

Stepping up against hate crimes

Towards an EU inclusive response to homophobic and transphobic violence and hatred

An ILGA Europe seminar

Background note

10 December 2014

Homophobic and transphobic hate crimes. An issue that undermines the right to human dignity and protection from discrimination across the EU

Despite EU member states efforts to combat discrimination, homophobia and transgender hate crimes continue to remain a daily reality throughout all EU member states. Research carried out by ILGA Europe, intergovernmental bodies such as the Fundamental Rights Agency (FRA), the Council of Europe, the OSCE and other human rights organizations has provided evidence of the widespread occurrence in Europe of hate crimes motivated by sexual orientation and gender identity.

Violence and hate are a pervasive EU-wide problem, regardless of the existing legal framework which protects LGBTI people across EU member states. The FRA's LGBT survey of May 2013 has revealed alarming levels of homophobic violence that give an account of the situation at stake: 26% of respondents have been attacked or threatened within the five years preceding the survey. This figure goes up to 35% in the case of transpeople. In the face of such situation, hate crime law with a bias motive acts unevenly across the EU. Only 16 Member States punish hate crimes motivated by homophobia, whereas nine member states punish crimes motivated by transphobia.

Only 10% of LGBT respondents in the FRA's survey have reported the latest incident of discrimination to the police or national authorities. The main reasons given for non-reporting confirm the distress of the victims: people either thought that nothing would happen or change if they reported the incident, or they felt 'it happened all the time' and was therefore not worth bringing forward. Victims did not want to reveal their sexual orientation or gender identity or they simply did not know how or where to report the incident. Such crimes affect the extent to which people in the EU can enjoy the fulfilment of their fundamental rights to human dignity and non-discrimination across the EU member states

The need to effectively combat hate crime and all forms of bias violence has been recognized in various European fora and institutions and notably the OSCE. All Council of Europe Member States have agreed on supporting action in this area, including more specifically in the case of hate crimes committed with a homophobic or transphobic motive¹.

¹ Cf Recommendation CM/Rec(2010)5 of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity

The EU response: a need to move legislation against hate crime to the next level ?

The 2008/913/JHA 2008 Council Framework Decision (herein the framework decision) on combating certain forms and expressions of racism and xenophobia outlaws hate speech and hate crime linked to victim's racial and ethnic origin. No EU law currently addresses homophobic or transphobic hate crime or speech.

In the course of the implementation of the framework decision 2008/913/JHA certain member states have gone a step further and chosen to include other grounds in criminal definitions protecting against discrimination among which anti-Semitism, sexual orientation or disability.

In 2012, the European Union adopted a directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU). It acknowledges that victims of crimes deserve specific protection in the course of the legal proceedings if the crime was linked to their personal characteristics, including their sexual orientation, their gender identity, or their gender expression. This directive provides further tools to support victims of bias violence. But it does not oblige EU Member States in the area of criminal law, nor does it define "hate crime" or "bias violence" legally.

In 2013 and 2014, a series of activities took place at the EU institutional level to assess the current legal and policy framework to combat crimes motivated by hatred and prejudice in the EU. An informal meeting of JHA ministers held on in Dublin on the theme: "EU action countering hate crime, racism, anti-Semitism, xenophobia and homophobia (17–18 January 2013). A resolution of the European Parliament was adopted calling on the European Commission, the Council of the European Union and the Member States to adopt a comprehensive strategy for fighting hate crime, bias violence and discrimination². In December 2013, the Council of the European Union adopted its conclusions on combating hate crime in the EU, inviting Member States to :

- Ensure that Framework Decision 2008/913/JHA has been fully transposed into national legislation and implemented in practice;
- consider the experience of other Member States in extending within their criminal legislation, the scope of punishable hate crime offences and the inclusion of other bias motives behind these offences;
- Ensure that bias motives are taken into consideration throughout criminal proceedings;
- Take appropriate measures to facilitate the reporting of hate crimes by victims, including looking at measures to build trust in police and other state institutions;
- Collect and publish comprehensive and comparable data on hate crime.

² EP resolution on strengthening the fight against racism, xenophobia and hate crime -(2013/2543(RSP)- B7 0123/2013

These initiatives and statements while being positive do not alter the fact that the current EU legislative framework remains fragmented and still lacks coherence to respond to the situation of hate crimes within the EU.

To ensure a real coherent approach to the fight against homophobic and transphobic hate crime throughout the EU, the needs is emerging for the extension of the scope of EU current criminal law provisions on racism and xenophobia to all forms of hate crime and bias violence including inter alia sexual orientation and gender identity. ILGA-Europe together with other civil society organisations, and in alignment with expressed positions of the European Parliament and FRA have called for a recast of the Framework Decision's provisions, in particular in the area of hate speech and incitement to hatred, for it to better comply with international human rights standards.

ILGA-Europe has developed legal research that provides evidence of the feasibility of legislative changes and initiatives in the framework of the current EU treaties³.

There is also a need for effective implementation of the Victims' Rights Directive (2012/29/EU) by mid 2015, ensuring that transphobic and EU homophobic crimes victims benefit from an adequate support in line with the provisions of the Directive.

Article 21 of the Charter of Fundamental Rights, and article 19 TFEU on discrimination provide a sound basis to the EU in terms of combating all forms and consequences of discrimination. There is an urgent need for the EU to review its legislative framework to combat all forms of bias violence by the same consistent set of means, putting an end to gaps that still prevails regarding homophobia and transphobia and other article 19 grounds.

Objectives of the ILGA Europe seminar

- Take stock of the state of play of homophobic and transgender hate crimes manifestations within the EU and the impact it has on the victims;
- Facilitate an exchange of views between ILGA Europe membership, government officials from EU member states, EU policy makers on the various models of hate crime legislation that exist at national level in order to assess their effectiveness and impact in helping to deter hate crime;
- Assess EU legislation and explore the legal avenues that could be conducive to the strengthening of the current EU legislation framework to combat hate crimes and protect more efficiently the victims of homophobia and transgender hate crimes;
- Address the role of law enforcement authorities and the judiciary in making hate crimes law work effectively;
- Promote dialogue and enhance cooperation between EU institution's, civil society and other stakeholders and pave the way towards middle term shared work objectives;

³ Cf "The legal grounds for inclusive EU legislation against bias violence and hatred"-ILGA Europe –December 2011.



Target Audience

- ILGA Europe members
- EU members states (ministers of justice and/or interior, equality bodies)
- European commission
- Members of the European Parliament
- Civil society organizations
- Legal practitioners
- EU agencies

Venue

Hotel Bloom, Rue Royale 250 - 1210 Brussels

Further information

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