

AN OVERVIEW ON **HATE CRIME** AND **HATE SPEECH** IN 9 EU COUNTRIES

**TOWARDS A COMMON APPROACH
TO PREVENT AND TACKLE HATRED**



FINAL COMPARATIVE REPORT

DELIVERABLE WP1



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THE **eMORE** PROJECT



The **EMORE PROJECT** seeks to contribute to developing, testing and transferring a knowledge model on online hate speech and offline hate crime, based on a circular and advanced joint monitoring-reporting system. The objective is to gain a sound understanding of the phenomena and trends surrounding hate speech and hate crimes, both over the internet and offline, in order to allow comparative analysis with the vision of developing a common model, and to support the harmonised combating of hate-motivated offences at both the national and EU level.

In order to do so, the Project developed a knowledge platform available to target groups, which allows the in-depth analysis of hate phenomena online and offline. The knowledge base includes the most important categories of hate-motivated offences. This knowledge enlargement and the definition of minimum standards allowed the development of a crawler detecting hate speech online to monitor the Internet, as well as a mobile phone APP to report hate speech online.

Each partner has been collecting data about its own country in order to create a common database crawler and multi-level report tool APP. The APP is tested and evaluated in the 9 participating target countries on its potential to promote the engagement of victims, to make hate speech more visible and to combat hatred at large, as well as to produce data and serve as a social research tool. E-learning training courses on hate crime addressed to main stakeholders and Civil Society Organizations (CSOs) are organised to improve their knowledge on the analysis and monitoring of hate crime.

THE **MAIN OBJECTIVES** OF THE PROJECT ARE THE FOLLOWING:

- > To develop and test an innovative tool that will crawl the internet in order to automatically detect and monitor online hate speech;
- > To develop and test a multi-level reporting tool (APP) for hate speech online;
- > To develop and test a comprehensive circular knowledge model, based on the integration between the data and information collected through the monitoring and reporting tools developed by the Project;
- > To promote the engagement of victims, witnesses and bystanders through their access to the APP;
- > To promote networking and cooperation among stakeholders and to empower them; to enhance visibility and dissemination of results, thus supporting transfer of the model to European Union Member States.

Within this main framework, the present deliverable of WP1 is the result of a comparative exercise based on the national reports produced by the project partners. This serves as a knowledge basis for the next activities of the project, as its main findings should be confirmed or confuted in the next phases of the project. Below is a list of the project partners involved in the draft of national studies, covering 9 European Member States.

PROJECT PARTNERS:

Research Centre on Security and Crime (RISSC), Italy

<http://www.rissc.it/>

A Jewish Contribution to an Inclusive Europe (CEJI), Belgium

<http://www.ceji.org/>

Centre for Legal Resources (CLR), Romania

<http://www.crj.ro/en/>

College for Public Administration and Administration for Justice – Police Department, Germany

<http://www.fhvr-polizei.bayern.de/de/startseite.html>

IDOS Study and Research Centre, Italy

<http://www.dossierimmigrazione.it/>

Associação ILGA Portugal, Portugal

<http://www.ilga-portugal.pt/ilga/index.php>

LAND, Italy

www.land.it

Action for Equality, Support, Antiracism (KISA), Cyprus

<http://kisa.org.cy/>

Migration Policy Group (MPG), Belgium

<http://www.migpolgroup.com/>

North West Migrants Forum, United Kingdom

<http://nwmf.org.uk/>

Peace Institute (PI), Slovenia

<http://www.mirovni-institut.si>

SOS Malta, Malta

<http://www.sosmalta.org/>

INTRODUCTION¹



This report presents a cross-cutting comparative analysis of the different sections included in the national reports compiled by the eMORE partners.

Section 1 will give an overview of the status of hate crime and hate speech in each country, particularly highlighting the particular aspects linked to local contexts and the more interesting similarities and differences among them. While hatred can be the result of current or recent phenomena, such as the increasing flows of refugees to Europe, since 2015, or the terrorist attacks that took place in the past years, discrimination and hate against certain minorities in one specific country is often related to historical legacies and socio-cultural aspects - as will clearly emerge from the present study. Data collected at international level will also be reported, where available.²

Section 2 will show the results of first-hand data collected by the project countries through the online surveys. The eMORE survey, as we will further explain in the relevant section, was aimed at filling existing gaps with regard to the perception of victims and witnesses, including potential ones, of hate crime and hate speech as well as specific aspects mainly covering the what/who/where/how/why of these phenomena. Particular attention will be given to this section as it constitutes one of the added values of the eMORE research project, in terms of data analysis and knowledge production.

Section 3 will then compare the main findings of the mass media analysis carried out by the country partners. The examination of news articles conducted on mass media online was the most challenging aspect for almost all the country reports. Some of the project's partners did not have access to full online journals; others were not able to manage such amount of data (the selected period was initially 2014-16, then restricted to 2015-16); finally, some countries found it more useful to analyse secondary data, to avoid duplications with previous works while still matching the objective of the analysis. For this very reason, the results of the comparative exercise are perhaps less effective for this section, but still highlights interesting differences and specificities within the countries.

Section 4 will close the comparison exercise, by providing an overview of compliance, by single countries, with international rules and legislation and showing interesting aspects related to the national frameworks.

Based on the previous sections, and thus on the concrete evidences and results of the analysis carried out during Year 1 the eMORE project will present a set of recommendations for practitioners and policy makers. These recommendations are aimed at facilitating the relevant actors in the elaboration of preventive and countering measures on hate crime and hate speech, both at local and European level. Moreover, they have to be considered as part of the wider monitoring and reporting exercise envisaged by the project eMORE in the second year of activities.

¹ The main sections herewith presented follow the structure and the topics drafted by the partners in the country reports. However, the national studies included also a specific section aimed at listing the stakeholders involved in the fight against hate speech and crime at country level, as well as a list of past and ongoing relevant project and initiatives. Even though these overviews in every country can be useful to better understand the national contexts, the nature of the argument made it difficult to carry out a comparison in the 9 countries.

² All eMORE project countries are participating States to the OSCE ODIHR, however some of them have never reported data on hate crime. Every year, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) releases information on hate crime and incidents across the region. ODIHR was tasked by OSCE participating States in 2006 to present statistics and information on hate crime legislation, investigation, prosecution and sentencing, as well as to share best practices. The information ODIHR gathers is provided by governments, civil society groups and international organizations. Official figures are provided directly by participating States through an online questionnaire developed specifically for them.

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Hate crime and hate speech represent a threat and a damage to the life of individuals, and increase the sense of fear in entire communities. The core values of the EU Treaty, such as the respect for human dignity and human rights, are undermined by hatred. On the eve of the International Day for the Elimination of Racial Discrimination (20 March 2017), the UN human rights (HR) chief reminded to all governments worldwide that they have a legal obligation to stop hate crime and hate speech. According to the UN HR Commissioner, the “politics of division and the rhetoric of intolerance are targeting racial, ethnic, linguistic and religious minorities, as well as migrants and refugees”. Moving in this direction does not mean attacking free speech or silencing controversial ideas or criticism, in his view. It is rather a recognition that the right to freedom of expression carries with it special duties and responsibilities.

Nowadays, in the mass media, social media and in our daily-life environment, the fear against the ‘other’ seems increasing more and more. Even though in different forms and at different levels, phenomena such as the terrorist attacks in Europe and worldwide, the so-called refugees’ crisis started in 2015, and the residual effects of the economic and financial crisis have been mentioned as root causes of hatred in the analysed eMORE project’s countries.

There is, as it is easy to imagine, a circular relation between the root causes of hatred and the main bias motives in the different countries. Based on the general assessment conducted by every project’s country on existing sources, racism, xenophobia, discrimination against nationality, ethnicity and religious faith or affiliation are still the main motives behind discrimination practices and hatred incidents. Hostility against particular groups, such as Roma and Sinti, antisemitism and islamophobia are other continuing or emerging phenomena; some

countries still manifest historical sentiments - such as sectarianism – while a general anti-refugees and migrants’ attitude is affecting almost every country. Sexual orientation and gender identity are usually the second main motives for discrimination or hatred, in line with the general tendency at EU level; discrimination and hate incidents against people with disability, even though still more hidden or less noticeable, is also a worrying phenomenon. Surprisingly enough, political belief is another bias category.

An interesting element emerging from the present report is that the online survey conducted by the project’s partners through a sample of respondents (different in each country) to register their perception, usually confirms the general tendency reported by the main sources of information in this area: some remarkable findings are highlighted.

Hate crime seems less experienced than hate speech; the low rate of hate crime is probably related to the lack of detection and / or recording of hate episodes with a criminal relevance. Looking at other forms of prejudice experienced by the respondents, the average number of victims is stable, namely 33% of the respondents have experienced or are experiencing some form of discrimination. Conversely, the number of people that have been witnessing forms of hate crime or hate speech is quite constant, between 65-80% in all the countries.

The types of offenses mostly experienced are derision, verbal threat and intimidation, bullying; while, at a lesser extent, physical attack or violence. These kinds of episodes are often reported to be taking place in the public space, however verbal prejudice or insult motivated by hatred can take place also in the private sphere. Looking more specifically at where the hate episodes are usually experienced,

EXECUTIVE SUMMARY



the surveys highlight the street as one of the most reported places. The workplace is also a 'delicate' environment, probably mostly for prejudice and discrimination but also for hatred in general. Schools and public transportation are also reported quite often.

Looking at the perpetrators of hate crime or hate speech, in the majority of surveyed countries they appear to be strangers in the majority of cases. This evidence relates to the debate over the idea of hate crime as a form of 'stranger-danger' (a crime that takes place between perpetrator and a victim who do not know each other). In this framework, the issue of anonymity in the digital environment plays an important role and further complicates the picture. In fact, another common result of the surveys is that hate speech online happens more often on social networks, by anonymous sources, or sometimes via private messages. Facebook is the first social network indicated in the answers, followed by You Tube and/or Twitter. Most of respondents think the solution against hate speech online is through educational activities, information, monitoring rather than through the action of law enforcement authorities.

While this is the general opinion registered via the survey, and with particular regard to countering online hate speech, the legal instruments – and specifically the criminal ones – still have an important symbolic power. In this historical moment, characterized among other phenomena by an important migratory flow and by forms of radicalization related to the religious sphere, the presence of penal instrument to face hatred phenomena represent a form of protection of the human dignity.

However, the legal instrument can not work as a deterrent element, and probably the most important action has to be on a cultural level. This is also reiterated by the fact that 70-80% of hate incidents in all the analysed countries were not reported to police, and the percentage was even higher when the incidents were witnessed.

The general lack of available and published data on hate crime and hate speech, goes along with the very low number of recorded incidents in almost all the countries. Unfortunately, the phenomena of under reporting and under recording are still very widespread in this area, due to a range of different reasons, among which: lack of confidence in the police; concern about revenge attacks or fear of retaliation; acceptance of violence and abuse, in the belief that nothing will change anyway; fear of re-victimisation or retaliation; fear of having privacy compromised; fear of jeopardising immigration status, being reported or deportation (if applicable); humiliation or shame about being victimised; the lack of a victim support system; cultural and language barriers. Moreover, even when the incident is reported to the law enforcement, there are still many obstacles that prevent from a duly investigation and consequent phase of prosecution.

However, a positive signal, as the concrete cases in the eMORE countries also demonstrate, is that where the action of the law enforcement is still lacking, there is often the intervention of independent authorities as well as the spontaneous response of the civil society.

The portray of the role of mass media in spreading (or conversely combating) hate presented in this report is also of interest. In most countries hate speech is more covered than hate crime by the media, also in view of working on a preventive strategy. Online comments and their moderation, even though not directly related to the liability of the mass media themselves, play a crucial role in the dissemination of xenophobic, racist or degrading ideas. Some countries show a general tendency to tolerate or accept hate speech, often coming across nuanced and well hidden forms and with no particular counter measures; phenomena that lead to a greater normalization of these ideas in the society at large.

From a legal point of view, most countries do not maintain a clear definition of either hate speech or hate crime. While many hate based acts are spelled out and subsequently criminalized within national

criminal codes, strict definitions of hate crime and hate speech have generally not been delineated. Some countries present working definitions, often related to the historical legacy the national context. However, the need for harmonized definitions throughout Europe has emerged from the country's analysis. Moreover, some important international or European legal instrument (such as the Protocol to the Cybercrime Convention) have not yet been signed or ratified by all countries, while this should be strongly encouraged.

While the unity of Europe and the efficacy of a European Union are concepts which nowadays seem to be at risk and challenged by both citizens and political movements or representatives, a common approach towards the prevention and fight against hatred phenomena is fundamental. Every country presents its own specificities, but the protection of human dignity and of human rights are common values and should be treated as such.

On this basis, the eMORE project elaborated a set of recommendations for practitioners and policy makers, also based on the main challenges emphasized by the country partners: in order to be more effective the recommended measures should be implemented at EU level. These recommendations are aimed at facilitating the relevant actors in the elaboration of preventive and countering measures on hate crime and hate speech, both at local and European level.

MAIN FINDINGS OF COMPARATIVE ANALYSIS

HATE CRIME AND HATE SPEECH AT NATIONAL LEVEL



BE

In BELGIUM, an increase in hatred incidents seems to be partly related to the terrorist attacks faced in the last couple of years (2014-2016): ECRI underlines hate in public discourse as an emerging phenomenon, as well as an increasing sentiment of Islamophobia throughout the country. At the same time ECRI highlights the issue of language as one of the main reasons for discrimination in the country, not recognized nor protected enough. Data on hate cases reported by Belgium to the OSCE-ODHIR are available until 2013, as for the following years no focal person was appointed to report such data. The trend in recorded hate crime was the following: 375 in 2013; 615 in 2012; 1152 in 2011; 815 in 2010; 1198 in 2009. There is a huge discrepancy in the number of cases reported in year 2009 and 2011, if compared with

the other periods; however, no specific explanation is reported in the country study. According to the statistics reported by CSOs to ODHIR, the main bias-motives in Belgium are anti-Semitism (11 reports on violent attacks in 2015) and bias against Muslims (5 violent attacks + 11 Threats). Under law, hate speech and hate crime are differentiated in the country, as Belgium keeps the distinction among the two phenomena also in terms of definition, which is provided by law³, as well as by the UNIA who has developed its own definitions⁴. Thus, this difference is also taken into consideration, at prosecution level. However, we will see in the media analysis that the way of communicating these phenomena is still confusing.

³ See at page 38.

⁴ UNIA defines hate speech as “public expression of hatred, incitation to hate, discrimination or violence including Cyberhate”; and hate offense as “motivated by hostility towards a person or group because of their origin, disability, sexual orientation or any other protected criterion”.



CY

The REPUBLIC of CYPRUS (RoC) does not include in its legislation a specific definition of hate crime or hate speech. According to the statistics provided by the Office for Combating Discrimination of the Criminal Investigation Department of the Cyprus Police, the main motivations of hate incidents are related to racism, discrimination in general and political differences. More precisely, out of the 131 crimes reported to the police, 109 criminal investigations were carried out, resulting in only 48 convictions. Looking at incidents (no criminal aspect involved), instead, approximately half constituted verbal assaults or hate speech, 60/120 assaults against property, 47/120 assaults against specific people.

An interesting aspect presented in the country report, which will be further confirmed by the findings of the online survey, is that the majority of hate perpetrators (186 out of 224) are of Greek-Cypriot origin.

This is, according to the authors, a clear signal of the increasing anti-Migration reality and attitudes in the RoC. 85, out of the 174 cases reported to the police in the ten-year span 2005-2015, were in fact motivated by racism.

The low number of available statistics, including the lack of statistics from OSCE-ODHIR, underlines the consistent gap in information on hate crime in the RoC, mainly due, according to the authors, to lack of awareness/information, high level of under-reporting and recording and lack of adequate training for LEAs, with a consequent effect of hate normalization in the entire society. As of today, on one side Cyprus has not available mechanisms or guidelines in place to support an adequate prevention; on the other one, the lack of investigation and punishment of hate crimes results in a general invisibility of the phenomenon itself.

HATE CRIME AND HATE SPEECH AT NATIONAL LEVEL



DE

In the GERMAN context, the term hate crime - differently than in any other country herewith analysed - describes political motivated criminality. In the national legal framework, the term hate is too wide in scope; therefore, German criminologists refer to it as 'bias motivated crime', and make a clear distinction between what constitutes a crime against the State and a crime against a person based on political views, ethnicity or sexual orientation. Hate speech is not considered as a crime per se, it is rather a related crime such as offence, defamation or libel.

The country report provides an overview of statistics delivered by 16 bureaus of investigation of the federal criminal police office since 2009. The following 3 categories are identified in the German system: right-wing motivated crimes (includes racism, anti-Semitism, anti-ziganism, nationalism, social Darwinism, national socialism); left-wing motivated crimes (crimes in field of communism and anarchism) and bias motivated crimes committed by foreigners (e.g. committed by jihadi Salafis or the Kurdish PKK). It is evident how German authorities, for historical reasons, have focused on politically motivated crimes perpetrated by individuals and groups with a specific ideological orientation. Hate crimes are thus considered a specific type of politically motivated crimes; however, "the concern with this system is that, consciously or otherwise, it introduces a high threshold for an offence to be classified and treated as a racist or otherwise hate-fuelled crime"⁶.

In 2014-15, the amount of right-wing motivated crimes increased, mainly consisting in torts committed in the frame of propaganda, seditions and injuries and property damages. According to the authors this is mainly linked with the refugees crisis, as xenophobic offences are the first category that rose by 79.6% in one year, and anti-Semitism is the second one. Moreover, direct attacks to refugees centres were registered, namely 16 in 2014 and 83 in 2015; finally, an increase in injuries against left-wing supporters increased by 81.3%. Looking at left-wing motivated crime, there was an increase by 27% of general offences, specifically violent acts (+61.6%), mostly against right-wing supporters, state and institutions. The main motives are hate against social status and religion. Last but not least, the third category of bias motivated crime by foreigners registered a drop of 24.3% since 2014; however, an increase in arson, property damage and coercion including attacks against churches, synagogues and mosques was registered, which is then reflected by the data on motivation: anti-Semitism and religion as main motives. The main gap highlighted by the authors is related to the police being the only source of data, which does not guarantee a full picture and, of course, hides the huge number of un-reported cases.

⁶ Amnesty International (2016), Living in insecurity: how Germany is failing victims of racist violence, p.61



The main findings on the ITALIAN context highlight an increasing occurrence, in the last years, of hate crime and discriminatory practices against Roma, Sinti, Caminanti⁶, foreign citizens, Islamic communities and LGBT people. According to the authors, the recent widespread dissemination of hate and intolerance is mostly linked to the so-called refugees crisis, and the consequent exploitation of data (even distorted) and facts by some political leaders and media, in combination with the use of stereotypes and rooted prejudices towards African people and Muslims (i.e. when reporting terrorist attacks). According to the OSCE-ODHIR data, the police recorded 555 hate crime in 2015 and 596 in 2014, however no data is available on how many people have been prosecuted and sentenced for having committed such crimes. Data from CSOs indicate that racial-bias motivated hate crime are the most common (369 in 2015), followed by those motivated by sexual

orientation (45 in 2015). These data are confirmed by the two Italian authorities in charge of dealing with hate crime and hate speech - OSCAD (dealing with criminal dimension) and UNAR (no criminal dimension) respectively report that 72% and 74% of complaints received were motivated by racism or xenophobia. More specifically, UNAR reported 84% of incidents based on racism in the digital environment. One of the most important issues with regard to the country, as highlighted also by ECRI, is represented by the inconsistencies between the several systems gathering data on hate crimes: the Italian police authorities do not use the same categories and do not always make a distinction between hate speech and other crimes motivated by prejudice. UNAR, in particular, points out that access to justice is still the biggest hurdle to an effective protection, since many victims decide not to apply to the courts.

⁶ The word 'Caminanti' refers to a specific group, semi-nomad, based in the Region of Sicily

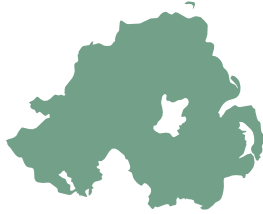
HATE CRIME AND HATE SPEECH AT NATIONAL LEVEL



MT

One of the main issues regarding MALTA, as highlighted also in the FRA report of 2014, is a desperate lack of available and published data on hate crime along with a very low number of recorded incidents in the country. This represents one of the greatest challenges in studying and countering hate speech and hate crime in the country. While there is no comprehensive study on these issues in the Maltese context, the eMORE project has tried to fill in this gap by assessing the phenomenon through an analysis of secondary resources focusing on hate related phenomena, namely discrimination and related issues as well as an analysis of first hand data which will be presented in the next sections (i.e. online survey and mass media analysis). Being positioned in the centre of the Mediterranean, the Maltese Islands boast a rich history of migration: migrants continue to be a central part of the Maltese narrative. According to ECRI (2013), Malta ranked 28th out of 31 on the Migrant Integration Index (MIPEX). This can be related to a number of contributing factors. Firstly, as some of the main international reports show (IOM, ECRI, FRA etc.), Malta considers itself as a transit country for migrants, which means acceptance of the permanent presence of migrants in Malta is slow

to emerge. In its 2013 Human Rights Report, the People for Change Foundation noted an increase in discrimination and hate speech towards racial, ethnic, and religious minorities “fuelling already-persistent discrimination and further hindering integration efforts for migrants who reside in Malta”. In fact, racial, ethnic, and religious minorities, in particular those who have come to Malta as irregular migrants, are the most highly discriminated group, according to the literature. Not only are racial and ethnic minorities the victims of violent attacks, they also face difficulty in accessing employment opportunities; discrimination within the work place and at schools; difficulty in obtaining housing; and limited access to goods and services. However, other groups, such as the LGBTI people also face discrimination in Malta. Whilst legislation has improved greatly over the last 5 years and public opinion has become more accepting, there is still a long way to go. According to the 2015 Eurobarometer, although Maltese adults are less likely to discriminate against LGBTI people than against racial and religious minorities in the work place, they are more hesitant about exposing children to diversity in sexual orientation and gender identity.



NI

In NORTHERN IRELAND, police data differentiate between expressions of prejudice that include a criminal offence (hate crime) and those that simply involve a form of expression without any crime being committed (hate incidents). The presence of two related but distinct terms raises some questions about the difference and boundary between the two, and specifically what types of activity are included within the notion of 'hate incident', rather than being classified as crime. The largest numbers of recorded incidents in the country are those referring to sectarian hate crime. This category, which is related to the socio-historical background on Northern Ireland, involves members of the indigenous Protestant and Catholic communities⁸: in 2016, 1352 sectarian incidents were recorded. In the same period there were 1221 racist hate incidents recorded, 343 homophobic incidents, 134 disability incidents, 39 faith based incidents and 19 transphobic incidents. According

to the definition provided by the police (PSNI), hate crime is this subjective, based upon the perception of the victim, a witness or any other person, rather than requiring any objective data. If a victim or any other person wants an incident to be recorded as a hate crime, a police officer does not have the right to refuse this. The PSNI developed 6 definitions based on the categories of recorded data⁹; looking at the statistics reported by PSNI on the 6 categories (some of them are increased and others decreased, with no consistency), different explanations are given to the rise (and opposite decrease) in hate crime: it can be related not only to an effective increase in the number of crimes and incidents, but also to other reasons such as the increase of minority groups, the positive effects of public campaign as well as more confidence in the police which resulted in an higher number of complaints reported to the law enforcement authorities.

⁸ Further information on Sectarianism can be found in Jarman (2012), Challenge hate crime. Defining sectarianism and sectarian hate crime, available online at: <http://conflictresearch.org.uk/wp-content/uploads/NIACRO-Report-02-Complete-Low-Res.pdf>

⁹ <https://www.psnipolice.uk/crime/hate-crime/>

HATE CRIME AND HATE SPEECH AT NATIONAL LEVEL



PT

The FRA report of 2012 on PORTUGAL reported that Brazilian immigrants and citizens with an African origin were the groups who suffered higher levels of victimization in the previous five years, and 11% and 9% of the interviewed reported being victims of theft, robbery, offences to the physical integrity, insults and threats. Additionally, 4% of the afro-descendants and 3% of the Brazilian immigrants also reported being victims of crime with a racist motivation in the previous year. Portugal started to submit data to OSCE ODHIR in 2014, when the number of hate crime reported by the police was 21. The figure captured by police recorded “crimes against cultural or personal identity”. This category

includes hate speech and discriminatory offences. According to the 2014 report, all the occurrences resulted in prosecution. Unfortunately, no data were collected in 2015, due to an incident with the database. However, the Portuguese Ministry of Justice reported 19 cases. One particular aspect with regard to Portugal is that the country is still dealing with the legacy of ideas on “benevolent colonialism”, and there’s still a clash between values/national cultures and contemporary integration policies. Differently than for the majority of the analysed countries, the refugees’ crisis is not affecting the country yet.



RO



According to the FRA, in ROMANIA authorities do not disaggregate the data on hate crime on the specific grounds of discrimination or bias motivation, thus making it hard to understand which groups are mostly targeted.

However, according to various national and international human rights reports, as well as the ECHR case-law on Romania, the most vulnerable groups are the Roma minority¹⁰, LGBTI, people with disability (particularly mental or intellectual disability), HIV/AIDS affected persons¹¹, and anti-Semitism is still very high¹². Other groups are also subject to discrimination and societal exclusion. The country is not a destination country for migrants or refugees, however anti-refugee feelings are high.¹³

During the first semester of 2016, the police received 31 reports on incitement to hatred or discrimination, and sent no case of this kind to the prosecution during this timeframe.¹⁴ The Prosecution services had 62 cases related to incitement to hatred or discrimination

pending, of which 15 were solved, all by decisions not to prosecute.¹⁵ As for GEO 31/2002, during the first semester of 2016, the police received 6 reports and referred 1 to the prosecution;¹⁶ the Prosecution services had 42 cases pending, of which they solved 12, 1 by waiver of investigation and 11 by decision not to prosecute, and none was sent to court;¹⁷ while courts at first instance level and tribunals had 4 cases (3 old ones and a new entry), of which one was solved by “Other solution” and none by conviction.¹⁸

Some data is also available from OSCE-ODHIR, starting with 2009.¹⁹ In 2009 the available information is that 1 case of hate crime was prosecuted. In 2013 there is no available information on the number of hate crimes recorded by the police or the number of sentences; however, the number of hate crimes prosecuted is 4. In the year 2014, in Romania there have been 25 hate crimes recorded by the police, 20 prosecuted that year and no available information regarding sentences. For the year 2015, the Romanian State informed the OSCE that 15 hate

¹⁰ Serious phenomena which illustrate widespread discrimination against the Roma include: school segregation of Roma children, police brutality or forced evictions of most vulnerable communities.

¹¹ National country report within eMore project and National Opinion poll commissioned to TNS CSOP by the National Council for Combating Discrimination (Romanian equality body), 2015, available at: <http://cncd.org.ro/2015-09-15-sondajul-perceptii-si-atitudini-ale-populatiei-romaniei-fata-de-strategia-nationala-de-prevenire-si-combatere-a-discriminarii>

¹² Anti-Defamation League, Global 100 Survey, 2015, results for Romania available at: <http://global100.adl.org/#country/romania/2015>; UN Committee Against Torture, Concluding observations on the second periodic report of Romania, 5 June, 2015 (CAT/C/ROU/CO/2), pt. 14, available at: <https://daccess-ods.un.org/TMP/502458.140254021.html>

¹³ US Department of State Romania Country Report on Human Rights Practices for 2016, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dld=265464>

¹⁴ General Inspectorate of the Romanian Police, Letter No. 471934/02.08.2016 to the Centre for Legal Resources (on file with CLR).

¹⁵ Romanian General Prosecutor's Office, Letter No. 1340/VIII-3/2016 of 08.08. 2016 to the Centre for Legal Resources (on file with CLR).

¹⁶ Romanian Ministry of Justice, Letter No. 67039/05.08.2016 to the Centre for Legal Resources.

¹⁷ Romanian General Prosecutor's Office, Letter No. 1340/VIII-3/2016 of 08.08. 2016 to the Centre for Legal Resources (on file with CLR).

¹⁸ Romanian Ministry of Justice, Letter No. 67039/05.08.2016 to the Centre for Legal Resources.

¹⁹ OSCE-ODIHR, Hate crime reporting, available at: <http://hatecrime.osce.org/>

HATE CRIME AND HATE SPEECH AT NATIONAL LEVEL



RO

crimes were recorded by the Police, 24 prosecuted and 59 sentenced. It is not clear what types of crimes are included under these figures.

In 2014, NGOs reported to OSCE-ODIHR 16 cases of hate crime that were brought to their attention, mainly based on anti-Semitism, bias against Christians and members of other religions and against LGBT people. Incidents against people with disability were additionally reported in 2015.



SI

The country report on SLOVENIA stresses the effects of the refugees' crisis starting from 2015, with the closure of the Hungarian borders and the set up of 'humanitarian corridors' among Croatia, Slovenia, Austria: 396,240 migrants entered Slovenia in 2015-2016. Looking at latest statistics submitted to OSCE ODHIR in 2011, 45 cases of hate crime were recorded; 34 cases in 2010; 9 hate crime in 2009 but none of them prosecuted nor sentenced. Moreover, according to the data from CSOs 1 registered case was directed against Christians in 2014. As for the country report on Romania, due to a general lack of reported cases, the authors compiled a review of legal casework: 300 cases of infringement of art. 297 of the penal code were registered, of which 281 received indictments, 54 judgments and only 26 ended up in conviction. Moreover, until 2015 there were 361 complaints filled in by the Slovenian police. Finally, it was received a total of 14,856 reports on alleged illegal hate speech under art. 297, of which 493 sent to the police.

The current practice is that prosecution mainly occurs in those cases where there is a recorded identifiable possibility that verbal violence could escalate into unlawful situation. Some cases are presented in the country report as examples, to show the very high standard established. One of the reasons for Slovenia to adopt the North American concept of freedom of speech is the legacy of being a former Socialist Republic. The most pronounced bias motivations in the country are racism, xenophobia, anti-immigration/refugees attitudes, bias against Roma and Sinti, against Islam and Muslims and sexism.

MAIN FINDINGS OF COMPARATIVE ANALYSIS

ONLINE SURVEY



The survey was carried out approximately from June to September 2016 in every country. However, for those who faced more challenges in collecting replies, the period was slightly extended.

The aim of the survey was to complement the national overviews on hate speech and hate crime being undertaken as part of the eMORE Project. This survey in particular sought to understand people's experiences of crime and other offences motivated by hate and prejudice and help national and international organizations to be more aware of the danger of hate speech/ crime online and offline. In order to reach this goal, the survey was divided into the following sections:

- The profile of the people surveyed (section 1)
- Their experience as the victim or witness of hate crime, hate speech or other forms of prejudice (offline as well as online) (section 2)
- Their opinion about hate motivated offences and prejudice (section 3)

Within the survey the country partners followed definitions as set out by the eMORE project, as highlighted in the box below.

HATE CRIME:

Includes all forms of expression or action that constitute a criminal offence involving prejudice or bias based on race, ethnicity, nationality, religion, sexual orientation, gender identity and disability.

HATE SPEECH:

Includes all forms of expression (oral and written) involving prejudice or bias based on race, ethnicity, nationality, religion, sexual orientation, gender identity and disability.

ONLINE HATE SPEECH:

Includes all forms of expression (with specific reference to written words and symbols) made available over the Internet and through social media, involving prejudice or bias based on race, ethnicity, nationality, religion, sexual orientation, gender identity and disability.



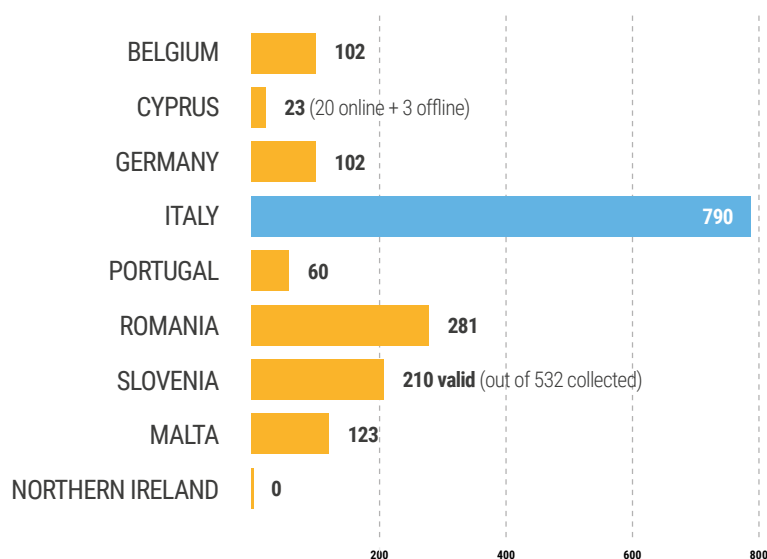
The survey was made available through the website survey monkey and the link was shared widely through the project partners' Facebook pages and websites, as well as networks of contacts and mailing lists including academia, NGOs and the general public. People could answer the survey anonymously.

It is also necessary to highlight that, given the method in which the eMORE survey was shared, the information collected may lead to certain limitations, due to the fact that survey was open to all and mainly distributed via the different partner organisations' networks. Therefore, some of the population experiencing hate speech and hate crime may have not been reached. Moreover, the number of respondents, as specified below, presents considerable differences from one country to another. The composition of samples was also changing from one country to another, in terms of age/gender/education/ethnicity groups

etc. This is also due to the different target reached by each project's partner, based on its own specific mandate (e.g. SOS Malta mostly dealing with racism, ILGA Portugal dealing with discriminations based on sexual orientation). Moreover, even though the project defined a set of methodological guidelines to carry out the surveys, these were not followed or entirely followed by all countries. For example, some partners decided to allow the selection of multiple answers while some other didn't, obviously affecting the possibility for comparison in certain cases.

Nevertheless, the comprehensive analysis of the results has drawn some important conclusions, comparable in some cases, and generally reflects the background research undertaken for the national overviews. Below a summary of these results is presented.

01. NUMBER OF RESPONDENTS BY COUNTRY



ONLINE SURVEY



02. WHAT HAS BEEN MOSTLY EXPERIENCED AS VICTIM?

%	Hate crime	Hate speech	Other prejudice discrimination	Never being victim
Belgium	1	34.7	27.7	36.6
Cyprus*	35.3	41.2	41.2	17.6
Germany	12	15	23	50
Italy	2.6	3.7	30.5	63.2
Malta	8	34	234	34
Northern Ireland	-	-	-	-
Portugal**	32		40	28
Romania***	11.4	32.5	28.6	27.5
Slovenia	5	22	20	53

* Methodological problem, the sum of 4 categories is over 100%

** Portugal included hate crime / speech victims in the same category

*** Romania as well included hate crime / speech in the same category, however the sum of the 4 categories does not reach 100%

03. WHAT HAS BEEN MOSTLY EXPERIENCED AS WITNESS?

%	Hate Crime Hate Speech / other forms of prejudice
Belgium	69
Cyprus*	75
Germany	62.7
Italy	65.9
Malta	83
Northern Ireland	-
Portugal**	69
Romania***	70.9
Slovenia	68

04. WHAT HAS BEEN MOSTLY EXPERIENCED IN THE DIGITAL ENVIRONMENT? *

%	Victims	Witnesses	Never being victim nor witnessed
Belgium	29.7	76.2	13.9
Cyprus*	50	37.5	12.5
Germany	51.9		48.1
Italy	5.1	46	48.9
Malta	7.5	42.5	29
Northern Ireland	-	-	-
Portugal**	21	48	31
Romania***	32	80	12
Slovenia	9	47	44

* Some country partners allowed the survey to accept both answers (being victim and witness of online hate speech), while some others followed the agreed guidelines that only one option should be selected. In the comments, some survey participants actually pointed out that this was wrong, since many have indeed been both a victim AND a witness – but the survey did not allow them to pick this option. This inconsistency is obviously affecting the possibility to gather any comparative conclusions, and it is probably the reason why it emerges the methodological problem as the sum of the categories is over 100% for some countries. Moreover, the number of 'NO' respondents was not always specified.

**In Malta 21% of respondents have been either/both victims or/and witnesses of online hate speech, therefore the final sum is 100%

***For Romania, the sum of victims + witnesses is over 100% - this is due to the fact that the same person could have been both victim and a witness, in different cases, thus most of the 32% is included in the 80%. This number + the number of those never been a victim (12%) is thus under 100.

The tables 1 - 4 present a first overview of the mostly experienced hate episodes in the target countries. There are significant differences in the number of victims of hate crime / hate speech among them. Portugal actually counts victims of hate crime and hate speech in the same category, making it difficult a comparison with the other countries. In general, hate crime seems less experienced than hate speech, especially in Belgium and in Italy, and in the latter this appears strange enough also considering the very high number of responses collected, almost 800. We can suppose, however, that the low rate is probably related to lack of detection and / or recording of hate episodes with a criminal relevance. The average number of victims of other forms of prejudice is, instead, stable: almost 1 every 3 respondents experienced or is experiencing some form of discrimination. Conversely, the number of people that have been witnessing forms of hate crime or hate speech is quite constant, between 65-80% in all

the countries. Looking at the digital environment - where only hate speech was considered - the picture becomes more complex, and a real comparison was not possible due to the different methods used in collecting the answers (as specified in the note of Table 4). As some of the partners allowed the selection of multiple answers, in some cases we can have mixed replies of people that were both victims and witnesses of online hate speech. In general, the highest rates are registered in Romania, Portugal, Cyprus and Belgium.

Based on this initial overview on hate episodes experienced both in person and online, we've tried to go further in detail with the comparison exercise to see which are the hate conducts mostly experienced by victims, as well as the main bias motivations behind those acts and, last but not least, the places in which these episodes occurred more often.

ONLINE SURVEY



VICTIMS

HOW: TYPES OF CONDUCTS MOSTLY EXPERIENCED (IN THE PAST OR STILL ONGOING)

BELGIUM

Derision / mockery

71%

Intimidation

58%

CYPRUS

Hate speech

50%

Public verbal abuse

50%

Private verbal abuse

25%

Threats - intimidation

33,3%

GERMANY

Offenses or verbal threats

N.A

Violent attacks

(mainly reported by police officers)

58%

ITALY

Derision - Jeering

45,1%

Threats - intimidation

34,1%

Bullying

10,1%

Physical assault

7,8%

PORTUGAL

Harassment insult

64%

Threats - intimidation

39%

Bullying

36%

ROMANIA

Derision - Jeering

76,1%

Bullied

48%

Threats

46%

Public verbal abuse

46%



SLOVENIA

Ridicule, derision and other forms of prejudice most frequently listed (n.a.)

MALTA

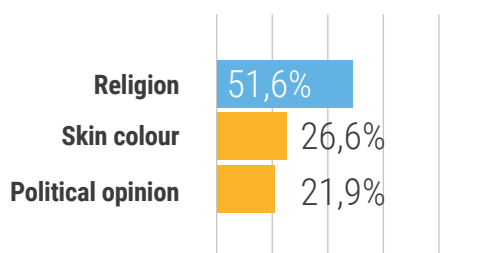
Prejudice mostly verbal (95%) including derisions, jeering, bullying, threats, hate crime, hate speech and public (73%), including verbal abuse, public written abuse. To a lesser extent, physical prejudices (5%): physical assault, damage to property, sexual assault are still present as private abuse (27%).

As a general tendency, derision, verbal threat or offence, insult, jeering and verbal prejudice are the most frequent conducts in all the target countries. Germany presents a different trend, as half of respondents actually suffered violent attacks. This is however related to the category of respondents, as most of them belong to the police forces and are more exposed to disputes or clashes in their daily work. These kinds of episodes are often reported to

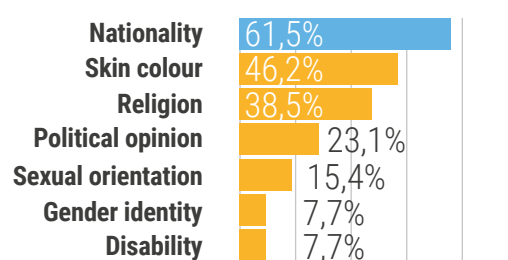
be taking place in the public space (as highlighted also in the table below - 'Where'), however verbal prejudice or insult motivated by hatred can take place also in the private sphere. Bullying is reported only in some countries, it seems high in Romania and Portugal, this could be somewhat related to the age of respondents that in the first one counted about 32% of respondents with less than 25 years old, and in the latter 38% were 29 or younger.

WHY: MAIN REASONS FOR HATE / DISCRIMINATION

BELGIUM



CYPRUS



ONLINE SURVEY



GERMANY

Political attitude	N.A.
Nationality	N.A.
Gender identity	N.A.

ITALY

Political opinion	30,6%
Gender identity	29%
Skin colour	25%
Nationality	22,1%
Religion	17,7%
Sexual orientation	14,1%
Disabilities	9,3%

PORTUGAL (0-5)

Gender identity	4.27
Sexual orientation	4.26
Race or ethnicity	3.94
Disability	3.15
Political opinion	3.03
Nationality	3.09
Religion	2.76

ROMANIA

Sexual orientation	33%
Gender identity	30,6%
Political opinion	29,6%

SLOVENIA

Political	N.A.
Sexual orientation	N.A.
Religion	N.A.
Race or ethnicity	N.A.
Other	N.A.

MALTA

Skin Colour / Ethnic origin	26,5%
Nationality	15,8%
Religion	15,2%
Sexual orientation	11,9%
Political opinion	11,3%
Gender identity	6,2%
Disability	2,8%

Looking now at the main bias-motivations, in Belgium more than half of the respondents suffered prejudice or offences due to their religion or faith, which is actually in line with what is generally highlighted by international reports and statistics, notwithstanding the 'neutrality' of the country from a religious point of view. Religion is an important factor also in Cyprus and Slovenia, in this latter case also related to the ethnicity factor. This opens an interesting reflection on the boundaries between religious and racist hate crime and speech. Recent terrorist attacks in Europe, Canada and worldwide, have been the occasion for racist exponents of both right and left-wings to publicly condemn all Muslims, contributing to the rise of Islamophobia. Religious hate speech is included in the Cybercrime Protocol and in the EU Framework Decision on Racism and Xenophobia only when used as a pretext for hatred on the grounds of race: religious hate speech is thus different from racial hate speech. At the same time, the criticism related to ideas and practices of religion can become "a pretext for hatred against persons which is actually based on exterior features or descent or which contains the same 'essentialised' thinking"²⁰. It is therefore evident that drawing a clear line is extremely difficult. Going back to the main findings of the comparison, ethnicity, nationality and skin colour are certainly the main reasons for discrimination in the majority of countries, even though the reasons and the legacy behind those prejudices are of course different in the local contexts. For instance, we've already mentioned the specificity of the Cyprus Question, linked to the ongoing issue of military invasion and Turkish occupation of the northern third of the island, a situation described in multiple UN reports and resolutions which is of course affecting the relations between Greek and Turkish Cypriots. Moreover, migration is a significant element for the Cypriot context, as the country has been in the past

decades both a source and destination country for migrants²¹. Other countries are particularly interested by the recent migration flows directed to Europe: Slovenia highlighted this factor as one of the main reasons for an increase in hatred and xenophobic attitudes in the recent years, as the country is a transit country due to its geographical position, and as a consequence of the recent politics adopted by some neighbouring countries (i.e. Hungary) and the setting of humanitarian corridors involving Croatia and Austria. Italy is also a destination and transit country for migrants, and its role in the so called refugees' crisis as well as the challenges that the country is facing in managing this situation appear on the public debate almost every day. However, the survey surprisingly highlights 'political opinion' as the main reason for prejudice and hate in the country, as declared by almost 1 out of 3 respondents. According to the authors of the Italian country report, this category needs to be considered in a broader sense, including political and social activism, and can also be a form of retaliation or "secondary victimization" against those who provide help and support to the victims or potential victims of discrimination. Gender identity and sexual orientation are the main bias motives in Portugal: this result however is depending on the nature of the organization that disseminated the survey, as ILGA Portugal is exclusively working on these very issues. However, discrimination against people for their sexual orientation or gender identity is high also in other countries such as Cyprus, Italy, Slovenia, Malta and Romania. The reasons behind this are different, and can be related to cultural aspects but also to the legislation (i.e. in Italy the proposal to include homophobia and transphobia as an aggravating factor for hate crime is under discussion at the Parliament since several years, but no decision has been taken so far; at the same time the Country

²⁰ Noorlos (2006), Hate Speech Revisited, School of Human Rights Research Series, vol. 45, p.309

²¹ As reported in Gregorius, Zontolemi, Matsi (2010) not only relatively poorer countries, such as Sri Lanka, the Philippines, Bulgaria or Romania, are important sources of inward migration in Cyprus. Other, more prosperous countries, such as Greece, the UK and Russia, have also been important sources of inward migration for Cyprus in recent years.

ONLINE SURVEY



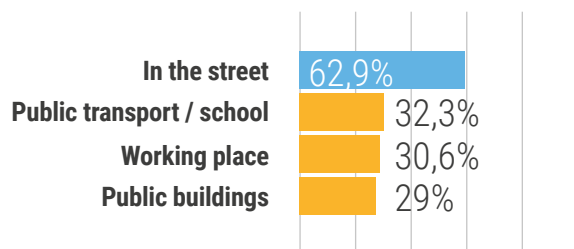
has recognized same-partnership union only very recently in 2016, still leaving some important aspects such as the adoption or step-by adoption out of the regulation).

Even though the percentage of discrimination or hate against disabled people is not always reported or it is still quite low, if this datum is weighed against the number of disabled people responding to the survey the rate of prejudice is actually significant: in Malta, for example, 16 respondents highlighted they had a disability. All 14 respondents had already been victims of hate speech or hate crime. Moreover, 43% of them specified that they face this type of behaviour every

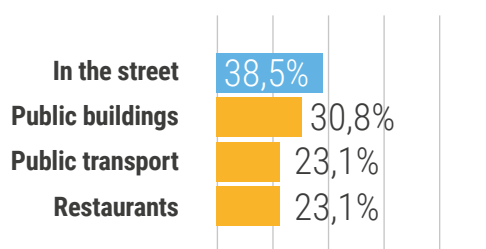
day. However, only 4 of them think that their disability is responsible of the hate speech they received. So, generally, for people who have got disabilities, hate speech is not linked only to this specificity, while is also linked to other characteristics like religion or nationality. This reflection is useful to introduce the concepts of 'multiple' and 'intersectional' discrimination. While these aspects were not directly addressed by the national surveys, this is a very challenging area for different reasons, including lack of definitions, of awareness as well as social actors.

WHERE: INCIDENTS WERE MOSTLY EXPERIENCED

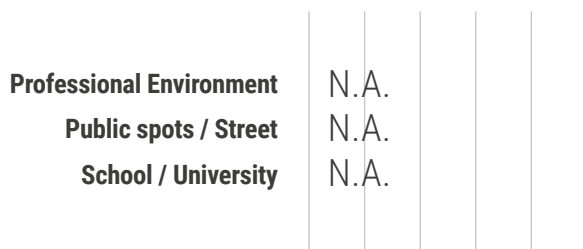
BELGIUM



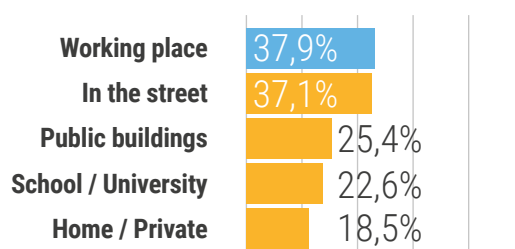
CYPRUS



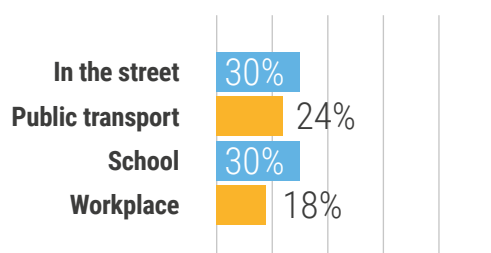
GERMANY



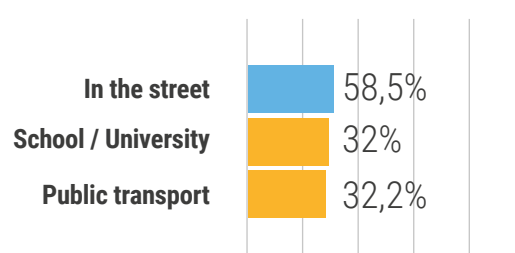
ITALY



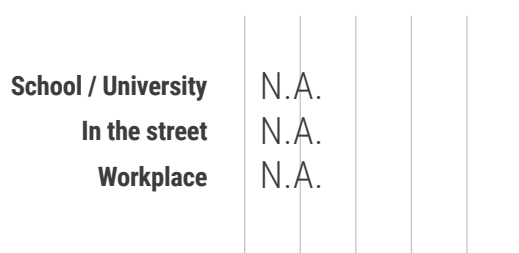
PORTUGAL



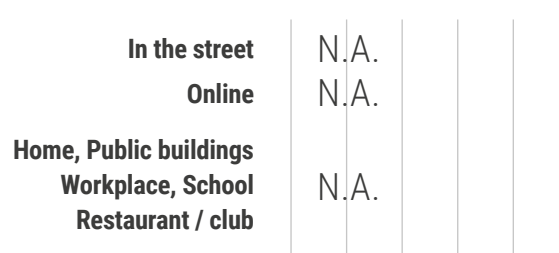
ROMANIA



SLOVENIA



MALTA



Looking at where hate episodes usually are experienced, the surveys highlight the street as one of the most reported places. The workplace is also a 'delicate' environment, probably mostly for prejudice and discrimination but also for hatred in general. Schools and public transportation are also reported quite often.

The comparison herewith presented is obviously not exhaustive, but it is mostly aimed at providing a general overview on how the victims who responded to the online survey experienced hate crime, hate speech or other type of prejudice in the target countries. Their perceptions and experience appear to be in line with some of the main issues described in the previous paragraph.

Even though the questionnaire was aimed at collecting the perceptions of victims, witnesses, as well as to explore the phenomenon online hate speech in detail, not all the countries provided the full results for all these categories; therefore, the comparison exercise on witnesses' perceptions or on the digital environment was not feasible as it was for the victims' experiences and perceptions. However, some general observations are reported below, together with a set of further findings of the comparative exercise.

In the majority of countries, the evidence reported by the witnesses are in line with the victims' replies: in Belgium, religion was the bias motivation according to 68% of respondents, thus confirming the importance of the religious factor together with the skin colour (83%). Skin colour is also the main motivation of hate



episodes witnessed in Cyprus (64.3%), followed by nationality (57.1%), sexual orientation and gender identity (42.9%): these results corroborate also in this case the general tendency previously described for the country, where migration issues and the Cyprus Question are central. In Germany the main bias motivations highlighted by witnesses are ethnicity, political attitude, nationality and sexual orientation; however, replies from witnesses registered a lower number of physical attacks and a higher rate of insults and threatening in public spaces. Moreover, while police officers were probably one of the main categories of respondents within the victims' groups (this was the hypothesis based on the specific target of the German country partner), aggression from public authorities is instead reported in this case. In general, the rate of reporting to competent authorities is very low also among the witnesses of hate crime or hate speech, and the episodes seem to occur mostly in public spaces.

Looking at the perpetrators of hate crime or hate speech (both from the victims and witnesses' point of view), in the majority of surveyed countries they appear to be strangers in the majority of cases. This evidence relates to the debate over the idea of hate crime as a form of 'stranger-danger' (a crime that takes place between perpetrator and a victim who do not know each other)²². This idea has been challenged by an empirical study conducted by the London Metropolitan Police in 2001, then followed by other research groups, and it still plays an important role in defining and understanding hatred phenomena. In this framework, the issue of anonymity in the digital environment plays an important role and further complicates the picture. In fact, another common result of the surveys is that hate speech online happens more often on social networks, by anonymous sources, or sometimes via private messages. Facebook is the first social network indicated in the answers, followed by YouTube and/or Twitter. Most of respondents think the solution against hate speech online is through educational

activities, information, monitoring rather than through the action of law enforcement authorities.

In this regard, another finding is that, not surprisingly, 70-80% of hate incidents in all the analysed countries were not reported to police, and the percentage was even higher when the incidents were witnessed. Even though the survey did not ask to specify the main reasons for not reporting, among the main causes mentioned by the countries' authors, in line with the main literature and discussion ongoing both at national and international levels, we can mention the lack of trust of victims or witnesses in the system and in the state authorities in charge of investigating; fear of retaliation or concern about revenge attacks; the impression that nothing will change anyway, together with the acceptance of abuse and violence; the fear of double-victimization or to have their status jeopardized, such as in case of migrants in the process of regularizing their status; fear of having privacy compromised; sense of humiliation and, last but not least, cultural and language barriers can play a crucial role.

Unfortunately, the general perception registered among the surveys' respondents, with only few exceptions, is that the situation with regard to discrimination and hate incident is getting worse and worse all around Europe and beyond.

²² Mason G. (2005), "Being hated: stranger or familiar?", SAGE Publications

MAIN FINDINGS OF COMPARATIVE ANALYSIS

MASS MEDIA ANALYSIS



The overall objective of the media analysis was to understand and assess how both the overall phenomenon of hate crime/hate speech and single episodes are described and reported to the general population. Based on a qualitative approach, the media analysis allowed to collect and analyse more information on the representation of the phenomena on the one hand (e.g. the incidence and impact; the relationship with other criminal phenomena; the impact on society and the fear of crime perceived among the population ...) and of the single episodes, on the other.

As mentioned in the introduction, the examination of news articles conducted on mass media online (and offline) was the most challenging aspect for almost all the country reports, due to different reasons. Some of them did not have access to full online journals; others were not able to manage such amount of data (the selected period was initially 2014-16, then restricted to 2015-16); finally, some countries found it more useful to analyse secondary data, to avoid duplications with previous works while still matching the objective of the analysis. For this very reason, while the comparative exercise probably results less effective for this section, it highlights interesting differences and peculiarities within the countries.

According to the methodology, 2 national newspapers were to be analysed, amongst the five most read newspapers. With regard to the Internet, each partner had the possibility to decide whether to analyse

also a sample of relevant online sources (e.g. online newspapers, social networks and platforms, relevant blogs and websites, up to a maximum of 5). The period of reference was January 2014 – May 2016, then restricted to 2015– 2016 to enable those partners who faced more difficulties in this phase. Depending on the different realities with regard to the media landscape, the method of analysis was then tailored to each context. Some country partners decided, in order to avoid duplication, to base the analysis on secondary data (Slovenia and Germany); some others opted to concentrate only on hate speech cases mainly coming from public figures (Cyprus); some focused the study on online newspapers rather than on the press, due to availability of resources (Romania); finally some countries used the online tool Europe Media Monitor²³ to support their search (Malta and Belgium). This also explains the different length of each synthesis of the country's analysis.

In brief, the analysis was aimed at: understanding the relevance given to hate related offences by national media coverage; collect information about the phenomena, victims, offenders, modi operandi (offline and online), main groups at risk, interdependencies with other criminal phenomena; outlining the possible scenario on the short-medium term; analysing the level of knowledge emerging from studies and surveys published by newspapers; identifying countermeasures and preventive initiatives adopted to struggle the phenomena of hate motivated offences.

²³ emm.newsbrief.eu

MASS MEDIA ANALYSIS



BELGIUM

- The media analysis focused on 4 online newspapers of the French speaking part of the country and on 4 bias motives: racism; anti-Muslim and islamophobia; antisemitism; anti-migrant motivation.
- Out of the 325 articles analysed, 114 were actually mentioning hate speech (over 35%). The most prevalent bias motivation is the anti-Muslim one, closely followed by the larger category of “racism” and “terrorism”.
- The majority of articles (54%) told stories about hate speech in Europe, with a particular focus on Belgium, and in the USA. However, an interesting point is that 51 articles have been published in one year on this topic, which means almost one per week.
- On 125 articles analyzed, only 26 articles were related to hate crime and 2 articles proposed a way to counter hate crime. This leads to two hypotheses: the definition of hate crime may restrict the number of articles falling under this category; a general disinterest of the media on hate crime, while an increased focus on hate speech to work more on preventive strategies.
- Online comments are important for the newspapers, according to previous studies. Therefore, Belgian media pay attention to create guided debate. They innovate in pushing forward the best comments of the month and dedicate hours to online debate. So even if hate speech seems hard to be defined inside an article, Belgian media are improving their way to counter hate comments.

CYPRUS

- Hate crime and hate speech incidents are rarely mentioned in the news as such; the media in Cyprus tend to reproduce racist and xenophobic speech, especially when is delivered by public figures²⁴.
- The cases mentioned in the national report represent a general tendency of the Cypriot society towards tolerating and reproducing hate speech.
- An example of such incidences is a public statement made by a famous Greek singer on the Cyprus’ broadcasting public service (CyBC). The specific incident was presented as an indicator of the normalization of hate speech in the RoC.
- The organization KISA (the eMORE project partner based in Cyprus) reported the case above to several authorities including the Cyprus Media Complaints Commission (CMCC), the Anti-Discrimination Body, the Attorney General etc.
- The CMCC imposed a fine of 3,000 euro, while according to the attorney general the case was not under its jurisdiction.
- The case presented highlights the laissez-faire approach of the attorney general, while the independent authorities imposed fines and the police recognized the need to send the case to prosecution.

²⁴ Based on this reality and due to the difficulties in identifying such articles in the press, as well as in the online media, KISA has chosen to focus on hate speech cases that come mainly from public figures through interviews on TV channels, newspapers and online news pages.



GERMANY²⁵

- The analysis mainly focused on a prominent case concerning Luz Bachmann, founder of the right-wing group PEGIDA: he was sentenced to a fine of 9,600 EUR for unhuman insults to refugees on FB.
- The analysis also presented the main results of a survey conducted by magazine the "Stern".
- 69% respondents when encounter hate speech on social media report to the platform; 51% inform the police; 31% do nothing.
- 89% of respondents think that hate speech should be prosecuted by police; 60% suggest use of real name online.
- As a general finding, people are loosing trust in mass media.

MALTA

- Quantitative analysis (Jan 14-May16) + qualitative analysis of Times of Malta (EN – 1984 articles) and TVM (Maltese – 542 articles).
- Word 'discrimination' most used in both newspapers, followed by 'racism' and 'xenophobia' in English newspapers, and 'hate speech' and 'intolerance' in Maltese newspapers. In addition, it was noted that there was a general increase in the use of the keywords in both English and Maltese newspapers.
- Articles mostly use a neutral tone - however examples of language implying aggression / hostility metaphors are evident.
- Xenophobia seems to be of greater concern and more widely covered than discrimination against LGBTI.
- Maltese language media is less concerned about reporting hate and discrimination.

²⁵ No analysis conducted on first hand data – short commentary on survey by STERN magazine

MASS MEDIA ANALYSIS



NORTHERN IRELAND

- Analysis of 2 national newspapers reflecting the enduring segregation in NI between Unionists/Protestants and Nationalists/Catholics: 1. Belfast Telegraph 2. Irish News – January – June 2014.
- Sectarianism and racism clearly dominate as bias components.
- Newspapers are critical of legal framework and political response.
- Newspapers use pejorative language to report HC/HS when perpetrator/victim judgment appear to be clear.
- Controversial cases tend to create echo chamber of debate and disagreement.
- Keywords: 'sectarianism' appears with frequency far outweighing other keywords, however this indicator alone is not accurate reflection of phenomena/single episodes (more related to historical background).
- Media employs term 'hate speech' less extensively than 'hate crime' > reflection of ambiguity / disagreement around the term in NI.

PORTUGAL²⁶

- The analysis has focused on the 2 most read newspapers in the country: 1. Jornal de Notícias (based in Porto), 2. Correio da Manhã (based in Lisbon), for the period from 1 January 2014 to 30 May 2016.
- According to the analysed articles, the acts of violence against LGBT people are mainly confined to the intimate relationship, which enable reproducing cultural bias of same-sex relations as dysfunctional.
- Moreover, the acts of violence against trans people are more often portrayed as a social phenomenon, with its roots in transphobia.

ROMANIA

- Analysis of 4 highly accessed news media sites (2 daily newspapers, having also a printed version, 1 online only daily newspaper and 1 media website attached to a national TV station).
- The media analysed generally do not report on the phenomena of hate crime and hate speech in Romania; the general public thus risks having no access to a clear picture of the everyday discrimination and hate faced by minority groups in Romania.
- Moreover, discrimination against minorities is generally not framed within a human rights perspective; in this context, being neutral towards hate speech or hate crimes can lead to a normalization of such behaviors;
- There is little hate speech used in the reporting itself. However in articles referring to the Roma minority the derogative term of “Gypsy” (“tigan”) is sometimes used.
- Anti-Roma racism is widespread in the comment sections of articles, with the few positive comments being severely not liked by the rest of the readers (in particular on those websites where it is possible to not only comment, but also to express a vote on other people’s comments).

SLOVENIA²⁷

- 2 newspapers were analysed: 1. Delo , 2. Devnik.
- One of the findings concern the lack of use or propagation of hate speech but rather the existence of hate speech, discrimination, xenophobia, hostility, intolerance, sexism etc. which come across nuanced and well hidden forms.
- The Slovenian section mainly mentioned the previous analysis to 97 commentaries on mechanisms of EU migration policies: this was considered of interest as Slovenia needs to address key instigators of hate speech such as the production of racist policies and discriminatory treatment of migrants.
- Some concrete cases were presented, such as the “case of Zlovenja”, concerning a journalist who tweeted “Europe can easily solve immigrant crisis. With bullets”. This case represents a spontaneous response and self-organizing reaction of the civil society to the lack of reaction on the side of the authorities and political actors. No legal action was taken against the journalist, at a point in time when racism was expanding particularly rapidly in the face of increased numbers of refugees in Slovenia.

²⁷ The country partner based the analysis on secondary data resources

MAIN FINDINGS OF COMPARATIVE ANALYSIS

LEGAL FRAMEWORK²⁸



“Bias-motivated violence is always harmful to society but is particularly destructive when there is either no response or an inadequate response by State institutions [...] States have taken on obligations under international human rights law and made other commitments to protect individuals from discrimination, especially in its most violent forms”²⁹. The International Community has adopted a large number of instruments, including legally binding instruments such as treaties, agreements, conventions, and soft law tools such as declarations or recommendations, to address the issue of hate crime and, more in general, of discrimination. National legislation, however, are still far from being

harmonized and present significant differences among each other. This is true, in the first place, with regard to the definitions of hate crime and hate speech, as one generally agreed definition still does not exist; moreover, the different ‘levels of protection’ also depend on the historical and cultural legacy of each country.

The chart below shows the status of ratification, implementation or adoption of some main different international instruments, both binding and not binding, in the field of anti-discrimination and hate speech by the eMORE project countries³⁰.

%	Belgium	Cyprus	Germany	Italy	NI (UK)	Malta	Portugal	Romania	Slovenia
Convention on Genocide (ratified)	1951	1982	1954	1952	1970	2014	1999	1950	1992
ICCPR	1975	1969	1973	1976	1976	1990	1978	1974	1992
ICERD	1969	1967	1969	1978	1969	1971	1982	1970	1992
CEDAW	1985	1981	1985	1985	1986	1991	1980	1982	1992
Additional Protocol to the Cybercrime Convention	Signatory in 2003	Ratified in 2005	Ratified in 2011	Signatory in 2011	-	Signatory in 2003	Ratified in 2010	Ratified in 2009	Ratified in 2006

²⁸ As a methodological note, it is worth noting that the national reports on which this comparative summary is based on, presented different levels of in-depth analysis on the legal frameworks. Some of them for instance did not mention at all the status of compliance with the international and European instruments, while only few countries reported cases of jurisprudence; in general the comparison exercise was challenging due to the different approaches used by the country partners. However, the comparative overview herewith presented allows to highlight the main differences at country level, the legislative gaps as well as the existing good practices. Although there is no presumption to be exhaustive, especially considering the limits above mentioned, this initial comparison could set the foundations for further analysis and provide initial inputs for recommendations to be addressed to policy and decision makers, both at national and European level.

²⁹ Human Rights First, (2011), “Combating Xenophobic Violence. A framework for action”, p.5., available at: http://www.humanrightsfirst.org/wp-content/uploads/pdf/UNHCR_Blueprint.pdf

³⁰ Not all country reports included data related to international instruments, therefore the chart is elaborated by the author, with data not directly taken from national report but from official sources.



BELGIUM

BELGIUM has a legal framework in place ensuring equal protection under the law, and implements consequences for discrimination, hate speech, and violence. The Constitution contains three articles related to hate crime and hate speech (art 10, 11, 19). In addition, the country provides tools against press offences involving holocaust denial or racism (art. 150 of the Constitution); the complementary article 25 states the system of cascading responsibility, which in the media sector is a penal responsibility for physical persons.

Most of Belgian legislation on racism and discrimination is contained within three acts: 1) the Anti-Racism Federal Act, 2) the Anti-Discrimination Act and 3) the Gender Equality Act. Nevertheless, many modifications of those three acts occurred over time³¹. The Penal Code covers public incitement to hatred or violence, establishing or promoting hate groups, public defamation, or threats against protected groups. The penal code even states for the protected grounds. The articles 20 of the anti-racism law, 22 of the anti-discrimination law and 27 of the Gender equality law state against incitation to, hatred, discrimination or violence (segregation) addressed to a person, group, community or their members in regard of at least one of the criterion stated in the laws.

Although a legal basis exists for pursuing cases related to hate speech and hate crime, anti-discrimination laws are not fully harmonized across Belgium, and many victims either choose to not report the cases, or must undergo extensive legal proceedings to receive full compensation³². Another relevant document is the Circular of 2012, which provides an overview of the Belgian legislation on issues related to discrimination and hate crime: it obliges each Police area to appoint a hate crime officer, as well as compels each Public Prosecution department to appoint a prosecutor of reference. Furthermore, the Circular provides with clear indications on how to record hate crime and on how to improve the internal communication, so that to combat the phenomenon more efficiently. According to the Interfederal Centre for Equal Opportunities (UNIA), at this stage the implementation of the above mentioned Circular depends very much on individuals. UNIA highlights also the issue of 'cyberhate', recognized as a serious issue to be undertaken, even though freedom of expression is an important value, recognized by article 25 of the Belgian Constitution. CSOs play an important role in monitoring hate crime and hate speech and working with the victims; in particular, UNIA is responsible for 17 out of the 19 categories for discrimination identified at national level, meaning all criteria except gender and language. In Belgium there is no public body with specific competence to act on language-based discrimination, which remain a peculiar characteristic linked to the very composition of the country and its protection still needs to be improved.

³¹ The national country report on Belgium provides an overview on main federal legislation and community/regional legislation.

³² http://www.unia.be/files/Documenten/Publicaties_docs/UNIA_FR.pdf, p.5

LEGAL FRAMEWORK



LEGAL DEFINITIONS IN BELGIUM

HATE CRIME:

"It is the offense for which there is a possibility of aggravation of the penalty when one of the motives is hatred, contempt or hostility towards a person because of his origin, ancestry, Religious beliefs, sexual orientation or any other protected criterion."

HATE SPEECH:

Belgian legislation defines hate speech within three Acts: Anti-Racism Act; Anti-Discrimination Act; and Anti-Negationism act. Hate speech is stated "when a statement or publication stimulates discrimination, segregation, hate or violence against a person or a group, based on characteristics such as race, ethnicity, sexual orientation, disability, state of health and/or gender." The prohibition extends from incitement to dissemination of ideas of racial superiority and hatred.



CYPRUS

In CYPRUS, Law 134(I)/2011 establishes that racist and/ or xenophobic motives should be considered as an aggravating factor on the imposition of penalties for all crimes as defined by the Penal Code. This Legislation was introduced as a mean of transposing the Council Framework Decision 2008/913/JHA. Other categories of bias-motivation, such as sexual orientation, ableism³³, gender, gender identity or ageism, are not included as aggravating factors. Moreover, even though a legal framework for prosecution exists, very few cases are being prosecuted or sentenced on this legal basis. Besides hate crime, legislation against hate speech also exists, even though according to the authors of the national report it has never been implemented in practice. In 2015, the Penal Code was amended with Law No 87(I)/2015: it now criminalises all those conducts which intentionally and publicly incites and motivates violence and hatred against a specific group of persons or members of a group on the grounds of

sexual orientation or gender. The study reports that only one prosecution occurred so far at national level, which concerns a case of sexual harassment cases within employment³⁴. Looking at the legal procedure, in Cyprus the police have the responsibility of investigating the complaint, collecting statements from the victims and perpetrators, and preparing a report with the results of their investigation and suggestion on whether the case should be criminally prosecuted at the court or not. In case the police decide to advise on the criminal prosecution of the case before a court, they also have the responsibility to add hate as an aggravating factor. In practice, it seems that the police very rarely do this. Following the investigation, the report is presented to the District Police Director as well as the Office for Combating Discrimination for further analysis. Should it be deemed that there is adequate evidence; the report is finally sent to the Attorney General for prosecution.

³³ Discrimination against disabled people

³⁴ Charalambidou&Koni, 2015



GERMANY

In GERMANY, a legislative initiative aimed at modifying the penal code by including 'racist motives' and demanding a harsher punishment of offenders in Section 46 of StGb (German criminal code) failed in 2012³⁵. Apparently, during the legislative deliberations, the German government reasoned that, since judges already consider racist motives as an aggravating factor in sentencing, a legislative clarification was not necessary. However, the proposition that racist motives are generally taken into account as an aggravating factor has been challenged in academic literature³⁶. Moreover, there is an ongoing revision of §130 of StGB on 'incitement to hatred', mainly dealing with if hate against certain groups should be implemented in criminal law. Currently, there is no difference between 'offences' and 'hate crime' in the German criminal law. However certain circumstances, such as hate or extremist thoughts, are included in the jurisdiction, for example to identify any particular severity of guilt or base motives in the case of murder.

In order to detect and deal with hate crime, the Federal Republic of Germany decided in January 2012 to cover crimes motivated by hate and extremism through the concept of "bias motivated crime". The issue of definition in Germany is particularly related to its historical legacy, and for its own specificity made it more difficult in the present work a direct comparison with the other countries. As reported by Amnesty International³⁷, in Germany hate crimes are considered a specific type of politically motivated crimes (Politisch motivierte Kriminalität).

Politically motivated crimes and hate crimes are not defined as such in the Criminal Code but in a system used by police since 2001, when authorities established a unified federal system for classifying, investigating and collecting data regarding politically motivated crimes. Under this system, several criminal offences constitute politically motivated crimes, including those related to right-wing or left-wing ideologies. However, while any hate crime is a politically motivated crime, there are many other politically motivated crimes which are not hate crimes.

Finally, article 26 of StGB already allows the judges to consider racial hate as a special reason for guiltiness and increase the penalties if necessary; the second part of the law identifies racist, nationalist and inhumane intentions as motives for a special reason for guiltiness. The reform will consider hate crime as a special term, to be defined by the German law. At the moment this issue is still pending and not finally decided by the German Parliament.

³⁵ <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2014/05/Oxford-Pro-Bono-Publico-Comparative-Hate-Crime-Research-Report-April-2014.pdf>), p.10

³⁶ <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2014/05/Oxford-Pro-Bono-Publico-Comparative-Hate-Crime-Research-Report-April-2014.pdf>, p. 10

³⁷ Amnesty International (2016), Living in insecurity. How Germany is failing victims of racist violence available at:

ITALY

In ITALY, the main challenging aspects of the legislative framework, as highlighted in the national report, concern the exclusion of certain categories, such as LGBT or disabled people, from the Mancino Law of 1993 (see further details below). Moreover, Italy has not ratified the Additional Protocol of the Council of Europe Convention on Cybercrime yet.

The principle of Equality is stated in Article 3 of the Italian Constitution, which forbids arbitrary distinctions related to certain types of crime expressly provided for by law through the principle of non-discrimination. The most important legislative instruments at national level are the following: Law 654/1975, known as “Legge Reale”, implements the ICERD and sanctions “as a separate and aggravating circumstance certain acts of discrimination that even by common law could be considered criminal offences”. Law 205/1993 (the so-called “Legge Mancino”) converted into law the decree 122/1993 on “urgent measures against racial, ethnic and religious discrimination. Moreover, the Legislative Decrees n. 215 and 216 of 9 July 2003, implemented respectively the EU Directive 2000/43/EC on Racial Equality and the so-called “occupational” Directive 2000/78/EC. Last but not least, Law 40/1998 is aimed at regulating immigration and the status of aliens.

From a criminal point of view, the Italian Criminal Code contains specific provisions against ethnical, race, nationality, religion or gender-based crimes, crimes against members of linguistic minorities and people with disabilities. However, as specified above, there are legal loopholes regarding other individual aspects, such as sexual orientation or gender identity. More specifically, the so-called “Legge Reale”, as modified by Law 205/1993 (known as “Legge Mancino”) and by Law no. 85/2006 (law on

thought crimes), punishes those who propagandize ideas founded on racial or ethnic superiority or hate, or instigate someone to commit, or themselves commit, acts of discrimination for reasons of race, ethnicity, nationality or religion; those who, in every way, instigate someone to commit, or themselves commit, violence or acts which induce to violence for reasons of race, ethnicity, nationality or religion; those who take part or support organizations, associations, movements or groups which are aimed at subverting the socio-economic order. The Law also condemns any public behaviour (gesture, action, and slogan) or display of symbols and logo used by the above-mentioned organizations, associations, movements or groups. The new aggravating circumstance provided for by art. 3 of the above-mentioned law is also fundamental, and states that “Anyone who commits offences punishable with a penalty other than life imprisonment for discrimination or ethnic, national, racial or religious hatred purposes, or with a view to encouraging the activities of organizations, associations, movements or groups pursuing the same purposes, shall be liable to a penalty increased up to one half.”

With regard to jurisprudence, the national report presented few examples (limited to racial and ethnic discrimination due to the lack of specific protection on other subjects), related for instance to the recognition by the Court of “online” associations as criminal conspiracy aimed at inciting to hatred, racist propaganda and violence against ethnic or religious minorities, even in the absence of “physical interaction”. Other cases referred to injuries aggravated by discriminatory reasons, aggravated defamation or incitement to violence both online and in person.



MALTA

In MALTA, in 2013, the Constitution and the Maltese Criminal Code were both amended to provide protection to gender and sexual-orientation minorities against hate incidents. Existing literature also highlights that “in December 2014, a consultation process was launched proposing the introduction of an Equality Act and a Human Rights and Equality Commission”³⁸. These changes were likely due to pressure given to the state by activists and stakeholders following a number of violent events. One of these events was the attack against two young lesbian girls in a park in Hamrun, Malta³⁹. At the time, no protection against hate motivated crimes existed and, thus, the brothers responsible for the crime were merely charged with assault⁴⁰. Below, the main legal articles relevant to hate crime, hate speech and discrimination, are listed:

Article 45 of the Constitution of Malta mainly defines the concept of discrimination, referring to all categories including race, place of origin, political opinions, colour, creed, sex, sexual orientation and gender identity;

Article 82 of the Maltese Criminal Code is defining penalties for abusive or insulting words or behaviours, even written or printed, aimed at racial hatred violence or against other grounds as defined in the Constitution (it includes also language, religion though);

According to the Press Act (Part II), whoever threatens, insults or exposes to hatred, persecution or contempt people or groups belonging to the groups defined above, by means of mass media / press etc. is liable to conviction to imprisonment.

The Broadcasting Act, Article 16K mainly refers to prejudice respect for human dignity.

The Employment and Industrial Relations Act is aimed at enforcing the principle of equal treatment in relation to employment.

Act No. II of 2012 is referred to protection of persons with disability.

One of the most obvious gaps in Maltese legislation is the lack of an adequate definition of hate speech. Although the criminal code makes direct reference to “threatening, abusive or insulting words [emphasis added] or behaviour, or displays any written or printed material [emphasis added] which is threatening, abusive or insulting”(Government of Malta, 2016b), there is no indication as to which words, what types of words, and for that matter what type of language is being referred to in the clause. Furthermore, as the legislation specifies ‘insulting words’ as discrimination, it rules out any other sort of hate speech that might not be immediately apparent on a lexical level. In addition, the law should be broadened to include any kind of hate speech oral or written. This is quite evident from one of the cases described within the report: wherein a correctional officer (VD) was accused of a) inappropriately using a network or an electronic communication device; and b) inciting racial hatred. VD had commented on a news article about a refugee camp burning in Sweden: I hope it’s burning with them inside. The accused was found guilty on the first count and fined 5000€, but was acquitted from the accusations of inciting racial hatred as the law says the hatred must be addressed at a

³⁸ Ellul, 2016, p. 5

³⁹ Calleja, 2012a

⁴⁰ Calleja, 2012b



MALTA

person or persons in Malta. Furthermore, the law does not explicitly include refugees and therefore, since the defendant did not address his comment to any particular race, the law absolves him of responsibility. The court suggests that the law should be broadened to include such cases.

As it is evident from the paucity of prosecutions that have been made on the grounds of hate and discrimination in Malta, hate speech can be difficult to prove, since one must prove not only that hate speech was used, but also that it was used in a vicious attempt to incite hatred.



NORTHERN IRELAND

NORTHERN IRELAND (NI) has its own legislative system which is distinctive from other parts of the United Kingdom, although many of its laws are very similar to laws elsewhere in the UK. In Northern Ireland there are two main pieces of legislation that address the issue of acts of prejudice against members of various minority communities or groups: Part 3 of the 1987 Public Order (NI) Order and Section 2 of the 2004 Criminal Justice (No 2) (NI) Order. The first one criminalises 'acts intended or likely to stir up hatred or arouse fear' and specifically relates to the use of 'threatening, abusive or insulting words or behaviour' and the display of written material which is threatening, abusive or insulting. The second one allows judges to increase the sentence of people convicted of any offence, if their crime was proved to have been 'aggravated by hostility' towards the victim because of their membership, or presumed membership, of a racial group, religious group, sexual orientation group or because of a disability. Initially the government had proposed that the legislation would focus on racist and religious hate crime, but as part of the consultation process there was strong lobbying from a range of civil society organisations to include homophobic hate crime, and when it was being debated in Parliament an amendment was introduced to also include disability hate crime.

One of the main concerns after implementing this hate crime legislation was that it could remain 'dead letter'. The Criminal Justice Inspectorate (CJINI) carried out a set of inspections in this regard. Since the 2010 CJINI report and the 2012 Challenge Hate Crime project's (2009-2012) report into criminal justice responses to hate crime, which highlighted a general failure in prosecuting hate crime, there has been some progress, with a range of initiatives from the Executive Office and the Department of Justice to outline a strategic framework to challenge hate crime. The Department of Justice's Community Safety Strategy 2012-17 includes an ad hoc section outlining its approach to hate crime, as well as a commitment to develop an ad hoc sexual orientation strategy.



PORTUGAL

In PORTUGAL, the national legislation includes some examples of protection against hate crime and hate speech. The article 13 of the Constitution of the Portuguese Republic foresees the prohibition of discrimination on grounds of sex, race, and language, territory of origin, religion, political or ideological beliefs, education, economic or social status, or sexual orientation. The Criminal Code establishes penal aggravations for crimes motivated by discrimination on grounds of race, religion, ethnicity, nationality or sexual orientation (art 132 relevant in the crime of homicide, art 145 on offence to qualified physical integrity). Under the article 240 on "Sexual, religious and racial discrimination", changed in September 2007 and February 2013, hate speech is criminalized and makes it forbidden to promote hate, violence, defamation, insults or threats on grounds of race, colour, religion, ethnicity or nationality, sex or sexual orientation, gender identity.

The National Assembly Resolution 91/2009 approved the Additional Protocol to the Convention on Cybercrime, while the Law 18/2004 transposed the 2000/43/CE Directive. In 2010, Portugal signed the Recommendation of the Committee of Ministers of the Council of Europe to the Member States "on measures to combat discrimination on grounds of sexual orientation or gender identity"; the Portuguese Journalist Code of Ethics states (Article 8) that the journalist should reject any discriminatory approach on grounds of race, colour, beliefs, nationality or sex. Thanks to the advocacy work of the civil society organizations mainly dealing with LGBT people (including ILGA Portugal), gender identity was included in the law as one of the aggravated penalty reasons to criminal offences in 2013.



ROMANIA

In ROMANIA, sanctions on illegal behaviour which apply to hate crime and hate speech can be civil, administrative (for misdemeanours) and criminal. However, there is no official definition of hate crime or hate speech per se.

In the criminal legal framework, the bias motivation can be found either as a penalty enhancement or as a component of substantive offences. The bias motivation was first introduced as an aggravating circumstance (penalty enhancement) in the Romanian legal criminal framework through Law no. 287/2006, currently art. 77 h) of the Criminal Code⁴¹. The bias component is also found in the definition of substantive offenses in the Criminal Code or in special criminal laws: incitement to hatred or discrimination (art. 369 Criminal Code); abuse of office, in the version based on discrimination (art. 297, par. (2) Criminal code); torture based on any form of discrimination (art. 282, par. (1), d) Criminal Code); preventing the freedom to practice religion (art. 381 Criminal Code); desecration of places or objects of worship (art. 382 Criminal code); desecration of corpses or graves, in certain situations and when the aggravating circumstance is applied (art. 383 Criminal Code)

In addition, hate crime are referred to also in the Government Emergency Ordinance (GEO) 31/2002 banning fascist, Legionnaire⁴², xenophobic organisations, symbols and deeds and the promotion of the cult of persons guilty of genocide and war crimes (recently amended by Law no. 217/2015) – which is a special criminal law, also banning Holocaust denial.

Looking at hate speech specifically, this hateful conduct can fall under the civil, administrative or criminal regulations, depending on the context. More specifically:

Administrative approach - Hate speech can fall under the Anti-Discrimination Law (Government Ordinance (GO) n. 137/2000) or the Audio-Visual Law (Law n. 504/2002) and take the form of a misdemeanour. Thus, hate speech can be considered as a form of discrimination, harassment or violation of the right to personal dignity under the Anti-Discrimination provisions or as a violation of the Audio-Visual code of conduct.

Criminal approach - hate speech can have such a high degree of severity that it falls under the criminal legal punishment system as can be discerned from some of the provisions mentioned above.

Civil approach - in the civil law framework, victims of hate speech can claim compensation for the damage they suffered (moral and/or material). Thus, based on the Civil Code, any person can file with a court of justice a claim for compensation if his/her rights have been violated. In criminal trials also, victims can file for civil compensation for the damages incurred. At the same time, victims of discrimination can choose a civil remedy, based on the special Anti-Discrimination Law (G.O. 137/2000, art. 27, par. 1), without the prerequisite to initiate administrative proceedings with the NCCD. However, if a civil action based on G.O. 137/2000 is initiated, then the NCCD must be subpoenaed for submitting an expert point of view in the trial (art. 27, par. 3).

⁴¹ The following constitute aggravating circumstances: (...) h) the offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or membership, possessions, social origin, age, disability, chronic non-communicable disease or HIV/AIDS status, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals."

⁴² Romanian inter-war version of fiercely nationalist, extremist, Anti-Semitic movement.

SLOVENIA

In SLOVENIA, the legal document at the highest level regulating anti-discriminations is the Constitution of the Republic, which provides general anti-discrimination regulations in Art 14 (Equality before law), Art 63 (Prohibition of Incitement to Discrimination and Intolerance and Prohibition of Incitement to Violence and War) and in Art. 64 and 65 on special protection to autochthon Italian, Hungarian and Roma people.

Hate crime is not specifically defined at national level, however it is included in the existing legislature as aggravating circumstance, even though there are very few existing cases of hate crime that would be recognised and filed as such by the responsible authorities.

Similarly, the term “hate speech” as such in the Constitution and other Slovenian legislation is not included. In the professional and general public understanding, criminal hate speech means public incitement to hatred, violence or intolerance under Article 297 of the Criminal Code (KZ-1), which is a crime against public order and peace. In the context of the Article 297, criteria for limitation of speech are set very high, as specified in a special legal position of the Supreme Prosecutor’s Office, where it emphasized that there should be criminal prosecution as a last resort to overcome the negative phenomena in the society (principle of ultima ratio).

Article 8 of the Law on Media prohibits the dissemination of programs encouraging national, racial, religious, sexual or any other inequality as well as incitement to bias motivated hatred, intolerance, violence and war. Article 47, instead, is specific on advertisement.

Law on protection of public order and peace defines offences under different categories, but in terms of enforcement for fighting hate speech there is a key limitation as the offence is not defined in terms of hatred and intolerance transmitted via the Internet or other modern media. Moreover, many organizations working in diverse areas, try to oppose hate speech and discriminatory conduct also through the use of internal code of conducts and guidelines (code of journalists, code of police ethics, code of education on professional ethics etc.).

RECOMMENDATIONS



As mentioned throughout the report, the present analysis is far from being exhaustive, while it is mainly aimed at providing an overview on the domestic frameworks based on the national reports produced by the eMORE partners. The exercise of comparison allowed us to shed light on some common aspects among countries, and on particular characteristics mainly linked to the socio-economic, cultural or historical contexts. On this basis, the eMORE project elaborated a set of recommendations for practitioners and policy makers, also drawing from the main

challenges emphasized by the country partners: in order to be more effective the recommended measures should be implemented at EU level. These recommendations are aimed at helping the relevant actors in the elaboration of preventive and counter measures against hate crime and hate speech, both at local and European level. Moreover, they have to be considered as part of the wider monitoring and reporting exercise envisaged by the project eMORE in the second year of activities.

Reporting mechanisms

- There is a need for the implementation of a joint circular system relating to investigation / prosecution policy regarding discrimination and hate crime, including the appointment of specialized hate crime police officers in every country.

Legal framework

- There is a need for a European harmonization on the legal definition of hate crime and hate speech. This would include a clear definition at national level, and the amendment of national laws to include and comprehensively define all hate motives such as nationality, ethnicity, race, sexual orientation, gender identity, religion and disability.
- All states should ensure implementation of / compliance with European Directive and other international instruments (eg. Additional Protocol to Cybercrime Convention).
- All states must ensure the application of existing and new regulatory and legal frameworks at national level.
- Independent authorities should be established to investigate alleged cases involving law enforcement or other related roles.
- Sufficient victim support mechanisms must be in place to ensure support to victims of hate (including free legal aid when needed).
- The lack of a sanctioning system depending on an independent body or an administrative authority should also be duly addressed.

Data collection

- There is a need for more coordination and coherence in terms of collection of data at national level between different bodies and mechanisms at national level, to correlate and analyze these data.
- Data collected should be disaggregated on the basis of the bias motives, to allow having a clearer picture of the groups affected.

Measures for vulnerable groups

- More accessible reporting mechanisms for vulnerable groups should be in place, as well as awareness raising and outreach to vulnerable communities to encourage them to take action.
- There is a need to focus on capacity building and awareness raising of vulnerable groups regarding their legal rights and provide them with sufficient legal support where such support is necessary.
- There is a need for civil society to reach out and build trust of victims and witnesses to report hate episodes. However, this needs to come hand in hand with effective reporting mechanisms and support from public sector professionals.
- Based on the general lack of measures to respond to the escalation of violence towards particular minority groups (eg. Roma, religious minorities, asylum seekers), specific measures should be tailored to address the needs of vulnerable groups based on their specific characteristics and necessities.

Capacity building

- Enhance capacity building for LEAs and legal professionals on soft skills, especially on how to recognize hate crime, hate speech and negative consequences of discrimination. Training for those categories should be compulsory, for instance in police academies' courses as well as for prosecutors.
- Support mechanisms for victims should be in place at national level, including intercultural mediation where necessary.
- There is a need for training of relevant members of the judiciary and police to ensure all are aware of hate crime legislation and its interpretation and prosecute accordingly.

RECOMMENDATION



Awareness raising

- Awareness raising is key. As such, there is a need to raise awareness on the topics of discrimination, diversity and addressing hate at school level. For example, dedicated space and time should be given to address themes related to diversity and hate, such as 'black history', history and rights of Roma, LGBT, people with disability etc.

General

- Further research is needed in the field of hate crime and hate speech, including online hate speech and crime, to further understand the phenomenon and ensure sufficient action is taken.
- There is a need for strengthened collaboration and coordination between communities, NGOs and government bodies ensuring efficient support to victims and tackle hate speech and crime.
- There is a need to enhance, analyse, mainstream and implement policies aiming at preventing and combating discrimination or hate-based violence in various relevant sectors of life, such as education, labor, housing, health, justice.
- Increase in cases against residence law / asylum procedures law was reported by several countries: in this view, specific measures should be taken to face the migration management within single countries and, in general, in Europe, to promote sustainable measures and avoid an increase in xenophobic and racist sentiments.
- Limited information on scale, nature, form and impact of online hate speech and no evidence of formal policy or criminal justice initiatives to respond to online hate speech: in this view, further awareness should be promoted in order to increase the reporting and recording of hate speech online.
- Hate crime and hate speech related topics should be taught to all relevant professionals, in the context of international/EU standards on the protection of freedom of speech.
- Ethical standards in relation to discriminatory media reporting should be improved.
- Very few crime cases successfully prosecuted in courts: need to improve legal procedures and ensure adequate investigation of hate crime and hate speech.
- Politicians should take a firm and public stance against expressions of racist and xenophobic attitudes, and refrain themselves from any speech that may have discriminatory effects.

LIST OF ACRONYMS

CJINI

Criminal Justice Inspectorate Northern Ireland

CSO

Civil Society Organization

ECHR

European Court of Human Rights

ECRI

European Commission against Racism and Intolerance

GEO

Government Emergency Ordinance

HR

Human Rights

LEAs

Law Enforcement Authorities

OSCAD

Osservatorio per la Sicurezza contro gli Atti Discriminatori (Observatory for Security Against Discriminatory Acts)

OSCE - ODHIR

Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights

PMK

Political motivated crime in Germany

PSNI

Police Northern Ireland

RoC

Republic of Cyprus

UNAR

Ufficio Nazionale Anti Discriminazioni (National Office Against Discrimination)

UNIA

Interfederal Centre for Equal Opportunities



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