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The crucial role
of intersectional
and victim-centred
approaches to confronting
bias-motivated violence.

CounterHate
Improving the assistance of victims of hate crimes
through a victim-centered and intersectional approach



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INTRODUCTION

Bias-motivated crimes affect the safety of individuals, communities, and society. Ensuring protection, support, and restoration to victims of hate crime requires consideration of its specific nature. Moreover, it calls for the ability to appreciate the experience and harm caused by hate crime victimisation to victims and their concerned groups. In this regard, it is critical that policymakers and service providers consider the intersectional perspective, according to which the different axes of oppression interact and overlap, leading to complex biographies, inequalities, and specific needs.

Across the European Union, some groups still face bias-motivated violence on a daily basis. However, most of these groups do not report to the authorities due to their low confidence in the judicial and law enforcement bodies and the fear of experiencing secondary victimisation, among other reasons. Moreover, other existing gaps need to be highlighted, such as the focus on the offender's punishment, while the victim's reparation is sometimes overlooked. Public bodies need to promote awareness and have greater engagement in preventing violence and assisting all types of victims of prejudice, pushing for reparation. To this end, the interconnection among supporting services is vital and should strive to overcome fragmentation and strengthen interagency and multidisciplinary cooperation. In addition, many victims and society in general do not have enough knowledge about victims' rights and available assistance services. Therefore, the dissemination of these issues should be improved.

By adopting a victim-centred and intersectional approach, the COUNTER-HATE project seeks to consider the particular vulnerability of hate crime victims. The COUNTER-HATE project is being implemented in six European countries (Bulgaria, Hungary, Italy, Lithuania, Slovenia, and Spain). It includes analytical activities, training, staff exchanges, workshops, seminars, and awareness-raising events, among other activities. Each participant country implemented a research phase to map and evaluate national legislation and policies regarding hate crimes and assistance to victims. Particularly, the research took into account to what extent those measures ensure the transposition of the Victims Directive and whether it is well implemented in practice by addressing the needs of victims of hate crimes. Through a mixed-method approach, the COUNTER-HATE project also explores the overlapping of discrimination factors. It analyses the opinions and needs of victims of hate crimes, as well as the perspectives and viewpoints of professionals on different issues: the existing services and policies for victims, the role of public bodies in the current provision of services, as well as their personal and professional experiences linked to bias-motivated violence.

The following pages present the results of the research carried out in the participating countries. The national information includes the highlights and the detailed results of the exploratory phase of the project. Finally, it presents the challenges at the national level to build a more just, equal, and prejudice-free society.

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GREECE



CounterHate

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HIGHLIGHTS

- ✦ Hate crimes are directed against the individual victims, but also against the community that they belong. Their implications thus go beyond the individual sphere and impact the community and society at large.
- ✦ A cohesive legal framework on hate crimes and discrimination exists at national and European level. In Greece, hate crimes on the hereunder grounds are criminalised: (a) race, (b) colour, (c) national or ethnic origin, (d) genealogical descent, (e) religion, (f) disability, (g) sexual orientation, gender identity or sex characteristics. They are not only hate crimes per se that are criminalised, but also the public incitement of hatred or violence against a person or a group of persons defined by reference to the above grounds.
- ✦ Despite efforts that have taken place with the establishment of Police Departments and Offices against Racist Violence and the functioning of the Hellenic Police hotline Against Racist Violence¹, the results of the interviews indicate that the reporting mechanism in Greece has some significant weaknesses -delays, language difficulties, bureaucracy- that contribute to the severe underreporting that is observed. The substantial dark figure of hate crimes leads to the legal framework remaining inapplicable and the formulation of policies inadequate.
- ✦ The results of the interviews emphasise important shortcomings of the judicial system in Greece regarding hate crimes. The whole judicial process is described as time-consuming, while the trial per se is really short for the discriminatory motive to be attributed. In addition, judges seem to have a lack of knowledge on hate crimes. Nevertheless, it was pointed out that the new generation of judges is more aware of the issue and impact of hate crimes.
- ✦ Various NGOs in Greece offer supporting services -information, psychological and legal counselling- to victims of several vulnerable groups. However, there are not NGOs specialised in the protection of hate crimes' victims, as the results of the online survey and interviews indicate. Moreover, the existing NGOs are underfunded and thus they cannot offer complete protection to the whole range of victims' needs.
- ✦ The research results indicate a general dissatisfaction -due to, inter alia, lack of adequate information and awareness campaigns- regarding the current government's commitment to combating hate crimes.

¹ *The police departments and the hotline provide their services to all the victims of bias-motivated violence: <https://www.astynomia.gr/hellenic-police-services-against-racist-violence/in-general/?lang=en>.*

INTRODUCTION AND METHODOLOGY

INTRODUCTION AND METHODOLOGY

Hate crimes have arisen globally as a significant social, political and legal concern. A hate crime is an act of violent behaviour motivated by bias against a person's race, colour, religion, national origin, sexual orientation, gender or disability. They are considered severe expressions of discrimination. In addition to violating individual victim's rights, they are also meant to threaten and intimidate the entire community that the victim belongs to. Thus, the offender's message of intimidation and social exclusion reaches everyone sharing the same characteristic(s). If left unaddressed, hate crimes can have a wider impact on society, weakening social cohesion. In this way, hate crimes cause inestimable damage to victims, families, communities and society as a whole (FRA, 2021, p. 5; OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2020, p. 8).

The overall aim of the project *Counter-Hate - Improving the assistance of victims of hate crimes through a victim-centered and intersectional approach* is to contribute to the assistance of victims of hate crimes, by guaranteeing that legislation and policies in Spain, Greece, Hungary, Italy, Slovenia, and Lithuania are in line with the basic principles of the mentioned approaches, ensuring a holistic support provided to those who have experienced these manifestations of discrimination and hate.

This national report is based on research conducted in Greece. The research aimed at: [I] mapping the national legal framework on hate crimes, hate speech and discrimination on the grounds of: (i) religion, (ii) race, ethnicity, and origin, (iii) sexual orientation, gender identity and sex characteristics (SOGISC), as well as (iv) other aggravating factors (disabilities, socio-economic status, etc.) and the assistance to victims, [II] analysing the experiences of victims, policy makers and key professionals, fostering the exchange of best practices and the cooperation between stakeholders, [III] raising awareness about the rights of victims of crime and available services.

In order to reach the aforementioned objectives, the project partners conducted primary research -both qualitative (interviews and focus group, both conducted online) and quantitative (online survey)- and secondary research (desk research) on national level.

The analysis of the national legal framework on hate crimes, the statistics and data regarding bias-motivated crimes and the perceptions towards and stereotypes against minorities are based on the desk research.

As far as the interviews and focus group are concerned, their main purpose was to gather participants' perspectives on existing policies and services regarding hate crimes, the current role of public bodies in victims' assistance, as well as to identify specific needs in relation to different types of bias-motivated violence and the overlapping of oppression factors. The interviewees in Greece were 16 professionals working in the field of hate crimes; their sociodemographic data are presented in Table 1. Although it was foreseen that similar interviews would be conducted with people who have experienced hate crimes and speech, a focus group was implemented instead, without deviating, nonetheless, from the selected methodology. The eight focus group participants were involved in the same incident and was, thus, decided that it would be more fruitful to be parts of the same discussion group.

Complementing the qualitative research, the online survey aimed at gathering the viewpoints of human rights and anti-discrimination organisations that fight against bias-motivated violence in relation to the existing legal and policy frameworks and the needs of victims. For the survey, one questionnaire was specifically designed, which contained closed-ended questions, whilst in the section of "organisation positioning about intersectionality", four-open ended questions were considered necessary. The questionnaire was distributed via LimeSurvey, an online tool that ensures the anonymity and confidentiality of respondents, as the IP address is undetectable and protected, following the applicable research protocols and GDPR regulations. The data are presented on the basis of percentages and/or actual number of respondents. A total of 12 people participated in the survey in Greece and seven of them completed it.

Table 1: Sociodemographic data - professionals

Interview	Gender	Age	Professional role
P1	Male	45	Community Coordinator working in an NGO providing support to refugees
P2	Female	33	Lawyer working in an NGO providing support to vulnerable groups
P3	Female	49	Sociologist working in the competent governmental authority for the design, implementation and monitoring of policies for the equality between women and men in all fields
P4	Female	59	Specialist on gender issues
P5	Female	29	Project Manager working in an NGO providing support to LGBTQ people
P6	Female	41	Social Worker working in an NGO activated in issues concerning racism, discrimination, human rights, social ecology, peace and non-violent resolution of conflicts
P7	Female	35	Project Manager working in an NGO providing support to migrant and refugee women's rights
P8	Female	50	Lawyer working in the national equality body with a mandate to combat discrimination
P9	Female	42	Social Worker working in an NGO providing support to unaccompanied children
P10	Female	44	Lawyer
P11	Female	39	Representative of a network working in the recording and monitoring of hate crimes
P12	Female	43	Representative of an international agency providing support to refugees, migrants, stateless people
P13	Female	30	Legal Advisor in an NGO working against poverty and justice
P14	Male	27	Representative of an NGO providing support to people infected by HIV/AIDS
P15	Female	46	Lawyer working in the trade union body defending the interests of all private sector workers in Greece
P16	Female	53	Representative of an independent advisory body to the Greek state on matters pertaining to human rights protection

Table 2: Sociodemographic data - survivors

FG Participants	Gender	Age	Factors of discrimination
S1	Male	42	SOGISC
S2	Female	44	SOGISC
S3	Male	40	SOGISC
S4	Non-binary	41	SOGISC
S5	Female	66	Support to the LGBTQIA+ community/ SOGISC
S6	Female	56	SOGISC
S7	Female	42	SOGISC
S8	Non-binary	23	SOGISC

Table 3: Survey data

Universe: N° of organizations contacted	Open dissemination via website and social media																										
Number of total responses	12																										
Number of completed responses	7																										
Responses rate (universe/total responses= Responses rate)	3,76%																										
Discrimination field	<table border="1"> <thead> <tr> <th>Role</th> <th>N</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Religion</td> <td>0</td> <td>0.00%</td> </tr> <tr> <td>Race, ethnicity, and origin</td> <td>5</td> <td>41.67%</td> </tr> <tr> <td>Sexual orientation and gender identity</td> <td>2</td> <td>16.67%</td> </tr> <tr> <td>Disabilities</td> <td>4</td> <td>33.33%</td> </tr> <tr> <td>Socio-economic status</td> <td>4</td> <td>33.33%</td> </tr> <tr> <td>All types of discrimination / civil rights in general</td> <td>6</td> <td>50.00%</td> </tr> <tr> <td>Others</td> <td>1</td> <td>8.33%</td> </tr> </tbody> </table>			Role	N	%	Religion	0	0.00%	Race, ethnicity, and origin	5	41.67%	Sexual orientation and gender identity	2	16.67%	Disabilities	4	33.33%	Socio-economic status	4	33.33%	All types of discrimination / civil rights in general	6	50.00%	Others	1	8.33%
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A. DISCRIMINATION AND HATE CRIME NATIONAL CONTEXT

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A.1. National legal framework on hate crime and discrimination

In Greece, the legal provision concerning the notion that is internationally known as hate crime is article 82A of the Penal Code, which defines it as a “*crime with racist characteristics*”. The abovementioned article stipulates that: “*If the victim of a crime that has been committed was selected on the basis of their race, colour, national or ethnic origin, genealogical descent, religion, disability, sexual orientation, gender identity or sex characteristics, the framework of the punishment is formed as follows: a. in case of misdemeanour, punishable by imprisonment for a term of up to one year, then the minimum penalty is increased by 6 months. With regard to all other misdemeanours, the minimum penalty is increased by one year; b. In respect of more serious crimes, the minimum penalty is increased by two years*”.

It is worth mentioning that although the article is titled: crime with racist characteristics, in fact it criminalises bias-motivated crimes on all of the abovementioned grounds. Moreover, the notion of “hate” that used to describe those crimes until recently was replaced in this article with that of the “*selection of the victim on the basis of their characteristics*” probably because of the misinterpretations that often accompany the term “hate crime”¹.

Another relevant provision of the Penal Code that should be mentioned is article 137A§2, upon its amendment by virtue of law 4637/2019, which states that an official or military officer is liable to imprisonment for up to ten years if a person under their authority is subjected to torture and they were selected based on their race, colour, national or ethnic origin, descent, religion, disability, sexual orientation, gender identity or sex characteristics. In this case, article 82A does not apply.

At constitutional level, article 5§2 of the Constitution provides that: “*All persons living within the Greek territory shall enjoy the full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs*”.

In addition, law 4285/2014 (Government Gazette A/191/10.09.2014, n.d.) incriminates the “*public incitement of hatred or violence*”. Thus, anyone who intentionally provokes or instigates acts that can potentially lead to discrimination, hatred or violence against a person or group of persons defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, or disability is punished both by imprisonment (3months-3years) and a fine (€5.000-20.000). The punishment is even higher if the act leads to a criminal offence, or if it is committed by a public servant or employee during the exercise of their duty.

Last but not least, as far as the EU-derived domestic legislation is considered, Greece has incorporated in its legal system the anti-discrimination directives. The “*Employment Equality Directive*” (78/2000) and the “*Race Equality Directive*” (43/2000) which prohibit discrimination on the basis of sexual orientation, religious beliefs, age, disability, race or ethnic origin in

¹ *The use of the term “hate” may erroneously lead people to think that the alleged defendant must have personally hated the victim so that the offence is considered as “hate crime”. This is not the case. The factor that renders a usual crime as “hate crime” is the selection of the victim based on a bias regarding (a) group/s that they belong to. This is why the term “bias-motivated crimes” is also used instead of “hate crimes”. It is, thus, noted that the legal provisions concerning what is widely known as “hate crime” do not necessarily contain the word “hate”, but may also use different terminology (Tsogas, 2016, p. 12; Diamantopoulou, 2013, p. 11; Papadoudis, 2018).*

employment have been transposed into the Greek legal system by law 4443/2016 (Government Gazette A/232/09.12.2016, n.d.)².

By virtue of law 3769/2009, the Directive 113/2004 on the implementation of the principle of equal treatment between men and women in the access to and supply of goods and services was incorporated into the Greek legal system. Moreover, the Directives 54/2006 and 41/2010, which implement the principle of equal opportunities and equal treatment of men and women in employment/occupation/activity in a self-employed capacity were also transposed by law 3896/2010 and law 4097/2012, respectively.

Finally, the “Victims’ Rights Directive” which establishes minimum standards on the rights, support and protection of victims of crime (29/2012) was transposed by law 4478/2017 (articles 54-71) (Government Gazette A/91/23.06.2017, n.d.). Compared to precedent relevant legal documents, this Directive is of special importance, because it adopts a broad definition of the term “victim” and it is not merely limited to certain types of criminal offences. It includes thus the whole span of victimisation forms (physical, mental, emotional harm and economic loss caused by a criminal offense), regardless of whether a prosecution has been previously duly initiated. It also provides for the family members, who are indirect victims of the crime (APAV, 2016).

A.2. Statistics and data regarding bias-motivated crimes

During 2021, the Greek Ombudsman received 1054 new complaints about discrimination (11% more than the preceding year). The distribution of complaints in accordance with the grounds of discrimination was as follows: 49% of the complaints concerned gender discrimination, 25% disability discrimination, 12% discrimination based on family status, 4% age discrimination, 3% discrimination based on national origin and ethnicity, 3% discrimination based on social class, 2% religion and belief discrimination, 1% race and colour discrimination, 1% discrimination based on sexual orientation and gender identity (Greek Ombudsman, 2022, p. 17).

As far as hate crimes are concerned, the main source of information in Greece is the Racist Violence Recording Network (RVRN). In 2021, the Network recorded 72 incidents of bias-motivated violence through interviews with victims. From which: [I] in 36 incidents, the targets were LGBTQI+ individuals as well as human rights defenders, due to their connection with the LGBTQI+ community (in three of these incidents, refugees were targeted due to their sexual orientation and gender identity), [II] 28 incidents targeted migrants, refugees or asylum-seekers, on the basis of their national origin, religion and/or colour, as well as human rights supporters, connected with them, [III] five incidents targeted Greek citizens, because of their ethnic origin, [IV] two incidents targeted Jewish sacred sites (cemetery), [V] one incident pertained verbal abuse through the internet against a person with disability. In 19 incidents, the victims stated that they had experienced racist violence in the past (RVRN (Racist Violence Recording Network), 2022, p. 10).

Out of the 72 recorded incidents, only one incident had been reported to the police and one incident had been reported to the Greek Ombudsman, at the time they were recorded by RVRN. For five incidents the criminal procedure had been initiated. Eight victims said that even if they had not reported the incident to the police, they intended to do so, while 45 survivors said that they would not proceed to further actions due to fear, bureaucracy, as well as due to lack of trust in the authorities (RVRN (Racist Violence Recording Network), 2022, p. 33).

² It is noted that it was by article 2 (2) g of law 4443/2016 that a definition of “multiple discrimination” was first introduced in the Greek legislation. It is defined as “any discrimination, exclusion or restriction of a person based on multiple grounds of discrimination”. This is used as an overarching, neutral notion for all instances of discrimination on several discriminatory grounds (FRA, 2015; Sarris, 2018, p. 63). The argument put forward is that individuals may belong to several disadvantaged groups at the same time and potentially suffer specific forms of discrimination (Crenshaw, 1989).

An observation that can be made by taking into account the RVRN's Annual Reports over time is that the majority of the attacks were made by groups of 2-10 people. The fact that the attacks are usually made by more than one person has as consequences: on the one hand that each perpetrator believes that has a smaller share of responsibility, and on the other hand that more serious harm is usually caused (Craig, 2002, pp. 87-88).

A rather distinctive characteristic of hate crimes that can be observed in Greece but also worldwide is that there is a significant deviation between the statistical data and the real violent incidents, with the latter preceding by far³. This especially concerns certain fields, such as that of ethnic/racial origin. It is empirically known that the discrimination suffered in those cases is much more than what is recorded in terms of complaints (Zotou, 2022).

A.3. Social perceptions towards and prejudices against minorities

According to the latest special Eurobarometer that examined the social perceptions about the most frequent grounds of discrimination in Greece, being Roma is thought to be the most widespread one (82%), followed by discrimination based on sexual orientation (70%), ethnic origin (64%), being transgender (57%), skin colour (56%), being intersex (54%), disability (53%), religion and beliefs (50%), age (50%), and gender (34%) which is considered as the less widespread one (Eurobarometer, 2019; Tserpeli, 2018, pp. 146-147).

³ *This is attributed to a general lack of understanding of the concept of "hate crime" not only from the victims but also from the bodies that collect the data (Diamantopoulou, 2013, p. 18; Grigoriadou, 2018, p. 171).*

B. OVERVIEW OF VICTIMS OF HATE CRIMES

OVERVIEW OF VICTIMS OF HATE CRIMES

B.1. Profile of the most vulnerable groups

“Vulnerable groups by nature do not exist. The formulation of more or less vulnerable groups is a matter of time circumstances, political agenda and local culture. Institutional racism plays a crucial role in the preservation and deterioration of vulnerability in certain populations” (P12).

In the case of Greece, those factors seem that recently rendered people on the move more vulnerable to hate crimes, i.e. refugees, migrants, asylum seekers. This is an opinion endorsed by the majority of the interviewees, who also pointed out the fact that these people tend not to report hate crimes they have experienced for many reasons. P7 stated that they hesitate to report the crimes they have experienced both for institutional reasons (lack of trust and/or previous negative experience with the competent authorities) and personal ones (lack of appropriate legal documents and fear for the status they have in the country). P2 added another reason, the fact that people on the move have very urgent, biotic issues to deal with.

P3 as well as other interviewees claimed that Roma women are also amongst the most vulnerable groups in Greece. They are also hesitant at reporting hate crimes because they have different community values and modus operandi.

P8 along with other interviewees stated that, apart from the mentioned groups, LGBTQIA+ people are also identified as vulnerable. In contrast to the above groups however, LGBTQIA+ people tend to report more often, because as P12 reported: *“in the majority of cases, they come from Greece, they are aware of their rights and they are in contact with a Civil Society Organisation”*.

Noteworthy is also an opinion expressed by P6 that gives prominence to a rather distinctive characteristic of hate crimes: *“most vulnerable are all those that differ from the dominant group, that are not identified with our familiar, western characteristics”*. Driven from this observation, it can be concluded that hate crimes may be seen as crimes against otherness.

The focus group participants have recently experienced hate violence on the basis of SOGISC. Two LGBTQIA+ organisations co-organised, with members of the community, an event of drag queens regarding fairytales to children, aiming at tackling stereotypes. The event was to take place in a childcare centre and was then moved to a bookstore/children’s place, due to the publicity, negative reactions and hate speech received upon a negative post made by a politician; S3, who is a member of one of the organisations, described it as a *“preaching of hate”*. Hatred was manifested online, in the social media pages of the parties involved as well as with protests outside the establishment, distribution of flyers with nazi messages and damage of property. The location changed after this outburst, in an effort to maintain a positive environment for the attendees. The far-right movement Golden Dawn protested outside the second location.

B.2. Presence and impact of intersectionality

It is true that the potential diversity in victims’ experience, as a result of intersectionality has been overlooked both in Greece and abroad (McPhail, 2008, p. 275; Colliver, 2021, p. 149; Diamantopoulou, 2013, p. 20). Recent studies focus more and more on the issue and impact of intersectionality on hate crime victims. Coined by the critical race theorist and civil rights activist Kimberlè Crenshaw in 1989, intersectionality describes the overlap between social categories such as race, class, gender, sexual orientation, disability, especially in cases where these categories create disadvantage (Crenshaw, 1989; Crenshaw, 1991). It refers thus to the added layers of discrimination that someone may experience by being part of more than one minority group. For example, a female Hindu hate crime victim may be acknowledged, but the bias is often solely attributed to her religion rather than a combination of her gender and religion. It is this “intersection” of marginalised identities that is at the root of intersectionality

(Healy, 2022).

Intersectional issues compound the challenges that exist in the lives of victims (Perry & Franey, 2017, p. 26; Colliver, 2021, p. 149). Intersecting elements of identity may not only increase their risk of victimisation and revictimisation, but also reduce a victim's likelihood of reporting their experiences. P7 characteristically mentioned that the intersecting elements of discrimination indeed aggravate the impact that hate crimes have on the victims. In fact, as it was stated: *"they do not have an additive but a multiplying effect to them. This very multiplying effect leads to the formulation of more discrimination and factors of vulnerability"*. P10 pointed out the fact that they can contribute to their revictimisation, rendering them even more vulnerable. Multiple attacks may have a detrimental impact on victims' self-esteem and confidence in the long-term. As P6 reported after multiple attacks *"the victim would continuously think themselves as victim and will most probably adopt a passive position in life generally"*. Regarding the additive reluctance that exists on reporting hate crimes with intersecting elements, P8 pointed out that *"the more vulnerable the victims are, the more difficult is for them to report the crime they have endured"*.

Half of the seven professionals who completed the online survey claimed they are familiar with the term of intersectionality (25% of them claimed that they have a "thorough knowledge" of the term and 25% a "superficial" one) and 25% of them consider that it is present in the actions of their organisation. Similarly, all of the professionals interviewed had a good knowledge of the term and consider that it is of crucial importance to adopt an intersectional approach in the treatment of such cases. Amongst other interviewees, P3 reported that an intersectional approach should be adopted both in policies and services regarding hate crimes.

B.3. Outstanding personal consequences and needs of victims of hate-based violence

Survivors of hate crimes may experience not only short-term but also long-term devastating consequences -physical, psychological and economic ones. The impact of hate crimes may be far greater and long-lasting than that of crimes that were not motivated by the offender's hostility towards a specific person/group because of their real or perceived characteristic(s) (OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2020, p. 11). Additionally to the physical harm of the attack per se, one of the most important impacts of hate crimes is the post-traumatic emotional and psychological distress. Focus group participants reported having feelings of fear or even terror which, in some cases, lasted for days upon the occurrence of the events. S1 characteristically mentioned *"in essence, there was terror [...] which was eased after approximately a week"*, while S2 added: *"I remember one time we were talking and we said 'ok, it's trauma', meaning so much profanity, so many threats, at some point, there was this numbness, almost"*.

According to the focus group members, the consequences further involved loss of profit, damage to premises and loss of work. For example, S1, associated with the first venue of the event, worked in therapeutic counselling and a few parents decided to withdraw their children from the relevant sessions, without bringing closure to the intervention. S3 explained that some of the members of their organisation were also scared when protesters started searching for the second location and were gathered outside the old offices of the organisation: *"You feel stalked"*.

The consequences that survivors of hate-based violence experience differ. Thus, also their needs. The type and extent of violence along with the victim's personal circumstances (previous experience with discrimination, the existence of social support circles, their economic and psychological resilience) and the intersectional nature of identities are amongst the factors that determine them.

Nevertheless, there was an agreement between the majority of the interviewees that the most urgent needs of those who have experienced a hate crime pertain to having access to hospitals/medical treatment, information, psychological support, legal counselling, and reporting mechanisms. Also, rather significant needs of the victims that were pointed out were those of finding accommodation and work. More precisely, P7 reported that: *"the first need that should be covered is the medical support, then*

the incident's official registration and then follows the legal and psychological support. Psychological support should have a more long-lasting character". P9 holding the same opinion reported that what victims need is: "direct help in access to hospitals, psychological support, reporting procedures, accommodation and then work". Interpretation services were also deemed vital for the protection of the victims.

Regarding psychological support, it should be offered immediately after the crime because it has an empowering effect on the survivors. P12 reported that *"it should be provided directly so as the victim will find the inner power to report the crime suffered and endure the proceedings that will follow"*. At the same time, the provision of psychological support along with legal counselling should have a more long-lasting character. P2 reported that this is because they play a crucial role in the avoidance of revictimisation, due to the empowering effect they have. It is noted that the fear of future victimisation is a worry expressed by many hate crimes' survivors (Iganski, 2008, p. 83).

Apart from psychological support, focus group participants also mentioned the need for public support, as well as self-care and identification of personal limits, in terms of promotion and exercise of their rights. Visibility and empowerment were also deemed highly important for their well-being, highlighting that *"silence is connivance"*. With regard to their long-term needs, S1 argued that people affected by such violence need affluence, in order for them to shift from 'surviving to thriving' and not be afraid of future victimisation.

As far as the satisfaction of victims' needs in Greece is concerned, psychological support is considered as the most easily accessible, whereas the services of accommodation, work and interpretation are the most hard to access. Furthermore, professionals who were interviewed reported that the services offered by NGOs -and thus the private sector- are considered more effective than those of the public sector. P1 reported that *"a lack of warmth from the state's part is observed"*.

It is considered of paramount importance that both the public and the private sector on hate crimes should adopt services that are victim-centred and take into account the nuances of intersectionality. Such an approach to hate crimes' services will look at the victims' personal circumstances, the material and immaterial impact of the crimes, including possible psychological implications, such as traumatisation and post-traumatic stress disorders (OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2020, p. 6).

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C.1. Reporting procedures. Strengths and weaknesses

Hate crimes are reported in Greece to the Hellenic Police to the general telephone number, “100”. If the offender is a police officer or a civil servant, the crime should be reported either to 10301/2108779700 (Department of Internal Affairs of the Hellenic Police), or to the Greek Ombudsman’s telephone number, 2131306600, or finally to 2107233216 (Racist Violence Recording Network) (National Council against Racism and Intolerance, 2020, pp. 10-11).

If the survivors are afraid to report the crimes they have experienced, they can speak up even anonymously in the Hellenic Police hotline Against Racist Violence, “11414” and in the Police Departments and Offices against Racist Violence (Athens: 2106476751, Piraeus: 2104178714, Thessaloniki: 2310388436). There is also the option of the electronic submission of the report from the [Hellenic Police website](#).

Focus group members provided details of the steps they followed after the occurrence of the event. S3 proceeded with filing a lawsuit at the Police Station, pertaining to the protests and the property damage; although the latter could only be reported by the owners of the establishment, the incident was recorded. At the same time, members of the organisations gather evidence of the online hate speech to submit the file to the Cyber Crime Division of the Hellenic Police.

The establishment of police departments against bias-motivated violence has been considered as a great initiative from the part of the Greek state. Other strengths of the reporting mechanism in Greece that were mentioned during the interviews are the cooperation and the networking between the services and organisations involved and the functioning of the RVRN. P7 reported that: *“the Racist Violence Recording Network takes into account the aspects of intersectionality of those crimes, as in this Network many organisations participate, that focus on different vulnerable groups. The Network has its own system of recording the incidents, and every year statistics are being published”*. Finally, another advantage of the reporting mechanism in Greece is that the complaints’ database of the police is confidential, as P11 mentioned.

One of the focus group members talked about their organisation’s collaboration with the police and the protection measures they take in some cases. They explained that prior to any potentially ‘risky’ event, they contact the Hellenic Police Services Against Racist Violence and prepare a security/risk assessment, in order to create a plan to enhance people’s security.

Some important weaknesses of the reporting mechanisms were also mentioned during the interviews. First and foremost, the language barrier is not taken into account in the relevant procedures. As P15 stated: *“the victim needs to make the report in the Greek language”*. Secondly, there are a lot of delays and bureaucracy that, in many cases, render the whole procedure ineffective. P2 mentioned that the procedure is *“time-consuming, to the point that the [foreign] victim may leave the country before justice is attributed”*. Other interviewees added that the procedure is *“difficult and painful”* and *“the contact with the police is really harrowing”*. Racial treatment by the police officers due to lack of special training and awareness was also pointed out. This fact observed in many cases renders the reporting procedure emotionally draining and leads to the victims’ secondary victimisation. P13 reported in this direction that the *“institutional contestation of the reported crimes and the people who report them”* constitutes a significant problem of the reporting mechanism. Moreover, P11 mentioned that *“all the groups report less and less because they fear the [potential] secondary victimisation [caused by] the authorities”*.

Some focus group members added that the lengthy procedure for filing a complaint does not motivate

people to report, while the motivation fades.

It is widely acknowledged that hate crimes are underreported for many reasons -either because survivors are unaware that they have experienced a hate crime or because they are unaware of their rights and the support services available or because they do not trust the police and the judicial system (National Council against Racism and Intolerance, 2020, p. 7; PRAKSIS & Colour Youth, 2018, p. 46). P16 mentioned that the reports that are made constitute only *“the tip of the iceberg”*.

The large-scale underreporting of hate crimes constitutes a significant barrier to law enforcement and policy formulation regarding hate crimes in Greece. As long as survivors avoid reporting, any official system for preventing and combating the phenomenon will fall short. Police forces and other civil authorities need to develop strategies to encourage survivors of hate crimes to report.

C.2. Judicial process. Strengths and weaknesses

Survivors of hate crimes may appeal: a. to the civil courts and claim for compensation (articles 57, 59 & 914 of the Civil Code) and b. to the criminal courts. It is noted that if the incident is reported and filed as a racist crime, the prosecution is carried out by the state, for free. More precisely, the offence of law 4285/2014, as well as the crimes that are a result of those, are ex officio prosecuted and the victims are not obligated to pay a fee when filing a lawsuit or for the criminal proceedings as a civil party. The victims and witnesses of racially motivated crimes and hate speech that are third country nationals, are granted a residence permit for humanitarian reasons, if there is a preliminary examination or a criminal charge is filed, until the end of the criminal proceedings. These conditions are defined by the prosecutor.

Lots of judicial system's shortcomings were pointed out during the interviews. The whole procedure is considered time-consuming. The duration of the trial is really short and there is also a lack of knowledge and awareness regarding hate crimes from the part of the judges. More specifically, P6 reported that the judicial procedure was really stressful because it lasted for a very short period of time for the victim to prove the racist incentive of the crime. P2 stated that the procedure was time-consuming and that the judges were not really trained to deal with this kind of crime.

Promising for the future is the remark of P13: *“there is a certain progress as far as the new generations of prosecutors and judges are concerned, who have more awareness and sensitivity”*.

C.3. Civil society's actions and initiatives

C.3.1 General mapping of antidiscrimination organisations

One of the most significant initiatives in the fight against hate crimes in Greece is the establishment of the RVRN in October 2011 by the Greek National Commission for Human Rights (GNCHR) and the Office of the United Nations High Commissioner for Refugees in Greece (UNHCR). The purpose of the Network is to systematically record acts of violence with a racist incentive. The registration of the incident is anonymous. It currently consists of a group of 52 non-governmental Organisations¹ that provide legal, medical, social, psychological services and come in contact

¹ *Aitima, Solidarity Now, Antigone -Information and Documentation Centre, University of Aegean Anti-Racist Observatory, Arsia, Doctors of the World (Mdm), Amnesty International, Network for Children's Rights, Network for Social Support of Refugees and Immigrants, “Pleiades - Hellenic Action for Human Rights”, Hellenic League for Human Rights, Hellenic Red Cross, Greek Council for Refugees, Greek Forum of Migrants, Greek Forum of Refugees, Human Rights Commission of the Bar Association of Rhodes, Positive Voice, Medical Intervention, Caritas Athens, Caritas Hellas, Centre for Research on Women's Issues “Diotima”, “Babel” Day Centre, Centre for the Support of Repatriated and Migrants - Ecumenical Refugee Program, Network for the Support of Refugee and Migrant Rights (Patras), World Without War and Violence, LATHRA? - Solidarity Committee for Chios*

with victims of racist violence or other violent attacks motivated by hate or prejudice.

Five years later, the National Council against Racism and Intolerance (NCRI) was established, a collective body that aims at the prevention and combat of hate crimes². NCRI's main responsibilities pertain to: [I] the design of policies to prevent and combat racism and intolerance in order to ensure the protection of persons and groups that become targets due to race, colour, national or ethnic origin, genealogy, social origin, religious or other beliefs, disability, sexual orientation, gender identity or expression, [II] the supervision of the implementation of the laws against racism and intolerance and the compliance thereof with international and European laws, [III] the promotion and coordination of the activities of involved bodies for more effectively addressing the phenomenon and boost cooperation with civic society in such matters.

Despite the Network, the Council and their members, many organisations offer support to the survivors of hate crimes -amongst others-, including Orlando LGBT+, Rainbow school, the Racist Crimes Watch and the European Network against Violence. Worth mentioning is a remark made by P13 : *“In Greece, there is not a single agent that provides services to the victims of hate crimes. There are various CSOs that provide specific types of services and they are also horizontally involved in hate crimes”*. This was also confirmed by the online survey, as only 25% of the professionals claimed that the organisations they are working to offer specialised services to survivors of hate crimes.

The fact that the services offered to hate crimes' survivors are fragmented gives prominence to the necessity of collaboration between the organisations. In the online survey, there was a question which asked the professionals if the organisations they are working actively collaborate with other organisations to combat hate crimes. All of the eight professionals who responded to this question reported on the existence of collaboration bridges between their organisation and other actors (one of them responded “totally”, four of them “quite”, two of them “somehow”, one of them “a little”).

C.3.2 Support services to victims

The interviews showed that the accessible services to survivors of hate crimes vary depending on the area of expertise of each organisation. The offered services are amongst others: reporting, medical, psychological and legal. Specialised actors are also responsible for the recording of relevant incidents. The majority of the interviewees believe that the provided psychological and legal services are somewhat satisfactory, nonetheless further actions are needed for the

refugees, METAction, Rainbow Families, Group of Lawyers for the Rights of Refugees and Migrants, Group of Lawyers for the Support of Refugee and Migrant Rights (Thessaloniki), Homosexual and Lesbian Community of Greece, Association of Afghans United in Greece, Association of Social Workers of Greece, Greek Transgender Support Association, Faros tou kosmou, Refugee Support Aegean, Act Up Hellas, ASANTE, Colour Youth - LGBTQ Youth Community of Athens, Generation 2.0 RED, HIAS in Greece, HumanRights360, Melissa Network, PRAKSIS, A21, Simeio for studying and fighting the far-right, Lesvos Solidarity, Steps, Legal Centre Lesvos, Aegean Migrant Solidarity | Christian Peacemaker Teams, the Panhellenic Confederation of the Greek Roma “Ellan Passe”, International Rescue Committee (IRC)

2 Its members are: Ministry of Migration and Asylum, Ministry of Education and Religious Affairs, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Labour and Social Affairs, the Hellenic Police Headquarters, Migration Council of Athens Municipality, National Commission for Human Rights, United Nations High Commissioner for Refugees, Racist Violence Recording Network, National Confederation of Disabled People, Journalists' Union of Athens Daily News Papers, Research Centre on Gender Equality, the General Confederation of Greek Workers, the Supreme Administration of Greek Civil Servants Trade Unions (ADEDY), National Radio & Television Council (ESR), Greek Ombudsman (with no voting right)

amelioration of the provision of all types of services, as they are not yet adequate to meet the needs of the survivors.

The inadequate provision of services on the part of the NGOs is the result of their underfunding. The lack of sufficient funding may also lead to the dismissal of people and discontinuity of politics of reference on hate crimes, as P3 pointed out.

C.3.3 Awareness-raising campaigns

More and more awareness-raising campaigns on hate crimes are taking place in Greece lately, the majority of which are initiated by the European Union. NCRI has elaborated the first National Action Plan against Racism and Intolerance, for the years 2020-2023. This reflects and proposes steps to put in practice the zero tolerance of the Greek state towards any kind of racism and intolerance within its territory. The Council has also designed a Guide for the rights of hate crime victims which is available in ten languages. They were all supported by the European Commission's "Rights, Equality and Citizenship" (REC) programme.

Other campaigns have also been implemented by public and private organisations. KMOP-Social Action and Innovation Centre has implemented in Greece inter alia the projects COMMIT-COMMUnIcation campaign against exTremism and radicalisation, which aimed at preventing and dissuading vulnerable young people from extremism, radicalism and terrorism and Words Are Stones, aiming at training young social media managers, bloggers, online activists, youtubers and young people to counter, monitor and prevent (online) hate speech and other forms of intolerance. Also, the National Commission for Human Rights implements the project STAND-UP-Standing up against hate in the EU, which aims at establishing mechanisms for public authority-led, multi-agency and multi-dimensional action against hate crime, discrimination and intolerance.

C.3.4 Training activities

Lately, there is an increase on the number of training activities for professionals working in the field of hate crimes that take place in Greece. They are organised both by the public and the private sector. It was almost unanimously agreed by the interviewees that the RVRN is the most active agent in the field of trainings. P2 who has participated in one of RVRN's trainings reported that it included, inter alia, the history of hate crimes, the description of the reporting mechanisms, information on the criminal proceedings and the residence permit. Another interviewee, P4 mentioned that the National Centre for Public Administration and Local Government also hosts relevant trainings in order to instruct public servants on those issues.

The online survey contained a section asking professionals to express their views regarding the content that would be more useful to be included in relevant trainings. In order to assess their views, a 10-point Likert scale was used in the relevant section of the questionnaire (Not at all to Totally). According to most respondents and as illustrated in the table hereunder, the most important subjects that should be covered in the trainings are those of social prejudices against minorities, vulnerable and hate crime victims and vulnerable intersections.

Table 4: Professionals' perceptions on the content of training activities

	Not at all	2	3	4	5	6	7	8	9	Totally
Social prejudices against minorities and vulnerable victims								1		6
Hate crimes victims and vulnerable intersections							1			6
Strategies to avoid secondary victimisation of victims of hate crimes						1			2	4
Social, emotional and psychological assistance to victims of hate crimes							1	1	1	4
Strategies and techniques for providing services for victims of hate crimes						1		1	1	4
Legal assistance to victims of hate crimes			1		1	1				4
Barriers to access to support services for victims of hate crimes						1		2	1	3
First contact with victims of hate crime					1	2		1		3
Strategies and techniques for providing restorative justice		1					1	1	1	3
Concepts, terminology and inclusive language								2	3	2
Specific needs of victims of multiple/ intersectional hate crimes						1	2	1	1	2

C.4. Practitioners’ and victims’ views on the legal and political framework on hate crimes and victims’ rights

The professionals’ and victim’s perceptions on the legal and political framework were found out through primary -both quantitative and qualitative- research. In order to assess the views of the professionals who took part in the online survey, a Likert scale was used in the relevant section of the questionnaire. The tables hereunder illustrate the views of the eight professionals who responded to this section.

Table 5: Professionals’ perceptions on the legal framework on hate crimes and victims’ rights

	Not applicable	Not at all	A little	Somehow	Quite	Totally
The application of law allows to properly combat hate crimes		2	2	1	3	
The legal framework allows to properly combat hate crimes			3	3	2	
The application of law allows to properly combat hate crimes		1	4	1	2	
The legal framework allows to properly combat other forms of discrimination		2	4	1	1	

Table 6: Professionals’ perceptions on the political framework on hate crimes and victims’ rights

	Not applicable	Not at all	A little	Somehow	Quite	Totally
The current government is committed in combating the bias-motivated hate crimes based in other factors (disabilities, socio-economic status)	2	3	1	2		
The current government is committed in combating the bias-motivated hate crimes based in race, ethnicity or origin	1	5	1	1		
The current government is committed in combating the bias-motivated hate crimes based in religion	1	4	3			
The current government is committed in combating the bias-motivated hate crimes based in sexual orientation/ gender identity	2	3	2	1		
The current government is committed to combating hate crimes	2	4	1	1		

The online survey reveals a general dissatisfaction as far as the political framework on hate crimes is concerned. At the same time, a moderate view regarding the legal framework can also be observed.

The majority of the professionals interviewed held the same opinion, referring to a general inefficiency of state authorities in the combat of hate crimes. More precisely, it was reported by many interviewees that the information and support offered to survivors of hate crimes during the criminal proceedings are not adequate. P7 reported that: *“the administrative and judicial authorities do not offer adequate*

information but there is considerate differentiation depending on the areas. In bigger cities, things are better, although in villages, smaller communities and in the countryside the situation is generally worse". P3 argued that: *"state agencies do not offer sufficient information, there is need of more information and awareness campaigns. Also, the involvement of local authorities is necessary"*. Survivors of hate crimes cannot only rely on information and support offered by NGOs; the Greek state should take a more active role in the fight against such phenomena.

A promising initiative from the part of the Greek state took place in 2010; the establishment by virtue of the ministerial decision 27787/2010 of the Hellenic Compensation Authority. A compensation mechanism in all member states of the European Union was thought as imperative and was provided by the Directive 2004/80, as survivors of crimes cannot often receive compensation from the perpetrators.

The Hellenic Compensation Authority resolves on the request of compensation of victims of violent crimes, committed in Greece. The compensation covers the medical expenses and hospitalisation costs, the loss of income for a reasonable period of time and the funeral expenses. The requests are accepted exclusively in Greek and submitted in specific forms, which are available at the premises of the Ministry of Justice and online at the Ministry's website. A requested fee of fifty (50) euros should be submitted to the Compensation Authority prior to the examination of the request. The deadline for submitting the application is one year after the incident; this time period includes the birth of the claim, i.e. the possibility to go to court.

The compensation procedure was strongly challenged during the interviews, as it is considered time-consuming and difficult. P7 reported that: *"the amount of money [reimbursed to the survivor] is low, almost symbolical, I would say"*. Another interviewee, P10 mentioned that *"although a procedure for compensation is provided, the victims do not apply for compensation because they do not know that it exists and it also has strict prerequisites"*. The same opinion was expressed by P12 who stated that it is *"a complex procedure, it has a lot of delays and the result is not guaranteed"*.

Restorative Justice, an alternative way to the attribution of justice, provides the possibility to survivors and offenders to communicate with the support of a trained practitioner so as a repair to the harm done will be agreed. Its aim is not only the material and psychosocial restitution of the victim, but also for the offenders to understand the consequences of their actions and to assume responsibility for the harm caused (Perry, 2014, p. 2045). In the Greek legal system, such practices are provided in the field of the minors' criminal treatment and domestic violence (Artinopoulou, 2010; Alexiadis, 1992, p. 302).

The majority of the interviewees mentioned that they had not participated in such a procedure. Two of them who had participated in such procedures, claimed that it was ineffective and a bad experience for them, without however providing details. Most probably, *"we are not ready socially and as a culture to deploy the values and mechanisms of restorative justice, so that justice will be attributed"* as P13 reported.

In the online survey, there was a question that asked the professionals whether their organisation either provides or collaborates with other organisations in applying restorative justice services. 41,67% of the respondents answered that their organisation does not provide such services, 16,67% answered positively, whereas 41,67% did not answer the relevant question.

D. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

D.1. Conclusions

The qualitative and quantitative research findings can be used for the better understanding of the state of the art of hate crimes in Greece:

- ✿ The legal framework includes significant protection in terms of legislation and procedures to survivors of hate crimes.
- ✿ The existence of an adequate legal framework regarding hate crimes in Greece is one part in the fight against them. Another one, equally important is its implementation. It is common ground that the long way between the “law on the books” and the “law in action” remains a key challenge in the field of the modern crime policies (Panagos & Mamai, 2018, p. 3). In that regard, the same challenge is met in the application of the respective victim assistance laws (Artinopoulou, 2012, p. 234).
- ✿ Behind this lack of implementation, is the large-scale underreporting that accompanies hate crimes in Greece, as it was reported in the interviews. The issue of hate crimes in Greece is thus more extensive than it appears in official reports. It mainly depends on the victims to report the incident to the competent authorities and many are reluctant or afraid to do so due to lack of support. Underreporting of hate crimes has multiple consequences: they cannot be investigated or prosecuted resulting in impunity, they remain uncouneted, survivors are left unprotected. As long as victims underreport hate crimes, any official system for identifying and recording will fall short.
- ✿ The results of the interviews emphasise significant weaknesses of the judicial system in Greece regarding hate crimes. The whole judicial process is described as time-consuming, the trial per se also as really short, whereas judges seem to have a lack of knowledge on hate crimes. Nevertheless, it was pointed out that the new generation of judges is more aware on the issue and impact of hate crimes.
- ✿ The compensation procedure in Greece was described in the interviews as ineffective, as it is complex and slow.
- ✿ The majority of supporting services to survivors of hate crimes -information, psychological, legal counselling- are offered by NGOs. As the online survey and the interviews indicate, NGOs specialised in the protection of hate crimes’ survivors do not exist in Greece. Also, it was supported that the state agencies do not offer sufficient supporting services to hate crimes’ survivors.
- ✿ The results of the online survey and the interviews indicate a general dissatisfaction regarding the current government’s commitment in combating hate crimes.

D.2. Recommendations

From the desk and field research conducted, the following recommendations/future actions seem appropriate:

- ✿ National efforts to encourage and facilitate reporting should be made, eg. recruiting of interpreters in the police departments and in the helpline, trainings of police officers in empathy, intersectionality and victim-centred treatment of hate crimes.

- ◆ The whole judicial procedure should also be more rapid and the trials per se more detailed. Finally, special trainings on hate crimes for judges should also take place.
- ◆ The compensation procedure should be simplified. Moreover, the application should also be available to languages, other than Greek and no submission fee should be required.
- ◆ The government should adopt a more active role in the fight against hate crimes, by providing training activities for professionals working in the field, awareness-raising campaigns, adequate information (rights of victims of hate crimes, supporting services and NGOs).
- ◆ Rephrasing of the law and the description of the police departments and hotline related to hate crimes. Crimes with racist characteristics is a very narrow term to describe hate crimes and creates confusion. Thus, a broader description of them should be introduced.

REFERENCES

- Alexiadis, S., 1992. Victim offender reconciliation schemes in the Greek justice system. In: H. Messmer & U. Otto, eds. *Restorative justice on trial*. Dordrecht: Kluwer Academic, p. 309.
- APAV, 2016. *IVOR Report: Implementing victim-oriented reform of the criminal justice system in the European Union*, Lisbon: APAV.
- Artinopoulou, V., 2010. Victim offender mediation in cases of domestic violence-The Greek experience. In: M. Gyokos & K. Lanyi, eds. *European best practices of restorative justice in the criminal procedure*. Budapest: Ministry of Justice and Law Enforcement of the Republic of Hungary, p. 177.
- Artinopoulou, V., 2012. The role of criminologist in crime prevention and victim support. In: C. Zarafonitou, ed. *The profession of criminologist today*. Athens: Nomiki Vivliothiki, p. 224 et seq..
- Colliver, B., 2021. *Re-imagining Hate Crime. Transphobia, Visibility and Victimisation*. Birmingham: Palgrave Macmillan.
- Craig, K. M., 2002. Examining hate-motivated aggression. A review of the social psychological literature on hate crimes as a distinct form of aggression. *Aggression and Violent Behaviour*, 7(85).
- Crenshaw, K., 1989. *Demarginalising the intersection of race and sex. A black feminist critique of antidiscrimination doctrine. Feminist theory and Antiracist Politics. University of Chicago Legal Forum*. [Online] Available at: <https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8> [Accessed 15 11 2022].
- Crenshaw, K., 1989. Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum*, 1989(1), pp. 139-167.
- Crenshaw, K., 1991. Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, 43(6), pp. 1241-1299.
- Diamantopoulou, M.-E., 2013. *Hate Crime. A Critical Feminist Approach. Law School. Aristotle University of Thessaloniki*. [Online] Available at: <https://www.constitutionalism.gr/hate-crimes-feminist-approach/> [Accessed 14 11 2022].
- Eurobarometer, 2019. *Discrimination in the European Union-Factsheets Greece*. [Online] Available at: <https://europa.eu/eurobarometer/surveys/detail/2251> [Accessed 15 11 2022].
- FRA, 2015. *Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU. Comparative Legal Analysis*, Luxembourg: Publications Office of the European Union.
- FRA, 2021. *Encouraging Hate Crime Reporting. The role of law enforcement and other authorities*, Luxembourg: Publications Office of the European Union.
- Government Gazette A/191/10.09.2014, n.d. [Online] Available at: https://www.kodiko.gr/nomologia/download_fek?f=fek/2014/a/fek_a_191_2014.pdf&t=ef599387bdea6105fd271e16496a386e [Accessed 08 11 2022].
- Government Gazette A/232/09.12.2016, n.d. [Online] Available at: https://ec.europa.eu/migrant-integration/library-document/law-44432016-equal-treatment-between-persons-irrespective-racial-or-ethnic-origin_en [Accessed 14 11 2022].
- Government Gazette A/91/23.06.2017, n.d. [Online] Available at: <https://www.e-nomothesia.gr/kat-egklema-organomeno/nomos-4478-2017-fek-91a-23-6-2017.html> [Accessed 08 11 2022].

Greek Ombudsman, 2022. *Equal Treatment. Special Report 2021*. [Online] Available at: <https://www.synigoros.gr/el/category/default/post/ish-metaxeirish-eidikh-ek8esh-2021> [Accessed 23 11 2022].

Grigoriadou, D., 2018. Vulnerable Social Groups and Multiple Discrimination in Greece: face-to-face interviews with six target groups in the Attica region. In: D. Balourdos & N. Sarris , eds. *Tackling Multiple Discrimination in Greece*. Athens: Ion Publishing Group.

Grigoriadou, D., 2018. Vulnerable Social Groups and Multiple Discrimination in Greece: face-to-face interviews with six target groups in the Attica region. In: D. Balourdos & N. Sarris, eds. *Tackling Multiple Discrimination in Greece*. Athens: Ion Publishing Group.

Healy, J., 2022. Intersectionality and Criminology: Uncomfortable Bedfellows?. In: J. Healy & B. Colliver, eds. *Contemporary Intersectional Criminology in the UK. Examining the boundaries of intersectionality and crime*. Bristol: Bristol University Press.

Iganski, P., 2008. *Hate Crime and the City*. Bristol: The Policy Press.

McPhail, B., 2008. Gender-bias hate crimes: A review. In: B. Perry, ed. *Hate and Bias Crime*. New York and London: Routledge, pp. 261-280.

National Council against Racism and Intolerance, 2020. *Guide for the rights of hate crime victims*, Athens: National Printing House.

OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2014. *Hate Crime Data-Collection and Monitoring Mechanisms. A Practical Guide*. Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR).

OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2020. *Understanding the Needs of Hate Crime Victims*. Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Panagos, K. & Mamai, A., 2018. *SupportVoc: Greek National Report. In order to contribute to the effective implementation of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*, Athens: KMOP. EKKA.

Papadoudis, G., 2018. Multiple Discrimination and Inequalities. An Empirical Investigation. In: D. Balourdos & N. Sarris , eds. *Tackling Multiple Discrimination in Greece*. Athens: Ion Publishing Group.

Perry, B., 2014. Hate Crime. In: G. Bruinsma & D. Weisburd, eds. *Encyclopedia of Criminology and Criminal Justice*. Amsterdam: Springer, pp. 2036-2046.

Perry, J. & Franey, P., 2017. *Policing Hate Crime against LGBTI persons: Training for a Professional Police Response*, s.l.: Council of Europe.

PRAKSIS & Colour Youth, 2018. *Working with Victims of Anti-LGBT Hate Crimes. A Handbook*, s.l.: s.n.

RVRN (Racist Violence Recording Network), 2022. *2021 Annual Report*. [Online] Available at: https://rvrn.org/wp-content/uploads/2022/09/ETHSIA-EKTHESH-2021_ENG_fn.pdf [Accessed 23 11 2022].

Sarris, N., 2018. The Legislative Framework for Tackling Multiple Discrimination in Greece: Theoretical approach, best practices and results from surveys. In: D. Balourdos & N. Sarris , eds. *Tackling Multiple Discrimination in Greece*. Athens: Ion Publishing Group.

Stefanidou, A., 2020. *Crime with racist characteristics. Analysis of the provisions of article 82A of the Penal Code*. [Online]

Available at: <https://www.lawspot.gr/nomika-nea/egklima-me-ratsistika-haraktiristika-analysi-ton-diataxon-toy-arthroy-82a-toy-poinikoy> [Accessed 07 11 2022].

Tserpeli, E., 2018. Preliminary findings of the survey on multiple discrimination in Greece. In: D.

Balourdos & N. Sarris , eds. *Tackling Multiple Discrimination in Greece*. Athens: Ion Publishing Group.

Tsogas, L., 2016. *Hate Crimes*. National School of the Judiciary. [Online]

Available at: <https://www.esdi.gr/%ce%b4%ce%b9%ce%b7%ce%bc%ce%b5%cf%81%ce%b9%ce%b4%ce%b1-%ce%bc%ce%b5-%ce%b8%ce%b5%ce%bc%ce%b1-%ce%b4%ce%b9%ce%b1%cf%87%ce%b5%ce%b9%cf%81%ce%b9%cf%83%ce%b7-%ce%b1%ce%bd%cf%84%ce%b9%ce%bc%ce%b5%cf%84/> [Accessed 07 11 2022].

Zotou, E., 2022. *Huge gap between anti-discrimination legislation and Greek reality*. Mediterranean Institute for Investigative Reporting (MIIR). [Online]

Available at: <https://miir.gr/en/huge-gap-between-anti-discrimination-legislation-and-greek-reality/> [Accessed 14 11 2022].

ITALY



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HIGHLIGHTS

- ✿ Underreporting is widespread in Italy. Specific accessibility protocols for reporting hate crimes have not been established, nor do the police have guidelines to govern the reporting of such crimes.
- ✿ Specific support services for hate crime victims are mainly provided by 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.
- ✿ Obtaining financial compensation is a critical point in the reparation of victims of hate crimes in Italy. The procedures in place are slow and ineffective and the amounts received are often minimal, which leads victims to give up on claiming compensation.
- ✿ An increase in the sensitivity and awareness of public authorities and assistance services for vulnerable people and victims of crime has been noticed in the last decade, due to information campaigns, increased training courses and major legislative improvements.
- ✿ Victim assistance initiatives are growing, and there is widespread awareness of the basic regulations, both national and European. However, there are few concrete protocols, especially regarding criminal proceedings, and the degree of applicability of the law still depends too much on the sensitivity of legal operators.

INTRODUCTION AND METHODOLOGY

INTRODUCTION AND METHODOLOGY

This report is the result of research conducted in Italy as part of the project: “*Counter-Hate-Improving the assistance of victims of hate crimes through a victim-centered and intersectional approach*”. It aims to provide comprehensive analysis of the various factors that contribute to the development of a victim-centred approach to addressing hate crimes. In fact, various national and regional political and legal frameworks have been established to protect vulnerable groups, and there are also social movements and third sector parties that provide assistance and defend civil rights. However, despite the various efforts, there are still gaps that need to be filled in order to guarantee a fully reparative system that can prevent and combat hate crimes.

Specifically, the objective of the study was to gather information about the various factors that influence the development of an intersectional approach to combating hate crimes. It also analysed the perspectives of key professionals and victims themselves on the current state of victims’ services and policies. In order to accomplish those objectives, the project partners conducted both primary -qualitative (interviews) and quantitative (online survey)- and secondary research (desk research). The qualitative study was conducted through a semi-structured interview method that was designed to collect data on individuals who have experienced discrimination and hate crimes, as well as on professionals dedicated to the field of discrimination.

The goal of the interviews was to collect data on as many individuals as possible in order to make an unbiased analysis of the various efforts being made to address the issue of discrimination and hate crimes. In order to carry out individualisation of the interviewees, the research team used some existing contacts of its members, known for their collaboration in previous projects, as well as in-depth internet research, to reach recognised professionals with a longer trajectory in the field. Some of the organisations contacted to respond to the project’s questionnaire also provided names of experts working with them. Following this research, 14 interviews were carried out (see Table 1). The profiles of the interviewees included various professionals, such as lawyers, social educators, psychologists, sociologists, and police officers. Different representatives of Civil Society Organisations (hereinafter CSOs) were also interviewed. These included those that provide support to anti-racist groups, and those fighting Islamophobia, homophobia, transphobia, and discrimination against people with disabilities.

Contact with hate crime victims was more challenging than expected. Although some victims could be contacted through four anti-violence centres in Milan and Bologna, and five anti-discrimination organisations, in the end most of them refused to participate in the study, for reasons of privacy or reluctance to share their stories. A second attempt to contact victims took place through the organisation “Coming-Aut,” located in Pavia and dedicated to combating discrimination against the LGBTI+ community. This contact made it possible to reach some victims who are also currently engaged in activism. Eventually, six interviews with victims were successfully carried out. Despite the small sample of victims, the participants were quite heterogeneous in terms of their backgrounds, experiences, and characteristics, even if only two of them had been victims of intersectional violence (see Table 2).

A survey by means of the LimeSurvey tool was also conducted to gather information about the various organisations working in the field in Italy. After extensive research, a list of 69 organisations was contacted. The list included various groups, such as people with disabilities, the LGBT community, race and ethnicity, religion, and other grounds. After the project was presented, an email was sent inviting organisations to participate. Some weeks later, another message was sent to thank those who participated in the survey. A final email was also sent to the participants to inform them about the results. Out of the 61 responses, 32 of them were able to answer all the questions.

Table 1: sociodemographic data - professionals

Interview	Gender	Age	Professional role
P1	Female	36	Social worker and staff coordinator of an anti-discrimination organisation (discrimination based on sexual orientation)
P2	Male	31	Lawyer (discrimination based on sexual orientation)
P3	Female	58	Lawyer (discrimination based on gender and race)
P4	Male	35	Lawyer (discrimination based on gender, violence against women)
P5	Male	46	Lawyer (discrimination based on race and gender)
P6	Female	29	Lawyer and legal consultant (discrimination based on gender and race)
P7	Male	49	Lawyer and legal consultant (discrimination based on disabilities)
P8	Female	39	Lawyer (discrimination based on race and gender)
P9	Female	47	Lawyer and coordinator of a department for legal assistance (discrimination based on disabilities)
P10	Female	52	President and staff coordinator of an anti-racism organisation
P11	Female	40	Psychologist (discrimination based on gender, sexual orientation, and race)
P12	Male	-	Mediator
P13	Female	33	Judge specialising in crimes against vulnerable people
P14	Female	41	Police officer working in crimes against vulnerable people

Table 2: sociodemographic data - victims

Interview	Gender	Age	Factors of discrimination
V1	Female	24	Sexual orientation
V2	Female	40	Gender and sexual orientation
V3	Male	37	Sexual orientation
V4	Male	-	Sexual orientation
V5	Female	25	Sexual orientation
V6	Female	48	Race, religion, and gender

Table 3: Survey data

Universe: N° of organisations contacted	69
Number of total responses	61
Number of completed responses	32
Responses rate (universe/total responses= Responses rate)	88.4%
Discrimination field	Sexual orientation / gender and violence against women / race / disabilities / religion
Role of the respondent in the organisation	President, staff coordinator, expert staff, volunteer.

A. DISCRIMINATION AND HATE CRIME NATIONAL CONTEXT

A. DISCRIMINATION AND HATE CRIME

NATIONAL CONTEXT

A.1. National legal framework on hate crime and discrimination

Until 2018 the Italian Penal Code did not provide any official definition of hate crime or discriminatory acts and the existing legislation was limited to Law no. 205/1993 (the so-called “Mancino Law”). By virtue of the Legislative Decree no. 21/2018, (in force since April 6, 2018) the provisions of the Mancino Law have been integrated, with a few minor changes, into the Penal Code. To this purpose, 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 of, or 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 organisations for the purpose of inciting discrimination or violence based on the same grounds. A more severe penalty applies if these acts are based on the denial, serious minimisation, 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 Statute of the International Criminal Court. However, as in the Mancino Law, no reference is made to sexual orientation and gender identity as relevant grounds regarding 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, in this case too, penalty enhancements only apply to discrimination and hate motivated by bias on the grounds of race, ethnicity, nationality, or religion.

All attempts to amend the legislation to extend the grounds of hate/discrimination have so far failed. In 2009, a Bill (C. 1658) was prepared to recognise bias based on sexual orientation or gender identity as a general aggravating circumstance (intersex status or sex characteristics have never been considered as grounds for hate crimes) but, without opening a debate, it was deemed unconstitutional by the Chamber of Deputies. In 2013, a broad and mixed political coalition proposed a new Bill (C. 245), extending the protection of the Mancino Law to sexual orientation and gender identity. This Bill was approved by the Chamber of Deputies, but it was not presented to the Senate before the end of the legislative term. Another attempt was made in 2020 (C. 569), but again the Bill did not achieve final approval from Parliament.

As far as the support and protection of victims of crime are concerned, Italy has transposed the Victims’ Directive through 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). Its implementation has both strengths and weaknesses. One positive aspect is, for example, that the legislative decree adopts a new definition of “victim of crime” which now includes not only the person who has directly suffered the commission of a crime, but also, in the event of their death, their direct relatives, siblings, dependants and partners living in a stable, de facto relationship, thus including same-sex families (constituted both before and after the enactment of the Civil Union law in 2016). Other positive provisions deal with granting special protection to victims within judicial proceedings, such as the use of video technology, separate waiting rooms, the exclusion of members of the public from the courtroom, and other victim-sensitive actions. In contrast, the main problem in implementing

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 with sufficient geographical distribution across the country, no guidance is provided on how this should be achieved. For example, no victim support service has been envisaged specifically for LGBT victims of crime, nor have funds been allocated to NGOs that assist victims. LGBT victims also somehow fall out of the scope of hate crime victims because they are not included as a protected group under existing law. Since Member States can freely choose how to set up these services but have no discretion regarding their very existence, sooner or later an infringement proceeding against Italy is likely to be started by the European Commission.

A.2. Statistics and data regarding bias-motivated crimes

Protocols or guidelines about how to record hate crimes do not exist in Italy and it is up to the first contact policeman to record whether an alleged hate crime has been committed or not. Official reports of incidents only have to include the personal data of the victim according to their ID card, identification of possible witnesses and narration of the incident, as a free text field. Since there are no binding regulations and protocols obliging police officers to record possible bias indicators, their actual recognition and recording depend 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 a police officer lacks specific training on 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.

It is worth mentioning that the Observatory for Security against Acts of Discrimination (OSCAD)¹, 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. This body, which is competent throughout Italy, can be contacted by victims of hate crimes, in order to communicate the attack suffered. Once the report of the attack is received, OSCAD can activate a series of actions on the territory to coordinate the various police forces and then follows the evolution of the investigation on the discriminatory attack that has been reported. Victims may reach out to OSCAD by email, including anonymously, and they will be contacted by phone, but only if they agree. Informal reports may be addressed by phone, or also online, to the National Office against Racial Discrimination (UNAR), the equality body established by the government within the Department for Equal Opportunities. Thanks to a cooperation protocol between UNAR and OSCAD, any report received by UNAR that has criminal relevance is immediately referred to OSCAD.

However, the data collected concerning hate crimes in Italy, and communicated annually to the Office for Democratic Institutions and Human Rights (ODIHR), can in no way be considered exhaustive. This is also true for data on discrimination collected by UNAR/OSCAD, which sends an annual report to Parliament to evaluate the impact of the implemented equality policies and to underline the necessary actions to be taken. Moreover, official data and statistics on anti-LGBT hate crimes are particularly lacking. Indeed, since the official police database relies only on offences punished by national criminal law, the absence of a specific law against homophobia/transphobia not only makes it harder to punish anti-LGBT hate crimes but also prevents the police from extracting reliable statistical data about them and thus from estimating their frequency and seriousness. 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.

¹ *OSCAD-Ministero dell'interno. Inter-agency operational tool, established in 2010 within the Department of Public Security, to optimise police action in preventing and combating discriminatory crimes.*

A.3. Social perceptions towards and prejudices against minorities

Among the institutional tasks of UNAR, there is also that of keeping Parliament and the Government informed, through periodic reports, on the effective application of the principle of equal treatment and on the effectiveness of protection mechanisms, as well as on the progress and obstacles of anti-discrimination action in Italy. The reports to Parliament, in addition to being an opportunity to take stock of what has been achieved, inform the political bodies and public opinion not only of the progress made, but also of the problems encountered in the action to combat discrimination.

According to the last available report², which also considers non-criminal cases, in 2021 cases of discrimination/hate totalled 1450. The majority concerned discrimination on “ethnic and racial” grounds, including those against Roma people (793 cases), followed by “Religion or personal beliefs” (241 cases, of which 170 concerned anti-Semitism and 28 anti-Islamism), “Sexual orientation and gender identity” (238 cases), “Disability/Architectural barriers” (113 cases), and by “Age” (30 cases), while the cases classifiable as “Multiple discrimination” were only 28. These 17 cases mainly concerned the intersection between ethnic-racial and religious grounds (9 cases) and, subsequently, the intersection between a) ethnic-racial grounds and those related to disability (7 cases), and b) ethnic-racial grounds and those related to sexual orientation (7 cases).

As regards the type of whistle-blowers, 142 (9.7%) cases were reported by witnesses, 282 (19.3%) cases were reported directly by the victims, while 99 cases (6.8 %) were sent by private/public organisations. Finally, the events that UNAR became aware of through daily press monitoring were 937 (64.2%), which included non-reported cases.

Further information of interest concerns the places where the episodes of discrimination/hate took place. The data show that 77.8% of the recorded discriminatory events occurred in real life, the remaining 22.2% in “virtual” places. Most of the reports (49.6%) concerned the sphere of “Public life”, which included cases of discrimination that did not fall within other areas and occurred in contexts and places without any commercial or service relationship between the victim and the perpetrator (e.g., writing a derogatory epithet on a wall which is then read by the victim). The area of “Health” followed, with less frequency (12%), followed by the area of “Labour” (7.2%). It is noteworthy that discrimination in the area of “Provision of services by public bodies” has decreased from 11.5% in 2020 to 6.5% in 2021.

In terms of developments compared to 2020, the data shows an increase in cases based on racial and ethnic grounds. Moreover, in 2021 there were 241 reported cases of discrimination for “Religion or personal beliefs”, compared to 183 in 2020, and also anti-Semitism is growing (170 cases in 2021 compared to 89 in 2020). LGBT people are not spared from hatred: the 93 episodes reported in 2020, rose to 238 in 2021. Finally, discriminatory episodes based on disability rose from 49 cases in 2020 to 113 in 2021. This data, however, may also mean greater public monitoring and a progressive increase in the tendency to report these crimes.

2 <https://www.unar.it/portale/relazioni-alle-istituzioni>

B. OVERVIEW OF VICTIMS OF HATE CRIMES

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B.1. Profile of the most vulnerable groups

The term “vulnerable subject” is a term that has been introduced and reinforced by Italian legislation in the last decade, mainly motivated by supranational legislation. The main exponents of this dynamic are Law no. 172/2012¹, concerning the protection of minors from sexual abuse; the Legislative Decree 204/2007² and the Law no. 4/2018, concerning compensation for victims; the Law no. 119³ of 15 October 2013, and the Legislative Decree no. 212 of 15 December 2015⁴, on the rights and protection of victims of crime. Directive 2012/29, transposed by the aforementioned law, has been a major step forward in developing and integrating the concept in the field of criminal procedure. In fact, it introduces into the domestic sphere some principles on the vulnerability of victims contained in the Directive. These principles include the presumption of vulnerability of minors, the individualisation of protection for the victim according to their objective and subjective profile, the right to information for victims and even the actual definition of victim, which expands on the concept that was contained in national legislation up until that moment⁵.

The current explanation of a “vulnerable subject”, which is not a strict definition, is found in art. 90 quater of the Italian Code of Criminal Procedure, introduced by Legislative Decree no. 212 of 15 December 2015, which adapts the definition to that contained in the aforementioned Directive. This article states the following:

Article 90-quater: “For the purpose of applying the provisions of this Code, the victim’s needs for specific protection shall be presumed not only on the basis of his age and physical or psychological impairment, but also in relation to the type of offence, and the circumstances and particulars of the case under prosecution. The victim’s needs for specific protection shall be assessed by taking into account whether the offence was committed with either violence or racial hatred, whether the offence qualifies as organised crime or national or international terrorism or trafficking in human beings, whether it was committed for the purposes of discrimination, and whether the victim depends on the offender either emotionally, psychologically or economically.”

As it is evident from the great complexity and diversity of crime victims, there is no single criterion for the attribution of the status of vulnerable subject in criminal proceedings or in the field of the administration of justice and Welfare services, rather, it depends on a series of variables. Italian legislation already contained a series of provisions relating to minors, who are automatically considered to be particularly vulnerable and for whom certain prerogatives of protection and assistance are established within the process, including those relating to psychological assistance, the taking of statements according to specific guidelines, and in more comfortable and protected environments. With the entry into force of the aforementioned laws, these rights and measures have been extended objectively and subjectively,

1 Italy ratified the 2007 Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (the so-called Lanzarote Convention).

2 Transposing, albeit partially, Directive 2004/80/EC relating to compensation for victims of crime.

3 Ratifying The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 11 May 2011 (the Istanbul Convention).

4 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.

5 Art. 2 of the Directive establishes that victims are: “(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death”.

reaching a greater number of victims who are also of legal age.

Analysis of the legislation shows that Italy provides a specific definition of vulnerable victims, as well as extensive provisions for their protection. However, the weaknesses observed in the legislative study and highlighted by the professionals interviewed are 1) the lack of a collaborative praxis between the social assistance bodies and the judicial bodies for the appreciation of the subject's vulnerability, 2) the lack of specification as to which body should declare the vulnerability 3) the lack of specification as to when the subject's vulnerability should be declared 4) the lack of professionals and psychologists who carry out a specific analysis of the victim's particular vulnerability. Therefore, given the relevance of the attribution of this condition to the victim, it is observed that it would be necessary to establish a more concrete protocol, which does not currently exist, on the specific aspects of the attribution of this condition. The legal professionals interviewed stated that, currently, this declaration of special vulnerability happens automatically in the case of victims of gender violence and minors. In all other cases, vulnerability is considered concretely in order to motivate the applicability of certain protective measures only when requested by the lawyer or Public Prosecutor, but not as a general statement.

The vulnerability of victims, however, is not only confined to the area of criminal proceedings, nor can it be analysed simply from this perspective. In this regard, the health care professional interviewed in this research stressed that it is a very complex phenomenon and varies greatly from person to person, so a case-by-case study is necessary and should not be strictly based on the type of crime or the gender or nationality of the victim. Thus, the fact of being women, or migrants, or having suffered a hate-motivated attack, does not always mean the automatic vulnerability of the victims if they have certain personal conditions and resources that allow them to fend for themselves without added weakness. In the case of hate crimes, it would be necessary to develop research and assistance on two different levels:

- ✿ **Vulnerability to suffer a hatred-based or discriminatory attack:** may be linked to simply belonging to a certain minority or to socially unaccepted communities, against whom hate attacks are statistically higher. According to experts, belonging to these communities in itself generates a vulnerability to suffer attacks, but this vulnerability increases when other risk factors are added. The main risk factors highlighted were the fact of being a woman, having a disability, having limited financial resources, and having little or no academic education. This is a phenomenon whose area of intervention is closely linked, on the one hand, to prevention and the education of citizens in tolerance and respect and, on the other hand, to support for these people both in terms of psychosocial accompaniment and information campaigns on rights and assistance services. As stated by representatives of anti-discrimination organisations dedicated to the LGTBI+ field, *“on many occasions cultural pressure generates discriminatory circles in which prejudices against certain groups or minorities, such as people belonging to the LGTBI+ group, are reinforced and strengthened”* (P1). These people, especially minors, *“suffer and feel the pressure of social prejudices against their condition and hide themselves, making it more difficult for them to obtain representation and, consequently, greater social recognition of their rights”* (P11). It has been underlined that there is still discrimination against LGTB+ people in the workplace and also in the health sector. It has been remarked that *“the lack of psychological support for these people and the social pressure to which they are subjected make them more psychologically vulnerable”* (P2). On the other hand, the representatives of organisations dedicated to providing support to people with disabilities highlighted the fact that society still sees people with disabilities as people who generate a burden and a cost to the State and are subject to frequent discrimination in fundamental areas of personal development, such as school, work, or leisure (P7, P9). In this case, it has been highlighted that the discrimination suffered by these people is a daily occurrence and has become normalised. Similarly, it was pointed out by interviewees working in the field of psychological care that *“there is a certain institutional discrimination against LGTBI+ people, who are only recognised to a certain extent, and also against people with disabilities, who are undervalued in their abilities in most areas. Generally, this is not discrimination in the form of an attack, but in the form of a lack of recognition of the whole identity of the person, which erodes their self-confidence and capacity for self-determination”* (P11).

- ✿ **Vulnerability as a subject of the judicial process:** this refers to weakness or difficulty in managing the post-crime process, in reporting, coping with the judicial procedure, in claiming one's rights and in overcoming the harmful effects of the crime. It coincides mainly with the definition contained in current legislation and it is an assessment that includes the victim's personal conditions and should be carried out on a case-by-case basis. It has been highlighted by the interviewees, that it would be interesting that in the process vulnerable subjects are defined *ad casum* regardless of their gender or race. A personal and singular analysis of each case should be carried out, because belonging to a group or possessing a certain personal condition does not always make people vulnerable, so it is questionable to generalise about a person's status as a vulnerable subject (P4). However, most of the experts interviewed do agree that the groups in which a greater intrinsic vulnerability is perceived are women, minors, migrants, especially those with linguistic difficulties and without professional stability, people with disabilities and victims with a greater emotional or economic dependence on the aggressor.

B.2. Presence and impact of intersectionality

Intersectionality is a key perspective in addressing both the vulnerability of certain people to suffer discriminatory attacks and the specific reparation needs of the victims of these crimes. It has been pointed out by various interviewees throughout the research that intersectionality is not a determining factor for suffering discrimination, but it is true that in many cases it generates situations of heightened vulnerability (P5, P6, P9, P10, P11). The two main opinions regarding intersectionality that have been collected throughout this research are the following:

1. Intersectional factors must be taken into account as factors that generate greater abstract vulnerability. It is observable that intersectionality generates, in most cases, a situation in which the tendency to isolation of victims and their vulnerability to suffer different forms of violence tends to increase. This vulnerability is not only found in the phenomenon of crime but in many other aspects of their daily life. The more risk factors are integrated into the person, the more complex the difficulties they have to face on a social level tend to be.

2. Intersectionality does not generate a sum of separated vulnerabilities, as the victim is always the same person, made up of all these conditions. In this sense, the insufficiency of this perspective in the law and in care services has also been highlighted. The professionals interviewed who state that they have contact with intersectional cases are of the opinion that *"the law tends to generate a fiction of segregation of these factors, and each factor is usually protected from different angles"* (P7). In this way, it has been stated that *"intersectional factors can exacerbate the effects of crime due to the lack of uniform legislation and the separate management, at the regulatory level, of situations that are in practice fully connected"* (P5). In order to improve care for these people, it would be advisable to generate a praxis that takes into account the whole person and specifies the personal needs of each person, as the sum of risk factors does not have the same impact on all people. However, it was also acknowledged by some of the professionals interviewed that intersectionality is a very theoretical concept and that it would be very difficult in practice to articulate it at the legislative level (P7, P10, P11).

With regard to the specific impact of intersectionality and its role as an obstacle to accessing justice, organisations dedicated to the LGTBI+ community have noted that the main vulnerabilities added to the conditions of sexual orientation are the age of minority and migrant status, as these conditions are linked to less personal security in one's own identity and less knowledge of one's own rights (P1, P2). This greater insecurity when the victims are minors has also been highlighted by several of the victims interviewed (V1, V2) who have stated that *"when the family puts pressure on you not to show your identity, and you do not feel accepted at school, you hide your condition, feeling that you have nothing left but to wait for time to pass and until you have more economic and legal resources to live your life accepting your reality"* (V1). In relation to gender-based violence crimes, it has been highlighted that victims can come from different social backgrounds, but the phenomenon of violence is more frequent in women with less

education and less economic independence (P6). On the other hand, it is unanimously agreed that foreign women are more vulnerable to situations of violence and, therefore, the gender condition is generally aggravated by belonging to a foreign community (P4). In this case, the motives affecting these people intersect at different levels. On the one hand, racial bias plays an important role in the increase of crimes against women, as their belonging to a foreign community and the associated prejudice is added to their condition as women, leading to a higher risk of violence (P14). The judge interviewed in this study, who specialises in crimes against vulnerable subjects, stated: *“When these women openly display cultural differences, such as Muslim women wearing the veil, it is very easy for them to become targets of such crimes. However, in such cases, hardly any of them go to court”* (P13). On the other hand, their status as foreigners can be understood as a factor that reduces their ability to turn to the authorities, especially if these women are unfamiliar with the legal system or the language. Specifically, racial background is added to the situation of violence and has a negative impact on women’s possibilities to 1) be aware of the situation of violence they suffer and 2) know the means available to them to claim their rights and bring the violent situation to an end. Therefore, being a foreign woman has been highlighted as a crucial factor in the phenomenon of underreporting and all the lawyers interviewed who work in the field of violence against women have stressed that, according to their experience, *“...very few foreign women find the courage and the appropriate channels to bring a criminal action for acts of violence against them”* (P6). In this sense, *“there is an urgent need to intervene more effectively to provide them with the necessary information and support”* (P8). Professionals working in the field of discrimination against people with disabilities also note that prejudice against people with disabilities increases if they are women (P10). Aware of the major vulnerability that this intersection between gender and disability can cause, OSCAD has recently published (2022) a study on hate crimes against women with disabilities⁶. The study shows that intersectional discrimination affecting women with disabilities is characterised by multiple factors. As one representative of an organisation defending interests of people with disabilities stated *“these women, in fact, tend to be exposed to violence for prolonged periods of time, due to their state of vulnerability and isolation and their limited ability to defend themselves, to flee, to ask for help and to be believed.”* (P9). Furthermore, the lack of real or perceived alternatives, the fear of not receiving support and the inability of the receptor of the complaint to recognise that particular form of violence and report it adequately, are further elements that characterise this phenomenon⁷.

In the area of racist crimes, it has been stated by workers from organisations in this sector that there is a perceived fear of going to court and reporting by migrants. In this field, the intersection that has also been pointed out as the one that generates the most vulnerability is the one that *occurs “when foreign origin or skin colour is combined with gender. If the victims are women, the resistance is much greater, and we have to accompany them much more until they feel safe to seek a solution”* (P10). These professionals observe that the area in which the greatest discrimination is detected, and in which there is also the greatest resistance to reporting the crime, is the workplace. In the case of one victim interviewed (V6), her status as a woman with limited economic resources and an unregulated employment relationship were the factors that led her to endure abuse from her boss and attacks due to her migrant status for more than two years.

B.3. Outstanding personal consequences and needs of victims of hate-based violence.

The harmful consequences for victims of hate crime are, in most cases, long-term consequences. From the point of view of both the professionals interviewed and the victims, these effects of crime are not of a patrimonial nature only, or limited to the specific physical or psychological damage resulting directly from the crime. *“Suffering this type of attack generates in the victims a feeling of society’s contempt for them, as well as a feeling of non-acceptance of their reality, which is added to other feelings that*

6 https://www.interno.gov.it/sites/default/files/2022-12/la_violenza_contro_le_donne_con_disabilita.pdf

7 OSCAD; Direzione Centrale della Polizia Criminale, *“La violenza contro le donne con disabilità”* (2022), pp. 7-8.

these victims already experienced such as exclusion or inferiority, and which makes it very difficult for them to seek help and claim their rights”, assures one psychologist interviewed, who is dedicated to the assistance of people with disabilities and people attending anti-violence centres (P11). On the other hand, it is common that the victims feel guilty for the crime they have suffered (V1) or feel ashamed because they believe that the attack has been caused by their own actions, actions that they dare not explain to the public authorities. As one of the victims interviewed explains: *“I felt that my bosses were doing me a favour by giving me a job. I felt that I had to put up with the abuse because my limitation with the language and my irregular legal status generated a risk for them for which I had to pay in some way”* (V6). Shame and feelings of guilt occur mostly in cases of minors and people belonging to the LGTB+ community or women who suffer violence, especially when the attacks suffered have a sexual component (P2).

From this point of view, it is very important to highlight that most of the people interviewed in this study have stated that there are two needs to be met for victims that are of vital importance and that should be guaranteed as soon as possible: 1) clear and accessible information about their rights and 2) listening and accompaniment. Here are some excerpts from the interviews: *“I would say that the first needs of victims are understanding, accompaniment and effective implementation of justice. Therefore, psychological support and access to justice”* (P4), *“In my experience, the most important need of victims is immediate listening and getting to know who the available interlocutors are”* (P3), *“The basic needs of victims are a listening environment in which people can be given adequate information about their situation and how to get out of violent situations”* (P8).

It has been highlighted by several of them (P1, V1, V2, P6, P7) that this information provided to victims is less effective when it is offered through institutional channels, such as television campaigns, and is much more effective when it is offered in a more personal context of victim accompaniment, most of the time prior to the start of any legal proceedings. It has been observed that most of the victims who are more vulnerable and reluctant to report, take a step forward after meeting other people in their situation, feeling accompanied without judgement by people from anti-discrimination organisations and other care services, and discovering that they will be supported in the subsequent process. As one of the interviewees states *“the most important need to guarantee to the victims is the immediate reception to facilitate them receiving the necessary information and help in confidence-building processes”* (P1). In this sense, it would be very beneficial to provide greater public support and resources to the listening and care services for vulnerable people that already exist in Italy, mainly offered by third sector organisations. All the representatives of the CSOs interviewed stated that these listening and support services already exist and are operational, but that they depend too much on the initiative and resources of CSOs, are poorly coordinated, are still not very visible to the potential victims and have little institutional support.

Secondly, within this listening process, it is essential to guarantee that victims receive adequate, free and prolonged psychological care, which includes processes of personal self-affirmation, as well as adequate legal accompaniment. In many situations, it is these care services that detect the violence and make the victims aware of it, allowing them to report it to the authorities. The lawyers interviewed agreed that the perseverance of these people in the subsequent judicial process and the avoidance of secondary victimisation depends to a very high degree on having a lawyer who guides them, transmits useful information about the case and makes the necessary requests for protection.

Legal assistance and accompaniment have been highlighted as crucial services in the case of persons with disabilities. As has been shown, the problem with these hate-based crimes is that they often respond to realities of discrimination or violence that have been normalised and accepted to some extent by the victims themselves. This is experienced very often by people with disabilities, who frequently suffer limitations in their lives linked to their physical or mental condition. In this sense, the lawyers of the national organisation LEDHA, the main Italian association dedicated to the protection of disabled people (P7, P9), emphasise the following: *“It is essential that these people have free legal support available throughout their lives, because they suffer implicit discrimination that they are often unaware of, or*

do not feel strong enough to fight against it. It is also essential that they have a lawyer at all stages of the legal proceedings because, otherwise, they are often not listened to or not taken seriously". However, they highlight the lack of resources and personnel in this regard: "It would be very important to provide more pedagogical or psychological support services for these people, because it is essential to bring out situations of violence against disabled people. However, there are not enough professionals, psychologists or social workers to follow up the situation of these subjects in a sustained manner, over time. A lot of progress still needs to be made in the field of providing understandable and adapted information to people with disabilities regarding their rights, welfare, access to justice and available assistance services" (P9).

From a perspective of more direct reparation for the damage of the crime, the need to guarantee a safe environment for people who suffer violence in close contexts has also been highlighted. It is considered a basic need for these people to be able to be away from the aggressor and to obtain financial support to reach an autonomous way of life, away from the area of abuse. The integral reparation of these victims requires the provision of tools to enable them to start a more independent life with less social isolation, such as professional orientation, contact with employment agencies or assistance to obtain a driving licence, for example. In this regard, some of the interviewees highlighted the great help offered by shelters and anti-violence centres (P6), although they also pointed out that the existence and resources of these centres vary greatly throughout the territory and depend on the political priorities of the different regions or on public subsidies linked to temporary projects (P4, P7). On the other hand, it has been highlighted by one of the victims (V6) and by a psychologist working in anti-violence centres (P11), among others (P1 and P2), that many shelters are not prepared to offer adequate services, financial support or the professional guidance necessary to acquire a way of life in which the victim feels comfortable and autonomous. As a consequence, some victims experience a lack of freedom in some cases, and victimisation or loneliness in others, and decide, after some time, to return to the contexts or environments in which the violence took place.

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C.1. Reporting procedures. Strengths and weaknesses.

According to the research conducted and the experience of the people participating in the study, it appears that in Italy there is a large number of bodies receiving criminal complaints, distributed throughout the territory, visible and accessible to the general public. These bodies are mainly police bodies¹ but complaints can also be submitted directly to the Public Prosecutor's Office. In relation to hate crimes, interviewees have no knowledge of specific channels for filing complaints, so in these cases the common procedure is followed. At this initial stage of lodging a complaint, the role of the OSCAD, the Observatory for Security against Discriminatory Acts, should be highlighted. However, according to professional experts, the OSCAD is rarely contacted by citizens, because informing the OSCAD does not replace the need to report the act to the police. On the other hand, there is still a widespread lack of knowledge of this body among the general public. All the victims interviewed during the investigation phase stated that they were unaware of the existence of this Office or the channels for communicating with it at the time of suffering the attack. It is a public body that mainly works with the police and other specialised bodies, and which works effectively in registering complaints reported on a regular basis by the police or anti-discrimination organisations. All the organisations working in the sector that were contacted in the course of this research, through the interviews and the survey, were aware of the existence of this specialised body. Most of the interviewees representing anti-discrimination organisations indicated that communication with OSCAD is fluid and that their protocol for handling complaints of discriminatory attacks includes the regular reporting of such complaints to the OSCAD. Despite the progress that this body represents, it should be noted that it has no specific power to initiate the judicial process or to provide services directly to victims. From a point of view of victim care, practitioners think that its most important added value is that of being a reliable source of information for victims and CSOs.

In the case of racially based hate crimes, interviewees working in this field have underlined that it is worth highlighting the existence of the UNAR (National Anti-Racial Discrimination Office in English)², which has a Contact Centre where victims can communicate the attacks they have suffered³. As in the case of the OSCAD, these reports have an impact in terms of research and recording, but the UNAR does not have legal standing before the judicial authority and therefore cannot be a party in legal proceedings related to these discriminatory offences. Victims should, in any case, turn to associations registered on the UNAR lists - or other organisations dedicated to the discrimination field - for any service of legal assistance. The lack of legal standing of the UNAR, as well as its status as a governmental body, due to its direct political dependence on the Ministry of Equality, have been pointed out by some practitioners interviewed as a dysfunctional factor of this body.

As highlighted by all the professionals interviewed and organisations contacted, the initial phase of contacting the public authorities to report a discriminatory attack is crucial, as it constitutes the gateway to accessing justice for victims. In contrast to the importance of this initial act, there is a well-known phenomenon of underreporting of these crimes and a social tendency of reluctance to report and resolve the conflict through criminal proceedings. The resistance detected in the victims of hate crimes responds to internal and external or structural reasons.

✿ **The most frequently detected internal resistance** to reporting derives from the fear of

1 *Commissariato della Polizia di Stato, Stazione Carabinieri, Comando della Guardia di Finanza, Comando della Polizia Municipale. It can also be filed in the Prosecutor's Office, Ufficio Ricezione Atti.*

2 *Ufficio Nazionale Antidiscriminazioni Razziali: <https://www.unar.it/portale/home>*

3 *By telephone (800 90 10 10), or via an online questionnaire.*

secondary victimisation: not being taken seriously by the authorities, fear of reprisal by the aggressor or the environment that generates the violence, and shame in explaining the context in which the violent attack took place, as well as recognising the victim's personal situation that led to the crime, especially when the crime has a sexual component. Other factors that generate reluctance to report are affective or economic dependence on the aggressor and the lack of information on free legal aid and assistance services available to victims, which generates fear of further impoverishment resulting from dealing with the attack suffered.

- ✿ External resistance or structural obstacles to reporting are mainly related to the lack of efficiency of the criminal procedure. In this sense it has been highlighted, especially by the practitioners interviewed, that the main shortcomings of the criminal procedure in these cases are the slowness of the procedural steps, and the uncertainty and distrust about the effective chance of obtaining sufficient financial compensation. On this basis, it is concluded that, with regard to criminal proceedings, victims and professionals have a common perception of a negative disproportion between the efforts invested in the process and the satisfaction finally obtained.

In the analysis of reporting procedures for hate crimes, and crimes with a discriminatory basis against vulnerable groups, three areas that require further attention emerge from the interviews:

1. The phase prior to filing a complaint and dealing with criminal proceedings is crucial, both for the psychological integrity of the victim and for mitigation of the effects of secondary victimisation. The optimisation of this preliminary phase includes 1) raising the victim's awareness of the seriousness of the situation of violence they are suffering, 2) informing the victim of the protection and support services available that could enable them to reduce the fear of the collateral effects of reporting the crime and 3) strengthening the victim internally to face the various phases and acts of the criminal procedure that may cause them to relive the traumatic situation linked to the hate crime suffered. As highlighted by professionals dedicated to the psychological accompaniment of victims, the solution to victimisation resulting from questions from public authorities, and other declaratory acts, does not necessarily consist of avoiding these acts, which are often valuable in clarifying the facts, but in the awareness of the victims that they will have to face these acts, as well as the adequate psychological preparation to do so successfully.

2. Promoting access to justice for vulnerable victims is closely linked to the right to free legal aid and the effective provision of information about this right to those groups potentially most vulnerable to discrimination and hate crimes. The lawyers consulted in this study were unanimous in stating that in the majority of cases, the victims who approached them stated that they were unaware of the concrete articulation of free legal aid and that this fact was one of the main reasons that led them to delay the request for legal assistance⁴. Despite the widespread existence of this right in the Italian procedural system⁵, which complies with the standard provided for by Directive 2012/29/EU, an information gap has been detected in this regard in the information campaigns combating hate crimes at the social level. These campaigns provide information on emergency numbers or institutions to contact in the event of such attacks, but rarely does the information extend to the specific victim's rights. An information gap has also been detected in this respect with regard to the information provided by police officers following the complaint. Although they usually provide the victim with an exhaustive list of rights, only sometimes do they invest the necessary time in expanding the information and fleshing out the application for free legal aid. The lack of knowledge about the right to free legal aid increases considerably in the case

⁴ Free legal aid is regulated in the "Decreto del Presidente della Repubblica" (Presidential Decree) of 30/05/2002, no. 115, in the articles 74-145.

⁵ According to Article 74 of Presidential Decree 115/2002, legal aid is provided in criminal proceedings for the defence of citizens and also foreigners without means, suspects, defendants, convicted offenders, injured parties wishing to bring civil action, civilly liable or civilly obliged to pay a fine.

of foreign victims, who generally feel excluded from this right because they usually do not enjoy all the faculties linked to the status of Italian citizens. In this case, this perception is a misunderstanding that stems from a lack of information, since free legal aid is a recognised and guaranteed right in Italy regardless of the nationality of the subject⁶. Moreover, there are many associations in the territory to which foreigners without legal documentation can turn in order to benefit from the legal assistance of lawyers who provide services within these associations⁷. More activity to raise awareness of this right should be undertaken.

3. The training of law enforcement authorities is essential for the proper management of victims' needs from the outset. The field research carried out reveals a notable increase in training courses for police forces, promoted by the OSCAD, OSCE and other private, non-profit bodies and organisations, which are highly valued by stakeholders. In recent years, there has also been a growing sensitivity on the part of the authorities in the administration of justice in dealing with vulnerable subjects, which is perceived positively by professionals and victims. On the other hand, it is noted that the need for more training on hate crimes and discriminatory attacks should cover the appropriate way to deal with victims, and so on. There is also a need to increase the competence of these authorities in detecting the discriminatory basis or motive for these attacks. The lack of attention to this aspect by law enforcement authorities, at the first appearance of victims, has been pointed out by the staff of anti-discrimination organisations as a reason for the current under-recording of these crimes, which are not reported as discriminatory crimes to the OSCAD, and enter into the justice system under the guise of common crimes.

The training deficiency detected in Italy does not lie in the lack of initiatives, but in the lack of institutional coordination of the abovementioned initiatives, so this training is not yet cross-cutting and systemic. The general perception is that training is increasing but not sufficient, largely due to the fact that participation in these courses generally depends on the initiative and personal sensitivity of operators, as well as the fact that the possibility of accessing them is not widespread throughout the territory. The training resources available are currently too closely linked to territorial scope, and are more accessible in large territorial areas and capital cities - where the main organisations contrasting discrimination are concentrated - than in smaller or rural areas, where specialisation in these matters is also much lower.

As an example of an outstanding regional initiative, the research phase has highlighted the provision of a training fund for lawyers who want to specialise in anti-discrimination law in the region of Piemonte. A regional anti-discrimination centre has been created in this area, and a specialised network has been established in the different cities. In each city, there is an anti-discrimination node that reports all cases to the regional centre, on a regular basis. As part of this initiative, the Piemonte region provides annual financial support to the regional bar association - *Ordine degli Avvocati* - to organise training courses on anti-discrimination law. Once these lawyers have received training, they can register on specific lists of lawyers with expertise in this field. As a complement, a financial fund has been set up to allow victims to

6 *Art. 90.1 of Presidential Decree 115/2002: "The treatment provided for the Italian citizen is assured also to foreigners and stateless persons residing in the State."*

7 *Some of these are: "Programma Integra" (Migration, Asylum and Social Integration Centre) <http://www.programmaintegra.it>; "Asilo in Europa" (Asylum in Europe): <http://www.asiloineuropa.it/>; "Avvocati per niente" (APN) Lawyers for Free: <http://www.avvocatiperniente.it/>; "Borderline Sicilia": <http://siciliamigranti.blogspot.com/>; "CLEDU – La Clinica Legale per i Diritti Umani" (Palermo); "Caritas Italiana": <http://www.caritasitaliana.it/>; "Casa della Carità": <http://www.casadellacarita.org/english>; "Consiglio Italiano per i Rifugiati": <http://www.cir-onlus.org/>; Cooperativa sociale K-Pax: k-pax.eu "info – Welcome to Europe": <http://w2eu.info>; "Fondazione Franco Verga": <http://www.fondazioneverga.org/> (Milano); "Centro Servizi per i Cittadini Extracomunitari ACLI – Caritas" (Trieste); Rete Lenford – Avvocatura per i diritti LGBTI (Professional body of lawyers for LGBTI persons): <http://www.retelenford.it/>.*

pay lawyers, if the lawyers are registered on the above-mentioned lists, for services that are not usually covered by public sponsorship, such as legal consultancy.

C.2. Judicial process. Strengths and weaknesses

In a general approach, the compliance of Italian criminal procedure with the requirements of Directive 2012/29/EU, transposed into national law by Legislative Decree no. 212 of 15 December 2015, is positively assessed by the interviewees. Many studies on the implementation of the Directive and its integration into criminal procedure have been written so far, and most of them reflect an acceptable reception of the Directive's requirements from a regulatory point of view. This report aims at a more practical approach to the phenomenon, from the point of view of the needs of particularly vulnerable victims. For this reason, the following paragraphs focus only on reflecting the salient aspects of the process in this respect, as well as the areas that are still perceived as areas for improvement according to the experience of the interviewed subjects, professionals, and victims.

The most frequently highlighted procedural obstacle is the slowness of both civil and criminal procedures. As regards positive aspects to be highlighted in relation to the speed of the process, most of the interviewees have appreciated, firstly, a positive trend in recent years in the urgency for the granting of precautionary measures and victim protection. Secondly, the implementation of Law no. 69 of the 19th July 2019, ("Modifiche al Codice Penale, al Codice di Procedura Penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere"), known as *Codice Rosso*, has also been highlighted on the basis of the introduction of effective measures for speeding up proceedings in violence against women, especially in the investigation phase. However, this speeding up of proceedings is limited to the offences linked to gender violence, so victims of other types of discriminatory violence, who are particularly vulnerable during proceedings, do not enjoy the same benefit. The *Codice Rosso* has been an important step forward in this area, and its provisions could be appreciated as a model for the procedural articulation of procedures involving other types of vulnerable victims. In this sense, it is clear that there is still work to be done to clearly define the concept of vulnerable victim in criminal proceedings, and the attribution of this status to each person by means of individual analysis, as it seems that the generalisation of this attribute on the basis of the criminal typology could have the counterproductive effect of overloading the resources of the Administration of Justice.

The causes of the excessive duration of the process include well-known structural reasons that affect the Administration of Justice as a whole, but in the specific field of hate crimes, the most feasible way to improve is to speed up the investigation phase. There are certain hate crimes with complex characteristics, such as online hate crimes, which may contain technical elements that make it difficult to investigate and where uncovering the identity of the perpetrators may require more time. However, the majority of reported hate crimes are simple crimes, in terms of evidence collection and investigation strategy, and the perpetrators are usually easily identifiable as they come, in most cases, from environments close to the victim. In this sense, it would be advisable to promote the training of prosecutors and Judicial Police so that investigation is completed as soon as possible, once the indispensable elements for starting the trial have been collected. As highlighted by the professionals interviewed, the excessive length of the process, and the uncertainty that this entails, is one of the most risky factors for the psychological integrity of the victims.

Regarding the active participation of the victim within the criminal process, Directive 2012/29/UE has left the role of the victim in the proceedings, as well as the realisation of his/her/their claim for compensation, to national law. As remarked by some lawyers interviewed (P2, P6, P8), the offended person does not have ownership of the criminal prosecution in the Italian system, which lies in the hands of the Public Prosecutor. In this regard, the victim remains, for the entire duration of the criminal proceedings, *"the offended person and does not have the status of a procedural party but only the*

*condition of a procedural subject*⁸, because the Italian code attributes the victim limited powers in giving impetus and controlling the work of the judicial authorities. It must be recognised, however, that the offended party who is also damaged by the crime can, at their own choice, join the proceedings as a civil party to claim compensation for damages⁹. In this procedure, the victim can take action in the process accompanied or not by a lawyer, although all the lawyers interviewed stressed the importance of such legal assistance.

It has been pointed out by some of the lawyers interviewed that it is common for the victim to be required to make more than one statement during the investigation phase. This practice, frequently demanded by the defendant, is detrimental to the speeding up of the procedure, and may increase the risk of secondary victimisation of the victim, who feels that their credibility is questioned in every statement they make. This problem could be solved by a much stricter application of the rule, currently contained in the aforementioned *Codice Rosso*, according to which public prosecutors must hear the statement of the offended person as a matter of urgency and without the possibility of delegating this function¹⁰. In practice, it has been detected that public prosecutors sometimes neglect the first steps of the investigation and totally delegate this first phase to the police, leaving the victim's statement in their hands as well, and requesting it again at more advanced stages of the investigation.

Collaboration with the police and judicial authorities throughout the proceedings has been described as positive and agile in most cases. It is stressed by all of them that the accompaniment and assistance of a lawyer throughout the process is an essential aspect for the well-being of the victim, as well as to ensure that he/she receives timely information on the case file throughout the procedure. On a positive note, the Italian Code of Criminal Procedure provides for the victim to be informed of the closure of the case when it comes to serious crimes so that the offended party can object to the closure of the case¹¹. Despite this provision, it was pointed out by some of the experts interviewed that the lack of a lawyer from whom the victim could formally request information on the case, sometimes means that the victim does not receive this communication and, therefore, is denied the right to oppose the case being closed due to lack of notification.

As regards the training of operators in the judicial procedure, the general view is that they are trained professionals in their areas of expertise, but more specialisation is needed. It is still common to encounter judges who lack training in anti-discrimination law or management of vulnerable subjects. The lack of training of judges and prosecutors is mainly focused on the psychological dynamics behind certain hate crimes or discriminatory violence, as well as the needs that these crimes generate in their victims. Particularly noteworthy is the fact that all those interviewed on issues of discrimination against disabled people mentioned the lack of training of the judiciary, the police and the Public Prosecutor's Office in the management of the capacities of these people within the process, which often leads them to undermine the credibility of people with disabilities, undervaluing them or reducing their intervention in the proceedings to a minimum, delegating all actions to those who represent them, including the initial reporting of the facts. The proposal to create a specialised section of anti-discrimination law for persons with disabilities is noted here.

Alternative Dispute Resolution (ADR) and other restorative justice mechanisms in the field of discriminatory offences are not widely developed and applied in the Italian procedural system. In Italy, the principle of mandatory prosecution is in force; therefore, no policy to develop alternative dispute resolution can meet the primary need of reducing court procedures. The juvenile criminal trial, however, offers the possibility of redrawing the boundaries of criminal intervention, creating a middle

8 For a deeper insight BELLUTA, Hervé, "Quale ruolo per la vittima nel processo penale italiano? Which role for the victim in the Italian criminal process?" *Rev. Bras. de Direito Processual Penal, Porto Alegre*, vol. 5, no. 1, jan.-apr. (2019), p. 73-92.

9 Art. 74, 185 Italian Criminal Code; art. 78 Italian Code of Criminal Procedure..

10 Legge 19 luglio 2019, n. 69, art. 2.

11 Art. 408.2 Italian Code of Criminal Procedure.

ground in which it is possible to resolve some criminal conflicts without holding trials. In the social field, there are different entities that offer the possibility of restorative justice mechanisms, mainly dedicated to mediation¹². On the other hand, among some organisations dedicated to offering services to victims, there is the possibility of contacting professionals who exercise mediation functions and other extrajudicial conciliation techniques. However, it is not currently a service offered in a structural way within the justice system and its scope of application is concentrated in civil and familiar matters. In the criminal field, its application is mostly focused on crimes involving minors, and in crimes reported as hate crimes, its application is practically non-existent.

The main alternative to the traditional trial, which is applied in practice, is the institution of probation - *messa alla prova*¹³-, which contains certain principles linked to restorative justice. This consists of the suspension of the trial for the offender on the grounds of participation in a treatment programme and the carrying out of other actions to repair their victim's financial damage¹⁴. This mechanism is limited to crimes with minor penalties, and its success in practice can be attributed to the fact that the perpetrator is released from the sentence through the execution of some restorative conduct without the need to recognise his criminal responsibility. This institution, together with the attenuating circumstance of prior reparation of the damage¹⁵, has been highlighted as positive by the victims' lawyers interviewed, because they are some of the few cases in which the victims receive a financial amount of compensation derived from the crime. It should be clear that we are referring to a mechanism that does not focus on hate crimes, nor has its main application in them. This mechanism applies to ordinary crimes, in general, although some of them may be hate crimes, which, as explained above, do not exist in Italy as a specific criminal category, but as a consequence of the application of a discriminatory aggravating factor. It would, therefore, be possible to promote its implementation for hate-based attacks for which the penalty would respect the limits set by law.

C.3. Civil society's actions and initiatives

C.3.1 General mapping of anti-discrimination organisations.

As already said in the introduction, an online survey was also conducted to gather information about the various organisations working in the field in Italy. After extensive efforts, we managed to have 61 organisations fill out the survey, with only 32 completing it. The vast majority of these 32 are NGOs (24), while only 4 are public bodies and the other 4 are private bodies. Most of them work across different grounds for discrimination, even if there are some imbalances between grounds. Race/ethnicity, on the one hand, and sexual orientation/gender identity, on the other, are the most represented (12 and 13 answers), while the least represented is socio-economic status (1 answer). The majority of the organisations (20) operate within national borders, while 12 both nationally and internationally. The remaining ones operate at a regional/local level. Almost half (14) do not receive any public funding, while five are fully financed by the State. The remaining ones rely only partially on public subsidies. 17 out of 32 organisations effectively deal with victims of hate crime, providing mostly legal aid or assistance. The adoption of an intersectional approach in the services provided to victims is considered "useful/very useful" by

12 Those contacted for this research were *Centro Italiano di Mediazione e di Formazione alla Mediazione (C.I.M.F.M.)*; *Associazione Aleteia - Studi e ricerche giustizia riparativa* and *Centro Ricerche Interventi Stress Interpersonale - Centro di Giustizia Riparativa*.

13 Introduced by Law no. 67 of 28/04/2014, entered into force on 17/05/2014. Art. 168-bis to 168-quater Codice Penale; art. 464-bis to 464-novies ss., and art. 657-bis, Italian Code of Criminal Procedure.

14 Cass., sez. II, 30 July 2019, n. 34878. The judgment establishes that the judge, when assessing the adequacy of the programme presented by the accused to obtain a suspension of proceedings, must take into account the financial damage caused to the victim and the degree of reparation that he/she/they will receive.

15 Art. 62.1.6) Italian Criminal Code.

the vast majority of the respondents (30). Only seven provide or have ongoing collaborations with restorative justice services. This is consistent with the questions on potential training activities, where the least requested topic would be “restorative justice services”, signalling that there is still a need for some efforts to properly disseminate alternative justice solutions.

C.3.2 Support services to victims

The research carried out in this study by the online survey launched among the heads of 69 anti-discrimination organisations, as well as interviews with stakeholders, shows that in Italy there is an adequate basis of care for victims, but these services are not provided on the same level throughout the territory and in some cases, they are poorly coordinated, as they rely to a large extent on a volunteer structure. The degree of supply, long-term follow-up and professionalism of these services depends on economic and territorial factors. Anti-discrimination organisations and anti-violence centres have stated that they do offer effective help for these people to find support and information, a fact that has been confirmed by three victims interviewed (V1, V3, V6), but services that include effectively meeting post-crime integration needs are much harder to provide. The main services currently available for victims, and most positively rated by the interviewees, are those related to psychological support and contact with support groups and people who have suffered the same situation or with whom they share their personal conditions. In this sense, the positive impact for victims of meeting other people, sharing experiences and strengthening their confidence has been highlighted mainly by the LGBT+ community (P1, P2, V1). Most of the organisations consulted manage to offer listening services as well as legal counselling services. In relation to legal assistance services, some of them are focused only on consultancy, while other organisations also offer accompaniment in legal proceedings by the organisation’s lawyers. The level of assistance in this area is therefore variable and depends on the resources and funding of each organisation.

As far as services related to the financial and accommodation area are concerned, the offer is much more limited. Housing services are mainly offered by anti-violence centres, usually for women suffering domestic violence, and shelters, mainly for minors subjected to violence, whether for reasons of sexual orientation or on other grounds. The provision of safe housing services for victims is still very deficient, and some professionals have pointed out that it is not possible for third sector organisations to offer this service in a structured way (P5, P7), because they do not have an adequate structure and funding. Therefore, it would be necessary for public authorities to better coordinate the provision of social accommodation on a more permanent basis.

From the anti-racism organisations contacted, it has become clear that *“the institutional system is not organised well enough to be able to manage the provision of services on the ground in the long term, taking profit from the existing realities. It is not necessary that all organisations or associations offer all services, but that they all exist in the territory in one way or another, and that they are well coordinated and publicised. Currently, this coordination does not exist in a stable way and, therefore, it is not easy for victims to reach these assistance services”* (P10).

It is clear from this research that assistance services are often too dependent on private and third sector initiatives. The view of professionals in contact with victims is that victim assistance required by Directive 2012/29/EU is offered to a greater or lesser extent by organisations and associations that are not sufficiently funded. Even though it is a good option to rely on the civil structure for this assistance, professionals agreed that it would be optimal for these initiatives to be more recognised at the institutional level in order to ensure that they have access to the necessary resources to carry out their task. As the head of the legal department of an organisation dedicated to people with disabilities, one of the interviewees pointed out *“public administration support to third sector organisations is a reality and subsidies exist, but each organisation must*

manage the resources as best it can and, sometimes, insufficient financial or personnel resources prevent the provision of all necessary services. A much more integrated system of cooperation between the organisations and the public administration would be necessary” (P9).

C.3.3 Awareness-raising campaigns

In the last decade, awareness-raising campaigns on hate crimes or discrimination and bias-based violence against minorities have increased considerably in Italy. All interviewees highlighted a greater social awareness that they link, to a large extent, to the existence of these campaigns at different levels: school, television, in the workplace, etc. The education of society in tolerance and respect and the information for potential victims about their resources to overcome attacks are increasing. However, it should be recognised that there is still a long way to go. Key points to highlight in this regard are the following:

- 1) Awareness-raising campaigns rely heavily on the initiative of third sector organisations and the view of those involved in the matter is that there is still very little public support.
- 2) Greater account should be taken of the context and possibilities of the target audiences of information campaigns in order to reach them more effectively. Some interviewees pointed out that some campaigns reach out to society in general but have little effectiveness in the specific area of the potential victims they are trying to reach. This issue is particularly relevant for people with low economic resources or unstable housing, immigrants and people with disabilities.
- 3) Information campaigns should contain more specific information on rights and services for those affected and should be more stable campaigns over time. It has been pointed out that these campaigns are often too limited in time, or they arise in connection with media cases that are forgotten after a while.
- 4) A lower presence of campaigns related to discrimination against people with disabilities, which still have very little social visibility, has been highlighted. On the other hand, greater visibility of the reality of gender-based violence and discrimination based on sexual orientation has been detected, the latter largely due to the initiative and push of all the associations working in the sector.

C.3.4 Training activities

In line with awareness-raising campaigns, training activities have increased in quantity and quality in recent years. Organisations, such as the OSCAD, organise training courses for law enforcement workers or other interested actors, with the aim of implementing best practices in case management, victim protection and the avoidance of re-victimisation. Italy implemented ODIHR’s TAHCLE (Training Against Hate Crime for Law Enforcement)¹⁶ programme in 2014, and also participated in ODIHR’s project on “Building a Comprehensive Criminal Justice Response to Hate Crime”, which included the training of police, civil society, and lawyers on hate crime investigation and victim support, and the mapping of available hate crime data in the Lombardy region¹⁷. On the other hand, initiatives by Bar Associations have been highlighted, mainly related to gender-based violence and anti-discrimination law. All things considered, the training initiatives with the greatest impact are led by anti-discrimination organisations, as well as by other bodies linked to research, such as ASGI¹⁸ (*Associazione per gli studi giuridici sull’immigrazione*), CILD¹⁹ (*Coalizione Italiana per le Libertà e i Diritti civili*), “Rete Lenford”²⁰ (*Avvocatura per i Diritti LGBTI*), AIPC (*Associazione Italiana Psicologia e Criminologia*),

16 <https://www.osce.org/odihrtahcle>

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

18 <https://www.asgi.it/>

19 <https://cild.eu/>


20 <https://www.retelenford.it/>

“Diversity Lab”²¹, “Rete Nazionale per il contrasto ai discorsi e ai fenomeni d’odio”²², “Certi Diritti”²³, “Articolo 3-Osservatorio sulle discriminazioni”²⁴, “Il razzismo è una brutta storia”²⁵ or “Lunaria”²⁶.

The professionals interviewed highlighted that *“there is training for police forces, for example, through courses and training programmes offered by the OSCE”* (P1) and that *“in Italy, the actors in the process are increasingly trained, especially since the Codice Rosso. The discourse on vulnerable subjects and intersectionality is increasingly present among law enforcement and justice administration operators and authorities”* (P6). While appreciating this improvement, it is also true that the general feeling is that these training initiatives do not reach all the actors involved in the process. Some of the lawyers interviewed recommended that these activities should be more coordinated and mandatory. One of them affirms that *“the training exists, and there are many judges and other professionals with important and adequate sensitivity, but it is also true that there is no structural training and at the moment participation in training programmes and courses is voluntary in most cases”* (P4). In the same vein, another explains that *“As far as the training of society and workers in this field is concerned, much more is being done than in the past, but the main problem is the lack of coordination of initiatives and that it is still very much voluntary training. Training needs to be more cross-cutting and structured”*. Some proposals have been made in this area, such as, for example, the incorporation of an anti-discrimination law subject in law studies (P7).

The subjects identified as the most important for improving the training of professionals are 1) intersectional factors and the accompaniment of vulnerable subjects according to their specific needs, 2) the identification of discriminatory social discourses and discriminatory motives of a violent attack, 3) the psychological and social dynamics linked to hate crimes, as well as their consequences on victims.

C.4. Practitioners’ and victims’ views on the legal and political framework on hate crimes and victims’ rights

 **Right of information and support during criminal proceedings:** In response to Directive 2012/29/EU, the mechanisms for informing victims in criminal proceedings have been strengthened in Italian practice. The professionals and victims interviewed unanimously declared that, once the complaint had been lodged, victims were informed of the list of rights to which they were entitled. There is a general perception of a good awareness of this right to information by law enforcement operators. Satisfaction decreases, however, with regard to the effective understanding and explanation of these rights, which is often incomplete, and most practitioners state that this degree of effective understanding of rights and other procedural acts depends mainly on the work of lawyers and legal consultants, both private and those offered by third sector associations.

The subjective areas where there is the least satisfaction in relation to victim support and information are those where the victims are foreigners or persons with disabilities. It has become clear that this is a question of lack of resources, as the justice administration bodies do not yet have enough interpreters or cultural mediators, nor do they have enough people trained to

21 <https://www.diversitylab.com/>

22 <https://www.retecontrolodio.org/>

23 <https://www.certidiritti.org/>

24 <http://articolo3.org/en/>

25 <http://www.razzismobruttastoria.net/>

26 <https://www.lunaria.org/disinformazione-discorsi-dodio-immigrazione/>

accompany people with disabilities, mainly of an intellectual nature, in a proper understanding of the proceedings adapted to their capacities. The issues where the lack of information is greatest are 1) the concretisation of the right to free legal aid and 2) the specific support organisations to which victims can turn. In this last aspect, there is positive assessment of the progress made with regard to victims of gender-based violence, who are immediately redirected to Anti-violence Centres²⁷, but some operators point out that there is a lack of knowledge on the part of the public authorities of the realities of assistance for other types of victims.

✿ **Right of legal aid and compensation:** The right to free legal aid has existed in Italy for a long time and the implementation of the Directive has not entailed changes to previous legislation in this regard. Despite the information gaps identified in this research, victims of hate crimes are guaranteed free legal aid in criminal proceedings. Two areas for improvement, however, have been identified and could be addressed in the coming years:

1) Free legal aid does not cover legal counselling activities prior to the formal commencement of criminal proceedings. For many people immersed in situations of violence or daily discrimination, the lack of knowledge about their practical rights or the way in which the process will develop and whether their claim has a chance of success, generates a first barrier to accessing justice. This barrier is overcome thanks to the legal consultancy activity developed at the moment when victims decide to turn to a lawyer or to the listening and reception services of the multiple third sector organisations. The work of the organisations that offer this service on the basis of voluntary work, and which enable incidents of violence to be channelled into subsequent legal proceedings, should be highlighted in a very positive way. Apart from the work of these organisations, there is a lack of public funding for these legal consultancy activities, which are often reduced to the limited capacity and resources of those third sector organisations.

2) Free legal aid does not always cover the subsequent civil proceedings to claim financial compensation. It was stressed by most of the lawyers interviewed that free legal aid should cover the victim in all procedural steps linked to criminal proceedings in which he/she/they enjoy public sponsorship. On many occasions, victims are left without compensation because, after the generic recognition of the victim's compensation in the criminal judgement, they are unwilling to face the costs of the civil proceedings to obtain compensation.

In relation to **financial compensation** linked to the harm suffered as a result of the crime, the system's shortcomings are notable. This is the aspect highlighted as the most critical by all stakeholders interviewed. Despite the general recognition of financial compensation, the study of practice shows that victims very rarely obtain financial compensation for the crime. If they do, the compensation 1) consists of modest amounts and 2) is obtained after a lengthy process that often harms the victim psychologically. It is pointed out that judges tend to set low amounts in the criminal sentence and consequently these amounts do not act as a deterrent to the perpetrators of the crime. This last fact has been highlighted by organisations combating discrimination against people with disabilities and anti-racism organisations. They point out that there are certain companies or entities with discriminatory practices towards these subjects that do not change their behaviour because the payment of compensation to which they are condemned generates

27 *These centres are institutions dedicated to women who suffer domestic violence or are victims of sexual crimes. They offer free legal and psychological advice and, depending on resource availability, sometimes operate as shelters. Centres are usually financed and supported by local government (Regions or Municipalities) that are responsible for the general organisation of the social service system in their area.*

Both centres and, where available, shelters, are quite widespread on the Italian territory, but since they're mostly organised on a voluntary basis, they are quite small. Some shelters are able to offer hospitality to women with children, but anti-violence centres can also try to find temporary accommodation for them in other specific structures.

less economic damage than a structural change in their discriminatory practices.

In addition to the slowness of proceedings, the small amount of compensation and the lack of free assistance, another difficulty reported in obtaining financial compensation is the fact that in many cases the execution of the pecuniary sentence cannot be carried out due to the insolvency of the aggressor. As a positive action, Italy establishes a financial fund to compensate victims of violence who have not been able to obtain the execution of the financial compensation in the case of insolvency of the offender. However, practitioners have clarified that in this case the victims are only entitled to obtain a sum of money for the medical expenses they have incurred as a result of the violence. Despite progress, it is a limited field that could be widened in accordance with the fact that, due to the psychological or moral nature of some hate or discriminatory crimes, a large number of victims did not seek medical attention.

✪ **Existence and implementation of restorative justice:** The majority of the professionals interviewed stated that they had no experience of restorative justice and most of the criminal lawyers said that they would not currently recommend these mechanisms to their clients. Those who were in favour of these mechanisms recognised, in addition, that they are mechanisms that cannot be applied in a generalised manner and that a case-by-case decision is needed in this respect. The obstacles that are perceived as the most determinant for the current lack of success of these mechanisms are 1) the lack of knowledge of these means, 2) the lack of trained professionals, 3) the need for the aggressor to recognise the harmful action and be willing to initiate ADR and 4) the uncertainty about the outcome of these mechanisms, the failure of which would require a subsequent criminal procedure, thus increasing the length of the path to obtaining justice. One of the reasons for the lack of success of these mechanisms could be that there must be a willingness to conciliate on the part of the defendant, which is often lacking. On the other hand, this attitude is also required on the part of the victim, who is often unwilling to conciliate because he/she/they are motivated by emotional motives, the desire to obtain justice, or even revenge.

All the professionals consulted were unanimously of the opinion that more research is needed in this area, as it is true that criminal proceedings are not always the most appropriate way to resolve conflicts, even if they are currently presented as the most viable. An important point in favour of the development of state responses other than punitive mechanisms is the fact that many actions linked to hate crimes or other attacks with a discriminatory background are based on insufficient education in the field of democratic civic values. Under this approach, some anti-discrimination organisations linked to discrimination on racial or sexual orientation grounds have stated that mediation actions carried out in situations of minor conflict - not major hate crimes -, mainly in the family or school environment or in cases involving minors, have been remarkably successful in putting an end to the conflict. On the other hand, the promotion of alternative means of conflict resolution may also be interesting in order to give the victim a greater role in the process, to contrast the tendency of putting the victim in the background, a tendency which, in certain cases, generates an excessive feeling of uselessness and lack of prominence.

The judicial process assumes an important function in relation to the victim, which is to recognise the harm he or she has suffered and the responsibility of the person who caused it, but it is also remarkable that the criminal process puts the person of the accused at its centre, and the responses it normally offers do not satisfy the personal demands for justice that the offended person requests. The means of restorative justice, properly applied, could distance the victim's punitive claims from the criminal process, keeping it more neutral, and offering the victim another space to present his or her needs in a position of greater equality with the offender. This is, without doubt, an avenue that would require, on the one hand, further development, and research and, on the other hand, a major future investment in organisational and social resources and in training and education of society in the field of conflict resolution and the restorative aims of justice.

✶ **Assistance to victims with specific protection needs:** A general approach to the support of particularly vulnerable victims shows that these protection and assistance measures are provided for by law in a general way and, in practice, exist on the ground and in the courts, but they differ in extent and applicability depending on the resources available and the sensitivity of the actors involved. In this field, a distinction must be made between assistance offered within legal proceedings and assistance covering wider areas of the individual, which was developed above.

Within the criminal procedure, the areas of assistance that have been described with a higher degree of satisfaction are 1) the confidentiality of the process, 2) the distancing from the aggressor in cases of violent crimes against women or crimes in the family context, and 3) the assistance of a translator in the case of a foreign person, although it is not often as immediate as it should be. The areas in which less satisfaction was detected are 1) the avoidance of contact with the perpetrator throughout the procedure, which depends on the resources of the court and police stations, and 2) the avoidance of secondary victimisation in the victim's declaratory acts.

Practitioners interviewed have highlighted that a) there are few established practices to guarantee the necessary support to victims of discrimination according to their specific personal needs, b) in many cases the protection of victims, as well as the appreciation of their status as vulnerable victims, is left to the sensitivity of individuals, and c) regulatory tools have been developed for some specific areas, mainly gender violence or crimes against sexual integrity, but it would be necessary to include other realities so that these measures can be applied to all persons who have suffered crimes that have left them in a special situation of vulnerability. The scope of application of protection measures should be transferred from the type of crime suffered to the actual degree of need and vulnerability of each individual being. This last fact requires a greater number of specialised persons working in the courts.

D. CONCLUSIONS AND RECOMMENDATIONS

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D.1. Conclusions

There is a broad political and legal framework in Italy that combats discrimination and hate crimes. There are also various services that allow victims and witnesses to report these crimes, such as the OSCAD. However, the annual report of the Interior Ministry does not include data on intersectional violence, and bias-motivated violence still remains a major issue that needs to be addressed at a national level. One of the most challenging factors is the underreporting of these crimes.

The reporting process is also not always friendly to victims and witnesses of hate crimes. This is because the authorities do not have the necessary resources to properly address these crimes. For instance, it is hard for police officers and judges to grant vulnerable victim status to individuals from certain groups, more closely linked, in their mental schemas, to the creation of violence, such as migrants and Muslims. There is also a lack of training for these professionals to address people with disabilities appropriately, understand their situation and give adequate credibility to their statements.

Despite the various measures that have been implemented to combat discrimination and hate crimes, many police officers still lack the necessary training to properly manage cases of violence motivated by hate. It is also hard for judges to properly identify hate in their sentences. The victimisation that often occurs throughout the process can also contribute to the difficulties that victims and witnesses experience. For instance, due to the lack of coordination between the various actors in the criminal process, victims are often forced to testify multiple times, which can lead to reliving the traumatic events that they have experienced.

The intersectional dimension of bias-motivated violence needs to be considered in order to effectively address this issue. This concept should be used to identify the various factors that can affect the victims and witnesses of this type of violence. Although many professionals agree that the need for this approach is important, they also noted that it can be difficult to implement in a practical manner.

Restorative justice can be an effective alternative to punitiveness, as it allows the victim and the offender to recognise the significance of the incident and its effect on society. However, the potential power imbalance between the offender and the victim, as well as the possibility of re-victimisation, must be addressed before extending the reach of alternative justice measures.

D.2. Recommendations

- ✿ Adopt a more consistent and uniform legislative framework in the field of discrimination and hate crimes, amending articles 604-*bis* and *ter* of the Criminal Code in order to include discrimination on the grounds of disability, sexual orientation and gender identity.
- ✿ Design and implement policies for facilitating access to justice for victims of hate crimes, including online and third-party reporting, specialised police units and liaison or contact officers.
- ✿ Ensure that appropriate training and sensitisation are provided to law enforcement professionals to avoid secondary victimisation and to ensure that bias motives are not overlooked when assessing victims' protection needs, in accordance with Article 22 of the Victims' Rights Directive.
- ✿ Set up a specific procedure for police to refer the victim of hate crime to the available support services.
- ✿ Implement the EU Victims' 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.

- ✦ Ensure appropriate training to professionals offering supporting services to victims of hate crimes.

REFERENCES

BELLO, Barbara Giovanna, “Diritto e genere visti dal margine: spunti per un dibattito sull’approccio intersezionale al diritto antidiscriminatorio in Italia”, in *Diritto e questioni pubbliche*, vol. 15, no. 2 (2015), pp. 142-171.

BELLO, Barbara Giovanna, “Riflessioni critiche sulla legislazione penale italiana contro il discorso d’odio nel sistema multilivello: la prospettiva del paradigma del social working of law” in *Ragion pratica*, vol. 2, december (2019) pp. 535-561.

BELLUTA, Hervé, “Quale ruolo per la vittima nel processo penale italiano? Which role for the victim in the Italian criminal process?” in *Rev. Bras. de Direito Processual Penal*, Porto Alegre, vol. 5, no. 1 (2019), p. 73-92.

CHIRICO, Stefano; GORI, Lucia; ESPOSITO, Ilaria, *Quando l’odio diventa reato: Caratteristiche e normativa di contrasto degli hate crimes* (Polizia Moderna-Mensile ufficiale della polizia di stato, 2020). Available at: https://www.interno.gov.it/sites/default/files/inserito_reati_odio_-_oscad.pdf

EUROPEAN COMMISSION, “A Union of equality: EU anti-racism action plan 2020-2025”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2020) 565 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0565&rid=4>

EUROPEAN COMMISSION, “EU Strategy on victims’ rights (2020-2025)” Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2020) 258 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>

European Union Agency for Fundamental Rights (FRA), *Crime, safety and victims’ rights. Summary*, (Luxembourg: Publications Office of the European Union, 2021). Available at: <https://fra.europa.eu/en/publication/2021/crime-safety-and-victims-rights-summary-fundamental-rights-survey>

FERRARI, Daniele; VALENZI, Ilaria; PALAZZO, Nausica; *Intersectionality as a legal approach: a multilevel perspective between international law, European law, Italian law, and comparative perspectives*, (ISR-Centro per le scienze religiose, 2022). Available at: <https://www.projectingrid.eu/en/intersectionality-as-a-legal-approach-a-multilevel-perspective-between-international-law-european-law-italian-law-and-comparative-perspectives/>

GOISIS, Luciana, “Hate Crimes, Social Media and Criminal Law. Hints on the Recent Italian Legislative Proposal Against Incitement to Discrimination and Hate”, in *Rivista di studi giuridici sull’orientamento sessuale e l’identità di genere*, no. 1 (2021), pp. 67-87.

OSCAD - Direzione Centrale della Polizia Criminale, “La violenza contro le donne con disabilità” (2022). Available at: https://www.interno.gov.it/sites/default/files/2022-12/la_violenza_contro_le_donne_con_disabilita.pdf

OSCE-Office for Democratic Institutions and Human Rights (ODIHR), *Understanding the Needs of Hate Crime Victims* (2020). Available at: <https://www.osce.org/files/f/documents/0/5/463011.pdf>

PONOMAREVA, Olena, “La dimensione femminile dell’immigrazione in Italia, in IDOS, *Dossier Statistico Immigrazione*”, in *Rapporto UNAR. Dalle discriminazioni ai diritti* (2014), pp. 165 ss.

LITHUANIA



CounterHate

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HIGHLIGHTS

- ✿ The Lithuanian criminal legislation could be considered as sufficient and compliant with international standards. It also includes hate incitement as a substantive crime, therefore it criminalizes a specific category of hate speech.
- ✿ Legal framework does require further improvements, namely expressly including more protected grounds, such as gender identity and gender expression.
- ✿ Underreporting of hate incidents appears to correlate with the victims' lack of trust and access to sufficient information as well the lack of substantial and clear victims' support system.
- ✿ Existing hate crime training measures lack a sustainable intersectional approach.

INTRODUCTION AND METHODOLOGY

INTRODUCTION AND METHODOLOGY

Instances of hate crimes in Lithuania could be defined as still being latent and highly underreported, although the legal framework could be considered as compliant with internationally recognized standards. Since 2000, the Criminal Code of the Republic of Lithuania¹ includes article 170, criminalizing incitement of hatred on grounds of sex, race, nationality, language, descent, social status, religion, convictions, or views. National and international developments contributed in terms of including grounds of sexual orientation, age, and disability.

Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law in 2008, bound EU Member States to criminalize racist and xenophobic offenses. By analyzing the transposition of this EU-level legal act into the legislation of the Member States it could be established that the criminalization of incitement of hatred and violence was a major aspect of its implementation.²

International human rights mechanisms underlined country-specific issues in Lithuania related to hate crime and hate speech on multiple occasions. In 2019 United Nations Committee on the Elimination of Racial Discrimination expressed concern in regard to the “use of hate speech in the media, including online media, and in the political sphere.”³

The Prosecutor General of Lithuania issued the pre-trial investigation methodological recommendations on the characteristics of conducting, organizing, and leading investigations of hate crimes and hate speech on April 1, 2020⁴. It currently remains the only legal act in Lithuania that provides a detailed definition of a hate crime.

The report aims to identify the main issues that contribute to the overall latency and underreporting of hate crimes in Lithuania and explore and identify main problems that possibly limit a complex and intersectional approach to build a systematic and effective response to hate crimes.

For the implementation of the research phase of the Counter-Hate project, National LGBTI Rights Organization LGL (hereinafter - LGL) reached out to organizations that have demonstrated capacities of working with vulnerable groups and communities, have a record of working with the human rights issues, and (or) their representatives are part of the intersectional working group established at the Ministry of Interior of the Republic of Lithuania for the effective response to hate crime⁵. LGL also has a reliable network for engaging victims and professionals for the interviews. LGL remains one of the first points of contact for victims of homophobic and (or) transphobic crime. In addition, sometimes the cases are intersecting with other protected grounds, e.g. ethnicity or disability. In order to increase the respondent pool, LGL approached lawyers and legal professionals who have a demonstrated history of working with clients of vulnerable backgrounds (including but not limited to migrants, LGBTI, ethnic

1 *Law on the Approval and Entry into Force of the Criminal Code, 26 September 2000 No VIII-1968*

2 *European Commission, "Report from the Commission to the European Parliament and Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law", 2014*

3 *UN Committee on the Elimination of Racial Discrimination, „Concluding Observations on the Combined Ninth and Tenth Periodic Reports of Lithuania“, 2019.*

4 *Pre-Trial Investigation Methodological Recommendations on the Characteristics of Conducting, Organising, and Leading Investigations of Hate Crimes and Hate Speech Approved by Order of the Prosecutor General of the Republic of Lithuania No. 17.9-4265 on March 30, 2020 [“Lietuvos Respublikos generalinio prokuroro 2020 m. kovo 30 d. įsakymu patvirtintos Ikiteisminio tyrimo dėl neapykantos nusikaltimų ir neapykantą kurstančios kalbos atlikimo, organizavimo ir vadovavimo jam ypatumų metodinės rekomendacijos Nr. 17.9-4265”].*

5 *Order of the Minister of Interior No. 1V-62, February 24, 2020.*

minorities, persons with disabilities, etc.), to explore the possibility of including some of their clients in the research. These efforts resulted in 10 interviews scheduled with hate crime victims, although only 7 were conducted as some of these respondents at some point decided not to be included in this research (see Table 2).

Regarding the interviews with professionals, LGL deemed it necessary to include government and civil society representatives and legal sector professionals that represent the victims before various institutions and therefore have an elaborate knowledge of relevant procedural specifics. LGL reached out to the following groups of potential respondents: non-governmental (civil society) organizations working with hate crime victims or human rights issues in general, various authorities and public establishments, numerous representatives of the Lithuanian Law Enforcement system, experts from science/academic community working on hate crime and (or) hate speech research as well as those working on the establishment of relevant LegalTech tools.

LGL did not face any significant obstacles in terms of scheduling interviews with civil society representatives. However, representatives of government-associated agencies showed less flexibility in terms of participating in the interviews, most citing the lack of availability at proposed dates or increased workload, while others not responding at all. This is not necessarily an indicator of the predominantly negative institutional attitudes towards LGBTI organizations, but rather it likely reflects how hate crime issues are treated as a lesser priority on an institutional level. In the end, LGL conducted six interviews with lawyers and scholars, and other specialists (see Table 1).

Regarding the online survey, LGL relied mostly on its internal network, while also approaching other civil society partner organizations with the request to disseminate the survey using their internal resources. It must be noted that in Lithuania not many organizations define their area of expertise as being related to countering hate speech and hate crime, e.g. some of LGL’s partners work regarding gender equality mainstreaming but not necessarily in the gender-motivated crime areas. Legal professionals with significant experience representing hate crime victims were approached with the request to complete the survey, as well as three representatives of law enforcement known to work on hate-crime cases and (or) hate-crime training.

Table 1: sociodemographic data - professionals

Interview	Gender	Age	Professional role
P1	Female	53	Journalist, Researcher
P2	Female	66	University Advisor
P3	Female	32	Professor
P4	Male	37	Lawyer
P5	Male	30	Lawyer
P6	Female	67	Lawyer

Table 2: sociodemographic data - victims

Interview	Gender	Age	Factors of discrimination
V1	Male	23	Sexual orientation
V2	Female	34	Ethnicity
V3	Female	25	Gender identity
V4	Female	33	Ethnicity, gender
V5	Male	30	Disability
V6	Female	33	Sexual orientation
V7	Male	22	Sexual orientation

Table 3: Survey data

Universe: N° of organisations contacted	30	
Number of total responses	16	
Number of completed responses	14	
Responses rate (universe/total responses= Responses rate)	53%	
Discrimination field	Role	N
	Religion	2
	Race, ethnicity, and origin	3
	Sexual orientation and gender identity	3
	Disabilities	2
	Socio-economic status	3
	All types of discrimination / civil rights in general	5
	Other	0

Role of the respondent in the organisation	Role	N
	President/Director	2
	Head of department/program or project manager	2
	Expert Staff	1
	Volunteer	1
	Other	2
	Unknown role	8

A. DISCRIMINATION AND HATE CRIME NATIONAL CONTEXT

A. DISCRIMINATION AND HATE CRIME

NATIONAL CONTEXT

A.1. National legal framework on hate crime and discrimination.

A.1.1. Hate crimes

Hate crimes in the Criminal Code of the Republic of Lithuania (hereinafter – CC, Criminal Code) cover ridicule, expression of contempt, incitement of discrimination, violence, physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, beliefs or opinions (Article 170 CC).

However, the specific features of hate crimes are defined by other articles of the CC which regulate the following:

- ✿ The Prohibition of Discrimination on Grounds of Nationality, Race, Sex, Descent, Religion or Belonging to Other Groups (Article 169 CC);
- ✿ Creation and Activities of Groups and Organizations Aiming at Discriminating Against a Group of Persons or Inciting Against It (Article 170 CC);
- ✿ Public Condonation of International Crimes, Crimes committed by the Union of Social Socialist Republics (USSR) or Nazi Germany Against the Republic of Lithuania or Its Inhabitants;
- ✿ Denial or Gross Trivialization of the Crimes (Article 170(2) CC);
- ✿ Disturbance of Religious Ceremonies or Religious Celebrations (Article 171 CC);
- ✿ Genocide (Article 99 CC), Desecration of a Grave or Another place of Public Respect (Article 312 CC).

These criminal offenses are often classified as a coincidence with other crimes, for example, Article 170 CC to be incriminated along with Article 284 CC (violation of public order). It also must be noted that the motive of hatred and prejudice may not always be qualified as a criminal offense by itself but may constitute the following:

- ✿ **Aggravating Circumstance** (CC Article 60 (1)(12)): *the act has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views.*
- ✿ **Qualifying characteristic** of specific criminal acts, defined in Articles 129 (2)(13); 135 (2)(13); 138 (2)(13) CC: *in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views.*

Methodological recommendations issued by the General Prosecutor Office in 2020 replaced earlier recommendations “On the pre-trial investigation organization, leading and conduct of criminal acts, committed on the grounds of racial, nationalist, xenophobic, homophobic or other discriminatory motives” which was adopted back in 2009¹. The

1 “Methodological Recommendations on the Pre-Trial Investigation Organisation, Leading and Conduct of Criminal Acts, Committed on the Grounds of Racial, Nationalistic,

current version provides guidelines for law enforcement professionals and includes an updated hate crime definition and therefore supplements the existing regulations laid down in the Criminal Code.

According to the 2020 version of the Recommendations of the Prosecutor General, hate crimes are criminal acts, whose motives are hatred, bias, and/or prejudice against a group of persons, distinguished by the characteristics of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, beliefs or opinions. It also prescribes that not only persons but also their immovable property and tangible objects that are important to a respective community can become targets of hate crime.

Recommendations of the Prosecutor General attribute two main features to hate crime: an unlawful act and hatred, bias, and (or) prejudice. Also, there is a clear distinction between the definitions of a hate crime and hate speech based on three essential criteria: the nature of these acts, their level of danger, and their proof.

Thus, the Lithuanian legal framework discerns hate crimes as substantive (self-standing) criminal acts (Incitement of Hatred). The motive of hate crimes however can be identified as an aggravating circumstance or a qualifying characteristic. Although existing regulation technically is sufficient and appropriate, the most frequent classification is the coincidence of Article 170 CC and Article 284 CC.

In other cases, it is classified only as a violation of public order (Article 284 CC). Also, it should be noted that the motives of a hate crime could not only be defined as based specifically on hatred–bias, but also on desire to humiliate a person who belongs to a specific group, take advantage of them or express prejudice. Existing regulations also do not include such community-specific protected grounds as gender identity and citizenship that are not always covered by other grounds such as sexual orientation or descent.

In the hate crime context, issues revolve around the classification and identification of hate crimes, as well as the lack of systemic victim support mechanisms that reflect on their individual needs and characteristics, and many endeavors of state institutions lack sustainability as they are project/external funding based rather than being sponsored through national budgetary means.

A.1.2. Hate speech (Incitement of Hatred)

Although there is no distinct article of the CC that expressly defines hate speech in Lithuanian legislation, it is covered in Article 170 CC (Incitement of Hatred). Article 170 (2) of the CC establishes criminal liability for acts that publicly ridicule, express contempt for, urge hatred of, or incite discrimination against a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, beliefs or opinions:

The offender who publicly ridicules, expresses contempt for, urges hatred of or publicly incites

Xenophobic, Homophobic or Other Discriminatory Motives Approved by Order of the Prosecutor General No. 12- 14-40 on December 23, 2009 (“Generalinio prokuroro 2009 m. gruodžio 23 d. įsakymu Nr. 12.14-40 įsakymu patvirtintos metodinės rekomendacijos dėl nusikalstamų veikų, padarytų rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumų”). Retrieved from: . <https://www.prokuraturos.lt/data/public/uploads/2015/12/met-rek-del-neapykantos-2009-12-23.pdf>

discrimination by public statements, which provide specifically, arbitrarily, and not objectively chosen and stated information, opinions, facts, assessments, conclusions, etc., which express negative, scornful, demeaning views of the speaker towards specific groups of persons or the persons belonging thereto those groups.

The case law of the Supreme Court of Lithuania provides definitions² of ridicule, contempt, promotion of hatred, and incitement to discriminate which otherwise are not provided or detailed in the CC.

These definitions include:

- ✿ Ridicule: the violation of honor and dignity, depiction of a person or a group of persons as an object of ridicule.
- ✿ Contempt: particularly negative, disrespectful comments about a person or a group of persons, rejoicing over their misfortune or offenses committed against them, etc.
- ✿ Promotion of hatred: the imposition of fabricated information about a person or a group of persons that negatively describes them in the eyes of the public, creates hostility or provokes intolerance towards a person or a group of persons.
- ✿ Incitement to discriminate: a direct invitation or the indirect incentive to restrict the rights and freedoms of a person or a group of persons compared with other persons or their groups.

Criminal offenses defined in the Article 170 (2) CC are considered committed from the moment certain statements were made, and it should not be relevant whether there were any consequences of such statements. Lithuanian case law suggests a requirement to prove *real danger* to the values protected by the law in anti-LGBTI hate speech cases, although the European Court of Human Rights case laws discrimination based on sexual orientation to be the same other types of discrimination.³

According to the Recommendations of the General Prosecutor hate speech is considered to *be the public dissemination (by word of mouth, in writing or another form) of information (ideas, opinions, incorrect facts) which is used to ridicule, express contempt for, urge hatred for, incite discrimination, incite violence or a physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, beliefs or opinions.*

In terms of imposing criminal liability in cases related to the incitement of hatred, prejudice, hatred and/or biased attitudes are essential, as the speech is not considered a criminal act unless the motive is clearly present. According to Article 16 (2) of the methodological recommendations of the General Prosecutor, Incitement of hatred is perpetrated through the use of language, e.g. by writing or speaking certain words or by making certain statements, also using derogatory symbols (signs and other objects), or through video or photographs.

Certain hate speech assessment criteria are being used by Lithuanian courts in cases related to hate incitement.

✿ **Principle of *Ultima Ratio*.**

Criminal liability in a democratic society should be seen as the means of last resort, the final argument (*ultima ratio*), used in the preservation of protected legal assets and values in cases

2 The Supreme Court of Lithuania Proceedings No. 2K-91-976/2018 (March 13, 2018)

3 *Vejdeland and Others v. Sweden, petition No. 1812/07, Feret v. Belgium, petition No. 15615/07, Beizaras and Levickas v. Lithuania, petition No. 41288/15.*

where less coercive measures cannot achieve the same goals. Currently, the position is that one laconic, unethical comment does not pose a real danger to the values protected by law that would necessitate criminal liability. However, it should be stressed that in such cases, persons who incite hatred are not held accountable in any other way.⁴

★ **The systematic nature of actions.**

In hatred incitement cases it is deemed necessary to determine whether these instances were of systemic nature, that is these acts were repeated on multiple occasions and directed to a considerably wide range of persons. Accordingly, a single derogatory, humiliating and (or) discriminatory act is not considered enough to establish a criminal liability to arise if it does not include an element of incitement.

★ **Assessment of real danger**

The criterion of *real danger* is problematic in the sense that the existing regulations and (or) case law do not expressly explain how *real danger* should be determined. However, The courts deem it necessary to establish whether the danger to the values protected by criminal law is real as it is not enough for criminal liability under Article 170 (2) and especially Article 170 (3) CC to result from an offensive or derogatory public statement if it has no specific direct or indirect incitement of hatred, discrimination, violence or physical violent treatment to a certain group of persons, which could pose a real danger to the values protected by law. Thus, in each individual case, it is necessary to assess the severity of actions and whether they constitute criminal liability. As this criterion lacks clarity, it may contribute to further discussions on establishing an administrative liability in hate speech cases.

A.2. Statistics and data regarding bias-motivated crimes.

In Lithuania, the official statistics consist of only recorded crimes, i.e. recorded number of criminal procedures initiated by law enforcement institutions. This, however, does not reflect the actual number of hate crimes, e.g. in such instances when the victim does not want to initiate a legal procedure or simply does not want to report the incident to law enforcement institutions. Hate crimes are still a latent and underreported phenomenon. Data from the “Qualitative survey of communities susceptible to hate crime” conducted in Lithuania in 2019 reveals that “the number of hate incidents may be much higher than the official statistics”.⁵ This could be explained that reporting itself may be complicated and highly sensitive as reporting the hate crime in many instances may also mean “outing” themselves for the victims, which makes LGBTIQ-identifying victims particularly vulnerable, but may be relevant to other victim’s characteristics or victims with intersecting identities as well.

“I believe the underreporting of hate incidents might be related to the general trends of the current political culture of Lithuania where statements by politicians, which often target and humiliate a specific group, let’s say migrants or sexual minorities, are being tolerated. This sends a wrong signal that breeds distrust in authorities could further victimize and silence vulnerable communities”⁶.

This could also be substantiated by the lack of strategic instruments directly to counter discrimination

⁴ *AIŠKINAMASIS RAŠTAS DĖL LIETUVOS RESPUBLIKOS ADMINISTRACINIŲ NUSIŽENGIMŲ KODEKSO PAPILDYMO 831 STRAIPSNIU IR 589 STRAIPSNIO PAKEITIMO ĮSTATYMO, LIETUVOS RESPUBLIKOS BAUDŽIAMOJO KODEKSO 60, 129, 135, 138, 169, 170 IR 1701 STRAIPSNIŲ PAKEITIMO ĮSTATYMO. Retrieved from:*

https://e-seimas.lrs.lt/rs/lasupplement/TAP/a2f85900832711eb84c497f41d72a99a/ea8b6b5c832b11eb84c497f41d72a99a/format/ISO_PDF/

⁵ *Liutauras Labanauskas, Report on a qualitative study of communities susceptible to hate crime, 2019.*

⁶ *Interview with Professional 2, on file with the authors.*

and its various forms. For example the Non-discrimination Action Plan 2021-2023⁷ does acknowledge the prevalence and negative effects hate speech has on vulnerable communities, however, it prescribes only two measures to combat negative social attitudes and strengthen institutional responses to hate speech and hate crime. The first measure is to conduct activities to increase the understanding of hate speech among the general public and only twenty persons per year are expected to participate in these awareness-raising activities. These activities also cover a single ground (i.e. only nationality). Another measure is related to building capacities of law enforcement professionals in terms of hate crime response and investigation but this measure lacks any specific quantitative indicators.

Underreporting of instances of discrimination and hate crime is a persistent issue in Lithuania, particularly when it comes to incidents related to homophobic, biphobic, or transphobic bias. According to the European Union Fundamental Rights Agency (FRA) survey⁸, 61% of the Lithuanian LGBT respondents claim they suffer from discrimination or harassment based on their sexual orientation, while only one person in ten proceeds with reporting such crimes to the appropriate authorities.

“It seems that hate is an everyday occurrence, especially online, and at least to me it often seems that reporting is a waste of time. I am not sure about the outcome. I am not sure how I will be treated by the police. I don’t know if I won’t face any repercussions from the perpetrator or someone from their environment. I would of course report it if it was a violent crime, if a was assaulted, injured, but anything less won’t likely go very far.”⁹

It must be noted that the hate crime data on separate social groups that were potentially subjected to these crimes due to bias against them, became available in official statistics only in 2017 in Lithuania. In 2017 only 17 criminal acts under Article 170 CC (Incitement of hatred) were recorded in official statistics, 3 of which were recorded on the grounds of race, 11 on the grounds of nationality, 2 on the grounds of sexual orientation, and 1 on other grounds. In 2018, 21 cases were recorded, 2 of which were against a certain race, 5 on the basis of nationality, 9 based on sexual orientation, and 5 on other grounds. Statistics also reveal similar results in 2019¹⁰: 21 hate crimes were recorded under Article 170 CC (Incitement of hatred) in Lithuania. 11 of them were committed on the grounds of sexual orientation, 8 on the grounds of nationality, and the remaining on the grounds of race, religion or other characteristics.

The Ministry of Interior’s Report on the hate crime and hate speech situation in Lithuania 2020-2021¹¹ reveals the following recent trends and statistics:

- ✿ In 2020 and 2021, compared to previous years (2017-2019), there were 2-3 times increase of crimes registered under Article 170 of the CC (Incitement of hatred);
- ✿ In 2021, compared to previous years (2017-2020), there was an increase in crimes registered under Article 170 of the CC (Incitement of hatred) where the pre-trial investigation was suspended, terminated or the case was referred to the court were made to suspend, as well as in those crimes where the suspect(s) were identified during the investigation.

7 *ĮSAKYMAS DĖL NEDISKRIMINAVIMO SKATINIMO 2021–2023 METŲ VEIKSMŲ PLANO PATVIRTINIMO*. Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d18f32643b2a11eb8c97e01ffe050e1c?jfwid=->

8 *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey: results at a glance*. European Union Agency For Fundamental Rights, 2013. P. 15.

9 *Interview with Victim 7, on file with the authors.*

10 https://ird.lt/lt/reports/view_item_datasource?id=8467&datasource=45984

11 *Report on the hate crime and hate speech situation in Lithuania 2020-2021, Ministry of Interior*, https://vrm.lrv.lt/uploads/vrm/documents/files/LT_versija/Viesasis_saugumas/2020_2021%20ataskaita%20d%C4%97l%20neapykantos%20kalbos%20ir%20neapykantos%20nusikaltim%C5%B3.pdf

According to the aforementioned report, such changes were influenced by the following factors:

- ★ The changing practice of law enforcement institutions, after the ECtHR decision in *Beizaras and Levickas v Lithuania* (application no. 41288/15) came into force. This case concerned two young men who were in a relationship at the time. One of the applicants posted a photograph of them kissing on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in general, while others personally threatened the applicants. Both the prosecuting authorities and the courts refused to launch a pre-trial investigation for incitement to hatred and violence against homosexuals, finding that the couple’s behavior had been provocative and that the comments, although “unethical”, did not merit prosecution. The Court held that there have been a violation of Article 17 (Prohibition of discrimination) and Article 13 (Right to an effective remedy) and found in particular that the applicants’ sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them so publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation. Such a discriminatory attitude meant that the applicants had not been protected, as was their right under the criminal law, from undisguised calls for an attack on their physical and mental integrity.
- ★ Social context, namely COVID-19 pandemic, contributing to the increased activity on the internet, public discourse initiated due to Baltic Pride 2019 festival as well as the gender-neutral Partnership legislative proposal in 2021, etc.;
- ★ Inter-sectoral actions for hate crime and hate speech response, such as the establishment of alternative hate crime and hate speech reporting platforms, strengthening the capacities of the representatives of law enforcement institutions.

It must be noted that in 2020-2021 sexual orientation was a prevailing motive among the registered hate crime cases.

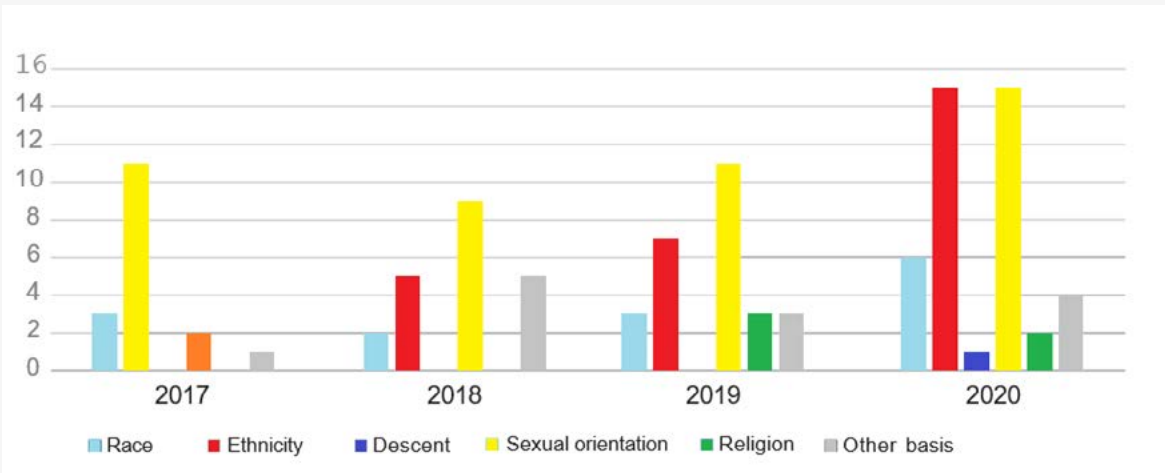


Figure A. Registered cases of incitement to hatred (Article 170 of the Criminal Code).

This is very similar to the earlier trends: according to the data of the Information Technology and Communication Department (hereinafter – ITCD) under the Ministry of Interior of the Republic of Lithuania¹² the number of registered cases of Incitement to hatred (Article 170 of the CC) has slightly increased in 2017-2020. In 2017, 17 cases of incitement to hatred were registered, in 2018 - 21, in 2019 - 28, in 2020 (data for January - November) – 42. Most cases under Article 170 of the CC are

12 www.ird.lt

registered on the grounds of nationality (38), sexual orientation (37) and race (14).

Issues related to the classification of hate crimes and criminal offenses, in general, may contribute towards distorting the statistics and view of the actual hate crime rates in Lithuania. As previously mentioned, oftentimes hate crimes are classified as violations of public order under Article 284 CC, despite the obvious motive of hatred.¹³ Online hate speech also remains a rather obscure phenomenon since the official statistidooes not provide distinct data on the nature and features of the hate incitement cases, that is how many of them took place online.

However, there is an alarming trend that fewer hate speech incidents reach advanced procedural stages in Lithuania. ITCDD data reveal that in 2019, 39 criminal hate speech investigations were discontinued on the grounds that no criminal offense had been committed, in 2020, 47 such investigations were suspended or terminated. Such data may suggest that hate speech and hate crime incidents are treated more as a formality by the authorities, rather than being thoroughly investigated.

In addition to this, recently there were two different instances (taking place in 2020 and 2021) with very similar contexts and circumstances concerning homophobic threats directed at the staff of LGL. Pre-trial investigation in which the suspect was not identified¹⁴, was suspended indefinitely, however, the one in which a suspect was identified was terminated. The latter case also indirectly concerned an administrative case whe¹⁵re the police was an applicant in a case against the municipality of Vilnius, questioning the legitimacy of a rainbow crosswalk and its compliance with traffic regulations.

A.3. Social perceptions towards and prejudices against minorities.

Different social groups are being subjected to biased opinions and stereotypes in Lithuania. European Commission's "Special Eurobarometer 493: Discrimination in the EU (2019)" data reveal that Lithuanians tend to be suspicious about people who may appear "different" and associate people from culturally different environments foremost with threats¹⁶. Same survey also reveals the persistence of discrimination against different ethnic, national and religious groups as well as LGBTI persons in Lithuania. E.g. only 26% of Lithuanian respondents agree with the statement that "it would be acceptable for a gay, lesbian or a bisexual person to hold the highest elected political position". Such numbers imply a persistent culture of isolation, meaning that not only the persons and communities may become less active in a social, political and cultural life, but their fundamental rights, such as the right to freedom of thought, conscience and religion, may become targets of hate speech and hate crime¹⁷.

*More migrants open up about suffering at the hands of authorities but that shows only a small fraction of the overall situation. Many who were granted protection still struggle, from open or less open negative attitudes or clear discrimination because of their appearance or language, possibly hate crimes too. They simply do not want to deal with authorities again, therefore many of those instances are not reported and may never be revealed in any of the official statistics*¹⁸.

13 NORMANTAITĖ, Kristina. *Response to hate crimes: the overview of the situation in Lithuania* ["Atsakas į neapykantos nusikaltimus: situacijos Lietuvoje apžvalga"], 2017

14 <https://www.jarmo.net/2021/04/po-grasinimo-issaudyti-lgl-biuro.html>

15 <https://madeinvilnius.lt/naujienos/miestas/teismas-panaikino-vilniaus-policijos-nurodyma-pasalinti-vaivorykstes-pereja-pylimo-gatveje/>

16 European Commission, „Special Eurobarometer 493: Discrimination in the EU." 2019, <https://data.europa.eu/euodp/en/data/publisher/commu>

17 European Convention on Human rights, Article 10, https://www.echr.coe.int/documents/convention_lit.pdf

18 *Interview with Professional 3, on file with the authors.*

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B.1. Profile of the most vulnerable groups

As previously mentioned, official data reveals that most cases under Article 170 of the CC (incitement of hatred) are registered on the grounds of nationality, sexual orientation and race. This indicates that in Lithuania there are several groups that may be more susceptible to experiencing hate incidents. Although this seems to correspond with the findings of the conducted interviews, certainly more vulnerable groups could be identified considering a broader Lithuanian social and legal context.

GENDER. According to the Gender Equality Index, among 27 EU countries Lithuania ranks 22nd with 56.3 out of 100 points, meaning that Lithuania's score is 11.6 points below the EU's average score and its ranking has dropped by four places since 2010¹.

Ministry of Justice of the Republic of Lithuania raised concerns about the supposedly ambiguous and broad definition of violence against women arguing that the prioritization of the protection of women from violence might violate the constitutional principle of equality because men suffer violence as well², although up to 79% of the victims of intimate partner violence are women and 90% of perpetrators are men³.

Societal attitudes and behavior of women and men are still impacted by the traditionalist family model depicting males as breadwinners and females as caregivers⁴. However, in Lithuania there are no state-sponsored and systemic measures to counter gender stereotypes and prejudices about social gender roles. Most measures that exist are very fragmented and lack sustainability. Moreover, existing paternity leave schemes contribute to perpetuating the role of father as an assistant to mother in childcare and do not have the capacity to reduce the gender care gap or counter pre-existing stereotypes.

Also, the current practice of state-guaranteed aid is not effective because often lawyers lack sufficient knowledge regarding the concept of coercive control in cases of domestic violence. Lack of understanding of gender-specific issues may contribute to the less effective procedure in terms of hate crime and hate speech investigation as well.

DISABILITY. Statistics suggest that people with disabilities are more likely to be at risk of poverty: the risk level of persons with disabilities was indicated as 35%, as compared with 18% of the general population⁵. Also, Lithuania is one of the EU countries with the greatest difference between people with and without disabilities participating in employment. According to the data of the Ministry of Social Affairs and Labour⁶, this difference accounted for 31.9% in 2019, with the employment rate of people with disabilities being 29%, as compared to the average of 40.7% in the EU.

1 European Gender Equality Institute (EIGE). *Gender Equality Index: Lithuania, 2020*, <https://eige.europa.eu/publications/gender-equality-index-2020-lithuania>

2 *Conclusions by the Ministry of Justice of the Republic of Lithuania, "On the Draft Law on Protection against Domestic Violence and Violence against Women", 19 May 2020*, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/f6ff255099b811eaa51db668f0092944?jfwid=zjgvrwc4c>

3 *Statistics Lithuania, "Domestic violence", 30 January 2020*: <https://osp.stat.gov.lt/informaciniai-pranesimai?articleId=7155309>

4 *Pilinkaite Sotirovič, V., Kontvainė V., Contemporary men and gender equality: incentives and obstacles for men to get involved in child care activities, Šiuolaikiniai vyrai ir lyčių lygybė: paskatos ir kliūtys vyrams įsitraukti į vaiko priežiūrą. Vilnius, 2020*, <http://gap.lt/wp-content/uploads/2021/02/%C5%A0iuolaikiniai-vyrai-ir-ly%C4%8Di%C5%B3-lygyb%C4%97.pdf>

5 *Statistics Lithuania, Database of Indicators*, <https://osp.stat.gov.lt/statistiniu-rodikliu-analize#/>

6 <https://socmin.lrv.lt/lt/veiklos-sritys/socialine-integracija/neigaliuju-socialine-integracija/statistika-2>

Among the greatest concerns is the violence experienced by women and girls with disabilities, including domestic violence⁷. In Lithuania, in 2019, a total of 285 women with disabilities were affected, including 156 who experienced violence. On average, among all affected women with disabilities, 60% of women with disabilities became victims of violence. However current statistics do not fully reveal the actual situation of victimization, of psychological and sexual violence of people with disabilities, emphasized in international documents.

LGBTQI (Lesbian, gay, bisexual, transgender, queer and intersex) PERSONS. It must be noted that the situation of transgender individuals or people that do not fit the heteronormative image may be particularly vulnerable to hate crime attacks, as the existing Lithuanian legislation does not recognize the protected grounds of gender identity or sex characteristics.

The LGBTI Survey findings released by the European Union (EU) Agency for Fundamental Rights (FRA) in 2019⁸ revealed that Lithuanian respondents admitted always (14%) or almost always (20%) feeling downhearted or depressed. Also, 55 % of Lithuanian respondents personally felt discriminated against in 8 areas of life due to their LGBTI identity. Survey results also showed a lack of openness in Lithuania: 51% of Lithuanian respondents confessed to hiding their LGBTI identity at work, while 59% admitted to not being open about it at school. In addition, 44% of Lithuanian participants in the survey said that they avoided holding hands with their same-sex partner in public fearing that they might be subjected to threats, assault, or harassment.

The results of the nationwide LGBTIQ high school student survey carried out in 2017⁹ revealed that 82% of the respondents were bullied due to their sexual orientation and (or) gender identity in the past year, while 50% of the survey respondents also stated that their teachers did not react appropriately to homophobic bullying, if they reacted at all.

Negative societal attitudes are perpetuated by the so-called “Anti-Gay Propaganda” provision that is present in the Law on Protection of Minors from the Detrimental Effects of Public Information. No legislative procedure was initiated to amend the Article 4.2.16 so it could not be used to limit LGBTIQ related content with the discriminatory view on the grounds of sexual orientation.

Both the Action Plan for Promoting Non-discrimination 2017–2019 and the Action Plan for Promoting Non-discrimination 2021-2023, despite being key policy documents for countering discrimination, do not sufficiently address the specific needs of LGBTI individuals, nor do they include any LGBTI-specific measures with qualitative and quantitative progress indicators.

MIGRANTS, ASYLUM SEEKERS AND BENEFICIARIES OF INTERNATIONAL PROTECTION. Social surveys discern a pattern in preferences towards ethnic and migrant groups perceived as “culturally similar”, while groups perceived as “culturally distant” are viewed rather negatively.

During the reported period, social distance regarding the Muslims and refugees remains significant: in 2020, about 41% of Lithuanian residents said they would not like to have Muslims as their neighbours, and almost 27% stated they would not like to have neighbours who are refugees. However, 68% of Lithuanians were in favour of accepting citizens of Belarus arriving for humanitarian reasons¹⁰.

7 [https://socmin.lrv.lt/uploads/socmin/documents/files/Ataskaita_Smurtas_artimoje_aplinkoje%20-%20kokybinio%20tyrimo%20ataskaita_docx%20\(5\).pdf](https://socmin.lrv.lt/uploads/socmin/documents/files/Ataskaita_Smurtas_artimoje_aplinkoje%20-%20kokybinio%20tyrimo%20ataskaita_docx%20(5).pdf)

8 European Union Agency for Fundamental Rights (FRA), LGBTI Survey Data Explorer, <https://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer>.

9 <https://www.lgl.lt/naujienos/90-proc-lgl-apklausoje-dalyvavusiu-lgbt-moksleiviu-baige-mokykla-ketina-emigruoti/>

10 The Institute for Ethnic Studies of the Lithuanian Social Research Centre (LSRC), the results of public opinion polls carried out between 2016 and 2020, <http://www.ces.lt/veikla-2/ziniasklaidos-stebesena/visuomenes-nuomones-apklausas/>

In terms of migrant integration, the Migrant Integration Policy Index 2020 (MIPEX 2020) concluded that Lithuania's integration policies posed more obstacles than opportunities for integration¹¹. The country's approach to integration is classified by MIPEX 2020 as "Equality on Paper". While immigrants enjoy basic rights and protection in Lithuania, they do not enjoy equal opportunities to participate in society. Limited opportunities for political participation leave migrants in Lithuania highly marginalized.

Irregular migration flow to Lithuania, which became evident in August last year, was denominated by numerous authorities and media outlets as "hybrid war" where the Lukashenko regime allegedly uses "illegal" migrants as weapons. Various human rights organizations as well as Seimas Ombudsmen Office representatives¹² raised concerns regarding the irregular migration management measures which also attracted international attention.

Since August 2021, LGL received numerous reports from around 45 LGBTIQ-identifying migrants, seeking legal and psychological support. Most common complaints included the lack of access to medical services, dehumanizing conditions at the camps, and some migrants mentioned being separated from their same-sex companions.

Individual reports available to LGL also suggest that many asylum requests failed to be registered and there is an ongoing tendency towards misapplication of the DSSH (Difference, Stigma, Shame and Harm) model by the migration authorities which is used for assessing asylum seeker claims based on persecution on account of their sexual orientation.

United Nations Committee against Torture addressed numerous concerns regarding Lithuanian Migration policy specifics, including procedural standards and competencies of the migration officials¹³. It urged Lithuania to take measures to ensure that detention of asylum-seekers, refugees and undocumented migrants is implemented as a last resort and provide adequate reception conditions, taking into account specific needs of vulnerable persons. Lithuania was also urged to ensure that asylum requests submitted by asylum-seekers, including those arriving in irregular manner and in times of emergency, receive appropriate consideration by the competent authorities and fair treatment is guaranteed at all stages of asylum proceedings, including an opportunity for effective and impartial review by an independent decision mechanism, with an automatic suspensive effect.

ETHNIC MINORITIES. Lithuanian authorities become increasingly aware of and put effort into improving the rights of people belonging to ethnic minorities. The state recognizes that discrimination is one of the main elements preventing the integration of different ethnic minorities into the society, and that hate crime committed against ethnic minorities require more consolidated effort as the official crime data do not reflect the real situation.

National minorities in Lithuania account for about 14.1% (393,600) of the estimated 2,792 million residents of Lithuania¹⁴. The biggest minority groups are Poles (5,7%) and Russians (4,5%), while Belarusian, Ukrainian, Jewish, Latvian, Tatar, German, Roma and other ethnicities constitute about 3.9%.

Available data suggest that Roma people (along with Muslims and Chechens) remain subjected to the least favorable societal attitudes. The study conducted by the Institute of Ethnic Studies in 2020 shows that more than half of the respondents would not want to live near Roma, 41% of the respondents would

11 Solano, Giacomo and Huddleston, Thomas, *Migrant Integration Policy Index 2020*, 2020, see *Lithuania*, <https://www.mipex.eu/lithuania>.

12 <https://www.vz.lt/verslo-aplinka/2021/10/07/seimo-kontrolierius-migrantu-salygas-priylgino-nezmoniskam-elgesiui>

13 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the fourth periodic report of Lithuania*, 21 December 2021

14 *Statistics Lithuania, Database of Indicators for 2020*, <https://osp.stat.gov.lt/statistiniu-rodikliu-analize#/>

not like to live in the vicinity of Muslims and 36% of the respondents would not live near Chechens¹⁵.

Hate crimes and hate speech continue to pose a challenge as most official hate crimes are perpetrated on the grounds of ethnicity, although professionals report that victims hesitate to report their cases.¹⁶ Ethnicity-based hate crime incidents amount to 410 cases registered in 2012-2020.¹⁷

Anti-Semitism is widely evidenced on social media platforms and through vandalism/ hooliganism on buildings/memorial sites/monuments that relate to the Jewish ethnic minority. These kinds of anti-Semitic attacks are mostly encountered in cities, whereas outside largest cities the issue is comparatively minor. Yet, there is a lack of official data about concrete anti-Semitic incidents towards members of the Jewish Community of Lithuania.

As previously mentioned, according to a qualitative study on Roma community situation in Lithuania¹⁸, Roma people remain among the most vulnerable minority groups in Lithuania. Roma people tend to experience discriminative speech and behavior in all forms and in many areas of life, insults are hurled in public spaces (i.e., on the street), hate speech or physical violence.

B.2. Presence and impact of intersectionality

Shortcomings of the official hate crime data registration are evident since the official statistics only record one protected ground, and it is not possible to retrieve data on the basis of several protected grounds in a single case, or in a group of cases. Such technical obstacles clearly represent a lack of an intersectional approach to hate crime and hate speech.

In terms of understanding of intersectionality as a concept, interviews with professionals revealed good general comprehension. Most respondents were able to name some examples of intersectionality applications, including those related to their work practice, most were related to such measures as working with different communities. Majority of online survey respondents also stated that they understand this concept, yet they also stated not knowing if intersectionality is applied in their organization. Most of the survey respondents did not provide concrete examples of how intersectionality is applied within their organizational practices.

Some professionals linked intersectionality to perpetrators' profiles, saying that incidence of crime is higher among perpetrators from high-risk backgrounds, especially if there are multi-risk factors, such as poverty, substance abuse, or difficult family situations.¹⁹ One victim linked intersectionality to their personal experience sharing that:

*I was targeted not because of my ethnicity but because of my gender too. How can intersectionality be recognized in hate crime if it is not recognized elsewhere?*²⁰

Interviewed professionals tend to stress that a person who has more than one vulnerable characteristic

15 *The results of the survey of public attitudes in 2020, commissioned by the Institute of Ethnic Studies of the Lithuanian Center for Social Research, 13-23 October 2020, <http://www.ces.lt/wp-content/uploads/2010/02/Visuomen%C4%97s-nuostatos-apklauso-rezultatai-20201.pdf>.*

16 *Interview with Professional 3, on file with the authors.*

17 *Information Technology and Communications Department under the Ministry of the Interior, Data on criminal offenses committed to discriminate or express hate to a group of persons or a person belonging to a group in the Republic of Lithuania, 2019-2020, https://www.ird.lt/lt/reports/view_item_datasource?id=8928&datasource=55343.*

18 *[https://tmde.lrv.lt/uploads/tmde/documents/files/Rom%C5%B3%20pad%C4%97tis%202020_TYRIMO%20ATASKAITA_galutin%C4%97%20\(002\).pdf](https://tmde.lrv.lt/uploads/tmde/documents/files/Rom%C5%B3%20pad%C4%97tis%202020_TYRIMO%20ATASKAITA_galutin%C4%97%20(002).pdf)*

19 *Interview with Professional 5, on file with the authors.*

20 *Interview with Victim 4, on file with the authors.*

would likely be susceptible to becoming a victim of hate crime or other forms of unfair or discriminatory treatment. It also might suppress victims' determination to report about the incident to relevant authorities.²¹

B.3. Outstanding personal consequences and needs of victims of hate-based violence

“Even professionals tend to oversee the importance and impact of hate crime as message crime. It targets a person's identity and is more personal and humiliating than let's say typical theft. It should not be ignored that these victims need specific support during and after the process”²².

Respondents stressed on the lasting impact of hate crimes and the need to increase the quality of services, not only investigation itself²³.

“When you experience it, it is not something that you can easily forget. You try not to think about it but ultimately you do think why it was me who was targeted and if there is something wrong with me”²⁴.

21 Interview with Professional 5, on file with the authors.

22 Interview with Professional 6, on file with the authors.

23 Interview with Victim 1, on file with the authors.

24 Interview with Victim 6, on file with the authors.

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C.1. Reporting procedures. Strengths and weaknesses

There is no single specific form for reporting a crime (i.e. hate crime or non-hate related crime) to the law enforcement: it can be done in person at a police station, court or prosecutor's office, calling the general emergency number, writing a report, or reporting via email.

The Methodological recommendations of the Prosecutor General confirm that hate crimes have their own specific characteristics. The recommendations state that:

“In the cases of criminal acts when they obviously are or may be connected to racial, nationalistic, xenophobic, homophobic, religious or other discriminatory motivation due to the group affiliations of a victim which are specified in the criminal law and these recommendations, the initiation of a pre-trial investigation cannot be formalized in pre-trial investigation bodies and the public prosecutor's office by combining the making of the procedural decision only on the basis established in Article 166 (1)(1) of the Criminal Procedure Code and/or by requiring the information about the potentially committed criminal act not in a regular way (not in writing, but, for example, only orally, by phone or other electronic means of communication) from the person who submitted a written request (complaint, statement, including the recording of verbal information in a protocol-statement), if the person is obviously unwilling or refuses to do so due to the wish to not reveal their identity or other motives.”

This suggests that the representatives of law enforcement are supposed to take a proactive role in order to understand whether the hate motive was indeed present in a concrete situation, even if the victim may not be willing to reveal certain details to the investigator. This principle is not always applied by the authorities. On one occasion concerning threats to LGL staff (incident took place in August, 2022)¹, Executive Director of the organization was told by the investigator *“why are you even coming here [to the police station]? we will terminate this investigation anyway”*. The pre-trial investigation was indeed terminated and LGL's effort to appeal to the Prosecutor's office proved to be futile.

C.2. Judicial process. Strengths and weaknesses

Many hate crime investigations were renewed after the European Court of Human Rights decision on the case of *Beizaras and Levickas v. Lithuania* (2020) came into force.

This breakthrough European Court of Human Rights ruling reflected on the systematic failure of the Lithuanian law enforcement institutions to maintain its equity and impartiality and secure the procedural rights of two gay men who faced flagrant instances of homophobic hatred.

Despite positive developments, adequate classification of hate crimes and the identification of the motive of hatred remains a relatively large obstacle to the effective investigation of hate crime. Existing case law suggests that the perpetrator's bias and incitement of hatred is to be classified under Article 170 CC, and in those cases when the crime is committed in a public space—as an ideal coincidence with Article 284 CC.

Incitement of hatred (Article 170 CC) is also applicable in such cases when the incitement itself does not happen, i.e. the “public” element is lacking. However, Lithuanian hate crime case law remains sparse when the motive of hatred should be assessed as an aggravating circumstance rather than a self-standing criminal offense.

¹ <https://www.jarmo.net/2022/08/lgl-darbuotojams-pamastymus-apie-dalgi.html>

C.3. Civil society's actions and initiatives

C.3.1 General mapping of anti-discrimination organizations

In Lithuania, there is no general victim support mechanism funded by state authorities that would provide generalized or specific support, e.g. emotional support, psychological support services, legal assistance to all victims of crime². The same could be said by the non-governmental sector: although there are organizations working with victims of crimes, these efforts are often sporadic and do not cover the specific needs of all hate crime victims.

Working Group to increase the effectiveness of the fight against hate crime and hate speech was established by the order of the Minister of the Interior of the Republic of Lithuania on 24 February 2020 by bringing together public authorities and non-governmental organizations. It has been tasked with:

- ✿ Considering the issues of raising public awareness of hate crime and hate speech, promoting dialogue with vulnerable communities and other ways to increase the effectiveness of the fight against hate crime and hate speech and making relevant proposals;
- ✿ Monitoring the implementation of the international obligations in the field of prevention of hate crime and hate speech, and preparing proposals on their proper implementation;
- ✿ Reviewing and commenting on the relevant legislation and its drafts;
- ✿ Considering the issues involved in improving the monitoring of hate crime and hate speech in Lithuania;
- ✿ Preparing and publishing annual reports on hate crime and hate speech in Lithuania;
- ✿ Exchanging relevant information on planned and ongoing activities and best practices in the field of prevention of hate crime and hate speech;
- ✿ Initiating events to strengthen the public's capacity to recognize hate crime and hate speech, reduce the latency of hate crime, and strengthen the relevant competences of law enforcement institutions and other state institutions and bodies and civil society organizations;
- ✿ Considering the recommendations of international organizations, CSOs and other organizations with regard to the response to hate crime and hate speech in Lithuania and preparing proposals for their implementation.

In 2020, four meetings of the working group took place. The main information about the activities of the working group is publicly available on the website of the Ministry of the Interior.

Civil society also formed the Coalition of Human Rights Organizations (HROC). In the summer of 2011, eight non-governmental organizations working in the field of human rights and anti-discrimination decided to join forces as the Human Rights Coalition (HRC).

On June 20th of 2011, representatives from the Lithuanian Gay League, Lithuanian Jewish Community, Lithuanian Centre for Human Rights, Centre for Equality Advancement, Centre for Equal Rights and Social Development, Mental Health Perspectives, Roma Community Centre and Human Rights Monitoring Institute signed the Human Rights Coalition's memorandum.

The Human Rights Coalition was established in response to:

- ✿ A regress in the human rights sector since Lithuania joined the European Union in 2004;

2 https://fra.europa.eu/sites/default/files/frc-2013-protection_of_hate_crime_en.pdf

- ✿ A lack of political will and failure by governmental institutions to formulate a coherent, effective and progressive human rights policy;
- ✿ Public disappointment and feelings of helplessness, expressed through rising distrust in governmental institutions, active emigration, aggression and civil apathy;
- ✿ A lack of public awareness on human rights issues;
- ✿ The concerning position of vulnerable demographics;
- ✿ Society's rising radical tendencies, massive discrimination and intolerance.

On April 5th 2012, seeking to become Lithuania's operator of the EEA Grants programme, the Human Rights Monitoring Institute ended its membership in the coalition in order to avoid potential conflicts of interest.

In 2014, HRC joined the National NGO Coalition and, on December 4th 2014, members of the coalition signed a new joint venture agreement and changed their name to the Coalition of Human Rights Organizations (HROC), committing to further active cooperation for the improvement of human rights. The renewed coalition was joined by the Tolerant Youth Association, which previously held an observer's status, and Centre for Equal Rights and Social Development did not extend its membership. In 2017, the Human Rights Monitoring Institute expressed willingness to renew its membership in the coalition and was accepted in the same year.

In September–December 2017, HROC successfully carried out a project to strengthen institutional cooperation between non-governmental organizations, financed by the Ministry of Social Security and Labour (MSSL). During the project, HROC members formalized the coalition's activity and established the HROC association.

The coalition consists of the Lithuanian Jewish (Litvak) Community, Lithuanian Centre for Human Rights, Centre for Equality Advancement, national LGBT rights organization Lithuanian Gay League, Mental Health Perspectives, Roma Community Centre, Tolerant Youth Association and Human Rights Monitoring Institute.

C.3.2 Support services to victims

The implementation of the EU Victims' Rights Directive in Lithuania revolved mainly on introducing legal provisions oriented towards strengthening victim's rights in criminal proceedings, rather than strengthening the victim support services.

Amendments to the Code of Criminal Procedure encompassed victims' rights to report the incident in their native language or to use the interpretation services, the right to receive information on the state of criminal proceedings involving them, the right to be accompanied by a chosen person during police interviews and court hearings, the right to receive information about the suspect's release from detention, and the right to compensation (initiate a civil action for compensation in criminal proceedings).³

Law enforcement officers rarely take an active role in ensuring that the victim understands the content of the provided 'letter of rights', such as offering additional oral explanations or making sure that the victim has understood their rights. There are no budgetary allocations to state agencies or NGOs working in this field in order to strengthen victim support services and its

³ *Law amending Articles 8, 9, 28, 43, 44, 128, 185, 186, 188, 214, 239, 272, 275, 276, 280, 283, 308 and the Annex of the Code of Criminal Procedure, and supplementing the Codex with Articles 271, 362, 561, 1861, 17 December 2015, <https://www.etar.lt/portal/lt/legalAct/1085d150aee411e5b12fbb7dc920ee2c>, came into force on 1 March 2016.*

accessibility. In fact, not a single victim respondent could name a single positive practice of law enforcement that was applied in their case, and most of them stressed on the lack of information received from the authorities.

C.3.3 Awareness-raising campaigns

LGL has a long history of organizing various hate crime and hate speech awareness-raising campaigns⁴ and countering hate speech, including but not limited to:

- ✿ *Speak Out*. Raising awareness on anti-LGBTQI hate crimes, hate speech, and on freedom of expression.
- ✿ *Call It Hate*. The project emphasized on the need to report, and empower victims. As such, the project addressed a common need within the European Union to inform and empower targeted communities and prevent secondary victimization of victims of homophobic and transphobic hate crimes, in accordance with provisions of the Directive 2012/29/EU.
- ✿ *Countering illegal hate speech online – EU Code of Conduct*. In order to solve the problem of incitement to hatred on social media at the EU level, the European Commission introduced the EU Code of Conduct on countering illegal hate speech online in 2016. This is a codex under which participating social media platforms are required to take measures specified in the document to combat instances of unwanted hate speech on their websites, and submit to a hate speech monitoring process. In June 2017, LGL joined the social media monitoring process.
- ✿ *UNI-FORM*. A campaign highlighted the importance of reporting homophobic and transphobic attacks. Four victims of homophobic attacks shared their stories with the public: what happened to them, how it affected their lives, and why they felt it was important to report it.

C.3.4 Training activities

Article 25(1) of the EU Victims' Rights Directive indicates a positive obligation of the EU Member States to ensure that officers, who are likely to come into contact with victims, receive trainings to increase awareness of the needs of victims and to enable them to deal with victims in a professional manner.⁵

National Courts Administration organizes such training and Lithuanian police school's curriculum includes hate crime training. Both of these measures do not universally cover all target groups in the Lithuanian Law enforcement system, nor are non-governmental actors working in hate crime, hate speech, victim support, or representing different communities actively and substantially engaged in these trainings. Working with vulnerable communities is particularly important as it would contribute to recognizing hate crime specifics and an in-depth understanding of the hate crimes victims' needs and build trust relations between authorities and affected communities, encouraging victims to actively report hate incidents to the respective authorities.

Particularly successful intersectional approach to law enforcement training took place on November 8 2018. LGL organized a training for law enforcement officers in Kaunas, where the participants, representing both law enforcement as well as civil sector had a chance to meet an investigator within the Democracy and Hate Crime Unit of the Stockholm county police and the founder of Swedish Gay police association and an inspector of Hate Crime Unit in Stockholm region.

The training was held as part of the international project "Come Forward: Empowering and Supporting Victims of Anti-LGBT Hate Crimes" whose aim is to increase competences of the

4 https://www.lgl.lt/en/?page_id=124

5

law enforcement officers in tackling hate-motivated crimes.

The trainees from Kaunas county police department increased their knowledge on the effective implementation of the national legislation regarding hate crimes targeting LGBT persons and other marginalized groups. Furthermore, they were introduced to different means of ensuring that the specific needs of anti-LGBT hate crime victims are met with regards to the EU Victims' Rights Directive.

On June 7th 2019, Workshop on Countering Hate Crimes with police officers from Sweden and Lithuania was included in Baltic Pride 2019 event program. The police officers working in The Democracy and Hate Crime group in Stockholm and representatives of Lithuanian Police Academy had an opportunity to share good practices in combatting hate crime and engaging in effective victim-centered support strategies.⁶

In 2016 LGL conducted a series of training on homophobic and transphobic hate crimes to law enforcement representatives and students of the Lithuanian Police School.⁷

Although above-mentioned activities could be regarded as good practices, they did not become a regular part of police training due to the lack of funds. Therefore lack of strategic funding and the lack of sustainability remains among the most pressing issues in Lithuania in terms of law enforcement training activities.

C.4. Practitioners' and victims' views on the legal and political framework on hate crimes and victims' rights

There was a general agreement among the interviewed professionals that the legal framework could be considered adequate and compliant with the international standards in Lithuania. Some professionals stressed that although there is plenty of available training on hate crimes, as well as learning material, these learning opportunities are rarely explored and (or) attended by the representatives of the judiciary, such as judges, judges' assistants or court advisors⁸.

None of the victims reported being informed about available support schemes but some reported being handed a list with contacts of relevant NGOs.

Most victims noted a lack of information and (or) sufficient communication from the authorities which they found discouraging or suppressing the determination to report other instances of hate crime.

6 <https://www.lgl.lt/en/?p=21771>

7 <https://www.lgl.lt/en/?p=14534>

8 *Interview with Professional 5, Professional 3, on file with the authors.*

D. CONCLUSIONS AND RECOMMENDATIONS

D. CONCLUSIONS AND RECOMMENDATIONS

D.1. Conclusions

Despite certain shortcomings, the Lithuanian legal framework on hate crimes could be considered sufficient and compliant with international standards. However, the application of the law is lacking which was confirmed by research findings. From a procedural perspective, the main shortcomings revolve around the inability to recognize hate crimes based on multiple grounds, and these instances, although prevalent in practice, are not reflected in the official statistics. Another issue relates to the qualification of hate crimes: hate motive is rarely recognized as a qualifying characteristic or aggravating circumstance, even if they are available in the existing legislation.

On the other hand, research results suggest that a very formal approach to hate crime incidents is still very prevalent, e.g. law enforcement representatives rarely take a proactive role in the investigation even if it is evident that the victim belongs to a specific social group/ is of vulnerable background and may have been subjected to hate-motivated crime. This is especially important in the context of the recent trend of decreasing amount or registered hate crimes.

In terms of the reparation of a crime, the system is lacking. Research results seem to reflect on the trend to stress the inevitability of the punishment for the crime committed, rather than the severity of the punishment¹, which is of course aligns with the basic Criminal law principles. However, we may as well question its inevitability if the victims are not determined to report the incident to the authorities while also revealing the lack of access to sufficient information and services.

D.2. Recommendations

Concerning the hate crime legislation:

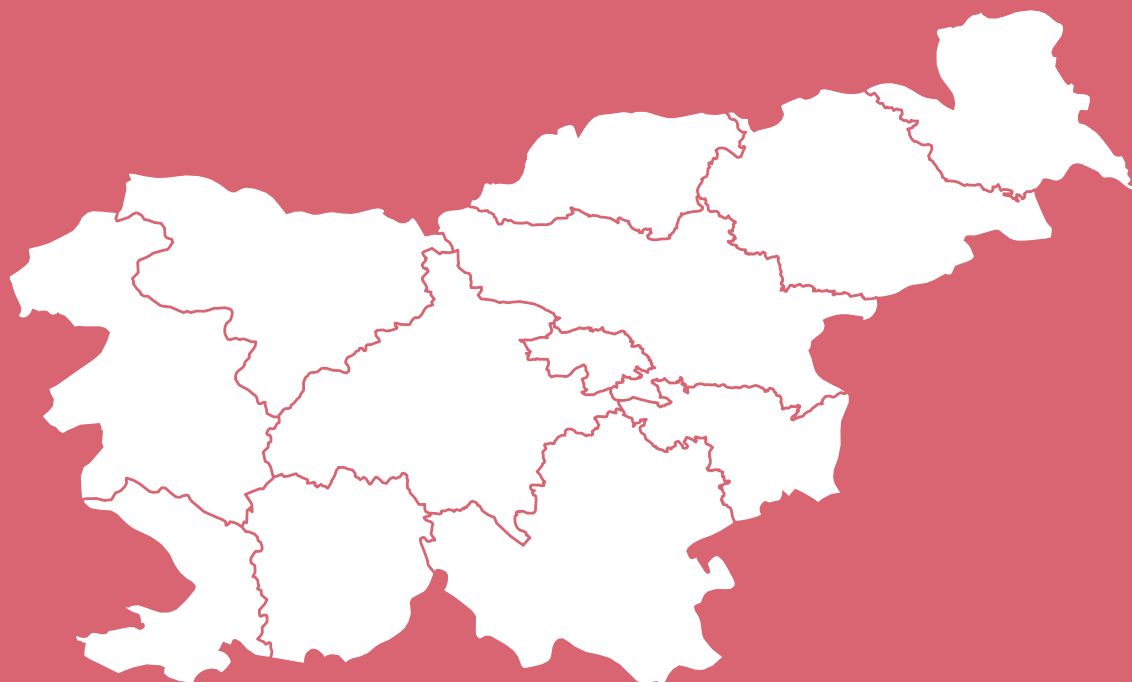
- ✿ Strengthen the hate crime legislation by expressly including the protected grounds of skin color, citizenship, and gender identity in the Criminal Code.

Concerning the political measures and intersectionality:

- ✿ Ensure the appropriate collection and transparency of official hate crime statistics by publishing detailed data including data related to the number of reports.
- ✿ Legal, psychological, and other support means should be available to every person who submits a report on hate. Also, it is important to strengthen the sustainability of available services provided by the non-governmental sector.
- ✿ Sustainable victim support mechanism should be established at the Government level.
- ✿ Hate crime training should encompass modules on victims' needs and appropriate investigation protocol, and engage more representatives of the NGO sector as well as the judiciary in the training.
- ✿ Increase efforts directed at online hate speech and hate crime monitoring.
- ✿ Consult with CSOs and victim representatives in terms of revising methodological recommendations on hate crimes or other relevant frameworks.
- ✿ Allocate sufficient resources in order to ensure the sustainability of a working group for increasing the effectiveness of combating hate crimes and hate speech in Lithuania.

¹ Interview with Professional 1, Professional 3, on file with the authors.

SLOVENIA



CounterHate

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MIROVNI INŠTITUT

SLOVENIA

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HIGHLIGHTS

- ✿ Only recently the government has put more focus on combating hate crime and hate speech through legislative changes and policies as well as public awareness-raising campaigns.
- ✿ The lack of disaggregated data and statistics still hinders an in-depth research in this field, especially from the victim's perspective.
- ✿ Consequently, the lack of research to fuel evidence-based policies was identified.
- ✿ Hate crime remains underreported due to lack of trust in institutions and lack of adequate support services, the research shows.
- ✿ On one side the society (also state institutions) is being tolerant towards perpetrators, while on the other side relativization of violence and victims is quite common.
- ✿ The need for additional training for competent authorities in field of victim-support was identified.
- ✿ The existing research results point to the need for a country-wide victimisation study on experiences of physical violence and harassment.
- ✿ Last but not least, there is a need for (more) country-wide awareness-raising campaigns.

INTRODUCTION AND METHODOLOGY

INTRODUCTION AND METHODOLOGY

Hate crime – with the exception of hate speech – has not received much attention until recently in Slovenia. The data and statistics available are quite poor, the public institutions mostly do not collect detailed data due to data protection reasons, which seem to be considered as a high priority. Also, until now no thorough comprehensive research on hate crime has been done in Slovenia, especially not putting the victims and their needs in focus. Even less so if we add another dimension – intersectionality and effects of multiple discrimination on the victims. The current government announced to make combating hate speech one of its priorities in the first half of 2023, and to form a special interdepartmental working group to combat hate speech, which will be led by a national coordinator from the Prime Minister's Office¹.

You hold in your hands a national report on hate crime in Slovenia which is the result of our research done within the Counter-Hate project². We have conducted desk research on the national context in the period from June to December 2022. The aim was to examine whether Slovenia successfully transposed the Victim's Directive regarding the generic and specialised services (Art. 8 and 9), and to analyse whether those measures are well implemented in practice. We analysed the national legislation and policies, relevant public institutions' reports and available case law. We also reviewed relevant existing research on the topic as well as national and EU statistical data and resources, previous surveys and policy reports (per example reports of the Fundamental Rights Agency³).

In the next step, we carried out an online survey which targeted mainly representatives of civil society organisations (CSOs) that combat bias-motivated violence and promote civil rights. We invited 65 relevant CSOs to fill out the online survey in the period from 2 November to 12 December 2022. We received 53 responses in total, however only 28 of them filled out the entire survey (see Table 3 below).

The third phase of our research was done in November and December 2022. We conducted 20 interviews, 6 with victims of hate crime (or at least bias-motivated discrimination) and 14 with professionals dealing with victims of hate crime within their work (see Table 1 and Table 2 below). Initially the aim was to interview 10 victims of hate crime, and 10 professionals working specifically on hate crime or with victims of hate crime. However, the task resulted to be more challenging than we assumed.⁴

For both clusters of interviews, we first used our existing networks and contacts. Due to our continuous research and advocacy work in the fields of human rights, anti-discrimination, minorities, migration, gender equality etc. we have already been in contact with some victims of hate crime or bias-motivated discrimination as well as relevant professionals. First, we interviewed them. Then, some of them provided further contacts (a snow-ball method). At the same time, we also formally addressed our request for

1 Lebinger, A. (2022), "*Nad sovražni govor medresorsko in s koordinatorjem*", *Dnevnik*, 9 November 2022.

2 *Counter-hate: Improving the assistance of victims of hate crimes through a victim-centred and intersectional approach*. Available at: <https://www.mirovni-institut.si/en/projects/counter-hate-improving-the-assistance-of-victims-of-hate-crimes-through-a-victim-centred-and-intersectional-approach/>

3 *ENCOURAGING HATE CRIME REPORTING — THE ROLE OF LAW ENFORCEMENT AND OTHER AUTHORITIES* (2021). European Union Agency for Fundamental Rights. Luxembourg: Publications Office of the European Union.

4 *We did approach more victims of hate crime, however some of them were not ready to talk about their experience in an interview, some did not agree to being audio-recorded, some agreed to the interview at first but then changed their minds afterwards. We were cautious when contacting victims and did not push further. Some of the interviewed professionals were victims of hate crime or bias-motivated discrimination too prior to becoming experts in the field they work in now. Thus, some of the 14 interviewed professionals were at some point also victims.*

interviews to some of the public institutions, however some of them (the courts and social work centres especially) were reluctant and either did not respond at all or responded that they do not have relevant experience to share on the topic. We carefully followed media representation of this topic for years, thus we were aware of several cases (violent attacks) which happened in public space. We managed to interview some of these victims or professionals that supported them.

Table 1: sociodemographic data - professionals

Interview	Gender	Age	Professional role
P1	Female	43	Legal expert (the equality body)
P2	Female	41	State prosecutor
P3	Male	-	Legal expert (state prosecutor's office)
P4	Female	45	District Court representative
P5	Male	53	Lawyer
P6	Female	40	Lawyer
P7	Male	52	Police
P8	Female	31	Legal expert (CSO supporting members of LGBTIQ+ community)
P9	Female	34	Social worker (CSO supporting victims of human trafficking)
P10	Female	40	Sociologist/academic and counsellor (CSO providing support for victims of domestic and gender based violence)
P11	Female	35	Social worker (CSO supporting the homeless)
P12	Male	39	Cultural worker (LGBTIQ+ CSO)
P13	Female	39	Activist (organisation supporting migrants, asylum seekers, refugees and other marginal groups)
P14	Female	44	Police officer

Table 2: sociodemographic data - victims

Interview	Gender	Age	Grounds for discrimination or hate crime
V1	Male	48	Sexual orientation, political beliefs (LGBTIQ+ human rights activist)
V2	Nonbinary person (they)	37	Gender identity, gender expression, sexual orientation, political beliefs (LGBTIQ+ human rights activist)
V3	Male	37	Race, socio-economic status (refugee)
V4	Trans woman	42	Gender identity, gender expression, gender, sexual orientation, nationality, political beliefs (LGBTIQ+ human rights activist)
V5	Female	27	Expression of religion (hijab), nationality, socio-economic status (refugee), gender
V6	Male	40	Sexual orientation

Table 3: Survey data

Universe: N° of organisations contacted	65	
Number of total responses	53	
Fully completed the survey	28	
Responses rate (universe/total responses= Responses rate)	39,4%	
Discrimination field in which survey respondents work	Role	N
	Religion	5
	Race, ethnicity, and origin	13
	Sexual orientation and gender identity	15
	Disabilities	14
	Socio-economic status	17
	All types of discrimination / civil rights in general	27
	Other	4
Role of the respondent in the organisation	Role	N
	President / director	7
	Head of department / program or project manager	13
	Expert	25
	Volunteer	7
	Administrator	1

A. DISCRIMINATION AND HATE CRIME NATIONAL CONTEXT

A. DISCRIMINATION AND HATE CRIME

NATIONAL CONTEXT

A.1. National legal framework on hate crime and discrimination.

Protection against discrimination is one of the fundamental human rights enshrined in Art. 14 of the Constitution of the Republic of Slovenia, where “*everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political, or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance. All are equal before the law.*”¹

The list of personal grounds is open-ended. The Constitution also prohibits incitement to inequality and intolerance in Art. 63. Moreover, Slovenia has ratified all the main international human rights instruments concerning discrimination. Under Art. 8 of the Constitution, they are directly applicable in the legal system of the Republic of Slovenia.

The main non-discrimination law is the 2016 Protection Against Discrimination Act (PADA)², which provided legal basis for a new independent state authority, namely the Advocate of the Principle of Equality (The Advocate). The Advocate, among other main tasks, also gives recommendations to the legislator, especially stressing the need for clearer definitions, policy coherence and data collection (P1).

According to PADA, discrimination is prohibited in all areas of social life, including the areas required by the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). All five grounds covered by the two directives are included: race or ethnicity, religion or belief, sexual orientation, age and disability. Additionally, the national legislation prohibits discrimination also on the grounds of gender, language, gender identity or gender expression, social standing, economic situation and education, and is generally open-ended. PADA prohibits direct and indirect discrimination, harassment, instructions to discriminate, and victimisation on the grounds of gender, race and ethnicity, religion or belief, sexual orientation, age and disability. PADA also prohibits discrimination by association, discrimination by assumption and severe forms of discrimination.³

In the field of criminal law, discrimination is also prohibited in the Criminal Code (CC-1),⁴ which defines various crimes connected to violations of the principle of equality. Art. 131 (violations of equal rights) reads as follows: “*Whoever due to differences in respect of national affiliation, race, skin colour, religion, ethnic origin, gender, language, political or other beliefs, sexual orientation, financial situation, birth, genetic heritage, education, social position or any other circumstance deprives or restrains another person of any human right or liberty recognised by the international community or laid down by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not more than one year.*” The second paragraph also incriminates anyone who persecutes an individual or an organisation for standing up for equal rights.⁵

1 Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1992, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1>.

2 Protection Against Discrimination Act (*Zakon o varstvu pred diskriminacijo*), 21 April 2016, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273>.

3 Kogovšek Šalamon, N. (2022) “Country report Non-discrimination Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 Slovenia.” Luxembourg: Publications Office of the European Union, p. 7.

4 Criminal Code (*Kazenski zakonik; KZ-1*), 20 May 2008, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050>.

5 This crime has not yet been successfully prosecuted.

Art. 116 and 135.a of the CC-1 stipulate discriminatory motives as part of the legal definition of murder and torture; and Art. 197, 198 and 202 violations of equality in employment and social services. Art. 297 (prohibition of incitement to religious or ethnic hatred or hatred based on sexual orientation, sex, skin colour, origin, property status, education, social status, political or other opinion, disability or other personal characteristics) sanctions hate speech with imprisonment of up to two years. The same punishment is laid out for those who publicly spread ideas of the superiority of one race over another or cooperate with any racist activity, or deny, diminish the meaning of, approve of, ridicule or advocate for genocide, holocaust, crimes against humanity, war crimes, aggression or other criminal acts against humanity. If these acts are published in the public media, the editor or their deputy are also punished, except in the case of a live transmission in which it is not possible to prevent such acts. The CC-1 also stipulates two aggravated forms of these crimes: if they were committed in an official capacity or with coercion, threat etc. According to many legal practitioners, academics and CSOs a restrictive interpretation of an obligatory causal link with public disturbance has caused a significant impunity gap, with hate speech almost never prosecuted in Slovenia.⁶ The interpretation was that incidents tried under this provision could be a criminal offence only when conducted in a manner that, given concrete circumstances, threatened or disturbed public order or peace. In 2019 the Supreme Court of the Republic of Slovenia departed from the established interpretation of the above-mentioned Art. 297(1) of the CC-1.⁷ It found that this criminal offence had two alternative forms, namely conducts likely to threaten or disturb public order and peace, and conducts involving threats, abuses or insults. The Court further clarified that the relevant provisions protected public peace and order, but also human dignity, and are aimed at preventing discrimination against less privileged and vulnerable groups, based on stereotypes. In the Court's opinion, both forms bore equal weight, were equal in intensity, and one form did not subsume the other.⁸

In general, the CC-1 does not provide for a definition of bias-motivated aggravated criminal offences (*hate crimes*). However, under Art. 49(2) of the CC-1, courts have to take into consideration aggravating and mitigating circumstances in the determination of penalties. The motive of the offence is explicitly included in the list of circumstances to consider. However, in November 2022, the Government of the Republic of Slovenia adopted a proposal for an amendment to the CC-1, which introduces hate crime as a mandatory aggravating circumstance that should be taken into account when determining the sentence.⁹ Accordingly, if the personal circumstances of the victim would be a predisposing factor for any criminal offence in the CC-1, the perpetrator will be punished more severely.

In 2018, a special working group on hate speech was set up at the Supreme State Prosecutor's Office of

6 Završnik, A. and Zrimšek, V. (2017) "Sovražni govor po slovenski kaznovalni zakonodaji in sodni praksi: neustaven položaj," *Časopis za kritiko znanosti*, 45(268), pp. 59–73.

Završnik, A. (2017) "Zakaj obsodb sovražnega govora v Sloveniji ni?: od okov implementacije do rigidnosti razlage," in S. Splichal (ed.) *Zagovor javnosti: med svobodo izražanja in sovražnim govorom*. Ljubljana: Slovenska akademija znanosti in umetnosti, pp. 101–114.

Kogovšek Šalomon, N. (2018) "Sovražni govor: vloga prava in pravosodja," in A. Teršek (ed.) *Svoboda izražanja, mediji in demokracija v postfaktični družbi: filozofske, teoretične in praktične refleksije*. Ljubljana: Lexpera GV Založba, pp. 91–102.

7 The relevant provision reads as follows: "Whoever publicly provokes or stirs up hatred, violence or intolerance based on national, ethnic, racial or religious affiliation, sex, skin colour, origin, financial condition, education, social status, political or other belief, disability, sexual orientation or any other personal circumstance, and the conduct is carried out in a manner likely to endanger or disturb public order and peace, or with the use of threats, abuses or insults, shall be punished by imprisonment of up to two years."

8 Supreme Court of the Republic of Slovenia, Judgement no. I Ips 65803/2012, 4 July 2019.

9 "Vlada sprejela predlog novele Kazenskega zakonika 22. 11. 2022" (2022) gov.si. Available at: <https://www.gov.si/novice/2022-11-22-vlada-sprejela-predlog-novele-kazenskega-zakonika/> (Accessed: January 12, 2023).

the Republic of Slovenia to deal with the legal issues raised in the application of the criminalisation of the offence under Art. 297 of the CC-1.¹⁰ This working group developed a definition of a “criminal offence with an element of hate”, which is a crime committed on the grounds of nationality, race, religious belief or ethnic origin, gender, skin colour, origin, social status, disability or sexual orientation of the person against whom it is committed.¹¹ In March 2021, the working group was succeeded by **the Working group on criminal offences committed with a hate motive** which remains responsible for hate speech issues, but its mandate is extended to all criminal offences committed with a hate motive.¹²

On the level of misdemeanours, Art. 20 of the Protection of Public Order Act sets out the punishment for incitement to ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation.

✿ **Transposition of the Victims’ Directive**

Slovenia was late in transposing the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims’ Directive). While the deadline was in November 2015, Slovenia adopted two relevant pieces of legislation only in 2019. On 26 March 2019, the Act Amending the Criminal Procedure Act was adopted.¹³ With the amendment, new rights that were not available to victims before were introduced. The amendment extended the definition of a victim/injured party, so that it includes certain family members of a victim who died due to the criminal offence.

The amended legislation does not expressly refer to victims of hate crime. However, the Criminal Procedure Act (CPA)¹⁴ now includes a definition of a victim with special protection needs: “*a victim, whose personal or property right were significantly violated by a crime, because of his or her personal characteristics or vulnerability, because of the nature, gravity or circumstances of the crime or because of the behaviour of the accused or injured person in the pre-criminal or criminal proceedings*” (Art. 144 of CPA). The authorities are also obliged to take into consideration the victims’ vulnerability (Art. 18.a of the CPA). In accordance with this provision, the police, state prosecutors, courts and other state authorities, experts, expert witnesses, court and other interpreters and mediators have to treat the victims carefully and considerately, with regard to their age, health, vulnerability or other similar circumstances.

In 2019, the Social Assistance Act was amended to transpose the requirements set out in Arts. 8 and 9 of the Victims’ Directive.¹⁵ These amendments provide for the introduction and functioning of generic support services in Slovenia. These are determined as a new set of social assistance services, and aimed at eliminating social hardship and problems and include support to victims of criminal offences. This social assistance service includes professional support and professional counselling to the person to whom any harm was directly caused by crime. Again, as this is considered generic support to victims of crime, these legal provisions or services do not address victims of hate crime specifically.

10 *Vrhovno državno tožilstvo (2019) Annual report 2018. Available at: https://www.dt-rs.si/files/documents/Porocilo_2018.pdf, p. 175.*

11 *Center za človekove pravice (2021) “Kazenskopравни pregon sovražnega govora v Sloveniji po 297. členu Kazenskega zakonika (KZ-1): Analiza tožilske prakse pregona kaznivega dejanja javnega spodbujanja sovraštva, nasilja in nestrpnosti v obdobju 2008-2018”. Ljubljana: Varuh človekovih pravic, p. 95.*

12 *Vrhovno državno tožilstvo Republike Slovenije (2022) “Skupno poročilo o delu državnih tožilstev za leto 2021”, p. 170.*


13 *The Act amending the Criminal procedure act (Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku, ZKP-N), 26 March 2019.*

14 *Criminal Procedure Act (Zakon o kazenskem postopku), 29. September 1994, available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362>*

15 *Social Assistance Act (Zakon o socialnem varstvu), 4 November 1992, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO869>*

A.2. Statistics and data regarding bias-motivated crimes

Data on bias-motivated crimes are relatively limited in scope and no specific hate crime monitoring mechanism is in place. Records of crime are kept according to the criminal offences set out in the CC-1,¹⁶ and as there is no general incrimination of hate crime, there are shortcomings in existence of and access to data, as well as in perception of the scale of the issue. Several interviewees (P1, P2, P7, P12), and amongst them employees of state authorities, were convinced that hate crime is underreported in Slovenia.

 **The Police** is the institution able to produce some data on offences involving ethnically, racially or religiously motivated intolerance, but not other bias-motivated offences. The available data is also not disaggregated by antisemitic, Islamophobic or anti-Roma motivation for the incidents.¹⁷ In recording data, the police are afraid of potential abuse, since a lot of people have access to police records: “*Because someone could have access to some sensitive information, be it health, be it sexual orientation, which could then be used not for the purpose of dealing with a criminal offence but for something else.*” (P7).

In 2022, the police dealt with 18 (26 in 2021) suspicions of criminal offences motivated by ethnic/racial intolerance, and lodged 16 (21 in 2021) criminal complaints with the competent state prosecutor. In 2022, they also investigated one (three in 2021) alleged criminal offence motivated by religious intolerance, and did not lodge any criminal complaints, while in 2021 they lodged criminal complaints in two cases.¹⁸ Disaggregated by type of criminal offence, in 2021 police dealt with one offence under Art. 131 of the CC-1 (violations of equal rights).¹⁹ In 2021 as well, the police dealt with 88 offences under Art. 297 of the CC-1 (public incitement of violence, hatred and intolerance), filing criminal charges in 39 cases and closing 49 cases with a final report.²⁰ In the period from 2016 to 2021 the highest number of suspects for the offence under Art. 297 of the CC-1 were aged between 54 and 64.

Regarding bias-motivated minor offences, at the beginning of 2022, the Uniformed Police Directorate of the General Police Directorate prepared an Analysis of Offences of Inciting Intolerance under the above-mentioned Art. 20 of the Protection of Public Order Act.²¹ The analysis covers offences committed with the intent to arouse national, racial, sexual, ethnic, religious, political or sexual orientation intolerance. In 2021 the police took action in 61 cases of minor offences under Art. 20 of the Protection of Public Order Act, whereas the number was the highest in the last six years in 2020 (during the Covid-19 pandemic). Most of the offences were committed in the context of fights and altercations. The highest number of offenders falls in the following age groups: 34-44, 44-54 and over 64. In each year from 2016–2021, most of the offenders were male (in 2021, there were 42 male offenders and 17 women). Almost all of the offenders were Slovenian citizens.

16 Vučko, K., Šori, I. (2021) *Franet National contribution to the FRA Fundamental Rights Report 2021 Slovenia*. Ljubljana: Peace Institute, p. 9.

17 Vučko, K., Šori, I. (2022) *Franet National contribution to the Fundamental Rights Report 2022, Slovenia*. Ljubljana: Peace Institute, pp. 14-15. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fundamental_rights_report_2022-slovenia.pdf

18 Vučko, K., Šori, I. (2023) *Franet National contribution to the Fundamental Rights Report 2023, Slovenia*. Ljubljana: Peace Institute.

19 Information on criminal offences under Article 131 of the Criminal Code were prepared according to the final document provided, which means that the data cover the cases of the listed offences for which the police have issued a closure document (criminal charge or report) in 2021.

20 The Advocate for the Principle of Equality (2022) “Redno letno poročilo za leto 2021”, available at: <https://zagovornik.si/wp-content/uploads/2022/08/Redno-letno-porocilo-za-leto-2021-%E2%80%93-prvi-del.pdf>, p. 91.

21 General Police Directorate (2022) “Analysis of Offences of Inciting Intolerance under the above-mentioned Article 20 of the Protection of Public Order Act”, no. 223-15/2022/2 (2111-05), 7. 3. 2022.

The interviewed police representative (P7) explained that “most of the crimes are related to the most typical prejudices in Slovenia. These are inter-ethnic, inter-national conflicts, but it would be too distorted to say conflicts... attacks, intolerance... they are still mostly inter-ethnic. But of course more and more often other personal grounds are relevant, per example sexual orientation”. Overall, the police are noticing an increase in reports of hate crimes and intolerance. (P7)

★ **The Supreme State Prosecutor’s Office of the Republic of Slovenia** keeps a register only of the offence committed, and does not record the motive which led the offender to commit the offence, except where the motive is a qualifying circumstance and is a statutory element of the offence. Consequently, comprehensive data on the personal circumstances of victims and the motive for committing the crime is not available. In July 2020 the State Prosecutor General issued an order stipulating that the relevant prosecutors’ case files falling under the above-mentioned ‘crimes with an element of hate’ be additionally marked with a general label (“SOV”).²² It is important to note, the definition represents a guiding tool when marking case files, and does not affect legal classification of a criminal offence. Barring, case files could not be marked by the personal feature targeted by the bias-motivated crime (e.g. membership of a specific group such as Roma), most likely due to personal data protection reasons. The label is used for all offences, not just offences under Arts. 131 and 297 CC-1.

In 2022, there were 12 prosecution case files labelled with “SOV”, where two of the cases were crimes of Public incitement of violence, hatred and intolerance from Art. 297 of the CC-1 and other cases involved other criminal acts.²³ In 2021, there were 25 “SOV” labelled cases, and among the legal qualifications, the criminal acts under Art. 297 of the CC-1 and Art. 135 (threat) of the CC-1 prevailed.²⁴

In 2022, the state prosecution received 37 criminal charges for the criminal act of public incitement of violence, hatred and intolerance from Art. 297 of the CC-1 (73 in 2021), 41 criminal charges were dismissed (68 in 2021), and in three cases the prosecution filed either an indictment or a request for issuing a criminal order (3 in 2021). They were successful in court in five cases, where in four cases the accused were found guilty, and one judgement on the basis of a criminal order was issued by the courts.²⁵ In 2021, they were successful in two cases, where a judgement on the basis of a criminal order was issued by the courts, whereas in one case the accused was found not guilty.²⁶

The state prosecution explains that in 2021 a jump in incidents of crime of public incitement of hatred, violence or intolerance (Art. 297 of the CC-1) and related crimes came as a consequence of the situation related to the epidemic of COVID-19. With the increase in the number of users of online tools, most often incidents occurred on social networks, where perpetrators are not directly exposed. Furthermore, the occurrence of this type of crime has continued to be affected by increased disrespectful communication from political representatives, which has helped to increase intolerance in the society. The intensification of measures to contain the epidemic and, on the other hand, its impact on other (adapted) life and decision-making in the economy and society has been reflected in lower tolerance in words and actions.²⁷

★ **Slovenian judiciary** does not collect data on the motives of criminal offences. First-instance

22 “SOV” is short for “sovraštvo” which means hate in Slovenian.

23 Vučko, K., Šori, I. (2023) *Franet National contribution to the Fundamental Rights Report 2023, Slovenia*. Ljubljana: Peace Institute.

24 *Vrhovno državno tožilstvo Republike Slovenije (2022), Skupno poročilo o delu državnih tožilstev za leto 2021*, p. 170. Ljubljana: April 2022.

25 Vučko, K., Šori, I. (2023) *Franet National contribution to the Fundamental Rights Report 2023, Slovenia*. Ljubljana: Peace Institute.

26 *The Advocate for the Principle of Equality (2022) “Redno letno poročilo za leto 2021”*, available at: <https://zagovornik.si/wp-content/uploads/2022/08/Redno-letno-porocilo-za-leto-2021-%E2%80%93-prvi-del.pdf>, p. 94.

27 *Vrhovno državno tožilstvo Republike Slovenije (2022), Skupno poročilo o delu državnih tožilstev za leto 2021*, pp. 168–183. Ljubljana: April 2022.

court decisions are not publically available and may be accessed through a freedom of information request. Some higher court decisions can be accessed through an online database, but often with significant delay.

A professional at the equality body is convinced that: *“Discriminatory motives are still not sufficiently taken into account, and this is also evident in the data collection. We always have an issue with this disaggregated data with all the authorities involved in law enforcement, police, prosecutors and courts, and it is basically seen that they are not so attentive to it.”* (P1)

✿ There are also some **civil society organisations (CSOs)** offering services to victims that keep records of their beneficiaries. Thus – through their online platforms²⁸ – Legebitra documented six (P8) and TransAkcija three hate crimes in the year 2021.²⁹ In 2022 until the beginning of December, Legebitra recorded 13 reports of bias-motivated crimes (P8). Interviewed professionals from CSOs also believe the grey area of criminality with hate crime is wide.

A.3. Social perceptions towards and prejudices against minorities

“Sometimes I take it on myself, I feel like my life is terrible. But it’s not, it’s just that I heard about a 16-year-old who’s almost on the street, or someone else whose parents are doing an exorcism to him, or an older trans woman who’s being beaten in the village, even the cops are beating her! Terrible stories! Then you say to yourself ‘it’s really a disaster to be trans’” (V4)

According to the Advocate’s yearly report, the most frequently alleged personal ground of discrimination in cases completed in 2021 was **disability** (10.8 %), followed by the total number of cases with personal grounds of **nationality, race and ethnic origin** (8.3 %), **gender** (6.3 %), **age** (6.1 %), **citizenship** of another Member State or a third country (3.5 %), property status (3.3 %), **sexual orientation, gender identity or gender expression** (3.3 %), **religion** or belief (2.4 %) and education (1.5 %). The Advocate also considered 5 cases of alleged personal ground of **language** and 4 cases of alleged personal ground of **social situation**. In 2021, the Advocate additionally kept records of the alleged personal grounds of health status (5.1 %), parenthood and pregnancy (4.4 %) and place of residence (2.6 %), which are not explicitly listed in the law and which the Advocate regarded as “other” personal grounds.³⁰

In Slovenia, the practice of measuring discrimination is extremely scarce, and Bajt³¹ is the first to undertake an in-depth field investigation of discrimination in several areas of life in accordance with a precisely outlined combination of different data collection methods. Research shows that despite existing legal grounds for its prevention, the extent of discrimination is problematic. The book stems from the need to collect such data in a way which ‘measures’ (ethnic) discrimination beyond official statistics.

The society in Slovenia is still very homogenous, only 8.5 % of the population are foreign nationals.³² **Xenophobia** seems to be one of the most present phobias in Slovenian society. One of our interviewees

28 See per example <https://niprav.si/> (accessed 19 January 2022).

29 ILGA Europe (2022) ANNUAL REVIEW OF THE HUMAN RIGHTS SITUATION OF LESBIAN, GAY, BISEXUAL, TRANS, AND INTERSEX PEOPLE IN SLOVENIA COVERING THE PERIOD OF JANUARY TO DECEMBER 2021, available at: <https://www.ilga-europe.org/files/uploads/2022/06/SLOVENIA.pdf>

30 The Advocate for the Principle of Equality (2022) “Redno letno poročilo za leto 2021”, available at: <https://zagovornik.si/wp-content/uploads/2022/08/Redno-letno-porocilo-za-leto-2021-%E2%80%93-prvi-del.pdf>, p. 41.

31 Bajt, V. (2022) “Ethnic Discrimination: Research and Measurement Strategies” (Etnična diskriminacija: strategije raziskovanja in merjenja). Ljubljana: Mirovni inštitut.

32 Statistični urad Republike Slovenije: <https://www.stat.si/StatWeb/News/Index/10636> (data for 1 July 2022).

shared events she experiences daily: “One lady started shouting: ‘why are you here, go to your country, leave Slovenia, leave child benefits, leave the money, you are here for the money...’.” (V5)

Discrimination based on the personal circumstances of nationality, citizenship, skin colour and religion is a problem that is present in Slovenia especially in the housing market, administrative procedures, access to services (per example banks), employment and the workplace, and in healthcare. The data show that discrimination is most often experienced by persons who are treated as foreigners by the existing legislation and the majority population, and it is especially strongly present in relation to applicants for international protection and refugees, who also report experiences of **ethnic or racial profiling by the police**.³³ As shown by the existing research³⁴ and our interviews, **the racism in the housing market** is by far the most obvious and persistent. One interviewee (V5) said: “When they hear we are not Slovenians, they always say “no”. Already on the phone.” Those rare landlords who are renting out to the migrants without any retentions, sometimes experience negative incidents with the police and consequently back-off too.

The attitude towards **the Roma** population also shows discriminatory practices, regardless of the fact that legally and formally the Roma community has guaranteed conditions for an equal life. There is still a lot of discrimination in the field of employment and education, which was especially highlighted during the covid-19 epidemic with distance learning. The situation of Roma children worsened and the exclusion of the Roma community at all levels was demonstrated. Data from the field confirm a very similar situation for migrant children and **migrant communities**.³⁵

Schools should be a safe environment for all students, however a study ‘LGBT youth – let’s break the silence in schools!’ found that one in four **LGBTIQ+** young people in Slovenia witnessed anti-LGBT remarks in school and that in most cases teachers either did not intervene or did so inefficiently.³⁶

Homophobia is strongly present in Slovenian society, especially in the rural areas. Those members of **LGBTIQ+** community that are not “obviously” gay perhaps do not report on direct attacks often, however transgender persons, especially those who do not “pass”, are facing verbal or physical attacks or at least bias-motivated discrimination and hate speech on a daily basis. (V4)

Religion or better said expression of religion is very frequently grounds for discrimination especially for veiled Muslim women. (V5)

Employment is one of the fields in which discrimination towards certain groups is obvious. Our interviewees reported on problems faced by Roma, transgender persons, and veiled Muslim women, while, ironically, the same group of people that face the most discrimination in all other spheres of life, can easily find employment (though only difficult, physical work). (P13) The same conclusion was made in a recent study, in which the majority (67.6%) of those surveyed believed that immigrants take jobs that others (Slovenians) do not want. Thus, immigrants on the labour market do not represent

33 Bajt, V. (2021) *Reducing and eliminating discrimination on the basis of ethnicity, 'race', nationality and/or religion (Zmanjševanje in odpravljanje diskriminacije na podlagi etničnosti, 'rase', nacionalnosti in/ali vere, Zaključno poročilo)*. Ljubljana: Mirovni inštitut.

34 Ladić, M., Thaler, I. and Bajt, V. (2022) *National Integration Evaluation Mechanism: Slovenia. Report for 2020-2021*. Ljubljana: Peace Institute.

35 Bajt, V. (2021) *Reducing and eliminating discrimination on the basis of ethnicity, 'race', nationality and/or religion (Zmanjševanje in odpravljanje diskriminacije na podlagi etničnosti, 'rase', nacionalnosti in/ali vere, Zaključno poročilo)*. Ljubljana: Mirovni inštitut.

36 ILGA Europe (2022) *ANNUAL REVIEW OF THE HUMAN RIGHTS SITUATION OF LESBIAN, GAY, BISEXUAL, TRANS, AND INTERSEX PEOPLE IN SLOVENIA COVERING THE PERIOD OF JANUARY TO DECEMBER 2021*, available at: <https://www.ilga-europe.org/files/uploads/2022/06/SLOVENIA.pdf>

competition to the majority population.³⁷

Several interviewees, victims as well as professionals, emphasised that in Slovenia the minorities most often experience **discrimination from public institutions and when accessing services**. Through the 20 interviews we conducted, we recorded numerous experiences of discrimination and mistreatment of our interviewees or their clients, members, beneficiaries or friends.

³⁷ Medvešek, M., Bešter, R., Pirc, J. (2022) *Mnenja večinskega prebivalstva Slovenije o priseljevanju, priseljencih in integraciji*. Ljubljana: Inštitut za narodnostna vprašanja, p. 94.

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B.1. Profile of the most vulnerable groups

Based on our desk, online and field research, we identified the following groups as the most vulnerable and most at risk of experiencing hate crime in Slovenia (not necessarily in this order):

- ✿ LGBTIO+ (especially transgender persons);
- ✿ Migrants and refugees (the darker the skin colour the worse the discrimination);
- ✿ Veiled Muslim women;
- ✿ Migrant women victims of (domestic/gender based/sexual) violence, and migrant women victims of trafficking;
- ✿ Roma (especially young girls who often face discrimination or violence also inside their community);
- ✿ Homeless persons (especially women);
- ✿ Persons with disabilities;¹
- ✿ Sex workers (especially migrants, transgender, racialized minorities);

As further elaborated in the next chapter, persons at the crossroads of various identified groups are even more at risk of experiencing hate crime or at least bias-motivated discrimination.

B.2. Presence and impact of intersectionality

Multiple discrimination is defined as one of the severe forms of discrimination.² Discrimination is often a result of co-effects of several factors, which create a new “*content of discrimination*”. One-dimensional approach to intersectional discrimination is always limited. Multiple or intersectional discrimination “*is additionally complicated from a legal point of view, since most legal instruments are focused on one-dimensional forms of discrimination – discrimination based on one personal circumstance*”.³

Our research confirms this, in a sense that interviewed victims and professionals working in CSOs pointed out intersectionality as an important risk factor, and they were able to share numerous examples. While, on the other hand, interviewed professionals working in public institutions and lawyers said that in those cases they have dealt with, the ground for hate crime or discrimination was always just one personal circumstance.

When discussing the crossroads of multiple discriminations in police or judicial procedures and how that affects the victim, one of interviewees said: “*the law enforcement authorities pay almost no attention to it. Moreover, in my experience, and also from what I hear from others, there is even considerable discrimination done.*” (P10)

B.3. Outstanding personal consequences and needs of victims of hate-based violence

“*These events have left a mark on me. I think, indelibly.*” (V1)

1 Unfortunately, we were not able to conduct an interview with any victim of hate crime or bias-motivated discrimination on this ground. Thus, this field is not adequately covered by the report.

2 Advocate for the Principle of Equality (2022) “Redno letno poročilo za leto 2021”, available at: <https://zagovornik.si/wp-content/uploads/2022/08/Redno-letno-porocilo-za-letno-2021-%E2%80%93-prvi-del.pdf>, p. 37.

3 Kuhar, R. (2009) *At the Crossroads of Discrimination. Multiple and Intersectional Discrimination*. Ljubljana: Mirovni inštitut. Available at: <https://www.mirovni-institut.si/wp-content/uploads/2014/08/Na-kriziscih-diskriminacije.pdf>, pp. 10-11.

Like any other serious crime, hate crime constitutes a blatant violation of human rights (per example, the right to life, the integrity of the person or the prohibition of torture and inhuman or degrading treatment) and represents a grave attack on human dignity. There can be commonalities to victim needs but victims of hate crime often do not experience victimisation in the same way as victims of ordinary crimes. They are victimised for who they are or are perceived to be.

These findings were echoed in the interviews conducted with victims and professionals, where most of the interviewees first and foremost highlighted the lasting psychological effects of the hate crime as a violent and discriminative act that attacked their very being. *“Someone hates you and that’s why they did it, it’s not just some robbery, but your social being is humiliated.”* (P12)

A general sense of security in society is gone or severely affected. Victims avoid certain places, become wary whilst outside, their outlook on the world changes. *“This experience is traumatic because it really changes you deeply. In the sense that you never go carefree out in public again. You always expect something to happen.”* (V1)

There are of course different survival strategies, also depending on the attacked personal ground. A victim of anti-LGBTIQ+ hate crime highlighted: *“After the attack I had one pepper spray on me for years and I went to buy one stick. [...] and we went to a self-defence course. But the mechanism is also hiding and this mimicry of hiding your whole symbolic world that shows you as an LGBT person, and then living a double life. But this also has consequences on people’s mental health.”* (V1)

Amongst their needs, after the attack, victims and professionals mentioned **the need to be heard, to be taken seriously** as the most important: *“So that when I experience violence, I don’t have to prove that it was violence, that it wasn’t just an opinion, that it was homophobic violence [...] In short, that they take you, that they take your case, that they take what happened seriously and don’t relativize it.”* (V1)

Several interviewees mentioned **the need for psychiatric or psychological support**, *“because dealing with this attack is a whole process – which I can’t quite describe now, but it goes from fear to anger, from feelings of guilt to self-accusation.”* (V1) Many victims face states and emotions they did not know before, such as insomnia, fears, anxiety, paranoia. The fear for one’s personal safety also affects reporting of crime and the interviews conducted show that very often victims do not find safety and relief with the police: *“Absolutely no [trust]! If we see the police we usually back off because we don’t want anything to do with them.”* (V4)

Very often, victims of hate crime or bias-motivated discrimination **cannot afford the costs for the legal representative** in the proceedings: *“There is no financial support specifically intended for victims... We have free legal aid, but we know that this is not the same as if you can afford well-known expensive lawyers... On the other hand, we have perpetrators of violence who come with exactly such lawyers.”* (P10)

Another need that was often mentioned was the need for **more comprehensive and tailored information** (V1, V5, P6, P10, P13). One of the professionals also mentioned an issue which corresponds to the special focus we shall put into analysing the available support services in the report below: *“It seems to me that victims feel that those who would help them are not strong enough. They need to feel that the organisation that is going to help them is going to stand behind them 100 % and that it is stronger than the perpetrator. That this is something big and powerful. That, I feel, is missing. That feeling that the whole world is behind you, that nothing can happen to you, that you can really trust.”* (P6)

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C.1. Reporting procedures. Strengths and weaknesses

In accordance with Art. 146(1) of the CPA, anyone can report a criminal offence which is prosecutable *ex officio*. The report can be made at the competent state prosecutor's office or the police. Although the law primarily designates the prosecutor's office as the competent authority to receive reports, the majority of criminal offences are reported to the police. Upon receiving the report, the police must then immediately forward the report to the competent state prosecutor (Art. 147(3) CPA). The report can be made at any police station or police department, which is usually organised and on duty 24 hours a day. A report can be made at any time (24 hours a day) by calling 113 or other publicly published telephone numbers of police units and on the police website. It can also be filed in writing and electronically. Anonymous reports via telephone or website are also available. On its website, the police has separate links for the anonymous online report of different types of crimes, among others extreme violence, under which incitement to intolerance and hatred is included.¹

With the 2019 transposition of the Victims' Directive, the responsibilities of the police and state prosecutors towards victims of crime are much more clearly defined.² This includes a set of rights when making a complaint. Namely, the police must, upon first contact, provide the victims with relevant information, including on free medical, psychological and other assistance and support; protective and other measures for ensuring personal security; right to be represented by a lawyer and to legal aid; and right to be accompanied by a person of trust during the pre-trial and trial procedure. The authorities must also provide the victim with a written receipt that they made a criminal report and a contact person of the competent authority with whom they can communicate in their case. Namely, the competent authority must inform the victim of this right in pre-trial or criminal proceedings and record this in an appropriate manner in such a way that the police, the competent state prosecutor or a judge may be informed thereof. Information on the status of pre-trial or criminal proceedings can be provided via websites (Art. 65.a(3) CPA). The police offer the victims the possibility to check the stage of the pre-trial proceedings via a website.³ By entering personal information, contact details and the date of the report, the victim can access information on the course, stage and conclusion of the relevant pre-trial procedure.

In line with the Victims' Directive, the objective is to empower the victims by providing appropriate information, support and protection so that they are able to participate in criminal proceedings.

Yet, underreporting of bias-motivated violence and harassment is a widespread issue across the European Union, and Slovenia is no exception.⁴ The issue of underreporting was mentioned by several interviewees (P5, P7, P13, V4). As findings of our research show, the issue of underreporting, which fundamentally contributes to inadequately addressing hate crime, reflects long-standing wider societal issues of prejudice and structural discrimination.

1 *Policija, Anonimne e-prijave, available at: www.policija.si/kontakti/estoritve/anonimna-e-prijava.*

2 *The Act amending the Criminal Procedure Act (Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku, ZKP-N), 26 March 2019.*

3 *Policija, Obveščanje oškodovancev kaznivih dejanj, available at: https://www.policija.si/apps/obvescanje_oskodovancev/form.php*

4 *FRA (2021) Encouraging hate crime reporting - The role of law enforcement and other authorities. Available at: <https://fra.europa.eu/en/publication/2021/hate-crime-reporting>*

Fear was mentioned by the interviewees as the main reason that prevents victims from contacting the authorities: fear of the perpetrator, fear and lack of trust towards the police, fear of being punished themselves, fear of the reaction from their families, colleagues and the wider community, stigma. *“The most slippery area is certainly sexual violence, which is very difficult to talk about. And shame and stigma are a very strong factor. Fear of what official procedures entail, fear of economic weakness – victims are often economically weak; fear that they will not be able to cope with these procedures, that they will not be able to afford a lawyer, protection, etc. And fear because they do not know their rights. [...] For those who have children, this fear is very much linked to the fact that they will lose their children. It’s a very strong fear.”* (P10)

In cases of intersectionality, these deterrents multiply and make it even harder for the victim to decide to report a crime. As the interviewed lawyer explained: *“They are afraid. For this very reason. Because of their sexual orientation, their nationality, etc. My client was also afraid to report. I asked him why and he said because he had sex with men. I told him that it is not a crime here, you can have them voluntarily, but nobody can force you to do it. But he said he didn’t know if that counts because he was black.”* (P6)

The law provides for several measures to protect the victims already at the reporting stage. One such mechanism is the **individual assessment of victims to identify specific protection needs**. The police must make an individual assessment that is used as a basis for the decision if and to what extent the victim would benefit from special protection measures as provided by the law (Art. 143.č of the CPA). The individual assessment should examine in particular the personal characteristics of the injured person, the nature, gravity and circumstances of the crime, the conduct of the accused person and the injured person in pre-trial or criminal proceedings and outside them, and should take into account the opinion of the injured person, in particular if the injured person expressly refuses in advance the possibility of special protection. Particular consideration must be given to the age and potential disability of the injured person and to the **circumstances of the criminal offences committed as a result of prejudice, discrimination, exploitation or hatred**, criminal offences involving the elements of violence or criminal offences against sexual integrity, and criminal offences involving the elements of terrorism, trafficking in human beings and crimes committed within the context of a criminal association. It is considered that minor victims always need special protection. The police make the assessment by asking the victim a set of questions based on a form, which was prepared by a working group, established by the Ministry of Justice in 2019 to develop measures for the effective implementation of the new provisions of the CPA transposing the Victims’ Directive.⁵ An individual assessment is updated if its elements change significantly. The police prepare and update the individual assessment until a criminal complaint is filed or until they send a report to the state prosecutor. The state prosecutor’s office prepares and updates the individual assessment during the course of pre-trial and criminal proceedings, or if the injured party has filed a criminal complaint with the state prosecutor’s office. However, one interviewee (P3) mentioned that the state prosecutor’s office does not prepare the individual assessments, but rather examine the individual assessment prepared by the police and assess whether there are any further steps to be taken or any further instructions should be given to the police to complete the assessment.

Victims also have the **right to be accompanied by a person of trust (confidant)**, both during the pre-trial and criminal procedure (trial). Before the transposition of the Victims’ Directive into national legislation, this right was only granted to minor victims, or victims of violence. Now, this right can also be exercised by other victims if the severity or the nature of the offence, the victim’s personal circumstances or the level of endangerment so required (Art. 65(4) CPA). This could in practice be very important for victims of hate crime. However, this right may be restricted, if the accompaniment is against the interests of the procedure or the victim.

5 Mirovni inštitut (2021) *ARVID - Advancing Access to Rights under Victims’ Directive for Persons with Disabilities, National Report for Slovenia*. Ljubljana: Mirovni inštitut.

The importance of this right was also stressed by interviewees, per example: *"You can come to the police station to report with a counsel, with a lawyer, even with a person of trust, you can come with a representative of a CSO /.../ And (this person) helps you. You are, of course, the initiator of the complaint, and you participate in it, but in that segment where it is absolutely necessary, so that you are not (overly) exposed."* (P7)

Despite these mechanisms and improved treatment and attitudes towards victims (in general) the implementation of the Victims' Directive should inspire, interviewed victims continue to report a lack of trust in the police. Several interviewed victims and practitioners mentioned also unresponsiveness of the police, per example: *"We went to the police, we reported it, we told the name of the perpetrator, because we found out who it was and they made a nice note of it and there has been no word about the case since. That was six months ago, nothing, nothing."* (P13)

One victim reported unresponsiveness of the police to their emergency call in a life-threatening situation: *"It seemed like an eternity to me... /.../ after two minutes I had called the police again and said, "They're going to kill me, please come. This is a homophobic attack." [...] The police didn't show up for 35 minutes or something like that. We called over one patrol as it was just passing by. A colleague waved and these two policemen came and then they treated it as vandalism."* (V6)

Victims reported that sometimes only media pressure or the commitment of an individual police officer moved the case forward (albeit too late): *"they then came back after a few days to collect evidence. Of course, by then the evidence was gone."* (V6)

Although all victims should receive equal treatment and rights, regardless of whether they report the crime themselves or are accompanied by a counsel or a representative of a CSO, some interviewees mentioned **the importance of established communication and cooperation between the police and minority communities or the organisations that represent them**: *"When I was present, the treatment from the authorities was quite correct. But I believe that it is different if someone comes with a lawyer than if they come alone. It was positive that we worked with the police, because that way we have people we can turn to. [...] When I am there when a report is made, I definitely point out that it is a hate crime. We then correct this in the official note of the report if it is not clear enough."* (P8)

Similarly, one of the professionals, offering support to members of Roma communities and the homeless (P11) explained their strategy: *"Much of it is arranged by us over the phone. We know which policemen, which investigators etc. are OK. We try very hard to make sure that the person interrogating a woman is a woman and not a man."*

In the field of combating human trafficking, public authorities have been working in close cooperation with CSOs for years and even attend training together. One of the professionals explained: *"We work well together. It is important to us that we have the right contact person at the General Police Directorate whom we can always turn to. And also that a person who is a victim of human trafficking is always interviewed by criminal investigators who also work in this field – that the person is trained. And we also always monitor the victim, to assess if they need a break, a coffee, a toilet, if it is too much, to stop, to take a break."* (P9)

These experiences represent promising practices that could be taken into account in future efforts to enhance the rights of victims of hate crimes, during the reporting process and in later stages of the proceedings. Special training of a number of police officers who would primarily deal with complaints made by victims of hate crime could also be a step in a positive direction, as was mentioned by one of the interviewed practitioners: *"On the other hand, (in the case of) sexual orientation, it can be a problem (if the victim) comes and encounters a police officer who has no sensitivity for these things [...] there are solutions here... notifying the police station in advance. At the police station there are (officers who are) more trained in a certain field, in short we have a set of certain solutions, which (can be) presented to the interested public."* (P7)

C.1.1. Identifying hate and bias-motivated crime in the practice of Slovenian police and state prosecution

Slovenian law does not mention victims of hate crime specifically. Addressing hate crime entails on the one hand victims and witnesses coming forward and reporting an incident and on the other the ability of national law enforcement systems to identify and record hate crime correctly.⁶ FRA research shows that many Member States still have no system in place that assists and compels police officers to identify and record bias motivation, and Slovenia is no exception. Field research confirmed that also in Slovenia reported hate crimes may be wrongly categorised, bias motivation may not be investigated and a hate crime may not be prosecuted as bias motivated. According to FRA, the consequences are that victims may be left without appropriate support, protection and justice; hate crime laws cannot be given effect in court; and even reported hate crimes are not accurately represented in official statistics.⁷

A professional from the police (P7) explained that when dealing with crime, the police and prosecutors always focus on what will have the best chance of success in the criminal proceedings, the best chance of proving the case in court. Therefore, if the hate motive or the prejudice turns out to be more difficult to prove, it may be that the police and the state prosecution will not specifically include this part in their prosecution.

On the other hand, some interviewees (P8, P12) cited the problem of relativization by the law enforcement authorities (police), where it is necessary to insist that the matter is explicitly on the record. So, the problem is that victims feel that they are not taken seriously by the authorities unless media pressure is created.

A prosecutor told us how the general lack of emphasis on hate motives for crimes is reflected in the practice of prosecutors: *“Sometimes we cannot even know from the very beginning that it is a hate crime. Because, per example, the police do not deal with that part of it, or because, per example, it is not apparent from the circumstances of the case itself. [...] The law does not oblige us to look for that cause, for that purpose, it basically provides or wants us to prove it only for specific offences. [...] So perhaps there is already the problem that we do not always know when it is a hate crime.”* (P3)

Therefore, the 2022 amendment to the CC-1, which introduces hate crime as a mandatory aggravating circumstance that should be taken into account when determining the sentence, is particularly important.

The representative of the police explained an issue frequently encountered in the criminal procedure: *“Usually, in the first phase, victims are willing to share with the police and expect to be treated in this way. However, these personal circumstances... it often turns out later on that they do not want to expose it anymore because of the labelling of society, because of the exposure in criminal proceedings and proceedings for minor offences, because of the questionings from the police officers and from the surrounding society, maybe also the confrontation with the perpetrator.”* (P7)

This issue of victims feeling uncomfortable with sharing their personal grounds, feeling unsafe and choosing to abolish pursuing justice and redress within the criminal justice system echoes the above-presented experiences of the interviewed victims (chapter C.1.).

6 FRA (2021) *Encouraging hate crime reporting - The role of law enforcement and other authorities* <https://fra.europa.eu/en/publication/2021/hate-crime-reporting>, p. 53.

7 FRA (2021) *Encouraging hate crime reporting - The role of law enforcement and other authorities* <https://fra.europa.eu/en/publication/2021/hate-crime-reporting>, p. 53.

C.2. Judicial process. Strengths and weaknesses

“Hate crime victims are those most afraid to go to trial, because these are traumatic experiences.” (P12)

For many victims, uneasiness and fear of the public authorities and the proceedings does not cease with the procedure continuing in the next phase, in front of the courts. *“People are afraid. They are afraid of the courts, they are afraid to go to the police... Those who are victims of systematic violence are especially afraid. They are afraid that it will be even worse afterwards. [...] They feel uncomfortable. I am sure of it. [at the court] you are behind the podium ... you are exposed ... There is no effort to make [the space] victim-friendly ... and lawyers of the opposite party can ask whatever they want.”* (P6)

According to the CPA, the victims have: the right to information (on their rights and available support services); right to make a complaint; right to information about their case; right to accompaniment by a person of trust; mandatory legal representation for minor victims; right to translation and interpretation; right to be informed of the release or escape of the suspect or accused person from pretrial house detention or from detention; individual assessment of victims to identify specific protection needs.

Both, the state prosecutors and the courts are also obliged to treat the victims carefully and considerately, with regard to their age, health, vulnerability or other similar circumstances. They too, have the responsibility to inform the victims of their rights, in accordance with the personal characteristics and vulnerability of the victims, their special needs for protection, the nature, gravity and circumstances of the crime and the stage of pre-trial or criminal proceedings (Art. 65.a CPA). During investigation, victims have the right to draw attention to all the facts and to propose evidence that is relevant for the establishment of the criminal offence, the tracing of the perpetrator of the criminal offence and the establishment of their property claims (Art. 59(1) CPA). At the main hearing, they have the right to propose evidence, ask questions to the defendant, witnesses and experts, give comments and explanations regarding their testimonies, and make other statements and proposals (Art. 59(2) CPA). They also have the right to inspect the file and the material evidence. They may be denied the right to inspect the file until they have been interrogated as witnesses (Art. 59(3) CPA).

The law provides for the protection of victims during court proceedings. Possible protection measures during court proceedings are:

- ✿ Recording the hearing of a witness or injured party – a person under the age of 15 (84(1) CPA),
- ✿ Interrogation with the help of an expert and in adapted premises (Art. 240 CPA),
- ✿ Protection of personal data of witnesses and interrogations using technical means, per example by providing a protective wall (Art. 240.a CPA),
- ✿ Hearing by videoconference (Art. 244.a (1) CPA),
- ✿ Exclusion of the public at the main hearing (Art. 295 CPA),
- ✿ The direct examination of persons under the age of 15 who were victims of sex offences, neglect and maltreatment of a child, human trafficking and enslavement is not allowed at the main hearing. In these cases, the court must decide to read the record of the previous hearing of those persons. If necessary, the court shall do the same with respect to other minor victims and to the victim with special protection needs (Art. 331 CPA).

As explained in Chapter C.1. of the report, victims have the right to be accompanied by a person of trust (Art. 65 CPA). They also have the right to be enabled to avoid unwanted contact with the suspect or the accused, unless the contact is indispensable for the successful conduct of pre-trial or trial procedure. There is also the possibility to use the mechanisms in accordance with the Witness Protection Act.

To ensure their personal security, the victim may request to be informed of the release or escape of the suspect or accused person from pretrial house detention or from detention. They have to be informed of this right by the competent authority during the first contact in pre-trial or criminal proceedings, which shall be duly recorded. But such information may be refused if the suspect or accused person could be threatened as a result. The victim should be informed by either the police, the court or the prison (Art. 65.a(4) CPA). However, the interviewed lawyer (P6) expressed doubt that this right is systematically implemented in practice as their clients reported that they were not informed of the perpetrator’s release.

Another lawyer (P5) shared his experience in a case, where the victim was interviewed only once, without the perpetrator present. In his opinion this was very important for secondary victimisation prevention – that the victim is interviewed immediately and in an appropriate manner, so that this testimony is then used during the entire proceedings. This was echoed by one of the victims of a hate crime (V6): *“we don’t even want to remember. Even though [the memories] are somewhere, it is difficult to recall them because we don’t want them, because we have repressed them, because they were unpleasant and that is quite normal. It’s just that in court they expect you to remember it like it was yesterday. ‘It was a traumatic experience, you must remember that!’”* He also mentioned that, in practice, providing for avoidance of contact of the victim and perpetrator is not always possible due to the inadequate facilities, especially in some of the smaller courts.

A number of professionals mentioned the issue of ‘keeping’ the victim in the proceedings. A police representative explained: *“when the victim goes back into their environment, and when they think a little bit and so on, we see that they change. [...] The one who faces it alone, who is not quite sure, who is afraid of the label, afraid of the perpetrator, and so on, often stops cooperating with the police, or no longer provides the circumstances necessary to prove the perpetrator committed a crime”* (P7)

A CSO representative that mainly supports victims of domestic violence mentioned the same issue: *“We see a lot of secondary victimisation and excursion from court procedures, non-cooperation of victims ... After they have already made a report, it is quite common and not surprising. They give up.”* (P10)

Generally, interviewees’ encounters with (different kinds of) judicial procedures were various. One of them noted *“As far as I remember, all the procedures were correct. I have no feeling of discomfort.”* (V1) On the other hand, some interviewees shared stories of horrific cases of discrimination in judicial proceedings, such as: *“These judgments in the courts ... these expert opinions. How many times do we have an expert write that it was not sexual violence, but that a Romani girl is physically mature at the age of 13, because she is of Romani origin and they mature earlier!?”* (P11)

One of the interviewees mentioned also the issue of vicious defence attorneys who are in their disrespectful, hateful and cruel questioning of the victims of violence not stopped by judges: *“These are insults, inappropriate questions, belittling ... I had this girl, who I have been working with for many years, and the lawyer asked her in court at the main hearing, because he wanted to show that she was mentally less developed, because she had been diagnosed with dyslexia [...] he asked her questions like to tell him the recipe for goulash. Totally inappropriate question and basically insulting[...] he wanted to show through that, that she was mentally less developed. The judge didn’t stop it.”* (P10)

Widespread societal discrimination towards migrants and foreigners is also reflected in court. A representative of a CSO that supports migrants and refugees therefore noted *“Once you are a victim of discrimination, you are a victim of a justice system that is equally discriminatory.”* (P13).

In proceedings involving LGBTQI+ a lawyer also mentioned unpleasant encounters with lay judges, who *“are crazy embarrassed. I get distracted by these things when they show a clip, a photo (of a sexual nature) on a big screen, and I get distracted by the reaction. Per example, lay judges... that look of disgust you see on their face when they change their facial expression. That is not right, you have to prepare for it and you have to expect what you are going to see and you have to react as if you are looking at sunflowers. You must not show that you are disgusted, that it is against your convictions.”* On the other hand, he has never felt that professional judges have anything against gays, lesbians, prostitutes, whoever. *“They talk to them normally and accept it as normal.”* (P5)

In judicial proceedings, interviewees (P3, P10, P13) also mentioned the problem of the outcome of the procedure, which is many times not what the victim imagined or wanted. Also, Slovenia still deals with the issue of very long procedures, where the actual judgement may be given several years after the crime has happened.

C.3. Civil society's actions and initiatives

C.3.1. General mapping of anti-discrimination organisations

We could divide relevant CSOs in two main groups:

A) CSOs focusing on a specific group of people (per example, people with physical disabilities, people with intellectual disabilities, people with mental health issues, LGBTIQ+ community, specifically transgender community, migrants, asylum seekers and refugees, specific minorities such as Roma, victims of violence and also perpetrators, etc.), which usually (not always) also provide support services to these groups;

B) CSOs fighting for human rights and against discrimination in general, mainly working in research and advocacy, taking on a watch-dog role towards the decision-makers, which usually do not work directly with and do not provide direct services to specific groups.

There are a number of CSOs offering different types of support to members of marginalised communities and victims of crimes. They mainly receive financial support from the government, but they do not all receive continuous support through social programmes, and must often yearly or bi-yearly apply for project funding. In some fields, such as human trafficking or domestic violence, the state already recognized the need for victim support services and, in a way, "outsourced" this to CSOs through stable funding. As shown by our research, this is needed in many other fields as well, however the state does not (yet) provide for it.

CSOs' support is most developed for victims of specific crimes, such as human trafficking, exploitation, forced prostitution, forced marriage (Društvo Ključ), anti-LGBTIQ+ (Legebitra, ŠKUC, Parada ponosa, etc.) or specifically anti-transgender (TransAkcija), xenophobic or racist attacks (Infokolpa, Ambasada Rog, Delavska svetovalnica, PIC - Pravni center za varstvo človekovih pravic in okolja, etc.), or for victims of domestic/gender-based/sexual violence (Društvo SOS telefon, Društvo za nenasilno komunikacijo, Zavod EMMA, Društvo beli obroč, etc.), or homeless (Kralji ulice) etc. There is no CSO that would offer support to victims of hate crime in general or to victims of hate crime specifically.

C.3.2. Support services to victims

As explained above, hate crime victims are eligible for support under general victim support provisions in the CPA (Art. 65.a). Victims have the right to free medical, psychological and other assistance and support provided by social work centres and other organisations. In addition to the health services provided by the public health system, the victim of the crime has the right to obtain professional support and expert advice from the competent social work centre, as provided for in Art. 65.a.(1)(1) of the CPA.

Interviewed victims of hate crime received the support from CSOs, which offer psychosocial, legal or (rarely) financial assistance. Some CSOs have branch offices in major cities, such as Maribor, Koper, but often the services are only present in the capital, Ljubljana. Work is carried out by employees and volunteers, and financed by the state, the EU and by private funds. Victim support networks, which connect public authorities and CSOs are especially dedicated to victims of domestic violence and of human trafficking and other forms of abuse (forced prostitution, forced marriage). **There are no specialised services for victims of hate crime**, but there are some CSOs that specifically address this issue, though mainly amongst LGBTIQ+ support CSOs. However, CSOs that are supporting and representing persons from individual marginalised groups generally do not have experience in providing support to victims of crime. For example, previous research regarding victim support to persons with disabilities showed that CSOs would need to strengthen their knowledge of the criminal justice system and would need

additional staff (lawyers, psychologists), additional funding and additional office space to be able to provide victim support services.⁸

Majority of our interviewees emphasised the victim's need for support on one side, and the lack of appropriate support or, in some cases, the preciousness of available support, on the other side. More cooperation between state institutions and CSOs would be beneficial for everyone, especially the victims. (P3) The support victims need often goes beyond the usual 8-16h working hours of institutions or even CSOs, thus informal groups and volunteers are indispensable. (P13)

Certain specific forms of needed support that the victims pointed out in our interviews have, until now, been completely overlooked by the authorities as well as CSOs, such as informal or formal network of allied organisations or safe spaces where victims plan their next steps safely. (V2) Another gap in the existing support system that was identified were housing units that are not safe houses, but offer a temporary solution for victims of violence, when they need it. (P10)

Social work centres

Based on the transposition of the Victims Directive, social work centres as a state institution became responsible for providing support to victims of crime. According to the Community of Social Work Centres of Slovenia this support entails professional support and expert advice. The professional support includes identification of the beneficiary's hardship, information and guidance. Professional support and counselling are provided to enable the victim of the crime to make appropriate psychological, social and financial improvements to the situation resulting from the crime.⁹ Regardless of whether victims report a crime, they have the right to support under the law governing social protection (Art. 14.a Social Assistance Act).¹⁰

Unfortunately, in the interviews with victims and professionals we have not encountered an instance in which victims of hate crimes would receive support from social work centres in regards to the hate crime itself. It seemed none of the victims knew they could have asked for support by social work centres.

Victim Support Service, District Court in Ljubljana

In October 2019 the District Court in Ljubljana established a special victim support service as an additional mechanism to improve the realisation of victims' rights, "*because the new Victims Directive gave the injured party a special place in the law, so that victims had to be treated in a much more individual and comprehensive way.*" (P4)

Mainly they are tasked with supporting victims of crimes with elements of violence in the area of marriage, family and children, and crimes against sexual integrity. They do not refuse to support victims of other crimes, because they also have certain rights and they inform them of the procedure.

Their aim is in helping victims, judges and court staff to communicate with victims and develop measures to protect them. This is to prevent or mitigate secondary victimisation, discomfort, fear and other unpleasant emotions that victims face in criminal proceedings. The service explains the procedure of the court hearing to the victim when he/she contacts the service and provides

8 Mirovni inštitut (2021), *ARVID - Advancing Access to Rights under Victims' Directive for Persons with Disabilities, National Report for Slovenia, Ljubljana: Mirovni inštitut.*

9 SCSD, "*Socialnovarstvene storitve*", available at: <https://www.scsd.si/centri-za-socialno-delo/delovna-podrocja-csd/socialno-varstvene-storitve/>

10 *Social Assistance Act (Zakon o socialnem varstvu)*, 4 November 1992, available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO869>

information and assistance as provided by the Victims Directive and the CPA. They explain the nature of the proceedings, victims' rights, possibly refer the victim to relevant CSOs, enquire about the victim's well-being in terms of threat, contact with the offender, explain the possibilities of pursuing compensation, a restraining order, free legal aid, and provide any other information that the victim may need. Furthermore, they communicate to the General Penitentiary Office if the victim would like to be informed of the escape or discharge of the convicted offender. And they provide information regarding the status of the proceedings. They are there to help once criminal proceedings are underway, but they may provide some guidance already before. It seems they work in a very open and non-formalised way. The support is individualised and provided in an accessible language and way. As explained in an interview, they provide comprehensive information in a brochure, but understand that often victims nevertheless do not understand the provided information, so they explain through phone or on-site consultations. (P4)

The victim support service may also suggest special safeguards for the most vulnerable victims (such as videoconference interview, avoiding the accused in the hallway etc.), but it is the decision of the judge if they will implement them. The service can also come to a court hearing as a person of trust, supporting the victim.

The above represents an example of a good practice, and reportedly it is being implemented also at other district courts in Slovenia.

C.3.3. Awareness-raising campaigns

Times are changing and new approaches, methods and technologies can be used, however, as one interviewee (P1) said: *"It should absolutely be renewed all the time, because it is not something that you do once and capture all the population, put a check mark and say "we will never do this again, because it is not necessary". This is periodic work that needs to be renewed all the time."*

All our interviewees agreed that more efforts need to be put in awareness-raising and sensibilization of the general public as well as (or especially) professionals working in institutions and services where they come across marginalised and vulnerable groups of people. Other interviewees emphasised on the need to include more sensibilization and awareness-raising already in schools, to incorporate it in the education system, especially for law students, medical students, future police officers, social work students etc. Victims are often sharing their personal stories through a method of living library - and this is exactly the method that has proven to be one of the most efficient, especially with younger generations. At the same time this empowers victims, some of them said.

The role of media of course is huge, especially taking into account their reach, and it is not rare that sensibilized journalists cooperate with CSOs in awareness-raising campaigns. On some occasions state institutions take on an active role as well, though not as often as they could or should. Towards the end of 2022, the Government of the Republic of Slovenia announced to form a special interdepartmental working group to combat hate speech, and that combating hate speech will be one of priorities in 2023.¹¹ In December 2022 the Government Office for Digital Transformation launched "Bite your hostile tongue!" (*Ugrizni se v sovražni jezik!*) campaign against online hate speech with short videos of Slovenian athletes who for various reasons often encounter hate speech.¹² The campaign was obviously well-intentioned and tried to reach and address the public through including people who are respected and liked by the community, but

11 Lebinger, A. (2022), *"Nad sovražni govor medresorsko in s koordinatorjem"*, *Dnevnik*, 9 November 2022.

12 Slovenia, the Government Office for Digital Transformation (*Služba Vlade Republike Slovenije za digitalno preobrazbo*) (2022), *"«Ugrizni se v sovražni jezik!», kampanja proti sovražnemu govoru na spletu"*, press release, 7 December 2022.

unfortunately it was structured in a way that reproduced stereotypes. Consequently the message of the campaign was blurred and the contribution to awareness-raising on the concept of hate speech among the general population is questionable.

Most campaigns are done on a national level, rarely on a local level. However, representative of the Police (P7), emphasised on the importance of local communities and the issue of reluctance of local authorities to act when first signs of intolerance or hatred are detected in a certain (especially smaller) local environment.

Awareness-raising of the general public should go hand-in-hand with specific training for professionals: *“The hostility that emerges in public opinion towards the victims, also permeates the institutions. We still find many people in the institutions who doubt the statements of the victims, who are sceptical about this violence against women that we talk about... I had one training [...] and there were certain police representatives who have problems with the fact that we are talking about violence against women, who still doubt that a man who has murdered his wife, that he is the only one to blame, because women cause problems too....”* (P10)

C.3.4. Training activities

Adequate training for professionals encountering victims within their scope of work can have a direct positive impact: *“We see cases that end well and these are people who have a high level of sensitivity, who have gone through training, etc. But we have very few of these people in Slovenia”* (P10).

It seems that in certain fields which have been recognized as priority by the state institutions, such as human trafficking, there is much more cooperation between state institutions and CSOs, and professionals from public institutions and CSOs even attend joint training. (P9) The prosecutor stressed that more adequate training is needed to increase the hate crime recognition rate: *“(police officers) who are the first to come into contact with a victim can detect it earlier. If the prosecutor does not see the person, if he does not have direct contact with him, such a case may slip by the wayside. [...] In this sense, police officers, social workers, persons who come into contact with victims should be trained. That they are taught to ask ‘what do you think is the background, why this happened’.”* (P2)

On a systemic level, the police are aware that the one who takes the report and has an in-depth conversation with the victim, has to be extremely qualified and careful about the sensitivity of the procedure, *“to keep the victim from withdrawing, from starting to change his or her statement, from being subjected to repeated attacks, or to stalking, to pressure from the perpetrator”.* (P7) But in practice they are more or less successful: *“because we also get from CSOs that in this case we did something completely wrong and so on, but at a systemic level we are trying to train people and to provide the circumstances and the space where this could be done.”* (P7)

Through our research, we identified a lack of victim-centred training for professionals (especially the police, lawyers, prosecutors and judges), more specifically training on how to treat victims of hate crime: *“Regarding our emotional response to the state of this individual, there is no training. For (prosecutors), other professional questions are somehow more foreseen, related more only to ius, law.”* (P3)

A lawyer shared his opinion that lawyers should also receive training on how to approach and communicate with victims. (P5) In practice, it seems as if the police are actually quite active when it comes to training their staff: *“We have a system of multipliers along the lines of work, who conduct and organise training. So that we have a continuity of training and a network of multipliers, more qualified police officers, criminalists who deal with hate crimes, let’s say, or at*

least sensitive crimes.” (P7)

On one side, our interviewees said that the Police might be the most cooperative public institution (relevant to hate crime victims), however, on the other side, they shared numerous negative experiences with the police. Thus, more training is still needed.

C.4. Practitioners’ and victims’ views on the legal and political framework on hate crimes and victims’ rights

To effectively safeguard their human rights and actively engage in a judicial procedure, most of the people need significant support by legal practitioners, guidance by the state institutions, financial aid (since procedures are often expensive), good information and additional support in cases of language or other barriers. All of this is even more so for most frequent victims of hate crimes, who are members of marginalised communities, often facing structural discrimination in society and lack of effective social networks which could support them in access to justice. Some experiences of victims of hate and bias-motivated crime, as well as other structurally marginalised victims in Slovenia will be presented below.

Access to information

There is no specialised information sheet for hate crime victims, they receive general information for all victims of crime.

Some representatives of public authorities are definitely aware of the sensitivity and complexity of effectively informing the victims that come to report a crime: *“we have agreed with our colleagues who do this, to inform all victims who report any crime, not just hate crime, in a clear but perhaps a little more modest way. So that they do not get too much information at once and are bombarded with what most people would forget in half or three quarters of an instant. Instead, to give them the essential information, directions on where to go for help and so on.” (P3)* To some extent, the authorities also explain how the procedure will continue. (P3)

But not all of the interviewees experienced this approach in practice: *“There should be some general things said about how the procedure will be carried out – to make that clear, what the options are, and also to offer options for psychosocial support. They give you a copy of the criminal report, say ‘you can call if there are any questions, etc.’ It’s not like it’s really holistic support.” (P8)*

On the other hand, victims can be relatively well informed of their rights, but the question remains whether they understood what that actually means in practice – how to exercise their rights.

Commenting generally on access to information, a representative of a CSO supporting LGBTQI+ persons felt the situation is improving. *“There is now more and more access on the internet to this information. per example, Legebitra, I think, has a proper website on rights and that sort of thing, where these things are listed up there. I find that it is getting better and better, but I find, especially with young people, that they are not quite sure how and what. But it seems to me that it is getting better. On the other hand nobody knows about (official) support services.” (P12)*

Others felt a lot more could be done in regard to access to information (P8). It must be mentioned that some public institutions have been doing a lot recently to make information about judicial proceedings and rights more accessible. The Supreme Court launched the project “At court” (*Na sodišču*) which also includes explanations about the criminal procedure,¹³ the Supreme Prosecutor’s Office lists and explains criminal procedure on their website (in Slovenian and English language)¹⁴ etc.

13 Available at: <https://nasodiscu.si/kazenski-postopek#kako-zacet-postopek-ce-ste-oskodovanec>

14 Available at: <https://www.dt-rs.si/kazenski-postopek>

★ Legal representation and legal aid

In accordance with the CPA, victims of crime in general have the right to be represented by a counsel in criminal proceedings and to legal aid, provided that they meet the conditions prescribed by the law governing free legal aid. Only for minors who are victims of criminal offences against sexual integrity, marriage, family and children, enslavement and trafficking in human beings the law stipulates mandatory representation throughout the criminal proceedings to ensure their rights and protect their integrity. If they do not have a counsel, the court appoints a counsel among attorneys *ex officio* (Art. 65(3) of the CPA).

However, the above-described experiences already show the need for professional legal representation for all victims, which was further underlined by several of our interviewees. *“So (the victims) are really left very much to themselves, to their own ingenuity, to their own resources. Because, let’s say, a victim of crime will only be able to get really good support in the process if they have a lawyer, and they pay him fairly. That lawyer will also look after their interests at all times.”* (P1)

The lawyer is like a buffer and can stop or manoeuvre hard questioning from the perpetrator’s lawyer, he/she can make sure that *“when involved, even in the investigation, when they are being questioned, that they are asked the right questions, not to be told how to answer or to be put in a position to make a decision. The questions should be open-ended, so that the victim has the opportunity to tell what happened to them.”* (P5)

The lawyer is also like a bridge that ‘translates’ the client’s interests into action in the judicial procedure, in the courtroom. Often, victims (as well as other lay participants in the procedure) are stressed out in court, the judges state their legal rights very quickly, and consequently it is very difficult for the victims to understand. *“We lawyers then explain it to them and look after their rights.”* (P5)

One of the interviewed victims (V1) highlighted his reliance on his lawyer, which made a significant contribution towards the feeling of safety and trust in the procedure. He had a lot of confidence in the lawyer, because the lawyer was part of the community and other members of the community already had good experience with her. It meant a lot to the interviewee that the lawyer was present all the time in the procedure, and the victim therefore did not have to be, they prepared for the hearing together, went through the scenario of what could happen. Commenting on the confrontation with the perpetrators in the courtroom, he noted that it was awkward for him that the perpetrators were in the same room during the interrogation.

Access to case file is also easier in instances where victims have official legal representation or at least are supported by CSO experts with procedural experience. In any case access to case file can be limited for the victim due to the interests of the procedure.

The importance of victim support by a professional legal representative is especially evident in this **case study**, shared with us by an interviewed lawyer (P5), which shows significant issues faced by the most vulnerable victims in criminal procedures. In this case, the victim was a victim of sexual violence. The lawyer was appointed by the investigating judge, who specifically contacted the lawyer in question, knowing he had experience with such cases. Furthermore, the victim was gay, a person of colour and with mental disabilities. The interviewee mentioned that the defendant's attorney built their defence on the victim's sexual orientation and blame-shifting.

“Here, too, during the proceedings, the defence tried to build a defence precisely on my client's sexual orientation, which had nothing to do with all the exploitation. It doesn't matter what his sexual orientation is, it doesn't matter whether he is gay or not, but the defence constantly tried to base the defence on the fact that he is gay and that he wanted it. In court, I, as his attorney, ensured that he was only questioned once and that he was not subjected to repeated secondary victimisation. I made sure that – because there were so many offences, when it came to his sexual orientation, his state of health and his personal circumstances – the trial was closed to the public. I did not make any statements to the press. We tried to get him through the process in a way that he would not feel like he was the perpetrator, even though he did. And he was always afraid of the consequences, what the consequences would be if the perpetrator was convicted. Because of the other people who were still free and were in that circle. In fact, I was surprised at what was happening in Ljubljana and in other places. And there was, in fact, human trafficking. At that time I also got him involved in CSOs, especially in Društvo Ključ”

The interviewee also mentioned that the defence attorneys harm the victims with their motions for evidence: *“What I found most inhumane was that at that time the defence lawyer insisted on looking at the photographs and the footage. We all said that we had watched them, that we knew what they were like, that we recognised him because he was the only black person. [...] And we, the five-member trial chamber, had to watch the videos of these orgies, sexual intercourse and photographs – because the lawyer wanted it.”*

The lawyer of the perpetrator even started a civil action against the victim, because of some of the victim's statements at the police. *“But it was really distressing. And for him in particular. I tried to protect him as much as possible.”*



Access to compensation

In terms of redress, the Slovenian criminal procedure offers the option for victims to file a compensation claim in the criminal procedure itself (*premoženjskopravni zahtevak*; Arts. 100-111 CPA), but the court will only decide on it if that would not prolong the criminal procedure (per example, if it is evident the offender stole 500 EUR from the victim, the court will decide the victim should be compensated for 500 EUR). If the victim claims compensation for non-pecuniary damage or if an evidentiary procedure is needed to establish the amount of compensation, the criminal court will direct the victim to file a civil action and claim compensation in civil court.

In practice, this system is problematic because it prolongs the procedure for the victim, it brings additional financial strain (court taxes, legal representation), it forces the victim to engage in the evidentiary procedure once again, etc. Also, there are no such protective mechanisms that exist in criminal procedures. Many victims therefore give up.

Some of the interviewees claimed referral to civil court is systemic. However, the interviewed lawyer said that most of the victims do not decide to continue their case in civil court. *“Most of them don’t decide because they cannot tell the same story again, because they are afraid of coming into contact with the perpetrator again, etc.”* (P5)

There was an idea to address this issue: *“For certain types of crimes, there should be some case law, about how much compensation at least is due. And if I and my client claims 60,000 EUR in damages, but there is a practice that in such a case he gets 10,000, the criminal judge should award 10,000 euros in damages, and for the difference he should refer to litigation – but not for the entire amount!”* (P5)

It should also be prescribed in the law that the victim is entitled to be represented by the same legal representative, whose services they received in the criminal procedure (at least in cases where victims are entitled to legal representation, covered by the state). *“Because he knows everything and does not need to explain it all again to someone else.”* (P5)

In some strictly defined cases, the victims may claim redress for a violent crime directly from the state itself (conditions are defined in the Crime Victim Compensation Act). A special fund exists for this. But, only Slovenian citizens and citizens of EU states are eligible, which seems discriminatory.

Restorative justice

Restorative justice is an underdeveloped field in Slovenia, and it is not designated as a priority approach.¹⁵ Alternatives to criminal prosecution were mainly introduced with a view to relieve the courts of the burden of cases and allow them to deal with other, usually more complex cases more quickly and efficiently. These alternatives, defined by the CPA, are: suspension of prosecution, settlement, penalty order and plea bargain. Penalty order and plea bargain are concluded with a conviction, whereas suspension of prosecution and settlement are not. Settlement procedure aims at reaching a settlement agreement between the victim and the perpetrator. It is regulated by Art. 161a of the CPA, which gives the public prosecutor the discretion to decide whether to refer the criminal indictment or the indictment to the settlement procedure or not. There is a list of cases which are eligible (offences punishable by a fine or imprisonment for a term not exceeding three years and some others), and they must consider the type and nature of the offence and also the personal characteristics of the offender. If a settlement agreement is reached, the prosecutor will dismiss the case. The dispute is resolved outside the judicial institutions, with the help of a conciliator, who is usually not a lawyer by training.¹⁶

Cases of hate crime and bias-motivated violence mainly do not meet the legally prescribed conditions for a referral to a settlement procedure. As it was raised by the interviewed representative of a CSO in the field of domestic and gender based violence, referring victims of hate crime into settlement procedures poses a significant ethical dilemma due to power imbalance. However, she knew of cases when this was done.

The interviewed representative of the equality body agreed that in serious cases settlement procedure is not appropriate – also from the viewpoint of general prevention: *“If some more serious action is needed, also as a general preference, to send a message to other potential offenders: ‘Look, if you do this you will end up in jail or pay such a large fine’ [...] That is to say, the more physical the matter, the more concrete damage it causes to the body itself or to the physical integrity of the individual, the less appropriate it seems to me then to use these alternative forms of prosecution.”* (P1)

15 Završnik, A. (2008) *“Conceptual problems of restorative justice - a new paradigm of a contemporary response to crime, available at: https://www.policija.si/images/stories/Publications/JCIC/PDF/2008/02/JCIC2008-02_AlesZavršnik_ConceptualProblemsOfRestorativeJustice.pdf*

16 Zupanc, M. (2021) *Nepravilnosti pri izvedbi postopka poravnavanja. Pravosodni bilten, 2/2021, p. 215. Available at: [http://sodnapraksa.si/search.php?q=pravo&database\[SOSC\]=SOSC&_submit=i%C5%A1%C4%8Di&order=changeDate&direction=desc&rowsPerPage=20&page=0&moreLikeThis=1&id=art_51610](http://sodnapraksa.si/search.php?q=pravo&database[SOSC]=SOSC&_submit=i%C5%A1%C4%8Di&order=changeDate&direction=desc&rowsPerPage=20&page=0&moreLikeThis=1&id=art_51610)*

D. CONCLUSIONS AND RECOMMENDATIONS

D. CONCLUSIONS AND RECOMMENDATIONS

“The security problem arises if all the mechanisms that should be triggered in the event of hostilities fail.” (P7)

D.1. Conclusions

The research confirmed the assumption we have already made when designing the Counter-Hate project, that **the criminal justice system as such is not victim-centred**. The transposition of the Victims’ Directive only took place in 2019. While the law on criminal procedure now defines the victims’ rights more comprehensively, the shift in the perception by all stakeholders has not yet fully taken place.

One of the interviewed professionals captured this well: *“The problem is that the criminal justice system is designed to revolve completely around the accused, that the victims of crimes are more on the sidelines here due to the nature of the criminal procedure. This does not mean that they do not have formal rights, of course they do... [...] Of course, the question is how it all works in practice. I think that there will still be a lot of effort necessary that such a parallel system will really be established, that the victims will really have at least a feeling, if not actually, of some support in this area. Because as said, the system that has been created, which has been functioning for decades focused on the accused, is then difficult to completely change on the basis of one legislative measure (Victim’s Directive), so that it gives the same support to the victims of crimes.” (P1)*

Once the prescribed rights of all victims of crime are fully respected, the position of hate crime victims will also consequently improve. However, as our research has shown, **authorities often do not recognise that a crime was hate or bias-motivated** and subsequently do not prosecute it accordingly. Furthermore, victims of hate crime are **particularly vulnerable and often suffer from stereotype-fuelled secondary victimisation** during the proceedings.

This leads to another conclusion we can draw from our research: that **much more focused training is needed for all professionals** (those working in public institutions as well as those working in CSOs) encountering victims of hate crime within the scope of their work. And especially, much **more focus should be put on an intersectional approach**. This has multiplier negative effects on victims of hate crime or bias-motivated discrimination, however the institutions very often completely overlook this.

A successful criminal trial can be extremely important for victims who come from marginalised groups, so it is really important that all authorities are properly trained and cannot afford to make mistakes. *“We believe that being a witness in a criminal trial is also part of recovery. [...] But then, when there is no closure, when people are acquitted, well, people don’t trust the system anyway, or they have had bad experiences in the past with social work centres, with the police, because maybe these authorities didn’t protect them, and then they lose trust in the system again.” (P9)*

Another assumption that was confirmed through our research, is **the lack of trust in public institutions**. All of the victims pointed this out, as well as professionals working in CSOs. As an idea on how to change that, one of the victims said:

“I think that some bodies like the Advocate for the Principle of Equality should have field workers, counsellors, who would be there with people, and through that some links would be strengthened, so that people would actually start to trust the institutions. I think that all the institutions that offer the possibility of reporting any kind of violence or human rights violation should stop staying in their rich rooms and go out among the people. [...] I know that the type of person who works in these institutions is completely inaccessible to vulnerable minorities, to whom bad things happen on a daily basis, and will remain so until these institutions are deinstitutionalised in some way.” (V2)

D.2. Recommendations

Identification and prosecution of hate crime

- ✿ Political will for combating structural discrimination at all levels, and publicly condemning hate crime (which should result in less hate crime).
- ✿ Increase capacity of law enforcement and the criminal justice system to identify and prosecute hate crimes and bias-motivated violence.
- ✿ Duly record and investigate each indication of bias as motive or cause for the offence.
- ✿ Hate and bias motive should be systematically considered as aggravating circumstances at sentencing. To raise awareness, at the proclamation of a judgement, the courts should speak publicly about hate and bias motives as grounds for a more severe punishment.
- ✿ To establish specialised police and prosecution units that investigate hate crime.

Personal safety and dignity of hate crime victims, protection from secondary and repeat victimisation

- ✿ Hate crime victims should be properly identified as such. Their vulnerability should be recognised, individual assessment should always be made and appropriate measures should be adopted.
- ✿ Hate crime victims must always be allowed the presence of a person of trust - at all stages of the proceedings.
- ✿ Courts and other criminal justice authorities should enable victims of hate crime to avoid unwanted contact with the perpetrator and to use the possibilities of remote hearing and the use of a screen and other technical means to prevent direct contact.
- ✿ Hearings of hate crime victims should be recorded by technical means for audio or audio-visual recording, similar as is provided for minor victims. Hate crime victims should be protected from repeating their testimony over and over again.
- ✿ Hearings of hate crime victims should be conducted with particular care in order to avoid possible detrimental consequences to their wellbeing. Harassment, bias-based questioning and bias-based blame-shifting should be prevented.
- ✿ Victims of hate crime should always be informed of the perpetrator's release or escape from pretrial house detention or from detention.
- ✿ All discriminatory practices from criminal justice stakeholders should be disciplined in accordance with relevant mechanisms for cases of professional misconduct.
- ✿ Analyse potential legislative, organisational or other changes that could improve victims' safety or sense of safety outside the criminal justice process itself.

Legal representation

- ✿ Extending mandatory representation in criminal proceedings to victims of hate crime.
- ✿ Drawing up a special list of lawyers who have received training on hate and bias motivated crime and the needs of hate crime victims, and who would primarily represent them.

Access to compensation

- ✿ Access to compensation should be facilitated. The practice of systematic referral of victims to litigation for non-pecuniary damage should be addressed and additional measures should be adopted.
- ✿ Consider developing a lump-sum system - a system of lump-sum amounts for most common types of non-pecuniary types of damages that are awarded in criminal proceedings, with referral to litigation for any exceeding claims.
- ✿ The discriminatory provision of the Crime Victim Compensation Act, under which only Slovenian and EU nationals are eligible, should be abolished.

Training

- ★ Law enforcement should develop and implement a comprehensive training for all uniformed police officers, in which bias, discrimination and hate crime would be addressed, with the aim of increasing awareness for enhanced reporting process, better identification and recording of hate crime, as well as addressing biased views and discriminatory behaviours in the police force itself.
- ★ Specialisation: Law enforcement should develop elaborate training for a number of expert police officers and criminal investigators, who will be equipped with specific knowledge to primarily deal with complaints and investigate hate crime, to provide a more uniform response and equal protection of rights for victims of hate crime.
- ★ Joint interdisciplinary training as well as regular interdisciplinary expert meetings/ mutual exchange should be organised for police, state prosecution, judiciary, lawyers, social workers and CSOs.

Enhanced hate crime victim support

- ★ To develop dedicated victim-centred “hate crime protocols” based on the intersectional approach covering all relevant processes (instructions on interviewing victims, assessing victims’ needs, referring the victim to specialised support organisations etc.).
- ★ Capacity building of victim protection services, including through training (see also above → **Training**)
- ★ Cooperation and referral between social work centres and CSOs should be ensured (see also below → **Cooperation with and inclusion of civil society**)
- ★ Support should be provided throughout the country, not just in major urban centres.
- ★ For support within criminal proceedings, the Victim Support Service at District Courts in Ljubljana and Maribor should be extended also to other Slovenian district courts.
- ★ Policy structures which include also local level and foresee an active role of the local authorities and local communities in the victim support system (bottom-up approach).

Cooperation with and inclusion of civil society

- ★ Organisations that provide support, counselling and advocacy for marginalised groups should be included in the victim support system. It should be possible for them to cooperate with criminal justice authorities.
- ★ The state should provide sufficient and stable funding to strengthen the capacity of these organisations, including to accompany victims in all stages of the proceedings.
- ★ To establish multi-agency partnerships between law enforcement bodies, equality bodies, local authorities, social work centres, CSOs and victim support organisations.
- ★ Police should reach out to CSOs to establish and/or strengthen cooperation in the field of support to victims of hate crime and bias-motivated violence. Promising practices of police cooperation and community outreach in the field of LGBTIQ+, Roma and trafficking in human beings should be strengthened and extended to other marginalised groups that are vulnerable to hate crime.
- ★ CSOs have valuable knowledge on the needs of hate crime victims. They should be included in the design and delivery of training for criminal justice stakeholders.

Data collection

- ★ Public authorities of the criminal justice system should rethink and improve their data collection system in a way that would address the issue of bias-motivated violence and hate crime and enable better analysis to create evidence-based policies.

Research

- ✿ The need for a country-wide victimisation study on experiences of physical violence and harassment should be addressed.

Awareness-raising

- ✿ There should be regular awareness raising campaigns on hate and bias motivated crimes for the general public; campaigns should be designed in cooperation with CSOs representing marginalised groups.
- ✿ Specific information materials (victims' rights, reporting procedures, support services, contact information) for victims of hate crime should be developed and widely disseminated.

SPAIN



CounterHate

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SPAIN

HIGHLIGHTS

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- ☀ In recent decades, Spain has seen a progressive recognition of diversity at social and institutional levels, which has allowed the approval of laws and policies for protecting civil rights and victims. However, bias-motivated violence and discrimination still constitute an important social problem.
- ☀ One of the main challenges is to counteract the factors behind high levels of under-reporting: lack of trust in institutions; lack of resources; internalisation of violence as something inevitable; fear of suffering reprisals or having to expose oneself publicly; fear of revictimisation, and unawareness of available resources and reporting channels.
- ☀ According to the interviewees, the institutions responsible for reporting and judging cases are not seen as sensitive or adequately prepared to address hate crimes, with the exception of prosecutors and police units specialised in the matter. There are still police officers who are poorly prepared to handle these cases, and whose reports do not take hatred into consideration as a possible motivation in criminal acts. Similarly, judges continue to show difficulties in recognising hate speech or aggravation in their sentencing. Some judges and police officers find it difficult to concede victim status to people from certain segments of the population associated with delinquency and criminal activity in the popular imagination.
- ☀ Spain has a wide and dense network of organisations that defend civil rights and fight against bias-motivated violence and discrimination, which offer essential services for victims: information, legal advice and support, social assistance, psychological support, etc. In addition, these organisations also offer emotional support for the victim, which is key to redressing harm.
- ☀ The paradigm of hate crimes presents some limitations, by offering an individualising conception of violence. Forms of violence such as racism or LGBTphobia are structural phenomena that shape our social and cultural universe. Therefore, beyond punitivism, there is a need to transform our system of values and beliefs, which requires rigorous efforts in educational and awareness measures at all levels, on the part of the competent authorities and society as a whole.
- ☀ Hate crimes have been used as a means of protecting groups that can in no circumstances be considered vulnerable, such as police forces, the monarchy and far-right movements. This incorrect application of hate crimes legislation could be interpreted as a strategy to counteract democratic criticism and protest against the activity of otherwise intolerant institutions and movements.
- ☀ The concept of hate crimes may not offer full redress to victims, insofar as it focuses largely on sentencing and less so on repairing harm. Restorative justice stands as an alternative or complement to punishment that could help to provide restoration, opening the way for a process

of listening and recognition of the harm caused that benefits both the parties immediately considered (victim and offender) and society as a whole. Nonetheless, tackling the power imbalance between the victim and the offender, avoiding revictimisation and reforming the legal framework are the main challenges to address.

- ✪ To understand and combat bias-motivated violence and adequately assist victims, the intersectional dimension of such violence must be considered, since several factors of vulnerability often interact and intersect. The need for an intersectional approach is shared by the professionals interviewed, although some of them warn of the difficulty in transcending the theoretical level in order to put concrete political and legal measures in place.

INTRODUCTION AND METHODOLOGY

INTRODUCTION AND METHODOLOGY

This report is the product of the quantitative and qualitative research carried out in Spain as part of the Counter-Hate project, which contributes to the support provided to victims of hate crimes by ensuring that legislation and policies take a victim-centred and intersectional approach. The research has been carried out to analyse the opinions and needs of victims of hate crimes, as well as the perspectives of policy makers and key professionals, in order to gather their views regarding existing victims' services and policies, the current role of public bodies in victim support, as well as their personal and professional experiences linked to bias-motivated violence, paying particular attention to the intersection of factors of oppression.

Given the administrative and institutional architecture of Spain as a decentralised state, the analysis of existing policies and services for victims has been carried out principally at two levels: national and regional. Regarding the latter, the analysis focuses on one of the regions with the most consolidated policies, services and community organisations dedicated to the prevention of bias-motivated violence, victim support and the promotion of civil rights: Catalonia.

This research has been conducted against the socio-historical backdrop of an extensive and dense network established for the prevention and combatting of bias-motivated violence and discrimination. Both nationally and regionally, a legal and political framework for the protection of vulnerable groups exists, with a powerful third-sector and activist base involved in the defence of civil rights and victim support. However, as this report shows, there are still weaknesses to be improved upon, and challenges to be addressed, in order to guarantee a system that is fully reparative for victims and fully effective in preventing and combatting hate crimes.

The qualitative research is based on semi-structured interviews with people who have experienced hate crimes and/or discrimination, and professionals who work with victims and/or defend civil rights. As tables 1 and 2 show, six interviews with victims and sixteen with professionals have been carried out.

Regarding the interviews with professionals, the aim was to ensure that the sample was as exhaustive as possible, including professionals from public and private organisations whose work relates to the main forms of discrimination and the defence of civil rights. As such, other than representatives of public bodies that deal with hate crimes and discrimination, representatives from the following type of organisations have been interviewed: LGBT rights, anti-racist, pro-Roma rights, anti-Islamophobia, against social exclusion and homeless support organisations. The profile of the interviewees is also varied: community and social workers, lawyers, psychologists, philosophers, and sociologists, together with activists from social movements. The strategy for recruiting the interviewees took advantage of the extensive list of organisations (235) prepared for the survey. Specifically, 25 organisations were selected from the list based on their nature (public-private) and their field of action (LGBT rights, anti-racism, against social exclusion, etc.), and subsequently contacted to request an interview with one of their employees. The research team had already contacted some of these organisations in previous projects, facilitating their participation on this occasion.

In relation to the involvement of victims, the team followed a double strategy: utilizing previous contact with victims from other projects, and through the professionals interviewed for this one. Whilst the first strategy worked relatively well, the second one was ineffective given that the majority of the professionals contacted either did not want to expose their users to possible revictimisation from having to relive traumatic events or could not find people willing to be interviewed. Despite its limitations, the sample is reasonably heterogeneous in terms of gender, ethnicity, age and the type of violence and/or discrimination experienced by the interviewees. In relation to the latter, it should be noted that most of the people interviewed had suffered intersectional violence. Both the interviews with professionals and with victims were audio-recorded, transcribed and analysed using the software Atlas.Ti.

To complement the qualitative analysis, an online survey was carried out with representatives from civil organisations by means of LimeSurvey. As ground work, an exhaustive list of 235 organisations was elaborated following thorough online research. The organisations identified were classified in relation to the following fields: LGBT, race/ethnicity, religion, others (e.g. aporophobia, disability, etc.) and transversal organisations. Thereafter, an email was sent to the identified organisations, presenting the project and inviting them to participate in the survey. Two weeks later, another email was sent to thank the organisations that had responded and remind the others of the importance of participating in the survey. Lastly, ten days later, a final email was sent to reach the last participants. Finally, 95 responses were obtained, of which 45 included responses to all questions. The results were analysed using

Table 1: sociodemographic data - professionals

Interview	Gender	Age	Professional role
P1	Female	33	Lawyer. Coordinator of the anti-hate crimes service (LGBT organisation)
P2	Female	29	Community worker. Project officer in an anti-Islamophobia organisation
P3	Male	55	Sociologist. Coordinator of the anti-discrimination service (Roma organisation)
P4	Male	36	Community worker. Coordinator of the service for the social inclusion of vulnerable young people (organisation against social exclusion)
P5	Male	53	Lawyer. Coordinator of the legal team (anti-racist organisation)
P6	Female	41	Social researcher. Researcher and coordinator of the observatory against hate crimes (organisation for the homeless)
P7	Female	-	Lawyer. Director of the service against discrimination (Roma organisation)
P8	Male	73	Coordinator of an anti-racist organisation
P9	Male	27	Volunteer (LGBT association)
P10	Female	63	Anthropologist. Founder of an anti-Islamophobia organisation

P11	Female	41	Psychologist. Director of the support office for victims of LGBTphobia (LGBT association)
P12	Male	-	Coordinator of a government service against hate crimes
P13	Female	50	Criminal lawyer
P14	Non-binary	37	Community worker. Coordinator of a government service against LGBT-hate crimes
P15	Female	40	Lawyer. Project officer in the hate crimes office (Anti-Racist organisation)
P16	Male	-	Coordinator of an anti-racist organisation

Table 2: ssociodemographic data - victims surveyed

Interview	Gender	Age	Grounds for discrimination or hate crime
V1	Transgender female	31	Gender identity
V2	Transgender female	62	Gender identity
V3	Male	47	Sexual Orientation / Race
V4	Female	23	Race / Gender
V5	Transgender female	48	Gender identity
V6	Female	42	Race / Gender / Social Class

Table 3: Survey data

Universe: N° of organizations contacted	235																													
Number of total responses	95																													
Number of completed responses	45																													
Responses rate (universe/total responses= Responses rate)	40,42%																													
Discrimination type (multi-response)	<table border="1"> <thead> <tr> <th>Type</th> <th>N</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>Religion</td> <td>5</td> <td>11.11%</td> </tr> <tr> <td>Race, ethnicity, and origin</td> <td>12</td> <td>26.67%</td> </tr> <tr> <td>Sexual orientation and gender identity</td> <td>19</td> <td>42.22%</td> </tr> <tr> <td>Disabilities</td> <td>3</td> <td>6.67%</td> </tr> <tr> <td>Socio-economic status</td> <td>4</td> <td>8.89%</td> </tr> <tr> <td>All types of discrimination / civil rights in general</td> <td>16</td> <td>35.56%</td> </tr> <tr> <td>Others</td> <td>61</td> <td>13.33%</td> </tr> <tr> <td>TOTAL</td> <td>65</td> <td>-</td> </tr> </tbody> </table>			Type	N	%	Religion	5	11.11%	Race, ethnicity, and origin	12	26.67%	Sexual orientation and gender identity	19	42.22%	Disabilities	3	6.67%	Socio-economic status	4	8.89%	All types of discrimination / civil rights in general	16	35.56%	Others	61	13.33%	TOTAL	65	-
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TOTAL	45	100%																												

A. DISCRIMINATION AND HATE CRIME NATIONAL CONTEXT

A. DISCRIMINATION AND HATE CRIME

NATIONAL CONTEXT

A.1. National legal framework on hate crime and discrimination

The principle of non-discrimination is recognised in article 14 of the Spanish Constitution: “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance”. In spite of sexual orientation and gender identity/expression not being explicitly mentioned in the article, several decisions by the Constitutional Court have stipulated that discrimination on the grounds of sexual orientation¹ and gender identity² represent an infringement of article 14. It should be stressed that the article offers an open-ended definition regarding the types of discrimination, using the expression “or any other personal or social condition or circumstance”. In relation to the guarantee of basic rights, article 10.2. states that “the principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain”. Individuals can cite the Constitution directly in criminal proceedings. In that sense, article 53.2 provides that “any citizen may assert his or her claim to protect the liberties and rights recognised in Article 14 (...) by means of a preferential and summary procedure in the ordinary courts and, when appropriate, by submitting an individual appeal for protection (“recurso de amparo”) to the Constitutional Court”.

The legal framework for fighting discrimination was reinforced in July of 2022 with the Equal Treatment and Non-Discrimination Act. This legislation, passed as a means of better incorporating the EU Directives 2000/43/EC³ and 2000/78/EC⁴, relies on the EU Charter of Fundamental Rights in order to prohibit all type of discrimination, and in particular that exercised for reasons of sex, race, colour, ethnic or social origins, sex characteristics, language, religion or convictions, political opinions, belonging to a minority national group, heritage, birth, disability, age or sexual orientation. The law also promotes the respect for cultural, religious and linguistic diversity, the equality between men and women, and the right to integration of people with disability. The right to equal treatment and non-discrimination in the main areas of political, cultural and social life is regulated (employment and work, culture, education, transports, health care, social services and organisations, goods and services, public security, housing and media) and a penalty regime is stipulated. It should be highlighted that the Act introduces the concepts of “multiple discrimination” and “intersectional discrimination”, defining the latter as “when various causes of those provided in this law concur or interact, generating a specific form of discrimination” (art.1.3.b). Moreover, the Act states that, in cases of multiple and intersectional discrimination, measures for positive action must attend to the concurrence of the different causes of discrimination. Nevertheless, the Act does not specify how to apply intersectionality in specific measures.

Regarding hate crime legislation, it should be taken into account that the Spanish Criminal Code does not explicitly mention the category “hate crime”. Nonetheless, some of its provisions serve to cover hate crimes and discrimination⁵, such as article 22.4, which outlines the aggravating circumstances of crime: “committing the offence for racist, anti-Semitic and anti-Roma reasons, or another kind of discrimination

1 STC 41/2006, STC 41/2013 and STC 92/2014.

2 STC 176/2008.

3 Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

4 Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

5 Aguilar, M.A. 2015. *Manual práctico para la investigación y enjuiciamiento de delitos de odio y discriminación*. Barcelona: Centre d'Estudis Jurídics i Formació Especialitzada, Generalitat de Catalunya.

related to ideology, religion or belief of the victim, ethnicity, race or nation to which he/she belongs, his/her sex, age, gender, sexual orientation and gender identity, aporaphobia or social exclusion, illness suffered or disability”. Moreover, additional articles outlaw discrimination as it manifests in other fields, such as in work and employment (article 314), in services (article 512), on threats against groups (article 170.1) and on “crimes against “moral integrity” (article 173).

Additionally, in 2015, article 510 was amended in order to include regulation of “hate speech”, albeit this term is not explicitly employed. As such, article 510 includes penalties for the incitement to discrimination, and hatred and violence against persons who are identified as the protected groups mentioned above. Specifically, this article establishes penalties for: (a) those who promote or incite hatred, hostility, discrimination or violence; (b) those who produce, elaborate and possess, for the purpose of distribution, materials that may promote or incite hatred, hostility, discrimination or violence; (c) those who publicly deny, trivialise or exalt crimes of genocide and crimes against humanity or protected groups. Additionally, this article establishes that any penalty will be higher when the aforementioned acts are carried out via social media, internet or through the use of information communication technology, since these allow for a higher level of dissemination of hate speech and materials.

At the regional level, the majority of Autonomous Communities have laws for tackling specific types of discrimination. One of the main domains of discrimination regulated by the regional laws is LGBTphobia, with respect to which only five of the seventeen Autonomous Communities have not yet passed specific legislation⁶. Some Autonomous Communities, such as Catalonia, have established the principle of non-discrimination in their Statute of Autonomy: “public authorities shall promote the equality of all individuals, regardless of background, nationality, gender, race, religion, social condition or sexual orientation, and shall also promote the eradication of racism, anti-Semitism, xenophobia, homophobia, and of any other manifestation that may constitute a violation of the equality and dignity of the individual” (article 40.8). Catalonia also has its own Equal Treatment and non-Discrimination Act (2020), which regulates the exercise of the right of individuals, natural or legal, public or private, to non-discrimination and equal treatment, establishes the principles that must govern the action of public authorities in this area, and sets out a series of measures aimed at preventing, eliminating and correcting forms of discrimination in the public sector and in the private sector, in accordance with the competencies recognised by the Catalan Government⁷.

6 Villascusa, A. 2019. “Castilla y León sigue en el reducido club de comunidades autónomas sin ley específica LGTBI”. *elDiario.es* (21/05/2019).

7 See [https://eapc.gencat.cat/ca/detalls/Article/02-nova-llei-igualtat#googtrans\(ca|en\)](https://eapc.gencat.cat/ca/detalls/Article/02-nova-llei-igualtat#googtrans(ca|en))

A.2. Statistics and data regarding bias-motivated crimes

Since 2013, the Ministry of the Interior publishes an annual special report on hate crimes. Whilst the data takes into account multiple variables, such as the different bias-motivated offences, the types of crimes, the place where incidents occur, or the profile of the victim and the offender, multiple discrimination and intersectionality are not reflected in the statistics. In addition, the report only reflects the cases reported to the authorities, and therefore does not address the problem of under-reporting. The latest report (2021)⁸ shows the evolution of registered cases during the last three years:

TYPE	2019	2020	2021	Variation 2020/2021
ANTI-SEMITISM	5	3	11	266.67%
APORAPHOBIA	12	10	10	0,00%
RELIGION	66	45	63	40.00%
DISABILITY	26	44	28	-36.36%
SEXUAL ORIENTATION/ GENDER IDENTITY	278	277	466	68.23%
RACISM/XENOPHOBIA	515	485	639	31.75%
IDEOLOGY	596	326	326	0.00%
SEX/GENDER	69	99	107	8.08%
AGE	9	10	35	250.00%
ILLNESS	8	13	21	61.54%
ANTI-ROMA	14	22	18	-18.18%
TOTAL	1598	1334	1724	29.24%

Regarding the place where the crimes were committed, the majority of incidents took place in public spaces (40.6%), following by the domestic environment (20.6%), leisure spaces (13.9%) and sports venues (4.3%). The dominant profile of the victim is male (63.82%) aged between 26 and 40 years old (32.98%), and of Spanish nationality (65.53%). Regarding the offender, the profile is also male (81.29%), between 26 and 40 years old (29.21%), and of Spanish nationality (75.64%).

Additionally, the National Office to Combat Hate Crimes (ONDOD in Spanish) of the Ministry of the Interior published, in 2021, the results of a survey carried out amongst 437 victims of hate crimes⁹. The respondents consider that hate crimes have increased in the last five years (almost 60%), whilst almost half of them fear suffering this type of crime (49.4%). In fact, 41.6% have experienced more than one hate crime in the last five years, more than 70% have suffered one or more discriminatory episodes, and more than 50% have been subject to abuse or threats on online social networks. The main factors of discrimination are sexual orientation/gender identity (35.47%), sex/gender (27%); ideology (22.88%) and racism/xenophobia (20.14%). Nonetheless, the survey highlights that an intersectional approach should be considered in the statistics and policies, given that many of the respondents asserted that they had experienced offences on the basis of multiple and interrelated prejudices. One of the most important results is that 89.2% of the respondents did not report the hate crime incident to the competent authorities. This percentage is in line with the data obtained by the European Union Agency for Fundamental Rights (FRA), which situates the under-reporting rate at around 80%.

⁸ *Ministerio del Interior. 2021. Informe sobre la evolución de los delitos de odio en España 2021. Available at <https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/delitos-de-odio/estadisticas/INFORME-EVOLUCION-DELITOS-DE-ODIO-VDEF.pdf>*

⁹ *Oficina Nacional de Lucha Contra los Delitos de Odio. Ministerio del Interior. 2021. Informe de la encuesta sobre delitos de odio. Available at https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/Delitos-de-odio/descargas/Informe-de-la-encuesta-sobre-delitos-de-odio_2021.pdf*

A.3. Social perceptions of and prejudices against minorities

In recent decades, Spain has seen a progressive recognition of diversity at social and institutional levels, which has allowed for the approval of laws and policies protecting the rights of minorities. However, bias-motivated violence and discrimination still constitute an important social problem, reinforced by certain negative stereotypes present in the collective imagination vis-a-vis certain groups of the population, partly due to the growing activity of far-right social and political movements as well as certain media outlets.

In this sense, in the 2019 Eurobarometer on discrimination in the EU¹⁰, the majority of respondents considered that the main types of discrimination are widespread in Spanish society: 65% indicated that discrimination against Roma people is widespread, with 58% indicating the same regarding discrimination against transgender people, 55% regarding discrimination based on skin colour, and 54% regarding discrimination based on ethnic origin and sexual orientation. Another noteworthy statistic emerged from the question about how comfortable the respondent would feel if one of their children was in a relationship with a person belonging to a social minority. 16% of the respondents indicated they would feel uncomfortable if this was a Muslim person, 15% if it was a Roma or transgender person, and 12% a person of the same sex.

Furthermore, the perception of unfavourable attitudes towards certain minority groups increases significantly when people belonging to said groups are surveyed. According to the survey elaborated by the Council for the Elimination of Racial or Ethnic Discrimination of the Ministry of Equality in 2020¹¹, 89% of Roma people surveyed thought that Spanish society has a negative view of them. Among the Maghrebi population, this percentage was 64%; among the Afro-Caribbean and Afro-Latin communities, 58%; among people from Eastern Europe, 54%, and among people from Sub-Saharan Africa, 47%. The vast majority of respondents considered that these negative perceptions are mainly attributable to the behaviour of some “minority groups” which are disseminated by media and certain xenophobic political discourses.

10 European Commission. 2019. *Discrimination in the European Union - Spain*. Available at <https://europa.eu/eurobarometer/api/deliverable/download/file?deliverableId=71153>

11 Consejo para la Eliminación de la Discriminación racial o étnica. Ministerio de Igualdad. 2020. *Percepción de la discriminación por origen racial o étnico por parte de sus potenciales víctimas*. Available at https://igualdadynodiscriminacion.igualdad.gob.es/destacados/pdf/08PERCEPCION_DISCRIMINACION_RACIAL_NAV.pdf

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B.1. Profile of the most vulnerable groups

Hate crimes against certain social groups, such as LGBT and racialised persons, or those in a situation of social exclusion/homelessness, are rooted in a social structure that creates hierarchies, inequalities, violence and discriminations which permeate all spheres of life. The paradigm of hate crimes tends towards individualisation and the specificity of violence, by referring to specific acts (crimes) carried out by specific people (offenders): *“the word ‘hate’ psychologizes racism, like an emotion with a verbal or physical expression, but this is a reduction of racism, it individualizes the problem. Racism is a structural production of the system”* (P16).

Thus, a structural reading must be carried out in order to understand that material and symbolic violence, beyond specific crimes, intersects the daily life of many people. In this sense, racism appears as structural violence that permeates the everyday life of a racialised interviewee: *“Of course, racism is everywhere, all aspects of our lives are affected by racism. You will never be able to live comfortably, because racism will always be there”* (V4). Similarly, transphobia, as a social stratification system, and not only an isolated act of violence, has a transversal impact in the life of a transgender woman interviewed:

“I separate (transphobia) into three fields: in the workplace, I have suffered attacks, harassment, mockery, many problems, in three of the four companies I have been in (...) Also, in the most immediate social sphere, among friends, I have ended up suffering a series of behaviours towards me that are not acceptable at all. And lastly, in the social space (...) the neighbourhood itself, going out to a park, for example, and meeting some boys who hit me, or when I go down the street and the soldiers insult me, because there is a barracks in my city.” (V1)

This structural violence exceeds the limits of the hate crimes paradigm, while it can be useful for dealing with specific incidents, presents limitations in its ability to counteract the sociocultural roots of the phenomenon. According to Bourdieu¹, structural systems based on inequalities such as patriarchy, racism or heterosexism are reproduced not so much through explicit violence, but rather symbolic violence, a subtle type of violence that is often not perceived as such because it is part of our shared beliefs and is so anchored in our social unconscious that we no longer see it. This naturalisation of symbolic violence often entails its denial vis-a-vis those who experience it: *“I believe that one of the hardest forms of violence is being able to say ‘this is violence’ and being told in response that ‘this is not, it is part of your imagination and does not exist’”* (V4).

These social difficulties in recognising the existence of structural and symbolic violence, together with the fact that many personal stories are riddled with discrimination, determine that among subaltern groups there are people who internalise violence until they perceive it as something unavoidable or normal. As such, they will never turn to the authorities or organisations for help:

- ★ There are people whose discrimination is so normalised that if they experience a crime, or they are called ‘faggot’ and get smacked, they see it as something so normal that they don’t even realise that they are victims. (P1)
- ★ The first generation of migrants has internalised discrimination. In other words, they were in a very precarious economic situation, they did not know the language, they felt like foreigners. So violence against them was like one more element of their complicated lives. (P10)

1 Bourdieu, P. 1998. *La domination masculine*. Paris: Seuil.

On other occasions, this daily discrimination and the lack of social recognition leads to distrust of public authorities, which are seen as a source of the same oppressions and inequalities that they intend to address: “Homeless people are people who have been completely failed by the system, to the point that they don’t have a house. Due to this failure of the system, they believe that it won’t be useful at all” (P6). This lack of trust in institutions, and especially the police and the justice system, is one of the main reasons why victims decide not to report a crime. As stated by a transgender person and a racialised women:

“I have very little confidence in the justice system and the public authorities (...) One of the groups of harassers I have are the police themselves. They know me because this is a town (...) and they use the other name (birth name) and they laugh (...) That is, if even the police act this way, what can I expect?” (V1)

“You don’t consider reporting [bias-motivated violence] because the image we have of people who are in the judicial and police spheres is of racist people (...) How am I going to report something to a racist about another racist?” (V4)

Likewise, it is essential to take an intersectional approach to understand that people’s lives are affected by overlapping axes of inequality and discrimination, a fact that inhibits taking legal recourse: “Many times they do not report [bias-motivated violence] because they have economic problems or suffer another type of discrimination (...) because reporting entails spending money, it also entails dedicating time during which you cannot work because you have to take care of this matter. It is a loss of resources and you do not know if it will be worth it later” (P15). As we can see, in order to decide whether to report a hate crime, it is necessary to have certain economic and social resources, as well as the necessary emotional resources to endure a painful process that often lasts for years. On example is a case of an assault suffered by a young Roma man in 2016, which as of 2022 has not yet come to trial. As a professional from a Roma rights association explains, this excessive delay has had emotional consequences both for the young man and his mother, who have been unable to rebuild their lives by closing a traumatic episode, nor obtain reparation for the harm caused:

“The boy who suffered these injuries has gone through different phases in which he did not want to know anything about the case again. But there are stages that he says ‘yes, I’m going to testify’ (...) It is a very strong blow that he has been dealt from suffering this harm (...) This delay discourages people (...) In fact, the mother often says that she doesn’t want to know anything else about the case because she is very affected and wants to close this bad chapter.” (P7)

Other professionals interviewed add that under-reporting of hate crimes is also due to the fact that the victims are unaware of the available resources and reporting channels, as well as fearing retaliation by the offender or those around them. Additionally, they point out the lack of confidence in the effectiveness of reporting, and above all, the fear of experiencing revictimisation during the reporting and the judicial process, that is, that their version is questioned by the police, the judge or the defence:

“They do not trust the justice system or the police. They are afraid of going through a process of revictimisation in which they are questioned and doubted, and made to feel bad again. And also, they know of some cases that have gone public and viral, of people who suffered attacks, and they know that the vast majority of them end in nothing. So in the end it’s like a general despair.” (P9)

B.2. Presence and impact of intersectionality

As mentioned above, adopting an intersectional approach is key to understanding that people’s lives are affected by multiple factors of advantage and disadvantage. Very often, bias-motivated violence and discrimination is a complex and multifaceted phenomenon in which two or more prejudices are

intertwined, to the effect that each case acquires a specific dimension. In this sense, the majority of victims interviewed experienced intersectional violence and/or discrimination. V4 stressed the discrimination at the intersection between gender and religion: “If you wear a veil, you are a submissive girl, but if you don’t wear it, you are a prostitute”. In the case of V6, racialisation, xenophobia, gender and social class came together during an episode in her life that she considers “very traumatic”, given that, for a few weeks, she was working as a maid for a rich family who exploited, mistreated and insulted her: “the woman call me ‘nigger’ and told me ‘you don’t know how to make food because in your country they eat simpler’”. Finally, the case of V3 shows how can interact racism, islamophobia and LGBTphobia, and also that one may experience a hate crime from being perceived as a member of a target group, without really belonging to it:

“When I was attacked [he was assaulted by two men], the first thing I heard was ‘Moroccan bastard’. And of course, I tell him ‘I’m not Moroccan, I’m not an Arab’ [the respondent is Brazilian]. But I had the LGBTI flag on my face mask, and he told me ‘well, if you’re not an Arab, you’re a poof’. So that’s when I got beaten up.” (V3)

The majority of professionals who responded to the survey (75.5%) are familiar with the term intersectionality, with 66.6% considering that the concept is present in the actions of their organisation. Similarly, all professionals interviewed show a good knowledge of intersectionality, considering that it is necessary to take it into account for better understanding and supporting victims: “It is the responsibility of public authorities and social organisations to take these intersections into account, because if not, it is impossible for us to accompany or provide reparation and support to people” (P6). They point out that there are complex and specific discriminations that especially affect some of the victims they provide support to:

“When a Muslim person is discriminated against, they are not always being discriminated against just for being a Muslim, but other types of discrimination such as gender or race are intertwined.” (P2)
“I think there is specific discrimination against Roma, Romanian and poor women.” (P3)

However, some of the professionals admit that, since intersectionality operates at a theoretical level as a concept for conceiving of social reality, it presents some difficulties when its application in practice is required, specifically, to translate it into laws or policies:

“I am involved in an NGO and when you carry out a project you have those possible intersections in mind (...) but I am unable to design a project that is truly intersectional, because you have to intersect so many things. In other words, it is too broad concept to be able to systematize it and include it within a specific action.” (P10)

“In the criminal justice system, intersectionality is very problematic. What should be imposed, two sentences, three? (...) And when brought to trial, do you judge it as one discriminatory act, or as three? Intersectionality as an academic discussion is fine, but then you have to put it into practice.” (P5)

B3. Outstanding personal consequences and needs of victims of hate-based violence

Experiencing a hate crime may have consequences that go far beyond the mere harm suffered during the incident. As several authors point out², hate crimes can affect, in the medium and long term, the main areas of the victim’s life, such as physical and mental health, employment, economic circumstances

2 Bard, M. and Sangrey, D. 1979. *The Crime Victim’s Book*. New York: Basic Books; Herek, G.M., Cogan, J.C. and Gillis, J.R. 2002. “Victim Experiences in Hate Crimes Based on Sexual Orientation”. *Journal of Social Issues* 58(2): 319-339; Janoff-Bulman, R. 1992. *Shattered Assumptions*. New York: Free Press.

and education. A transgender woman explains the consequences of having been discriminated against in various workplaces by her colleagues and bosses: “On a psychological level, I’ve felt like shit. And at a work level, I have had to leave jobs because I have experienced workplace bullying. And without a job, one cannot live” (V1). For his part, a gay man points out not only the anxiety derived from the aggression experienced (he had to take medication to reduce it), but also another psychological consequence that affects his self-esteem: guilt. In his case, this feeling was triggered by not meeting the socially constructed ideal of a victim, namely, a person of morally blameless conduct who was subject to harm. Similar to what happens to women who are sexually assaulted in nightlife environments, and who are criticised for their clothing or drunkenness as factors which mitigate or even excuse the offences committed against them, he felt that he was not in the right place nor the right time when attacked by two men when he was coming home after leaving a nightclub:

“At first, I felt ashamed: was it my fault? Because I’ve heard that from many people: ‘what were you doing in that place?’ I wasn’t reading a book or jogging at 5am, what is the problem? Although I was left with many questions and stress: was it my fault?” (V3)

For many of the professionals interviewed, the psychological consequences resulting from hate crime are one of the main aspects to be addressed in order to ensure that the victim can resume their life. As a psychologist from an LGBT organisation explains, providing adequate psychological support is essential not only for the mental well-being of the victim, but also for them to acquire the adequate personal resources to decide on reporting the incident and undertaken legal action with their needs taken into account: “Many times psychological support is needed for them to be able to undertake legal action, because there are times when it is very clear that they can take it [a legal action], but they are not capable of doing so. Empowerment is needed” (P11). In addition, and given the fact that the victim is often ignored, their story is questioned, or even the acknowledgment of the violence suffered is denied, some professionals affirm that it is especially important to offer the victim a space for support, listening and acknowledgment of the harm they have experienced:

“The main thing is to feel heard and understood, that is, to tell the victim: ‘I understand you and I am very sorry that you have gone through this’. Logically, if you go to a police officer or a psychologist, they have a specific job to do, but they have to know how to convey that to you.” (P9)

If we take into account that one of the consequences of structural violence and discrimination is that the victim internalises this as something inevitable or normal, and even feels guilty for having experienced it, another of the main needs to be met is to empower the victim so that they know their rights and know how to identify when they suffer violence and discrimination, however subtle these may be. Additionally, delivery of exhaustive information on what reporting and undertaking legal action entails is required, as well as support throughout the process, in order to counteract the factors of vulnerability that make reporting an incident difficult:

“Training in rights is very important, [so] that victims understand what their rights are. Explain to them that what they are suffering is discrimination and that it should not be tolerated (...) Legal support is also necessary when they want to file a complaint, and explain them the benefits of reporting (...) Sometimes many of the victims, especially if they do not hold official residency status, are afraid to report an incident in case they could face problems for being undocumented. So they always need someone to accompany them, to explain that it will not harm them when it comes to regularising their situation.” (P2)

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

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C.1. Reporting procedures: strengths and weaknesses

In Spain there are a number of different channels through which a hate crime may be reported, at national, regional and local levels. The most direct means of reporting a crime is through the competent authorities, that is, at a police station of any of the different national security forces¹, or in a court. Regarding the assistance offered by these public bodies, especially the law enforcement agencies, a number of interviewees point out several limitations that discourages the victim from reporting an incident. A transgender woman (V2), who is a LGBT activist, complains that the police often do not treat transgender people according to their experienced gender if they have not yet proceeded to their legal gender recognition. The gay man who suffered a beating when leaving a nightclub (V3) highlights the lack of empathy and approachability on the part of the woman police officer who dealt with his complaint: *“Her attitude was cold and distant (...) She was very professional (...) but she could have done with a little more humanity, been more approachable (...) In addition, the space was already cold in itself”*.

To this lack of empathy towards the victim, indicated by many interviewees as an aspect to be improved upon by the authorities, should be added victims’ lack of trust in an institution that has historically been seen as hostile towards certain groups, such as Roma, racialised or LGBT people: *“There is a lack of trust. It is very difficult for them to go to the police to report [an incident] because they are people who have normally also been discriminated against by the police”* (P2). Furthermore, another interviewee underlines that police forces are not properly trained in hate crimes, thus they ignore or minimise the damage suffered by the victim.

“The police do not inform the victim properly, and they tell the victims that they better leave it, that they cannot report this, when they can. In other words, sometimes the services do not properly inform the victims of their rights (...) Your job [that of the police] is to register the complaint and that’s it. You cannot tell a victim: ‘don’t report this’. I believe that there is a lack of sensitivity and training in the police, whether local, regional or national.” (P3)

Police forces such as the Mossos d’Esquadra, the regional police of Catalonia, have a specific Unit against Hate Crimes and Discrimination, in place since 2021, with officers duly trained to act against this type of crime. However, this specialised unit is not available in all police stations, so the person who usually processes complaints may be a police officer with no specific training in hate crimes. Being properly trained is essential not only to offer correct, friendly and empathetic attention, but also to know how to identify hate as a motivating factor in criminal conduct and reflect this properly in the police report. The fact that the police report reflects in detail that the crime has been motivated by prejudice is essential for subsequent action to be taken by the public prosecution service and the investigating judge:

It is essential that the police have solid training in human rights and hate crimes so that they know how to interpret things correctly and that the reports include that information [hate motivation] (...) If the report includes this, the prosecution service can later investigate properly, because the prosecution depends on the police reports. So, the starting point, of the prosecution of hate crime, is in the police report. If we can, we sometimes intervene and call the police station to tell them: ‘hey, did you remember to include in the report that this boy was called a ‘fucking gypsy’ when they hit him? Or did you take a

1 The Policía Nacional or Guardia Civil at the national level, or the Mossos d’Esquadra in Catalonia and Ertzaintza in the Basque Country, the two regions with their own police forces.

photo of the graffiti that said 'gypsies out!'? You have to take a photo of this graffiti, put it in the report, because that is the evidence for the prosecutor's investigation and for the judges to ultimately apply the aggravating circumstance. (P3)

"I am not going to send anyone to the police station if I do not know who is going to attend them and I don't have the guarantee that they will be attended to in an appropriate way, so as to avoid revictimisation (...) We recommend to the victim that they should make a written complaint, so that it does not depend on the criteria of the person to whom you report it, but rather that you tell in great detail what you consider to be important, what has happened." (P9)

Another official channel through which an incident can be reported is the Special Prosecutor for Hate Crimes and Discrimination. Since 2013, each Spanish province has a special prosecutor whose main responsibility is to respond with expertise to crimes that threaten the principles of equality and non-discrimination. At present, there are more than 50 prosecutors in Spain dedicated to dealing with hate crimes. This figure, of the specialised prosecutor, is highly valued by the professionals interviewed, who highlight their skills and sensitivity in addressing this type of crime, thus demonstrating the importance of having duly trained and sensitised professionals:

"When there is a hate crime, a criminal act, we go directly to the Prosecutor's Office because it is the appropriate body specialised in the matter. It is much easier to get through to a prosecutor specialised in these issues than a court. If we go to the judge on duty, we don't know if the case will be taken up. Probably many of our cases would not if it hadn't been for prosecutors who are trained and aware of the issues. They are our allies." (P7)

On the other hand, there are also public and private bodies to which a person can report bias-motivated crimes and/or discrimination, and which will register the complaint with the aforementioned authorities. Amongst the most important at the national level is the reporting service of the Movement Against Intolerance, which has a phone number which a victim can call or send a WhatsApp message. Regarding anti-LGBT violence, the Spanish Federation of Lesbian, Gay, Trans, Bisexual and Intersexual Persons (FELGTBI+) has deployed the Observatory Networks Against Hate for victims and witnesses of hate crimes. Another national organisation with a hate crimes reporting service is the national Council for the Elimination of Racial or Ethnic Discrimination (a public body which is part of the Ministry of Equality). In addition, some NGOs that have offices in several cities also manage the reporting of hate crimes and victim support, among them the Secretariado Gitano (anti-Roma crimes), CEPAIM and SOS Racismo (racism and xenophobia) and ACCEM (social exclusion and aporophobia). Finally, the Ombudspersons who operate at the different levels of Spain's territorial administrations are in charge of gathering reports on violence and discrimination which occur in the provision and delivery of governance and public services.

At the regional level, all Autonomous Communities have their own channels for reporting bias-motivated violence and discrimination. In Catalonia, there are several services and channels for reporting and providing assistance. Amongst them, the Catalan Government's LGBTI Integral Care Service Network (SAI), as well as the Catalan Observatory Against LGBTphobia (a private organisation), handle complaints regarding LGBTphobia and offer support to victims throughout the reporting and judicial process. SOS Racisme (founded in Catalonia) has a specific service for reporting incidents, as does the Catalan Observatory Against Islamophobia (ODIC). The regional capital, Barcelona, also has an Office for Non-Discrimination (managed by the local government), which offers person-centred support to anyone who suffers discrimination and violence and provides legal advice for reporting incidents.

For many professionals and victims, contacting a social organisation to handle the complaint process instead of going directly to the police or the courts involves making sure that the victim will receive specialised and friendly support, since "they are safe spaces [and] they know what's going on" (P1). In addition, associations are essential for these highly vulnerable groups with very tenuous links with

public authorities, and whose main resource is the help offered by NGOs: “I am not aware of any case in which people in a situation of homelessness report a crime directly to the police, but often report it to organisations that offer some type of support” (P6).

C.2. The judicial process: strengths and weaknesses

As with reporting, personal and social resources are essential for the well-being of those who take their case to judicial process, an often a long and costly process in terms of money, time and mental health. Consequently, not having the money to hire a good lawyer, not having the necessary time to testify in person as many times as required (where work obligations prevent it), not having a good command of the language to understand the communications received or even not having a fixed address to receive them are factors that can determine the exclusion of the victim from the judicial process itself.

Likewise, strong emotional resources are also required to participate in a process that most of the interviewees consider as both stressful and revictimising. The court setting and the particularities of the trial have an effect on the victim, whose story will be questioned by a defence lawyer who will try to find holes in their story. This is exactly what happened to a transgender woman whose case is currently under investigation: “the [defence] lawyer is using my birth name to hurt me. They are going to say things about me in court and of course she scares me (...) I have already psychologically prepared myself for that” (V1). Another interviewee laments the fact that, in the case of hate crimes, there is no reversal of the burden of proof, so it is the plaintiff who has to prove the harm suffered: “You have to prove something and this is very frustrating. They have hit you and on top of that you have to prove it. You are the one who has to go to a place to prove that you have actually suffered a hate crime” (P9).

The legal professionals interviewed coincide in stressing that the main cause of revictimisation is the need to have to testify several times throughout the entire process, with the emotional exhaustion attendant to having to relive traumatic events several times: “we have the first statement at the police station if they have filed a complaint there, the second statement to the investigating magistrate, and finally the statement during the oral hearing (...) The victim has to tell the same story several times and also be under investigation, of course, because the criminal process implies that there are several parties and everyone defends their interests” (P13). As a criminal lawyer points out, a possible solution to the revictimisation which having to make several statements entails is what is called “pre-constituted evidence”; that is, recording the first statement and having it held as evidence during the trial. However, the same interviewee warns that this could affect the right to defence:

“We tend to think that what a victim says is absolutely true, but there are also victims who do not tell the truth (...) The criminal process also requires a party defending the person under investigation. The fact that there is a lawyer who tries to contradict what a victim says also safeguards the right to defence.” (P11)

As we can see, the very nature of the judicial process entails a high risk of revictimisation and emotional exhaustion. It is a long process during which the victim has to relive the events several times and which ends in a trial in which the defence attorney questions their version. That is why it is very helpful to have the support of an organisation that accompanies the victim throughout the entire process: “We protect the victim here at the association. The rest is attack, maximum attack. (...) Attack, attack, attack to see if the victim collapses” (P11). Apart from legal support and advice, there are also organisations that offer psychological support to mentally prepare the victim and provide them with the necessary tools to face what is a difficult process:

“I provide face-to-face and psychological support. For example, when you have to make a statement in two days, I call you on the phone and ask you how your anxiety level is, and I remind you of the tools I have given you. We do small relaxation sessions, by phone or video call, so that you are more prepared for that moment. And if there is a process in which face-to-face accompaniment is needed, I can go to

court and directly accompany that person to be by their side throughout the process.” (P11)

One of the main challenges to be addressed within the judicial system, according to the legal professionals interviewed, consists of strengthening the training and awareness of judges and other judicial officials, as well as legal aid providers, who often are not duly aware of the applicable range of hate crime: “there are errors in the application of the law by the judge. In other words, many judges are not familiar with aggravating circumstances (article 22.4 of the Criminal Code) and do not see racist bias. Others do, okay (...) I think that in Spain there is little sensitivity as to this whole issue. Someone says: ‘we won’t let him in because he’s a gypsy’, and the judge doesn’t see the racist bias in that” (P3). In a similar regard, another lawyer (P1) bemoans that, often, whether hate is recognised as a motivating factor or not depends on the judge who is randomly assigned to handle the case in question.

One legal professional posits a further, more worrisome problem, namely that judges are not immune to social prejudices towards some minorities. In this sense, some judges and police officers find it difficult to grant victim status to people from certain groups associated, in the popular imagination, with delinquency and crime, such as Roma people, migrants and Muslims.

“There is still prejudice in the judicial system, there is still a bias, especially towards Roma people. I think that judges are used to seeing Roma people prosecuted (...) In other words, it is strange for them to see a Roma person who has filed a complaint because their rights have been violated.” (P7)

C3. Civil society’s actions and initiatives

As previously mentioned, in Spain there is a wide and dense network of social organisations that defend civil rights and offer assistance for victims of bias-motivated violence and discrimination. In the preparation of the sample prior to carrying out the survey, 235 organisations were identified, a number that in reality is much higher, given that we were only able to identify those organisations most visible on the internet. There are national organisations with numerous regional and local branches throughout the country (such as the Red Cross, ACCEM or SOS Racismo), which work with the groups most subject to discrimination and violence: racialised people, religious minorities, the LGBT community, those at risk of social exclusion, and disabled people. In addition, some of them have an intersectional approach regarding the target group (such as ACATHI, which serves LGBT migrants), and others a transversal approach with which they address all kinds of discrimination.

Many organisations are financed in the main with public funds, both from the various levels of Spanish public administration and through European programmes such as Next Generation. However, some of them, especially the smaller ones, do not have any kind of public resources, and so they must subsist using the resources provided by their members. This is the case of a modest LGBT organisation from a small Spanish city that criticises the lack of support and commitment of the regional and local governments, which do not offer the basic services that the LGBT community could need:

“We function because we are able to function. In the end we have a perspective of volunteering, because we fight for the cause and we get involved in it. But the services the city needs are not being met. That means an LGBT+ person being able to go at any time to a space where they can ask for help, be it at a psychological, health, educational, legal or many other levels, this does not exist (...) We do what we can, we try to meet all needs. Each member does their bit.” (P9)

Similarly, an anti-racist organisation laments the lack of support from local government when they had an accident that destroyed their headquarters, forcing them to carry out their work in very precarious conditions. This demonstrates the way in which institutional support is essential for the proper delivery of an organisation’s services:

“In 2002, after having managed more than 4,000 cases, a pipe burst at the doors of our association, and it sent us back to the stone age with everything. We had to reinvent ourselves. How? Well, we decided to give what little we had, which was our choice. The fact is that we spent five years serving in the public square in the face of the discomfort, to call it that, of the authorities, both the City Council and the Provincial Council, in full view of them.” (P8)

In terms of the services offered, there are organisations that offer a wide range, while others, due to their limited capacity, focus on offering only one. In these cases, networking between organisations and even the public administration is of great importance. This joint collaboration, through agreements and referrals, is one of the strengths highlighted by a number of the professionals interviewed, since it allows the victim to avail themselves of all the services they need in the same local area. As an example, an interviewee (P2) points out that their organisation, which fights against Islamophobia, has agreements with 18 organisations. Another interviewee (P5) highlights that his association is part of a network of eight organisations that jointly provide a support service to victims of racial discrimination. In other instances, is the service goes towards covering existing gaps in public services, and counteracting failures in the welfare system:

“Yes, we do work in a network. In fact, we do not offer services that are within the public portfolio, but that are outside [of it]” (P6).

“In my city there are absolutely no resources apart from the one offered by our volunteer psychologist (...) A person cannot wait a month for an appointment to go to a public health psychologist” (P9).

Although many interviewees highlight the large number of existing organisations and their ability to work as part of a network, another interviewee (P12), who works in a public body, points out that there is still the challenge of improving coordination between public bodies and civil society associations, as well as strengthening the outreach mechanisms of the services, in order to offer better attention and make it easier for the public to find out what services are available:

“Our strong point is that there are many institutions and many organisations in the third sector that can support the victim. Among the weak points is that these services are often only known by the victim (...) We must also try to coordinate a little more and get to know each other better, so that we can provide a better service, so that the victim, which could be any of us, knows who to turn to” (P12).

In relation to the improvement of the communication channels of the organisations and their outreach strategies, it is considered key to improve presence in emerging social media, in order to reach younger people who may not obtain their information through traditional media:

“Regarding the weaknesses, perhaps there is no knowledge of social media. Our service is not active on social media, when in reality, young people use social media the most, even for information. (...) If you advertise this service in a newspaper or on a poster on the wall, it will not reach a young Roma person or a young migrant, because they may not read the newspaper. Instead, they have TikTok or Instagram. There is a problem there, I think, of communication and visibility that means that we do not reach many victims.” (P3)

Be that as it may, in Spain the work of social organisations is essential in the fight against discrimination and violence, and as a means to provide support to victims. The existing dense organisational network offers a wide range of services, such as basic and specialised information on victims’ rights, case reception, legal support and advice, psychological support, social assistance, etc. In addition to these essential services, social organisations offer emotional support that is incidental within the public sector. As a trans woman points out (V5), in LGBT organisations she has found “knowledge, acceptance and respect”. For his part, a gay man (V3) goes further, pointing out that an LGBT collective has been “like a family” during the difficult period he went through after suffering a homophobic attack.

Another service that many organisations offer is training and awareness-raising on issues that fall within their scope of action, both training regarding the fight against bias-motivated violence and discrimination, and awareness-raising on issues of diversity (racial, cultural, religious, sexual, functional, etc.). These organisations tend to offer training to public service professionals working in education, health and policing, to students in educational centres, and even to their own members and other interested individuals. Regarding the impact of training on violence and civil rights, one of the people interviewed laments that, when this training is voluntary, those who are most interested are often those directly affected by the issue and/or previously aware of it. That is why the biggest challenge is to encourage participation of those people – the majority – who require more training on these issues:

“I remember that I organised a course called ‘Invisible Racism’ which was very interesting. It consisted of sessions in which different professionals came to talk about the subject. But we found that most of the people who were there were people affected by racism. There was only one white girl in the entire course of 30 people (...) Clearly, the people who are affected are the people who are studying about racism.” (V4)

Furthermore, the results of the survey show what the most necessary subjects on hate crime and victim support are when it comes to training of the members of the organisation. Although all the issues raised in the survey have been rated as relevant or very relevant, some stand out for their importance among the respondents. The two most requested training topics are “social, emotional and psychological victim support” and “specific needs of victims of multiple/intersectional hate crimes”, followed by “strategies to avoid secondary victimisation”, “barriers to access to support services for victims” and “strategies and techniques for providing services”.

C4. Practitioners’ and victims’ views on policy and law covering hate crimes and victims’ rights

To analyse the position of professionals and victims in relation to the current legal and political framework, we used both qualitative and quantitative data. As part of the survey (addressed only to professionals), we prepared a section in which the respondents had to answer, based on a Likert scale², to what extent they considered certain statements to be true in relation to current circumstances in Spain.

In general terms, the most frequently cited of the ten possible responses is “somehow”. Specifically, this is the predominant response to the following questions: the application of the law allows us to properly combat other forms of discrimination not necessarily qualified as crimes (40%); the current government is committed to combatting all types of hate crimes (40%); the law allows us to properly combat hate crime (35.56%), and the law allows us to properly combat other forms of discrimination not necessarily qualified as crimes (31.1%). Additionally, the option “a little” was the predominant response to the following statements: public sector bodies collaborate effectively with civil organisations in combating hate crimes (42.2%), and the application of the law allows us to properly combat hate crimes (31.1%).

In light of these results, we can affirm that the vast majority of respondents have a moderate opinion regarding the effectiveness of policy and law in combatting bias-motivated violence and discrimination, given that, on the one hand, the majority of responses fall in the middle of the scale (“somehow”), while only a minority of the respondents selected the maximum score (“totally”. a response rate of 11.1%). Of all the statements, the one which refers to collaboration between public sector bodies and social organisations in the fight against hate crimes stands out for its relatively low score (42.2% of “a little”), from which it can be inferred that the organisations to which respondents belong seek greater collaboration with and support from public institutions.

2 Not at all - a little - somehow - quite - totally.

This section concerning the assessment of policy and law concludes with four statements regarding the government's commitment to the combat against specific forms of violence and discrimination. In this regard, the priorities of the government are the following, considering the majority response: combating hate crimes which centre on the victim's sexual orientation/gender identity (quite, 40%); race, ethnicity or origin (quite, 31,1%); religion (somehow, 44,4%); and other factors such as disabilities or socio-economic status (a little, 31,1%).

The interviews with both professionals and victims also shed light on the potential strengths and weaknesses of the system. As one professional interviewed rightly points out, among Spain's strengths are that "we have a fairly strong legal, political and even custodial corpus" (P3). The incorporation of the paradigm of hate crimes in several articles of the Criminal Code allows for their judicial prosecution. Likewise, the recent passing of the Equal Treatment and non-Discrimination Act, as well as the future passing of laws against racism and LGBTphobia, will facilitate the prevention and fight against these everyday forms of discrimination which are irreducible to criminal prosecution.

Nevertheless, the same interviewee points out one of the main weaknesses of the system, namely that "there is still not enough awareness or sensitivity on the part of prosecutors, judges and police officers" (P3) regarding hate crimes and discrimination, a fact that hinders the correct application of the law. In a similar sense, an expert in criminal law considers that training public administration professionals so that laws have a real effect on citizens is key: "I get the feeling that wonderful laws are being passed and then they are not trained on these laws in public bodies. Adequate training is needed so that there really is protection for vulnerable groups" (P13). Another interviewee stresses the same issue, believing that training in bias-motivated violence and discrimination is one of the pillars on which victim support must be built: "If those in authority or working in public institutions are not aware, we can do little later on a social level. I think we have to start there" (P2).

The legal experts interviewed point out another weakness related to the wording and penalty system for hate crimes in the Criminal Code. In the opinion of the aforementioned criminal lawyer (P13), the wording of the articles referring to hate crimes is somewhat vague and confusing, a fact that makes it difficult for judges to interpret and apply the law:

"Hate crimes are indeterminate legal concepts, which is the name we jurists give when what you want to include in the crime is not specified very well. It is so broad, very indeterminate (...) More specificity would be needed in this case. (...) We jurists like legal certainty and more so from the point of view of criminal law. Criminal law has to be very clear so as to not infringe upon the statutory rights of the person under investigation" (P13).

The same expert adds that the designation of hate speech as a crime (article 510) is very problematic, since it often collides with the right to freedom of expression: "The most normal thing is that [a case for hate speech] is dismissed unless there is harm (...) Why? Well, because of the limit of freedom of expression" (P13). Furthermore, another jurist interviewed highlights the problems arising from an excessively severe penalty system, a fact that dissuades judges from issuing convictions in relation to hate crimes:

"Very severe penalties are stipulated for these cases, and therefore the judges use legislative material that they do not consider adequate to give an answer. Eventually, all this ends either in the dismissal of proceedings or in acquittals. Because if there is no acquittal, there is no middle ground, strong penalties must be applied. And the proof is there, the sentences that have rested on article 22.4 (aggravating circumstances) or 510 (hate speech) can be counted on one hand." (P5)

Another criticism around which jurists coincide is that, in recent years, there has been an incorrect application of hate crime legislation, insofar as this has served attempts to protect groups that in no case can be considered as vulnerable or that, theoretically, should be protected by law. In this regard, far-right

groups have filed criminal complaints against the actions of anti-racist groups, as the far-right party Platform for Catalonia did against the Anti-Fascist Action Collective³; Law Enforcement Authorities, such as the Policia Nacional and Guardia Civil, have filed complaints against Catalan civil society groups for ‘hate crimes’ during pro-independence demonstrations in 2017, although the complaint was ultimately dismissed by the High Court of Justice of Catalonia⁴; The European Court in Strasbourg condemned Spain in 2018 for “violating the freedom of expression” of two young Catalans who burned a photo of the king, for which they were found guilty of a hate crime⁵. As one interviewee rightly points out, hate crimes “cannot be applied to people in a situation of power (...) It is not a crime [committed] against the police or the king” (P3). Trying to counteract democratic criticism of state institutions through the application of hate crime legislation is not only a flagrant violation of the spirit of the law – protecting historically oppressed groups – but also represents a way of repressing dissent and social activism.

Perhaps one of the greatest weaknesses of hate crime as a legal concept is that, although it can serve to punish specific criminal behaviour, it is ineffective in combatting the systemic violence and discrimination that condition the daily lives of many people. As one professional rightly points out, “we have to understand that punitiveness is not what solves the underlying issue here. The underlying issue is that certain groups still end up being discriminated against, and we have to take action from a social point of view before reaching for criminal law” (P13). As such, punitiveness is always a limited resource that does not attack the socio-cultural root of the problem. A life marked by constant and daily transphobia, as is the case of one of the interviewees, cannot be fully redressed simply by applying the Criminal Code:

“When I spoke to the prosecutor, she asked me ‘what happened to you?’. ‘What happens to me is that I get up in the morning, have a coffee, go out into the street and come across a neighbour who looks at me strangely. So I continue on my way to work and in the street there are some children who laugh at me for how I am dressed. And I go to work, and I come across this man who treats me like shit and insults me. And I leave work, and then suddenly there is a man who calls me a ‘poof’ (...) So of course, when I’m asked ‘where is the crime?’, the answer is that it is everywhere.”(V1)

An alternative, or perhaps complement, to the punitive paradigm concerning hate crimes is restorative justice. Victim-offender mediation, conferencing and peace-making circles are some of the restorative techniques that some interviewees believe could help provide redress for criminal behaviour in the case of bias-motivated violence. As one professional points out, restorative justice has “as its ultimate objective the recognition of the damage caused” (P5). This legal expert considers that “criminal proceedings do not provide an adequate response to many discriminatory acts that are prosecuted or where an attempt at redress is made through criminal proceedings”. He also adds that “the system is not designed for reparation because it must be taken into account that in many hate crimes there is a great asymmetry between the right infringed upon, and the legal right in the eyes of the law”; that is to say, “that the psychological and mental consequences that this harm produces are not taken into account in the objective conception of harm in legal terms”. Therefore, “the harm you have suffered is not restored at all”. For instance, the serious psychological consequences that repeated insults for being gay, black or Muslim can cause to a person end, in criminal proceedings, in a simple fine for the offence of verbal abuse.

Victim-offender mediation is the technique most cited by the professionals interviewed. In it, a voluntary

3 See <https://www.ccma.cat/324/plataforma-per-catalunya-denuncia-les-associacions-que-van-organitzar-la-manifestacio-antiracista-de-salt/noticia/1351687/>

4 See https://ajuntament.barcelona.cat/dretsiversitat/es/noticia/un-exito-judicial-recorta-el-abuso-que-se-hace-del-termino-delito-de-odio_686297

5 See <https://www.publico.es/sociedad/strasburgo-condena-espana-vulnerar-libertad-expresion-jovenes-quemaron-fotos-del-rey-juan-carlos.html>

listening process is opened between the victim and the offender with the help of a mediator, who has previously worked with both parties to ensure an adequate atmosphere. The objective is for the victim, “who deserves to be heard” (P1), to obtain some recognition of the harm caused from the offender: *“I have hit or insulted a person who has their concerns, who really is a person of flesh and blood, and is telling me about their experiences and helping me understand that I have done this situation wrong”* (P1).

For the gay man interviewed who was assaulted by two men, it would be preferable, for himself and for society, to try to provide redress for the crime and achieve the rehabilitation of the offenders through mediation or alternative sentencing, rather than a prison sentence:

“I believe in the inclusion of people. I think that people can sit down and talk (...) I don’t hate them, I don’t know them (...) I would prefer that they do work for the community, not that they end up in jail because later they come out worse. I think re-education would be good.” (V3)

Nevertheless, some professionals highlight certain limitations – or have reservations – in relation to restorative justice. One of them (P15) believes that one of the greatest difficulties in applying penal mediation in the case of hate crimes is to counteract the existing asymmetry of power between the offender and the victim. It is precisely this asymmetry that led legislators to expressly prohibit restorative justice in cases of gender violence⁶. Another points out that the difficulty lies in the high risk of revictimisation, so that the interests and wishes of the victim must prevail at all times:

“If the person who has been attacked believes that restorative justice will bring them something, wonderful (...) For me it is a very uncomfortable situation to have to speak again with the person who has attacked me, because the thoughts of what has happened will involuntarily return (...) I think that what has to predominate is the opinion of the victim” (P9).

Other professionals (P5 and P7) only see criminal mediation as desirable in less serious cases. Underlying this opinion is the idea that, in a serious crimes, it would be difficult to safeguard the interest of the victim, while there is doubt that the offender is capable of recognising the harm caused: “there are cases in which I do not see it [as feasible]. There was a case of a blow with a bottle. The man had other judgments, he is dangerous, he had tattoos of Nazi symbols. So I don’t think there can be restorative justice there” (P5). Be that as it may, a criminal law expert warns that Spain does not have an adequate and clear legislative framework for the application of restorative justice, so that its application often falls to the choice of the judge:

“The legislation does not provide for restorative justice. There would have to be a modification of the Criminal Procedure Law to permit the possibility of restorative justice (...) The cases I know of are more due to the disposition of the judge than the application of rules. Here, for example, there was an investigative court that provided restorative justice for crimes that were not extremely serious (...) In Spain restorative justice is sold a lot but then it is not carried out, and the legislative framework should be reformed” (P13).

6 See Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence.

D. CONCLUSIONS AND RECOMMENDATIONS

D. CONCLUSIONS AND RECOMMENDATIONS

D.1. Conclusions

In Spain there is a consolidated legal and political framework dealing with hate crimes and discrimination. The Constitution guarantees equal opportunities, whilst the Criminal Code contains several articles referring to hate crimes and discrimination. Likewise, there are laws at state and regional levels that protect vulnerable groups against discriminatory acts in all the main areas of social life, as is the case of the recent Equal Treatment and non-Discrimination Act, passed by the Spanish Parliament in 2022. Likewise, in each province there is a prosecutor specialised in hate crimes, and some law enforcement agencies have specific units to fight against this type of crime and offer support to victims. There are also several official services for reporting hate crimes and offering support to victims, such as the National Office to Combat Hate Crimes, as well as registering them, such as the annual report prepared by the Ministry of the Interior, which, although it offers data broken down by type of crime, does not include intersectional violence.

However, bias-motivated violence and discrimination continues to be a problem that must be fought at different levels. One of the main challenges is to counteract the high under-reporting rate and, to this end, it is necessary to address the various causes that give rise to it: the lack of trust of the victims in public institutions, especially the police and the judiciary; the lack of resources (financial, emotional, time) to face a long and costly process; the internalisation of violence as something inevitable; the fear of suffering reprisals or having to expose oneself publicly (especially in those cases where the person has not yet come out to those around them); the fear of revictimisation during the reporting phase and the judicial process, and ignorance of the resources and the channels of reporting and support available to victims.

In relation to the reporting and judicial processes, official channels are not seen as friendly, sensitive or prepared for addressing hate crimes, with the exception of prosecutors and police units specialised in the matter. Some judges and police officers find it difficult to grant victim status to people from certain groups associated with delinquency and crime in the popular imagination, such as Roma people, migrants and Muslims. There are still police officers who are poorly prepared to handle cases of bias-motivated violence, and whose reports do not reflect hate as a motivating factor in the criminal act. Similarly, there is a continuing difficulty in ensuring judges include hate speech or hate as an aggravating factor in their sentencing. This may be due to insufficiently detailed knowledge of the regulations, having to interpret the somewhat confusing wording of the Criminal Code, or to the problem posed by the interpretation of certain types of hate speech in relation to the right to freedom of expression. To this it must be added the problem arising from the possible revictimisation that manifests throughout the entire process. The victim is forced to testify several times, which entails reliving the traumatic event and, as the process leads to the oral hearing, where the victim's testimony will be subject to scrutiny by the defence.

To counter all these problems, the work of civil society organisations is essential. Spain has a wide and dense network of organisations that defend civil rights and fight against bias-motivated violence and discrimination, and offer essential services for victims. The information services on available resources and the rights of victims, legal advice and support, social assistance and psychological accompaniment are noteworthy. The last is perhaps the most pressing need to be met if we consider the significant harm to mental health generated by the crime. In addition, these organisations provide emotional backing for the victim, which is key to redressing the harm done, offering an opportunity for their voice to be heard and their suffering recognised. These organisations work together and complement each other, although there is room for improvement to strengthen their links with public institutions. Furthermore, both the public sector and civil society face the challenge of raising awareness about these organisation's services, especially through social media, so that all citizens are aware of the available resources.

Hate crimes causes deep and multidimensional harm, which affects the safety of individuals, their communities and society as a whole. Clearly, knowledge about hate crimes contributes to increased public awareness of the unacceptability of violence committed against vulnerable groups, such as LGBT people, and provides them institutional protection. However, this paradigm presents some limitations when it comes to counteracting bias-motivated violence and discrimination, insofar as it offers an individualised conception of violence. Forms of violence such as racism or LGBTphobia are structural phenomena that make up our social and cultural universe, and are manifested not only through specific criminal acts, but also pervade the daily lives of many people. Therefore, beyond punitivism, there is a need to transform our system of values and beliefs, something which requires significant work on educational and awareness measures at all levels by the competent authorities (such as the police or judges) and society as a whole.

Another criticism is that, in recent years, there has been an incorrect application of hate crimes, where attempts have been made to use the law to protect groups that in no case can be considered as vulnerable, such as the monarchy, law enforcement agencies, or far-right movements. This incorrect application of hate crimes legislation could be interpreted as a strategy to counteract democratic criticism and protest against the activity of public institutions and movements whose modus operandi is based on intolerance.

In order to better understand and combat bias-motivated violence, and adequately provide support to victims, its intersectional dimension must be considered, since several factors of vulnerability often interact and intersect. The professionals interviewed share the belief that such an intersectional approach is necessary, although some of them warn of the difficulty in transcending the theoretical level such that it might lead to concrete political and legal measures.

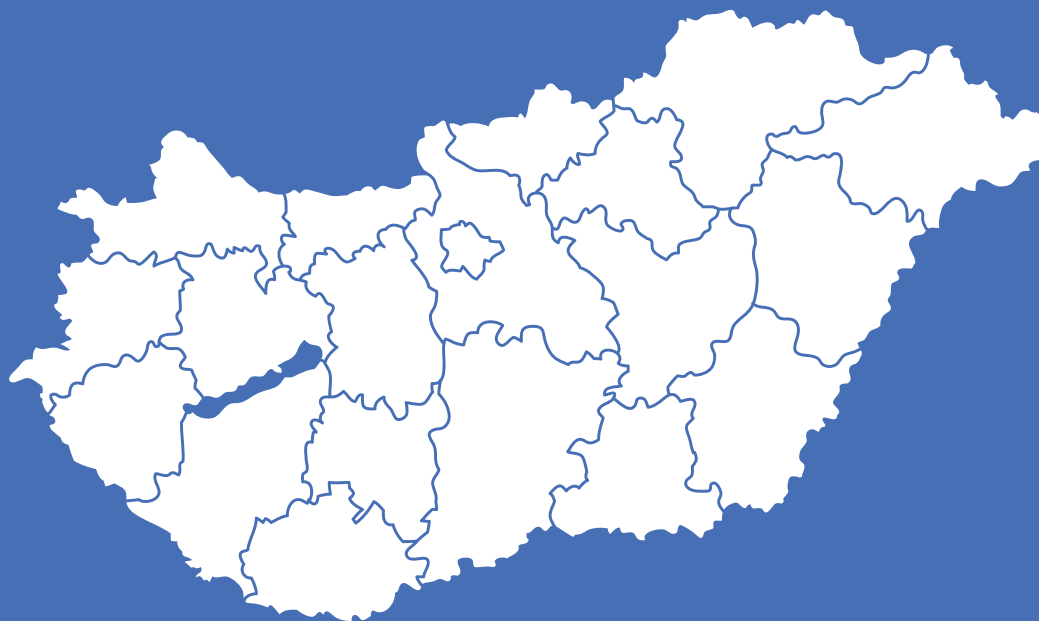
Finally, some interviewees highlight restorative justice as an alternative or complement to punishment that could help to truly provide redress for the crime committed. Restorative justice does not focus so much on the conviction but rather on the harm caused, leading the way for a process of listening and recognition of harm that benefits both the main actors (victim and offender) and society as a whole. However, the asymmetry of power between the victim and the offender continues to cause concern, in addition to possible revictimisation. Moreover, for this alternative justice to be effectively rolled out, it there must be a strengthening of applicable legislation.

D.2. Recommendations

- ☀ Counteract the factors that lead to the high level of under-reporting: lack of trust in public institutions; lack of resources; internalisation of violence as something inevitable; fear of suffering reprisals or having to expose oneself publicly; fear of revictimisation; ignorance of available resources and reporting channels.
- ☀ Promote training and awareness-raising amongst legal authorities and experts aimed at improving the detection and handling of hate crimes, as well as the support provided to victims.
- ☀ Offer clear and specific guidelines to civil servants, police officers and judges so that they know how to apply the legislation on hate crimes and discrimination.
- ☀ Address the main causative factors of revictimisation, exploring specific mechanisms to prevent it, such as pre-constituted evidence.
- ☀ Strengthen the support offered by government administrations, especially regional and local ones, to social organisations, as well as public-private collaboration, so that each local area can offer all the necessary services for victims.

- ✦ Improve the communication channels and awareness-raising strategies of organisations and public institutions, especially their presence on new social media.
- ✦ Establish legal and political measures aimed at clearly determining what vulnerable groups are to be protected, thus avoiding the use of hate crimes legislation to protect institutions (the monarchy, police forces, etc.) and movements whose modus operandi is based on intolerance (far-right).
- ✦ Taking into account that a punitive approach does not serve to address the structural matrix of bias-motivated violence and discrimination, training and awareness-raising measures are necessary at all levels of society to transform our frames of reference.
- ✦ Incorporate intersectionality in the analysis of bias-motivated violence and discrimination, enabling this to complement the theoretical approach and lead to specific political and judicial measures.
- ✦ Strengthen legislation and policy designed to promote restorative justice as an alternative or complement to punishment, given that it facilitates the redress of the harm caused.

HUNGARY



CounterHate

Eszter Polgári
Róbert Buzsáki

HÁTTÉR TÁRSASÁG

HUNGARY

HIGHLIGHTS

Eszter Polgári

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- The Hungarian Criminal Code offers adequate and broad protection against hate crimes; the protected grounds include race, nationality, ethnicity, religion, sexual orientation, gender identity, disability, and other status.
- Despite the adequate legal framework to counter hate crimes, victims do not benefit from a supportive and protective procedure (at neither stage).
- While there are two publicly funded victim support services, interviews confirmed that they do not provide sufficient services (problems of accessibility and efficiency).
- Victims of intersectional hate crimes - based on our research - more often face re-victimization, and are more reluctant to report.

INTRODUCTION AND METHODOLOGY

INTRODUCTION AND METHODOLOGY

Hate crimes are constantly present in Hungary. The scapegoating of certain minority groups by the government (migrants, LGBTQI persons, Roma, homeless) undoubtedly contributed to the moderate rise of recorded hate crime incidents. While there is growing awareness among the victims and also within the law-enforcement authorities on the importance of bringing the perpetrators of these heinous crimes to justice, these efforts are hindered by structural deficiencies. The present report aims to illustrate that it is not enough to have an adequate legal framework: without proper implementation, it remains a dead letter and victims of hate crimes are deprived of their right to remedy.

When preparing the national report, Háttér Society closely cooperated with its partner organizations focusing on hate crimes. We relied on our own network, as well as the network and contacts of the partner organizations when engaging victims and professionals for the interviews. When selecting the participants for both types of interviews, we applied ‘purposive’ sampling: we contacted persons who were known to have relevant information for the objectives of the research. Háttér Society’s Legal Aid service works with victims of hate crime where the hate motivation is primarily based on sexual orientation and / or gender identity, at times intersecting with other protected grounds (e.g. ethnic belonging, race, gender or nationality). In order to broaden the pool of hate crime victims, attorneys litigating such cases were approached with a request to draw their clients’ attention to the interview call circulated by Háttér Society. Due to confidentiality reasons, only the victims represented by Háttér were contacted directly. As a result of this coordinated effort of the Legal Program and the civil society organizations (CSOs) – primarily the ones in the Working Group against Hate Crimes¹ – nine (9) interviews with victims were set. Unfortunately, one of the interviews had to be canceled due to logistical difficulties.

For the interviews with professionals, we have compiled a list of both governmental and non-governmental organizations’ professionals with relevant mandate, knowledge, and experience. The following groups of potential interviewees were contacted: CSOs, victim support centers (nation-wide), victim support services (nation-wide),² the Curia (supreme court), the Prosecution Service of Hungary, Office of the Commissioner for Fundamental Rights, the National Headquarters of the Police, all officers designated to investigate hate crimes across the country,³ academic experts involved in research or policy research and reporting on hate crimes. Most of the experts working for CSOs agreed to take part in the research and sit for an interview. However, Háttér hit a wall with victim support bodies that are dependent on or associated with the government. Only one of the Victim Support Services (from Csongrád Csanád County) responded: the government office under the auspices of which it operates informed Háttér Society that the Prime Minister’s Office does not support the participation of government employees

1 *The Working Group against Hate Crimes (WGAHC) was established in January 2012 with the participation of four Hungarian NGOs (Háttér Society, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Amnesty International Hungary) and individual experts. For details see: <https://gyuloletel.hu/about-us>*

2 *Victim Support Services (hereinafter: VSS) are operated by the district Government Offices under the supervision of the Prime Minister Offices, however, the professional support and coordination is ensured by the Ministry of Justice. Meanwhile, the newly set up Victim Support Centres (hereinafter: VSC) belong to the Ministry of Justice. Victim support is an under-sourced area. Financial aid, state compensation and certification of victim status can only be received from the VSSs, while both the VSSs and VSCs provide information for the victims, offer help in accessing legal representation, witness assistance and emotional support.*

3 *Investigating hate crimes is the prerogative of police stations operating at county level (there are 19 of such police stations in addition to Budapest). Each police station has an officer appointed to be in charge of coordinating hate crimes investigations. The head of this group of police officers is with the National Police Headquarters.*

in the Counter Hate research.⁴ Even though employees working in the Office of the Commissioner for Fundamental Rights informally agreed to an interview, none materialized in the end. As a result, out of the 50 invitations for interviews with professionals, we could only conduct 7, predominantly with lawyers working with CSOs. Despite all Hättér's efforts to diversify the pool of interviewees, we could not – due to the restrictions imposed by the Prime Minister's Office – engage any relevant professional affiliated with, for instance, the victim support services of the Hungarian state.

For the online survey, Hättér Society approached 100 stakeholders: for contacting them, Hättér relied on the contact lists maintained internally, these were supplemented with contacts publicly available. Given the nature of the research, we believed that the input from the police would significantly contribute to the validity of our findings: in addition to the requests for interviews, an invitation for filling out the survey was sent out to 35 police officers working on hate crimes, out of these, 11 officers have already left the force as the email bounced back.⁵ We also contacted each county-level police force as hate crimes are supposed to be investigated on that level; here only 1 email proved to be undeliverable. Despite our skepticism,⁶ 7 persons identified their area of work as law-enforcement in the questionnaire. Additionally, 18 persons who filled out the questionnaire marked 'public sector' when describing their organization without specifying what they work for.

4 *The letter dated on December 8, 2022 is on file with Hättér Society.*

5 *These police officers are or were designated to investigate hate crimes - for details see section A.1. below.*

6 *In previous years, all the Hättér's attempts to engage with the state bodies, including the police, were rejected or simply ignored. The previous channels of cooperation have significantly deteriorated or broken down completely.*

Table 1: sociodemographic data - professionals

Interview	Gender	Age	Professional role
P1	Male	43	Sociologist
P2	Male	38	Lawyer
P3	Female	42	Lawyer
P4	Female	27	Lawyer
P5	Female	51	Lawyer
P6	Male	50	University professor, researcher
P7	Female	47	Lawyer

Table 2: sociodemographic data - victims

Interview	Gender	Age	Personal grounds of discrimination or hate crime
V1	Male	30	Sexual orientation
V2	Male	38	Sexual orientation
V3	Female	26	Sexual orientation
V4	Female	23	Sexual orientation
V5	Male	44	Ethnicity
V6	Female	26	Sexual orientation
V7	Male	43	Sexual orientation
V8	Female	24	Gender identity

Table 3: Survey data

Universe: N° of organisations contacted	100				
Number of total responses	28				
Number of completed responses	18				
Responses rate (universe/total responses= Responses rate)	28%				
Discrimination field in which respondents work	Role	N			
	Race, ethnicity, and origin	1			
	Sexual orientation and gender identity	2			
	Disabilities	1			
	Socio-economic status	3			
	All types of discrimination / civil rights in general	15			
	Other	8			
	<table border="1"> <tr> <td>Law enforcement</td> <td>7</td> </tr> <tr> <td>Did not indicate anything</td> <td>1</td> </tr> </table>	Law enforcement	7	Did not indicate anything	1
Law enforcement	7				
Did not indicate anything	1				
Role of the respondent in the organisation	Role	N			
	Head of department / program or project manager	8			
	Expert	13			
	Volunteer	1			
	Administrator	5			
	No answer	1			

A. DISCRIMINATION AND HATE CRIME NATIONAL CONTEXT

A. DISCRIMINATION AND HATE CRIME

NATIONAL CONTEXT

A.1. National legal framework on hate crime and discrimination.

Hungarian law does not refer to “hate crimes” or “hate speech” *per se*, nor is there a specific crime for bias-motivated discrimination. The Criminal Code¹ (CC), however, defines and punishes bias-motivated criminal acts against national, ethnic, racial or religious groups, or of a certain societal group, with explicitly mentioning the grounds of disability, gender identity or sexual orientation. There are two groups of relevant criminal acts related to hate crimes: (1) *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 (2) other criminal acts that do not contain an explicit reference to bias motive but contain qualifying circumstances² referring to “malicious motive”, which – based on the consistent case law of courts – includes bias motive based on someone’s belonging to a social group. The following criminal acts contained in the Criminal Code can be considered as relevant hate crime provisions:

***Sui generis* acts:**

- Violence against a member of a community (CC Section 216);
- Incitement against a community (CC Section 332);

Crimes listing malicious motive as a qualifying circumstance:

- Homicide (CC Section 160), assault (CC Section 164), illegal restraint (CC Section 194), defamation (CC Section 226), unlawful detention (CC Section 304), offending a subordinate (CC Section 449).

Violence against a member of a community (CC Section 216) is a crime committed by a person who

(1) (...), because of the fact that another person, actually or presumably, belongs to a national, ethnic, racial or religious group or another group of society, in particular because of his disability, gender identity or sexual orientation, displays a conspicuously anti-social conduct that is capable of causing alarm in members of the respective group is guilty of a felony and shall be punished by imprisonment for up to three years.

(2) (...) assaults or coerces another person by violence or threat to do, not to do or to tolerate something because he, actually or presumably, belongs to a national, ethnic, racial or religious group or another group of society, in particular because of his disability, gender identity or sexual orientation, shall be punished by imprisonment for one to five years.

The Criminal Code also lists qualifying circumstances that result in harsher penalties. Punishment is two to eight years of imprisonment if violence against a member of a community is committed by carrying a deadly weapon, by causing significant harm to interest, by tormenting the victim, in a group of 3 or more persons and / or in criminal association with accomplices [CC Section 216(3)].

Preparation for this criminal act is also a misdemeanor³ punishable by up to two years imprisonment [CC

1 Act no. C of 2012 on the Criminal Code.

2 A qualifying circumstance is a feature of a criminal act specifically included in the definition of the crime in the CC that imposes a higher sanction for the act.

3 A criminal offense in the Hungarian Criminal Code shall be a felony (*bűntett*) or a misdemeanor (*vétség*). A felony shall mean an intentional criminal offense that is punishable by a penalty of over two years of imprisonment under the Criminal Code, and any other criminal offense shall constitute a

Article 216(4)]. Preparation means providing the conditions necessary for the purpose of committing a criminal offense or facilitating it, or if someone invites, offers, or undertakes to commit, or agrees to commit a criminal offense jointly [CC Section 11(1)].

Incitement against a community (CC Section 332) is a felony committed by a person who

(...) *in front of a large audience, incites to violence or hatred against*

a) the Hungarian nation,

b) a national, ethnic, racial or religious group or a member of such a group, or

c) certain groups of society or a member of such groups, particularly with regard to any disability, sexual (sic!) identity⁴ or sexual orientation, is guilty of a felony and shall be punished by imprisonment for up to three years.

The list of protected characteristics is an open-ended list in both provisions above, providing an opportunity for the practice to extend the list of the groups protected by the law against bias-motivated acts. According to the case law, the provision is mainly applied in hate crimes committed against one of the protected groups listed in the Criminal Code, however, there have been cases against homeless people prosecuted, and in one of the cases, the court also treated a fan of a certain football team as a member of a group to be protected. Even though this decision was widely debated, it shows the intention of the practice to extend the list of protected groups.⁵

There are several measures to ensure the effective implementation of the above provisions. One of these is *Instruction 30/2019 (VII.18.) of the Chief of Police on the implementation of police tasks related to the handling of hate crimes*. The instruction entered into force on 1 August 2019 and serves as a general manual for police officers on how to deal with bias-motivated incidents and crimes. It expands the institutional framework of the Hate Crime Special Network (established in 2012) by ordering that a ‘mentor’, who is a local expert on hate crimes, shall be appointed at every police headquarter. The Instruction also contains a list of hate crime indicators to assist the police in recognizing hate incidents and includes guidance for the police on how to treat victims and witnesses of hate crimes and how to conduct their questioning.⁶

Another notable measure is the prosecutors’ hate crime protocol (NF/1621/2015/3⁷). Based on the analysis of the WGAHC, the protocol fails to address many important issues, such as the interpretation of the different forms of the ‘violence against a member of the community’ as defined in the CC, the interpretation of the criminal provision ‘incitement to hatred’, and the possibility of mixed motives behind hate crimes. The WGAHC further notes that additionally there seems to be a serious lack of awareness of the protocol.⁸ On a positive note, even though this protocol is much less detailed than the *Instructions of the Chief of Police* cited above, the fact that it uses the same list of indicators ensures that the police and the prosecutors may be expected to examine the same set of indicators in investigations

misdemeanor:

4 *The quote comes from the official translation (available at: <https://njt.hu/jogszabaly/en/2012-100-00-00>) of the Criminal Code. Correctly, it should contain ‘gender identity’.*

5 *Summary opinion on the analysis of the case-law on certain offenses infringing fundamental rights – Curia (Összefoglaló vélemény az egyes alapjogokat sértő bűncselekmények ítélkezési gyakorlatának elemzéséről – Kúria), 2016, https://kuria-birosag.hu/sites/default/files/joggyvak/osszefoglalo_velemeney_4.pdf.*

6 *Joint submission by Amnesty International Hungary, Háttér Society, Hungarian Helsinki Committee and Hungarian Civil Liberties Union as Working Group Against Hate Crimes for the Third Cycle of the UPR of Hungary, 2021.*

7 *https://gyulotellen.hu/sites/default/files/ugveszseg_gybcskorirat_2019.pdf*

8 *Communication of the Working Group Against Hate Crimes in Hungary to the Committee of Ministers on the implementation of the judgments of the European Court of Human Rights in relation to hate crimes, 2022, https://gyulotellen.hu/sites/default/files/wgahc_rule9_communication_221111.pdf*

and prosecutions. This may contribute to the better detection and proper classification of hate crimes.⁹

While there is a consensus among professionals that the legal framework on hate crimes is adequate,¹⁰ an efficient response to hate crimes is hindered by underreporting and systemic failures resulting in the under-enforcement of the impugned criminal provisions. The most typical systemic failures are:

- ★ *Under-classification*: the hate motivation is often disregarded and therefore, even if a criminal procedure is initiated based on a well-founded suspicion of a crime (but not hate crime), the incorrect and more lenient provisions of the CC are applied, and consequently the sanctions imposed are lighter than those applicable for hate crimes.
- ★ *Failure of the police to intervene in case of hate crimes*: police often fail to take the necessary measures at far-right, extremist assemblies directed against vulnerable groups, despite the fact that sufficient evidence supports that criminal acts had taken place.¹¹ Even though the failure of the police to execute proper and effective law enforcement measures has attracted criticism, experts admitted that recently the police actively prevented the escalation of events organized by far-right, xenophobic groups.¹²
- ★ *Failures of the authorities to take investigative steps*: the investigative authorities fail to question the witnesses, collect the CCTV recordings before the deletion, to conduct searches or background investigations during the investigation into the motives to learn of the lifestyle of the perpetrators (whether they might have extremist symbols on their walls, what type of comments they make in public, etc.), and to pose questions pertaining to the motivation and to properly investigate the social networks of the perpetrator. All professional interviewees witnessed such failures in the cases they had been involved in.
- ★ *CC's hate crime provision applied in favor of far-right groups*: it is important to note, that in parallel with the above presented systemic omissions, among those hate crime cases that reach the court phase (known from media reports and from the officially published highest court decisions), hate crimes against Hungarians, committed by Roma are overrepresented. Roma were sentenced to imprisonment for hate crimes committed against Hungarians: the defendants had been previously threatened in their own neighborhood by far-right groups, and the defendants attacked the cars of the presumed members of these groups. These verdicts showcase the twisted logic of the application of the law: the hate crime provision is misinterpreted and applied against members of a vulnerable minority in favor of racist groups.
- ★ *Failure to consider bias-motivated attacks against property*: finally, it is problematic that the Criminal Code does not consider bias motivation as a qualifying circumstance in case of offenses committed against property. The judicial practice has demonstrated that offenses committed against property can be covered by CC Article 216 (1) on bias-motivated nuisance. However, the application of the CC in this regard is not consistent.¹³

A.2. Statistics and data regarding bias-motivated crimes

The number of hate crimes is low not only because they are not reported or registered, but because it

9 <https://gyuloletellen.hu/aktualitasok/ugyeszsegi-korirat-gyulolet-buncselekmenyekrol>

10 For instance, interview with Professional 4, on file with the authors.

11 According to Act LV of 2018 on the right of assembly, if an assembly in itself constitutes a crime or violates the rights or freedoms of others, the police should disperse without delay.

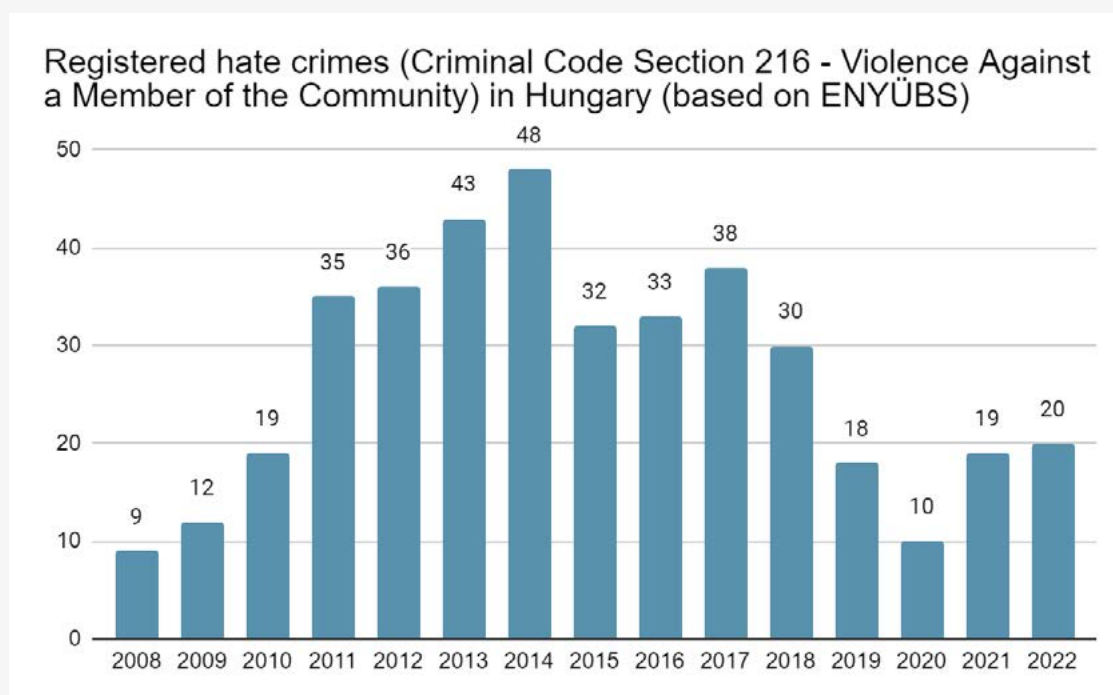
12 See for instance interview with Professional 5, on file with the authors.

13 Working Group Against Hate Crimes (GYEM): Shadow report to the sixth periodic report of Hungary to the International Covenant On Civil and Political Rights to the United Nations Human Rights Committee February, 2018, https://gyuloletellen.hu/sites/default/files/wghc_shadow_report.pdf. A more recent summary of the problematic cases and practices may be found in the submission of the Working Group Against Hate Crimes to the Committee of Ministers on the implementation of the judgments condemning Hungary for procedural failures in hate crime cases: https://gyuloletellen.hu/sites/default/files/wgahc_rule9_communication_221111.pdf (11 November 2022).

is simply the case – in this sense Hungary is a lucky country, there are no weapons on the street, and a decade after cases, we still speak of the horrific Roma killings, there was nothing comparable ever since.¹⁴

Data collection on hate crimes was significantly improved in July 2018, however, it still suffers from serious defects that do not allow for a comprehensive and timely compilation of statistics. There is no specialized data collection by public authorities on hate crimes. Data on crimes reported to the authorities are collected in the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (hereinafter: ENYÜBS), statistical information on hate crimes may be obtained from this database only.

In July 2018 two new fields were introduced in the statistical form the investigative authorities have to fill when recording data: a yes-no question on whether the crime is a hate crime, and if it is, a question on the protected category needs to be answered (race, nationality, ethnicity, religion, sexual orientation, gender identity, disability, other). This is a significant improvement compared to the previous system, but it is still problematic that the categorization of the crime as a hate crime is based solely on the decision of the authorities and there is no room for contesting their assessment, thus in case the authorities do not recognize or acknowledge the bias motivation, the crime will not show up in the relevant category. Furthermore, recording crimes only along the protected grounds, but not based on the group targeted, lumps together highly different forms of hate crimes (such as antisemitic, anti-muslim, and anti-christian crimes under ‘religion’). This prevents a comprehensive analysis of the nature of hate crimes and thus, makes it difficult to fully understand the spread of hate-motivated incidents among the protected groups.



There are three general problems with ENYÜBS that significantly undermine its usability altogether. First, data on registered crimes are recorded in the statistical system either when the report is dismissed, when the proceeding is suspended or terminated, or upon the decision of prosecutors to prosecute or suspend the investigation in the case; therefore, in case of a long investigation, the crime appears in the system only months or years after its occurrence. Second, the system only contains data on investigation and prosecution, but not on sentencing, for which a separate statistical system is in place that is significantly less detailed and does not allow the tracking of a case from reporting to sentencing. Finally, researchers claim that the accuracy of the system is very low: there are many statistical forms which are

14 Interview with Professional 4, on file with the authors.

not fully completed or contain mistakes.¹⁵

While there is a public interface making ENYÜBS data available on the internet, the protected categories are not included in the data tables published, so the specific hate crime data is only available if a freedom of information request is submitted.¹⁶

There is no regular victimization survey that would be able to assess the true prevalence of hate crimes in Hungary taking into consideration underreporting as well. The last public large-scale, representative victimization survey was conducted in 2002-2003.¹⁷

A.3. Social perceptions towards and prejudices against minorities

The Hungarian Government continues to have a very strong anti-minority rhetoric that undermines many of the forward-looking steps and essentially goes against the requirement of equal treatment and international standards. The Working Group Against Hate Crimes (WGAHC) provided a thorough description of the impact of the Government's rhetoric regarding vulnerable groups:

as a consequence of which the legal amendments made and protocols adopted by the state easily remain only a written text and empty words without support on the Government's part. (...) the Government launches campaigns that stir up hatred against minorities: the first target of these hateful campaigns were migrants, then in 2021 members of the LGBTQ+ community. As a part of this 'campaign', legislative measures were adopted in order to hamper adoption by same-sex couples, certain school activities dealing with LGBTQ+ issues were banned and high-ranking government officials suggested that acquainting children with such topics would amount to the endangerment of the children concerned. There are also certain cases where intolerance against Roma people is openly promoted by the Hungarian Government. Additionally, in 2022 for the first time in Hungarian history, an extremist, openly far-right political party called Mi Hazánk ("Our Land") which is openly collaborating with widely known hate groups was elected into Parliament. One of the party's main mottos before the election was "We cannot be a gypsy country!", which was shown on billboards all across the country.¹⁸

The data from the 2019 Special Eurobarometer 493 confirm the findings of the WGAHC: they show that there is a significant gap in the acceptance of these vulnerable groups in Hungary compared to the EU average. Answering the question on how comfortable they are with having colleagues from a minority, for a Hungarian it is less likely to be acceptable to have as colleagues at their workplace a Roma (50% compared to the EU average of 64%), a Muslim (37% compared to the EU average of 71%), a Black (46%, compared to the EU average of 79%), a gay, lesbian or bisexual (41% compared to the EU average of 72%), a transgender (33% compared to the EU average of 65%) or an intersex person (33% compared to the EU average of 66%). The same stands for having one of their children in

15 Joint submission by Amnesty International Hungary, Háttér Society, Hungarian Helsinki Committee, and Hungarian Civil Liberties Union as Working Group Against Hate Crimes for the Third Cycle of the UPR of Hungary, 2021.

16 WGAHC of which Háttér Society is a member did submit such FoI request and the National Police Headquarters provided the same data as those publicly available.

17 See Andrea T. Barabás: *Áldozattá válás Magyarországon: a statisztika és az empirikus vizsgálatok valóságképe*. In: A. Borbíró et al. (eds.): *A kriminálpolitika és a társadalmi bűnmegelőzés kézikönyve II.*, 2009. http://www.okri.hu/images/stories/kutatok/barabastunde/bt_irm_2009_2_7.2.pdf; Andrea T. Barabás: *Áldozattá válás*. In A. Jakab et al. (eds.): *Internetes Jogtudományi Enciklopédia*, 2022. <http://ijoten.hu/szocikk/aldozatta-valas>

18 Communication of the Working Group Against Hate Crimes in Hungary to the Committee of Ministers on the implementation of the judgments of the European Court of Human Rights in relation to hate crimes, 2022, https://gyuloletellen.hu/sites/default/files/wgahc_rule9_communication_221111.pdf

a love relationship with a Roma (27% compared to the EU average of 48%), or a Muslim person (23% compared to the EU average of 53%), a person of the same sex (22% compared to the EU average of 55%), a transgender (16% compared to the EU average of 43%) or an intersex person (17% compared to the EU average of 44%).¹⁹

19 <https://europa.eu/eurobarometer/surveys/detail/2251>

B. OVERVIEW OF VICTIMS OF HATE CRIMES

B. OVERVIEW OF VICTIMS OF HATE CRIMES

In the law and legal defense work the irony is that those who are fully aware of their rights and the available remedies are usually in such a privileged position that their rights are not violated or are violated considerably less frequently.¹

B.1. Profile of the most vulnerable groups²

Reports and practice indicate that in Hungary there are seven groups that most often become victims of hate crime³ – our interviews also corroborated this finding. These groups are the Roma, LGBTQI persons, Jews, Muslims, people with disabilities, foreigners and homeless people.

The *Roma* in Hungary do not form a homogeneous group. Although they traditionally lived a nomadic, wandering lifestyle, this is no longer typical in Hungary, all of them are settled. During the forced industrialization during Socialism, the majority of Roma were employed in industry instead of their traditional professions, and with the decline of the large-scale industry during the transition most of them lost their jobs. Due to their educational disadvantage (school segregation) and social prejudices, it is more difficult for them to find a job. The mother tongue of the majority of Roma in Hungary is Hungarian, but there are also speakers of the Lovari and Boyash languages. Communication difficulties do not stem from a language barrier, but from their educational disadvantage, they find the legalistic language used in the procedure hard to understand, thus they are often not fully aware of their rights and get confused or lost in the procedure. These cumulatively contribute to their lack of trust and low level of cooperation. Furthermore, it is difficult for the Roma to act and get recognized as victims because the police often treat them only as perpetrators; their reports and complaints are not always taken seriously and are not processed adequately. This is reinforced by the anti-Roma rhetoric of hate groups emphasizing “Gypsy crime”; a significant number of hate crimes against the Roma also occur within the framework of such groups’ “public security activities”. Professional interviewees indicated that access to justice for Roma victims was further hindered by physical barriers, *i.e.* distance to the police station, lack of adequate means of transportation, or simply lack of funding for the tickets.⁴ As Roma victims of hate crime are often already discouraged from pursuing the case at the very beginning of the procedure, they do not benefit from victim support services or additional assistance. Finally, as noted above, the systemic misapplication of the law for protecting the majority group against the Roma minority is a serious impediment on such victims’ willingness to report hate crimes committed against them.

Sexual and gender minorities. Lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) people differ from mainstream society in their sexual orientation (what gender they are attracted to: gay, lesbian, bisexual), their gender identity (what gender they consider themselves to be if it differs from their registered gender at birth: transgender) or their sex characteristics (which biological sex characteristics they have, if a person has both male and female characteristics: intersex). Since sexual orientation and gender identity cannot usually be determined from external signs, some LGBTQI people, fearing rejection, keep their sexual orientation and gender identity a secret even in their closest environment (friends, family members), they remain in the closet; some of them live in a relationship with a person of the opposite sex in accordance with social expectations. LGBTQI people in the closet often do not

1 Interview with Professional 4, on file with the authors.

2 This section builds on the respective chapter of WGAHC’s handbook titled ‘A gyűlölet-bűncselekmények rendőrségi kezelése. Gyakorlati kézikönyv a 30/2019. (VII. 18.) ORFK utasítás végrehajtásához’. Forthcoming.

3 Takács Flóra: *Gyűlölet-bűncselekmények és a szolidaritás formái a mai Magyarországon*. *socio.hu*, 2021/4, 162. <https://doi.org/10.18030/socio.hu.2021.4.162>.

4 Interviews with Professionals 5 and 1, on file with the authors.

report hate crimes for fear of their secret being exposed. Due to the shame formed as a result of hiding and social rejection, it may be difficult for an LGBTQI person to discuss this aspect of their life during an interrogation, and this requires a supportive environment that provides a safe space for sharing their account of the incident. Family rejection makes it harder for an LGBTQI victim to find support in reporting a hate crime and going through the criminal procedure. A professional working with hate crimes committed against sexual and gender minorities told a case where the CSO - considering the individual circumstances of the victim - could not recommend him to report the case to the police: his personal situation made it likely that the violence against him deteriorates and he could not access – due to the lack of financial means and the distance – any form of victim support (he was living in a small village with his hostile father, and he was repeatedly attacked because of his sexual orientation).⁵ Trans victims – in particular, those in their transition – need further accommodation: the police officers dealing with their cases need to be mindful of the importance of using their preferred name (even if that is not the one in their official documents). Since legal gender recognition is currently not possible in Hungary, the divergence between official names and gender identity or appearance is very common. The rights awareness of LGBTQI victims is higher compared to the Roma. They more likely know CSOs supporting such victims, and reach out to them right after the hate incident, thus they can get support from the initial phases of the procedure.

Jews. Judaism, that is, the Jewish religion, has several branches and trends. Most often those who express their religious affiliation in their dress and appearance (Orthodox or Hasidic groups) become victims of hate crime, but at the same time, wearing the more widespread Jewish head covering, the kippah, also makes Jews identifiable to the perpetrators. Vandalism against synagogues, Jewish cemeteries, and Holocaust memorials is common; only a few of the Jewish sites (predominantly in Budapest) benefit from security services maintained by the state. It also happens that anti-Semitic comments are added on top of other (political or worldview-based) conflicts since hate groups often identify Judaism with liberalism, progressive, left-wing thinking (and believe that those who hold such views are Jews). The Sabbath lasts from Friday evening to Saturday evening, and work is prohibited (also on Jewish holidays): traveling long distances, using electronic devices, and writing are also considered work, which is why Orthodox Jews sometimes do not report to the police (postpone for later), do not sign their confessions, or answer the phone on Saturday. Some members of older generations (especially Holocaust survivors) and younger people carrying family trauma might find it difficult to discuss their Jewishness with police officers.

Muslims. The Islamic religion, which is based on Judeo-Christian foundations and follows the teachings of the Prophet Muhammad, has been present in Hungary since the formation of Hungary. In January 1916 the Hungarian Parliament legally recognized the Islamic religion, so a significant part of the Muslims living in Hungary is not recently arrived immigrants, there are ethnically Hungarian people among them too. Prejudice against Muslims is often linked to the fear of terrorism, even though the vast majority of Muslims also reject political violence. Like Judaism, Islam also has several branches, from conservative to liberal, there are progressive trends that emphasize the continuous reinterpretation of the Koran and the diversity of the religion. Many Muslims pray five times a day, before which believers must ritually clean themselves. During the month of Ramadan Muslims fast during the day, and more people attend evening prayers than usual. Our research found no cases where Hungarian-speaking Muslims became victims of a hate crime: one professional recalled a case where Muslim students living in Hungary had been attacked, however, in that case, the hate motivation was not only linked to their religion but nationality was also a factor.⁶

Foreigners, refugees, migrants. Within this group, most often people different from Europeans in their racial traits (people of color) are attacked, but it also happens that the foreign language draws the perpetrators' attention to the group affiliation of the victims. Foreigners living in Hungary may be afraid to file a police report because they are afraid their stay in Hungary may be jeopardized, so they refrain

5 Interview with Professional 3, on file with the authors.

6 Interview with Professional 1, on file with the authors.

from reporting; this is especially true for undocumented migrants. In recent years, many prejudices have been formulated regarding refugees, which are certainly not true for the entire group. It happens that someone attacks a member of this group because of such misconceptions, for example, that he is a member of a terrorist organization, is violent or takes away the workplace and social support from the Hungarian people. With the outbreak of the war in Ukraine, the number of foreigners in Hungary increased, even though fewer refugees are arriving from distant countries. The biggest difficulties during the reporting and the subsequent procedure are the cultural differences and the lack of language skills: the information materials given to victims and the forms they need to fill out are usually not available in any other language but Hungarian, organizing interpretation always takes unduly a lot of time, and the quality of interpretation often raises concerns (as an interviewee underlined).⁷

People with disabilities. Disability is a physical, intellectual, psychosocial or sensory impairment that, together with environmental and social barriers, may limit a given person's full, effective, and equal participation in society. The latency of hate crimes against people with disabilities is extremely high, especially those living in closed residential institutions cannot file a report and participate in the procedure. People with disabilities often encounter prejudice and their intellectual abilities are questioned, although a physically disabled, deaf, or visually impaired person can effectively participate in criminal proceedings with appropriate assistance. Some have limited mobility, and accessing police stations may prove difficult. In the case of blind and visually impaired people, it is important to read out the testimony before signing (in case of partial vision loss, to show it in larger letters), and to send the documents in electronic form (not scanned, but as a text file that can be read with a screen reader). For people who are deaf or have hearing difficulties, appropriate accommodation is needed as well (e.g. use of an interpreter in sign language). For visually impaired victims, there is little support in the procedure: information materials and documents used in the procedure are not accessible in Braille, police do not share the files suitable for 'text-to-speech' softwares, thus such victims are fully dependent on external assistance.⁸

Homeless people. Homelessness is an extreme form of poverty, when someone does not have enough assets/income to pay for housing or does not have a support system (relatives, friends) who would help them. In addition to the serious shortcomings of the state social care system, unemployment, addictions, and psychiatric illnesses can also play a role in the development of homelessness, however, these are often not the root causes, but their consequences. For homeless people it may be difficult to access various public services (health care, police), as they are not welcome, however, (real or hypothetical) hygiene considerations cannot lead to the refusal of the service. Homeless people often do not have a postal address, at the same time, most people can receive the mail at some address (e.g. a friend, daycare worker, social worker, or homeless shelter).

B.2. Presence and impact of intersectionality

Intersectionality taken in a broad sense may be present in almost every criminal case committed: it is intersectional if the perpetrator belongs to a privileged group while the victim does not. A specific layer of intersectionality when victims encounter difficulties regarding their participation in criminal proceedings due to personal characteristics or situations (lack of education, poverty, disability), even if those characteristics were not part of the motivation for the crime committed against them. In a narrower sense, intersectionality is used for cases where multiple protected characteristics gave rise to a hatred motivation. The official statistics only record one protected category, it is not possible to filter the intersectional cases, thus it is difficult to map the presence of intersectionality in the hate crimes reported in Hungary.

While the professional interviewees were familiar with the concept, those who filled out the online

7 Interview with Professional 3, on file with the authors.

8 Similar concerns were voiced in the interview with Professional 3, on file with the authors.

survey showed a lower level of understanding. A significant portion of them indicated that they do not know what intersectionality stands for or have only superficial knowledge of it (32.14% and 14.29%).

The experience of a professional interviewee is illustrative of the presence of intersectionality in hate crime cases committed by members of extremist groups:

Among the cases that reach us, there are some where the victim was a Roma LGBTQI person. Usually, the attackers start by calling them names (e.g. faggot), and then at some point – especially if the victim responds – they start with racist slurs. In the far-right ideology homophobia and anti-gypsyism are completely linked together. There is an ideological continuum: the victim belongs to both groups.⁹

A different version of intersectionality appears in cases where the attacker belongs to a minority and marginalized group (e.g. Roma). The professionals who had experience in such cases drew attention to the structural discrimination against Roma people within the justice system which may explain why these perpetrators are more often charged.¹⁰ As one of them noted: among people in poverty with low education violent forms of interaction are more common, and it is more likely that they become perpetrators. They are not more homophobic, but a more privileged homophobe knows how far they can go without committing a crime.¹¹ A similar pattern – though in a different context – may be observed with regard to foreigners: those who come from countries where society is more tolerant and for instance same-sex couples can freely display their affection publicly, they are more prone to become victims because of their behavior.¹²

The research of Hättér revealed that most frequently ethnicity or race intersected with other protected categories, such as sexual orientation. However, poverty, gender, and political opinion also played a role in some instances.¹³

Professionals agree that belonging to more than one risk group increases the likelihood of becoming a victim of a hate crime. Intersectionality not only makes the impact of the crime harsher on the victim, but re-victimization is also more common in this group. As one professional noted:

Intersectionality has relevance in these cases, as it is possible that if someone only possessed one protected characteristic, then they would not become a victim. If they have more than one, these are added up and thus, it is more likely that they become victims and the impact is more serious.¹⁴

B.3. Outstanding personal consequences and needs of victims of hate-based violence

Hate crimes are very serious crimes violating one's human dignity, and as such, they fundamentally undermine a person's self-confidence. And for this reason, it is of utmost importance to provide victims with some sort of psychological support to process what happened to them.¹⁵

Several victims interviewed for the research indicated that becoming a victim of a hate crime had a lasting impact on their lives; the vital need for specific psychological support or counseling was voiced by most of them. A victim who was attacked because of (perceived) sexual orientation recalled:

My depression became worse because of the crime. I had suicide attempts. (...) I still dream about

9 Interview with Professional 3, on file with the authors.

10 E.g. interview with Professional 1, on file with the authors.

11 Interview with Professional 3, on file with the authors.

12 *ibid.*

13 Interview with Professional 5, on file with the authors.

14 Interview with Professional 7, on file with the authors. A similar view was voiced by Professional 4 as well (on file with the authors).

15 Interview with Professional 6, on file with the authors.

*it, and until today I get scared if I see a bald person.*¹⁶

Yet, she did not receive any help from the authorities, the state left her on her own. Another victim reminded us in his interview that the impact of a crime may reach beyond the direct victim(s). In the context of a hate crime motivated by racism, he explained how the incident affected his broader community:

*There was a small child in the neighboring house, whose parents had to take them to a psychologist for a long period, he was so affected. [The crime] was central to our conversations at that time.*¹⁷

Not all victims require immediate help from the state (or from civil society actors), however, it is for them to decide on it. The current legislation on victim support (described under section 3.2) – in a commendable way – introduced the so-called opt-out system: if the victim does not want their data shared with victim support services, they can decline this possibility.; if there is no objection, the victim support system - in principle - gets activated automatically. Although the opt-out system was introduced in late 2021 and no professional interviewee had any positive experience to report, the practice has seemingly not changed and hate crime victims only rarely receive adequate and timely support.¹⁸ The victims interviewed for the present research also confirmed the views voiced by the professional interviewees: very few of them could recall that they received information on victim support services, and none of them benefitted from any concrete form of such support.

16 *Interview with Victim 4, on file with the authors.*

17 *Interview with Victim 3, on file with the authors.*

18 *The victims who were interviewed could only report on the pre-2021 system.*

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C. ACTIONS AGAINST HATE CRIMES AND DISCRIMINATION

C.1. Reporting procedures. Strengths and weaknesses

In Hungarian law violence against a member of a community is a crime that shall be investigated *ex officio*, thus if the police receive information of any incident raising the suspicion of a hate crime, it needs to proceed without a motion from the victim, and even against the wish of the victim. Investigation in alleged hate crimes is the prerogative of the police operating at county level, thus if a hate crime is reported to lower-level police, the case and its investigation need to be transferred to the county-level police station.¹ Reporting a crime to the police may be made in any form, *i.e.* in person at a police station, court, or prosecutor's office, via phone [calling the emergency number or *Telefontanú* (Telephone Witness)], in writing, or in email. Although the website of the police recommends all the above options,² practitioners in their interviews reported difficulties. A professional recalled cases where the police attempted to discourage the victim from filing a report; the low number of reported hate crime cases shown above confirms this practice. The same professional interviewee gave a possible explanation for this practice:

If the work of the police is evaluated based on the number of cases reported (as that indicates that they fail to keep 'order' in their district), then their interest is to keep the numbers low.³

A professional interviewee working in the field of discrimination based on disability summed up the initial hurdles:

If the victim gets into the legal procedure, things move ahead. It is, however, difficult to get to the point where a legal procedure is commenced. The lack of information is a big problem.⁴

The law allows the presence of an adult chosen by the victim during the procedure, however, the police often disregard this possibility. A professional non-lawyer interviewee recalled an incident when the police officer taking the report arrogantly refused him into the room with the victim. He also recalled a case, when the victim's partner was not let in with the victim without providing any reasoning - the police were likely not informed of the changes introduced in 2016 that allow not only a legal representative, but any person of choice to be present with the victim.

When a person supporting the victim – an attorney or representative of a CSO – is present, victims feel safe and more willing to proceed with the case, victims interviewed for the research confirmed this. Reporting a crime is particularly difficult if the victim is a non-Hungarian, the language barriers often seem to be insurmountable. It takes an extremely long time for the police to provide an official interpreter. One lawyer representing victims reported that it even occurred that one victim was translating for another one. It is highly problematic if the victims had been physically hurt, yet they have to remain present to

1 This, however, often does not happen as some police want to conduct an investigation to gather evidence of the motivation prior to transferring the case, which undermines the whole purpose of the rule on exclusive jurisdiction that aims to place such investigations in the hands of experts. For more information on difficulties with the implementation of the jurisdiction rule, see: Otherness Foundation: *Hate crimes in Hungary. Problems, recommendations, good practices*, 2014. <https://en.hatter.hu/publications/hate-crimes-in-hungary-problems-recommendations-good-practices>

2 See: <https://www.police.hu/en/ugyintezes/mit-tegyek>.

3 Interview with Professional 3, on file with the authors. The practice of the police was also corroborated by the account given by Victim 5.

4 Interview with Professional 7, on file with the authors.

provide interpretation for another victim.⁵ The authorities have so far made no efforts to find alternative solutions, e.g. to provide speedy access to interpretation through use of modern technology in any part of the procedure; they only proceed if the interpreter is physically present. The unnecessarily lengthy waiting period causes anxiety in the victim, who has very little understanding of what is happening around them, especially if they do not have representation from the very beginning.

Despite the above difficulties, victims are determined to stand up for their rights. Most of them overcame their internal resistance to interact with the police, and their reluctance was eventually subordinated to the greater good their reporting served. As one victim neatly put it:

I immediately saw what was reported in the news about the incident, and I felt that it is more important to simply disregard it. I was not afraid of the perpetrator, rather feared that my employment would be affected, however, I said to myself: somebody needs to stand up, and thus, I sacrificed myself.⁶

Sadly, not everyone has the bravery some of the victims exhibited. A victim interviewee confessed that had the hospital not reported the case, she would not have turned to the police in fear of retaliation from the perpetrator. She told an alarming story:

I absolutely had no trust in the authorities. When the police officer arrived, he went up to the perpetrator who was having a beer and tapped his shoulder, and told him, 'what have you done again?!'. Everyone in the police knew the perpetrator (...). The police officer only came up to me half an hour later and asked me if I needed medical assistance. He even had a beer with the perpetrator.⁷

Reporting the crime does not end the victim's interaction with the police. Their testimony as witnesses is also taken after the investigation has begun and this encounter with the police raises similar concerns about the authorities' attitude and lack of empathy towards the victims. Before the questioning begins, victims are reminded of the consequences of submitting a false testimony: both professionals and victims deem this warning legalistic, difficult to understand, and therefore threatening. It is not delivered in a language that is easily accessible to most, and together with the way it is conveyed this has a chilling effect on the victims. In general, police officers are not trained to effectively inform victims of the procedure, their rights, and possible involvement in the procedure.⁸

Victims and professionals confirmed that the police are aware of and comply with their obligation to keep the victim and the perpetrator separated from each other during the investigation phase. Only one victim reported that when summoned to give witness testimony, she was confronted with the perpetrator. She received no prior notification of that, had her representative not been present, "*she would have run away*".⁹

If reporting of a hate crime is done in person, the material conditions at the police station, the speediness of the procedure, and the attitude of police officers are of crucial importance. Hate crimes in Hungary to a large proportion are committed by extremist groups and those sympathizing with them. When the questioning of the victim takes place in person, it creates fear and uneasiness in the victim if the walls of the room are decorated with posters resembling the ideology of these extremist groups, e.g. the map of 'Greater Hungary' as one professional reported. It is important to note that victims did report a positive experience with the police as well:

The balance and calmness of the police officers was maintained throughout and they created an environment in which the incident was just a casual discussion topic.¹⁰

5 Interview with Professional 1, on file with the authors.

6 Interview with Victim 3, on file with the authors.

7 Interview with Victim 4, on file with the authors.

8 Interview with Professional 3,

9 Interview with Victim 4, on file with the authors.

10 Interview with Victim 6, on file with the authors.

Hungarian law provides – in addition to the set of victims’ rights generally available to everyone – further safeguards for victims in need of special treatment.¹¹ The Code of Criminal Procedure created additional guarantees for this class of victims in order to compensate for the disadvantages and barriers such persons encounter and ensure their effective participation in the criminal procedure. Classifying a victim as someone in need of special treatment may happen *ex officio* or upon the motion submitted by the person assisting the victim (‘helper’). Háttér Society had requested this status before for one of the victim’s of a hate crime case represented by the organization. Even though the victim was physically assaulted and severely traumatized, the authorities did not initiate *ex officio* to classify the victim as someone in need of special treatment. Based on the motion of Háttér Society with reference to the Victims’ Directive, however, the police provided this special status to the victim without any further reasoning or objection. Two professionals raised that there is an overall lack of awareness within the police: unless reminded, they do not inform the victim of this possibility and fail to carry out the assessment themselves.¹² While only one victim complained about her treatment by the police, the consistent application of the law and granting additional rights to victims of hate crimes could enhance their protection, and ultimately reinforce the trust in the system.

All the interviewees (professionals and victims alike) considered the procedures slow: even in cases where the perpetrator was known to the police (*e.g.* there was some type of video recording of them or a witness identified them), the procedure was drawn out for years without any reasonable justification. As a result, the victim is kept in uncertainty, and by the time the case finally reaches a court, so many years have passed that the sanction imposed does not have any deterring function any longer.¹³ Furthermore, delays in the procedures were reportedly present even when the victims were called for at a specific day and time. Both victims and professionals reported such incidents.

C.2. Judicial process. Strengths and weaknesses

The decisive moments in hate crime cases are not in the judicial phase of the procedure: if the police adequately investigate the victim’s report, consider the hate indicators, gather the evidence without undue delay, then the prosecution is more likely to charge the alleged perpetrator with a hate crime. The judicial procedures are thus not at the center of the criticism of experts and professionals working in this field. Naturally, there may be unfounded judgments where the court dismisses the charges of hate crime despite clear evidence to the contrary, cases where circumstances and evidence are improperly weighed by a court, yet, these may be corrected on appeal by the higher court, or ultimately on a constitutional complaint by the Constitutional Court. It has to be noted though, that while victims can participate in the judicial process, and can submit police or prosecutorial decisions for review by a (higher) prosecutorial forum, prosecutorial decisions – with a few exceptions – cannot be challenged in court, and victims have no right to appeal a criminal judgment.

Exceeding the reasonable time requirement embodied in the right to a fair trial was a critique almost every respondent raised. As mentioned above, imposing a sanction years after a crime was committed does not have the expected deterrent effect, and as seen in some cases, the length of the procedure may be taken as a mitigating circumstance by the court leading to the absurd result that the defendant benefits from the inaction of the authorities.¹⁴ Such judgments not only hurt the victim but generally endanger trust in the justice system.

11 *Act XC of 2017 on the Code of Criminal Procedure, Section 81.*

12 *Interviews with Professionals 1 and 3, on file with the authors.*

13 *Interview with Professional 3.*

14 *The case was reported by Professional 3 in his interview, on file with the author.*

C.3. Civil society's actions and initiatives

C.3.1 General mapping of anti-discrimination organizations

The most notable cooperation of CSOs related to hate crimes is the Working Group Against Hate Crimes (WGAHC). Established in 2012, CSOs Amnesty International Hungary, Háttér Society, Hungarian Civil Liberties Union (TASZ), and Hungarian Helsinki Committee joined forces for a more effective approach against hate crimes.¹⁵ Besides the representatives of the organizations, individual experts from academia also take part in the work of the working group. The principal objective of the working group is to fight hate crimes. To achieve this, they work for the following goals: establishing a more effective legal and institutional framework for state responses to hate crimes; encouraging victims to initiate legal proceedings; and creating a social environment that rejects hate crimes.

Some of the member organizations of the WGAHC handle hate crime cases themselves related to specific protected groups: Háttér Society provides support to victims of hate crimes against LGBTQI people, Hungarian Helsinki Committee provides assistance to victims of hate crimes against refugees, asylum seekers or hate crimes committed due to the ethnicity of the victim, the Hungarian Civil Liberties Union provides assistance to victims who are Roma and or living with disabilities.

Some organizations support other vulnerable groups and provide tailored services to hate crime victims: Action and Defense Foundation¹⁶ and the Legal Service of the Federation of Hungarian Jewish Communities¹⁷ supports the Jewish community; the Hungarian Muslim Defense League supports the Muslim community; and the Street Lawyer Association supports homeless people.¹⁸

CSOs offering support services tailored to the needs of hate crime victims do not receive public funding, despite the fact that they replace the missing public services in this area. Funding for victim support services largely comes from projects supported by non-Hungarian donors.

C.3.2 Support services to victims

Hungary has had a public victim support system for nearly two decades set up by Act CXXXV of 2005 on crime victim support and state compensation (hereinafter: Victim Support Act), but the number of victims accessing the system remained very low. Formerly only victims of a violent criminal offense against a person had to be informed right away by the investigating authority about the victim support services, about the fact that the victim is eligible to support services, and that their data will be forwarded to the victim support services for the purpose for making direct contact. In 2021 the Victim Support Act was amended to include more crimes where the investigating authorities are obliged to provide this information, for example to victims of sexual abuse, procuring, harassment or robbery of vulnerable persons. Information about the victim is directly shared with the public victim support service automatically, and it is the duty of the service to reach out to victims. If victims do not wish to receive such support, they need to opt out. The amendment – according to the authorities – is meant to facilitate effective contact between the authorities and the victim support services.¹⁹ Interviewed professionals have not, however, noted much change in practice.²⁰

15 *Among the original founders was the Legal Defence Bureau for National and Ethnic Minorities (NEKI), but the organization no longer functions.*

16 *For more information see: <https://tev.hu/en/>*

17 *For more information see: <https://mazsihisz.hu/hirek-a-zsido-vilagbol/mazsihisz-hirek/hitkozsegi-jogsegelyszolgalat>*

18 *For more information see: <https://islamjogvedo.wordpress.com/english/>*

19 *Response by the National Police Headquarters to the freedom of information request sent by the WGAHC. 24 October 2022, on file with the authors.*

20 *See interview with Professional 1 and 3, on file with the authors.*

The system of victim support in recent years became a non-transparent, complicated, and difficult-to-access service. Services are provided by two different entities: Victim Support Services (hereinafter: VSS) are operated by the county Government Offices under the supervision of the Prime Minister Offices, however, professional support and coordination are ensured by the Ministry of Justice. Meanwhile, the Victim Support Centres (hereinafter: VSC) and the newly set up Victim Support Points (hereinafter: VSP) belong to the Ministry of Justice. Victim support is an under-sourced area. Financial aid, state compensation, and certification of victim status can only be received from the VSSs, while both the VSSs and VSCs and VSPs provide information for the victims, and offer help in accessing legal representation, witness assistance, and emotional support. The VSCs operate under the direct control of the Minister of Justice and are located in select bigger cities.²¹ VSSs have been situated in government offices across the country for a long period of time.²² Socially disadvantaged victims do not have the financial means to access the victim support at all (for instance instant financial aid – aiming at providing financial help for necessary living costs – is to be requested personally at the county seat within 8 days from the date of the crime was committed, and victims often do not even have money for the travel). Those who become victims of violent attacks against the person may apply for support to mitigate the damages caused by the crime within 1 year after the crime was committed.²³ The legislation does not explicitly require psychological help to be offered by the VSCs, although some VSSs and VSCs offer it under emotional support, but since it is not a legal requirement, there is no guarantee that victims in need of psychological support are in fact provided with such service. Psychological support might be accessible as part of the healthcare system, but waiting lists are extremely long, and psychologists are not always trained to support crime victims suffering trauma.

CSOs listed in chapter 3.1 provide services focusing on specific protected groups of hate crime victims. The services mainly include free legal counseling and legal representation or simply providing information on hate crimes. These organizations, however, do not exclusively focus on helping hate crime victims, thus their work on hate crimes is frequently limited by other priorities to serve. Hungarian CSOs are generally funded insufficiently and cannot rely on funds provided by the state, thus their project-driven operation may divert attention and resources from their services offered to hate crime victims.

General victim support services are provided by CSO Fehér Gyűrű (White Ring). They used to work closely with the police and all forms of public victim support services, but their activities significantly declined in recent years, and there is a lack of understanding of the specificities of hate crimes, they are not in touch with local minority CSOs, and their services do not take into consideration the special needs of hate crime victims. The organization mainly provides information on the reporting and court procedures to victims of crimes, in certain cases they offer mental or legal assistance and financial aid as well.

The respondents in our research had very little information on mediation and restorative justice procedures in hate crime cases, although professionals generally considered these mechanisms beneficial in some cases.²⁴ In the view of a professional interviewed for the present research, these mechanisms are “alien” to the Hungarian legal system, and it would be difficult to integrate them in a meaningful and efficient way.²⁵ The National Crime Prevention Strategy (2013-2023) sets as an aim to be realized by the state that victims have more information on and access to restorative justice instruments. The strategy describes restorative justice as an instrument of

21 *At the moment 11 VSCs operate across the country, in order to have broader coverage, the Ministry established 4 additional ‘victim support points’ (VSP) (VSP) that operate not as standalone providers, but integrated to police stations in cities where no VSC has been opened..*

22 *There are 20 VSSs in Hungary.*

23 *<https://igazsagugyiinformaciok.kormany.hu/aldozatsegito-szolgalat>*

24 *Interview with Professionals 1, 3, 4, 5 on file with the authors.*

25 *Interview with Professional 6, on file with the authors.*

victim support, noting that the concept of restorative justice recognizes the needs of victims to be not only treated as witnesses providing first-hand information on a crime but as persons who are entitled to emotional, mental, and physical, and material rehabilitation. The strategy also mentions restorative justice in its chapter on crime prevention.²⁶

C.3.3 Awareness-raising campaigns

Háttér Society's research has not yielded any result on campaigns run by public bodies specifically targeting hate crime victims. The only proactive activity we could identify was a flyer the police published for victims of hate crimes; it is now unavailable as it is out of print. However, CSOs regularly organize campaigns and programs on hate crimes or for hate crime victims. The following list contains a brief description of the relevant projects:

- ★ *Speak Out*. A project with a goal to raise awareness of anti-LGBTQI hate crimes hate speech, and on freedom of expression, to empower LGBTQI communities to develop counter-narratives. A website aimed at the community was developed.²⁷
- ★ *Call It Hate*. The project aimed to raise awareness about anti-LGBTQI hate crimes among the general public and within the LGBTQI communities, emphasizing the need to report, and empower victims. The campaign in Hungary included a social experiment video,²⁸ a reporting interface²⁹ and a street campaign marking sites of anti-LGBTQI attacks.
- ★ *Come Forward*. Aimed to increase reporting of homophobic and transphobic hate crimes through capacity building of civil society and official partners and empowering victim communities. A booklet explaining the notion of hate crimes, the criminal procedure, and victims' rights was prepared.³⁰ And a quiz on hate crimes with prizes reached - through activists - the target audience.
- ★ *Hate crimes affect us all*. Amnesty International Hungary produced a short video³¹ explaining the most important facts about hate crimes in a simple and accessible way. The aim of the video is to make the topic easy to understand for everyone.
- ★ *Human Rights Education*. A campaign run by Amnesty International Hungary includes a course offered to schools on hate crimes as well. Their aim is to raise awareness of the background of this specific crime, so the public will be able to recognize it and thus contribute to its prevention.
- ★ *Should I report it?* Háttér produced an awareness-raising video³² on hate crimes. Using the example of a homophobic attack to illustrate the key legal provisions and encourage victims to report an attack and use the support services available.
- ★ *UNI-FORM*. A web and app-based reporting interface³³ was created and a campaign highlighting the importance of reporting homophobic and transphobic attacks was carried out. Four victims of homophobic attacks shared their stories with the public: what happened to them, how it affected their lives, why they felt it was important to report it.

26 For details see: <https://hatter.hu/kiadvanyaink/the-potential-of-restorative-justice-in-hate-crimes>.

27 <https://safetobe.eu/hu/>

28 <https://www.facebook.com/HatterTarsasag/videos/850198482029200>

29 <https://hangosabbagyuloletnel.hu>.

30 <https://hatter.hu/kiadvanyaink/ismerd-fel-es-jelentsd-a-homofob-es-transzfob-gyulolet-buncselekmenyeket>

31 <https://www.youtube.com/watch?v=a4rbw30zGqI&t=4s>

32 <https://www.facebook.com/watch/?v=1107797709268525>

33 <https://uni-form.eu/welcome?country=HU&locale=hu>

C.3.4 Training activities

Instruction 30/2019 (VII.18.) of the Chief of Police on the implementation of police tasks related to the handling of hate crimes includes a training obligation for the police on hate crimes. Based on a recent data request of the Working Group Against Hate Crimes it is clear that police personnel mainly attended training organized by the police themselves. The WGAHC issued the following report on the training of the police:

*Between 1 January 2020 and 31 December 2021, 62 vocational workshops were held on the topic of hate crimes. However, the duration of most of these workshops is clearly insufficient: in 45 out of 62 occasions (72%) the workshop took only an hour or even less, and two of them lasted only 20 minutes. There is no available information on the topics elaborated during and methods of the training. Although the Police Instruction prescribes active cooperation between the police and NGO experts, we were not invited to any of the training courses (or any other events) aiming to help police personnel detect and investigate hate crimes more efficiently.*³⁴

Prosecutors, deputy prosecutors, and prosecution clerks have regular training on the prosecution of hate crimes organized by the prosecution service itself. Based on a recent data request, recently the yearly one or two training on hate crimes attracted 23 to 52 attendees.

Judges also participate in hate crime-related training. In 2021 there were four internal pieces of training organized related to hate crimes with an attendance of 200 court clerks, court secretaries, and judges. These were rather short, only 30-60 minutes in length.

CSOs also convene occasional training for professionals. The Working Group Against Hate Crimes provides hate crime training for police officers, prosecutors, judges, lawyers, and activists, for example, in a project called *Tackling hate crimes locally*, which aimed to empower local actors, including public bodies and CSOs with knowledge related to hate crimes. Hate crime-related training was also provided in different projects by the Faculty of Law Enforcement at the National University of Public Service, for example *Facing All the Facts* (training on bias indicators, treatment of victims, and data collection) or *Shelter*³⁵ (training for medical institutions and professionals on how to support hate crime victims).

C.4. Practitioners' and victims' views on the legal and political framework on hate crimes and victims' rights

There was a consensus among the professionals interviewed for the purposes of the research that the legal framework affords adequate protection against hate crimes in Hungary. However, all of them criticized the information provided to the victims from the early stages of the procedure. The information materials available at the police stations are outdated or are written in non-accessible language for those who lack a higher level of education. The authorities do not provide information *ex officio* on the available victim support services, only if the victim or their representatives request such information, it is provided. But the quality of the information is questionable since police officers were deemed by many to lack adequate and up-to-date knowledge on the support schemes. A victim recalled that he saw a poster at the police station, but no further materials were provided to him.³⁶ Another victim found a CSO through a search on the Internet, “*nobody at the police said anything, I doubt that they know of it*” – she continued.³⁷ Only one victim reported that the authorities informed her of the availability of

34 *Communication of the Working Group Against Hate Crimes in Hungary to the Committee of Ministers on the implementation of the judgments of the European Court of Human Rights in relation to hate crimes, 2022, https://gyuloletellen.hu/sites/default/files/wgahc_rule9_communication_221111.pdf*

35 *Útmutató Egészségügyi Intézmények És Szakemberek Számára A Gyűlölet-Bűncselekmények Áldozatainak Támogatására, https://www.gyuloletellen.hu/sites/default/files/shelter_eugyiutmutato.pdf*

36 *Interview with Victim 6, on file with the authors.*

37 *Interview with Victim 5, on file with the authors.*

psychologists within the victim support scheme.³⁸

For professionals, the main sources of information are laws.³⁹ For victims, naturally, this is not the case, they can only rely on information ideally provided to them by the authorities. Many of them confirmed that they did not receive adequate information at any point of the procedure and for this reason, sought knowledge from CSOs. Such organizations are considered more reliable sources:

*The publications [prepared by non-governmental organizations] are more specific and tailored to the needs of victims.*⁴⁰

As a professional commented in the online survey: “*The special situation and needs of victims of hate crime should be known.*” But if the state fails to provide such an essential service to the victims, CSOs shall be compensated for delivering the information in a concise and accessible format to all who are in need of that. However, in the current political climate service providing CSOs have difficulties in accessing tailored funding schemes (if they exist at all), they only have access to victims who have previously contacted them (there are no referrals to them from the public of victim support), and there is no possibility to leave leaflets or other informational materials at police stations. The respondents in our research concurred that CSOs providing such vital services are under-funded, are limited to the geographic area in which they operate (mostly the capital city of Budapest), and are not known to the most vulnerable and marginalized victims.⁴¹

Victims with specific protection needs are – in principle – protected by the law. As detailed under C.1. rights awareness in this context is low, and often the authorities themselves are not knowledgeable of measures that may be taken to protect especially vulnerable victims. A victim interviewed perfectly summarized why special attention needs to be devoted to such victims:

*[It is needed] to make the person feel that they are not left alone, and that there are people who do not belong to [the same] minority group, but it is still important for them. It is to ensure that victims feel a positive attitude and the helpfulness of others.*⁴²

In Hungary, criminal procedures are still predominantly about punishing the offender – this is the primary wish of the victims. To help the victim to emotionally process the crime, to mitigate its impact or get any other support is not among the priorities of the criminal procedure. A professional working almost exclusively with Roma victims added that in some communities there is resistance to psychological help and that may explain why they do not use victim support services, not even the ones offered by non-governmental actors.⁴³ Thus, the problem only partly stems from the scarcity of information, partly there is peer pressure within the community to avoid such services.

The National Crime Prevention Strategy (2013-2023)⁴⁴ sets as an aim to be realized by the state that victims have more information on and access to restorative justice instruments. The strategy describes restorative justice as an instrument of victim support, noting that the concept of restorative justice recognizes the needs of victims to be not only treated as witnesses providing first-hand information on a crime but as persons who are entitled to emotional, mental, physical, and material rehabilitation. The strategy also mentions restorative justice in its chapter on crime prevention, however, it fails to elaborate on the concrete steps that are to be taken in order to implement the aspirations contained in the strategy. The Strategy explicitly excludes action regarding hate crimes as they are deemed “criminal phenomena [that] needs a specific expertise on behalf of public bodies”.

38 Interview with Victim 5, on file with the authors.

39 See for instance, interviews with Professionals 1 and 3, on file with the authors.

40 Interview with Victim 2, on file with the authors.

41 See for instance, interview with Victim 7, on file with the authors.

42 Interview with Victim 3, on file with the authors.

43 Interview with Professional 5, on file with the authors.

44 Government Decision no. 1744/2013. (X. 17.) on the National Crime Prevention Strategy (2013-2023)

D. CONCLUSIONS AND RECOMMENDATIONS

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D.1. Conclusions

In a country, like Hungary, where the preventive campaigns organized by CSOs or even the police are constantly undermined by the government's hate- and fearmongering, research in hate crimes is always timely and needed. It not only contributes to understanding the gaps and weaknesses but also gives an opportunity to acknowledge the results and good trends. The Hungarian context allows for both. The legal framework does not call for substantial criticism, the Criminal Code contains a *sui generis* crime with an open-ended list that may be extended to protect not mentioned social groups. There is growing awareness both among the public and within the authorities of the special nature of the crime and the impact it may have not only on the victim but also on the community they belong to. Despite these positive notes, the research identified a number of shortcomings in the application of the law from the moment the victim wishes to report the crime. The interviews give an insider take on the legal maze victims and their representatives face when reporting a hate crime: the discouragement, the occasional victim-blaming, the insensitivity of the police, the bureaucratic hurdles, or the lack of adequate attention and support to victims.

D.2. Recommendations

- ★ Make reporting more accessible to victims: create a safe and supportive environment for them, and avoid traumatization and revictimization during the process. If needed each victim shall have access to an interpreter or any other required form of accommodation without delay.
- ★ Make information materials available for hate crime victims online and at the police stations including their rights and access to victim support services.
- ★ Ensure that victims of hate crimes have effective access to support services, including legal, financial, and psychological support, and counseling throughout the procedure. This support shall be available even if the perpetrator is not identified.
- ★ Provide training for the police on the nature of hate crimes and the role of the police in combating them, in particular on the investigation protocol to be followed.
- ★ Provide training for the police to ensure that the needs of victims of hate crimes are met, including respect for their dignity and privacy.
- ★ Provide the required resources for the police to ensure that investigations are closed within a reasonable time.
- ★ Provide financial support for civil society organizations offering victim support services tailored to the needs of hate crime victims.

