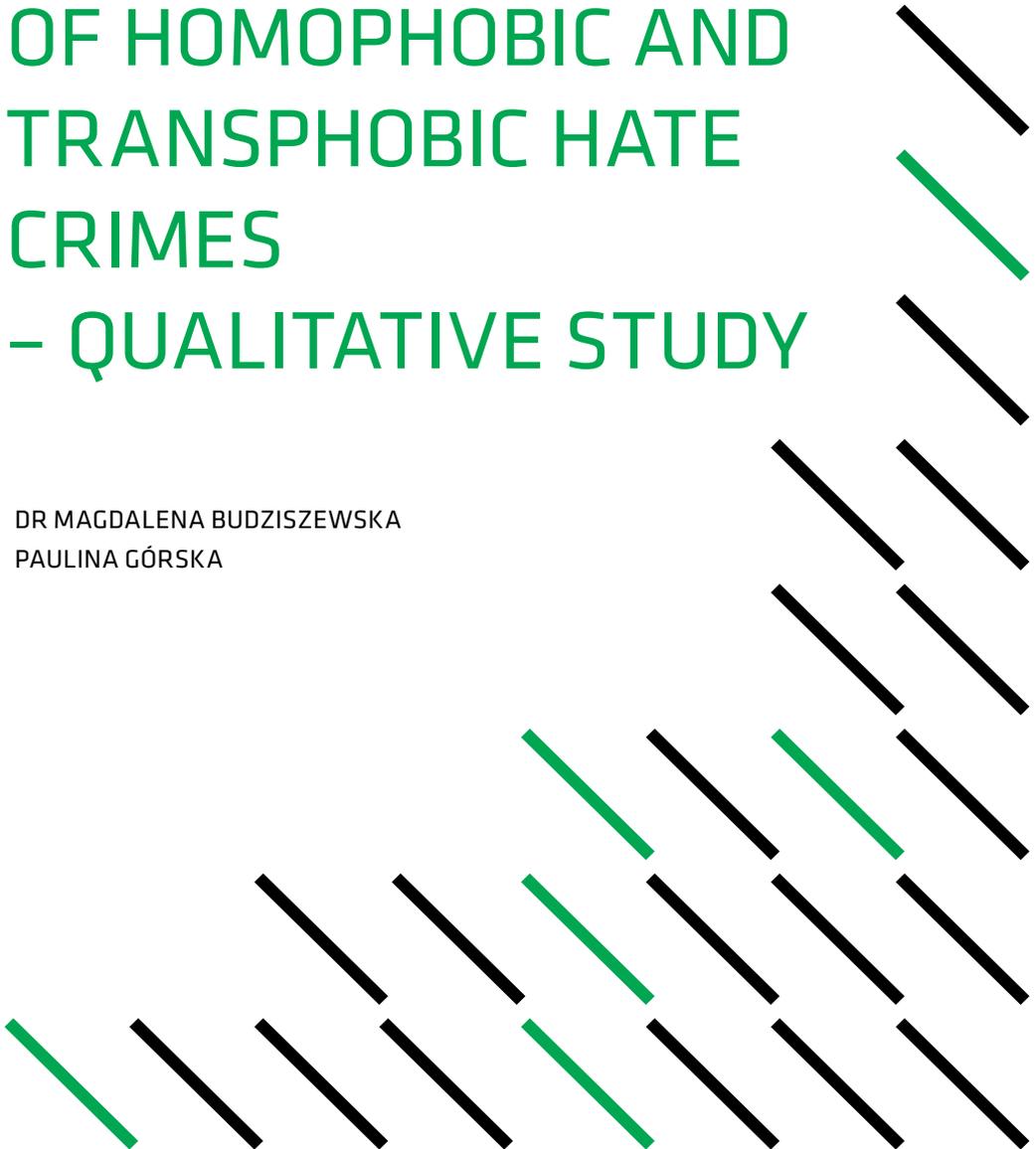


H A T E N O M O R E

# NEEDS OF THE VICTIMS OF HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES – QUALITATIVE STUDY

DR MAGDALENA BUDZISZEWSKA  
PAULINA GÓRSKA



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OF HOMOPHOBIC AND  
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– qualitative study

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## Preliminary report on qualitative study

The 2012/29/EU Directive of the European Parliament and of the Council establishes the minimum standards on the rights, support and protection of people who have experienced hate crime. The aim of the project, which includes the current study, is to improve the implementation of the directive's recommendations regarding those who have experienced homo- and/or transphobic crimes, and who are living in five Member States: Croatia, Hungary, Latvia, Lithuania and Poland. The reason why those particular countries are participating in this project is because in all of them the number of hate crimes against LGBTQI individuals is equal to or greater than the EU average<sup>1</sup>. The study presented below aims at diagnosing experiences of individuals who suffered from homophobic and transphobic hate crimes and came into contact with the law enforcement authorities and the justice system. In particular, the objectives were:

- verifying the level of practical implementation of Directive 2012/29/EU by the law enforcement authorities and the justice system,
- defining the needs of individuals who suffered from crimes motivated by their actual or alleged sexual orientation and/or gender identity,
- establishing in what manner contact with the law enforcement authorities and the justice system affects the wellbeing of the individuals who have been sub-

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1 European Union Agency for Fundamental Rights (2013). EU LGBT survey. Main results. Retrieved from: [http://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results\\_tk3113640enc\\_1.pdf](http://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results_tk3113640enc_1.pdf)

ject to crimes due to their actual or alleged sexual orientation and/or gender identity,

- diagnosing possible problems in the functioning of the law enforcement authorities and the justice system,
- collecting guidelines necessary for constructing a questionnaire for the quantitative study, which was apart of the project.

# 1. DESCRIPTION OF THE STUDY

## Method

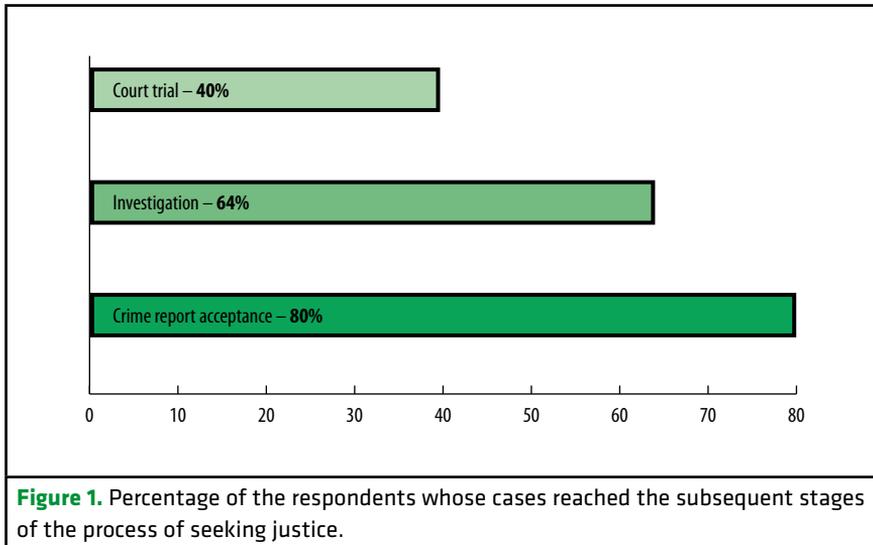
The study has been carried out with use of semi-structured qualitative interviews. The interview script has been prepared by a group of psychologists from the University of Warsaw in consultation with Campaign Against Homophobia team.

The subsequent sections of the script referred to such issues as: the type of crime experienced, contact with the representatives of the law enforcement authorities and the justice system, the needs of the aggrieved and contentment with the means of resolving the case. The respondents have been recruited in each of the countries by the project partners: MOZAIKA, Háttér Társaság Kontra, LGL and Campaign Against Homophobia. The informants have been selected among the former or current clients of those organizations, as well as through announcements published on the webpages addressed to LGBTQI community. Having been a victim of a crime due to an actual or alleged sexual orientation and/or gender identity and having reported this fact to the law enforcement authorities within the last 5 years were the criteria for being included in the sample. In order to capture a possibly broad spectrum of experiences, the study design underscored the necessity of maximal diversification of the sample in terms of such features as gender, sexual orientation, age, place of residence, education and engagement in LGBTQI rights activism. The interviews have been conducted in the native languages of the informants by interviewers with a degree in social sciences. The content of the

interviews, translated into English, has been analyzed by social psychologists of the University of Warsaw.

## Description of the sample

The study comprised 50 respondents – 30 respondents from Poland and 5 from each of the following countries: Croatia, Hungary, Latvia and Lithuania. Men prevailed (66%) in the sample, while women comprised 24% and transgender persons 10% of the studies population. Among the participants, homosexuals constituted the majority (68%), whereas the share of heterosexuals (16%), bisexuals (8%) and those identifying themselves as queer or not willing to define their sexual orientation was smaller (8%). The age of the respondents ranged from 20 to 63 years ( $M = 32.88$ ;  $SD = 1.49$ ). Individuals with higher education prevailed in the sample (70%), as did the residents of major cities (80%). Activists involved in the LGBTQI rights movement constituted half of the respondents. Most of the crimes reported by the participants took place in 2014 (24%), 2012 (22%) and 2013 (18%), whereas the frequency of the incidents was lower in 2015 (10%), 2011 (4%) and 2010 (2%). Twenty percent of the respondents were not able to provide the exact date of the crime. For 82% of the participants, the crimes involved physical violence. The respondents were on different stages of seeking justice, which included coming into contact with the law enforcement authorities and courts (FIGURE 1). Eighty percent of the respondents declared that the police accepted their complaint about a crime they experienced. In the case of 64% of the informants preparatory proceedings commenced. The complaints of less than a half (40%) of the respondents ended with court proceedings.



### Limitations of the study

Some technical aspects of the study can be deemed the sources of its limitations. The fact that the informants were recruited by partner organizations – NGOs gathering young, educated people living in large cities – could have prevented the collected material from reflecting the whole spectrum of experiences of homo- and transphobic crimes. Despite the recommendation for maximum diversification of the sample, the interviewers did not succeed in gathering the sufficient number of informants from certain social groups – women, the elderly, the less educated and those living in smaller localities were underrepresented in the sample. Nevertheless, it must be underlined that the composition of the sample can result from the applied criterion of sampling. Seeking justice through contacting law enforcement authorities and courts requires that the person who has experienced hate crime has salient resources such as motivation, knowledge, social networks, time and money. Perhaps the individuals from the underrepresented groups have not been included in the sample, due to their scarce resources, and thus, did not report the crimes they had experienced. The data collected in the quantitative study in which a broader criterion of sampling will be applied (belonging to LGBTQI community) will allow verification of this assumption.

Another limitation of the study stems from varied cultures of conducting interviews displayed by the interviewers. Not all of the interviews have been conducted in an exhaustive and careful manner which would allow exploration of the most difficult parts of the interviewees' experiences and hence discovering the subject of the study in detail. The necessity to translate the interviews into English constitutes another shortcoming of the study – certain undertones and meanings which the respondents ascribed to their experience could have gotten lost in translation.

## 2. ARE THE DIRECTIVE'S GUIDELINES RESPECTED?

The Directive 2012/9/EU of the European Parliament and of the Council defines the rights of those who experienced crimes and the practices to be undertaken by the representatives of the law enforcement authorities and the justice system in contact with them. Based on the information gathered in the study, it can be concluded that not all of the directive guidelines are observed in the participating countries.

### Right to understand and to be understood

Pursuant to the directive, "Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing" (Article 3, Section 2). The conducted interviews suggest that the language used by the law enforcement authorities and the justice system for communications with the crime victims is imbued with legalese, thus unclear for people without relevant education. Often those who lodge a complaint are not able to react on their own to the messages received from the law enforcement authorities and the justice system– in order to make such contact effective, legal assistance is required. The counsels retained independently or appointed by non-governmental organization serve as translators, who paraphrase the expressions used in the written or oral statements of police officers, prosecutors and judges, using the common language. Only after the translation, their clients become aware of their current position and the options offered by the justice system of their country. Some of the respondents

openly claim that if it had not been for the assistance of counsels from outside of the state system (hence, not appointed *ex officio*), they would have not managed to go through the justice seeking process. The courtroom is a place where the level of cognitive alienation is particularly high (EXAMPLE 1).

#### EXAMPLE 1: POLAND, MAN, 21, IN A COURT TRIAL TO WHICH HE WAS A PARTY

„ [Name – a friend who also suffered from a crime] had a counsel and due to that I know how it looked like. But if I'd been alone there, it'd have looked completely different. I mean, I wouldn't have felt secure at all, comfortable at all, and I wouldn't have known also what was going to happen.”

At the same time, it is worth noting that the representatives of law enforcement authorities and the justice system rarely make the effort to inform the respondents about their rights and options of further proceedings in simple words. In Poland, the information on the rights of the crime victim is often conveyed on densely printed papers. Such manner of providing information impedes interactive, two-way communication which would otherwise provide an opportunity to enquire about the meaning of expressions unclear to the injured party.

Pursuant to Article 3 Section 3 of the Directive, Member States allow victims to be accompanied by a person of their choice during the first contact with an appointed authority when due to the impact of the crime the person who is lodging the complaint may require assistance in order to understand or to be understood. The information collected in the study allows to opine that this guideline is rather observed. In cases when, as a result of the crime, the respondents were shocked or in a bad physical condition, the police officers allowed them to make the initial statement accompanied by someone (e. g. family member, a friend, an assistant from a non-governmental organization).

### Right to receive information from a competent authority from the very first contact

Article 4 of the Directive imposes the obligation on the Member States to ensure the crime victims access to information regarding matters such as the procedures

for making complaints with regard to a criminal offence, available support, legal aid or complaints procedures regarding the action of law enforcement authorities, from the first contact with a competent authority. The data gathered in the current study indicate shortcomings in the matter of information provided by relevant authorities to crime victims.

According to the conducted interviews, upon the moment of reporting the crime, the officers of the law enforcement authorities usually inform the victims about the report filing procedures. Yet, the scope of this information can raise objections, as it can often be seen as insufficient from the victims' perspective.

It is a common practice to fail to provide victims with information on their rights – the law enforcement officers do not inform the injured party about the possibility of removing the personal data from the files or changing the correspondence address. In Poland the information about the rights of the person of the person who has experienced hate crime are sometimes presented in writing, on a sheet of paper.

The standard procedures for informing victims, regardless of the type of crime experienced and public recognition of the victim, or the possibility to obtain psychological and medical aid, do not function either. Among 50 participants of the study, only one person received contact details to a crisis intervention center and a doctor, which probably was due to the fact that the person had been raped. Medical examination was also offered to a respondent who was a politician known in the media. One person was advised to get psychological counselling. Others, even in the case of a severe battery, had to search for medical and psychological aid on their own. None of the respondents remembered being informed by law enforcement officers about the possibilities of obtaining legal aid.

Crime victims are not automatically informed about the possibility of submitting a complaint against the law enforcement authorities' actions. The information on procedures in such case is, however, provided to them upon their request.

## Right of victims upon submitting the complaint

Article 5 Section 1 of the Directive states that: „Member States ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned“. The information collected in the current

study shows that non compliance with the Directive is common. The lack of issuing written acknowledgements of the complaint is partly due to the fact that the law enforcement authorities do not always accept the complaints. A recurring reason for rejecting the complaint by law enforcement officers is a lack of a long-lasting bodily injury of a victim, which would constitute ground for prosecuting the offenders ex officio. Even though the victims can sue their offenders in a civil court, it occurs that the officers discourage them from taking such steps, emphasising potential difficulties regarding the evidence as well as the lengthiness and high costs of court proceedings. It also happens that after the police have been informed about the incident by phone they do not come to the scene of the incident; therefore the crime is not officially reported. Nonetheless, even if the official complaint is actually made and accepted, the respondents do not automatically receive an acknowledgement of this fact. The copies of the victim's statements are, however, provided to the victims upon their request.

## Right of those who have experienced crime to be informed about their case

Article 6 of the Directive concerns providing the crime victim with information about the pending investigation (Section 1), criminal proceedings (Section 2) and the situation of those apprehended, prosecuted or convicted in relation with the affairs concerning the victim (Section 5). Importantly, the wish of the respondents as to whether receive the information or not, binds the relevant authority (Section 4). In a different section, the Directive specifies that the information meant to be presented to the victim of a criminal offence must be sent to the last known correspondence address or via electronic means of contact provided by the victim (Section 27 of the Preamble).

In the gathered data, a significant shortfall in communication and a lack of information regarding the progress of the investigation has been mentioned by a vast majority of the participants. Sharing information happens occasionally and can be incomplete. In order to receive relevant advice, the victims must take initiative – visit police stations, write letters or call. Importantly, those actions are generally taken by those with greater resources – educated, with external legal support from non-governmental organizations or independently retained counsels. The respondents

who did not actively ask for the information on the investigation's progress were often uninformed about its course or the gathered evidence. However, they usually were informed about the discontinuation of the investigation and received subpoena informing about hearings. The respondents received information about people apprehended, prosecuted or convicted in their lawsuits by word of mouth and only if they actively searched for it.

In the light of the conducted interviews, the requests of the injured parties towards the law enforcement authorities to send the correspondence to the address different than their residence address, were dealt with in various ways. In a few cases, despite the declared approval of the law enforcement authorities, the correspondence was sent to the address of residence. Sometimes it resulted in the information on the proceedings falling into the wrong hands and having serious consequences for the private lives of the victims (EXAMPLE 2).

#### EXAMPLE: HUNGARY, MAN, 28, UNFULFILLED REQUEST REGARDING A CHANGE OF THE CONTACT ADDRESS [HU01]

The respondent asked for a change of a contact address (different than his permanent residence). Despite making the request, the information on discontinuation of the investigation, together with the detailed description of the event, was sent to the address of his permanent residence, where his parents lived. The respondent's mother opened the letter, from which she learnt about her son's sexual orientation. In consequence, the contact between the respondent and his mother become rough and unpleasant: „My mother brought me to a psychiatrist, ghost buster, future teller, fate-analyzer, because she was convinced that this issue [his homosexuality] can and must be helped somehow. Not because it is a problem but because I would have an easier life if I were normal". The respondent believes that if he had known what the consequences of making the complaint would be, he would have considered not informing the police about the battery.

## Right to interpretation and translation

In Article 7, the Directive imposes on Member States the obligation to ensure the crime victims who do not understand the language of the proceedings the possibility to get interpretation and/or translation services. Even though the sample of the

study presented here included a few people whose native language was different to the language of the proceedings, none of them reported the need for translation and/or interpretation, nor was offered such service.

## Right to access victim support services

Pursuant to Article 8 of the Directive, Member States ensure the crime victims, accordingly to their needs, a free of charge access to victim support services (Section 1) and the victims are directed to these services by a competent authority that received the complaint (Section 2). As mentioned above, the studied sample included only three respondents who were informed by law enforcement authorities about the opportunity of receiving medical and/or psychological aid, one of whom exercised this right. The representatives of the law enforcement authorities did not inform the respondents about the options of obtaining assistance in legal, financial and practical matters resulting from the offence. A police officer suggested to one of the respondents that he should contact the fire service in order to remove the remains of the crime – but it was an exception. The officers also warned the respondent that unjustified call for the fire service will result in a fine (afraid of being fined, the respondent removed the damages on his own). Importantly, none of the informants from Lithuania and Hungary remembered being directed to an institution which offers any (medical, psychological, advisory, and practical) support for those who have experienced crime.

## Support from victim support services

Article 9 specified the scope of support which should be provided to crime victims by the competent services. Along with counseling on the role of the victims in the criminal proceedings, the relevant services should provide them with emotional and psychological support; offer advice if they are threatened with secondary and repeated victimization, intimidation and retaliation; as well as provide counseling on financial and practical issues related with the offence.

The information collected indicates that the respondents sought external support on their own. Several informants took part in psychiatric and psychological counseling. Some of them requested certain non-governmental organizations

dealing with LGBTQI rights and human rights for help. The support received from those organizations consisted in monitoring the investigation and providing legal advice. The only case in which the state authority offered counseling to an informant living in Poland – the respondent asked the local representative of the Civil Rights Ombudsman for help and received it.

## Right to be heard in criminal proceedings

Article 10 of the Directive stipulates as follows: „Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence.” The respondents could provide testimony in the trials, although some of them did not feel that the authorities listen to them – the judges asked specific questions and they expected simple answers, thus they did not give the respondents the chance to present the overall background of the case.

## Rights in the case of court’s decision not to prosecute

Pursuant to Article 11 of the Directive, Member States ensure crime victims the right to appeal against the decision not to prosecute. The respondents who received a written decision not to prosecute were at the same time informed on the right to appeal. Only in two cases, in Lithuania and Latvia, the participants decided to appeal. In one of them (Latvia) the appeal proved effective – the police commenced investigation.

## Right to guarantee of access to restorative justice services

Pursuant to Article 12 of the Directive, Member States should undertake measures to ensure crime victims access to restorative justice services. In the studied sample only two respondents used such services (in the form of mediation). Most of the other respondents do not remember anyone informing them about this type of services and only one person did consciously choose not to use them.

## Right to legal aid

Article 13 of the Directive stipulates that Member States ensure the victims access to legal aid, if the latter have the status of a party in a lawsuit. The majority of the respondents who participated in a criminal trial used legal aid paid with their own funds or appointed by non-governmental organizations.

## Right to reimbursement of expenses and return of property. Right to a decision on compensation from the offender in the course of criminal proceedings

The sample did not include any case of violation of the following articles of the Directive: Article 14, 15 and 16.

## Right to protection

Article 18 of the Directive states as follows: „Without prejudice to the rights of the defense, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeated victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the **PHYSICAL PROTECTION** of victims and their family members.”

Some of the participants were not offered protection against secondary or repeated victimization. In the case of two people from Croatia, the police from time to time patrolled the neighborhood where the two lived in order to capture or deter the offenders. In some of the cases, the offenders were apprehended or received a restraining order. The inaction of the police towards a respondent from Latvia, who, due to sharing a house with the offender, was especially exposed to secondary and repeated victimization, was striking (**EXAMPLE 3**).

### **EXAMPLE 3: LATVIA, MAN [LV02]**

The respondent was subject to serious threats and offences, including threatening with a knife, motivated by hatred for his sexual orientation. The

offender was his mother's partner, with whom he lived. The man was petrified and called the police. Once they arrived, the police officers actively and effectively discouraged him from making a complaint, saying that it was not going to bring any effect and just provoke the offender and make matters worse. The case was not reported. After the incident the respondent continued to live with the offender.

Also the lack of the court's response to the mocking and homophobic statements of the offenders during the court proceedings, reported by three respondents from Poland and one from Croatia, can be deemed violations of Article 18.

Attention should be paid also to situations in which the respondents experienced secondary victimization by police officers, while making the complaint with regard to a criminal offence. A few respondents felt offended as attempts were made to assign the responsibility for the crime to them (EXAMPLE 4).

#### EXAMPLE 4: POLAND, WOMAN, CONVERSATION WITH A POLICE OFFICER SITTING AT THE RECEPTION DESK AT A POLICE STATION [PL18]

"The policeman decided that perhaps I was going to be a good person to talk to and he told me something in the way of 'so this is why they broke your windows, because you flaunt this homosexuality of yours too much'. Generally I was kind of stunned, whereas the man continued with his stream of thoughts and told me that 'there was too much of it' and that we flaunt and this is because... He would repeat the same old story again and again... I asked him what he meant saying that we flaunted homosexuality because I didn't understand what he meant, what he wanted to say. To which he said more less this: "Don't you think it's fashionable these days?" So I asked him: "But what?" And he said: "Homosexuality, you know, just as it was the case of being Jewish. Some time ago it was in, so everybody was Jewish. Now it's cool to be gay, homosexual, and now everybody is gay."

### Right to avoid contact between the victim and offender

Pursuant to Article 19 Section 1 of the Directive, within the spaces where criminal proceedings are conducted, Member States should establish the necessary

conditions to enable avoidance of contact between victims and the offender, unless the criminal proceedings require such contact. Section 2 of this Article states that Member States should ensure that court buildings have separate waiting rooms for victims.

Based on the data gathered in the course of the study, it can be concluded that the Directive's guidelines for the right to avoid contact with the offender are sometimes being breached. While waiting for the hearing, the victims often share the waiting rooms with the prosecuted who were released pending trial. Often, this encounter before the hearing is an occasion for the offender to provoke the victim. Even without direct contact, staying close to the offenders before the hearing may be the cause of victim's discomfort.

## Right to protection of victims during criminal investigations

Article 20 of the Directive envisages that the interviews of victims during the preliminary proceedings should be conducted without additional delay after the criminal complaint has been made and the number of hearings should be limited to the minimum. Article 20 also states that victims may be accompanied by their legal representative and a person of their choice, unless there are reasons to exclude such option.

The information provided by the study participants indicates frequent violation of this rule. It is often the case that after making the complaint there is a long break: the interview and other preliminary proceedings are carried out a couple of weeks later. Moreover, even if the number of the official interviews held is rather sparse, the victims have to talk about the criminal offence during informal interactions with various people. The operators accepting phone complaints, the officers at the scene of the incident and those in the police station's reception, as well as those investigating the case – they all expect to hear an account of the offence. Nonetheless, the right to contact law enforcement authorities in the company of a person appointed by the complainant is usually observed.

## Right to protection of the privacy

Article 21 of the Directive regards the remedies which the relevant authorities of Member States may apply in order to protect victims' privacy. Based on the information collected from the participants of the study, it can be assumed that the victims' right to privacy is not always respected. The prevalent context in which sensitive data of the victims is acquired by a third party are: interviews conducted at police stations and at the incident scene. Many respondents said that during their hearings at the police station, apart from the officer accepting the statement, there were also other people in the room – usually officers performing their work, unrelated to the case. Statements provided at the scene of incident could be heard by people in the surroundings, often including those in conflict with the respondents, e. g. patients walking along the corridor, neighbours or offenders.

Another situation in which the information concerning the victims is acquired by a third party is the very first moment of arrival to the headquarters of law enforcement authorities, when in the waiting room in the company of others the victims have to explain the reason for being there and provide the personal details. For transgender individuals whose statutory sex does not have to be compliant with the gender expression, it can be a particularly difficult experience (EXAMPLE 5).

### EXAMPLE 5: POLAND, TRANSGENDER PERSON F/M, 25, ON INTERACTIONS AT THE POLICE STATION RECEPTION

“And it is always like that, that I need to show my ID at the lodge, reception, whatever it's called, where there's a policeman sitting there who accepts the initial complaint and information about who came and why. And this room is connected with the waiting room, where each time I present the summons document on which there is me and sometimes it happened that I had to prove that it was really me [name and surname], as you couldn't say by my looks. It was never the case that the police officers did it discreetly. When there were no people in the waiting room then it's ok, but even if there were, they would say: “But it is not you, this lady should come” and so on and so forth.”

## Individual assessment of victims to identify specific protection needs. Right to protection of victims with specific protection needs during criminal proceedings

Article 22 of the Directive emphasizes the right to receive an individual assessment as a victim in order to determine their needs regarding protection. Pursuant to Section 3 of this Article, special attention must be paid to, among others: victims of offences committed due to prejudice and discrimination, including hate crimes. In other words, the individuals who suffered from crimes motivated by homophobia and transphobia, under the Directive who constitute the population of the respondents of the current study, deserve a special attention regarding assessing their needs for protection.

The safety measures accessible to the complainants with specific protection needs are specified in Article 23 of the Directive. During the preliminary proceedings, these measures include interviewing the aggrieved in rooms suitable for that purpose, conducting interviews with the participation of professionals, interviewing the victims by the same interviewers; and by a person of the same sex if the victim suffered from sexual or gender-based violence. During the criminal proceedings the measures available to complainants with specific protection needs include: avoiding eye contact between the person and offender, enabling the hearing outside of the court, avoiding unnecessary questions about the private life and conducting the hearing without the audience.

Vast majority of the respondents do not recall the law enforcement authorities and the justice system applying measures aiming to satisfy their specific protection needs. The case of rape from Latvia, where the respondent was heard in a room suitable for this purpose by a specially trained police officer, was an exception. None of the respondents whose cases reached the court proceedings stage was treated with special protective measures such as preventing eye contact with the offender or testifying outside of the courtroom. What is more, none of the participants mentioned being informed by the representatives of the public authorities about such possibility.

## Conclusions

Not all of the Directive guidelines are observed in the countries included in the Project. Deficits are visible both in the official (the common practice of not providing the victims with acknowledgements certifying that they have made a complaint with regard to a criminal offence) and soft (i. a. poor communications, little support, failure to identify specific needs of the complainants, breaching the right to privacy, violating the victim's dignity) aspects of the operation of law enforcement authorities and the justice system. It is worth emphasizing that the Directive's guidelines are respected to a greater extent when: the victim suffered from a criminal offence with procedures familiar to the authorities and were implemented (e. g. rape); is a public figure or their case is monitored by other authorities (non-governmental organizations, media or Ombudsman's representative). In the light of conducted interviews, the law enforcement authorities and the system of justice are rather reactive in their actions – if they exercise the victim's rights it is rather upon the request of the latter than on the initiative of the former. On the other hand, in order to effectively exercise their rights and survive in the system, the complainants must be in possession of vast psychological resources, knowledge, connections and money. In the future, it would be desirable to support the system for the benefit of those lacking sufficient resources, so that the rights of the victims are available to anyone, regardless of the level of their status or knowledge.



### 3. WHAT ARE THE NEEDS OF PEOPLE WHO HAVE EXPERIENCED HOMOPHOBIC OR TRANSPHOBIC CRIMES?

The needs of individuals who have experienced hate crimes are the fundamental needs of a person in a difficult situation. In this regard, they are similar to the needs of the victims of other offences. Their needs comprise primarily the essentials, just like any other aggrieved. We can name among them: the need for physical and psychological safety, need for respect, information and the need to understand one's own situation, the need for the acknowledgement of the harm caused to them, or the need to restore the sense of control and justice. On the other hand, the special identity of the victims and the special character of such cases make the aggrieved ones feel the needs are experienced more profoundly and it is more difficult to satisfy them. The need for the acknowledgement of the special character of hate crime is of a special nature. It affects the central, for most people, element of their identity and often includes an evident aspect of symbolic violence. Its purpose is humiliation, exclusion and destruction of one's identity. At the same time, the identity related to sex, sexuality and expression of gender is one of the core and most sensitive aspects to the sense of "self" for most people, regardless of their orientation or gender. Most victims underline the psychological aspect of this type of violence as the one bringing the most serious and enduring effects.

The needs of those who have experienced hate crime are described below, in the way they were reflected in the collected interviews. The structure of the description has been inspired by the hierarchical model of needs by Abraham Maslow<sup>1</sup>. The list of the needs starts with the most fundamental need for physical survival and safety and ends with no less important, yet more complex psychological needs.

## Need for safety

The need for safety is the strongest at the very beginning of contact with the police, in the moment of the incident or immediately after, still under the influence of shock, accompanied by a sense of disorganization and a strong feeling of danger. At that moment, even minor remarks, behaviors or even single words of the police are significant and will be remembered for a long time. Small details, such as ensuring calmly that the police will undertake measures to protect the complainant, can to a significant extent contribute to increased sense of safety. On the other hand, even minor comments, e.g. making the victims feel guilty about not remembering all the details or commenting right away that the case does not have any chance for success, will stay in their memory for long time.

The basic way of satisfying the need for safety is a guarantee of **PHYSICAL PROTECTION** to the injured parties. The conducted interviews suggest that the representatives of the law enforcement authorities vary in the way in which they take care of the physical safety of the victims. Alongside the interventions in which the first steps of the police aim at separating the victim from the offender, there are cases when the officers do not make that effort, putting the victims' health and life in danger (**EXAMPLE 6**).

### **EXAMPLE 6: CROATIA, WOMAN, 33 [HR03] - LACK OF REACTION ON THE PART OF THE POLICE DURING A LGBTQI MARCH**

„I don't remember now at what time, but everything was in a fog, explosions, stones were raining down on me... At one moment I saw, I was at the front as one of the organizers, at my side was [name], a member of the

European Parliament, she was 8 months pregnant and we clenched to each other in terror, and I noticed that the thugs had leaders, I saw one directing the others, he stood there, directing the others, where to throw their objects, and I realized, I assumed towards me as well, because I was prominent in the media, and in that moment I said to [name] to move away from me, because she's pregnant and so she's not exposed to the attacks as much. I also saw that close to their leader, the one conducting the attacks, there was a number of police officers just standing there, not doing anything to stop him from conducting the attacks against us, as I said. They did nothing to stop the attacks. In addition, all those people throwing all those objects at us, hitting us, they were also yelling the whole time, threatening us: "Kill, kill the Serbs, the faggots, you're all going to die". All kinds of insults..."

**SYMBOLIC SAFETY** refers to the feeling that the law enforcement authorities and the justice system are on the complainant's side, are protecting the complainant, they are not hostile or indifferent towards the person. The confidence that the state authorities will – in a situation of a danger or injustice – guard the rights of any person and protect him/her is an expression of the symbolic sense of safety. Even though symbolic safety seems to be an insignificant issue compared to the occurrence of real dangers, in fact ensuring it, especially in the first moments, is often crucial for the wellbeing of the complainants. LGBTQI people experience difficulties due to the factual and symbolic exclusion from various types of communities. It seems even more important that the justice system and the law enforcement authorities guard their rights of the citizens, especially when they become crime victims. In the interviews with individuals who were subject to a hate crime, it was apparent that the respondents were highly sensitive to the choice of words, official and private comments they heard from the police officers, prosecutors and judges. Sometimes a small comment addressed to the victim, for example like: "the police will take care of it and there is nothing to be afraid of", can change the perception of the whole situation. Even if apprehension of the offender is impossible, the symbolic feeling that somebody recognized the person as a victim, acknowledged the harm as injustice and honestly tried to help as much as it is possible, is crucial. Those minor acts of the police were recalled and appreciated by the victims as something meaningful. The example of police behaviors increasing the symbolic sense of safety include among others: showing adequate sympathy, acknowledgment of the suffered

harm and injustice, ensuring that any possible measures will be taken in order to apprehend the offenders, providing private contact details, emphasizing that the police's role is to protect citizens. This is about a basic, often non-verbal and symbolic message: "what happened to you is reproachful and unlawful" and "we are on the side of the injured ones" (EXAMPLE 7).

#### EXAMPLE 7: LATVIA, MAN, 31 [LV01] – A POSITIVE EXAMPLE OF ENSURING PHYSICAL AND SYMBOLIC SAFETY IN CONFRONTATION WITH THE OFFENDERS AT THE POLICE STATION

"There was also a confrontation, one of them [the offenders] who hit me was very aggressive and was also screaming at me that I am a "faggot" and that is the reason I received [the punch], but the person [the policewoman] calmed him down quickly, in a harsh voice said to him to shut up. He listened and did so. She was really supportive. I felt that in a way she will not allow to me being bullied."

YOUNG PEOPLE are a group especially sensitive in terms of physical and psychological safety, as they depend to a greater extent on others, both economically and emotionally. The youth, more frequently than others, can struggle with their identity, being merely at the beginning of the path to discovering it. It happens that they hide their real identity from their families and hostile environment. At this stage of shaping the identity, one is also more vulnerable to offence and humiliation. Contact with police can be especially threatening for young people due to their wish to maintain their privacy and scarcer resources for dealing with the situation (dependence on the family, intolerant peer groups). Regardless of whether the fear of obligation to reveal the identity at the police station and its consequences (some fear that it is going to be on their record forever) is realistic or not, it constitutes a serious problem, characteristic for LGBTQI individuals (EXAMPLE 8).

#### EXAMPLE 8: POLAND, MAN, 30 [PL14] – CONCERNS CONNECTED WITH OBLIGATORY COMING OUT

The respondent, a gay, recalls that when he was a very young boy, he was caught with his partner by the police for „indecency” and transferred to a sobering-up station. He was very young then, he hid his identity and was struggling with it. Meanwhile, the police officers delivered them to

the station workers saying “take the faggots” and openly offended their identity. The respondent spent the night in the sobering-up station in enormous fear that the fact of his being gay would come out and bring him serious consequences consisting in being rejected by all his environment, which was extremely intolerant towards homosexuals at that time.

Fulfillment of the victims’ need for safety is also connected to granting them protection against **SECONDARY VICTIMIZATION**. The informants stated in the interviews (especially those who participated in court proceedings) that the lengthy and time-consuming procedures, the necessity to describe the case many times and to meet the offenders in court, often many times, prevented them from forgetting about the situation. The participants often felt that the offenders, who saw them many times, knew and remembered them very well, which increased the risk of secondary victimization. The victims’ need for safety was nevertheless satisfied when convicting sentences were issued. Still, these were just few cases in the sample.

## Need for belongingness

The sense of belongingness in the situation of contacting the law enforcement authorities and the justice system comprises the sense of belongingness to a civil community in which members enjoy equal basic rights and protection of the state – regardless of their gender, age, race, religion or sexual orientation. The need for belongingness to the community is often unfulfilled in the case of LGBTQI individuals due to the real and symbolic, often aggressive, refusal to grant them equal rights by different groups in the public discourse. This is also visible in the statements of the respondents, quite often referring to the idea of citizenship in the interviews. They emphasize that they are citizens just like the others: “pay the same taxes as others” and fulfill their civil obligations. In the context of hate crimes the need for belongingness to a legitimate community can be either frustrated or satisfied (**EXAMPLE 9**).

### EXAMPLE 9: POLAND, MAN, 45 [PL01] – FRUSTRATION OF THE NEED FOR BELONGINGNESS

Having experienced negligence of the police with regard to their complaints concerning a criminal offence, the respondent complained: „You know, how I am supposed to feel like a citizen of this country? How am I supposed to feel that I have a fantastic prime minister, prime ministress, president? How am I supposed to feel I am a Pole, a patriot, celebrate national festivals? Be proud of the red and white flag and hang it out on the flag day? I am fucking sorry. You understand? This country pushes me to the margin, it would like to get rid of me in the first place, it doesn't see me in the legal system in any aspect and not only in the situations, you know, of that kind of [hate] crimes, but also as a citizen who has the right to found a family”.

In a few interviews, the participants came onto the subject of unfriendliness or open hostility of the police towards the protection of **PUBLIC GATHERINGS** of LGBTQI community. Depending on the political atmosphere in the given locality, the police can be overtly hostile towards the participants of events in public spaces or display negligence of taking care of safety during such events. In this way, LGBTQI people are symbolically excluded from a democratic community and its right to gatherings. On the other side, the respondents described the situations in which police officers displayed a kind and friendly attitude towards the participants of such public gatherings. This was the case e.g. in one of the major Polish cities where one of the officers asked the respondent (LGBTQI activist) whether they were satisfied with the service of the police (although, it is worth emphasizing that in this case the helpful attitude of the police resulted from enduring efforts of the participant). The manner in which the police approach public gatherings organized by LGBTQI community has a symbolic dimension – it is a message to the representatives of this minority showing whether they belong to a wider group of citizens or not. Due to this fact, the behavior of law enforcement authorities during marches and performances can translate into trust of LGBTQI community towards the authorities and the number of complaints reporting criminal offences.

**THE INDIFFERENT (SOMETIMES REFERRED TO AS “BUREAUCRATIC”) APPROACH TO THE VICTIMS’ CASES OF THE LAW ENFORCEMENT AUTHORITIES AND THE JUSTICE SYSTEM** can also have a negative impact on the sense of belongingness. After having experienced a crime, their life, health, property, dignity and other values are in danger – in such case the evident lack of actual protection is a step

toward the exclusion from the community, yet is not the only factor. It is also the lack of engagement or engagement inadequate to the nature of the case, indifference and pure formalism that can be (and often are) understood as a denial of somebody's belonging to the community. In many interviews, the indifference or alleged neutrality of the police was perceived as negligence and exclusion, a kind of message saying that homophobic and transphobic crimes do not matter, they are just a nuisance. The respondents often described the impact of their contact with the law enforcement authorities and the justice system emphasizing the fact, that it made them constantly feel as a cause of troubles to the others because they reported the case. The feeling of being "a cog in the machine" emerged in the participants' descriptions as well – many of them expressed the belief that the law enforcement authorities and the justice system were more interested in the correct course of formal procedures than the complainants themselves. The LGBTQI people felt that nobody cared about what happened to them (EXAMPLE 10).

#### EXAMPLE 10: LATVIA, MAN, 50 [LT04] – ON POLICE PROCEDURES

"The only comment was the one right after this technical questioning, a letter came the next day, stating that the case is dismissed, and then I made a conclusion, that everything I had tried to say during the questioning had no effect on the decision, and it was sad to think, that this process was done only for the process itself, very technically. [...]. It's like, they [the police] don't need that result [of the investigation]. The process exists because of the process. We perfectly remember the novel "Process", by Kafka, and here you feel as part of the process, which never ends, where's the beginning, where's the end. And of course, it washes the meaning away, because the process must be for the result, but if there's no result..."

### Need for acknowledgement and respect

The need for appreciation and respect, including the acknowledgement of the suffered injustice, psychological state and the identity of the person who has experienced crime, is one of the fundamental human needs. The right to dignity is included in the human rights catalogue. The members of minority groups and those discriminated against can be especially sensitive to the satisfaction of the need for

acknowledgement and respect. In the practical experiences of the respondents, the need for acknowledgement and respect was violated to the biggest extent through neglecting the identity of the victims by police officers and refusal to acknowledge the homo- or transphobic motivation of the offenders.

**DISREGARD OF THE ISSUE OF GENDER IDENTITY AND SEXUAL ORIENTATION OF THE AGGRIEVED BY THE REPRESENTATIVES OF THE LAW ENFORCEMENT AUTHORITIES AND THE JUSTICE SYSTEM** may occur due to several reasons. Firstly, the representatives of these authorities may consciously avoid the problem of the injured parties' identity in order to create an impression of their neutrality and avoid being accused of discrimination. Even though such practices have been interpreted as a sign of professionalism by some of the respondents, other complainants felt that a relevant aspect of their identity has not been recognized. Disregard of the issues of gender identity and sexual orientation may also result from the lack of an appropriate language for addressing the topics concerning LGBTQI individuals. The conducted interviews shown that even though the police officers (except for those openly prejudiced) try to use an adequate and non-discriminatory language, they lack the skills in that matter. In the opinion of some of the respondents, police officers gain knowledge on LGBTQI issues from the media (which are not always LGBTQI friendly), rather than trainings or real contact with LGBTQI persons.

One of the most apparent needs of the crime victims according to the data collected, is **THE NEED FOR THE ACKNOWLEDGEMENT OF THE CRIME AS HOMOPHOBIC OR TRANSPHOBIC** by the law enforcement authorities and the justice system. In the legal sense, in some countries (Poland, Latvia) it is not possible; in the countries where it is possible to classify an incident as a hate crime based on the sexual orientation and gender identity of the person, the police are often unwilling to classify it as such and by all means discourage the complainants from striving for such classification. Nonetheless, not only the mere classification of the offence, but also the designation of the crime's character in the reports, witness statements, investigation materials, statements of grounds and similar documents, could serve as an acknowledgement of its nature.

Imposing a different motivation of the offender than the way it is perceived by the complainant, as well as omitting or neglecting the aspect of homo- and/or transphobic motivation of the offenders and refusing to classify the case as related to hatred has been perceived by the participants as a distortion of the truth and a contradiction to the meaning of making the complaint (**EXAMPLE 11**).

### EXAMPLE 11: POLAND, MAN [PL30] – ON COURT'S RULING

The respondent was beaten in the night, while he was going along the street holding hands with his boyfriend. The offenders accosted them with insulting words referring to their sexual orientation. The insults and humiliating jokes occurred also at the police station where the victims and offenders were transported, and continued also in court, in the presence of third parties. Nevertheless, the statement of grounds stated that the battery was not motivated by hatred (this was allegedly only the motivation of verbal insults), but resulted from the fact that the victims reacted to the insults instead of not reacting at all. The respondent feels that such statement of grounds to the ruling shatters the whole point of it and not only are the victims blamed in that way, but also the whole event is compared to a common hooligan incident which can happen to anyone in the street. Meanwhile, for the respondent, it was the homophobic character of the incident that was its main point and striving for the disclosure and punishment of this fact was the main motivation for going through the lengthy and tiresome process of seeking justice.

The respondents were actually unanimous in the notion that hate crimes differ from the “usual” accidental acts of hooliganism, battery or violence in the street. After experiencing the symbolic violence including: humiliation and denial of belongingness, the need for acknowledgement is very strong. Hence by dismissing homophobia or transphobia as a factor in the case, the law enforcement authorities and the justice system contribute to the even stronger frustration of the complainants.

Another frequently occurring phenomenon violating the need for respect is that the police, in the opinion of the respondents, appear to be more interested in preserving the good reputation based on the opinion of the media and on the statistics, than taking proper care of the offence, not to mention the wellbeing of the complainant. The respondents perceived the lawsuits followed by the media or human rights organizations as handled differently as the rights of the victims are respected to a greater extent. This theme reoccurred in numerous interviews.

## Need for contributing to the common good

In some of the interviews a strong need for contribution for the better future and the wellbeing of minority groups, as well as protecting the weak against hatred, was expressed. In the participants' statements it was often mentioned that the whole issue of reporting the case and going through all the procedures take so much time and emotions that they would not have done it if it had not been for their conviction that reporting such cases is a civil obligation or a form of contribution for the benefit of the other, weaker individuals.

Those who reported the crime have the need for the acknowledgement of the interest and harm of the whole group; the smaller or bigger private injustice represents a broader problem. For some of them this case is not an individual affair. They hope to shape better social practices among the law enforcement authorities (EXAMPLE 12).

### EXAMPLE 12: POLAND, MAN [PL03] – REPORTING HATE CRIMES AS ORGANIC WORK

The respondent, heterosexual activists of a human rights organization, has been reporting to the police cases of homophobic hate speech for years. He interprets his actions as a form of organic work, which aim is to increase the awareness among the representatives of law enforcement authorities and the justice system: "I have been doing it [reporting the hate speech] for years and I know that it is one of the ways to educate the police and prosecution authorities, to educate them how they should ensure the compliance with the law in Poland".

It is worth noticing that there are differences between those who are public figures / recognized in the media and those who would like to keep the case secret. The activists are more prone to revenge from their political rivals; on the other hand they have more resources. In contrast, non-activist focus on maintaining privacy.

## Conclusions

The most neglected need of the respondents in contact with the law enforcement authorities and the justice system is the need for acknowledgement. It would be satisfied if the police officers, prosecutors and judges acknowledged the homophobic or transphobic motivation of the offenders, the best would be doing so in the form of a legal classification of the crime.



## 4. EFFECT OF THE CONTACT WITH THE LAW ENFORCEMENT AUTHORITIES AND THE JUSTICE SYSTEM ON WELLBEING OF INJURED PARTIES

Apart from the identification and punishment of the offenders, a relevant function of the actions of the law enforcement authorities and the justice system is restoring the psychological wellbeing of the victims, undermined with the victimization. Those who are subject to hate crimes addressed the law enforcement authorities in order to regain the sense of control and justice. Sometimes the mere reporting of the crime – which in the conducted interviews was interpreted as acting for the benefit of LGBTQI community – regardless of how the case is finally resolved, is enough for a victim of a homo- or transphobic attack to feel better (EXAMPLE 13).

### EXAMPLE 13: HUNGARY, MAN, 28 [HU01] – CONSEQUENCES OF MAKING A COMPLAINT WITH REGARD TO THE OFFENCE

“I didn’t do it to catch the attacker, because I knew that there was 1% chance for that, if there was any, but I did it for homosexuality, so for ‘our cause’. Although if I’d been simply beaten up, I mean, if the attack hadn’t have any gay aspects, then... I’m not sure if I’d have reported it to the police, but in any case, reporting it to the police made me feel better.”

A factor which has a positive influence on the wellbeing of the complainants is the identification and punishment of the offenders. The case closed with a convicting judgment restores the sense of justice and brings trust in an efficient functioning of the country, even if the quality of contacts with the representatives of the law enforcement authorities and the justice system was not ideal (EXAMPLE 14).

**EXAMPLE 14: LITHUANIA, WOMAN, 25 [LT04] –  
CONSEQUENCES OF MAKING A COMPLAINT WITH REGARD TO  
THE OFFENCE**

“[I felt] Better. It [contacting the law enforcement authorities] helped. I think that I did the right thing, contacting law enforcement, they [the offenders] were found, punished to some extent, so the law enforcement is working. [...] The police office sent me letters informing about the process of the investigation. The investigator called me to make appointment for another meeting. So, in other words, I evaluate it positively. I don’t evaluate it as receiving a lot of attention and support, but I believe they did their job, even though not entirely, but they did.”

In the majority of interviews, however, the respondents claimed that the contact with the law enforcement authorities and the justice system made them feel worse rather than better. Even in situations when the actions of the police, prosecution and court were effective – they resulted in the offenders being convicted – in the cases when these authorities did not consider homophobic or transphobic motivation of the acts, the complainants felt they lacked the acknowledgment, which affected the whole process of seeking justice as it was considered as unsatisfactory (EXAMPLE 15).

**EXAMPLE 15: POLAND, MAN, 24 [PL22] – ON THE JUDGEMENT  
CONVICING THE OFFENDERS ON GROUNDS OF HOOLIGANISM  
AND NOT HOMOPHOBIA**

“The judgement was absolutely unsatisfactory. The judge completely missed the fact that it, it’d been motivated by homophobia and decided that “those are fucking faggots” was equal to “stupid idiots””

The detriment of the wellbeing of the injured results also from the lengthy and exhaustive procedures and the necessity to provide the account of the offence on

numerous occasions. Some of the respondents were not able to reach the psychological closure and move on with life without being affected by the offence. Another cause of discomfort was the uncertainty of the results of the psychologically exhausting investigation (EXAMPLE 16).

#### EXAMPLE 16: HUNGARY, MAN, 32 [HR04] – PSYCHOLOGICAL CONSEQUENCES OF MAKING A COMPLAINT ABOUT THE OFFENCE

“Well, I feel worse. It [the investigation] is going on for too long and I have to keep reliving it, so I often think, was it even worth it, reporting it, because you’re only prolonging your own suffering. And I know, I doubt that, I don’t think a verdict will be reached, that he [the offender] will probably be acquitted, which will probably make me sad. I don’t know, I really don’t know what it’ll achieve. Maybe it would be best not to report these attacks, not to enter any sort of trial and try in that way to keep your name out of the public and hope, that with time, people will forget about it, that it’ll stop, that those attacks will cease. I don’t know, I’m trying to figure out a smart course of action and I still can’t, I still can’t figure out what would be the best thing to do.”

In some cases, the quality of contact with the representatives of the law enforcement authorities and the justice system was a source of frustration. Not only the openly hostile behaviors of the police officers, but also the lack of interest from their side, led to the feeling of “being a cog in the machine”, meaninglessness in confrontation with the bureaucratic machine of the justice system, indifferent to an individual harm (EXAMPLE 17).

#### EXAMPLE 17: POLAND, WOMAN, 34 [PL11] – ON HER OWN MEANINGLESSNESS IN THE PROCESS OF SEEKING JUSTICE

„You know what, I also have various experiences with the police, here, in this situation I saw that I was just a little mite who came to them with something tiny, meaningless, just for a second; they issued the act straight away, we classify it as such, they didn’t even call, didn’t say, that this was just a 10-minute episode in the life of this policewoman and that’s it .”

## Conclusions

The effect of the contact with law enforcement authorities and the justice system on the wellbeing of the persons subject to homophobic or transphobic crimes depends on a range of factors. A good quality contact with the representatives of the authorities, the identification and punishment of the offenders and recognition of the hatred as the key reason for such behaviours would help the injured parties to regain their psychological balance. The lengthiness of the proceedings, the need for providing accounts of the crime on numerous occasions, disregard to the homophobic and/or transphobic motivation of the offenders and prejudices or unsympathetic behaviors of the police, prosecution and court representatives affect adversely on the victims' needs and deteriorate their psychological wellbeing.

## 5. FUNCTIONING OF THE LAW ENFORCEMENT

### AUTHORITIES AND THE JUSTICE SYSTEM

The analysis of the collected material indicated common occurrence of a few serious, fundamental phenomena which reduce the effectiveness of the law enforcement authorities and the justice system in combating hate crimes. These circumstances may result in a low rate of reporting such crimes.

#### The problem of trust in the police and the law enforcement authorities – fear of incompetence and negative attitude

The level of social trust of LGBTQI people towards the police and the justice system is relatively low, even though many of the LGBTQI individuals display an active, pro-state attitude and they expect the State to protect their rights. The low trust in the law enforcement authorities has two sources – concerns regarding the generally low effectiveness of the police or the relevant institutions as well as the anticipated negative attitudes of these authorities towards LGBTQI individuals. The disadvantageous perception of **THE POLICE'S INCOMPETENCE**, causing a lack of trust, often is based on small details. In the interviews, among other things, the lack of e-mail address of the police (the police officers provide their private e-mail for correspondence) was mentioned. The other reasons were: the inability to use photos or videos in the electronic form; the staff typing very

slowly resulting in spending few hours to make the complaint and the lack of communications between individual units.

The problem which reoccurs in more than one country was the matter of preserving the video recordings from the city or private monitoring, which could serve as a valuable evidence in some of the cases. The police officers either did not consider the suggestions of the aggrieved that such recordings should be used in the investigation or they waited too long before finally requesting the relevant authorities/individuals to make them available (the recordings are deleted after a certain period of time). Also the effectiveness of a city monitoring systems, which often is very expensive, is unsatisfactory. The range of the camera reaches only some sections of the public space and the quality of the recordings does not allow the identification of the recorded people. In one of the cases in Croatia the cameras stopped working for 10 minutes, exactly when the respondent experienced the offence.

#### EXAMPLE 18: HUNGARY, WOMAN, 32 [HU5] – THE PERSON BROUGHT TO TRIAL WAS NOT THE OFFENDER

Having experienced an attack of a radical right-wing fighting group, the respondent – a lawyer – wanted to test the functioning of law enforcement authorities and the justice system. For that purpose, she made a complaint with regard to the crime, providing the precise date, hour and place of the incident and indicating the monitoring cameras located in the vicinity. After some time, the respondent was summoned to the police station in order to identify the offenders among the persons verified that day by the police. The respondent indicated a few of them. After some time she was summoned to court. She was surprised that after she had found information about the defendant specified in the summons in the Internet, she realized that the person was not present in the place of the incident nor among the persons from the photographs of suspects that she saw. In the courtroom, to a great surprise of the police officers present there, the respondent testified that the defendant did not participate in the attack. As the respondent suspects, the police did not follow the available evidence while selecting the defendant, but they considered the reputation of the candidates – the person put in the courtroom had a prominent position in the environment of the local right-wing fighting groups.

The participants indicated also the poor infrastructure of the law enforcement authorities. In a repetitive manner, this infrastructural problem appeared during the initial identification of the offenders whose photographs were already in the police records. The photographs presented to the respondents were unclear due to their small size, they were also often out of date – the respondents saw the photographs taken a few or several years ago.

An extreme case of incompetence of the police officers was revealed in Hungary, where without prior consultation with the respondent, they brought a wrong person to the court.

The participants were not certain to what extent the unprofessional actions of the law enforcement authorities resulted from poor competence, and to what extent it was due to the low motivation of the officers to take care of LGBTQI individuals and how much it was caused by their ill will. Some of the respondents felt helpless if the crime was classified as too minor to prosecute, e.g. injuries resulting from the assault were relatively small.

The lack of professionalism of the law enforcement authorities translates into a common conviction, that whether the police really do take steps in the case and identifies the offenders is not certain. In some cases the victims themselves provided the police with hints and information which was evident and which the police did not find. The participants often understand the busyness and powerlessness of the police officers, as well as the level of difficulty of their work – the respondents would rather expect the change of the system. Due to that, they appreciate more even the small gestures of engagement on the part of individual police officers. Expecting negative attitudes, powerlessness and little initiative on the part of the law enforcement officers is even more visible, considering that in the situations where the interactions with them were successful, the respondents were generally surprised by that fact (EXAMPLE 19). The perception of the negative attitudes of the police towards LGBTQI individuals was connected with all of the issues described below.

#### EXAMPLE 19: POLAND, WOMAN, 32 [PL04] – MAKING A COMPLAINT WITH REGARD TO A CRIMINAL OFFENCE

“And it surprised me very much. I mean, I generally expected, going there [to the police station], I was prepared for a fight with prejudice of the policemen and policewomen and that I would have to, you know, do some boxing, so more less knowing what to say, not exactly though, as I had never

experienced something like that before and I hadn't been on any training on how to report such crimes. [...] But I didn't have to try that much, she [the policewoman] just accepted it, like, straight away, and noted down.'

## The problem of discouraging the victims from making a complaint with regard to a criminal offence

Active discouragement of the victims from making complaints with regard to a criminal offence is a frequent phenomenon. The representatives of the authorities hinder the reporting of the crimes especially in cases considered as minor or where there are small chances of identifying the offenders. Sometimes persuading the victims not to complain happens also in serious cases – the participants associate it with a negative attitude of the police officers towards their identity (EXAMPLES 20 AND 21).

### EXAMPLE 20: LITHUANIA, TRANSGENDER PERSON M/F, 21 [LT02] – WAYS OF DISCOURAGING THE VICTIMS FROM MAKING A COMPLAINT WITH REGARD TO A CRIMINAL OFFENCE

The respondent was attacked by a few strangers in her own house and her sister, whom the attackers taken for her, was beaten so severely that she was bleeding. The police arrived at the scene and probably rescued the respondent and her sister; however, the officers did not suggest accepting a complaint with regard to criminal offence. The respondent had to actively demand the acceptance of the complaint and being transported to the police station in order to make statement. The police officers at the police station secretly laughed at the victims, ignored them, made them wait for a long time and discouraged them from making a complaint. Despite serious injuries, the respondent's sister was not offered medical examination which made the case more difficult later on – medical examination was carried out much later, when the counsel told the respondent that it mattered. The police did not do anything in the case, did not preserve the traces and did not search for the offenders.

### EXAMPLE 21: POLAND, QUEER PERSON [PL15] – SUBTLE DISCOURAGING FROM MAKING A COMPLAINT ABOUT A CRIMINAL OFFENCE

The respondent describes the functioning of the reception desk at the police station. The woman sitting there asked the persons standing in the queue, bluntly and without any privacy, unnecessary, detailed questions about their case. The respondent had to publicly tell about his sexual orientation, standing in the queue. At the same time he witnessed embarrassing and humiliating questions asked to other crime victims. For example, an elderly lady who was a victim of a theft, whom the receptionist asked in what way she was holding the bag which was snatched. The receptionist kept suggesting that the lady was responsible for the incident. The respondent concluded that the receptionist functioned as a kind of a “gate keeper”, trying to discourage the victims from reporting the cases.

Although the practice of discouraging the victims from making complaints is not a problem limited to LGBTQI people, one may think that it is the most intensified in the case of homophobic or transphobic incidents – as the participants believe the law enforcement authorities do not consider that type of offence as significant.

### The problem of disregard of the homophobic and/or transphobic background of the crimes

One of the most common and most serious problems which stems from the qualitative analysis is the partial or complete disregard of the homo- or transphobic motivation of the offenders in the police reports and in offence classification. Several dozen cases of hate crimes were analyzed and in all of them the offender’s motivation had a great meaning. It is apparent in many ways, for example: while reporting the event to the police, the victims emphasized exactly that context, they cited insults, threats and offences which proved it and actively demanded the consideration of this context by the police. The descriptions of the long-term consequences of the events often indicated that the experience of hatred due to the gender identity or sexual orientation has other, more serious consequences than other crimes. Also, the offenders are assigning certain meaning to the committed

hate crimes, calling it an intentional humiliation, “forceful reeducation” and undermining the person’s identity as a purpose on its own rights (EXAMPLE 22).

#### EXAMPLE 22: POLAND, TRANSGENDER PERSON F/M [PL12] - DESTRUCTION OF THE VICTIM’S IDENTITY AS THE PURPOSE OF THE OFFENDERS

The respondent was beaten by a politically engaged fighting group („Młodzież Wszepolska”) which attacked him together with his friend while they were coming back from work. A group of around 8 men, having severely beaten the victims (with the use of broken glass bottles and severe kicking of the lying victims) stood over the respondent and his friend, humiliating them. “And, like, when we were both already lying, they started to kick us and saying some words, that nobody would ever want us, that we would always be so ugly, that nobody would ever be attracted to us and that generally everybody was ashamed of us, such things that... And somebody was passing by so they stopped for a moment. Somebody like, just passed by, and they were still standing over us and it lasted around 10-15 minutes and, like, there was no physical aggression, but, like, all the time, I don’t know, maybe they just wanted to brainwash us, telling us all over again how hopeless we were, I remember that they were telling me that I was fat and I should do something about it and still, I had no chance to do that, to do anything about me, cause you could not change your face.”

The symbolic dimension of violence aiming to bring psychological consequences for the aggrieved, often has, as it stems from the descriptions, more serious and lasting consequences for the victims than the physical injury. Some of the LGBTQI people who (due to frequent problems with acceptance by the environment and, in most cases, the difficult adolescence) might have problems with anxiety and self-esteem anyway, can be even more vulnerable to such symbolic violence (EXAMPLE 23).

#### EXAMPLE 23: POLAND, TRANSGENDER PERSON F/M [PL12] - PSYCHOLOGICAL CONSEQUENCES OF THE CRIME

„Let me put it this way, at the beginning I trivialized all those words [of the offenders], and the time showed that this is something that left a bigger trace in me than the physical violence. And, so, I feel that at first I was

shocked, but then... Well, yes then I remember that on my therapy it was associated with the fact that it was one of the reasons that my self-esteem was rather low, also that event. [...] Like... If they wanted to brainwash me somehow, then I think they partly succeeded."

Treating hate crimes as incidents that could happen to everyone who had bad luck and was in the wrong place in the wrong time is not fair towards the aggrieved. The acknowledgement of a different character of hate crimes and including it in the documents, even in the form of a note of a concurrent circumstance of the crime, would be a very important gesture considering the needs of the victims.

In this particular case (PL12) the police officers arrived after a very long time and they said that if the victims, who were in shock, did not remember much, there was no chance of finding the offenders. In consequence, the incident was not reported at all and the offenders were never brought to court.

The conducted interviews indicate the asymmetry of the meaning of homophobic or transphobic motivation of the offenders for the crime victims and the representatives of the law enforcement authorities. While the background of the incidents matters for the victims who spontaneously, or some even persistently, emphasize it in the complaints, the law enforcement officers tend to omit the offenders' motivation in the reports they prepare. Importantly, failing to consider the real basis of subsequent incidents is not only limited to the countries without specific categories of homophobic and transphobic crimes in the legal sense (Poland, Latvia). In the countries where the homophobic and transphobic crimes are recognized, it is also an issue that the offenders' motivation is (often consciously) omitted and even actively censored (EXAMPLE 24).

#### EXAMPLE 24: LITHUANIA, MAN, 30 [LT01] – DISCOURAGING THE VICTIM FROM EMPHASIZING THE OFFENDERS' MOTIVATION IN THE COMPLAINT WITH REGARD TO A CRIMINAL OFFENCE

The police officers told the respondent not to try to report battery which he experienced as a homophobic crime as, despite the recordings and witness statements, it would be difficult to prove the offenders' fault. As a result, the case was classified as an act of hooliganism/disturbing public order.

In the participants' opinion, it happens that the law enforcement authorities and the justice system trivialize the experiences of the victims. Not only are the events not classified as hate crimes but often they are not even recognized as general offences – they happen to be considered merely as infractions (EXAMPLE 25).

#### EXAMPLE 25: CROATIA, MAN, 32 [HR04] – CLASSIFYING THE EVENT AS A LOWER GRADE INCIDENT

“Each time at a report, they tried to trivialize it. Only following our repeated insistence that they should emphasize that we had been attacked because of our orientation, that it had been a hate crime, and not an ordinary attack, only then would they react and write it down. I mean, before, it was always handled as misdemeanors.”

### The problem of scarce knowledge and contact with LGBTQI persons

Some of the respondents indicated the problem of scarce contact of the representatives of the law enforcement authorities and the justice system with LGBTQI people and the lack of knowledge about the whole LGBTQI community, which is caused by it. Whereas the higher rank police officers appear to have such knowledge, the level is decreasing according to the place in the police hierarchy – with the lowest level among ordinary officers. In some cases the respondents had to explain what homophobia was and the meaning of the commonly known abbreviation of LGBT to the officers who arrived on the crime scene or those reporting the incidents. Shortfalls in the knowledge were revealed also in the contact with the injured parties. The officers of the law enforcement authorities seemed to rely on prejudice and stereotypes, or due to the lack of experience with such cases, they were omitting the issues related to the gender identity or sexual orientation of the respondents (actual or as assumed by the offenders). An attempt for political correctness resulted sometimes in an overprotective attitude towards the complainants, which the respondents interpreted as a display of patronizing (EXAMPLE 26).

### EXAMPLE 26: POLAND, WOMAN, 29 [PL17] – TREATING THE INJURED PARTIES NOT AS EQUAL PARTNERS

“But, on the other hand, that it [the offence] is treated as not very serious. [...]. Just not exactly like a partner, but like ... [...] attitude as bit like to a child or something. [...] These were sort of details which were like that... It [the way of being treated by the police] was exactly because we were in the march, like the very organizing of it, participating, getting involved in political events like that and not some serious behavior like belonging to a party or making a congress or being active on the street – those balloons, banners – childish nonsense, really... It was like we were handled with kid gloves. Seems like nobody knows what to do with us, because of this political correctness and this thoughtfulness not to, you know, not to do something wrong, but still we are such weirdoes. Like, a bit like they don't know what to do with us. And you can't really talk to us openly, because you never know what we take as offensive and, so, you don't know what to do with us.”

### Problem of the labour intensity required from the person making the complaint

Another common issue is something that can be described as the “do it yourself” syndrome. The success of the lawsuit, starting from the identification of the offenders to taking the case to court, often depends on the initiative, perseverance, resources and efficiency of the complainants. Sometimes during the investigation, crime victims realize that unless they take steps themselves in order to continue the proceedings, the law enforcement authorities will not do this on their behalf. Some of the respondents think that the representatives of the law enforcement authorities will not only fail to provide them with necessary aid, but will also look for an excuse to discontinue the proceedings, as it results in less workload for the officers themselves. Due to their inertia, some of the participants perceived the law enforcement authorities not as an advocate, but another obstacle in the process of seeking justice (EXAMPLE 27).

### EXAMPLE 27: CROATIA, MAN, 32 [HR04] – CLASSIFYING THE EVENT AS A LOWER GRADE INCIDENT

“The problem at the police is that you always have to be your own attorney and everything. They won't help you going through it, but you have to arm

yourself with patience and you have to study everything and know what's going on”

The interviews mention vast time resources, motivation and sometimes perseverance and legal aid that are needed for the cases to be instigated and finished in court. Crime victims, often on their own and not waiting for the police, identify the offenders, learn details, secure evidence. They do not believe that the police will do this or they decide to take steps when they notice the lack of engagement from the police's side (EXAMPLE 28).

#### EXAMPLE 28: POLAND, MAN [PL10] – COLLECTING EVIDENCE ON HIS OWN

“Generally, we provided the copies of the cinema video monitoring [scene of the incident]” right when we were going to the officer on duty [the police station]. We did it ourselves. Both were preserved. Because we wanted to make sure that it is attached to the documentation right away.”

### Problem of better treatment of victims with higher status by the law enforcement authorities

Another problem is a different treatment of the crime victims, depending on their social status, which is particularly present in Poland. As it emerges from the gathered data, the representatives of the law enforcement authorities are able to act fast, effectively and professionally. The exemplary conduct of the officers is, however, reserved for those having resources, e. g. power (EXAMPLE 29).

#### EXAMPLE 29: POLAND, MAN, 39 [PL27] – PROFESSIONAL ACTION OF LAW ENFORCEMENT AUTHORITIES

The respondent holds a prominent public function. In the case described by him the police presented a model behavior – they appeared quickly at the scene of incident, apprehended the offenders, informed the respondent on his rights and treated him with great respect. The respondent admits: “[The police acted] as if somebody had attacked the president of the Republic of Poland”

**CONNECTIONS WITH THE MEDIA**, which often inform the broad audience about the shortcomings in the actions of the law enforcement officers, are also a meaningful resource. Concerned about their image, the law enforcement officers fear criticism from the press, radio and television and quickly respond to it. A few respondents noticed that once their case had become known to the broad public, the quality of services of the law enforcement officers improved overnight (**EXAMPLES 30 AND 31**).

**EXAMPLE 30: POLAND, MAN, 34 [PL02] - INTEREST OF THE MEDIA AND THE SIGNIFICANCE OF THE CASE FOR LAW ENFORCEMENT AUTHORITIES**

„And he [the policeman] told her [the respondent's friend] that yes [...] the case was a priority. At that moment at the police station. [...] This was not directly told, but you could see that it was about the publicity.”

**EXAMPLE 31: HUNGARY, MAN, 27 [HU04] - CONNECTIONS WITH THE MEDIA AND THE QUALITY OF SERVICES PROVIDED BY LAW ENFORCEMENT AUTHORITIES**

„[Name, assistant in a non-government LGBTQI rights organization] mentioned the fact that it might have been a hate crime, and that I worked at [name of the TV station] and then suddenly, everyone [at the police] was kind and helpful.”

Another type of resources which allow the victim to obtain a better treatment from the law enforcement authorities is **AN EXTENSIVE SOCIAL NETWORK WITH REPRESENTATIVES OF STATE AUTHORITIES**, including the superiors of the officers managing the case. Having experienced the lack of respect to their rights at the level of police stations, the respondents from Poland and Croatia applied the top-down strategy, that is, tried to influence the actions of the ordinary officers through addressing those higher in the hierarchy, such as local police representatives for equal treatment, local Ombudsman representatives or politicians (**EXAMPLE 32**). Whereas this type of interventions appeared to be effective in Poland, they did not evoke any response in Croatia. The effectiveness of the top-down strategy in Poland exposes two phenomena. Firstly, for the officers of a lower rank, the orders given by the policemen higher in the organizational hierarchy are more important than the victims' rights guaranteed by the law. Secondly,

obtaining effective actions on the part of the law enforcement authorities is much easier if the victim has an extensive social network and knowledge – the top-down strategy was applied exclusively by LGBTQI activists.

#### EXAMPLE 32: POLAND, MAN [PL10] – APPLYING THE TOP-DOWN STRATEGY

As agreed with the police officers who arrived at the scene of incident, the respondent went to the police station the following day in order to make statement on his case. However, nobody was waiting for him. Following the respondent's conversation with the local police representative for equal treatment, a police officer from that police station called him and apologized for the situation, suggesting that he could make the statement in the place and time of his choice.

### Problems with the impartiality of the courts

An unexpected phenomenon disclosed in some of the interviews is the fact that the victims of hate crimes had worse experiences with the justice system than with the law enforcement authorities. Many uncomfortable situations were described related to the contact between the victims and offenders, including unwanted meeting in the courtroom as well as in the court corridors and waiting rooms. The topic of public arrogance of some of the offenders reoccurs in the descriptions of mocking the victims, laughing at them in the corridor or in the courtroom with no reaction from the others. The respondents from certain countries recalled a situation in which the judge or prosecutor participating in the case had self-evident negative views of LGBTQI community members (EXAMPLE 33) or was politically involved. The worse treatment of the victims by prosecutors and judges may be due to the fact that (at least in Poland) these groups underwent anti-discrimination trainings to a much lesser extent than police officers.

#### EXAMPLE 33: POLAND, MAN, 32 [PL13] – JUDGE'S NEGATIVE ATTITUDE TO THE VICTIMS

In a hearing regarding the battery of the respondent together with his partner and a friend, the court asked the respondent's friend if the word „fag-got” offended her, he was also expressing his annoyance with the case. The

respondent's account: "I was really, absolutely outraged, as this was not a case about a word, but about a battery, disrespect, 10 thousand different things, but not about a word. And he (the judge) was annoyed that he was given a case about a word. Whether a faggot is this or that. And then this comment that he would not be offended by it – he said those words. [...] From the moment when the Helsinki Foundation [Helsinki Foundation for Human Rights] started to appear in the hearings, these comments stopped, this did not happen."

The selection of expert witnesses is a similar problem. It happens that extremely incompetent expert witnesses are appointed, who moreover are public figures with openly expressing homophobic and transphobic views and those views are familiar to the broader public.

### Extraordinary case – “the good policeman”

In a few interviews the figure of “the good policeman” occurred – an officer who displays a lot of interest in the case, gives practical advice to the injured party and for their sake goes in his actions beyond the mere formal requirements. “The good policeman” ensures that the victim feels safe during the intervention at the scene of the incident, is available on the phone even while on holiday, openly admits that the attitudes of the representatives of the law enforcement authorities towards LGBTQI individuals are not always friendly and expresses his regret about this fact. Sometimes the wellbeing of the complainants is more important for “the good policeman” than the compliance with the law (EXAMPLE 34).

#### EXAMPLE 34: POLAND, MAN, 45 [PL01] – ADVICE FROM THE POLICE COMMUNITY SUPPORT OFFICER

The respondent complained to the police community support officer that, despite his complaints with regard to criminal offences made to the police and leading the officers to the group of young men that harassed him, the police never apprehended the offenders: “The policeman threw up his hands and said that there was no legal basis for the police to do anything, perform any effective intervention”; if I had been beaten so badly that the injury would last for more than 7 days, then the police could react. Whereas until

that moment I could only take the offenders to court in civil action, but I would have to know where they lived and what their surnames were. So, you know, I say to this policeman: "But how am I supposed to do this?". And he says: "I will tell you in private what I would do. Just like that. Fix it on my own". I say: "How, on my own?". "I would call my mates and we would fix the problem in the district."

The injured parties appreciate "the good policeman" whom they often perceive as the only one who demonstrated their interest and care in the process of seeking justice. The actions of "the good policeman" interpreted under the 2012/39/EU Directive would mean that they implement the "soft" guidelines regarding care for the wellbeing of the crime victims.

### Extraordinary case – crimes committed by police officers and purposeful negligence by the police

The homo- and transphobic acts of the law enforcement officers or purposeful negligence on their part constitute a separate category of problems in the functioning of these authorities. Each time when a particularly moving and dramatic story appears in the qualitative interviews, regarding violation of rights and violence performed by the law enforcement authorities themselves, the problem of their credibility occurs together with the unwillingness to accept such incidents. However, there are facts that make the stories credible such as: the stories appeared in the interviewed sample more than once, were complex and detailed; other sources informed about separate lawsuits due to the law enforcement authorities abuses.

#### EXAMPLE 35: POLAND, MAN, 32 [PL13] – BEATEN BY THE POLICE

In the middle of the night, in an empty street in front of a gay club, the respondent and his partner and a friend were laughing loudly. Police officers came over and asked them for documents. When the respondent asked them why there were doing this, they started to be aggressive and told one of the men to go to the police car. "[The policeman] went around the police car from the front, opened the door... I was sitting behind the driver. And he squeezed

my head between the front of my knees and the driver seat and started to hit me with his fists and shoe. At one point he poured tear gas on me – from that moment I don't know [...] if the second policeman also participated in the battery. [...] Then, at the sobering-up station, they say: "We have dealt here with worse faggots than you." Some things about pansies. Oh, and they asked me if I had HIV or AIDS, they were interested in such topics. At one point I said that I wanted to put on record that God, I was beaten and they said... One of them said: "Don't take the Lord's name in vain." And yes, he justified it – "God does not admit faggots to heaven."

The complainants may feel particularly helpless if the officers appointed to protect public order violate the law themselves and even powerless when they know that proving mistreatment by the representatives of the law enforcement officers is going to be difficult. In the described case (PL13] the proceedings were conducted, but were discontinued and recommenced many times. Recordings from the sobering-up station, where the respondent was left, confirmed that he experienced verbal insulting. The police on their own initiative conducted a disciplinary investigation against the officers and punished one of them with a reprimand – the scope of the punishment was due to the material evidence found.

Lack of protection on the part of the police during public gatherings reported by a few of the respondents is a circumstance which leads to undermining the sense of safety and increasing the sense of alienation towards the State. According to the interviews, during marches and performances of LGBTQI community organized in three Polish cities and one Croatian city, the police did not respond actively to the attacks against the participants by football yobs or extreme right-wing fighting groups. The inactivity of the police not only maintains the threat to health and life of the participants of the events, but was also interpreted by them as an expression of symbolic support for the offenders and offensive words said by them.



## 6. GUIDELINES FOR QUANTITATIVE STUDY

The qualitative study provided some guidelines concerning the structure of the quantitative study, which will be conducted in 5 countries which participated in the project in the summer 2015. The problems with gathering a sufficient number of participants in the qualitative study, particularly in Poland, indicate that the reporting rate for the homophobic and/or transphobic crimes is rather low. Therefore, we find it crucial to examine the factors influencing the process of lodging a complaint after a hate crime. In order to achieve this goal, a broader criterion of sampling must be applied in the quantitative study: that is being a part of the LGBTQI community. The data from a general sample of LGBTQI people will allow us to define the factors anticipating the experience and reporting of hate crimes, as well as help to identify the consequences of the contact with the law enforcement authorities and the justice system.

The data collected in the qualitative study allowed us to define in detail the most important research problems on which the quantitative part of the project should focus:

### WHAT FACTORS LIMIT THE REPORTING OF HATE CRIMES TO LAW ENFORCEMENT AUTHORITIES?

*Hypothesis based on qualitative data: Hate crimes are reported by people who possess vast psychological, social and material resources.*

## WHICH GUIDELINES OF THE 2012/29/EU DIRECTIVE ARE THE LEAST AND WHICH ONES THE MOST OBSERVED?

*Hypothesis based on the qualitative data: The individuals who made a complaint rarely received a written acknowledgement of that fact.*

## WHAT NEEDS OF HATE CRIMES VICTIMS ARE THE MOST AND WHICH ONES THE LEAST SATISFIED IN CONTACT WITH THE LAW ENFORCEMENT AUTHORITIES?

*Hypothesis based on the qualitative data: The least satisfied need of the hate crime victims is the need for acknowledgement.*

## IN WHAT WAY DOES THE CONTACT WITH THE LAW ENFORCEMENT OFFICERS AND THE JUSTICE SYSTEM AFFECT THE WELLBEING OF THE HATE CRIME VICTIMS?

*Hypothesis based on the qualitative data: If the homo- and/or transphobic background of the crime has been recognized and the offenders punished, the contact with the law enforcement authorities and the justice system has a positive influence on the wellbeing of the complainants.*

## WHICH ASPECTS OF THE PROCESS OF SEEKING JUSTICE ARE THE STRONGEST ANTECEDENTS OF THE WELLBEING OF HATE CRIME VICTIMS?

*Hypothesis based on the qualitative data: Recognition of the homo- and/or transphobic character of the offence is the most important for the wellbeing of those who have experienced hate crime.*

## WHAT EFFECT DOES THE CONTACT WITH THE LAW ENFORCEMENT AUTHORITIES AND THE JUSTICE SYSTEM HAVE ON THE TRUST IN THOSE AUTHORITIES?

*Hypothesis based on the qualitative data: The contact with the law enforcement authorities, when considered as positive, increases the trust in those authorities, whereas a contact considered as negative – decreases it.*

## Summary

- Qualitative data from 50 interviews with people who have experienced a homophobic or transphobic crime on the territory of 5 Member States constitutes an extensive material. Based on the information gathered, it was possible to identify the needs of crime victims and indicate typical problems within the observance of Directive 2012/39/EU as well as the functioning of the law enforcement authorities and the justice system.
- In the countries participating in the Project, the guidelines of Directive 2012/39/EU of the European Parliament and of the Council are not fully complied with (they are mostly observed within the formal aspects rather than the soft ones). The law enforcement authorities and the justice systems in the subsequent countries are, however, able to respect most of the directive provisions, which can be proved by the compliance therewith in cases monitored by other state agencies, non-government organizations or the media;
- The system constituted by the law enforcement authorities and the justice system does not guarantee the homophobic and/or transphobic crimes victims an equal access to the means of seeking justice. Effective actions in this system require that the victims have vast motivational, social, cognitive and material resources, and also depend on the external support; the victims' contact with the law enforcement officers and the justice system is often described as difficult and burdening. The victims' rights are exercised when the victims actively claim them. The law enforcement authorities and courts rarely act proactively in offering support to the victims and providing them information. From this

perspective, the system of the law enforcement authorities and the justice system discriminates against the weaker and those in a worse psychological, social and financial condition. The problem does not concern only LGBTQ individuals but probably all of those with scarcer resources;

- Reporting hate crimes is connected with a general contribution benefiting the LGBTQI community. A half of the participants were activists with a big social capital and knowledge resources. Despite the efforts, reaching those who reported a hate crime and were not activists, was very difficult. People who go through the lengthy police and court proceedings, treat the process of independent justice seeking through legal action as a kind of work to the benefit of the whole LGBTQI community;
- A problem characteristic for hate crimes in the context of gender identity and sexual orientation is the issue of acknowledgement of its character by the representatives of the law enforcement authorities and the justice system. The study exposed the disregard of homophobic or transphobic motivation of the offenders on different stages of the justice seeking process, starting from the first contact with the police until the announcement of statements of court rulings. Lack of recognition of the real background of subsequent incidents is painful for the victims – it constitutes a form of denial of the gender identity and sexual orientation of the injured parties, which constitute the essence of their everyday experience;
- An additional problem, specific for LGBTQ individuals in contact with the law enforcement officers and the justice system is the frequent necessity to disclose their gender identity and/or sexual orientation, which can be difficult, especially for the young people;
- Even minor displays of care for the wellbeing of the victims, showing them kindness, respect, providing them with information or support on the part of the law enforcement authorities and the justice system are very important for the complainants – they help to build trust in the institutions and restore the sense of safety, even if not much can be done in the relevant case;
- The effect of the contact with the law enforcement authorities and the justice system on wellbeing of those who have experienced hate crime depends on the quality of this contact, recognition of homo- or transphobic background of the offenses by the representatives of the authorities and punishment of the offenders;

- A range of problems has been revealed in the functioning of the law enforcement authorities and the justice systems of the participating countries, such as lack of knowledge due to the lack of contact with LGBTQI people, unwillingness to handle homophobic or transphobic crimes, incompetence and lack of impartiality as well as the effort connected with the procedures of seeking justice for the aggrieved. Each of those issues can explain the low trust of LGBTQI community members in the law enforcement authorities and the justice system.
- The qualitative study demonstrates that the human aspect, related to showing empathy, cultivating the sense of dignity and kindness, is very important in the contact with the law enforcement authorities and the justice system. The process of seeking justice has a double function for crime victims – on the one hand it should result in the apprehension of the offenders, resolving the case in its material aspect, on the other – through a symbolic acknowledgement of the victims' experience, it should help them restore the sense of control. The actions taken to the benefit of the relevant group are interpreted as a form of civil work for a better society. Turning injustice into a contribution for common good is for the victims a form of restoring the sense of control and supports effective handling of difficult experiences. Actions must be undertaken, so that the contact with the law enforcement authorities and the justice system will not bring a rejection of acknowledgement, secondary victimization and increased feeling of helplessness, which as of today is sadly a frequent fact.



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