



VIOLENCE AGAINST LGBT PEOPLE IN POLAND

2013 REPORT

EDITED BY CAMPAIGN AGAINST HOMOPHOBIA

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## 1. INTRODUCTION

The present report is an outcome of ***Step up reporting on homophobic and transphobic violence***, a project supported by ILGA-Europe, the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association. The objective of the project was to empower European LGBTI civil society organisations to more consistently monitor and report homophobic and transphobic hate crimes and incidents.

To prepare this work, ILGA-Europe had developed a harmonised data collection methodology in 2012. The methodology builds on international standards and on the expertise gained in different past activities, such as the elaboration of European-wide submissions to the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) in view of its Annual Report on Hate Crime<sup>1</sup>, or ILGA-Europe's participation to the ***Facing Facts! Making hate crime visible*** project.<sup>2</sup>

***Step up reporting on homophobic and transphobic violence*** was launched in 2013. ILGA-Europe's Documentation and Advocacy Fund, with the support of the Government of the Netherlands, provided dedicated resources to 12 national and local NGOs in Bosnia and Herzegovina, Greece, Ireland, Italy, Latvia, Lithuania, Moldova, Poland, Portugal, Spain, Turkey and Ukraine. These NGOs were trained on the methodology previously developed by ILGA-Europe, and committed to apply it in order to produce comparable data.

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<sup>1</sup> <http://www.osce.org/odhr/108395>

<sup>2</sup> <http://www.ceji.org/facingfacts/>



Data collection and publication is expected to be developed on a more sustainable and professional basis in the future, thanks to the capacity building aspect of the current project. Following this pilot initiative, ILGA-Europe's methodology will be made available to more European LGBTI civil society organisations.

## 1.1 METHODOLOGY

### 1.1.1 GOAL

The main goal of this research was to collect data on hate crimes and incidents motivated by homo- and transphobia committed in Poland in 2013. The goal of the research was to answer those questions:

What types of crimes are most common?

Who are the offenders?

Are victims reporting those incidents to police services and if they do how are they treated by authorities?

What impact does the crime have on a victim's life?

### 1.1.2 TOOL

A survey of 32 questions was prepared for the research. Most of the questions were of a closed-ended type with multiple answers. A few questions were of an open-ended type i.e. respondents were asked to describe the incident. The survey was prepared in 2 versions: for the victim and for the witness. The two versions did not differ much except when it was needed to take into consideration the difference of perception between the victim and the witness.

### 1.1.3 PROCEDURE

The research was conducted between April and October 2013. Altogether there were 209 filled out questionnaires collected, counting 104 filled out by victims and 16 by witnesses. 129 surveys were approved for analysis. 89 questionnaires were rejected for the reasons below:

- a) a survey was fake e.g. was filled out by a person who was neither a victim or a witness,
- b) an event was neither a crime or an incident,
- c) an incident was not of homo- and/or transphobic nature.

On-line surveys were available at <https://homofobia.queer.pl/> Respondents could also download a mobile application (Google play and Apple Store) which allowed filing in an application.

<https://play.google.com/store/apps/details?id=net.netzindianer.zhf>

<https://itunes.apple.com/pl/app/zg-os-homofobie/id649805260?mt=8>

### 1.1.4 SAMPLING

This survey was targeted at persons who suffered from hate crime or incident and to witnesses of such events. We wish to emphasize that the goal of this research was not measuring the scale of hate crimes motivated by homo- or transphobia. Measuring the scale would be only possible if the survey was targeted at general LGBT population, not only those how experienced homophobic hate crime or incidents. The surveys were available on www and via mobile applications. The link to the www with the online survey was advertised on polish LGBT community website, [www.queer.pl](http://www.queer.pl). Buttons linked to the website were put on [www.queer.pl](http://www.queer.pl) and KPH's website [www.kph.org.pl](http://www.kph.org.pl). The survey was also advertised through KPH's and Queer.pl's Facebook fan page. Queer.pl has also sent a message to their user (about 150.000 persons) encouraging to report hate crimes and incidents. Messages to users were also sent by the administrator of gay dating website [kumpello.pl](http://kumpello.pl) Mobile applications were advertised via above mentioned websites and additionally in a printed LGBT magazine called "Replika". In one of the issues "Replika" included an article about the project and 6 stickers with QR codes to download mobile applications.



Button



Sticker

## 2. KEY FINDINGS

According to data from the research<sup>3</sup> on situation of LGBT persons 12% of respondents suffered in the past two years (2010-2011) some sort of physical violence motivated by homophobia. Physical violence was faced by 9% of women and 14% of men. Nearly 40% faced it more than 3 times during past years. The analysis of data concerning types of violence indicates that majority of respondents who faced violence was hit, pulled kicked or pushed (65%). Second comes sexual harassment which infringes one's physical inviolability (e.g. touching against one's will) - 42%. The percentage of persons who faced sexual violence is 8% while 17% were beaten. Another form of violence described by respondents was throwing rocks, bottles or other objects.

Concerning psychological violence 44% of respondents suffered from at least one type of psychological violence, in most cases (60%) this happened repeatedly. The most common

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<sup>3</sup> Situation of LGBT persons in Poland. Report for 2010-2011. Edited by Mirosława Makuchowska and Michał Pawłęga. KPH, Warsaw 2013.



form was verbal aggression (67%), second comes insulting, belittling and ridiculing (51%) as well as dissemination of negative opinions about victims (48%) while 11% received threats.

The analysis of 120 cases of violence motivated by hate provided several findings on the social life of victims of crimes and their experience. Almost 30% respondents do not engage at all in the life of the community but only one declared that they are not out as LGBT to anyone. Individuals come out mostly to their friends and acquaintances, both LGBT and not. Over 16% of persons suffered from extreme physical violence which resulted in injuries but only few turned for medical help. A third of them were treated wrongfully by attending healthcare professionals. Almost 70% of respondents fell victims of threats and psychological violence – in many cases restriction of freedom (regarding teens). Overall, barely 10% reported the crime to the police and half of those who did were maltreated by police officers. Only one case resulted in court proceedings which was related to the well-known criminal past of the perpetrators.

### **3. Bias motivated violence against LGBTI**

#### *3.1. The legal situation of homophobic and transphobic hate crime<sup>4</sup>*

Legislation on hate crimes can be inferred from the Constitution of the Republic of Poland. Article 35 states that “the Republic of Poland shall ensure for Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.”

This Article directly corresponds to Article 13, where the legislature has prohibited the existence of “political parties and other organizations whose platforms are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as

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<sup>4</sup> in Violence motivated by homophobia 2011 report, edited by Mirosława Makuchowska, 2011 Warsaw, pages 31-39



those whose platforms or activities which sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence national policies or the secrecy of their own structure or membership.” The Constitution also contains a provision on human dignity (“The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.” – Art. 30) and one for gender (“All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever.” – Art. 32).<sup>5</sup>

Criminal Code

Chapter XVI

Crimes against peace, humanity and war crimes

Article 118

§ 1 Any person who, with the purpose of destroying in whole or in part, a national, ethnical, racial, political or religious group or a group holding certain beliefs, commits homicide or causes serious injury to a person belonging to such a group, shall be subject to imprisonment of not less than 12 years, with a sentence of 25 years imprisonment or life imprisonment.

§ 2 Any person who, for the purpose specified in § 1, provides for persons belonging to such a group living conditions which carry the risk of its biological destruction, applies measures aimed at preventing births within the group or removes children from members of the group

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<sup>5</sup> The Constitution of the Republic of Poland, Retrieved from: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>



by force, shall be subject to imprisonment of not less than 5 years or a sentence of 25 years imprisonment.

§ 3 Any person who makes preparations for the offense specified in § 1 or 2, shall be subject to imprisonment of not less than 3 years.

#### Article 119

§ 1 Any person who uses violence or makes an unlawful threat towards a group of persons or particular individuals because of their national, ethnic, racial, political or religious identity or because of their lack of religious belief, shall be subject to imprisonment of 3 months to 5 years.

§ 2 The same sentence shall be given to a person who incites others to commit the offense specified in § 1.

#### Chapter XIX

##### Crimes against life and health

#### Article 148

§ 1 Any person who kills a human being shall be subject to imprisonment of not less than 8 years, with a sentence of 25 years imprisonment or life imprisonment.

§ 2 Any person who kills a human being:



- with particular cruelty,
- in connection with taking hostages, rape or robbery,
- for motives deserving special condemnation, or
- with the use of firearms or explosives,
- shall be subject to imprisonment of not less than 12 years, with a sentence of 25 years imprisonment or life imprisonment.

§ 3 Subject to the sentence specified in § 2 is a person who in one act kills more than one person or has previously been legally convicted of murder.

§ 4 Any person who kills a human being under the influence of strong mental agitation justified by the circumstances shall be subject to imprisonment of 1 to 10 years.

## Chapter XXIV

### Crimes against freedom of conscience and religion

#### Article 194

Any person who limits a human being in his or her rights because of his or her religious affiliation or lack of religious belief shall be subject to a fine, restriction of liberty or imprisonment of up to 2 years.

#### Article 195



§ 1 Any person who maliciously interferes with a public religious performance of a church or other religious association with official legal status shall be subject to a fine, restriction of liberty or imprisonment of up to 2 years.

§ 2 The same sentence shall be given to a person who maliciously interferes with a funeral, mourning ceremonies or rites.

#### Article 196

Any person who offends the religious feelings of other people, publicly deriding an object of religious worship or a place dedicated to public religious rites, shall be subject to the restriction of liberty or imprisonment of up to 2 years.

#### Chapter XXVII

##### Crimes against dignity and personal inviolability

#### Article 212

§ 1 Any person who slanders another person, group of people, institution, legal person or organizational entity without legal personality for such behavior or characteristics that may humiliate them in the public opinion or expose them to a loss of trust necessary for a given position, profession or type of business, shall be subject to a fine, partial restriction or deprivation of liberty for 1 year.

§ 2 If the perpetrator commits the act specified in § 1 through means of mass communication, he or she shall be subject to the restriction of liberty or imprisonment of up to 2 years.



§ 3 In the event of a conviction for an offense specified in § 1 or 2, the court may order compensation to the victim, to the Polish Red Cross or another charity or social aim specified by the victim.

§ 4 The prosecution of the offense specified in § 1 or 2 should proceed from a civil claim.

## Chapter XXXII

### Crimes against public order

#### Article 254

§ 1 Any person who takes an active part in an unlawful assembly, knowing that the participants are jointly committing a violent assault on a person or property, shall be subject to imprisonment of up to 3 years.

§ 2 If the consequence of a violent assault is the death of a human being or serious damage to health, the participant of the unlawful assembly as defined in § 1 shall be subject to imprisonment of 3 months to 5 years.

#### Article 256

Any person who publicly promotes a fascist or other totalitarian system of government or incites hatred on grounds of national, ethnic, racial or religious differences, or because of a lack of religious belief, shall be subject to a fine, restriction of liberty or imprisonment of up to 2 years.



#### Article 257

Any person who publicly insults a group of people or a particular person because of their national, ethnic, racial, or religious affiliation, or because of their lack of religious beliefs, or for these reasons infringes on the physical inviolability of another person, shall be subject to imprisonment of up to 3 years.

#### Article 258

§ 1 Any person who is involved in an organized group or association aimed at committing crimes, including tax fraud, shall be subject to imprisonment of up to 3 years.

§ 2 If a group or association specified in § 1 carries and possesses arms, it shall be subject to imprisonment of 3 months to 5 years.

§ 3 Any person who founds a group or association specified in § 1 or 2, or is a leader of such a group or association, shall be subject to imprisonment of 6 months to 8 years.

Protection against hate-motivated crimes is reflected in several articles of the Criminal Code, but is restricted to only a few selected groups: national, ethnic, racial, political, religious, ideological or atheistic. Only these groups have been enumerated in the Criminal Code, which makes the protection of other groups (e.g. LGBT, disabled people, women, the elderly, etc.) much weaker.

Much controversy is also raised by the ineffectiveness of using existing legal instruments against various forms of aggression. The practice of prosecutors and courts in this area is very lenient on those who violate the law. As Prof. Monika Płatek from the University of



Warsaw writes, although the crimes specified by Art. 256 and Art. 257 of the Criminal Code are prosecuted by public indictment, “one of the reasons for refusing enforcement is referring to the fact that the act is reported by a person who was not directly affected, as he or she is not, for example, a Rom or a Jew. So what today – at least in academic literature – defines the form of this offense, so recognition of the perspective of the victim is used in Poland to resign from undertaking any legal; action. In Poland, there is still no understanding of the nature of hate motivated crime. It is an indictable crime, which imposes on law enforcement authorities *ex officio* and on the citizens by civic duty to report violations (Art. 304 CPC). It is clearly visible, then, that the aforementioned practices are rather motivated by finding excuses for abandoning the action.”

Within the framework of international obligations and domestic law being in force in Poland, a number of institutions and instruments to monitor and combat hate crimes were established. These include a nationwide governmental programme to support the Roma community in Poland, the implementation of which was planned for the years 2004–2013 with the possibility to continue in subsequent years. It was developed based on experiences from the Pilot Government Program for the Roma Community in the Małopolska province for the years 2001–2003. It refers to similar programs implemented by European countries, also aiming at improving the situation of the Roma. The scope of the programme includes the prevention of crimes committed on ethnic grounds. The coordination and monitoring of the implementation of the program is run by the Ministry of Internal Affairs and Administration. The programme is implemented with the participation of local communities.

An important event for this analysis is the draft amendment of the Criminal Code prepared in 2008 by a coalition of NGOs. NGOs proposed amendments to existing legislation by including additional groups to be protected by law protection. These changes are connected with Art. 119 on the use of violence or unlawful threats (Art. 119), incitement to hatred (Art. 256) and to derision (Art. 257) of a person or persons because of their gender identity or sexual orientation. The authors of the draft, referring in the justification to the changes to Art. 32 (prohibition of discrimination), emphasize that this article is not fully reflected in the existing regulations of criminal law. “The current state of protection by criminal law does not correspond to modern social needs, as shaped by a more extensive and more apparent presence in the public sphere of representatives of the groups hitherto excluded, marginalized and neglected,” organisations write in support of the bill. The justification for the bill was prepared by Eleonora Zielińska, an outstanding professor of criminal law from the Law and Administration Department of Warsaw University. Encouragement for this type of



legislation also found its place in the Memorandum of the Council of Europe to the Polish Government of June 20, 2007, Par. Review of Progress in Implementing the Recommendations of the Commissioner for Human Rights, the Council of Europe in 2002. In conclusion, the Commissioner recommended “the application of appropriate legal measures to combat hate speech and discrimination against people with different sexual orientation or gender identity.”

The need to combat homophobic hatred spread via the Internet is mentioned in the European Parliament Resolution of December 13, 2007 on combating the growing extremism in Europe. On March 3, 2011, a seminar was held on hate crimes, summarizing the project and once again drawing attention to the need to change the rules. On that day, NGO representatives placed in the hands of Member of Sejm Speaker Jerzy Wenderlich a proposal for a draft bill. The Deputy Speaker agreed to officially introduce the bill for consideration by the Sejm at the initiative of the SLD parliamentary party. The draft was forwarded to the Speaker of the Sejm on April 19, 2011.

A lack of legal regulations concerning the protection of non-heterosexual people against hate speech and hate crimes in Poland is reflected in the level of sensitivity of public administration. The Polish government was obliged by the UN Human Rights Council in its recommendations to conduct training for law enforcement officers and justice department workers, including police officers and judges, on hate speech and hate crimes. Unfortunately, so far, these recommendations have been implemented to a very limited extent. A system of monitoring hate crimes motivated by homophobia is also missing from the activities of the police and various government departments.

### *3.2. Homophobic and transphobic hate crimes and hate incidents*

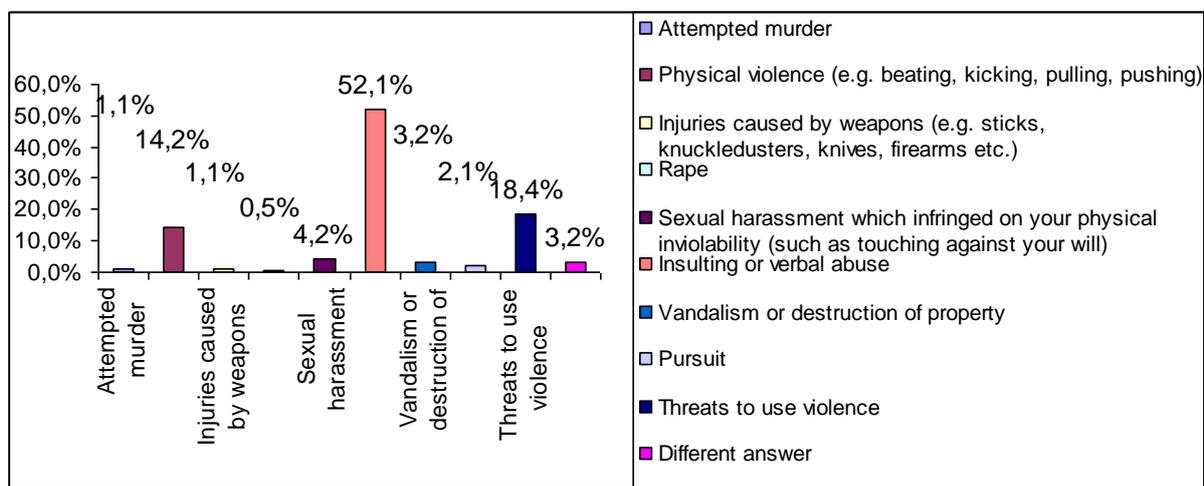
#### *3.2.1 Types of violence and offenders*

Respondents could choose the type of crime they were victims or witnesses of by answering multiple choice questions composed of the following categories: attempted murder, physical violence (e.g. beating, kicking, pushing, pulling), injuries caused by a weapon or other dangerous object (e.g. sticks, knuckledusters, knives or firearms etc.), rape,



sexual harassment which infringed on physical inviolability (such as touching against ones will), other form of infringing on physical inviolability, insulting or verbal abuse, vandalism or destruction of property, pursuit, threats to use physical violence, "other" or "n/a". Fig. 9 presents frequency of occurrence of the above incidents. Their total comes to 190, which is caused by the fact that respondents chose more than one category to describe an event. For example physical violence (such as attempted murder or other form of infringing on physical inviolability) where always simultaneously marked as "insulting or verbal abuse" and in 34,4% cases as "threats to use physical violence".

Fig. 1. *Type of event.. You can choose more than one answer. (n = 190)*



Based on descriptions of the above categories and on descriptions of the events from the surveys all incidents have been divided between six categories:

1. Homicide - defined as any assault on a person which causes death.
2. Extreme physical violence - attack on a person, which can potentially cause death or injury, attacks on possessions or buildings which can cause loss of life of those inside, rape or rape attempt and sexual violence.
3. Assault - attacks on a person who do not pose a threat to one's life or health, also owing to self-defence or escape.
4. Destruction of property - private property of a victim as well as public property (e.g. graffiti).
5. Arson.

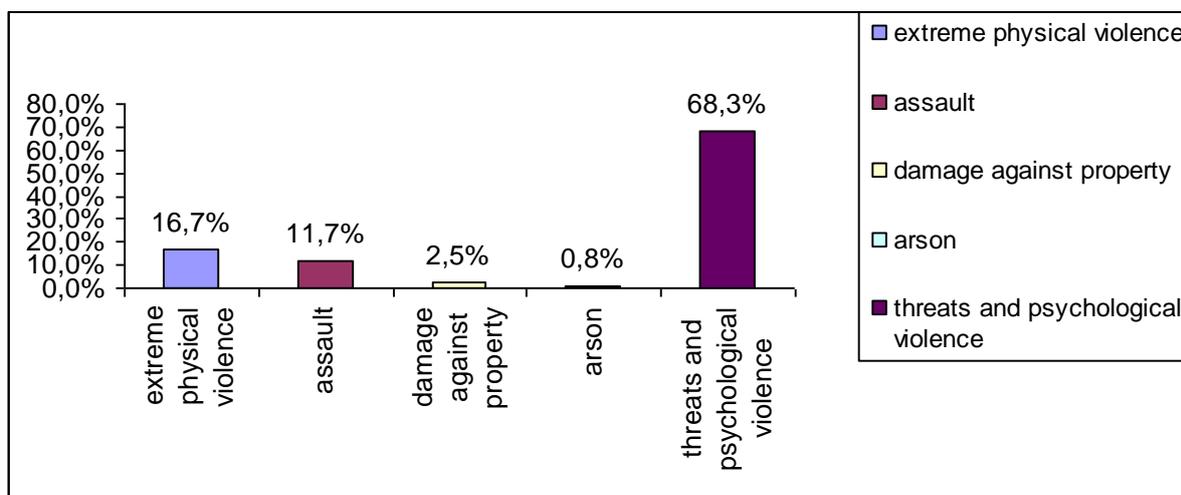


6. Threats and psychological violence - verbal and written threats of using direct or indirect violence, mobbing, harassment, stalking, blackmail, restriction of liberty, defamation.

The fig. 10 shown below presents the categories of incidents from in percentages. We did not note any case of homicide and only one case of arson, namely setting on fire the rainbow installation at Zbawiciela square in Warsaw during Independence Day (11.11.2013).

Cases when respondents marked several crimes, were classified as highest severity, i.e. cases which described simultaneous defamation, threats, destruction of property and attack with a firearm were categorised as "extreme physical violence", as lower categories excluded threats of losing live or health. Similarly, incidents categorised as destruction of property of the victim were qualified as destruction of property even though they were accompanied by threats of using violence.

Fig. 2. *Types of violence.* (n = 120)



1. Homicide.

This type of crime did not occur at all in the data provided by respondents.

2. Extreme physical violence.

The data contained 20 cases of extreme physical violence. Multiple bias factors included sexual orientation, gender and gender identity, though there is a strong possibility that these factors have been viewed by the respondents as one motivation,



as the study of case descriptions suggests. All of the victims were to some degree out – all to LGBT friends or other friends, seven to their whole families. In seven cases (35 %) there was only one perpetrator. In seven cases (35 %) there were no witnesses.

### 3. Assault.

The data contained 14 cases of crimes qualified as assault.

Multiple bias factors included sexual orientation, gender and gender identity, though there is a strong possibility that these factors have been viewed by the respondents as one motivation, as the study of case descriptions suggests. All of the victims were to some degree out - all to LGBT friends, other friends or acquaintances, six to their whole families. In three cases (21 %) there was only one perpetrator. In four cases (29 %) there were no witnesses.

### 4. Damage against property.

The data contained 3 cases of crimes qualified as damage of property.

Multiple bias factors included sexual orientation, gender and gender identity, though there is a strong possibility that these factors have been viewed by the respondents as one motivation, as the study of case descriptions suggests. All of the victims were to some degree out - all to LGBT friends, other friends or acquaintances, one to their whole family. In one case (33 %) there was only one perpetrator. In two cases (66 %) there were no witnesses.

### 5. Arson.

The data contained one case of crime qualified as arson.

Multiple bias factors included sexual orientation, gender and gender identity, though there is a strong possibility that these factors have been viewed by the respondents as one motivation, as the study of case descriptions suggests.

The witness reporting the crime did not know how many perpetrators were there but the media suggest multiple. The number of witnesses is also unspecified.



6. Threats or psychological violence.

The data contained 82 cases of crime qualified as threats and psychological violence.

Multiple bias factors included sexual orientation, gender and gender identity, though there is a strong possibility that these factors have been viewed by the respondents as one motivation, as the study of case descriptions suggests. Only one of the victims was not out with their sexual orientation or gender identity to anyone. All other victims were to some degree out - all to LGBT friends, other friends or acquaintances, 27 to their whole families. In 34 cases (41 %) there was only one perpetrator. In 20 cases (23 %) there were no witnesses.

**General tendencies regarding all types of crimes.**

The multiple categories of perpetrators that any respondent could mark prevent an in-depth analysis of the issue, though it is clear that the majority of crimes is committed by persons unknown to the victim (35 %). The second group in order of quantity is “other persons known to the victim” (21 %) and then supposed members of “hate groups” (12,5 %). Additionally, there is no proof of correlation between the type of crimes and such variables as the place and time of occurrence, degree of being out, the nature of the relationship between the victim and the perpetrator or the degree or level of participation of the victim in the life of the LGBT community. Age proved to be a significant factor only in the crosstab with psychological violence.

Type and level of engagement in LGBT community life has no influence on type of violence the victim faces. Persons who do not take part in any kind of activities face violence (both physical and psychological) at the same level.

The Figures below describes the frequencies of the abovementioned categories.

Fig. 3. Identity and type of crime

	Identity and type of crime
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	Man	Woman	Transma n	Transwo man	Transgd ener person	Intersex
extreme physical violence	10	9	1	0	0	0
assault	8	6	0	0	0	0
damage against property	0	2	0	0	1	0
arson	0	1	0	0	0	0
threats and psychological violence	48	27	2	2	0	3

**Fig. 4. Sexual orientation and type of crime**

	Sexual orientation and type of crime				
	Gay	Lesbian	Bisexual	Heterosex ual	No data
extreme physical violence	11	7	2	0	0
assault	7	4	3	0	0
damage against property	0	1	1	0	1
arson	0	1	0	0	0
threats and psychological violence	40	27	12	1	2

**Fig. 5. Age and type of crime.**

	Age and type of crime		
	13-18	19-25	26-34
extreme physical violence	11	4	4
assault	6	5	1
damage against property	2	1	0
arson	1	0	0
threats and psychological violence	50	21	7

**Fig. 6. Engagement in the life of the LGBT community and type of crime**

	Engagement in the life of the



	LGBT community and type of crime	
	Engagement	Lack of engagement
extreme physical violence	15	5
assault	9	5
damage against property	1	2
arson	0	1
threats and psychological violence	60	22

Fig. 7. Type of settlement and type of crime

	Type of settlement and type of crime			
	Large city	Smaller city	Rural areas	Not applicable
extreme physical violence	13	5	1	0
assault	8	5	1	0
damage against property	1	1	0	1
arson	0	1	0	0
threats and psychological violence	47	21	6	8

Fig. 8. Time of day and type of crime

	Time of day and type of crime			
	Morning	Afternoon	Evening	At night
extreme physical violence	5	4	4	7
assault	3	4	4	3
damage against property	0	3	0	0
arson	1	0	0	0
threats and psychological violence	19	32	22	9

Fig. 9. Place of occurrence and type of crime

	Place of occurrence and type of crime
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		At home	Near home	School	Workplace	LGBT bar or near	Police station	Other public place	Internet
extreme physical violence		3	3	6	1	0	1	6	0
assault		2	3	5	1	1	0	2	0
damage against property		0	0	1	0	0	0	2	0
arson		0	0	1	0	0	0	0	0
threats and psychological violence		5	7	24	2	1	0	31	12

Fig. 10. Wounds and type of crime

	Wounds and type of crime	
	Yes	No
extreme physical violence	20	0
assault	0	13
damage against property	0	3
threats and psychological violence	0	72

Data on type of violence faced by victims was analysed in light of place of occurrence (types of settlements). The analysis did not show any relation between those variables. There was however a link between the age of victims and the type of violence they faced - people aged 13 - 18 (school youth) is more likely to face threats and psychological violence including blackmail, stalking and restriction of liberty (e.g. by parents). Fig. 11 and Fig. 12 show frequency of occurrences of given categories of incidents taking place in different places and affecting different age groups.

Fig. 11. *Type of violence and type of settlement.(n=110)*

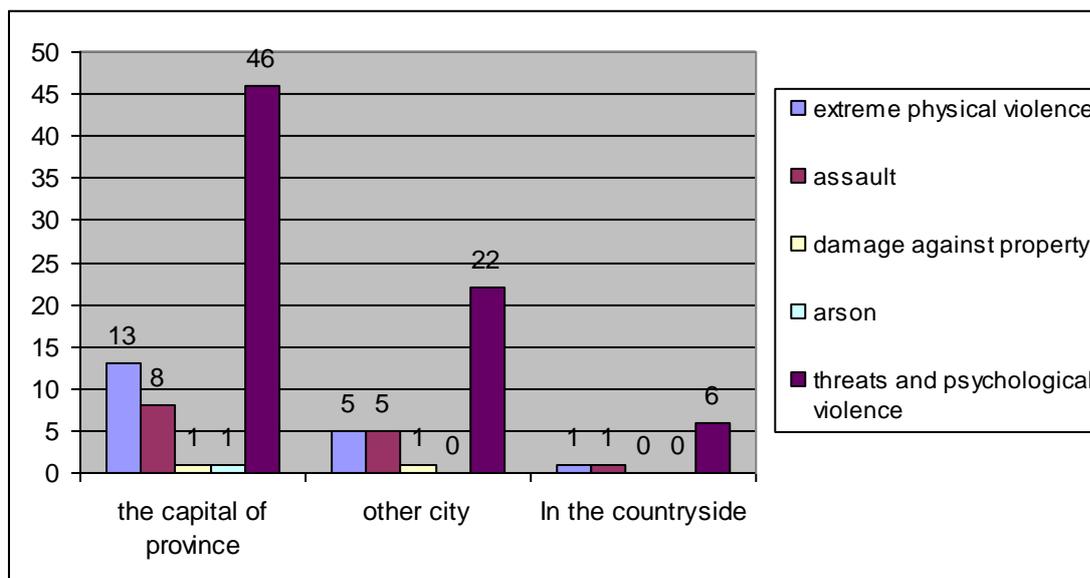
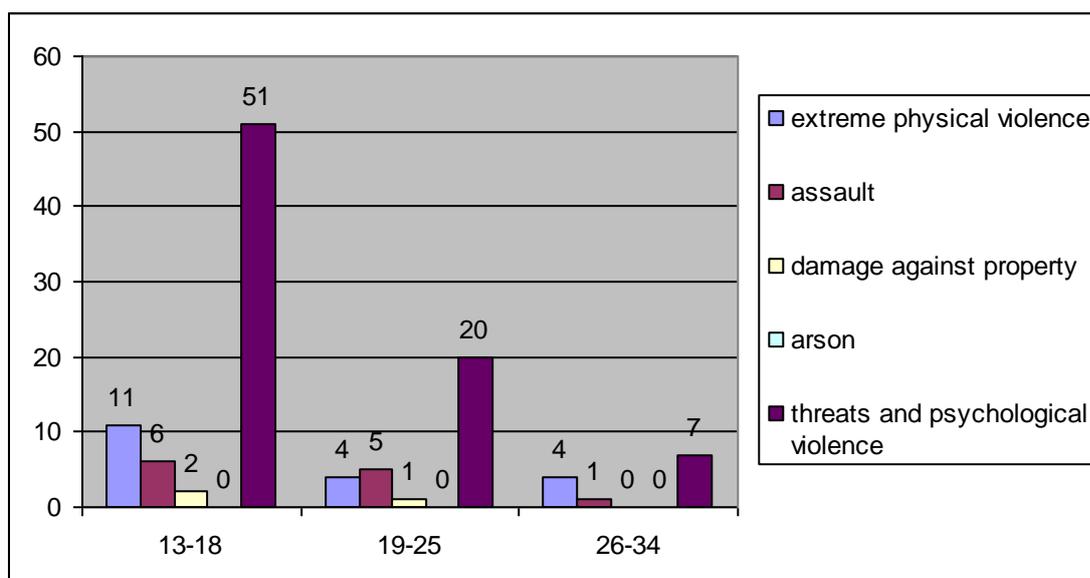


Fig. 12. Type of violence and age group. (n=113)

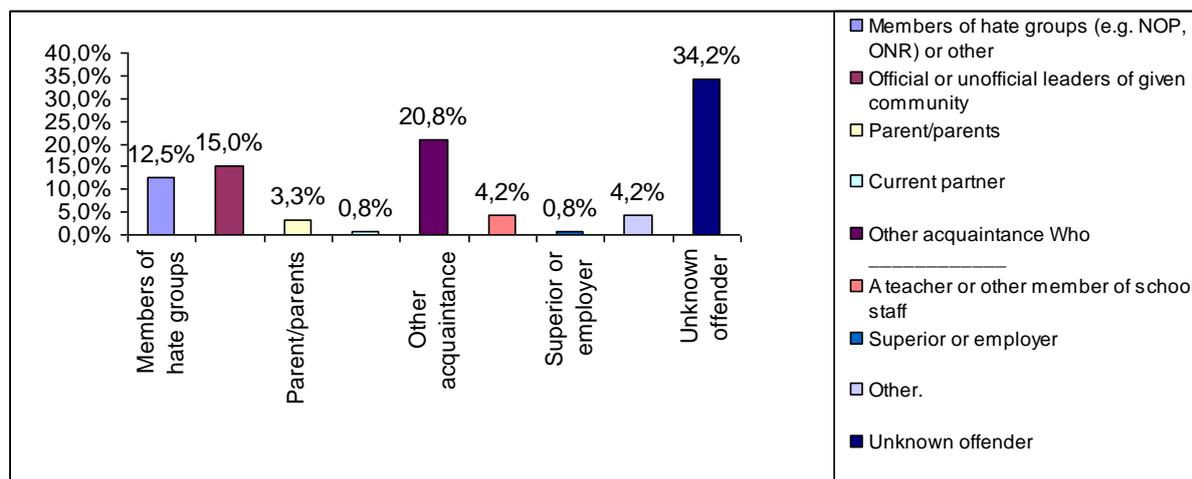


There were usually 2 to 4 offenders (46,6%) or 1 (37,5%). There were a few cases when victims described the number of offenders as higher than 10 (3,3%) - they often described taunting by larger part of classmates. Distinguishing marks of offenders were noticed in five cases only - victims described them as tattoos or bold heads. We also analysed offenders (by crimes they committed) in light of their relations with the victim. Most of crimes were committed by persons unknown to victims (34,2%) or by persons being a colleague or acquaintance (20,8%). The last category - "other persons known to you" victims described offenders as colleagues or mates from school/college, place of residence or work. Between



different categories of offenders there were no significant differences in relation to committed crimes.

Fig. 13. *Who were the offenders? You can choose more than one answer. (n = 120)*



Victims and witnesses answered if and why do they think that offenders were motivated by prejudice. In most cases they justified that by giving answers and describing examples on the way the offenders acted and what were the circumstances of the events. The variety of motivations was really wide and aside from sexual orientation, gender identity, social sex role and expression it covered religion, race or ethnicity and nationality. Three last categories were marked multiple times by respondents, but the given descriptions of incidents did not prove that offenders were motivated in such ways. Victims justified religious or nationalistic motivation by mentioning radical catholic or nationalistic views of offenders. We understand this situation as a probable lack of understanding of categories of protected features and hateful motivations, this is why categories which did not find justification in the descriptions of incidents were not analysed.

Fig. 14 shows how frequently the listed motivation occurred while Fig. 15 shows the circumstances of the incidents, which proved the motivations.

Fig. 14. *Do you think that the incident has anything to do with the characteristics of the victim or that the offenders suspected that he or she has one? You can choose more than one answer. (n = 134)*

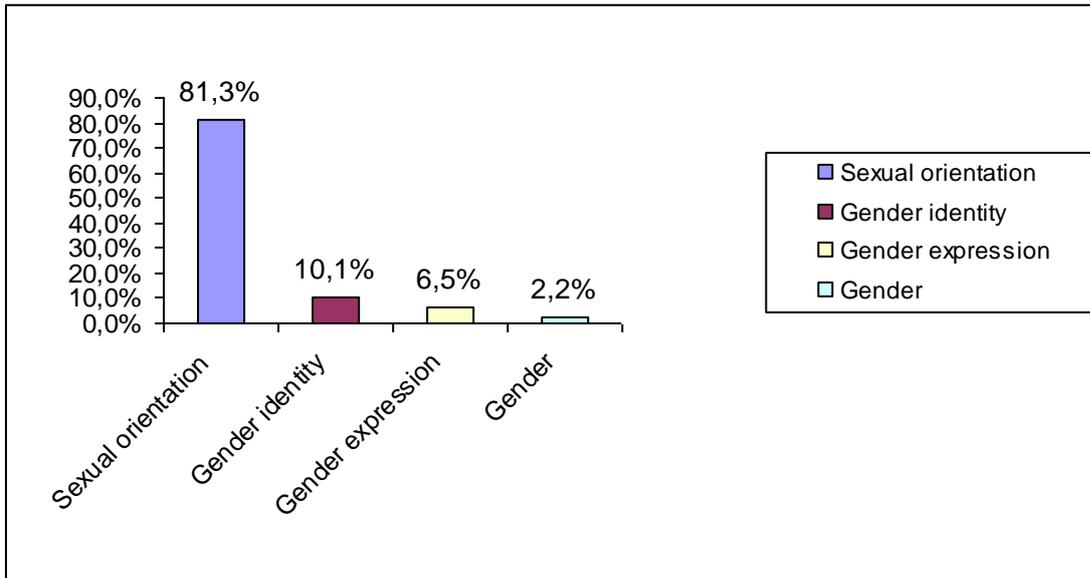
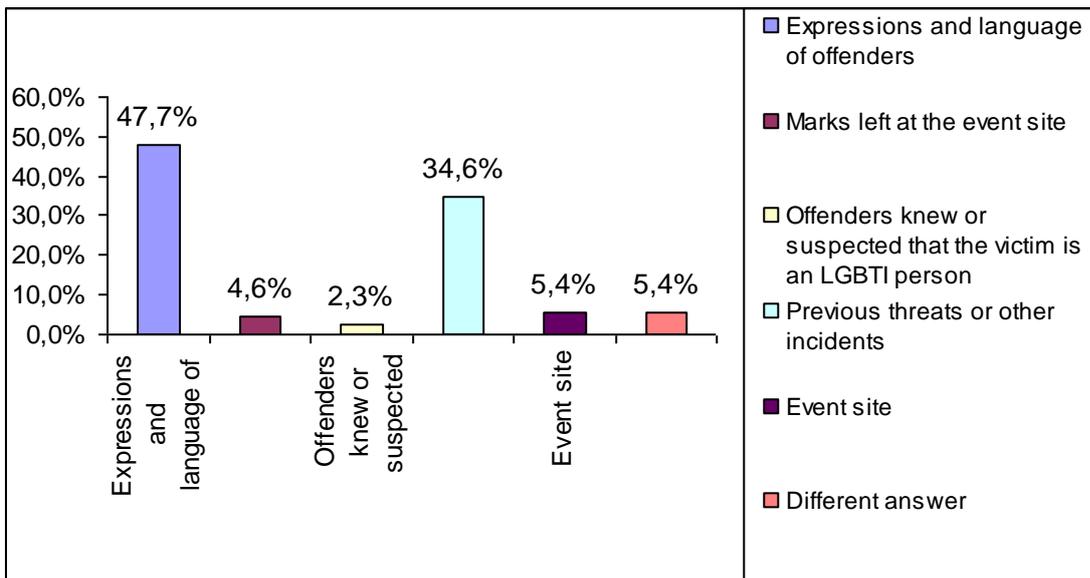


Fig. 15. *Why do you think that the incident is connected with the characteristics you marked? You can choose more than one answer. (n = 130)*



Marking more than one answer allowed describing the way offenders acted and circumstances of incidents in more detail. Statements and language were in most cases characterised by typical derogatory names and stereotypical expressions: "queer", "fag", "dyke", "whore", "you never had a man", "deviants", "No gays allowed" plus offensive language written on walls were signs left on the spot where incidents took place. Persons



who marked "place of the event" mentioned places where LGBT people meet (venues). "Other" meant for example an attack on a LGBT symbol (Rainbow at Zbawiciela square) or that the incident took place during the Equality Parade or other public events linked with the community.

*Two men used offensive language towards me and my partner, they said: "you dykes, do you know what would Hitler do to you?"*

A312, female, 30 yo

*I was on my way home while three young people, my age, came by and started shouting: "you fag, fags should burn like Jews in Auschwitz". they were pulling me, they spit.*

A353, male, 27 yo

*Brutal beating by 3 "fit", bold men. No response from the Police, despite accurate CCTV in the incident vicinity.*

A249, male, 20 yo

*I nearly reached my staircase. Suddenly a car showed up right in front of me, I was about to turn left onto my street to reach my staircase. When I took the turn and turned around I saw three aggressive "chavs" armed with knives. I started running leaving my staircase behind and loosing a couple of valuable items on the way.*

A396, male, 18 yo

*They threatened me to close me in a padded room. Called me a "shitty dyke", they said that there is no place in this world for people of my sexual orientation. Much more name calling and eventually a struggle.*

### 3.2.2 CHARACTERISTICS OF RESPONDENTS

We analysed 120 surveys gathered from April to October 2013. Out of 209 surveys we rejected 89 suspecting that they were fake or taken multiple times by the same person or the incidents took place before 2013. We also rejected surveys if described incidents did not



qualify to be analysed as hate crimes, since the described incidents were not ~~Criminal~~criminal offences in Poland or could not be qualified as motivated by hatred resulting from actual or alleged sexual orientation or gender identity of victims. 16 surveys were taken by witnesses of the incidents while 104 by victims. Those surveys were compared to eliminate multiple description of the same incident.

The identity of six persons was described as trans while three people were described as intersexual. Crime victims were mostly cissexual (n = 111). Cissexual describe related types of gender identity where an individual's self-perception of their gender matches the sex they were assigned at birth. Detailed results are shown in Figure 1. Figure 2 shows distribution by sexual orientation among victims. Most victims were homosexual (n = 98).

80% of the respondents were young persons aged 13 to 34, which is linked to the fact that the surveys were taken via the Internet (using smartphone application as well). Research shows that<sup>6</sup> the Internet is mainly used by young persons i.e. pupils and students. Additionally the older the person is the less likely it is that she or he would reveal their sexual orientation <sup>7</sup> such persons are less likely to actively take part in the community life, for instance getting in touch with other LGBT persons or attending usual meeting places where the research was promoted. The average age of victims was 18,58 yo (after excluding persons of unknown age). Distribution of frequency is shown in Figure 3. In the following part of the report surveys will be analysed basing on the division by three age groups: 13 – 18, 19 – 25 and 26 – 34.

Fig. 16. *How does the victim describe her/his sexual identity?(n = 120)*

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<sup>6</sup> Using the Internet, Fundacja Centrum Badania Opinii Społecznej, Warsaw, August 2011.

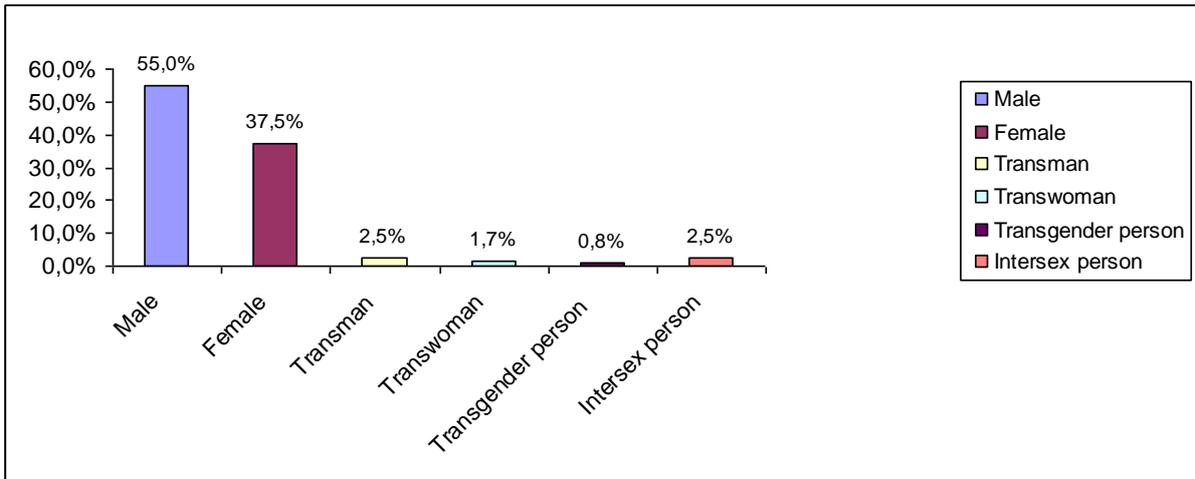


Fig. 17. How does the victim describe her/his sexual orientation?(n = 120)

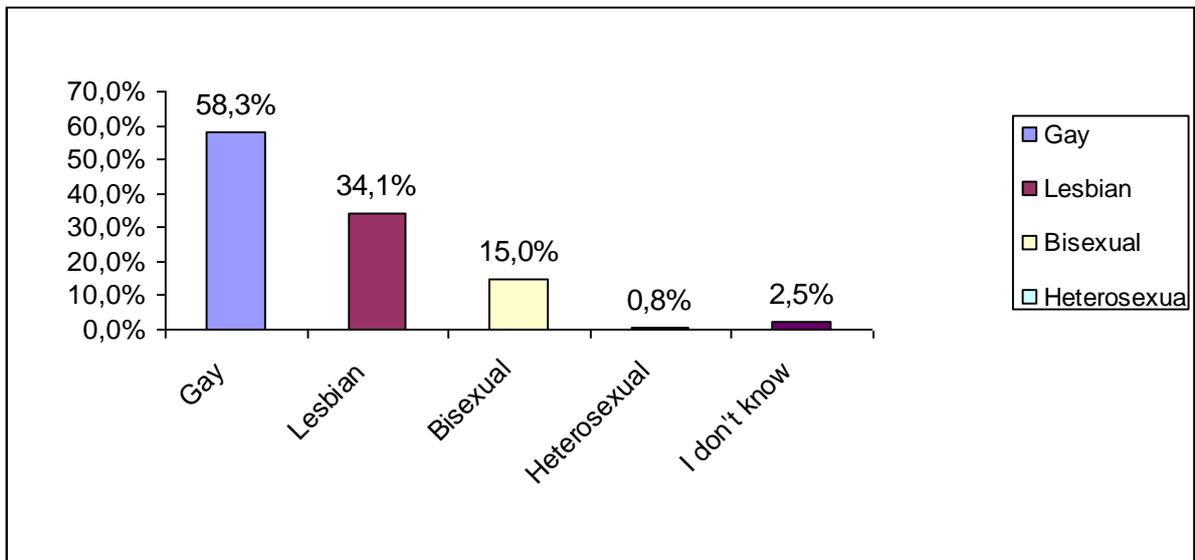
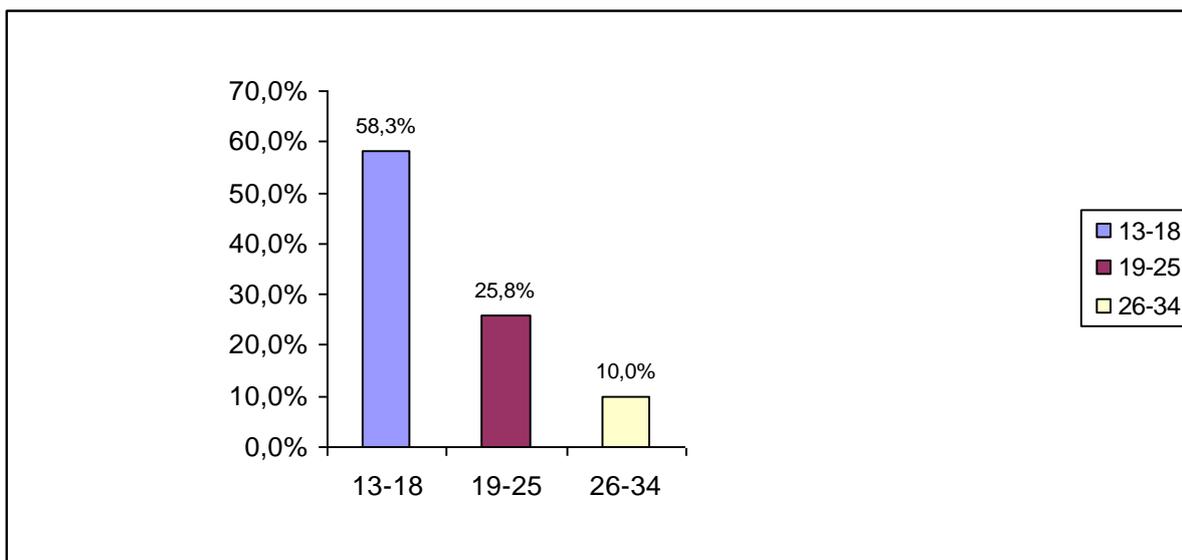


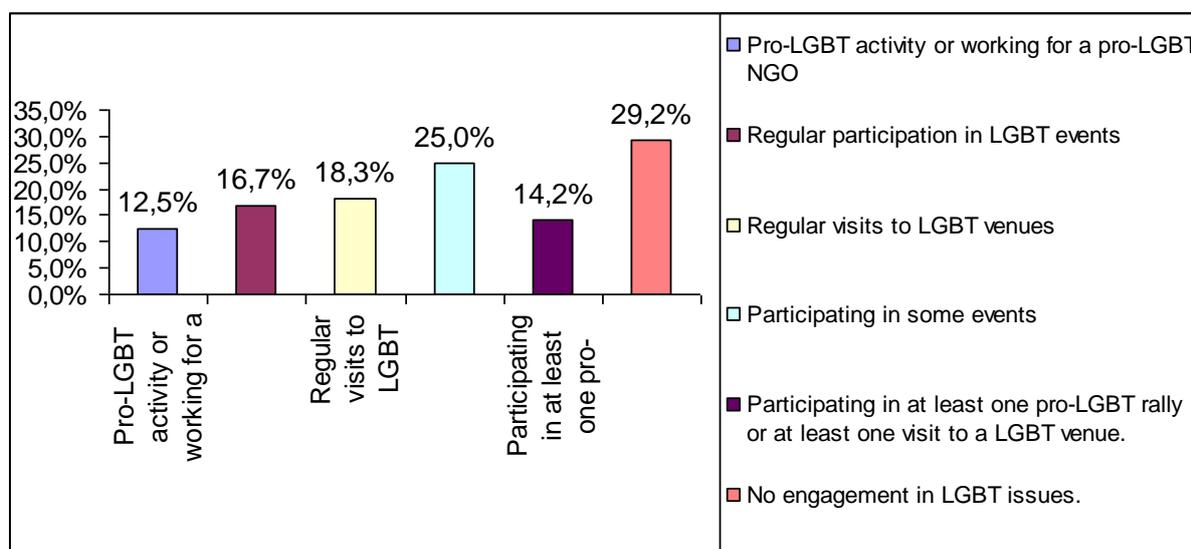
Fig. 18. Age of the victim at the time of the event(n = 113)



**3.2.3 CONTACTS WITH LGBT COMMUNITY AND LEVEL OF DISCLOSURE.**

This questionnaire studied how frequently and in what way do victims participate in LGBT community life. The analysis showed that 70,8% of respondents take active part of the community life: in most cases by occasional participation in events (25%) or frequenting LGBT venues (18,3%).

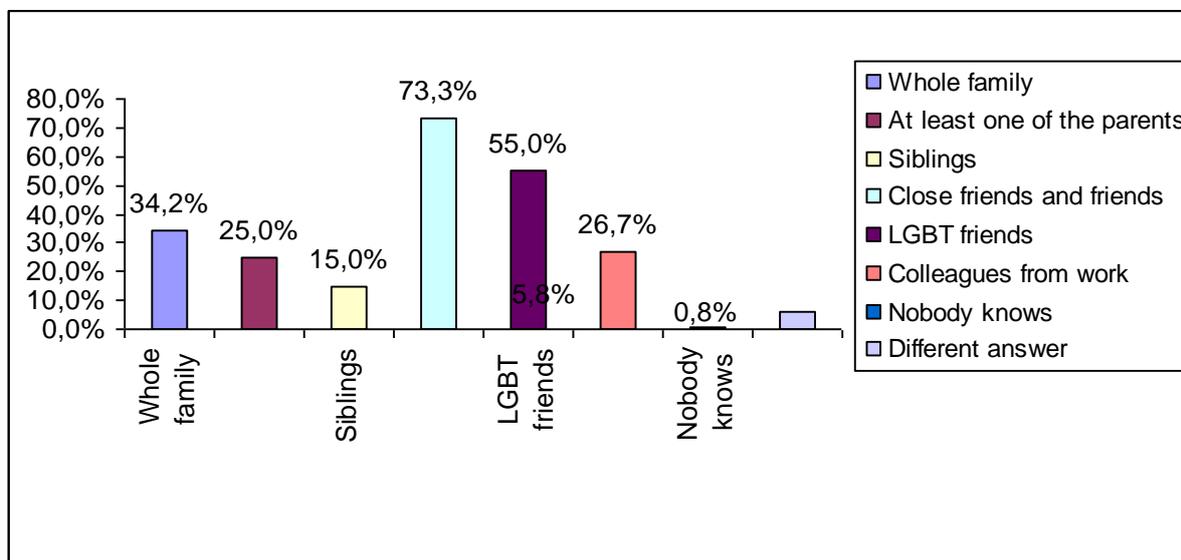
Fig. 19. *In what way does the victim participate in LGBTI community life? You can choose more than one answer. (n = 120)*





Next question concerned the level of disclosure i.e. to whom (persons or groups) did the victim disclose her/his sexual orientation and/or gender identity. In the surveys seven persons chose the "I don't know" answer in regards to coming out, while only one stated that nobody knows about her/his orientation. In majority the victims came out to their "close friends and friends" and "LGBT friends" (73,3% and 55%). The subjects could choose more than one answer to the question. Fig. 5 presents the answers as percentages. This data does not reflect the level of disclosure in given category because of absence of filter questions (The subjects were not asked about having a sister/brother before they answered if they came out to their siblings. Another example is coming out at work, here as well we lack a filter question asking if the person was employed at all. Taking into account the low average age of the respondents we can suspect that many of them never got a job where they could come out.). Similarly, because we lack a filter question asking if victims have siblings, we can't compare this data with the "close friends and friends" category, probably all the subjects have friends.

Fig. 20. *Who knows about the sexual orientation/gender identity of the victim? You can choose more than one answer. (n = 120)*



### 3.2.4 CRIMES MOTIVATED BY PREJUDICES

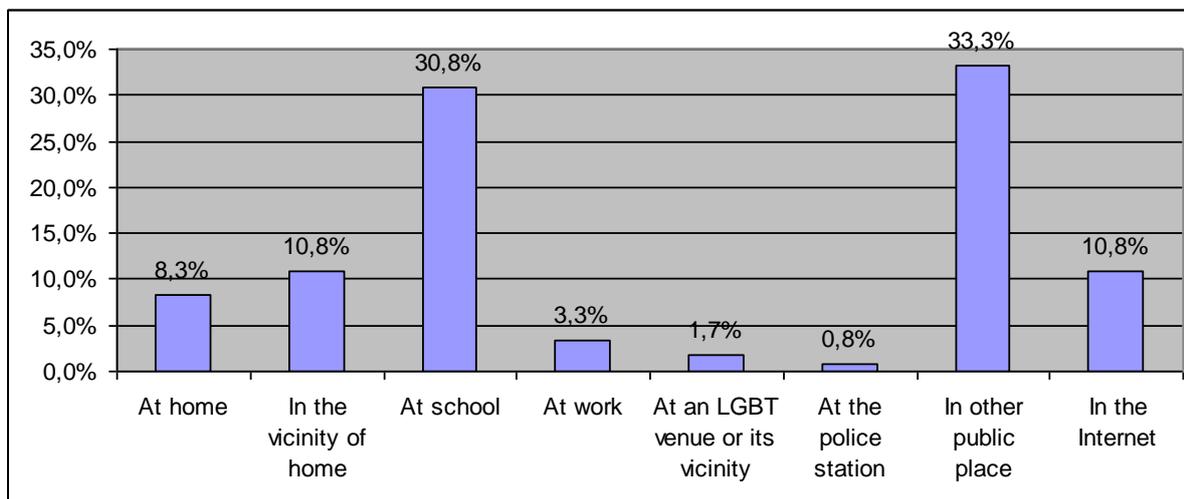
All the incidents described by respondents took place in 2013. Characteristics of the phenomenon based on the place of occurrence is presented in fig. 6 and indicates that in



most cases violence occurs at school (30,8%) or other public places (33,3%), this founding is in line with other researches on violence motivated by sexual orientation and gender identity of victims. The 2012 report indicates school as the place where violence occurs in 32,4% of cases, while public places in 57,3% of cases (in the 2012 research the number of answers considering public places was higher).

Additionally as figures 7 and 8 show, the most cases were recorded in capitals of provinces (57,5%) and during afternoons (35,8%) and evenings (25%). This does not determine the actual level of danger in terms of the size of a city one resides, as data in the report on social situation of LGBT people <sup>8</sup> shows that nearly 30% of LGBT people migrates to larger cities and more than 40% live in cities of population higher than 500 000 residents. It is then logical to assume that the research had smaller chance of reaching people who live in smaller cities or in the country side as those people are less actively participating in LGBT community life and are more often hidden in the closet (among the persons who came out, the percentage of persons who came out and are living in the cities of population higher than 1 million residents is 73,6%). In 10 cases respondents chose "n/a" as the answer to the question about the place of the event, as it took place e.g. in the Internet.

Fig. 21. *Where did the event occur?* (n = 120)



<sup>8</sup> Situation of LGBT persons in Poland. Report for 2010-2011. Edited by Mirosława Makuchowska and Michał Pawłęga. KPH, Warsaw 2013.

Fig. 22. *In which city/town did the event occur?(n = 110)*

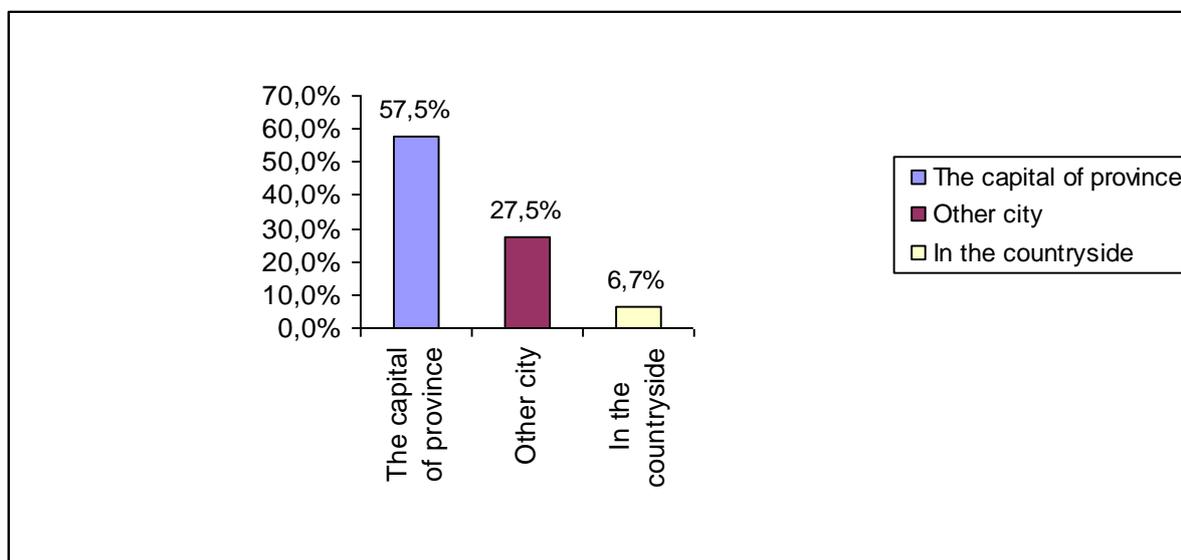
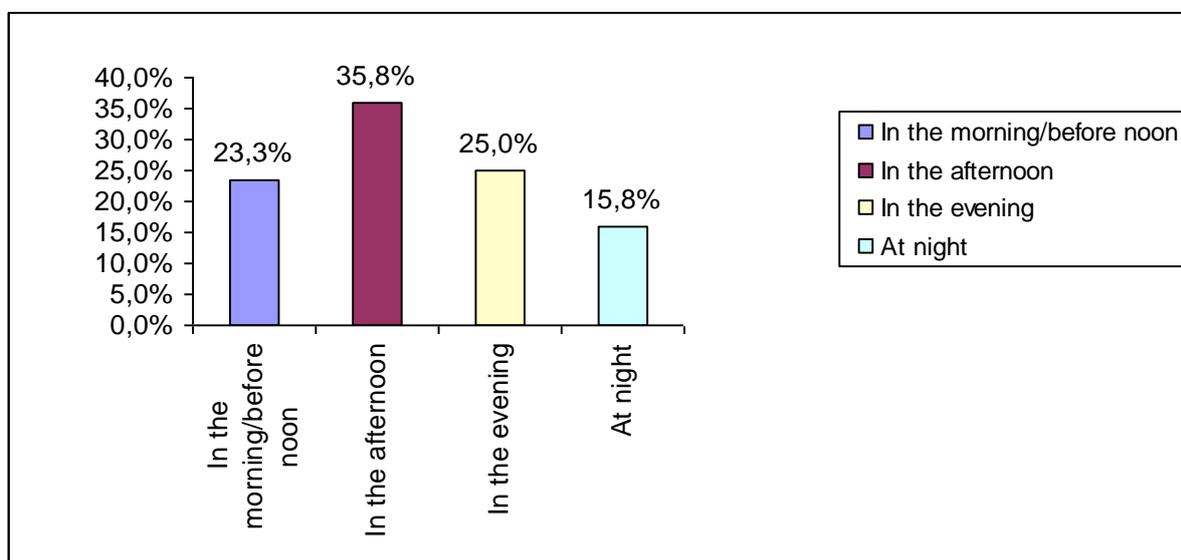


Fig. 23. *At what part of the day did the event occur?(n = 120)*



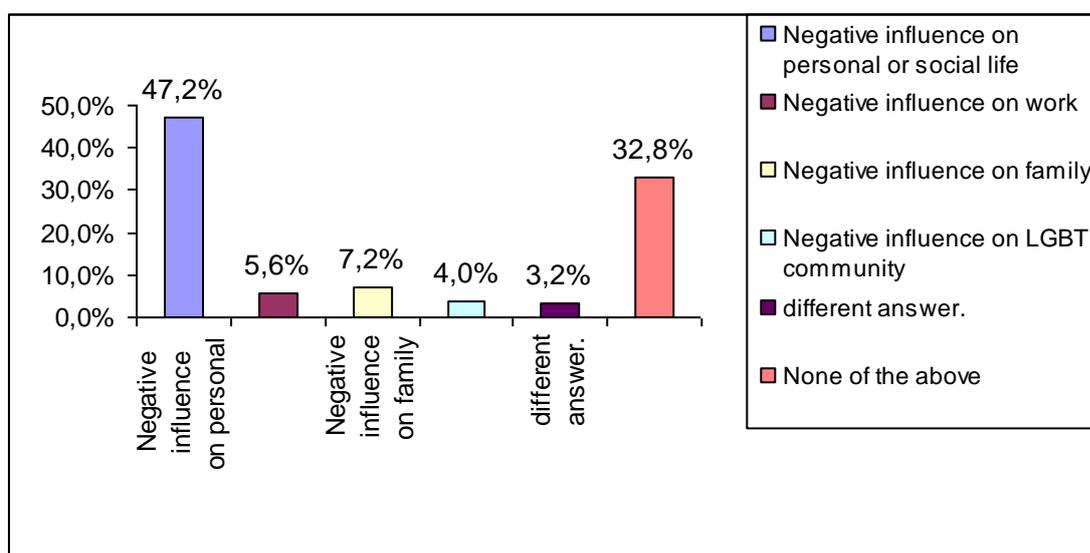
### 3.2.5 RESULTS OF THE EVENT AND VICTIMS' REACTIONS



Persons who suffered from extreme physical violence in 95% of cases were also injured. Nevertheless only 6 of them (31,5%) sought medical assistance. Among those 6 persons 2 were treated in an inappropriate way by health services workers: negative and malicious comments on their sexual orientation.

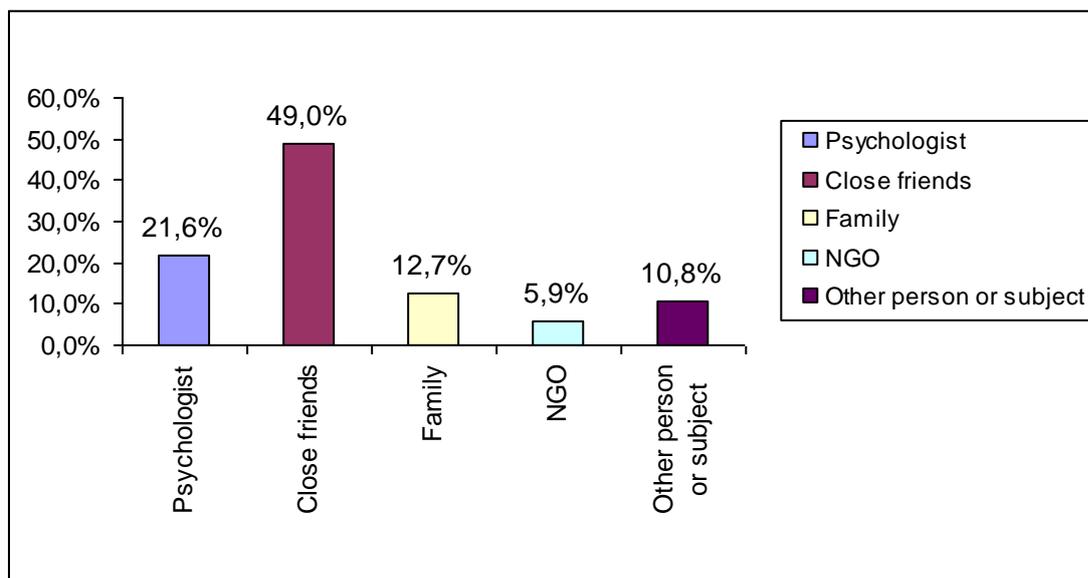
Victims and witnesses described how incidents made impact on victims' lives. 67,2% of respondents described it as negative. Those persons pointed out which areas of life were affected by incidents by answering a multiple choice question. Frequency analysis did not cover cases in which witnesses did not know whether incidents had an impact on victims' lives. The most frequent answer was that the crime had a negative impact on personal and social life. Persons who marked "other" specified that crimes negatively affected their wellbeing and self-esteem. In a separate question regarding one's wellbeing as much as 86,7% admitted that the incident had an impact on them.

Fig. 24. *Did the event have a negative impact on victim's life? You can choose more than one answer. (n = 115)*



Victims sought support in 69,1% of cases, mostly from close friends (49%) and psychologists (21,6%). Respondents could choose more than one answer at a time. The analysis did not include surveys in which witnesses did not know if the victim sought support.

Fig. 25. *Did the victim sought support after the event from presented below individuals/institutions? You can choose more than one answer. (n = 103)*



Only 7 from 83 persons who sought support were not shown understanding. Three times by psychologists chosen by victims, and twice by other subjects - in these cases: a principal and a teacher.

#### 4. POLISH POLICE AND OTHER LAW ENFORCEMENT AUTHORITIES RESPONSE TO HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES

Due to the fact that Polish criminal law does not provide for a legal definition of hate crime and does not include hate crimes committed on the grounds of sexual orientation or gender identity of the victim, such motivation does not in fact constitute an aggravating circumstance. Crimes committed with a homophobic or transphobic motivation are not classified as hate crimes but as "regular" crimes. Therefore law enforcement representatives do not pay any particular attention to the possibility of a motivation of this kind. The recent government's opinion on proposals for amending Criminal Code in order to include homophobia and transphobia as motives of hate crimes, state that there is no need to do so, as the judges have a possibility to recognise the homophobic motive as an aggravating circumstance according to art 53 § 2 of Criminal Code:

" In imposing the Criminality, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and



dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form. The court shall also consider the behavior of the injured person."

However neither KPH nor the Ministry of Justice know a single case in which art 53 § 2 was applied by the court in a crime with a homophobic motivation. Concluding, homophobic and transphobic motivations are not recognized by the law enforcement representatives.

Reporting crime to the to the police agencies was also low - only 8 victims went to the police, which means that as much as 92,3% incidents remained unreported (we excluded 16 cases from the analysis, when a reporting persons was not sure if a victim reported an incident). Only one of the reported incidents went to court.

Among persons, who reported incidents to the police 4 faced a positive or neutral, and professional reaction from the police officers, while in 4 remaining cases incidents were underestimated or the victim faced mockery.

We also asked if the victims reported the crimes to other authorities or institutions. only 2 persons marked "an NGO" as an answer - nobody reported incidents to the Ombudsman or any other institution.

Fear of secondary victimisation or another attack by offenders was often given as a reason for not asking for medical assistance or not reporting incidents to the police or other institutions. Majority of victims are convinced that the police lack effective means to pursuit and Criminalize offenders and that the police is not eager to start this type of cases.

*A402, male, 18 yo*

*I was afraid that the police will question them and then release them and they will only seek vengeance for me reporting them.*

*A403, male, 17 yo*

*I am afraid that this would have no effect. And even if it would, the struggle would be long*



*and pointless. Or maybe the police officer would hit us?*

A420, male, 22 yo

*Because while filing a report we are told, there is nothing they can do, that we need to start a case which means costs, otherwise they would accomplish nothing and come what may. I was also afraid what the reaction after reporting would be.*

A319, female, 19 yo

*Because I believe that insulting, calling names, threats of beating, and in general all what concerns attacks on LGBT, the police would try to do as little as possible in relation to such situations.*

A331, male, 19 yo

*Such cases in this city are a common thing...the police operates in a way that you can end up with a slam on your face...it makes no sense to report to the police.*

## 5. GLOSSARY

### **Advocacy**

The deliberate process of influencing those who make or have responsibility for implementing policy decisions. As such, the word 'advocacy' is quite pliable and is used variously to suit organisational agendas. It is understood in terms of the work an organisation does and the fundamental mission of the organisation.

### **Bias indicators**

Criteria that can assist law enforcement professionals in determining whether a particular crime should be classified as a bias/hate crime. These criteria are not all-inclusive, and each case must be examined on its own facts and circumstances.



## **Bias motivation**

A bias or hate crime or hate-motivated incident can be based on one of the following motivations: race/ethnicity, religion/faith, nationality, age, disability, sex, sexual orientation, gender identity, or other grounds.

## **Data collection**

Data collection implies determining what information is needed and establishing means for acquiring it. Fact finding and monitoring are part of this process. Methods use a wide range of tools including surveys, interviews, questionnaire, etc.

## **Documentation**

The term documentation can have different meanings, depending on the geographical context or the field in which it is employed. It is important to stress that documenting is a process that includes different steps, which can vary depending on the goal of the documentation. Generally, documentation is the process of organising and classifying the collected data in a way that it is accessible in the short and long term. It implies categorising the collected data according to certain criteria (such as the profile of victims/perpetrators; categories of incidents; bias indicators). This makes the data accessible and creates possibilities for analysis. Analysing data includes elaborating statistics, charts and graphs to make findings more visible. Good documentation is the basis for good reporting and dissemination to actors (government authorities, European/international institutions, human rights institutions, etc.) who can take action. Good documentation can also be used to create effective advocacy tools which support changing attitudes, education, articles, posters etc.

## **Hate crime (or bias crime)**



Hate crime are criminal acts motivated by bias or prejudice towards particular groups of people. This could be based, inter alia, on gender, gender identity, sexual orientation, ethnicity, religion, age or disability.

A hate crime comprises two distinct elements:

- It is an act that constitutes an offence under criminal law, irrespective of the perpetrator's motivation; and
- In committing the crime, the perpetrator acts on the basis of prejudice or bias.

Thus, the perpetrator of a hate crime selects the victim based on the victim's membership or perceived membership of a particular group. Where the crime involves damage to property, the property is chosen because of its association with a victim group and can include such targets as places of worship, community centres, vehicles or family homes.

### **Hate-motivated incidents**

An act that involves prejudice and bias of the sort described above but does not amount to a crime is described as a "hate-motivated incident". The term describes acts motivated by prejudice ranging from those that are merely offensive to those constituting criminal acts in which the crime has not been proven. Although hate-motivated incidents do not always involve crimes, such incidents often precede, accompany or provide the context of hate crimes.

### **Hate speech**

Forms of expression that are motivated by, demonstrate or encourage hostility towards a group or a person because of their membership of that group. Since hate speech may encourage or accompany hate crimes, the two concepts are interlinked. States differ considerably as to which forms of expression can be limited or prohibited because of their hateful nature.



## Monitoring

A broad term describing the active collection, verification and use of information to address human rights problems over time. Human rights monitoring includes observing and gathering information about incidents and events (elections, trials, demonstrations, etc.); it has a temporal quality as it generally takes place over an extended period of time. In the specific context of hate crime, the purpose of monitoring is to document violence motivated by hatred and to draw the attention of national authorities or international organisations to the violation of recognised human rights. Monitoring ultimately aims to collect sufficient evidence of hate crimes to convince authorities and the public that something has to be done to improve the situation. Monitoring is also done to ensure that the authorities are adhering to the law, guidelines or agreements. It can also show trends over time.

## Recording of hate incidents

In the context of hate incidents recording means the police or NGOs are keeping a log, or record, of all hate crimes/ incidents that have been experienced and reported by people. It involves taking down key information that relates to these incidents, such as when they occurred and a description of what happened.

## Third Party Reporting

The aims of having third party reporting is to increase reporting of hate crime and to increase the flow of intelligence from the different communities whose members suffer from hate motivated incidents/crime. These are achieved by providing members of the public with an alternative point of contact, which is different from the police. There are a number of initiatives that encourage and assist victims and witnesses to report hate-motivated incidents and crime, these include:

- *Self-reporting schemes*, allowing victims to make direct reports of incidents/crimes without having to speak to the police.
- *Assisted reporting scheme*, involving a third party such as a voluntary organisation, who take details of an incident or crime and pass the report to the police.



## **Victim perception**

The perception of the victim (or of a witness) is the defining factor in determining that an incident should be investigated as a hate incident. No assumption regarding the lack of motivation as a cause of an incident should prevent reporting it as a hate incident if the victim or a witness indicate such a perception. A victim of a homophobic or transphobic hate crime or incident does not have to be a member of LGBTI communities. For example, a heterosexual man who is verbally abused leaving a gay bar may well perceive that it is motivated by homophobia although he himself is not gay. The deciding factor lies in the perception of the victim or a witness.

## ***Repeat* Victimisation**

A person, who becomes the victim of a hate crime or incident, may already have been the victim on a number of occasions. Previous incidents may not have been reported to the police for a variety of reasons and as such, when an incident is reported, it may be the culmination of a lengthy course of victimisation.

## ***Secondary* Victimisation**

When a person is the victim of a hate crime and they perceive a lack of commitment or understanding in the response from the police, this can have the effect of victimising them for a second time. Whether they are in fact receiving such a level of response is immaterial, as the victims personal reaction is based on their immediate perception.

## **Victim of a homophobic or transphobic hate crime/ incident**

A victim of a hate incident/ crime is a person that has suffered of any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate based upon his/her sexual orientation, gender identity or gender expression. The perception of the victim or any other person is the defining factor in determining a homophobic or transphobic hate incident.

