

BECAUSE OF WHO I AM

HOMOPHOBIA, TRANSPHOBIA
AND HATE CRIMES IN EUROPE

AMNESTY
INTERNATIONAL



“They wanted to butcher me just because of who I am, because I have a face that is a bit masculine and because they understood I was a trans person from my voice”

Michelle, Italy, March 2013

Although the situation of lesbian, gay, bisexual, trans and intersex (LGBTI) people has improved in recent years in some European countries, prejudice, discrimination and hate-motivated violence persist, even in countries where same-sex relationships are relatively accepted and where marriage has been opened to all couples irrespective of their gender and sexual orientation.

Because of discrimination, prejudice and violence, many people in Europe continue to hide their sexual orientation and gender identity, including from colleagues, friends, schoolmates and family members.

According to a survey across European Union (EU) States recently published by the European Union Agency for Fundamental Rights (FRA), almost 70% of the LGBTI respondents had always or often disguised their sexual orientation or gender identity at school.

LGBTI individuals can face violence anywhere: on the street, in bars and clubs, even at home – sometimes from family members. An Italian NGO (AGEDO) that provides counselling to parents of LGBTI youth in Palermo described cases where teenagers have been sexually abused by their relatives as well as cases where they have been confined to or banished from their homes or referred to “sorcerers” supposedly to help them “fix” their sexual orientation or gender identity.

Violence motivated by the real or perceived sexual orientation or gender identity of the victim is widespread, although the exact extent cannot be known. According to the FRA, one out of four of the LGBTI individuals

surveyed had been attacked or threatened with violence in the past five years.

Unfortunately, only a minority of European countries collect comprehensive data on homophobic and transphobic hate crimes. According to the Organization for Security and Co-operation in Europe (OSCE), 13 EU countries collect some kind of data on homophobic hate crimes, while only five collect data on transphobic hate crimes. However, only four of them provided information on these crimes to the OSCE Office for Democratic Institutions and Human Rights in 2011.

Hate-motivated violence has a particular detrimental, long-term impact on victims. It also creates a broader climate of fear among LGBTI individuals, groups and communities and, especially when states fail to bring the perpetrators to justice, a pervasive mistrust in authorities.

In order to effectively tackle hate crimes on the grounds of sexual orientation and gender identity, authorities need to make improvements in several areas. Currently, there are gaps in legislation in many EU countries, while investigations and prosecutions of crimes with a hate motive are often flawed. There is little support for victims, who in turn may be unwilling to report the crimes to the police, and impunity prevails for the attackers. This briefing identifies such areas with illustrative case studies. It also provides information on homophobic and transphobic hate crimes in these countries and makes a number of recommendations to both national authorities and the EU.



Above: Counter-protesters at the Baltic Pride in Vilnius, Lithuania, July 2013.

Cover: An activist touches a rainbow flag during the fourth Pride march in Sofia, Bulgaria, June 2011. The rainbow flag has long been associated with LGBTI communities, since it first appeared in San Francisco, USA in 1978.
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WHY THE HATE MOTIVE MATTERS

Hate crimes are criminal offences targeting persons or properties because of their real or perceived association with a group defined by a protected characteristic such as ethnic origin, religion, sexual orientation or gender identity.

It is the discriminatory nature of the motive that sets hate crimes apart from other criminal acts, which is why it is crucial that the investigation aims at clarifying the circumstances surrounding the perpetration of a crime. That is not always easy especially in cases when the hate motive is not self-evident or when a person may have been targeted on multiple grounds.

The European Court of Human Rights notes that the failure to take all reasonable steps to unmask this motive amounts to a failure to distinguish between situations which are fundamentally different and so it is a violation of the prohibition of discrimination.

Ensuring that the hate motive is identified also makes it possible to collect statistics and develop effective strategies to combat and prevent future hate crimes. More effective strategies, coupled with denunciations of hate crimes by public officials, help build confidence in targeted groups in the ability and willingness of the state to protect their rights. This in turn promotes reporting of crimes to police by marginalized individuals or members of groups and communities, and facilitates more successful investigations and prosecutions.

ANA, GREECE

For many, living openly leads to discrimination, even violence. For instance, Ana, a 25-year old trans woman, has been experiencing harassment and violence in an evening school for secondary education in Athens. In June 2012, Ana was victim of a serious attack when two men allegedly poured gasoline on her and

attempted to set her on fire just outside the school premises. At the beginning of the following school year, the new headmaster refused to enrol her unless she “behaved like a man”. Ana was eventually allowed to wear clothes that she felt expressed her gender identity but continued to face bullying and threats from peers.

GAPS IN LEGISLATION

“The current lack of legislation on hate crimes perpetrated on grounds of sexual orientation and gender identity hinders the possibility for the police and prosecutors to duly take into account these hate motives.”

Francesco Messineo, Prosecutor, Palermo, Italy

Physical violence targeting individuals on the grounds of their real or perceived sexual orientation or gender identity are hate crimes. These attacks violate several human rights, including the right to life, the right to physical integrity, the right to be free from ill-treatment, and the right to non-discrimination.

States are therefore required under international law to combat hate crimes, including on the basis of sexual orientation

and gender identity. First and foremost, states should adopt legislation prohibiting hate crimes and requiring investigating and prosecuting authorities to unmask any alleged discriminatory motive associated with a crime.

Most states in Europe do so either by ensuring that the hate motive associated with a common crime constitutes an aggravating circumstance or by criminalizing specific types of crimes perpetrated with a hate motive. Others have adopted a mixed approach.

However, several states, including those in the chart on page 6, have not yet made explicit in their legislation that a crime perpetrated on grounds of real or perceived sexual orientation and gender identity constitutes a hate crime. A similar gap exists in EU law.

GAPS IN EU STANDARDS

In 2008 the EU adopted an instrument aimed at combating racism and xenophobia (Framework Decision 2008/913/JHA).

Article 4 of the Framework Decision establishes that the racist or xenophobic motive associated with a crime should be considered as an aggravating circumstance or alternatively taken into account in the determination of the penalty when member states prosecute racially motivated hate crimes.

Although sexual orientation and gender identity are prohibited grounds of discrimination under international and European human rights law, the Framework Decision does not apply to hate crimes motivated by these grounds.

Article 4 of the Framework Decision has been incorporated into national legislation in almost all EU member states. However, in practice, this provision has not ensured

that investigating and prosecuting authorities at the national level effectively unmask and fully take into account any racist motive possibly associated with a crime.

The Council of the EU is due to review this Framework Decision by the end of 2013 although it is not clear to date whether extending the scope of this instrument will be part of the review. It should be.

In October 2012, the EU adopted a Directive aimed at establishing standards on rights, support and protection of victims of crime (Directive 2012/29). Although not specifically tackling hate crimes, this Directive includes key provisions regarding the rights of victims to be heard and to be duly informed on legal proceedings, access to support services and training of judicial authorities and the police. It calls on authorities to treat victims of crimes equally and without any discrimination including on grounds of sexual orientation and gender identity. The European Commission is currently preparing guidelines for its implementation.



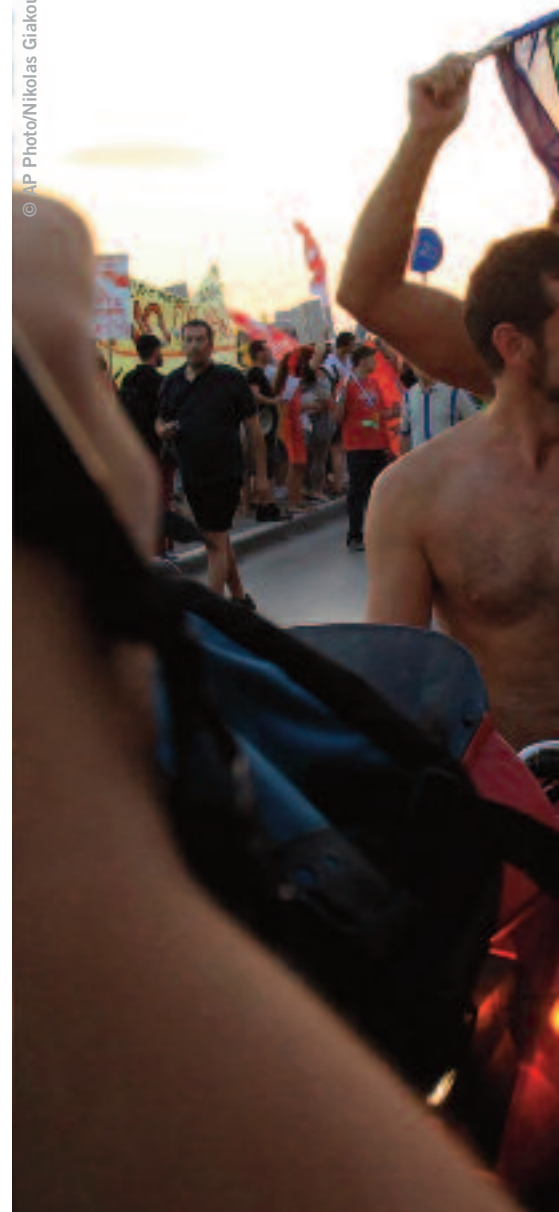
The lack of adequate legislation makes it unlikely that any alleged homophobic or transphobic motive will be effectively considered in the investigation, prosecution and sentencing of a hate crime.

For example, prosecutors in Italy and Bulgaria told Amnesty International that



since offences committed with homophobic and transphobic motives were not defined in law as constituting hate crimes, they could not be prosecuted or punished as such.

An activist waves a rainbow flag in front of a building of the Bulgarian parliament during the fifth Pride march in Sofia, Bulgaria, June 2012.



LACK OF PROTECTION AGAINST HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES IN SOME EU COUNTRIES		
Bulgaria	Criminal Code Articles 162, 163 and 165	Violence and group violence against a person or property on grounds including race, religion, nationality or political convictions are stand-alone offences.
Czech Republic	Criminal Code Articles 219, 221, 222 and 257	For some offences (including murder, physical assault, criminal damage) motives relating to the race, ethnicity or political belief of the victim(s) can be considered as aggravating circumstances when sentencing.
	Criminal Code Article 196	Violence motivated to a large extent by the political conviction, nationality, race, religion or belief of the victim is a stand-alone offence.
Germany	Criminal Code	No provision on hate crime.
	Police criminal registration system	Hate crime is a sub-category of “politically motivated crimes”. There are two types of hate crime: xenophobic and anti-Semitic.
Italy	Law n° 654 of 13 October 1975	Violence, or inciting violence, on the grounds of race, ethnic origin, nationality or religion, is a stand-alone offence.
	(subsequently amended in 1989, 1993 and 2006)	Perpetrating any other crime on the grounds of race, ethnic origin, nationality or religion is an aggravating circumstance.
Latvia	Criminal Code Section 48	Perpetrating a crime with a racist motive is an aggravating circumstance.
Non-EU	Gaps exist in legislation including in neighbouring states such as Ukraine and Moldova and in acceding and candidate states such as Turkey, FYROM (Macedonia) and Montenegro.	

ITALY

Violence, or inciting violence, on grounds of race, ethnic origin, nationality or religion, is a specific crime in Italy. However, the same act committed on the grounds of gender identity and sexual orientation would not be considered a hate crime.

The Criminal Code applies “general aggravating circumstances” in cases where a crime is perpetrated for trivial purposes or in a cruel manner (Article 61 Criminal Code). Such aggravating circumstances have, although rarely, been applied to homophobic or transphobic hate crimes.

The police have no duty to take into account gender identity or sexual orientation in the investigation of crimes or to officially register these alleged motives when they collect victims’ reports. Prosecutors cannot explicitly indicate gender identity and sexual orientation as a suspected motive when pressing charges against suspects and judges are not required to take into account these grounds in the determination of the sentence.

In recent years, the Parliament has several times rejected draft laws aimed at extending the scope of existing legislation on hate-motivated violence to sexual orientation and gender identity. The debate on a new bill

started in June 2013 and continues. It is urgently needed.

The Observatory for Security against Discriminatory Acts (OSCAD) of the Ministry of the Interior reported 40 cases of hate crimes motivated by sexual orientation from 2010 to March 2013. The NGO Gay Helpline, which provides free legal and psychological counselling to victims of discrimination and violence nationwide, received information about 750 cases of verbal and physical attacks targeting LGBTI individuals in 2011. According to Transgender Europe, 20 trans individuals have been murdered between 2008 and March 2013.



MICHELLE, ITALY

On 14 February 2012, Michelle, a young trans woman was beaten up by several people in a club in Catania. One of the assailants attempted to flirt with her on the dance floor. When she turned down his advances, he realized that she had a masculine voice and shouted “Oh you’re a faggot!” before punching her in the face. Michelle told Amnesty International that then at least 10 people who were in the club started punching and kicking her and shouted derogatory language such as “Disgusting! You are a man, a faggot!”

Michelle was seriously injured. She reported the attack to the police indicating that she was attacked because of her gender identity. The derogatory language used by the assailants as well as the dynamics of the attack were mentioned in the police report.

One suspect has been identified. Although the trial has not started yet, the transphobic hate motive will not explicitly be taken into account in the prosecution of this crime or in the determination of the sentence because of the gaps in the criminal legislation.



“More than a year after I am still afraid... After the attack I could not walk in the street without repeatedly turning back to check if someone was coming from behind to attack me... I am still traumatized, sometimes I have nightmares.”

Michelle, who was attacked in Catania, Italy

Top: Mayor of Thessaloniki Yannis Boutaris speaks with gay activists during a march in Thessaloniki, Greece, June 2013.

Left: Michelle, after the attack, 2012.

INVESTIGATION AND PROSECUTION

Hate crimes are particularly egregious manifestations of discrimination. State responses to hate crimes should form part of broader policies aimed at eliminating discrimination and promoting equality. It is essential to ensure that the discriminatory motives in hate crimes are investigated, acknowledged and publicly condemned by authorities and political leaders, not only to more effectively prevent future such crimes, but to combat discrimination and the destructive message that such crimes send to individuals, groups and society at large.

States must ensure that investigations into suspected hate crimes are adequate,

thorough, prompt, impartial and independent. Any alleged hate motive should be taken fully into account during the investigation and prosecution of a crime. Many states across the EU are failing to do this consistently.

Investigating authorities must ensure that all reasonable steps are taken to secure all the evidence relating to a crime, including relating to any discriminatory motive. This is true even in cases where the victims had not reported such a motive. To that purpose, the police and judicial authorities must be adequately trained to recognize, record and treat appropriately any evidence of a discriminatory motive in a crime.

STEFANOS, GREECE

On 28 August 2012 in the early morning, Stefanos was walking near Omonia Square, Athens, with a friend. Two men approached them and asked if they were gay. After their positive reply, the men said “Now see what happens” and went away. After a few minutes they caught up with Stefanos and his friend, threw them on the ground and repeatedly kicked and punched while shouting homophobic insults.

Stefanos managed to call the police while he was still lying on the pavement. They arrived after a few minutes. Stefanos reported that he was victim of a homophobic attack. The police officers asked him what a homophobic attack was.

There were some witnesses around including the owner of a nearby news stand. However, the police did not talk to them to collect further details of what had happened. “They didn’t even get out of the car.” Then, the police suggested he go to the nearest police station to report the attack, but refused to escort Stefanos there. He went to the police station by himself. The police officers at the station again asked what a homophobic attack was.

Stefanos’ awareness of homophobic violence and the fact that he was open about his sexual orientation were pivotal in making sure that the alleged homophobic motive was recorded, although it should be the duty of the police to collect and register all the elements of a crime, including the alleged motives as perceived by the victims.

The alleged homophobic motive was indicated in the police report. “I wanted this attack to be registered as a homophobic one, I know it’s important these attacks are registered as such”, said Stefanos.

On 4 September 2012, Stefanos filed a private criminal complaint against the unknown perpetrators of the attack. The complaint referred to traffic cameras that had recorded the events. Stefanos’ lawyer obtained an order for the police to preserve the camera recordings that would have otherwise been deleted after seven days.

Despite repeated requests, neither Stefanos nor his lawyer has received any information on the progress made by the investigation, including whether the tape recordings had been examined.



Stefanos (right) with his partner at the 2012 Athens Pride.



Graffiti referring to attempts to stop the Pride march in Split, Croatia, June 2011.



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GREECE

Article 66 of the Criminal Code has listed motives relating to victims' race or sexual orientation as aggravating circumstances for a number of years. In March 2013, this article was amended to also include gender identity.

Local NGOs have complained, however, that, in practice, the police and judicial authorities regularly fail to take alleged hate motives into account when investigating and prosecuting hate crimes. The establishment of special police directorates and local units in December 2013 may contribute to addressing this problem, but these units and directorates have

only been set up to tackle hate crimes on the grounds of race and not crimes perpetrated on other prohibited grounds such as sexual orientation and gender identity.

In 2013, the national NGO Network for Recording Racist Violence started to collect data on hate crimes motivated by sexual orientation and gender identity. To date, two cases have been reported. No official data on homophobic and transphobic hate crime are collected.

PAVLA, CROATIA

On 31 January 2010, Pavla went to a club with some friends. A man attempted to flirt with her, and then made explicit sexual proposals; Pavla told him she was a lesbian. When she left the club, the man was waiting for her outside, together with five others. Pavla was called names and then physically assaulted by the man she met in the club. She was repeatedly kicked in the head and body. The man ran away only when another friend of Pavla's came out of the bar and threatened him with an imitation firearm.

Pavla reported what happened to the police, including the homophobic comments. She was taken to the hospital, treated for her head and face injuries and kept under medical observation for several hours. Pavla repeatedly tried to get information on her case; she went to the police station several times during the months after her attack. "Every time I tried to contact the police to get more information, the way they behaved made me think they were not taking the complaint seriously, I felt that they just wanted to send me home..."

Despite Croatian legislation explicitly defining hate crime as any criminal offence motivated by a personal characteristic including sexual orientation, the alleged homophobic motive behind the attack against Pavla was not registered by the police. The attack against her was classified by the police as a minor offence although some other cases of physical violence motivated by the sexual orientation of the victims had been classified as criminal offences.

The police indicated in the report that the suspect attacked Pavla because he was drunk. He was fined by a Court of First Instance in June 2010 and the alleged homophobic motive was not taken into account. As it was classified as a minor offence, no hate crime legislation was applicable.

Pavla was not informed at all about the legal proceedings against her attacker. She found out that he was charged and found guilty for a minor offence only some months after the conclusion of the trial thanks to the support of a private lawyer.

CROATIA

The Criminal Code defines hate crime as crimes perpetrated on the basis of a personal characteristic. Sexual orientation has been explicitly mentioned in the list of such characteristics since 2006 and gender identity since January 2013, when a new Criminal Code entered into force.

In 2011, Rules of Procedures were established to set investigation, prosecution and data collection standards, and to coordinate the response from law enforcement, judicial and governmental authorities.

Notwithstanding these positive developments, hate-motivated physical attacks have not always been classified consistently. In particular, some instances of physical violence have been classified by the police as minor offences. The hate motive may not be fully taken into account by authorities when processing minor offences because hate crime legislation is not applicable in such cases.

The Governmental Office for Human Rights collects official data on hate crimes disaggregated by ground. A few cases of homophobic hate crimes have been recorded on an annual basis, with a peak of 45 of such crimes in 2011 due to the violence that occurred during the Split Pride.



BARRIERS TO REPORTING

According to the EU FRA survey, 80% of cases of homophobic and transphobic violence or harassment are not reported to the police, often because of fear of further victimization due to institutionalized homophobia and transphobia.

Failure by states to assiduously prevent, investigate and punish hate crimes, or to unmask, track and denounce hate motives in crimes, undermine the confidence of LGBTI people in the ability or willingness of the state to protect them from violent crimes on the basis of equality. This in turn makes it less likely that people will report hate crimes, which can hinder the ability of the police or



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ANNA, ITALY

Anna is a trans woman living in Bologna. In July 2011, she went to meet a friend in an area of the city where there are many trans sex workers. She was approached by two young men who started to harass her physically; when she refused their advances, they started punching and kicking her. She was rescued by her friend and taken to the hospital. Anna was severely injured and had to undergo facial reconstruction surgery.

She reported the attack to the police; no suspects have been identified. Anna shared with Amnesty International the discomfort she experienced at the police station. “Someone who is there and who is trans is considered to be worth nothing. I had to explain to the police that I was not a sex worker, they were assuming I was ... even though I was wearing casual dress and trainers... But that’s not the problem... Would that have made a difference in terms of the physical violence I had experienced? My friend called the police who came to the hospital, more than anything else they inquired why I was hanging around in that area. They said ‘you were there so late at night... what were you doing there?’ They asked the same when I went to the police station to provide further details – ‘but why were you there? You can tell us.’”

“Every time I tried to contact the police to get more information, the way they behaved made me think they were not taking the complaint seriously, I felt that they just wanted to send me home...”

Pavla, Croatia

The aftermath of the Pride event in Split, Croatia, 2011. It was stopped when counter-protesters threw missiles at the activists.

other authorities to effectively tackle hate crimes.

More generally, LGBTI individuals may not feel comfortable mentioning their sexual orientation or gender identity to authorities. Some of the victims of hate crimes Amnesty International interviewed said that they had reported the homophobic crime they had experienced because of their activist background or because they were already publicly open about their sexual orientation.

Petros, a young Greek activist who was physically attacked with a friend in November 2012 in a central square in Athens said: “My friend didn’t even want to call the police at the beginning. It was even difficult for me to go and report it. It is hard because you think you also have to deal with the police afterwards.” He added: “It’s one thing talking about gay activists and another talking about the gay community in general. Gay people do not report these incidents, because they are not openly gay and they are afraid their peers will find out about them. Gay activists are more likely to report those incidents to the police although they often fear homophobic reactions from the police.”

SUPPORTING VICTIMS

Homophobic and transphobic violence can lead LGBTI individuals to try to make themselves invisible, as a protection strategy against targeted violence, often resulting in high levels of stress, anxiety and depression.

“More than a year after I am still afraid... After the attack I could not walk in the street without repeatedly turning back to check if someone was coming from behind to attack me... I am still traumatized, sometimes I have nightmares” said Michelle, who was attacked in Catania, Italy.

Petros from Greece (see page 11) told Amnesty International in March 2013: “I was a little frightened, when I first heard about the attacks, but I was mostly worried that this would take us back as a society... As far as I am concerned, after the attack against me I should have sought counselling. It’s an experience that affects you at many levels. At first, it’s just the fear. I was afraid of walking alone home or I was constantly looking back to see if someone was following me. Then for a period I didn’t want to be an activist any more. Now I can’t say there’s something specific left, but I’m never going to express myself openly in front of others. Last year, I would go for a drink with gay friends and we would be public about our sexual orientation on the street at 4am in the morning on our way home. There’s no way that would happen now. Even when I’m with my boyfriend in a public place, I’m not going to display affection publicly in any way.”

States should ensure that victims of hate crimes are provided access to counselling and legal assistance as well as effective access to justice.

Some of the victims who spoke to Amnesty International were not informed about the legal proceedings following their report to the police. Some have not been given the chance

to testify or to otherwise participate in trials. For instance Pavla, who was targeted with homophobic violence in Zagreb, found out only after several months that the perpetrator was charged with minor offences. She was not involved at all in the proceeding before the court.

In other cases, victims were not given any support from the state. For instance, Hristina Stoyanova, whose son was killed in Sofia, Bulgaria (see page 14), did not receive any psychological counselling. “Now, I’m seeing a psychologist as this situation is very overwhelming and I am also taking medicine. I can’t sleep, I am depressed. I think there is no progress with my case. I have the impression that victims have no rights. I have received no support at all from the state”, she told Amnesty International.

Lack of support by the state to a victim of a homophobic or transphobic hate crime can be particularly detrimental when the victim is vulnerable to multiple discrimination, for instance because of his or her ethnic origin or he or she is or was a sex worker, as illustrated by the case of Camilla in Italy.

CAMILLA, ITALY

Camilla is a trans woman originally from Brazil. She was trafficked to Italy and forced to be a sex worker by a criminal organization. After several years she was able to leave sex work and sever links with the criminal organization. She joined a support programme designed for former sex workers and run by a trans organization, she was given an accommodation by the municipality and she is now looking for a job.

In December 2011, as she was leaving a nightclub, she was approached by a man who made sexual advances. As she refused other men appeared and attacked her. “They punched and kicked me all over my body, when I fell onto the floor they kicked my head, they ... ripped



A gay couple hold hands during the annual gay Pride march in central Rome, Italy, June 2013.

away the wig I was wearing. Then one of them sat on my chest and tried to choke me... I remember thinking they wanted to kill me and that I was dying, I lost consciousness and when I woke up, I was alone.

“I think they beat me up so violently because I turned down their sexual advances and because they assumed that because I am trans woman I was willing to have sex with them... They perceived my refusal as an insult to their masculinity.”



She was taken to hospital. She ended up staying three months because of the seriousness of the injuries. She experienced prejudice and discrimination from the hospital staff who also failed to inform the police about the crime. According to Italian law, health professionals have to file a formal complaint to the authorities if they encounter a criminal offence that is prosecutable, as in this case of serious bodily injuries. However, the hospital failed to call the police and file the complaint. Camilla was not informed of her rights and when she asked to talk to the police, she was told she could do that once dismissed from the hospital.

She went to the police when she recovered. “I was questioned why I had waited so long and

I had the impression they just did not believe me because the injuries had gone. No one told me anything about my rights.”

Camilla is still experiencing discrimination and threats of violence because of her gender identity and her past as a sex worker. She told Amnesty International that recently a person involved with the organization who forced her into sex work followed her and threatened to attack her with acid.

“It’s one thing talking about gay activists and another talking about the gay community in general. Gay people do not report these incidents, because they are not openly gay”

Petros, a young Greek activist

IMPUNITY FOR HATE CRIMES

“What drives me to seek justice is that no more cases like this should happen. The victims who do not dare to complain should not be afraid anymore. It is not only my case. My case got publicity but there are similar cases that no one is talking about.”

Hristina Stoyanova, Bulgaria

Impunity for serious human rights abuses arises when perpetrators are not brought to justice. Impunity may result from the lack of appropriate criminal legislation aimed at tackling serious human rights abuses, from inadequate or biased investigation of such abuses or from the authorities' failure to bring suspects to justice in instances where the results of the investigation warrant this.

Impunity does not automatically arise in each case where the perpetrators remain at large. A thorough, impartial and prompt investigation will not necessarily result in the identification of suspects in all cases. However, neglecting to take necessary measures, such as arresting suspects or delaying the prosecution of hate crimes, can lead to impunity as in the case of the murder of Mihail Stoyanov.



Hristina Stoyanova holding a photograph of her son, Mihail Stoyanov, at Borisova Gardens where he was murdered in September 2008.

THE MURDER OF MIHAIL STOYANOV

In the early evening of 30 September 2008, Mihail Stoyanov, a 25-year-old medical student, left his home in Sofia, Bulgaria, telling his mother Hristina that he would be back shortly. That night he was brutally killed in Borisova Gardens, Sofia, because he was perceived to be gay.

The investigation of this crime resulted in the arrest of two suspects in 2010. The homophobic motive was well established during the investigation, as confirmed by the Prosecutor in charge of the case to Amnesty International's researchers in June 2012. In fact, three witnesses testified that they were in Borisova Gardens, that they watched the two suspects kill Mihail and that they were all part of a group who claimed to

be cleansing the park of gays and who attacked other men only because of their perceived sexual orientation.

The two suspects were initially held in custody and later under house arrest until April 2012 when they were both released on bail because the maximum period of pre-trial detention had elapsed. The investigation concluded in May 2012. Almost five years after the murder, the trial of the two suspects has not yet started. On 17 December 2012, the prosecutor issued an indictment against the two suspects in Sofia City Court. The Court rejected the indictment on grounds of legal inconsistencies. As of August 2013, another indictment had not been issued.

The failure to bring those who killed Mihail to justice has been devastating for his mother, Hristina. Although she is actively engaging in the investigation process by constantly seeking information and providing advice to the investigators, she now feels hopeless and abandoned by the authorities.

Those suspected of killing Mihail may be tried for murder committed on the basis of “hooliganism” and “in a particularly cruel manner”, two aggravating circumstances, but not for murder perpetrated on grounds of Mihail's perceived sexual orientation. Prosecuting this crime without including the hate motive means that the discriminatory aspect will remain unacknowledged.



© LGBT Youth Organization "Deystvie"
 Protesters call for justice in the case of Mihail Stoyanov, Sofia, Bulgaria, May 2012.

BULGARIA

Bulgarian legislation does not include any provision on hate crimes motivated by sexual orientation and gender identity. Homophobic motives can, at best, be prosecuted under the general aggravating circumstance of "hooliganism". Hooliganism is defined as

indecent acts, grossly violating the public order and expressing open disrespect for society (Article 325 of the Criminal Code).

The government initiated a discussion on amendments to the Criminal Code in 2010 and a working group including civil society organizations was established with the aim

of drafting a new Criminal Code. A draft in May 2013 included sexual orientation but not gender identity among the lists of personal characteristics on the basis of which a hate crime can be perpetrated.

No data on homophobic and transphobic hate crimes are collected by the authorities.

CONCLUSION

States should comprehensively address hate crimes on all grounds by adopting legislation to prohibit them. Such legislation should explicitly tackle hate crimes perpetrated on grounds of sexual orientation and gender identity, which are prohibited grounds of

discrimination under international human rights law.

States should also ensure that, in practice, investigating and prosecuting authorities uncover homophobic and transphobic motives associated with a crime. States should collect thorough data on these forms

of crimes on the basis of which robust policies can be adopted and implemented.

The EU should adopt comprehensive standards on all forms of hate motivated violence including on the basis of sexual orientation and gender identity. The Framework Decision 2008/913/JHA should be reviewed accordingly.



Amnesty International delegates join the Pride event in Palermo, Italy, June 2013.

RECOMMENDATIONS

States should:

- Ensure that their laws prohibit all crimes that are perpetrated against individuals or property because of their real or perceived association with, or belonging to, a group defined by a protected characteristic.
- Include real or perceived sexual orientation and gender identity as protected characteristics on the basis of which a hate crime can be perpetrated.
- Ensure that investigative authorities are required to investigate any alleged homophobic and transphobic motive, or when there is reason to believe that such a motive may have played a role but was not alleged by victims.
- Ensure that prosecuting authorities consistently bring alleged homophobic and

transphobic motives to the attention of the court when there is sufficient evidence to do so.

- Collect data on hate crimes at all levels, including reporting, investigation, prosecution and sentencing. Such data must be disaggregated by hate motive including sexual orientation and gender identity. This data should be made publicly available (while taking account of privacy) and authorities should develop policies to combat all forms of discrimination on the basis of such data.
- Ensure that victims of hate crimes receive thorough and prompt information about the developments of their cases, be able to be heard in the legal proceedings and be provided with legal and psychological support as appropriate.
- Provide police, judicial authorities and health professionals with general training

on discrimination including on grounds of sexual orientation and gender identity and specific training on hate crimes.

The EU should:

- Review the Framework Decision 2008/913/JHA in order to ensure that it comprehensively tackles all forms of hate crimes including those perpetrated on grounds of sexual orientation and gender identity. Any revised instrument should also include principles requiring states to put in place the necessary measures to ensure that alleged hate motives are fully taken into account by the competent authorities in the investigation and prosecution phases.
- Ensure that victims of hate crimes in EU member states have equal access to the rights protected by the victims' rights (Directive 2012/29).

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Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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