

HATE CRIMES AND INCIDENTS

**BASED ON SEXUAL ORIENTATION, GENDER
IDENTITY AND GENDER EXPRESSION
CARRIED OUT IN BULGARIA IN 2017**

REPORT

МЛАДЕЖКА ЛГБТ ОРГАНИЗАЦИЯ



ДЕЙСТВИЕ

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

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

Step up reporting on homophobic and transphobic violence was launched in 2013. In 2013, a first call for proposals within the

ILGA-Europe's Documentation and Advocacy Fund was launched, supporting 12 member organisations in Europe to do hate crime reporting.

In 2017 the Fund, with the support of the Government of the Netherlands, provided dedicated resources to 6 national and local NGOs in Armenia, Bulgaria, Poland, and Serbia. These NGOs were trained on the methodology previously developed by ILGA-Europe, and committed to apply it in order to produce comparable data.

Data collection and publication is expected to be developed on a more sustainable and professional basis in the future, thanks to the capacity-building aspect of the current project. Through this initiative, ILGA-Europe's methodology is being made available to a greater number of European LGBTI civil society organisations. Reliable reporting continues to be an essential tool for convincing authorities of the need to criminalise hate crimes and to develop policies and trainings for police and judicial bodies to deal with hate crimes effectively.

INTRODUCTION

This report was compiled on the basis of the data collected by the Youth LGBT Organization DEYSTVIE* on hate crimes directed at LGBTI people in Bulgaria. The data was collected from May to October 2017 through a questionnaire for victims and witnesses distributed online through the organization's communication channels. In addition to the questionnaires, representatives of Youth LGBT Organization Deystvie held a series of meetings with individual victims and witnesses of crime, with the LGBTI community itself, with representatives of the non-governmental sector, with police, prosecutors, judges and citizens.

The report has several main goals. First, as the national law does not recognize LGBTI-phobic hate crimes, and hence, the National Statistics Institute cannot collect information about such crimes, the report will start a regular reporting procedure which will motivate LGBTI community to report crimes. The second purpose of the project is to provide knowledge to all potential law enforcement officials that such

crimes are happening and therefore it aims to show officials the necessity for including LGBTI-phobic based hate crimes in the criminal law of Bulgaria. It also shows the necessity for close and constant work with police and law enforcement authorities in their work in recognizing hate crimes.

The reported incidents occurred in 2017. Youth LGBT Action Deystvie is now in the process of developing a direct button on its site and communication channels which victims can use to directly report incidents and crimes.

The project was implemented with the financial and methodological support of ILGA-Europe. It allowed the recording of new incidents and future monitoring of hate crimes against LGBTI on a national level. The report has been printed in Bulgarian and English and will be sent to all government institutions, the Commission for Protection against Discrimination, NGOs, the Police, the Prosecutor's Office and other bodies dealing with crimes with discriminatory motives.

* Youth LGBT Organization Deystvie is an LGBTI advocacy organization.

METHODOLOGY

The selected methodology was based on an online questionnaire and direct interviews. On the one hand, the online questionnaire was accessible to unlimited number of people and places throughout the country, including people who were not on the territory of the country but who were aware of or had been subjected to a hate crime or incident based on homophobic and/or transphobic motives. On the other hand, direct interviews gave several different perspectives to the existing situation. Direct interviews with injured parties could be used to provide direct assistance or advise to them.

Direct interviews with the police and the prosecutor's office were used to inspect the process of informing these bodies about the occurrence of such incidents and crimes, investigate their sensitivity to such crimes and, last but

not least, track hate crime reporting to the police, the prosecutor's office or the court. Direct interviews with citizens and representatives of non-governmental organizations were used to collect data of a general nature, unknown to neither the police nor the LGBTI organizations in the country.

The reporting form had been consulted with ILGA-Europe before being distributed online. It was designed to ensure the collection of reliable and comparable data from different European countries in a consistent manner, taking into account the standards demanded by national, European and international organizations. Classification and analysis of collected data were based on the guidance provided by ILGA-Europe at the beginning of the project implementation.

KEY FINDINGS

The lack in the legislation of an explicit provision characterizing an act as a crime and/or hate the sexual orientation, gender identity and/or gender expression of the person, as well as the lack of any provision to characterize the motive of such an act as an aggravating circumstance led to a number of consequences some of which being: fear of subsequent discrimination by the law enforcement authorities, refusal to investigate, refusal to initiate prosecution or termination of criminal proceedings.

In this regard, the survey data showed that LGBTI people in Bulgaria faced obstacles in the exercise of their fundamental rights.

People participating in the online survey and in the interviews reported multiple cases of discrimination in their daily lives, more direct actions based on their sexual orientation, gender identity and/or gender expression were reported, including threats, attacks, offensive words and a hate speech.

However, due to the lack of a legislative framework and, consequently, the fear

of subsequent secondary discrimination, many of the cases described in this report never reached the police, the prosecutor's office or a court at all.

Many of the cases shared with representatives of Youth LGBT Organization DEYSTVIE had not even been reported to a relevant authority, nor had the organization been given their permission to be included in this report.

The lack of legislation for this type of crime also led to a lack of statistical data on the number of such crimes committed. The National Statistical Institute (NSI) collects data on crimes under the chapters of the Criminal Code. According to the data for year 2016 under Chapter Three of the Criminal Code, Crimes against the rights of citizens, which contained the corpus delicti of hate crimes, there were data about 246 crimes committed. 120 of them ended with an effective sentence, 115 with conditional sentencing, 10 with an acquittal and 1 with terminated criminal proceedings.¹ However, the NSI did not collect data separately for each of the corpus delicti in this chapter.

¹ Statistical data of the National Statistical Institute on crime by chapters of the Criminal Code and on outcome of the cases in 2016 by districts.

The NSI did not collect any information about crimes with discriminatory motives based on sexual orientation, gender identity and/or gender expression because such crimes did not exist in the Criminal Code.

Meetings with representatives of the MoI Regional Directorate were held in Sofia, Plovdiv, Veliko Tarnovo, Varna and Burgas. Ministry of Interior officials claimed that they were willing to cooperate, including to place posters in the foyers of regional directorates and regional police departments to provide information to LGBTI victims of crimes.

Conversations with police officers demonstrated that they HAD NO knowledge of the meaning of “hate crime or incident based on homophobic and transphobic motives”, and neither on how LGBTI persons were affected by hate crimes.

Police officers disregarded the fact that crimes with a discriminatory motive had a

particularly high degree of social danger, because they were not directed at the specific individual per se, but to a large group of people united by one of the protected features listed in the law.

The police officers interviewed reported that they had never encountered hate crimes based on sexual orientation, gender identity and/or gender expression.

Representatives of the Youth LGBT Organization Action at the MoI Regional Directorate - Veliko Tarnovo had been informed that LGBTI people did not exist in Veliko Tarnovo.

In the written correspondence, all Ministry of Interior Regional Directorates reported that they did not have any data on hate crimes based on sexual orientation, gender identity and/or gender expression.

STUDY DATA

HISTORY OF THE STUDY

This study is based on 16 crimes/incidents reported personally by the injured persons and 9 crimes/incident reported by witnesses. More crimes with homophobic and transphobic motives were reported within the study period. However, injured persons refused to be included in the generated statistics. During the reported period, 2 cases of serious physical violence were reported, as well as the turning out of the home of a young man aged 18, for which the injured persons refused to be included in this report. At the beginning of June, 1,200 messages containing threatening speech were received on Sofia Pride's Facebook page. In 2017, the

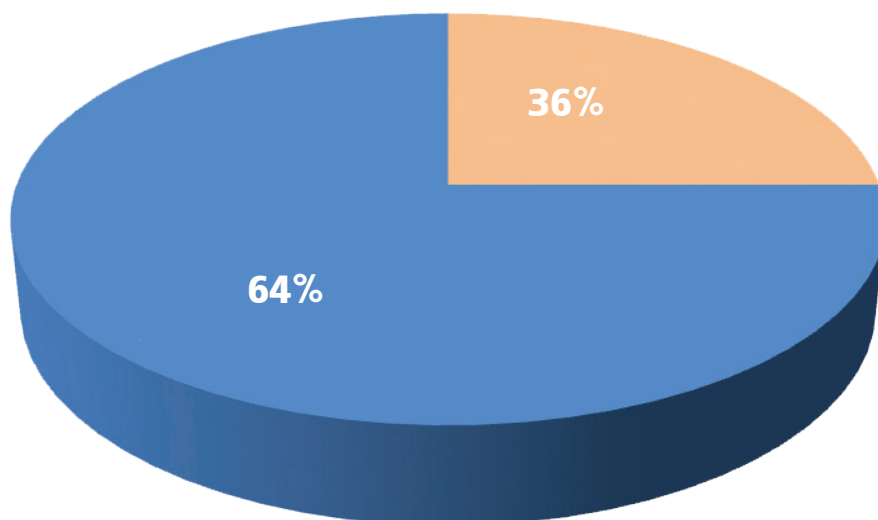
Sofia Pride procession was accompanied by a counter-procession permitted by Sofia Municipality, the counter-procession coinciding in time and place with Sofia Pride. In the day before Sofia Pride, the pages of the football clubs were openly calling for violence and data was received that the football fans of FC Levski and FC CSKA will surround the gathering point for Sofia Pride from all sides. There were no clashes and injuries, thanks to activists and organizers of Sofia Pride and the support and assistance of the international community along with the Sofia Directorate of Internal Affairs (SDIA).

COMMUNITY MEETINGS

The reported incidents were preceded by fieldwork with representatives of the LGBTI community in the cities of Sofia, Plovdiv, Veliko Tarnovo, Varna and Burgas, which included mainly a series of information meetings and seminars aimed at raising

awareness of discrimination hate crimes based on homophobic and transphobic motives, as well as other related events. Four meetings were held in Sofia on 12 March, 17 May, 10 June, 11 July. The total number of visitors was about 150 people.

INFORMATION ABOUT THE PERSON REPORTING



WITNESSES REPORTING - 9 PEOPLE **36%**

VICTIMS REPORTING - 16 PEOPLE **64%**

In Varna, 3 meetings were held on 2 April, 11 June, 21 October, and they visited by a total of about 30 people. Two meetings were held in Burgas on 9 April and 18 October, the number attendees being 20 people. In the cities of Plovdiv and Veliko Tarnovo, one meeting was held in each of them, on 8 April and 1 April respectively, the meetings being in the form of a seminar and a conversation with the community and had a total attendance of about 20 people. At each of these meetings, flexibility and variety of topics were

sought, with no emphasis on violence and victims of hate-based violence. Therefore, the format of the meetings varied from seminars, workshops, film screenings, book presentations and a small LGBTI festival organized in Varna.

Meeting attendees varied from 10 to 80 people, depending on the event, with a total attendance of about 220 people. For the cities of Varna, Burgas, Veliko Tarnovo and Plovdiv, the events held were the first of their kind to be held by LGBTI activists

and to be spoken openly at about LGBTI topics. The organization of such types of events in some of the cities was extremely difficult, on the one hand, due to the very stigma that still was a fact for LGBTI people in Bulgaria and in particular in the cities outside Sofia; on the other hand, the publicity of the events in some places was inappropriate due to the fear of visibility

of community representatives. For now, the most visited ones remained the events in Sofia city, which, however, also enjoyed the opportunity for diversity and were most accessible in terms of crowding of LGBTI population that was open and ready to attend such events. The least visited were the events in Veliko Tarnovo and Plovdiv.

MEETINGS WITH REPRESENTATIVES OF THE MINISTRY OF THE INTERIOR

During the project, meetings with representatives of the regional administrations of the Ministry of Interior were held in the cities of Sofia, Plovdiv, Veliko Tarnovo, Varna and Bourgas. Ministry of Interior officials claimed their readiness for cooperation, including for placing posters in the foyers of regional directorates and regional police departments to provide information to LGBTI victims of crimes.

During the conversations with police officers it became clear that they had no knowledge of the meaning of “hate crime” and of how LGBTI people were

affected by hate crimes. Police officers disregard the fact that crimes with a discriminatory motive have a particularly high degree of social danger, because they are not directed at the specific individual per se, but to a large group of people united by one of the protected features listed in the law. The police officers interviewed, in their own words, had never encountered hate crimes based on sexual orientation, gender identity and/or gender expression. At the Mol Regional Directorate - Veliko Tarnovo we were informed that there were no LGBTI people in Veliko Tarnovo.

A request for access to information under the Access to Public Information Act was subsequently sent to all regional directorates. In the written correspondence, all Ministry

of Interior Regional Directorates report that they do not have any data on hate crimes based on sexual orientation, gender identity and/or gender expression.

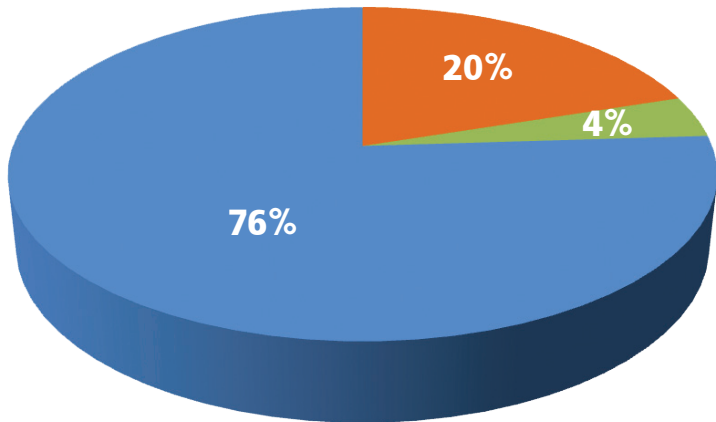
SUMMARIZED INFORMATION FROM THE STUDY

The most frequent reason for the incident was the sexual orientation of the victim, 76% of respondents said. The remaining 20% reported that the

attack was due to their gender identity, and 4%, or 1 person, reported that the attack was a consequence of gender expression.

REASONS FOR THE CRIME

- SEXUAL ORIENTATION
- GENDER IDENTITY
- GENDER EXPRESSION

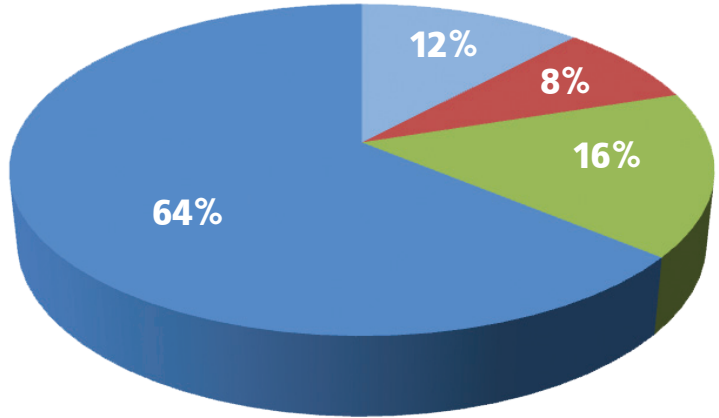


The highest percentage of attacks was reported by 16 males defining themselves as homosexuals, followed by 3 reported

incidents against women and 2 incidents involving trans women and 4 incidents involving trans men.

SEPARATION OF THE CRIME BASED ON THE SEXUAL ORIENTATION AND GENDER IDENTITY OF PERSON

- GAY MEN
- LESBIANS
- TRANS WOMEN
- TRANS MEN



The highest percentage of incidents occurred in the street. Next were 5 incidents that happened in a healthcare ward where HIV positive persons and trans persons were denied a healthcare service. Three cases were reported that had happened in the home of the injured person, at the injured person's educational establishment and in an administrative building by an official. There were also reports of 2 incidents that had happened in a bar. There was no such tendency for such incidents to occur during a LGBTI event (such as Sofia Pride) or a specific place where more LGBTI people were gathered - a bar or a club. Even on the contrary, in such events and places, the attendees are safer than

in their everyday life, as the responses show. Most reported incidents were in a variety of locations. This suggested that homophobia and transphobia were a fact not only when there was an accumulation of more public attention towards a LGBTI event, but it was an everyday thing.

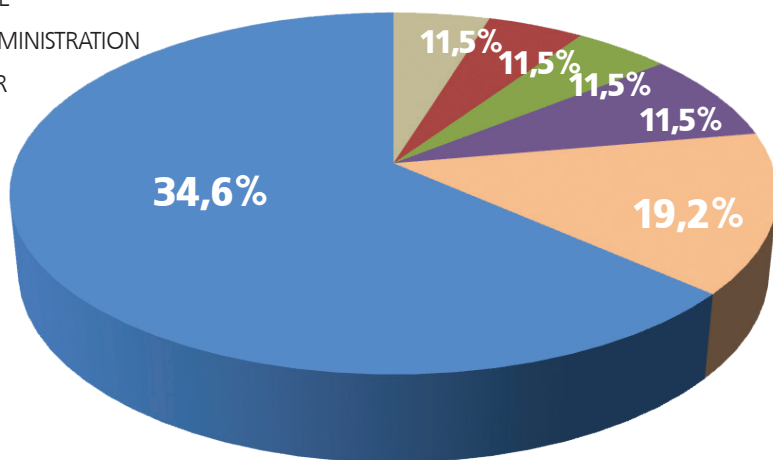
The majority of incidents occurred in the morning - 56.3%. Next were the 25% which happened in the afternoon, and 12.5% happened in the evening. Information from the incidents, however, was insufficient to trace precisely at what time of the day a similar types of incidents occurred.

66.7% of the respondents say the incident had an impact on the victim's personal and social life. A frequently-marked response was that, besides the fact that the incident had an impact on the privacy of the injured person, it also affected the LGBTI community as a whole. This statement spoke of the great response that a single

incident based on sexual orientation and gender identity of the person had on the entire LGBTI community because of the affiliation of the injured person to the particular group. It also pointed out that the incidents also had an impact on the working conditions and the victim's family.

PLACE WHERE THE CRIME/INCIDENT HAPPENED

- IN THE STREET
- IN THE HOSPITAL
- AT HOME
- AT SCHOOL
- IN THE ADMINISTRATION
- IN THE BAR



REASONS NOT TO REPORT TO THE POLICE

In one single case, the injured person has filed a complaint with the police. As reasons for the victim not to turn to the police, witnesses pointed out fear and lack of confidence that the police could help resolve the case because of the victim's gender identity.

THERE WAS ONE REPORT TO THE POLICE



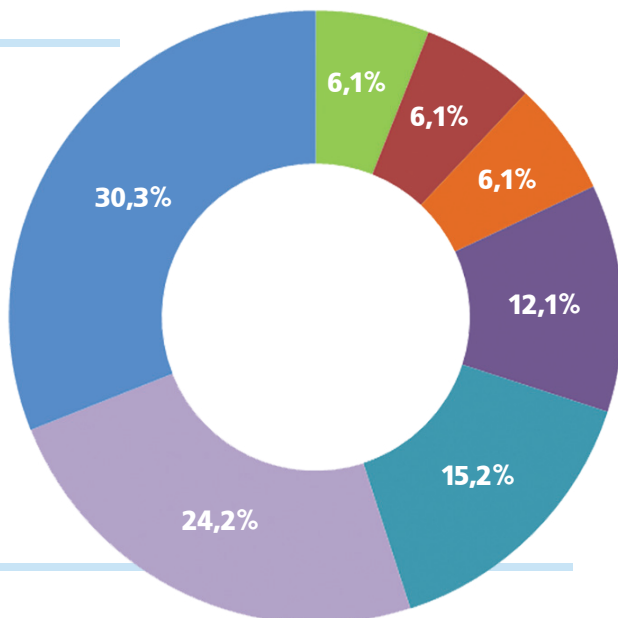
TYPES OF REPORTED INCIDENTS

The reported incidents were a total of 25, most of which were from Sofia city. Although there were 25 cases, the number of reported

incidents was 33 due to the fact that in many cases one type of incident was accompanied by another incident.

WHICH OF THE FOLLOWING INCIDENT OCCURRED?

- REFUSAL OF A SERVICE
- HATE SPEECH
- ENCROACHMENT UPON PROPERTY
- THREAT
- BEING CHASED
- MURDER ATTEMPT
- PHYSICAL VIOLENCE



DENIAL OF SERVICE

Denial of service accounted for the largest share of reported incidents – 30.3%, or 10 reported cases. Five of the cases involved a refusal of health service. Three of the cases concerned a person living with HIV. The first person was denied switching to antiretroviral therapy, and the rest were related to refusal to measure viral load.

Denial of health service for people living with HIV

From November 2016 to July 2017, National Reference Confirmatory Laboratory of HIV in Bulgaria did not have any tests for measuring the viral load in the body, which were the primary means of monitoring of patients living with HIV and establishing and confirming a lasting viral suppression of people undergoing antiretroviral therapy. As a result, the possibility of determining the amount of virus in newly discovered patients was obstructed. This forced doctors in the ward to prescribe antiretroviral therapy without being aware of the initial indicators of the viral load of the patient's body. In addition, monitoring of patients taking antiretroviral therapy was disrupted, and for those who were only starting the medications due to the lack of a test, the determination of a persistent viral suppression (undetectable viral load in the body), which was a key indicator of the effectiveness of therapy, became impossible.

For patients who had an already established persistent viral suppression, tracking and validating previously achieved undetectable levels of viral load in the body became impossible. These practices were in absolute contravention to the Methodological Guideline for antiretroviral treatment and monitoring of HIV-positive individuals, they left AIDS doctors unaware of disease prevention and compromised the health status of the patients.

The main reason for the lack of tests for determining the viral load was the delay in the adoption of the National HIV and AIDS Prevention and Control Program, on which the purchase of these diagnostic kits depended. Achieving sustained viral suppression was the main sign of successful antiretroviral therapy according to the Methodological Guideline for antiretroviral treatment and monitoring of adults with HIV infection, approved by Order No. ПД-01-193/03.06.2016, as well as according to the global medical practice.

Denial of service to trans persons

Five of the cases of denial of service were based on the gender identity of the person. In all these cases, the injured person did not report the incident. Reporting was done by a witness, a friend or a relative to the person. In one case, a trans man was denied

a change in his postgraduate degree after changing the gender marker and names by court order. In two cases there was a denial of a health service, in one case there was a refusal to carry out an operation following a change of the gender marker and the names by court order, while in the other there was an operation but there was poor performance thereof. Again the trans man was denied the conclusion of a life insurance, for the sole reason that the person was trans. Another trans person was denied access to a state examination due to the gender identity of the person.

Denial of an administrative service

The reporting person stated that in the end of 2016 she married her partner abroad. After a request to the Sofia Municipality, Lyulin District, to reflect the marriage in her personal registration card in the Municipality and reflecting the current marital status, namely married, a refusal was received and the administrative body based its refusal on the Constitution of the Republic of Bulgaria and the Family Code.

Denial of protection by law enforcement and judicial authorities

A person filed an application for international protection based on his sexual orientation. The same identified as a gay man. However, due to contradictory evidence, the State Agency for Refugees refused to grant international protection. Although,

according to Art. 10 of Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted – Qualification Directive, as well as Art. 8, para.1 of the Asylum and Refugees Act, sexual orientation can be pointed out as one of the five existing motives for persecution, the state Agency for Refugees refuses.

Another person who identified himself as a gay man and was a 36-year-old who lived in a small town outside the capital and a large city, reported a massive attack of the townspeople against him and his partner in which their house was surrounded by town residents and they were afraid for their lives. He reported that the actions of the town residents were accompanied by words and actions that were offensive and threatening the life of the partners. The police did not respond to the tension in the town.

During Sofia Pride, an attempted murder was reported. An unknown person had taken out a knife and threatened the reporting person's life. A policeman passing nearby handled the situation, but he did not arrest the person who drew out a knife, did not make a warning, did not draw up a statement against him, there were no adverse consequences for the attacker.

OFFENSIVE WORDS AND HATE SPEECH

Offensive words and hate speech take the second place in the reported incidents. Although offensive words and hate speech were part of the public and social everyday life of the country, in the reported incidents, this part only accounts for 24.24%, or 8 reported cases. A total of seven persons replied that offensive words had been used against them, in 3 of the cases the offensive words becoming a threat for physical violence or a threat to the life of the injured person. Six of the victims say they were under the age of 31, and one was 37 years old. In one case, it was hate speech based on the gender

identity of the person, and in the other 7 cases the incident was due to the sexual orientation of the persons. In three cases, people have never visited LGBTI events and were in no way related to LGBTI activism in the country. In the other five cases, individuals attended or were linked in one way or another to LGBTI activism. All incidents were committed with respect to persons who were open or relatively open. In most cases, the incident was committed by a person whom the victim did not know but who knew about their

sexual orientation and/or gender identity. In two cases, offensive words and hate speech were used by representatives of the public administration or, in particular, by an officer of the Border Police and by police officers and a representative of Sofia Municipality at an official meeting.

SOME OF THE PHRASES USED INCLUDED:

- ✓ **"The LGBTI community always misconstrues things"**
- ✓ **"Nobody talks about "hate" crimes that LGBTI people commit against other people."**
- ✓ **"faggots, vile wretches, a mistake of nature"**
- ✓ **"I do not want you in my neighborhood"**
- ✓ **"I will kill you"**
- ✓ **"We are beating faggots. Death to LGBT. A good faggot - a dead faggot."**

The failure to report more cases, although hate speech was used in media addresses, Facebook, as well as by Members of Parliament speaking in their capacity of MPs, suggested that hate speech was a normalized practice in Bulgarian society, which even LGBTI people were accustomed to and which were not taken into account as threatening. This part of the report also included an online attack against Sofia Pride consisting of 1,200 messages on the Pride's Facebook page containing hate speech and accompanied by threatening words.

ENCROACHMENT UPON PROPERTY

15.15%, or 4 of the reported incidents, concerned an encroachment upon property. Two of them concerned a bar known as a place where LGBTI people gathered, in one of the cases the integrity of the outside door was broken, and in the other one - a person with a hood invaded the bar to look at the visitors.

In two other cases, the injured person was turned out of their home.

All cases concern an incident which had occurred outside of Sofia. The turned out persons were 17 and 18 years old respectively. The reports were filed by witnesses of the incidents, only the 18-year-old person reported it in person.

THREAT

In 12.12%, or in 3 of the reported incidents, a threat of violence was reported. The victims were aged 25 to 30 years and were open

about their sexual orientation, and at the time of the incident it was obvious that they belonged to the LGBTI community.

PERSECUTION

Two cases of persecution were reported. In one case, there were 5 persons coming out of Sofia Pride 2017, when they were spotted by three other persons dressed in black clothes and wearing hoods. After the establishment of the fact that the five persons had attended the Pride, the same were chased.

Two other persons were persecuted on the street again by an unknown person, and the persecution was accompanied by offensive words and a threat of physical violence. In both cases, it was a situation in which the attacker(s) could identify the victims as belonging to the LGBTI community.

PHYSICAL VIOLENCE

2 cases of physical violence were reported. One of the cases concerned a 37-year-old gay man shopping at a shop in central Sofia. The person visibly belonged and could be identified as belonging to the LGBTI community. The incident happened in the middle of the day in the presence of witnesses. The attackers were security guards at the store.

"There were three of them, they lashed out at me and started dragging me around [...]

on the ground like a dog"... "They gave you too many rights, you freaks, one was yelling at me. "One of them threatened that if he saw me outside, he would cut off my throat, and that gay people had to be murdered and they shouldn't live".

The person filed a complaint with the police. This is the only case of a complaint submitted to the police for the reported incidents.

ATTEMPT OF MURDER

Of the reported crimes, one attempt of murder was reported. The person who filed the complaint identified himself as gay, 34 years-old, and reported that he was an activist. The attempt of murder was carried out during the Sofia Pride 2017 procession. An unknown person took out a knife against him and threatened his life. A policeman passing nearby handled the situation, but he did not arrest the person who drew out a knife and pointed it towards a Sofia Pride activist, he did not make a warning, did not draw up a statement against him. Overall, due to the inaction of the police officer, there were no

adverse consequences for the attacker.

"One of them took out a knife and pointed it towards me, along with a threat of murder. There was a policeman near by, who intervened. He told me to get out, but he did not do anything. The man who threatened my life was not arrested, nor was a statement drawn up against him, nor was a protocol drawn up. His attitude and the aggression had no consequences."

After the attack, the attacked person felt threatened and in a state of impasse by the police's failure to act and left the country.

POLICE AND OTHER LAW ENFORCEMENT AUTHORITIES LEGAL FRAMEWORK

HATE CRIMES BASED ON SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

The Constitution of the Republic of Bulgaria in its Art. 6 proclaims equality before the law on the basis of characteristics of race, nationality, ethnicity, sex, origin, religion, education, beliefs, political affiliation, personal and social status and property status. Sexual orientation, gender identity and gender expression are absent from the text of the Constitution.

The Criminal Code does not contain any provisions describing an act as a crime and/or hate speech based on sexual orientation, gender identity and/or

gender expression of the person. There are also no provisions to characterize this motive as an aggravating circumstance.

Protection against hate speech based on sexual orientation can be obtained by administrative or civil law procedure under the Protection Against Discrimination Act. The PADA however contains no recognition of the protected ground “gender identity” and/or “gender expression”. Hypothetical protection for these signs may be sought under Art. 4 of the PADA.

HATE CRIMES BASED ON SEXUAL ORIENTATION AND EXISTING CASE LAW

According to Amnesty International's latest reports, LGBT people have been attacked, raped, and one man was even killed. Most of

these crimes had not been investigated and had gone unpunished. In most cases there is even a lack of investigation because the

victim is afraid that their testimony will not be taken seriously. The Amnesty's report states that delays in investigation and criminal proceedings have been documented in two of these cases, and it is found that the police and the prosecution have treated the victim indifferently. In many cases, delays are due to the lack of understanding how to treat hate crimes, as well as to deep-rooted prejudices against LGBT people.² The lack in the legislation of an explicit provision characterizing an act as a crime and/or hate speech based on the sexual orientation, gender identity and/or gender expression of the person, as well as the lack of any provision to characterize the motive of such an act as an aggravating circumstance meant that this type of crimes are rarely investigated or uncovered. They lack prosecution, there is no investigation into this. Although one of the most important things in the criminal proceedings is to establish the motive for the offense committed, the motive in the case of hate crimes based on sexual orientation, gender identity and gender expression remains uncovered.

In the rare cases when homophobic attacks have been reported to the Police or

criminal proceedings have been instituted, the perpetrator has been charged with bodily injury committed by hooliganism motives – Art. 131, para. 1, item 12 of the CC. Homophobic motives of the crime have not been taken into account.³⁴ Art. 325 of the Criminal Code contained a definition of hooliganism and it is defined as a deed of committing indecent acts, grossly violating the public order and expressing open disrespect for society.

This is the case with the 25-year-old medical student Mihail Stoyanov. Mihail Stoyanov was murdered in 2008 in the park Borisova Garden, with many bruises and haemorrhages found on his body. He was kicked by his attackers until they broke his windpipe, which led to his death. In 2010, two young men were arrested as suspects for the murder of Mihail Stoyanov. In their testimony to the police, the two men admitted that they had “cleared the park of gays” and systematically beat gay men in the park Borisova Garden, i.e. their behavior was not incidental. The same was confirmed by the testimony of the police officer questioned in the case, who stated that the corpse had been found in a place where random

² Amnesty International, *Because of Who I Am: Homophobia, Transphobia and Hate Crimes in Europe*

³ Amnesty International, *Changing Laws, Changing Minds: Challenging Homophobic and Transphobic Hate Crimes in Bulgaria*

⁴ Amnesty International, *Because of Who I Am: Homophobia, Transphobia and Hate Crimes in Europe*

persons were meeting for sexual encounters in respect of which data of beatings and robberies occurred, i.e. the police knew well the place where the crime was committed as one where there attacks and other types of crime related to the sexual orientation of the persons there happened. The evidence in the case found that the defendants and witnesses had walked down the alley in the park to look for a person to “purge” the park from or “kick”, as they themselves called the ill-treatment of persons for whom they presumed had homosexual orientation.⁵

In the grounds of its decision, the Sofia Court of Appeals (SCA) concluded that the direct purpose of the defendants had been clearly established, namely – beating of any person whom they considered to be homosexual. The SCA concluded that the attackers experienced a strong and gratuitous hatred towards the victim that was dictated by the lack of any intelligence and the totally wrong notion of the defendants for their own significance and superiority over those they consider to be different, i.t. the homosexual persons that they attacked. It was this idea for significance and superiority of theirs that motivated them to press Mihail to the ground, which led to his killing.

With regard to the first defendant, the court concluded that “[t]he gratuitous cruelty shown by the defendant towards a person whom he not only did not know but also had never seen before, as well as the circumstances under which the crime was committed – in complicity, after a decision had been made for the physical abuse of anyone, as long as they meet the defendants’ notion of a homosexual, show an overwhelming degree of public danger of the defendants as perpetrators”. With regard to the second defendant, the court found the “commission of the deed as part of the undertaken and systematically implemented activity of beating persons considered homosexuals” an aggravating circumstance.⁶

“The appellate court believes that the defendants were not led by hooliganism motives. The actions of the defendants were carried out in a public place, but it cannot be admitted that it concerned an indecent act affecting the public interest. Apart from the fact that these actions were not committed in front of many people, they were directed exclusively against the victim’s personality. This concerned a brutal physical assault that led to serious and irreversible socially dangerous consequences, which was not

⁵ Decision No. 330/12.07.2017 on the appellate CCGN No. 84/2016 of the SCA

⁶ Decision No. 330/12.07.2017 on the appellate CCGN No. 84/2016 of the SCA

an expression of open disrespect for society, but a disrespect for the bodily integrity of another person. The actions of the defendants expressed their hatred towards homosexuals, i.e. they acted on homophobic motives rather than hooliganism ones". This said, The Sofia Court of Appeal concluded that it had no grounds for qualifying the deed as one under Art. 116, para. 1, item 11 of the Criminal Procedure Code and that Sofia City Court had rightly acquitted the defendants of the charges in this part and dismissed the private prosecutor's request for implementing a law for an offense with a more serious punishment.⁷

With this conclusion, the Sofia Court of Appeal admitted for the first time that a homophobic "hate crime" has been committed, it recognized that the motive for the offense committed is namely the sexual orientation of the person, as well as the increased degree of public danger of the defendants, but could not apply a law for a criminal offense with a more serious punishment (although there are grounds for that) because such a law did not exist, nor existed in the Criminal Code an aggravated offense providing for a heavier punishment for crimes committed for homophobic motives.

In summary, we can say that the criminal justice system in Bulgaria considers the crimes with discriminatory motives more closely, including only those based on race, nationality, ethnicity, religious background and political conviction. The law does not cover any crimes with the discriminatory motives of sexual orientation, gender identity and gender expression. However, the case law, in particular in the Sofia Court of Appeal's decision in the case of the murder of the medical student Mihail Stoyanov, indicates that the offense was committed for homophobic motives and acknowledges the increased degree of public danger of the defendants and their actions. Although it considers all this an aggravating circumstance, the Court finds its "hands tied" because a law on an offense with a more serious punishment or such an aggravated offense does not exist in the Criminal Code. The criminal law doctrine, however, in its essence, aims to cover all spheres of public life and all spheres of negative change of the existing reality, which entails a social danger. It is for this reason that the criminal doctrine and the criminal law in particular are subject to change as public attitudes towards certain acts undergo changes at different periods of time.

⁷ Decision No. 330/12.07.2017 on the appellate CCGN No. 84/2016 of the SCA

GLOSSARY

Further specific definitions are provided also in Annex 3 as regards different types of crimes and bias indicators.

Advocacy

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

Bias indicators

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

Bias motivation

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

Data collection

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

Documentation

The term documentation can have different meanings, depending on the geographical context or the field in which it is employed. It is important to stress that documenting is a process that includes different steps, which can vary depending on the goal of the documentation. Generally, documentation is the process of organising and classifying the collected data in a way that it is accessible in the short and long term. It implies categorising the collected data according to certain criteria (such as the profile of victims/perpetrators; categories of incidents; bias indicators). This makes the data accessible and creates possibilities for analysis. Analysing data includes elaborating statistics, charts and

graphs to make findings more visible. Good documentation is the basis for good reporting and dissemination to actors (government authorities, European/international institutions, human rights institutions, etc.) who can take action. Good documentation can also be used to create effective advocacy tools which support changing attitudes, education, articles, posters etc.

Hate crime (or bias crime)

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

A hate crime comprises two distinct elements:

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

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

Hate-motivated incidents

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

Hate speech

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

Monitoring

A broad term describing the active collection, verification and use of information to address human rights problems over time. Human rights monitoring includes observing and gathering information about incidents and

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

Recording of hate incidents

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

Third Party Reporting

The aims of having third party reporting is to increase reporting of hate crime and to increase the flow of intelligence from the

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

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

Victim perception

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

perceive that it is motivated by homophobia although he himself is not gay. The deciding factor lies in the perception of the victim or a witness.

Repeat Victimisation

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

Secondary Victimisation

When a person is the victim of a hate crime and they perceive a lack of commitment or understanding in the response from the

police, this can have the effect of victimising them for a second time. Whether they are in fact receiving such a level of response is immaterial, as the victims personal reaction is based on their immediate perception.

Victim of a homophobic or transphobic hate crime/ incident

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

