

**Stepping up the fight against hate crimes – Towards an inclusive response to homophobic and transphobic violence and hatred**

**Report of the Seminar**

10 December 2014

**Summary**

The ILGA-Europe seminar “Stepping up the fight against hate crimes - Towards an inclusive response to homophobic and transphobic violence” took place on 10 December 2014 and brought together over 60 representatives of LGBTI and human rights civil society organizations, EU institutions, Member State governments, international organisations and academia.

Key speakers included ILGA-Europe members, representatives of the European Commission, European Parliament, the Fundamental Rights Agency (FRA) , as well as many other experienced practitioners. The debates focused on the EU’s and its Member States’ responses to homophobic and transphobic hate crimes.

The main objectives of the seminar were:

1. To facilitate the discussion on the various models of hate crime legislation in order to assess their effectiveness and impact;
2. To assess EU legislation and explore the legal avenues to strengthen the EU legislation framework to combat hate crimes and to protect victims of homophobic and transphobic more efficiently;
3. To strengthen cooperation between EU institutions, civil society and other stakeholders and pave the way for shared operational objectives;

The question of gaps in EU legislation tackling homophobic and transphobic hate crime was at the centre of the discussions. Workshops exchanges looked closer at how EU legislation could tackle those gaps. Best practice examples of fighting hate crime on the ground were discussed and the importance of partnerships between civil society, police forces and the judiciary system was reemphasized.

In the closing session, participants called upon Members of the European Parliament, the European Commission and the upcoming Luxemburg Presidency to step up the fight against homophobic and transphobic hate crime across the EU. The LGBTI Strategy, announced by Commissioner Jourova, will be essential in this regard.

## Detailed Proceedings

### **1. State of play: the situation regarding homophobic and transphobic hate crimes in the EU**

The **opening session** kicked off with **Evelyne Paradis' (ILGA-Europe)** recalling that tackling homophobic and transphobic hate crime is a key priority for ILGA-Europe. Evelyne Paradis outlined the need to take stock of manifestations of homophobic and transphobic hate crime and to assess how EU institutions and Member States are addressing hate crimes. She emphasised the need for a collective strategy to address gaps in order to build a Europe free from homophobic and transphobic violence.

#### **Opening remarks by the EU's Italian presidency**

Representing the Italian presidency in office, **Filippo Colombo (Italian Permanent Representation to the EU)** gave an overview of measures taken by the Council of the EU, building on the adopted Council conclusions on hate crimes of 6 December 2013<sup>1</sup>. He confirmed that gaps in data collection still hamper the ability of Member States to tackle hate crime effectively.

A Council/FRA Working Party gathering EU Member States and FRA representatives met for the second time in November 2014, in Rome. The Working Party is tasked to exchange practices on various aspects of hate crime. Underreporting will be a priority. There is a high discrepancy regarding data collection practices across Member States and there is a need to work towards shared definitions and methods. Synergies with activities of the Council of Europe and ODHIR/OSCE will be sought in this regard. The WG will also focus on cooperation with the media and the development of educational activities in school environments. Member States will reflect on procedures designed to build knowledge of hate crimes and better equip police and prosecutors in this regard.

Regarding legislation, Mr Colombo confirmed that for now the Council is focusing on the implementation of the EU acquis, notably the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (hereinafter, the Framework Decision) and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter, the Victims' Rights Directive).

### **2. Member States criminal law systems protecting victims and prosecuting hate crimes**

The first panel discussed Member States' criminal law systems protecting victims and prosecuting hate crimes. **Craig Barnes** from the **LGBT Equality Team within the UK Government Equalities Office (GEO)** gave an overview of the legislation related to hate crimes in the UK.

The seriousness of several cases of hate crimes with a bias motive led to the UK government putting into place legislation and operations to tackle hate crimes. Especially the murder of Stephen Lawrence in 1993 was a catalyst for change – both in the way the police and criminal justice system deal with racially-motivated crimes and in the recognition of hate crimes. Today there is greater understanding of the disproportionate impact hate crimes have on victims.

The UK government defines hate crime as “any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice based on a personal characteristic”. According to this definition, hate crime can be motivated by disability, gender

---

<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/139949.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139949.pdf)

identity, race, religion or faith and sexual orientation.<sup>2</sup> Legislative measures are only part of the response to hate crimes. It is a priority for the UK government along with the question of under-reporting. The legislative tools are covering incitement to hatred based on race, religion, disability, sexual orientation, and racially and religiously motivated offences. Legislation protects victims from such hate crimes, including offences for those who intend to stir up racial hatred, commit racially and religiously aggravated offences. New criminal offences and enhanced sentences have been introduced in recent years to reflect the seriousness of hate crime.

Measures are being put in place to ensure the operational enforcement of legislation notably at the level of the police through a National Policing Hate crime strategy along with operational guidance. A tool kit for prosecutors dealing with cases of homophobic and transphobic hate crimes has been developed, along with confidence building measures encouraging reporting and support the victims.<sup>3</sup>

## Romania

**Carolina Marin (ACCEPT, Romania)** made the case of the still prevailing fragmentation within the EU criminal law landscape. According to the Romanian Penal Code, crimes based on opinion, sexual orientation, ethnicity, religion or political views of a person are particularly grave, with hate crime being an aggravating factor. But the problem is that this legislation is not enforced in Romania. Carolina reported about several serious cases of verbal and physical assaults against LGBTs individuals which have remained unaddressed and unpunished, both at the level of the police and of the prosecuting office. There is a clear lack of political will, lack of awareness about hate crime, with no trainings of the police forces and the prosecutors. Victims are often afraid to report incidents due to prejudiced attitudes present at the level of the police authorities.

## Transgender hate crimes

**Boglarka Fedorko** presented **Transgender Europe (TGEU)**, an organisation whose mission is to ensure that trans people in Europe can enjoy their human rights and full equality in all spheres of life. In the fight against hate crime, TGEU offers victim support services and advocacy. Boglarka presented TGEU's Legal and Social Mapping Tool<sup>4</sup>, an overview of gender identity as a protected ground in the context of hate crime legislation and other laws and policies. She also presented the ProTrans project which supports TGEU member organisations and other stakeholders in monitoring violence against trans people and in establishing support for trans survivors of violence.

## FRA latest EU LGBT and Transgender survey

Boglarka welcomed the latest FRA report "Being Trans in the European Union – Comparative analysis of EU LGBT survey data" which provides substantial evidence of the high level of recurring violence and hate-motivated crime affecting trans persons. The results show that the annual incidence rate of violence or harassment is around one incident per two trans respondents, which is twice as high as the incidence rates for lesbian, gay and bisexual respondents. About two in five (44%) trans respondents who were victims of violence in the 12 months preceding the survey indicate that this happened three or more times during this period. This indicates the need to improve policies combating hate crime across the EU.

With regard to suffered violence, trans respondents are the most likely of all LGBT groups to say they were attacked or threatened with violence in both the five-year and one-year time periods asked about in the survey. In the five years preceding the survey, 34% of all trans respondents experienced violence or were threatened with violence, and 15% experienced violence or the threat of violence in the 12 months preceding the survey. Among all the LGBT

<sup>2</sup> <https://www.gov.uk/government/policies/reducing-and-preventing-crime--2/supporting-pages/hate-crime>

<sup>3</sup> Website "True Vision", [www.report-it.org.uk](http://www.report-it.org.uk).

<sup>4</sup> [http://www.transrespect-transphobia.org/uploads/downloads/Legal-Social-mapping2014/web\\_tvt\\_mapping-europe\\_small.pdf](http://www.transrespect-transphobia.org/uploads/downloads/Legal-Social-mapping2014/web_tvt_mapping-europe_small.pdf)

survey respondents, the trans respondents are also the most likely to report hate-motivated violence to the police.

### **Data collection**

Currently, only Finland, Sweden, and the United Kingdom collect segregated data on bias-motivated crimes committed against trans people. The Swedish National Council for Crime Prevention (Brå) publishes statistical data on crimes in Sweden, amongst which the Swedish Crime Barometer.

Brå also publishes data specifically on hate crime, including of a separate category for trans people/ gender identity. In the United Kingdom, the Gender Equality Duty (GED) came into force in April 2007 and required all UK public authorities to carry out their functions in due regard of the need to: (i) eliminate unlawful discrimination and harassment on the grounds of sex, and (ii) promote equality of opportunity between women and men.

### **Legal protection of transgender persons against hate crimes: the case of Scotland**

Scotland has produced one of the most Transinclusive legislation against hate crimes. Scottish authorities understood that in order to improve trans people's living experiences, trans communities needed to be considered as key stakeholders to any policy making process that are likely to affect their lives. The Scottish Transgender Alliance (STA) was set up with public funding to provide training sessions on trans issues to the Scottish Parliament, government and public authorities, as well as to develop trans related policies. The success of the approach led to an extension of the funding in order to engage the wider Scottish trans community in policy making.

Following input provided by STA regarding the Scottish Trans people's experience of bias-crime and violence, the Scottish Parliament progressed hate crime legislation expressly covering gender identity. The Offences (Aggravation by prejudice) (Scotland) Act entered into force in March 2010. This Act extended the protection that was already in place for victims of prejudice crime motivated by their racial or religious characteristics to sexual orientation, transgender identity and disability.

### **3. Assessing EU responses to Hate Crimes and Support to the Victims. What are their impacts?**

The second panel started with a presentation of **Aydan Iyigüngör (FRA)** presenting the findings from the recently published LGBT survey and transgender report as well as the purpose and activities of the Working Party on Improving Reporting and Recording of Hate Crime. Aydan confirmed that 78% of LGBTI hate crimes were not reported to the police. Almost a fifth (19%) of the 93,079 respondents said that they had been victims of harassment in the past year, partly or completely because they were perceived to be lesbian, gay, bisexual or transgender. Lesbian women were the most likely to have been harassed – almost a quarter (23%) in the last year – along with transgender respondents, of whom 22% had been harassed in the preceding 12 months.

Aydan gave an overview of the range of research that the agency was involved in. Activities include access to justice for victims of hate crime, hate crime against persons with disabilities, children with disabilities, and the pilot project on hate crime indicators "Targeted Violence and Hostility" in Ireland, the Netherlands, and Finland.

### **Challenging hate crime through law**

**Paul Iganski (professor at Lancaster University)** focused on the importance of using the law to challenge cultures of hate. Research evidence shows that hate crimes hurt more on average compared to other crimes, with victims being more likely to report post-victimisation emotional and psychological distress.

There are a number of reasons to explain this phenomenon. Hate crimes are 'message crimes'. Intentionally or not, perpetrators strike at the core of the victim's identity, disparaging, denigrating and marginalising the victim. The greater harms inflicted by hate crimes provide yet another rationale for hate crime laws.

Challenging hate violence means challenging the cultural values which spawn hate. Law is constitutive of culture itself by providing a narrative of how a society seeks to be and envisions the relations between its members. Law therefore plays a crucial role in constructing narratives against the attitudes underpinning hate violence. This lays the foundations for the dynamic evolution of communities without violence and promoting respect for diversity and difference. In his concluding comments, Paul Iganski called for criminal justice systems across Europe to tackle homophobic and transphobic hate crime seriously so that victims and offenders receive an appropriate response. There is a need for all Member States to end double-standard policies whereby violence on the basis of a person's sexual orientation or sexual identity is treated less seriously than other types of bias crimes in certain Member States and at EU level.

### **EU legal instruments addressing hate crime and victims' rights**

**Linda Ravo ( DG Justice, European Commission)** presented the European legal framework on hate crime and on other relevant EU policy action and funding:

- The Framework Decision 2008/913/JHA adopted in 2008 lays down a common approach to combating racism and xenophobia by means of criminal law. Its scope covers certain intentional forms of hate speech and hate crime committed with a bias motivation related to the race, colour, religion, descent or national or ethnic origin of the victims.
- Whether to consider a bias motivation based on grounds other than those explicitly mentioned in the Framework Decision, including sexual orientation and gender identity, is up to each Member State under national law.
- Combating hate speech under the Framework Decision includes the obligation to criminalise the public incitement to violence or hatred, including by public dissemination or distribution of tracts, pictures or other material; aiding and abetting is also punished.
- Investigations into or prosecution of the conduct should not depend on a report or an accusation made by a victim
- Under the framework decision, there is an obligation to provide for effective, proportionate and dissuasive penalties;
- Investigations into or prosecution of conduct should not depend on a report or an accusation made by a victim
- For all criminal offences (murder, arson, bodily harm etc.), Member States must either ensure that racist and xenophobic motivation is considered an aggravating circumstance or ensure that such motivation may be taken into consideration by the courts in the determination of penalties:
- In terms of implementation, the deadline expired in November 2010: all Member States have now notified their transposing legislation. A report was published by the European Commission (EC) in January 2014<sup>5</sup>
- Key challenges have been identified in terms of implementation and include Incomplete/incorrect transposition; limited application of the provisions (gaps in investigation and prosecution);
- Since December 2014, the EC, formally acquired enforcement powers and will make use of those to further ensure sound implementation of the framework decision through bilateral dialogues with all Member States.

### **Directive on the Rights of Victims of Crime<sup>6</sup>**

---

<sup>5</sup> link [http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/framework-decision/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/framework-decision/index_en.htm)

<sup>6</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA-  
[http://ec.europa.eu/justice/criminal/victims/index\\_en.htm](http://ec.europa.eu/justice/criminal/victims/index_en.htm)

The directive aims at ensuring that all victims of crime are recognised, treated with respect and receive proper protection, support and access to justice. It also includes provisions on training on victims' needs, and encourages cooperation between Member States and awareness rising on victims' rights.

The Directive's main provisions are:

- An obligation to **assess victims' individual specific needs for protection**
- An obligation to **ensure unconditional access to specialist support services**
- An invitation to collect good quality targeted data, including on the prevalence of particular forms of crime and on how victims are assisted and protected
- An obligation to set up **training measures targeted at law enforcement as well as judicial authorities;**

The implementation deadline for the directive will expire in **November 2015**. A Guidance document was published in December 2013. The Commission will soon launch **bilateral dialogues with Member States** which most need assistance for ensuring timely and correct transposition.

In terms of policies and actions, the EC has supported the **establishment of expert's fora and platforms** aiming to facilitate exchange of good practices. **EU funding** is also available for the development of efficient monitoring and reporting mechanisms for racist and xenophobic hate crime and speech, including online hate speech, and the exchange of best practices to combat racism, xenophobia and other forms of intolerance, with a focus on criminal law tools; the development of programmes providing support to victims, the training of judges, prosecutors and other legal professionals.

## Poland

**Kuba Sękowski (Chief specialist in the Criminal Law Department of the Polish Ministry of Justice)** recalled the important role played by both the Council of Europe (CoE) and the EU in enhancing Poland's legal framework protecting human rights and combating discrimination. Poland's constitutional framework is based on the rule of law and complies with its obligations being a state party to the UN basic human rights treaties and to the European Convention on Human Rights (ECHR). Its legal system has learnt from jurisprudence of the European Court of Human Rights and its dialogue with ECRI. Poland complies with the EU non-discrimination framework (But Poland's legal tradition remains conservative. While Poland has no provisions specifically covering hate crimes and has imposed the Framework Decision without extending it to sexual orientation. The Victims' Rights Directive has not yet been implemented. The General Prosecutor's instructions for prosecutors in the field of hate crimes provide practical accompanying measures and district prosecutors specialised in hate crime have been appointed. Police officers have been trained in cooperation with LGBT organisations.

## Belgium

Kenneth Mills from Çavaria raised the issue of the serious gaps which prevail in terms of data collection and data collection of homophobic and transphobic crimes. In its Belgium country report, ECRI highlighted this problem and recommended that the authorities "*pursue systematic research and data collection concerning intolerance and discrimination on grounds of sexual orientation and gender identity, including a general attitude survey on LGBT related questions*". Kenneth Mills stressed the importance of projects which can further nurture relations between LGBTI organisations and the police authorities. Trainings of police authorities are taking place in this context.

## 4. Workshops

**Workshop 1 – Towards inclusive EU legislation to combat hate crimes. What do we need? What are the challenges? What could be the way forward?**

This workshop focused on the fragmented landscape across EU Member States when tackling hate crimes and the existing gap in EU legislation regarding homophobic and transphobic hate crimes. The opportunity and chances of new EU legislation to close that gap was the object of significant debate. Paul Iganski made the case that differences among Member States should not be accepted and that inclusive hate crime legislation in terms of criminal codes needs to be the strategic goal.

Kuba Sękowski agreed with the fact that equal treatment should prevail between all grounds from Article 19 TFEU, but pointed to different cultural traditions in each Member State. According to him, the Criminal Code cannot be a tool for social change but can only reflect it.

Linda Ravo agreed with the fact that Criminal Code should prompt change, but according to her political will by Member States is lacking. In addition, the EU can only act within the limits of its competence and the principle of subsidiarity should be respected. Mainstreaming EU anti-discrimination legislation into EU criminal law is technically possible, but might face strong resistance. The proposed non-discrimination Horizontal Directive<sup>7</sup> does not foresee any harmonisation of criminal law provisions. Linda suggested that better implementation of the anti-discrimination legislation should be sought.

Natacha Kazatchkine (Amnesty International European Institutions Office) highlighted the need of compliance between the EU anti-discrimination legislation<sup>8</sup> and criminal law as a strategic objective of the EU. The discussion subsequently focused on the implementation of the Framework Decision and on further steps the EC could take in this respect. Linda Ravo mentioned the limited scope of the Framework Decision, especially article 4 and 8. Guidelines for Member States on the implementation were still under discussion in the European Commission. Linda also emphasised the importance of dialogue between the Commission and civil society.

Pol Naydenov (Bilitis, Bulgaria) highlighted concerns about hate speech propagated by religious groups and institutions referring to the Orthodox Church in Bulgaria using the argument of freedom of expression to legitimise such acts. Linda Ravo confirmed the importance of receiving information from NGOs at national level in order to better monitor hate crime situations. In terms of freedom of expression and human rights law, there is a red line between the two.

The fact that hate crime legislation needs to take into account the needs of different identity grounds and affected groups was stressed in this respect, the Victims' Directive was mentioned, as it contains provisions that can be applied to bias motivated speech/violence.

Paul Iganski stated that an EU Criminal law including provisions on bias-motivated hate crime is key and should be a model for legislation on national level. There was broad recognition that more political discussion between civil society and the EC is needed and strong consensus emerged on the need to push forward an EU LGBTI Strategy. The monitoring the implementation of the Framework Decision would be an opportunity to check whether member states have decided to extend the scope of the instrument to sexual orientation and gender identity.

## **Workshop 2 – Best practices of combating hate crime on the ground**

This workshop aimed at exchanging innovative models of stakeholder partnerships involving LGBTI organisations with the aim of tackling homophobic and transphobic hate crimes.

**Joanna Perry (OSCE Office for Democratic Institutions and Human Rights (ODIHR))** gave an overview of current work on hate crime recording and reporting. She recalled the Ministerial Council Decision No. 9/09 on combating hate crimes as well as the work of the

<sup>7</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}-  
[http://ec.europa.eu/justice/discrimination/law/index\\_en.htm](http://ec.europa.eu/justice/discrimination/law/index_en.htm)

<sup>8</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation- [http://ec.europa.eu/justice/discrimination/law/index\\_en.htm](http://ec.europa.eu/justice/discrimination/law/index_en.htm)

Council/FRA Hate Crime Working Party. To assist OSCE participating states in filling the remaining gaps in policies against hate crimes, ODIHR has developed different programmes: hate crime recording, police training, supporting law makers, training prosecutors, working with civil society and working with educators. An important tool of ODIHR is the website [www.hatecrime.osce.org](http://www.hatecrime.osce.org) which collects data on hate crime in different countries. Official data is complemented with NGO information. The website is a useful tool for activists as it confronts the state's actions in the face of its commitments at ministerial level. A drawback of the project is that sexual orientation is not mentioned, because there is no consensus among OSCE Member States that "other grounds" includes sexual orientation.

Joanna Perry also admitted that transphobic violence does not have the profile it should have on the website. In the area of hate crime recording, a Practical Guide has been developed to fill data gaps and gain a better understanding of the prevalence and impact of hate crime across the OSCE region.<sup>9</sup> This guide helps states diagnose where they are at and helps activists advocate for improved responses.

**Nick Antjoule (GALOP, London)** presented Galop's work in countering hate crime. Firstly, victims of homophobic or transphobic attacks can report to Galop. Galop then sends the report to the police and follows up the case. After case-files have been instructed and processed in court, the records are sent to community workers. LGBT organizations can then better understand how the case was handled and positive or negative developments that might have impacted on the case instruction. The numbers of people who report hate crimes and get their case through court remains limited. And there is a need for an official acknowledgement of homophobic and transphobic violence. Research on hate crimes is notably accounted for through questions on hate crimes inserted in the UK Household Survey. Additionally, there are opinion surveys on what people in the UK think about different communities. This research is useful to Galop in order to shape messages for the media when contacted by them. Katrin Hugendubel (ILGA-Europe) noted that cooperation with authorities while keeping the organisation's independence is an important factor in Galop's success.

Joanna Perry drew attention to the impact of joining forces to make the call stronger. She mentioned Greece, where the establishment of a Racist Violence Coordination Network, significantly impacted on the public reporting of hate crimes by public authorities, including homo- and transphobic hate crimes. This network is composed of the UNHCR, the national human rights body and NGOs. The network conducted trainings with the police and provided reflection on law implementation which helped to create momentum for the fighting against hate crime in Greece.

Julia Kata (Trans-Fuzja , Poland) reported that in Poland a "police platform against hatred" is in place where the police meets with NGOs, including LGBTIQ organisations. The Polish human rights defender is also involved, which helps cooperation. Data collection is very important, because of the "no data, no problem" mind-set.

Katsiaryna Barsuk (GayBelarus) shared her experiences of working in Belarus, which is not a participating state of the Council of Europe and neither of the Organisation for Security and Co-operation in Europe. Police is very prejudiced and does not want to work on hate crime. The police forces do receive training, but only from police authorities from the United Kingdom and Germany. GayBelarus cooperates with the UK and Germany police force authorities to ensure that homo- and transphobic hate crimes are addressed. GayBelarus also aims at making cases visible through strategic litigation.

### **Workshop 3 – Making hate crime legislation effective: the role of law enforcement and judiciary authorities**

The objective of workshop three was to examine the role of law enforcement and judiciary authorities in tackling hate crime. Pascale Charhon (Charhon Consultants) recalled that law enforcement authorities and judiciary authorities have a decisive role to play in ensuring that

---

<sup>9</sup> Hate Crime Data Collection and Monitoring: A Practical Guide, <http://www.osce.org/odihr/datacollectionguide>.



homo- and transphobic hate crimes are understood, properly investigated and sanctioned. The development of police authorities' confidence building measures towards LGBTI communities is also needed in order to address under-reporting and better respond to the needs of victims. A clear understanding of the nature of homophobic and transphobic hate crimes and learning to recognize common experiences of discrimination affecting LGBT people by law enforcement and judiciary authorities is key in ensuring that hate crimes are properly recorded and sanctioned.

The last years numerous initiatives have been developed by LGBT organisation and police authorities to help police, investigators and prosecutors better understand and identify potential hate crime cases of homophobic nature. Pascale Charhon mentioned the work undertaken by ILGA-Europe to cross-fertilise those practices.

**Kerttu Tarjamo (CoE Sexual Orientation and Gender Identity Unit)** presented the 2010 Recommendation CM/Rec(2010)5 to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. Building on existing human rights instruments (particularly ECHR and the ECHR case law), it calls for the review of legislation and other measures and to conduct relevant research and data collection in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity. The Recommendation further referred to the rights to life and security recommending that CoE Member States:

- ensure effective and prompt investigation of alleged cases of hate crime, take into account a bias motive related to sexual orientation or gender identity as an aggravating circumstance when determining sanctions;
- encourage victims and witnesses of SOGI related hate crimes to report, making sure that law enforcement officials have the skills and knowledge to identify cases and to support and assist victims and witnesses;
- guarantee the safety of persons in prisons or such institutions, especially protection of LGBT persons from physical violence, and the protection and respect of transgender persons gender identity;
- collect relevant data on the prevalence and nature of discrimination and intolerance on grounds of SOGI, especially on hate crimes.

Targeted initiatives by the CoE to address homophobic and transphobic hate crimes also include specific education and training for legal professionals and the police, the development of a database of promising policies on hate crimes (accessible in 2015) and practices in the field of police training in Montenegro, Albania, Poland and Latvia.

**Stefano Failla (CEPOL)** presented the EU agency CEPOL. The agency provides a platform for the training of law enforcement officers across the EU via residential courses, seminars, online modules, webinars (online seminars), common curricula and staff exchange programs. CEPOL cooperates with the FRA and other key players in this sector, including ILGA-Europe and other CSOs, to promote a better understanding of hate crime and to help train law enforcement officials address them. The agency addresses fundamental rights as a cross-cutting issue across all learning products.

Cultural mind-sets and attitudes of course do play a role; hence education (not simply training) is the key. Six courses have taken place addressing hate crime since 2012. A specific webinar with ILGA-Europe among the trainers took place in 2014, and a new course on hate crime based on a new curriculum will be put in place in 2015. Under-reporting and wrong categorisation of hate crime are still an issue that needs to be addressed.

The upcoming reform of the CEPOL Regulation by the Council and European Parliament may provide opportunities to enhance the fundamental rights dimension of police training and open up to European law enforcement trainings. The widening of CEPOL's target group to law enforcement officers (as opposed to only senior police officers) may play a crucial role in this regard. The European Law Enforcement Training Scheme proposed by the European Commission is an opportunity not to be lost, and it needs to feature clearly in CEPOL's new legal basis.

The workshops exchanges confirmed the invaluable contribution provided by innovative practices of cooperation involving the police and LGBT organisations. Many of the CSOs present shared their experiences notably in implementing trainings for the police force and which revealed a series of systemic issues prevailing at state authorities levels (bureaucracy, lack of cooperation between police authorities and ministries of justice and budget cuts which affect the number of training initiatives that can be carried out). Participants also argued that trainings should follow a bottom-up approach and target staff and managerial positions within the police forces. As concluded by an Amnesty International representative, legislation does not solve everything. In Greece, for instance, hate crime legislation exists but suffers from lack of implementation. This is a key issue, affecting the way in which the police and judicial authorities work.

## **5. Closing session**

The session started with feedback and conclusions from the different workshops, by the designated rapporteurs and did put forward clear questions and calls for the representatives of the different EU institutions represented in the final panel.

### **Report from Workshop 1 : Natacha Kazatchkine (Amnesty International EU)**

While the EU can rely on legislation to fight against discrimination and support victims, minimum rules and sanctions on hate crimes, covering all discrimination grounds, are lacking. It is felt not acceptable for EU citizens to enjoy different levels of protection from one country to another. While the last two years have seen renewed Council commitments to tackle hate crimes, protection gaps cannot continue to be ignored. Moreover, the 2008 Framework Decision has not been effective in ensuring that Member States actually reveal the hate crime motive during the investigation and prosecution phases. Its provisions need to be strengthened. It would be commendable that a group of Member States support the introduction of enhanced EU standards on discriminatory violence that provide protection to all the grounds covered by Article 19 TFEU.

The European Commission should:

1. Prepare the ground for future legislative action to enhance the existing legal framework (for example by issuing a Communication, launching consultation through a Green paper or adopting a recommendation);
2. Tackle specific challenges on investigation and prosecution practices via targeted measures to strengthen national responses to hate crime on all grounds by Member States (e.g. by developing specific guidelines to complement the existing guidelines for the EU Directive on victims of crime and promoting the sharing of good practices between Member States);
3. Build bridges between EU policy making and the activities of the newly established FRA/Member States Working Party on hate crime;
4. Promote the adoption of better standards in the field of the protection of victims, while monitoring the implementation of the Victims' Rights Directive;
5. Use the potential of a future EC LGBTI Strategy to consider new legislation and guidelines on hate crime.

### **Report from Workshop 2 : Joël Le Déroff (ENAR)**

Some Member States are making progress in the fight against hate crime, while others are still lagging behind. The role of legislation is deemed essential as a first critical step. As many Member States haven't adopted good legislation, EU legislation is necessary to fill protection gaps. In order to step up the fight against hate crimes, a concerted approach between public authorities, enforcement agencies and NGOs, which play a fundamental role in reporting, monitoring and providing support to victims, is needed.

EU level can play a role ensuring sound implementation of European legislative frameworks, but also by promoting the exchange of good practices on the issue of hate crimes. This should be a clear objective of the future LGBTI Strategy to be proposed by the EC.

### **Report from Workshop 3 : Ulrika Westerlund (RFSL, Sweden)**

The role of police forces, public prosecutors and judicial authorities in enforcing legislation and supporting the victims of hate crimes is paramount. Indeed, if legislation is a first step, the implementation should not to be taken for granted. Both police and prosecution authorities are key in stepping up the fight against hate crime. Sensitisation and training in both areas should therefore be further encouraged and supported.

Capacity-building of police forces in the area of hate crime has been highlighted by models developed by CEPOL and there are many examples of fruitful and efficient cooperation between LGBTI organisations and police forces. Exchange of such practices and information sharing on the issue is recommended. Capacity building of police forces in the area of hate crimes has been highlighted by models developed by CEPOL and many examples of fruitful and efficient cooperation practices between LGBTI organizations and police forces. Exchange of such practices and information sharing on the issue is recommended.

Considering the high rate of underreporting, awareness raising amongst institutions, but also the broader public remains of great importance. The European Commission and Member States should disseminate key tools, such as targeted trainings and encourage peer learning and sharing in the area of hate crimes. The European Commission should encourage the development of awareness-raising and educational activities related to hate crime prevention and the rights of victims, targeting all types of bias violence, through its programming and funding priorities.

### **Concluding comments by EU policy makers**

In response to the summary of recommendations presented during the seminar workshops, policy makers representing the European Parliament (EP), the European Commission and the Council troika were asked to provide their concluding comments.

**Roberta Metsola (MEP, EPP Group, Member of the LIBE Committee)** referred to the recent activities that took place in support of the LGBT rights notably the relaunch of the LGBT intergroup. MEP Metsola also referred to the EP resolution “EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity”<sup>10</sup> which led to heated discussions and debates in the EP. She mentioned some of the key recommendations of this resolution, often referred to as Lunacek report, notably the EP’s call to propose a recast of the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law to include the grounds of sexual orientation and gender identity.

Also, the Fundamental Rights Agency should assist Member States in improving their collection of comparable data about homophobic and transphobic hate crime. Together with relevant agencies, the Commission should facilitate the exchange of good practices among Member States pertaining to the training and education of police forces, prosecution services, judges and victim support services. The extension of the remit of CEPOL will be a good development in this context.

**Paul Nemitz (Director Fundamental rights and citizenship at DG Justice, EC)** contextualised the EU fight against hate crimes as a part of fundamental rights mainstreaming, multiculturalism, freedom of movement and the digital age. The opportunities offered by the potential relaunch of negotiations of the proposed horizontal non-discrimination directive are part of this continuum. Correct implementation of the Framework Decision is essential and Member States should not wait for infringement procedures by the EC but take responsibility and act. All cases of bias hate crime need to be thoroughly investigated on the ground and this should result in a positive spill over of the existing

---

<sup>10</sup> P7\_TA(2014)0062

legislation. Police and prosecutors need to make use of the existing law. 19 Member States have developed a legal basis related to hate crime and sexual orientation.

Addressing the question of the extension of European legislation can only be considered if there is political will in the Council. If the 19 Member States who have legislation to combat hate crimes would call for legislation, this could create a favourable climate in the Council to ensure reasonable chances of success in this respect.

**Anna Hedh (MEP, S&D Group, Member of the LIBE Committee)** recognized the importance of the FRA's research-led activities in the field of hate crimes. The fact that the Council is trying to get out of the regulatory deadlock surrounding the horizontal non-discrimination proposed directive is a positive sign that could pave the way for more initiatives in support of LGBT rights. MEP Anna Hedh also pressed the EC to bring clarity in terms of next steps. The EC LGBTI strategy to which Commissioner Jourova has committed upon taking office, will be key in this context.

Finally **Raoul Ueberrecken (JHA Counsellor at the Permanent representation of Luxembourg to the EU)**, while not yet being in the position to highlight the specific priorities of the upcoming Luxembourg presidency, insisted on the importance of ensuring sound consolidation of the existing European legislation with the existing instruments available in this regard notably the Framework Decision 2008/913/JHA and the Victims Directive along with its accompanying guidelines. The Charter of Fundamental rights is also the strategic compass of EU action. Raoul Ueberrecken also recognized the need to continue to mobilize the expertise of FRA when it comes to research and the identification of best practices. He finally insisted on the importance of the training of practitioner's notably police and judiciary authorities along with best practices exchanges.

Katrin Hugendubel, ILGA-Europe Advocacy Director, closed the session thanking both participants and speakers for bringing their inspiring thoughts and insights and for examining means by which ILGA-Europe can support the EU moving forward and strengthening protections against hate crimes.

7 January 2015