team for Prevention and Combating Domestic Violence, all of whom also have regional teams. One interviewed professional from this service emphasized that these collaborations are useful because when they know professionals from different institutions and organizations in person, the cases get resolved much more quickly than when there is only a formal contact between bodies. They frequently inform themselves about NGOs and their services, keeping up to date with whether they are competent in providing these services, asking questions such as, "Do they answer calls timely, and have there been any changes in the services provided?"

Except for LGBTIQ NGOs, most NGOs and public institutions do not have any particular written protocol, training or person specialized in working with LGBTIQ victims. Only two professionals, working at one support service NGO, had the subject of working with LGBTIQ persons as part of their training (Interview 20). Also, one interviewee working at the Ministry of Justice is aware that some of her colleagues from a court support service in Split attended a training program organized by an LGBTIQ NGO (Interview 19). In addition, two interviewed profes-

sionals, working at a public institutional support service, collaborate regularly with an LGBTIQ NGO as lecturers in training sessions for other organizations, about hate crime against LGBTIQ persons.

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It is most important to emphasize that, in Croatia, there are no 24/7 telephone lines offering specialized support to LGBTIQ persons. Nor is there any emergency accommodation for LGBTIQ persons, the existing infrastructure of shelters is not safe for them and the system of social housing does not take into account the specific vulnerability of LGBTIQ persons to the risk and experience of homelessness. Especially worrying is the fact that there are serious impediments for transwomen to accessing the existing shelters for women victims of domestic violence. Shelters commonly require the victim to report the violence to the police as a precondition for admission to the shelter and this presents a serious impediment for transwomen since they are often very reluctant to report due to the fear of a transphobic reaction from police officers (Poštić and Gonan 2015:67).

Most support services are centralized in the capital, especially non-governmental organizations. As already mentioned, support services at county courts are established only in seven cities, and victims from other parts of Croatia are referred by the police to the nearest one. Especially challenging is the work of NGOs that operate with specific groups such as victims of sexual violence, since for many such organizations there is only one office in the whole country. They usually try to reach out to their users by increasing their visibility online and providing information about existing services, searchable by region. However, one interviewed professional expressed the fear that the rural regions with no access to non-governmental organizations are the same areas where people tend to use the internet less, leaving some segments of the population unreachable (Interview 20). The same interviewee was also concerned about most professionals in public institutions not being sensitized enough to work with transgender persons and not applying feminist principles to their work, such as always trusting the victim and respecting the victim's autonomy.

To improve the existing support services, professionals mentioned the following ideas: the police having a more systemic approach to referral which would encourage referral of victims to the relevant NGOs at an early stage; and more professionals employed at all courts, especially at the municipal criminal courts where they get most of the

hate crime cases but do not have the victims and witnesses support sections. Three respondents expressed the need for better working conditions regarding the provision of space at their institutions, which would guarantee discretion, be welcoming and let the victim know that the officers are sensitized, by displaying posters, flags or leaflets. They suggested professionals should be sensitized to how victims experience hate crime and trained in conversation techniques on how to talk about delicate questions. Finally, they recommended visibility campaigns, which state that all staff at the existing services fully supports LGBTIQ persons.

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### **Conclusions and Recommendations**

Our analysis of the implementation of anti-hate crime regulations in Croatia has demonstrated that the mere existence of a policy is not enough to make that policy work in practice, especially for LGBTIQ victims. There are strategies, bodies, protocols and practices aimed at tackling hate crime, but there is no state-coordinated and financed support which would specifically target victims of anti-LGBT hate crimes. Nor are there any extensive services which provide legal and psychological support or emergency accommodation, underpinned by professionals systematically trained to work with LGBTIQ victims. Only a limited number of non-governmental organizations offer such support to victims of anti-LGBT hate crime. Also, NGOs are the ones who initiate research and awareness raising campaigns on this topic while public institutions provide insufficient information on the available support and the information provided does not reflect the needs of LGBTIQ victims. Furthermore, professionals working in public institutions face systemic impediments that do not allow them continuity of work with a victim, something which in itself, contributes to secondary victimization. Finally, the existing services, such as social housing and autonomous houses for victims of domestic violence are not accessible to LGBTIQ victims.

From the experiences of the interviewed professionals, it can be concluded that tackling anti-LGBT hate crime requires a broad, collective effort by various institutions and organizations to reach-out to LGBTIQ victims and provide them with support that is sensitive to their specific needs. Based on these findings, a series of recommendations are presented below, put forward by the professionals interviewed for this study:

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1. Design and implement policies for access to justice for victims of anti-LGBT hate crimes, including free and extensive services providing legal and psychological support, as well as emergency accommodation (shelters).
2. Implement systemic education for all professionals about working with victims of anti-LGBT hate crime.
3. Conduct awareness-raising campaigns targeted at LGBTIQ persons, initiated by the relevant authorities.
4. Expand the victim and witness support sections to all courts.
5. Implement more systemic referral to relevant support services; include contacts of LGBTIQ, non-governmental organizations in the contact list of the Notification on the Rights of Victims of Crime, handed to the victims by the police at first contact.
6. Include being LGBTIQ a victim of crime as a precondition on the priority list for social housing.
7. Exclude reporting domestic violence to the police as a precondition for admission to autonomous houses for women victims of domestic violence.

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# Greece

*At a glance*

## Attitudes

According to the Eurobarometer (437/2015), 62 percent of Greek respondents believe that LGB should have the same rights as heterosexual people. One in four Greeks (26 percent) would feel comfortable seeing gay couples showing affection in public. Only 12 percent would feel comfortable if their child was in a relationship with a transgender person.

## Victimization levels

According to the EU LGBT survey (2013), 25 percent of respondents from Greece declared they had been physically/sexually attacked or threatened with violence in the previous five years; however, only 14 percent of Greek LGBT respondents reported the most recent incident to the police.

## Official Statistics on Anti-LGBTQI Hate Crime

The number of officially recorded SOGI hate crimes was 41 in 2017 (of which, 29 incidents were with a homophobic/biphobic bias and 12 incidents with a transphobic bias). According to ODIHR, there were 63 anti-LGBT hate crimes in Greece in 2016.



## Summary

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- There are several new measures and the legal framework is stronger than in the past; however, they are still not implemented as many of the provisions envisaged require reform of existing structures and procedures.
- The phenomenon of anti-LGBTQI is still rather controversial in Greece and creates conflict.
- There is a significant lack of expertise in recognizing and reporting, as well as supporting victims within a holistic model.
- Specialized training was acknowledged as needed in most parts of the research; as there is, indeed, a lack of knowledge of the conceptual framework of anti-LGBTQI hate crime.
- Underreporting is still a problem in Greece. Significant efforts have been made to improve this but much remains to be done.
- There is an absence of standardized procedures that are realistic and capable of implementation.
- There are a number of very good practices through which support is provided and underreporting is minimized, mostly provided by civil society organizations. These could be used as examples by the State, and applied to official services.
- State agencies and non-governmental reporting centers are creating specific protocols for supporting anti-LGBTQI hate crime victims in order to avoid secondary victimization and ensure long-term protection.
- A strong cooperation strategy is needed in order to ensure adequate recording of cases.
- There is a need to increase the visibility of services as well as the necessity [or impact] of them in order to highlight [and/or combat] the phenomenon.
- Official data collection on anti-LGBTQI hate crimes was absent until recently. In order to deal with the lack of official data and coordinate the different civil society reporting actors an initiative was undertaken by the UN Refugee Agency and the (Greek) National Commission for Human Rights. Today, Greek police record hate crimes more systematically, but there is still room for improvement.



# Greece: Heading in the Right Direction, but with a Long Road Ahead

*Thanasis Theofilopoulos, Irini Serafeim, Maria Moudatsou and Kostas Farmakidis*

## Legal Framework

**The Greek legal framework has provision for aggravated circumstances for every criminal act perpetrated out of racist motives; this includes bias based on the sexual orientation, gender identity or other characteristics of the victim. Nevertheless, these provisions have not yet been applied in cases with LGBTQI victims. Even though several new measures have been introduced, many challenges are encountered in the application of the law, as many of the envisaged provisions require reform of existing structures and procedures.**

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## The Law on Racist Crimes

Anti-LGBTQI hate crimes are proscribed in Greece through the provisions on “racist crime” (Article 81A of the Penal Code), introduced in 2014 and amended in 2015. Racist crime is defined as a criminal act perpetrated against a victim “chosen because of his/her color, nationality, ethnicity, race, religion, descent, disability, sexual orientation, gender identity or characteristics”. The law provides for heavier sentence limits for every common crime considered as “racist” according to the above definition.

Currently, the law has only rarely been applied. Up to 2017, there were two convictions for racist crimes pursuant to Article 81A, but none yet in cases with LGBTQI victims (RVRN Press Release 2015; Greek Council for Refugees 2016), possibly due to the reluctance of victims to file formal complaints and the long duration of the initial investigation.

Apart from the above, current law also provides for a substantive crime of incitement to violence or hatred against persons “identified by their color, nationality, ethnicity, race, religion, descent, disability,

sexual orientation, gender identity or other characteristics” and also for a substantive crime of denial of or praise for historical crimes perpetrated against victims identified by the above characteristics (Articles 1 and 2 of statutory law of 1979 against racial discrimination). The first provision has been applied for the prosecution of a Greek Orthodox Bishop making a public call for “spitting at homosexuals”, who recently was acquitted by the first trial Court<sup>1</sup>. The Appeals Court prosecutor has filed a pending appeal against the initial judgment.

Current law defines “racist crime” in relation to an objective element, i.e. the characteristics of the victim, including SOGIEC, in clear contrast to the focus on a subjective element, i.e. the “hatred” as motive of the perpetrator. RVRN noted that “the removal of subjective elements, such as hatred, that have given rise to reasonable objections, is positive and emphasizing the objective elements related to the victim may reduce the requirements related to the proof of feelings that are hard to prove in court” (RVRN Annual Report 2015: 27).

### Implementation of the Victims’ Directive

The Victims’ Right Directive was only recently (June 2017, statutory law 4478/2017) transposed into Greek Law. Law 4478/2017 sets the basis for the comprehensive support and protection of victims’ rights in Greece and transposes/incorporates the majority of the Victims’ Rights Directive articles. Victims of violence due to sexual orientation, gender identity or characteristics, and victims of sexual violence are considered to be a specifically vulnerable group of crime victims and individual assessment of the needs and vulnerability of the victim is meant to ensure protection of this vulnerable subgroup. The law provides for individual assessment, protective measures for the victim, the family or partner and essential witnesses during criminal proceedings, along with provision of information concerning the rights of the victim, access to support and care services, and several procedural rights (translator, access to legal documents). All rights are explicitly recognized for victims of “racist crimes”, according to the definition of Article 81A of the Penal Code.



1 <https://www.economist.com/blogs/erasmus/2018/03/orthodoxy-homosexuality-and-hate>

However, the necessary supporting structures, such as organizing generalist and specialist support services, although provided by the law, have not yet been organized and made to function. The application of the law may encounter a variety of challenges as many of the provisions envisaged require new procedures within the existing structures and increase the duties or tasks of professionals and officials of law enforcement, prosecutorial and judicial authorities.

In addition, although police seem to play a key role in providing information and services to victims, Article 70 of Law 4478/2017 does not provide for police officers to be trained to a level appropriate to their contact with the victims. Therefore, there is a limitation on the application of Article 25 of the Victims' Rights Directive which clearly requires that member states shall ensure that officials, including police officers, likely to come into contact with victims, should receive general and special training to a level appropriate to their contact with the victims (Protasis Project, 2017).

### **Professionals and Anti-LGBT Hate Crimes**

**Professionals provided several answers to questions concerning definitions of hate crimes. However, it became clear how much conflict, as well lack of knowledge, existed about the conceptual framework of anti-LGBTQI hate crime.**

#### **Conceptual Frameworks**

As mentioned above, the Greek law defines "crimes with racist features" as criminal acts driven by motive or prejudice towards particular groups of people, including bias based on the sexual orientation or the gender identity of the victim. As such, the term hate crime per se does not exist within the legal framework, while the broad definition of racist crime covers several victim categories.

Considering the definitions provided by the professionals interviewed, three conceptual frameworks of hate crime emerged. Firstly, a number of definitions viewed hate crime as a human rights violation. More specifically, incidents that have the consequence of impairing the recognition or enjoyment of human rights and fundamental freedom in any spectrum of public life were considered to be forms of

hate crime. The second conceptualization, closest to the legal view and most often used by police officers, referred to the verbal, physical or/and psychological violence directed towards LGBTQI people due to their sexual orientation or gender identity. For example, one interviewee stated that, “anti-LGBTQI hate crime is an unprompted crime against certain people because of their gender identity, gender expression, sexual orientation or their sex characteristics” (Reporting center professional, interview 21). Lastly, some organizations defined hate crime using the concept of violence, without any reference to motive. In particular, one organization registered victims of violence motivated by anti-LGBTQI bias as victims of violence or victims of torture (Supporting center professional, interview 11).

Despite the evident differences based on the conceptualizations held, anti-LGBTQI hate crimes were recognized as a serious issue in Greece by most of the professionals interviewed. Several pointed out that hate crime is an increasing problem, but that such crimes are usually “silent”; only a small proportion comes to be reported. Only one interviewee said that “anti-LGBTQI hate crimes are not a very serious phenomenon in Greece. [...] There are not many serious anti-LGBTQI hate crimes recorded in Greece – most of them are cases of insults” (Reporting center professional, interview 17).

It is possible that the above differentiation could lead to conflict between CSOs and state agencies, with the former using (at least in some cases) broader frameworks and the latter following the more limited, legal definition. Furthermore, such discrepancies around key concepts may lead to inefficient recording of hate crime and thereby to inadequate victim support. The latter point is demonstrated by the different recording and supporting methods used by the interviewed CSOs and state agencies (see section on recording below).

Regarding the motives of the anti-LGBTQI hate crimes, a number of interviewed professionals argued that the perpetrators not only target the person himself/herself, but also the goal is to humiliate the specific person and, through them, all the members of the LGBTQI community. In an example given by one interviewee, one perpetrator said, “when I beat an LGBTQI person, I beat, I express my hatred for the whole LGBTQI community” (Interview 17).

## Training

Analysis of the current research indicates that both reporting center professionals and victim support providers in Greece have an “inadequate” level of training and thus, greater effort should be made to ensure full training of all front-line professionals with regard to the application of Article 81A of the Criminal Code, including the issues around gender identity and sexual orientation, and the reception, approach and support of anti-LGBTQI hate crime victims.

In particular, focus should be placed on the Hellenic Police Department, as more serious cases demonstrate the need for training and ongoing supervision of persons involved in the recording and support of the hate crime victims. As one interviewee stated, “Emphasis on training for police officers and judges could improve the reporting of anti-LGBTQI cases. These training sessions should be continuous and part of a stable state policy and could be carried out by international organizations, LGBTQI organizations etc.” (Reporting center professional, interview 12). Under a well-designed training program cases of mis-categorizing, ignoring motives of hate crime, and further traumatizing victims could be minimized.

Findings from the interviews conducted with reporting centers highlight what is currently taking place in Greece to combat the problem of LGBTQI hate crimes. Firstly, law enforcement officers serving in the Hellenic Police Force, who have responsibility for fighting racist violence; receive a two-day training course at the beginning of their operational appointment. This focuses on preliminary investigation proceedings. Secondly, NGOs, members of the RVRN, receive specific training on key concepts relating to LGBTQI as well as on the methodology of recognizing and reporting hate crimes. Six out of ten professionals interviewed said that the person(s) responsible for carrying out the identification, registration and statement-taking of anti-LGBTQI hate crime victims have some kind of special training, either on hate crime or specifically on anti-LGBTQI hate crime.

Findings from the interviews with victim support providers added to this current picture. Specific training sessions on (anti-LGBTQI) hate crime are either internal or external. The latter are organized by civil society organizations and other competent institutional bodies such as PRAKSIS, Colour Youth, the Hellenic League for Human Rights

and KMOP – Family and Child Care Center, as part of the funding provided to address such issues. However, only two out of 11 of those professionals interviewed said that the professionals who provide support services and work in the Social Service Department of their organizations have specific training in (anti-LGBTQI) hate crime victim assistance, based on ILGA and ODHIR guidelines. Similarly, only four out of 11 interviewees said that the professionals responsible for such matters have specialized training in sex and gender-based violence or/and torture, or in supporting victims of bullying.

## **124 Reporting Anti-LGBTQI Hate Crime**

**The most critical issue is “underreporting”. Victims do not believe that reporting would change anything and they believe that they will be mistreated by the police. There is an absence of realistic, standardized procedures for reporting which could be implemented, and there are issues concerning confidentiality and secure pathways. However, there are also some examples of good practice which provide enabling support and can minimize underreporting.**

### **Underreporting**

According to the FRA EU LGBTQI survey (2014: 68), Greek respondents were less likely to report a hate motivated incident to the police than those in any other EU member state. Furthermore, according to the same source, Greece has one of the lowest rates (2 percent) of reporting anti-LGBTQI hate-motivated harassment (European Union Agency for Fundamental Rights 2014:77).

The professionals interviewed for this research project expressed concern about underreporting and agreed that encouraging the reporting of hate crimes in general, is an effective strategy to combat the problem. More importantly, some of the interviewees argued that reporting is not only a “sufficient” strategy to confront anti-LGBTQI acts, but also “the first and the best strategy” (Reporting center professional, interview 18).

The reasons for underreporting expressed by interviewed professionals can be divided into two broad categories; the first includes reasons related to the experiences of the victims while the second consists of reasons linked to the reporting procedures themselves and to the accessibility of the reporting centers.

In the first category and in line with the reasons identified in previous research (FRA 2014), the most frequently mentioned reason for not reporting an incident to the police is the belief that the police would not do anything about it. Clearly, the nature of the involvement of law enforcement officials in incidents of racist violence is particularly alarming in Greece. Based on data published in the annual reports of RVRN, covering the years 2012-2017, there were at least 19 incidents in which the perpetrators of anti-LGBTQI hate crimes were on-duty law enforcement officers. According to the professionals, other causes of underreporting involve psychological factors; for instance, victims may feel ashamed or be afraid of revenge by the perpetrator.

In the second category, the majority of those interviewed argued that underreporting comes both as a result of the lack of a safe, confidential environment for the victims and because of the gap in the available procedures throughout the reporting process. This reflects the lack of an existing reporting protocol. Indeed, of the interviews conducted, only three out of 10 organizations stated that there are protocols which are followed. For instance, in one organization:

*... after the anonymity is secured, the victims follow certain steps: report, protocoling of the report to a special scientist in the department, examination of the report [...], evaluation by the special scientist, contact between special scientist and victim, support services provided to the victim if there is a case and if the complainant is reliable. (Reporting center professional, interview 13)*

Another possible reason for underreporting is the lack of supporting services for victims. For instance, according to the RVRN, the number of recorded anti-LGBTQI hate crimes decreased in 2016 because “a project providing support to victims of racist crimes was completed in February 2016”; and in the country, there was “only one such program supporting LGBTQI victims of hate crimes currently being implemented, with limited geographical scope” (Racist Violence Recording Network 2017:11).

## Accessibility

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In terms of official reporting, most victims go, in person, to a local police station and if bias motivation is detected they are referred to the Office on Racist Violence in the General Police Directorate of Attica. The victims can also contact the office on their own initiative via a 24hr emergency line or they can report incidents via e-mail. In seven out of ten interviewed organizations, victims of anti-LGBTQI hate crime usually come on their own initiative, but there are cases where the victims are referred. Six interviewees said that ways of access (also) include electronic means: social media, e-mails, and/or special platforms or online reports.

Most interviewees stated that in order to make the services visible to the citizens, other professionals and/or beneficiaries and their organizations carry out social media campaigns, pride events and press releases as well as publish leaflets, reports and articles. Such examples come mostly from the civil society sector. Moreover, they organize or participate in conferences, seminars, public events or TV shows. In order to make the service visible to professionals, the organizations cooperate with LGBTQI organizations and the police and organize training events for professionals/officers of the public sector. However, although that was the information coming from the interviews, it is important to point out that, in reality, this is not actually how things happen in Greece at the moment.

Apart from the visibility campaigns, the following needs were recognized as the most urgent to improve accessibility and reporting: 1) a 24hr help line; 2) the introduction of protocols; 3) information provision for the target group about the existence of reporting centers; 4) creation of a safe environment for the victim to proceed to report; 5) quick and specific procedures; 6) advocacy; 7) employment of LGBTQI police officers; 8) community based work; 9) awareness raising activities; 10) specific projects on reporting hate crime.

In recent years there has been a focused effort from NGOs or state institutions to answer the specific needs of, and improve accessibility for the victims of anti-LGBTQI crimes. These initiatives include: interventions with community-based work, 24hr help lines, the *Tell Us!* project (see box below), an active approach/research for incidents in the media/social media, a *No Hate Speech Movement* project and recruitment of LGBTQI police officers. Despite the existence of such good practices, only a small number of the interviewed professionals

were aware of such initiatives, illustrating both the absence of effective visibility campaigns among the professionals and the urgent need for communicating such projects within the LGBTQI community, in order to encourage reporting.

### **Community Based Work – *Empowering the Trans Community*; Cooperation among the Greek Transgender Support Association & PRAKSIS**

One of the purposes of the project *Empowering the Trans Community* is to reduce the frequency and consequences of discrimination. In order to achieve this, four goals were designed and achieved: a) increasing the number of early testing for HIV, hepatitis and other STIs, and providing access to health-related services through PRAKSIS Mobile Testing Unit; b) creating a website with an interactive platform to record and classify transgender issues and emergency needs, including discrimination incidents; c) capacity building through seminars, in order to encourage open dialogue between PRAKSIS, GTSA and other civil society actors; and d) advocacy activities related to access to health and other civil and human rights.

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### **11528 – *By your Side*. NGO OLKE**

Lesbian & Gay Community of Greece, Thessaloniki Pride, Athens Pride and Positive Voice have created a psychological helpline for LGBTQI people, their families and educators, including victims of hate crimes/mistreatment *11528 – By Your Side*. Counseling, psychosocial and psychological support and crisis intervention are also provided by face-to-face personal and charge free sessions

### ***Tell Us!***

Since 2014, NGO Colour Youth – Athens LGBTQI Youth Community has implemented the project *Tell Us*, providing free-of-charge psychological and/or legal support to anti-LGBTQI hate crime and/or discrimination victims. Victims may contact the Project's Services via specific phone numbers and/or the Project's Facebook page and/or a special online form which is available at <http://www.colouryouth.gr>.

## Rights of Victims of Anti-LGBTQI Hate Crimes in the Criminal Justice Process

Even though there are specific guidelines in Greece governing the rights of victims of hate crime, in practice they are not always applied. Civil society organizations are trying to establish and follow specific procedures in order to avoid secondary victimization and ensure long-term protection of victims.

### Existing Policies and Guidelines Governing Victims' Rights

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The research identified three main findings; firstly, although there has been a development in the legal framework, it is not fully implemented and many things remain to be done; secondly, the existing procedures do not support a realistic and clear pathway and thirdly, a lot of work is still needed in training, especially for the police units, as the training process is rather limited, has no continuity, and is repetitive in character.

There are specific guidelines governing hate crime victims' rights in Greece. The Criminal Procedures Code enables the victim of every crime to bring a civil action before the criminal court for damages, thus making her/him an adversary party in a trial. The victim can be represented by an attorney where not only testimony but also legal arguments are heard and answered by the court. The victim does not have a direct right to appeal against an acquitting judgment; this right is reserved for the Public Prosecutor.

The focus on prosecution of "racist crime", according to Article 81A of the Penal Code, has been further enhanced since 2014 in the major cities of Athens, Piraeus, Thessaloniki, Patras and Herakleion, by the gradual appointment of Special Prosecutors for racist crimes (Greek Council for Refugees 2016:26, RVRN Annual Report 2016:19). This has had a positive impact on the prosecution of anti-LGBTQI hate crimes. It has allowed for more effective prosecutions and the shortening of time frames during which victims are at risk of secondary victimization, either due to inadequate treatment or even detention.

In addition, Law 4478/2017 sets out the basis for the holistic support and protection of victims' rights in Greece and makes provisions for the majority of the EU Victims' Rights Directive articles. However,

the necessary supporting structures, such as organizing and setting up general and specialist support services, although provisioned by the law, have not yet been applied in practice. The application of the law may encounter a variety of problems as many of the provisions envisaged require new procedures within existing structures and an increase in the duties or tasks of professionals and officials of law enforcement, prosecuting, and judicial authorities.

### Secondary Victimization and Protection Mechanisms – the Professionals' views

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According to the interviewed professionals, a key challenge when referring a victim, either for an official statement or for further support, is the problem of his/her secondary victimization. The concept of secondary victimization of victims was acknowledged by all professionals interviewed and it is recognized as a potential reason why victims choose not to report hate crimes. As far as the police are concerned, even though the interviewed police officers stated a number of protection measures (for example, raising awareness on LGBTQI issues, special training on sensitization, and police patrolling), other important elements relevant to the questioning of the victims or homophobic/transphobic language were not identified.

Some common, general principles and guidelines to avoid secondary victimization, suggested by the other nine professionals, relate to being strict about confidentiality, providing accompaniment services, offering specialized training to law enforcement officers, judges or lawyers, and following a code of conduct and clearly identified procedures when referring a victim to another organization. According to one professional, “in order to avoid secondary victimization, we [the Greek Ombudsman] have the right to demand punishments for police officers for mistreatment/abuse of victims; unfortunately, we do not have the same right for Judges or Ecclesiastical Authorities (Bishops)” (Reporting center professional, interview 13).

Another measure mentioned was the need for key stakeholders to be able to offer a holistic approach to support, i.e., to include all the services needed (legal, social, psychological, housing, etc.) under one intervention (see Box “PRAKSIS” below). One interviewee said: “when a person comes to you and you have to refer him/her to 2-3 different

organizations, he/she will go away. It is not easy for them to retell their traumatic experience again and again. They re-experience the event and become traumatized again" (Supporting service provider, interview 3). Nonetheless, only one professional referred to certain characteristics of the victim which should be taken into account in order to avoid secondary victimization; these included gender identity, communication skills, supportive environment and the emotional state of the victim (Interview 4).

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### **PRAKSIS – One-Stop Source**

To avoid secondary victimization, PRAKSIS offers support services for victims in the framework of a one-stop source. PRAKSIS' polyclinics in Attica region and Thessaloniki, in cooperation with other projects, are one of the most significant examples of this model as medical, legal, and psychosocial support, as well as interpretation and housing services, is provided to victims of anti-LGBTQI hate crime, in addition to general population. Moreover, PRAKSIS' case management teams in the islands of Northern Aegean (Samos, Lesbos, and Chios) are offering psychosocial and legal support, including referrals for housing to vulnerable LGBTQI cases and especially minors, who are victims of hate crime.

According to the interviewed professionals, even more difficult than avoiding secondary victimization, is the task of protecting the victims of new situations of anti-LGBTQI hate crime. In order to protect victims, the organizations take different kinds of measures. For instance, the professionals in one organization focus on good cooperation with the Special Police Division for Racist Violence and, to avoid new situations of discrimination or anti-LGBTQI hate crimes, promote training and awareness events for police officers (Reporting center professional, interview 13).

Another form of protection, mentioned by five professionals, referred to the provision of accompaniment services. Specific organizations use standardized procedures for victim accompaniment before, during and after reporting. These include the following steps: provision of information regarding the procedure for an official statement, meet-

ing with the police, judges or public prosecutors without the presence of the victim, accompaniment of victims to law enforcement officers that have received adequate training on anti-LGBTQI hate crime and issues of sexual orientation and gender identity.

Finally, a number of professionals argued that victims receive protection from new situations of discrimination or anti-LGBTQI hate crimes in an indirect way; when the reports and the publishing of these incidents are used to combat the phenomenon and reduce the number of new hate crimes and discrimination incidents (Reporting center professionals, interviews no 12 & 20). Other mechanisms to protect victims from new anti-LGBTQI hate crimes, according to the interviewees, include: psychological support and empowerment, referrals to organizations, and the possibility of re-housing in cases where accommodation is included in the project of the organizations.

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### **Recording Anti-LGBTQI Hate Crime**

**Official data collection on anti-LGBTQI hate crimes was absent until recently. In order to deal with the lack of official data and coordinate the different civil society reporting actors, an initiative was undertaken by the UN Refugee Agency and the (Greek) National Commission for Human Rights. Today, Greek police record hate crimes more systematically, but there is still room for improvement.**

### **How a Hate Crime Victim Can Report to the Authorities.**

An anti-LGBTQI hate crime victim may contact the Special Police Service on Combating Racist Crime by calling the 24hr help line 11414 (Project *11414 By Your Side*), by filling in a special electronic form available on the Greek Police's official website and/or by visiting one of the two main departments (Attica and Thessaloniki Region) of the service, or one of the 68 Local Offices around the country (P.D. 132/2012 & P.D. 178/2014).

According to the legal framework, the special police units working on racist violence “intervene ex officio or after a relevant accusation, lawsuit or complaint to investigate and prosecute crimes relating to the perpetration, preparation or in any way public urge, provocation or aggravation of acts, offenses or manifestation of acts or actions

which may cause discrimination, hatred or violence against persons or a group of persons because of their [...] sexual orientation, gender identity [...]” (P.D. 132/2012 & P.D. 178/2014). They immediately inform the Prosecutor who is responsible for such offenses and who also informs victims about their rights.

To file an official statement, the victim needs to visit a local police department or one of the above-mentioned special offices of the Police Service. Anti-LGBTQI crimes are identified exclusively according to the law and data is collected during registration including: date, place and description of the incident, socio/demographic details, contact information of the victim and the perpetrator (if available), and motive.

Considering gender identity of the victim, there are forms to be completed in which the victims can choose between “man”, “woman” and “other”. Nevertheless, according to the police officer interviewed for the purposes of this survey, while filing an official statement, the victim’s gender is registered according his/her identification document (Reporting center professional, interview 17); but as the same officer indicated, “our officers treat trans people according to their gender identity and not according to their ID” (Reporting center professional, interview 17).

According to the official website of the Greek Police Service, these Special Police Services “collect, process and use, in an appropriate way, information and data relating to the perpetration or preparation of offenses with racist characteristics” and they also keep a record of incidents in which they intervene (Hellenic Police, Hellenic Police Services against Racist Violence). Moreover, every January they prepare a special, annual report about the incidents they have dealt with during the previous year.

The data-collection on hate crimes, provided by the Greek Police Service to OSCE/ODIHR is inconsistent. For instance, according to ODIHR, in 2015, Greek police recorded 60 hate crimes, but in all cases the bias motivation was “unspecified” (OSCE/ODIHR 2015). In 2016, according to the same source, Greek police recorded 40 hate crimes – only one of which had a bias motivation against LGBTQI people (OSCE/ODIHR 2016). This nevertheless, is an improvement in terms of specifying the bias motivation.

There is a clear difference between the police data published by ODIHR and the police data published in a separate chapter of the An-

nual Reports of the Racist Violence Recording Network. According to these sources, in 2016, Greek police recorded 84 “potentially racially motivated incidents”; in 14 cases the motivation was related to the victim’s sexual orientation and in one it was related to the victim’s gender identity (Racist Violence Recording Network 2017: 17). In 2017, these numbers increased; Greek police recorded 184 “incidents potentially involving racist motives”; in 29 of these the motivation was related to the victim’s sexual orientation and in 12 it was related to the victim’s gender identity (Racist Violence Recording Network 2018: 19-20). However, after “a question raised by the RVRN in this regard, it was clarified that incidents involving hate speech amounted to 40.76 percent of the total number of recorded incidents”. It is important to stress that “hate speech does not fall within the traditional definition of racist crime and should, therefore, be distinguished from all other crimes, which are normally committed against specific victims on grounds of particular characteristics” (Racist Violence Recording Network 2018:20).

### Civil Society and Anti-LGBTQI Hate Crime Recording.

In response to the absence of an official and effective data collection system on racist violence and the need to coordinate civil society recording, in 2011 the Racist Violence Recording Network (RVRN) was set up by the UN Refugee Agency and the National Commission for Human Rights. The network brings together actors offering medical, social and legal services who may come into direct contact with victims of bias motivated violent attacks, as well as organizations established by identity groups vulnerable to hate crimes (Racist Violence Recording Network, 2018:7). In 2018, there were 42 members of the network, including four main Greek LGBTQI organizations which have legal status.

The RVRN members have a common methodology for recording hate crimes. Incidents are recorded exclusively on the basis of interviews conducted with the victims and a common recording form is used. It is completed anonymously and serves only for the purposes of combating racism and hate crimes. During registration, the following data are recorded: date of registration, name of recorder, name of the organization, date/place/time of the incident, type of criminal

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acts, social/demographic details of the victim and offender, motivations of the offender according to the victim, profession/status of the offender (for example, common citizen, policeman, public officer, member of extremist group), description of the incident, available evidence and actions of the victim after the incident. For the “gender identity” information, a blank space is left so the victim does not have to choose between predefined categories. RVRN members appoint key staff, trained by the RVRN within their organizations, to record the incidents of hate crime (Racist Violence Recording Network 2018:8).

Apart from the RVRN, a small number of other organizations use their own forms, designed and based on the legal framework or the guidelines of the Council of Europe and the OSCE/ODIHR. For example, the NGO Greek Helsinki Monitor records incidents using a different and mixed method of recording; collecting witness statements as well as media reports and social media posts/comments/messages.

### **Support for Victims of Anti-LGBTQI Hate Crime**

**There are just a small number of organizations offering specialized services to anti-LGBTQI hate crime victims, using a holistic model of support. There is a significant need for further improvement, accessibility, and visibility of such services in all the different areas across Greece.**

### **Availability of Support Services**

Most organizations interviewed provide one or more type(s) of service and if additional services are needed then the victims are referred to other organizations. Some organizations provide psychological support online only, or on call, while others can provide in-person sessions. In addition, a number of organizations offer a variety of services in a broad geographic area, while others offer their services only in specific regions or cities. While, there are only a few organizations in Greece that offer specialized services for LGBTQI hate crime victims, all the organizations interviewed have assisted at least one anti-LGBTQI victim of violence in the last 12 months.

Considering the answers of all those interviewed, the support options available for victims of anti-LGBTQI hate crimes can be summarized as follows:

- Psychological support: sessions are offered in person, via phone or online, and in support/empowerment groups
- Psychosocial support: career counseling, crisis intervention, escorting
- Psychiatric support
- Legal support: legal counseling, legal representation
- Medical support: examinations, first aid, medical consultations, information on medical issues
- Referrals to another organization/body/institution for specialized assistance
- Emergency accommodation

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Although the organizations seem to provide a holistic model of services, there are still many gaps to fill. Only two out of 11 interviewees said that people who carry out the above-mentioned services have specific training in anti-LGBTQI hate crime, victim assistance. The system is often characterized as “effective” for different reasons, such as: the great numbers of beneficiaries, positive feedback from users, continuous supervision of the staff, regular progress reports, free and easy access to all services, and direct response to emergencies. In addition, interviewees mentioned that “...the system is very effective, but sometimes the incidents are so many and the procedures become slow” (Support service provider, interview 1).

The various services have different kinds of funding sources depending on the project or the organization, including; European Union funding, State funding, Foundations, private companies, donors, and own resources.

### Accessibility of Support Services

Victims can access support services in a number of ways. Among the interviewed professionals, there are organizations which victims approach on their own initiative and thus, there is no referral diagnosis. Also, there are organizations which only accept referrals. Finally, the majority of support providing organizations can be approached either by the victims themselves or through a referral from other organizations. No supporting service provider we interviewed referred to the police as their referring agency.

All those interviewed argued that there is a need to facilitate access to the services for victims of anti-LGBTQI crimes. In order to ease access, professionals suggested a range of measures relating both to the accessibility and visibility of the existing services. These included: the creation of a safe waiting room, the guarantee of confidentiality, the availability of services by telephone or online, supporting groups, free-of-charge services, and the existence of protocols for first contact with a victim. Moreover, all interviewees were carrying out practices which, according to them, promote good victim assistance, such as organising special training for the professionals, following a code of conduct and specific scientific methods of support, and using consent forms.

Methods used to make the support services for anti-LGBTQI crime victims visible to other professionals or the public include: special campaigns on the media, focused on LGBTQI people; social media advertisements; participation at conferences; press releases; leaflet distribution and special publications; cooperation with educational institutions; participation in the Racist Violence Recording Network, and specialized training for professionals working in the front line.

Furthermore, all the interviewed professionals recognized the importance of making support services visible to LGBTQI people. However, only four people talked about being involved in awareness raising actions; they did this by participating in organizing events for the public (Athens Pride) such as distributing posters and leaflets, engaging in social media campaigns, visiting schools and being in contact with the LGBTQI community or LGBTQI NGOs.

Even though most of the organizations interviewed are not involved in projects specializing in anti-LGBTQI hate crimes, they do provide support services when a victim is referred to them through other programs. For example, one NGO we interviewed supports LGBTQI asylum seekers through their Accommodation Scheme Program, while another non-profit organization provides psychological and/or psychiatric support to LGBTQI homeless people who are referred to them as people with mental health problems.

## Conclusions and Recommendations

The professionals we interviewed agreed that underreporting of anti-LGBTQI hate crimes is a serious problem in Greece. Most suggested the reasons for this include fear of secondary victimization, the lack of a safe, confidential environment for the victims, the lack of specific and widespread use of protocols for reporting hate crimes and/or supporting the victims. Furthermore, most of the professionals also highlighted the need for specialized training for all those working in the field. They also emphasized the need for full support services for victims, provided by the organizations, and improvements to the accessibility of reporting and support services.

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Based on the above general conclusions, in order to combat the underreporting of anti-LGBTQI hate crimes in Greece, build the capacity of reporting centers and victims support service providers which deal with such incidents, and provide the victims with quality support services, we make the following key recommendations to the Greek State:

Combating underreporting of anti-LGBTQI hate crime:

1. Create a safe environment for the anti-LGBTQI hate crime victims and facilitate the reporting procedure in every Special Police Department and Office for combating hate crime.
2. Distribute information material to members of LGBTQI communities regarding: their human rights, the definition, and legal framework of hate crime, guidelines for victims on how properly to react in such incidents, contact information for reporting centers and support services providers.
3. Raise awareness – for example through social media campaigns – of the necessity of reporting such incidents.
4. Improve and increase the means of contact – such as help-lines, online support/reporting etc. – with reporting centers, in order to facilitate the access of the victims to reporting services all over the country.
5. Create robust mechanisms for cooperation among different key stakeholders across society; i.e. civil society, public services, and security bodies.

### Providing Support Services to Victims:

1. Provide free legal and/or psychological support services to anti-LGBTQI hate crime victims who are unemployed and/or have a very low income.
2. Create LGBTQI friendly hosting facilities/shelters for victims of domestic homophobic/transphobic/biphobic violence, via state and/or European and/or private funding.
3. Provide anti-LGBTQI hate crime victims with accompanying support from public social services (in municipalities, hospitals for example) to every other body/institution/organization for additional services.
4. Appoint psychologists to all schools in order to support victims of homophobic, transphobic and biphobic bullying.
5. Create realistic referral pathways.
6. Empower the victims.

### Capacity building:

1. Train and raise awareness of police officers, prosecutors, judges, school/education professionals, health professionals, public sector social service staff – particularly those working in emergency departments – on LGBTQI issues, relevant legal frameworks, identifying and/or preventing homophobic, biphobic and transphobic bullying and harassment, use of appropriate and non-abusive language, as well as relevant good practices across Europe.
2. Training should be continuous and repeated.
3. Create specific training courses dedicated to media actors and journalists.
4. Provide coaching and supervision to the people working in the field.
5. Develop and spread the use, among all police departments and offices, of an analytical, specific protocol for reporting hate crimes, avoiding secondary victimization, facilitating the access of the victim and referral to support service providers. A similar protocol should be developed for professionals working in any public social service.

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# Hungary



*At a glance*

## Attitudes

Hungarian society is moderately accepting of LGBT people; according to the Eurobarometer (437/2015), almost half of Hungarians (49 percent) agreed that gay, lesbian and bisexual people should have the same rights as heterosexual people (EU average: 71 percent); 34 percent would feel comfortable seeing same-sex couples showing affection in public as opposed to 58 percent for straight couples while 22 percent would feel comfortable with sons or daughters in a relationship with a trans person.

## Victimization levels

According to the EU LGBT survey (2013), 28 percent of respondents from Hungary declared they had been physically/sexually attacked or threatened with violence in the previous five years; however, only 10 percent of Hungarian LGBT respondents reported the most recent incident to the police.

## Official Statistics on Anti-LGBTQI Hate Crime

Hungary does not disaggregate anti-LGBT crimes from other hate crimes. In 2016 a total of 33 hate crimes, including all grounds, were recorded by the police.



## Summary

- Hungary has legislation on hate crimes and hate speech explicitly covering sexual orientation and gender identity, but these provisions are not always enforced; criminal justice agencies often disregard bias motivation.
- Hungary has a relatively developed victim support system with victim support and legal aid services offered as a public service; but there is only one civil society organization offering services tailored specifically to the needs of victims of anti-LGBTQI hate crimes.
- Cooperation between civil society organizations working on hate crimes and the public victim support service is non-existent; cooperation with the police is intensive at the national level but largely missing at the local level, posing a barrier to efficient referral mechanisms.
- Training of criminal justice agencies on hate crimes and LGBTQI people is sporadic and such training is not available at all to victim support services.
- There have been no public campaigns to encourage reporting, or efforts to make reporting easier for victims of anti-LGBTQI hate crimes; some civil society organizations have developed online reporting interfaces and conducted small-scale awareness raising campaigns.
- The rights of victims, enshrined in the Victims' Rights Directive, have been transposed into legislation but their enforcement is often limited due to lack of human capacity, and for financial or technical reasons, or due to restrictive interpretation by public authorities and courts.
- There is no specialized system for criminal justice agencies to record hate crimes. A statistical form is opened and updated during the investigation for all crimes, which allows for the identification of some (but not all) hate crimes, but disaggregation of data by bias motivation is inconsistent.



# Hungary: Support and Protection for LGBTQI Victims of Hate Crimes, an Empty Promise

Tamás Dombos, József Kárpáti and Bea Sándor

## Legal Framework

Hungarian law does not refer to “hate crimes” or “hate speech” *per se*. The Criminal Code, however, defines and punishes bias-motivated criminal acts with explicit reference to sexual orientation and gender identity. Most provisions of the Victims’ Rights Directive have been transposed to Hungarian law but their implementation is often limited due to lack of human capacity and for financial or technical reasons. The deficiencies of the transposition (and the bad practice) are however, not specific to hate crimes or LGBTQI victims.

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In relation to bias-motivated criminal acts committed against LGBTQI people there are two groups of relevant acts in the Hungarian Criminal Law: *sui generis* acts, where the description of a criminal act explicitly refers to bias when defining the motive and the aim of the criminal act; and other criminal acts that do not contain an explicit reference to bias motive, but “qualifying circumstances”<sup>1</sup> refer to “malicious motive”, which includes bias motive based on someone’s belonging to a particular social group.

The following criminal acts defined by the Criminal Code (Act C of 2012 on Criminal Law, hereafter also referred to as Criminal Code) are LGBTQI relevant for hate-motivated acts:

*Sui generis* acts that explicitly refer to sexual orientation and gender identity:

- violence against a member of a community
- incitement against a community

Acts that suggest bias motive indirectly, listing “malicious motive”



1 A “qualifying circumstance” is a feature of a criminal act specifically included in the definition of the crime in the Criminal Code that imposes a higher sanction for the act.

as a qualifying circumstance:

- homicide, assault, illegal restraint, defamation, unlawful detention, offending a subordinate

Sex characteristics (intersexuality) *per se* are not mentioned in the law but since the list of protected characteristics is open-ended, such bias motive is also implicitly covered, both in the case of violence against a member of a community and in the case of incitement to hatred against a community.

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Violence against a member of a community (Criminal Code Article 216) is a crime committed by someone who:

*(1) displays apparently anti-social behavior against others for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, aiming to cause panic or to frighten others; this felony is punishable by up to three years of imprisonment.*

*(2) assaults another person for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, or compels him by applying coercion or duress to do, not to do, or to endure something; this felony is punishable by one to five years imprisonment.*

Incitement against a community (Criminal Code Article 332) is a felony committed by “any person who, before the public at large, incites hatred or violence against the Hungarian nation, any national, ethnic, racial or religious group, or certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation.” The crime is punishable by up to three years of imprisonment.

The provisions of the Victims’ Rights Directive were transposed into Hungarian legislation via amendments to the Criminal Procedure Act (Act XIX of 1998 on Criminal Procedure), the Victim Support Act (Act CXXXV of 2005 on Support of Victims of Criminal Offenses and State Compensation), the Legal Aid Act (Act LXXX of 2003 on Legal Aid)

and several lower level pieces of legislation.<sup>2</sup> The *HateNoMore* project prepared a detailed analysis of the transposition procedure, as well as data about its implementation (Háttér 2016). The report found that most provisions of the Victims' Rights Directive have been transposed to Hungarian law, but their implementation is often limited due to lack of human capacity and for financial or technical reasons.

The most significant novelty brought about by the transposition of the Directive was the introduction of individual needs assessments and the notion of *victims in need of special treatment* in the Criminal Procedure Act, in line with Articles 22-23 of the Directive. An individual needs assessment form has also been introduced (Victims' Rights Directive Annex 1) containing specific reference to hate crimes; however, of the possible personal characteristics, only age, sex, disability and citizenship are included; information on sexual orientation or gender identity can only be recorded in an open space for "Other circumstances necessitating special treatment". The form only records aspects of vulnerability and whether the victim is considered a victim in need of special treatment, but not the protection needs of the victim, or the protection measures to apply.

Even in cases where the provisions of the Victims' Rights Directive are transposed into Hungarian law, implementation is often limited due to a lack of human capacity, or for financial or technical reasons. For example, while police interviews and court hearings via videoconferencing are provided for in the legislation, the limited availability of technical equipment and the difficulty of organizing its use mean they are hardly ever used in practice. Similarly, audio-visual recording of



2 Decree 64/2015. (XII. 12.) of the Minister of Interior on the Tasks of the Police Related to Victim Support, hereafter also referred to as Victim Support Decree; Decree 29/2017. (XII. 27.) of the Minister of Justice on the Content of Requests for Victim Support Services and Rules on Certain Questions of the Provision of Victim Support Service in Non-Administrative Procedures; Decree 34/2015. (XI. 10.) of the Minister of Justice on Establishing and Monitoring Police Interview Rooms Designed for Hearing Defendants or Witnesses Being Less Than 14 Years Old and Aggrieved Parties Requiring Special Treatment; Decree 32/2015. (XI. 2.) of the Minister of Justice on the Detailed Requirements of the Content of the Information Leaflet on the Rights of Victims, Prepared by the Victim Support Service; Order 2/2013. (I. 31.) of the National Chief of Police on the Victim Support Tasks of the Police, hereafter referred to as VSO.

interviews or the use of special hearing rooms is not properly implemented. A police officer working at the National Police Headquarters said:

*The usage of recorders or special hearing rooms might cause difficulties. The way they work with a victim with special needs partly depends on the personality [of the officer]. Of course we have training. But the police force is a huge body and is composed of people just like the rest of society; you have to see this. (Police officer at National Police Headquarters (ORFK), interview 10)*

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A general criticism can be made regarding insufficient information provided about the rights of victims and the formal, difficult-to-understand manner of providing that information. The physical separation of victims and defendants cannot be solved in many places due to the characteristics of the buildings. Victims' rights and victim support do not receive sufficient emphasis at Universities of law, nor in the in-service training of judges, prosecutors and attorneys, and it is detectable only in traces, in the basic or in-service training of police officers.

Deficiencies in the transposition of the Victims' Rights Directive (and the bad practice) are, however, not specific to hate crimes or LGBTQI people.

### **Professionals and Anti-LGBTQI Hate Crimes**

**Professionals, who have no work experience with, or personal connection to LGBTQI people or other vulnerable groups do not consider hate crimes a serious social problem. On the other hand, professionals with direct experience are aware of underreporting, and thus recognize the problem of hate crimes to be far greater than the number of cases dealt with by authorities. Some training courses have been organized for professionals, most importantly the police, but they only cover a very small proportion of the professionals who might come into contact with anti-LGBTQI hate crime victims.**

Due to the low number of hate crimes reported, few professionals in Hungary have direct experience with hate crime victims, let alone victims of anti-LGBTQI hate crimes. Of those interviewed, only civil

society organizations offering services to LGBTQI people or hate crime victims in general, a police officer working specifically on hate crimes at the National Police Headquarters, and a prosecutor working in the capital, had substantive experience. Most other interviewees said they had never met an anti-LGBTQI hate crime victim: “[S]ince I have been working here, for three years, I have not met any report or complaint regarding such a case” (Police officer taking reports in the capital, interview 15). “We have never had a client who belongs to this community.” (Officer at victim support service outside the capital, interview 8)

Professionals working in the police, prosecution service or the public victim support service, at civil society organizations specifically working with LGBTQI people or, at least, some other minority groups subject to hate crimes, had a relatively good understanding of the notion of hate crimes. They referred to crimes committed with a bias or hate motive, or a crime being motivated by the victim’s belonging to a certain social group; some added that victims often differ from the majority in their views, norms or behavior. Police usually referred specifically to the crime of violence against a member of a community as defined by the Criminal Code (Police officer at National Police Headquarters (ORFK), interview 10; High ranking police officer outside the capital, interview 13). Psychologists working at victim support organizations on the other hand, had difficulties explaining the difference between hate crimes and discrimination (Psychologist at general victim support organization, interview 11; Psychologist at support organization for migrants, interview 19).

None of the interviewees questioned that LGBTQI persons are covered by the notion of hate crime and related legal provisions in Hungary; however, differences between sexual orientation and gender identity were not always clear for respondents. This is in line with the experience of the legal aid service of Háttér Society, who found that even legal documents such as police reports, indictments or judgments often do not make proper use of these terms (Professional at LGBTQI legal aid service, interview 7).

Those who have no first-hand experience of LGBTQI people or other minority groups do not consider anti-LGBTQI hate crimes a serious social problem: “I do not think it is serious. I do not consider it serious based on the number of cases...” (High ranking police officer

outside the capital, interview 13); “...the number of crimes with such a motivation is low.” (Chief of patrol outside the capital, interview 14) Professionals with first-hand experience, on the other hand, are aware of underreporting and thus recognize the problem to be far greater than the number of cases dealt with by authorities.

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A report by the *Working Group Against Hate Crimes* (2012), a coalition of civil society organizations and experts working in the area of hate crimes, documents widespread problems in hate crime procedures; they identify “under-classification” (mis-categorization) as the number one problem, by which they understand that the bias motive is ignored in the proceedings. A second problem is the failure of action by the police at crime scenes; since the officers underestimate the seriousness of incidents they often fail to apprehend perpetrators, secure relevant evidence, or disperse public assemblies when participants commit a crime or violate the rights or freedoms of others, such as in case of demonstrations by hate groups. Finally, investigative authorities often fail to take all necessary investigative actions such as interrogating witnesses, retrieving recordings from CCTV before they are deleted, conducting house searches, exploring the perpetrator’s living conditions or analyzing their social media presence to get an understanding of their lifestyle and views. (For more information on the Working Group, see text box below.)

### **Hungarian civil society organizations’ coalition working on hate crimes**

The Working Group Against Hate Crimes is an informal coalition of NGOs and experts working on hate crimes. It has member organizations representing LGBTQI, Roma and refugee/foreigner victims. They focus on improving legislation and its application, encouraging victims to make reports and raising awareness. Their activities include preparing opinions on draft legislation, proposing changes to legislation, organizing conferences, publishing scientific articles and practical manuals, organizing training, maintaining a knowledge base and informing professionals about developments via a newsletter, and preparing international shadow reports. They cooperate with the police, universities, and professional associations. See [www.gyuloletellen.hu/about-us](http://www.gyuloletellen.hu/about-us)

To address these problems a hate crime network was set up at the police service to supervise the investigative work of the police. The network consists of a national coordinator at National Police Headquarters and network members at each county police station. They receive specialized training and can instruct colleagues at county or local police level on how to perform investigations. No similar efforts to improve service provision have been implemented at the prosecution service or the public victim support service.

Professionals working at the public victim support service or general victim support organizations had difficulty grasping why services tailored to the needs of anti-LGBTQI hate crime victims would be needed; they focus on equal treatment among the various victim types rather than on the special needs of victims. The following quote demonstrates well, the approach of victim support services: "People do not come to us based on their orientation. The result is what matters. If they have a physical injury as a result of an assault, the reason for the assault is completely irrelevant for the authority. They are entitled to public compensation, that is, financial support..." (Officer at victim support service in the capital, interview 6).

The reluctance to recognize specific needs is partly related to the lack of training on such topics; some training projects about hate crimes have been implemented in recent years in the police and prosecution services, and the courts, but these only reached a limited number of professionals (there are 32,870 police officers, 2,045 prosecutors and 2,846 judges in Hungary, the training reached only a few dozen), and the issue is not properly covered at the universities of law or in the basic training of the police. Case workers at the victim support service could not recall any training on victims of anti-LGBTQI hate crimes, nor on hate crimes or LGBTQI people in general. The need for more training, however, was recognized by most interviewees.

## Reporting Anti-LGBTQI Hate Crime

**Underreporting of anti-LGBTQI hate crimes remains a serious concern in Hungary; research finds that only 10-23 percent of incidents are reported to the authorities. There have been no public campaigns to encourage reporting or efforts to make reporting such crimes easier. Some civil society organizations have implemented small-scale awareness raising campaigns and online reporting interfaces, but their efficacy is hard to measure.**

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The underreporting of anti-LGBTQI hate crimes is well documented by research in Hungary. A large-scale survey in 2010, by the Institute of Sociology of the Hungarian Academy of Sciences and Háttér Society (1674 respondents) found that only 15 percent of those respondents who had been victims of violence due to their sexual orientation had made an official report (Dombos, Takács, P. Tóth, Mocsonaki 2011). Research by the Fundamental Rights Agency in 2012, (2267 Hungarian respondents) found that only 10 percent of the most recent and 14 percent of the most serious threats or assaults were reported to the police in Hungary (FRA 2012) while a research study in five Eastern and Central European countries (168 Hungarian respondents) found the reporting rate to be 23 percent in Hungary (Iganski 2016). The most recent research, from 2016, covering 10 European countries (348 LGBT respondents in Hungary), found that only 10 percent of Hungarian respondents experiencing or witnessing homophobic or transphobic hate crimes or online hate speech reported it to the authorities (Háttér Society 2017b).

Earlier research among professionals about the underreporting of anti-LGBTQI hate crimes, in the framework of the project entitled *UNI-FORM: bringing together NGOs and Security Forces to tackle hate crime and online hate speech against LGBT persons*, found that professionals not in direct contact with crime victims knew little about underreporting or were insecure about answering the question. In contrast, those police officers specialized in hate crimes were aware of underreporting (Háttér Society 2017b). Interview research by the Fundamental Rights Agency, with 263 hate crime professionals from around Europe (among them 10 Hungarian professionals), found that 68 percent of them thought hate crimes are “more” or “significantly more” difficult to report than other crimes (FRA 2016).

The current research found similar tendencies. The general finding is that those who have not had any work or personal connection to LGBTQI people, or at least some other minority groups subject to hate crimes, have no clear understanding of the notion of hate crime and do not consider underreporting of hate crimes a more serious problem than for any other type of crime. This finding cuts across the various types of organization and is equally true for police and victim support organizations, both public and those run by civil society. It is worth noting that, due to the nature of the phenomenon, even those public officials believing underreporting to be a serious problem, can refer only to their impressions or to indirect information from civil society organizations. Professionals working in civil society organizations tend to report high levels of underreporting, supported by their own experience and partly by their own documented cases.

The assumed causes of underreporting mentioned by interviewees were; unwillingness to come out, shame, humiliation, feelings of inferiority, fear of publicity, repeat traumatization and (founded or unfounded) mistrust of the police, or lack of information and fear of lengthy proceedings. These are similar to previous studies on the subject. A victim support service case worker also emphasized social stigma, as well reluctance to retell the story several times: "I think there is inhibition, social prejudice, so they'd rather not... They turn to the police as an investigative authority if such a crime happens, but they do not turn to other organizations... it is not easy to tell it at so many places" (Victim support service outside the capital, interview 9).

No interviewees were aware of any efforts by public authorities specifically to encourage victims to report anti-LGBTQI hate crimes or to make reporting easier. Some mentioned the efforts to improve the reporting of domestic violence, via work with the media, as an example that could also be replicated for hate crimes (High ranking police officer outside the capital, interview 13).

A number of interviewees were aware of the efforts of civil society organizations to improve reporting via online reporting interfaces and offered their support for such tools (Prosecutor, interview 5; Police officer at National Police Headquarters (ORFK), interview 10). They argued that these tools make the police more accessible for victims of hate crimes and are also useful for providing information on hate crimes in general, as well as on legal procedures. Since 2012, the

Háttér Society has been operating an online reporting interface for hate crimes, hate speech and cases of discrimination, called *Report homophobia!* Experiences with the initiative prompted the development of the *UNI-FORM* project that aims to develop a new reporting interface, available throughout Europe, directly linked to the police. (For more information on the project, see text box below.)

### **UNI-FORM: a project linking LGBTQI civil society organizations and police**

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*UNI-FORM* is an online reporting interface and smartphone app, available in local languages in nine EU countries since September 2017. The application contains a simple form to report hate crimes and online hate speech. Users can decide to report the case only to a local partner organization, or also directly to the police. If reporting to the civil society organization only, the user can remain anonymous. The application contains information on national legislation and a point of interest database with all police stations, hospitals and victim support services. The project enjoys the full support of the police, and a cooperation agreement between Háttér and the police is currently being drafted. See [www.uni-form.eu](http://www.uni-form.eu)

The representative of the local partner organization of the *UNI-FORM* project, Háttér Society, was however, cautious about expecting too much from online reporting interfaces: “Other countries have also introduced online reporting interfaces and their experience is that the use of these has been quite hectic. ... In order to make them really work, they have to be continuously promoted so that people know about these interfaces. ...” (Professional at LGBTQI legal aid service, interview 7).

He emphasized the importance of making in-person reporting available locally:

*It is important for people to know that they can report hate crimes locally, wherever they are. It would be good to form a country-wide civil network, to make sure that people can talk about what happened to them even if they do not trust the electronic channels*

*or do not like making calls. This is missing in Hungary. People can only turn to state authorities – but then it means a criminal procedure will be launched. (Professional at LGBTQI legal aid service, interview 7)*

Háttér also held a series of training courses for local LGBTQI activists to become paralegals, non-professionals who can provide basic legal help via taking statements, referring victims to public authorities or civil society organizations, and running legal awareness raising campaigns.

The issues of underreporting and accessibility are deeply related; even if victims know they have been subjected to a crime and are willing to report, if they do not know where to report or if making the report is difficult, it will not be made. The only organizations working on making their services more accessible specifically to LGBTQI victims of hate crimes are the three LGBTQI organizations interviewed. All other civil society organizations or public bodies talked only about making their services more widely known in general.

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### **Rights of Victims of Anti-LGBTQI Hate Crimes in the Criminal Justice Process**

**The rights of victims enshrined in the Victims' Rights Directive have been transposed into Hungarian legislation, but their enforcement is often limited due to lack of human capacity, for financial or technical reasons, or due to restrictive interpretation by public authorities or courts. There are no public campaigns to inform LGBTQI or hate crime victims about their rights; this group of victims often remains invisible for criminal justice agencies and victim support services.**

Rights enshrined in the Victims' Rights Directive were transposed into Hungarian legislation in 2015.<sup>3</sup> This legislation affords victims the right to: be informed about the case; have access to and make copies of case documents; be accompanied by a person of their choice to police interviews; be present at certain investigative actions; make suggestions to authorities; make comments on investigative actions and case documents. They also have the right to: make a complaint



3 For a detailed list of transposing legislation see section on legal framework.

about decisions or other actions of investigative authorities, including omissions; make a statement and suggest questions to be asked at court hearings; use their own language; have a legal representative throughout the procedure; claim expenses related to their participation in the procedure as a witness; request personal protection, and access compensation, victim support and legal aid services. The requirements and wishes of victims in need of special treatment should be accommodated and special measures are to be used, especially in such cases. These measures include the audiovisual recording of police interviews, interviewing and court hearing via videoconferencing, being interviewed in rooms specifically suited for such purposes, and avoiding contact with the perpetrator. However, unlike the Directive that prescribes these measures as rights, Hungarian legislation only requires that authorities “endeavor” to make use of these measures, thus downgrading these provisions from an enforceable right to an aspiration.

The duty to respect human dignity, personality rights and privacy are enshrined as basic principles to be respected in all criminal proceedings (Act XIX of 1998 on Criminal Procedure 60(1)). The Equal Treatment Act (Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities), forbidding discrimination and harassment based on sexual orientation and gender identity, applies to all criminal justice agencies and victim support service providers (Articles 4(a), 4(c), 8(m-n)). These provisions can be considered as general measures to prevent secondary victimization; interviewees could not identify any other policies or guidelines serving this purpose.

The police are obliged to provide information to all crime victims, on victims’ rights and public victim support services. This is carried out *via* handing over an information sheet published by the public victim support service and informing victims orally, about the possibility of turning to victim support services. While in principle, the information sheet should cover victims’ rights as well as victim support services, detailed legislation on the content (Decree 32/2015. (XI. 2.)), it focuses on the latter; procedural rights of victims are not mentioned. Some victims’ rights (right to personal protection, right to confidential handling of personal data, right to the use of mother tongue, right to claim expenses related to the interview) are to be asked as questions by the police during interviews and are to be included in the record

of the interview, but this provision of information is often done in a very formal, difficult-to-understand manner, which is particularly problematic for less educated victims. All written decisions must contain information about the right to appeal. While the legislation allows for the publication of information sheets targeting victims of specific types of crime, in addition to the general ones, and thus allows the tailoring of information to the needs of the actual victim, to our knowledge no such specialized information sheets have been published for any type of crime.

When cases arise, the court, the prosecutor and the investigative authority must examine whether the victim is a victim with special needs and thus requires special treatment. This assessment is based on the victim's personal characteristics and living conditions, as well as the type and circumstances of the crime committed against them. A form to assess the individual needs of victims, to be used by the police, has been introduced but no similar forms exist for the prosecution service or the courts; the individual assessment may be repeated if necessary. The form contains specific reference to hate crimes but, of personal characteristics, only age, sex, disability and citizenship are included; information on sexual orientation or gender identity can only be recorded in an open space for "Other circumstances necessitating special treatment". Furthermore, the form only records aspects of vulnerability and whether the victim is considered a victim in need of special treatment, but the protection needs of the victim and which protection measures to apply, are ignored.

In principle, victims have the right, formally to challenge decisions of investigative authorities, thus providing a forum for victims' rights to be enforced. The right to complaint covers all decision, provisions, actions and omissions of investigative authorities, and shall be laid within eight days. The victim therefore, may submit a complaint if: the prosecution service or the police rejects the report, drops the case, or the public prosecutor issues a resolution without indictment, makes recourse (or refuses to make recourse) to mediation, or decides to postpone indictment. The victim may decide to file a substitute legal action if the public prosecutor or the police reject the report or drop the case, if the prosecutor drops charges or the prosecutor fails to find an offense subject to public prosecution and does not lay a charge. In such cases it is the victims themselves who prosecute the case

in court. Except for substitute legal action, the victim has no right to appeal court judgments, only the defendant, their lawyer and the prosecutor can do so. However, a restrictive interpretation by public authorities of the right to complaint negatively impacts on hate crimes victims in particular; there have been several cases in which the police or the prosecution service rejected a complaint concerning the legal qualification of the case, arguing that victims only have a legal interest in the case being investigated and prosecuted, but not in how it is legally qualified, thus leaving victims without redress if the authorities disregard the bias motivation, and only investigate or prosecute the base crime (Working Group Against Hate Crimes, 2012).

Formal decisions (such as rejection of a request for financial aid or public compensation, a decision to oblige the victim to pay back financial aid or the cost of legal services) issued by the public victim support or legal aid services can be appealed, and if the appeal is unsuccessful, can be contested in court on the basis of the Code of Administrative Procedure (Act I of 2017). Other (non-formal) measures (e.g. information, referral) cannot be contested.

There have been no public campaigns or publications to inform LGBTQI or hate crime victims about their rights. However, general legal advocacy organizations and a legal aid organization targeting ethnic minorities have produced flyers, information sheets, and guides to hate crime victims that mention all protected groups, including LGBTQI people. Háttér Society has issued several publications on the rights of LGBTQI people, also including information on the rights of hate crime victims. They also regularly organize legal awareness raising training for members of the LGBTQI community. (For more information on the awareness raising work of Háttér, see text box below.)

## Awareness raising videos online

In 2016 Háltér Society published a series of short animated videos to raise the awareness of the LGBTQI community on their rights already secured in Hungary. Voiceover for the videos was recorded by a famous celebrity. One of the videos focused on hate crimes; the 2.5 min video tells the story of a homophobic attack against a young gay man and includes information about hate crime legislation and the rights of victims. The video emphasizes the dilemma of reporting or not, dispelling common fears about the risks involved. The video also promotes the legal aid service of Háltér with the slogan: *You are not alone! Get informed, ask for help, stand up for yourself!* The video received 77,000 views and 694 likes on social media.

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## Recording Anti-LGBTQI Hate Crime

**There is no specialized system for criminal justice agencies to record hate crimes; rather, reports are recorded in their narrative form. A statistical form is also opened for all crimes and updated during the investigation, which allows for the identification of some (but not all) hate crimes; but disaggregation of data by bias motivation is not consistent. Records of cases at the public victim support service do not allow for the separation of hate crimes from other crimes against human dignity. Some civil society organizations have advanced systems to record and categorize hate crimes.**

Interviewed police officers and prosecutors knew of no specific guidelines or protocols on recording hate crimes; general rules, however, do apply to them. When a crime is reported to the police or the prosecution service, in person or over the phone, the police officer or prosecutor produces a summary, in a narrative form, of the facts reported. There is a template for the report that includes some basic questions concerning the person reporting and some legal disclaimers, but there is no set of questions guiding the interview. The interviewees referred to the “main questions of criminalistics: What? Where? When? How? Who? To whom? Why?” (Police officer taking reports in the capital, interview 15). The Criminal Procedure Act prescribes that all relevant data be recorded, if needed, verbatim. The report is filed in

the case management system of the police (*Robotzsaru*). In case the police are called to the crime scene, a report is prepared by the patrol officers, and stored in *Robotzsaru* (Victim protection police officer in the capital, interview 17). If a report is submitted in writing (via post or email), it is also filed with the case in *Robotzsaru*.

Based on information contained in these documents the (sub-) commander of the criminal affairs department decides if the case is a crime and if so, what type of crime, and orders an investigation to be started. When asked about whether this person is trained regarding the identification and registration of anti-LGBTQI hate crimes, the interviewees said that there is general training, but it does not mention LGBTQI people as victims of hate crimes (Police officer at National Police Headquarters (ORFK), interview 10). The prosecution service at any time can instruct the police to re-categorize the incident as a different crime.

Since there is a *sui generis* hate crime in the Hungarian Criminal Code, the crime is qualified as a hate crime from the beginning of the investigation, although it can be updated any time during the investigation. In cases where the crime is qualified as a hate crime it is, supposedly, transferred to the county police as they have the jurisdiction to investigate such cases. After an investigation is started the victim is usually interviewed (again), as a witness, to provide further information. There is a template for this interview but as with the template for crime reports, it does not contain a list of questions to ask.

#### List of bias indicators developed by civil society organizations

In 2017, the coalition *Working Group against Hate Crimes*, formed by civil society organizations, compiled a list of bias indicators to facilitate recognition of hate crimes. The introduction to the list calls on police and prosecution to record all indicators identified in the case files. The police department has officially informed the *Working Group* that the list has been put to use by the police, and is used in training but it is not clear how well-known or widely used it is on the ground.

Since 2015 the police also have a duty to fill out on first contact, an individual needs assessment form for all victims (Victim Support Decree Article 2). The form contains a question concerning the type of crime, and hate crimes are specifically included as an option, but the bias motivation is not recorded. Among the personal characteristics only age, gender and disability are recorded; ethnicity, religion, sexual orientation or gender identity is not. The victim protection police officer in the capital highlighted that this form must be filled in during the very first meeting, although sometimes it is only during an investigation that the nature of a crime is revealed, and the forms are practically never updated to reflect this (Victim protection police officer in the capital, interview 17). Police officers we interviewed (Interviews 13 and 17) reported that data from individual needs assessment forms are also processed in an anonymous way and analyzed for victimization trends. This processing is not required by law and it is not clear whether it can be considered a standard practice for other police units.

Parallel to launching an investigation, a statistical form is also opened in *Robotzsaru*, which contains various aspects of the case. The form is part of the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (ENYÜBS) (Decree 12/2011. (III. 30.)). It categorizes the registered crimes on the basis of the legal qualification laid down by the authorities (Criminal Code articles and paragraphs); in some cases subcategories (method, object) are also recorded. The data recorded include the gender, age, citizenship and occupation of victims, but no other personal characteristics (including their belonging to a group that might be relevant in cases of hate crimes). The system allows no possibility to record a victim's transgender status. In cases of violence against a member of a community the "method" field enables the specification of the victim group, however, while classification according to protected characteristics is mandatory regarding crimes committed against members of a racial, ethnic, national or religious group, it is optional with regard to sexual orientation, gender identity and disability (they can be subsumed under the category of "other group"). The statistical form is constantly updated throughout the investigation and finalized when the investigation is terminated, closed, suspended or submitted for prosecution. A fundamental problem with the system is that the classification of crimes depends entirely on the authorities. Even if

the victim or a witness perceives hate as a motive, if the authorities do not take this into account, the hate crime recorded becomes “invisible” in the system.

The prosecution service uses the same statistical system; they register crime types, violence against a member of a community among them, so they can tell how many such crimes were processed during a given year, but the same limitations described above, apply.

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Once the statistical form is finalized, the crime becomes a “registered crime”, and becomes available in the public interface of ENYÜBS.<sup>4</sup> The interface allows for filtering on the legal qualification, the year and the county where the crime took place, but does not allow for filtering on bias motivation, even if it was recorded in the system.

Recording of crimes at the public victim support service is significantly less developed. The primary aim of the service is to offer support services to the victim.<sup>5</sup> In the majority of cases the crime has already been reported to the police who refer the victim to the victim support service. This means that the data gathered by victim support services are of limited use as a complement to data collection by the police.

Case workers at victim support services must fill in an individual needs assessment form and a case information sheet for all cases they deal with. The individual needs assessment form must identify the needs that substantiate the provision of services (Decree 1/2006 (I.6.) of the Minister of Justice on Accessing Victim Support Services); and case information sheets contain notes on actual service provision. While the individual needs assessment form does contain a list of crime types, it does not specifically list hate crimes as an option, these are subsumed under the category of crimes against human dignity (together with abuse of personal data, libel, stalking etc.). Among the personal characteristics only age, gender and disability are recorded; sexual orientation or gender identity is not.

The data gathered this way is not analyzed: “Well, I can only say that the person responsible for filing the data might be able to produce data. But I am not sure. (...) We do not have a protocol on this. We



4 <http://bsr.bm.hu>

5 For an analysis of the services offered, see the section on referring and assistance

do not summarize the data gained from the individual needs assessment documents.” (Victim support service officer outside the capital, interview 8)

The interviewees at the victim support service in the capital explained that the statistics they produce focus on the official procedure and not on the type of crime or personal characteristics of victims. They register the number of clients and cases, the forms of decisions, procedural data, etc., but they do not gather or analyze data on the age, gender or other characteristics of their clients.

All civil society organizations interviewed have some form of internal registry of cases they receive and work on, but only Háttér Society mentioned a developed system of recording and categorizing hate crimes. (For more information on the case management system, see the text box below.) General legal advocacy organizations operate case registration systems in which they record all incoming requests for help but the systems are not detailed enough to identify LGBTQI hate crime victims. The *Working Group Against Hate Crimes* have a joint hate crime case registry with information not only on all the cases its member organizations handle, but also cases gathered from other public sources. Case descriptions follow the methodology of OSCE ODIHR (2017).

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### Case management system

The Legal Aid Service of Háttér Society uses an advanced case management system which contains all cases the service deals with, including all case files and client communication. The system also contains anonymized summaries and categorization based on type of case (including hate crime and hate speech as specific categories) and demographic characteristics of the client (gender, age, sexual orientation, trans status, type of settlement, ethnicity, disability and HIV status) if the client shares such data. The system is in line with the statistical manual adopted by the board of the organization, requiring that a minimum set of information be recorded about cases, by all services of the organization.

## Support for Victims of Anti-LGBTQI Hate Crime

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**Hungary has a relatively well-developed victim support system with victim support and legal aid services offered as a public service. A network of victim protection officers at the police and witness care office at the court complement this system. However, these public bodies offer no specialized services tailored to the needs of victims of anti-LGBTQI violence. They have no specific protocols or measures in place for victims of anti-LGBTQI hate crimes and are not properly trained on these issues. There is only one civil society organization offering legal and psychosocial support specifically to anti-LGBTQI hate crime victims but the service is severely underfunded, and not properly linked to public service providers.**

In 2005 Hungary adopted a specific law on the support and public compensation of victims of crimes. According to the Victim Support Act, the state shall provide to the victim the following services: facilitating the enforcement of the victim's interests, instant financial aid, certifying victim status, witness care, and ensuring placement in a safe house (Article 4(1)). Indigent victims of violent crimes whose bodily integrity or health has been harmed are also entitled to public compensation (Chapter III). Facilitating the enforcement of the victim's interests, instant financial aid, certifying victim status, and public compensation are offered by the public Victim Support Service integrated into the district and county government offices (Government Decree 362/2016. (XI. 29.)). As part of facilitating the enforcement of victims' interests, the victim support services help victims in the enforcement of their fundamental rights and in resorting to healthcare services, health insurance benefits and social welfare services, and to other forms of state support, in particular by providing information, (general) legal advice, emotional support, and other kinds of support in order to deal with the harm suffered (Victim Support Act Article 4(2)). In cases where the victim needs advanced legal counseling or legal representation, they are referred to the public Legal Aid Service (Victim Support Act Article 28(2) and Legal Aid Act). Legal aid is offered only to indigent victims. After the Legal Aid Service assesses the financial situation of the victims, they are referred to legal aid providers contracted by the state. Any lawyer or civil society organization with a contracted lawyer can apply to be a service provider and victims

are free to choose any provider. Service providers are entitled to an hourly fee set by legislation (Legal Aid Act 1(3)). However, the financial eligibility criteria and the burden of compiling the necessary financial documentation limit effective access to the service for a large number of potential beneficiaries.

Accessibility of the public victim support service was significantly improved in 2017; what was formerly a county-level service available in 20 county seats became a local service available at district-level government offices in 174 cities outside the capital and in 23 districts of Budapest. However, staff in the newly established, district-level offices, were not given a thorough training on victim support (Victim support service officers in the capital, interview 6) let alone any specialized training on hate crime victim support. As one case worker at a victim support service outside the capital, noted about training: “[I]t is completely general; we treat all victims in the same way” (Victim support service officer, interview 8). Since 2011 the public victim support service also has operated a 24h toll-free, national victim support hotline.

The focus of the work of the public victim support service is providing financial aid: “Most people turn to us in cases of theft, or burglary” (Victim support service officer outside the capital, interview 8). It was not clear from the interviews whether this is due to victims not needing any other service or rather that this is the most promoted and most easily understood service of the victim support services. In Budapest, the public victim support service has a psychologist on staff to whom they refer the victim; in the two other cities where we undertook interviews, the victim is referred to the general healthcare system. However, the public mental health system is very underdeveloped in Hungary, both in terms of infrastructure and human resources (Hungarian Psychiatric Association, 2016). It is a further problem that sexual orientation and gender identity are taboos in the healthcare system as well; research shows that 75 percent of LGBTQI respondents are not out to general practitioners and 63 percent, not out to specialists (Dombos *et al.* 2011:40).

All interviewees working at victim support services reported that in their work, they have neither met a victim of any type of hate crime nor LGBTQI victims in particular, so they cannot imagine such victims to have special needs. The following quote demonstrates well, the

approach of victim support service providers: “People do not come to us based on their orientation. The result is what matters. If they have a physical injury as a result of an assault, it is completely irrelevant, I mean for the authority, what the reason was for the assault. They are entitled to public compensation, which means financial support ...” (Victim support service officers in the capital, interview 6).

The Victim Support Act foresaw the adoption of legislation about witness care at courts (4(1d)), however the ministerial decree was never adopted. Nevertheless, a system of witness care does exist; witness care officers are appointed staff members of courts who inform witnesses (including victims) about their rights and are responsible for improving the infrastructure of interviewing victims and of waiting rooms (Decision 117/2008. (V. 6.) of the National Justice Council on Introducing the Institution of Witness Care on a National Level).

Within the police service, a victim protection officer network has been in operation since 2008 (Order 2/2013. (I. 31.) of the National Chief of Police on the Victim Support Tasks of the Police, Article 3). All county police are to have a dedicated victim protection officer, while local police are free to introduce such a position. The network is coordinated by a victim protection officer at the National Police Headquarters. Members are responsible for the supervision of the victim support activities of local police, monitoring victimization, implementation of victims’ rights, organizing training for local police, cooperating with the public victim support services and civil society organizations, helping victims solve their problems, organizing information campaigns and building trust between police and citizens. Victim protection officers have a duty to pay special attention to minor, elderly, disabled, foreign victims, and victims in a disadvantaged situation; LGBTQI or hate crime victims are not specifically included.

The public victim support services are complemented by civil society organizations offering general or targeted services. There is one general victim support organization, the White Ring Association, with offices in 19 cities, funded to a large extent by public grants. They have no specific experience of working with LGBTQI or hate crime victims. There is only one civil society organization, Háttér, which offers legal aid and limited victim support services to LGBTQI people in general, and thus also to victims of anti-LGBTQI hate crimes in particular (For more information on Háttér’s case management protocol, see the text

box below). Civil society organizations offering legal aid and victim support services to other minority groups, such as the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, Otherness Foundation and PATENT, have only a very low number of LGBTQI clients; within those the number of hate crime victims is statistically marginal. Over the last 15 years a distribution of work and informal referral system developed among these organizations in which they refer LGBTQI cases to Háttér Society unless cases of multiple discrimination are involved. It is worth noting that the civil society organizations with a higher number of hate crime cases (Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, Otherness Foundation) offer only legal aid and no other form of support. PATENT (an organization helping victims of domestic and intimate partner violence) and Menedék (an organization helping migrants) use an integrated client management system based on a holistic approach where the complex handling of the client's situation is at the center of providing support, but they have only dealt with a very small number of hate crime victims, and none that involve LGBTQI. There are publicly funded shelters with a limited number of places, operated from public funds, but they need to prioritize victims of trafficking and domestic violence, so it is unlikely that anti-LGBTQI hate crime victims would qualify for such help.

Háttér Society offers legal counseling and representation to most clients fitting the profile and strategic priorities of the organization; anti-LGBTQI hate crimes are such priority cases. Háttér also operates an anonymous counseling hotline that offers basic emotional support for victims. In principle, Háttér's personal counseling service is also available to victims of hate crimes, although they have had no such clients as yet. Háttér (and all other civil society organizations interviewed, except for White Ring) has an office only in Budapest and, while they strive to help victims outside the capital, this is not always possible. The organization receives no public funding for the operation of its services and is maintained via a large number of volunteers and by limited private and public funding from outside the country. Recently, Háttér became a legal aid provider contracted by the state, but the number of clients eligible for public legal aid has been very limited and the funding covers only part of the costs involved.

## Hate crime case management protocol

Háttér is currently in the process of developing a hate crime case management protocol. The protocol will deal with how hate crimes are handled in the various services of the organization and will cover intervention aims; case opening and case closure; case selection criteria; staff responsibilities; intervention steps; case documentation and follow-up for all services.

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Referrals are crucial in making sure that victims receive all the available support they might need. The police are obliged to provide information to all crime victims about public victim support services; when a victim contacts the police, the officer must provide them with an information sheet on victims' rights and also inform them orally, of the possibility of turning to victim support services. In fact, this is the primary way victims find the victim support services: "It is primarily the police who refer the victims to us" (Victim support service officer outside the capital, interview 9). The police do not forward data about victims to victim support services, so the victim support services cannot contact victims directly; only if the victims turn to them for help do they receive the service.

While both the victim support services and the police victim protection officers have a duty, prescribed by legislation, to cooperate with civil society organizations (Victim Support Act Article 43) this is limited to general victim support organizations; none of the civil society organizations offering specialized services to LGBTQI and/or hate crime victims could recall a single case in which the client was referred to them by public bodies.

## Conclusions and Recommendations

### Concluding remarks

In 2013, significant progress was made in improving the legal and institutional framework to deal with anti-LGBTQI hate crimes in Hungary. While the legal framework can be considered appropriate, inefficient investigations and disregard of the bias motivation behind crimes often results in no justice being delivered to hate crime victims. Most provisions of the Victims' Rights Directive were transposed to Hungarian law but their implementation is often limited due to lack of human capacity, or for financial or technical reasons. Deficiencies of the transposition and bad practice are however, not specific to hate crimes or LGBTQI victims. Victims are often regarded only as witnesses in criminal proceedings, which fail to recognize the harm and trauma suffered as a result of the crime.

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Public bodies fail to see their role in addressing underreporting and even those professionals who recognize the existence of the problem relegate its solution to civil society organizations. LGBTQI and mainstream legal advocacy organizations have made some effort to raise awareness about hate crimes and facilitate reporting via online interfaces, but these initiatives receive no public funding from the Hungarian state and their sustainability and broad impact is questionable.

Hungary has a relatively well-developed victim support system with victim support and legal aid services offered as a public service. A network of victim protection officers at the police, and witness care officials at the court complement this system. However, these public bodies offer no specialized services tailored to the needs of victims of anti-LGBTQI violence, have no specific protocols or measures in place for victims of anti-LGBTQI hate crimes, and are not properly trained on these issues. There is only one civil society organization offering legal and psychosocial support specifically to anti-LGBTQI hate crime victims, but the service is severely underfunded and not properly linked to public service providers.

Professionals working in criminal justice agencies, public victim support services or general victim support organizations had difficulty grasping why services tailored to the needs of anti-LGBTQI hate victims would be needed; they focus on equal treatment among

the various victim types, rather than on the special needs of certain victim groups. Such an approach hinders the development of policies, protocols and services that address the specific concerns of such victims. The reluctance to recognize specific needs is partly related to the lack of training on such topics; training courses on hate crimes at the police, prosecution and the courts only reach a limited number of professionals, and there is no such training available at all for victim support services.

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Underreporting and the lack of public campaigns, targeted policies and professional training result in this group of victims often remaining invisible to criminal justice agencies and victim support services. The new Criminal Code adopted in 2013 promised to take homophobic and transphobic hate crimes more seriously by including sexual orientation and gender identity in the hate crimes and hate speech provisions. The time that has since passed has proven that without more targeted action, such a promise remains empty.

### Recommendations

1. Adopt a comprehensive strategy and action plan covering all spheres of life to tackle discrimination and violence based on sexual orientation and gender identity.
2. Make available free legal aid to all victims in need of special treatment, including hate crime victims.
3. Adopt an investigative protocol for the police on hate crimes, including specifically anti-LGBTQI hate crimes.
4. Reform the criminal statistics system to allow for the identification of hate crimes regardless of their legal qualification, and to allow for disaggregating such crimes by bias motivation.
5. Make available free psychological counseling for victims of crimes as part of the public victim support system.
6. Establish better coordination and a formalized referral system between the police, public victim support services and civil society organizations offering support to hate crime victims.
7. Introduce LGBTQI community liaison officers into the police service at the national and county level.
8. Make information on LGBTQI people and hate crimes a mandatory part of the basic training of police and victim support personnel.

9. Launch a media campaign targeting and encouraging LGBTQI people to report hate crimes.
10. Make hate crimes victims a priority target group in calls for proposals for public funding in the field of crime prevention and victim support.

## Relevant legislation

Act XIX of 1998 on Criminal Procedure

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities

Act LXXX of 2003 on Legal Aid (Legal Aid Act)

Act CXXXV of 2005 on Support of Victims of Criminal Offenses and State Compensation (Victim Support Act)

Act CLXIII of 2011 on Public Prosecution

Act C of 2012 on Criminal Law

Act I of 2017 on Administrative Court Procedure

Decision 117/2008. (V. 6.) of the National Justice Council on Introducing the Institution of Witness Care on a National Level (not in force any more)

Decree 1/2006 (I.6.) of the Minister of Justice on Accessing Victim Support Services

Decree 12/2011. (III. 30.) of the Minister of Interior on the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution

Decree 25/2013. (VI. 24.) of the Minister of Interior on the Tasks and Jurisdiction of Investigative Authorities of the Police

Decree 32/2015. (XI. 2.) of the Minister of Justice on the Detailed Requirements of the Content of the Information Leaflet on the Rights of Victims, Prepared by the Victim Support Service

Decree 34/2015. (XI. 10.) of the Minister of Justice on Establishing and Monitoring Police Interview Rooms Designed for Hearing Defendants or Witnesses Being Less Than 14 Years Old and Aggrieved Parties Requiring Special Treatment

Decree 64/2015. (XII. 12.) of the Minister of Interior on the Tasks of the Police Related to Victim Support (Victim Support Decree)

Decree 29/2017. (XII. 27.) of the Minister of Justice on the Content of Requests for Victim Support Services and Rules on Certain Questions of the Provision of Victim Support Service in Non-Administrative Procedures

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. 2012

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# Italy

*At a glance*

## Attitudes

- According to Eurobarometer (437/2015), 72 percent of Italian respondents think that gay, lesbian and bisexual people should enjoy the same rights as heterosexual people. Despite that, less than a half (43 percent) would feel at ease with, or indifferent about, gay couples showing affection in public, compared to almost three quarters (73 percent) in case of heterosexual couples doing the same.
- Half (49 percent) of Italian respondents declare they would feel totally uncomfortable with their sons or daughters being in a relationship with a transgender or transsexual person. Only 26 percent would be totally comfortable.

## Victimization levels

According to the EU LGBT survey (2013), 19 percent of respondents from Italy declared they had been physically/sexually attacked or threatened with violence in the previous five years; however, only 17 percent of them reported the most recent incident to the police.

## Official Statistics on Anti-LGBT Hate Crime

The number of officially recorded SOGI hate crimes was 38 in 2016.

### Summary

- The lack of a specific law against homophobia/transphobia makes it harder to challenge anti-LGBT hate crimes, as well as making it difficult to estimate their frequency and seriousness.
- Law enforcement professionals who have work experience or personal connections to LGBT people show a high degree of consciousness about what an anti-LGBT hate crime is, although the general level of knowledge within the police service seems likely to be lower. NGO volunteers demonstrate knowledge of what an anti-LGBT hate crime is in theory, but in practice some display difficulty in distinguishing hate crime from other related phenomena, such as discrimination.
- Underreporting is widespread in Italy. Specific accessibility protocols for reporting anti-LGBT hate crimes have not been established, nor do the police have guidelines to govern the reporting of such crimes.
- Protocols or guidelines do not exist on statement taking or the recording of hate crimes. At the same time, most NGOs do not support victims in writing reports and do not collect any statistical data.
- Specific support services for anti-LGBT hate crime victims are mainly provided by LGBT NGOs on a voluntary basis and without the support of public funding. As a consequence, the fragmented and discontinuous nature of available services ends up hindering victims' access to justice.
- NGOs play the most important role in raising awareness of anti-LGBT hate crimes both within the LGBT community and the general public.



# Filling the Gaps: Combating Anti-LGBT Hate Crimes in Italy in the Silence of Law

Paola Parolari and Giacomo Viggiani<sup>1</sup>

## Legal Framework

**Italy has hate crime laws but SOGI are not recognized as protected grounds. As a result, anti-LGBT hate crimes are investigated as common crimes. Intersex status has never been considered or proposed as a ground for hate crime. The transposition of the Victims' Directive has been partial and no concrete support or specific service for hate crime victims has been introduced.**

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Until 2018, the Italian Penal Code did not provide any official definition of hate crime and the existing legislation was limited to Law no. 205/1993 (the so-called *Mancino Law*). With Legislative Decree no 21/2018, (in force since April 6, 2018) the provisions of *Mancino Law* have been transposed, with few minor changes, into the Penal Code. To this purpose, the Legislative Decree no 21/2018 introduced a new section (Section I-bis "Crimes Against Equality") in the part of the Penal Code dealing with "Crimes Against the Person", and more specifically, in the sub-section concerning "Crimes Against Individual Liberty". This new section consists of two articles: 604-*bis* and 604-*ter*. The substantive provisions introduced by article 604-*bis* punish: (a) racist propaganda, (b) the commission or the incitement to commit discriminatory acts, or acts of violence against people belonging to a different national, ethnic, racial or religious group, and (c) the establishment of associations and organizations with the purpose of inciting to discrimination or violence based on the same grounds. A more severe penalty applies if these acts are based on the denial, serious minimization or apologia of the Holocaust, or on the denial, serious minimisation or apologia of acts of genocide, crimes against humanity and war crimes as defined by articles 6, 7 and 8 of the Stat-



1 Giacomo Viggiani authored the "Summary" and "Legal framework" paragraphs. Paola Parolari authored all the other paragraphs. The "Conclusions and Recommendations" paragraph is co-authored by Parolari and Viggiani.

ute of the International Criminal Court. As in the *Mancino Law*, however, no reference is made to sexual orientation and gender identity as relevant grounds with regard to hate crimes. Art. 604-ter imposes a general penalty enhancement for every crime motivated by hate or by a discriminatory intent (except for crimes already punished with a life sentence). However, also in this case, penalty enhancements apply only to discrimination and hate motivated by bias on the grounds of race, ethnicity, nationality or religion.

In 2009, a Bill was prepared to recognize bias based on sexual orientation or gender identity as a general aggravating circumstance (intersex status or sex characteristics have never been considered as hate crime grounds) but, without opening the debate, it was deemed unconstitutional by the Chamber of Deputies (Bill C. 1658). In 2013, a broad and mixed political coalition proposed the Bill C. 245, extending the protection of *Mancino Law* to sexual orientation and gender identity. This Bill was approved by the Chamber of Deputies<sup>2</sup> but it was not presented to the Senate before the end of the legislature (December 29th, 2017).

The lack of hate crime legislation covering sexual orientation and/or gender identity also means that anti-LGBT crimes are not registered as such. This not only hinders the possibility of officially appointing an institution for collecting data on the reporting of these crimes but also makes it difficult to understand and challenge them properly.

As far as the support and protection of victims of crime are concerned, Italy has transposed the Victims' Directive through the Legislative Decree no. 212/2015, which amended some provisions of the Code of Criminal Procedure (articles 90, 134, 190-bis, 351, 362, 392, 398, and 498) and introduced four new articles (articles 90-bis, 90-ter, 90-quater, and 143-bis) and two implementing rules (articles 107-ter and 108-ter) in it.

The implementation has both strengths and weaknesses. One positive aspect is, for example, that the legislative decree adopts a new definition of the victim of crime which now includes, not only the persons who have directly suffered from the commission of a crime, but also, in the event of their death, relatives in direct line, siblings, dependants and partners living in a stable, *de facto* relationship, thus including same-sex families (constituted both before and after the



2 The Bill was approved with a substantive amendment, foreseeing an exculpatory circumstance for speeches delivered within political parties, trade unions, cultural and healthcare organizations, as well as churches.

enactment of the civil unions law in 2016). Other positive provisions deal with granting special protection to victims within the judicial proceedings, such as the use of video technology, separate waiting rooms, the exclusion of the members of the public from the courtroom, and other victim-sensitive actions.

In contrast, one negative aspect is that the obligation for Italy to periodically provide, to the European Commission, relevant statistical data about the application of national procedures on victims of crime (including at least the number and type of the reported crimes) has a very low impact for LGBT people. Indeed, since the existing provisions in the Italian penal law do not cover sexual orientation and/or gender identity it is not possible to discern, properly, anti-LGBT hate crimes from other hate crimes. Therefore, anti-LGBT hate crimes still are very likely to go unnoticed.

However, the main problem in the implementation of the Directive is the limited access to support services for victims. Indeed, while the Legislative Decree states that victims must have access to confidential support services in accordance with their needs, and that these services must be offered free of charge and through a sufficient geographical distribution across the country, no guidance is provided on how this should be realized. For the time being, no victim support service has been envisaged for LGBT victims of crime, neither have funds been allocated to NGOs providing assistance to victims. Since Member States can freely choose how to set up these services, but have no discretion with regard to their very existence, an infringement proceeding against Italy is likely to be started by the European Commission in the near future.

### **Professionals and Anti-LGBT Hate Crimes**

**The Italian professionals interviewed in this research showed a high level of consciousness about what anti-LGBT hate crime is. However, there are indications that the general level of knowledge might be lower, especially among law enforcement professionals. A shared perception of the seriousness of the phenomenon of anti-LGBT hate crimes is missing, probably due, among other things, to the lack of official data on anti-LGBT hate crimes. Furthermore, there is disagreement on whether the law on homosexual civil unions, recently passed in Italy, has resulted in an increased or decreased level of intolerance.**

The Italian professionals interviewed in this research have shown a high degree of consciousness about what anti-LGBT hate crime is.<sup>3</sup> All of them defined it as a crime motivated by prejudice and hatred against LGBT people because of their sexual orientation/gender identity. In addition, many of the interviewed police officers, either explicitly or implicitly, stressed the importance of bias indicators including: the circumstances of the crime, how the action developed, verbal expressions pronounced by the aggressor, the place and time where the incident happened (e.g. cruising areas or LGBT venues) and the fact that the aggressor belongs to a hate group.

The most common examples of anti-LGBT hate crimes mentioned by the respondents included: insult<sup>4</sup>, defamation, physical assault, personal injuries, threat and crimes against property. Other examples included incitement to suicide (especially connected with bullying at school), stalking, mobbing and murder. Only one professional mentioned that sexual assaults could be hate-related (Reporting center, interview 11), although the rest recognized the relevance of this kind of victimization after the interviewer suggested it. Cyber hate seemed, somehow, to be underestimated too. Some police officers stressed that hate crimes can only consist of acts already punished by the law, and that Italian criminal law does not punish homophobia/transphobia as such, either as a crime or as an aggravating circumstance.

It is important to underline that all the interviewed police officers either received specific training on anti-LGBT hate crimes or were actively involved in providing training to other police officers (see box below). Thus, the general level of knowledge within criminal justice institutions could be lower. This is especially true within the police force, in relation to the understanding of SOGI issues. Indeed, one of the respondents described being told by some colleagues that they had never even heard of the LGBT acronym (Reporting center, interview 7). This confirms the findings reported by FRA (2016a:57) where a significant number of Italian police officers either showed lack of awareness of LGBT issues or failed to recognize underreporting. A different study by FRA (2016b) highlighted that, generally, there is



- 3 Twenty two Italian professionals were interviewed (11 from reporting centers, mainly police officers, and 11 from support service providers, mainly NGOs volunteers).
- 4 However, the majority of them – especially among police officers – are aware that, after being decriminalized in January 2016, insult is now punished only with an administrative sanction in Italy.

insufficient training on hate crimes for professionals in the criminal justice system. With regard to victim support service providers, respondents demonstrated knowledge of anti-LGBT hate crime in theory, but the answers given by some of them showed difficulty in differentiating between acts that constitute a crime and other forms of discrimination that do not have criminal relevance.

Different perceptions emerged about the prevalence of the public sphere (mainly the street) or private sphere (mainly family, especially for psychological violence) as contexts in which anti-LGBT hate crimes occur. In the private sphere, some difficulties may emerge in distinguishing hate crimes from domestic violence, thus possibly affecting the ability to identify correctly the applicable rules and to provide or to make a referral to the most appropriate support services. Also, the perception of the seriousness of the phenomenon of anti-LGBT hate crimes varies. In general, respondents from LGBT associations are more inclined to see anti-LGBT hate crimes as a severe problem while some of the interviewed police officers think that, although there is a high level of intolerance and discrimination, anti-LGBT crimes are neither quantitatively nor qualitatively serious. For example, one police officer stated: “The issue is perceived as worrisome, but I think that actually, cases are not so numerous. In my experience this is not a pervasive phenomenon, nor is it relevant in terms of the gravity of the facts: mainly, we speak about insults, which are now decriminalized” (Reporting center, interview 9). Nonetheless, it must be said that other interviewed police officers think that the phenomenon is relevant and that, since cultural factors prevent discussion of the problem, it is probably more serious than it appears. One interviewee also stressed that the qualitative importance of the phenomenon (especially for its impact on social culture and on the conception of individual rights, but also for its very deep impact on the victim’s intimacy and self-perception) should not be underestimated just because of its (possible) low quantitative relevance (Reporting centers, interviews 3 and 10). Overall, the possibility of reaching a shared perception of the problem is hindered by the lack of official data on anti-LGBT hate crimes (see section on recording below).

Finally, there is disagreement among the respondents on whether the law on homosexual civil unions, recently passed in Italy (Law no. 76/2016, commonly called *Cirinnà Law*), resulted in an increased or decreased level of intolerance. Some respondents believe that it

resulted in an increased legitimization of LGBT people and also linked the increased number of hate crime reports to the awareness-raising effect of this law. In contrast, other respondents stressed the fact that the higher visibility of LGBT people heightened the reaction of intolerant people, thus leading to more anti-LGBT acts. Also, the negative impact of the high level of intolerance at the political level has been underlined. Indeed, as one respondent suggested: “The statements of some politicians are literally an incitement to hatred: they transmit the idea that assaulting LGBT people is not something so serious” (Reporting centers, interview 2). This also reinforces the warning of the FRA’s study (2016b:19-20), which calls for hate speech to be taken seriously and underlines the negative impact of discriminatory speech on the societal climate, especially emphasizing the language politicians use during election campaigns.

### Training and Sensitization of Police Officers

Since 2012, around 10 thousand law enforcement officers from Police and Carabinieri have attended training courses on hate crime and antidiscrimination issues carried out by OSCAD (Observatory for security against acts of discrimination), in cooperation with UNAR (National office against racial discrimination), LGBT Service Torino, Re.A.DY Network (National network of local public administrations against discrimination based on gender identity and sexual orientation), Polis Aperta, Avvocatura per i diritti LGBTI – Rete Lenford, and Amnesty International.

These courses include a 2-hour module on LGBT issues such as: basic concepts and terminology, national and European legal frameworks, good practice when dealing with LGBT persons (especially trans persons).

### Reporting Anti-LGBT Hate Crime

**Underreporting of anti-LGBT hate crime is a widespread problem in Italy. Reasons for not reporting are varied, ranging from distrust of the police to internalized homophobia/transphobia. At present, specific accessibility protocols for reporting anti-LGBT hate crimes**

**have not been established, nor do the police have guidelines to govern the reporting of such crimes. In particular, online and third-party reporting are not a possibility, while no specialized police units and/or liaison officers for anti-LGBT hate crimes have been set up.**

Italian professionals interviewed in this research share the perception that underreporting of anti-LGBT hate crime is widespread. Some of them, especially from the local or peripheral central police stations, said that they have never registered an anti-LGBT hate crime (or even any hate crime at all). The respondents also stressed that convincing victims to file a report is often hard, and that a significant number of the victims who turn to the service finally opt out of formalizing a report.

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According to the respondents there are several reasons that could explain underreporting, including: distrust of the police (fear that the police could share the same discriminatory attitude of the offender or not treat the victim in a sympathetic manner), a close personal relationship between the victim and the aggressor, fear of retaliation, desire to forget, shame and embarrassment (especially if the victim did not come out), internalized homophobia/transphobia, and the lack of awareness, in victims, of their rights. Many of the respondents also underlined the negative impact of the lack of a specific law against homophobia/transphobia which increases the feeling that reporting would not lead to any tangible result. These findings support those of previous studies (e.g. FRA 2016b:30).

To file a formal report, the victim has only two options, i.e. either to go in person to a police station, or to bring a written report directly to the prosecutor's office. If the victim chooses the former option (which is very often the case) it is likely that her/his report and statements will be taken in conditions which may not provide for the necessary comfort (for example, the rooms could be crowded and not welcoming) because no specific/separate reporting desks for hate crimes are available. All the interviewed law enforcement professionals agreed that there is a need to facilitate access of anti-LGBT hate crime victims to reporting centers. Despite this, neither specific accessibility protocols nor procedures for reporting anti-LGBT hate crimes have been established, nor do the police have policies or guidelines to govern the reporting of such crimes. In particular, online and third-party reporting are still not possible in Italy, while neither specialized police units nor liaison officers for anti-LGBT hate crimes have been put in place.

However, it is worth mentioning that the Observatory for security against acts of discrimination (OSCAD), which was instituted by the Ministry of the Interior within the Department of Public Security – Central Directorate of Criminal Police, may act as an intermediary between the victim and the police, thus facilitating the victim in receiving appropriate treatment when accessing the police station. Victims may reach out to OSCAD by email, including anonymously, and they will be contacted by phone only if they agree to it. Informal reports may be addressed by phone or online also to the National office against racial discrimination (UNAR), established by the government within the Department for equal opportunities. UNAR is an equality body which also deals with discrimination on the grounds of SOGI. Thanks to a cooperation protocol between UNAR and OSCAD, any report received by UNAR which has a criminal relevance is immediately referred to OSCAD. Reports to OSCAD and UNAR are also important for collecting data on anti-LGBT incidents (see section on recording below).

People who contact OSCAD and UNAR are often advised to do so by NGOs. More generally, many respondents stressed the importance of cooperation between NGOs and the police since, in their experience, victims are more likely to reach out to the police if NGOs support them in taking this step. Indeed, NGOs are often the first contact for victims; in addition, as far as NGOs are involved, social networks (e.g. Facebook) may play an important role in the victim taking a first step towards reporting. Some respondents also stressed the importance of anonymous help lines. In any case, as one respondent stressed, the police always seem to be “the last resort” (Reporting center, interview 6).

Awareness raising actions emerged as central tools for recognizing hate acts and discourses against LGBT people as criminal offenses. As far as the awareness of police officers is concerned, training activities have been provided by OSCAD (see box above), although the number of beneficiaries still needs to be increased. Indeed, systematic training is only provided for new police recruits rather than existing officers. However, as already stressed by the FRA (2016a:52), “older police officers, especially those officers in more rural areas, are less accepting of LGBT persons’ fundamental rights and equality agendas than their younger and more urban counterparts”. Therefore, they are probably the ones who are most in need of specific training on anti-LGBT hate crimes.

No specific policies have been adopted by the police so far, at the national level, for raising awareness about anti-LGBT hate crimes (e.g. to encourage victims to report). Some respondents from the police lamented that no extra resources are allocated to this purpose. However, examples of local initiatives exist. For instance, one interviewed police officer explained that they organize information campaigns in “hot zones” of the city for distributing flyers about what a hate crime is and how to report it (Reporting center, interview 8). Another police officer said that they participate in public events (often invited by schools or, sometimes by journalists) and in training courses for healthcare professionals, although these events and forms of cooperation mainly concern, for instance, domestic and gender violence, child abuse, bullying and stalking in general, and not LGBT issues as such (Reporting center, interview 9). This suggests that possible actions (if any) are left to the free initiative of each central police headquarter (Reporting center, interview 9).

In general, public authorities still show a low level of commitment with regard to countering anti-LGBT crimes. UNAR seems to be the only institution which, in recent years, has received some funding (also from the Council of Europe, e.g. in the case of the “National LGBT Strategy”, 2013-2015<sup>5</sup>) to address the general public with specific awareness-raising activities on LGBT issues. In addition, UNAR has distributed funding to NGOs through *ad hoc* calls for projects and it also works for the creation of a network with NGOs, both at national and local level (Reporting center, interview 3).

In this context, NGOs play the most important role in raising awareness of anti-LGBT hate crimes. Some NGOs admit that reaching out to the LGBT population is sometimes difficult. Indeed, according to one respondent, “it is hard to talk with persons who do not want to come out, because they only want to keep their secret, even if they have suffered violence” (Victim support service provider, interview 11). Nevertheless, NGOs carry out a wide range of awareness-raising activities. This includes, for example, public events, social networks, media work, presence in LGBT bars and clubs, community meetings, cooperation with public institutions, and participation in the national network of local public administrations against discrimination based on gender identity and sexual orientation (Re.A.DY Network). While some organizations work exclusively with LGBT communities, others



5 <http://www.unar.it/unar/portal/?p=1921>.

cooperate with NGOs also working with other groups.

### **Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process**

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**The law enforcement professionals interviewed within this project consider anti-LGBT hate crime victims to be vulnerable subjects. However, guidelines for avoiding secondary victimization are still lacking, with any initiative being left to the personal sensitivity and expertise of each, individual law enforcement professional. Furthermore, while victims' information rights in the criminal justice process recently have been implemented in Italy, guarantees of protection for victims still need to be strengthened.**

According to article 90-bis of the Code of Penal Procedure (introduced by Legislative Decree no. 212/2015), law enforcement professionals have to inform the victims immediately (in a language they can understand) about: how to file a report, how the procedure will develop after reporting, the victim's rights in the judicial proceedings (including the right to legal assistance and the right to an interpreter), and the available supporting services (including healthcare services, anti-violence centers, foster homes, and shelters).

Article 90-quater of the Code of Penal Procedure (also introduced by the Legislative Decree no. 212/2015) establishes the specific cases in which the victim may qualify as vulnerable. In particular, victims are understood to be vulnerable on the basis of predetermined subjective features (age, infirmity, mental deficiency) or objective factors: e.g. type and circumstances of crime; if the victim is emotionally, psychologically or economically dependent on the aggressor; if the crime is motivated by racial hatred or committed with discriminatory intent. Although no explicit reference is made to homophobia/transphobia, the discriminatory intent of the aggressor in anti-LGBT hate crime must be taken into account.

The possibility of including anti-LGBT crime victims within the notion of vulnerable victim is very important, since this implies special protection rights, such as using video technology for statement taking, granting separate waiting rooms, excluding the public from the courtroom during the trial, and other victim-sensitive procedures. Effective access to these rights is imperative for avoiding secondary victim-

ization. However, this may be hindered by several factors including the difficulty of recognizing the homophobic/transphobic motive of the crime and ignorance of the special needs of anti-LGBT hate crime victims. For these reasons, only adequately trained police officers and magistrates should deal with these victims.

Within this perspective, it is worth noting that the law enforcement professionals interviewed in this project consider anti-LGBT hate crime victims to be vulnerable subjects who should be referred to special police units for vulnerable victims, where they exist. However, such units can only be found in the major central police stations, and they are not specifically for (anti-LGBT) hate crime victims. Moreover, according to the interviewed police officers, no policies or guidelines exist on how to avoid secondary victimization despite the fact that this is actually one of the biggest problems that law enforcement professionals have to face.

Respondents from the police listed several examples of good practice that they autonomously try to follow in order to address the special needs of anti-LGBT hate crime victims. In particular, it has been stressed that the first contact with the victim is always crucial. Anti-LGBT hate crime victims should not be left waiting for hours in a common waiting room; an evaluation of the gravity of the crime should be undertaken immediately by professionals with specific training, in a separate, quiet, isolated, clean and well illuminated room. Anti-LGBT hate crime victims call for attention to their very personal situation and need particular empathy, sensitivity, discretion and a “personalized” approach. Commenting on this, one professional said that “the idea of treating everyone in the same way doesn’t work in these cases” (Reporting center, interview 2). For example, it was noted that the interview could take longer than usual, as the victim may bring up issues which might not have significance for the case. As one of the respondents pointed out, when the victim is particularly shocked, the police should avoid asking questions immediately after the incident, but rather provide the victim with adequate assistance and support first (Reporting center, interview 9). Another professional stressed the importance of conducting an exhaustive interview (in order to avoid the necessity of going back to the victims for more questions, time and again, in the future) and said that the victim should be handled by the same officer from the beginning to the end of the procedure

(Reporting center, interview 3). At the present time however, whether these good practices are followed or not depends solely on the personal sensitivity and expertise of the professionals involved in the case.

More generally, any systematic approach to anti-LGBT hate crime is lacking within the penal/judicial system. Therefore, the goal of avoiding secondary victimization on a wider and more stable basis calls both for the elaboration of precise protocols and guidelines and for the establishment of special units (or at least liaison officers/magistrates) for (anti-LGBT) hate crime victims, within the police and the judicial system.

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As far as protection of the victim is concerned, respondents stated that they do provide protection according to the law. In the case of anti-LGBT hate crime victims, however, the protection of victims is often far from being effective. For this reason, some respondents argued that the existing measures for countering violence against women should be extended to anti-LGBT hate crime victims (Reporting centers, interviews 1, 3 and 11), even if these measures still do not seem to be very effective or fully implemented for women either (Reporting center, interview 7). Some of the respondents also said that they give advice to the victims for their self-protection, such as: avoid risky situations, contact an LGBT NGO for support, and immediately reach out to the police if other problems arise, in order to add the new incident to their report. However, simply advising people to avoid risky situations may be problematic. Indeed, by focusing on the behavior of the victims rather than on the responsibility of the aggressor, this approach may eventually end up affecting the victims' freedom and rights, or even (implicitly) blaming them for their "incautious" conduct.

### **Recording Anti-LGBT Hate Crime**

**Protocols or guidelines about how to record anti-LGBT hate crimes do not exist. In particular, no binding regulations and protocols oblige police officers to record possible bias indicators. Furthermore, the absence of a specific law against homophobia/transphobia results in the lack of official data and statistics on anti-LGBT hate crimes and impacts negatively on the possibility of tackling them effectively.**

Protocols or guidelines about how to record anti-LGBT hate crimes do not exist. Official reports of incidents only have to include the personal data of the victims according to their ID card, the identification of possible witnesses, and the narration of the incident, as a free text field. If trans people are involved the report identifies them according to their ID, although the police officer can specify that they are known under, or want to be called by, a different name. Since there are no binding regulations and protocols obliging police officers to record possible bias indicators, their actual recognition and recording depends solely, case by case, on the personal knowledge and sensitivity of the police officer who receives and registers the report. This may be a serious problem since, when the police officer lacks specific training on anti-LGBT hate crimes, important elements are very likely to be missed, with detrimental effects on both the possibility of correctly prosecuting the aggressor and assessing the victim's vulnerability and needs.

Official data and statistics on anti-LGBT hate crimes are lacking. Indeed, since the official police database relies only on offenses punished by the national criminal law, the absence of a specific law against homophobia/transphobia not only makes it harder to punish anti-LGBT hate crimes as such, but also prevents the police from extracting reliable statistical data about them, and thus from estimating their frequency and seriousness. This means that although OSCAD reports hate crimes to ODIHR, the reported data concerning anti-LGBT hate crimes can in no way be considered exhaustive. This is true also for data on discrimination collected by UNAR, which sends an annual report to the Parliament to evaluate the impact of the implemented equality policies and to underline the necessary actions to be taken.<sup>6</sup> In December 2017, a permanent commission was established by the Minister of Justice to monitor hate crimes and hate speech committed on different grounds (Decree of the Minister of Justice, December 14, 2017). The commission should carry out advisory functions and support the Ministry of Justice with regard to the actions to be taken at both national and European level. It should also present reports and proposals based on monitoring and analysis of discriminatory



6 <http://www.unar.it/unar/portal/?p=1733>

social practices, in order to offer elements of evaluation of the impact of the policies for countering discrimination and hate crimes. Some LGBT NGOs take part in the commission. While it is still too early for any assessment of the possible impact of their activity, it seems that reliable statistical data on anti-LGBT hate crimes are unlikely to be collected unless a law on homophobia/transphobia is adopted.

With regard to the data gathered by NGOs, the interviews found that only one has any protocols for registering reports and collecting data (Victim support service provider, interview 3), and only one organization has ever drafted an unpublished report (between 2011 and 2014) on the cases it dealt with (Victim support service provider, interview 2). On the contrary, most respondents said that their organizations do not write reports on the cases they follow and do not collect data, while other organizations may collect data only informally and unsystematically (for instance, data contained in email correspondence, regarding the victims and the reasons why they contacted the organization), but without producing any anonymized report. Furthermore, these data concern only the limited field of action of each NGO (see also section on support for victims below). Therefore, it seems that the lack of official information denounced above cannot be filled through data collected by civil society organizations.

### **Support for Victims of Anti-LGBT Hate Crime**

**There is a widespread belief among police officers that supporting crime victims is not a police responsibility. Specific support services for anti-LGBT hate crime victims are mainly provided by LGBT NGOs, without the help of public funding. As a consequence the fragmented, patchy and piecemeal nature of available support services significantly impedes victims' access to justice.**

Most of the police officers interviewed in this research think that supporting the victims is not a police responsibility. While police inform the victim about the available support service providers, as required by the law, no specific procedure has been set up for referring anti-LGBT hate crime victims to those services. Moreover, while Italy implemented the Victims' Directive on the grounds of information rights, no step has been taken to strengthen the existing support services for the victim. In particular, no specific support services have

been provided for anti-LGBT hate crime victims; indeed, since the Directive leaves it to member states as to whether to establish specialist services separately and in addition to general support services, Italy simply did not choose this option. As a consequence, at present, support services for anti-LGBT hate crime victims are mainly provided by NGOs, without any financial support from the state.

Support services provided by NGOs include different options. Many organizations offer phone/email help lines and free psychological and/or legal counseling, either through in-house or outside professionals. Some also offer crisis intervention and support groups. However, lack of funding is a major problem for NGOs, which may negatively affect both the kind of services provided and, to some extent, their overall effectiveness. For instance, most respondents said that their organizations lack the necessary resources for setting up face to face help desks/advice services which stay open to the public on a regular basis. Only one respondent said that his organization provides assistance in case of rehousing needs (Victim support service provider, interview 4) while none of the organizations have emergency shelters suitable for LGBT victims. This is partly due to the fact that many of the NGOs that provide support to the victim are very small and cover only a very limited geographical area. Furthermore, the human resources of NGOs consist mainly of volunteers who often lack adequate training on hate crimes. Indeed, most NGOs deal mainly with SOGI discrimination issues in general and not with anti-LGBT hate crimes specifically. This may be a problem, because they may have limited experience in advising victims about their rights in criminal proceedings, including the risk of secondary victimization in various stages of the police and criminal justice process (See also FRA 2016b:40). The prevalence of volunteering in victim support service providers also prevents the possibility of ensuring continuity of service. Finally, since no governmental, systemic interventions have been carried out so far, the distribution of support services varies between regions. In conclusion, the respondents confirmed the fragmented, patchy and piecemeal nature of the support services available, something which was already lamented by FRA (2016b:40) as a major factor impeding victims' access to justice.

The length of time spent supporting the victim may vary depending on the organizations involved, the nature of the cases, and the victim's will. One of the interviewees said that they accompany the victim for at least one month (Victim support service provider, interview 11) while another said for at least three months (Victim support service provider, interview 4). In the more structured organizations, a recovery plan may be produced, with regular weekly meetings (Victim support service provider, interview 3). However, the duration of the accompaniment never exceeds one year: as one of the interviewees pointed out, "long term psychological counseling is not a competence of anti-violence centers" (Victim support service provider, interview 3). In the organizations focused on legal aid, the assistance may stop when a report is filed or last until the end of the judicial proceedings, according to the victim's will. Usually, meetings and phone calls are more frequent immediately after the incident.

Many interviewees said that their organizations work in coordination with other associations, services or external professionals, mainly psychologists and lawyers. Three interviewees said that their organizations cooperate with human rights NGOs which help migrants and asylum seekers arriving from countries where LGBT people are persecuted (Victim support service providers, interviews 4, 8 and 11). However, some interviewees complained that cooperation is sometimes difficult, even among LGBT associations, because some of them are used to working alone, and sometimes show a competitive attitude towards other associations.

Considering secondary victimization, support service providers take into account that victims of anti-LGBT hate crimes generally need a welcoming environment, empathy, patience, confidentiality and psychological support. One of the interviewees stressed the importance of devoting especial attention to young people because of their particular vulnerability (Victim support service provider, interview 11). Another underlined the view that psychological support should also be provided with regard to the judiciary proceedings, which may be very traumatic (Victim support service provider, interview 3). Furthermore, it was stressed that secondary victimization can be avoided only by well-trained institutional operators, meaning not only the police but also judges, forensic psychologists (Victim support service provider, interview 3), and attorneys: "Attention should be paid to avoid the possibility that attorneys may be perceived as being 'a part of the system'" (Victim support service provider, interview 2).

In relation to mechanisms to protect victims from new situations of anti-LGBT discrimination or hate crimes, the interviewees stressed the importance of reporting, asking for help, increasing self-esteem, self-awareness and empowerment, and creating a network of social relationships around the victim. They also underlined the need for a law against homophobia/transphobia. More generally, they called for attention to the widespread homophobia/transphobia in wider society, which should be tackled through awareness-raising activities. One of the interviewees also drew attention to the importance of shelters: “It would be useful to have buildings and goods confiscated from the mafia” (Victim support service provider, interview 7). The respondents generally said that it is hard to evaluate whether, when and how their system is effective.

## Conclusions and Recommendations

### Concluding remarks

The failure to include SOGI as a protected ground in the Italian hate crimes legislation both reflects and contributes to the persistence of a widespread underestimation of the frequency and seriousness of anti-LGBT hate crimes. At the same time, by preventing the opportunity to collect reliable statistical data, this gap in the Italian legal system risks rendering these crimes almost invisible.

Several negative consequences stem from this situation including, for instance: (a) the insufficient level of commitment of the public bodies to promoting awareness raising activity against homophobia and transphobia, and to monitoring their efficacy; (b) the absence of any serious effort to tackle underreporting, for instance by adopting policies for facilitating the access of victims to reporting centers; (c) the lack of protocols and guidelines which could help reporting centers in carrying out their activities effectively and without causing unnecessary secondary victimization; (d) the lack of public support services specifically tailored to LGBT people. Furthermore, the underestimation of anti-LGBT hate crimes may have played a role in failing to give specific attention to anti-LGBT hate crimes victims in the general rules implementing the Victims’ Directive. Indeed, although the discriminatory intent of the crime may lead to a consideration of the victim as vulnerable, SOGI are not explicitly mentioned as grounds for special protection.

Although good practices have been found, both among some reporting centers and victims support service providers, voluntarism is not an adequate basis for tackling anti-LGBT hate crimes and addressing the special needs of the victims of these crimes. Systematic training is still not provided for professionals in reporting centers and for support service providers. Furthermore, official cooperation protocols between reporting centers and victim support service providers (if any) are still left to the initiative of local actors, without any national directive.

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In this context, the overall defective character of the Italian response to anti-LGBT hate crimes often impedes the effective access to justice for the victims and may result in the violation of their rights, inevitably turning into a disincentive to report crimes.

#### Recommendations:

1. Adopt a law against homophobia/transphobia.
2. Set up a mechanism for monitoring and collecting data about anti-LGBT discrimination and hate crimes.
3. Design and implement policies for facilitating access to justice for victims of anti-LGBT hate crimes, including online and third-party reporting, specialized police units and liaison or contact officers.
4. Ensure that appropriate training and sensitization is provided to law enforcement professionals to avoid secondary victimization and to ensure that bias motives are not overlooked when assessing victims' protection needs, in accordance with Article 22 of the Victims' Rights Directive.
5. Set up a specific procedure for police referring the victim of anti-LGBT hate crime to the available support services.
6. Implement the EU Victim's Directive in the field of support to the victim, in order to overcome the fragmentation of victim support services and ensure that appropriate support services are available to all victims of hate crime, including free and extensive services providing legal and psychological support, as well as shelters.
7. Ensure appropriate training to victim support service provider professionals.

8. Conduct public awareness policies and programs in cooperation with LGBT NGOs, to change cultural paradigms and attitudes in order to encourage and promote respect for LGBTI persons and fight against prejudice and discrimination against them.
9. Carry out follow-up mechanisms that enable verification of the implementation and impact of norms and measures adopted to promote equal rights and to confront anti-LGBT discrimination and hate crimes.

## References

- FRA (2012), *European LGBT Survey*. (<http://fra.europa.eu/en/survey/2012/eu-lgbt-survey>)
- FRA (2016a), *Professionally Speaking: Challenges to Achieving Equality for LGBT People*. (<http://fra.europa.eu/en/publication/2016/professional-views-lgbt-equality>)
- FRA (2016b), *Ensuring justice for hate crime victims: professional perspectives*. (<http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>)

## List of legislation

- Bill C. 1658 (2009) Chamber of Deputies on the introduction of a general aggravating circumstance for crimes motivated by homophobic/transphobic hate.
- Bill C. 245 (2013) Chamber of Deputies, on combating homophobia and transphobia.
- Decree of the Minister of Justice, December 14, 2017, establishing a permanent committee on hate crime and hate speech.
- Law no. 205/1993, on urgent measures against racial, ethnic and religious discrimination and hate.
- Law no. 76/2016, on same-sex civil unions.
- Legislative Decree no. 212/2015, implementing the Victims' Directive.

# Lithuania

A stylized map of Europe with various countries in different colors. Lithuania is highlighted in red, and the surrounding region, including Poland and the Baltic states, is highlighted in green.

*At a glance*

## Attitudes

According to the Eurobarometer (437/2015), 44 percent of Lithuanian respondents think that gay, lesbian and bisexual people should have the same rights as heterosexual people. Only 14 percent would feel comfortable with or indifferent to a couple of two men showing affection in public (the lowest result in the EU). The same number would feel comfortable or moderately comfortable if their children were in a love relationship with a transgender person.

## Victimization levels

According to the EU LGBT survey (2013), 39 percent of respondents from Lithuania declared they had been physically/sexually attacked or threatened with violence in the previous five years; however, only 16 percent of Lithuanian LGBT respondents reported the most recent incident to the police.

## Official Statistics on Anti-LGBT Hate Crime

According to ODIHR, four cases of anti-LGBT hate crimes were registered by the police in Lithuania in 2016.

## Summary

- Even though anti-LGBT hate crimes and hate speech are criminalized in Lithuania the response by the law enforcement agencies to this phenomenon could not be described as effective.
- High levels of underreporting result from the insufficient legal protection for LGBT victims, the lack of victim-centered support services and the generally hostile social atmosphere on LGBT issues.
- Law enforcement officers apply an “LGBT-blind” approach, which manifests itself in a reluctance to discuss and acknowledge the specific needs of LGBT people in the course of criminal procedures. The majority of the interviewed police officers do not consider anti-LGBT crimes to be a serious issue.
- There are no victim support services in Lithuania specifically tailored to the needs of LGBT people. These services are usually performed by non-governmental organizations with limited financial and organizational resources. LGBT individuals are reluctant to seek appropriate support services for a range of reasons which contribute to underreporting (e.g. fear of disclosing one’s sexual orientation).
- The main training need pertaining to the key stakeholders, namely law enforcement agencies and victim support service providers, in the field of anti-LGBT hate crimes and hate speech, is related, first and foremost, to raising LGBT awareness.



# Lithuania: The “LGBT-Blind” Approach

*Tomas Vytautas Raskevičius*

## Legal Framework

Even though the Lithuanian criminal law explicitly prohibits hate crimes and hate speech on the grounds of sexual orientation, the protection offered seems to be illusory. Two distinct factors contribute to this situation. First, the law enforcement agencies are reluctant either to start pre-trial investigations or acknowledge the bias motivation behind the crime. Second, Lithuanian LGBT people report high levels of mistrust in law enforcement authorities, which contributes to the high levels of underreporting of SOGI-based incidents. While the Victims’ Directive has been formally transposed, in practice this change has improved the situation of anti-LGBT hate crime victims only minimally.

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Lithuania’s Criminal Code (Seimas 2000) contains a combination of general and specific penalty-enhancement provisions for hate crimes, as well as a substantive offense. Article 129.2.13 (i.e. murder), Article 135.2.13 (i.e. severe health impairment) and Article 138.2.13 (i.e. non-severe health impairment) of the Criminal Code establish penalty enhancements in case these particular offenses are committed out of bias motivation on grounds of, *inter alia*, sexual orientation. Article 170 of the Criminal Code prohibits incitement to hatred and violence based on, *inter alia*, sexual orientation (i.e. hate speech), while Article 60.12.1 qualifies acts committed in order to express hatred on the grounds of, *inter alia*, sexual orientation as an aggravating circumstance within the framework of criminal proceedings (i.e. hate crimes). Taking into account that hate speech on grounds of, *inter alia*, sexual orientation, is explicitly criminalized, the incitement to hatred and violence is considered as a specific form of hate crime in Lithuania. While sexual orientation is a protected ground under the Lithuanian criminal legislation, the same does not apply to the grounds of gender

identity and (or) gender expression. Equally, the Lithuanian hate crime legislation does not cover intersex people, as it does not acknowledge sex characteristics or intersex status as a ground.

While the legal framework against homophobia is established, in practice it is rarely used. To the knowledge of the National LGBT\* Rights Organization LGL, the aggravating circumstance established under the Article 60.1.12 of the Criminal Code has never been applied in practice for hate crimes based on the grounds of sexual orientation. Considering hate speech, in the period between 2013 and 2015, the National LGBT\* Rights Organization LGL submitted 24 complaints to law enforcement agencies, based on 206 instances of alleged hate speech online, on the grounds of sexual orientation. Of these complaints, 28 pre-trial investigations were initiated in 2013, 13 in 2014 and eight in 2015. All investigations were either halted or terminated with the result that none of the alleged perpetrators was either identified or punished. Considering the above, particularly in light of the high levels of victimization (see the section on reporting) it can be concluded that the Lithuanian authorities systematically fail to provide effective remedies for victims of homophobic hate crime and hate speech; there is no evidence of cases being successfully investigated, prosecuted and/or sentenced.

To illustrate the systematic failure by national authorities in investigating hate speech and hate crimes on grounds of sexual orientation and (or) gender identity, one example is examined in more detail. In December 2014 two gay men posted a public picture on a Facebook profile which depicted a kiss between them. The picture received more than 2,400 “likes” and more than 800 comments; most of the latter were inciting hatred and violence against LGBT people in general, while some were directly threatening the two men in particular. Some examples of the posted comments include: “Faggots should be burnt”, “You both should be thrown into gas chambers”, “You are fucking gays; you should be exterminated” and “Kill them!” The National LGBT\* Rights Organization, LGL, lodged a complaint to the Prosecutor General regarding 31 comments, under Article 170 of the Criminal Code (i.e. prohibition of hate speech) indicating that the comments in question ridicule gay people and incite discrimination, hatred and violence against them. The Prosecutor’s Office issued a decision not to start a pre-trial investigation which was then appealed before the

national courts. The District Court dismissed the appeal, stating that “the individual, by posting a picture of two kissing men in the public sphere, should have and must have, foreseen that eccentric behavior (sic) really does not contribute to social cohesion among individuals with different views in society, and the promotion of tolerance” (District Court of Klaipėda City 2015). The decision was upheld by the second instance court, which indicated that:

*[t]he owner of the social network profile, by exercising the freedom to express his convictions and to promote tolerance had to take into account that freedom is inseparable from obligation to respect the views and traditions of other individuals (...). Therefore, this action can be interpreted as an attempt to intentionally tease or shock individuals with different views or encourage posting of negative comments. (Klaipėda Regional Court 2015)*

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In August 2015 the two gay men in question submitted a complaint to the European Court of Human Rights (ECtHR) alleging that the failure by national authorities to investigate the above described instances of hate speech violated their rights to private life and the right to an effective legal remedy, taken in conjunction with the general prohibition of discrimination. In June 2017 the ECtHR communicated the petition to the Lithuanian government, as the case passed the admissibility test (ECtHR 2017).

The Victims’ Directive was transposed to Lithuanian national legislation in the period between 2015 and 2016 through the introduction of amendments to the Code of Criminal Procedure (Seimas 2000) and the adoption of enabling, secondary legislation. In the context of anti-LGBT hate crimes, the most notable improvements were related to the adoption of the *Report on Informing the Aggrieved Person on His/Her Rights* (Generalinis prokuroras 2016a) (i.e. obligation to inform the victim about their rights in the course of criminal proceedings), and the *Recommendations on Assessing Special Protection Needs by the Aggrieved Person* (Generalinis prokuroras 2016b) (i.e. guidelines on assessing vulnerability of a victim). While these guidelines and recommendations provide a substantial basis for ensuring the victims’ rights in the course of criminal proceedings they do not take the specific needs of LGBT victims into account. For example, the recommendations do not explicitly mention sexual orientation and

(or) gender identity, even though the acknowledgement of these characteristics are instrumental in protecting LGBT victims of hate crimes from secondary victimization. While it remains to be seen how law enforcement agencies and victim support service providers will apply the new guidelines, it seems that the current framework does not guarantee that all rights of victims of anti-LGBT hate crimes described in the Directive will be respected.

### **Professionals and Anti-LGBT Hate Crimes**

**202 Skills and knowledge of the interviewed professionals, on anti-LGBT hate crimes, are rather limited and fragmented. Police officers have difficulties in distinguishing between hate crimes and hate speech and victim support service providers have very limited (almost non-existent) resources to provide LGBT-specific services. LGBT hate crime victims in Lithuania are placed within the general system of investigative and support services, which does not necessarily take their specific needs into account.**

While the research team sought to interview professionals with at least some experience of working with LGBT victims, the general knowledge and sensitivity to anti-LGBT hate crimes was rather limited among the sampled population. Out of 10 interviewees, only one had direct professional experience in investigating hate crimes on the grounds of sexual orientation. Most of the interviewed law enforcement officers disregarded both the prevalence of the phenomenon and the specific needs of LGBT victims within the framework of the criminal justice system. For example, one police woman claimed that:

*[i]t is an important topic. However, we have to remember that we are a Member State of the European Union and our people are not openly hostile against those [LGBT] people. Maybe only a tiny group of people exhibit hatred, but this problem is not so serious that it would affect minority groups in the form of hate crimes. (Law enforcement officer, interview 2)*

Based on the interviews, it could be stated that the law enforcement officers do not consider themselves as having any relationship with vulnerable communities (including LGBT people), because this “special attention” could somehow negatively impact on their “impartiality” and “neutrality”.

On the other hand, victim support service providers demonstrated a more nuanced and sensitive approach. They tended to emphasize that it is important to take into account the specific needs of various victim groups because it is the only way of providing comprehensive victim support services. However, the existing structure of such support services (see the section on victim support below) provides only very limited opportunities of acknowledging and responding to those needs.

Considering conceptual frameworks, there is no commonly used working definition of hate crime in Lithuania and the boundary between hate crimes and hate speech is blurred; all interviewed police officers identified hate speech as a form of hate crime. Until 2013, statistics on hate crimes reported to ODIHR by the Lithuanian Government also included cases of hate speech.<sup>1</sup> The inclusion might partially be explained by the shape of the law, which establishes hate speech as a separate criminal offense (i.e. Article 170 of the Criminal Code), while hate crime is defined by aggravating circumstance (i.e. Article 60.1.12 of the Criminal Code). The lack of a clear distinction between hate crimes and hate speech is dangerous because it may lead to reducing the phenomenon of hate crime to incidents of only hate speech, while the bias motivation behind other criminal offenses may be miscategorized or simply disregarded. For example, six out of 10 interviewed police officers referred to hate speech as the most prevalent form of anti-LGBT hate crimes in Lithuania. The tendency to under-record hate crimes is illustrated by the low numbers reported by the government to ODIHR (20 cases, including four anti-LGBT crimes, in 2016).

Nine out of the 10 law enforcement officers interviewed indicated that they had not received specific training on any hate crimes or hate speech (i.e. not limited to anti-LGBT motivation). Furthermore, most were also unable to identify a colleague or a superior with specific knowledge of LGBT issues who they could consult within the course of investigating a particular incident of hate crime. This demonstrates that the majority of the police do not have the necessary training for working with the victims of anti-LGBT hate crimes.



1 ODIHR currently observes that Lithuania has not made public, reliable data and statistics on hate crimes, but it does not comment on whether hate crime figures reported for 2016 include hate speech cases.

Turning to victim support service providers, two out of 10 interviewed professionals qualified as providers of LGBT-specific services, as they represented LGBT-centric civil society organizations. In terms of the rest, the majority of the interviewed victim support service providers represent the providers of legal services and, as the majority of the comprehensive victim support service providers are either targeting particular groups of victims (e.g. Specialized Support Centers working almost exclusively with victims of domestic violence) or have strong religious affiliation (e.g. “Caritas”), it can be concluded that the effective system of victim support services for victims of hate crimes on the grounds of sexual orientation and (or) gender identity, in Lithuania, does not exist.

There is a lack of professional specialization with the purpose of generating an effective response to anti-LGBT hate crimes in Lithuania. Bias-motivated incidents are usually placed within the general investigative framework of criminal justice, thus contributing to the reluctance to acknowledge the specific needs of victims of anti-LGBT hate crimes. In other words, there are no law enforcement officers in Lithuania who would be specifically trained or experienced in working with LGBT victims of crimes. This situation is further impacted by the fact that there are no LGBT-specific, comprehensive victim support services in Lithuania. It goes without saying that these investigative and support services for LGBT individuals could be provided by the general system as well. However, further analysis will indicate that neither law enforcement officers nor victim support service providers have sufficient knowledge and (or) experience to respond to the specific needs of victims of anti-LGBT crimes.

### **Reporting Anti-LGBT Hate Crime**

**While various ways of reporting hate crime are available for LGBT victims in Lithuania, underreporting remains a problem. Most police respondents, even if they acknowledge that hate crimes are underreported, believe that anti-LGBT violence is not a serious issue in Lithuania and dismiss the need for specific measures addressing the needs of the LGBT community. Underreporting is therefore sanctioned not only by the inaccessibility of reporting centers, but also by the attitudes and beliefs of police officers who apply a “LGBT-blind” approach.**

Various surveys indicate that LGBT victims in Lithuania do not report hate crimes. According to the survey by the Center for Research on Prejudice at the University of Warsaw (Iganski 2016: 30), 27.9 percent of the Lithuanian LGBT respondents has experienced hate crimes or harassment in the course of the past five years, while as many as 80 percent did not report it. According to the survey within the framework of the *UNI-FORM* project (LGL 2017), 53 percent of the Lithuanian LGBT respondents have experienced hate crimes or harassment on the grounds of their actual or perceived sexual orientation and/or gender identity; however, as many as 86 percent did not report it to the national authorities. The most commonly quoted reasons for not reporting are: “not being sure whether it qualifies as a criminal offense”, “it would not have any result”, “it will make situation worse” and “the report will not be taken seriously” (LGL 2017).<sup>2</sup>

While nine out of 10 police interviewees explicitly expressed their position that anti-LGBT hate crimes and hate speech are not a serious issue in Lithuania, most respondents acknowledged the above tendency for underreporting. The majority of interviewed police officers also agreed with the statement that encouraging reporting is a good strategy for responding to hate crimes.

While supporting outreach measures, the interviewed police officers were reluctant to discuss this approach as an LGBT-specific strategy rather than a general measure. In other words, they did not perceive the LGBT community as having any specific needs within the framework of the criminal justice system. When discussing the specific measures for encouraging reporting, the interviewed police officers universally mentioned the generic concepts of “awareness raising”, “publicity” and “media”. It was not possible to determine from the interviews whether the police officers would consider the LGBT-specific challenges (e.g. fear of disclosing one’s sexual orientation) as effectively preventing reporting. The police officers also shared their views on what factors (motivators) might encourage LGBT people



2 It has to be noted that these are subjective reasons of underreporting, provided by victims themselves. While some of them might imply further tendencies (e.g. victims are badly informed about their rights or tend to minimize experienced incidents), it would require further research on LGBT victims and their perception of anti-LGBT hate crimes and (or) hate speech.

to report hate crimes. They usually mentioned “personal motivation”, “struggle for their rights”, “seriousness of damage” and “civic duty”. While these motivators are indeed important and might play a role in encouraging some people to report, it appears that interviewed police officers tend to perceive every LGBT victim as some kind of an activist (see also the section on victim support in this chapter).

Most interviewed police officers were convinced that reporting centers (i.e. police stations) are readily available for the victims of anti-LGBT crimes. The general attitude among them could be described as an “LGBT-blind” approach. For example, after being asked about any specifically tailored measures for reaching out to the victims of anti-LGBT hate crimes, one police woman said: “[W]e treat them [LGBT people] like everybody else. We do not apply any specific measures, because we don’t want them to feel excluded from the others” (Law enforcement officer, interview 2). The strategy for dealing with the issue is simply to ignore it, using the language of “impartiality” and “neutrality”.

This “LGBT-blind” approach is problematic for two reasons. Firstly, it indicates that the issue of sexual orientation and (or) gender identity is still perceived as being something controversial and potentially stigmatizing. While police officers may consider themselves as free from biases and treating everyone equally, it is difficult to expect that the “LGBT-blind” approach puts LGBT individuals on equal grounds with other victims, especially taking into account that police officers are part of the Lithuanian society characterized by homophobic attitudes (European Commission 2015:50). Secondly, it is simply impossible to take into account the specific needs of the victims of anti-LGBT crimes in the course of the criminal proceedings when the law enforcement officers are choosing the strategy of not confronting (discussing, acknowledging) the topic of sexual orientation or gender identity. As a result, it is virtually impossible comprehensively to assess the needs of the victims of anti-LGBT hate crimes and to apply the corresponding special protection measures in accordance with the requirements of the Victims’ Directive.

Four out of 10 police officers discussed the assessment of the special protection needs as an example of best practice in improving the accessibility of the reporting centers by affected individuals. While it is encouraging that the police are aware of the requirement

of assessing these needs, it remains unclear how strictly procedural requirements for applying special protection measures, with the view of avoiding secondary victimization, will improve the accessibility of reporting centers. It can be speculated that the protocol for assessing the special protection needs is the only (formal) tool that is readily available for the law enforcement officers for engaging with the particular circumstances of the victim.

Despite the limited knowledge among the law enforcement officers on how to deal with the victims of anti-LGBT crimes, there are several initiatives encouraging victims to notify the law enforcement structures about bias-motivated incidents. For example, the police-run platform [www.epolicija](http://www.epolicija) serves as a gateway for reporting criminal acts to the police electronically. The platform also allows reporting through e-mail or text message. In addition, there are multiple initiatives by civil society organizations to encourage reporting of anti-LGBT incidents. For example, the National LGBT\* Rights Organization LGL maintains the platform [www.uni-form.eu](http://www.uni-form.eu), which seeks to encourage the LGBT community and witnesses to report incidents, not only to NGOs but also to the police.

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**UNI-FORM** is the only reporting platform that is specifically tailored for hate crimes and online hate speech targeting LGBT persons and (or) persons perceived to be LGBT. It is available via [www.uni-form.eu](http://www.uni-form.eu) or as a mobile application (downloadable from Google Play and Apple Store). It is now available in Portugal, Spain, United Kingdom, Belgium, Malta, Hungary, Latvia, Estonia and Lithuania. The reports submitted through **UNI-FORM** are received, not only by the police but also by a national civil society organization. This feature enables comprehensive follow-up in each case.

The availability of various reporting tools indicates that reporting centers are accessible to the victims of anti-LGBT crimes. This suggests that the tendencies of underreporting might be reinforced by other factors such as failure of providing effective legal remedies (see section on the legislation above), protecting the rights of a victim or the lack of available victim support services (see below).

## Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process

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The practice of ensuring the rights of victims of anti-LGBT hate crimes in the criminal justice process in Lithuania requires major improvements. There is a lack of knowledge about the vulnerability of LGBT victims among key stakeholders. The victims are informed about their rights in a formal manner, the referrals to the appropriate victim support services happen on an *ad hoc* basis and there are no clearly identified strategies for protecting LGBT victims from secondary victimization. Publicly funded victim support services have failed to identify any specific needs from LGBT victims receiving their services.

There is no centralized system for victim support services in Lithuania. As a result, it remains at the full discretion of the particular police officer to refer victims to the appropriate services. Based on the interviews conducted, it can be concluded that law enforcement officers do not have any specific knowledge on where to refer victims of hate crimes and hate speech on grounds of sexual orientation and (or) gender identity. The interviewed law enforcement officers have indicated that they refer “sensitive” victims to victim support service providers, such as “specialized Support Centers” (SSPs), “Children Rights Protection Services” (CRPSs), “Caritas” and “Civil Society Organizations” (CSOs). While SSPs and CRPSs provide services to clearly defined types of victims, namely – victims of domestic violence and minors, the referral to “Caritas” and other CSOs seems to happen on an *ad hoc* basis.

The proposed generic solutions and points of contact mentioned by the respondents might not meet the specific needs of LGBT victims. For example, Caritas has a very strong affiliation with the Catholic Church. When the research team approached the organization about a possible interview on providing victim support services for LGBT victims, the organization responded that they are not able to accommodate this request due to the heavy workload in the organization.

The interviewed police officers demonstrated a somewhat reluctant and conflicting understanding of the concept of secondary victimization. For most of them this concept was related to the precautionary measures, i.e. physical or legal barriers for an alleged perpetrator to

repeatedly approach a victim. It can be concluded from the interviews that the specific vulnerability of the victim who has suffered from hate crime on the grounds of sexual orientation and (or) gender identity, is not being recognized and (or) acknowledged. While the police officers episodically mentioned certain protection measures that should be applied (e.g. not to be confronted with the perpetrator) other crucial elements potentially contributing to the secondary victimization (e.g. repeated questioning, homophobic/transphobic language, victim blaming, etc.) were not identified.

In relation to the mechanisms for protecting LGBT victims from future hate crime incidents the law enforcement officers were unable to identify any specific measures targeting this particular community. Once again, the recurring themes in the course of the interviews focused on “common procedures” and the perpetrator-centric approach. One interviewed police woman insisted that the only way of protecting LGBT victims from future bias-motivated incidents is somehow to change the attitudes of the perpetrator. However, she herself was quite skeptical about the prospects for success: “Even more, I am not sure, whether the sanction means anything; maybe the punishment will incite even greater hatred in the future” (Law enforcement officer, interview 6). In essence, this interpretation might suggest that the interviewed police officers do not consider the criminal sanction an effective stimulus for social rehabilitation in relation to hate crimes and hate speech on grounds of sexual orientation and (or) gender identity. This approach could be interpreted as reflecting the current jurisprudence in the Lithuanian national courts, when the criminal sanction is considered as an *ultima ratio* (last resort) measure in preventing the negative phenomenon of bias-motivated behaviors.

Turning to victim support service providers, seven out of 10 respondents indicated that, in the course of their professional experience, they had directly encountered victims of hate crimes and hate speech on grounds of sexual orientation and (or) gender identity. However, there was a clear distinction between civil society organizations and institutions receiving public funding. While the former seek to develop and provide LGBT-specific services (or, in case it is not viable due to the limited organizational, financial or human resources, to take active measures to render the existing services available for LGBT persons), the latter display the general attitude that services are available for

everyone without any distinctions or exceptions (closely resonating with the opinions expressed by the interviewed law enforcement officers). As there are no centralized victim support services in Lithuania, the assistance for victims of anti-LGBT rights in the criminal justice process remains highly fragmented and provided on an *ad hoc* basis.

### **Recording Anti-LGBT Hate Crime**

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**Anti-LGBT hate crimes in Lithuania are recorded through the general recording system under specific articles of the Criminal Code. As data are not disaggregated it is impossible to identify the specific bias motivation behind each case. There are no specific guidelines on recognizing bias indicators, resulting in many incidents being miscategorized. Together with underreporting, this contributes to the “latency” of hate crimes. CSOs monitor hate crimes with a view to providing evidence for advocacy, but also to offer support for victims.**

Hate crime data are collected as part of general crime figures. Once a crime incident is reported to the authorities it is recorded on the online Prosecutor’s Information System (PIS), where a record of every pre-trial investigation is kept. The PIS is integrated with the Departmental Register of the Criminal Offenses of the Information Technology and Communications Department under the Ministry of Interior (the ICT Department). It is also connected to the Courts’ Information System, thus any update on a case is recorded in all three systems. The ICT Department’s Register is publicly accessible online while the details of each case are only accessible to the law enforcement officers.

The data about criminal offenses punishable under the separate articles of the Criminal Code is provided by the ICT Department. However, the data under the Article 170 (i.e. prohibition of hate speech) or the Article 60.12.1 (i.e. prohibition of hate crime) does not indicate the specific ground on which the crime was committed. As a result, it is not possible to identify in how many instances homophobic or transphobic bias motivation has been punished through criminal sanctions and consequently, the current official data collection system fails to reflect the actual prevalence of hate crimes, due to underreporting and mis-categorization. The most notorious case illustrating this problem was related to an incident when two Muslim women in hijabs were

attacked near the refugee reception center. While this incident was investigated as a hate crime the investigating officers failed to record the bias motivation behind the crime, while entering the data to the PIS (BNS 2016).

In addition to the lack of disaggregated data on bias motivation the official recording system does not provide the opportunity to identify instances when the specific penalty-enhancement provisions were applied within the framework of Article 129.2.13 (i.e. murder), Article 135.2.13 (i.e. severe health impairment) and Article 138.2.13 (i.e. non-severe health impairment) of the Criminal Code. This is partially the result of the fact that penalty-enhancement provisions are usually triggered during the judicial process and not during the pre-trial investigation phase, which is crucial for recording purposes. Nevertheless, the association, LGL, is not aware of any judicial process where penalty-enhancement provisions on grounds of sexual orientation were applied.

In 2009 the Prosecutor General adopted the *Methodological Guidelines on Organization, Management and Performance Characteristics of Pre-Trial Investigations of Offenses Committed on Racial, Nationalistic, Xenophobic, Homophobic of Other Discriminatory Grounds* (Generalinis prokuroras 2009). While these methodological recommendations provide some useful guidance to prosecutors and law enforcement officers (e.g. on how to identify homophobic motivation behind a criminal offense and how to record it accordingly), their recommendatory nature renders their application sporadic and non-compulsory. Besides these methodological guidelines, there are no other policies or guidelines governing recording of anti-LGBT hate crimes. Furthermore, law enforcement officials and prosecutors do not receive any centrally-coordinated training on hate crimes, *inter alia*, on the grounds of sexual orientation and (or) gender identity (see below); therefore, most of them lack essential knowledge and there is no uniform approach regarding the effective identification, recording and investigation of hate crimes and (or) hate speech.

In November 2016 the Ministry of Interior created a working group, consisting of the representatives of the Police Department, the General Prosecutor's Office, the Ministry of Interior, the National Courts' Administration and civil society organizations, with a view to improving the recording of hate crimes in Lithuania (Vidaus reikalų ministras

2016). The working group prepared a list of recommendations for promoting effective responses by state institutions and law enforcement agencies to the instances of hate crimes and hate speech. They accentuate the “latency” of hate crimes (i.e. underreporting) and suggest measures for cooperating with non-governmental organizations representing the interests of marginalized groups, in order to encourage victims to report. While the institutional initiative to establish an expert-based working group to address the underreporting of hate crimes is a positive move, it must be noted that corresponding financial resources should be allocated with the view of successfully implementing any measures proposed by the group.

Considering civil society reporting, instances of anti-LGBT hate crimes can be reported to several organizations (e.g. the Lithuanian Center of Human Rights, the Human Rights Monitoring Institute, the European Human Rights Foundation – EHRF, the National LGBT\* Rights Organization LGL). Some of these organizations allow online reporting as well; for example, the LCHR provides the opportunity of filling in a simplified reporting form on their website which, after submission, is converted into a more official complaint and then the individual may forward it to the police through an e-mail reporting mechanism. The EHRF provides the opportunity of filling in a short statement about the experienced incident and then the organization’s lawyers process it into an official complaint to the law enforcement institutions. Finally, the association LGL maintains the *UNI-FORM* online reporting platform and mobile application (see [www.uni-form.eu](http://www.uni-form.eu)) which provides a unique opportunity to monitor the status of reports submitted to the police.

The instances of anti-LGBT hate crimes and hate speech recorded by CSOs are used to develop evidence-based advocacy strategies. However, all civil society organizations which collect data on bias-motivated incidents in Lithuania also provide legal support services for the victims. As reporting mechanisms usually provide opportunities for establishing direct contact with the victims of anti-LGBT hate crimes, CSOs use these important contacts with the view of testing the legal system’s response and generating legal cases of strategic importance (ECtHR 2017).

## Support for Victims of Anti-LGBT Hate Crime

**Most services for LGBT crime victims are provided by civil society organizations that do not necessarily position themselves as victim support service providers. Due to a lack of resources, services are usually limited to legal assistance and referrals. Lack of appropriate and anonymous services and fear of disclosing one's sexual orientation prevents some victims from seeking assistance. As a result, the requirement to provide comprehensive victim support services might not be satisfied in Lithuania.**

Most interviewed victim support service providers that are CSOs indicated that victims of anti-LGBT hate crimes are not referred to them for assistance by law enforcement officers or prosecutors; rather, they are approached directly by the victims, as first points of contact. The main challenge is that these organizations do not necessarily position themselves as victim support service providers and usually qualify as advocacy, awareness-raising or community organizations. The victims who approach such civil society organizations usually seek not only legal support but also other assistance (e.g. psychological or emotional support, housing services, case management, etc.); as a result, most of those interviewed performed the function of referral as well. As most civil society organizations of this kind only have the capacity to provide legal assistance and referrals, it becomes apparent that the requirement to provide comprehensive victim support services to all victims, regardless of their personal characteristics (including sexual orientation and gender identity), is not satisfied in Lithuania.

The victim support service providers interviewed indicated that the main factors encouraging victims to seek support are: (a) accessible information about availability of such services; and (b) legitimate expectations that the particular service will be tailored to the specific needs of each individual. For example, one interviewee described motivation by service users in the following way: "The most important factor is publicity; the person has to receive information that the service is available, that the service is targeting the victim's group and that the service can be provided anonymously" (Victim support service provider, interview 9). On the other hand, another victim support service provider emphasized that LGBT persons in Lithuania might be hesitant to approach the available services for the same reasons preventing them from reporting to the law enforcement officers:

*One of the main reasons for not approaching the available services is the fear of disclosing one's sexual orientation. If you claim that you have been a victim of hate crime, you have to indicate the ground for this particular incident. In Lithuania LGBT victims can expect that victim service providers are not exceptionally open-minded about these issues. (Victim support service provider, interview 3)*

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Taking into account the particular characteristics of the Lithuanian national context, it has to be emphasized that seven out of 10 interviewed victim support service providers do not represent the “victim support services” in the literal sense of this category. These services that potentially qualify as supporting victims of anti-LGBT hate crimes and hate speech are usually integrated within the framework of other organizational activities and are usually provided on an *ad hoc* basis. As a result, the victim support services provided do not necessarily follow strict procedures, guidelines or protocols. The majority of the interviewed representatives of the civil society organizations providing victim support services also indicated that they do not have formal guidelines or rules on how to receive and treat possible victims of anti-LGBT hate crimes and hate speech.

According to the interpretation of some interviewed victim support service providers, more emancipated individuals, who are knowledgeable about their rights and the negative impacts of the homophobic and (or) transphobic atmosphere in society are more daring and willing to look for the specifically tailored victim support services. Or, to put it another way, identifying certain problems and actively seeking assistance is also considered as some type of “activism” by the victims themselves. The “activist” victims are usually more inclined to discuss, publicly, their cases and are less prone to the negative impacts of secondary victimization.

Victim support service providers were asked about the specific measures for protecting victims of anti-LGBT hate crimes from future incidents. After hearing this question one CSO representative burst into laughter. She explained her reaction in the following way:

*I do not think that LGBT people receive specifically tailored victim support services in Lithuania. Actually, I do not believe that they receive any specifically tailored services in this country at all. Many professionals still somehow think that sexual orientation and gender identity are characteristics that pertain exclusively to the private sphere. We can call ourselves LGBT-blind, as we consider public consideration of sexual orientation and gender identity as “propaganda” or “promotion” of a particular lifestyle. I can imagine that victim support service providers or police officers become very surprised when they hear that a person was beaten up or discriminated against because of their LGBT identity. This is an almost exclusively value driven question. As long as we do not change our general attitude towards LGBT people, it will be extremely difficult to respond to the specific needs of this community. (Victim support service provider, interview 2)*

## **Conclusions and Recommendations**

Based on the interview results and significant field experience, the National LGBT\* Rights Organization LGL has identified the following challenges with the view of effectively responding to anti-LGBT hate crimes in Lithuania:

(a) Despite the comprehensive national legislation, the Lithuanian authorities systematically fail effectively to investigate the instances of hate crimes and hate speech on grounds of sexual orientation and (or) gender identity. The most pressing challenge is the failure to identify, correctly, and qualify the bias motivation behind the criminal offense.

(b) There is no political will to treat anti-LGBT hate crimes as a serious issue. Law enforcement agencies and prosecution services indicate that the prevalence of hate crimes is low, according to the official statistics, completely disregarding the fact that hate crimes are grossly underreported.

(c) Civil society organizations face a moral dilemma when they encourage LGBT people to report hate crimes, because they know that the law enforcement agencies and prosecution services are not ready to deal with LGBT victims in a respectful manner. There is a lack

of stories on positive experiences with the law enforcement agencies, circulating among the members of the local LGBT community, thus further contributing to the underreporting of anti-LGBT hate crimes.

(d) The available victim support services are not tailored to the specific needs of LGBT victims. While civil society organizations seek to provide isolated services (e.g. legal assistance, emotional/psychological support) they do not receive appropriate funding.

Considering the above, the National LGBT\* Rights Organization LGL, formulates the following recommendations:

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1. Improve tools for hate crime data collection, allowing disaggregation of official statistics, based on bias motive and identification of penalty-enhancement provisions being applied.
2. Introduce the protected ground of “gender identity” into the relevant provisions of the Criminal Code.
3. Introduce comprehensive and coordinated victim support services for the victims of hate crimes and hate speech on grounds of, *inter alia*, sexual orientation and (or) gender identity.
4. Issue mandatory methodological guidelines to the law enforcement officials and prosecutors on investigating hate crimes and hate speech.
5. Organize LGBT sensitivity training for law enforcement officials, prosecutors and victim support service providers.
6. Announce a policy of “zero tolerance” towards hate crimes and hate speech by securing leadership support within the law enforcement structures and prosecution.
7. Introduce targeted awareness raising measures with the view of emphasizing the negative impacts of anti-LGBT hate crime and hate speech.
8. Consider the possibility of introducing LGBT liaison officers (e.g. community officers) within the police force.
9. Step up efforts to cooperate with civil society organizations working in the field of hate crime prevention.

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# Poland

*At a glance*

## Attitudes

According to the Eurobarometer (European Commission 2015), only 37 percent of Polish respondents believe that LGB people should have the same rights as heterosexual people. 60 percent of Poles say they would be at ease with heterosexual couples showing affection in public, whereas only 27 percent say the same about same-sex couples. Over a half (57 percent) say they would be totally uncomfortable having sons or daughters in relationship with a transgender or transsexual person (in contrast to 43 percent as EU average), while only a quarter (25 percent) would be at ease with such a situation. These results place Poland among EU countries with the least supportive attitudes towards LGBT equality.

## Victimization levels

According to FRA (2013), 62 percent of Polish LGBT respondents admit that the last incident of violence in the previous 12 months happened partly or entirely because they were perceived to be LGBT (59 percent as EU LGBT average). Only one in 10 of Polish LGBT respondents reported the incident to the police (17 percent as EU average).

## Official Statistics on Anti-LGBT Hate Crime

In 2016 Polish authorities reported 874 cases of hate crimes to ODIHR. Figures include cases of hate speech. Out of 874, 12 cases related to hate crimes with a homophobic or transphobic bias.

## Summary

- Hate crimes based on sexual orientation or gender identity are not recognized in Polish law. The fact that sexual orientation and gender identity are not recognized as protected grounds in the Criminal Code affects the understanding of hate crime, reporting of cases, collection of data, and provision of support to victims.
- Numerous understandings of hate crime exist in Poland. This leads to confusion as to what constitutes hate crime and which victim categories should be included.
- Victims of anti-LGBT hate crimes face multiple obstacles in accessing justice. Many rights stemming from the Directive 2012/29/EU are not respected.
- Only a small fraction of anti-LGBT hate crime cases is reported. Police and prosecutors are rarely trained in recognizing anti-LGBT hate crimes, which leads to under recording.
- Publicly-funded victim support services do not address the needs of anti-LGBT hate crime victims. Specialized services offered by LGBT NGOs are often limited.



# Responding to Anti-LGBT Hate Crimes in Poland: One Step Forward, Two Steps Back?

*Piotr Godzisz and Marta Rawłuszko*

## Legal Framework

**There is no legal definition of hate crime in Poland; neither the Criminal Code nor any other law foresees penalty enhancements for crimes motivated by anti-LGBT bias. Hate speech based on SOGI is not recognized. The Victims' Rights Directive has not been fully implemented and victims of homophobic and transphobic violence face legal obstacles in accessing justice.**

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## Criminal Law

The Polish Criminal Code (Sejm 1997a) proscribes both hate-motivated violence and speech acts motivated by racism and xenophobia with the use of substantive offenses (special “hate crime” laws). Article 119.1 penalizes threats and violence on the grounds of national, ethnic, racial, religious belonging and political views. Article 257.1 penalizes public insults and the breach of bodily integrity (minor assaults) based on national, ethnic, racial, or religious belonging. Article 256.1 prohibits the incitement of hatred based on national, ethnic, racial, or religious differences. Article 126a proscribes the incitement to the crime(s) specified in article 119.1.

Articles 119.1 and 257.1 provide for more severe verdicts for selected crimes if they are motivated by bias. For example, while the base offense of the breach of bodily integrity (article 217) carries a penalty of a fine, limitation of liberty or up to a year of imprisonment, Article 257.1 provides for up to three years of imprisonment if the crime is motivated by the victim’s ethnic or national belonging, so called “race” or creed. In addition, racist or xenophobic crimes have a more sympathetic mode of prosecution than their non-bias counterparts. While in the base form of such crimes the victim needs to make a private com-

plaint to bring the perpetrator to justice (which involves costs, time and legal knowledge (Mazurczak 2017:10; Rzepliński 2008:36)), racist and xenophobic crimes are prosecuted *ex officio*, i.e. independently of reports or accusations made by victims.

There is no general penalty enhancement for hate crimes in the Polish Criminal Code. As a result, there is no obligation to provide higher penalties for such offenses as homicide, arson, damage to property or theft, even if they are motivated by racism or xenophobia. In some cases, such crimes may be considered jointly with the crimes proscribed in Articles 119.1, 256.1 or 257.1 (Brzezińska and Słubik 2016:12).

Considering victim categories, the catalogues of protected grounds in Articles 119.1, 256.1 and 257.1 are closed. This means that crimes motivated by bias based on sexual orientation or gender identity (or disability, or other grounds) do not automatically attract higher penalties.

The fact that sexual orientation and gender identity are not recognized in the law, as grounds for hate crime, has implications for how anti-LGBT hate crimes are prosecuted and sentenced. Theoretically, if the police flag the crime as motivated by bias against LGBT people and hand it over to the prosecutor who in turn highlights it in the court, this may have an impact on the penalty, as the bias motivation of a crime *may* be considered by the courts as an aggravating circumstance when deciding on punishment based on general sentencing principles (as a “motivation deserving a particular condemnation”) (Interviews 7, 10 and 11). In practice, however, this almost never happens, and the homophobic or transphobic motivation of a crime is rarely mentioned in the judgments.<sup>1</sup>

Also, theoretically, prosecutors may decide to step in and prosecute, publicly, cases that would otherwise depend on the report made by the victim. This should happen particularly if the victim is vulnerable, or the prosecutor otherwise believes that it is in the public interest for the prosecution services to engage (Prokuratura Generalna 2012). The use of this prerogative for anti-LGBT hate crimes however, has



1 In one notable case, litigated by the Campaign Against Homophobia, the District Court for Warsaw-Śródmieście found in 2015 that a motivation of the perpetrator of a homophobic crime deserved a particular condemnation (Knut 2015:33).

been rare. For example, in 2014, a prosecutor in Warsaw declined to join a case in which an openly gay politician was slapped in the face (es 2014). More recently, a prosecutor in Poznań joined a case of homophobic assault, arguing that it was a hooligan crime (Żytnicki 2017). While the decision to prosecute the crime *ex officio* suggests that the additional harms of hate crime are recognized, this is still not a standard. Moreover, treating bias crimes as cases of hooliganism may result in pushing the bias motivation into the shadow, as hooligan crimes are understood, according to Article 115.21 of the Criminal Code, to be committed “without a reason or for an obviously trivial reason” (Brzezińska and Słubik 2016:17).<sup>2</sup>

Unlike racist and xenophobic hate speech, hate speech against LGBT people is not legally recognized in Poland. According to the Polish Criminal Code, public insults aimed at groups based on SOGI or inciting hatred based on SOGI do not constitute crimes. Homophobic or transphobic insults aimed at individuals may sometimes be prosecuted by the victims using base offenses. Alternatively, victims may sue perpetrators in civil courts for infringement of personal rights. Both these options however, require significant resources on the part of the victim, who needs to prove the perpetrator’s guilt.

Bills aimed at recognizing SOGI, disability, age and gender hate speech and hate crime have been submitted, regularly, in the parliament since 2011 (the last one in 2016), usually by members of the opposition parties. The government pledged to change the law in the framework of the Universal Periodic Review in 2012 and 2017 (HRC 2012, 2017) but to date, the official work to legislate against anti-LGBT hate crimes has not started. In March 2018, the Ministry of Justice informed the Polish Society for Anti-Discrimination Law that “no works on the issues raised in the letter [i.e. hate crime law amendments] are planned in the near future” (MS 2018).



2 Compare also with the situation in Bulgaria (in this volume).

## Victims' Rights Legislation

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Officially, the Directive 2012/39/EU, pertaining to the rights, support and protection of crime victims was transposed in Poland before the set deadline (2015). The implementing statutes include the Criminal Procedure Code (Sejm 1997b), the Act on the Protection and Assistance for the Victim and the Witness (Sejm 2014), the Act on Counteracting Domestic Violence (Sejm 2005), as well as other laws. Some of these statutes have been amended as recently as 2016, which makes it difficult to assess how they are used in practice in cases of anti-LGBT hate crimes.<sup>3</sup>

While the current legal framework asserts some victims' rights, none of the above laws make specific references to such personal characteristics of the victim as sexual orientation or gender identity. As a result, specific support and protection needs of LGBT crime victims are not considered. Łada and Knut (2016:72), who analyzed the state of the implementation of the Directive in relation to the rights of victims of SOGI hate crimes, argue that "[t]he process of establishing and applying law to guarantee the rights of LGBTI crime victims and the protection of their rights should be assessed in a negative way". They observe that the transposition is not full, and that

*... [T]he change of law with respect to the implementation is not accompanied by necessary technical, organizational, financial and informational efforts on the part of the state, which would allow for the realization of the guarantees stemming from the Directive. (P.72)*

## Professionals and Anti-LGBT Hate Crimes

**With the lack of a legal definition of hate crime in Poland, state and civil society actors use their own working definitions, borrowing from national and international frameworks. There is no clear delineation between hate crime and hate speech, and the catalogue of victim at-**



3 The links provided in the reference list lead to the most up-to-date versions.

tributes is not universally accepted. Training on anti-LGBT hate crime is provided by NGOs on an irregular basis. There are no guidelines on dealing with anti-LGBT hate crimes for police or prosecutors, but the police have recently set up a network of hate crime coordinators.

### Definitional Frameworks

There is no agreed definition of hate crime in Poland, leading to differences in the conceptualizations of the problem among professionals. The Police and the Ministry of Interior and Administration use a working definition of hate crime which derives from the ODHR definition, but also includes criminalized hate speech.<sup>4</sup> The reach and impact of the definition is limited, as it is not shared by other agencies, particularly prosecution services, which follow the Criminal Code (Wąsik and Godzisz 2016:20). Moreover, as the interviews suggest, the definition is not commonly known among police officers (Interviews 7, 8, 9, 10). Considering civil society organizations, some use a working definition of a hate crime while others work with different concepts. For example, the association, Lambda Warsaw, records any crime as long as it is motivated by bias based on SOGI (Interview 22). Hate speech cases are registered as hate incidents. On the other hand, the association, Campaign Against Homophobia, records cases of incitement to hatred or violence and insults towards LGBT people as a group or individually, as hate crimes (even though they are not criminalized), *per analogiam* to the racist and xenophobic offenses proscribed by the Criminal Code (Interview 13). The NEVER AGAIN association registers crimes committed by neo-fascists and the extreme right as racist, xenophobic and discrimination incidents (Interview 3). The HejtStop project records cyberhate incidents (dubbed *hejt* in Polish) which could be criminal (e.g. threats or incitement to violence) or not (Interview 1). The Open Republic association registers cases of hate speech, discrimination and acts of violence and vandalism connected with discrimination (Interview 4). On the other hand, organizations providing general services to victims of violence rarely use the hate crime framework (Interviews 19 and 21). Instead, they use

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4 Ministry of Interior, Letter no DKSIW-ZPC-078-10/14 of 24 June 2014 to Piotr Godzisz.

the broad concept of “violence” (psychological, physical, domestic, economic etc.) and apply it to a spectrum of cases, including those with an anti-LGBT bias.

The above lack of clarity around key concepts impacts both on the quality of recorded data and the quality of victim support. Figures collected by various reporting centers do not compare; different recording methodologies among civil society organizations lead some police officers to question the validity of civil society data (Interviews 8 and 9). Considering support services, lack of recognition of the bias character of an incident (e.g. prolonged or repeated instances of abuse) may lead to a lack of adequate support.

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### Awareness

Poland first started to train police on hate crime in 2006/2007, following an agreement with ODIHR. Since then, the majority of officers have received basic hate crime awareness training, although this is mostly concentrated on racism and xenophobia. Prosecutors have been trained on racist and xenophobic crimes for over five years now. In 2015, an agreement was signed with ODIHR to implement the *Prosecutors and Hate Crime Training* program (OSCE 2015). While ODIHR training curricula may cover some aspects of LGBT victimization, there are, no regular, institutionalized training sessions on anti-LGBT hate crimes for any professional group. Training is delivered occasionally by NGOs, in the framework of a project, or *pro bono*; for example, in 2016, Lambda Warsaw delivered, *pro bono*, a basic anti-LGBT hate crime training programme to over 430 police officers (Lambda Warsaw 2017:12), while the Polish Society for Anti-Discrimination Law trained over 75 legal practitioners on anti-LGBT hate crime in 2016 (Interview 17). In relation to civil society, in 2015, ODIHR trained representatives of several Polish NGOs on hate crime (ODIHR 2015). Apart from questionnaires filled in by participants directly after training, most of these efforts have not been evaluated, particularly regarding their long-term impact.

Considering the limited training opportunities, levels of awareness of anti-LGBT hate crime vary among professionals from different groups with LGBT associations having the broadest and deepest understanding of the issue (Interviews 13 and 22). Among police

officers and prosecutors, the levels of awareness vary depending on issues such as position, training or personal circumstances. While some of the interviewed officers have a good understanding of the issue (Interviews 7 and 10) the inadequate level of training and sensitization efforts for other, particularly front line, officers may result in cases being miscategorized and victims feeling discouraged from reporting in the future. For example, some police may believe that it is the responsibility of the victim to disclose the homophobic motive of a crime and that police officers should not ask about it (Interview 9).

### Reporting Anti-LGBT Hate Crime

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**Anti-LGBT hate crimes are reported on an incidental basis and there are no reliable official data on the issue in Poland. Institutionally, reporting is impeded because sexual orientation and gender identity are not recognized in law as protected grounds. The other key barrier is connected to experiences and attitudes of victims coming from the LGBT community who do not believe that reporting would change anything and perceive it as ineffective, pointless or even dangerous.**

### Barriers to Reporting

Subsequent surveys show that fewer than one in 10 Poles, attacked because of their sexual orientation or gender identity, report this kind of violence to the police (FRA 2014; Górska et al. 2016; Świder and Winiewski 2017). For example, in the 2016 *HateNoMore* survey only 5.2 per cent of people who have experienced physical or psychological violence over the past five years, motivated by hatred, have reported the most serious case to the police (Górska et al. 2016:29). Almost half of the victims (43.5 per cent) did not report because they believed that the police *would not* want to do anything about it, while one in five (20.2 per cent) thought that the police *could not* do anything about it.

The above results show that victims feel the police do not have the will and/or tools to deal with anti-LGBT hate crime. In this sense, the absence of anti-LGBT hate crime from the Criminal Code hinders anti-LGBT hate crime reporting. This barrier is widely recognized among all groups of professionals working with the issue: the police, the prosecutors, the personnel of the Commissioner for Human Rights

and NGOs. Particularly in the case of incitement to hatred, based on sexual orientation, prosecutors argue that it is impossible to prosecute a crime which is non-existent in the law (Interviews 11 and 12).

According to the professionals interviewed, other causes of under-reporting are related to the attitudes and experiences of the victims. These reasons are consistent with those identified in previous research (FRA 2014; Górska et al. 2016; Świder and Winiewski 2017) and include: (1) victims do not believe that reporting will change anything and/or improve the situation; (2) they are afraid of coming out or being outed by others (especially in smaller communities); (3) they fear secondary victimization caused by the police or other professionals/practitioners; (4) they have low levels of trust in the police; (5) they are afraid of revenge from the offender; (6) they feel ashamed and do not have sufficient resources to defend themselves (they do not feel themselves a part of LGBT community, they feel alone, this is especially frequent in the case of teenagers); (7) they do not know the reasons why reporting is important for the whole LGBT community (what is its aim, how it serves others etc.); and (8) they undermine the crime by believing it is not serious enough or is a “normal” part of a gay/non-heterosexual life.

There is also additional and specific difficulty relating to reporting crimes committed on the internet, particularly on social media, where hateful content can spread and multiply. For example, an interviewee reported a case of comments published by internet users after a couple of gay men posted a picture from their wedding, which took place abroad (Interview 13). The post caused an avalanche of hateful commentaries, some of which, such as direct threats, amounted to crimes. According to the interviewee, it was impossible to pick up and report everything; for this reason, only the most explicit and violent content was documented and the most “extreme” cases of abuse reported.<sup>5</sup>



5 The case is pending. It is being litigated by the Campaign Against Homophobia. Compare also a similar litigation case in Lithuania (in this volume).

## Accessibility and Outreach

There are visible differences among various institutions with regard to the accessibility of their reporting services, especially when NGOs and the police/the prosecutor offices are compared. In terms of official reporting, although it is possible to report the crime by a written notice, most victims come in person to a police station. There, the first contact usually happens with an officer on duty and the question of who is interrogating the victim for the first time is accidental. This affects the level of reporting, as victims may be discouraged by their negative experience with the police at this stage. For example, according to the *HateNoMore* survey, 57 per cent of victims were discouraged by someone (for example, a police officer) from filing a complaint (Górska et al. 2016). Police officers may advise that the case requires a private complaint (see section about law) and therefore, they cannot take the report (Brzezińska and Słubik 2016). Victims under the influence of alcohol (e.g. coming back from a club) may be asked to come back when they are sober; victims of physical assaults may be asked to obtain a medical statement first, which may sometimes take many hours.

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While hate crime reporting is perceived by LGBT NGOs as an instrument of advocacy aiming at legal recognition of SOGI hate crimes (Interview 13), interviewed professionals prioritize the needs of the victims and do not push (or sometimes even discourage) them to report the crimes any further (e.g. by informing media or going to the police) if there is a risk of secondary victimization.

Civil society reporting centers are more flexible than official institutions and use all possible channels of communication with potential victims. The two largest LGBT NGOs (Campaign Against Homophobia and Lambda Warsaw) collect reports mostly via email and telephone or personal meetings and also through their social media accounts (Interviews 13 and 22). In addition, they sometimes actively monitor traditional and social media looking for reports and encourage identified victims or witnesses to report. In some cases, victims contact them only once, describing the incident and after receiving the response about the possible actions to be taken, they do not say anything else (Interview 13). HejtStop and Open Republic have dedicated web forms for reporting incidents (Interviews 1 and 4).

Children or youths, seeking support in cases of homophobic or transphobic violence, almost exclusively, contact charities and institutions supporting children and youth, and seldom report to LGBT organizations. The children's charity We Empower Children and the office of the Children's Rights' Commissioner operate help lines, where children and adults concerned about children's wellbeing may report cases and seek advice and support (Interview 19).<sup>6</sup>

Despite international recommendations to do so (HRC 2012, neither the police nor any other institution has ever conducted an outreach campaign to encourage LGBT victims to report hate crimes. LGBT groups, Campaign Against Homophobia and Lambda Warsaw, have conducted several outreach campaigns aimed at encouraging LGBT community members to report (by means of special apps, billboards, city-lights, spots, flyers distributed in LGBT clubs, and social media tools). For example, in 2017, Lambda Warsaw conducted the anti-LGBT domestic violence campaign, *If You Hear This/If You Say This* (see box below).

### Good Practice: *If You Hear This/If You Say This*. Public campaign on domestic violence against LGBT people

Lambda Warsaw, supported by the internet agency K2 Internet, conducted a public campaign aimed at raising awareness of the problem of domestic violence experienced by LGBT people. The campaign's aim was to encourage victims and witnesses to report and perpetrators to seek information on how to receive help. The campaign, which reached over a million people, featured outdoor (city lights), social media and a spot, which was shared online and played in the cinemas. It was co-funded by the city of Warsaw. See [www.jeslitos-lyszysz.pl](http://www.jeslitos-lyszysz.pl) (in Polish).

Barriers to reporting (above), limited funding for outreach and relatively modest experience in carrying out such activities results however, in low numbers of reports. Annually, fewer than 50 cases



6 The research team requested an interview with a representative of the Children's Rights Commissioner's office, but the request was declined. Instead, the Office's public affairs department answered questions submitted in writing.

are collected by Lambda Warsaw and the KPH combined (Godzisz, Knut, and Świder 2016; Świder, Rawłuszko, and Godzisz 2017). For this reason, as acknowledged by professionals interviewed in this research, more outreach activities are necessary to increase reporting.

### **Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process**

**Access to justice for anti-LGBT hate crime victims in Poland is limited by the legal and policy framework. Most common types of anti-LGBT hate incidents and crimes require that the victim make a private complaint, which is time and resource-heavy. There are no forms for assessing victims' needs and no procedures for dealing with hate crime victims. Information about victims' rights is provided in a formal way, and victims are seldom referred to LGBT-inclusive support services.**

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As mentioned above, some forms of anti-LGBT hate crimes (e.g. insults, threats, minor physical assaults) require that the victim make a private complaint. From the point of view of victim's rights, this constitutes an important obstacle to accessing justice, as the private complaint mode means that the burden of prosecuting the case, including collecting evidence of the bias motivation, is shifted to the victim (see the law section above). The process is time and resource-heavy. The use of this mode results in most victims deciding not to report, as they do not see any benefits from doing so (see the section on reporting).

The use of the private complaint mode is problematic from the point of view of the Framework Decision (Council of the European Union 2008) and the jurisprudence of the ECtHR. While the Decision concerns racism and xenophobia, it recognizes that hate crime victims are often particularly vulnerable and reluctant to initiate legal proceedings, therefore investigations and prosecutions should not be dependent on reports or accusations made by victims, which is currently the case in Poland. The ECtHR has asserted on numerous occasions that, "authorities must do whatever is reasonable in the circumstances" to uncover any possible discriminatory motives (ECtHR 2016). Forcing the victims to fend for themselves can hardly be seen as "doing whatever is reasonable".

Considering the criminal procedure and the legislation concerning victims' rights, the bias motivation of a crime is not specifically mentioned as a reason for which the victim might have specific protection and support needs. The legal definitions refer only to the general concept of "victim," without differentiating their status based on the type of crime or personal characteristics of the victim (Wąsik and Godzisz 2016:23). Łada and Knut (2016:75) report that the procedure to assess the victim's individual protection and support needs has not been implemented in Poland. Questionnaires to assess the victim's needs (one for police and one for NGOs) were developed and piloted in 2015, but, following the pilot study, the project was not implemented on a larger scale. According to the latest reports, there is no legal obligation to perform individual assessment and any systematic procedures to assess the victims' needs that would take into account the personal characteristics of the victim, the type or nature of the crime and the circumstances of the crime, are lacking (KPH 2016:43).

As a rule, hate crime victims are not treated as vulnerable. There is no specific police procedure as to how to deal with hate crime victims. According to the interviewed police officers, there is no need for such a measure (Interviews no 7 and 8); the process of informing victims about their rights is formalized. Officers hand out a sheet with an excerpt from the Criminal Procedure Code, with information about the victim's right to legal aid, support services and other available support and protection measures. However, the sheet does not provide victims with information about the specific support services available locally (Łada and Knut 2016:76). Police officers or prosecutors do not regularly provide updates on the case. Victims are informed about developments in their case only formally, by letter for example, when the offender is charged or the investigation is discontinued.

Some victims of LGBT-phobic crimes may benefit from the procedures developed for survivors of child abuse or domestic violence, which are designed to improve the situation of vulnerable victims. The so-called *Blue Card* procedure, introduced by the Act on Counteracting Domestic Violence (Sejm 2005), introduces measures aimed at preventing secondary victimization. It provides survivors of domestic violence with the opportunity to be interviewed in more comfortable conditions and to report all incidents, even if they do not reach a criminal threshold. It also requires the police to inform victims of locally available support services which specialize in helping domestic violence survivors.

In terms of training, there is no systematic training for professionals involved in the individual assessment of hate crime victims' on specific protection and support needs. Some training opportunities, funded externally, may be provided by NGOs but only on an irregular basis.

The lack of legal definitions and specific procedures to assess needs and inform victims about their rights means that hate crime victims may not have the opportunity to access support services and benefit from special protection arrangements (Łada and Knut 2016:75). This means that the provisions of the Victims' Directive have not been fully transposed.

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## Recording Anti-LGBT Hate Crime

**There are no reliable statistics on anti-LGBT hate crime in Poland. Some official figures are regularly published, but they contain only a handful of cases per year. Police, prosecution services and courts use different methods of recording, resulting in differences in numbers and cases “disappearing” on the way through the criminal justice system. Several civil society organizations record data on bias-motivated incidents.**

### Official Recording

The numbers of anti-LGBT hate crimes captured by the police are negligible. For example, in 2014, Poland reported to ODIHR, only seven incidents targeting LGBT people; zero cases in 2015; and 12 cases in 2016. These numbers are incongruent with the statistics of the Ministry of Interior and Administration, which contained six crimes with a homophobic bias and one with a transphobic bias (almost all of them concerning internet comments), in 2015 and 2016 combined.<sup>7</sup> The prosecution services publish data on prosecutions of crimes pursuant to Articles 119, 256 and 257 of the Criminal Code, which proscribe racism and xenophobia. The reports sporadically include cases of anti-LGBT crimes.<sup>8</sup>



7 Ministry of Interior and Administration, Letter no. PK I Ip 181.2017 of July 5, 2017 to Piotr Godzisz.

8 The reports are available (in Polish) at <https://pk.gov.pl/wp-content/uploads/2017/12/8ffee219b2f4dd56387508008eee13a5.pdf>.

A new data collection system was put in place in 2015 in the police and the Ministry of Interior and Administration where a working definition of hate crime is used to record cases. According to the definition,

*[h]ate crime is:*

*a) any offense of a criminal nature, including offenses against people and their property, in which a victim, place or other object of offense is selected because of their actual or alleged affiliation, relationship, belonging, membership or support for a group defined in point b),*

*b) The group may be distinguished on the basis of characteristics common to its members such as actual or implied race, national or ethnic origin, language, color, religion, sex, age, physical or mental disability, sexual orientation or other similar characteristics. (In Pudzianowska et al. 2016:101)*

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When registering the case, police officers can flag it as a hate crime (e.g. based on the content of the case file) by ticking a checkbox in the police case management system. This allows identification of hate crimes even when there is no legal “bias motive” for grounds such as homophobia or transphobia, which are not explicitly listed by the Criminal Code, (FRA 2016b). Statistics in each voivodship are collated, monthly, by specialized hate crime coordinators (see box below).

### **Good Practice: Network of Police hate crime coordinators**

The Polish police set up a network of 18 police hate crime coordinators, based in the voivodship police headquarters, as well as the national police headquarters. Some of the coordinators are actively involved in investigating hate crimes; while all of them are tasked with compiling monthly hate crime statistics and providing advice to investigating officers. The coordinators receive regular specialist hate crime training, which includes anti-LGBT hate crime issues (e.g. underreporting). The training sessions are delivered in cooperation with civil society organizations and academics.

While the system for data collection has been improved, there are significant shortcomings. Interviews suggest that the working definition and the possibility of flagging the anti-LGBT motivation of a crime are not well known among police officers (Interviews 7, 8, 9 and 10). According to one organization:

*The problem of the Polish system is that it (1) allows inputting these [anti-LGBT bias motivation] data, but does not force it (i.e. (...) it is [not] obligatory to fill out the box on the motivation of the offender; (2) it does not allow for identification of the motivation based on the perception of the victim or another person reporting the crime; (3) it does not train police officers on how to fill out this rubric.<sup>9</sup>*

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Another obstacle to collecting data on hate crimes based on sexual orientation was protection of personal data. Some police officers believe (wrongly) that recording the homophobic motivation of the crime would require processing sensitive information on the victim's sexual orientation. One investigating officer said that, if victims do not reveal the anti-LGBT bias on their own, "they have no right to ask about it" (Interview 9). The fact that police are afraid of asking about the bias motivation (or do not know how to do it) leads to crimes being miscategorized.

Other shortcomings include the lack of coordination between different agencies responsible for capturing data on the different levels of the criminal justice procedure. While both the prosecution services and the Ministry of Justice (which collects data on sentenced cases) have recently improved their methods of data collection, unlike the police, they have not introduced a working definition of hate crime. Prosecution services continue to monitor only selected provisions proscribing crimes motivated by racism and xenophobia.<sup>10</sup> Cases based on other biases, including SOGI, are recorded only sporadically. One of the prosecutors interviewed said that, to gather information about anti-LGBT hate crimes, "you should contact every prosecutor working in Poland, one by one, and ask them about their cases" (In-



9 Email of 5 February 2018 from the Campaign Against Homophobia to Piotr Godzisz.  
10 Country Prosecutor's Office, Letter no PK I Ip 168.2017 of 26 June 2017 to Piotr Godzisz.

terview 11). Considering the cases that are sentenced, the form used by the Ministry of Justice contains a long list of bias motivations, including sexual orientation, gender identity, disability and age, but it records data based on the use of Articles 119, 256 and 257 of the Criminal Code, which proscribe racism and xenophobia. This means that crimes based on the victim's sexual orientation, gender identity or disability will not be captured as long as these characteristics are not included in these provisions (Godzisz 2018:183).

While the number of anti-LGBT hate crimes that are recorded is already low, the lack of training, lack of coordination between agencies and inadequate forms result in under-recording and in the cases “disappearing” on their way through the criminal justice system.

### NGO Recording

NGOs remain the main source of information on anti-LGBT hate crimes in Poland. Some of them use precise templates for hate crime registration. This can be a set of questions accessible to victims via a website (such systems are used by the HejtStop project and the Open Republic association). The children's charity We Empower Children has a case management system which allows cases to be marked as involving discrimination based on sexual orientation (Interview 21). At Lambda Warsaw, a paper questionnaire is filled in by a professional (Interview 22). Most other NGOs do not use any templates or questionnaires, but decide on their own, whether the reported incident is a crime or not.

NGOs which record cases avoid gathering personal data of victims or witnesses unless this is necessary for the purpose of litigation or other support services. Most gather only data describing the crime or incident. The system used by the HejtStop project allows reporters to leave their contact details so that they can be informed about the follow-up of the case. People may also be asked to leave their details if they would like to receive support from the organization.

Lambda Warsaw, the KPH and the NEVER AGAIN association publish annual reports on the cases that they record and submit information to ODIHR (Godzisz et al. 2016; Świder et al. 2017). The Open Republic association describes reported incidents online.

Thus, data on anti-LGBT hate crimes in Poland represents a patchy and random collection of incidents and no completely reliable data is available. Both the exact scale of anti-LGBT hate crimes committed and the scale of underreporting are difficult to estimate.

## Support for Victims of Anti-LGBT Hate Crime

**State-sponsored support services for crime victims are rarely LGBT-inclusive. LGBT organizations provide services such as crisis intervention, psychological and legal counseling which are accessible for victims of violence, but their reach is limited to large towns. There is no dedicated emergency housing for LGBT victims of violence. The awareness of existing services among members of the LGBT community is low.**

General crime victim support services in Poland are commissioned by the Ministry of Justice and provided by civil society organizations. There is no developed, specific, publicly-funded support system addressed to victims of hate crimes. Anti-LGBT hate crime victims may, in theory, be referred to the publicly-funded services. However, in some areas services are provided by organizations affiliated with the Catholic Church, which means they may not be accessible to LGBT victims. As Łada and Knut (2016:77) sum up, “in practice, this leads to resignation from using these services by this category of victims.”

While there are no charities specialized in providing support to hate crime victims, victims of anti-LGBT violence may access support services provided by LGBT organizations and, to a lesser degree, charities supporting survivors of domestic violence. As mentioned above, young persons who experience homophobia or transphobia at home or at school mostly contact the charities dedicated to children and adolescents. There are very few services tailored to the needs of transgender people whereas services focusing on LGB are relatively more accessible. There is one transgender rights organization in Poland, while support groups for transgender individuals meet in several towns.

All of the support service providers are located in the biggest cities of Poland. While some services (e.g. legal counseling) may be provided by phone or on line, other services, such as assisting in reporting, are not available in most parts of the country. Lack of funding leads to considerable gaps in the coverage, and many LGBT people who have experienced bias crimes may not be able to access specialist support services where they live.

Some of the LGBT organizations in Poland are backed exclusively by international donors and private sponsors and/or individual donations; they do not use public funding. Some other organizations,

particularly those providing support to victims of gender-based violence, used to be publicly funded, but no longer receive government grants for their work (FRA 2018, 2017). All of the organizations we contacted admit to a problem with insufficient resources to provide adequate help. Often, they operate thanks to voluntary work but still report that the demand for support is greater than existing resources.

The main forms of support offered to anti-LGBT hate crimes victims are crisis intervention, psychological support and legal advice (sometimes also help in litigating the case). There is only one hotline dedicated to LGBT people in Poland, run by Lambda Warsaw and operated by trained volunteers. The hotline of the children's charity We Empower Children is also sensitive to the needs of LGBT children (Interview 21). There is no emergency accommodation dedicated to LGBT victims or any that would be fully-LGBT inclusive. An emergency hostel for LGBT people fleeing violence in or near their homes existed between 2015 and 2016 in Warsaw but closed due to lack of continued, sustainable funding.

Legal support is provided on an individual basis. Most cases are served in two ways: (1) basic support – sending legal advice or legal information, a maximum three meetings with a legal advisor; (2) extended support – preparation of legal notices, accompanying a victim until the end of the case (e.g. the end of trial). As the organizations providing legal support have limited resources, if there are many cases they choose those they will to support in an extended way. Mostly, these will be strategic litigation cases and sometimes, the follow-up, that is accompanying the victim until the end of the legal process, takes years.

Most organizations do not have a special and/or formal procedure to welcome victims of anti-LGBT hate crimes. Nor do they have a protocol for such cases. It is rather a matter of their applying experience and long-term practice.

Most of the organizations cooperate with other institutions to provide complete support or refer clients in cases of limited, in-house resources. According to some interviewees, in LGBT cases this may not be “institution-to-institution” cooperation but rather a personal, informal relationship with specialists who can be trusted as competent and “LGBT friendly” (Interviews 13 and 22). All interviewed NGO professionals were aware of the high risk of secondary victimization; for this reason, they admit that they do not always recommend their clients to contact other institutions, or report to the police.

## Conclusions and Recommendations

According to most of the professionals interviewed, both from civil society organizations and police and prosecution services, amending the Criminal Code to include sexual orientation and gender identity as protected grounds, is the most crucial and needed reform. The lack of legal recognition of anti-LGBT hate crimes impedes investigation, prosecution and sentencing of cases; it impairs data collection and creates challenges for victims in accessing justice and receiving support.

Considering the above discussion, to improve the work on countering anti-LGBT hate crime in Poland and ensure access to justice for anti-LGBT hate crime victims, the authors make the following key recommendations to the Polish government:

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1. Add gender identity and sexual orientation to the list of protected grounds on hate crime provisions in the Criminal Code.
2. Criminalize the incitement to hatred and publicly offending groups or individuals based on sexual orientation or gender identity.
3. Amend the Criminal Code to ensure that all types of offenses committed with a bias motive are investigated *ex officio* and attract higher penalties than crimes committed without such a motive.
4. Ensure that courts take into account the bias motivation of a crime as an aggravating circumstance when deciding on the sentence.
5. redouble efforts to detect and record all cases of anti-LGBT hate crimes reported to the police;
6. Introduce a system in the Country Prosecutor's Office and the Ministry of Justice where hate crime data are captured, based on motivation and not legal qualification.
7. Ensure that all persons responsible for dealing with hate crime victims, as well as responsible for data collection, receive necessary training on understanding and recognizing anti-LGBT hate crimes.
8. Conduct regular hate crime victimization surveys with questions about anti-LGBT hate crimes;

9. Ensure that the individual assessment of the support and protection needs of crime victims takes into account the type of crime and the personal characteristics of the victim.
10. Ensure that hate crime victims have access to special protection measures guaranteed for vulnerable victims, such as always being interviewed by the same person.
11. Ensure that the victim support services funded by the Ministry of Justice address the specific support and protection needs of victims of crimes based on sexual orientation and gender identity.
12. Ensure that LGBT-inclusive victim support services are available to all victims, including outside of large towns;
13. Conduct awareness-raising campaigns about hate crimes, particularly those based on sexual orientation and gender identity.
14. Consider regulating all issues related to countering hate crimes and supporting victims in a separate statute, such as happens in the case of domestic violence.

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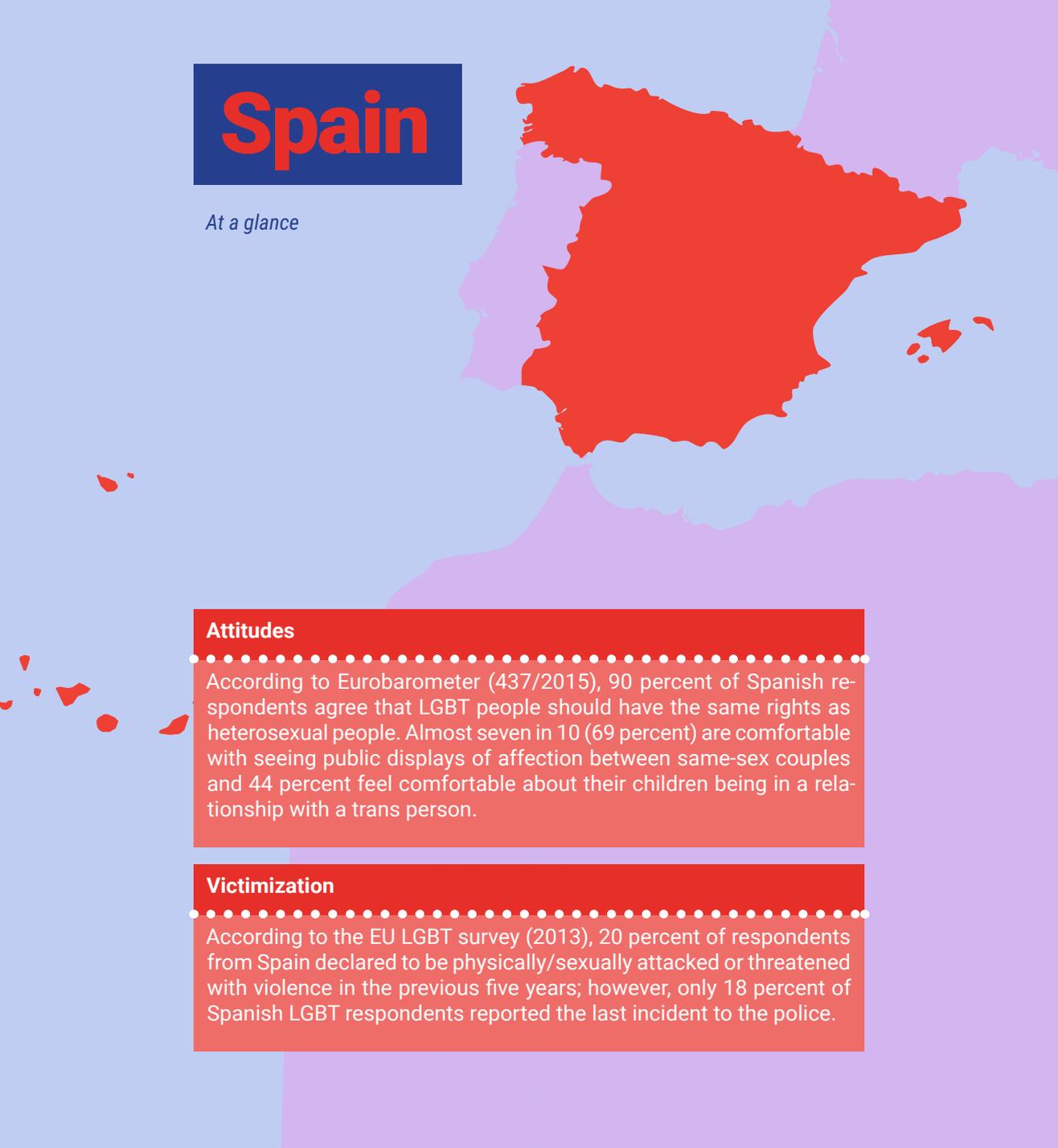
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# Spain



*At a glance*

## Attitudes

According to Eurobarometer (437/2015), 90 percent of Spanish respondents agree that LGBT people should have the same rights as heterosexual people. Almost seven in 10 (69 percent) are comfortable with seeing public displays of affection between same-sex couples and 44 percent feel comfortable about their children being in a relationship with a trans person.

## Victimization

According to the EU LGBT survey (2013), 20 percent of respondents from Spain declared to be physically/sexually attacked or threatened with violence in the previous five years; however, only 18 percent of Spanish LGBT respondents reported the last incident to the police.



## Official Statistics on Anti-LGBT Hate Crime

The number of officially recorded SOGI hate crimes, recorded by the Spanish Ministry of Interior was 230 in 2016.

## Summary

- The Spanish Criminal Code sets a basic, common ground for the whole of the country. Additionally, around half of the autonomous communities have expanded the legal framework with the approval of more concrete laws.
- In general, police bodies and NGOs lack training on the issue, particularly on the notion of hate crime.
- There is general concern about underreporting, a view which is complicated by some critical voices.
- The main reasons for not reporting are mistrust in the police and thinking that reporting will not make a difference.
- Victim support offices are present in several courts and they are the key to ensuring the rights of victims.
- Anti-LGBT incidents are recorded by the police and by some NGOs, which then lead to the elaboration of yearly reports.
- Both NGOs and public authorities have limited resources that often fail to meet victims' needs.



# Tackling Anti-LGBT Hate Crime in Spain: A Patchwork of Realities

*Núria Sadurní, Paolo Leotti, Jose Antonio Langarita and Xavier Vallvé*

## Legal Framework

**In Spain, there is a patchwork of different legal frameworks. The Criminal Code sets a basic, common ground for the whole of the country. However, several regions have specific anti-LGBT violence laws which vary slightly from one another and which address a broader perspective on anti-LGBT violence.**

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Spain is a single state divided into 17 autonomous communities and 2 autonomous cities. Such autonomous communities have some level of local sovereignty and the power to legislate on a range of different issues, providing that such regulations do not interfere with the constitution or any of the broader, state-level laws. This is the case with anti-LGBT violence regulations, which are subject to sanctions in the state criminal code as well as in the specific laws of some of the autonomous communities. Because of this, the legal framework of anti-LGBT violence in Spain can be considered as a patchwork of realities.

## State level

At the state level, the criminal code, law 10/1995, after its amendment in 2014, includes anti-LGBT violence as a criminal offense in several articles. In this document, anti-LGBT motivation is punished as an aggravating circumstance, as the reason for a threat, and as an incitement to violence.

According to article 22 of the Criminal Code, it is an aggravating circumstance to commit an offense “for racist or anti-Semitic reasons, or another kind of discrimination related to ideology, religion or belief of the victim, ethnicity, race or nation to which they belong, their gender, sexual orientation or identity, illness suffered or disability” (P. 8). This

requires that, when there are one or two aggravating circumstances, “they shall apply the punishment from the top half of that set by Law for the offense” (P.22). Furthermore, when more than two aggravating circumstances concur and there are no mitigating circumstances “the higher degree of punishment to that established by Law, in its lower half, may be imposed” (P.22).

Article 169 of the criminal code regulates punishment of threatening behavior. In relation to this, article 170 establishes that, if the intimidation is harmful it constitutes a felony and,

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*is intended to cause fear among the inhabitants of a location, ethnic, cultural or religious group, or a social or professional group, or any other group of persons and, if serious enough for such harm to be inflicted, the respective higher degree of penalties than those foreseen in the preceding Article [169] shall be imposed. (P.54)*

Finally, in article 510, a sentence of imprisonment from one to three years and a fine from six to twelve months, will be applied to “those who provoke discrimination, hate or violence against groups or associations” (P.147) due to gender, sexual preference, among other characteristics. Moreover, the same punishment is established for “Those who, with knowledge of its falseness or reckless disregard for the truth, were to distribute defamatory information on groups or associations” (P.147) in relation to their gender, sex, or sexual preference, or other characteristics.

Since 2013, a specialized prosecutor in hate crime and discrimination has been appointed in every province of Spain, who has to work following the specific legal framework of the autonomous community of their province.

According to one of these prosecutors, the Spanish criminal code only regulates anti-LGBT violence through anti-discrimination law. Furthermore, the articles on the Criminal Code do not fight anti-LGBT violence in a broad sense, or through proper reporting and victim assistance. This has led many LGBT organizations to push for a more effective legal framework, which can further tackle anti-LGBT violence as well as improve reporting and victim assistance. Such initiatives have led to the passing of several autonomic bills on anti-LGBT violence laws, as well as the elaboration of a law proposal at state level, which on May 2017, was accepted for debate in the Spanish Parliament.

## Autonomous community level

In eight of the 17 autonomous communities, Galicia, Canary Islands, Catalonia, Extremadura, Murcia, Balearic Islands, Madrid, and Navarra, there are also specific laws to guarantee protection against anti-LGBT violence at the autonomous community level, with the first one being passed on 2014. These are all administrative laws, similar to the one that passed for Spanish parliamentary debate, so their sanctioning power is limited to fines and withdrawal of public grant application rights. Nevertheless, most of these legal frameworks, besides working on prevention and sanctioning, have set the grounds for the implementation of some guarantees of anti-LGBT violence reporting and victim assistance in those autonomous communities where they are present. Some of these laws are still being implemented so as yet there has been little opportunity for evaluation, although some critical voices have been raised concerning the lack of deployment and lack of budget allocation to support them.

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## Professionals and Anti-LGBT Hate Crimes

**There is limited knowledge of what hate crimes are exactly, even if there is knowledge of the actual LGBT situation in Spain, including, low intensity discrimination or micro aggression, underreporting, misconceptions or lack of knowledge of LGBT within public opinion. In order to deal with problems affecting LGBT professionals, especially from NGOs, are involved in awareness raising activities, providing information and support to victims, and training. However, limited resources make it difficult to address them. In terms of intervention, there are different ways to respond to hate crimes that include holistic approaches or WhatsApp-based services. There is a broad consensus about the need to ensure users' data is protected.**

Interviewees showed differing levels of knowledge of the national and regional legislation relating to anti-LGBT violence and discrimination. In only five out of 20 interviews were respondents able to provide a robust definition while the remaining 15 gave only a partial definition or simply some example of the most frequent crimes. At the same time, interviewees have a good, overall understanding of the prevalence of hate crime and hate speech in Spain. This is a con-

sequence of the considerable experience of addressing such cases and to a lesser extent, because of specific training they have received, for instance from the Spanish platform FELGTB, that brings together several organizations across the country, or by police units.

In this vein, Catalan regional police, Mossos d'Esquadra, and local police from Fuenlabrada (Madrid) have paid significant attention to hate crimes in general and hate crimes affecting LGBT victims in particular. This is further demonstrated by training sessions for local LGBT NGOs and schools, to reduce the mistrust towards them and to give instructions about how to file a robust complaint. At the same time, police officers attend specialized training in order to update their knowledge and the way they intervene.

Participants in the research are generally aware that Spain has improved considerably in respecting the rights of the LGBT community, however, they stress that much has yet to be done, especially in reducing so-called "low intensity" discrimination or micro-aggression affecting LGBT people in their daily life. Respondents say that this generally consists of insults, slander, vexations, humiliation and threatening activity on social networks. Low intensity discrimination includes situations that do not necessarily represent a crime but they threaten coexistence at a local level and it is a target of their interventions:

*We also pay a lot of attention to those incidents which do not entail a criminal offense, but which can entail either an administrative offense, based on discrimination, or a coexistence conflict, which is not even an administrative offense, but which still alters coexistence and is in need of mediation. (Police officer)*

Professionals stress that interventions aimed at eradicating these kinds of acts are usually difficult because victims prefer to ignore them or believe that reporting does not pay off; consequently, they normalize such violence:

*I'm simplifying things a bit, but when we've interrogated victims we asked them, "But you haven't suffered such a circumstance?" and they would answer: "Well, they insulted me just as usual". ...I think that this reality hasn't really emerged; and it hasn't emerged because I think that in this country we have a very high acceptance threshold, before identifying that what you've experienced was a hate crime. (Police officer)*

In order to respond to this situation, and despite the limited resources available, third sector organizations are active in raising awareness and looking for new ways to reach people and modify misconceptions. On the one side, they try to inform and empower potential LGBT victims and on the other, they raise awareness in the whole society. For instance, one NGO uses “living libraries”, as a tool that seeks to challenge prejudice and discrimination. It works just like a normal library; visitors can browse the catalogue for the available titles, choose the person they want to listen to, and borrow it (him/her) for a limited time. Persons who decide to be part of living libraries are those who have usually experienced the situations about which they want to talk<sup>1</sup>.

Professionals from NGOs provide the first response and, in some cases,, they give information and an element of support to victims, even if it is not always easy to deal with the lack of resources or to collaborate with local administrations.

*In the case of our Autonomous Community, the existent service is a source of first advice, and then, if we see that the case requires a judicial procedure, curiously, they send the victim to us; and it is a service with a lot of economic resources, more than us. But, the thing is that this service does not carry out any kind of judicial action. Then, can they refer cases to us? Yes. When there is an intention to go to court, they say it's reached their limit, and they send the victim to us so we, who don't have this service, if we want to carry it through out of activism, which is what we usually do, we just do it. (LGBT NGO volunteer)*

Among the various services that professionals from NGOs usually provide, there are training sessions, cultural events, awareness raising activities in schools, for example, and there are victims' support services. These services, offered only by those NGOs with more resources, usually consist of free psychological and legal aid. Interviewed representatives from two NGOs explained that this service is not advertised or promoted among users because of the need to avoid identification of the organization's activity with the victims' support services they offer (Interviews 9 and 19). In fact, this would lead to identifying NGO users as just victims and thus affect the broad approach these NGOs have.



1 <https://www.coe.int/en/web/youth/-/lgtb-refugees-give-testimony-to-the-drama-of-immigration-in-europe>

Different organizations' approaches take a different focus on how they address the roots of the victim's issue. In some cases, organizations seek to adopt a holistic approach to the victims, for instance by taking into consideration the multiple intersecting forms of oppression that the victims might be experiencing. In other cases support is more limited but quick, easy to obtain and anonymous, for instance by using a Whatsapp-based service. In this case, if potentially serious situations are detected, a face-to-face meeting is proposed. This service emerged by chance, because the NGO gave out mobile phone numbers to students during awareness raising activities in schools and, little by little, the students started to spread information to friends and the NGO received a growing number of queries. Every time they receive a new message, they agreed with the person on how to respond, because sometimes parents respond to calls and they are not aware of the issues or are opposed to the sexual orientation of their sons or daughters.

There is a broad consensus about victims' data protection even if, in some cases, formal procedures to ensure it do not exist. For instance, notes taken by victims' support services are destroyed after the case is closed; victims' identity is not shared among colleagues; or the computer in which sensitive information is stored is not connected to internet. On one occasion, a respondent raised the need to achieve a balance between ensuring data protection and avoiding secondary victimization. In other words, the more the information about victims is shared among professionals, the less victims are obliged to repeatedly explain what they have suffered (Interview 9).

### **Reporting Anti-LGBT Hate Crime**

**There is agreement and a general concern among research participants that anti-LGBT hate crimes are not reported, either to the police or to NGOs. Reporting is widely encouraged by participant organizations, except for some critical voices. The main reasons for not reporting are mistrust in the police and thinking that reporting will not make a difference. Some participants demand the approval of additional laws on anti-LGBT violence.**

Almost all participants from reporting centers, both NGOs and police forces, agree that reporting anti-LGBT crimes to the police, overall, is a good strategy to combat LGBT-phobia. Among the arguments they give are; that it helps make LGBT-phobia visible, it “helps naming and numbering the suffering” (Police officer) and, some argue, it is the only way to make this issue visible. Another argument given by an NGO which specialized in reports on anti-LGBT acts, is that the message to the general population should be that these kinds of acts have consequences” (LGBT NGO psychologist) and hence, that there is punishment for such actions. In relation to this, one participant from an LGBT NGO suggested that

*Reporting usually has to do with visibility. Many times, they ask us if the number of reports is growing because homophobia is growing. In my opinion, there has always been such homophobia, but people are starting to realize that there are now more resources to combat these kinds of discrimination, and they report more. It is not a matter that there is now more homophobia.*

On the other hand, two of the participating reporting centers, an NGO and a local police body, admitted that they believe reporting is only a good option some of the time. They explained that there could be unofficial reports without a formal procedure, which would still count as statistics and as provision of assistance. However, they believe that, at other times, it may put the victim into a very vulnerable position, or it may create false expectations in them that may not be met:

*Our campaigns are always centered on communicating with us; we never work with the slogan “Report”. We are seeing that from LGBT collectives reporting has been widely encouraged, and reporting is generating many expectations; but we are being very critical with this, and we are saying, be careful with these reporting processes, because then you might not be heard in court. (Local police officer)*

When asked about the reasons for not reporting, almost all participants emphasize distrust in the police as one of the main reasons, as well as a belief that their report will not receive attention. In relation to

the lack of trust, police officers argue that this is because of historical police bad press, not because they are currently untrustworthy. Some police forces respond to this problem with public campaigns:

*Building from the title of your project, we reinforce the message of “come forward to report, come forward to explain, come forward to trust this country’s police”. We created a corporate video where all agents in our force intervene, from the lowest ranked agent to the superintendent. In it, we say the different reasons why one can be a victim of a hate crime and discriminatory behavior and then we encourage people to report. (Police officer)*

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However, some NGOs state that victims may not be comfortable around police officers because of their migrant status or past history with police forces; or else because they are not comfortable with bureaucratic procedures. In addition, some participating NGOs report that their users complain that reporting to the police is worthless:

*With the current laws, we believe that we have high self-esteem, that reporting is very important. We know that we have rights and that we have cause to report; but then, most reports end up in nothing. (LGBT NGO volunteer)*

One of the participating police officers and a regional-level organization, reportedly blamed distrust in the police on users themselves, arguing that there is no legal reason not to trust the police. In addition, they argue that if there is any police malpractice, it can be reported to the police. This creates a situation that is difficult to resolve, because the victim may not trust in the second police report if their first experience was bad. Furthermore, this demonstrates that, although police officers are widely being trained on the issue of hate crimes in general and anti-LGBT hate crimes in particular, they are not addressing the complexities of power relations between victims and police bodies. Solving this issue might lead to a better approach to victim care.

Because of their concern with underreporting, many of the participating organizations are carrying out strategies to encourage reporting. Most NGOs campaign for victims to report to them so that the process of reporting takes place with active support. Furthermore, some of these NGOs are participating in police training on how, prop-

erly, to take statements of anti-LGBT hate crimes, as well as how to deal respectfully, with sexual and gender diversity. In addition, as illustrated above, some police forces are carrying out campaigns aimed at gaining people's trust in the matter of hate crime and hate speech reporting.

Finally, the complex articulation of different legal frameworks in different autonomous communities and cities opens up a patchwork of practices and differential claims. Participants from autonomous communities without a specific law against anti-LGBT violence, claim that they need one to improve reporting. They believe that with a legal framework which clearly and more thoroughly protects the person experiencing discrimination it will be easier for them to take certain cases to the police:

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*We need a law against discrimination, and for equality of treatment, for the whole of the country. Attempts were made to achieve this in the last socialist term of government. However, it was "left in the lurch". (Trans NGO)*

This is a claim some of the more critical NGOs make. The experiences of the autonomous communities that have a specific law against anti-LGBT violence raises concerns among activists from other autonomous communities, about the wider political implications:

*The first thing that we need is accessibility for the victims. We need to pass an LGBTI law, at a state level, which is supported by autonomous communities with LGBTI laws at an autonomic level. And, we need resources to be allocated to organizations, so they can work with victims. We cannot do as in Catalonia, where a law was passed and then no budget was allocated to it. If you don't allocate a budget and bestow it with sanctioning power, it's as if it weren't there in the first place. (LGBT NGO member)*

## **Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process**

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**Rights of the LGBT victims are enshrined within Law 4/2015, on the standing of victims of crime and covers a vast array of rights including; giving a statement accompanied by a person of trust, receiving language assistance and free translation of a copy of the complaint and being entitled more generally, to receive support measures. In the framework of a criminal justice trial, victims' support officers are present in several courts and are the key to ensuring the rights of the victims; they also play a role in coordinating the entire range of support measures.**

According to Article 5 of Law 4/2015, of 27 April, on the standing of victims of crime, victims have the right to receive information at their first contact with authorities. For instance, victims must receive information about the assistance and support measures available, including medical, psychological or material measures, as well as about procedures to get information on emergency housing. At the same time, they have the right to receive free language assistance and free translation of a copy of the complaint filed. Language assistance is offered, also, during court hearings, including a written translation of the more relevant information.

In order to avoid secondary victimization, professionals involved in hearings are asked to record the victim's statement promptly and to reduce the number of statements to the "minimum necessary" (art. 21). This is also the case for the number of medical examinations. While this recommendation is important, according to the Spanish law on criminal procedure, the "minimum necessary" number of hearings cannot be lower than three or four, which is still too high to prevent this risk.

Victims have the right to access free of charge and receive assistance and support services provided by public administration, as well as those provided by the Victim Assistance Offices (art. 10). Under certain conditions, this right may be extended to the next of kin of the victim, especially when involving crimes that have caused particularly serious damage.

Victim Assistance Officers provide a public and free service provided by the Ministry of Justice in accordance with Law 35/1995 of December 11, on aid and assistance to victims of violent crimes and against sexual freedom. Their general objective is to offer comprehensive, coordinated and specialized assistance to victims, and to respond to specific needs in the legal, psychological and social sphere (Article 17 Royal Decree 1109/2015). Their offices are located in the same premises as the courts.

Victim Assistance Officers play a very important role of providing emotional support, advising, assessing, supporting and referring, and coordinating with other actors involved in the hearings. In this vein, victims receive general information about their rights and, in particular, about the possibility of accessing the public compensation system. The information provided relates also to specialized services that can assist the victims, according to their personal circumstances and the nature of the offense. Advice provided includes economic rights related to the process, in particular the procedure for claiming compensation for the damages suffered, and the right to have access to legal aid. In addition, it covers counselling on risks and advice on how to prevent secondary or repeated victimization, intimidation or reprisals.

Protection measures are granted, based on a previous assessment made by the same office, and can include provision of psychological support or assistance, accompaniment to trials and information about available psychosocial assistance and other resources. The law 4/2015 also specifies the criteria upon which to make this assessment. It includes the nature of the crime, which in turn also includes “crimes against sexual freedom”.

Victim support officers also deal with coordination tasks, on the one hand with external bodies such as institutions and entities providing support services to the victim and on the other hand, with the judicial system, involving judges, courts and public prosecutors. Each of them has a different role in the follow up processes, and this completely guides the kind of case monitoring which takes place. The prosecutor office carries out most of the legal follow up with the victim. This is a key part of criminal processes, which means that they follow every step of the cases that end up at trial: “We are part of the process and hence, we follow up from the time the report is

presented until the decision is executed, when there's been prosecution" (Prosecutor on hate crimes and hate speech). However, there is no mention of the follow up of cases that do not end in prosecution, which leads us to conclude that there is only monitoring in those cases where investigation is involved.

### **Recording Anti-LGBT Hate Crime**

**258 All police and justice bodies record anti-LGBT incidents through protocols. They have also received training on how to identify hate crimes, although some suggest that it is not good enough. Conversely, some NGOs record all incidents and produce yearly reports on them, while others do not, primarily due to a lack of resources.**

All participating reporting centers treat victims' information very carefully and always keep it safe from privacy violations. In the case of police forces, the information is only visible to those officers who are working on the case, and all reports are kept safe, although they travel to the prosecutor's office as well as to court, if needed. Likewise, in NGOs, only the person, or the small number of people, who are taking care of the case can access the victims' private information and their report. Although some participating organizations produce public reports on the cases, all data is anonymized and produced in a way that nobody can recognize the victims.

Participants report that since 2014, all police bodies and prosecutor offices have been equipped with the necessary protocols to be able to identify and document hate crimes when taking a victim's statement. Officers from the national police and the autonomic police in the autonomous communities, where they are present, have received training on how properly to identify and record hate crimes. This information is included in the police statement, which is computer-based, and the recorded data are then used for analysis by the Ministry of Interior. Since 2013, this ministry has published yearly reports on the evolution of hate crimes in Spain; the last available report is that of 2016. A considerable amount of data is recorded; as one participant police officer stated:

*In the report that we hand to the prosecutor [of hate crimes and discrimination], we tell him the number of reported incidents, as well as the kind of hate crime and the crime: if it's a threat, coer-*

*cion, an injury... They are broken down into kinds of crimes, age of the victim, and the number of victimized people – if there is a report with more than one victim... According to the prosecutor, every year we will expand the content of the report. (Police officer)*

The participating NGOs reported having different policies regarding recording of anti-LGBT hate crimes. Three of them record data on all of the cases that they receive, regardless of whether or not the victim reports it to the police. One of the organizations has produced yearly reports since 1995, although they only started to include homophobic and transphobic incidents several years later while the other two organizations that produce yearly reports also are observatories of LGBT phobia. One of them started producing reports in 2015 and the other in 2016, both still very recent. A participant from the former explained their recording and disseminating of data in the following way:

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*The report that we do, yearly, is this big report. In addition, we have talks and training sessions that entail making data visible in some spaces but, basically, we put the data in this report; and, in this report, we have quantitative data, and in a semi-structured interview, we also ask users who have suffered aggression, if they want to explain their case. Then we analyze the case, and we use it for good practice. (NGO officer)*

However, the remainder of the participating NGOs stated that they did not record incidents and hence, they do not provide any kind of report on the matter. Some of the participants from these NGOs reported that they do not have enough resources to record such information and even less to produce reports on it, although some are willing to start producing them: “We do not record data, not properly. But this is what we want to do in the future. And besides, we want to carry out some research on our autonomous community” (NGO officer).

In summary, the scenario on reporting is very different in public bodies compared with NGOs. While in public bodies, recording hate crimes is part of their protocol and data is automatically registered, in NGOs this practice differs greatly depending on the available resources. Their reports also differ in content, since police bodies only gather data on formal reports, whereas NGOs collect data also, on those cases that were not taken to the police. This creates different documents that reflect different and uneven parts of the overall picture.

## Support for Victims of Anti-LGBT Hate Crime

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NGOs and local authorities usually have limited resources and sometimes do not respond to victims' needs for, for example, protected shelters or long-term psychological assistance. Another limitation is collaboration and referral between NGOs and local authorities. This varies considerably across Spain and there is usually significant room for improvement. Secondary victimization is a real risk that less efficient or inefficient referral systems produce. Interviewees agree that this must be avoided. The Catalan police service has a unit that follows up victims from the early reporting phase, and gives support, depending on the characteristics of the case, even after the court decision. Protocol also includes storing information in a secured database and providing information about resources available in the territory.

NGOs tend to act as a first filter through which LGBT people with very different issues and needs are screened and if possible, their needs are internally and/or externally addressed. This role is extremely important because very often victims are confused, ashamed or unaware of their condition. They may also come for a specific issue but then recognize the real problem is something else.

Fieldwork research highlighted very different levels of capacity for referring victims, ranging from networks of organizations as in the Basque Country, sharing protocols and information even with the public administration (see box below), to situations in which NGOs are obliged to be self-sufficient and rely on volunteers due to the lack of external resources, especially from local administrations. In the middle of this spectrum, there are organizations that work together with one another even if collaboration is sometimes complicated, as they tend to have specific competences and protocols that affect the delivery of specialized services. Because of this situation, victims are usually required to explain what happened several times, which involves time-consuming and bureaucratic processes that increase the chances of secondary victimization and the decision to renounce their experience before any court judgement is issued.

From a more general perspective, while several interviewees recognize that some victims must be protected from continuously explaining painful experiences, in the case of persons who feel more empowered, the situation changes; they may actively want to share

their experiences with the public (for example, through the media). When this occurs, the visibility of the cases helps other potential victims to respond because they feel they are not alone and more generally, it raises levels of awareness.

In the case of serious offenses, when a victim comes to the attention of the Catalan regional police, s/he is referred to a specific unit, Victim Support Groups, belonging to the police, which are present in each police station.

These groups carry out the victims' follow-up, which means, not only a first interview or a first telephone call, but also that additional measures are taken while the victim is in a situation of risk, and for as long as this risk remains, or as long as the victim has judicial protection measures in place. For this reason, the police unit can decide the protection measures, especially in the event that victims are in a situation of defencelessness and need some kind of protection after leaving the police station. A judge, who may rule that aggressors cannot approach victims or communicate with them, may also implement such measures. Each case and each victim who enters a police station is evaluated and, according to their needs, they are offered one type of protection or another. Some minimum support standard must be met. For instance, Victim Assistance Teams make periodic phone calls and continuous monitoring is carried out while the risk remains, or until there are appropriate protective measures in place.

In terms of storing information, the Catalan Police, Mossos d'Esquadra, record data in a computerized system, SIAV (integral system of attention to victims, in Catalonia), which stores information about each victim, regardless of the nature of the offense. The whole list of proceedings is included.

As for support services, Catalan Police, Mossos d'Esquadra have created a list of resources to give support to victims, including psychological support and housing. They do not provide them directly but are able to refer victims to the most suitable solution.

Even if resources are available there remains a need to inform victims about these resources and spread the information to other departments of public administration, for instance the Department of Social Welfare and Family, and more generally, any institution that deals with victims. In order to fill information gaps, the Catalan Police have edited a resource guide about "Self-protection measures". It is a booklet that explains what to do before, during and after an episode of violence.

**Eraberean (Equally)** Eraberean is a network promoted by the Department of Employment and Social Policies of the Basque Government, to fight against discrimination based on racial, ethnic or national origin, and for sexual orientation and sexual identity and gender identity.

The network is made up of professionals from the Department and from various social organizations with which they share the mission of “enhancing the presence of the principle of equal treatment and non-discrimination in public policies and in the civil society of Basque country”.

The main objectives of Eraberean are to:

Promote and coordinate specific policies on equal treatment and non-discrimination, especially in relation to the reasons indicated, and to integrate the principle of equal treatment and non-discrimination in sectoral policies.

Put at the service of people, mechanisms and tools for information, advice, guidance, etc., in order to assert their rights when they are being violated by discriminatory treatment.

Share those resources and tools with others that already exist, addressing a vast array of targets (sex, functional diversity, etc.), and that operate in the public sphere, from the initiatives that have historically been developed by civil society organizations.

Creating synergies, complementing and reinforcing each other.

Eraberean places its focus preferably in the private sphere, combining a holistic approach including the processes of social and cultural transformation. To do this, it combines programs and actions to raise awareness, train agents, create outreach materials, advise institutions and social organizations, etc.

Eraberean also has an operational approach, in the sense of offering assistance as soon as possible to specific people, finding themselves in specific situations and in specific courses of action. For this, a number of organizations are deployed in the territory, in order to detect discriminatory situations and focus on individuals and groups.

## Conclusions and Recommendations

In Spain there is widespread acceptance that LGBT people should enjoy the same rights as the rest of society, and the EU LGBT Survey (FRA 2012) concludes that LGBT people consider it to be one of the countries in which they feel less discriminated against and harassed in comparison with the rest of the EU. However, as can be seen through the research findings, this does not mean that there is no anti-LGBT violence in Spain. As a result, the need for special services for anti-LGBT violence victims remains.

This situation is being addressed in law through the Spanish Criminal Code which includes anti-LGBT discrimination as constituting a crime. Since such legal provisions are not sufficient, several autonomous communities have elaborated regional laws that tackle anti-LGBT violence. The existence of such laws in certain autonomous communities, the lack of them in others, along with the existence of a common Criminal Code, makes Spain a patchwork of legal frameworks.

Besides the legal measures, several institutions and organizations, both public and from civil society, put considerable effort into fighting anti-LGBT violence. Part of the strategy to combat it takes the form of formal police reports and several NGOs are working to encourage reporting of anti-LGBT hate crimes, as are all participating police forces. This creates some difficulties with public bodies that operate on a larger scale, such as some police bodies and prosecutor offices.

Victims have a range of rights that help them in the process of reporting. Such rights, which include the right to assistance and support measures, are intended to diminish secondary victimization, although this is not always achieved.

Underreporting of anti-LGBT violence remains an issue and was identified by almost all respondents, both public bodies and NGOs, as an ongoing problem. Reporting as a strategy is widely encouraged by most of the participants although some critical voices point out that reporting is not always the best option for the victim and that sometimes it does not help with the victim's wellbeing. Furthermore, we have seen that some of the stakeholders do not always take power relations between police bodies and victims into account. Police officers do undergo training on anti-LGBT hate crime and like NGO partic-

ipants they mostly showed a good understanding of what this kind of hate crime is, as well as acknowledging its seriousness. Nevertheless, such training clearly fails to explore the issue of power relations.

In relation to assistance, support from NGOs is highly dependent on the resources that they have. Whereas some NGOs can offer both legal and psychological assistance others do not have the capacity to provide so much. Public bodies also offer assistance, although on many occasions it is not enough. This overall lack of resources could be improved by creating more networks between public bodies and NGOs.

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Following these conclusions, we make the following recommendations:

1. Undertake in-depth evaluation of training on anti-LGBT violence provided to law enforcement bodies by specialized professionals.
2. Create networks between police bodies and NGOs who work as reporting centers and victim support service providers, as well as within such NGOs.
3. Centralize all data on reports, both by law enforcement bodies and NGOs, to create a unified collection of data, including both incidents reported and not reported to the police. Such centralization should be carried out by professionals with specialist knowledge of anti-LGBT violence.
4. Implement measures to inform victims of the legal procedures that reporting entails so they can make an informed decision and so expectations can be managed. Importantly, this would also prevent a great deal of secondary victimization.

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# United Kingdom



*At a glance*

## Attitudes

According to the Eurobarometer (437/2015), 84 percent of UK respondents felt LGBT people should have the same rights as heterosexual people. This is above the European average of 71 percent. Fewer people (56 percent) would feel comfortable seeing same-sex couples showing affection in public, compared to those who would feel comfortable seeing affection among heterosexual couples (75 percent). 56 percent would feel comfortable with their son or daughter forming a relationship with a trans person.

## Victimization levels

According to the EU LGBT survey (2013), 31 percent of respondents from UK declared to be physically/sexually attacked or threatened with violence in the previous five years; however, only 27 percent of English LGBT respondents reported the last incident to the police.

## Official Statistics on Anti-LGBT Hate Crime

10,467 cases of anti-LGBT hate crimes were recorded by UK policing institutions during 2016 according to the OSCE Office for Democratic Institutions and Human Rights.

### Summary

- The UK records significantly more hate crime than any other European country. Comparative European research indicates that this is due primarily, to improvements in reporting and recording rather than an indication that significantly more anti-LGBT hate crimes occur in the UK than elsewhere.
- A key feature of the UK model is “perception-based recording”, alongside efforts to improve the confidence of LGBT communities in the police through cooperation with NGOs, in order to increase reporting.
- Despite this progress LGBT communities still experience high levels of homophobic, transphobic and biphobic hate crime, creating substantial individual and community impacts, a majority of which remains unreported.
- The UK has well developed anti-hate crime laws, though they are in need of reform to correct current deficiencies and to ensure they are coherent, effective and fair for LGBT victims of hate crime.
- A comprehensive range of victim-focused measures related to the Victims’ Directive are available to hate crime victims, although in practice they are not always offered and are framed as “entitlements” rather than “rights”; in practice, making enforcing them difficult.
- There is a mixture of approaches and levels of quality among victim support services, alongside varying levels of expertise in criminal justice process issues and support needs, of LGBT hate crime victims. This indicates the need for improvements through training and dissemination of good practice.
- Although UK criminal justice institutions have made significant progress toward LGBT inclusion, they can still be alienating environments for LGBT victims. Activities are needed to help policing and prosecution professionals to gain insight into the fast changing LGBT identities, the impacts of hate crime, the importance of respectful and empathetic treatment, and the importance of referral to appropriate victim support services.



# Pride and Prejudice: Anti-LGBT Hate Crime in the United Kingdom

*Nick Antjoulle and Melanie Stray*

## Legal Framework

The UK anti-hate crime legal framework has effective provision for sentence uplift of crimes involving anti-LGBT prejudice. These laws are regularly utilized by criminal justice authorities. Despite this, UK hate crime laws have been pieced together in an incremental manner, meaning they have quickly become outdated and are in need of reform to make them coherent and effective.

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## Variation Across Jurisdictions

The UK has three separate jurisdictions and systems of criminal law, England & Wales; Northern Ireland; and Scotland, each with slightly varying approaches to hate crime. The first UK hate crime legislative provisions were introduced in England & Wales with the creation of specific racial hate crime offenses (s.28-32 Crime and Disorder Act 1998). The law was then amended to include faith hate crime in 2001 while separate legislation was later enacted to enable sentence uplift of offenses involving homophobia, transphobia and disability hate crime (s.146 & 146 Criminal Justice Act 2003). This created an inconsistent approach between specific race/faith hate crime offenses, and the use of sentencing uplift for LGBT/disability. One consequence of this is that a lower maximum sentence is available in cases of anti-LGBT and disability hate crime than for other forms of hate crime (Galop 2016). Laws in Northern Ireland largely follow the above model, though they rely entirely on sentence uplift without creating specific offenses (Criminal Justice, Northern Ireland, No. 2, Order 2004). A distinct deficiency in the Northern Irish approach is that it includes no provisions for tackling transphobic hate crime. Meanwhile Scotland has taken a different approach by mandating that courts consider

hate crime as an aggravating factor in sentencing, while avoiding mandating how courts should do this (s.2 Offences, Aggravation by Prejudice, Scotland, Act 2009). Scotland also has several specific hate crime offenses covering offensive behavior at football matches and racial harassment (s.50A Criminal Law, Consolidation, Scotland, Act 1995). Additionally, each of the above jurisdictions has varying forms of anti-hate speech law.

### The Bias Element

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A key element of the UK legal model is the legal test used to establish the “hate element” of a crime. In doing this, UK legislation avoids the word “hate”, as it can be a misleading term when used in relation to this issue. Most acts of crime related to bias against a stigmatized community are not driven by strong feelings of hatred. Instead, these crimes are often driven by everyday thoughts and feelings that are more akin to prejudice, meaning a different legal test is needed. Two such alternative legal tests are utilized in the UK. The first is “hostility”, which is used in England, Wales and Northern Ireland (s.146 & 146 Criminal Justice Act 2003). This enables courts to treat any crime that is related to hostility against a protected group as a hate crime. In defining “hostility” an ordinary dictionary definition is used, meaning ill-will, ill-feeling, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike. The second model is used in Scottish law, which identifies “malice and ill-will” against a protected group as the necessary bias element of a hate crime. This term is interpreted as meaning that a crime was related to “evil or hostile feelings or intentions towards someone” (s.2 Offences, Aggravation by Prejudice, Scotland, Act 2009).

### Motivation and Demonstration

A second unique feature of the UK hate crime legal framework is the means by which the bias element is established. It shares common ground with many other legislatures by enabling increased sentencing of crimes that are proven to be motivated by bias against a protected group. This means that the “hate element” can be treated as an aggravating factor if it can be proved that the offender’s prejudicial beliefs about a protected group played a part in their decisions to enact

the offense. This takes the form of mandatory sentence uplift at the sentencing stage, as is the case for sexual orientation, transgender identity and disability offenses (this is exemplified by the English and Welsh provisions within s.146 & 146 Criminal Justice Act 2003), or as part of substantive hate crime offenses, as is the case for the majority of race and faith hate crimes (s.28-32 Crime and Disorder Act 1998).

The point where UK laws diverge from international norms is the allowance to prove that bias was *demonstrated* within a criminal act, even where evidence of bias *motivation* is absent (Law Commission 2014). Scottish hate crime law uses the similar concept of “evincing”, meaning to clearly demonstrate (Scottish Government 2017). In practical terms this means that it can be enough for an offender to demonstrate their homophobic, transphobic or biphobic attitudes through their actions or speech during an offense to establish the hate element of a crime. This is especially useful in light of the difficulty of evidentially establishing motive, given that it is an intangible internal factor. Instead, the UK model allows it to be sufficient to establish that an offender exhibited anti-LGBT behavior or speech while committing an offense for it to be considered a hate crime, rather than needing to prove that the offender holds anti-LGBT beliefs.

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### Protected Groups

The third and final key element of UK hate crime laws is the groups to which they apply. These hate crimes provisions apply to bias against people on the basis of five main protected characteristics; sexual orientation, transgender identity, race, faith and disability (Law Commission 2014). One important caveat to this is that transphobia is still missing from Northern Irish hate crime laws. Anti-intersex hate crime is included in Scottish hate crime sentencing provisions, but not in the rest of the UK (Scottish Government 2017).

### Hate Speech

In addition to the above measures covering “ordinary” criminal offenses, UK law makers have introduced various laws prohibiting “hate speech”. These offenses relate to behavior which aims to incite violence or stir up hatred against members of protected groups, such as in the Racial and Religious Hatred Act 2006. There are variations

in approach across protected characteristics and UK jurisdictions on this topic of hate speech. In practice all such laws only criminalize highly serious incidents, to balance the need for free speech, meaning such crimes are infrequently prosecuted successfully. These laws include hate speech provisions on the basis of race, faith and sexual orientation in England, Wales and Northern Ireland. No such provisions currently exist for transphobia. In Scotland there are legal prohibitions against stirring up racial and religious hatred, which have no equivalent for sexual orientation, transgender identity or disability. Scotland also has separate criminal offenses dealing with stirring up hatred in relation to football matches that cover all five core UK protected groups (race, faith, sexual orientation, transgender identity and disability).

### Professionals and Anti-LGBT Hate Crimes

Those who institute UK criminal justice have made significant progress from enforcing anti-LGBT policies and laws, towards a more LGBT-inclusive approach. However, police and court environments can still be alienating and frustrating for LGBT victims. Based on interviews conducted with professionals, as part of this research, findings suggest it would be beneficial for policing and prosecution professionals to be offered insights into the nuances of LGBT needs/identities, the personal impacts of hate crime, the importance of respectful and empathetic treatment, and the importance of referral to appropriate victim support services.

### Police Training

Despite the recent positive cultural change within UK police forces, interviewed police professionals reported the continued existence of prejudice within their ranks. This was identified as a barrier to gaining the trust of LGBT communities and achieving satisfactory outcomes among those who report hate crimes. This was underlined by the following interviewee:

*In the police we've got some officers who do not take the time to think about what they do, they just do it and they might come across as intolerant by just doing their job. Like in every organization, we've got racists, and those who are sexist and we've got homophobic staff. (Police officer, interview 4)*

The levels of knowledge among police officers, on the diversity of LGBT identities were discussed. While police interviewees displayed a good working knowledge of the needs and issues of LGBT victims, several identified deficiencies in the understanding of their colleagues. Police training initiatives were welcomed but several interviewees characterized existing training as simplistic in the way they conceptualized sexual orientation and gender identity.

*With regard to training, everything is twenty plus years behind...I think it's still quite black and white, gay or lesbian. But transgender issues or... if I mention pansexual, or asexual to some of my colleagues; I get blank looks. They really don't know what you're talking about. (Police officer, interview 3)*

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Some UK police institutions use police “LGBT liaison officers”. Interviewees described the varying nature of this role across police forces, which included; acting as a point of contact for LGBT communities, being a hate crime investigator, an internal knowledge resource for colleagues, or an outreach worker to LGBT communities. Despite the value of these roles in the eyes of LGBT communities and authorities, interviewees highlighted the lack of training for these officers and the problem of having little or no protected time for this role, as ordinarily they perform these functions on top of their usual duties.

### Prosecutor Training

Prosecutor interviewees described the shift in recent decades toward prioritising work on hate crime issues. Training was a key part of this, with a training course on hate crime being delivered nationally. In addition the Crown Prosecution Service (CPS) has recently been working with Galop to develop a training course on anti-LGBT hate crime and victim issues, which is compulsory for all prosecutors.

### NGO Staff Training

Interviewees from NGO victim services demonstrated awareness of the importance of an informed and sensitive response at first contact and in the overall process of working with victims of hate crime. A majority of generalist victim support services emphasized the importance of training during the staff induction period, on different

aspects of hate crime as well as LGBT issues, but also encourage their staff to utilize training opportunities throughout their ongoing employment. Conversely, LGBT services tended to characterize the efforts of mainstream victim services' training on this topic as being generic and tokenistic, mostly as a consequence of budget cuts and an unwillingness to reach out to LGBT organizations.

### Reporting Anti-LGBT Hate Crime

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**Significant progress has been made across the UK towards encouraging the reporting and recording of homophobic, transphobic and biphobic hate crime. Despite this, substantial levels of under-reporting remain and public authorities never hear of the majority of hate crimes committed against LGBT communities.**

#### Level of Reporting

Measures to address under-reporting are a key part of the UK anti-hate crime model. In this regard it has been successful; the UK records significantly more hate crimes than any other European state (OSCE 2018). For instance, 80,763 hate crimes were recorded by UK police forces during 2016, while 20,321 hate crime prosecutions took place that year. This far exceeds the next highest OSCE member, Spain, which recorded 1,272 hate crimes that same year.

Turning to anti-LGBT hate crime, the UK recorded 10,467 hate crimes during the above period (OSCE 2018). This number has stayed relatively stable over the past decade, though it has begun to rise in recent years. Yet, according to government research, the actual prevalence of such hate crimes is significantly higher with an estimated 29,000 homophobic hate crimes being committed annually in England & Wales, (Corcoran, Lader and Smith 2015). However, there is no evidence to indicate that LGBT communities in the UK face significantly higher levels of hate crime than other European countries (FRA 2013). In fact, high levels of hate crime recording in the UK would seem to be evidence of the success of reporting and recording improvements.

Despite progress, the disparity noted above, between estimated prevalence rates and recorded hate crime remains high, with the majority of victims never disclosing offenses to the authorities. To further demonstrate this reporting gap, community surveys consistently find

a reporting rate of approximately 25 percent for anti-LGBT hate crime among UK victims (Galop 2016). This suggests that a sizable majority of such crimes remain unreported<sup>1</sup>.

Interviewees highlighted numerous reasons for non-reporting among victims, including historically poor relations and poor current responses to LGBT people who do make the decision to report hate crimes they have experienced. In addition, some LGBT people become acclimatized to a certain amount of hate crime and it is simply accepted as part of life. The issue of victims being unaware of criminal law provisions there to protect them was also discussed. This was particularly noted in relation to more everyday forms of abuse such as aggressive name calling and sustained harassment. One interviewee said: "Victims [often] don't understand or recognize that they've been victims of a crime. Mostly this is so because violence and discrimination is just part of their lives and they've just normalized it...It's just something that's tolerated" (State prosecutor, interview 3).

Interviewees identified knowledge gaps among their colleagues in relation to the details of these barriers and how to overcome them when reaching out to LGBT communities and working with victims. The importance of LGBT-inclusive reporting routes and partnership work between services also featured in interviews.

### Opinions on Reporting

Participants pointed to a relatively well established national policy framework aiming to increase reporting of hate crime. There were concerns however, among NGO interviewees that reporting does not guarantee an empathic or respectful response to victims and may in fact open them up to further frustration which in turn, influences future reporting decisions. All participants agreed that underreporting of hate crimes is still a significant issue and that much more needs to be done to empower victims and build their confidence to come forward. Generally, all participants observed an increase in the volume of reports of anti-LGBT hate crime in comparison to previous years. The assumption was that the reporting increase was due both to higher levels of hate crime occurring and greater reporting following the UK referendum on membership of the EU, in 2016.



1 It is worth noting that this compares favorably to the average European LGBT hate crime reporting rate of 17 percent found by the EU LGBT Survey (OSCE 2015).

## Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process

A comprehensive range of victim-focused measures is available to UK hate crime victims with regard to the provision of information, protection and access to justice. These include elevated levels of protection available to victims of hate crime, compared to other crimes. However, in practice such rights are not always offered as matter of routine and are framed in a manner that makes them difficult to enforce.

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### UK Contexts

UK justice systems differ from those of most European countries. The system of “adversarial justice” practiced in UK courts focuses on the relationship between state bodies and people accused of committing a crime. On the one hand this can be beneficial for victims as state prosecutors directly prosecute every criminal case in court, meaning victims do not need to secure legal assistance. On the other hand victims have little autonomy in the criminal process and are only invited to court to give evidence as a “witness”, meaning their views, needs and priorities are often overlooked in the investigative and court process. There has been decades of work to mediate this problem and to adopt a more victim-focused approach to a criminal justice mechanism which currently, can be inherently unfriendly to those who report crime. These efforts were supplemented by the Victims’ Directive, the requirements of which were met in the UK by creating or amending existing national provisions, giving entitlements to those who experience crime. The varying, specific elements of these, within UK constituent countries, are explored in the following sections.

### *England & Wales*

Compliance with the Victims’ Directive was achieved by amending the pre-existing Code of Practice for Victims of Crime in England & Wales (2015). It sets out the entitlements of victims: to receive written acknowledgment that they have reported a crime; receive a needs assessment; be given information; referral to a support service; be informed if a suspect is arrested; bailed or charged; give a “victim

personal statement” to explain the impact of the crime; ask authorities to review a decision not to charge a suspect; meet the prosecutor and visit court ahead of time to familiarize themselves with it; apply for compensation; receive information on restorative justice; and make a complaint about criminal justice services. It contains enhanced rights for “victims of the most serious crime”, which includes hate crime. These include the option of being referred to a specialist support agency, pre-trial therapy, and measures, where appropriate, to make giving evidence in court easier.

### *Northern Ireland*

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The Northern Irish Victims Charter (2015) was created to implement the Directive as mandated by s.31(2) of the Justice (Northern Ireland Act). Its contents are similar to those mentioned above. One key difference is that victims of hate crime are automatically eligible for referral to a hate crime advocate and assessment for personal and home protection measures.

### *Scotland*

The Victim Rights (Scotland) Act 2014 and the Victims’ Rights (Scotland) Regulation 2015 were both created to satisfy the Directive. It lists the rights of victims to receive information, participate in criminal justice proceedings, receive protection, to be referred to support services, apply for compensation, and complain about criminal justice services. It contains no specific provisions in relation to hate crime but does list fair treatment on the grounds of sexual orientation and gender reassignment as a principle behind the standards.

### **Special Measures**

A key feature of the UK victim rights framework is “special measures”. They are an attempt to assist “vulnerable and intimidated” victims in giving evidence in court. The measures include the facility for victims to give evidence behind a screen positioned around the witness box, by a live TV link from a room outside the courtroom, or in private by clearing the courtroom of members of the public. It also enables use

of video-recorded interviews, removal of wigs and gowns by judges and lawyers to make them less intimidating, and questioning of the victim through a registered intermediary.

### Victim Rights Compliance

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NGO interviewees reported that victims do not always receive their entitlements under the above provisions. Examples included low levels of referral of hate crime victims to specialist anti-hate crime support services, victims not receiving updates on the investigative process, and not being offered the opportunity to make a victim impact statement. Concerns were also raised about the manner in which the entitlements are delivered. For instance, victim caseworkers described the difficulty of receiving a satisfactory outcome from victim complaints about the police response to hate crime.

### Victim Satisfaction

Despite the above protections, victim service interviewees reported that their service users often face difficulty in obtaining a response from criminal justice institutions leaving some feeling they had not received an effective, fair and respectful service. This was particularly the case for those who report the more everyday forms of harassment and those from more marginalized sections of LGBT communities, including those who are members of multiple oppressed groups. This finding is supported by the Crime Survey for England & Wales which established that approximately half of all people who report a hate crime are satisfied with how it is handled by the police (52 percent), compared with the much higher satisfaction rate for victims in general (73 percent).

### Recording Anti-LGBT Hate Crime

**The UK records a high number of anti-LGBT hate crimes compared to other jurisdictions. This recording success is due, in large part, to the introduction of victim-focused recording policies. A key feature of this is the “perception-based recording” model, alongside efforts to improve the trust and confidence of LGBT communities in the police, through cooperation with NGOs, with the aim of increasing reporting.**

## Recording Policies

The primary source of UK hate crime data is its 45 police forces which operate across England, Wales, Northern Ireland and Scotland. The data relates to the “front end” of the criminal justice system, meaning incidents reported by members of the public, which appear to have been related to anti-LGBT hostility and have transgressed a criminal law, are recorded. Additionally, state prosecutors record cases prosecuted where the victim perceived the incident to be related to anti-LGBT hostility, whether the prosecution was successful or not, and whether the court found evidence to establish that an offense was a hate crime. This data is regularly made publicly available by police, prosecution and government institutions (Corcoran, Lader and Smith 2015).

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A key feature of UK recording frameworks is “perception-based recording”, which all research participants were familiar with and applied in their own work. Exact wording of policies varies slightly across the UK, though an example can be found in the hate crime definition utilized in England & Wales:

*Hate crime: Any criminal offense which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person’s race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender. (College of Policing, 2014)*

The intention behind the words “perceived by the victim” is to provide a victim-focused approach at the police recording stage, to determine whether a bias element is present, so it can be considered during the investigative process. Other key elements in the UK recording model outlined above include, the perpetrator’s (correct or incorrect) perception that the victim belongs to an oppressed group, the facility to record non-criminal hate incidents, and recording process improvements made by authorities and NGOs.

## Victim Perception

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The definition quoted above requires UK police institutions to record any crime report as a hate crime if the reporting person believes they were the target of homophobia, biphobia or transphobia. It also allows any other person who feels that a crime was related to anti-LGBT bias to have it recorded as a hate crime. This includes witnesses, investigating police officers, or any other person. It is worth noting that this administrative definition has no bearing on the guilt or otherwise of a suspect, and courts still require evidence that both an offense and the bias element are present for a hate crime to be recorded on an individual's criminal record. This process was further explored by the following interviewee:

*It's challenging as, even though someone might perceive an incident as racially aggravated, there is no evidence that it is so. We log it as hate crime on the basis of the perception; however, as the prosecutors we need to decide whether there is sufficient evidence to prove hostility... The CPS will mark the file as a hate crime and if there is enough evidence to prosecute they would recommend sentence uplift. (State prosecutor, interview 4)*

## Perceived Group Membership

The above definition also means it is not necessary for the victim to be a member of the target group for them to have a hate crime recorded. It is sufficient that they were believed (correctly or incorrectly) to be LGBT by the suspect. This is beneficial as it enables LGBT victims to report a hate crime without the need to answer questions about their identity. It also means that emerging gender and sexual orientation identity groups can have hate crimes against them recorded where they are the target of homophobia, biphobia or transphobia, regardless of whether legal frameworks currently offer them protection.

## Non-criminal Incidents

A key part of the UK hate crime recording model is that policing institutions record and monitor hate incidents that do not reach the criminal threshold. This mandates that all non-criminal hate incidents should be recorded, even if they do not meet the threshold to be classified as a criminal offense (College of Policing 2014). Though prosecution can only take place when the law has been broken, recording incidents can help in mapping problems, preventing escalation and encouraging victims to report if they are unsure if they have experienced a crime.

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## Recording and NGOs

Civil society organizations play a key role in improving the recording of hate crime. Three UK anti-hate crime NGOs hold a national data-sharing agreement with police institutions. This enables those organizations to exchange anonymous details of crimes they have become aware of with relevant police institutions, enabling community members to have a hate crime they have experienced, added to official records by reporting to one of these specialist community based services. The NGOs are Galop, the LGBT anti-violence charity; the Community Security Trust which challenges anti-Semitism; and Tell MAMA which fights anti-Muslim hate crime. Additionally, a range of local and regional NGOs provide assistance in linking victims with the police. The scope of NGO reporting work is demonstrated by the following Galop interviewee:

*We apply a very client led approach, supporting people in making the report. My job is to sit down with the client and find out what they want. I present options to them, help them choose what they want and help them get that. Managing expectations is often part of the job. We advocate for them with the criminal justice agencies, we negotiate on their behalf and go with them to meetings and to court, if needed. (NGO, interview 3)*

## Support for Victims of Anti-LGBT Hate Crime

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There is a significant diversity of approach across UK victim support services. The NGO support services offered to victims of crime vary across local areas in terms of size, type and quality. While the service landscape was previously relatively uniform, a shift in funding from national to regional level has created a mixed picture of service provision. Services of note include Galop, a specialist LGBT anti-hate crime NGO providing advice, support and assistance; numerous local LGBT services that provide general support to LGBT people without a focus on criminal justice; Victim Support, a large NGO that provides general emotional support to victims; and numerous local hate crime support services working in a generalist way across all types of hate crime.

### The Work of Support Services

There are numerous complimentary and competing approaches to victim support work across the UK. The fact that state prosecutors directly handle all criminal prosecutions means that such services do not need to provide legal assistance. Instead there is a tendency to focus on emotional support, providing advice and offering direct assistance. Some services focus on formal therapeutic interventions with victims while others offer more informal support by offering a “listening ear”. Some offer in-depth casework, including practical assistance and accompaniment through the criminal justice system, while others provide only limited interventions, such as helping someone to connect with another service. There is also a broad range of advice provision, ranging from expert professional services to untrained volunteer advisors. A final factor is that some services focus narrowly on victims’ needs in relation to the crime they experienced, while others think more broadly about helping to ameliorate the impact of victimization (emotional, practical, social, health, housing, financial etc.). Speaking of the importance of a high-quality response from the very first contact with a victim, one interviewee gave the following account:

*We try to impress on our partners that often they will be the first contact for a victim. How they respond to reporting or support seeking can significantly influence the victim's emotions, feelings and perception of his or her own situation and their overall attitude towards the support and criminal justice system. (NGO, interview 6)*

## The Role of Specialist Services

Interviews suggest that LGBT services such as Galop play an important role in supporting victims of homophobic, transphobic and biphobic harassment and violence. Interviewees from LGBT organizations stressed that access to support services is important, especially for more marginalized sections of LGBT communities. This is partly due to their specialization in understanding and meeting the needs of LGBT communities, but also because they provide a means to counter the damaging impact of isolation which can result from hate crime victimization. Speaking of the benefits of specialist LGBT community based services, one mainstream victim support service employee said: "Even though we have a very good profile with LGBT agencies... I'm not sure how well that translates to the members of the public. As we're not specifically LGBT organizations, we lack that extra appeal; if you like" (NGO, interview 5).

A significant number of anti-hate crime NGO service users make their first disclosure of incidents to these specialist services, often after a period of support during which their trust is gained. However, LGBT support services also encounter many clients who have already made a report to police and make contact for assistance with issues other than reporting. These individuals may desire to be listened to, believed, offered emotional support and ask for practical help in ending or escaping repeated incidents. In addition, victims might also need organizations to work on their behalf, for instance, to help speak to authorities on their behalf or to resolve an unsatisfactory police outcome.

## Good practice: Cooperation between specialist hate crime services

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The Community Alliance to Combat Hate (CATCH) is a hate crime advocacy service. It provides expert assistance to people facing hate crime and is composed of six specialist services including the Community Security trust, Galop, Choice in Hackney, Tell MAMMA and the Monitoring Group. It is commissioned by the Mayor's Office for Policing & Crime and led by Galop.

CATCH advocates work to inform and empower victims. They provide specialist advice and act as an expert ally in navigating official systems, which can seem overwhelming and frightening at times. They help with reporting and justice, but they also assist recovery from the practical, emotional and social impacts of hate crime.

CATCH is a coordinated multi-strand joint initiative between anti-hate crime services based within the communities they serve. Each of the six partners is an expert in their field and the practices they have developed over decades are direct responses to community needs within their particular strand. CATCH is a collaborative effort that retains the benefit of partners' specialist knowledge and relationships with communities, while providing a consistently high quality service. This has benefits for communities who receive services more closely targeted to their needs, while also enabling cross-pollination of good practices between partner services.

CATCH also advocates work to assist the emotional and practical needs of victims beyond CJS issues. That includes working with housing and ASB services to enable action against perpetrators or enabling victims to move, working with social care providers, assisting with workplace issues, securing financial support for victims, complaining to companies whose staff perpetrate abuse etc.

The partnership constantly achieves good outcomes in its work with victims. During the 2017/18 year it helped 81 percent of its clients feel more able to cope, 84 percent to feel safer, 74 percent were supported in navigating the criminal justice system and 73 percent were helped through multi-agency work. Most importantly, 88 percent of CATCH clients were satisfied with the service they received.

[www.catch-hatecrime.org.uk](http://www.catch-hatecrime.org.uk)

### *Referral to Victim Services*

Most people who report crime to the police are offered a referral to Victim Support, an NGO that provides emotional support through its teams of volunteers. Though they offer a good service much of the time, in practice the specific issues and needs facing those victimized due to their sexual orientation and/or gender identity can be difficult for generalist volunteer delivered services to address. Though the UK victim rights frameworks outlined previously gives a right to all victims of hate crime to be offered referral to specialist victim services, in practice this rarely happens. Instead many victims of hate crime are left to find information about specialist services themselves, often long after it would be optimal to have their assistance. The exception to this is where LGBT services have built up a relationship with specific local areas or police officers, though this is often a piecemeal solution rather than a systemic one led by criminal justice agencies.

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### *Support from Police Officers*

Though support of victims is not usually considered a core part of police officers' work, victims often look to officers for a respectful and supportive response that acknowledges the personal impacts caused by victimization. This element of the policing experience was discussed by one of the police interviewees, who said: "The best support as police officers we can often give is the ability to listen to people; because if we can give them the time to sit down and tell us their concerns, people finally feel like they've been listened to and heard" (Police officer, interview 5).

### **Conclusions and Recommendations**

Anti-hate crime legal and policy frameworks are embedded into the practice of UK criminal justice authorities. Meanwhile, a growing body of NGO service delivery and expertise in combating hate crime continues to gain ground. Alongside these, an emergent body of academic material in the field of hate studies has originated within UK universities. However, despite these areas of progress, much remains to be done. The vast majority of anti-LGBT hate crimes remain unreported, those victims who do report tend to be ambivalent in their evaluation

of the response of authorities, and funding of NGO hate crime support services is modest, fragmented and short-term. Additionally, UK hate crime laws are in urgent need of reform. Despite their relative progressiveness when they were first implemented, they contain significant flaws owing to the piecemeal manner in which they were introduced. The need for a single coherent and effective approach across all forms of hate crime was highlighted by the review of English and Welsh hate crime laws conducted by the Law Commission (2014). It discussed the problems inherent in retaining specific race and faith hate crime offenses, while relying on sentence uplift for homophobic, transphobic and disability hate crimes and the accompanying lower maximum sentence they attract. Meanwhile, provision for combating transphobic crime is entirely absent from Northern Irish law. In light of these legal deficiencies, it seems clear that an urgent review of hate crime laws is needed to create a single, coherent and effective framework within each UK jurisdiction.

Based on the above findings, we make the following recommendations:

1. Reform current English and Welsh hate crime legislation to create a more effective legal response that has parity for victims of all forms of hate crime.
2. Create legal provisions in Northern Irish law to enable transphobic hate crime to be formally acknowledged in sentencing.
3. Review hate speech laws across the UK to create parity for anti-LGBT hate speech, equivalent to other forms of hate speech.
4. Give legislative backing to the various codes of practice across UK jurisdictions to make them a legally enforceable set of rights for victims.
5. Create initiatives to improve professionals' understanding of LGBT community needs, including the importance of respectful and empathetic treatment by staff within criminal justice bodies.
6. Improve generalist LGBT support services' level of professionalism and understanding of criminal justice advice, support and practical assistance for crime victims.
7. Disseminate existing hate crime good practice materials to criminal justice professionals.
8. Make further efforts to improve the reporting of hate crime through collaboration between authorities and LGBT communities.

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# Come Forward Region

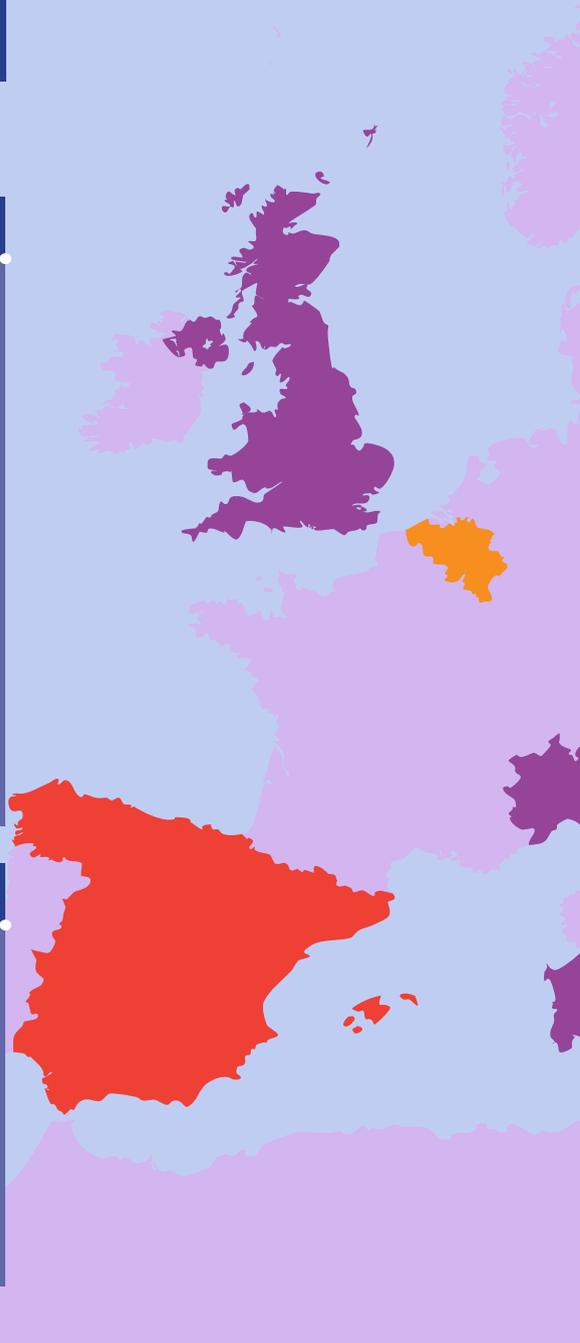
*At a glance*

## Attitudes

- According to Eurobarometer (European Commission 2015), almost three quarters (71 percent) of respondents in the European Union agree that LGBT people should have the same rights as heterosexual people, compared to 38 percent who disagree. About half said that they would be comfortable with gay (49 percent) and lesbian (51 percent) couples showing affection in public (compared with 72 percent who would be comfortable or indifferent if the couple was heterosexual).
- Almost four in ten respondents (38 percent) would be comfortable or indifferent if their child were in a relationship with a transgender or transsexual person, fewer than those who said that they would be uncomfortable (43 percent).

## Victimization levels

According to the EU LGBT survey (FRA 2013), a quarter (26 percent) of all respondents had been attacked or threatened with violence in the last five years. This figure rises to 35 percent among transgender respondents. Fewer than one in five of the most recent incidents of hate-motivated violence that respondents experienced in the previous 12 months (17 percent) were brought to the attention of law enforcement authorities.





## Summary

- Criminal legislation addressing anti-LGBT phobia is still under construction in Europe. Legal frameworks within the participant countries vary greatly and set different legal contexts.
- Understanding and identifying anti-LGBT hate crimes are key issues, and only in some participant countries are professionals trained enough for cases to be carried out more thoroughly.
- Only in 4 out of 10 participant countries' law enforcement authorities reportedly receive a fairly good training on hate crimes.
- Underreporting is widespread across participant countries, for various reasons, some of which are common among countries and some of which are specific to a particular country.
- The European Victim's Directive by now, should be transposed in all EU countries, but still is not. This directive sets out the grounds for some basic rights of the victims.
- Recording anti-LGBT hate crimes is done differently across the participant countries, which, as a result, does not allow for an even or thorough collection of data.
- Support services for victims are also very different from one country to another. In some, the state offers proper services to the victims, sometimes with an adequate LGBT perspective, while in other countries the responsibility for such services lies mainly with NGOs, which are not always well-funded



# From Zero to Hero: A Transnational Perspective on Countering Anti-LGBT Hate Crime in Europe

*Jose Antonio Langarita, Núria Sadurní, Antonia Dorado Caballero and Pilar Albertín Carbó*

## Overview of Legal Responses to Anti-LGBT Hate Crimes in EU Member States<sup>1</sup>

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While almost all EU member states have some form of hate crime law, they differ with regard to legislative technique and the victim attributes selected for protection.<sup>2</sup> Within the EU, 18 states (seven out of 10 *Come Forward* countries) recognize sexual orientation as a protected ground. Gender identity is recognized by nine countries (five *Come Forward* countries). A majority of states use a general penalty enhancement for hate crimes, but other approaches are also present.



- 1 The section reports on the legislative framework in European countries as of 1 December 2017. The primary source of data on hate crime laws in the region is [Legislationline.org](http://Legislationline.org). The data were cross-referenced with information from other sources; particularly Rainbow Europe and State-Sponsored Homophobia 2017 report (Carroll and Mendos 2017). Come Forward project partners verified the data pertaining to their countries.
- 2 Ireland is the only country in the European Union which does not have any form of hate crime law (hate speech laws are present). Despite criticism from civil society and international organizations, as well as scholars (Carr, Schweppe, and Haynes 2014; Haynes and Schweppe 2016; Haynes, Schweppe, and Taylor 2017), Irish authorities have consistently opposed recognizing the hate element of a crime, simply stating “that motivation can always be considered by the courts” (European Commission 2014:14).

## Protected Grounds

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Criminal legislation addressing anti-LGBT phobia is still a novelty in Europe. Within the European Union, the first state to legislate against homophobic hate speech was Denmark (1987), while higher penalties for violence based on sexual orientation were first introduced in 1997, in Luxembourg (Carroll and Mendos 2017:61-62). Currently, out of twenty-eight EU member states, the majority (eighteen, including seven out of ten *Come Forward* countries) consider proving a bias based on sexual orientation to be an aggravating circumstance of a crime.<sup>3</sup>

Half of the states that recognize sexual orientation in hate crime laws (ten, including six *Come Forward* countries) have also legislated against **anti-transgender hate crime**.<sup>4</sup> In other countries, this type of victimization may be considered as discrimination based on sex discrimination, on sexual orientation (incorrectly), or none of these (Hammarberg 2009:6–7). A similar problem may be observed with **intersex status**. At the moment, five EU states (including four *Come Forward* countries) recognize hate crimes against intersex people in their legal frameworks.<sup>5</sup> However, Greece seems to be the only country which (since 2015) uses the term “sex characteristics” in the criminal law (Angelidis et al. 2015 and ILGA-Europe 2016). In other countries, protection seems to be granted to intersex people based on provisions relating to gender identity.

The situation in which gender identity and sex characteristics are sometimes recognized as hate crime grounds in their own rights, and sometimes treated as part of other categories, creates a state of legal uncertainty. This in turn affects trust in the criminal justice system, makes any meaningful comparisons between jurisdictions difficult and negatively impacts the protection of people vulnerable to targeted violence.<sup>6</sup>



3 Austria, Belgium. Croatia, Denmark, Finland, France, Greece, Hungary, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Spain, Sweden and the United Kingdom (*Come Forward* countries in bold).

4 Belgium, Croatia, Finland, France, Greece, Hungary, Malta, Portugal, Spain and the United Kingdom (*Come Forward* countries in bold).

5 Belgium, Greece. Malta. Spain and the United Kingdom (*Come Forward* countries in bold).

6 For a recent academic debate on legal certainty and victim attributes in hate crime laws see Bakalis (2017), Mason (2014), Goodall (2013) and Scheppe (2012).

## Types of Legislation

Two approaches to legislating against hate crimes are commonly found in the EU. The first includes the creation of a **substantive “hate crime” offense** in the criminal law; such provisions, which exist in nine EU states (including four *Come Forward* countries),<sup>7</sup> proscribe selected bias-motivated acts, such as violence or threats. For example, Article 216.2 of the Hungarian Criminal Code proscribes violence against a member of the community. The section reads:

*Any person who assaults another person for being a member or a presumed member of a national, ethnic, racial or religious group or a certain group or population – especially due to a disability, sexual identity or sexual orientation – or compels him by applying violence or threats to do, to not do or to endure something, shall be punishable by one to five years of imprisonment.*<sup>8</sup>

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Another legislative approach includes **penalty enhancements** if a bias motivation of a crime is detected. Penalty top-ups may be applied to any offense in the criminal code (general penalty enhancement – GPE) or to selected offenses (specific penalty enhancements). General penalty enhancements for hate crimes have been introduced in 18 EU countries (including six *Come Forward* countries).<sup>9</sup> Some countries have a combination of both, in which case the specific provision excludes the use of the general provision. For example, Article 83B of the criminal code of Malta stipulates:

*The punishment established for any offense shall be increased by one to two degrees when the offense is aggravated or motivated, wholly or in part by hatred against a person or a group, on the*



7 Bulgaria, Cyprus, Czech Republic, Hungary, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and the United Kingdom (Come Forward countries in bold).

8 <http://www.legislationline.org/topics/country/25/topic/4/subtopic/79> (Retrieved December 27, 2017).

9 Austria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Romania, Slovakia, Spain, Sweden and the United Kingdom (Come Forward countries in bold). In the Netherlands, the official guidelines (Openbaar Ministerie 2007) oblige prosecutors to ask for higher penalties for crimes if a bias motive is detected. The grounds recognized include race, religion, belief, gender, sexual orientation and disability.

*grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A: Provided that the provisions of this article shall not apply where an aggravation of punishment in respect of the motives mentioned in this article is already provided for under this Code or any other law.<sup>10</sup>*

The introduction of a GPE symbolically, is a sign that the state condemns all forms of hate crime. The general provision may also serve as a **legal definition of hate crime** (see box below). The definition is shared by all stakeholders, which means that hate crime is understood universally across the criminal justice service and victim support services.

### A legal definition of hate crime

A hate crime is a crime committed because of race, color, religion, national or ethnic origin, disability, gender, sexual orientation or gender identity of another person. Such actions will be taken as an aggravating circumstance if this law does not explicitly prescribe heavier punishment

(Article 87.20 of the Criminal Code of Croatia).

The GPE model is, however, criticized by some sectors, which consider that it may not be sufficiently effective to address hate crime and to collect data (see, for instance, FRA 2012). As aggravating circumstances are invoked at a late stage of the criminal procedure, “police investigators are less likely to be aware of such provision” (Hanek 2017:479).

ODIHR recommends that a model hate crime legislation should include a list of substantive “hate crime” offenses for the most common types of crimes and a GPE for other crimes (ODIHR 2015:10). The institution argues that such a combination “is likely to contribute to creating a framework within which cases can be more effectively identified and data collected” (ODIHR 2015:10).



<sup>10</sup> <http://www.legislationline.org/topics/country/15/topic/4/subtopic/79> (Retrieved December 27, 2017).

Some other sectors take on the criticism of the GPE model as well as the hate crime model by arguing that the “widespread failure of criminal punishment to act as a deterrent to crime calls into question the extent to which hate crimes legislation actually reduces violence towards a particular group” (Spade and Willse 2000:40). This opens up another perspective on anti-LGBT hate crimes which should be taken into account when analyzing legal and social realities on anti-LGBT violence.

While the recognition of anti-LGBT hate crimes in the legislative frameworks of EU countries is uneven, the ongoing wave of legislative reforms, as well as developments in policy areas (see other sections) suggests that laggard countries, such as Ireland, Bulgaria, Italy, and Poland, may eventually follow suit. The increased interest of the European Commission, FRA, ODIHR and other agencies in this topic is triggering this process.

### **Professionals and anti-LGBT hate crime**

**Anti-LGBT hate crime legislation differs greatly from one participant country to another; this shapes the different understandings of them. Overall, law enforcement authorities use the legal definition of hate crime of their country, which sometimes means a very low understanding of the concept and low skills in identifying them. NGOs tend to use broader definitions of hate crime that better grasp the problem. Professionals in some participant countries have received training, although several weaknesses have been reported in such training.**

### **Understandings of Anti-LGBT Hate Crimes**

Understanding what anti-LGBT hate crimes are is key to being able to recognize them, record them, and properly assist their victims. The definitions may be informed by a region’s legal definition of it, so legal frameworks shape professionals’ definitions. Beyond legal definitions, the proper training of professionals greatly shapes the knowledge that they have of anti-LGBT hate crimes.

Across participant countries, we have found that professionals work with a wide range of definitions of anti-LGBT hate crime, some of which match the legal definitions and some of which differ from them.

The differences in definition vary, not only depending on the country, but also depending on the kind of service in which professionals work.

Participant law enforcement authorities from Greece, the United Kingdom, Spain, Italy, and Belgium were able to provide a working definition of anti-LGBT hate crime that matches that of the legal framework in the country, although the analysis also shows that some of the participating officers might not be representative of the rest of the force. In Poland knowledge differs in relation to different services: The police and the Ministry of Interior use a definition of hate crime based on that of the OSCE ODIHR whereas the Prosecutor services follow the criminal code, which does not include anti-LGBT violence as a hate crime. This leaves Poland with a disparity in the working definitions of hate crime, leading to differences, among participant professionals, in conceptualizing the problem. Finally, in Lithuania, Hungary, Bulgaria, and Croatia – to a lesser extent – the knowledge of participant law enforcement authorities on hate crime, and particularly on anti-LGBT hate crime, is reportedly very limited and only understood as a concept, not really put into practice. In fact, in Lithuania and Hungary, as well as for a few participants in Italy, the problem is perceived by law enforcement authorities not to be relevant, but rather as the behavior of only a minority of subjects.

In comparison with law enforcement authorities, civil society organizations overall, and across all participant countries, appear to have a better understanding of what a hate crime is and what anti-LGBT hate crimes are. Reported exceptions to this were found among participant psychologists in Hungary, who work with victims who have not been subjected to anti-LGBT violence, and among those in Bulgaria who work for general human rights NGOs. In both cases, participant professionals showed a low level of understanding of anti-LGBT hate crime and hate speech.

The aforementioned understanding of hate crimes in general and anti-LGBT hate crimes in particular, portrays a generalized gap in some countries between law enforcement authorities and NGOs, particularly LGBT NGOs. In the countries analyzed in this study, where participant law enforcement authorities disregard the seriousness of anti-LGBT violence in their countries, this leaves a great deal of responsibility to civil society organizations which try to provide what they can, given their very limited amount of both resources and legal tools. In those

countries where the legal framework takes anti-LGBT hate crimes into account NGOs do not have to cover so much, but they still play a very important role in working with those cases of anti-LGBT violence which do not fall into the legal definition.

## Training

Only in four of the participant countries did law enforcement authorities reportedly receive a fairly good training on hate crimes, again with some significant differences between them. This is the case for the UK, Belgium, Spain, and Poland. In the UK, Spain, and Belgium, initial training has been provided to new officers in hate crimes, including anti-LGBT hate crimes, and these training sessions have also been extended to more senior officers. Such training covers aspects related to diversity and proper identification of a hate crime when a victim reports an attack but according to some participant NGOs, the training is not always put into practice.

In the case of Poland, police officers have been trained since 2006 in police training programs with participation of trainers from NGOs. However, the level of awareness varies and front line officers in particular, are in need of more training which would help them properly to categorize cases and avoid discouraging victims from reporting in the future.

In other participant countries, including Italy, Croatia, Bulgaria, and Greece, some law enforcement authorities have received basic training on the matter. However, this for various reasons this is reportedly inadequate, particularly because a significant number of police officers were unable to identify anti-LGBT hate crimes, even when they had received training on it. This shows that there is a need to increase police training on anti-LGBT violence.

Lastly, in Lithuania and Hungary law enforcement participants, both in reporting centers and victim support services, said that they have almost no training in hate crimes or hate speech. Such a lack of training reinforces the widespread idea in both countries that the phenomenon of anti-LGBT violence is not widespread and that there isn't need for specific procedures for such victims.

In terms of NGOs, many, particularly those that are specifically LGBT, have a good level of training on what anti-LGBT hate crimes are, although there are also some exceptions. Those who do have a

good knowledge reportedly train themselves in those elements which they feel they need to improve their practice. Furthermore, several LGBT NGOs across the participant countries actually train other organizations, sometimes including public bodies and law enforcement agencies.

## **Reporting Anti-LGBT Hate Crime**

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**Underreporting of anti-LGBT hate crimes is widespread across all participant countries. Reasons for underreporting are multiple, and the most common are mistrust in the institutions, fear of being outed and a lack of awareness of a victim's rights. In an attempt overcome such a situation, many organizations, as well as some public bodies, carry out awareness-raising activities.**

### **Underreporting Anti-LGBT Hate Crime: Motivations, Context and Practices**

Underreporting is widespread across the European Union, including in all the countries analyzed in this report. This is a concern of almost all participants in this research that raises a common problem within a complex diversity of realities. To properly assess this issue, we must take into account the different legal frameworks which allow for anti-LGBT violence to be reported or not, as a hate crime. Also, social attitudes towards LGBT people should also be brought into the analysis, since they differ greatly both between and within participant countries.

These results are mostly consistent with the EU LGBT survey by the Fundamental Rights Agency (2013), according to which, the average for the whole of the European Union in reporting the last anti-LGBT incident to the police is 17 percent. Only 3 participant countries in this research surpassed the EU average: the UK (25 percent), Belgium (24 percent), and Croatia (23 percent). Below average, the rest of the participant countries included: Spain (16 percent), Lithuania (13 percent), Italy (13 percent), Bulgaria (13 percent), Poland (10 percent), Hungary (10 percent), and Greece (6 percent). Related, the statistics on reporting the most serious incidents show that, across the EU, an average of 22 percent of such incidents were reported to the police

(in this case, the EU LGBT survey main results do not show the results by country). The only country in which results differ from the EU LGBT survey is Croatia; this research found a high level of underreporting there. This could be explained by the escalation of violence in Croatia the year after the survey, when there was a referendum to ban same-sex marriage, and that violence raised fear within the LGBT community.

The reasons for underreporting given by participants of the *Come Forward* research are numerous, but many of them are consistent between different countries. The most common reason, reported in all participant countries, is distrust in the police, expressed through the idea that the police won't do anything or that they will not take reports seriously. In those countries where there are no legal provisions to protect anti-LGBT hate crimes, as in Bulgaria, Italy, and Poland, participants state that this is the main reason why police will not be able to help them, or more directly, that they can't help them. This distrust is also explained by additional reasons such as reported LGBT phobic attitudes or attacks by police officers (in Bulgaria and Greece). Dismissal when reporting a case of anti-LGBT violence has also appeared in the analysis (Belgians), as well as historic poor relations with the police (UK and Spain) and the feeling that no tangible result will be achieved (Italy, Poland, Lithuania, Spain, and Croatia).

Fear of being outed or of outing someone – that is, of making one's sexual orientation or gender identity public – was also present in some interviews (Poland, Croatia, Belgium, Hungary, Bulgaria, and Italy), along with shame and embarrassment (Poland, Hungary, Greece, and Italy), and finally, fear of secondary victimization (Belgium, Poland, Hungary, and Croatia).

The lack of awareness of rights was also stated by various participants as an important reason for not reporting (Italy, Belgium, Hungary, the UK, Croatia, and Lithuania). This is in line with a normalization of low level discrimination, present in the interviews in Italy, the UK, Belgium, Spain, and Poland. It means that there is a certain level of discrimination which has become so frequent that it is perceived to be just normal, erasing in this process the visibility of such discrimination. Similarly, the lack of legal frameworks which guarantee reporting was also stated as a factor in underreporting (in Poland, Greece, Italy, and somehow in Spain) while other reasons, less widespread, were the lack of resources to defend themselves (in Poland and Croatia), the

fear of a long and costly process (in Hungary and Croatia), the lack of a safe environment and support services for victims (in Greece) and the belief, coming from public authorities, that it is not a serious problem (in Lithuania).

The comparison between the results of the FRA survey and the current research opens up a debate on the actual effect of anti-LGBT hate crime regulation. Even though these appear necessary to be able to tackle the issue juridically, the mere approval of such laws is far from solving the problem since, although reports do increase somehow, there is still an average of over 80 percent of incidents that go unreported across Europe (FRA, 2013).

### Accessibility of Reporting Centers to Victims

This research identified reporting centers with all kinds of services to which a victim can turn to report an attack or discrimination. They may be official, institutional services such as police bodies, judicial services, or prosecutors' offices, but they can also be NGOs which take the cases and then may be able to work with the victims as well as, sometimes, produce reports on the number of cases they have received.

Across all participant countries, diverse ways of contacting reporting centers were identified and from a transnational perspective, they were consistently similar between public bodies and between NGOs. It was common across participant countries that police reports are usually more formalized processes and that, in some countries, this entails identifying oneself and reporting to the police headquarters in person. This is particularly the case in Italy, Hungary, and Spain. In other countries reports can be made to the police following other paths such as a written notice (in Italy if it is in person and in Poland, although not widely used), phone (in Greece, via a 24h phone line, and in Croatia), text message (in Lithuania), a police-run platform for reporting (in Greece and in Lithuania), email (in Bulgaria, Poland, and Croatia), and using an app (Croatia).

Although police bodies in some of the participant countries are becoming more and more diverse in their ways of receiving reports, NGOs still offer a wider range of possibilities for contacting and reporting. In general, they tend to reach out through all possible ways, and

this includes traditional practices, such as meeting in person, phoning, and emailing, as well as more contemporary forms of contact, such as using WhatsApp, Facebook, Twitter, or even dating apps like Grindr or Wapa. Furthermore, in Lithuania, Hungary, Belgium, the UK, and Spain, as well as other European Union countries which did not participate in this research, anti-LGBT hate crimes can be documented through the reporting platform *UNI-FORM*. If reported through this mechanism, the incident is received by both the police and a national civil society organization, which enables a comprehensive follow-up of each case.

### Awareness Raising Activities

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To try to overcome the need to facilitate access, many services, especially NGOs, carry out visibility-raising actions, many of which are common throughout participant countries. These include websites, online banners and banners during Pride events, social media campaigns, and billboards in the subway, public appearances in live events as well as TV shows, leaflets, and stickers. Other kinds of visibility campaigns, reported by the UK and Greece, are the elaboration of tools for professionals, factsheets, and reports.

Some of these campaigns are carried out and funded by public authorities, as is reportedly taking place in the UK, Belgium, and Spain. Nevertheless, the vast majority of the campaigns are carried out by NGOs, both those who work on general human rights and those who specifically do work on LGBT advocacy. Most of the time, these campaigns are funded from the NGOs own resources, either coming from private donations and memberships, or in some cases, money from public funding. In several of these campaigns, reporting is widely encouraged, and it may even be its focus. It is important to note here that, although reporting can be a useful tool in many cases, some organizations stated that, at times, it is not the best option for all victims.

## **Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process**

**The EU Victim's Directive should be transposed in all European Union Countries. However, this is not yet fully accomplished in all countries, including three within this project. Some national and regional legal provisions ensure certain other victim's rights, while in other countries legal frameworks create realities in which victim's rights or the possibility to ensure them are diminished.**

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A key tool for the provision of victim rights is the European Directive 2012/29/EU (Victim's Directive from now on). The transposition of this directive and its implementation is supposed, already, to be fulfilled by all member states. However, in the course of this research we have found that some of the participant countries have not completely transposed it. This is the case for Greece, which has only very recently transposed the directive into its laws but has delayed its implementation. It is also the case in Lithuania which in general, leaves many of its mandates to the full discretion of the particular office in charge of a case. Finally, in Italy and Poland some provisions are yet to be fully transposed.

In addition to the mandates of the Victim's Directive, some of the participant countries fall back on national or regional legal provisions which enhance the victim's rights. This is the case for instance, in Greece and Spain, where a special prosecutor on hate crimes and hate speech manages all judicial works around them. In Hungary the Equal Treatment Act, which applies to all public bodies, including criminal justice agencies and victim support service providers, and explicitly forbids discrimination and harassment based on sexual orientation and gender identity, helps avoid secondary victimization whenever possible. In a similar vein, in Spain professionals in the judicial system are asked to reduce the number of occasions of statement taking from a victim down to 3 or 4 to reduce secondary victimization; however, some participants have raised concern that this is not a low enough number. Also in Spain, a significant number of police stations across the state have Victim Assistance Offices where specially trained professionals work with vulnerable victims, including those of anti-LGBT hate crimes. Finally, in Northern Ireland, UK, victims of all kinds of hate crimes are automatically eligible for referral to a hate crime advocate.

In contrast, some legal realities in the participant countries generate problems which diminish the victim's rights and/or their possibility of using them. On the one hand, in Lithuania, Italy, and Poland victims of anti-LGBT violence are not thought of as hate crime victims which, as well as constituting a major barrier to reporting, entails not considering these victims as vulnerable. In the case of Lithuania participant police officers explain this lack of attention as due to the belief that considering victims of anti-LGBT violence as deserving of "special attention" would mean losing their impartiality as a public body. This is in line with the findings in Bulgaria and Poland. In these three countries victims of anti-LGBT violence are not treated as vulnerable, which automatically excludes them from legal provisions for vulnerable victims. In Greece, although the directive has been transposed into law the procedures do not support a realistic and clear pathway; as a result, this fails to ensure the rights of victims. As previously stated, in the Hellenic Republic this transposition has happened very recently, in 2017, which may explain the gap in practice.

Lastly, in the UK victims of hate crime go through an adversarial justice system. This can be beneficial for the victim in some respects but in general it entails less autonomy for them, leaving them with less agency in the process. Furthermore, some participants from the UK have stated that, even with the transposition of the directive, victims don't always receive entitlements which should be available under its provision.

Regarding guidelines on follow up, as stated earlier, most of the participant countries have transposed the Victim's Directive. This provides the victims with some rights, which generally entail that the victims can access the case file during the investigation of an incident and obtain a copy of it. This also means that cases are followed up, but this is only in the cases where the investigation goes ahead. If for any reason, an anti-LGBT incident is not investigated, including those already stated in the previous two sections of this chapter, the incident is left without any follow up.

## Guaranties of Protection for the Victim

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Many of the participants in this research have highlighted practices which take place in their organizations to avoid secondary victimization, as well as to apply special measures which will guarantee protection for the victim. In Belgium and Croatia there are measures which aim at ensuring the victim receives protection from the aggressor. In the case of Belgium, victims are to be protected from threats and reprisals for the duration of the investigation, and the law enforcement authorities have to make sure that such measures are undertaken. In the case of Croatia, the police are also required to take immediate measures and actions to protect the victim against repeated victimization. This includes the right to remove the accused from the courtroom, although the accused can later access the statement and if they wish, confront it in court. On the other hand, in Spain and the UK measures are activated to provide the victims with psychological support or assistance, accompaniment at trials, or give evidence in court. And in Italy, in some cases special measures are activated to try to prevent secondary victimization.

## Recording Anti-LGBT Hate Crime

**All law enforcement bodies throughout the participant countries record the crimes which get reported to them. Nevertheless, if the reported incident does not constitute a crime, if it is not an anti-LGBT hate crime under a country's legal framework, or if the legal framework uses a narrow concept of hate crime, it will not be recorded as such. For this reason, the responsibility of recording all possible incidents lies with NGOs, some of which, as well as public bodies, produce periodic reports on the cases.**

## Recording by State Agents

Law enforcement authorities record crimes as part of their protocols. In this research we found that across the European Union, state agents used very different recording mechanisms, a finding that is in line with previous research (European Commission, 2017).

Commonly, these records and reports only portray information the way that officers register it. This means that if anti-LGBT violence is not considered a criminal offense under a particular legal framework, or that an officer does not recognize an incident as such, this incident will not be recorded as an anti-LGBT hate crime and hence, data will be lost. For this reason, both the region's legal framework and staff training are key to being able to record episodes of anti-LGBT hate crime. Additionally, the incidents recorded are only those in which the police intervene, which makes underreporting a problem related to the recording of anti-LGBT incidents. For all the aforementioned reasons, participant countries show a wide range of results in relation to recording of anti-LGBT incidents by state agents.

In general, anti-LGBT hate crimes are recorded as such in Greece, the United Kingdom, Belgium, Croatia, Hungary, and Spain. However, in Greece the OSCE/ODIHR has reported inconsistent collection of data in comparison to the incidents that other organizations have reported. In contrast, in Spain and Belgium there are protocols which reportedly make data collection more concrete, but participants from NGOs complain that incidents aren't always registered properly due to an officer's incapacity to recognize them as anti-LGBT hate crimes. In the case of Croatia, police officers only mark that an incident has to do with a person's sexual orientation, gender identity, and gender expression, if that person is open about it. Meanwhile, in Hungary there is a public interface, ENYÜBS, in which all registered crimes are posted; however, although anti-LGBT hate crimes are registered as such by officers, the public cannot filter them according to bias motivation. Finally, in the case of the United Kingdom, criminal justice institutions utilize a "perception-based" recording model. This entails police and state prosecutors adopting recording criteria that are focused on the victim's perception that a crime involved anti-LGBT prejudice. Within this framework, police and prosecutors are required to record, investigate and prosecute in a manner that acknowledges that a victim has experienced a hate crime if the victim feels the crime involved homophobia or transphobia.

In Italy, Poland, Lithuania and Bulgaria there are no records on anti-LGBT hate crimes and, hence, the countries cannot account for the seriousness of the problem. Although in some countries, for example Poland and Italy, an incident can be registered as a hate crime,

it cannot be considered as an anti-LGBT hate crime because such a category is not included in its legal framework. Although in Poland officers are technically allowed to flag a hate incident as anti-LGBT, most officers are not aware of the possibility and, hence, fail to use it.

In the case of Belgium, the UK, and Spain, public bodies produce yearly reports on the data which can be accessed publicly. In Poland, Greece, Hungary, and Croatia, public authorities produce reports on hate crimes in general, but not separated by grounds. Finally, in Bulgaria, Lithuania, and Italy, official data and statistics are missing, particularly because of a lack of its recognition in the criminal law.

### Recording by Civil Society Organizations

As stated earlier, a significant proportion of the participant countries do not record anti-LGBT incidents and even if they do, they reduce them to only those that are recognized as hate crimes in law. Given the major, widespread problem of underreporting throughout Europe, this means that recording by state agents, even if somehow, it were thorough, would remain inadequate. For these reasons, the responsibility to collect, record, and make visible data on anti-LGBT violence lies with NGOs.

Organizations in several countries have begun working together to set up common methodologies and recording forms; for example, in the United Kingdom a common database has been developed with the police. Even with this collaboration, NGO participants from the UK believe they have a key role in improving the recording of hate crime in the country, by working with victims and managing their expectations.

Likewise, in Greece, the Racist Violence Recording Network was set up to work as a common methodology for recording hate crimes, using a common form, which, among other features, leaves the option of gender identity blank to be filled with the victim's preferred gender.

In the case of Poland, Hungary, Belgium, Spain, and in one organization in Italy and another in Croatia, some participant NGOs have developed their own registry form to collect data, and Lithuania uses the *UNI-FORM* reporting platform, which, besides making recording easier also helps them monitor the status of the reports submitted to the police. However cases reported through this platform are few. On the other hand, in Bulgaria, and the majority of participant Italian

NGOs, civil society organizations do not consistently collect data. Also, in Croatia participant NGOs maintain an internal record of cases holding only basic data, from which statistics are later made available to members of the organization and some donors. NGOs in Poland, Croatia, Spain, Greece, and Belgium stated that they record the anti-LGBT incidents that they receive and that later these are used to write reports on the cases.

### **Support for Victims of Anti-LGBT Hate Crime**

**Support services differ greatly from one country to another. While in some of the participant countries there is a network of state-offered services which can help anti-LGBT hate crime victims, in general, support services lack a perspective on anti-LGBT violence. For this reason, many LGBT NGOs or even LGBT collectives end up offering these services, either through a structured service or *ad hoc* responses.**

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### **Support Service Providers**

The kinds and forms of support services available in the participant countries differ greatly from one another. In Hungary, Poland, Croatia, Bulgaria, Belgium, and Spain, the state offers victims support services, and except for Spain, they are generalized rather than specifically LGBT-oriented services.

In the cases of Bulgaria and the UK, non-governmental, non-LGBT oriented organizations provide most of the victim support service, but they still have a very close relationship with the public authorities, including the police.

Services which are oriented specifically to hate crime victims are usually run only by independent organizations which are present in all participant countries, and while in the cases of Lithuania, Poland, Italy, and Croatia, they do not have a close relationship with the public authorities, in the case of Spain, Hungary, Greece, Belgium, and the UK some do have a closer relationship with public institutions. These independent organizations are usually funded privately or by means of grants and donations, and commonly run by volunteers.

In many other services, especially, but not only where there aren't specific services for LGBT people, the person who receives the victims hasn't received training on LGBT assistance. This is specially the case for professionals that also assist on other hate crimes or other kinds of violence, such as gender-based violence.

### Reception of the Victims

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The victim's first contact with the service is made through a range of different channels, including; in person visits, online tools (through website, email, or WhatsApp, for instance), and telephone. In Greece, Italy, Poland, Lithuania, Croatia, and Spain, most of the first contacts are made directly to the organization, particularly in those countries where the relationship with the public administration is not active. On the other hand, in Bulgaria, Belgium, the UK, and in some cases in Hungary and Spain, victims reach the victim support service provider through referrals, sometimes even by direction from a police officer.

Since in many participant countries these services are provided by both public bodies and NGOs, the kinds of premises vary greatly from one service to another; public bodies and NGOs with strong funding – both public and/or private – usually have more well-equipped premises, with proper areas from which to assist victims. Hence, they mostly receive victims in their premises. Some of these premises, especially when they belong to LGBT NGOs, collectives or specialized units, have a more comfortable environment, sometimes with posters from the same organization hanging off the wall and, in the case of NGOs or collectives, it may include Pride flags. However, when the organization is a law enforcement body, a judicial body or a wider-focused organization, accessing the building can be a cold, impersonal experience, sometimes driven by formal protocols and located in large buildings where victims need to identify themselves to get in. Where the organization has no proper premises to assist victims, reception sometimes takes place in what they call “neutral places”, such as cafes, or they may even assist the victim where s/he is located.

When services and professionals carry out the reception, they usually try to establish a close and supportive relationship with victims, whether they (victims) want to report an incident or not: they emphasize the human touch and experience gained through the years.

## Distribution of Support Services in the Country

As a general rule, all participant countries reported a better disposition among victim support service providers in bigger cities. This not only means mean that the services *per se* can offer a wider range of support, but also that the network of referrals works better within cities or areas that are closer together.

This centrality is particularly relevant in the cases where all anti-LGBT hate crime victim support service providers are NGOs or LGBT collectives that depend on volunteers, because the stronger associations tend to gather in bigger cities. This is the case for Italy, Poland, Lithuania, Hungary, and Spain.

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Nevertheless, in some participant countries where the state provides services victims of anti-LGBT hate crimes can use there is a network of intervention services across the country. A particular example of this is Croatia, where state agencies are only present in some regions and they provide funding to NGOs which are present in others.

## Accessibility of Services for Victims of Anti-LGBT Hate Crimes

Where victim support service providers are not specifically LGBT focused many of the services do not take into account the specificities of anti-LGBT hate crime victims. In some cases, interviewed professionals with no training in LGBT issues realize that they should include such a perspective, but this is not a very common stance. As many services are available for a more general profile of victim, and most of their workers do not have training on anti-LGBT violence, most provision lacks a perspective on the needs of anti-LGBT hate crime victims. This has been asserted in all participant countries.

For this reason, many LGBT NGOs and LGBT collectives have become the only providers of specifically LGBT support services in their area. In the case of Italy, Poland, Hungary, Greece, Bulgaria, Croatia, and Spain, such services basically include legal counseling, psychological counseling and crisis interventions. In the case of Lithuania, where all LGBT support is provided by an LGBT collective, they cannot offer a structure of services but rather, provide an *ad hoc* solution for the victims who turn to them.

## Conclusion

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Through the comparative analysis of the 10 studied countries, we have been able to show the heterogeneity of the realities between them, as portrayed across this chapter. These countries have very different social and legal arrangements in which very similar forms of anti-LGBT violence occur. As tools to fight such violence, some states have developed legal frameworks with the creation of anti-LGBT hate crime laws. These laws are present, in different ways and intensities, in seven out of ten participant countries, the exceptions being Bulgaria, Lithuania, and Italy.

One of the key issues when responding to anti-LGBT hate crimes is being able to recognize them and understand their specificities. In this sense, professionals in the participant countries portray a varied level of knowledge on the issue, which means they focus on different issues. The need for further training was highlighted during the analysis, particularly given the fact that law enforcement authorities from six out of the ten participant countries receive little or no training on the subject. The knowledge professionals have of anti-LGBT hate crimes is directly related to the way they perform their jobs, whether it is as part of a reporting center, or a victim support service provider.

As explained earlier, underreporting of anti-LGBT violence remains a widespread problem, often due to negative experiences with law enforcement authorities but also for a range of other reasons. Such levels of underreporting put different issues on the table. On the one hand, the need to enhance the possibilities of reporting can be one way to address it, including the improvement of some legal systems, training of professionals, and awareness raising campaigns. On the other hand the issue raised by three countries which already have anti-LGBT hate crime laws – Belgium, Spain, and the UK – must be considered. In these countries, reporting low level discrimination often ends up with a very long and frustrating legal process for victims. For this reason, mechanisms other than reporting should be pursued in order to make the experience of the victim as good as possible, including the granting of support services if necessary, even without a formal report to the police.

Turning to victim support service providers, this research has highlighted the wide differences between participant countries in terms of available services. While in some countries the state provides good

and effective support services, sometimes even with an LGBT perspective, in other countries the state provides no such services. In these cases, responsibility for services usually lies with NGOs which often cannot rely on resources adequate enough to meet all users' needs. What is more, all kinds of services, both public and private, are usually more available in bigger cities. This needs to be rethought and a model of proper service provision, for support throughout all participant countries, should be implemented.

Another useful tool to tackle anti-LGBT violence is effective recording of cases. While all law enforcement authorities must record all crimes reported to them, the way they record anti-LGBT hate crimes differs greatly among the participant countries. In those countries where anti-LGBT hate crime is not recognized by the legal framework these events are not recorded as such. This, in combination with the low rates of reporting, makes it very difficult to grasp the severity of the situation. However, in those countries where anti-LGBT hate crimes are recorded, they are not always recorded properly. As stated above, the training of professionals is imperative to give them the tools to identify anti-LGBT motivation behind a crime. Such a finding means that, even when training exists, officers are not always able properly to identify cases. There is, therefore, an urgent need to increase and improve training.

This research has tried to grasp all the complexities and multiple realities of the participant countries which have been analyzed in these pages. All have multiple and different pasts, presents, and paths that lie ahead. We have tried to analyze them following the same guidelines and a combination of local and comparative perspectives. This has allowed for different views on the matter, and different lenses to be used and discarded. While we believe that the participant countries are part of the same European Union and that, as such, they have some commonalities, at times the local perspective needs to prevail. Although sometimes the need of a model is essential to advance, we must never forget that all models can have fissures, even if they are not visible. Thus, the local knowledge from the different realities across the participant countries must surely lead to better understanding, practice and navigation in the sea of ongoing social transformation.

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# Conclusions and Recommendations

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Previous research has highlighted that LGBTI persons across the European Union continue to face prejudice, discrimination and violence because of their sexual orientation, gender identity or sex characteristics. Existing publications also show that there are numerous shortcomings in how countries respond to hate crimes, including through criminal law and policy solutions.

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While the body of knowledge on how states respond to hate crime has grown recently, this research is the first study focused on the access to justice, for victims of anti-LGBTI hate crime, across 10 EU jurisdictions. It contains robust legal analyses as well as capturing the views of professionals on issues such as reporting and recording, rights of victims and provision of victim support. In some member states, the study has found, *inter alia*:

- Gaps in the legal frameworks, including criminal laws and victims' rights laws.
- Deficiencies in training professionals on LGBTI issues and hate crime issues.
- Difficulties in understanding and working with the concept of hate crime.
- Downplaying, and in some cases, denial of the harms of anti-LGBTI hate crimes and the vulnerability of victims.
- Insufficient efforts to encourage reporting.
- The inability to record hate crime cases and a lack of recording procedures.
- Lack of adequate, accessible and inclusive networks of victim support services.

The professionals who were interviewed, as well as country researchers who analyzed the data, made numerous recommendations on how to improve the response to anti-LGBTI hate crimes and facilitate access to justice for victims. While some recommendations are country-specific, many are relevant to all countries in the region. Key recommendations include:

### **Legal and Policy Frameworks**

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- Enable an effective response to anti-LGBTI hate crimes by:
  - ensuring that all crimes motivated by bias based on the victim's real or perceived sexual orientation, gender identity, gender expression or sex characteristics attract higher penalties than comparable, otherwise motivated crimes;
  - ensuring that investigations and prosecutions of offenses involving anti-LGBTI bias are not dependent on reports or accusations made by victims, who are often particularly vulnerable and reluctant to initiate legal proceedings;
  - developing and implementing policies, strategies and action plans to tackle anti-LGBTI hate crimes; and
  - reforming measures aimed at re-socialization of offenders, including through the practice of restorative justice.
- Evaluate the legal and policy framework on victims' rights with the view of assessing whether it responds to the support and protection needs of victims who experienced hate crime, or victims who may be vulnerable because of their sexual orientation, gender identity, gender expression or sex characteristics.

### **Professionals**

- Raise awareness and build capacity of professionals by ensuring appropriate, systematic and sustainable training on LGBTI issues and on anti-LGBTI hate crimes for law enforcement officers, prosecutors, members of the judiciary, as well as social services and providers of victim support services.
- Ensure that all agencies and institutions responsible for reporting, recording, investigating, prosecuting and sentencing anti-LGBTI hate crimes, as well as supporting victims, share an

understanding of hate crime, and that any working definitions are inclusive of sexual orientation, gender identity, gender expression and sex characteristics.

- Create opportunities for professionals from different sectors to build connections with the LGBTI community and exchange knowledge and good practices in reporting, recording, investigating, prosecuting and sentencing anti-LGBTI hate crimes, as well as supporting victims.
- Ensure that law enforcement officers and prosecutors have up-to-date guidelines on investigating hate crimes and hate.

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### **Encouraging Reporting**

- Facilitate reporting by setting up and promoting alternative and third-party mechanisms to report anti-LGBTI hate crimes and hate incidents, as well as ensuring a prompt and adequate response to reports.
- Organize public campaigns targeting members of the LGBTI community aimed at raising awareness of the legal framework and rights of victims, providing guidelines on how to react to attacks, encouraging victims to report and informing them about available support services.
- Build trust between LGBTI communities and law enforcement authorities by setting up police outreach programs and promoting diversity in the police force.
- Organize public campaigns targeting the general public with a view to improving respect for LGBTI persons, raise awareness of anti-LGBTI hate crimes and promote taking a stand against hate.
- Guarantee that anti-LGBTI hate crime victims have access to special protection measures guaranteed for vulnerable victims, such as always being interviewed by the same person.

## Monitoring and Recording

- Improve access to knowledge on the scale and nature of hate crimes by ensuring that all relevant institutions have the capacity to identify and record all hate crimes and produce publicly-available statistics where data can be disaggregated by bias motivation, type of crime and region.
- Carry out regular surveys aimed at capturing the level of under-reporting of anti-LGBTI hate crimes and the level of trust in the criminal justice system.

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## Victim Support

- Enable access to justice for all victims of anti-LGBTI hate crimes, regardless of whether or not the crime was officially reported, by setting up, funding and promoting a reliable network of dedicated victim support services, including legal and psychological help and emergency accommodation, and ensuring that generalist support services are accessible and inclusive for LGBTI persons.

For all of the above to be possible, policy makers should provide leadership for law enforcement and criminal justice agencies, and other institutions by announcing the policy of “zero tolerance” for anti-LGBTI hate crime offenders.

The European Union plays a major role in improving access to justice for victims of anti-LGBTI hate crimes. While some steps have already been taken, there is still a lot the Union can and should do. First of all, the European Commission should assess to what extent the transposition of the Victims’ Rights Directive in each member state guarantees the rights and responds to the needs of victims who experienced hate crime or are vulnerable because of their protected characteristic(s). Following the assessment, the Commission should take firm action against those member states which continue to fail anti-LGBTI hate crime victims. Second, the Commission should continue to inspire and support representatives of member states within the framework of the EU High Level Group on combating racism,

xenophobia and other forms of intolerance. At the same time, the Commission should increase the support for civil society organizations supporting victims and advocating for improved responses to anti-LGBTI hate crime, particularly in countries where governments do not provide such support.



## About the authors



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of the book, *Hard Work. LGBTI Persons in the Workplace in Italy* (2017). Giacomo also edited the book, *Domestic and Dating Violence Against LBT Women in the European Union* (2015) and co-edited, with Susanna Pozzolo, the book, *Investigating Gender-based Violence* (2016).



# Appendix: Methodology

*Piotr Godzisz and Giacomo Viggiani*

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The aim of the study was to understand the legal and policy situation of victims of hate crimes based on sexual orientation and gender identity in ten EU member states, and the barriers to justice they face. Specifically, the research aimed to:

- provide up-to-date, robust and comparable data on the legal and policy framework relevant to anti-LGBT hate crime and victims' rights
- Map the availability of places where victims of anti-LGBT hate crimes can report hate crimes and receive support adequate to their needs
- assess the training needs of professionals working with anti-LGBT hate crime victims

## Coverage

The research was conducted in 10 EU member states (Belgium<sup>11</sup>, Bulgaria, Croatia, Greece, Hungary, Italy, Lithuania, Poland, Spain, and the United Kingdom). The sample aimed to ensure scale and diversity among the studied cases. The study covers over 1/3 of the Union, or around 40 per cent of the EU population. Countries were selected based on:

- their geographical location within the EU
- their legal tradition (common law/continental law)
- the population/area of the country (small/large states)



<sup>11</sup> Flanders only

- the level of social acceptance of LGBT people
- the legal approach to anti-LGBT hate crimes (recognized/not recognized)
- public availability of statistics on anti-LGBT hate crimes

## Study design

The research used qualitative methods of inquiry, including desk-based research of primary and secondary sources, mapping of relevant institutions and organizations, and in-depth interviews.

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As the first step in the research, to ensure a uniform knowledge base and starting point, a reading list of publications relevant to the study topic was drawn up by the scientific supervisor and shared with the consortium. Country researchers and coordinators were encouraged to familiarize themselves with key concepts and debates as well as the most recent and up to date comparative and national reports. Following the review of secondary sources, the researchers analyzed the existing legal and policy frameworks relevant to anti-LGBT hate crimes including, inter alia, criminal laws, criminal procedure laws, and laws transposing the Victims' Directive; national anti-hate action-plans, guidelines on policing and prosecuting hate crimes, and other relevant public policy documents.

The second activity involved the mapping of organizations and institutions which (could potentially) work with victims of anti-LGBT hate crimes. For analytical purposes, the identified organizations and institutions were divided in two categories: reporting centers and victim support service providers. The first category included, inter alia:

- law enforcement agencies
- prosecution services
- equality bodies
- LGBT organizations
- human rights NGOs

The second category included actors such as:

- state-sponsored crime victim support services
- legal aid
- crisis centers
- shelters
- NGOs, particularly LGBT organizations

In practice, several organizations fell into both categories. For example, some LGBT rights organizations, such as the Hatter Society in Hungary or Lambda Warsaw in Poland, are involved both in supporting victims and in recording hate crime cases for the purpose of advocacy. In such cases, respondents were categorized either as a representative of a reporting center or a victim support service provider depending on which of both activities were more dominant in their work, or relevant for them.

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The third activity consisted of structured, in-depth, individual interviews with professionals working in reporting centers and with victim support service providers. Partners were recommended to select interviewees in a way that allowed for diversity of experiences and views. In particular, the selection criteria included the territorial distribution of services/activities in each country, the responsibilities of the interviewees, target groups, and the kinds of services provided. Cross-cutting issues, particularly gender (see below), were also considered.

The recruitment of research participants was the responsibility of the researchers in each country. Most of them chose to recruit participants using a snowball method or personal contacts, taking into consideration the above guidelines. In some states, researchers sought to obtain official permission to conduct interviews with law enforcement officers, whereas in other countries the decision whether formal permission was needed was left to the interviewee. In several cases there were considerable difficulties in accessing respondents, particularly police officers. In the end, a total of 195 professionals (95 representatives of reporting centers and 100 representatives of victim support service providers) were interviewed. These figures are presented in the Table 1 below:

Country	Reporting centers	Victim support service providers
Belgium	7	6
Bulgaria	4	16
Croatia	10	10
Greece	10	9
Hungary	11	9
Italy	11	11
Lithuania	12	10
Poland	10	9
Spain	10	10
UK	10	10
TOTAL	95	100

*Table 1: Professionals interviewed in each country*

Two standardized interview models, each based on four guiding themes, were developed to collect comparable information on both types of organizations. For reporting centers, the guiding themes covered:

1. Motivations, context and practice of (non-) reporting by victims
2. Accessibility of reporting services (physical, online)
3. Data collection and procedures for identifying and registering hate crime incidents
4. Case management, safeguarding victims, follow-up

For victim support service provision, themes included:

1. Reception of the victims
2. Case management, safeguarding victims and referrals
3. Follow-up and accompaniment
4. Case closure

Whenever relevant, interviewees were asked about the specific training received and provided on LGBT issues or on hate crime, as well as about the presence of evaluation procedures. Fuller information about the guiding themes is provided in the Methodology Guide.

Interviews were conducted in national languages, in person or on the phone or using video-conferencing tools.

The fieldwork took place from February to June 2017.

## **Analysis and Writing Up**

Most interviews were audio-recorded (with permission) and researchers took detailed notes during the interview and immediately after. Analysis of the interview data followed the guiding themes and was based both on the recorded interview and the researchers' notes. Only selected fragments were transcribed *verbatim* to exemplify findings. A template for interview analysis was developed to improve comparability.

The drafting of the chapters followed detailed guidelines elaborated by the scientific leader and each national chapter was peer-reviewed by the authors of two other chapters. Comments were shared during an online feedback session, as well as in writing. The comparative chapter was reviewed by a representative of all involved countries.

Any findings of this research are grounded in the data collected and cannot be generalized beyond this specific dataset.

## **Ethical considerations**

To ensure that all participants understood the nature of the research, its goals, confidentiality, the voluntary character of their participation and the possibility of withdrawal at any time, an information sheet and consent form were developed, translated to national languages and distributed at the beginning of the research or read out by interviewers (if the interview was conducted on the phone or online). All data were stored and processed for the purpose of analysis using the highest available standards of data protection. Original data (notes and recordings) were destroyed following the acceptance of the draft.

## **Cross-cutting Issues**

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Intersectional aspects, such as gender and discrimination on multiple grounds were duly considered in the planning and execution of this research. Cross-cutting issues were considered when selecting members of the research teams, as well as interviewees. As far as possible, researchers tried to understand and acknowledge how the regulatory frameworks, the availability of reporting centers and support services, and other relevant aspects affect (i.e. respond to the needs of) lesbians and bisexual women, trans, non-binary and intersex people, as well as sex workers, minority ethnic groups, LGBT youth, homeless persons or asylum seekers.





Across the European Union, LGBTI people face discrimination and violence based on their sexual orientation, gender identity, gender expression or sex characteristics. Most incidents are not reported which impedes the possibility to investigate hate crimes and prosecute offenders. Lack of reports renders the problem of anti-LGBTI hate crimes invisible to the public and may prevent authorities from acknowledging and addressing the problem. As a result, victims often suffer in silence and their rights may not be fully respected.



By reviewing the legal and policy frameworks and analyzing the institutional deficiencies in reporting and recording anti-LGBTI hate crime and access to victim support in ten EU countries, this report sheds much needed light on the obstacles in the access to justice, faced by victims of anti-LGBTI hate crimes in the EU.

*“The Come Forward project, which we proudly co-funded as part of our Rights, Equality and Citizens Programme, is a good example of how our commitment and framework to tackle hate crime and ensure justice for victims can be translated into practical guidance and initiatives for the benefit of victims themselves and of policy makers.”*

Věra Jourová  
European Commissioner for Justice, Consumers and Gender Equality



*“The Come Forward project takes on this very issue, raising awareness about homophobic and transphobic hate crimes and highlighting good practices, as well as delivering training for civil society and public authority stakeholders to better support and empower victims of LGBTI-phobic hate crimes at the local and national levels. ILGA-Europe is proud to be an Associate Partner of the Come Forward project and is glad to support its work towards making Europe a safer place for LGBTI people to live, work, travel and simply be.”*

Evelyne Paradis  
Executive Director, ILGA-Europe



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