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Hate speech, gender, social networks and political parties

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# REPORT ON THE STATE OF THE ART ON ANTI-GENDER HATE SPEECH

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## 1. Introduction

With the increasing use of social media, we are also witnessing a perverse effect of the potential of communication via social media; namely, the emergence of phenomena linked to hate speech and gender discrimination. That this new media contributes to fuel and spread. Regarding the definition of hate speech, may vary in different contexts. Following the instructions of ECRI n° 15 we considered hate speech as in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race" (...), colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.<sup>1</sup>

But more specifically, hate speech has increased considerably in this new communication context against certain groups of the population based on their race, ethnicity, sexual orientation, religious belief, gender or sex. Obviously, not all hate speech develops into hate crimes, but it is rare to find a hate crime without a previous process of stigmatisation and dehumanisation of the victims, resulting in a clear link between hate speech and hate crimes. Moreover, we are witnessing the emergence of far-right communicative strategies that through ideological programmes and hate speech, aim at using the Internet and social media as tools to spread malicious and manipulative information about approaches such as gender theories (gender ideology) and hate speech against women.

With this scenario as a starting point of the analysis, the aim of the GENHA project is to identify and examine how hate speech against certain segments of the population, subject to discrimination on the basis of gender, sex or identity, are constantly under attack by a certain type of extreme propaganda.

This document aims to reflect the state of the art on anti-gender hate speech in Europe, and in particular in the participating countries of Italy, Hungary, Germany, Sweden and Spain.

This state of the art report includes the most relevant literature related to anti-gender hate speech, European laws and public policies, a brief comparison of the legal frameworks applicable to anti-gender hate speech in the participating countries, and the most relevant European case law and national case law on anti-gender hate speech.

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<sup>1</sup> General Policy Recommendation no. 15 on combating hate speech, adopted on 8 December of 2015. European Commission against Racism and Intolerance (ECRI) (Council of Europe 2016) in <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

## 2. Relevant literature on anti-gender hate speech in the participating countries

The aim of this section is to review the research and the scientific progress carried out to date in the countries participating in the project. The analysis is divided according to the countries of origin of the project. It takes into account whether there is any specific research and/or publication on anti-gender hate speech, social media and political parties; the existing general literature on anti-gender hate speech; and whether there are any other studies focussing on individual aspects of hate speech or anti-gender hate speech. But, it is important to remark that all those topics above referred are not treated together in one publication in any country involved.

### 2.1. Spain

There is no specific literature on anti-gender hate speech, social media and political parties.

However, there are general publications dealing with anti-gender hate speech, such as:

- a) Álvarez Rodríguez, I. (2019). *El discurso de odio sexista (en Construcción)* [Sexist hate speech (in progress)]. *Revista Jurídica de Castilla y León*, 48, 43.

In this paper, the author explores sexist/gender hate speech in order to find out whether the Spanish legal framework allows one to speak in these terms. The author doesn't separate the gender and sexist hate speech definition. They call it both in the same way.

The author studies the construction of sexist hate speech in Spain. The paper starts with a brief explanation of the origin and the concept of hate speech. Later, it specifically addresses sexist hate speech (also called gender hate speech). This is followed by a series of reflections provided from Constitutional Law on the possibilities and perspectives that this type of discourse has in the Spanish legal system. It concludes: 1) Hate speech continues to be a complex and problematic concept with freedom of expression at the centre of its target; 2) The emergence of social media in hate speech could mean a paradigmatic shift; 3) The emergence of sexist hate speech as a new form of hate speech, according to the Supreme Court sentencing despite the experts' doctrine is almost always suspicious.

- b) Jubany, Olga and Roiha, Malin (2018). *Las palabras son armas: discurso de odio en la red* [Words are weapons: hate speech on the web] Edicions de la Universitat de Barcelona.

The book analyses (from an ethnographic approach) the use that the extreme right and other extremist groups are making of social media and the Internet, to spread

intolerance, especially racism, xenophobia, Islamophobia and gender discrimination. Furthermore, the authors criticise the role of politicians and the media in the indirect creation or exacerbation of hate speech. Similarly, they also criticise the social media provider companies for their permissiveness and passivity as hate speech grows.

Hate speech for gender reasons appears in all discourses. Expressions of hate regarding gender appeared in all the interviews, both with professionals and with young people, especially in the United Kingdom and Spain. In general, young people consider that not only is hate speech normal, but also that videos or images and certain vocabulary with violent and discriminatory messages against women are normal. This normalisation shows a lack of questioning about patriarchal stereotypes and/or the privileges of the groups or people who reproduce them.

- c) Souto Galván, B. (2015). *Discurso del odio: género y libertad religiosa*. [Hate speech: gender and religious freedom] *Revista General de Derecho Penal*, 23, 14.

In this article, gender-based hate speech is analysed in relation to the protection and promotion of the principle of effective equality between men and women, and non-discrimination. In this aspect, author use the concept of **gender** hate speech to illustrate a difference between sex.

Nevertheless, the paper emphasises the most important jurisprudential antecedents surrounding hate speech and gender issues, especially when they are disguised under the concept of religious freedom and with the strong intervention of Criminal Law to prevent and resolve these cases.

In the Conclusion, the author puts forward the need to use a series of criteria in order to allow the distinction between hate speech and other offensive or unpopular expressions that are protected under the freedom of expression, according to the interpretation of the European Court of Human Rights and the Spanish Constitutional Court. The dangerousness of the conduct to be identified under Article 510 of the Spanish Criminal Code (hate speech) should be assessed taking into account the author and the context. This would include both the content of the speech and the actual dissemination.

There are other publications dealing with hate speech in general or some elements of the anti-gender hate speech such as:

- a) Aguilar García, Miguel Ángel (2015). *Manual práctico para la investigación y enjuiciamiento de delitos de odio y discriminación* [Handbook for the Research and Prosecution of Hate Crimes and Discrimination] Centre d'Estudis Jurídics i Formació Especialitzada (Catalunya).
- b) Bautista Ortuño, R. (2017). *¿Eres un cyberhater? Predictores de la comunicación violenta y el discurso del odio en Internet*. [Are you a cyber hater? Predictors of

- violent communication and hate speech on the Internet] *International E-Journal of Criminal Sciences*, 11, 1.
- c) Jiménez, P.P. and Puente, S.N. (2016). *Educación, Lenguaje y Violencia: Coeducar en La Igualdad* [Education, Language and Violence. Co-education in Equality] *Español Actual*, 105, 7–28.
  - d) López Ortega, A. I. (2017). *España 2000, la evolución de la derecha radical valenciana (2003-2015)* [España 2000, the evolution of the Valencian right-wing extreme party] *Doctoral Thesis Universitat de Valencia*.
  - e) Núñez Puente, Sonia (2013). *La construcción del sujeto víctima de violencia de género en Youtube como acto performativo: Estudio del activismo online desde el análisis multimodal* [The construction of the victim of violence against woman in Youtube as a performative act: Study of online activism from multimodal analysis] *Universidad Rey Juan Carlos Cuadernos Kóre*.
  - f) Rodríguez Izquierdo Serrano, Miryam (2015). El discurso del odio a través de Internet. [Hate speech via the Internet] in *Libertad de expresión y discursos del odio* / Miguel Revenga Sánchez (dir.) pp. 149-186.
  - g) SOS Racisme Catalonia (2019) *Racist Hate Speech in Spain: a 2018 case analysis: Towards possible 'alternative narratives' in "Words are stone" hate speech Analysis in Public Discourse in Six European Countries Austria, Cyprus, France, Greece, Italy and Spain*

## 2.2. Sweden

There is no specific literature on anti-gender hate speech, social media and political parties.

However, there are general publications dealing with anti-gender hate speech, such as:

- a) Wigerfelt, Anders S., Wigerfelt, Berit, & Dahlstrand, Karl Johan. (2015). Online Hate Crime - Social Norms and the Legal System/Crime de Odio Virtual - Normas Sociais E O Sistema Juridico. *Quaestio Iuris*, 8(3), 1859-1878.

This study is based on an Internet-based survey sent out to 1,102 people aged 16-40. The survey confirmed previous research, but the number of young participants was higher than in other studies. Men (including boys) felt exposed to online hate more often than women (including girls). However, it seems that the female informants consider online hate as more severe than the male participants. This is confirmed also by other studies referred to in the article.

The empirical study was carried out in Sweden and the article presents the Swedish legal and social context related to different hate crimes and how these phenomena are perceived among Swedish Internet users.



The study is of relevance with regard to the magnitude of the perceived problem and also to the fact that the informants expressed their experiences without restricting them to what is considered as hate crime legally.

- b) Bladini, M., & Nordisk information för kunskap om kön (2017). *Hat och hot på nätet: En kartläggning av den rättsliga regleringen i Norden från ett jämställdhetsperspektiv*. [Online hate speech, threats and other forms of online harassment: a mapping out of a gender equality perspective] Göteborg: NIKK: Nordisk information för kunskap om kön.

This mapping of the legal regulation in the Nordic countries on online sexist hate speech, threats and other forms of online harassment is written on behalf of the Nordic Information on Gender, NIKK, a cooperative body under the Nordic Council of Ministers.

The report concludes that women, more often than men, fall victim to repeated personal attacks online which, when considered individually, would not seem particularly serious but when seen in their full context can pose a major problem. The report also stresses the fact that women experience abuse that is more strongly characterised by sexism, sexual threats and harassment, and that therefore is personally rather than professionally-oriented. If the online hate speech, threats and other harassment concern somebody's gender, or for that matter age, social status or political views, currently the victims cannot count on any legal protection. The claim made in the report is therefore that there is every reason to include the protection of people who are attacked due to their gender in the hate crime legislation.

In view of the observation that women are particularly affected by online hate speech, threats and other harassment related to gender and that the Nordic countries consider gender equality important, it is noteworthy that *no* Nordic country offers legal protection against gender-related hate speech.

- c) Edström, M. (2016). The Trolls Disappear in the Light: Swedish Experiences of Mediated Sexualised Hate Speech in the Aftermath of Behring Breivik. *International Journal for Crime, Justice and Social Democracy*, 5(2), 96-106.

This article, addressing the ongoing efforts of feminist journalists to bring sexualised hate speech to the attention of the public and authorities, is a critical commentary on the threat to which Internet trolls expose feminist journalists. The problems of threats and sexualised hate speech towards female journalists are at least twofold: the purpose of the threats is to silence the victims; and it is impossible to state in advance if words will turn into actions.

The article shows that technological shifts have opened up new ways of displaying hate but this hate is also contested. Most of the people perpetrating sexualised hate

speech are men, and they appear to both court and fear public attention. Sexualised hate speech, insufficiently prohibited or not at all by law, can truly be seen as a way of silencing women and hindering gender equality. Since gender is not part of the hate crime legislation in Sweden and freedom of expression is so highly valued, there has been a dearth of response from society to sexualised hate speech.

- d) Giritli Nygren, K., Martinsson, L., & Mulinari, D. (2018). Gender Equality and Beyond: At the Crossroads of Neoliberalism, Anti-Gender Movements, “European” Values, and Normative Reiterations in the Nordic Model. *Social Inclusion*, 6(4), 1-7

This paper claims that gender equality, identified as one of the cornerstones of Swedish society, is challenged from various directions, neoliberalism, anti-gender movements and European values. The ideology and policy practice of gender equality has been historically situated within a social democratic framework through the establishment of public policies that support women’s work outside the home and through social policies aiming to balance paid work with family life.

The social-democratic-inspired “Nordic model”, with its agenda for gender equality, has also become the focus of the attack in the last decade by anti-gender movements and ethno-nationalistic parties as it is seen both as emblematic for the Nordic nations and a threat that must be destroyed to save the nation. All articles engage with the position of gender equality at the crossroads of gender equality in relation to the workplace, territories, neo-liberalism, religion, the crisis of solidarity and the success of the anti-genderism agenda.

During the Swedish election campaign in 2018, the anti-feminist and anti-gender rhetoric was made very explicit both by the right-wing party and by other parties that followed and focussed their electoral campaigns on “gender nonsense”. Furthermore, Islam is pointed out as a threat to European values, in particular with reference to “unaccompanied young boys”. The anti-feminism/anti-gender and Islamophobic and racist rhetoric, albeit not completely new, appears today in new and radical (and more dangerous) forms acting upon a powerful entanglement of neoliberal ideologies and cultures, increasing the success of authoritarian, neo-fascist visions, ideas, and policies.

There are other publications devoted to hate speech in general or to some elements of the anti-gender hate speech such as:

- a) *Hatbrott 2018: Statistik över polisanmälningar med identifierade hatbrottsmotiv och självrapporterad utsatthet för hatbrott*. Brå Rapport (2019):13 [Published in an English version: *Hate Crime 2018*. English version of report 2019:13]
- b) Granström, G., Mellgren, C., & Tiby, E. (2019). *Hatbrott? En introduktion* [Hate crime. An introduction] (2 ed.).

- c) Wigerfelt, B., Wigerfelt, A. S., & Delegationen för migrationsstudier (2017). *Hatbrott med främlingsfientliga och rasistiska motiv: En kunskapsöversikt* [Hate crime with xenophobic and racist motives] Rapport, Delegationen för migrationsstudier; 2017:2. Stockholm: Delegationen för migrationsstudier (Delmi).
- d) Lilja, M., & Johansson, E. (2018). Feminism as Power and Resistance: An Inquiry into Different Forms of Swedish Feminist Resistance and Anti-Genderist Reactions. *Social Inclusion*, 6(4), 82-94.
- e) Mulinari, D. & Nergaard, A. (2017). Doing Racism, Performing Femininity: Women in the Sweden Democrats. In: Köttig, M., Bitzan, R., & Petö, A. *Gender and far right politics in Europe* (Gender and politics), Palgrave Macmillan US.
- f) Eriksson, M. (2013). 'Wronged white men': The performativity of hate in feminist narratives about anti-feminism in Sweden. *NORA: Nordic Journal of Feminist and Gender Research* 21(4): 249-263.

### 2.3. Germany

There is no specific literature on anti-gender hate speech, social media and political parties.

However, there are general publications dealing with anti-gender hate speech, such as:

- a) Döring, N., & Mohseni, M. R. (2020). Gendered hate speech in YouTube and YouNow comments: Results of two content analyses. *SCM Studies in Communication and Media*, 9(1), 62-88. doi:10.5771/2192-4007-2020-1-62.

There is little research on gendered hate speech on video platforms. The authors conducted quantitative content analyses of video comments on YouTube and YouNow. They use the term “gendered online hate speech” which is defined as “online hate speech that is addressed towards women or men and has sexist and/or sexually aggressive content”.

Comments on channels of eight popular female and male YouTubers of the four most popular YouTube genres in Germany (comedy, gaming, ‘how to’ & style, sports/fitness) were sampled. Based on the analysis of 8,000 video comments that were addressed towards female and male German YouTubers, results suggest that female YouTubers received more negative video comments that included sexist, racist and sexually aggressive hate speech than male YouTubers. In addition, female YouTubers received fewer positive comments addressing their personality and the content of their videos than male YouTubers. However, they received more positive comments regarding their physical appearance than their male counterparts.

To analyse the comments on YouNow, the coded categories were updated and also covered homophobic and violent statements. 6,844 video comments on YouNow were analysed. In line with findings of the content analysis of YouTube comments, women received more sexually aggressive and sexist comments than men, but there were no significant gender differences in racist and hostile comments.

- b) Keipi, T., Näsi, M., Oksanen, A., & Räsänen, P. (2017). *Online hate and harmful content: Cross-national perspectives*. London/New York: Taylor & Francis.

The book presents a cross-national study (Finland, Germany, UK and US) assessing the commonality of online hate. Drawing on theoretical frameworks from sociology, social psychology and criminology, it develops a theoretical model explaining online behaviour and victimisation.

Some of the findings of the study conclude that exposure to online hate targeting sexual orientation is highest in the US and Finland and lowest in Germany. Hate material focusing on gender is highest in the UK and US and lowest in Germany. Whereas sexual orientation was among the most common reasons for victimisation, victimisation due to sex/gender was least common in all four countries. The study also reports negative effects of exposure to online hate and victimisation on individuals' subjective wellbeing.

## 2.4. Hungary

There is no specific literature on anti-gender hate speech, social media and political parties.

However, there are general publications dealing with anti-gender hate speech, such as:

- a) Barát E. (2018). Az előjogainak sérülését helyreállítani igyekvő „dühös államférfi” „nő”-ellenes hadjárata [The anti-“woman” attack of the “angry statesman” who wants to restore the damage of his privilege] *TNTeF* 8(1), 32-45.
- b) Barát, E. (2019). Stigmatization of the Analytical Concept of Gender as Ideology, *Feminist Critique. East European Journal of Feminist and Queer Studies*, 2(2).

The two papers aim to reveal how the stigmatisation of ‘gender’ has become a central element of the political discourse in Hungary since the 1989 socio-political transformations. This has happened through ‘critical junctures’ of meaning-making of ‘feminism’ in media in the 1990s, and ‘gender’ in political communication after 2010. The process crystallised into the discourse on ‘gender-ideology’ as a ‘threat’.

Theoretically, the papers are based on the concept of hegemonic masculinity as introduced by R.W. Connell (1987) and later reworked by Connell and J.W. Messerschmid (2005); on Laclau's concept of the 'empty signifier' (1996); and on Paul Gee's (2014) model of discourse. Methodologically, Barát uses discourse analysis and collects material from media and political communication as primary discursive fields.

We must highlight how nowadays the category of 'gender' (and not feminism) begins to function as an 'empty signifier'. It brings various groups together around the trope of the 'threatening alien' and stigmatises anyone who comes to be labelled as one of them, without any further need for justification. In the wake of the 2015 migration crises, 'gender' is being coupled with the 'migrant' as another 'empty signifier'. This results in the routine mode of hate speech communication.

- c) Barát, E. (2019) Revoking the MA in Gender Studies in Hungary Enmeshed in the Right-Wing Populist Political Rhetoric, *L'homme: zeitschrift für feministische geschichtswissenschaft* 30(2), 135-144.2)

This paper is about the Hungarian government's ban of the M.A. in Gender Studies in the Public University in Hungary in 2018. The ban, labelled a "legitimate" decision, was the culmination of four narratives, all articulating a politics of fear: 1) The regime's general anti-gender politics situated in the field of Higher Education; 2) The affiliation to the Central European University, founded by George Soros; 3) The promise of 're-gaining masculinity' by protecting 'our women' and 'Christian values' in the context of migration; and 4) The global context of anti-gender populism. The author argues that the revocation of the Gender Studies degree is "the climax of the current Government's anti-gender politics"

The Secretary of State responsible for Higher Education provided four points questioning the status of the Gender Studies degree already at its launch in 2017: 1) There is no demand for the degree on the job market; 2) The degree was not sustainable given the low number of placements for future students; 3) The degree did not constitute an academic discipline, but an ideology like Marxism (thus they did not revoke a *discipline*, but an *ideology*); 4) The curriculum of the programme contradicted the Government's concept of human nature.

- d) Kováts, E. (2019). Limits of the Human Rights Vocabulary in Addressing Inequalities – Dilemmas of Justice in the Age of Culture Wars in Hungary. *Intersections EEJSP* 2(5) 60-80.

The paper aims to refute the common interpretations of mobilisation against 'gender-ideology' and 'human rights' as a conservative backlash to progress towards gender equality and LGBTI rights. The author claims that this is a simplistic 'culturalist' interpretation of the phenomenon, which leads to the false

dichotomy of being ‘for or against’ human rights. She uses Fraser’s concept of ‘perspective dualism’ to escape the dichotomy and suggest a more complex understanding.

Empirically, the article draws on recent government attacks against the ratification of the Istanbul Convention and the attack on Gender Studies in Hungary.

There are other publications devoted to hate speech in general or some elements of the anti-gender hate speech such as:

- 1) Grzebalska, W., & Pető, A. (2018). The gendered modus operandi of the illiberal transformation in Hungary and Poland. *Women's Studies International Forum* Vol. 68, 164-172. Pergamon.
- 2) Szemán D., Szabó M. (2017). Feminizmus férfiszemmel - férfi identitások reprezentációi a feminizmushoz való viszony kontextusában online közösségi terekben. [Feminism from the perspective of men – the representation of men’s identities in relation to feminism in the context of online spaces] In: Kovács, Mónika (szerk.) *Társadalmi nemek. Elméleti megközelítések és kutatási eredmények (Gender. Theoretical approaches and research findings)*, ELTE Eötvös Kiadó, 187-208.
- 3) Kovács, E. & Pető, A. (2017). Anti-gender discourse in Hungary: A discourse without movement? In Kuhar, R., & Paternotte, D. *Anti-gender campaigns in Europe: Mobilizing against equality*. London/New York. 117-131.
- 4) Krizsán, A. & Sebestyén, A. (2019). Politicizing gender equality and women’s movement reactions to it in Hungary. In Krizsán, A. and Roggeband, C. (eds.) *Gendering democratic backsliding in Central and Eastern Europe. A comparative agenda*. Central European University, Budapest, CPS Books.
- 5) Meza, R., Vincze, H. O., & Mogos, A. (2018). Targets of Online Hate Speech in Context. A Comparative Digital Social Science Analysis of Comments on Public Facebook Pages from Romania and Hungary. *East European Journal of Society and Politics*, 4(4), 26-50.
- 6) Norocel, C. (2018). Antifeminist and “Truly Liberated”: Conservative Performances of Gender by Women Politicians in Hungary and Romania. *Politics and Governance*, 6(3), 43-54.

## 2.5. Italy

There is no specific literature on anti-gender hate speech, social media and political parties.

However, there are general publications dealing with anti-gender hate speech, such as:

- a) Farris, S. R. (2019). *Femonazionalismo. Il razzismo nel nome delle donne* [In the name of Women’s Rights. The Rise of Femonationalism] Roma: Edizioni Alegre.

- b) Belluati, M., Genetti, S. (2016). Odiare a parole. Gli hate speech nella discussione parlamentare [Hating with words. Hate speeches in the parliamentary debate] Available at: [https://www.academia.edu/29942025/ODIARE\\_A\\_PAROLE.\\_GLI\\_HATE\\_SPEECH\\_NELLA\\_DISCUSSIONE\\_PARLAMENTARE](https://www.academia.edu/29942025/ODIARE_A_PAROLE._GLI_HATE_SPEECH_NELLA_DISCUSSIONE_PARLAMENTARE)

The article deals with the issue of hate speech in parliamentary debate in Italy. The authors believe that the entry of xenophobic and populist forces into the political sphere has in some way favoured the use of vulgar language. This circumstance, according to the article, is legitimised and amplified by journalism and social media. The unit of analysis consists of the individual speech of each member of parliament who participates in the debate. The presence of hate speech in five particularly salient plenary debates (e.g. about civil unions, homophobia, refugee reception legislation), divided into two different categories: soft, which concerns allusions or ironic references; and hard, which concerns explicit expressions of incitement to hatred. According to the authors, there are population segments more exposed to hate speech; for instance, immigrants. The trope of the immigrant invasion and social dangerousness at the expense of the Italians' suffering is a powerful argument, expressed several times by the Lega Nord, which has a wide grip on popular feeling. The other prejudice that explicitly emerged from the hate speech in parliament is that linked to homophobia, poorly concealed behind the defence of the traditional family and children's rights, revealing the political approach towards gendered issues, in this case perhaps diverging from common sense. Finally, in an indirect but evident way nevertheless, a masculine and sexist political attitude emerges, which in this case takes the form of hostility towards some prominent female figures.

- c) Farris, S. R. (2019). Femonazionalismo. Il razzismo nel nome delle donne [In the name of Women's Rights. The Rise of Femonationalism] Roma: Edizioni Alegre

The author coined the concept of 'femonationalism'. It is used as a theoretical framework within which a particular phenomenon of the contemporary age could be read, namely that of the claim of gender equality by extreme right political parties with the aim of proposing Islamophobic and racist policies. In addition to this, there is a whole rhetoric insisting on the idea that migrant men are a danger to Western societies because of their oppressive attitude towards women. The research carried out by the author is an investigation of a phenomenon that has been there for all to see for many years, that is the manipulation of gender equality by certain political parties in order to strengthen Islamophobic feelings. The subjects of this study are nationalists, neoliberals and some intellectuals/feminists belonging to organisations dealing with equal opportunities. Everyone tends to stigmatise men, especially Muslim men, in order to "empirically validate" their political objectives. The author has focused the research on the following three aspects: 1) Analysis of three European countries (the Netherlands with the PVV -

Party for Freedom; France with the Front National; Italy with the Lega Nord) in order to propose parallels between national contexts and political actors; 2) Analysis of some feminists' speeches (delivered by intellectuals, female politicians, associations' spokeswomen) who received media attention from the early 2000s onwards precisely because of their resolute adoption of Islamophobic topics; and 3) Analysis of the use of issues related to gender equality in anti-Islam and anti-immigration media campaigns, also trying to highlight some aspects of the EU's neoliberal workfare programme.

d) Vox – Osservatorio italiano sui diritti (2020). Mappa dell'intolleranza 4° anno.

This study was carried out by the Italian Observatory on Rights in collaboration with several universities, including the Department of Psychology of the Sapienza University of Rome, the Department of Informatics of the University of Bari, the Department of Law of the University of Milan, and the Department of Sociology of the Catholic University of Milan. The mapping allows for the extraction and geo-location of tweets containing words considered sensitive and aims to identify the areas where intolerance is most widespread, according to six groups: women, homosexuals, migrants, people with disabilities, Jews and Muslims. The aim is to try and detect what animates online communities, in the understanding that the Internet allows for anonymity (and therefore for the greater “freedom of expression”) and interactivity. This method of mapping is, according to the authors, essential for identifying hate speech. The limited period examined (between March and May 2019) makes it possible to identify a trend in online hatred that mainly affects certain categories. The combination of migrants/Muslims/Jews stands out in the intolerance ranking. Women are also high in the online hate pecking order. Equally significant is the correlation between hate on social media and political messages: the first evidence emerged from the analysis of the peaks of aggressiveness against migrants, Jews and Muslims and comparing them with politicians' posts.

There are other publications devoted to hate speech in general or some elements of the anti-gender hate speech such as:

- a) Amnesty International Italy (2019). *Barometro dell'odio. Elezioni europee 2019* [The Hatred Barometer. European Elections 2019] Available at: <https://www.amnesty.it>
- b) Battaglia, F.M. (2015). *Stai zitta e va' in cucina: breve storia del maschilismo in politica da Togliatti a Grillo*. [Be quiet and get in the kitchen: a brief history of machismo in politics from Togliatti to Grillo] European Elections 2019] Torino: Bollati Boringhieri.



## 2.6. Conclusions

Assuming that online hate speech has a deep impact on people and communities, causing sometimes serious consequences that can affect individual freedom, we have to keep in mind that many victims do not even know they are victims of an illegal activity, and many people do not believe the police can do anything about the abuse (Bladini & Nordisk information för kunskap om kön, 2017). There is uncertainty regarding what is illegal and what is not and how different types of abuse should be dealt with. From a legal point of view, basic principles, such as the principle of equality, the principle of equal treatment as well as the freedom of expression, should be undoubtedly respected<sup>2</sup>. It seems that often the right to freedom of expression is being used as a pretext behind which to hide, especially via social media. Concerning gender equality and sexist hate speech, for example:

“online or offline, freedom of expression is often brandished as an ultimate right to counter calls for gender equality. In addition, social media has fewer obligations than traditional media in relation to the quality of its output and in respecting ethical standards. The new media industry sometimes uses these legal loopholes and abuses the freedom of expression argument in order to allow the spread of sexist hate speech. (...) The conflict that appears between freedom of expression and gender equality seems to be a major obstacle in combating sexist hate speech” (Council of Europe, 2016, p. 18).

These seem to be two competing rights, but they should be taken into account as complementary aspects which need to be balanced. Referring to the European Convention on Human Rights, it could be seen that the right balance is based on the respect for the following three rights: freedom of expression, prohibition of abuse of rights, and prohibition of discrimination<sup>3</sup>. In that respect, supranational case law expressed through the European Court of Human Rights underlies how important it is “to give priority to fighting against hate speech when confronted by the irresponsible use of freedom of expression which undermined people’s dignity, or even their safety”<sup>4</sup>. The difficult balance between the use of hate speech and freedom of expression is by now a recurring theme (Bladini & Nordisk information för kunskap om kön, 2017) and it is important even when hate speech is admittedly considered as a misuse of freedom of expression, but is at the same time perceived as a limitation of a freedom of expression, and limitations are *per se* negative and something that should be avoided<sup>5</sup>. Freedom of expression should not preclude the enforcement of the various forms of discrimination

<sup>2</sup> Available at: [http://www.voxdiritti.it/wp-content/uploads/2019/06/190610\\_VOX-Comunicato-mappa-2019-completo-compresso.pdf](http://www.voxdiritti.it/wp-content/uploads/2019/06/190610_VOX-Comunicato-mappa-2019-completo-compresso.pdf), p.26.

<sup>3</sup> Articles 10, 17 and 14. Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>4</sup> Fèret v. Belgium 15615/07 – Judgment 16.7.2009 (section ii) European court of Human rights “Insults, ridicule or defamation aimed at specific population groups or incitation to discrimination, as in this case, sufficed for the authorities to give priority to fighting hate speech when confronted by the irresponsible use of freedom of expression which undermined people’s dignity, or even their safety” – available at [https://hudoc.echr.coe.int/eng#{"itemid":\["002-1407"\]}](https://hudoc.echr.coe.int/eng#{)

<sup>5</sup> Bladini, M., & Nordisk information för kunskap om kön. (2017). *Hat och hot på nätet: En kartläggning av den rättsliga regleringen i Norden från ett jämställdhetsperspektiv*. [Online hate speech, threats and other forms of online harassment: a mapping out of a gender equality perspective]. Göteborg: NIKK: Nordisk information för kunskap om kön.

and harassment against women. In fact, there are words and behaviours, subjected to the provisions of Criminal Codes, that cannot be justified in the name of freedom of expression. However, the legal and judicial protection of certain forms of online hate speech, threats and other harassment cannot be considered satisfactory today. In fact, the existing legislation should be used in a more explicit manner for two reasons: to better protect the victims, and to refer to the symbolic value of the law; and reiterate that this abuse is not acceptable. The scope of the legal definition is of great importance, i.e. that sexist hate speech is considered a hate crime, as a normative signal, and to offer a way to deal with this phenomenon (Wigerfelt, Wigerfelt & Delegationen för migrationsstudier, 2017).

### 3. European laws and public policies on anti-gender hate speech

The aim of this section is to show, in a comparative way, the most important legal instruments and public policies applicable to anti-gender hate speech at European level. The section is divided first into hard law, i.e. norms that are binding, and secondly into soft law, i.e. norms that constitute recommendations to be followed. Hard laws are compulsory for the member states of the European Union (in the case of Directives and Decisions), or have binding effects for the members of the Council of Europe (once these legal instruments have been signed and they have entered into force in the corresponding States parties). Soft law comprises different legal instruments, with no binding effects, but which can exert important political pressure on each member state (in the case of legal documents produced by the European Parliament or Recommendations by the European Commission) or on the states parties of the Council of Europe (in the case of legal documents produced by the Committee of Ministers, the Parliamentary Assembly and special commissions of the Council of Europe).

Thirdly, there is a selection of the most important public policies at European level directly addressed to anti-gender hate speech or with important content regarding anti-gender hate speech.

#### 3.1. European Hard Law (from 2000 to date)<sup>6</sup>

| Authority                            | Title  | Date      | Addressees    | Main Objectives   | Main elements   |
|--------------------------------------|--|-----------|---------------|---|---|
| <b>Council of the European Union</b> | Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin | 29/6/2000 | Member states | The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the member states the principle of equal treatment.<br>It implements the principle of equal treatment between persons, regardless of 'race' and ethnic origin. | Defence of rights: Member states shall secure judicial and/or administrative procedures to all persons who consider themselves wronged by the failure to apply the principle of equal treatment to them.<br><br>Burden of proof: it shall be the respondent's responsibility to prove |

<sup>6</sup> The major laws regarding racism and xenophobia in general have also been included in the table.

| Authority                | Title   | Date       | Addressees                         | Main Objectives   | Main elements   |
|--------------------------|---|------------|------------------------------------|---|---|
|                          |   |            |                                    | <p>This law does not include the word ‘gender’.</p> <p>Italy transposed it in 2003.<br/>           Germany transposed it in 2003.<br/>           Spain transposed it in 2003.<br/>           Hungary transposed it in 2004.<br/>           Sweden transposed it in 2003.</p>  | <p>that there has been no breach of the principle of equal treatment (not applicable to criminal proceedings).</p> <p>Victimisation: introduction of measures to protect individuals from adverse treatment or adverse consequences as a reaction to a complaint or proceeding related to the principle of equal treatment.</p> <p>Establishment of bodies for the promotion of equal treatment at national level</p> |
| <b>Council of Europe</b> | Additional Protocol to the Convention on Cybercrime concerning criminalisation of a racist and xenophobic nature committed through computer systems | 28/01/2003 | EU member states and third parties | <p>The aim is to facilitate the criminalisation of acts of a racist and xenophobic nature committed through computer systems through the instruments envisaged in the Convention on Cybercrime</p> <p>Racist and xenophobic material means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.</p> <p>Gender is not mentioned.</p> <p>Germany signed it in 2003 and it entered into force in 2011.<br/>           Hungary has not signed it.</p> | <p>Measures to criminalise:</p> <p>Dissemination of racist and xenophobic material through computer systems</p> <p>Racist and xenophobic-motivated threats</p> <p>Racist and xenophobic-motivated insults</p> <p>Denial, gross minimisation, approval or justification of genocide or crimes against humanity</p>   |

| Authority  | Title   | Date       | Addressees    | Main Objectives   | Main elements   |
|--|---|------------|---------------|---|---|
|  |   |            |               | Italy signed it in 2011.<br>Spain signed it in 2013 and it entered into force in 2015.<br>Sweden signed it in 2003.   |   |
|  | Council Framework Decision 2008/913/JHA on combatting certain forms and expressions of racism and xenophobia by means of criminal law   | 28/11/2008 | Member states | Fight against certain forms and expressions of racism and xenophobia by means of criminal law<br>Art. 1: offences concerning racism and xenophobia<br>Art. 2: instigation, aiding and abetting offences concerning racism and xenophobia<br><br>This law does not include the word 'gender'.<br><br>Germany transposed it in 2010.<br>Spain transposed it in 2010.<br>Italy has not directly transposed this directive.<br>Hungary transposed it in 2010.<br>Sweden has not transposed this directive.                | Each member state should provide criminal penalties for the defined racist and xenophobic acts.<br>Racist and xenophobic motivation shall be considered an aggravating circumstance.<br><br>Member states shall ensure that a legal person can be held liable for the defined offences concerning racism and xenophobia.<br><br>Those measures shall not modify the constitutional rules and fundamental principles relating to the freedom of association and freedom of expression. |
| <b>European Parliament and the Council of the European Union</b> | Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive) | 10/3/2010  | Member states | It aims to create and ensure the proper functioning of a single EU market for audiovisual media services while contributing to the promotion of cultural diversity and providing an adequate level of protection for consumers and minors.<br>Member states shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.<br><br>Germany transposed it in 2017. | Audiovisual commercial communications shall not:<br>(i) prejudice respect for human dignity;<br>(ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.   |

| Authority  | Title  | Date       | Addressees                         | Main Objectives  | Main elements  |
|--|--|------------|------------------------------------|--|--|
|  |  |            |                                    | Spain transposed it in 2010.<br>Italy transposed it in 2011.<br>Hungary has not transposed this directive.<br>Sweden transposed it in 2015.  |  |
| <b>Council of Europe</b>   | Istanbul Convention on preventing and combating violence against women and domestic violence                       | 11/5/2011  | EU member states and other parties | <p>The Convention is the first legally-binding international instrument aimed at creating a comprehensive legal framework to protect women against all forms of violence and discrimination.</p> <p>The Convention also establishes a clear link between the objective of gender equality and the elimination of violence against women.</p> <p>Germany signed it in 2011 and it entered into force in 2018.<br/>Hungary signed it in 2014.<br/>Italy signed it in 2012 and it entered into force in 2014<br/>Spain signed it in 2011 and it entered into force in 2014<br/>Sweden signed it in 2011 and it entered into force in 2014</p> | <p>Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.</p> <p>Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.</p> <p>Parties shall take the necessary legislative or other measures to criminalise the different forms of violence against women: psychological violence, stalking, physical violence, sexual violence (including rape), forced marriage, female genital mutilation, forced abortion and forced sterilisation, sexual harassment.</p> |
| <b>European Parliament and the Council of the European Union</b> | Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and | 25/10/2012 | Member states                      | The main objective of this directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.   | Victims should be protected during criminal investigation and from secondary and repeat victimisation.   |

| Authority | Title   | Date | Addressees | Main Objectives  | Main elements |
|-----------|---|------|------------|--|---------------|
|           | replacing Council Framework Decision 2001/220/JHA |      |            | <p>For the purposes of GENHA research, this Directive is important because:</p> <ol style="list-style-type: none"> <li>1) It specifies that victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any grounds such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health;</li> <li>2) it states that: violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim.</li> </ol> <p>Germany transposed it in 2015.<br/> Spain transposed it in 2015.<br/> Italy transposed it in 2015.<br/> Hungary transposed it in 2015.<br/> Sweden transposed it in 2015.</p> |               |

### 3.2. European Soft Law (from 1997 to date)<sup>7</sup>

| Authority   | Title   | Date       | Addressees                           | Main Objectives   | Main elements  |
|---|---|------------|--------------------------------------|---|--|
| <b>Council of Europe<br/>- Committee of Ministers</b> | Recommendation of the Committee of Ministers No 20 of 1997 on “Hate speech” | 30/10/1997 | Member states                        | <p>Definition of the term “hate speech”: all forms of expressions which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.</p> <p>This text does not include the word “gender”.</p> | <p>Principle 2: recommends establishing or maintaining a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech</p> <p>Principle 3: interferences with freedom of expression should be narrowly limited through a lawful and objective way, subject to independent judicial control.</p> <p>Principle 6: national law and practice in the area of hate speech should take due account of the role of the media</p> |
| <b>Council of Europe<br/>- Parliamentary Assembly</b> | Recommendation 1543 (2001) on racism and xenophobia in the cyberspace       | 8/11/2001  | Member states                        | <p>The Assembly considers racism not as an opinion but as a crime. The relevant international legal instrument to combat racism is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).</p> <p>This act does not include the word “gender”.</p>   | <p>A mandate to draft an additional protocol to the Convention on Cybercrime aimed at punishing racism on the Internet</p>   |
| <b>European Union - European Parliament</b>           | Resolution on homophobia in Europe (B6-0025/2006)                           | 18/1/2006  | European Commission<br>Member States | <p>Condemns any discrimination on the basis of sexual orientation.</p> <p>Protection of LGBTI people from hate speech and violence,</p>   | <p>Urges member states and the Commission firmly to condemn homophobic hate speech or incitement to hatred and violence, and to ensure that freedom of</p>   |

<sup>7</sup> The most relevant laws regarding racism and xenophobia in general have also been included in the table.



| Authority  | Title   | Date             | Addressees           | Main Objectives   | Main elements  |
|--|---|------------------|----------------------|---|--|
|  |   |                  |                      |   | <p>demonstration – guaranteed by all human rights treaties - is respected in practice. Urges member states and the Commission to step up the fight against homophobia through education.</p> <p>Urges the Commission to come up with a proposal for a directive on protection against discrimination on the basis of all the grounds mentioned in Article 13 of the Treaty establishing the European Community (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation).</p> <p>Urges the Commission to consider the use of criminal penalties in cases of violation of directives based on Article 13 of the Treaty.</p> |
| <p><b>Council of Europe<br/>- Committee of<br/>Ministers</b></p> | <p>Recommendation CM/Rec (2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity</p> | <p>31/3/2010</p> | <p>Member states</p> | <p>The Recommendation calls on the member states to be guided in their legislation and policies by a set of principles and measures aimed at ensuring the human rights of LGBTI people in different areas of family, social and working life.</p> | <p>Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.</p> <p>Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity-related ‘hate crimes’ and other hate-motivated incidents are encouraged to report these crimes and incidents</p> <p>Member states should take appropriate measures to ensure the safety and dignity</p>   |

| Authority   | Title  | Date             | Addressees           | Main Objectives   | Main elements  |
|---|--|------------------|----------------------|---|--|
|   |  |                  |                      |   | <p>of all persons in prison or in other ways deprived of their liberty, including lesbians, gays, bisexuals and transgender people.</p> <p>Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbians, gays, bisexuals and transgender people (“hate speech”).</p> <p>Member states should take appropriate measures to effectively protect defenders of human rights of lesbians, gays, bisexuals and transgender persons against hostility and aggression to which they may be exposed.</p> |
| <p><b>Council of Europe - ECRI (European Commission against Racism and Intolerance)</b></p> | <p>General Policy Recommendation No. 15 on Combating Hate Speech</p> | <p>8/12/2015</p> | <p>Member states</p> | <p>According to this recommendation, hate speech is based on the unjustified assumption that a person or a group of people is/are superior to others; it incites acts of violence or discrimination, thus undermining respect for minority groups and damaging social cohesion.</p> | <p>In this recommendation, ECRI calls for speedy reactions by public figures to hate speech; promotion of self-regulation of media; raising awareness of the dangerous consequences of hate speech; withdrawing financial and other support from political parties that actively use hate speech; and criminalising its most extreme manifestations, while respecting freedom of expression.</p> <p>Recommendation 9 is particularly concerned with the appropriate response to</p>  |

| Authority   | Title   | Date      | Addressees                                  | Main Objectives  | Main elements  |
|---|---|-----------|---|--|--|
|   |   |           |   |  | the use of hate speech by political parties and other organisations, as well as by those who belong to them.   |
| <b>Council of Europe<br/>- Parliamentary<br/>Assembly</b> | Resolution 2144 (2017)<br>Ending cyber-discrimination and online hate                       | 25/1/2017 | Member states                               | This resolution gives a description of hate speech on the Internet.<br>Hate speech is not limited to racism and xenophobia: it may also take the form of sexism, anti-Semitism, Islamophobia, misogyny, homophobia and other forms of hate speech directed against specific groups or individuals            | <p>It calls member states to:</p> <p>Adopt the already existing international instruments to combat hate speech on the Internet</p> <p>Ensure that national legislations permit the effective prosecution of online hate speech covering all forms of online incitement to violence against a person or a group of persons; that covers all hate cases, including sex, colour, ethnicity, nationality, religion, sexual orientation, gender identity, political or other opinion, disability or other status.</p> <p>Adopt training, education, prevention and awareness-raising measures</p> <p>Adopt different measures for Internet intermediaries.</p> |
| <b>European<br/>Commission<br/>European Union</b>         | Recommendation on measures to effectively tackle illegal content online C (2018) 1177 final | 1/3/2018  | Member states and hosting service providers | Member states and hosting service providers are encouraged to take effective, appropriate and proportionate measures to tackle illegal content online. General recommendations relating to all types of illegal content (submitting and processes notices, informing content providers and counter-notices). | <p>Out-of-court dispute settlement.</p> <p>Transparency.</p> <p>Proactive measures.</p> <p>Protection against abusive measures.</p>  |

| Authority  | Title  | Date       | Addressees    | Main Objectives   | Main elements  |
|--|--|------------|---------------|---|--|
|  |  |            |               | Specific recommendations relating to terrorist content.   |  |
| <b>European Parliament of the European Union</b> | Resolution (2019/2933 (RSP)) on public discrimination and hate speech against LGBTI people, including LGBTI-free zones | 18/12/2019 | Member states | <p>The starting point of this resolution is that public discrimination and hate speech against LGBTI people are growing across the EU. Although legal measures against discrimination and violence are in place in the vast majority of member states, implementation continues to be insufficient.</p> <p>It includes hate speech by public authorities and elected officials, in the context of elections, as well as the declarations of zones in Poland free from so-called LGBTI ideology.</p> | <p>Reiterates that LGBTI rights are fundamental rights and strongly condemns any discrimination against LGBTI people.</p> <p>Calls the EC to support training programmes for law enforcement and judicial authorities</p> <p>Calls the EC and the Council to use all existing EC mechanisms to protect LGBTI rights and avoid attacks on them by public officials and member states.</p> <p>Calls the Commission to continue working with the member states on the investigation and legal instruments to prevent and condemn hate-based crimes and hate speech against the LGBTI community.</p> |

### 3.3. European Public Policies (in chronological order)

| Authority                | Title  | Date                   | Addressees    | Offices involved  | Objectives   | Strategy & policy development  | Evaluation & monitoring (if any)   |
|--------------------------|--|------------------------|---------------|---|--|--|--|
| <b>Council of Europe</b> | Charter on Education for Democratic Citizenship and Human Rights Education | 2010, reviewed in 2017 | Member states | Partnership and collaboration should be encouraged among the wide range of stakeholders | The charter is concerned with education for democratic citizenship and human rights education. | Member states should include education for democratic citizenship and human rights education in the curricula for formal | Member states should regularly evaluate the strategies and policies they have undertaken with respect to the charter and adapt |

| Authority  | Title                          | Date       | Addressees   | Offices involved   | Objectives   | Strategy & policy development   | Evaluation & monitoring (if any)   |
|--|--------------------------------|------------|--|--|--|---|--|
|  |                                |            |  | involved in education for democratic citizenship and human rights education at national, regional and local level.                   | One of the principles at the basis of the Charter is that an essential element of all education for democratic citizenship and human rights education is the promotion of social cohesion and intercultural dialogue and the valuing of diversity and equality, including gender equality. | education at pre-primary, primary and secondary school level as well as in general and vocational education and training. Member states should also continue to support, review and update education for democratic citizenship and human rights education in these curricula in order to ensure their relevance and encourage the sustainability of this area. | these strategies and policies as appropriate. They may do so in co-operation with other member states, for example on a regional basis. Any member state may also request assistance from the Council of Europe. |
| <b>Parliamentary Assembly of the Council of Europe (PACE) Committee on Equality and Non-Discrimination</b> | No Hate Parliamentary Alliance | Since 2015 | Members of the Parliamentary Assembly of the Council of Europe<br>Members of delegations having observed and partnered for democracy status with the Assembly. | General Rapporteur on combating racism and intolerance, supported by the Bureau of the Committee on Equality and Non-Discrimination. | The Alliance is a network of parliamentarians, who commit to take an open, firm and pro-active stand against racism, hatred and intolerance.   | The Alliance provides a platform for parliamentary activities to tackle racism, hatred (including hate speech), intolerance, anti-Semitism, Islamophobia, anti-Gypsyism, homophobia and transphobia, through various activities such as hearings, conferences, thematic events, round   |  |

| Authority  | Title  | Date           | Addressees    | Offices involved   | Objectives  | Strategy & policy development  | Evaluation & monitoring (if any)  |
|--|--|----------------|---------------|--|---|--|---|
|  |  |                |               |  |   | tables and awareness-raising activities.   |   |
| <b>European Commission</b>   | Code of conduct on countering illegal hate speech online | Since May 2016 | EU countries  | Facebook, Twitter, YouTube, Microsoft, Instagram, Google+, Snapchat, Dailymotion, Jeuxvideo.com  | Prevent and counter the spread of illegal hate speech online.<br>Help users notifying illegal hate speech in the social media platforms, improving the support to civil society as well as the coordination with national authorities.<br>Each of the providers that signed this Code of Conduct is committed to countering the spread of illegal hate speech online, and to have rules or community guidelines in place clarifying that they prohibit the promotion of incitement to violence and hateful conduct. | Notification and active procedures to eliminate illegal content in an efficient way, while preserving freedom of expression.<br>The Code of Conduct currently includes a series of practices aimed at the prompt review and deletion of hate speech content within the platforms, based on reports from community users. | The EU Code of Conduct provides a robust response to illegal hate speech online. Nevertheless, the code is a self-regulatory commitment by these providers. It is not a legal document and does not confer any rights to governments to take down content.<br>Monitoring rounds (Dec 2016, May 2017, Dec 2017, Dec 2018). |
| <b>European Parliament Anti-Racism and Diversity Intergroup (ARDI)</b> |  |                | Member States | Members of the European Parliament from any political groups with a view to holding informal exchanges of views on particular subjects | ARDI is a cross-political party group that exists to promote racial equality, counter racism, and educate about non-discrimination in the work of the European Parliament.  | Strengthen EU and national legal basis to tackle all crimes of hate speech and crime and to ensure investigation and prosecution of racist crimes.   |   |

| Authority | Title | Date | Addressees | Offices involved   | Objectives   | Strategy & policy development | Evaluation & monitoring (if any) |
|-----------|-------|------|------------|--|--|-------------------------------|----------------------------------|
|           |       |      |            | and promoting contact between members and civil society.<br><br>Conference of Presidents | It aims to be at the heart of parliamentary work for racial equality/equity, and against all discrimination based on racial or ethnic origin, religion or belief, and nationality. The intergroup also looks at discrimination based on these grounds together with age, disability, gender and sexual orientation |                               |                                  |

### 3.4. Europe - Agencies

| Agency   | Date                   | Addressees            | Offices involved   | Objectives   | Strategy & policy development  | Evaluation & monitoring (if any)  |
|--|------------------------|-----------------------|--|--|--|---|
| <b>European Commission against Racism and Intolerance (ECRI)</b> | Operational since 1994 | All European citizens | ECRI is composed of 47 members. Each Council of Europe member state appoints one person to serve as a member of ECRI. Parliamentary Assembly of the Council of Europe, the Congress of Local and Regional Authorities of the Council of Europe, and the European | ECRI is a unique human rights monitoring body specialised in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance in Europe. | General Policy Recommendations (GPRs) are addressed to the governments of all member states. These recommendations provide guidelines which policy-makers are invited to use when drawing up national strategies and policies. Relations with civil society and equality bodies. Round tables. | Country monitoring work. ECRI analyses the situation closely in each of the member states and makes recommendations for dealing with any problems of racism and intolerance identified there. A country visit is organised before the preparation of each new report in order to obtain as comprehensive a picture as possible of the situation in the country. During the visit, the ECRI delegation |

| Agency  | Date       | Addressees            | Offices involved   | Objectives   | Strategy & policy development   | Evaluation & monitoring (if any)  |
|---|------------|-----------------------|--|--|---|---|
|   |            |                       | Union shall be invited to be represented in ECRI without the right to vote.  |  | Thematic meetings.  | meets key players in the fight against racism and intolerance in the country concerned. |
| <b>European Union Agency for Fundamental Rights (FRA)</b> | Since 2007 | All European citizens | Independent body. The staff includes legal experts, political and social scientists, statisticians, and communication specialists.   | The FRA helps policy makers understand how they can do more for their citizens by sharing insights and raising rights awareness at the EU, national and local level.<br><br>The FRA works on rights: equality, non- discrimination and racism, for example hate crime, sex, sexual orientation and gender.   | Research and data.<br>Capacity-building.<br>Advising.<br>Convening people.<br>FRA for children.   | Annual activity report  |
| <b>European Institute for Gender Equality (EIGE)</b>      | Since 2006 | All European citizens | Autonomous body of the E.U. The staff includes 18 representatives of the Member States in the Management Board; 2 members for each country for the expert forum; and a Director. | Operates within the framework of E.U. policies and initiatives. The European Parliament and the Council of the European Union defined the grounds for the Institute's objectives and tasks in its Founding Regulation and assigned it the central role of addressing the challenges of and promoting equality between women and men across the European Union. | Collects, analyses, processes and disseminates data and information on gender equality issues, whilst at the same time making them comparable, reliable and relevant for the users. | Annual Activity report  |



## **4. Executive summary of the national legal frameworks applicable to anti-gender hate speech**

The aim of this document is to bring together a brief comparison between the key laws and public policies related directly or indirectly to anti-gender hate speech in the participating countries.

All the analysed constitutions refer to the concepts of equality and non-discrimination before the law but gender identity, sexual identity or sexual orientation might not always be explicitly mentioned. Only in some countries is sex equality mentioned.

Hate crimes are only explicitly included in the Criminal Codes of Hungary (albeit called "bias motivated"), Italy, Spain and Sweden. Crimes motivated by sex, gender, sexual identity or sexual orientation reasons are only actually explicitly mentioned in the Spanish Code and in Hungary (Act no. C of 2012).

Hate speech is not considered a crime in any of the studied countries but it appears as an aggravating circumstance in the Criminal Codes of Germany, Hungary, Spain and Sweden. But it is only the Swedish Criminal Code which includes anti-gender as an aggravating circumstance.

Only one of the analysed countries –Germany– has a specific law on hate crimes, hate speech on Internet and social media.

Some countries have specific laws on gender equality, namely Hungary (only equality between sexes), Italy (sexual orientation and gender identity not included) and Spain (only sex and sexual orientation included).

Most of the analysed countries have specific laws on media freedom and/or freedom of expression (Germany, Hungary, Spain and Sweden) although none of them explicitly mentioned potential attacks for gender reasons (Spain includes sex reasons).

### **4.1. Germany**

Germany has approved a considerable number of anti-discrimination laws and hate crime/speech laws. The most important issue within the German legal system is that there is no explicit mention to gender or sex bias, nor an explicit recognition –in both cases– that they are an aggravating circumstance in any other crime.

Furthermore, there is currently a bill to fight right-wing extremism and hate crime<sup>8</sup>. One of the foundations of the law is focused on women who “are specifically affected by hate

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<sup>8</sup> From 19<sup>th</sup> February 2020. It was proposed by the Federal Government (Ministry of Justice and Consumer Protection).

speech. They are exposed to sexist slurs and threats of rape. This represents a particularly serious violation of personal rights and, as violence carried out using digital means, it often has major physical and psychological consequences. Prominent cases involving female politicians, journalists or so-called net activists clearly show that derogatory treatment and threats aimed at women are of particular importance”.

#### 4.1.1. Constitutional Laws, Ordinary Laws and Bills Chart

##### Constitutional Laws

| Name   | For   | Against  |
|--|---|--|
| Constitutional Law of the Federal Republic of Germany (GG) Arts. 1, 2, 3 and 5 | Involves human dignity (art. 1); personal freedom (2); equality before the law (2 and 3); freedom of speech and freedom of the press (5). | There is no specification (in art. 3) regarding gender identity and sexual identity and orientation. |

##### Ordinary Laws

| Name  | For  | Against  |
|---|--|--|
| Criminal Code. Articles 46, 111, 130, 185, 186, 187, 240, 241 | Art. 46: Principle of sentencing: offender motives such as racist, xenophobic or other motives evidencing contempt for humanity; art. 111: Public incitement to commit offences; art. 130.1: Incitement of masses (hatred because of national, racial, religious or ethnic reasons); art. 185: Insulting behaviour; art. 186: Malicious gossip; art. 187: Defamation; art. 240: Coercion; art. 241: Threatening Behaviour. | No specification is made (in Articles 46 and 130) regarding misogyny, sexism, gender (sex), gender identity and sexual identity and orientation. |
| Act regarding compensation to victims of violent crimes       | Art. 1 Physical assault.   | Only physical assault is included in the act. There is no mention of psychological assault. It does not apply to hate speech either.             |

| Name                    | For   | Against   |
|-------------------------|---|---|
| Network Enforcement Act | The law aims to combat hate crimes, punishable false messages and other punishable content on social media platforms more effectively.                                    | Art. 3 deals with “Handling of complaints about unlawful content”. Social media providers must have an effective and transparent procedure as per paragraphs 2 and 3 for the treatment of complaints about unlawful contents. There is no specific mention to gender. |
| Telemedia Act           | Regulation of the legal framework for information and communication services in Germany (e.g., spam, liability of service providers for unlawful content, data security). | There is no mention of what happens after attacks or defamation cases due to gender reasons.  |

## Bills

| Name   | For   | Against  |
|--|---|--|
| Law to fight right-wing extremism and hate crime | Obliging social media to report hate speech/ hate crime to the state criminal department and broadening definitions in the criminal code. | However, the draft does not include any specifications on misogynist and sexist hate speech.       |
| Law to change the law Enforcement Act            | Social media platforms must provide detailed and comparable information.<br><br>Focus on the transparency of social media companies.      | Only in the preamble there is a reference to gender, women, sexual identity or sexual orientation. |

### 4.1.2. Germany’s Public Policies

There are some public initiatives in Germany regarding **hate speech**. One of these is called “Prosecution instead of only deletion” from the Ministry of Justice of the Federal State Northrhine-Westfalia (NRW). The objective is to provide concrete contacts for media businesses in order to prosecute hateful comments on their websites. This would entail consequent sanctions aiming to prevent future hate speech.

Another initiative comes from the Ministry of Justice of Bavaria. “Justice and Media - Consequences against hate online” focuses on providing concrete contacts for media businesses to prosecute hateful comments on their websites.

There are some prominent non-governmental campaigns such as an international youth campaign initiated by the Council of Europe and led by Neue deutsche medienmacher, a nationwide independent association of journalists; and #Ichbinhier [I am here], a Facebook group created by online activists focusing on social media users with the aim to sensitise users by providing information about the causes of hate speech thus facilitating democratic discussions and encouraging everyone to position themselves against hate speech.

Regarding measures against **far-right parties**, it is worth naming The Counter Extremism Project (CEP). This is a non-for-profit, non-partisan, international organisation that aims to counter the threat of extremist ideologies and to strengthen pluralistic democratic forces.

In relation to the GENHA project, and involving a **gender and sex perspective**, it is worth noting the coalition agreement between the Social Democratic Party, the Christian Democratic Party and the Christian Social Party (Bavaria). In their coalition agreement contract, they refer explicitly to it: “We encounter sexism everywhere, daily –in the media and culture, in advertising, at the workplace and in politics. Sexism degrades humans based on their gender. In an open, modern and equal society there is no place for sexism. We want to fight sexism, develop measures against it and continue successful projects” and “We want to run a nationwide public campaign to condemn violence against women and to raise awareness and inform the general public about help, support and opportunities to take action against it.”<sup>9</sup>

## 4.2. Hungary

Hungary has many fundamental laws about freedom of expression and equality, as well as a Criminal code that protects these fundamental rights. However, there is a lack of specific protection on the grounds of sexual orientation, transgender identity, as well as sexist hate speech. For instance, in the fundamental Law include gender among the list of protected characteristics, there is no specific mention of sexual orientation and/or gender identity, **which are still subsumed under the category of ‘any other ground’**. There is no explicit reference to hate speech or hate crime and the Criminal code only makes a reference to “bias-motivated criminal crime”, and in implicit way, we can identify a gender identity and sexual orientation in this classification.

Several relevant political events have taken place with regard to gender issues. The first one is the withdrawal of the accreditation licence of a Gender Studies Programmes in 2018, when the Government **stripped MAs in Gender Studies of their accreditation**

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<sup>9</sup> Koalitionsvertrag SPD, CDU und CSU [Contract of coalition between the Social Democratic Party, the Christian Democratic Party and the Christian Social Party (Bavaria). Available from: <https://www.bundesregierung.de/resource/blob/975224/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf?download=1> pages 24 and 25.

through Decree No. 188/2018 (X. 12.). The second is the Declaration of **rejection of the Istanbul Convention** in May 2020 “On the importance of the protection of the rights of women and children and on the rejection of acceding to the Istanbul Convention”. The adaptation of the declaration (which does not “un-sign” the Convention) was preceded by a number of media attacks on the alleged threat of “gender-ideology” and feminism, as well as with extremely sexist statements by parliamentarians. The last event is the **banning of the legal recognition of transgender people** by Act XXX of 2020, Article 3. The act changes the “sex” category in official documents such as birth certificates and identity document to “sex at birth” defined as the “biological sex determined by primary sex characteristics and chromosomes”.

These examples show the clearly anti-gender stance of the political decisions of the current government of Hungary.

#### 4.2.1. Constitutional and Ordinary Laws Chart

##### Constitutional Law

| Name                          | For   | Against  |
|-------------------------------|---|--|
| Constitution (arts. 2, 9 15). | 2: Human dignity.<br>9: Freedom of expression.<br>15.2: No discrimination<br>15.3 Equality between sexes. | 9: Freedom of expression of some groups, without mention of gender nor sex.<br>15.2: Includes sex, but not gender. |
| Civil Code Act no. V of 2013  | Art. 2:54 (5) Hate speech against the community.  | Art. 2:54 (5) only mention a “member of community” not contained sex, gender identity and sexual orientation.      |

##### Ordinary Laws

| Name  | For  | Against   |
|---|--|---|
| Criminal Code (arts. 216, 222, 332, 459 and qualifying circumstances on arts. 160(2), 164(6), 194(2), 226(1), 304(2), 449(2). | 216: Violence against a member of a community.<br>222: Harassment against domestic partner.<br>459 (22): Crimes committed via the press or media services.<br>332: Incitement against the community. | 216 and 332: HS and HC only against a community.<br>459 (22): No mention of sex or gender bias in the crime. “Qualifying circumstances” refer to a “malicious motive”, which includes bias based on belonging to a particular social group. No groups are explicitly named. |

| Name   | For  | Against  |
|--|--|--|
| Act. no. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.   | 1. Direct discrimination [art. 8]; 2. Indirect discrimination [art. 9]; 3. Harassment [art. 10 (1)]; 4. Unlawful segregation [art. 10 (2)]; 5. Retribution.                            | 1: Direct discrimination only mentions sex, <u>family status, maternity (pregnancy) or paternity, sexual orientation and sexual identity.</u>  |
| Act no. C of 2012 (within the Hungarian Criminal Code) includes the possibility of taking into account the motive of the crimes. | Includes a general reference to a bias as a motive for a crime   | National, ethnic, racial or religious group, or of a certain societal group,. In particular on the grounds of disability, <u>Gender identity or sexual orientation</u> in non explicit way.  |
| The Press Act (CIV of 2010)  | Promotion of tolerance and diversity, and negative (prohibition of incitement to hatred) obligations with regards to hate speech   | The Press act does not explicitly refer to sex, sexual orientation or gender identity although claims might be brought on behalf of “the community”. The act grants protection to the majority.  |
| Media Act (CLXXXV of 2010)   | Prohibition to broadcast any image or sound that offends religion, faith-related or ideological beliefs.<br>Offers pluralistic media content.<br>Protects certain kind of hate speech. | The response and sanctions of this law have a lower efficiency. The Media Council (in charge of the judgments of the cases regarding this law) applies a very limited understanding of what constitutes incitement and exclusion and fails to address cases in public service media and other government-controlled media outlets. |

#### 4.2.2. Hungary’s Public Policies

Hungary has no ‘cyber bullying’ law, nor any related state funded nation-wide program. However, the Criminal Code contains reference to ‘harassment’ in the online space. Also, the National Media Infocommunications Authority (NMHH) operates an Internet Hotline, which allows the reporting of a broad range of “illegal and harmful” content, including online harassment, pedophile content, and racist and xenophobic content. Sexism, homophobia and transphobia are not explicitly included.

### 4.3. Italy

In Italy, there is a lack of specific regulation on discrimination on grounds of gender, gender identity and/or sexual orientation. The existing discrimination laws focus on racial, ethnic, national or religious bias. There is just a bill (A.C. 569) to be examined by the Justice Commission of the Chamber of Deputies (28<sup>th</sup> July 2020) aimed to combat discrimination on the grounds of sexual orientation and gender identity by adding discriminatory acts based on sexual orientation and gender identity to discriminating situations on racial, ethnic, national or religious grounds.

#### 4.3.1. Constitutional Laws, Ordinary Laws and Bills Chart

##### Constitutional Laws

| Name                        | For   | Against  |
|-----------------------------|---|--|
| Constitution Articles 2 & 3 | Recognise and guarantee the inviolable rights of the person as well as the dignity and equality of each and every person. | Equality is not mentioned in terms of gender, but in terms of sex, race, political opinion, personal and social condition. |
| “Scelba Law” (No. 645)      | Establishes that promoting fascism is a crime   | Promoting fascism in any way is banned. There is no mention of sex nor gender discrimination.                              |

##### Ordinary Laws

| Name                                | For   | Against   |
|-------------------------------------|---|---|
| Criminal code. Art. 604-bis         | Fights against propaganda and incitement to commit a crime  | Only focuses on acts of discrimination for racial, ethnic, national or religious reasons. |
| “Mancino Law” (Decree Law 122/1993) | Urgent measures on racial, ethnic and religious discrimination. Also mentions hatred on those bias. | Non-mention of any sex or gender discrimination.  |

##### Bills

| Name     | For   | Against   |
|----------|---|---|
| A.C. 569 | Combats discrimination on the grounds of sexual orientation or gender identity. | It does not define the concepts of "sexual orientation" and "gender identity" |

### 4.3.2. Italy's Public Policies

There are different public policies in different fields, showing that Italy has heterogeneous policies on discrimination, hate crimes, hate speech, gender and mass media but there is not one single law encompassing all these issues. It is also important to note there is a strong resistance in some areas of Catholicism to the advancement of gender-based policies.

Examples of this fight against discrimination can be the UNAR (National Office for Racial Discrimination) working in collaboration with the Italian Ministry of the Interior and the Observatory for Security against Discriminatory Acts (OSCAD). The UNAR works to increase protection against discrimination for all victims of hate speech, and to promote the right to equality before the law.

With regard to **hate crimes**, the Together! campaign has been created in Milan, under the impulse of the CGIL (General Confederation of Union Forces) with the collaboration of the Local Police of the Municipality of Milan and others to strengthen the capacity of law enforcement agencies, NGOs and community organisations to recognise and report hate crimes and to interact with its victims.

With regard to **gender**, the National LGBTI Strategy includes measures and actions to prevent and oppose discrimination based on sexual orientation and gender identity.

With regard to **hate speech** and the Internet, there were several initiatives such as the No hate speech movement: young people fight against online incitement to hatred, focused on young people; the Declaration of Human Rights in Internet, focused on data protection; the Jo Cox Commission against intolerance, xenophobia, racism and hate speech; and Parole Ostili [Hostile Words], a social awareness project against the use of hostile language that aims to encourage to redefine the way Internet is used.

In the **social media field**, the Italian Telecommunications Guarantee Authority (AGCOM) produced a “Regulation containing provisions on respect for human dignity and the principle of non-discrimination and hate speech” to promote initiatives on the themes of social inclusion and cohesion, the promotion of diversity and fundamental human rights.

## 4.4. Spain

Laws and public policies have become more open to include discrimination on the grounds of sex and gender. However, there is still a lack of definitions of gender and sex in the Spanish legal system.



#### 4.4.1. Constitutional Laws, Organic Laws, Ordinary Laws and Bills Chart

##### Constitutional Law

| Name  | For  | Against                          |
|---|--|----------------------------------|
| Constitution.<br>Articles 1.1, 6, 9.2, 10, 14, 16 to 29.2 | 1.1: Freedom, justice, equality and political pluralism; 6: Political parties; 9: Participation and full enjoyment in the political and economic sphere; 10: Dignity; 14: No discrimination; 16: Freedom of ideology; 20: Freedom of expression. | No mention of any gender issues. |

##### Organic Laws

| Name   | For  | Against  |
|--|--|--|
| Criminal Code  | 510: Hate speech; 22.4: Aggravating circumstances; 538: Freedom of communication; 120.2: Civil liability (Press and TV); 211: Defamation; 172: Stalking; 197.7: Sexting.                         | None of these articles includes any gender issues in their wording. Only two articles include a possible definition of the concepts of gender and sexual preferences (arts. 510.1 and 2) related to the incitement to hate and the general aggravating circumstances applicable to all crimes. |
| Organic Law 3/2007, 22 <sup>nd</sup> March<br>“Effective Equality Between Women and Men” | To ensure equal treatment and opportunities for women and men, and the elimination of discrimination against women (in the political, civil, occupational, economic, social and cultural areas). | There is frequent mention of sexist violence but there is no definition of online sexist violence nor anti-gender-hate speech or hate-crime.   |
| Organic Law 1/2004<br>“Integrated protection measures against gender violence”           | Art. 10.1: Illegal advertising; art. 13: Communications media.   | Sex is protected but gender is not.  |

|  |   |  |
|--|---|--|
| <p>Organic law 6/2002 “On Political Parties”</p> | <p>Art. 2.a states that “a political party is considered illegal when it systematically violates fundamental freedoms and rights, promoting, justifying or exculpating attempts against the life or integrity of persons, or the exclusion or persecution of persons because of their ideology, religion or beliefs, nationality, race, sex or sexual orientation”.</p> | <p>Only sex or sexual orientation are mentioned.</p> |
|--|---|--|

### Ordinary Laws

| Name  | For  | Against  |
|---|--|--|
| <p>Act 3/2007 of 15<sup>th</sup> March, “Regulation on the rectification of register entries relating to a person’s sex</p> | <p>More LGTB rights.</p>   | <p>This act and its medical requirements is widely contested by the LGTB community in Spain.</p>                             |
| <p>Act No. 14/1966 “On press and printing”</p>  | <p>Regulates the Freedom of Expression.</p>  | <p>Old law dating from the Francoist regime. There is no mention of hate speech or gender.</p>                               |
| <p>Act No. 34/2002 “On society information society services and electronic commerce”</p>                                    | <p>Respect of human dignity, the principle of non-discrimination on the grounds of sex, religion, opinion, nationality, disability, or other personal or social circumstances.</p>   | <p>There is a single mention about non-discrimination on the grounds of sex (Art. 8.c) but not on the grounds of gender.</p> |
| <p>Law 7/2010 “Regulation of the TV Broadcast”</p>  | <p>The prohibition to broadcast gender violence to protect the physical and mental development of minors. Art. 38.2 establishes limits to the freedom of receiving audiovisual contents from other EU countries if they incite hate on the grounds of birth, sex, religion, nationality, opinion, or other social or personal circumstances.</p> | <p>There is no specific definition of gender.</p>  |
| <p>Act 34/1988 of 11<sup>th</sup> November “On General Advertising”</p>   | <p>Makes illegal any advertising that shows women in a humiliating and discriminatory way, where their bodies are used as mere objects</p>   | <p>There is no specific definition of gender.</p>  |

|  |   |  |
|--|---|--|
|  | unrelated to the product intended to be promoted. |  |
|--|---|--|

#### **4.4.2. Spain's Public Policies**

There are three regions (known as *autonomous communities*) in Spain with some public policies related to anti-gender hate speech: Catalonia, Madrid and Andalusia. These three Spanish regions have developed legislation relating to gender, gender identity, transsexual identity, women's right to a life free of sexist violence, sexual freedom, sexual orientation as well as police protocols about hate crimes.

The majority of the autonomous communities simply apply the most important national laws on non-discrimination on the grounds of sex and gender, but they lack an effective implementation of these laws. To secure their effectiveness, further decrees and norms are necessary to implement and provide budgets to these pieces of legislation.

#### **4.5. Sweden**

Sweden has a relatively long history of gender equality as an important constitutional norm and a political goal. It became a political area of its own in the early 1970s. The overall gender equality goal is that men and women shall have the same opportunities (power) to shape the society as well as their own lives. This goal was adopted with a broad majority in 2006. Sweden also has the first feminist Government in the world, formed on 21<sup>st</sup> of January 2019.

This might explain why there are many initiatives and strategies in place. However, there is not a single one that encompasses hate crime, anti-gender, and anti-extreme right parties. There are connections between violent extreme right and anti-gender, and violent extreme right and hate crime, and there is a recognition of the threat against democracy posed by the violent extreme right. There is also a recognition of the threat against democracy that hate crime poses. In addition to that, online violence against women is addressed in a similar way.

#### **4.5.1. Fundamental Laws, Ordinary Laws and Bills Chart**

## Fundamental laws

| Name  | For   | Against   |
|---|---|---|
| Fundamental Law on Freedom of Expression (1991) | 7:2, Unlawful threat; 7:3, Defamation; 7:4, Insulting behaviour; 7:5, Inciting crime; 7:6, Provocation against a population group; 7:7, Unlawful depiction of violence. | Only applicable in specific situations online. For example, when statements are published in a newspaper's online edition or a website that has a publishing licence. |

## Ordinary Laws

| Name  | For   | Against  |
|---|---|--|
| Swedish Criminal Code                             | a. Provocation against a population group; b. Unlawful discrimination; c. Inciting crime; d. Conspiracy to commit an offence.   | In the conspiracy to commit a crime, gender, sex, sexist, gender equality or feminist ideas do not fall under the scope of criminal legal protection.  |
| Swedish Criminal Code (aggravating circumstances) | a. Defamation; b. Insulting behaviour; c. Unlawful threat; d. Molestation; e. Sexual molestation; f. Unlawful breach of privacy.<br><br>It includes transgender identity and expression in the aggravating circumstances. | If the motive is related to anti-gender, (e.g. sex, gender, feminism, gender equality) then it might still constitute a crime, but it is not legally classified as a hate crime under the regulation on aggravating circumstances.                 |
| Freedom of the Press Act (1949)                   | It contains the principle of the public nature of official documents and rules about the right to produce and disseminate printed matter.   | The acts that deal with these types of crimes are the same as in the Swedish Criminal Code, with the difference that they refer solely to acts committed in a medium protected by the constitution. Only applicable in specific situations online. |

## Bills

| Name                     | For  | Against                                  |
|--------------------------|--|--|
| To include sex/gender as | The criminal regulation of provocation against a | The following suggestions were rejected: |

|   |   |  |
|---|---|--|
| <p>part of the protected grounds</p>  | <p>population group has been put forward several times, by individuals or groups, and dismissed at an early stage of the legislation process.</p> <p>It includes transgender identity and expression in the hate crime criminal protection. Bill 2017/18:59</p> | <p>Inclusion of gender/sex in the regulation of hate crime; decriminalisation of unlawful discrimination and criminalisation of unfair discrimination/treatment (<i>otillbörlig särbehandling</i>); and rejection of the inclusion of transgender identity and expression in the regulation of hate crime. Motion 2017/18:3960).</p> |
| <p>A stronger criminal legal protection towards sexual harassment (Dir. 2020:5)</p> | <p>The criminalisation of sexual molestation, the possibility to implement it as a serious crime and the principles and rules on sexual crimes committed at a distance (i.e. online).</p>   | <p>Completed by the end of March 2021.</p>   |

#### 4.5.2. Sweden’s Public Policies

Regarding **gender equality**, the Government programme is underpinned by the idea that “women and men shall have the same power to shape society and their own lives”. The Government is working towards six sub-goals: 1) Gender-equal division of power and influence; 2) Economic gender equality; 3) Gender-equal education; 4) Gender-equal distribution of unpaid housework and provision of care; 5) Gender-equal health; and 6) Men’s violence against women must stop.

Another national plan is the Plan against men’s violence against women, which focuses on the regional prevention and elimination of men’s violence against women.

In relation to **Hate Crimes**, the National plan to combat racism, similar forms of hostility and hate crime entails more knowledge, education and research; improved coordination and monitoring; civil society: greater support and more in-depth dialogue; strengthening preventive measures online; and a more active legal system. Neither sex/gender nor gender equality or feminism are addressed in the plan.

Regarding **violent extremism**, there is a “Swedish strategy to combat terrorism and the work against violent extremism”. This report addresses anti-gender questions within the extreme right movements, especially in terms of ideals of masculinity and the women’s role in families. It highlights the problem that right-wing extremists are questioning gender perspectives and recognising them as a threat to democracy.

In relation to **hate speech**, there is the Directive 2018:88, Democracy 100 years – working for a strong democracy, the purpose of which is to raise levels of participation, anchoring and resilience in democracy.

As far as **mass media** is concerned, there is a national effort on media and information knowledge and the democratic debate in the mission by the Swedish Media Council in the No Hate Speech campaign. This focuses on raising awareness among children and young people about racism and similar hostilities online. It also aims to strengthen children and young people's ability to use their freedom of expression and to respect human rights and equality as well as stimulate critical thinking when using social media.

Regarding **violence against women**, the 2016 national strategy includes measures to prevent and combat men's violence against women. It is focused on men's participation and responsibility; strategic, cohesive and long-term agency governance; and it includes the task of reviewing the regulation of sexual abuse and the regulations of sexual crimes online.

## 5. European Case Law and most relevant national case law

### 5.1. European Court of Human Rights (ECHR) case law

#### 5.1.1. ECHR case law on gender equality

The European Court of Human Rights has an extensive case law dealing with **gender equality issues**. A violation of Article 14 of the ECHR, in many occasions in conjunction with a violation of Article 8 of the ECHR (Right to respect for private and family life) has been considered in some of the most recent cases; in other words, decisions by domestic authorities have amounted to a discriminatory difference in treatment when no other reasons have been provided other than the applicant's sex (Case Hülya Ebru Demirel v. Turkey, 19<sup>th</sup> June 2018); when the applicant's sex and age appeared to have been decisive factors in a court's ruling as well as seemingly basing it on stereotypes on women's sexuality (Case Carvalho Pinto de Sousa Morais v. Portugal, 25<sup>th</sup> July 2017); when certain jobs were reserved for men on the grounds of the nature of the post and the public interest (Case Emel Boyraz v. Turkey, 2<sup>nd</sup> December 2014); when the law allows married men, but not married women, to use only their own surname after marriage – amounting to discrimination based on sex (Case Tuncer Güneş v. Turkey, 3<sup>rd</sup> September 2013).

There are also many cases of violations of Article 14 of the ECHR in conjunction of Article 3 (Prohibition of inhuman and degrading treatment) in the following cases: discriminatory judicial passivity in a case of domestic violence against the Istanbul Convention obligations imposed to the member states and the consideration of violence against women as a violation of women's human rights (case M.G. v. Turkey, 22<sup>nd</sup> March 2016); when the authorities had failed to take effective measures against a perpetrator and to protect the victims and their children from further domestic violence (case Eremia and Others v. the Republic of Moldova, 28<sup>th</sup> May 2013), to cite some of the most recent cases.

There are cases regarding violation of Article 8 (Right to respect for private and family life), e.g. when the national civil law lacks adequate provisions in relation to single-parent adoption (Case Gözüm v. Turkey, 15<sup>th</sup> January 2015); when the relevant national legislation did not contain any safeguards to protect patients' privacy rights, in particular to women giving birth (Case Konovalova v. Russia, 9<sup>th</sup> October 2014); when adequate and timely medical care has been denied, in the form of an antenatal screening test which would have indicated the risk of the foetus having a genetic disorder and allowed a women to choose whether or not to continue the pregnancy (Case A.K. v. Latvia, 24<sup>th</sup> June 2014) to cite some of the most recent cases.

There are cases regarding violation of Article 10 (Freedom of expression) when the interference by national authorities had been disproportionate with the aims pursued by the associations (the promotion of reproductive rights) in the case Women on Waves and Others v. Portugal, 3<sup>rd</sup> January 2009; when organisations complained about being prevented, by means of a court injunction, from providing pregnant women with

information about abortion abroad (Case Open Door and Dublin Well Woman v. Ireland, 29<sup>th</sup> October 1992).

There are cases regarding Article 9 (Freedom of thought, conscience and religion), e.g. when a school making mixed swimming lessons compulsory was not considered an infringement of this right, even when the children's parents claimed exemption from this obligation on the grounds of freedom of religion (Case Osmanoglu and Kocabaş v. Switzerland, 10<sup>th</sup> January 2017); when the prohibition to wear any burka or niqab in public spaces by the national legislation was not considered an infringement of this right, but understood as a national margin of appreciation to establish some conditions for "living together" (case S.A.S. v. France, 26<sup>th</sup> June 2014);

### 5.1.2. ECHR case law on LGTBI

The interpretations given by the ECHR through its case law regarding **sex, gender, gender identity, gender expression, sexual orientation and non-discrimination of the LGTBI** are also important:

- sexual orientation is an essentially private manifestation of the human personality (Case Dudgeon v. United Kingdom, 22<sup>nd</sup> October 1981);
- the dignity and freedom of the individual are the very essence of the Convention and Article 8 ECHR implements a protection of the personal sphere which includes everyone's right to determine the details of his or her identity as a human being (Case Goodwin v. United Kingdom, 11<sup>th</sup> July 2002);
- the concept of "respect" for private and family life in Article 8 ECHR is sufficiently precise when undue interference by the state in the private life of individuals is at issue; its preceptive content is more uncertain with regard to the positive obligations that all articles of the ECHR imply and the duties of protection, which vary greatly depending on the circumstances, practices and conditions in each member state (Case B v. France, 25<sup>th</sup> March 1992).
- it seems reasonable to require from society that it accepts inconveniences in order to allow some people to live in dignity and respect, in accordance with the sexual identity chosen at the price of great suffering (Case Goodwin v. United Kingdom, 11<sup>th</sup> July 2002);
- there can be a serious violation of privacy when a conflict between social reality and the law places a transsexual person in an abnormal situation that inspires feelings of vulnerability, humiliation and anxiety (Case Goodwin v. United Kingdom, 11<sup>th</sup> July 2002).
- sexual identity is one of the most intimate aspects of a person's private life and therefore it seems excessive to require proof of the medical need for treatment (Case Kück v. Germany, 12<sup>th</sup> June 2003);
- the state may impose restrictions on individuals' rights to respect for their private life where there is a real threat to the operational effectiveness of the armed forces



because it is inconceivable that the army should function properly without legal rules preventing the military from doing so. National authorities cannot, however, invoke such rules to obstruct the exercise by members of the armed forces of the right to respect for private life enjoyed by the military, like all other citizens under state jurisdiction (Case Smith and Grady v. United Kingdom, 27<sup>th</sup> September 1999).

The ECHR's case law on cases where the claimants' sexual orientation or identity was highlighted shows the court's tendency to condemn the violations of the Convention found both in Article 8 ECHR<sup>10</sup>, every person's right to respect for their private and family life, and in Article 14 ECHR<sup>11</sup>, which prohibits states from discriminating against individuals in the enjoyment of rights and freedoms.

### 5.1.3. ECHR case law on hate speech

There are some important cases dealing with **hate speech**, where the ECHR has to find a balance between the right to freedom of expression and the legal limits allowed in Article 10.2<sup>12</sup>.

Freedom of expression prevailed in this balance in the cases *Altıntaş v. Turkey*, 10<sup>th</sup> March 2020; *Sürek v. Turkey*, 8<sup>th</sup> July 1999; *Özgür Gündem v. Turkey*, 16<sup>th</sup> March 2000; *Gündüz v. Turkey*, 4<sup>th</sup> December 2003; *Vejdeland and Others v. Sweden*, 9<sup>th</sup> February 2012; *Balsytė-Lideikienė v. Lithuania*, 4<sup>th</sup> November 2008.

There are cases when the Court, as the result of the balancing process, found a violation of Article 10 (*Fáber v. Hungary*, 24<sup>th</sup> July 2012; *Ibragim Ibragimov and Others v. Russia*, 28<sup>th</sup> August 2018; *Dink v. Turkey*, 14<sup>th</sup> September 2010; *Lehideux and Isorni v. France*, 23<sup>rd</sup> September 1998; *Stomakhin v. Russia*, 9<sup>th</sup> May 2018; *Faruk Temel v. Turkey*, 1<sup>st</sup> February 2011).

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<sup>10</sup> “1. Everyone has the right to respect for his or her private and family life, home and correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

<sup>11</sup> Article 14 of the Convention – Prohibition of discrimination, “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

<sup>12</sup> Art. 10.2 ECHR:

“2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

The other approach of the Court is to find the application inadmissible, because the activity for which the applicant seeks protection aims at the destruction of a right set forth in the Convention (Article 17, Abuse of rights). Examples of this approach are: *Seurot v. France*, 18<sup>th</sup> May 2004); portraying Jews as the source of evil in Russia and calling for their exclusion from social life (*Pavel Ivanov v. Russia*, 20<sup>th</sup> February 2007); promoting a terrorist organisation on television broadcast (*Roj TV A/S v. Denmark*, 17<sup>th</sup> April 2018); denying facts of the Holocaust (*Garaudy v. France*, 7<sup>th</sup> July 2003; *Honsik v. Austria*, 22<sup>nd</sup> April 1998; *Marais v. France*, 24<sup>th</sup> June 1996; *Williamson v. Germany*, 8<sup>th</sup> January 2019); or giving promotion to negationism through a controversial comedy (*M'Bala M'Bala v. France*, 20<sup>th</sup> October 2015); promoting white supremacy (*Glimmerveen and Haqenbeek v. the Netherlands*, 11<sup>th</sup> October 1997); promoting religious hate (*Norwood v. UK*, 16<sup>th</sup> November 2004; *Belkacem v. Belgium*, 27<sup>th</sup> June 2017).

Regarding this approach, it is important to underline the role of the speaker. The Court found that politicians, teachers, or even famous footballers can be regarded as having a special duty or responsibility towards society, e.g. a footballer in the case *Šimunić v. Croatia* (22<sup>nd</sup> January 2019). In *Féret v. Belgium*, 16<sup>th</sup> July 2009, Daniel Féret was chairman of the political party “Front National”, editor in chief of the party’s publications and a member of the Belgian House of Representatives. In *Seurot v. France*, 18<sup>th</sup> May 2004, the Court explicitly referred to the applicant’s duties and responsibilities as a teacher.

However, in the case *Le Pen v. France*, 20<sup>th</sup> April 2010, the Court did not refer to the applicant’s political status. Jean-Marie Le Pen was fined 10,000 euros for saying: ”the day there are no longer five million but 25 million Muslims in France, they will be in charge”. The case was found inadmissible because the statement presented the “Muslim community” as a whole in a disturbing light likely to give rise to feelings of rejection and hostility.

In short, the Court has employed the argument that influential people (e. g. politicians, party leaders, teachers and famous figures such as football players) have a particular responsibility due to their enhanced influence on their followers. However, the Court has failed to give a definition to identify who can be considered such a speaker.

#### **5.1.4. ECHR case law on anti-gender hate speech**

For years, the European Court of Human Rights has been carrying out remarkable case law work in the fight against online hate crimes, sexual orientation and gender-based discrimination. For this reason, we will present below other court rulings that have had a significant impact in the defence of gender minorities.

- In the Case *Delphi AS v. Estonia*, 16<sup>th</sup> June 2015, the applicant company, which operates a news portal on a commercial basis, complained that it had been held

liable by national courts for offensive comments published by its readers about one of its online news articles about a ferry company. At the request of the ferry company owner's lawyers, the applicant company removed the offensive comments about six weeks after their publication. This was the first case in which the European Court was asked to examine a liability claim for user-generated comments on an Internet news portal. In this respect, the Court noted that the unlawful nature of the comments in question was obviously based on the fact that most of them amounted to incitement to hatred or violence against the ferry company owner. Consequently, the case concerned the duties and responsibilities of Internet news portals under Article 10.2 of the Convention, which stipulates the removal from a commercial platform of user-generated comments on previously published content after some users –identified or anonymous– engaged in clearly unlawful speech that violated the personality rights of others and amounted to hate speech and incitement to violence against them. In cases such as the present one, where comments from third-party users are in the form of hate speech and direct threats to the physical integrity of individuals, the Court found that the rights and interests of others and of society as a whole may authorise member states to impose liability on Internet news portals. Moreover, on the basis of the concrete assessment of these aspects and taking particularly into account the extreme nature of the comments in question, the fact that they had been published in reaction to an article published by the applicant company on its professionally-managed news portal on a commercial basis, and given the inadequacy of the measures taken by the applicant company to remove the content without delay after publication, the Court considered that the finding of liability by the Estonian courts against the applicant company was a justified and proportionate restriction on the freedom of expression of the portal.

- In the Case *Beizaras and Levickas*, 14<sup>th</sup> January 2020, two young people in a relationship claimed to have been discriminated against on the basis of sexual orientation because of the refusal of the Lithuanian authorities to launch a preliminary investigation into hate comments on the Facebook page of one of them. The latter had posted a picture of the couple kissing, which led to hundreds of hate comments online. Some concerned LGBTI people in general, while others threatened the applicants personally. The complainants claimed to have been discriminated against on the basis of their sexual orientation. They also argued that the authorities' rejection had left them with no possibility of legal redress. In this case, the Court found that there had been a violation of Article 14 (Prohibition of discrimination) in conjunction with Article 8 (Right to privacy) of the Convention, noting that applicants had been discriminated against on the basis of their sexual orientation and that the Lithuanian Government had not provided any justification indicating that the difference in treatment was compatible with the rules of the Convention. In particular, the judgment stressed that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, who had clearly expressed their disapproval of them for having so publicly displayed their homosexuality while refusing to open a preliminary

investigation. This discriminatory attitude had meant that the applicants had not been protected, as was their right under criminal law, from undisguised invitations to an attack on their physical and mental integrity. The Court also found that there had been a violation of Article 13 (Right to an effective remedy) of the Convention because the applicants had been denied an effective domestic remedy for their complaints. The Court found that the complainants' complaint under Article 10 (Freedom of expression) of the Convention was manifestly ill-founded and rejected it as inadmissible. In particular, the Court upheld the conclusion of the Lithuanian Supreme Court that the comments had been "serious, seriously damaging and prejudicial" and that the decision that had originally triggered the debate, concerning measures to strengthen education in schools on lesbian, gay, bisexual or transgender people, had not justified such a serious reaction. The decisions of the national courts in the case, taken after a broad balancing act between the applicant's right to freedom of expression and the rights of gender and sexual minorities, had therefore been reasonable and justified.

## **5.2. Domestic judgments appealing to the European Convention on Human Rights**

The internal jurisprudence of GENHA partner states can in some cases refer to, and be based on, judgments that have become final in the ECHR. The Spanish decision made by the province of Tarragona in January 2016 is a case in point. This is still an ongoing case where the Watani NGO, an association supporting the Islam development for their citizens in cohabitation with non-Islamic citizens, is interested in continuing a criminal procedure against Platform for Catalonia (PxC), a far-right, anti-immigration political party based in Catalonia. In particular, the focus of the procedure is to determine whether the content of the PxC electoral manifesto allegedly amounts to criminality for: stating the amount of money the Spanish Government directs only to immigrants (with a clear negative connotation); using the phrase "The ones from home First"; calling for the elimination of the places in schools and day-care centres reserved for immigrants; affirming that the job market is unbalanced in favour of immigrants; stating that immigrant labour generates unfair competition; attributing the loss of labour rights and decrease in wages to immigrants; affirming that "immigrants are paid the rent for their apartment, receiving subsidies without having contributed to them, for water and electricity bills, for school grants, baby pushchairs and vouchers for the pharmacy or the supermarket". Similarly, the manifesto declares that "the immigrant trade destroys the commercial fabric" and that "immigrants do not comply with schedules, work without contributing to the state and are exempt from taxes" or that "immigrants are linked to the mafias". Reference is therefore made to the case law of the ECHR (cases Handyside, Linges and Günduz) which states that hate speech expressions are outside Article 20.1 (Freedom of expression) in the Spanish Constitution. When the expressions are xenophobic, this goes beyond those limits. Hate speech attacks people's dignity, provokes

discrimination against other social groups in relation to their ideology, religion or beliefs. Furthermore, incitement of hatred is an attempted dangerous crime. It does not have to be committed, so punishment is to prevent more severe crimes.

There are also two very important Swedish judgments inspired by the principles enshrined in the European Convention. In NJA 2005 s. 805 the Judgement from the Supreme Court on 29<sup>th</sup> November 2005 concerns the accused, Å.G., a reverend within the Pentecostal church who gave a sermon on homosexuality with the title: *Is homosexuality a congenital instinct or evil power's play with humans?* Around 50 people attended the sermon and the prosecutor states that during his sermon, the reverend expressed contempt towards homosexuals through a high number of statements and quotes. The sermon had gained considerable attention. The prosecutor held that the reverend should be convicted for agitation against a population group. Despite the Court's assertion that the words of the reverend do not fall under the scope of the rule in SCC 16:8, the Court finds that his statements must be perceived as insulting judgements about the group in general. Even if the reverend argued that he talked about the acts and not the group of homosexuals, it must be the sexual orientation in itself that he targets. It is clear that the sermon exceeds the limits of an objective and substantial discussion on homosexuals as a group. The priest did so intentionally and with the knowledge that it would be regarded as offensive. The Court finds that an application of the regulation would not obviously conflict constitutional law but after scrutinising the case law from ECHR, the Supreme Court found that the statements in the sermon do not constitute hate speech. The Court found it likely that the ECHR would find the delimitation of the defendant's right to express his belief disproportionate and a violation of the ECHR.

On the other hand, the second Swedish judgment is the s.467 of 2006, concerning seven people charged for agitation against a population group by handing out flyers at a school describing homosexuals as promiscuous and being the cause of HIV and AIDS as well as promoting paedophilia. This act constitutes agitation against a population group as the content is disseminated and expresses contempt towards a group by allusion to sexual orientation. As the flyers had been distributed at a school and the distribution had been planned it should be regarded as a gross violation. In the cases that the Supreme Court has examined from the ECHR regarding the freedom of expression the following factors are assessed: 1) Is the law corresponding to an urgent societal need?; 2) Is the restriction (of the freedom of expression) proportional to the legitimate aim?; 3) Are the reasons given by the authorities to make the restriction relevant and sufficient? In concrete cases the court has to make an assessment of all the relevant facts and the context in which the message has been spread. The ECHR clearly finds it necessary to criminalise hate speech but considers that the freedom of expression shall be given a wide margin. The Court of Appeal finds that the messages are expressing contempt towards homosexuals as a group, but as it is not encouraging violence or hate, it would be disproportionate to delimit the freedom of expression in this case. The charges are hence being dismissed. The Supreme Court restated the content of the preparatory work and it also underlined that the freedom

of opinion and the right to criticise cannot be used as a protection for statements that express contempt towards a population group.

### **5.3. National case law dealing with hate crimes and gender discrimination**

Not only the ECHR but also a number of national courts in the countries analysed here have carried out case law work over recent years to address online hatred and gender-based discrimination. It should also be pointed out that at individual country level, legal interpretations of sexual orientation, gender identity, other related expressions and how hate crimes are classified vary depending on the regulatory framework. As a result, it is difficult to provide a homogeneous account of this jurisprudence and we have therefore chosen to analyse each country individually with its most significant sentences in this area.

#### **5.3.1. Italy**

In the Italian legal framework, there is a legislative vacuum regarding ad hoc laws that punish gender discrimination and homophobia as well as trans-phobia, which is currently being discussed in the Italian Parliament. For this reason, the sentences that create jurisprudence in Italy are in most cases related to the issue of racial hatred, a field already regulated by the Mancino Law of 1993. Recently, however, there are civil sentences that are creating important jurisprudence in Italy and defence against sexist hatred such as the well-known Boldrini case, which will be discussed later. It should be remembered, however, that although there are both civil and criminal Italian sentences in defence of sexual minorities, aggravating circumstances due to gender discrimination or sexual orientation are not yet envisaged by law.

Regarding discrimination on the grounds of sexual orientation, there are however some significant judgments.

In 2019, the Italian Court of Cassation<sup>13</sup> rejected the appeal of a businessman who had been sentenced to pay compensation for the financial loss of one of his managers. In fact, in the context of an employment relationship, the employer had engaged in offensive and vexatious conduct concerning the employee's alleged homosexuality, systematically calling him a "finocchio" [fag<sup>14</sup>].

As far as criminal case law is concerned, in its sentence of 14<sup>th</sup> January 2019, the Court of Torino sentenced a well-known doctor for the crime of defamation pursuant to Article 595 of the Italian Criminal Code, due to the continued repetition of offensive statements aggravated by the use of radio and the Internet against the LGBTI associations that had

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<sup>13</sup> <http://www.articolo29.it/corte-cassazione-ordinanza-del-19-febbraio-2019/>

<sup>14</sup> "Finocchio" is a slur used in Italian to insult a homosexual person.

been brought before the Court, observing that with specific statements the doctor had attributed to the “LGBTI movement” the intention to “spread paedophilia<sup>15</sup>”.

With regard the Boldrini case, it concerns the Italian parliamentarian Laura Boldrini, who was the spokesperson for the Representation for Southern Europe of the United Nations High Commissioner for Refugees (NHCR) before starting her political career, and who was also the President of the Chamber of Deputies in the Italian Parliament between 2013 and 2018. She was the first president of the Italian Chamber of Deputies to take part in a Gay Pride parade. In the years of her greatest media exposure, Boldrini was the object of a great deal of sexist hatred online, fuelled also by political parties opposed to her. Despite this, she has often taken legal action by denouncing online hate speech and some of the current cases which she has appealed have reached a verdict today (we will talk about the others in the section dedicated to mediatised judgements). On 15<sup>th</sup> January 2019, the Court of Savona expressed its opinion regarding the criminal procedure where Mayor Matteo Camiciottoli (a member of Lega Nord party – the Northern League) was the defendant and Laura Boldrini was one of the civil parties. The mayor was accused of the crime of defamation (Art. 595 of the criminal code) for having published a post on Facebook in which he wished “that those responsible for the rape that took place on the beach in Rimini in the summer of 2017<sup>16</sup> would be sent to Laura Boldrini's house so that her smile would return”. The Savona judge sentenced the mayor to a fine of 20,000 euros, as well as compensation, equal to 100 euros each, for the damage suffered by Laura Boldrini and the five associations dealing with women's rights, already admitted as civil parties, as well as the reimbursement of legal costs, which was 3,500 euros, in favour of Boldrini, and 1,980 euros in favour of the civil parties; the conditional suspension of the sentence was subordinate to compensation for the damages. This sentence is fundamental because it recognises the unlawfulness of a behaviour that violates a woman's dignity –at the time of the events, in the third highest office in Italy – and wounds her in her most intimate and personal sphere. Moreover, this case law is important because not only does it do justice to Laura Boldrini, who has always spent her time defending women's rights in the institutions, but it also affirms the principle that sexist insults to one individual offend everybody.

As far as the Italian case law on racial hate speech is concerned, there are a number of quite important judgments. One of the better known and mediatised cases is the one concerning Cécile Kyenge, an Italian female politician originally from the Democratic Republic of Congo who was the Italian Minister of Integration and member of the European Parliament and who was the subject of mainly online (but also offline) hate speech because of the colour of her skin. We will use this case by way of explaining

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<sup>15</sup> See the article at the page: <http://www.articolo29.it/2019/tre-importanti-decisioni-materia-discriminazione-omofobia/>

<sup>16</sup> In the summer of 2017, four boys (three of whom were minors) of African origin (two Moroccans, a Nigerian and a Congolese) attacked a couple of Polish couple on the beach in Rimini, raped the girl and later raped a transgender girl. The case was heavily mediatised in the Italian news and became the subject of public opinion over those days.

defamation aggravated by racial motives. There have been several judgements by the Courts regarding her:

- As far as incitement to racially motivated violence on Facebook is concerned, in 2014 a user was sentenced, conditionally suspended, to 13 months of imprisonment, in addition to the penalty accessory and to compensation to the civil parties established for the crime of, as per Article 3, paragraph one, letter b) of Law no. 654 of 1975, aggravated pursuant to of Article 61 no. 10 of the Italian Criminal Code, for having published the following sentence on her Facebook profile: “Shame she’s never going to be raped so that she understands what the victim of this heinous crime can feel!” accompanied by the photograph of Kyenge, the Minister of Integration, thus instigating people to commit racially motivated violence against the aforementioned, compounded by the fact of the public function performed. The Court found that the female defendant did not deny the fact justifying her behaviour as she explained that it was an impulsive gesture, as she had being particularly shaken by the news of a violent sexual act committed by a foreigner because her daughter had been the victim of a similar event. She had, however, denied malicious intent towards the Minister. With regard to this case, in 2015 the Court of Cassation rejected the appeal and ordered the appellant to pay the costs of the proceedings and to pay the costs incurred in this case by the civil plaintiff. It should be pointed out that with the ruling in question, the Supreme Court of Cassation, set out the following principle of law on which basis it is now clear that to publish on your Facebook profile the phrase “Never going to be raped”, accompanied by a photo of the offended person constitutes a crime of incitement to violence due to racial, ethnic, national or religious reasons. The Court took into consideration the fact that the behaviour of the accused was dangerous because of the following: 1) The words used; 2) The media used to widespread and disseminate these words; 3) The context in which the events took place, in the context characterised by a vigorous debate on a rape committed by an African man against an Italian woman.
- In June 2016, the Trento Court of Appeal ordered the appellant to pay the costs of the proceedings and to pay the costs incurred by the civil parties. The Trento Court of Appeal confirmed what had already been decided by the Court of Trento, stating that the expressions used were “highly detrimental to Ms Kyenge's honour and prestige” because “such a way of expressing disapproval goes far beyond what is necessary to make the idea of a severe, but allowed, contrary judgment and goes beyond a personal attack of gratuitous offence, for itself far from the needs of criticism and free expression of thought”. The appellant was a Lega Nord party councillor who in July 2013 had also published on his Facebook profile a comment which seriously damaged the reputation of Cécile Kyenge, inviting her “to return to the jungle from which she emerged”. The Court of Cassation in 2018 confirmed the sentence for defamation aggravated by racial discrimination (Article 595 of the Italian Criminal Code). In fact, according to the Court, it was a personal attack because, using the African origins of Kyenge, assimilating it to an anthropomorphic monkey, attributed the characteristics of animals living in the jungle to her.



- Finally, in 2019 the Court of Cassation held another member of the Lega Nord party criminally responsible. At the time of the events, this politician was a member of the European Parliament, and the crime he committed was that of defamation aggravated by ethnic and racial discrimination. During an interview, he defined the Government in which Cécile Kyenge was a minister, the Government of the “bonga bonga<sup>17</sup>” and called the Minister a “housewife of Modena”, opposing her ideas on *jus soli* (right of soil) defending the *jus sanguinis* (right of blood), stressing that “we are not from Congo”.

Finally, it is important to highlight a recent judgment (23<sup>rd</sup> February 2020) of the Rome Civil Court of where it was established that “spread hatred is not a right and that Facebook can remove the offensive pages written by Forza Nuova” (an Italian extreme right party). In fact, according to the judge, it is very clear from the Italian and supranational law framework that one of the boundaries of the right of freedom of speech is the respect of human dignity and the prohibition of any discrimination, in order to guarantee everyone’s inviolable rights. Freedom of speech does not include discriminatory and hostile speeches. Supranational laws require states and, within certain limits, social media, especially Facebook, to subscribe to the European Code of conduct on countering illegal hate speech online (May 2016).

### 5.3.2. Spain

With regard to Spanish case laws, a key difference from the Italian cases should be noted in that after analysing all selected cases, we did not find any case that involved a political party using anti-gender hate speech through the Internet or via social media. It should be noted also that all the sentences concern cases of attacks on women by men. Fourteen of the seventeen sentences looked into were offences from men to women, committed by ex-partners or against persons with a high political profile.

However, for instance, in three of the selected sentences we found that the accused participated in the former-political party Platform for Catalonia (PxC), a far-right political party dissolved in 2019 which then merged with the Vox far-right Spanish political party. Those are the only publicly available sentences where the relationships between the far-right political parties and hate speech arise. The other cases concern hate crimes on racial and religious grounds. By way of illustration, judgement 514/2017 by the Provincial Court of Tarragona intervened in the case of incitement discrimination, hatred and violence against certain groups of people (Art 510 of the Spanish Civil Code.). In this case, through various mass media sources such as the digital newspaper [periodismejuvenil.cat](http://periodismejuvenil.cat), press releases or speeches at the plenary session of the Tortosa City Council by the defendant Enrique, who is a Platform for Catalonia councillor in the City Council of Tortosa. Enrique had been holding offensive demonstrations against

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<sup>17</sup> Defamatory expression to indicate tribal behaviour.

Muslim immigrant groups. In fact, the comments on the news provoked Facebooks users to express hatred and direct incitement to violence against black and Moroccan people. The Court found the defendant guilty of incitement to discrimination. It concluded without doubt that the incitement to hate was direct, as was the promotion of a series of violent acts against immigrants and in particular against Muslims, who he considered to be terrorists and murderers as well as inciting to burn and shoot Islam mosques.

Judgments referring to gender discrimination hardly ever have the aggravating circumstance for this type of crime in Spain. Only one of the fourteen sentences contained references to gender issues or violence against women. Sentence 439/2014 of the Provincial Court of Murcia, albeit timidly, affirmed that the author “has a sexist profile”. In another case, sentence 546/2015 of the Provincial Court of Almeria referred to the “darkness” where this type of acts take place, and sentence 243/2019 of the Provincial Court of Valencia remarked that “the ending of a marital relationship cannot be considered a powerful stimulus for the accused to act in that way”. However, none of these sentences recognised that these types of acts can be the starting point or the breeding ground of violence against women.

Let us look at these three sentences in further detail:

- Sentence No. 439/2014: the accused person posted some messages on Twitter such as “you are a whore and a big whore”, “you disgust me”, after which the accused was consequently considered guilty of vexatious behaviour entailing four days of home detention and a restraining order to get near the victim (300 metres) nor contact her for the next 10 years.
- Sentence No. 546/2015: heard at the court of the Province of Almeria, the author sent different messages to his ex-partner using the terms “liar”, “betrayer” and other terms of a vexatious nature. In this case, too, the accused was found guilty.
- Sentence No. 243/2019: a Valencia court made a ruling on the messages sent by the accused to his former partner, which included passages such as: “You are a whore, always tasting dicks... You choose him because he is a Latino and he would have a bigger dick than me, and that is your taste... Next weekend I will go to your home... Go away because I will be waiting in your room... Yes, it is a threat and clearly I will kill him... Because it is you or me... Nobody will take from me the love of my life... This is serious, I’m gonna kill him, you think I lie?” Some days later, the accused wrote on Twitter the following messages to Fermín (the new partner of the ex-partner) “You fucked up, run away because I will kill you... Motherfucker I know where you live and I will go back to Valencia to kill him, fucker” and another message addressed to his former partner, Maria Inmaculada: “Whore, fucking bitch, fuck off, I will fill Valencia with your naked photos, and I will kill you”. Here too we have an indictment even if, as said above, gender issues are not taken into account in the Court's decision.

While the gender issue is hardly ever mentioned in Spanish rulings, the aggravating circumstance of the Internet and social media context is considered. Along these lines we see judgment 104/2019 of the Court of the Province of Santa Cruz of Tenerife, in

the case where the accused posted on the Twitter public account of @ Aida the following message: “Monster motherfuckers like you, who despise the millions you have brought into misery to people, deserve a throat-cutting - and - any day is a good day for you and all the mob motherfuckers who murder our lives to have their throats cut. Employment of quality? If a bitch like you has puppies, I wish your puppies and your whole fucking abject bitch family, tell me one thing bitch and son of a bitch, what would be the unemployment figure if nobody had left this country that you have looted?” The man was found guilty and sentenced to a year in prison, because according to the Court:

“[He used] The anonymity of Internet to commit a crime. He thought he would not be located. This mechanism is common in threats made through social media: the author acts, when making his threats, being aware of the prior existence of a previous environment of moral intimidation and adjusts his threats and insults in this occasion. They are reinforced by the context and he is undoubtedly responsible; this is what makes his attack particularly serious.”

In its judgment of 279/2019, the Court of Granada also ordered the defendant to delete what was posted online. This is a case in which the accused posted videos on social media intended for the President of the Council of Andalusia (Trinidad) and his Vice Councillor of Health (Guillermo) concerning the decisions they took about health management. He posted 14 videos. Some of those saying “Imagine Saturnino [the former mayor of Granada] getting his head in the ass of Trinidad...” “Trinidad, listen to me I am not afraid of you nor of the fuckers that surround you, you must listen to me, because I live only for my job, you are gonna bleed from your ass, fucker... Come for me if you have guts, Trinidad bitch”. In this case, the victim, the President of the Council of Andalusia, had been greatly affected on three levels, personally, at family level and professionally, by the published videos. The videos were published with the intention to erode her dignity and they cannot be explained as an emotional outburst of the accused. Also, the freedom of expression and the right to criticise have their own limits, they are not unlimited nor an absolute right.

To conclude, in Spanish case laws the lack of gender sensitivity is very clear in the majority of the analysed sentences. None of them mentioned Organic Law 1/2004 that determines the integral protection measures against gender violence in Spain, one of the most important acts in Spain to prevent gender violence. In the same manner, none of them mentioned the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence, which entered into force in 2016 in Spain).

Moreover, some judges had different opinions about the same or similar facts, for example for one judge a message on Twitter is not a direct message to constitute a crime, but for other judges, the same message becomes a crime because the victim

may receive it in one way or another provoking psychological damage<sup>18</sup>. These conclusions show the need for permanent training on Internet and social media for all judges and legal agents.

### 5.3.3. Germany

With regard to the German situation, the cases we found on hate speech and gender in social media refer to the following laws: Criminal Code, Telemedia Act, Network Enforcement Law, Constitutional Law (Grundgesetz, Personality rights), German Civil Code, Human Rights Convention and Federal Data Protection Act. Most of the cases concern hate comments on Facebook, Messenger and Twitter. Predominantly, these cases were heard at regional or district courts (e.g. Berlin district court). There were some cases in which offenders claimed freedom of speech.

One of the most prominent cases is the case of Renate Künast, a female politician of the German Green party. Künast tried to take legal action against insults on Facebook and other platforms such as Twitter. The politician wanted Facebook to be allowed to disclose the personal data of 22 users in order to take civil action against them<sup>19</sup>. The case received remarkable media attention and had an impact on the bill to fight right-wing extremism and hate crime<sup>20</sup> (also see Legal and Policy Review, Germany). The comments that the female politician received on the social media site are relevant on §185 StGB (criminal code/ Insult) and examples for comments that have been made are: “piece of shit”, “slut”, “dirty twat”, etc. On this premise, therefore, the applicant, based on the Telemedia Act (Telemediengesetz 14), can request the disclosure of information given the presence of unlawful contents. The decision of the Berlin district court was ambivalent stating that in fact, the user comments were not unlawful as such, and they were considered as expressions of opinions. According to the court, the freedom of speech of the commenting users needs to be protected, especially since the exemplary comments are mixed with factual claims and need to be viewed as a whole. The contextualisation of words is also highlighted because the comments were posted underneath an article by a third party on a debate on the topic of sexual violence against children. The claimant made a remark that had been taken out of context and positioned her as though she was a person who did not mind sexual contact with children as long as it was non-violent. It was in this regard that the comments were made, and the sexualised atmosphere had to be taken into account when assessing the words used. Therefore, she had to accept the expressions used, since her remark could have been constructed as it appeared in the article, resulting in abuse

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<sup>18</sup> See the explanations of the judge’s reasons on sentence No. 449/2017 of the Provincial Court of Barcelona (section 20) and sentence No. 218/2016 of the Provincial Court of Madrid (Section 27).

<sup>19</sup> Tagesspiegel (3<sup>rd</sup> December, 2019). <https://www.tagesspiegel.de/berlin/urteil-gegen-hass-im-netz-renate-kuenast-erringt-teilsieg-vor-berliner-landgericht/25296982.html>

<sup>20</sup> Spiegel online (14<sup>th</sup> June, 2020) <https://www.spiegel.de/netzwelt/netzpolitik/gesetz-gegen-hasskriminalitaet-im-netz-soll-verabschiedet-werden-a-2e0d23d2-fcc7-44e6-9650-5de80c9a45b0>

against her. That said, according to judgment, the comments are viewed as partly sexist but they are permitted with regard to the protection of freedom of speech and with reference to the relevant issue. The decisions in the Künast case show that decisions on hate speech are hardly context-dependent (e.g. here the topic of sexual violence against children was being debated) and sexist speech is not unlawful as such. But considering the public outcry and Künast's appeal against the courts decision, she was granted access to some of the commenters personal information to pursue further legal action against their sexist insults. The case has shown, that it can be possible to win claims against sexist hate speech but it seems to be necessary to be willing to take the long run.

Another significant case is that of Tina Mendelsohn, host of the German public broadcast show Kulturzeit (Culturetime). Mendelsohn claimed that the publications of well-known journalist Henryk M. Broder on his website (and their distribution on Twitter) violated her personality rights. On this occasion, she obtained a preliminary injunction on the basis of statements made about her by the accused and she claimed compensation. The court decision established that Broder is no longer allowed to use the comments made about Mendelsohn and if he does, he has to pay €250,000. The whole discussion had started with an antisemitism debate between Broder and another journalist, which was then reviewed in the show Kulturzeit by Tina Mendelsohn, where she commented that Broder was an impediment to dealing with the nation's past. Afterwards, he published his injurious article about her.

Other cases that have had an impact on jurisprudence with regard to gender-based hate speech are:

- Judgment of 9<sup>th</sup> February 2016: in this case, the regional court (LG) of Hamburg prohibited a Facebook user from making insulting remarks against ZDF presenter Dunja Hayali. By means of a temporary injunction, the court prohibited the user from posting hate comments on the journalist's Facebook page. Violation of this rule could result in an administrative fine of up to €250,000.
- Judgment of 20<sup>th</sup> April 2017 referring to the case of a 65-year-old pensioner from Upper Bavaria who posted offensive comments on Facebook. The Court (AG) sentenced the man to pay a fine of 110 daily rates at 20 euros each (i.e. a total of €2,200). The public prosecutor's office accused the 65-year-old of having publicly agitated against refugees on Facebook. Among other things, he called them "invaders" and "rapefugees" and denied that they were human. The prosecutors saw these statements as an attack on the human dignity of asylum seekers living in Germany. In addition, he called the presenter Dunja Hayali a "dirty system whore" and thus insulted her, the court found.

The remaining jurisprudence cases that do not concern gender-based hate speech are those involving immigrants and refugees. Overall, the reported decisions suggest that the courts attached somewhat greater importance to freedom of speech and freedom of the press than to personal rights in a country like Germany. It seems in this case that internal case law seeks a balance between freedom of expression and the

protection of the rights of the person in a certain way unbalanced towards the former right.

#### **5.3.4. Sweden**

Despite the social democratic tradition of the country, the number of cases that can be classified as motivated by hatred has been increasing over the years. For example, in 7,090 cases in 2018, 760 cases—i.e. 11%—showed a motive concerning sexual orientation, and 80 cases—i.e. 1%—showed a transphobic motive. In 2018, 15% of the crimes were committed online compared to 9% in 2016. This means that there has been an increase of 11% from 2016 and 29% from 2013. In addition, the largest increase compared to 2016 is xenophobic/racist and anti-Semitic motives and for reasons of sexual orientation.

The data collected with regard to the case law of Sweden has been classified and reported here and will focus on criminal law (i.e. Swedish Criminal Code) but the review also includes cases within what is called media case law. These cases fall under the fundamental laws of freedom of expression and constitute the so-called press cases. When messages expressing hate have been disseminated through certain media, there is a special procedural order and the crimes are regulated by the Freedom of the Press Act (FPA) or the Fundamental Law on Freedom of Expression (FLFE). Therefore, the following cases have been heard at the Supreme Court, Court of Appeals and, in some cases, the District Courts. Cases from the Supreme Court, and sometimes from the Court of Appeals, have a precedential value. Cases only heard at district courts are included to show the application in lower courts.

- An important case to mention is that relating to judgment B202-18 from the Court of Appeal on 3<sup>rd</sup> October 2018. The court had to decide on the facts in which a man, an active member of the NMR (Nordisk motståndsrörelse, a Nordic violent national socialistic organisation with branches in all the Nordic countries, albeit prohibited in Finland since 2017 and which in Sweden is also a political party) posted several images and comments expressing contempt towards several population groups. He posted an image of Hitler, all groups persecuted by Nazis under the 2WW and he specifically targeted homosexuals and refugees with comments and symbols. He posted images such as the Tyr rune symbol, a crossed out rainbow flag, and comments such as “Defend the Nordic countries”, “Refugees not welcome”, “The Nordic countries will rise”, “Stop the invasion”, “Destroy the homo lobby”, “NMR”, and followed almost every post with nordfront.se. The defendant argued that he did not intend to threaten or express contempt to any of the groups, but to make people visit the webpage, a page to which NMR is closely connected. The Tyr rune is the symbol of NMR and he had an open page and about 111 followers. The posts were up for about a week before Facebook took them down. The district court found that two of the posts constituted a crime in SCC 16:8, posting an image of Hitler and the comment “Destroy the homo lobby” and since they were only two images and no further comments on these two, as well as being published for a short time (a week) the offence is minor and he was awarded a day-fine..

- Similar to the online hate posts is the case B-259-19 heard at a district court on 3<sup>rd</sup> July 2019. The defendant, S.S. had posted 38 images on her profile at the website vk.com: images were of the swastika and SS runes, and she also expressed that refugees should die, and that a transsexual lifestyle destroys Christianity and the white race. Her profile was open to anyone. S.S. has denied criminal responsibility but admitted having posted three of the images but does not concede that they constitute agitation against a population group. However, the court found her guilty of agitation against a population group, with a sentence of a day-fine and a suspended sentence corresponding to three months in prison.
- The last case worthy of note on gender-based violence is the one relating to one person prosecuted in the case of a man who sent a so-called *dick pic* to the victim, L.C. with the comment “Here is something to write about, you compulsive liar”. The court found the defendant guilty of sexual molestation according to SCC 6:2, 2 and sentenced him to day-fines and to pay damages of SEK 5,000. In addition, the defendant wanted the court to take into account that he sent it because of one of L.C.’s chronicles. The court did so and interpreted it as aggravating circumstance. Due to the victim’s position in the public debate, as one of the most prominent figures, the purpose of the act was not only to violate her sexual integrity but to silence her as a public debater.

The so-called media case laws concerning Sweden will be dealt with in a dedicated section (5.4).

### 5.3.5. Hungary

The few cases that led to a sentence over the last decade were exclusively cases of racist hate speech. As already argued, Hungarian case law in relation to cases involving hate crimes and hate speech on the basis of gender and sexual orientation is in contrast to other countries (except from Italy). Most criminal reports about hate speech were rejected based on Constitutional Court arguments (involving the requirement of “clear and present danger”). The change to the Fundamental Law brought about by the 4th amendment<sup>21</sup> is not reflected in legal practice. Media law seems to offer more opportunities to legally challenge hate speech: there have been a few cases where the Media Council found anti-LGBTI and sexist media content to be unlawful. These cases will be discussed in the section dedicated to media cases. It is worth noting that while homo- and transphobic, sexist and anti-“gender ideology” speech by politicians has gained ground in recent years, these more recent anti-“gender ideology” and other hate speech incidents have not been legally challenged. The most recent anti-LGBTI and anti-“gender ideology” hate was linked to the closing of gender studies programmes in higher education, on not ratifying

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<sup>21</sup> The aim of 4th amendment was to break with the Constitutional Court’s consistently pro-free speech position and to give more weight to the protection of human dignity.

the Istanbul Convention, on planning to ban adoption by same-sex couples<sup>22</sup>, and most recently the ban of legal gender recognition for trans people. When they talk about questions related to LGBTI rights, speakers on conservative media sites often talk about “well-funded” and dangerous LGBTI CSOs (an “LGBTI lobby”) endangering and attacking Hungarian national values and families. We were not able to find a single legal case launched regarding hate speech linked to these public debates.

A striking example of the unwillingness to prosecute hate speech crimes against at-risk groups in Hungary is the case of the Budapest Pride event in 2011. The Budapest Pride march took place in Budapest on 18<sup>th</sup> June 2011. Several extreme right groups officially organised counterdemonstrations with several hundred participants at Oktogon, a larger square on the route of the march. Based on the experience of violent attacks in the previous years, the police decided to separate the participants of the march and the counterdemonstrators. When the march was approaching the square, counterdemonstrators at Oktogon were fenced off and could not leave the area, while the march took a slight detour to avoid direct contact between the two groups. It was only the result of this police intervention which prevented violent attacks on the march. At Oktogon, a group of activists affiliated with the extreme right website [mozgalom.org](http://mozgalom.org) held up signs calling for the extermination of gays (the signs showed a rope, a pink triangle referring to the persecution of gays in Nazi Germany and the words: “New treatment for gays”). The demonstrators were constantly shouting: “Dirty faggots, dirty faggots!” A news portal interviewed a participant of the counter-demonstration who told the camera: “We are waiting here for the gays... We will beat them up!” When the fences were lifted, the counterdemonstrators rushed after the march and tried to disrupt the closing speeches at Kossuth tér. The demonstrators were constantly shouting: “Dirty faggots, dirty Jews!” A former leader of the extreme right paramilitary group Hungarian Garda was seen to give out commands to a group of men dressed in military-style uniform. When asked by a journalist what they were doing, they responded: “We will catch them”. Several participants of the Pride march leaving the premises were verbally harassed and violently attacked. László Toroczkai, one of the organisers of the counterdemonstration, published an article a few days later on an extreme right website<sup>23</sup> in which he described how proud he was of the people who had gone to the counterdemonstration, and how the counterdemonstrators had “shown strength” and “made gypsies, Jews, niggers and police run home in fear” and how they “patrolled the streets of the city” undercover later during the day. Rainbow Mission Foundation, the organisers of the Pride march, in cooperation with the legal aid service of Háttér, reported the incidents to the police.

They also submitted a complaint to the Independent Police Complaints Board (IPCB) claiming the police had failed to act when they witnessed criminal activity among the counterdemonstrators. The IPCB refused to investigate the incident arguing they had no

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<sup>22</sup> Same-sex couples cannot jointly adopt in Hungary, but they can adopt legally as individuals, regardless of their family status. Some rainbow families came out publicly with their adoption stories, which prompted leading politicians and right-wing media to call such adoptions a “circumvention” of legislation and promised to close the legal loophole.

<sup>23</sup> <https://m.kuruc.info/r/6/80816/>



competency. The police started an investigation but closed it in a few weeks declaring that no crime had been committed. The CSOs submitted a complaint, but the Prosecutor's Office upheld the police decision. The authorities argued that the incidents did not constitute incitement to hatred (CCold Art. 269) as "holding up the signs might have incited hatred, but not active hatred" and thus the incident "does not reach the minimum level of criminal sanctioning". The authorities argued that the incidents did not amount to preparation for violence against a member of the community (CCold Art. 174/B. (3)) as telling a journalist that one is planning to commit a crime "is not enough to establish a direct intent to commit a crime". The authorities claimed that the incidents did not amount to violence against a member of a community (Article 174/B. (1) a)) as holding up signs "that call for a certain treatment of homosexuals [i.e. their extermination – added by Háltér] only indirectly with drawings and symbols" does not amount to "the open, conscious and clear ignorance of the norms of social coexistence". Thus, the outcome was a refusal of investigation by the police, upheld by the Prosecutor's Office.

#### **5.4. An evolving phenomenon: media case laws**

The sources of jurisprudence can take various forms and come from different contexts. The European one, the national one –inspired by the European one– and the internally regulated national one. The latter does not always produce definite and definitive jurisprudence and there are very well known cases by the public opinion and covered by the media, but of which it is difficult to find access to sources of jurisprudence or whereby the judgments are not yet present. In addition, there are cases that the media laws can take on despite the fact that there is no specific legislation by lawmakers on gender discrimination. Therefore, cases that have received significant media coverage and the access to which is not easy will be discussed in this part of the report. We will start with the analysis of Hungarian media cases.

The case of the programme *Képtelenségek* on EchoTV in 2009 is interesting in this respect. The Hungarian television programme *Képtelenségek* [Nonsense] covered the Pride march and as well as showing previously recorded footage (e.g. from a police press conference), guests were invited too. The presenter categorised homosexuality as a deviant behaviour and stated that Pride was not about the protection of human rights but about glorifying deviancy. Furthermore, a guest expressed opinions such as that recognising same-sex relationships would lead to the deterioration of society and that lesbian and gay people were like "cancer cells". Finally, the press conference from which statements were shown related to an event by the Hungarian Gárda (a paramilitary, extremist group) and not to the Pride march, thus the warning of the illegality of uniforms, etc. showed a very distorted picture of the LGBTI community in addition to the factually false and hateful statements. The consequences of this episode led to The Hungarian LGBTI Alliance, supported by the legal aid service Háltér to submit a complaint first to EchoTV, then to the National Radio and Television Commission (NRTC). The Complaint Board initially rejected the complaint. The NRCT, however, overturned the decision and

found the violation of the media legislation (which was then in force), according to which no content should incite hatred towards a minority group. The programme contained openly homophobic and hateful statements that violated the LGBTI community's human rights and human dignity, and fuelled hatred towards them. As NRTC found that the TV channel had violated the media law five times in 2008, and twice in 2009, NRTC obliged EchoTV to suspend their broadcast for 90 minutes and to show an explanatory text during the period of suspension. EchoTV appealed against the decision. In November 2010, the Metropolitan Court upheld the decision and sanctions of the NRTC. Both the procedural and the substantive claims of EchoTV were rejected. In the ordinary appeal process the case reached the Metropolitan Court of Appeals, which in April 2011 upheld the NRTC decision without modifying or amending the judgment of the first instance court. Finally, EchoTV submitted a motion for review to the Supreme Court that partly overturned the lower courts' judgments. The Supreme Court found that NRTC had no legal basis to prescribe the text that needed to be shown during the blackout of the television (which clearly indicated the reason for the sanction, i.e. the violation of the human rights of the LGBTI community). The final decision was issued on 28<sup>th</sup> August 2013, with which the National Media and Infocommunications Authority (NMIA) imposed a fine HUF 200,000 (approx. €625) on EchoTV.

Two other media cases in Hungary have had positive results from the Media Council:

- In a commercial radio station in September 2014, guests of the Morning Show programme were discussing a case of sexual violence at a university summer camp. They said such violence is a regular part of university summer camps; referred to the violence as “damage”; said that teachers should not be expected to be present all the time to stop such an event; that it was not even clear who raped whom; and referred to the right hand of a host as “raping several times a day”. In this case, the Media Council found that the programme violated human dignity by trivialising and making fun of rape, by sharing views that the law is not universal and unrestricted. Rape was portrayed as natural, inevitable with some statements considering it even appealing, and students at summer camps were objectified. The Media Council imposed a fine of HUF 500,000 (approx. €1,500).
- On 10<sup>th</sup> July 2017, following the Budapest Pride march, an opinion piece was published in the print and online version of the daily newspaper *Magyar Hírlap* entitled *Let's stop here!* The author argued that homosexual propaganda and Pride marches should be banned, homosexuals should be barred from becoming teachers or theatre directors, and registrars and police officers should be allowed to decline their participation in celebrating same-sex registered partnerships and protecting homosexual events. The Hättér society reported the article to the Media Council, and the Media Council found that the article contained hurtful and degrading language on homosexuality and called for curtailing the constitutional rights of homosexuals, which amounted to incitement to exclusion. The Council imposed a HUF 150,000 (approx. €500) fine on the newspaper.

In the case of Sweden, the judgments analysed are those that are tried under the constitutional laws FPA and FLFE, and prosecuted (or decided not to be prosecuted) by the Chancellor of Justice as press crimes under the Freedom of the Press Act or the Fundamental law on freedom of expression. The cases concern material from printed publications, radio and television programmes, on CDs, in video tapes etc. The cases included have been of importance in many of the cases above on agitation against a population group. One of the cases that can be taken as an example for others concerns the Chancellor of Justice (Dnr: 2720-04-30) on 11<sup>th</sup> August 2004. The case concerned the question whether an article in a religious journal should lead to prosecution for crime agitation against a population group under the FPA. The article was expressing contempt towards homosexuals and other groups. The Chancellor of Justice states that parts of the content of the article objectively could constitute agitation against a population group, but that it is mainly a criticism of an unhealthy way of living in general in a modern society. Homosexuality was just mentioned once and the statements were founded on religious belief. In summary, the Chancellor stated that he did not find the content to constitute agitation against a population group. In many of these similar cases the Chancellor, despite the admission of the discriminatory motive, often tries to contextualise where the hate speech took place and the religious grounds serve as a guarantee of freedom of expression.

As far as Italy is concerned, the Laura Boldrini case seen above, about the former President of the Chamber of Deputies, is paradigmatic because she received thousands of hate messages (both from ordinary citizens and political figures) online. Hers was a very high profile case and there are still ongoing trials. For example, in a speech in 2016, the former Minister of Internal Affairs and now a political leader of the largest party in Italy (Lega Nord) Matteo Salvini, compared Laura Boldrini to an inflatable doll he had brought on stage with an extremely sexist metaphor. The lawyers of Boldrini's party at the time filed a complaint, the outcome of which is not yet known<sup>24</sup>. The Salvini incident spurred media clamour with consequent online hatred against the former President of the Chamber of Deputies. Another case dating back to 2018 is that of the newspaper *Libero* and a piece of brutal news story about the death of a girl killed by immigrants. Laura Boldrini's name was associated as the moral instigator of the crime for her position in defence of immigrants and to support policies of hospitality<sup>25</sup>.

Finally, we must remember that Laura Boldrini continues to fight a battle that is also cultural. She has been denouncing since 2017<sup>26</sup> that many people have posted messages on social media, sent threatening emails, etc. and that there are therefore many sentences that have yet to be decided. In fact, Boldrini announced<sup>27</sup> that she would use the money

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<sup>24</sup>[https://milano.repubblica.it/cronaca/2016/07/27/news/salvini\\_e\\_l\\_offesa\\_alla\\_boldrini\\_sel\\_presenta\\_es\\_posto\\_in\\_procura-144915510/](https://milano.repubblica.it/cronaca/2016/07/27/news/salvini_e_l_offesa_alla_boldrini_sel_presenta_es_posto_in_procura-144915510/)

<sup>25</sup> <https://www.fanpage.it/politica/laura-boldrini-denuncia-libero-quotidiano-ha-associato-il-mio-nome-al-delitto-di-desiree/>

<sup>26</sup> <https://www.anconatoday.it/cronaca/insulti-minacce-diffamazione-boldrini-ancona.html>

<sup>27</sup> <https://www.lastampa.it/cronaca/2018/06/29/news/boldrini-non-si-arrende-agli-insulti-devolvero-i-risarcimenti-per-progetti-di-educazione-civica-1.34028381>

she would receive from compensation to fund projects concerning digital education aimed at an informed and responsible use of the Web addressed to girls and boys.