



Transphobic Hate Crime in the European Union

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1. Executive Summary

This report is the first quantitative evidence of trans people's experiences of hate crime in European Union member states. As this research provided the opportunity for anonymous self-reporting, it is probably the most accurate picture of the extent of transphobic hate crime to date in the context of the trans people from the EU states that participated

The data analysed for this report draws upon parts of an online survey that was translated into 13 languages and launched in October 2007. Although the survey covered all aspects of trans people's lives, the sections analysed for this report concern trans people's reported experiences in public spaces and the Criminal Justice system. As of November 2008 the total number of respondents to the survey was 2669.

Quantitative findings

Experiences of harassment in public

We found that 79% of respondents had experienced some form of harassment in public ranging from transphobic comments to physical or sexual abuse.

Comparisons with homophobic hate crime

Our findings suggest that trans people's experience of transphobic harassment may be greater than lesbian and gay men's experiences of homophobic harassment. Our data suggests that trans people are three times more likely to experience a transphobic hate incident or hate crime than lesbians and gay men homophobic hate incidents or crimes. More in-depth research needs to be done on why this might be the case.

Types of transphobic harassment

The most common forms of harassment were (unsolicited) comments (44%) and verbal abuse (27%). 15% of respondents had experienced threatening behaviour and 7% physical abuse.

Harassment by Gender

Drawing upon evidence from an earlier online survey from the UK (Whittle et al 2007) we found that trans women may be more likely to experience harassment than trans men. 67% of trans women reported harassment compared to 57% of trans men. 24% of trans women had experienced verbal abuse compared to 20% of trans men.

Types of harassment by country

Italian respondents reported the highest percentage of comments (51%); Greek, German and British/UK respondents reported the highest levels of verbal abuse (25%); Greek respondents reported the highest levels of threatening behaviour (22%); English

respondents reported the highest levels of physical abuse (7%) and French respondents, the highest level of sexual abuse (3%).

‘Clusters’ of harassment

The types of harassment experienced were very similar between the different EU states. For example, comments are the most common type of harassment across all countries followed by verbal abuse.

Confidence in the Police

The vast majority of respondents from all countries were not confident that they would be treated appropriately by members of the police service as their preferred/acquired gender. This undoubtedly has a negative impact on transphobic hate crime being reported in the first place.

Qualitative findings: Case studies

We analysed 3 case studies of transphobic hate crime involving trans women that occurred in the UK over the last 4 years. These studies identified areas where the criminal justice system fails to regard trans women as vulnerable victims – and indeed, as women at all. We identify the common factors involved in failing to prosecute transphobic hate crime, suggesting that primarily, trans women are often understood by the Criminal Justice system as men by proxy:

- a. attacks on trans women by men are implicitly regarded as ‘male-on-male’ attacks rather than male-on-female attacks.
- b. trans women’s vulnerability as women and as trans women is overlooked.
- c. In many cases trans women are often presumed by the police as the cause of the incident rather than the victim.

Trans women’s responses to being attacked are also regarded as a ‘male’ response (thus more of a threat to their assailants) rather than a woman acting in self-defence. They may also be implicitly blamed for not responding as a ‘male’ for example, in the case of the murder of a trans woman, the victim was assumed to be in possession of a ‘man’s strength’.

The police and the courts need to recognise that trans people are vulnerable from transphobic attack – which comes from an irrational fear of those who do not conform to cultural gender norms. Indeed, those who attack trans women may see a ‘man in a frock’ rather than a trans woman and thus a ‘deviant’ – hence the frequent use of the terms ‘pervert’ as abuse (as in one case study). Until the Criminal Justice system recognises trans women and trans men as their acquired gender, and also as vulnerable victims, transphobic hate crime will not be responded to appropriately.

Recommendations

- There is a strong case for governments in the EU to enforce hate crime legislation based on gender identity and expression as well as sexual orientation, on a par with the outlawing of hate crime based on ethnicity race and religion that exists in some EU states.
 - Criminal justice agencies should cease to position trans women who are victims of hate crime as 'men by proxy'. More in-depth research is also needed to examine the specificities of transphobic hate crime experienced by trans men – as well as the different contexts in which trans people experience hate crime.
 - More work needs to be done on recognising crimes motivated by transphobia as transphobic by governments, law enforcers as well as the media.
 - The police and the criminal justice agencies need to work on building a relationship of trust with the trans population in their countries in order that transphobic hate crime is reported by victims and that justice can be done.
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1. Introduction

Hate Crime

Although Hate Crime is notoriously difficult to conceptualise (Hall 2005; Iganski 2008), in its simplest terms, it is a crime committed against another person which is motivated by the perpetrator's prejudice or hostility toward the victim or the victim's perceived identity. In other words, had the victim not been for example, of a particular ethnic or racial group, or transgender or gay, then they would not have been the victim of that crime. It can be manifested as verbal abuse, threatening behaviour, physical violence, damage to property or murder.

Although hate crime is not a new phenomenon, the issue has received more attention in recent years – largely due to legislation being passed making it unlawful (against specific groups) in some EU states.¹ Many groups have campaigned for years for governments to acknowledge it as a problem and to take formal action (see Hall 2005).

Hate crime differs from other crimes as it has an increased detrimental impact on the victim due to its essentially personal nature. Indeed, what is crucial in understanding hate crime is the fact that it inflicts greater harm on the victim than other types of crime (Iganski 2008). In addition, it impacts upon the perceptions of safety for other members of the community or people who belong to the victim's identity category. For example if a place of worship is vandalised with anti-religious graffiti, then the people who belong to that religious group will also perceive themselves as the target for that hatred. This impact will also be exacerbated if the crime is not acted upon by the authorities as members of that group will implicitly feel that the anti-religious sentiment is condoned.

Hate crime is also a human rights issue because it impacts the victim's right to liberty and security, the right to freedom from violence and abuse and the right to life (Iganski 2008). There is a growing body of evidence that people who belong to specific minority groups are more at risk of hate crime than those who do not.² There is, however, a paucity in evidence of the experiences of hate crime for some groups – in particular those who would be categorised as transgender or transsexual.

¹ Some EU states for example Britain, Denmark, Finland, Latvia, Poland, Romania prohibit political propaganda which sanctions religious or racial hatred, or have increased sentencing for offences which are aggravated by hatred towards or aimed at a racial or religious group.

² For example, in the British Crime Survey 2002/03, 2003/04 and 2004/05 nearly 20% of crime incidents reported by Asian or Asian British-Bangladeshi respondents were believed to be racially motivated. This compares with less than 1% of crimes reported by White British respondents (Iganski 2008).

2. Transgender and Transsexual people³

People who may be described as Transsexual have a deep conviction that their gender identity does not match that of their appearance or anatomy and they wish to present to the world in a different gender to that assigned at birth. The majority will wish to undergo hormone therapy, oestrogens or testosterone depending upon their birth gender and the gender they wish to acquire legally. Most will also wish to undergo some surgery to bring their bodies in line with their gender identity. The term transsexual can be misleading and many assume that it is about sexual orientation but it is an issue of gender identity. Sexual orientation is a separate issue which refers to the gender to whom one is attracted. Due to the sexual connotations of the term 'transsexual', some transsexual people may prefer to call themselves transgender.

Transgender is an umbrella term originating from the US, which describes the identities of a range of people whose lifestyles appear to conflict with the gender norms of society. In the broad sense of the term, a transgender person crosses the conventional boundaries of gender by dressing and presenting themselves as their preferred gender role. It can include those who may describe themselves or be described by others as transvestite or cross dressers.

More recently, the term 'trans' has been adopted as it covers all people who have a transvestite, transsexual or transgender identity – or who may be understood to be a member of one of those groups by others. For the purposes of this report it is worth remembering that the instigator of a transphobic hate crime or incident may not know whether someone is living full-time in their gender role, or whether they have undergone gender reassignment. Generally, they might just regard the victim as 'queer', a 'sex change', or even as a 'homosexual'.

Those who spend some or part of their lives in a different gender role to that assigned at birth may be classified as a 'cross-dresser' or 'transvestite' and the majority of (male-to-female) transsexual women usually begin cross dressing before they decide to undergo gender reassignment. Some trans women are happy to cross dress on a part-time basis all their lives and often they will consider themselves to still be a member of their natal sex

³ The categorisation of transsexual and transgender people is complex and fraught with difficulty. A primary reason is that terms like 'transsexual' and 'transvestite' originate from medical terminology and as members of the community have become increasingly politicised, different terms have been adopted – for example 'man with a transsexual background' or 'post transsexual'. Some people after gender reassignment may regard themselves as non-transsexual. At the same time, other members of the trans population may describe themselves as 'transsexual' or 'transgender' even if the way they live their lives do not correspond with the descriptions in this section..

group. Others would prefer to live full-time in their preferred gender role, but do not undergo gender reassignment because they have often justified fears of losing their jobs or family.⁴ Whilst some may seek gender reassignment in their youth or early 20's, many (male to female) transgender or transsexual women live part-time for many years until the need to undergo permanent gender reassignment becomes too strong, usually later in life. When a (male to female) person commences living permanently in their preferred gender role and start gender reassignment treatments, they will then be regarded as a transsexual woman rather than a transvestite or transgender person. With a more open society, we are now seeing trans adolescents, both male to female and female to male trans youth commencing partially or permanently to live in their preferred gender role in their early to mid-teens.

Female to Male trans men often commence living partially or permanently in their preferred gender role as early as aged 12 or 13, though most would do so from 16 to their early 20s. There are a few (female to male) trans men who transition later, often previously married with children, who after separation or divorce are still responsible for child care. Though we do not touch on evidence relating to these issues in this report it must be noted that without the support of their school, in particular anti-bullying education and enforcement, trans youth or children of trans people are extremely vulnerable to transphobic bullying and hate crimes.

⁴ Whittle et al (2007) found that 42% of trans people not living full-time in their preferred gender who wished to, stated that the workplace was preventing them from transitioning.

3. Transphobia

Transphobic hate crime is a crime or incident which is motivated by the perpetrator's prejudice or hostility toward transsexual or transgender people or the victim's perceived trans identity. It has been defined by social scientists as follows:

Transphobia is an emotional disgust toward individuals who do not conform to society's gender expectations. Similar to homophobia, the fear or aversion to homosexuals (e.g., Weinberg, 1972), transphobia involves the feeling of revulsion to masculine women, feminine men, cross-dressers, transgenderists, and/or transsexuals... The "phobia" suffix is used to imply an irrational fear or hatred, one that is at least partly perpetuated by cultural ideology. (Hill and Willoughby 2005: 91).

Thus transphobia is an irrational reaction to those who do not conform to the socio-cultural ideology of gender conformity. Crucially, those who are visibly trans, (for example those who do not 'pass' as their preferred gender) or non-trans people who do not conform to a cultural norm of gender, are more likely to experience transphobia than people who are not visibly trans.

The context of Transphobic Hate Crime

To understand transphobic hate crime, it is important to understand the context in which it occurs. Among the several relevant factors are the perceptions of the perpetrator as well as the extent to which a person is visible as a trans person, along with the trans people's social and environmental circumstances.

It may be generally assumed that hate crime is perpetrated by offenders who harbour deep feelings of prejudice and where the attack is premeditated. Research has shown that this is not the scenario in the majority of incidents. Indeed, Iganski (2008) has written at length about what he calls the 'everyday' nature of hate crime – committed by 'ordinary' people during their everyday lives to others who are going about their 'ordinary' business. Other research has found that the majority of scenarios involve young people who are in a group and are 'thrill seeking' (McDevitt *et al* 2002). Thus, hate crime may be experienced in mundane everyday situations by any person who may 'look different'.

An individual trans person's personal circumstances will have a bearing on their experience of hate crime. For example Iganski (2008) found that a 33% of hate crimes occur outside the victim's home and 20% involve neighbours. Research has also found that 1 in 4 trans people in the UK live in rented private sector housing which is double the national average of non-trans people (Whittle *et al* 2007). In the UK, some of the private rented housing sector is based in poor or inner-city areas, thus many trans people may reside in areas with higher

than average levels of crime and anti-social behaviour. Research has also found that employment is one of the areas where trans people face the most discrimination (see Whittle et al 2007), and 10% of this would constitute a hate crime if reported.

Visible members of the trans population are more likely to experience transphobic harassment by strangers. Physical changes brought about by testosterone are irreversible, thus many trans women – particularly those who have been exposed to testosterone for some time prior to transitioning may be more visible as a trans person. Their increased visibility can make it more likely that they will experience hate crime. Correspondingly, trans men after being exposed to testosterone for even a short time may be less visible as trans. This is borne out by the data analysis in this report where experiences of harassment are broken down by gender, suggesting that trans women experience more harassment than trans men.

Lack of access to gender reassignment treatment as well as difficulties in acquiring legal gender change on identity documents in some states in the EU can have an indirect bearing on a trans person's vulnerability to hate crime. Having lack of access to services and employment, many trans people (particularly trans women) have no option but to be sex workers which makes them particularly vulnerable to being victims of prejudice and violent crime (Human Rights Watch 2008).⁵

There is also a strong link between non-conformity to gender norms and hate crime. As the definition of transphobia suggests, women who are perceived as masculine and men who are perceived as feminine, thus not conforming to normative standards of gender, are more likely to elicit an adverse reaction. This is backed by research which suggests that it is perceived gender transgression that may be at the root of both transphobic and homophobic hate crime (Genderpac 1997, 2006; Mason 1996; Namaste 1996; Witten 1999). Therefore lesbian, gay, bisexual and trans people who do not appear to transgress gender norms may be less likely to experience hate crime.

⁵ The Human Rights report (2008) cites several accounts of sex workers experiencing physical and sexual abuse by police officers as well as targeted attacks by gangs.

4. The extent of Transphobic Hate Crime

Reporting and recording hate crime

It is well understood that hate crime in general is under-reported by victims and witnesses (Perry 2001; Stonewall 2008) for many reasons including lack of faith that the crime would be dealt with appropriately by the criminal justice system or lack of trust that the police would take the allegations seriously. This is particularly the case for those whose identities or behaviours might be culturally stigmatised or illegal, as may be the case with lesbian, gay bisexual or trans people. With the lesbian, gay, bisexual or transgender population (LGBT) the issue of non-reporting is compounded by the fact that many may not be 'out' as trans or gay and there is a fear that reporting may lead to their identities being disclosed by criminal justice proceedings. It is also worth bearing in mind that some trans people or gay people may have had previous bad experiences with the police – and in some cases, been the victims of hate crime at the hands of police officers.⁶

Crimes against trans people are often reported by the media in ways that are unsympathetic to the victims and do not acknowledge the element of hate driving the offences. In many cases, murder victims are addressed as their former gender in media reports and other elements of their lives which are tangential are focused on (for example being a sex worker). This draws attention away from the fact that that violence was committed against a person because they were transsexual or transgender. This injustice is exemplified by a high profile murder case in June 2006 in Portugal. Gisberta, a Brazilian trans woman, was subjected to several days of physical abuse and torture by a group of youths who eventually threw her into a pit where she drowned. The Portuguese media did not report this as a transphobic hate crime; Gisberta was described as homeless or a drug addict by many and some described her by her masculine name.⁷ What is crucial in understanding and recognising the problem of transphobic hate crime is the acknowledgement that the victim was trans and that this may have been an aggravating factor of the crime.

At the present time, transphobic hate crime is not officially recorded at the EU level. Even in the UK, where transphobic hate crime has been recorded, it had been classified by police computers as a sub-section of homophobic hate crime until very recently. Previous figures, therefore, did not specify the difference between a homophobic or transphobic hate crime.

⁶ See Human Rights Watch report (2008) which describes how in one district of Istanbul, police were involved in a campaign of persecution of trans people by arbitrarily arresting and torturing them.

⁷ See http://www.ilga.org/news_results.asp?FileCategory=6&ZoneID=4&FileID=823. In March 2008 another trans female sex worker from Brazil, Luna was also murdered in Lisbon and her body found in a dumpster. See <http://questioningtransphobia.wordpress.com/2008/03/16/pantera-rosa-calls-for-action-another-murder/>

However since April of 2008, transphobic hate crime has been recognised as one of the '5 strands' of hate crime and, as such, it has been recorded separately by all UK police forces from that time.⁸ From April 2009, the British Crime Survey has also included transphobic hate crime. Even with these proactive changes, the current figures may not reflect the true extent of transphobic hate crime.

The scale of transphobic hate crime is unknown given the under-reporting by victims as well as the mis-reporting by the media. As transphobic hate crime is not generally recorded by police and criminal justice systems across the EU, it is clear that official records are unlikely to be a reliable source of data. In response, this survey provided the opportunity for anonymous self-reporting. Thus, this report is the first comprehensive evidence of trans people's experiences of hate crime in the EU and may be the most accurate picture to date in the context of the trans people from the participating EU states.

⁸ The other four strands are Race, Religion, Disability and Sexual Orientation.

5. Literature Review: What Evidence is there?

Qualitative evidence

Much of the evidence of hate crimes perpetrated against trans people is subsumed under the umbrella of lesbian, gay, bisexual and transgender (LGBT). Worldwide, the figures on the number of hate crimes where sexual orientation and gender identity are aggravating factors are difficult to establish and much of the evidence has been compiled anecdotally and through reviews of official records. An important point to remember is that the vast majority of literature looking at hate crime within the LGBT community focuses almost exclusively on sexual orientation (L, G and B) rather than gender identity (T).

The Office for Democratic Institutions and Human Rights reported that hate crime based on sexual orientation or gender identity accounted for a significant portion of all violent crimes and that the level of violence often exceeded that of other hate crimes (OSCE 2008). This is further evidenced in a 2008 Hate Crime Survey, which suggests that incidences of hate crime towards LGBT people is either remaining steady or potentially even increasing, in direct contrast with the strong political gains that have been made by LGBT people in Europe (Stahnke *et al* 2008). Indeed, increasing levels of visibility of LGBT people seem to correspond with increasing levels of violence (Stahnke *et al* 2008; Human Rights Watch 2008).

Hate Crime towards LGBT people is especially prevalent in the eastern part of Europe and there have been a number of attacks on community members during Eastern European Gay Pride events. Indeed, in pride marches in Bulgaria, the Czech Republic, Hungary and Slovenia, LGBT people experienced acts of violence even though there was police protection of the marchers (Stahnke *et al* 2008). It has been suggested that violence towards LGBT individuals and attacks on community events were often organised and perpetrated by extremist right-wing groups. A Human Rights Watch report found extremely high levels of crime in Turkey towards trans people and gay men. In that study, every single transgender person and many of the gay men who were interviewed had been the victim of hate crime on the basis of their gender or sexual identities (cited in Stahnke *et al* 2008). Another report by Human Rights Watch highlighted the high number of hate crimes that take place within Kyrgyzstan for those who were born female but who do not conform to normative cultural gender norms, including lesbians, bisexual women and transgender men. It documents that many were regularly harassed and assaulted by their communities, family members and the police (Sterne 2008).

Quantitative research

There are very few statistics on hate crime experienced specifically by trans people. The first national survey on violence against trans people was conducted in the US, which found that 48% of respondents had been victims of assault, including sexual assault and rape and 78% had experienced verbal harassment (Genderpac 1997). Other research conducted in the US found that 43% of the participants had been a victim of violence or crime, with 75% attributing the motive to either transphobia or homophobia (Xavier 2000). It has also been suggested that young trans people are particularly vulnerable to victimisation and harassment compared to adults (Ryan and Rivers 2003).

More recent research conducted in the UK shows similar figures to that of the US. In 2006, the largest UK survey of its kind found that 73% of trans people had experienced some kind of harassment in public spaces and that 10% had experienced violent behaviour (Whittle *et al* 2007). Another recent research report from an area in the UK with a high population of LGBT people found that trans people are more likely to be victims of hate crime than LGB people. In their survey, 79% of trans respondents had experienced verbal abuse compared to 54% of LGB respondents. Trans people were also more than twice as likely to experience physical violence and three times as likely to experience harassment than LGB people (Browne 2008).⁹

As noted in the introduction to this report, hate crimes are outside of current international human rights and anti-discrimination frameworks. LGBT-specific hate crime is not recognised by convention or treaty (Stahnke *et al* 2008). However we are beginning to see a slow shift as more attention is paid to the problem of crime towards LGBT people. In 2006, an international panel of human rights experts from around the world convened to develop the Yogyakarta Principles: a document which addresses the issue of human rights in relation to sexual orientation and gender identity.¹⁰ The writers of the principles expressed that they were:

... disturbed that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all regions of the world because of their sexual orientation or gender identity.

And that, compounded by intersectional discrimination on other grounds:

... such violence, harassment, discrimination, exclusion, stigmatisation and prejudice undermine the integrity and dignity of those subjected to these abuses, may weaken

⁹ This research found that 26% of trans people had experienced physical violence compared to 11% LGB people and 42% had experienced harassment compared to 14% of LGB people.

¹⁰ http://www.yogyakartaprinciples.org/principles_en.pdf

their sense of self-worth and belonging to their community, and lead many to conceal or suppress their identity and to live lives of fear and invisibility.

These Principles begin to offer solutions to this complex problem by putting the onus on the state to combat hate crimes towards LGBT people as human rights violations (Stahnke *et al* 2008). Adding the category of crimes perpetrated based on gender identity and sexual orientation onto existing mandates would help ensure that lawmakers and police accept the serious nature of the problem. It would also provide a framework for addressing violations of LGBT human rights as hate crime. However, there is no clear consensus about the inclusion of discrimination on such grounds. National legislation varies widely, making it very difficult to tackle the problem on a global scale.

6. Methodology

The data for this report is drawn from a comprehensive online survey conducted for an earlier research project commissioned by ILGA-Europe, which focused on healthcare access (Whittle *et al* 2008).¹¹ The survey was launched in October 2007 and asked 97 questions of trans respondents. Subjects covered included age, living arrangements, occupation, savings, marital status, when they transitioned, disability, employment, earnings, whether they were living full-time in their acquired gender, and what documentation had been changed. Other questions covered all aspects of life including experiences at work, school, college and university, neighbourhoods and public spaces, using toilets and leisure facilities and the criminal justice system. Therefore, the original survey was not focussing on hate crime alone and may not have disproportionately drawn only those respondents who had experienced hate crime. Rather, it was a broad survey about many aspects of trans people's lives in the EU with a small section regarding experiences in public spaces – and this is where the data from this report is drawn (see Appendix 1). The survey was translated into Danish, Swedish, Maltese, Polish, Russian, German, Greek, French, Dutch, Spanish, Finnish, Italian and Hungarian.¹²

Two case studies analysed come from personal correspondence from the last four years between trans people and the UK campaign group Press for Change. One case study examines the recent publicised murder of a trans woman in the UK.

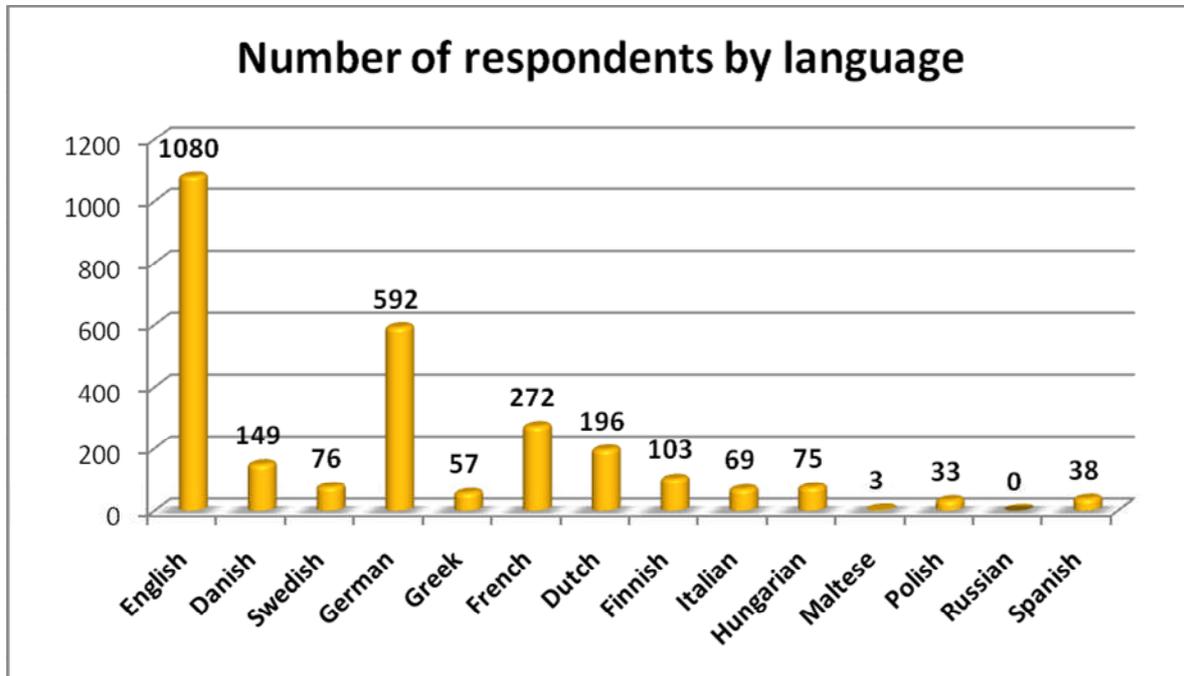
Respondents by country

In November of 2008, the total number of respondents to the online survey was 2669. This constitutes the largest response to a survey of its kind to date from the trans population. We excluded the languages which had fewer than 50 respondents from the analysis (Maltese, Russian, Spanish and Polish) as the numbers were not sufficient to draw conclusions. Table 1.1 details the numbers of respondents by language where we can see that the majority of respondents chose the English, German, French or Dutch language in which to complete the survey.

¹¹ Transgender Euro Study 2008

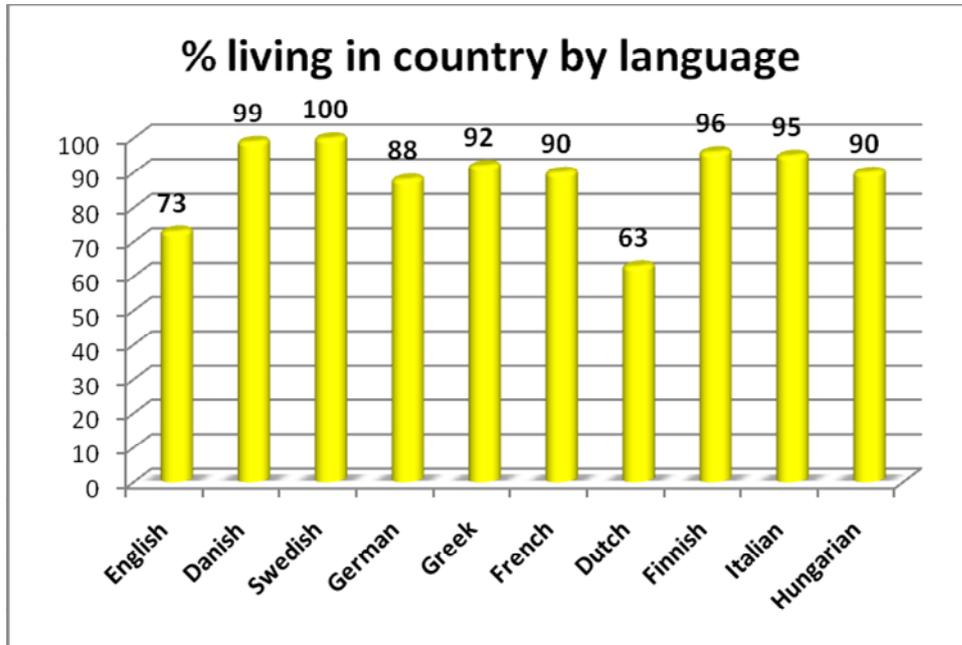
¹² It is with regret that other countries were not represented in this survey. Recruitment of translators was done within a narrow timescale.

Chart 1.1 Respondents by language chosen to complete survey



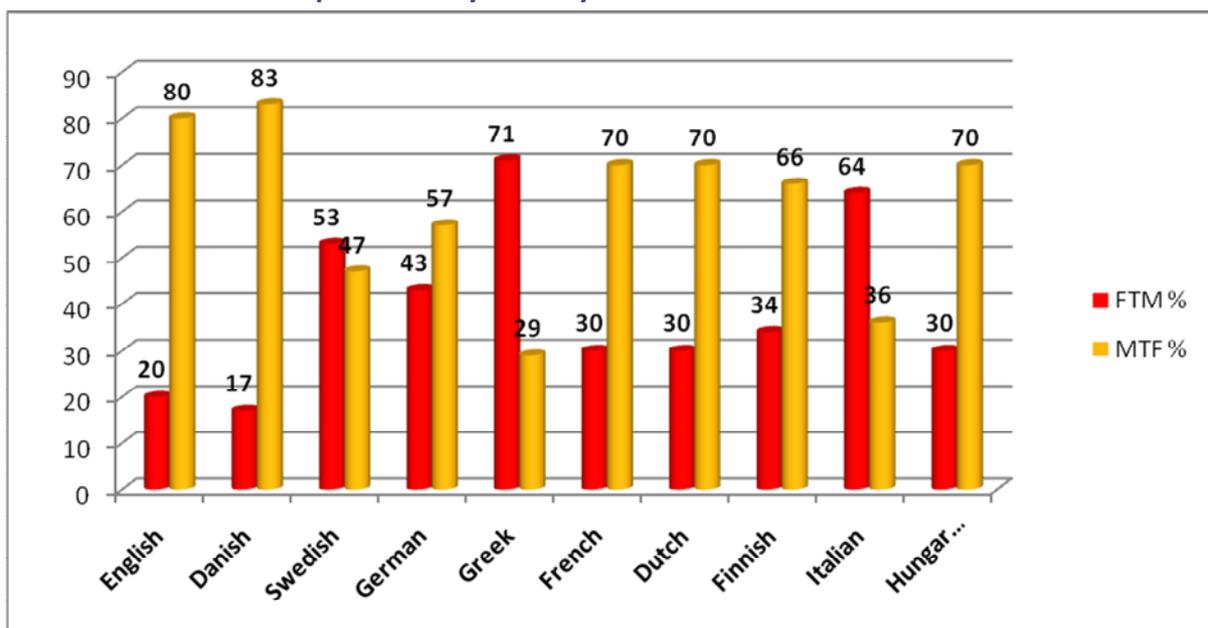
It would usually be assumed that the language of a participant's survey would be the language of their country of residence. But, it may not necessarily mean that because a respondent who has chosen to take the survey in the French language that their answers refer to their experiences of public spaces and the criminal justice system in France. However, the survey did ask what country respondents were residing in when they completed the survey as shown in Table 1.2:

Chart 1.2 Correlation between language chosen to complete the survey and country of residence



The above table demonstrates that the majority of respondents were residing in the country where the language they chose for the survey was spoken. The only exceptions are English (where the majority other country of residence was Ireland) and Dutch (where the majority other country of residence was Belgium). Thus overall, we can assume that experiences of transphobia by language chosen for the survey are largely relevant to that country.

Chart 1.3 Gender of respondents by country



We can see from Chart 1.3 that in the surveys with English, Danish, French, Dutch, Finnish and Hungarian translations, the numbers of male to female respondents were significantly higher than the female to male respondents. The surveys translated to German, Greek and Italian had more female to male respondents than male to female, with the Swedish translation the only one with nearly a 50/50 level of male to females and female to males.

7. Research Results

Experiences of harassment in public

In the online survey we asked respondents if they had experienced any form of harassment in public, allowing respondents to tick more than one box for the following:

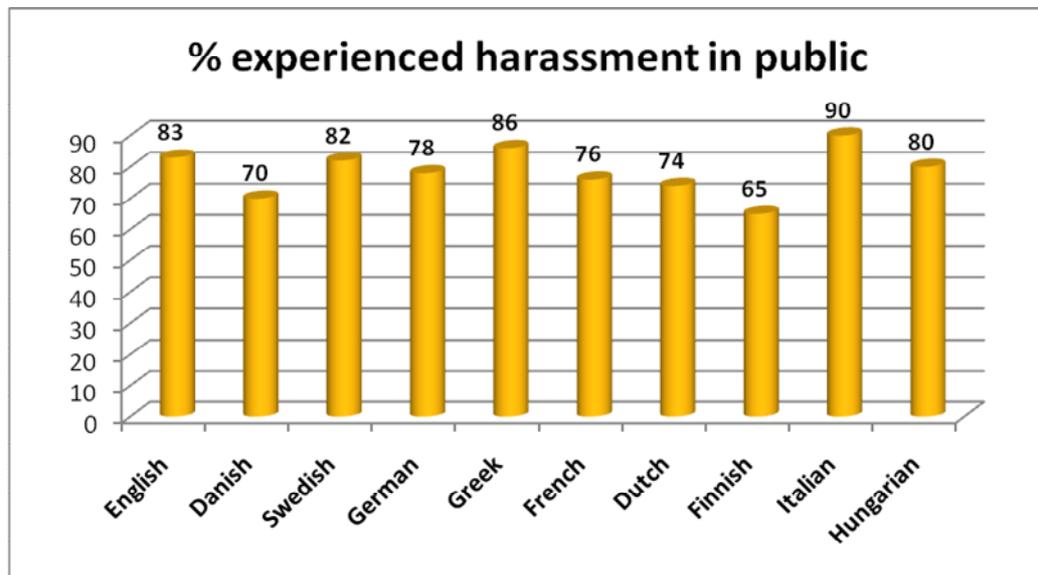
- comments
- verbal abuse
- threatening behaviour
- physical abuse
- sexual abuse

There was also a box for 'nothing like this happened to me' and the overall percentage of participants who chose this response was 21%. The percentage of all respondents who reported 'nothing like this happened to me' was deducted from the percentage of those who had ticked one or more of the other boxes – hence had experienced some form of harassment. This gave the final figure for those who had experienced some form of harassment in public ranging from comments to physical or sexual abuse at 79%.

These figures are slightly higher than the findings from a previous research report for the UK Equalities Review, where we found that 73% of trans people in the UK had experienced some form of harassment in public spaces (Whittle *et al* 2007).

The chart below shows the percentage of respondents by language who reported experiencing some form of harassment in public:

Chart 3.1 Experiences of harassment in public



We can see from the chart above that the Italian respondents had experienced the most harassment in public places, followed by Greek and Hungarian respondents.

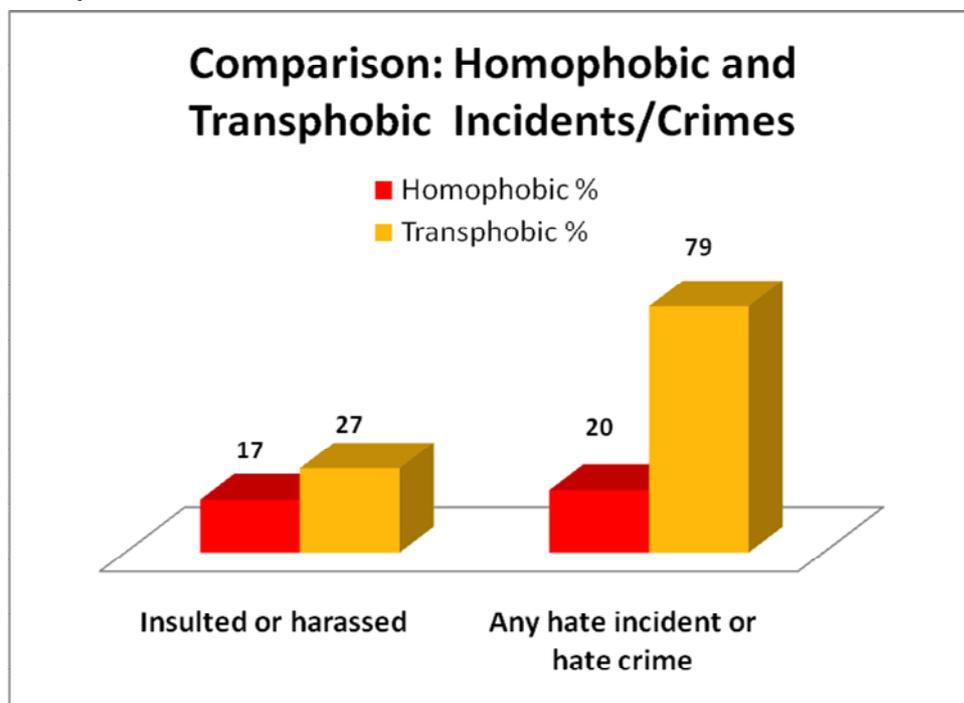
Comparisons with other research

In our examination of the available literature on transphobic hate crime in section 5 of this report we found that transphobic hate crime is often subsumed under LGBT hate crime as a whole, with little or no analysis of transphobic hate crime. We thought that it might be interesting to compare our findings with recent research on homophobic hate crime to discern if there are any differences between the T and the LGB communities.

The chart below shows the comparison of statistics between the Stonewall Homophobic hate crime survey 2008 and this research. The Stonewall survey was the first comprehensive study of gay, bisexual and lesbian people's experiences of hate crimes in England and Wales and was launched a month after incitement to hatred on the grounds of sexual orientation became unlawful as part of the UK Criminal Justice Act.

In the Stonewall survey they asked respondents about their experiences of being 'insulted or harassed' and we suggest that the comparative terms asked of respondents in our survey is 'verbal abuse'. For the comparison with the Stonewall question regarding 'any hate incident or hate crime', we used those respondents who had experienced some form of harassment to get the final figure of 79% as explained previously.

Chart 3.2 Comparison between homophobic hate incidents and hate crime and transphobic hate incidents and hate crime



The chart above suggests that trans people may be more likely to experience transphobic harassment than lesbians and gay men experience homophobic harassment. According to our figures, trans people are more likely to be victims of insults or harassment (in our survey 'verbal abuse'). The chart also suggests that trans people may be three times more likely to experience a hate incident or crime than lesbians and gay men. These figures correspond with those of Browne (2008) who also found that trans people are 3 times as likely to experience harassment than lesbians and gay men. More in-depth research is required to find out why this might be – for example some of the contexts of transphobic hate crime discussed in section 3 such as being more visible as trans might be relevant. Nevertheless, the figures suggest that if studies on 'LGBT' hate crime have a stronger sample drawn from the trans community, the overall statistics of LGBT hate crime will be higher than previously recorded.

Types of transphobic harassment

The chart below shows, by percentage, the types of transphobic harassment experienced by all respondents from the different EU states. As the chart shows, the most common forms of harassment are comments (44%) and verbal abuse (27%). These figures compare with the Equalities Review research (Whittle *et al* 2007) where we found that 37% of respondents had experienced comments and 24% had experienced verbal abuse. Although only 2% of

respondents reported sexual abuse, it is worth bearing in mind that this constitutes 40 respondents.

Chart 3.3 Types of transphobic harassment

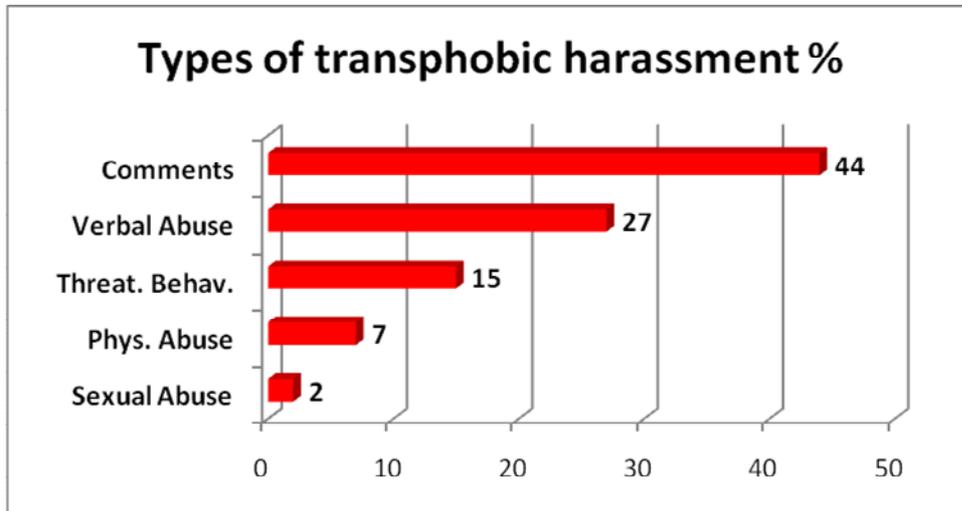


Chart 3.4 harassment by gender ¹³

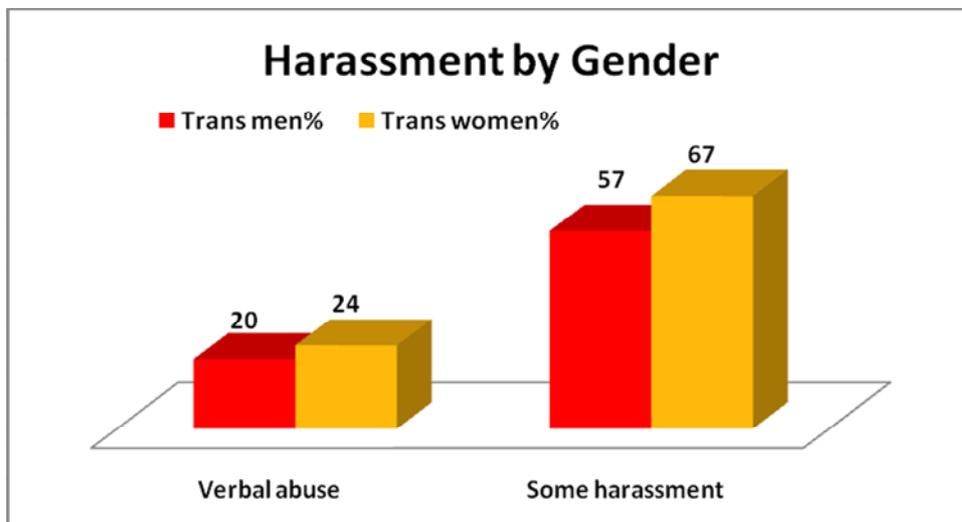


Chart 3.4 shows the breakdown by gender (drawn from UK statistics: Whittle *et al* 2007). We can see that trans women reported more harassment than trans men. The difference between the two groups is smaller than anticipated as it is assumed that trans women are more visible as trans than trans men (see introduction). However, as stated in the introduction, being visible as trans is just one of the many contexts in which a trans person may experience hate crime and hate incidents.

¹³ Figures from 'Engendered Penalties' research report 2007.

Types of harassment by language

The table below compares the responses by the language chosen by respondents to complete the survey. We can see that Italian respondents reported the highest percentage of comments (51%); Greek, German and English reported the highest levels of verbal abuse (25%); Greek respondents reported the highest levels of threatening behaviour (22%); English respondents reported the highest levels of physical abuse (7%) and French respondents, the highest level of sexual abuse (3%).

Chart 3.5 harassment by language

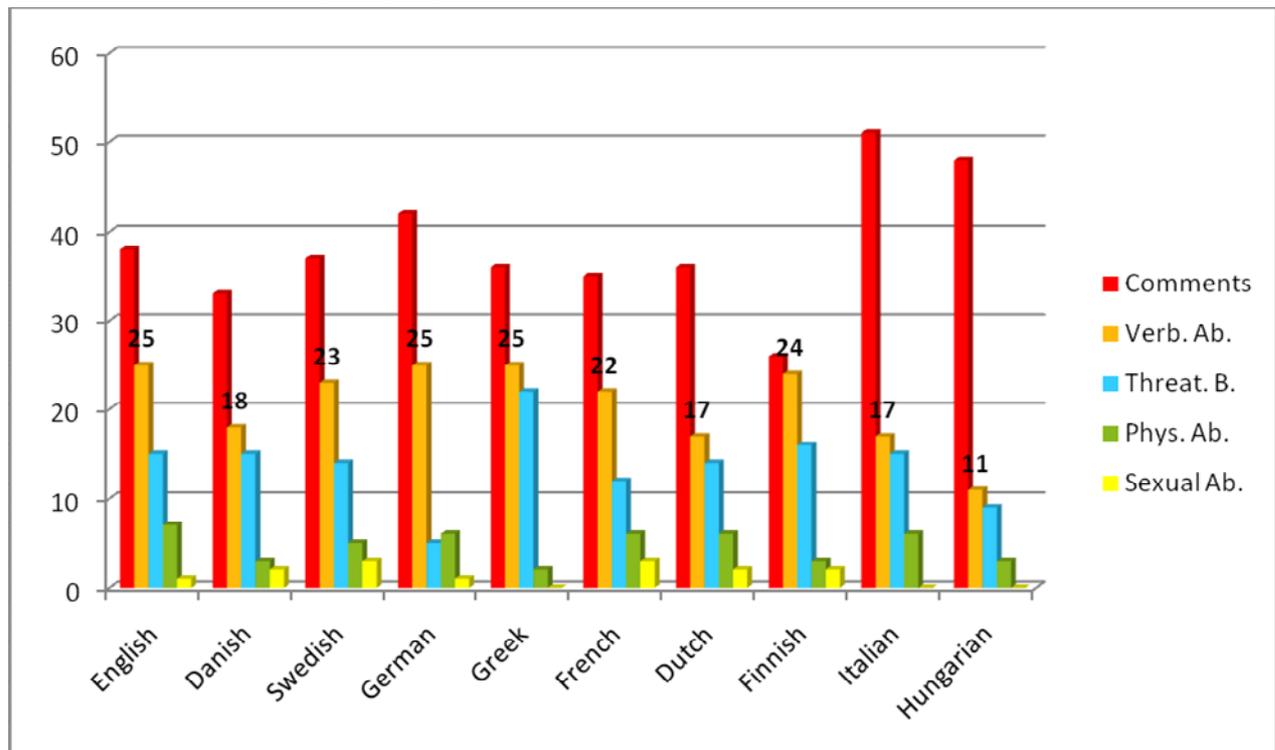
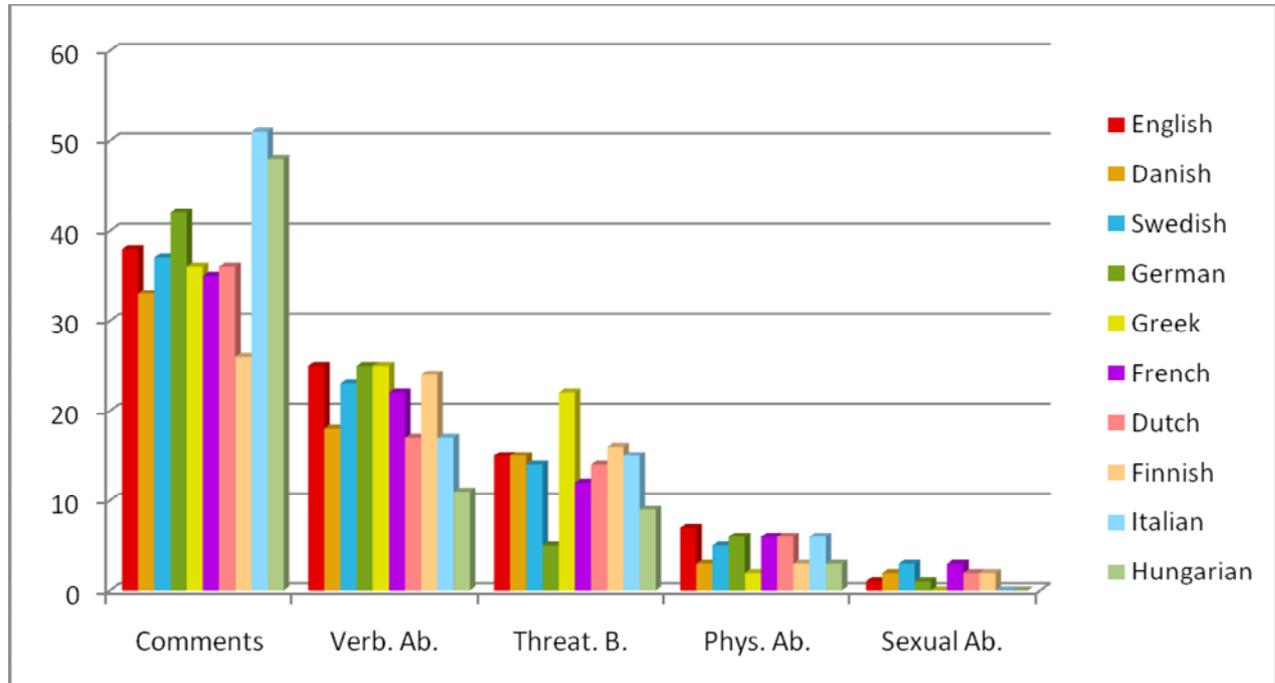


Chart 3.6 'Clusters' of harassment



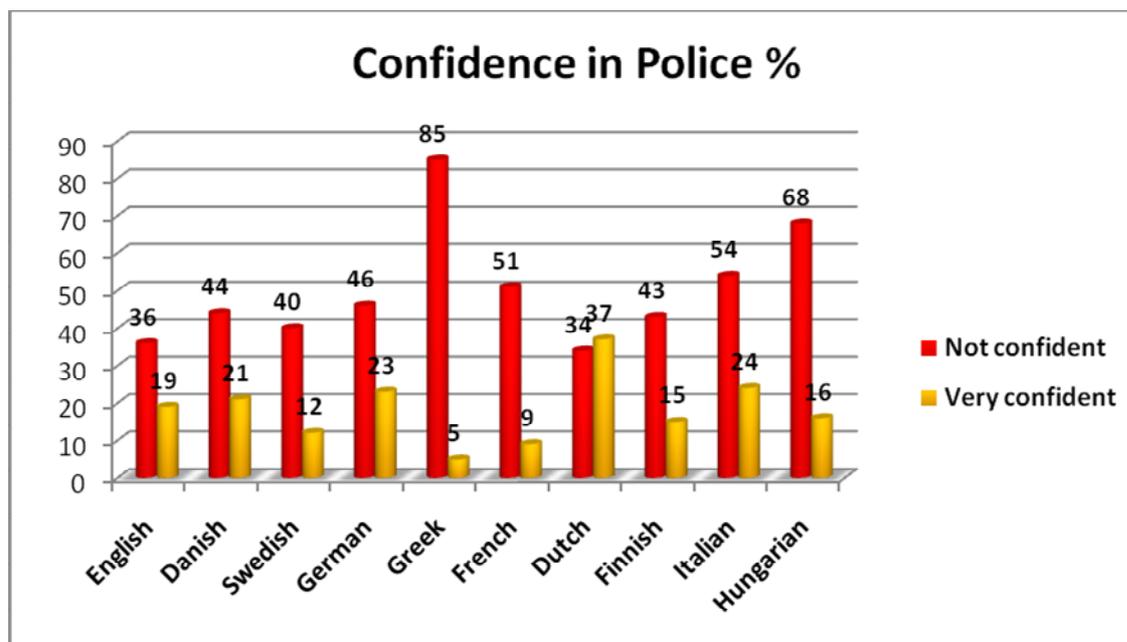
What is significant from Chart 3.6 is that the results for each type of harassment were very similar between countries. For example, comments are the most common types of harassment followed by verbal abuse.

Confidence in the Police

As stated earlier, transphobic hate crime and hate incidents need to be reported and recorded by the criminal justice system in order to appreciate the scale of the problem. Crucial to anyone reporting any hate crime is confidence that the police will take it seriously and take appropriate action. For trans people there is the additional factor that they will be treated appropriately with dignity and respect as a trans person, for example, addressed as a member of one's acquired gender.

We asked respondents how confident they were that they would be treated appropriately by members of the police service as their preferred/acquired gender. The answer options were 'very confident'; 'not confident' and 'quite confident'. Chart 3.6 shows that the vast majority of respondents from all countries were more likely to be not confident than confident. Indeed, in most countries, twice as many respondents were not confident than confident. The only respondents who were nearly equally not confident and very confident were the Dutch respondents. The Greek respondents have the least confidence in the Police followed by the Hungarian and Italian respondents. This undoubtedly has an impact on the reporting of transphobic hate crime when it occurs.

Chart 3.7 Confidence in the Police



Some narratives from the English survey demonstrate some of the problems some trans people face with the police:

- *After an assault I reported I was not given the opportunity to make a statement or even given a crime number ... so they did not treat the assault as a crime. I felt they either thought I deserved the attack because I am transsexual or I brought the assault on myself because I'm transsexual.*

- *When I was suffering from violence I wasn't taken seriously at all and in some cases it seemed like they thought that I was the one who had done something wrong by being trans.*

- *I was beat up by a gang of boys on a bus. The bus driver asked for help from the police but did not receive it. When they came to take a report it was obvious they did not take the assault seriously.*

- *I had to file a complaint at the local police station and while the duty desk officer was fine, when she went back of office to confer with duty sergeant I was able to overhear a stream of transphobic abuse and "jokes" from the back office staff. When the duty officer returned I pointed out to her I could hear everything and she apologised, but again I heard a transphobic remark from the back office staff leaving both myself and duty officer feeling embarrassed and humiliated.*

- *I reported several assaults on myself over my transition and was told that "if I dress like that its not surprising" bearing in mind I wore jeans a vest and my docs so not exactly inappropriate.*

- A friend of mine was discriminated by the police in 2007 so I am very wary of the police now. Apparently, she lay on the floor after being beaten up and the police made derogatory comments thinking they were out of ear shot.

These narratives indicate that many trans people have had poor experiences in their interactions with the police. The violent incidents were not taken seriously or it was suggested implicitly or explicitly that the trans person was the cause of the incident.

These experiences have several ramifications for trans people. Firstly, while hate crime has an increased impact on the victim compared to other crime, trans people have become additionally victimised while reporting crimes to the police. Secondly, hate crime not only has an impact on feelings of safety for the individual victim, but furthermore, stories about an individual's negative experiences will circulate through the trans community's and impact upon their trust in the police. These narratives resonate in the examination of the case studies and exemplify some reasons why transphobic hate crime remains underreported.

8. Case studies

The following case studies from the UK have occurred within the last 4 years and demonstrate some of the key features where the criminal justice system may fail in bringing justice to victims of transphobic hate crime.

Case study 1: KELLIE TELESFORD (2007)

Kellie Telesford was a transgender woman who worked as a florist and beautician. She met a man for a date and went back to her flat where they engaged in sexual activity. The man was filmed on Closed Circuit Television leaving her home in the early hours of the following day – he had taken her travel card and used it to board a bus. Later, Kellie was found dead at her flat on the living room floor. She had been strangled with her scarf. The local newspaper reported that paramedics on the scene found that the scarf was so tight round her neck that they could only get the tips of their fingers inside.¹⁴

There was no conclusive DNA evidence that the young man seen leaving Kellie's flat had murdered her and this report is not suggesting that he was responsible. However, arguments used by his defence served an injustice to Kellie as a trans woman. Firstly, his defence attacked Kellie's credibility by suggesting that she 'died during a sex game that went wrong' or that she may have inflicted injuries on herself. Secondly, they stated that 'while we are referring to her as a female out of courtesy because that is how she wanted to be known. She was nevertheless a male with a man's strength and you would have thought that she, as a victim, would have fought her attacker'.¹⁵ By arguing that as Kellie was born male she had a man's strength, the defence ignored her status as a trans woman and positioned Kellie as a man by proxy. Not only was this disrespectful, but it was also inaccurate; if Kellie was undergoing hormone replacement therapy (oestrogens and anti-androgens), the effects have been proven to have a negative effect on muscle strength (Ruzic et al 2003; Jenkins 2005). The defence implicitly suggested that Kellie was physically capable of defending herself and did not do so – thus was culpable in her murder.

This case exemplifies many of the features in transphobic hate crime and the criminal justice system – particularly for trans women. The main feature is that trans women do not appear to be regarded by the justice system as trans women or even women – rather, they are positioned as men. In many cases like the above, the crime is regarded implicitly as a male-on-male attack, which not only denies the female identity of the victim, but also ignores her

¹⁴ <http://www.thisiscroydontoday.co.uk/news/direct-DNA-link-teen-accused-murdering-Thornton-Heath-transsexualarticle-264224-details/article.html> (accessed 17.01.09).

¹⁵ <http://news.bbc.co.uk/1/hi/england/london/7561957.stm> (accessed 17.01/09).

vulnerability as a trans woman. Moreover, the effects of a court dealing with a male-on-female violence may be very different to a male-on-male violence due to the assumption of a woman's vulnerability and inferior strength.

Case Study 2: JOCELYN (2005)

Jocelyn was a pensioner and a church warden living in a rural village. She was sometimes visible as a trans woman at that time, having transitioned some years earlier but still waiting for the full effects of female hormone therapy to appear. She was driving her car in the village when she noticed a group of youths loitering around the church. When she asked them to stop what they were doing she was verbally abused by them (as a 'pervert' and 'paedophile'). As she drove away from them they surrounded the car. She stopped the car and got out, then a young woman attacked her and they both fell back into the car. Jocelyn held the woman and told the youths 'back off and I will let her go' but she continued to be attacked and Jocelyn let her go. Eventually very shaken, scratched and bruised, Jocelyn then drove off.

Later that night, the Police got Jocelyn out of bed at home to arrest her for assault (the young woman having reported the earlier incident as one in which she had been assaulted). Her car had been vandalised outside her house and 'pervert' had been written on her bonnet. The car was damaged beyond repair.

Jocelyn contacted the UK Transgender Legal group; Press for Change and a defence solicitor was found. The case went to court and the magistrates found no reason to convict Jocelyn. Instead they found there to have been a great miscarriage of justice and heavily criticised the police and the Crown Prosecution Service for their handling of the prosecution. The Magistrates wrote a list of the reasons why Jocelyn was not guilty of assault. She was never told that she could counter-claim the youths for assault. The police could find no fingerprints on the car so the damage was not investigated. Jocelyn has since moved in order to get back her privacy, having sold her home at a loss. In this instance, as discussed earlier, Jocelyn was seen as the cause of the incident rather than a victim of assault.

Case Study 3: HEATHER (2006)

Heather, a trans woman, lived with her daughter who attended the local secondary school. There were repeated rumours in the neighbourhood about Heather, despite the fact that she passed well and that she and her daughter kept the matter private.

Over a period of several months, local youths vandalised Heather's front garden. They also shouted abuse and would urinate in her garden. Heather called the police on several occasions over the course of several months, often being able to give the names and

identifying features of the boys who had committed the vandalism. On one occasion, having called the police who failed to attend, her house was again attacked. In response, she sprayed the garden hose at the boys. The police visited Heather the next day and gave her a formal caution for her actions. The vandalism continued and Heather and her daughter were getting extremely distressed, both at what happened and the failure of the police response. Finally, one day after repeated attacks and abuse, Heather went to her front door and fired an air rifle loaded with pellets, three times into the ground– well away from the youths. Later that evening, two police officers arrested her for attempt to cause grievous bodily harm.

After a period on police bail, the Crown Prosecution Service (CPS) proceeded with the charge and Heather went before the Magistrates Court. The magistrates found no reason to convict her of the charge, and heavily criticised both the police and the CPS for their role in pursuing the matter. The magistrates also heavily criticised the police for failing to attend when called by Heather, for failing to arrest the boys who had been identified as the perpetrators and for failing to support a good citizen to the extent that she was driven to action by the constant vandalism and abuse. In this case Heather has been regarded as a perpetrator rather than a victim of harassment.

These case studies demonstrate how the Criminal Justice system can fail to do justice to transphobic hate crime. In these cases, trans women were not regarded as vulnerable victims – or indeed, as women at all. Rather, the cases demonstrate how trans women are often understood by the Criminal Justice system as men by proxy; where it is implicitly assumed that they are capable of defending themselves - as in case study one, where Kellie was expected to have defended herself by virtue of having a ‘man’s strength.’ Case studies two and three demonstrate how, when trans women do defend themselves from attack that they are regarded as more of a threat to their assailants than a (non trans) woman who was defending herself would be.

Case studies two and three also demonstrate how trans women’s vulnerability as women and as trans women is overlooked. In these cases the police regarded the trans women as the cause of the incident rather than the victim. The police failed to understand that trans people are vulnerable from transphobic attack – which comes from an irrational fear of those who do not conform to cultural gender norms. Indeed, those who attack trans women will not see a woman in front of them, but often see a ‘man in a frock’ and thus a ‘deviant’ – hence the frequent use of the terms ‘pervert’ or ‘paedophile’ as abuse (as in Jocelyn’s case).

What is reassuring in these cases was that the magistrates in the court recognised the injustice – but the victims were still put to trial rather than the attackers. Until the criminal justice system as a whole recognises trans women as their acquired gender, and also as vulnerable victims, transphobic hate crime will not be responded to appropriately.

9. Conclusion

The evidence of the extent that trans people experience transphobic hate crime has often been lost while subsumed in previous investigations under the banner 'LGBT'. This report provides the evidence of trans people's experiences of hate crime in the EU states that participated. Indeed, the figures suggest that trans people are three times more likely to experience a hate incident or crime than lesbians and gay men. Although we do not want to suggest that transphobic hate crime is a more important issue than homophobic hate crime, this report does demonstrate how, when buried within 'LGBT', the extent and seriousness of transphobic hate crime can be overlooked.

It also suggests that trans women are marginally more likely to experience hate crime than trans men – which may be due to the fact that many trans women are more visible as trans than trans men may be. Indeed, through the examination of the case studies in the UK, this report has found that the police service and the Crown Prosecution Service position trans women as 'men by proxy' as detailed above. This obscures the specificity of trans women and diverts the due regard to their vulnerability for justice to be done. More in-depth research is needed to examine the specificities of transphobic hate crime experienced by trans men – as well as the different contexts in which trans people experience hate crime.

It is only relatively recently that the murder of trans people has been documented by members of the trans community and voluntary organisations.¹⁶ The frequency of these murders is grave cause for concern and Appendix 2 of this report, which documents the victims in one year all over the world, suggests the rate of approximately 2 deaths of trans people per month. Clearly there is a strong case for governments in the EU to enforce hate crime legislation based on gender identity and expression as well as sexual orientation, on a par with the outlawing of hate crime based on ethnicity race and religion that exists in some EU states.

¹⁶ For example Gender Public Advocacy Coalition (Genderpac) in the United States. See also a discussion on the birth of the 'Transsexual News Telegraph' in Wilchins (1997) as well as the 'street-net-street' effect of the internet for trans activism in Whittle (1998)

10. Recommendations and Good Practice

We recommend that as well as the outlawing of transphobic hate crime, more work needs to be done on recognising crimes motivated by transphobia, as transphobic by governments, law enforcers as well as the media. The police and the criminal justice agencies also need to work on building a relationship of trust with the trans population in their countries in order that transphobic hate crime is reported by victims and that justice can be done.

In the following, we outline some good practice that has been undertaken in the UK with the criminal justice agencies.

Reporting recording and recognising transphobic hate crime

Transphobic hate crime should not be lost while subsumed under 'LGBT'. The initiatives below demonstrate good practice in this area as they recognise the importance of having 'T' as a separate 'strand' and thus understanding the different needs of trans people from the LGB population:

Policing hate crime

Association of Chief Police Officers (ACPO) LGBT portfolio

The Association of Chief Police Officers (ACPO) is an independent strategic body which leads on the direction of the police service in England Wales and Northern Ireland. There is a nominated 'champion' who has their own portfolio where they will lead on issues ranging from knife crime to drugs. The Deputy Chief Constable of Lancashire police has an LGBT portfolio, with advisors from the LGBT communities and stakeholder groups. In this instance, the 'T' is a separate portfolio from the 'LGB'. This work is currently reviewing policies and procedures in the police service as well as employment for trans people.

National Trans Police Association

The National Trans Police Association in the UK was formed in 2008 with trans police officers and staff who work in the Police service – many of whom transitioned at work.

The purpose of the NTPA is to:

- Promote equal opportunities for trans police officers and trans police staff.
 - Offer advice and support to trans police officers and trans police staff
 - Improve relations between the police service and the trans community.
-

(see <http://www.ntpa.co.uk/>)

Independent Advisory Groups (IAGS)

Independent Advisory Groups are panels of local community members who act as ‘critical friends’ of the police. They give guidance to the police on incidents and policy and procedure to help the police improve their service – particularly with minority communities. Many IAGS in the UK have trans members on the panels.

Lesbian and Gay Liaison Officers (LAGLOs)

LAGLO’s are Police Officers and Police Staff who have expertise on lesbian, gay, bisexual and transgender issues and who help forge a stronger relationship between the police and lesbian, gay, bisexual and transgender people.

All of the above initiatives indicate a willingness of the police service to understand the needs of all the LGB &T population and build bridges. They may help enhance the confidence of victims of transphobic hate crime to report.

Lancashire police

Lancashire police have a long tradition of student officers receiving an input from members of the trans community. Since 2007 every new student officer has had training on trans issues by trans people as part of their overall police training.

Prosecuting hate crime

The Crown Prosecution Service (CPS) is the body which prosecutes criminal cases investigated by the police in England and Wales. Recently, in consultation with stakeholders from the trans and LGB community, the CPS produced a policy and guidance for prosecuting cases of homophobic and transphobic hate crime for prosecutors.¹⁷

In order to improve the prosecution of hate crime, the CPS has also established Hate Crime Scrutiny Panels made up of community members and stakeholders to act as ‘critical friends’ to the CPS. These panels meet and scrutinise hate crime prosecutions – both successful and unsuccessful cases.

Office for Criminal Justice reform

The Office for Criminal Justice Reform is a cross-departmental team that supports all criminal justice agencies in working together to provide an improved service to the public. Recently they reviewed all hate crime categories for clarification and transphobic hate crime

¹⁷ See http://www.cps.gov.uk/publications/docs/htc_policy.pdf and http://www.cps.gov.uk/publications/docs/htc_guidance.pdf

is now recognised as one of the ‘five strands’ of hate crime (the others being disability, race, religion, sexual orientation). Since April 2008 transphobic hate crime has been recorded by all police forces and British Crime survey questionnaire will now include transphobic hate crime.

This will give a clearer picture of the extent of transphobic hate crime. The UK government also launched its cross-governmental strategy for hate crime including transphobic hate crime in September 2009.

Experts meeting in Strasbourg with the Commissioner for Human Rights

In November 2008 two of the authors of this report attended a special experts meeting in Strasbourg with the Commissioner for Human Rights, Thomas Hammarberg to discuss the Human Rights of Transgender people. Hate Crime was one of the issues discussed and the authors did a presentation to the Commissioner. Following this meeting the Commissioner issued a statement urging the Council of Europe Member States to ‘take all necessary concrete action to ensure that transphobia is stopped’. The full statement is in Appendix 3 of this report.

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Appendix 1: Survey Questions

Have you ever experienced the following while out in public that you felt were because of your transition or preferred/acquired gender? *(Tick all that apply)*

- Comments
- Verbal abuse
- Threatening behaviour
- Physical abuse
- Sexual abuse
- None of these things have happened to me

How confident are you that you would be treated appropriately by members of the police service as your preferred/acquired gender?

- Not confident at all
 - Quite confident
 - Very confident
-

Appendix 2. Trans murders worldwide November 2007 – 2008

Kellie Telesford

Location: Thornton Heath, United Kingdom

Cause of Murder: Strangled

Date of Murder: November 21, 2007

Brian McGlothin

Location: Cincinnati, Ohio

Cause of Murder: Shot in the head with an automatic rifle

Date of Murder: December 23, 2007

Gabriela Alejandra Albornoz

Location: Santiago, Chile

Cause of Murder: Attacked and stabbed

Date of Murder: December 28, 2007

Patrick Murphy

Location: Albuquerque, New Mexico

Cause of Murder: Shot Several times in the head

Date of Murder: January 8, 2008

Stacy Brown

Location: Baltimore, Maryland

Cause of Murder: Shot in the head

Date of Murder: January 8, 2008

Adolphus Simmons

Location: Charleston, South Carolina

Cause of Murder: Shot to death

Date of Murder: January 21, 2008

Fedra

Location: Kota Kinabalu, Malaysia

Cause of Murder: Lying face up in a pool of blood

Date of Murder: January 22, 2008

Ashley Sweeney

Location: Detroit, Michigan

Cause of Murder: Shot in the head

Date of Murder: February 4, 2008

Sanesha Stewart

Location: Bronx, New York

Cause of Murder: Stabbed to death

Date of Murder: February 10, 2008

Lawrence King

Location: Oxnard, California

Cause of Murder: Shot to death

Date of Murder: February 12, 2008

Simmie Williams Jr.

Location: Fort Lauderdale, Florida

Cause of Murder: Shot to death, Simmie was found wearing women's clothing

Date of Murder: February 22, 2008

Luna

Location: Lisbon, Portugal

Cause of Murder: Brutally beaten to death and tossed into a dumpster

Date of Murder: March 15, 2008

Lloyd Nixon

Location: West Palm Beach, Florida

Cause of Murder: Repeatedly beat in the head with a brick

Date of Murder: April 16, 2008

Felicia Melton-Smyth

Location: Puerto Vallarta, Mexico

Cause of Murder: Stabbed to death

Date of Murder: May 26, 2008

Silvana Berisha

Location: Hamburg, Germany

Cause of Murder: Stabbed to death

Date of Murder: June 24, 2008

Ebony Whitaker

Location: Memphis, Tennessee

Cause of Murder: Shot to death

Date of Murder: July 1, 2008

Rosa Pazos

Location: Sevilla, Spain

Cause of Murder: Stabbed in the throat

Date of Murder: July 11, 2008

Juan Carlos Aucalle Coronel

Location: Lombardi, Italy

Cause of Murder: Severely beaten and run over by a car

Date of Murder: July 14, 2008

Angie Zapata

Location: Greeley, Colorado

Cause of Murder: Two severe fractures in her skull

Date of Murder: July 17, 2008

Jaylynn L. Namauu

Location: Makiki Honolulu, Hawaii

Cause of Murder: Stabbed to death

Date of Murder: July 17, 2008

Samantha Rangel Brandau

Location: Milan, Italy

Cause of Murder: Beaten, gang raped and stabbed numerous times

Date of Murder: July 29, 2008

Nakhia Williams

Location: Louisville, Kentucky

Cause of Murder: Shot near the dumpster next to her home

Date of Murder: August 20, 2008

Ruby Molina

Location: Sacramento, California

Cause of Murder: Drowned, her body was found floating

Date of Murder: September 21, 2008

Aimee Wilcoxson

Location: Aurora, Colorado

Cause of Murder: Found dead in her bed

Date of Murder: November 3, 2008

Duanna Johnson

Location: Memphis, Tennessee

Cause of Murder: Shot dead in the middle of the street

Date of Murder: November 9, 2008

Dilek Ince

Location: Ankara, Turkey

Cause of Murder: Shot in the back of the head

Date of Murder: November 11, 2008

Teish Cannon

Location: Syracuse, New York

Cause of Murder: Shot dead

Date of Murder: November 14, 2008

Source:

http://egfed.org/gse/notice-description.tcl?newsletter_id=29214094

Appendix 3: Statement from the European Council Commissioner for Human Rights 5th of January 2009: ¹⁸

“Discrimination against transgender persons must no longer be tolerated”

[[05/01/09] During missions to member states of the Council of Europe, I have been reminded of the on-going discrimination many face on account of their gender identity.¹ Transgender persons encounter severe problems in their daily lives as their identity is met with insensitivity, prejudice or outright rejection.

There have been some extremely brutal hate crimes against transgender persons. One case which received media attention was the murder in Portugal of a homeless, HIV-positive, Brazilian transgender woman, called Gisberta Salce Junior. She was tortured and raped by a group of young men, thrown into a well and left to die.

My discussions with non-governmental organisations defending the rights of transgender persons indicate that a number of such hate crimes go unreported – even in serious cases. One of the reasons appears to be a lack of trust in the police.

Some people seem to have a problem with the mere existence of human beings whose outer expression of their inner gender identity is not the same as their gender determined at birth. Aggression against transgender persons cannot however be excused as resulting from ignorance or lack of education. These attitudes cause serious harm to innocent and vulnerable people and must therefore be countered.

I have been struck by the lack of knowledge about the human rights issues at stake for transgender persons, even among political decision-makers. This is probably the reason why more has not been done to address transphobia and discrimination based on gender identity. The result is that individuals are discriminated against all over Europe, in areas such as employment, health care and housing.

In a number of countries, the problem starts at the level of official recognition. Transgender persons who no longer identify with their birth gender, seek changes to their birth certificates, passports and other documents, but often encounter difficulties. This in turn leads to a number of very concrete problems in daily life when showing one’s ID papers – in the bank or the post office, when using a credit card, or crossing borders.

One well-publicised case related to Dr. Lydia Foy in Ireland who sought to have her legal

¹⁸ http://www.coe.int/t/commissioner/Viewpoints/090105_en.asp

gender changed from male to female on her birth certificate. After ten years of struggle, in 2007 the Irish High Court finally ruled that the State was in breach of Article 8 of the European Convention on Human Rights.

The European Court of Human Rights has ruled that States are required to recognise legally the gender change of post-operative transsexuals.² In one case, Christine Goodwin, a post-operative male to female transgender person, complained about sexual harassment in the workplace, discrimination in relation to contributions to the National Insurance system, and the fact that she was prevented from marrying a man (because she was still legally male).

The Court stated that “the very essence of the Convention was respect for human dignity and human freedom. Under Article 8 of the Convention in particular...protection was given to the personal sphere of each individual, including the right to establish details of their identity as human beings.”³

In some European countries, it has now become possible to correct official records and obtain a new first name. However, in other countries a change of birth certificate is simply not allowed. In a large number of Council of Europe Member States, such changes are permitted only upon proof that the transgender person has been sterilised or declared infertile, or has undergone other medical procedures, such as gender reassignment surgery or hormone treatment. The individual's sincere affirmation of their gender identity is not seen as sufficient, and the suitability of the medical procedures for the person in question is not considered.

Additionally, many countries require that a married person divorces before his or her new gender can be recognised, even though the couple itself does not want to divorce. This in turn may have an impact on children of the marriage. In fact, in several countries the parent who has undergone the gender change will lose custody rights. Legislation requiring divorce needs to be reformed in the spirit of the best interests of the child.

To require surgery as a prerequisite to enjoy legal recognition of one's gender identity ignores the fact that such operations are not always desired, medically possible, available, and affordable (without public or other funding). It is estimated that only 10% of transgender persons in Europe actually undergo gender reassignment surgery.

Even access to ordinary health care is a problem for transgender people. The lack of trained staff familiar with the specific health care needs of transgender persons – or simply prejudice towards transgender people - render them vulnerable to unpredictable and sometimes hostile reactions.

In the United Kingdom, male to female transgender persons have been struggling to get

their gender status accepted for the purpose of pension benefits. In spite of overwhelming legal arguments they have so far been denied the pension rights that other women in the country (who were born female) enjoy without question.

There are other obstacles encountered in day-to-day life. A major problem for transgender persons is harassment and discrimination at work. Some leave their jobs to avoid it, while others avoid gender reassignment surgery for fear of stigmatisation. Data presented by EU's Fundamental Rights Agency shows that in some countries the unemployment rate of transgender persons can reach up to 50%. Some jobless transgender persons are unable to find employment, and see no other option but to work in the sex industry. A report from Human Rights Watch on Turkey called attention to the situation of transgender sex workers in that country - victimised by violence, drug addiction, sexual abuse, lack of health insurance, homelessness, police attacks, and a high risk of HIV/AIDS.

To date, very little factual information is available on the situation of transgender people in Council of Europe Member States. This information is needed urgently to determine the extent of the problems faced.

There is no excuse for not immediately granting this community their full and unconditional human rights. Council of Europe Member States should take all necessary concrete action to ensure that transphobia is stopped and that transgender persons are no longer discriminated against in any field.

Thomas Hammarberg

European Council Commissioner for Human Rights

End Notes

¹ Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

² Most recently, in *L. v Lithuania*, Application 27527/03, 11 September 2007, para. 56

³ *Christine Goodwin v. United Kingdom*, Application 28957/95, judgment of 11 July 2002
