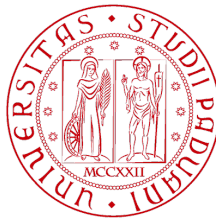


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IS THE PROTECTION OF LGBTQI+ PEOPLE
AGAINST HATE SPEECH AND HATE CRIME
IN THE EU A REALITY?

A CASE STUDY OF CZECHIA

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Abstract

The thesis aims to explore the European Commission's initiative to criminalise hate speech and hate crime at the EU level, including the bias-motivated grounds related to the LGBTQI+ community. The focus of the paper is on the current stance of the post-socialist member states and the influence of their historical experience with socialist regimes on their approval of adding hate speech and hate crime to the list of Eurocrimes. The thesis will test the hypothesis that the impact of the socialist past decreases the approval of the criminalisation of LGBTQI+ hate speech and hate crime at the EU level. Such presumption stems from the literature describing post-socialist states as more sensitive to issues of freedom of expression. The single case study of Czechia will offer in-depth insight into this issue. Semi-structured interviews with experts, MEPs, government and European Commission representatives, and NGO members will shed light on the situation in one of the most relevant cases of post-socialist member states. Therefore, the thesis framework can be intended as a starting point for further research in the area of LGBTQI+ hate speech and hate crime oriented on post-socialist member states. The importance of this topic is proven by data uncovering a long-term upsurge of hate speech and hate crimes against minorities in various EU member states.

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List of Acronyms

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERV	Citizens Equality Rights and Values
CJEU	Court of Justice of the European Union
CoG	Convention on the Prevention and Punishment of the Crime of Genocide
CSO	civil society organisation
ECHR	European Convention on Human Rights
ECRI	European Commission Against Racism and Intolerance
ECtHR	European Court of Human Rights
EU	European Union
EP	European Parliament
FRA	The EU Agency for Fundamental Rights
HC	hate crime
HS	hate speech
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA	The International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBTQI+	lesbian, gay, bisexual, transexual, queer/questioning, intersexual
MS	member state
NATO	The North Atlantic Treaty Organisation
NGO	non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
SDG	Sustainable Development Goals
SOGISC	sexual orientation, gender identity, and sexual characteristics
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHRC	United Nations Human Rights Council
UNHCHR	United Nations High Commissioner for Human Rights
UPR	Universal Periodic Review
V4	Visegrad Group

Introduction

When the president of the European Commission (henceforth the Commission) Ursula Von Der Leyen presented her State of the Union Address in 2020, it became clear that anti-lesbian, gay, bisexual, transgender, queer or questioning, and intersex (anti-LGBTQI+; see also p.18) hate speech (HS) and hate crime (HC) are issues worth the attention of the European Union (EU). The president underlined this position by proposing to extend the list of EU crimes to all forms of HS and HC, including the grounds of sexual orientation, gender identity, and sexual characteristics (SOGISC). “A Union where you can be who you are and love whom you want - without fear of recrimination or discrimination,” she envisioned (Von Der Leyen 2020). Her step followed a series of reports and research on the documentation of discrimination against the LGBTQI+ community. Therefore, the Commission subsequently presented its first-ever strategy on LGBTQI+ equality in November 2020, making the criminalisation of anti-LGBTQI+ HS and HC one of its priorities (LGBTIQ Equality Strategy 2020-2025). Since the Council of the EU (henceforth the Council) has not yet voted on the Communication from the Commission to the European Parliament (EP) and the Council, the topic is still open to discussion.

This offers the chance to evaluate the current stances of various member states (MS) and apply the theory of the differentiation of the understanding of HS and HC criminalisation by post-socialist EU MS. Such an aim is based on the existing literature pointing to the lasting influence of the historical socialist experience. Further, statistics related to the legalisation of same-sex marriage or anti-LGBTQI+ HS and HC legislation also suggest that there might be a difference between post-socialist and other MS in regards to the LGBTQI+ community’s protection (Jsmé fér 2023; Rainbow Europe 2023). Media reports about the ongoing discussions in the Council also hint that Czechia, Hungary, and Poland are the only states not supporting the inclusion of HS and HC under the list of Eurocrimes (iDnes 2022a). Against this background, the research will focus on the case study of Czechia, one of the post-socialist EU MS. Another reason for this choice is the current state’s legislation. Namely, the criminal code does

not fully include the SOGISC grounds of HS and HC. This is despite them being included in the list of Eurocrimes according to the Commission's initiative.

The research aiming to discover how the historical socialist experience influences Czechia's stance towards the suggestion to add HS and HC to the list of Eurocrimes relied on a qualitative methodology. Specifically, eight semi-structured interviews were conducted with stakeholders from various levels. Interviewees included: a civil servant from the Commission; a Czech member of the EP; two representatives of the Czech government; two officials from Czech CSOs, and two experts from fields related to HS and HC law and LGBTQI+ rights. The insight from these interviews was used to ascertain whether the historical socialist past influences Czechia's position at the EU level towards the Commission's proposal.

The remainder of this thesis is organised as follows: firstly, I will introduce the literature review. Hence, articles and papers related to the general knowledge of HS and HC legislation will be included. However, specific focus will be put on the anti-LGBTQI+ HS and HC and the definition and protection of the LGBTQI+ community. Next, the situation at the EU level will be described. Lastly, the literature on post-socialism and its interconnection with the rights of LGBTQI+ communities will be introduced. The second chapter of this thesis will form a research background. Therefore, it will cover the criminalisation of HS and HC at both the international and the EU levels. Such a framework will enable the introduction of the Framework Decision 2008 and the LGBTQI+ Equality Strategy 2020-2025. The specificities of the Commission's proposal and the current level of protection of LGBTQI+ people in the EU MS will be covered. The third part of the thesis will closely introduce the described methodology and research design. The fourth chapter will discuss the empirical findings of the research. Subsequently, the sub-research questions, the main research question, and the hypothesis will be debated and conclusions drawn.

Chapter I. Literature Review

The debate surrounding the criminalisation of HS and HC at the EU level is quite limited. Therefore, it is relevant to frame the issue in the context of a broader set of literature. Hence, the first section of the chapter will introduce the overall debate on the criminalisation of HS and HC and the basic definitions of the LGBTQI+ community. Subsequently, it will describe the current research on general and anti-LGBTQI+ HS and HC legislation at the EU level. The description of the anti-gender movement will then offer the context of the opposition to harmonising the criminalisation of HS and HC across the EU. Most importantly, it will capture its interconnection with the stances of post-socialist MS. Therefore, the impact of the past socialist regimes on the acceptance of anti-LGBTQI+ HS and HC will be introduced. Lastly, I will identify the research gap and outline the reasons for my research.

1.1 Hate Speech and Hate Crime

The need to introduce HS and HC-related legislation increases in importance with the steady growth of discrimination against various minorities in recent years, including LGBTQI+ people (European Commission 2020a). Despite the necessary comprehensive laws not yet implemented in all of the MS of the EU, the general debate on the criminalisation of HS and HC in liberal democracies is not a novel topic, especially in relation to racism. For this reason, most of the current literature focuses on the issue of anti-racist HS and HC. However, the understanding of the issue has gradually expanded since it was first captured in the 1960s and currently covers different types of hatred, e.g. on the grounds of religion, political stance, age, or disability (Garland 2016). These various categories share a lot of similar characteristics. Therefore, for the purpose of this review, I will apply the core arguments related to racism or other types of HS and HC to anti-LGBTQI+ HS and HC as well. Similarly, I will approach the debate surrounding HS equally to the one focused on HC as both share some features, though cannot be considered synonymous terms (Boeckmann and Turpin-Petrosino 2002; Vergani et al. 2022).

Different theoretical approaches exist for various types of HS and HC. For example, one could use social, cultural or post-structural models to perceive how HS and HC are created. However, these approaches mainly understand HS and HC as a mechanism supporting existing social hierarchies. Those who do not fit this socially and culturally created order are then understood as those who endanger it (Walach 2023). But despite their differences, most authors have long agreed on the necessity of anti-hatred legislation. Therefore, most Western European countries implemented some laws against such offences between the 1960s and 1990s (Bleich 2011). The literature ranging from fields of sociology, law, criminology, psychology, or politics is, for the most part, united on one assumption. Namely, the vicious and hateful motive accompanying a crime should serve as a reason for a stricter and enhanced punishment.

The following section will introduce the different understandings of why should HS and HC be penalised. Some literature focuses on the intention or the motive behind the crime. For example, one justification claims that a hateful motive is not a temporary state of mind and represents a prevailing belief system. It stems from a decision-making process based on the “character traits” of the defendant (Mathis 2018, 7). Hence, the stance or opinion hidden behind the crime gives it a different, often more harmful meaning. On the other hand, Baron opposes this “motive” based explanation of HS and HC legislation. She explains that the punishment should not be limited to offenders motivated by hatred. According to her, members of minorities can be attacked without such intention, and the impacts on their community or self-respect will remain the same. Hence, she instead focuses on what “the crime enacts”, as HS and HC are not connected only to the offender’s intentions but also to their impacts (2016, 5). Therefore, when defining HS and HC, scholars take into account the feeling of inequality that the victims are left with and the harm caused to their dignity (Baron 2016; Boeckmann and Turpin-Petrosino 2002; Hamm 1994; Hare 1997; Jenness and Grattet 2001; Mathis 2018).

Disagreement with such a repercussion is rare (Card 2001; Iganski 2001; Strossen 2018). For example, Seglow enters a rather detailed and abstract discussion with Jeremy Waldron regarding his claims about the harm of HS and HC. Unlike him,

he believes that the value impacted by such crime is not human dignity understood in the context of our status in a given society but our self-respect (2016). In any case, the victims are often left with feelings of “otherness”. Because the attackers insult an unchangeable or otherwise fundamental sense of their “self”. Therefore, they also affect a part of them, which is a characteristic of a group identity (European Commission 2021a). Such a vicious act leads to behavioural changes, psychological distress, higher anxiety levels, loss of trust, feelings of vulnerability, difficulties in concentration, anger, fear, and safety reduction. Therefore, experience with HS and HC sometimes equals surviving trauma (Directorate-General for Justice and Consumers 2021a).

The discussion of the various impacts revolves around other specificities. For example, some argue that HS and HC do not inflict harm but rather an “offence”, which creates an “offended mental state or psychological discomfort” (Peršak 2022, 23). Therefore, they consider it less grave than “harm” since it is only temporary and causes no setbacks of interest. But those divisions do not always matter. E.g. the EU law does not connect the seriousness of the crime to either “harm” or “offence”. Instead, it requires mostly “clear factual evidence about the nature of effects of crime in question” (Peršak 2022, 23). Even though the literature does not agree on all of the mentioned aspects of the “impact”, it is united on the fact that HS and HC deserve a special punishment because their victims often feel excluded from society and their community. Hence, HC does not only hurt the individual but creates a crack in social cohesion, affecting the society and the community of the victim (Baron 2016; Boeckmann and Turpin-Petrosino 2002; Jenness and Grattet 2001).

For example, Bleich further explains this line of thought by claiming that higher penalties for crimes conducted with biased motivation are founded on the assumption that these cause harm not only to the individual but also “the society as a whole” (2011, 9). The same view supported the Communication of the Commission to the Council proposing to criminalise HS and HC at the EU level. According to the document, HS and HC cause polarisation of society, social conflicts or tensions, and create a climate of fear (Directorate-General for Justice and Consumers 2021a). Also, Hare elaborates on

this idea when declaring that such crimes interfere with the public welfare, hence “creating a climate of intimidation and unease over an extended period” (1997, 4). Therefore, scholars describe that HS and HC cause damage beyond the individual. They influence the community or society and formulate a “message” of hate. They almost unanimously view hateful motivation as an aspect of a crime or a stand-alone crime, which makes the act itself even more reprehensible.

Despite agreeing on the need to criminalise HS and HC, scholars remain split on the definition of HS and HC legislation. They do not seem to find common “boundaries” for such offences. Hence, there is no global agreement on the definition of HS and HC legislation or hate as such (Hall 2013; Howard 2019; Strossen 2018). Such a dispute can be explained by the different political, economic, cultural, and social contexts through which each nation approaches this issue (Jenness and Grattet 2001; Hall 2013; Perry 2014; Schweppe 2021; Vergani et al. 2022). Moreover, it is also connected to the historically tricky task of creating a shared definition of a crime. Nevertheless, to paint a better picture of the complex legislation, I will offer some examples of the definitions of HS and HC. According to Boeckmann and Turpin-Petrosino, HC is “an unfortunate expression of negative stereotypes, prejudice, discrimination, and intergroup tensions” (2002, 16). Therefore, they include the attacker’s belief system in their definition.

Hence, these authors find it relevant to emphasise that it is not the person in itself who is being attacked but rather what they represent. Instead, Craig describes HC in more detail, stating it is “an illegal act involving the intentional selection of a victim based on a perpetrator’s bias or prejudice against the actual or perceived status of the victim” (2002, 86). Here, he chooses to highlight the direct intention behind the crime. Wolfe and Copeland point to another aspect of HC. According to them, it is “violence directed toward groups of people who generally are not valued by the majority society, who suffer discrimination in other arenas...” (1994, 204). In this case, they emphasised that the attacked group was already marginalised and vulnerable. These examples show just how easily the definitions vary. Among other main points of departure falls the

discussion about whether the crime is directed against an individual or a group and whether the act is an expression of power and oppression. The authors also fundamentally diverge on the various grounds that should be included under the legislation, e.g. race, ethnicity, or nationality. Therefore, different stakeholders consider certain types of hate more relevant than others. However, they agree that the offences committed under HC already exist. Hence, they are already prohibited by other criminal legislation as stand-alone crimes (Hall 2013).

Moving on to the description of HS, that, from a legal point of view, is seen as a separate concept from HC. Boeckmann and Turpin-Petrosino understand it as a “form of expression directed at objects of prejudice” (2002, 3). Similarly, Waldron describes it as “the publication or dissemination of ideas that express profound disrespect, hatred, and vilification for the members of minority groups” (2012, 27). Therefore, he considers the presence of HS in public spaces a key factor. Some understand HS also as a “verbal or non-verbal manifestation of hatred, prejudice, or hostility” (Schweppe 2021, 8). Such an “expression” can range from group defamation, negative stereotyping, stigmatisation, incitement to hatred, or a threat to public order to humiliation and violation of human rights (Seglow 2016). Therefore, some countries created less extensive definitions while others use legislation including less “serious” types of offences.

For example, Belgian law also penalises public announcements of “intention to discriminate, hate, or perpetrate violence against an individual or a group on the grounds of race, colour, origins, descent, or nationality” (Bleich 2011, 11). But others hold back in their definitions, fearing the implications of such legislation on freedom of speech or expression. Similar views are also directed towards a specific category of HS, namely the one disseminated online. This type of HS was brought about by the internet offering a vast and weakly regulated space for the increased proliferation of hatred (Castaño-Pulgarín et al. 2021). However, the scope of online HS is still disputed not only by governments throughout the world but also by academics. The phenomenon is still relatively new and unknown. Hence, no agreement on its definition, range, or punishment exists. According to Persily and Tucker, it can be understood as “bias-

motivated, hostile, and malicious language targeted at a person or a group because of their actual or perceived innate characteristics” (2020, 57). What makes defining online HS harder is the challenge of proving the effect that a hateful comment in a blog or Twitter post can have on its victims and the anonymity of the attackers (Iginio et al. 2015). Hence, the lack of consensus on the definition of online HS contributes to the uncertainty and controversy surrounding its criminalisation. However, some regulation is needed because it can spread faster and reach a wider audience (Mathew et al. 2019).

Lastly, it is essential to mention the specificities of HS and HC directed against the LGBTQI+ minority. In general, the form of hate is equal to bias-motivated crimes based on the grounds of race, nationality, religion and others. However, governments often consider it less relevant or threatening and do not specifically mention it in their HS and HC legislation. However, the list of examples of prevailing hate against LGBTQI+ persons highlights the need for specific anti-LGBTQI+ HS and HC legislation. In countries such as Brunei, Iran, Saudi Arabia, Yemen, or Uganda, people can receive the death penalty for engaging in same-sex sexual acts. Further, discrimination against transgender people in South, Southeast and East Asia worsened due to the pandemic of Covid-19. Not to mention the long-term suffering of the LGBTQI+ community in Poland related to the creation of LGBTQI+-free zones (Amnesty International 2023). These constitute just a tiny section of the atrocities which could be included. Because of the poor protection of LGBTQI+ people, the monitoring of hate directed against this minority is poor.

An exception is the think-tank Movement Advancement Project (MAP), founded in 2006. Its goal is to provide rigorous research and create communications that promote equality in the United States. One of the results is a map covering HS and HC legislation protecting the LGBTQI+ community in all the states (Movement Advancement Project 2023). In Europe, such efforts are reflected, for example, in the work of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). More details on LGBTQI+ hatred will be mentioned throughout the thesis. Still, it should be emphasised that various scholars increasingly consider the HS and HC

directed against the LGBTQI+ community as a prevailing and alarming topic (Judge and Nel 2018; Schweppe and Walters 2016). Even though states fail to reflect such a reality and do not grant LGBTQI+ minorities the same protection as other vulnerable groups. To conclude, what unites the scholars in their different approaches is the effort to define better what they understand under offence, prejudice, or insult and what not. They also try to grasp the characteristics which deserve protection. Although, the related debate seems endless since academics can challenge the way other scholars define basic terms constituting the definitions of HS and HC, e.g. hate, prejudice, motive, or harm. The discussion around the exact definition of HS and HC is complex and multifaceted. There might never exist a single explanation of what HS and HC mean.

When debating HS and HC, scholars also focus on the different aspects of the application of the HS and HC legislation. For example, they discuss issues related to the presence of visible hate elements in the crime, the severity of the punishment, or the interpretation of the specific hate-motivated cases (Jenness and Grattet 2001; Peršak 2022; Rose 2015; Vergani et al. 2022). One of the issues that led to the scholars' departure is the complex question of how to approach the process of proving the biased motivation of the offender. For example, should past sentences of the defendants be used in the proceedings? Is it proportionate to look at their membership in various organisations? Or does this attempt to assess the hatred go too far? (Hare 1997). Bleich points to an issue related to the strictness of anti-hatred legislation. According to him, the state must balance the legislation's declarative effect and its possible decline into empty rhetoric (2011). If the state punishes too little, it will never achieve the protection of minorities. When it reaches too far, people will start to fear for their freedom of speech. The same goes for the typology of the law. A disagreement exists regarding HS and HC categorisation. The act can be defined as a new separate crime. In that case, the attacker would be prosecuted for two crimes. But the offence can also be understood as a "penalty enhancement of another existing crime" (Mathis 2018, 1), also known as an "aggravating circumstance" (Hare 1997, 3). Some critics regard the former as a more invasive option towards individual rights and freedoms.

The literature agrees on a shared uncertainty surrounding the form of the HS and HC legislation. However, the same doubt functions also as the main argument for the opposition to this type of legislation. These critics fear that the anti-hatred legislation will infringe fundamental rights of the defendants, such as freedom of thought, speech, expression, or association (Boeckmann and Turpin-Petrosino 2002; Cowan et al. 2002; Hare 1997; Howard 2019). However, many authors argue against such claims, finding ways to explain the necessity of such legislation (Iganski 2001; Malik 2019; Peršak 2022; Rose 2015). Most importantly, even though these freedoms are protected by the European Convention on Human Rights (ECHR), they were never positioned as absolute or without restrictions. This applies to national and international human rights law. Because, in some cases, speech can create a burden on other rights. For example, the International Covenant on Civil and Political Rights (ICCPR) states in Article 19 that although everyone shall have the right to freedom of expression, the right carries “special duties and responsibilities”. Hence, it can be restricted “for respect of the rights or reputation of others” and “for the protection of national security or public order, or of public health or morals” (United Nations 1966).

Therefore, scholars also dismiss the marketplace of ideas theory. This theoretical framework presupposes that true and better ideas will naturally beat the false and wrong ones. It creates an analogy to the functioning of the free market (Rose 2015). But one cannot agree that the truth will prevail in a skewed market. In our society, truth is rarely the most significant factor in the competition of ideas. On a more philosophical note, Mathis explains that what is being punished by the anti-hatred legislation is not the belief in itself but the crime that the defendant committed. The opinion or thought is “merely stigmatised” (2018, 16). Next, Hare points out that the existence of a motive as an aggravated circumstance is nothing new in criminal law (1997). However, the growing opposition to the criminalisation of HS and HC does not consider such arguments sufficient. Hence, the current general debate on HS and HC legislation revolves around this division. Lastly, the “freedom of speech” argument divides the pro and con camps but the advocates of anti-hatred legislation themselves.

Before moving to the next part of the review, a few points must be highlighted. Firstly, the various academic definitions are rarely identical to those used by jurists. Most are not directly applicable because they lack specificity or practicality (Hall 2013). Therefore, there is a gap between the academics and those dealing with HS and HC in “real life”, like lawyers or the police. Secondly, the HS and HC legislation should never serve as the only solution to prevailing issues of hatred-motivated crime and discrimination (Baron 2016; Peršak 2022). The implementation of the law might not always be fully effective. If society radically opposes protected minorities, the law might remain unused or backfire (Directorate-General for Justice and Consumers 2021a). Police, judges, or administrative staff can ignore the issue or force the victims to enter proceedings, which will unrightfully not end up in their favour. For example, the hatred against trans women is sometimes regarded as “male-on-male” violence. Hence, other steps such as raising awareness, supporting minorities, training police or administration staff, or monitoring and collecting data should also be implemented. However, the HS and HC legislation remains a fundamental tool in the fight against discrimination of various minorities. Because besides legal protection, it sends a clear message. The message of equality.

1.2 Definition and Protection of the LGBTQI+ Minority

As mentioned, there was no need to differentiate between the different grounds of hate like race, ethnicity, nationality, religion, disability, age, or political stance and those of SOGISC in the first general section of this review. However, the position of different MS towards anti-LGBTQI+ HS and HC is one of the crucial challenges of the proposal to criminalise HS and HC at the EU level. Therefore, it will be included in the following section of the review. But firstly, it is essential to describe how current literature defines the term LGBTQI+ persons, the hate directed against them, and subsequently, introduce the protection offered by international law. The issues related to this minority are multifaceted. Therefore, only the most general concepts will be covered.

The abbreviation LGBTQI+ stands for lesbian, gay, bisexual, transgender, queer or questioning, and intersex (Gaycenter; ILGA Europe). These terms serve as a

description of either someone's sexual orientation or gender identity. The less-known term queer includes all of those who do not wish to choose an exact "label" or do not identify with any. Intersex is a general term used for a variety of situations in which a person is born with reproductive or sexual anatomy that doesn't fit either female or male. The enumeration of these characteristics could continue even further, for example, some literature also mentions A after the I which stands for asexual. However, the plus at the end of the term hints at the large spectrum of the different ways of understanding oneself. In this thesis, the term LGBTQI+ will be used since this form is usually the most used by the minority itself. Hence, it will be applied also in the case of anti-LGBTQI+ HS and HC, even though most scholars speak "only" about anti-LGBT HS and HC. Similarly, the term EU LGBTQI+ Strategy will be used despite the official title of the EU document which, for unknown reasons, names the community as LGBTIQ.

As will be shown in the following pages, human rights scholars and queer theory scholars agree that the LGBTQI+ minority remains to be a marginalised, stigmatised, and unequally protected part of the population. Many authors, therefore, focus on different prevailing issues of discrimination, related, e.g. to the criminalisation of same-sex activities, adoption by same-sex couples, same-sex marriage, laws related to gender identities, immigration equality, sexual orientation and military services, or as in this case, HS and HC legislation. The reasons why some people express hate towards members of the LGBTQI+ community vary, depending on the characteristics of the targeted person and the particular issue. For example, they might be "fine" with homosexuals but dismiss transgender people. Or support the decriminalisation of homosexual sex but arm against same-sex marriage. Others accept gays or lesbians as long as they do not engage in "homosexual activity". However, such a division is faulty since "most people who object to homosexuality object to the whole lifestyle - not just the sex" (Corvino 2013, 13).

An often shared view stemming from diverse backgrounds is that the community's members differ from the majority. Therefore, they threaten various aspects of society, like its values or traditions (Chaney 2018). The assumptions about the

supposed dangers of LGBTQI+ people range from extreme to less far-fetched. For example, members of the LGBTQI+ community face the allegations that they are mentally ill, misuse children or have an endless number of partners infected with sexually transmitted diseases. In other cases, queer people are confronted with hatred based on the conviction that their lifestyles are “morally wrong” (Corvino 2013, 5). The list of possible objections continues.

On an academic level, scholars explain the clash between heterosexual cisgender, persons whose gender identity corresponds with the sex registered at birth, or also “traditional” society and the LGBTQI+ community through queer theory. The framework established in the 1990s “destabilises notions of fixed identities” (Gedro 2010, 3). Hence, it exceeds the binary vision of our world and allows us to see beyond the categories of male or female, masculine or feminine, and heterosexual or homosexual. The theory explains that such “simple” identities are culturally and historically constructed by powerful and privileged actors (Watson 2005). Hence, they can be changed and moulded. Those who do not agree with such a post-modernist and constructivist theory often do not understand and support the rights and needs of the LGBTQI+ community. Because of the historical oppression of the minority, for a long time reflected also by scholars, this field of research is still recent. For the same reason, also the protection of queer persons is not as far-reaching as that of some other minorities.

For centuries, homosexuality was punished as a “crime of sodomy” in most countries of the world since it was considered an act “against nature” (Irujo et al. 2020, 12). Such views often came from religious groups, who had a tight grip over state affairs. But with the piecemeal departure of governments and religious institutions, states all over the world have started to decriminalise homosexual relations since the 19th Century. Such a step meant only the beginning of a long, thorny, and possibly never-ending journey to equality. The topic of LGBTQI+ rights became central to an international debate only near the end of the 20th Century. The credit for this change belongs to the protesters of the Stonewall riots in 1969, who fought against police

harassment in New York (Braun 2014). But despite their efforts, even major human rights organisations such as Amnesty International or Human Rights Watch neglected the protection of LGBTQI+ people in the “heyday” of their activism in the 1970s and 1980s (Ibhawoh 2014, 9). Moreover, the World Health Organisation declassified homosexuality as a disease only in 1990 (Council of the EU 2017). The flagrant delay of that decision points to the prevailing gap in the universal aspiration of human rights. Even though Eleanor Roosevelt already promised a “Magna Carta for all mankind” when she introduced the Universal Declaration of Human Rights (UDHR) in 1948, such a vision remains only rhetorical.

One of the causes lies in the international community's deficient protection of the LGBTQI+ community. Nevertheless, a general framework used by many LGBTQI+ activists emerged in the last decades. One of the main milestones for protecting LGBTQI+ people is the adoption of the Charter of Fundamental Rights by the EU MS in 2000. The document prohibited discrimination on the grounds of sex and sexual orientation under Article 21. It became the “first international human rights charter to do so” (Irujo et al. 2020, 23). The Union law also prohibits such discrimination in the field of employment under Directive 2000/78/EC (European Commission 2000). The EU institutions also combat discrimination based on sexual orientation in Articles 19 and 10 of the Treaty on the Functioning of the European Union (TFEU). The ECHR only prohibits discrimination on the grounds of sex in Article 14 but does not directly mention any reasons related to SOGISC (Council of Europe 1950). However, the case law of the European Court of Human Rights (ECtHR) showed the willingness of the judges to interpret the Convention as a “living instrument” and hence, to protect the LGBTQI+ minority. Subsequently, the Court understands discrimination based on sexual orientation as equal to discrimination on the grounds of sex. However, we cannot forget that sexual orientation is only one part of the SOGISC grounds. Moreover, the ECtHR ruled that same-sex relationships constitute a “family life” under Article 8 and that the right to marry under Article 12 does not entail only heterosexual couples in “all circumstances”. But at the same time, the Court ruled that MS do not have to give access to marriage to homosexual couples under Article 12 (Cooper 2011, 2).

The United Nations (UN) do not offer similar protection since no convention specific to LGBTQI+ minorities exists under its legislation. The advocates of LGBTQI+ rights attempted to push through a Convention on the Elimination of All Forms of Discrimination Due to Sexual Orientation or Gender Identity (CEDOSIG) in the past. They were inspired by the success of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, no binding treaty arose from their efforts (Braun 2014; Gibert Diaz and Palacios 2023). The reason for their failure lies in the dismissive attitudes of states strongly disputing the right of LGBTQI+ minorities to non-discrimination and equal treatment. Among them are Russia, most African states, and Middle Eastern, Asian, and Caribbean countries (Lhant 2019).

Moreover, neither sexual orientation nor gender identity is mentioned in the ICCPR or the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights have stated that they consider discrimination on these grounds as prohibited (Petrova 2013). Next, the UN institutions published several declaratory documents condemning the criminalisation, discrimination, and stigmatisation based on sexual orientation or gender identity (Ibhawoh 2014). Great success is also assigned to the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity formulated in 2006 (Cviklová 2012). These introduced international principles and a universal guide which affirms binding legal standards. They were based on well-documented patterns of abuse on the grounds of sexual orientation and gender identity. They were updated in 2017 to include gender expression and sex characteristics (The Yogyakarta Principles Plus 10 2017). The UN WOMEN published LGBTQI+ Equality and Rights: Internal Resource Guide. The document serves as guidance in advancing the focus on the human rights of the LGBTQI+ community in the global gender equality agenda. Therefore, it entails key terminology, definitions, messages, and conceptual frameworks to support the ongoing operationalisation within the organisation (UN WOMEN 2022).

A further example is the statement published by the UN General Assembly in December 2008, in which 66 states called for an end to discrimination on the grounds of sexual orientation and gender identity (Human Rights Watch 2008). Consequently, the United Nations Human Rights Council (UNHRC) produced a resolution in 2011 which requested the UN High Commissioner for Human Rights to commission a study on discriminatory laws and practices and acts of violence based on sexual orientation and gender identity (Human Rights Council 2011). Moreover, a group of twelve UN agencies released a statement declaring the need to end violence and discrimination against the LGBTQI+ community in 2015. And in 2016, the UNHRC established an independent expert to investigate violence and discrimination against LGBTQI+ individuals (Lhant 2019). However, none of these documents or statements became binding for their signatories. Other relevant instruments in international law are various case law decisions. The enlisting of all of them goes beyond the aim of this thesis. However, the one considered a turning point in the neutrality of the UN must be mentioned. The *Toonen vs. Australia* decision from 1992 created the first international precedent. In its aftermath, the Human Rights Committee published a resolution claiming that laws of the state of Tasmania in Australia criminalising consensual sexual relations between homosexuals constituted a breach of Australia's obligations to the ICCPR. Other essential rulings fall under the jurisdiction of the Court of Justice of the EU (CJEU), the ECtHR, the Inter-American Court of Human Rights, and the UN Human Rights Committee.

The international community is nevertheless increasing its efforts to advance LGBTQI+ rights in countries that dismiss it continuously on religious or cultural grounds. Scholars agree that one of the leading strategies is the effort to position LGBTQI+ rights as a part of the mainstream human rights agenda (Gibert Diaz and Palacios 2023; Ibhawoh 2014; Mayers 2018). Therefore, human rights advocates promote them through “a holistic approach to equality” (Petrova 2013, 3). They fight cultural relativism and claim that discrimination against the LGBTQI+ minority is against the universality of human rights. Hence, they conclude that all of the provisions of international human rights instruments containing the principle of equality should be

applied to protecting the LGBTQI+ community. Therefore, many advocates reference UDHR and its Article 1, which states that “all human beings are born free and equal in dignity and rights” (UN 1948).

However, such an indirect link is still disputed by various states. For example, in 70 states, “discriminatory laws criminalise private, consensual same-sex relationships”. The members of the LGBTQI+ also face the death penalty in at least five countries (OHCHR 2023). The continuous inequality is caused also by the politicisation of the LGBTQI+ community. Since the time of King Henry VIII, those in power discriminated against the minority to achieve their own goals. Be it revenge, the oppression of political opposition and activists or the creation of an ideal political figure “protecting traditional family and values” (Human Rights Watch 2014). Therefore, lawyers and scholars agree there is still a long way until the LGBTQI+ community can feel safe, protected, and respected (European Commission 2020b; Gibert Diaz and Palacios 2023; Human Rights Watch 2014; Irujo et al. 2020).

1.3 The Anti-LGBTQI+ HS and HC at the EU level

The next part will describe the literature surrounding the criminalisation of HS and HC legislation at the EU level and the opposition inextricably linked to it. Authors interested in HS and HC do not often focus on the EU level. One of the reasons might be that the motion to unite the criminalisation of HS and HC is recent. The main paper focused on the Commission’s proposal is the article *Criminalising Hate Speech and Hate Crime at EU Level* by Nina Peršak (2022). Therefore, it is also one of the prime sources of this review. Next, the Framework Decision 2008/913/JHA partly covers criminalising bias-motivated offences within the EU. The secondary legislation is the only existing EU criminal law instrument related to this topic. It sets standards for definitions and sanctions for HS and HC on the grounds of race, colour, religion, descent and national or ethnic origin. Hence, after its introduction, MS had to define national laws criminalising HS and HC for the above-mentioned “types” of hatred.

However, the implementation of the national laws varies. Therefore, the scholars focus mainly on analysing different national contexts. Such a focus points to persisting issues with the application of the Decision's provisions (Peršak 2022). However, the grounds of SOGISC, essential to this thesis, are not included in this instrument. Nevertheless, the current situation concerning the HS and HC directed against LGBTQI+ persons at the EU level is explained in different reports, opinion pieces, and statements published by various civil society organisations (CSOs) or EU agencies. They describe the current legislation of MS, the need for the criminalisation of anti-LGBTQI+ HS and HC, the progress made so far in this regard, and the data showing the increased discrimination of LGBTQI+ people (European Commission 2021a; European Commission, Ypma, P., Marsavelski, A., Giraudon, S., et al. 2021; ILGA-Europe 2021). Moreover, they often explain why the suggestion to include HS and HC in the list of EU crimes fulfils the requirements set for this purpose in the third subparagraph of Article 83(1) of TFEU (Peršak 2022; European Commission 2021a; European Commission 2021b). The content of this article will be described later in this paper (see p. 48).

The various reports also highlight the gaps in the protection of LGBTQI+ persons in the existing EU legislation. I have not found any academic research papers or official documents opposing such conclusions. Another often-mentioned reason why various stakeholders support the criminalisation of HS and HC at the EU level is the increased discrimination of LGBTQI+ persons. However, the issue is often not directly visible from the collected data. The reason for this discrepancy is the issue of underreporting, also known as the so-called dark figure of crime (European Commission 2022; European Commission, Ypma, P., Marsavelski, A., Giraudon, S., et al. 2021; OSCE 2020; Peršak 2022).

A considerable amount of the literature related to this issue is constituted by documents describing the context within different MS. Even though the Framework Decision 2008 does not include the grounds of SOGISC, many MS incorporated all or some of these characteristics in the list of aggravating bias motivations under their HC legislation. The EU Agency for Fundamental Rights (FRA) appreciated these steps and

called on the remaining states to follow them (FRA 2020). The same advice applied to the improvement of collecting and publishing data related to such crimes, which is not a habit of many MS. The annual reports of different countries are categorised and reflected by the Office of Democratic Institutions and Human Rights (ODIHR), which falls under the Organisation for Security and Cooperation in Europe (OSCE) (OSCE ODIHR 2021a). The criminalisation of SOGISC is covered in more detail by one of the largest LGBTQI+ non-governmental organisations (NGOs) in the EU, the ILGA Europe. Its Rainbow Europe maps show which states make HS and HC on the grounds of sexual orientation and gender identity illegal (Rainbow Europe 2023). The statistics are presented in percentages.

Among the EU MS that reached zero in the “sexual orientation HC category” are Czechia, Poland, Italy, and Bulgaria. The same applies to the “gender identity” category. However, just because certain states established some form of legislation related to anti-LGBTQI+ hatred does not mean that the subsequent implementation is effective (Peršak 2022). Besides already mentioned institutions, OII Europe, IGLYO, the EU High-Level Group on combating HS and HC, the EP, and the institutions of the Council of Europe publish data on this topic. In summary, most information on the criminalisation of HS and HC and anti-LGBTQI+ HS and HC is provided by different organisations or agencies but there are not many academic publications on this topic. Moreover, the overwhelming majority agrees on the need to criminalise HS and HC at the EU level.

As expected, the arguments opposing the suggestion to criminalise HS and HC at the EU level do not appear within the before-mentioned documents. Again, academic papers do not speak about this issue in detail, mainly because of its recency but also specificity. However, this debate can be well understood through more general literature on Europe's slowly expanding transnational anti-gender movement. Different papers have emerged in the past years trying to understand the historical, political, and ideological aspects of the new illiberal and anti-democratic tendencies. Such a phenomenon is among others (Graff and Korolczuk 2022; Kuhar and Paternotte 2017; Norocel and Paternotte 2023; Sosa 2021) described by Marie Wittenius in her article

The Transnational Anti-gender Movement in Europe. She agrees with other authors that the members of such a movement are diverse, coming from different national, historical, or social contexts. Hence, under this label, religious, populist, or right-wing representatives all come together and create space for “racism, anti-semitism, homophobia, transphobia, ethnic-nationalism ideas, or hostility towards elites” (2021, 2).

However, the discourse started in the 1990s and was first promoted mainly by conservative and right-wing populist parties. The first prominent anti-gender campaigns appeared in the mid-2000s in Spain, Croatia, Italy, and Slovenia. Hence, they are not connected only to Eastern Europe, as one might suppose. Multiple authors also mention the *Manif pour Tous* (Demonstration For All) mass protest against same-sex marriage in France in 2012. They describe this moment as a point of inspiration for similar movements in other countries, like Germany, Italy, Poland, Russia, and Slovakia (Kuhar and Paternotte 2017; Norocel and Paternotte 2023; Sosa 2021; Wittenius 2021). These groups protested either against an already introduced bill related to the LGBTQI+ community or opposed such a measure “preventively”. Despite their differences, these actors share many similarities and remain consistent across borders on their “war against gender”. What unites them is their effort to fight against a common enemy, the so-called “gender ideology” or “gender theory”. They consider this agenda as a part of either a new leftist stream or a neo-colonialist Western project.

Such an understanding serves as a glue that unites these different transnational actors. According to Wittenius, alliances against “gender” formed also in the EP. Most MEPs with such opinions belong to the right-wing populist and nationalist Identity and Democracy or the European Conservatives and Reformers groups (2021). Some politicians use the movement to attract voters or grab the public’s attention. They achieve this, for example, by claiming to represent the majority and their values (Sosa 2021). Therefore, they position “gender” and “LGBTQI+” as a form of threat. However, scholars also concentrate on other diverse members of this movement outside the EU institutions, such as family associations, religious conservatives, nationalists, populists,

or far-right groups. These are often not grassroots but are financed by elite groups with transnational impact. They understand the EU as one of the global “corrupt elites”, a new totalitarianism undermining MS’s sovereignty, national values, traditions, or identity. (Kuhar and Paternotte 2017; Norocel and Paternotte 2023; Sosa 2021). This is partly because they see the EU as a prominent defender of LGBTQI+ rights. Such a view is also in line with their firm distinction of “us” versus “others”, meaning mainly “bad” international and supranational powers, like the Brussels (Wittenius 2021).

Another characteristic of the movement described by the scholars is its attempt to change scientific and human rights approaches. Authors often describe the way its members interpret human rights law. According to them, they use twisted legal arguments through which they misinterpret human rights norms and put them into intentional conflict with other rights. Therefore, in the case of anti-LGBTQI+ HS and HC, members of the anti-gender movement position the right to free speech or expression above the right to equality and protection of LGBTQI+ persons (Dahl and Kennedy-Macfoy 2020; Sosa 2021). In doing this, they unite with some of the critics of HS and HC legislation and try to protect the absolute freedom of speech. According to the literature on HS and HC, the movement uses these strategies differently, depending on the social, historical, or cultural contexts.

One specific way that emerges from the articles is when some of the members use the argument of censorship, claiming that the criminalisation of anti-LGBTQI+ HS and HC could lead to an unfounded and autocratic breach of their rights. Such points are more likely to be used, for example, by states with a post-socialist past which see the “gender ideology” in relation to Marxism and the communist political regime or some new form of similar oppression (Graff and Korolczuk 2022; Kuhar and Paternotte 2017; Norocel and Paternotte 2023). This aspect leads to another set of literature focused more closely on the post-socialist factor of this debate. However, I conclude that the authors writing about the anti-gender movement are united on all the aspects of the phenomenon mentioned above. They differ in their focus, writing about different actors or emphasising various contexts, often concentrating not only on the impact of the

movement on human rights but also on democracy or neoliberalism. The specification is needed because the anti-gender movement interconnects with other phenomena, like “euro-scepticism, anti-globalisation, or national anxieties” (Kuhar and Paternotte 2017, 268).

1.4 The Impact of Post-Socialism

The literature review on the anti-gender movement illustrated in the preceding sections shows that such a phenomenon is transnational and, hence, is constituted of various factors and can be found in different contexts. Only a few scholars speak about how post-socialist states participate in the anti-gender movement and how they perceive the attempt to criminalise HS and HC. Before introducing their research, an overview of a more general debate about post-socialism is needed since many authors dispute its form and impact. The reason for such a split lies in the difficult task of finding a shared definition of post-socialism. Such a challenge is deepened by the diversity of researchers who attempt to study the phenomenon. They come from different disciplinary and geographical backgrounds, like economics, political science, anthropology, sociology, business, law, history, or geography (Stenning and Hörschelmann 2008). What socialism means differs according to geographical and historical contexts. Likewise, it is not an easy task to distinguish it from communism. For example, communism is used by some to refer to an older and more “radical wing of socialism” (Sekiguchi 2010, 75).

A detailed debate about the exact definition of both terms reaches beyond the scope of this review. It is only essential to understand what post-socialist states represent within the context of this thesis. They are “societies in which state socialism or communism (...) was formerly practised as the governing system of the states in which they are located” (Hamilton 2017). Hence, post-socialist studies, often rooted in anthropology, concentrate on the situation after the fall of the oppressive systems. Some scholars might argue that the term applies only to a few years or months after the fall of the socialist regimes. However, most use it to describe even the current situation. For example, Ringel states that broadly, the term “refers to something that once was

socialist, but is not socialist anymore” (2022, 7). Scholars also concentrate on the economic and political transformation and the impact on “culture, identity, traditions, history, and symbols” (Young and Light 2001).

However, scholars differ in their opinions on how post-socialism influences the states’ current political, economic, and social contexts. Does the experience with post-socialism play a decisive role in the functioning of the states? And in which specific way does it impact them? Those are some of their essential questions. According to most scholars, the divide between the West and the East stemming from the experience of socialism is still apparent today (Demenko and Urbańczyk 2020; Godzisz and Viggiani 2019; Kuhar and Paternotte 2017). However, the researchers emphasise that the impact of socialism varies. Even though the socialist experience works as a homogenising factor due to the similarities of the forms and functions of the past regimes, the economic and political paths of post-socialist states vary significantly (Bunce 1999). The scholars agree that the connecting point is the past ideology directed against capitalism and democracy, connected also to the intense socio-economic transformation. The resemblance of the states’ departures with the old regimes is also striking. However, their paths diverge shortly after.

The scholars had expected the post-socialist states to follow the linear transition from communist dictatorships to “Western” democratisation. That they would return to “Europe”, to “normality”. However, it became apparent soon after that this would not be the case. Not only did the post-socialist states not follow the same path as their Western neighbours, but they also started to differ from each other (Madlovics and Magyar 2020). Therefore, the transformation after 1989 or 1991 became an accelerating point for the diversity of the different states (Stenning and Horschelmann 2008). Hence, Bunce emphasises that state socialism is a strong argument for a powerful past because the socialist system was “consistent, elaborate in structure and invasive” (1999, 3). Despite that, he still concludes by naming variation as the dominant post-socialism pattern. In summary, scholars differ in how great of an impact post-socialism currently has in different states. They warn against the diversity reflected in their regimes,

economies, or levels of democratisation. The same applies to the complex interaction of the socialist experience with the national anti-gender movements. Therefore, scholars highlight that various factors play a role in forming the final positions or opinions of the states.

For example, Kuhar and Paternotte explain that the current differences between the stances of the West and East can be attributed to historical and political contexts. However, at the same time, they claim that those are not the only grounds enabling the growth of the national anti-gender movements, which they understand as a very complex phenomenon, not a simple and homogeneous counter-movement (2017). For them, more contemporary aspects, not only the specific historical path, play a role. Other authors also state that we should not concentrate too much on the lingering past but instead be aware of the influence of the present and the future (Ringel 2022; Stenning and Horschelmann 2008). However, they still consider post-socialism as a relevant factor. For example, Peršak observes that the opposition towards the criminalisation of HS and HC at the EU level is often related precisely to post-socialist systems. According to her, countries with a socialist experience consider such legislation “undemocratic and reminiscent of former regimes” (2022, 19). Hence, she understands the political and historical differences between the West and East not only as minor but as one of the main factors in this debate.

The next part will describe the various reasons that led the post-socialist states towards refusing stances on the criminalisation of both “general” and “LGBTQI+” HS and HC. However, it needs to be restated that the literature concerned with post-socialism and its impact on HS and HC legislation or the LGBTQI+ minority is scarce. Most scholars agree that the opposition of post-socialist states stems from the refusal of “yet another” censorship. Therefore, according to Demenko and Urbańczyk, the advocates of the criminalisation of HS and HC should better understand the different cultures and experiences of states and consider what is socially acceptable in their societies (2020). Next, we might also look at the recommendations of post-socialist EU MS related to freedom of expression made under the UN tool Universal Periodic

Review (UPR). However, as implied earlier, the experience of post-socialist states differs. For example, Estonia has given out the second-highest number of recommendations connected to freedom of expression out of all the EU MS, namely 52. The third place belonged to Czechia, with 47 recommendations. Next, Lithuania gave out 24 and Slovakia 22. But, the other post-socialist EU MS, such as Bulgaria, Croatia, Hungary, Slovenia, Latvia, and Poland, have not reached such high numbers (Universal Periodic Review 2021). Hence, the UPR shows that the situation within the post-socialist states differs and is not easily generalizable.

However, the fear of censorship and totalitarianism is not the only legacy socialist regimes have left behind. They have also influenced how the post-socialist states understand the role of family or religion. Their citizens experienced the family as the only stable and reliable anchor during many challenges connected to socialism, e.g. the rapid economic transformation after the fall of the Berlin Wall (Graff and Korolczuk 2022). Hence, they are more sensitive towards the pro-family propaganda of the anti-gender movement, which emphasises family values or traditions and positions the LGBTQI+ community as their main enemy. For example, in Poland, “gender ideology” is understood as a “foreign-imposed threat to traditional family and national identity” (Sosa 2021, 7).

Next, socialist regimes have for decades suppressed the role of religion. Therefore, some post-socialist states, such as Poland or Hungary, have clung to it even more when they finally could. Subsequently, they created a more conservative and rigid society through “re-evangelisation”, suppressing the rights of the LGBTQI+ community (Ramet 2014, 5; Rogers 2005). Such a move was in line with the need of society to cling to the stable and “normal” role of the traditional family model in the turbulent times of reforms (Godzisz and Mole 2023). However, such a claim is not accurate for all post-socialist states. We need to take into consideration also other factors present in these states, like the non-homogeneous role of the Church in constructing national identity or constituting a moral authority (Ayoub 2014). Therefore, religion does not play an equal role in all post-socialist countries.

Another reason for the negative stance of the post-socialist societies towards HS and HC legislation is the “novelty” of the LGBTQI+ community in their states. They had less time to “get used to” LGBTQI+ persons because they were prosecuted and heavily stigmatised under the socialist regimes. Often, the government falsely used the connection to the LGBTQI+ community to punish people suspected of anti-state activities (Schindler 2013). Though interestingly, some contemporary literature interprets Marxism as a tool against the oppression of the LGBTQI+ community. It states that capitalism intentionally divides the working class by discriminating against LGBTQI+ people for the sake of their exploitation and the securitisation of the ruling elites’ advantage (Wolf 2009). Next, Norocel and Paternotte view the nostalgia for “traditional values” in post-socialist states as a prevailing impact of the West and East split. They describe that the cultural line running between these two “blocks” “can be described as a fight between traditional and European values” (2023). They also point to the unequal integration of Eastern European states into the EU. Such a situation creates a ground for growing resentment towards the union. However, like others, they refer to the phenomenon’s complexity, claiming that the existing concepts and theories are limited to their local specificities.

Lastly, the critical view towards the literature on non-Western LGBTQI+ minorities needs to be mentioned. Neufeld and Wiedlack warn against the framework regularly applied to Eastern European countries. According to them, it focuses too much on “ideal” Western-imposed milestones. Therefore, the still progressive yet different steps taken by “Eastern” LGBTQI+ communities are neglected by many authors (2020). For example, they do not realise the risks of the so-often praised visibility caused by the Pride marches. However, such a tool does not need to be applicable everywhere equally. Also, Pitoňák points to the need to refrain from using Western or universalist approaches when dealing with various regions. Namely, we cannot expect the same progress or similarity in the different European states (in Blidon and Brunn 2022). In summary, scholars agree that the experience of socialism plays a role in the current debate on the protection of the LGBTQI+ community. But they give a different weight to such a factor and point to the presence of other variables. They are also united on the

view that post-socialist states differ from each other despite their shared history. Therefore, they explain that post-socialism can manifest itself differently in the arguments against anti-LGBTQI+ HS and HC legislation or the anti-gender movement, reflecting the various national contexts.

To conclude, it is necessary to emphasise that the experience with socialism is specific to every post-socialist state. The historical, cultural, economic, and other factors make them a unique context. According to historical institutionalism theories, the socialist system is one of the strongest arguments for the powers of the past. However, due to the states' differences, it works as a “homogenising and diversifying” factor (Bunce 2013). The conformity of the former ideology and policy is unifying enough to allow us to make connections and comparisons between the various states known as post-socialist (Stenning and Hörschelmann 2008). Still, scholars continue to understand the differences by studying how states have dealt with the transition after the fall of the Soviet Union. But most scholars focus only on transforming political-economic settings in the individual post-socialist states. Also, democratisation studies concentrate mainly on the regime and institutional change, the interests of the elite or the West-inspired economic and political policies (Madlovics and Magyar 2020).

However, a detailed analysis of the changes in the everyday lives of the citizens is missing (True 2003). Some articles examine the impact of socialism on gender and feminism but do not dive into the LGBTQI+ topics (Havelková 2020). If the authors describe the themes of sexual orientation or gender identities, they delve into very detailed country-specific study cases. When scholars mention the opposition towards HS and HC criminalisation in post-socialist states, they only include it as a part of a more general work on HS and HC. Subsequently, specific literature dealing with the stances of post-socialist MS towards the criminalisation of HS and HC at the EU level, and hence, the EU-wide criminalisation of LGBTQI+ HS and HC, is missing. Therefore, this thesis offers a chance to gain insight into this complex situation.

The first section of this literature review captured the general debate on the HS and HC legislation, explained how disputed its different forms are, and introduced its

opposition connected to fears of the infringement of freedom of speech. The second part underlined the alarming lack of national and international protection of the LGBTQI+ community and its increasing discrimination. The introduction of the debate at the EU level revealed a gap in the literature focusing on the criminalisation of HS and HC in the EU. Still, it helped to understand the situation of the LGBTQI+ minority within the union. Lastly, it offered a chance to understand the anti-gender movement. Even though scholars do not pay much attention to it, they agree that post-socialism interconnects with this phenomenon. There is a lack of literature on how post-socialism manifests itself in the movement and the anti-LGBTQI+ HS and HC debate. However, more detailed knowledge of the impact of post-socialism on the criminalisation of HS and HC could help define better strategies for promoting such steps at the EU level. The current research gap reflects the complexity and uniqueness of the issue. For example, Ringel warns that we might never be able to respond to the question of what influence the socialist past has on the present and future “one and for all” (2022, 2). However, he concludes that the concept alone enables us to pose them despite these difficulties. Therefore, this topic calls for a more detailed examination. The thesis aims to understand better the relationship between the post-socialist states and their stances toward anti-LGBTQI+ HS and HC legislation at the national and EU levels.

Chapter II. Research Background

The next part will introduce the necessary background that will enable a better understanding of the subsequent research. It will summarise the legislation regulating HS and HC in international law. The following pages will also explain the EU HS and HC legal framework. Subsequently, they will shed light on the current protection against HS and HC enshrined in the Framework Decision 2008. Furthermore, the following section will introduce the EU's LGBTQI+ Equality Strategy 2020-2025 and the related Commission's Initiative. The latest developments and reactions to the suggestion to criminalise HS and HC at the EU level will also be covered. The chapter will also describe the data related to discrimination against LGBTQI+ minorities in the different MS. Moreover, it will explain the issue of underreporting. Lastly, it will include an overview of national criminal laws of the EU MS related to HS and HC. In summary, the above-listed topics help to grasp the justification of not only the necessity to research the issue at hand but also the chosen methodology.

2.1 The Criminalisation of Hate Speech and Hate Crime in International Law

When the first news about the shooting at the queer bar Tepláreň in October of 2022 in the Slovak capital Bratislava broke out, human rights advocates were shocked. Up until then, no one believed that such an atrocious crime aimed against the members of the LGBTQI+ community could happen in Central Europe. Suddenly, not only queer people but also their friends, families, and colleagues felt threatened. The murder of the two innocent young gay men made them realise that when no one was looking, hate was spreading behind their backs. Besides other factors, its growth was enabled by the spreading of the transnational network, mainly residing online. The increased sharing of hate messages or hateful acts is inherently connected to the phenomenon of globalisation. The growing “international economic, legal, political, and cultural connectedness” fuelled by transnational mobility, technological advancements or the fall of communication barriers is inherently linked to the proliferation of crime

(Schweppe and Walters 2016, 1). Even though the phenomenon carries with it also the bright side, namely the growing cooperation between global human rights movements and alliances, this progress also helps to fuel the opposition or, in other words, the counter-movement. Despite such struggles, the past decades brought important internationalisation of HS and HC legislation, a description of which will follow. However, it needs to be mentioned that this legal area remains very poorly researched.

As already mentioned in the literature review, there is no clear definition of HS or HC. The same issue applies in the sphere of international law. The notion of both bias-motivated crimes remains to differ across various jurisdictions. Therefore, the subsequent uneasy comparison of data gathered across different geographical areas complicates the creation of international policies. For example, Germany understands HC differently from many other states. Such exclusiveness stems from its experiences with the Nazi regime. The national authorities put more emphasis on politically motivated offences constituting a threat to human rights and the constitutionality of the Grundgesetz (German constitution) (Schweppe 2021). Next, debates about other aspects, such as intent or context, divide the international institutions trying to penalise HS and HC. To give an example, the ECtHR disagreed with Danish courts (*Jersild v Denmark 1994*) that intended to condemn a journalist using racist speech in a documentary movie in order to expose the prevalence of racism. However, the Court highlighted that the lack of intent must be considered because the journalist meant no harm. However, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) lacks this presence of intent requirement. Next, the United Nations High Commissioner for Human Rights (UNHCHR) stated that incitement is also not clearly defined in international law related to HS and HC (Mendel 2010). This discrepancy between different documents can subsequently lead to issues of protecting freedom of expression. When international actors try to form a common definition of HS and HC, some states might feel like their free speech is being limited or threatened.

Therefore, the introduction and comparison of the main instruments codifying the penalisation of HS and HC need to follow. The first international treaty that dealt

directly with the issues of HS was the before-mentioned ICERD. Its Art. 4 prohibits racist ideas, acts, groups, and their financing (Alkiviadou 2018). However, it emphasises that the principles of UDHR, equality before the law and the freedom of expression, must remain respected. Concurrently, it can be argued that the first document to tackle HS is the Convention on the Prevention and Punishment of the Crime of Genocide (CoG). As soon as in the 1950s, the treaty banned direct and public incitement to the commitment to the crime of genocide. Therefore, HS was seen as an element that could fuel the escalation leading to genocide (Brayson and Pejchal in Schweppe and Walters 2016). However, this instrument applies to only a very narrowly defined type of HS. Nevertheless, the UN considers the topic of genocide as a relevant aspect of HS to this day. In 2004, on the 10th anniversary of the Rwanda genocide, the Secretary-General created an Action Plan to Prevent Genocide. Subsequently, it appointed the first Special Advisor on the Prevention of Genocide (United Nations 2023). The Rome Statute of the International Criminal Court adopted in 1998 also holds “criminally responsible and liable for punishment” anyone who “directly and publicly incites others to commit genocide” (Art. 25).

However, most international instruments do not include the definition of HS and HC. For example, in the Art. 20(2), the ICCPR prohibits “any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence” (Alkiviadou 2018, 221). Such an enumeration is the closest any UN document has gotten to a proper definition of HS and HC. The international organisation is not currently conducting any efforts to change that situation. However, the UN still recognises the magnitude of the issues caused by HS. Therefore, its representatives clearly stated that HS undermines core principles of the UN Charter, such as respect for human dignity, equality, and peace. Next, Secretary-General António Guterres launched the Strategy and Plan of Action on HS in 2019. The organisation also included HS under the Sustainable Development Goals (SDGs). Namely, SDG 4 and SDG 16, focusing on inclusive and quality education and promoting peaceful and inclusive societies, respectively (United Nations 2023). The organisation also organises further initiatives, e.g. the International Day for Countering HS.

On the contrary, the OSCE describes HC quite concretely, namely as “criminal acts committed with a biased motive” and continues stating that “hate crime is not one particular offence, it could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence” (OSCE 2023). Next, ODIHR also has its definition of HC in which it states that the bias-motivated crime must constitute a criminal offence, and the victim must have been targeted on the grounds of ethnicity, race, religion, or other status (Funnell and Garland in Schweppe and Walters 2016). Next, a relevant role in defining HS and HC also belongs to the ECtHR. An example is the case *Nachova and Others v. Bulgaria* regarding the killing of two Bulgarian nationals of Roma origin by the local police. The Court ruled that “it is essential that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert (...) condemnation of racism and ethnic hatred” (Alkiviadou 2018, 223). The decision was later reaffirmed in the *Šečić v. Croatia* or the *Identoba and Others v. Georgia* cases. The judges of the ECtHR also broadened the scope of HS penalisation through decisions in *Gündüz v. Turkey* or *Vejdeld v. Sweden*.

The last instrument worth mentioning is the Additional Protocol to the Cybercrime Convention created under the Council of Europe, which criminalises racist and xenophobic acts. The protocol entered into force in the year 2006. It states that such offences must be made public for the victims to be able to call for protection (Alkiviadou 2018). Such a condition is an example of a certain threshold that needs to be reached for the crime to be punished under the various international instruments. However, these “levels” vary. E.g. the limits of Article 20(2) of the ICCPR are higher than those of Article 4 of the ICERD. Namely, the Article requires the presence of an advocacy of hatred. Meanwhile, Article 4 settles with disseminating racist ideas (Alkiviadou 2018). The following pages compare the before-mentioned international documents and the EU legal protection framework.

The different “levels” of protection can also be described through three generations of HS legislation. The first one started with prohibiting any speech inciting war, genocide, or crimes against humanity, as mentioned in the CoG. The next

generation included further grounds, which resulted in the discussion regarding the protection of free speech. Lastly, the third generation of HS focuses on the impact of stereotypes, which can, under certain circumstances, escalate towards discrimination (Brayson and Pejchal in Schweppe and Walters 2016). The second generation leads us to the discussion surrounding Article 20(2) of the ICCPR and Article 19 of the same instrument. The latter guarantees freedom of expression, while the former imposes obligations to restrict the freedom of speech. However, even though seemingly in contrast, they were put next to each other on purpose.

Moreover, the Human Rights Committee monitoring and supervising the implementation of the document stated in the past that Article 20(2) is in line with the one preceding it (Mendel 2010). But to conclude the debate about the various thresholds established by the international instruments, it needs to be mentioned that, in general, the wording of the documents is relatively abstract. On one side, this blurry definition points to the related abstractness of terms such as justice, peace, or hate connected to this issue (Mendel 2010). Next, through such a broad definition, the stakeholders also consider the indirect impacts of hate on the victims. On the other hand, this uncertainty also complicates the implementation of the so-proudly formed Articles. Lastly, it must be mentioned that the HS and HC legislation can be connected to the principle of non-discrimination. Such a protection is enshrined in the before-mentioned treaties, e.g. ECHR, UDHR, ICCPR, ICESCR, or CEDAW. However, none of them explicitly mention HS or HC.

2.2 Hate Speech and Hate Crime in the EU

This section will closely focus on HS and HC in the EU. However, it will not mention the related Articles of the Charter or the Treaties described in the literature review. Before moving to the list of different types of EU legislation, a crucial point must be mentioned. Namely, the theoretical and academic divisiveness surrounding the exact definition of HS and HC. Such differentiation is reflected in the various jurisdictions of the EU MS. Their laws often differ in scope, severity, the list of prohibited grounds, and the conditions for fulfilling the crime or their execution. E.g. Belgian law requires the

offender to demonstrate hatred, malice, or hostility towards the victim to be convicted. However, in some of the other MS, it is “enough” to punish the offender if there is only a causal link between her actions and the victim’s characteristics. Similarly, Belgium has quite a broad “umbrella” of factors included under its legislation, naming also political conviction, wealth, or health. On the other hand, for example, Austria has more narrow boundaries regarding the protected grounds of race, religion, and ethnicity (Garland and Chakraborti 2012). Therefore, an analogous lack of unification to the one described in the previous part of this chapter can be seen also in the efforts of the EU’s institutions to tackle HS and HC.

The main instrument of the EU regarding the HS and HC is the Council Framework Decision 2008/913/JHA (Framework Decision 2008) on combating certain forms and expressions of racism and xenophobia. However, before moving to a detailed description of this crucial document, other steps in HS and HC will be mentioned. However, many of them do not directly include HS or HC. For example, the EU adopted different directives or other documents based on equality. The Directive 2000/78/EC, also known as the Framework Directive, sets up a basis for equal treatment in employment, occupation, vocational guidance, or training. Namely, it prohibits discrimination on the protected grounds of disability, age, religion, belief, and sexual orientation. Next, Directive 2000/43/EC, or the so-called Race Directive, implements the principle of equal treatment between persons irrespective of their racial or ethnic origin. Thirdly, Directive 2004/113/EC establishes equal treatment between men and women in their rights to access and supply goods and services. Subsequently, the EU approved the Manual for gender mainstreaming, employment, social inclusion, and social protection policies in 2009 (Kalenikova and Pálmadóttir 2018).

A further document related to hatred is Directive 2010/13/EU. The EP and the Council later amended the secondary law by Directive 2018/1808 regarding Audiovisual Media Services. The document obliges EU MS to ensure that the mentioned media do not contain any form of incitement to hatred or violence based on any of the grounds referred to in Article 21 of the Charter (Peršak 2022). An important

step was Directive 2012/29/EU, often called the Victims' Rights Directive, which explicitly mentioned HC for the first time. The text emphasised the importance of individual assessment of victims' needs. However, its implementation has been problematic due to low allocated budgets and policymakers' worries about possible clashes with current justice systems (Schweppe and Walters 2016). The following year, the Council published conclusions on combating HC in the EU, and in 2014, FRA was established (Perry 2016).

Among more recent progress falls, for example, the EU Code of Conduct on countering illegal HS online, published in 2016 and agreed with major technological companies such as Facebook, YouTube, Twitter, and Microsoft (Alkiviadou 2018). The High-Level Group on combating HS and HC was founded in the same year. It aims to facilitate discussions among experts, exchange and disseminate good practices or include the perspectives of various IGOs and CSOs. The four main focus areas of the group are data collection, training, capacity building for national law enforcement, HC victims support, and efforts to counter HS online (European Commission 2023a). As mentioned, most of these relate more specifically to equality or non-discrimination rather than HS and HC. However, as shown above, more progress has been made.

2.2.1 Understanding the Framework Decision 2008

The Framework Decision 2008 is the sole source of harmonisation of criminal offences and sanctions related to HS and HC at the EU level. However, as in the previous cases, it also does not define HS or HC, mainly due to the mentioned differences in all MS jurisdictions. Besides HS and HC, the Decision also comments on other forms of racism or xenophobia, e.g. the trivialisation of genocide, crimes against humanity, or war crimes. However, the first part of Article 1 is the most relevant for this thesis. It states that “publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent, or national or ethnic origin” should be punishable by the MS.

Moreover, the MS “may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive, or insulting.” However, such instructions are unclear, considering that each state can interpret differently what might be understood as “threatening, abusive, or insulting”. Next, Article 2 establishes that MS should make the aiding or abetting of the mentioned conducts punishable as well. The type and scope of punishments are left up to the states. However, according to Article 2, the penalties must be “effective, proportionate, and dissuasive”. Another specification defines that the conduct referred to in Article 1 is punishable by a criminal punishment of a maximum of at least between 1 and 3 years of imprisonment. If there are any other offences with racist or xenophobic motivation but are not defined under Article 1 or 2, the intent behind them should be considered as an aggravating circumstance or else be taken into consideration during the issuing of the judgment (Council Framework Decision 2008/913/JHA 2008).

These are the most important “rules” established by the Decision. In 2018, the Guidance Note on the Practical Application of Council Framework Decision 2008 was published. Such a step reflects the problematic implementation of the EU instrument, which will be addressed later. The guide clarifies that the Decision “does not provide for full harmonisation of criminal laws” but instead offers the “minimum approximation necessary to ensure that the national legislation is sufficiently comprehensive” (EU High-Level Group on Combating Racism and Xenophobia 2018, 3). Furthermore, the document repeats that it provides conditions for two main types of offences, namely public incitement to violence and any other similar offence which should constitute aggravating circumstances. It continues with listing advice to the police or investigating officers, coordinators, prosecutors, and judges. For example, the document highlights that the identification of the bias or hate motive cannot stem only from an “actual membership” of a victim to a group because they can often be attacked also on the grounds of their sole association or connection with the given group (EU High-Level Group on Combating Racism and Xenophobia 2018, 5).

Next, the guide emphasises the need to choose a victim-oriented approach. Therefore, the victim should be offered psychological assistance if needed and not be further traumatised by enforcement officials lacking the skills necessary for similar situations. Lastly, when assessing the bias motives, officers should look to a broader set of manifestations such as words, actions, or other circumstances like statements preceding or directly following the offence (EU High-Level Group on Combating Racism and Xenophobia 2018, 13). Similar guidance is needed due to the lack of implementation of the Decision's rules. Such a state of the MS jurisdictions was proven, for example, by the report of FRA conducted in 2012. The document stated that despite the past commitments of the MS, the results of countering discrimination, intolerance, and HC were not any more promising. A review of the national legislation of the MS with similar results was conducted by the same agency a year later (Hall et al. 2014). Hence, it slowly became clear that the publication of the Framework Decision 2008 was not enough to counter the HS and HC continuing to spread across the continent.

The lack of promising results stems from the missing correct implementation of the Framework Decision 2008 and its content. Besides the already mentioned "abstractness" of the wording, other issues arise from this document. Namely, the instrument considers that only racist and xenophobic motivation can constitute an aggravating circumstance. The lack of protected grounds, such as age, disability, sexual orientation, or gender identity, is also striking. Of course, the MS have the option to include other characteristics in their legislation as well. According to Peršak, in 2022, 21 MS explicitly included sexual orientation in their HS and HC legislation, and 12 among them added gender identity. Two decided to cover the ground of sexual characteristics (2022, 5). Moreover, some MS should be currently working on adding misogynous HS and HC into their criminal codes. Still, the lack of categories of people who must face hatred daily shows that the document is outdated and weak in the face of many current challenges.

These factors lead us back to the discussion about different "thresholds" mentioned in the previous section of this chapter. Compared to the ones enshrined in

ICCPR and ICERD, the “level” established in the Framework Decision 2008 is the highest and the most “strict” one. Such an outcome is achieved mainly by the document's wording emphasising the “condition” of the disturbance of public order (Alkiviadou 2018). The historical context of creating instruments such as ICCPR or ICESCR offers at least a partial explanation of why certain aspects of hate or targeted groups were not considered when the documents were first created. However, such an argument is not as easily used in the case of the more modern and relatively recent Framework Decision 2008. Besides other reasons, this is also why the EP recommended that the Commission proposes a “recast” of the Decision and include the grounds of sexual orientation and gender identity in 2018 (Alkiviadou 2018). In addition, there are more recent steps aiming towards the extension of the protection against HS and HC, which will be described in the subsequent parts of this chapter. To conclude, the Framework Decision 2008 is one of the most crucial instruments of the EU in terms of legislation against HS and HC. However, a more up-to-date approach reflecting the decisions of many of the MS needs to be accepted for the institutions of the EU not to appear lost in the face of the ever-increasing spreading of hate.

2.3 The European Union's LGBTQI+ Equality Strategy 2020-2025

Before explaining in detail the Commission's suggestion to add HS and HC to the list of EU crimes (which is crucial to this thesis) it is first essential to understand how the EU institutions came to such a conclusion. Therefore, the following part of this chapter will describe several crucial steps that led to the creation of the related LGBTQI+ Equality Strategy 2020-2025 and explain some of the most relevant priorities outlined in the document. This way, the previous debate on HS and HC legislation within the EU and the topic of protecting the LGBTQI+ community will finally interconnect. Moreover, it will be possible to move on to the Communication of the Commission to the Council, the related reactions of various actors, and the latest developments.

In December 2015, the Commission published its first-ever policy framework dedicated to combating discrimination against LGBTIQ+ people called the List of Actions to Advance LGBTI Equality 2015-2019 (List of Actions). The following summer, the Council adopted the first-ever conclusion on LGBTIQ+ equality, requiring the Commission to report the implementation of the List of Actions. These steps reacted to the before-mentioned EP resolution, which required the Commission to “step up efforts to combat discrimination based on sexual orientation and gender identity” (European Commission 2020b, 4). The document’s aim was mainly to raise awareness about the discrimination that LGBTIQ+ people were facing, to facilitate high-level discussions on the topic, to increase social acceptance of the community, or to improve the existing non-discrimination protection. In January 2020, at the end of the period devoted to the List of Actions, the Commission Work Programme decided that a dedicated strategy to fight discrimination against the LGBTIQ+ community would be created. Therefore, near the end of the same year, on the 12th of November 2020, the LGBTIQ+ Equality Strategy 2020-2025 (Strategy) was published (European Commission 2022).

President von der Leyen first announced the creation of the Strategy in her 2020 State of the Union Address. At the same time, the Commission also promised to offer more funding opportunities for initiatives aiming to combat HS and HC against LGBTIQ+ people. The document's importance was underlined, for example, by the Czech European Commissioner for Values and Transparency Věra Jourová, who proclaimed that the Strategy “will reinforce our joint efforts to ensure that everyone is treated equally” (European Commission 2020c). The instrument has several parts, focused on tackling discrimination, ensuring LGBTIQ+ people’s safety, building LGBTIQ+ inclusive societies, leading the call for their equality around the world, and making full use of EU initiatives. The second part of the Strategy describes how disproportionately LGBTIQ+ people suffer from HS and HC, e.g. because sexual orientation is the most commonly reported reason for HS (European Commission 2020a, 13). The section also mentioned issues such as the under-reporting of HC or the

attacks against the LGBTQI+ community increasingly present in political discourse or election campaigns.

One of the results of this review was the decision that the Commission must present an initiative to extend the list of EU crimes under Article 83 of the TFEU to cover HS and HC, including the cases in which LGBTQI+ people became the target, no later than in 2021. Many other relevant goals are established in the Strategy, but their listing reaches beyond the scope of this thesis. However, another highly essential target is the decision that the Commission should push for mutual recognition of family relations in the EU, including the cases of same-gender spouses' and registered partners' legal statuses in cross-border situations (European Commission 2020a, 17). As part of the Strategy, the LGBTQI+ Equality subgroup was created to increase the quality of the implementation of the document. The subgroup brings together governmental experts and functions under the before-mentioned High-Level Group. Its work resulted in the publication of the Guidelines for Strategies and Action Plans to Enhance LGBTQI+ Equality.

Lastly, it must be mentioned that the Strategy links to other frameworks like the EU Action Plan against Racism 2020-2025, the Victims' Rights Strategy, the Gender Equality Strategy, or the European Pillar of Social Rights Action Plan (European Commission 2020c). Even though the time framework of the Strategy is not yet finished, some well-established NGOs already published their evaluation of the progress made so far. Among them is ILGA, one of the leading initiatives focused on LGBTQI+ rights. Overall, its evaluation was positive, highlighting the increased mainstreaming of LGBTQI+ rights. On the other hand, one of the recommendations suggested more frequent involvement of other DGs of the Commission besides the one focusing on justice (ILGA 2021a). Regarding HS and HC legislation, only the following years will show whether the Strategy has done enough to establish some progress. However, including the priority related to expanding the list of EU crimes by HS and HC can already be considered a big step forward.

2.3.1 The 2021 Commission's Initiative based on TFEU 83(1)

For the Commission to fulfil the target established by the Strategy, a few steps must be taken. They all stem from Article 83(1) of the TFEU, which provides for the so-called list of EU crimes (also known as Eurocrimes). More specifically, it establishes “minimum rules concerning the definition of criminal offences and sanctions in the areas of grave crime with a cross-border dimension resulting from the nature or impact of such offences or a special need to combat them on a common basis” (Consolidated Version of the Treaty on the Functioning of the European Union 2007). Therefore, for a new crime to be considered worthy of being included under the mentioned list, it must fulfil several conditions, which will be discussed later in greater detail. Next, part two of Article 83 introduced the requirements for the list extension process. Namely, it authorises the EP and the Council to establish “minimum rules with regard to the definition of criminal offences and sanctions’ if the approximation (...) is essential to ensure the effective implementation (...) in an area that has been subjected to harmonisation measures” (Consolidated Version of the Treaty on the Functioning of the European Union 2007). Hence, the Article allows any area harmonised within the EU to be subject to minimum criminal law rules.

The entry into force of the Treaty of Lisbon enabled these rules. The document granted the EU the competence to “approximate national legislation with the supranational framework of Judicial Cooperation in Criminal Matters” regulated within Articles 82 to 86 (European Commission 2021c, 28). Therefore, to start the whole process, the Commission published its Initiative to trigger a Council’s decision. The unanimous adoption of such a decision would also require the consent of the EP. Only then could the Commission start the ordinary legislative procedure and initiate legislation, concretely a directive, which would set minimal rules for the prosecution of HS and HC and the recognition of the protected characteristics (ILGA 2021b).

Besides introducing the motion and justifying the step by explaining the fulfilment of the necessary conditions, the Commission’s Initiative (also Communication to the EP and the Council) included a draft proposal for the Council decision in its

Annex. Moreover, it specified that before suggesting the directive, the Commission would undergo an impact assessment to prepare the options for the possible minimal rules and their impact on fundamental rights, namely freedom of expression and press or media freedom (European Commission 2021a). While doing this, the Commission would also consult the other two institutions. More will be said about the reactions to the Initiative and current developments later. Firstly, it is crucial to explain in detail what the Commission suggests and how it deals with the justification of the conditions required to extend the list of Eurocrimes.

The Initiative of the Commission states that HS and HC should be added to the list of EU crimes and supposes that if that happens, a broader definition of both will be adopted. Specifically, the Communication suggested that grounds such as sexual orientation, gender identity, age, and disability would be covered by the new legislation. Hence, people targeted because they belong to or are connected with these categories would gain equal protection in front of the law. Such a proposal also explains why the Initiative might be a thorn in the heel of some of the MS. Accepting it would not mean only that HS and HC will be acknowledged across the EU as serious crimes with cross-border characteristics. The decision would also entail a sort of confirmation of the fact that the LGBTQI+ community deserves equal protection.

But to achieve such a state, certain conditions laid down by Article 83(1) TFEU must be fulfilled. The first one establishes that the new crime needs to fall under an “area of crime”. Such a requirement can lead to rather abstract discussions already introduced in the literature review. Therefore, the Commission clarified that it considers HS and HC not a single offence nor two separate areas of crime but one single area of crime (Peršak 2022). Next, as was already shown, such an opinion is shared also at the international level. The further condition is a bit more complex since it demands the given crime to be seriously harmful to others. The impact that HS and HC cause has already been covered by many academics or other stakeholders, and hence, the Commission decided to follow their conclusions. While doing so, it points, for example, to the exceptional and beyond-the-individual reaching harm of HS and HC offences and

the societal change or the disruption of the society connected to the increased presence of such crimes. Besides that, both HS and HC can cause “mental and physical trauma, depression, suspicion, self-blame, isolation, political and social exclusion, or risk of secondary victimisation” (European Commission 2021a, 9).

More reasons supporting the claim that HS and HC pose serious harm are further named in the Initiative. According to the Commission, such a risk is also heightened by the increased migration flows, economic and social crisis, improved access to online information allowing for the faster spread of conspiracy theories, or the COVID-19 pandemic. The following condition requires that there is a cross-border element to the crime. The Commission explains such an aspect by pointing not only to the online form of HS but also to the spillover effect that hate-motivated crimes usually have. Its representatives cited around 93 consulted stakeholders that believe online HS can transfer to another MS, both online and offline (European Commission 2021, 43). Another relevant condition demands that the “new” crime represents a development. However, this requirement does not constitute an obstacle since it is believed that the increase of HS and HC evident from the data collected in the past years reflects societal changes (Peršak 2022, 32). Lastly, the Commission and Council must consider whether there is an alternative way of dealing with the issues at hand. Due to the conclusions and facts above, the Commission announced that it does not see any other option that would lead to the same results as expanding the list of Eurocrimes.

Therefore, it remains up to the Council to decide whether it will approve this Initiative. If yes, it will open the process of the inclusion of HS and HC among the other crimes on the “EU list”, such as terrorism, trafficking in human beings, sexual exploitation of women and children, illicit drug and arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crimes, and organised crime (Council of the EU 2022a). Of course, the final judgment of the Council will reflect the positions of the individual MS. However, on the 4th of March 2022, the Council examined the proposal, and a broad majority favoured the Initiative. Regarding the EP, its position seems to be inclining towards the approval of the Commission’s suggestion.

The proposal has been assigned to the Committee on Civil Liberties, Justice, and Home Affairs (LIBE). The rapporteur is Maite Pagazaurtundúa (Renew) from Spain (European Parliament 2023a). The EP's position is also evident from some of the resolutions the institution published in recent years. For example, in March 2021, the resolution condemning the creation of LGBTQI+-free zones came out (2021/2557(RSP)). In September of the same year, the EP also approved a resolution (2021/2035(INL)) calling on the Commission to propose gender-based violence and the grounds of sexual orientation, gender identity, and sexual characteristics as a new area of crime under the Eurocrimes by which it indirectly agreed with the Initiative (Bąkowski 2022).

Moreover, on the 18th of May 2022, the European Economic and Social Committee (EESC) adopted an Opinion on the subject. The document stated that “the EESC supports the initiative of the Commission and encourages the Council and the Parliament to fully cooperate in defending the core values of the EU” (EESC 2022/00299). Therefore, it agreed that the Commission’s Initiative meets the requirements set forward by Article 83(1) of the TFEU. Besides that, it suggested that ideological and political reasons or other conscience-related beliefs and values should be added under the definition as one of the protected characteristics. Among other comments, it also highlighted “that there is a significant and worrying development of hate-based crimes, (...) a clear cross-border dimension (...) and that these types of crimes cannot be efficiently prevented and combated in the absence of EU-level legislative and institutional action” (EESC 2022/00299). A few months later, the EESC published another related Opinion in which it considered that violence against women should also be included in the list of EU crimes (European Parliament 2023b).

Lastly, at the end of November 2022, the European Committee of the Regions published its opinion on the topic. It concluded that the only response to HS and HC is “to create a comprehensive legal strategy for countering, reporting, and consistent prosecution” (European Committee of the Regions 2022). However, it also highlighted that there is a fine line between combating HS and censorship and called for the guarantee of freedom of expression. Therefore, the description of the Commission’s

Initiative and the explanation of the recent reactions showed that most European institutions are inclined towards accepting the decision. Although, the further steps will depend primarily on the Council in which some MS could decide to block such a step, among them some of the former socialist countries.

2.4 Protection of LGBTQI+ Minority in the EU Member States

Before moving on, it is crucial to underpin the claims of the EU institutions with the latest available data on the discrimination of the LGBTQI+ community. One of the most relevant arguments for the inclusion of HS and HC under the list of EU crimes is the fact that the incitement of hatred or violence against the minority is increasing. Therefore, several surveys on this topic will be introduced in the following part of the chapter. They will help to explain not only the level of reported hatred directed against the LGBTQI+ minority but also reveal several challenges connected to the data collection of HS and HC. Among them is mostly underreporting, weak statistical measurement, or incorrect recognition of HS and HC cases. These are also among the topics that the Commission aims to address in its current efforts to combat HS and HC in the EU.

The most important outcome of the latest surveys is clear - the discrimination and hatred directed against the LGBTQI+ minority is on the rise. Such a worsening of the situation stems from several factors from which only some of them are known. For example, the COVID-19 crisis has been named by several stakeholders as a negative factor because it forced many members of the LGBTQI+ community to remain within a hostile environment. Subsequently, such conditions worsened their previously already unsafe situations. Moreover, multiple fake news stories appeared online, blaming the pandemic on the community (European Commission 2020a). But even before the virus, the situation has not been very bright. In a 2019 survey, FRA found that discrimination on the grounds of SOGISC was increasing in the EU. Around 43 % of LGBTQI+ people proclaimed that they felt discriminated against, while in 2012, the number reached only

37 % (European Commission 2020a, 4). Next, the Hate Crime Report published by ODIHR in 2019 showed that victims of hatred based on their sexual orientation or gender identity constituted the third largest group in the dataset. More discriminated against were only the victims of racism and xenophobia (Peršak 2022, 9). Similarly, according to multiple studies in selected EU countries, sexual minorities, along with migrants, are among the groups hit hardest by discriminatory political rhetoric (European Commission 2021c).

A high level of hatred was, for example, also described by the EU LGBTI Survey II carried out by FRA in 2019. Its result stated that one in ten LGBTQI+ respondents in the EU, or 11 %, were physically or sexually attacked in the five years before the survey took place (FRA 2020). The summary of the same research published by IGLYO and ILGA Europe showed that young people aged between 15 and 24 experience some of the highest levels of discrimination across all the age groups included in the data set. These people were more than ten times more likely to be exposed to an attack in the last year than all LGBTQI+ respondents. Among the offenders were often their classmates, other teenagers, family members, or someone from school or university (Rodríguez and Russell 2022). Next, research shows that the growing number of HS cases increases the amount of HC. The hateful comments function as a legitimisation of public hostility. Hence, when the media allow the spread of HS, it will also reflect in the “physical world”. Such a phenomenon was proved by the study published by the Cardiff University HateLab project. Its outcomes revealed that when the number of “hate tweets” increased, so did the number of racial and religious crimes (Cardiff University 2019).

The list of recent studies pointing to the same trend could follow, but such an enumeration goes beyond this thesis. However, a positive development is also being reported in the before-mentioned surveys. For example, the Eurobarometer study from 2019 revealed that three-quarters of EU citizens consider that LGBTQI+ people should have equal rights with heterosexuals (European Commission 2022, 7). Namely, 76 % of EU citizens think that, compared to 71 % in 2015. But, the figure went down in nine

countries at the same time. Such numbers show that the general public supports the protection of the LGBTQI+ community. Still, despite the numbers presented above or the mentioned interest of the society, the opposition to the enlargement of the HS and HC legislation often proclaims that they do not find the statistics alarming. They emphasise that the increase in the number of crimes in recent years stems from the improvement in the recording of the crimes or the strengthening of the commitment of various MS to combat HC. According to them, the number of HS and HC recorded by the authorities does not need to indicate the growth of hatred. However, FRA surveys reveal that even states with a relatively high number of police-reported HC have significant issues with underreporting (FRA 2021).

Hence, although the improvement in statistical measurement might “artificially” increase the numbers slightly, the increase cannot be blamed purely on this factor. The claims of politicians insisting that the situation remains unchanged are faulty. The rest of the surveys published by different stakeholders also point out gaps in the reporting of HS and HC. Next, around 78 stakeholders consulted during the preparation of the Commission’s Initiative proclaimed that they did not consider that the number of reported cases corresponds to the number of incidents that occurred in reality (European Commission 2021c, 11). The same conclusion was offered in a survey organised by FRA in 2020, which showed that only 2 to 5 % of LGBTQI+ people reported their most recent experience of harassment to the police (European Commission 2021c, 20). Also, previous FRA reports explained that various professional groups from several EU MS agreed that “the effectiveness of criminal justice is severely impaired by the systemic underreporting of victims of HC” (FRA 2016, 29).

As mentioned above, the issue has multiple levels. When reporting, the victims risk the deepening of their trauma, but they also lose trust towards police or public authorities. They often refuse to stand before the state authorities due to language barriers, self-blame for the attack and, more rarely, fear of deportation. Besides the mentioned factors, the cause of underreporting lies in the fact that a large number of LGBTQI+ people are at risk of poverty, social exclusion, or physical and verbal

violence (European Commission 2020a). Therefore, they fear the deepening of their already difficult situation. Among the reasons are also the feelings of fear, guilt, or shame that the victims have to live through. They also lack awareness of their rights or support services available to them. Even when they are aware of such tools, they doubt that bringing the case forward would change anything for them since they view the proceedings “as bureaucratic, costly, and time-consuming” (FRA 2016, 31).

Lastly, the victims often fear repeated victimisation from the same offenders and do not feel like the authorities would protect them. On the other hand, the police or administrative workers are often not well-educated on the topic. They do not handle the victims with the required sensitivity or knowledge and do not correctly recognise HS and HC. Or, even when reporting it, they do not differentiate between the various grounds one can be attacked on. For example, an EU report published in 2018 explained that out of the 18 EU MS that share data on recorded HC, only 15 disaggregate this information by different bias motivations (Peršak 2022, 12). Such a conclusion also shows a lack of interest among the MS in publishing the data on these crimes. However, similar errors make the statistical measurements related to the LGBTQI+ community even harder to execute. If the police are known for not taking HS and HC-related cases seriously, they will suffer an untrustworthy reputation. Subsequently, the victims will not feel protected even before approaching the authorities (FRA 2016).

Therefore, the Commission also promised extensive consultations with different stakeholders when presenting the Initiative. They aim to gather comprehensive information and factual evidence so a more victim-oriented approach can be reached. Among the consulted actors are various international organisations, civil society representatives, networks of experts, and research institutions. The report attached to the Study to Support the Preparation of the European Commission’s Initiative, which crucially underpinned the Communication to the Council of the EU, also emphasised the importance of CSOs. They are valued for their ability to collect data and get closer to the victims in comparison to public authorities (European Commission 2021c). Relevant is also the Victim’s Rights Directive. The document establishes minimum

standards for the support and protection of victims. It differs from the before-mentioned Framework Decision 2008, mainly because it does not differentiate between various minorities who experienced HS and HC but aims to protect all of them regardless of the discriminatory ground of the offender.

For example, some of the rights that the MS must implement are an individual assessment to identify special protection needs or confidential victim support services free of charge, including medical and psychological support. Moreover, the MS is required to inform victims about all the assistance they are entitled to (FRA 2021). In July 2023, the Commission proposed amendments to the Victims' Rights Directive because of issues identified during the latest evaluation document adopted in 2022. The current progress shows that the protection of the victims of individual MS is still insufficient. Hence, a part of the Commission's aim to better protect minorities against HS and HC is the effort to step up the game in the reporting of bias-motivated crimes. The summary of the amount of hatred directed against the LGBTQI+ community offers not only a better explanation of the Commission's Initiative. It also underlines the relevance of the discussion about the lack of protection of the LGBTQI+ community in some of the EU MS. Such a gap in HS and HC legislation stems mainly from the already mentioned differences in the definition of these crimes or the unwelcoming stances towards the rights of LGBTQI+ people.

2.5 Overview of National Criminal Laws of Post-Socialist Member States

The previous part of this chapter better explained the growth of hatred directed against the LGBTQI+ community and the need for the Commission's Initiative. Another reason why the establishment of HS and HC legislation at the EU level is required by many stakeholders is the status of the legal systems of the individual MS. Namely, not all of them enshrine the protection of the LGBTQI+ community in their criminal codes even though other minorities are protected against HS and HC fully. Hence, the last part of the second chapter will briefly introduce the situation in all of the MS. An extensive

analysis of their legislation goes beyond this thesis because their legal systems differ significantly. However, there are several documents which will make this explanation easier. For example, the Study to Support the Preparation of the European Commission's Initiative also included the description of the legal framework in all of the MS. As mentioned in the literature review, the organisation ILGA also attempted to complete the same task. Therefore, I will mainly use their results to create my overview.

Firstly, the Progress report on the implementation of the LGBTQI+ Equality Strategy 2020-2025 claims that 14 EU MS have laws that “give some degree of protection against HS or HC based on sexual orientation or gender identity”. Only three have extended the legislation to include intersex people (European Commission 2023b). The Annex to the Study to Support the Preparation of the European Commission's Initiative contains a list of all the EU MS with detailed information about their HS and HC legislation. The document introduces a questionnaire answered by representatives of these states. One of its essential questions was whether their national legal framework or case law criminalises HS or HC on the grounds of sex, sexual orientation, disability, or age. A summary of the answers related to the protected characteristic of sexual orientation will follow. States like Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Greece, Hungary, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, and Sweden criminalise both HS and HC on this basis. But, for example, Estonia and Ireland criminalise only HS but not HC. On the other hand, Romania criminalises only HC. But Bulgaria, Czechia, Germany, Italy, Latvia, and Poland do not have any legislation on these bias-motivated crimes (Directorate General for Justice and Consumers 2021b).

However, this list needs to be taken only as the answer to a strictly legal question. The enumeration does not explain any of the societal context, the implementation of this legislation, the level of discrimination, or the status of the recording of HS and HC. Next, for the description of legislation protecting against HS and HC on the grounds of gender identity, the before-mentioned ILGA Rainbow Europe map will be used. The graph created by the organisation covers the states in which

gender identity is expressly included in HS or HC legislation as an aggravating factor. The EU MS that follow this requirement in the sphere of HC are Finland, Sweden, Denmark, Belgium, Luxembourg, France, Portugal, Spain, Malta, Hungary, Croatia, Greece, and Cyprus. However, the map also gives a certain percentage to these states that rank them according to the human rights situation on the ground. In this case, most named states reached around 50 %, with 100 % being the best result. Only Sweden, Denmark, Belgium, Malta, and Greece had 60 % or more. The same results applied to the measurement of legislation regarding the HS.

Moreover, the Rainbow Europe map offers data on states that expressly include bias based on the victim's actual or perceived sex characteristics or intersex status into their HS and HC legislation as an aggravating factor. Among these are Denmark, Belgium, Spain, Malta, and Greece. Of them, only Spain ranks lower than 60 % (Rainbow Europe 2023). In the sphere of sexual orientation, the map agrees with the previously described data of the Annex to the Study to Support the Preparation of the European Commission's Initiative. According to the organisation, the data are up to date with the developments which took place in the year 2022. The documents published by OSCE ODIHR offered a more general overview. The included surveys showed that 33 OSCE participating states have HC laws relating to sexual orientation, 25 relating to sex or gender, and 21 relating to gender identity (OSCE ODIHR 2022). The current situation among the EU MS shows that most recognise the need to protect against HS and HC on the grounds of sexual orientation. However, factors such as gender identity and sexual characteristics are not taken so seriously. Moreover, the states that so far refuse to criminalise are known to be either post-socialist countries or ones with very conservative or religious political representation. For a better understanding of this complex context, a summary of the newest developments and best practices will follow.

Some of the EU MS continue to realise the importance of deepening the protection of LGBTQI+ people against HS and HC. For example, the Fundamental Rights Report 2022 showed that France extended the grounds for the administrative dissolution of associations or groups if they disseminated hatred or violence against

groups based on their sex, sexual orientation, or gender identity. According to the same document, the Danish Parliament amended the criminal code governing the prohibition of HS and HC to include SOGISC and gender expression in the list of aggravating circumstances (FRA 2022). France was also named one of the countries offering “best practices” in HS and HC. Ireland was also mentioned because it published an LGBTQI+ Inclusion Strategy. The document aims to ensure that the legislation concerning HS and HC is sufficiently robust. Another state which is often mentioned as one of the best examples is Malta. Mainly because its legislation protecting against HS and HC includes grounds of SOGISC. Subsequently, such a framework “has led to increasing acceptance of support for access to legal gender recognition in Maltese society and below average reporting of physical and sexual violence among the EU member states” (European Commission 2022, 24).

Next, a better context can be provided by introducing the latest available data on HC reporting monitored by the ODIHR falling under the OSCE. These statistics from 2021 describe the situation in those states which decided to share their reports with these organisations. Such a practice can also constitute a factor in judging the situation on the ground in the various EU MS. However, these statistics regard all types of HC, not only the one directed against the LGBTQI+ community. They do not take HS into account. Most of the countries are doing quite well. For example, Austria fundamentally improved its HC recording in 2019. Therefore, the local police reported around 5,400 crimes in 2021, compared to the 156 registered the preceding year. However, states like Belgium, Finland, France, Italy, the Netherlands, Portugal, Germany, Denmark, Cyprus, and Spain regularly report to ODIHR without encountering any crucial challenges. Therefore, they describe an increased amount of cases intercepted by the police every year and monitor them responsibly. Still, all have sectors in which they could improve. Other states reporting regularly are Bulgaria and Slovakia. However, their law enforcement agencies do not record the motivations behind HC.

A slightly similar but more severe conclusion was reached in the case of Czechia. The representatives of ODIHR highlighted that the country's mechanisms for

recording HC statistics do not sufficiently distinguish HC from other crimes. The same problem was found in Hungary, Poland, and Croatia. Another state that reports HC and has some space for improvement is Greece. However, the issue is that the local authorities have not made its HC public yet, similar to Lithuania. A slightly worse practice was also recorded in Ireland since ODIHR pointed out that its society would “benefit from changing the existing legal framework in a way which would establish a more effective system and appropriate penalties for the offenders”. However, it needs to be mentioned that various progress has been identified in different areas in the before-mentioned states. In comparison, Estonia, Latvia, Luxembourg, Malta, Romania, and Slovenia have never or rarely submitted information on HC to ODIHR. A further exception is Sweden, which publishes data every second year (OSCE ODIHR 2021b). The latest data on HC reporting in the EU MS also support the claims concerned with the increasing incidents of bias-motivated crimes. Moreover, they show that some states are gradually improving while others do not cooperate with ODIHR.

Such a divergence supports the leading message of this chapter, namely that the situation concerning HS and HC in the EU varies greatly. Not only that the definitions, criminal codes, and other legal arrangements related to bias-motivated crimes do not match in the international sphere, but they also vary inside the EU. What differs is the implementation of such legislation, the practice of the local authorities and the police, or the way of reporting. All these factors explain why the Commission introduced its Initiative and considers that a greater harmonisation among the MS in terms of HS and HC should happen. Therefore, the chapter successfully fulfilled its aim to provide a greater factual context of the legal framework. It also described the most recent processes undergoing in the EU in terms of HS and HC criminalisation. Moreover, it provided a fact-check to some of the claims of the Commission regarding the need to enlarge the protection against HS and HC at the EU level. The result also laid the ground for the next chapter, which will introduce the research design and justify Czechia as the chosen single case study.

Chapter III. Analytical Framework

The next chapter will describe the research design and interconnect the previous sections of the thesis. Namely, the debate surrounding the enlargement of the list of EU crimes, the discussions connected to protecting the LGBTQI+ community against HS and HC, and the growth of the transnational anti-gender movement. All of these offer a chance to explore the role of post-socialist states. The international and independent anti-gender movement attacking the rights of women and LGBTQI+ people is formed out of various actors on multiple levels. All of them fall under the “anti-gender” umbrella for different reasons. The research aims to uncover the position and impact of post-socialist states within this movement. However, a comparison of all of the post-socialist countries reaches beyond the scope of this thesis, namely due to their political and economic diversity. Even after applying the framework of the EU, the scale of such an analysis remains unfeasible.

Based on these premises, this chapter will explain why a single case study is an equally appropriate approach for this research. Next, the following section will introduce the political, historical, and legal situation in Czechia, the country chosen for the single case study research design. Such a description will offer a greater context and justify the decision to research the given country. Subsequently, the research hypothesis and questions will be explained, followed by a description of the methodology. Therefore, this chapter will also outline why are qualitative research, and more precisely, semi-structured interviews, the correct way to approach this topic. Other aspects of the methodology will be described thoroughly, such as the choice of respondents, the interviewing process, the related checklist of questions, and the method of the final analysis. Hence, the chapter will prepare the ground for introducing the empirical data and the final evaluation of the completed research.

The scope of this work does not allow for large-n comparison models that might be considered for the research of the introduced topic. Moreover, the differences in legislation, jurisdictions, reporting, or training of police officers of the post-socialist MS

hinder the option of conducting comparative research on any form of HS and HC. Vergani even goes as far as stating that during the study of such a topic, “cross-country comparison is methodologically impossible” (2022). The lack of agreement on multiple concepts crucial to this thesis makes it even more challenging to design comparative research. Both academics and various states understand hate, HS and HC, and their punishment differently. The same applies to defining post-socialism and its impact on current political decision-making or protecting the LGBTQI+ community. More importantly, the characteristics of EU MS do not allow for a comparative design in this case. Namely, none are substantially different but share the same independent and dependent variables. Neither are they very similar but do not share the independent variable, only the dependent variable. The independent variable is the absence or presence of the historical experience with socialism, and the dependent one is the state’s position towards the Commission’s Initiative. Therefore, the potential comparison would not sufficiently rule out other possibly influential factors and would also reach beyond the possibilities of this thesis.

Another way to approach the research might be conducting single case studies for each post-socialist MS and comparing them. But that scope of research is also unimaginable for a study such as this one. Such an option would be too expensive and logistically demanding even without such an obstacle (Pepinsky 2019). A higher amount of data might also appear more rigorous. On the other hand, the more research units we have, the less time we spend on each. Subsequently, the attention to national, political, and social aspects decreases. But such an in-depth orientation is what the topic of this thesis asks for. Even though multiple cases offer broader theoretical evolution, the single case study approach is the most feasible and suitable for this thesis. Such a decision allows for a greater understanding of the subject and of potential sub-units as well. The single case study can later transform into a plausibility probe since it allows for a more in-depth analysis. Hence, its outcome can decide whether further research on the same topic is needed.

However, despite its suitability for this thesis, the single case study has its negatives. Because its outcomes cannot be easily compared, they are also hard to generalise. But being aware of such a risk allows us to use other tools to balance this “gap” (Gustafsson 2017). As Cartwright mentions, what matters, in the end, is the quality of the evidence gathered. Hence, we must look at “how strong the link between evidence and the conclusion is, how sure are we about this strength, and how warranted are we in taking the evidence claim to be true” (2022, 37). Also, we need to eliminate the alternative explanations or at least consider and describe them sufficiently. Another way to balance the negatives of the single case study is supplementing the outcomes with relevant literature and already existing data such as various surveys, polls, or election results. The researcher must also be extra careful not to be biased when choosing the research design. Individual steps of the methodology must be clearly defined, justified, and transparent. As Zeev Maoz highlights, “case studies have become in many cases a synonym for freeform research where everything goes” (2002, 164). Hence, such information will be covered in the following pages. The previous pages have sufficiently justified the choice of the single case study. The next logical step is to describe why the state of Czechia is the appropriate unit to study. But before providing such an explanation, the necessary background on Czech history, political situation, and HS and HC legislation must be provided.

3.1 The Context of Czechia

After the terrorist attack, which happened at the beginning of October 2022 in Bratislava, the capital of Slovakia, something has awoken in Czech society. Briefly, members of the LGBTQI+ community, their supporters, and others realised the chilling impact of hate. They decided to act. Subsequently, the petition organised by Prague Pride and other organisations called Together Against Hate gained over 23 thousand signatures. “The attacker's motivation was long-term influenced by the culture of hatred towards differences and minorities fueled by the statements of public figures, including politicians, towards LGBT+ people, their families and children,” explained the organisers the reasons why the fight against HS and HC needed to be reinforced (Prague

Pride et al. 2022). Hence, they proposed three steps to the Czech government and the Parliament that should be implemented for the rights of LGBTQI+ people in Czechia to be strengthened. “It is time to define what values our society stands for. Czechia belongs to the West, and part of its values is the full and unreserved acceptance of LGBTQI+ people, who were born equal in dignity and rights with everyone else,” they proclaimed.

The reference towards “the West” shows that Czech society continues to remember its past. The knowledge that the state has not always been part of the “West” side of the world is still present, although the intensity and form of this feeling vary. At least among civil society, an assumption prevails that the state should continue its journey away from the East and connects this path to a set of values that should be implemented along the way. Their stance might be understood as a hint for the presumption that the historical experience with socialism still influences Czechia. However, other factors play a role. The political representation continues to refuse several steps which would improve the lives of LGBTQI+ people. These include the three before-mentioned demands introduced in the petition Together Against Hate. First of all, the petition demanded the legalisation of same-sex marriage in Czechia. The next point required the acceptance of legislation that would ban mandatory disability of reproductive function (castration) of trans people for an official change of gender. Lastly, the organisers asked for amending the current criminal code to ensure the explicit protection of LGBTQI+ people against HS and HC (Prague Pride et al. 2022). However, the Czech political representation has not accepted any of them. The following pages will show why this state is a relevant case study for the research. But before the current situation and processes are discovered in detail, it is crucial to put Czechia into the context of post-socialism.

Between 1948 and 1953, Czechia, back then Czechoslovakia, was transformed into a Stalinist-type totalitarian society. Among others, there were enormous changes in the class structure since most private property was nationalised. Even though this new order was supposed to create equality and give the land to the “ones that truly work on

it”, the legislation led to the confiscation of the property belonging to wealthy farmers. Such deception can serve as an example of the trend which subsequently took place in Czechoslovakia and the other socialist countries. Namely, most of the changes first welcomed by the public gradually turned against them (Rychlík 2020). The support for the new system came mainly from people's desire to increase their social status and material position. But in exchange, almost all parts of citizens' lives have fallen under the control of the Party.

Those who tried to fight the regime had to count with the strictest of punishments. Especially at the beginning of the 1950s, when people were being sent to prison or executed for their negative ideas or positions towards the newly created state regime. However, they were usually tried for crimes that they had never committed. The most famous victim of these brutal trials is Milada Horáková, a member of the leadership of the National Socialist Party and the Constituent National Assembly and a former heroine of resistance during the Second World War. The Party unrightfully blamed her and others for treason and espionage. She and three others were sentenced to death by hanging (Rychlík 2020). Her verdict was carried out despite the objections of relevant figures of that time from all over the world.

After these frightening events, the opposition was mainly silenced for the following years. The political situation started to melt only with the election of Alexander Dubček as the First Secretary of the Communist Party near the end of the 1960s. He allowed for the first beginnings of democratisation and liberalisation. These movements eventually crystallised into the so-called Prague Spring, the relaxation of the strict rules in culture, media, and society established by the Party. Together with this “thawing”, attempts to reform the socialist system emerged as well. The so-called socialism with human face started to replace the more strict and brutal regime of the 1950s. However, these small windows of hope were violently closed with the invasion of Czechoslovakia by the Warsaw Pact in August 1968 (True 2003).

The Soviet Union worried that such free-minded ideas might spread to other neighbouring socialist states as well. Subsequently, the country became enclosed more

than before, and all the hopes of a non-socialist future have disappeared. The era of “normalisation” followed. But despite these adverse conditions, the dissidents worked in the shadows relentlessly and took their chances with founding Charta 77. A manifesto initially signed by 242 people called out the government for their hypocrisy and for not upholding their commitments to fundamental human rights included in the 1975 Helsinki Agreement. The movement began a new wave of dissidents who gradually broke the mostly numb and “normalised” society of that time through small acts like disseminating forbidden music or literature.

This culture ended up being one of the main drivers in restoring civil society in Czechoslovakia after the revolution (Mahoney 2011). These streams of opposition grew, especially when the new general secretary of the Soviet Union, Mikhail Gorbachev, proclaimed the policy of perestroika and glasnost. Therefore, when several national and international factors came together, the non-violent Velvet Revolution changed history in 1989 and ended the communist regime (True 2003). Almost immediately, the country pronounced its wish to belong to the West. Such a political orientation became quite apparent due to the first presidential elections. They saw Václav Havel take the mostly symbolic but highly valued position of the first free president after decades of the socialist regime. His work, literature, and speeches showed that Czechoslovakia became a country that values democracy, freedom, and human rights. With that, the journey towards the “West” began. One of the many crucial milestones was the split of the Czech and Slovak Federal Republic quite shortly after the revolution. On the 1st of January 1993, the Czech Republic and the Slovak Republic emerged (Pacner 2018). Despite the worries of the surrounding states, the “goodbye” happened in an orderly and calm way. From then forward, both states went on their own, though still slightly similar, journeys.

After the “turbulent” 1990s, when Czechia experienced enormous economic, political, cultural, and social reform, the state encountered two major milestones. Namely, the post-socialist country joined the North Atlantic Alliance (NATO) in 1999 and the European Union in 2004. More could be said about the historical socialist

experience of Czechia. However, the most relevant points have been highlighted. Those presenting the hardships and turbulent changes the state faced and the possible apprehension towards any political steps, social discussion or legal changes that might remind the society or the political representation of the traumatic past. But before moving forward with the description of the current situation, the experience of Czechoslovakia, and subsequently Czechia, and the LGBTQI+ people must be mentioned.

There is an expectation among some scholars that democracy in post-socialist states coincides with the assumption that human rights will finally be extended universally (Madlovics and Magyar 2020). In this sense, Czechia mostly caught up with its “Western” neighbours. However, some more “sensitive” areas, among them the rights of the LGBTQI+ community, remained contested. During the socialist era, police used homosexuality as a tool for blackmailing. Since 1961, relationships or sex between people of the same sex stopped being criminalised. Still, there were punishments for “public indignation” (Schindler 2013). Therefore, being gay or lesbian in public still was not normalised nor safe. The situation of LGBTQI+ people got better only after the Velvet Revolution. In the realm of the famous Pride marches, Prague was seen as a bit “behind” compared to cities like Belgrade or Warsaw. Namely, the first Prague Pride was organised only in 2011. Therefore, the event took place years after the legalisation of the registered partnership in 2006. However, the first gatherings of people promoting the rights of gays and lesbians started at the beginning of the 1990s.

The slow progress of the emancipation of LGBTQI+ people and their rights lies in the size of Czech civil society. It took years for the initiatives and organisations to form in the first place. Once the goal of establishing the registered partnership was achieved, they slowly dissolved again (Michal Pitoňák in Blidon and Brunn 2022). However, the efforts to legalise same-sex marriage in Czechia brought the community back together. In 2018, the NGO Jsme fér asked the back-then member of the Parliament, Radka Maxová, to submit the amendment regarding same-sex marriage (Hlaváčková 2021). However, at that time, the government did not manage to vote on

the proposal before the end of its term. The current government debated the same request but has not accepted it yet. The members of the EP are also parallelly discussing the constitutional ban on same-sex marriage. The current same-sex marriage status interconnects with the other LGBTQI+ “topics” in Czechia. However, it is the most medialised and debated among those that the political representation must deal with.

The first part of the context of Czechia described its historical experience with socialism, the post-revolutionary development, and the related experience of the Czech LGBTQI+ community. The following pages will introduce the current situation regarding the legal protection of LGBTQI+ people against HS and HC, the review of the public opinion, the stance of Czech political representation towards the Commission’s Initiative to include HS and HC under the list of EU crimes, and the reactions of the civil society. Such an explanation will justify the choice of Czechia as the single case study.

3.1.1 Czechia and the LGBTQI+ HS and HC Legislation

Before describing the stance of Czech society and its political representation towards the legal protection of LGBTQI+ people against HS and HC, it is crucial to introduce the current wording of the Czech criminal law. When defining the punishment of HS and HC, the Czech criminal code differentiates between various groups. Namely, when judges wish to punish HC or a “prejudicial crime” in Czech, they have more options. First, there exist crimes with a prejudicial motive embedded in the base of the merits of the case. Therefore, if the motive is not proven, there is no crime (see Article 352(2); 355; 356; 400; 401; 402; 403; 404; 405 of the criminal code). These crimes include various grounds. Hence, it is irrelevant which characteristics belong to the victim. Also, the SOGI grounds related to the LGBTQI+ community, disability or age are considered. For example, the crime known as inciting hatred towards a group of persons or restricting their rights and freedoms (Article 356 of the criminal code) establishes the so-called “other group of people”, which can subsequently be understood as the target of the prejudicial crime. Another crime in the same alternative “group” is the defamation of a nation, race, ethnicity, or other groups (Article 355 of the criminal code).

The other type of crime related to the HS and HC legislation is the one in which prejudice is a condition for a higher penalty rate for an already existing crime. Hence, after the hate motive of the offender is proven, the punishment will be automatically set higher. However, this definition does not apply to groups attacked for age, disability, or SOGI (In Iustitia 2023a). Instead, the law considers only race, ethnicity, religion or the absence of religion, nationality, and political beliefs. It understands them as unchangeable personal characteristics of the victims. What is also relevant to note is that for this type of offence provisions to apply, the offender does not need to attack only in the state of hate but also on the grounds of “selective selection” (In Iustitia 2023b). The judges can impose a stricter punishment for various crimes, for example, intentional injury. The same rule would apply to around 20 other types of crimes, such as homicide, grievous bodily harm, bodily harm, deprivation of liberty, abduction, or extortion (OSCE ODIHR 2014). Therefore, this form of legislation is a part of the criminal code crucial for this thesis. Namely, it shows the clear differentiation between the characteristics related to the LGBTQI+ community and the other vulnerable groups. However, Article 42, paragraph b, of the criminal code considers an exception applicable to this minority.

It states that if a person attacks out of “another similar hatred” than of those clearly stated in the legislation, an aggravating circumstance that increases the punishment can be applied (also known as the penalty enhancement provision). However, such an act does not mean the punishment will get automatically higher, as in the case of the before-mentioned provisions (In Iustitia 2023b). Instead, it can increase only within the base of the merits of the case. To give an example, if someone murders a gay person, the sentence will only be between 10 to 18 years. If someone murders a person on the grounds of colour, nationality, ethnicity, religion (or an absence of religion), or political conviction, they automatically get 15 to 20 years in prison or an exceptional punishment. Moreover, the law organisation In Iustitia highlights the fact that “the penalty enhancement provision is not used by the authorities, prosecutors, and judges in the way it was intended in the law, and it is not taken into account at all for pre-trial crimes and does not influence the extent of the punishment” (In Iustitia 2023b,

15). Therefore, the Czech criminal code considers that hate-motivated crimes on the grounds of age, disability, or SOGI characteristics do not need to be punished “as much” as the ones committed on the grounds of race, ethnicity, nationality, religion (or absence of religion), or political belief.

An interesting speciality of the Czech criminal code is its tension with other types of legal protection. For example, the Charter of Fundamental Rights and Freedoms includes a relatively broad list of groups to which the various rights and freedoms should belong (Presidium of the Czech National Council 1992). Although, it does not directly mention the LGBTQI+ community. The Anti-discrimination law prohibits discrimination based on race, ethnicity, nationality, sex, sexual orientation, age, disability, religion, belief, or worldview (Act No. 198/2009 Sb. 2008). Another tool related to hate is the so-called misdemeanour law that defines the widest enumeration of prejudiced reasons out of all the instruments. Namely, it establishes that a prejudicial attack happens when someone causes harm to others on the grounds of nationality, ethnicity, race, colour, gender, sexual orientation, language, belief, religion, age, disability, political ideas, membership in a political party and movement, or other association, wealth, social origin, health, or family status (Act No. 250/2016 Sb. 2017).

The last norm related to this issue is the Victims of Crimes Act, which establishes the protection of “particularly vulnerable persons”. This instrument mentions sexual orientation as well (In Iustitia 2023b). Hence, there is a clear difference between the less “serious” legal documents and the criminal code. Less grave offences include the protection of groups not considered in the more atrocious ones. Various civil society groups in Czechia advocate for the amendment of the current criminal law. However, before continuing with the description of the suggested change, it is crucial to introduce the societal and political situation regarding HS and HC against LGBTQI+ people in Czechia. Only then will it be possible to understand the need for such a legal amendment.

Whereas multiple surveys and studies are trying to understand the stance of the Czech society and the political representation towards same-sex marriage, the ones

focusing on extending the legal protection of the LGBTQI+ community against HS and HC are missing. For example, the newest survey from 2023 published by the Centre for Public Opinion Research found that most Czechs in history currently support same-sex marriage. Namely, 58 % of the Czech society would welcome such a change. Therefore, the outcome increased by about 11 % compared to the one conducted in 2019 (Pospíchal 2023). Other surveys support such a conclusion as well. Among them is the research of the company Median from 2019. According to its measurements, around 67 % of Czechs, namely 5.7 million legitimate voters, agree with legalising same-sex marriage. A similar amount also supports adopting children by gay and lesbian couples (Jsmé fěr 2020). Such statistics can hint slightly at the position of Czechs towards the LGBTQI+ community. However, the Czech society and political representation do not consider amending the criminal code as relevant. Therefore, no surveys are trying to understand their stance towards the possible change of the current criminal law.

The situation changed slightly only after the before-mentioned terrorist attack in Bar Tepláreň in Bratislava, which happened on the 12th of October 2022, sent a wave of shock through Slovakia and, subsequently, Czechia. Therefore, 23 organisations have decided to conduct the petition directed to the government mentioned at the beginning of this chapter. Two public gatherings supporting LGBTQI+ people also took place shortly after the attack. Moreover, a special conference called Together Against Hate was organised on the 16th of February 2023. It aimed to discuss the three already-mentioned requirements of the petition among various stakeholders (In Iustitia 2023c). The reasons for such actions lay not only in the reaction to the events in Slovakia but also in the increased fears stemming from the national situation.

The law office focusing on HS and HC In Iustitia reported that the last quarter of 2022 recorded up to 20 incidents of prejudicial violence on the grounds of SOGI. Such a number was the highest reported. Hence, it pointed to the growing number of similar acts (In Iustitia 2022). However, the following first quarter of 2023 reported only six incidents. The initiative warned that such low numbers are typical for the first months of the year (In Iustitia 2023c). Next, the Report on Extremism and Prejudicial

Hatred in the Territory of the Czech Republic in 2022 mentioned that the police investigated several homophobic acts directed against the LGBTQI+ community. The document reported that the state authorities recorded 13 hate-motivated acts against LGBTQI+ people for 2022 (Ministry of Interior 2023). Although, several reports of various IGOs and domestic initiatives highlight an issue of underreporting in Czechia. These issues will be discussed later in this chapter.

Next, a survey from 2019 by the Office of the Ombudsman found that 55 % of gays, lesbians, or trans people have met with threats, intimidation, and physical attacks (iRozhlas 2022). Crucial are also the latest results of the study *To Be LGBTQI+ in Czechia 2022* conducted by Queer Geography and the National Institute for Mental Health. Among other findings, the researchers reported that the perceived level of prejudice and intolerance among 57 % of the interviewed LGBTQI+ people has decreased. It remains the same according to 22 % and is increasing according to 20 % of the respondents. Some of the reasons for the positive change are integrating LGBTQI+ people into public life, the support of publicly known or famous people, and the support of civil society. On the other hand, those who were worried about the increase in intolerance named the refusing stances and the discourse of politicians or political parties as the cause (Macháčková and Pitoňák 2023). Although these results are not equal to HS and HC, they help to paint the background of the societal situation in Czechia.

Another relevant report is the one published by OSCE ODIHR in 2021. According to its data, the Czech authorities monitored 108 “offences with hostility background”. These had different bias motivations, and 11 out of them were anti-LGBTQI+. However, at the same time, the organisation stated that “the country’s mechanisms (...) do not sufficiently distinguish hate crimes from other crimes” (HCRW 2021). Moreover, the institution also noted that Czechia should raise awareness among police about the correct ways of reporting HC. The European Commission Against Racism and Intolerance (ECRI) report on Czechia, adopted in 2020, also highlights several issues with the national reporting system. The document covering the years

2015-2020 noted that even though the Czech government publishes the annual Report on Extremism, prepared by the Security Police Department of the Ministry of Interior, these data are not compatible with the ones presented by the Ministry of Justice and the police (ECRI 2020).

When a crime with an extremist background happens in Czechia, police should register it in an incident form and a form on known perpetrators. In these documents, it should be noted whether the crime had a biased motivation. The data are transferred into the Crime Statistics Recording System, a part of a broader Electronic Criminal Proceedings system. Such a process must allow a classification of the data according to pre-defined groups. However, according to OSCE ODIHR, these include only Jewish people, Roma, Muslims, and Arabs (2023). Next, the victims of HC are entitled to information, legal advice from attorneys or civil society organisations, social services, or psychological assistance. These are all positive steps, although ODIHR acknowledges that the police' training on sensitive and respectful treatment of the victims "is not regular and does not constitute a part of the mandatory curriculum" (OSCE ODIHR 2023). Because of the subsequent lack of trust towards the police on the side of the LGBTQI+ community, the final reports of the Czech government lack adequacy and result in underreporting.

Next, ECRI also described that the Czech authorities have not carried out any research into discrimination against LGBTQI+ people, high-level politicians do not sufficiently condemn hateful comments against various vulnerable groups, and the government has not approved any national LGBTQI+ strategy or action plan (ECRI 2020, 7). Therefore, political representatives have not yet addressed the gaps in protecting LGBTQ+ people. Even though the draft of this strategy for 2021 to 2026 was created, it never gained political support. The document suggested amending the criminal code (The Government of the Czech Republic 2021). However, a more relevant point in the paper was the request for legalising same-sex marriage. That was the hidden cause of the departure of the different political factions. The current

government of Czechia is still negotiating this document. ECIHR also recommended the amendment of the criminal code.

Interestingly, the topic of anti-LGBTQI+ HS and HC and the related legislation cannot be found in the UPR recommendations to Czechia in the 3rd cycle that took place between 2017 and 2021. Instead, states such as Venezuela, Thailand, or Egypt concentrated on HC targeted mainly at the Roma minority, Muslims, or migrants (Universal Period Review 2021). Lastly, the stance of the Czech ombudsman should be included. There is no known position of Stanislav Křeček on the suggestion to add HS and HC under the list of Eurocrimes or the amendment of the Czech criminal code. But, it might be expected that he does not support it because, in 2021, he proclaimed that “no one is denying any rights to the LGBTQI+ community”. He added that “LGBTQI+ people sometimes have an unnecessarily negative relationship with society, yet most of society is quite indifferent towards them” (Ombudsman 2021).

Furthermore, the before-mentioned inadequate police reporting is emphasised by the organisation In Iustitia. The report regarding the last quarter of 2022 mentions that only one in ten people turns to the police when attacked (In Iustitia 2022). However, as in other states, the lack of information is often misinterpreted as the absence of such crimes. As mentioned before, the issue of underreporting, lack of trust towards the police officers, or inadequate related systems is a European, if not international issue. However, reasons for the incomplete protection of LGBTQI+ people in Czechia stem also from the already-described form of the criminal code. To give an example of a failure of the system to protect the victims of anti-LGBTQI+ crimes, the initiative In Iustitia described the case of Czech LGBTQI+ activist Kryštof Stupka. He is open about being gay on social media. Subsequently, he has to face several prejudicial attacks.

When Stupka wrote a post on Twitter related to the terrorist attack in Bratislava in 2022, one user shared a comment with him stating: “Death to the faggots. The incredible dude who killed those bastards in Bratislava should have killed more of them”. With the help of In Iustitia, Stupka filed a criminal complaint against the user. However, the police did not grant him the status of a victim, and prosecutor Martin Bílý

confirmed this decision. Even though such a statement was clearly against the jurisprudence of the Constitutional Court from 2019. The prosecutor states, among other explanations, that it is not clear from Stupka's Twitter profile that he is gay (In Iustitia 2023c). However, such an assertion is inappropriate, considering that several visible factors, including the profile picture of the activist, are pointing to such a fact. Therefore, the prosecutor made it clear that because the law does not explicitly mention the grounds of SOGI, the courts are not bound by the legislation to decide in a way that would protect the LGBTQI+ community. Hence, the next part of the chapter will introduce the efforts to amend the criminal code and the stance of political representation towards such a request and the Commission's Initiative.

3.1.2 The Reaction of the Czech Political Representation

Before explaining the current situation and stances of the Czech political representation, it is crucial to describe the amendment to the criminal code introduced by the organisation In Iustitia. Simply put, there are two options which would improve the legal protection of LGBTQI+ people against HS and HC. Firstly, it is possible to establish a universal "special" aggravating circumstance as applied in Slovakia or Greece. Hence, judges would have to choose higher punishment after proving the prejudicial motive. In Czechia, the same rules apply only to certain vulnerable groups, which would change with such an amendment. This legal arrangement would also universally apply to all types of intentional crimes. However, such an amendment is the most complex one.

The second option is to novelise the current crimes for which prejudice is a condition for applying a higher penalty rate and enlarge the list of the grounds by SOGI, age, and disability. This would also apply to those crimes not currently including the "prejudice motive". Such a change is crucial because these crimes are often caused with that intention. Among them are sexual attacks, disorderly conduct, dangerous threats, or harassment (In Iustitia 2023b). To achieve such a change, the organisation In Iustitia coordinates a project called Rise Up Against Anti-LGBT Hate Crimes with Prague Pride and the National Institute for Mental Health. It aims to improve the knowledge of the

public about discrimination and prejudicial violence on the grounds of SOGI (In Iustitia 2022). Lastly, In Iustitia reported that even though they conducted several meetings with the Czech government, its members do not consider the amendment of the criminal code a priority.

Such a dismissive stance connects to the position of the Czech political representation towards the Commission's Initiative to include HS and HC under the list of Eurocrimes. In March 2022, the Council examined the proposal of the Commission, and according to its concluding statement, "a broad majority was in favour of this initiative". "Today, we reiterated the importance which we attach to this subject, and we will continue to work to enable the Commission to propose, in future, legislation ensuring that those perpetrating such crimes face the same consequences throughout Europe," proclaimed the French Minister for Justice Éric Dupond Moretti at that time (Council of the EU 2022b). When this meeting took place, France held the presidency of the Council. However, a few months later, the task of leading the Council was transferred into the hands of Czechia. Subsequently, two Czech media reported about the turn of events.

The server iDnes cited anonymous sources suggesting that during its presidency of the Council, Czechia tried to "sweep the issue under the rug". According to these sources, France almost mediated consent with the Commission's Initiative during its presidency. The Czech MEPs Radka Maxová (independent) and Dita Charanzová (ANO) mentioned the same issue in the article. They stated that the only exception to the support of the proposal among the MS was Hungary and Poland (iDnes 2022a). Therefore, Czechia did not take any stance towards the issue, despite the President-in-Office of the Council of that time, Ivan Bartoš, claiming that "the Presidency will continue to seek the necessary consensus to reach an agreement" in October 2022 (European Parliament 2022).

A similar media report was published by the server Aktuálně.cz. The article described that the Initiative was discussed by the Government Committee for the EU chaired by Prime Minister Petr Fiala (ODS) in February 2022. Other attendees were the

head of the Office of the Government, Jana Kotalíková, and the ambassador to Brussels, Edita Hrdá. The Committee tasked the Minister of Justice and the Minister for European Affairs with bilateral meetings on the position of Czechia. "Our department has a negative attitude (...) because all the judges, prosecutors, police officers, and officials from the ministry are strongly against it, simple as that. The reason is that we already have such a regulation. We do not need Europe to regulate this at all," the Minister of Justice Pavel Blažek (ODS) told Aktuálně.cz (Horák 2022). However, the Minister also mentioned that the government's position is not final.

Other members of the Czech political representation commented on the Commission's Initiative. For example, MEP Markéta Gregorová (Pirates) has a positive stance towards such a suggestion. "The main reason I support it is that new groups emerged which also fall under the already established definition," she explained. Another MEP with a positive stance is Marcel Kolaja (Piráti). "There is no doubt that the number of hate crimes is increasing, and the categories that the Commission proposes should be covered by law in the same way as ethnicity or nationality," he proclaimed (Koubová 2022). However, the conservative MEP Tomáš Zdechovský (KDU-ČSL) stands against the Initiative. "Although I am in favour of regulating some offensive insults and speech on social media, in this case, it feels like an unfinished proposition for which I lack concrete data," he said and added that no one should be punished for "taking a ground against gender ideology" and that some of the comments of his "leftist colleagues" make him worried. He emphasised that freedom of speech needs to be protected.

Negative opinion had the MEP Dita Charanzová (ANO) as well. She explained that the EU needs to be careful about how it will define the HS and HC and what will be included under such legislation and added she does not want any form of "censorship" (iDnes 2022b). Therefore, the publicly available information shows the Czech government has not taken a public stance towards the Initiative. However, the representation is leaning towards refusing the proposal. Despite that, several MEPs from various liberal political parties announced that they support the Commission's Initiative.

Still, it must be considered that some of the conservative MEPs are also against the suggestion.

As already mentioned, there are no available surveys on the position of the Czech society. The only related data can be found on the Have Your Say website of the European Commission. The platform serves as a space for EU citizens to express their opinions on some of the steps of the EU institutions. Multiple Czech citizens expressed their views about the proposal to include HS and HC under the Eurocrimes. Mostly, they disapproved of it, and some even mentioned the fear of potential “censorship”. “That is indeed how Soviet-style censorship used to work - the premise was always protecting marginalised groups, and the punished was mostly people presenting "pills too hard to swallow" - harmless but provable statements pointing out real problems without any harmful content or intention,” described for example Martin Pelikán. “That would be a move against the rule of law, freedom of speech and liberal democracy, and a move towards an authoritative Orwellian nightmare,” added Jan Zmelík (Have Your Say 2021). However, it must be highlighted that it is to be expected that questionnaires on similar platforms usually attract mostly critique. It would not be correct to generalise these comments when there were over a thousand posts from citizens of various MS. The percentage of participating Czechs is unknown.

The previous parts of this chapter described the Czech historical experience with socialism, the current state of LGBTQI+ protection against HS and HC, and the stance of the political representation towards the possible change on both national and EU levels. Therefore, such a background shows that the state fulfils the first requirement for the single case study I chose for my research. Namely, that it is a post-socialist country. The current political representation disapproves of both the Commission’s Initiative and the national amendment of the criminal code that would enable higher protection of LGBTQI+ people against HS and HC. Moreover, it is one of the European states with the weakest protection framework for the LGBTQI+ community. Out of the other post-socialist states, only Poland, Estonia, Bulgaria, and Latvia have the same “non-existent” level of protection for LGBTQI+ people (In Iustitia 2023a). The statements of Czech

political representatives showed that if they have a negative stance towards the Commission's Initiative, they mostly worry about the freedom of speech. Some even mention the fear of "another censorship". Therefore, Czechia also fits into the theory introduced in the literature review that post-socialist states are more sensitive towards their freedoms. Hence, such a context makes it a relevant case for ascertaining whether the historical socialist experience influences the state's decision about the Commission's proposal.

The stances towards the legal protection of the LGBTQI+ community in post-socialist countries are influenced by many factors, some known and others not. Therefore, the thesis aims to uncover whether the socialist experience has a role in contemporary decision-making. In this light, Czechia is an interesting case study since it is not immediately clear how the past influences today's decisions regarding political representation. Also, there are no other outstanding factors coinciding with the decision-making. For example, Poland is a highly religious state. Therefore, the aspect of religion would have to be considered. Instead, various factors play a role in Czechia. The state's civil society is quite vocal about LGBTQI+ rights and has a more influential presence than, for example, the one in Hungary or Poland. Especially with the last presidency of the Council, Czechia showed its clear orientation towards the "West". By contrast, the most recent Czech political elections have led to one of the most conservative governments of the past years. The state has not accepted same-sex marriage, still demands castration as a mandatory part of the official change of gender, and finally, does not explicitly criminalise anti-LGBTQI+ HS and HC. Hence, the state's position is driven by various factors in both directions and finds itself at an imaginary crossroads.

Therefore, I consider Czechia a relevant case study to follow in detail. The first part of this chapter introduced the background necessary for arriving at such a conclusion. The previous pages explained why is the single case study a relevant choice for this research. Next, they captured not only the post-socialist past of Czechia but also described its legal protection of the LGBTQI+ community, the stance of the political representation, and the suggestions for an amendment corresponding with the

Commission's Initiative. Therefore, it became clear why Czechia is suitable for this thesis research. The next chapter will explain the research design in greater detail.

3.2 The Research Hypothesis and Research Questions

The previous chapters have illustrated the research gap identified through the literature review and presented the context of HS and HC legislation in the EU, the human rights situation of LGBTQI+ people, post-socialism, and Czechia. As mentioned in the first part of this thesis, post-socialism works as both a diversifying and unifying force. Even though historical institutionalism argues that the socialist system is one of the strongest arguments for the influence of the past, many other authors insist on the variability of the socialist experience. That is perhaps why the literature about post-socialism's impact on HS and HC legislation or LGBTQI+ protection is so scarce. This thesis aims to address this gap. Its objective is to add more data and analysis to an area of growing relevancy to human rights advocates.

Hence, it is crucial to ascertain whether post-socialism belongs to one of the factors fueling the ever-growing anti-gender movement at the EU level. Such a conclusion can be reached only after identifying the role the historical socialist experience has in the decision-making of post-socialist EU MS related to protecting the LGBTQI+ community. If the research concludes the presence of such an influence, it might also better explain how post-socialism influences the position of the given state at the EU level. This thesis will describe the impact of the past on the stances of post-socialist MS towards the Commission's Initiative to add HS and HC to the list of Eurocrimes. Specifically, the research will focus on the case study of Czechia. Such a focus enabled the identification of the research question of this thesis:

RQ: How does experience with socialist regimes influence member states' stance towards the European Union's motion to criminalise anti-LGBTQI+ hate speech and hate crime?

The available data related to the position of post-socialist MS of the EU towards protecting LGBTQI+ people had to be considered. As mentioned earlier, the legislation

against anti-LGBTQI+ HS and HC varies among these states. According to the statistics of In Iustitia, the Czech law firm concerned with HS and HC, only Bulgaria, Czechia, Estonia, Latvia, and Poland do not have any form of laws protecting LGBTQI+ people against hate-motivated crimes (2023a). The rest of the post-socialist MS are Lithuania, Slovakia, Hungary, Croatia, Slovenia, and Romania. It must be mentioned that Germany is an unusual case. The “Iron Curtain” divided the state during the Cold War, so it cannot be easily categorised. However, the state has not introduced legislation protecting the LGBTQI+ community against HS and HC. Therefore, it seems that the post-socialist MS are divided on the core issue of this thesis.

Other factors need to be considered when assessing the stance of the post-socialist states, for example, the general position towards LGBTQI+ people within the state or other related legislation. Various sources must be used also because the literature on the topic is missing. In this view, maps covering the legalisation of same-sex marriage shine some light on the reality. Out of the mentioned states, Estonia and Slovenia are the only states that enable same-sex couples to marry. Besides that, Czechia and Croatia offer some form of civil partnership (Jšme fér 2023). Most of the other post-socialist MS constitutionally ban same-sex marriage. They define marriage by stating that it exists only between a man and a woman. Hence, this data, combined with the issue of the correct implementation of the HS and HC legislation, creates an unwelcoming environment for the LGBTQI+ community in this post-socialist MS. Therefore, the hypothesis of this paper reflects such conclusions.

H1: The experience of member states with socialist regimes decreases their approval of anti-LGBTQI+ hate speech and hate crime legislation at the EU level.

To correctly confirm or disprove the hypothesis, sub-research questions have been defined. These aim to guide the research in a way that will contain all the before-mentioned necessary aspects of this issue. Namely, they concentrate on the level of protection of the LGBTQI+ community within the post-socialist MS, on their reaction to the Commission’s Initiative, and lastly, on the form of the potential impact of the historical socialist experience.

Sub-RQ1: What is the current protection of LGBTQI+ minorities against hate speech and hate crime in the given post-socialist member state?

Sub-RQ2: What was the reaction of the given post-socialist member state to the motion to criminalise anti-LGBTQI+ hate speech and hate crime at the EU level?

Sub-RQ3: To what extent and in what ways does the historical socialist experience influence decision-making in the given post-socialist member state?

The sub-research questions will be used within the chosen methodology, namely the single case study using semi-structured interviews, which will be introduced in greater detail later. This part of the chapter aimed to describe and justify the chosen research design. Its definition is grounded on existing literature and the contextual background of the topic. Therefore, it concentrates on the stances of post-socialist MS towards the Commission's Initiatives and strives to understand the influence of historical social experience on such decision-making. The outcomes should not only help to cover the literature gap but also offer guidance to human rights advocates who continue advocating for a change in legislation that would better protect the LGBTQI+ community. Hence, they also need to understand the refusing positions they are dealing with. They must acknowledge the aspects influencing such negative attitudes. For example, if the H1 is proven, they can better target their campaigns and communicate in a way that considers the issue's roots. The same applies in case H1 will not be applicable. The core of the analytical framework has been explained and justified. It has also become clear why Czechia makes a relevant case study to research.

3.3 The Methodology

Because of the need to introduce the context of Czechia and justify the state as the subject of this thesis, the explanation of the decision to conduct a single case study has already been provided. However, there is still a need to describe qualitative semi-structured interviews. Therefore, the following pages will offer the justification for such an approach. After, the interview process will be described in greater detail, including

the choice of respondents and the design of the checklist. Lastly, this part of the chapter will explain the analysis of the results of the conducted interviews.

The most crucial reason for choosing qualitative research is the positive aspects of such an approach. Namely, these methods are needed when studying complex, unstructured, or infrequent phenomena. That is the case of HS and HC but also post-socialism (Bennett and Elman 2007). Qualitative research allows for a more in-depth study of complex, nuanced, and unique cases. Qualitative research provides “an interpreted understanding of the social world of research participants by learning about the sense they make of their social and material circumstances, experiences, perspectives, and histories” (Barnard et al. 2013, 4). As described later, such a process is precisely what the semistructured interviews aim to deliver. Qualitative research allows for a more dynamic and fluid methodology that reflects the evolution of the research project. This type of methodology understands that there is no one way of interpreting. Instead, there are many ways of looking at certain realities (Lichtman 2013). Even though some critics have claimed that qualitative case studies collect atheoretical and unreliable data, they can still be very effective when provided with a tight research design. As Ormston and Ritchie describe, “even assuming that is so, qualitative methods still have a crucial role in identifying the important influences and generating explanatory hypotheses” (2013, 33).

Such a conclusion applies primarily when the research studies complex issues as those at the core of this thesis. The lack of definition of the phenomena examined in this research is not fitting for quantitative research. Instead, what is needed is a detailed, specific, well-researched, and unique analysis of respondents’ views on LGBTQI+ protection against HS and HC and the influence of the socialist past. The concurrent lack of external validity that comes with this type of methodology does not lower the value of the research. Qualitative research is often used to discover a new subject area or angle (Lewis and McNaughton Nicholls 2013). The literature review at the beginning of this paper explained clearly that the topic of this thesis covers a substantial gap in

current research. Hence, the mentioned qualities of the in-depth type of methodology make it clear why it is the most suitable option for this thesis.

One of the most widely used types of qualitative research is interviews, namely their semi-structured form. Because “very complex systems, processes or experiences are generally best addressed in one-to-one exchanges because of the (...) opportunity for clarification and detailed understanding” (Lewis and McNaughton Nicholls 2013, 56). Moreover, semi-structured interviews act as a sort of middle ground. They combine closed and open-ended questions and allow for asking more follow-up questions in case of a need. Therefore, they lay a base for a more in-depth discovery of what the respondent truly thinks and means. But at the same time, they ensure enough rigour because the pre-prepared checklist creates a firm framework to guide the conversation. Unstructured interviews risk the conversation turning in a different direction, away from the core of the research (Rabionet 2011).

Since the interviews can vary slightly with each respondent, they also reflect one of the best advantages of qualitative research, namely, flexibility. As mentioned, such quality is highly appreciated in a study dedicated to complex and hard-to-define topics. The semi-structured interviews are known under various names in the academic sphere. For example, the so-called elite interviewing focuses on interviews with people in decision-making or leadership roles like politicians, bureaucrats, or interest group leaders. The research of this thesis will follow such a form of interviewing, as it is most fitting to conduct interviews with experts and decision-makers to answer H1 and discover the realities of Czechia most appropriately, especially since elite interviewing allows for hypothesis testing (Leech 2002). Lastly, the research questions of this thesis call for expertise and cannot be answered simply by citizens. As with any form of methodology, there are also costs to using semi-structured interviews. Namely, they are time-consuming and risk a lack of analytical rigour. However, there are counter-steps to be taken. For example, multiple sources from different spheres should be used, the questions asked should be critical, and the results of the interviews must be interconnected with other independent data.

It has now become clear why semi-structured interviews are suitable for this thesis. All of their advantages match the needs of the single case study and the rather complicated questions to be discussed in this thesis. Next, the interviews with relevant stakeholders and decision-makers from Czechia will shed the most light on the complex situation. They will offer much more than a quantitative study could. Their results will not create data with broad external validity, but they will explain the point of view of the most crucial actors in this area. The next part of this chapter will contain a detailed description of the checklist and the interviews. Concurrently, other advantages of the semi-structured interviews will be discussed.

3.3.1 The Semi-structured Interviews

Firstly, the role of the researchers in the semi-structured interviews must be mentioned. Unlike quantitative research, interviewers must be reflective when conducting semi-structured interviews. Their main goal is to encourage the respondents to share as much of their views as possible, but the following interpretation and analysis of what has been said remain up to them (Crabtree and DiCicco-Bloom 2006). Because semi-structured interviews are often the sole data source of qualitative research projects, the importance of the role of the researchers increases as well. However, because the data are mainly interpreted through the eyes of the interviewers, problems related to subjectivity might arise. The researchers must base their questions on thorough and systematically collected literature and previous knowledge. They must also be as transparent as possible and choose respondents from various groups to avoid sampling issues (Kallio et al. 2016). Therefore, I followed such steps as well. This is why the flexibility of the semi-structured interviews becomes an advantage. After the first interview, there is always an option to reassess all the work and continue with needed changes.

However, the high quality of the checklist, also known as the interview guide, makes the research better. Its preparation is one of the main tasks of the interviewer. The interview guide of this thesis has been created in a way that would allow for a loose, flexible, but controlled dialogue, resulting in in-depth and unique answers (Kallio et al.

2016). The majority of the questions are open-ended and start with the question how. But in order not to be subjective, close-ended questions were asked first. However, no matter the answer, a follow-up question of why or how would follow. Hence, no leading, double-barreled, or loaded questions have been asked. For example, the questions have been phrased in a way that would allow negative and positive answers. Therefore, all the possible stances of the respondents were taken into account.

Before conducting the interviews, the main list of questions was always complemented by other possible prompts or questions depending on the respondent. The follow-up questions also reflected that some interviewees knew more about specific topics than others. As discussed earlier, the checklist was slightly modified after the first interview. However, such changes were not noticeable and were mere reinterpretations of the same questions. When creating the interview guide, I concentrated on answering the three subresearch questions. Therefore, the interview guide is separated into three main subtopics. Namely, the situation in Czechia, the processes at the EU level, and the role of post-socialism. The final number of questions created is ten. However, more has been asked in the interviews. The checklist has been sufficiently introduced, and hence, the explanation of the interview process will follow.

In all cases, the respondents were first addressed by email. If they were not responding, an additional reminder was sent. Before the interview, they were informed about the process and the privacy issues related to GDPR. As required by the university, each signed the related GDPR privacy policy. All the respondents agreed that their names could be used in the thesis and also allowed to be recorded. However, their names are anonymised. The use of the recorder was considered a very crucial step. The recording allows for better analysis and offers the researcher more time to focus on what is being said (Adams 2015). The consent of the respondents was always recorded before the start of the interview. All of them have also been conducted in Czech. Any direct quotes in this thesis have been translated. Hence, the respondents could be more confident in their speech and express their thoughts freely. This aspect of the interviews is one of the qualities of the thesis.

Next, I always learned the questions by heart and studied the respondents' backgrounds. Therefore, I was more aware of their contexts. During the interviews, I was in control of the dialogue but also was not "outsmarting" the respondents, which might throw them out of balance and offend them. When some answers were not clear, I asked for an explanation. However, I have not repeated what had been said as I might risk misinterpreting the respondents' thoughts. I also was not filling in the pauses but allowed the quiet to settle in. More in-depth answers were prompted that way. At the end of the interviews, I offered a reflection of what had been said. Such a step resulted in some extra insight from the respondents. Sometimes, these would not be caught on record but nevertheless created a better understanding of the situation. The interviews usually lasted around an hour. However, some more high-positioned respondents could not offer as much time. In that case, the conversations lasted about 30 to 40 minutes. Because of the mentioned description, I believe these methods have led to more objective and profound answers from the interviewees. The next part of this chapter will focus more on how the respondents have been chosen.

When ascertaining who to speak to, several factors were taken into consideration. Foremost, there was the need to include multiple points of view from various backgrounds. The aim was to prevent subjective conclusions. For example, if only politicians were interviewed, the outcome of the research might hide some realities since it would only reflect the thoughts of decision-makers who care deeply about their public image. The same applies to CSOs that, on the other hand, tend to be very critical. They are also usually focused on one aspect of the issue. Therefore, I opted for a combination of different levels. The final four groups of respondents are two representatives of the EU, two representatives of the Czech government, two members of various NGOs, and two experts. Such a division covers all the main stakeholders involved in the issues of this thesis. More importantly, the framework offers a unique view of the situation since they all specialise in a slightly different field.

The MEP has been chosen because she advocates for LGBTQI+ rights and has some knowledge of the topic. However, I tried to reach out to a less liberal MEP as

well. The aim was to have two MEPs with different opinions but similar experiences with LGBTQI+ issues. After my research, I realised that not many conservative politicians engage with these problems. Therefore, I wrote to seven different Czech MEPs out of the 21 elected. All refused me either because of lack of knowledge or time. Hence, I turned to the European Commission and talked with a member of the cabinet of one of the Commissioners with expertise on the topic. The rest of the respondents support the change in the current legislation. However, such a positive stance might be expected since most human rights advocates and experts stand behind such an HS and HC legislation. Some at-first-chosen respondents refused the interview due to lack of time or their perceived expertise. However, the majority of them agreed. Therefore, the most relevant respondents in Czechia are included. When identifying them, I used either my previous knowledge, media articles, Google search, or the recommendations of other respondents. The criteria for choosing the interviewees were based on their understanding of all parts of the research, namely the rights of LGBTQI+ people, the Commission's Initiative, HS and HC legislation, and post-socialism. Therefore, the paper offers relevant, unique, and in-depth insight into Czechia's stance towards the key topics.

Lastly, there is a need to introduce the method of analysing the semi-structured interviews. As mentioned, qualitative data are often doubted for their "scientific objectivity" due to the lack of systematic procedures. Therefore, there is a need for a clear, transparent, and referenced methodology. The core of the method derives from Price and Smith's work describing a three-phase coding used for cultural model analysis (2021). Even though the theme of their interviews does not directly overlap with the one of this thesis, the method is equally suitable. To justify their choice, Price and Smith reference the triangulation approach. This tool was first introduced by Campbell et al. (2013). The first-order coding follows the method of open coding or thematic analysis. Therefore, ideas and concepts are coded "using theoretically motivated ideas with which we entered the project" (Price and Smith 2021, 189). The individual themes will be introduced in greater detail in the next chapter. The second-order coding focuses only on the passages already coded, without the surrounding context. Here, subthemes or

subsequent patterns are coded. The second phase allows examining the relationships among themes, motivations, and their distribution across types of respondents or other relevant aspects. The third phase covers the quantifying of the data. However, the described method was applied to a data set of a much larger size and coded by a handful of researchers. Therefore, the last level of coding was not used. Instead, other crucial steps derived from different literature have been used.

For example, the themes were coded using both deductive and inductive coding. The former enables the following of the theory framework introduced in the thesis. Hence, it reflects existing knowledge and tests the hypothesis. The latter allows for a bottom-up approach fitting for unexpected issues or relationships (Adeoye-Olatunde and Olenik 2021). Such a choice reflects the deficiency of theories in the themes covered by this thesis. As expected, many codes were added or modified during the coding. Using coding trees allows for a more transparent and clear presentation of the data. Attribute codes reflect the respondents and convey basic demographic information about the individuals without revealing their identity. In the findings of this thesis, the respondents were not mentioned by name. Hence, such trees were not created in order not to say too much about their identity. The anonymisation makes their answers more authentic. None of the respondents also required an authorisation of what has been included in the thesis. In the opposite case, they might later change their words out of fear of revealing “too much”. The trees of substantive codes describe the themes and subthemes of the coded passages (Bradley and Harrell 2009). When coding, a mind map or the already-mentioned tree was created for a more transparent and organised data set. The codes were also put into tables. Therefore, discovering interconnected issues, answers, and factors was easier. To check the codes’ validity, the transcriptions of the interviews were compared repeatedly with the recording. The coding was also not a one-time step but underwent a revision.

Lastly, complementary data sources such as existing literature and theories, research papers, surveys, or statistics were applied when discussing the empirical findings (Atkins 1984). Such a firmly laid-out framework allowed for a rigorous

approach to the collected data. The coded data form a base for a more precise discussion. For example, certain intersections or unions of themes can be more easily found. Even though the number of interviews ($n = 8$) does not allow for results leading to external validity, the mentioned methods might still help organise the data set. Hence, the following discussion will summarise patterns, themes, and perspectives. Quotations without the identification of the respondent will be used to describe codes better. The empirical findings will be put into the context of the literature review and the research background previously introduced in this thesis. Such an approach allows for the answer to the main research questions, the sub-research questions, and the approval or disapproval of H1. Therefore, the analysis of the interviews follows a set method based on the literature of researchers familiar with semi-structured interviewing.

To conclude, this third chapter introduced the research design and the methodology. The first paragraphs explained why a single case study suits the topic and why Czechia is a relevant case. Subsequent sections described the advantages of qualitative research and semi-structured interviews, showing why they best capture the answers to the research questions related to the hypothesis, which have also been covered. Moreover, the checklist, interviewing approach, and the choice of respondents were described and justified. Lastly, the process of coding and empirical data analysis was included. Therefore, the analytical framework and methods of this thesis were captured sufficiently. The next chapter will focus on introducing the results of the research, as well as the analysis of the data.

Chapter IV. The Case of Czechia

This last part of the thesis will present the results of the semi-structured interviews and their interpretation. Because of the nature of qualitative research, these two steps are interconnected to be more easily understood and explained. Firstly, the results will be described through the help of structure reflecting the sub-research questions defined in the research design. The substantive codes, the coding trees, and the tables will be used to organise the results. Direct anonymised and coded quotes will be included for a more specific description. These data do not allow us to draw general conclusions about the role of post-socialism. However, they provide an in-depth insight into the complex situation of one of the post-socialist MS of the EU. Therefore, the second part of the chapter will answer the three sub-research and the main research question, as well as discuss the established hypothesis. These findings will be intertwined with the research background and existing literature. Lastly, possible limitations of the results will be summarised, and areas of further research will be recommended.

4.1 The Intertwining of the Presence and the Past

A structure based on the sub-research questions was followed when coding the transcribed semi-structured interviews. Such a way of analysis was chosen because the questions for the checklist arose from these concepts. Therefore, the three base codes reflected their key ideas. They included the current protection of the LGBTQI+ community against HS and HC in Czechia, the stance of the political representation towards the Commission's initiative to amend the list of Eurocrimes, and the impact of the historical socialist experience on such a position. From these, multiple sub-codes were derived. Their exact organisation and meaning will be introduced together with the interpretation of the data. Because of this type of data set's organisation, the empirical results will be described and interpreted as a reference to the sub-research questions. Such an analysis will allow for a more understandable discussion of the sub-research questions, the main research question, and the hypothesis.

4.1.1 The Lack of Protection of LGBTQI+ People

Sub-RQ1: What is the current protection of LGBTQI+ minorities against hate speech and hate crime in the given post-socialist member state?

When trying to answer this question, I focused on multiple aspects. The respondents were asked to evaluate the current status of LGBTQI+ people's protection against HS and HC in Czechia. They were also questioned about the ways the community should be protected. Next, they had to describe their understanding of the stance of the Czech society and the political representation towards this issue. The precise wording of the questions can be found in the checklist attached in the Appendix. The description of the attribute codes will also be added to this part of the thesis. In summary, all respondents except one agreed that the LGBTQI+ community's protection in Czechia is insufficient. However, when MEP1 declared that the current legislation was enough, she added that she was not familiar with the Czech criminal code in great detail. She later described that she would support the initiative of the Commission to amend the list of Eurocrimes. Such a step might result in a change in the national legislation. Hence, she indirectly suggested that the current legislation offers insufficient protection. Next, MEP1 proclaimed: "The current numbers (of HS and HC cases) are increasing. Despite that, the number of reported cases is rather low, as if nothing is happening, but that is not true." Therefore, she also showed interest in enlarging the protection of the LGBTQI+ community. To conclude, the respondents agreed that the current state of the Czech criminal code needs to change. But what were their reasons?

Mostly, they believed legal protection should be equal for all minorities and vulnerable groups. Otherwise, the LGBTQI+ community would not ever achieve proper assistance in case of an HS or HC attack. E.g. GOV2 explained that the penalty enhancement provision, currently applicable to bias-motivated crimes against LGBTQI+ people, is not sufficient. Because "the court can juggle with the provision as it pleases" (GOV2). For example, if the offender lives an otherwise "normal" life and has never committed a similar crime, the court might decide not to use the penalty enhancement. The interviewees also considered that there is a need to reflect on the

increase in the attacks on the LGBTQI+ community. Interviewee EXP1 described the surge in violent cases registered by her office. Among them were also brutal physical attacks. “I dare to say I have never experienced such a situation in my career,” she added. EXP1 saw the reasons for such a change mainly in the often heated debate surrounding the efforts to legalise same-sex marriage.

During these discussions, offensive and false claims are regularly used by politicians disagreeing with such a legal amendment. Concurrently, the Czech political representatives refuse to accept progressive human rights laws such as the Istanbul Convention. EXP2 also mentioned the homophobic statements of MPs. According to her, such proclamations legitimise certain forms of hatred subsequently happening on a personal level. Studies conducted by her organisation also showed that the level of discrimination against LGBTQI+ people is on the rise. Specifically, online HS has risen significantly in the past years. Hence, the two main reasons named by the respondents were the inadequacy of the current legislation and the increase of bias-motivated crimes against the LGBTQI+ community in Czechia. Interestingly, besides GOV1, none of the respondents mentioned the aim to “catch up with the West” as the reason for the criminal code’s amendment. However, such an answer would have been expected from the existing literature on post-socialism.

Furthermore, EXP1 and CSO1 described the creation of the current form of the Czech criminal code. EXP1 explained that the first mentions of the punishment of bias-motivated crimes came in 1923. These laws reflected the Czechoslovakia of that time, a young state connecting various nationalities and ethnicities. Therefore, the task of the legislation was to “protect the republic and its democratic values” (EXP1). Naturally, it changed throughout the upcoming decades. The last time the criminal code was amended was in 2009. However, the attempt to extend the protection to other groups besides the existing ones was not achieved. According to CSO1, such an outcome arose from a “political trading led by KDU-ČSL (Czech Christian Democratic political party)”. Hence, the discussion about the criminal code’s amendment is not a novelty of the past years. Instead, it can be considered a long-term effort for change.

Because of the agreement on the need to amend the current criminal code, the respondents focused on the form such a change should take. What divided them was their position towards the differences between HS and HC. For GOV1, GOV2, and EXP1, there was no need to amend both these crimes. Namely, they considered LGBTQI+ people's protection against HS more sufficient than the one against HC. For example, GOV1 described: "As for hate speech, I'm more reserved. I do not think that there is a need for any significantly higher level of protection than we currently have". EXP1 described how homophobic and transphobic motives of HS are already included in other crimes such as "violence against a population group (...), defamation of a nation, race, ethnic group or another group of persons, or incitement to violence against a group of persons, or restriction of their rights and freedoms". What must be mentioned is that these opinions came from respondents with a deep knowledge of the Czech law system and HS and HC legislation.

Another aspect of the possible change is whether the enlargement of the protected groups should include only the LGBTQI+ community or other missing groups as well. A precise question on this topic did not have to be asked. Almost all respondents explained that their envisioned change would also entail motives related to age and disability. Only MEP1 and EC1 have not expressed their opinion at all. Next, EXP1 stated that if there existed an effort to include only the LGBTQI+ community, it "would never pass in the Parliament". However, she added that such a step would be illogical since HS and HC also create problems for the two other groups. CSO2 supported this view by claiming that the Czech society will accept the proposition better if it includes more protected characteristics. Lastly, there is not much to add regarding the exact legal form of the amendment. The respondents have not named either of the variants that the law office In Iustitia proposed to the Czech government. The reason is probably the specificity of such legal propositions.

I was interested also in other ways of possibly increasing the protection of the LGBTQI+ community in Czechia. The steps that arose during the interviews included, for example, law enforcement training, increased focus on victims' wellbeing, better

data collection and monitoring, or coordination of involved actors. These aspects reflect the knowledge of NGOs, research institutions, or other international organisations mentioned in Chapter 2. Therefore, they came as no surprise. The respondents put the most emphasis on the lack of data on the anti-LGBTQI+ HS and HC. Because if there are no statistics, there is no proof of the increase of hate. Subsequently, the government will be able to keep on refusing to amend the criminal code. No facts will exist that would reveal the worsening situation. However, as EXP1 explained, according to reports of her organisation, the LGBTQI+ community is the second most threatened group in Czechia, just after refugees from Ukraine. She also specified that currently, there is no available data on around 90 per cent of the attacks that happen.

Therefore, the issue is intertwined with the faulty system of monitoring bias-motivated crimes. According to EXP1, one of the crucial problems is that such crimes are often not registered as bias-motivated ones but only as ordinary crimes. In the case of LGBTQI+-related attacks, the Czech Ministry of Justice also does not consider the offender's motive. Instead, it looks at the victim's sexual orientation. However, EXP1 highlighted that such an aspect is irrelevant since the offender can attack for real or assumed characteristics. Next, the importance of the role of different agents of change was mentioned by GOV2. She underlined the need to supplement the lack of legislation's implementation aimed at protecting vulnerable groups. Police presidents or general prosecutor's offices can achieve great results with the help of officers' training or "progressive" crime recording protocols.

Besides the already mentioned steps, other more surprising aspects were cited. Namely, the two requirements of the initiative Together Against Hate that was founded shortly after the attack in Bratislava's bar Tepláreň. Hence, according to some of the respondents, the legalisation of same-sex marriage and the elimination of the castration requirement for transgender people wishing to change their gender legally would also help to create a more protective environment for LGBTQI+ people. The respondents also mentioned the change in the atmosphere of the society. For example, EC1 explained that the positions of high-level politicians matter and can affect the "mood" of

society. Specifically, she mentioned the role of the president. She also highlighted the governmental support of NGOs as a relevant aspect of the overall atmosphere.

However, EC1 also mentioned two other factors that could make the situation of the LGBTIQ+ people in Czechia better, which should be understood as separate categories. She emphasised the role played by the ombudsman and his interpretation of the anti-discrimination laws. “But the current ombudsman insults LGBTIQ+ people. And I think he is supporting the polarisation of the society,” she added (EC1). Next, she described that there is a lack of finances in the area of protection of LGBTIQ+ rights. She gave the program Citizens Equality Rights and Values (CERV) as an example. According to her, there are different “budget lines” for various groups. “You can see how the budget for the advocacy of women’s rights increased. But the one supporting LGBTIQ+ rights is very minimal,” EC1 described. To conclude, the respondents named several other steps besides the amendment of the Czech criminal code that could be taken to increase LGBTIQ+ rights protection. Therefore, the respondents value legal, administrative, and societal changes equally.

Some further relevant information related to the status of LGBTIQ+ protection must be mentioned. Namely, GOV2 described that the issue of HC against the LGBTIQ+ community is considered grave in Czechia “at least by the Supreme State Prosecutor”. She added that the prosecutor’s office signed a related memorandum and joined the Justice Academy in 2018. The document served as a basis for the training program PACT for judges and public prosecutors. The project teaches its participants how to punish LGBTIQ+ HS and HC. However, GOV2 highlighted that judges, public prosecutors, and the police “refuse” to include the characteristics related to the LGBTIQ+ community in their work. Next, CSO2 shared another crucial piece of information. She described the current status of the Government Strategy for Equality and the Removal of Barriers to a Dignified Life for LGBTIQ+ People in the Czech Republic 2021–2026. The equivalent of an official Czech LGBTIQ+ strategy has not been approved yet. CSO2 described that the document is in the discussion. She added that the topic of the protection of the LGBTIQ+ community is also included. However,

she highlighted that the most relevant cause of disagreement among politicians is the proposition to legalise same-sex marriage. She also emphasised that the CSOs do not want to allow the adoption of a “half-empty” document that would result in so-called pink-washing. In that case, the government could be seen as advancing LGBTQI+ rights, but in reality, the politicians would not be bound to make any essential changes.

Moving on, the respondents explained their understanding of society’s stance towards the enlargement of the protection of the LGBTQI+ community. As already mentioned, there are no public surveys on this issue. Therefore, I was interested in the perception of the various stakeholders. The answers varied. The respondents mostly believed that the Czech society would accept the criminal code’s amendment under certain circumstances. Because some respondents thought that citizens are oblivious to such an issue (EC1, CSO1, EXP1). According to them, the reason lies in the complexity of the criminal code but also the specificity of the problem. However, the respondents believed that if the citizens understood the context of the amendment, they would not be against it. Only CSO2 warned that some people might feel that there is an attempt to give an unnecessarily “higher protection” to a specific group of people. Still, the generalisation of such a concern is impossible.

Moreover, EXP2 mentioned that the Czech political culture permanently hinders constructive discussion about LGBTQI+ people. Therefore, the politicians allow ignorance to grow among the members of the Czech society. Despite these comments, the respondents agreed that the general stance of citizens is quite positive. Both MEP1 and CSO1 believed that the work of Czech NGOs concerned with LGBTQI+ rights brought some progress. These are, for example, Prague Pride or Jsme fér. “They do not attack but explain and collect data or examples of good practice. They visit politicians personally and work directly with people from the community,” described MEP1. Hence, the acceptance of the LGBTQI+ community in Czech society increases progressively. It seems that the issue with non-acceptance does not come from “people” but from other sources. That brings us to the last aspect of the first sub-research question.

When asked about the government's stance, none of the interviewees responded affirmatively. All agreed that it is negative. They differed on whether the position was a full-on disapproval or a form of ignorance. However, they still shared various reasons why the refusal to advance the LGBTQI+ community's protection persists. These will be introduced subsequently (see p. 99). What must be said first is that according to the interviewees, the current status of the government's position would not change with opposition at the helm of the state. Currently, there are two political parties in the opposition. Namely, parties called Akce nespokojených občanů 2011 (ANO) and Svoboda a přímá demokracie (SPD). "Nothing would change. Vice versa, these politicians use the topic of gender ideology to gain political points in those murky waters where they hunt their voters," explained CSO1. Also, CSO2 agreed that these parties do not play a significant role in the discussion. According to her, SPD is close to inclining towards fascist ideas, and ANO is such a large party that the stances of its MPs differ significantly. Therefore, it seems that the level of the LGBTQI+ community's protection would not change even with other political parties in the head of the government.

Some respondents shared details about the governmental discussion about amending the criminal code. GOV1 described that the change is being discussed informally between the coalition government parties. GOV2 shared that the Ministry of Justice is "looking into the matter". She explained that such progress is thanks to the Commission's initiative and the efforts of the Czech law office In Iustitia. CSO1 also shared her insight by stating that some initiatives of the Ministry of Justice connected to LGBTQI+ topics are not being introduced to the public on purpose. The reason is to avoid the controversial reactions of the opposition groups. Instead, the Ministry representatives "have time to prepare their arguments" (CSO1).

Next, the attack in Bratislava in October 2022 and its impact on the Czech political situation was also connected to the government's position. Interestingly, respondents representing the government stated that as a result, the politicians started to act and at least attempted to change the current situation in Czechia. Conversely, both

representatives of CSOs plus EXP1 declared that nothing had changed since the attack. “Czech politicians have used it to tweet about how horrible they consider the terrorist act, but almost none of them have acted,” described CSO1. She added that an exception is those MPs who are fighting for the legalisation of same-sex marriage. In 2023, they managed to include the matter in the debate in the lower chamber of the Parliament. Subsequently, the MPs voted and moved the amendment to the second round of votes. However, the same happened with the proposal to ban same-sex marriage constitutionally. Next, EXP1 explained that her company found that the violence against LGBTQI+ people increased after the attack in Bratislava. Therefore, some respondents believed that the terrorist act has influenced Czechia negatively, rather than caused a positive change.

The following section will enumerate factors mentioned by the respondents when talking about the causes of the current political representation’s stance at the national level. However, some of the reasons stated later in the discussion about the Czech government’s stance towards the Commission’s initiative could also be listed here. These two levels are interconnected because the interviewees often discussed thoughts about a “general” position of the Czech political representation. Some also named reasons at this point of the interview that others highlighted only in the later part connected to the EU level. Therefore, more will be said about this particularity in the following pages of this chapter.

Among the explanations of the negative stance of the Czech political representation were, for example, same-sex marriage (MEP1, CSO2, EXP1) and the overall status of human rights protection (MEP1, EXP2). The former was named as a factor related to the possible criminal code amendment. The respondents mentioned that the Czech political representatives do not want to legalise same-sex marriage. Hence, they concluded that there are not many chances that the politicians would act differently in the case of the LGBTQI+ community’s protection. The latter factor, the human rights issue, was also mentioned in the context of the Istanbul Convention that Czechia has not

ratified yet. Again, the thinking was that if the government cannot accept this, why would they try to increase the protection of LGBTQI+ people?

Next, the lack of data (CSO1, EXP1) and the rigidness of the criminal code (GOV2) were also highlighted. The problems connected to the former were already introduced in the previous paragraphs. The latter reason meant that some politicians might believe the criminal code should not change if the situation is not “critical” enough. They cite the current level of reported anti-LGBTQI+ HS and HC cases as proof that Czechia has not reached that stage yet. Other named reasons included populism (EC1, GOV1, CSO1, EXP2), illiberalism (EXP2), patriarchy (GOV1, EXP2), and conservatism (GOV1, CSO1). The first, third and fourth factors were also highlighted during the debate about the presence or absence of the impact of socialism on the position towards the Commission’s initiative. We can see how the views on the reaction of the political representation on national and EU levels intertwine. Populism was described by GOV1 when stating that “the political representation blocks proposals related to LGBTQI+ people and marks them as cultural war only to become more visible for the voters”. “Some politicians abuse the LGBTQI+ topic similarly to Poland or Hungary” noted CSO1. EC1 also agreed with these opinions. She explained that the current politicians use the rights of minorities to win the elections. According to her, the worsening situation is most visible in Poland, Slovakia, and Hungary. However, it can be observed in Czechia in a less extreme version too. The mentioned respondents believed that the politicians use the LGBTQI+ community as a pretext for conflict. Hence, the political representatives will say whatever their voters want to hear.

Furthermore, illiberalism was mentioned by EXP2. She explained: “I don't think it is conservatism that influences those attitudes, but a certain form of illiberalism or a latent form of intolerance and ignorance that has not yet been eradicated.” When discussing patriarchy, the interviewees described the current political representation as too homogeneous. They underlined that there is a lack of women and younger generations. Older men, who make up most of the political parties, usually have a much lower acceptance and tolerance of the LGBTQI+ community. Lastly, conservatism was

described together with the bewilderment at how much power conservative parties have in the Parliament. CSO1 connected this fact with the factor of religion. “Even though churches in Czechia are empty on Sundays, the power of the voice that the Church managed to gain is breathtaking,” she explained (CSO1). When asked about the source of such a connection, she referenced personal ties and nepotism.

The last aspect was named by almost all respondents (MEP1, EC1, GOV1, CSO1, CSO2, EXP1, EXP2). The interviewees underlined the current form of government and the political representation. However, the respondents have not described the situations’ causes in depth. They believed those in power refused to advance the LGBTQI+ community’s protection for various reasons. “Too few people are involved in politics. If you look at how many members each political party has, it is very few considering how many people those parties should represent,” explained, for example, GOV1. Finally, another aspect was highlighted by some of the respondents. Namely, MEP1, GOV1, CSO2, and EXP2 pointed out that the political representation does not reflect the wishes of the society on LGBTQI+ matters. Lastly, EC1 described how polarised the current Czech government is. “The politicians are so hard to read. Most of the MPs have a choice of a free vote. The situation is very fragmented,” she explained (EC1). She also thought that the politicians create cooperation across various political factions and end up in “unbelievable coalitions”. Therefore, the respondents supported the idea that what stops the situation in Czechia from changing is not the hateful and refusing atmosphere in the Czech society but rather the one in the political sphere.

4.1.2 The Unclear Stance of Czechia

Sub-RQ2: What was the reaction of the given post-socialist member state to the motion to criminalise anti-LGBTQI+ hate speech and hate crime at the EU level?

This question was the hardest out of the established sub-research questions. The political debate surrounding the Commission’s initiative is not easy to reach. The discussions remain mostly between high-level politicians and related officials. Despite

these barriers, I wanted to see what the multi-level respondents knew about the situation. The answer to this sub-research question will be interconnected with my research in the discussion part of this chapter. However, I soon discovered that there is not much information available because the position of the Czech government does not exist. The respondents agreed that the political representatives refused the Commission's proposition or did not share any opinion. Even MEP1 described that the initiative "is parked in the Council" and that she does not know when the vote in the European Parliament on the same topic will take place. She also thought there would be no more decisions from the Council until the upcoming election to the EP. Therefore, there might be no development in the following months.

Moreover, EC1 mentioned that the Czech government did not support the matter during its presidency of the Council. "It was not among the politicians' priorities. You can see how easily the presidency can block discussions by not giving the topic enough space," she explained (EC1). She added that the current Commission considers the "union of equality" one of its main priorities. Therefore, the institution also tries to pressure the MS to make them "care and act" about this topic. Next, GOV2 also gave more information on this topic. She described that there was not any "framework position" of the Czech political representation. "I think this is probably the first time in our history that we didn't have one," she added (GOV2). GOV1 described that the discussion about Czechia's stance was one of the first times the newly created governmental coalition "clashed". This information hints at the position of the government as well.

Even though the respondents did not know much about the government's position or could not talk about it in great detail, they assessed the causes of the refusal of the Commission's proposal. In total, they mentioned eight different factors. However, collectively they barely agreed on any of them. They, for example, stated that the political representation considers the current legislation appropriate enough (MEP1, EXP1). Such a reasoning would correspond with the interpretation of the situation at the national level. Other factors mentioned included the fear of censorship (MEP1) and the

understanding of the Commission's proposal as what might be described as "a dictate from Brussels" (CSO1). Of course, these were mere interpretations of the political stance of Czechia's government. Respondents also stated that the political representation might think that there are no cross-border characteristics of HS and HC, and therefore, these crimes should not be dealt with at the EU level (GOV1, CSO2).

Two other interviewees mentioned that Czechia did not engage in the debate because its politicians knew that Poland and Hungary "would block the initiative either way" (GOV2, CSO1). "We can thus (as a state as such) maintain an apparent greater sophistication than we have in reality by remaining silent," explained CSO1. Another reason was that the Czech political representation was not interested in the topic (EC1, CSO1, EXP1). Therefore, the politicians also did not need to decide which position to take on this matter. Interestingly, some respondents agreed that the cause behind the lack of stance was the "hypocrisy" of the politicians (EC1, GOV2, CSO1, EXP2). According to the interviewees, they feared that if such legislation would pass, it might turn against them. They believed that the politicians often use homophobic or transphobic harmful speech that could be punished from then on. Therefore, the respondents' understanding of the current situation and the lack of Czechia's position varies greatly. The answers also differed according to the background of the respondents. Those from government-related organisations could not share "insider" information, and interviewees from CSOs were too distant from such negotiations to know such details.

Regarding the respondents' opinions, they all agreed that the Commission's initiative should be accepted. However, some had a few comments concerning the exact form of the proposal. For example, MEP1 mentioned that she would not emphasise the protected characteristics of the LGBTQI+ community when trying to promote the Commission's initiative. She thought that this way, the chances of the proposals' acceptance would increase. However, it must be mentioned that the representatives of the Commission did not choose such a strategy. They promoted the proposal as an inclusion of various types of HS and HC under the list of Eurocrimes.

Next, GOV1 explained that she would accept the initiative. However, she thought it would make more sense to divide HS and HC because of their differences. She would also prefer to include LGBTQI+ characteristics in the Czech legislation at the national level rather than using an EU-wide framework. Specifically, she said the list of Eurocrimes is generally understood as “more controversial and less wanted, especially from a certain side of the political spectrum” (GOV1). GOV2 also described that it was “a mistake” that the Commission dealt with HS and HC at the same time. She thought that if only HC had been considered, the proposal might have had a greater chance of succeeding. On a more positive note, EXP1 emphasised the issue’s importance by pointing to the harmfulness of HS and HC. Namely, these crimes do not harm only the individual but also their community and society. CSO1 believed that the Commission’s initiative helps to “push the issue from above” while others can “take care” of the national level. Therefore, the stance of the respondents towards the proposal was generally positive.

The discussion about a possible change in Czechia’s stance can also be understood as part of this sub-research question. When asked about their view of the future, the respondents had an uneasy time responding. Such difficulty was not caused only by the intricate task of predicting what might happen but also due to the issue’s complexity. Therefore, some respondents who responded affirmatively named conditions that must be met for the situation to change. For example, CSO2 concentrated on the form of the future government and the possible reform of conservative political parties. She explained that they currently have the historically lowest electoral preferences. They will soon face the questions of why and how they arrived at such a position. The outcome of such a contemplation might lead them to create a new and more modern face. However, the complete opposite scenario is just as possible. They might also become more extreme in their opinions. EC1 also mentioned elections as a crucial factor in future developments. “It takes just little to have the right people in the Parliament so the LGBTQI+ friendly laws could pass,” she explained (EC1). She added that it is just as possible for the situation not to change. Lastly, she

mentioned the role of the employers of various ministries who can also block future debate.

Next, EXP2 stated that the future does not lie only in the politicians' hands but also in those of the young generation. She also mentioned the level of independence of public media and the "familiarity" of society's majority with the LGBTQI+ community as relevant factors. However, the EXP1's answer concentrated on an entirely different aspect. She envisioned a change that would not come from the political level or the sudden acceptance of the Commission's view. Instead, she concentrated on police work, which she evaluated as increasingly improving. "The progress is slow, but it is there," she added (EXP1). Lastly, GOV2 expressed the influence of the presidency of the Council. According to her, the states holding this position soon, namely Hungary and Poland, will only halt any future progress. Therefore, she considers the Commission's initiative "dead". The previous paragraphs have explained how the Czech political representation refuses to take a clear stance. They have also covered the reasons for such positions. They summed up the respondents' understanding of future development. However, the evolution of Czechia's stance depends on various aspects. The following pages will debate whether the historical experience with socialism might be one of them.

4.1.3 The Persistent Presence of the Socialist Past

Sub-RQ3: To what extent and in what ways does the historical socialist experience influence decision-making in the given post-socialist member state?

The respondents' answers related to the influence of the historical socialist experience reflected the issue's complexity. There was no agreement and no simple explanation. Six respondents (EC1, GOV1, GOV2, CSO2, EXP1, EXP2) stated that socialism plays a role in today's discussion about the LGBTQI+ people's protection. However, a few of them considered this influence as only partial. The rest concluded that there are other reasons behind the stances of the current political representation (MEP1, CSO1). For example, MEP1 explained she sees no connection between

contemporary politics and the socialist past. According to her, the factor that influences politicians' views is education. Next, CSO1 believed that despite its dark sides, socialism also helped to advance specific processes in Czechia. "Our state decriminalised homosexual relations as early as 1961, even though only for men older than 18. We were quite ahead in this sense," she described and added that women living under the socialist regime had certain rights that their counterparts in the West were still fighting for at that time (CSO1).

Moreover, some of the respondents who agreed with the influence of the historical socialist past highlighted the complexity of the question. They emphasised that they do not see the situation as a black-and-white picture. To make their point, they mentioned that some states on the East side of the Iron Curtain included the explicit protection of the LGBTQI+ community against HS and HC in their criminal codes. "I think every post-socialist state has its specific journey," explained CSO2. Next, CSO1 stated that states such as Croatia or Spain included the SOGI grounds in their legislation, even though they are "often understood as more conservative than us, the Czechs". EXP1 also agreed with this idea and cited Baltic states such as Latvia or Estonia as an example.

However, she also underlined that the impact of the socialist past is significant. According to her, Czechia cannot reflect on modern democratic states that understand the commitment to protecting human rights and the consequences of not doing so. "I think the socialist regime destroyed this country. We haven't been able to break out of that bondage in the past 30 years," she stated (EXP1). EXP2 shared a similar stance. "Some people openly talk about the LGBTQI+ community constituting totalitarianism. But in reality, the rejection of that diversity is the totality," she described when talking about the current influence of socialism. Next, an important point was made by GOV1. She explained that when thinking about the impact of socialism, she does not strictly mean the political regime itself but rather the influence of the "political-social-cultural environment". Even though the other respondents did not formulate their thoughts so

explicitly, it became apparent from their answers that they at least partially shared this line of thinking.

After discovering the respondents' initial stance, the following questions concentrated on the way socialism influences the current political situation in Czechia. Almost all respondents agreed that socialism made society and politicians fearful of some "otherness" or anything they understand as the imposition of the "West". For example, GOV1 described that many current progressive topics are "often understood as an import from outsiders". According to her, some would even raise their voices to point to other "West-oriented" countries and scream: "Look at them, how bad we will end up too!". Others found an explanation of how the socialist regime imposed the concept of equality on the society of that time. "People almost started to resent the concept," described CSO2.

EXP2 viewed the same factor differently. According to her, because the socialist regime tried so hard to make everyone seem equal, it created a fear of anything standing "outside the line". An example of such an excess would be LGBTQI+ people, who were immediately understood as problematic by the wider society. Therefore, any discussion related to their community would be labelled as taboo. "LGBTQI+ people were understood as people who are having a lot of sex, take drugs, and sleep with others for money. It is still quite a sexualised topic," EXP2 explained. She added that in Czechia, such views were, for a long time, supported by corresponding media narratives. Interestingly, CSO1 mentioned the factor of "otherness" as well. However, she has not connected it to socialism but considers it a separate and individual characteristic of Czech society and political representation.

The other impacts were not mentioned as often as the first one. For example, some respondents agreed (GOV1, EXP1, EXP2) that the absence of political diversity is another form of impact of the socialist past. Hence, they stated that Czechia does not have a large offer of political parties. "We still need to follow a sort of hero, like a flock. We are not used to political diversity," described EXP2. Such an influence interconnects with the next one. Namely, the aversion to politics or a lack of interest in anything

political (GOV1, CSO2, EXP2). Some respondents described that after the Velvet Revolution, part of the society decided that politics was not in their interest. “They just believed that an invisible hand would guide them out of their problems from then on,” explained CSO2. GOV1 also described that the Czech society sees politics as something “ugly and dirty” that people do not wish to be associated with.

Another form of socialism’s presence was the distrust towards CSOs (GOV1, EXP2). According to some respondents, these organisations are still seen as something “subversive” by society, but also the political representation. Lastly, some respondents agreed that there is an ongoing influence of other post-socialist states (EC1, EXP1, EXP2). However, EXP2 explained that the negative stance of some of the post-socialist governments towards the LGBTQI+ community is not always the real one. “I think it is a political game through which they influence the political atmosphere,” explained EXP2. She added that such a strategy is not as common in Czechia. On the contrary, the rest of the respondents were sceptical about the possible connection between the various post-socialist governments. “We can see that the political group V4 has sizzled out recently,” stated CSO2 to make her point.

Lastly, some respondents also included aspects mentioned mainly by those refusing the presence of socialism’s influence (EC1, GOV1, GOV2, CSO2, EXP1). However, they still connected them to the historical experience of socialism. Among these were patriarchy, conservatism, populism, the persistent power of the Church, an insufficient level of democracy, a lack of minorities, and the form of the current government. For example, CSO2 described that post-socialist countries are more prone to fall into the trap of populism or disinformation campaigns. Next, GOV1 explained that the current power of the Church in Czechia is connected to restitutions that have taken place after the Velvet Revolution. “When you move a large amount of property into the hands of a certain power in the country, you are increasing its influence,” she stated (GOV1). The previous paragraphs have introduced how those respondents who agree with the presence of socialism impact view its repercussions. Among the named aspects were the fear of “otherness” or import from “the West”, absence of political

diversity, aversion to politics, or distrust towards CSOs. Interestingly, some interviewees also mentioned factors considered by those who do not believe in the presence of socialism influence.

When asked about other sources of politicians' stances, the respondents differed. Such fragmentation shows the various approaches one can have towards this issue. Therefore, the following pages will introduce the causes named by those who do not believe in the presence of socialism impact. However, as mentioned earlier, it must be remembered that some respondents who agreed with the influence also talked about factors not connected to the experience with socialism. The respondents cannot be divided into "black and white" groups. Three interviewees also could not decide about the impact or understood it as only partial (EC1, GOV2, CSO2). The most often mentioned factor was the current form of the government. Namely, all of the respondents agreed on it. However, they have not connected it to a specific political orientation or a party. Instead, they described a form of political culture.

For example, MEP1 stated that current politicians "are afraid" to stand up for LGBTQI+ rights. She added that people continue voting for representatives who do not respect their wishes. CSO1 highlighted that the politicians know in advance that they will never reach a consensus on LGBTQI+ rights' protection. Therefore, the government will try to suppress this topic "not to risk that its coalition would fall apart" (CSO1). The interviewees have not mentioned any other underlying causes for such behaviour. Often, they wondered at the roots of the current political state. The next often-mentioned category was populism (MEP1, GOV1, CSO1, CSO2, EXP1, EXP2). According to the respondents, the topic of LGBTQI+ people is used to achieve a specific political goal. For example, to gain voters or divert the public's attention to a different theme. "They use lies, manipulation, they attack people's emotions," described MEP1 "strategies" of some Czech politicians. More was said about this factor in the part of this thesis related to the government's position towards LGBTQI+ protection.

Furthermore, the respondents named the factor of conservatism (MEP1, GOV1, GOV2, CSO1, CSO2). When doing so, they pointed to the high numbers of Czech

politicians following this political direction. They also highlighted the most common form of conservatism in Czechia. Namely, the type that refuses to accept any progressive lines of conservatism. For example, MEP1 emphasised how influential conservatism and religion are in Czechia. Especially when considering that Czech people belong to one of the most atheistic communities in Europe. However, CSO1 expressed her hopes for the future. According to her, some conservative politicians already changed their positions towards LGBTQI+ people. E.g., by learning more about the topic. Some of them were even convinced by their children “who showed them how stupid their opinions are” (CSO1). Therefore, she believed this could happen to other conservative politicians as well.

Next, the interviewees named patriarchy as one of the causes of the current political representation’s stance (MEP1, GOV1, CSO1, CSO2, EXP2). They often pointed to the amount of older men working in the Parliament. As mentioned earlier, these types of politicians are more prone to having a refusing stance towards the LGBTQI+ community. Next, patriarchy is also interconnected with conservatism. Hence, according to the respondents, some of the politicians of the right-wing parties are concerned that once something “new” comes, men will lose their dominance. “The stance of the political representation is also influenced by the sheer number of men in politics,” described MEP1. Two respondents (CSO1, EXP2) explicitly mentioned the generations’ differences. Therefore, to them, the reason for the refusing stances of the political representation towards the LGBTQI+ community was not men or only older men. But older generations in general.

The following cause brought up by the respondents is the growing power of the anti-gender movement (EC1, MEP1, GOV1, GOV1, EXP2). The interviewees mentioned that the Czech government takes advice from the Alliance for Family, which would fall under this movement. However, such cooperation is not balanced by communication with the opposite “side”. Therefore, organisations advocating for LGBTQI+ rights are not consulted by the government as often. The respondents also highlighted that the Czech anti-gender movement takes inspiration from similar groups

abroad. For example, EC1 explained that she thinks the situation in Czechia is influenced by powerful foreign groups “founded by rich people who wish to share the anti-gender narrative across Europe”. She added that security forces should consider mapping such phenomena as one of their cases to protect the status of the Czech democracy.

The previous factor is connected to the next one. Namely, some respondents mentioned the Church and religion as the reasons for the Czech political representation’s negative or neutral stance (MEP1, GOV1, CSO1, EXP1). Their debate about the power of the religious structures in Czechia was mentioned earlier in this chapter. Most interviewees could not explain the reasons for the prevailing influence of the Church. The only connections mentioned were the restitutions and private ties with politicians. Next, EC1 described that the cause of the negative or ignorant stance of the Czech political representation is the “simplification and misuse of Christian values”. She explained that other more religious states with strong Christian pasts, e.g. Malta, Spain or Ireland, have moved forward. However, she has not observed the same progress in Czechia. The following categories brought up by the respondents have not gained much agreement. They were named by two or one of them. Nevertheless, they deserve to be mentioned.

For example, EXP1 and EXP2 highlighted the role of propaganda. They described the wave of disinformation society must face, most often in the online environment. According to EXP2, autocratic states like Russia or China aim to weaken Western societies. Therefore, they search for narratives that have the potential to divide and polarise society. One of the topics of their choice is also the LGBTQI+ community. “If they see it works, they will continue using this method against us. LGBTQI+ people are victims of higher political games,” described EXP2. Next, GOV2 and EXP1 named the level of democracy as the root of the government's negative stance. However, they differ on whether the inadequate quality of democracy in Czechia is the heritage of the past socialist regime. A similar disagreement existed between the same respondents on the topic of minorities. They both agreed on the presence of society’s fear or discomfort

related to this topic. But when GOV2 talked about the lack of minorities in Czechia, she saw the causes at the end of World War II. and the so-called Beneš decrees. These documents served as the basis for the expulsion of Germans from Czech territories. She stated that because of this historical event, Czechia does not have as many minorities as other European states.

One of the last factors was also mentioned at the beginning of this chapter. Namely, MEP1 and EC1 discussed the role of education. MEP1 emphasised that the refusing stances towards the LGBTQI+ community do not come from the experience with socialism but rather from an individual education. This explanation also came from her view that socialism does not influence current political stances. EC1 described that the roots of the refusing political position come from a lack of tolerance and respect for others. “All of us bring these values from our families, and hence, education towards human rights,” she added (EC1). She was one of the respondents split on the precise level of impact of the historical experience with socialism.

The next factor was mentioned only by CSO2. Namely, she described that the causes of today’s political positions do not lie in the experience with socialism but rather in the 1990s. She explained that what matters is not what preceded the revolutionary year 1989 but what followed. “Some politicians still think that absolute freedom will bring the equality of everyone. That some invisible force will intervene and fix everything. Unfortunately, that is not true,” she described (CSO2). However, such a point is hard to categorise because one could argue that the era of the 1990s logically emerged from the previous decades of socialism. But there is no easy way of discovering an uncompromising causality. Next, EC1 explained that she does not think the refusing political stances come explicitly from the experience with the socialist regime but from any totalitarian regime. “Hence, we can also consider the World War II. Our sad experience with authoritarian and totalitarian regimes causes citizens to hold onto something they know,” she described (EC1). According to her, this “well-known factor” is some form of common enemy. In this case, politicians use the LGBTQI+

community to unite society through something they are already used to. In this case, to find someone to turn against.

Lastly, EXP2 discussed two other interesting factors unrelated to the political representation's stance. However, they are still worth mentioning because they are connected to the work of CSOs advocating for LGBTQI+ rights. EXP2 explained that what makes their job harder is the complex issue of finding sufficient funding. She described that social media and crowd-funding are crucial in such efforts. However, more powerful players usually gain control of this environment. And therefore, make it harder for the small or grassroots NGOs. She also talked about the difficult job of LGBTQI+ activists. According to her, some are prone to burnout because they face the difficult task of advocating for LGBTQI+ rights. For example, the registered partnership was enforced only 14 years after the beginning of the CSOs' efforts. After achieving at least a partial victory, the authors of such an important milestone did not have much energy to fight for other causes or pick up the battle again.

To summarise, the first part of this chapter introduced the collected data. First, answers to the questions related to the first sub-research questions were described and the current level of protection of the LGBTQI+ community in Czechia was explained. Besides that, the first paragraphs also summed up the respondents' understanding of the stance of society and the government towards the topic and their explanation of the negative or neutral stance of the political representations. The various steps that, according to the interviewees, should be taken to increase the safety of LGBTQI+ were also described. The second part of the chapter focused on the sub-research question related to the Commission's initiative. It summarised the respondents' knowledge of the topic and introduced their explanations of the negative or non-existent position. The last part reflected the third sub-research question focused on the impact of the socialist past. The respondents' views on the presence or absence of the influence of the historical experience with socialism were described. Subsequently, the reasons for both positions were also thoroughly covered. In so doing, this chapter created a basis for the following discussion to follow.

4.2 The Outdated Political Culture of Czechia

The last part of the thesis will focus on answering the sub-research questions, the main research question, and testing the research hypothesis. To do so, the literature review, the research background, and the empirical data set will be connected and compared. As already highlighted, the aim of the research is not to lead to a generalizable conclusion. This study simply strives to provide in-depth knowledge of one of the post-socialist EU MS. The discussion will follow the structure of the previous part. Therefore, the three sub-research questions will be answered gradually. Subsequently, the main research question and the hypothesis will be debated. To conclude, the limitations of the thesis will also be discussed.

4.2.1 The Need for the Amendment of the Criminal Code

Sub-RQ1: What is the current protection of LGBTQI+ minorities against hate speech and hate crime in the given post-socialist member state?

The previous part of this chapter has shown that the respondents agree on the amendment of the Czech criminal code in a way that would include the LGBTQI+ community. Considering that such a step would reflect the recommendations of the European Commission, the OECD or ECRI (European Commission 2022; OSCE ODIHR 2023; ECRI 2020), it can be concluded that the current protection is insufficient. It stems from how the Czech police, judges, and public prosecutors approach the existing laws concerning LGBTQI+ people. Namely, they do not apply the provisions available for punishing anti-LGBTQI+ HS and HC. This issue interconnects with the literature and various reports highlighting the lack of implementation of existing HS and HC legislation in other post-socialist but also “Western” states (Baron 2016; ECRI 2023; Peršák 2022).

However, the current legislation would not protect the LGBTQI+ community sufficiently, even if fully implemented by the judges. It might seem that other steps taken to increase LGBTQI+ people’s protection would be more effective. For example,

the Czech stakeholders should focus on better monitoring of HS and HC, training of personnel, the well-being of victims, or the change in the political atmosphere (European Commission 2020a). That is not the case. Even though the respondents mentioned a long list of other steps that should be taken to make the situation better, they strongly underlined the need for the amendment. The criminal code's change would serve as a starting point and send a clear message from the political representation.

Another aspect stemming from the literature review was confirmed in the interviews. The discussion about the legislation's sufficiency is even more difficult because of the complex topic of HS and HC. As emphasised in the literature review, there is no agreement on which form of punishment is the most appropriate (Hall 2013; Howard 2019; Strossen 2018). Such a division was seen also in the case of Czechia. For example, the respondents saw differences between HS and HC. Some of them considered the current legislation more appropriate, others less. The intricacy of the topic also complicates the debate in society and at the political level. Hence, it allows politicians to use arguments such as that the data do not show any increase in HS and HC cases or that the LGBTQI+ community is already sufficiently included in the current HS and HC legislation. However, the literature, the reports, and the experts agree that this is not the truth (European Commission 2021a; European Commission, Ypma, P., Marsavelski, A., Giraudon, S., et al. 2021; ILGA-Europe 2021).

The following factor pointing to the conclusion that the current LGBTQI+ people's protection in Czechia is insufficient is the increase in HS and HC cases (In Iustitia 2022). This also corresponds with the mentioned reports and documents. Even the respondents from organisations conducting their surveys highlighted that the LGBTQI+ community has become increasingly more vulnerable. However, it is interesting that even though the attacks are increasing, the stance of Czech society is rather welcoming. More precisely, its majority feels either welcoming about the advancement of LGBTQI+ rights or does not consider such a topic as relevant. Yet, such stances cannot be derived directly from public surveys.

However, the existing statistics show that up to 67 % of society would accept the legalisation of same-sex marriage (Jsme fér 2020). Citizens are also becoming more active in the area of LGBTQI+ rights. For example, the petition Together Against Hate, created after the attack in Bratislava, gathered over 23 thousand signatures. Around 60 thousand people joined the Prague Pride march in the summer of 2023 (Prague Pride 2023). Interestingly, the survey To Be LGBTQI+ in Czechia from 2019, organised by the former ombudsman Anna Šabatová, concluded that the public perceives the situation of LGBTQI+ people in Czechia more positively than the community itself (Ombudsman 2021).

The more or less welcoming stance of society leads us to the conclusion that the root cause of the insufficient protection of the LGBTQI+ community in Czechia is political representation. The exact reasons for the refusal to advance LGBTQI+ people's rights will be discussed later. However, it must be highlighted that the government is very fragmented. Some politicians are fighting for the advancement of LGBTQI+ rights and the legalisation of same-sex marriage. Still, they are the minority and are not loud enough to “drown” their opposition. Because of their inability to act, the Czech government creates an unwelcoming political atmosphere that overflows into the society. The politicians' position towards other LGBTQI+ friendly or human rights laws, such as the Istanbul Convention, is not helping (In Iustitia 2023c). An interesting point is also the inability of the government to create some form of National LGBTQI+ Strategy. Even though other aspects yet to be debated have an influence, the issue's roots lead to the Czech politicians.

The answer to the first sub-research question was more or less straightforward. The knowledge of the existing literature, reports or documents, and the respondents all agreed that LGBTQI+ people's protection exists to an extent but is insufficient. The available surveys of public opinions on LGBTQI+ rights and the conducted interviews also hinted that the root cause of such a situation is the refusing or ignorant stances of the Czech political representatives. It became clear that the legislation is only one part

of a larger framework. Hence, other steps must be taken to improve the protection of LGBTQI+ people as well.

4.2.2 The Crucial Role of the Council's Presidency

Sub-RQ2: What was the reaction of the given post-socialist member state to the motion to criminalise anti-LGBTQI+ hate speech and hate crime at the EU level?

There were few resources accessible to address this inquiry. I could not find any public documents or articles on this topic. The only information I could use were media articles cited earlier in this paper. However, the lack of framework position of the Czech government is an answer in itself. Namely, its representatives have never published any public stance related to the inclusion of HS and HC under the list of Eurocrimes. Even though the trio of France, Czechia and Sweden stated in their “trio” priorities that they want to “give special attention” to the LGBTQI+ Equality Strategy 2020-2025, the Czech political representation failed to keep such a promise (Council of the EU 2021).

According to the media and the respondent's knowledge, the Czech government has not pursued the issue of Eurocrimes during its presidency. Since I could not talk directly with any decision-makers, the reason for such a decision is based on mere speculation of the respondents. It stems from their opinions that the Czech political representation does not care for the topic or considers the current legislation sufficient. Interestingly, the “fear of censorship” or the opposition towards the “dictate” from Brussels highlighted, for example, by Kuhar and Paternotte (2017) or Wittenius (2021), were not mentioned. The censorship argument was used only in the Have Your Say questionnaire and mentioned by the MEP Dita Charanzová (iDnes 2022b). Still, the literature emphasised its relevance more than was found in the research. Therefore, these arguments, also connected to the anti-gender movement, do not penetrate the discussion at the EU level. However, it must also be remembered, as GOV2 mentioned, that politicians will probably use more “rational” arguments like the lack of a cross-border aspect needed for the crime to be discussed at the EU level.

Relevant is also the suggestion by some of the respondents that the politicians fear a backlash. Since they routinely share homophobic statements, they would act against themselves if they supported the Commission's initiative. To give an example, MP Tomio Okamura famously proclaimed that he would prefer to jump out of a window than be adopted by homosexual parents during the discussions about the legalisation of same-sex marriage (iDnes 2021). When agreeing with the change in the criminal code, these politicians could not attack LGBTQI+ people so explicitly and would also face the risk of being seen as hypocrites. Interestingly, the literature on HS and HC does not mention such a "personal" approach to the legislation. However, another set of literature considers the impact of personal characteristics on politicians' decisions (Krasno and LaPides 2015).

It can be concluded that the stance of Czechia is negative. If the political representation wanted to pursue this topic, it had a great chance to. The presidency of the Council is one of the best ways to advance a specific proposal or amendment. Also, according to the media, France has already started the dialogue during its presidency. As EC1 stated, the presidency has a crucial influence. "You can see how easily the presidency can block discussions by not giving the topic enough space," she explained. Therefore, it will also be interesting to see the future of the Commission's initiative since Hungary and Poland should have the presidency in 2024 and 2025. Despite no official document of the Czech government supporting this statement, the conclusion can be based on the already mentioned factors.

4.2.3 The Unexpected Influence of the Historical Socialist Experience

Sub-RQ3: To what extent and in what ways does the historical socialist experience influence decision-making in the given post-socialist member state?

The discussion of the last sub-research question will interconnect both the national and international levels. The reason is that one of the main changes that the inclusion of HS and HC under the list of Eurocrimes would cause in the Czech legal

system is the one connected to the LGBTQI+ community. Because the SOGISC grounds would be added to the provision already protecting the other vulnerable groups. The research can't ascertain whether the politicians understand these two issues as connected. Still, the respondents often approached them as such. When they talked about the reasons for the refusing stances of political representation, they often switched from one “level” to the other. However, as will be explained shortly, they did see some crucial differences in how the politicians approached them.

Firstly, it must be said that most respondents considered that the historical experience with socialism still plays a role. None named it the main factor influencing the current discussion surrounding the LGBTQI+ community at the national and EU level. Such a finding supports the overall conclusion of the literature review. The impact of the socialist past exists, however, is very specific. It also stems from the respondents' answers that the influence of socialism does not correspond with the one mentioned in the scarce literature on this topic (Demenko and Urbańczyk 2020; Norocel and Paternotte 2023). Namely, those authors concentrated most on the fear of “censorship” connected with the totalism of the past and with the protection of freedom of expression. Such arguments against the implementation of HS and HC under the list of Eurocrimes were found only in the Have Your Say questionnaire published by the EU (Have Your Say 2021). Some MEPs mentioned them in their scarce media statements. However, the respondents did not include them when debating the stances of the political representation. Therefore, this opinion might exist only among some citizens. There are no public surveys to test such a conclusion, and Czech politicians do not routinely use such a claim. Such a conclusion does not correspond to the existing literature (Demenko and Urbańczyk 2020; Graff and Korolczuk 2022; Kuhar and Paternotte 2017; Norocel and Paternotte 2023). The articles concentrated mainly on the issue of freedom of expression. However, the background research and the interviews revealed other “heritage” of the past.

It seems that the influence of the socialist past is more subtle. When asked about the reasons for the negative stance of the Czech government, respondents pointed to the

current form of the government or the political offer available in Czechia. However, finding the causes of the current political composition was a complex task. Those interviewees who believed in the lasting impact of the socialist experience named the absence of political diversity or aversion to politics as possible reasons. They highlighted that because of the decades-long socialist regime, Czech society and politicians have gotten used to having one leader and one common enemy. Hence, if the current political parties sense this prevailing atmosphere, they can use it for their benefit. They can also work with the fear of “otherness” that remains to be embedded among Czechs. Interestingly, LGBTQI+ people are in general seen as a “different” group of society (Chaney 2018). Such a sense of “otherness” increases even more in post-socialist states. In this light, the LGBTQI+ community seems like the perfect target. The distrust towards CSOs highlighted by other respondents also plays a role in the unchanging status of insufficient protection of LGBTQI+ people in Czechia. However, it remains unknown to what extent politicians realise this “impact” of socialism on their decisions. Interestingly, none of these types of influence were mentioned in the existing literature.

Some respondents connected factors with the historical socialist past that others understood as independent from such an experience. Among them are, for example, populism, patriarchy, conservatism or religion. These aspects deserve to be highlighted also because they belonged to those most often mentioned by respondents not seeing any influence of socialism in current decisions of the Czech political representation. An in-depth description of how these factors impact politicians has already been provided. What seems relevant here are those explanations connected to socialism. E.g. the influence of restitutions given to the Church after the Velvet Revolution, the need to follow the voice of a particular political group or one politician, or the prevailing patriarchic structures of the Parliament. Also, the influence of populism interconnects with the anti-gender movement, as described by Marie Wittenius (2021, 2). A deeper discussion of these aspects would require further research on these factors. It must also be noted that some of the influence of the historical socialist past captured by the literature was not mentioned by any respondents. Namely,

the greater emphasis on the role of family or “traditional values” (Godzisz and Mole 2023; Norocel and Paternotte 2023). Lastly, it must be highlighted that there was no clear differentiation of the respondents’ answers. Besides the assessment of the government's steps, there was no apparent division between the representatives of the government or the EU, the CSOs, and the experts.

4.2.4 The Specificity of the EU Level

RQ: How does experience with socialist regimes influence member states' stance towards the European Union’s motion to criminalise anti-LGBTQI+ hate speech and hate crime?

Furthermore, I will discuss the main research question based on the previous answers. As mentioned, the already complex situation gets even more complicated because of the Czech government’s non-existent position towards the Commission’s initiative. I will also consider the status of LGBTQI+ people’s protection and the government’s position towards the amendment of the Czech criminal code. Both these factors hint towards Czechia's stance towards the Commission’s initiative. To conclude, the research has shown at least a partial influence of the historical socialist experience on politicians’ position towards LGBTQI+ people. However, this impact connects mainly to the general stance towards the community. This can also be seen in the maps of Europe published by various NGOs concerned with legalising same-sex marriage or comprehensive HS and HC legislation, showing a line more or less corresponding to the Iron Curtain (Jsmé fér 2023; Rainbow Europe 2023).

It must be emphasised that such a conclusion can never be black and white because the issue of criminalisation of anti-LGBTQI+ HS and HC is so complex. Some of the post-socialist MS criminalise HS and HC on the grounds of sexual orientation only. Others add gender identity. Bulgaria, Czechia, Latvia, and Poland do not have any (Directorate General for Justice and Consumers 2021b). Next, the before-mentioned factors of socialist “influence”, such as lack of political diversity or distrust of NGOs, also do not directly connect to the EU level. During the interviews, the respondents also

often gave examples related to the political discussion around the legalisation of same-sex marriage. And such a debate is ongoing only at the national level. Some respondents even mentioned that the government might be willing to amend the criminal code at the national level so it protects LGBTQI+ more soon. Hence, it might be concluded that the stance of the political representation towards the Commission's initiative stems from different reasons.

Such a conclusion does not imply that the national and EU levels cannot be interconnected. In this case, the respondents did not emphasise such a connection. They believe that the political representatives share the refusing position. However, they differ on the presence of the socialist past's influence at the EU level. Moreover, if an EU MS refuses the Commission's proposal, it might still implement a similar change at the national level. The representatives might not care to deal with the issue through the EU institutions. Such an option was hinted at by GOV1 and CSO1 when they mentioned that the politicians might not believe that the cross-border factor is present in the HS and HC cases. Lastly, the existing literature does not support the conclusion that the experience with socialism influences the decisions taken at the EU level. Except for Peršak (2022), it mainly concentrates on the "general" stance of the post-socialist states (Graff and Korolczuk 2022; Sosa 2021).

Next, the factor of influence of the other post-socialist states could be taken into account. It stems from my research that the other two countries refusing the Commission's initiative are Poland and Hungary, also post-socialist countries. However, none of the respondents highlighted any existing influence between the post-socialist countries of Central Europe. Madlovics and Magyar (2020) and Stenning and Hörschelmann (2008) also described that the path of post-socialism differs among various states. CSO2 and GOV1 emphasised that Visegrad Group's connections (V4) have weakened in the last few years. However, it must be mentioned that the government quoted the presidency of V4 as a reason for not joining the Commission's lawsuit against Hungary aimed at its LGBTQI+ discriminatory laws (iDnes 2023).

Some respondents compared the factor of populism present in Czech politics with the situation in Hungary. They believed that some of the Czech political representatives used similar hateful language against the LGBTQI+ community. Even the ECRI report on Hungary concluded that the human rights of LGBTQI+ people have significantly deteriorated due to increasingly hostile political discourse. Or that the community has increasingly become a target of stigmatisation and offensive political language (ECRI 2023). To conclude, the research demonstrates that the historical socialist experience influences the decisions about the Commission's initiative only indirectly. Its impact remains mainly at the national level. The refusing stances towards including HS and HC under the list of Eurocrimes might stem from the other already mentioned factors, such as conservatism, populism, patriarchy, or religion.

H1: The experience of member states with socialist regimes decreases their approval of anti-LGBTQI+ hate speech and hate crime legislation at the EU level.

Since all the sub-research questions and the main research question have been answered, the hypothesis of this research can be debated. In regards to what has already been described in previous pages, I understand the hypothesis as unconfirmed. More specifically, I do not consider the influence of the historical socialist experience strong enough to impact the decisions about the Commission's initiative. However, as said before, the research uncovers at least a partial influence on the general position of Czech politicians, society, and their stance towards the LGBTQI+ community. The implications of such an impact will be debated in the Conclusion. In the following paragraphs, the other factors connected to Czechia's position towards including HS and HC under the list of Eurocrimes will be discussed. It must also be highlighted that Czechia's refusal stance towards the Commission's proposal might not come from its relations towards the LGBTQI+ community but from other reasons, such as the general HS and HC legislation.

As highlighted before, the task of unearthing the decision-making process at the EU level is a strenuous one. Since there is a lack of public information about the issue, the respondents' answers serve as the sole source of this discussion. Their understanding

of the situation seemed to focus mainly on a few factors. They considered Czechia's refusal stance towards the Commission's proposal resulting from the inner discussions of the political representation. Namely, they pointed towards the conservative parties blocking similar initiatives. For example, CSO1 mentioned that the amendment of the Czech criminal code had already been discussed. At that time, the Christian Democratic political party KDU-ČSL blocked its acceptance. In the last elections in 2021, the largest conservative coalition, SPOLU (KDU-ČSL, ODS, TOP09), won 71 seats out of 200 in the lower chamber of the Parliament. And these were not the only conservative politicians elected (Seznam zprávy 2021). However, it must be mentioned that the most recent electoral preferences have shown a steep decline in KDU-ČSL. According to the survey of Median from May 2023, this party would not even get elected in the lower chamber of the Parliament (2023). Such a turn in voters' behaviour might indicate a hint of future change.

The other mentioned aspects were populism and the role of religion, or more specifically, the Church. Both of these factors have been discussed enough already. The last factor that deserves more attention is the anti-gender movement. Its growing influence has not gone unnoticed by the existing literature (Graff and Korolczuk 2022; Kuhar and Paternotte 2017; Norocel and Paternotte 2023; Sosa 2021). The research has proven that the movement is also present in Czechia. However, it seems that the politicians are merely using their arguments for their political aim rather than considering themselves "diehard" members of this movement. It might be that the anti-gender narratives in Czechia come mainly from other sources, such as private organisations. Therefore, it seems relevant to focus on these aspects in future research.

Lastly, I want to consider what could have been done better in this research. Regarding the interviews, I included some of the most knowledgeable respondents on the topic of this thesis in Czechia. However, I might have found another MEP who could talk to me. I could have also interviewed someone representing Czechia's stance in the Council of the EU. Even though, as I was told by the respondents, such a task is not easy. Further, in retrospect, I could have reached out to more experts in post-

socialism research. When conducting the interviews, I could have tried to delve more in-depth into the reasons for the Czech political representatives' stances or I could have paid more attention to the different territorial levels the respondents were talking about. Sometimes, they considered both the national and the EU, other times, they were strictly talking about one of them. This meant that when coding the interviews, it was still possible to ascertain what they meant, although indirectly. Despite these possible limitations, which were largely due to the practical limitations (time, logistics) of the study, I believe that the research has brought relevant insights into the influence of the historical socialist experience of Czechia on its position towards the Commission's initiative, as well as on the general LGBTQI+ people's protection and the impact of socialism on this issue.

Conclusion

This thesis aimed to determine whether the historical socialist past of the post-socialist MS of the EU influences their current decision-making concerning the protection of LGBTQI+ minorities against HS and HC. More specifically, whether it influenced the creation of these countries' official position towards the Commission's initiative to include HS and HC under the list of Eurocrimes, including the SOGISC grounds. Hence, it discussed the following hypothesis: The experience of member states with socialist regimes decreases their approval of anti-LGBTQI+ HS and HC legislation at the EU level. The chosen methodology was qualitative semi-structured interviews with multi-level respondents from Czechia, which I picked as the case study. Therefore, I will conclude by debating whether this goal has been reached.

Despite the lack of literature on the topic and the enclosed environment of political decision-making at the EU level, the research contributed to the discussion about the advocacy of LGBTQI+ rights. Namely, it uncovered various factors influencing the current status of protection of the LGBTQI+ community in Czechia, one of the post-socialist EU MS. The thesis has supported the view of the literature on the complexity of HS and HC legislation through a practical insight into Czechia's situation. For example, despite focusing mainly on the criminalisation of HS and HC, it discovered that other steps to increase LGBTQI+ people's protection must be taken. Next, the research concurred with the existing literature in concluding that the conclusions related to the issue of post-socialism cannot be generalised to all of the MS with a socialist past. Instead, the historical socialist experience functions as an umbrella for diverse realities.

To conclude, the research has supported the theory that the historical socialist experience influences Czechia's political representation in the decision-making related to the LGBTQI+ community. However, the impact on the stance towards the Commission's initiative is only indirect or partial. The aspects that play a role at the EU level are, for example, the issues of conservatism, populism, patriarchy, or religion.

The general weakening relationship towards human rights protection, visible, e.g. on the refusal to ratify the Istanbul Convention, must also be mentioned. Even though the national and the EU level are interconnected, they cannot be considered identical. A relevant discovery is also connected to the presidency of the Council. Namely, Czechia had a chance to move the Commission's initiative forward but refused to. And what are the implications of the influence of the socialist historical past on the national level?

It must be highlighted that in the research, the impact of socialism was understood as a complex aspect interconnecting the cultural, social, and political spheres. My conclusions have concurred with the existing literature in agreeing with the presence of some influence, but not on the forms of such influence. For example, the research has not supported the expectations of a greater fear of some type of censorship of post-socialist states. The aspect of a strong role of the traditional family and values, crucial for the socialist regime in the past, has also not appeared in the research. Instead, it pointed to the lack of political diversity, a prevailing aversion to politics, and a general distrust towards the CSOs. The research also showed how the Czech society and politicians still fear certain "otherness" that might be considered coming from the West. Such conclusions are based mainly on the respondents' views. Hence, they constitute a limited insight into the situation in Czechia and are not generalisable statements. Still, the thesis is a relevant contribution to the gap in the literature interconnecting the post-socialist and LGBTQI+ rights research.

It shows that the role of the historical socialist experience should not be underestimated. Moreover, it should also be considered by the CSOs advocating for better LGBTQI+ protection. Such an insight can help them with their future efforts. The added value of the thesis is the filling of the literature gap, but also a new insight, potentially useful for human rights advocates. The paper also helped to uncover the insufficient LGBTQI+ people's protection in Czechia. Future research could focus on the same situation in other post-socialist states or on the other reasons for the negative stance of the Czech political representation and their connection to socialism. It would be relevant to uncover to what extent they are tied to the historical socialist past. The

appropriate methodology might be a similar in-depth case study because of the issue's complexity. It should be taken into account that this thesis' topic is interdisciplinary and requires deep knowledge of the various research areas and the given post-socialist state. Then, it will be possible to create a paper enhancing the academic domain but also the practical realm, as I am convinced this one does.

Appendix

The Checklist

1. How would you evaluate the legal protection of the LGBTQI+ community against HS and HC in Czechia?
2. What steps need to be taken in order to protect the LGBTQI+ community against HS and HC in Czechia?
3. How would you describe the opinion of Czech society about the extension of protection of the LGBTQI+ community?
4. What is the stance of the Czech government on expanding the protection of the LGBTQI+ community?
5. How did the Czech government react to the Commission's initiative to include HS and HC under Eurocrimes?
6. Based on your experience, are there differences between post-socialist and non-post-socialist member states? If yes, what?
7. Does the socialist historical experience influence the stance of the Czech government towards protecting the LGBTQI+ community? How?
8. How do its relationships with other post-socialist states influence the Czech government's debate on enlarging the protection of LGBTQI+ people?
9. What other aspects influence the position of the Czech government in the debate?
10. What do you think the future steps of the Czech government will be?

Attribute Codes

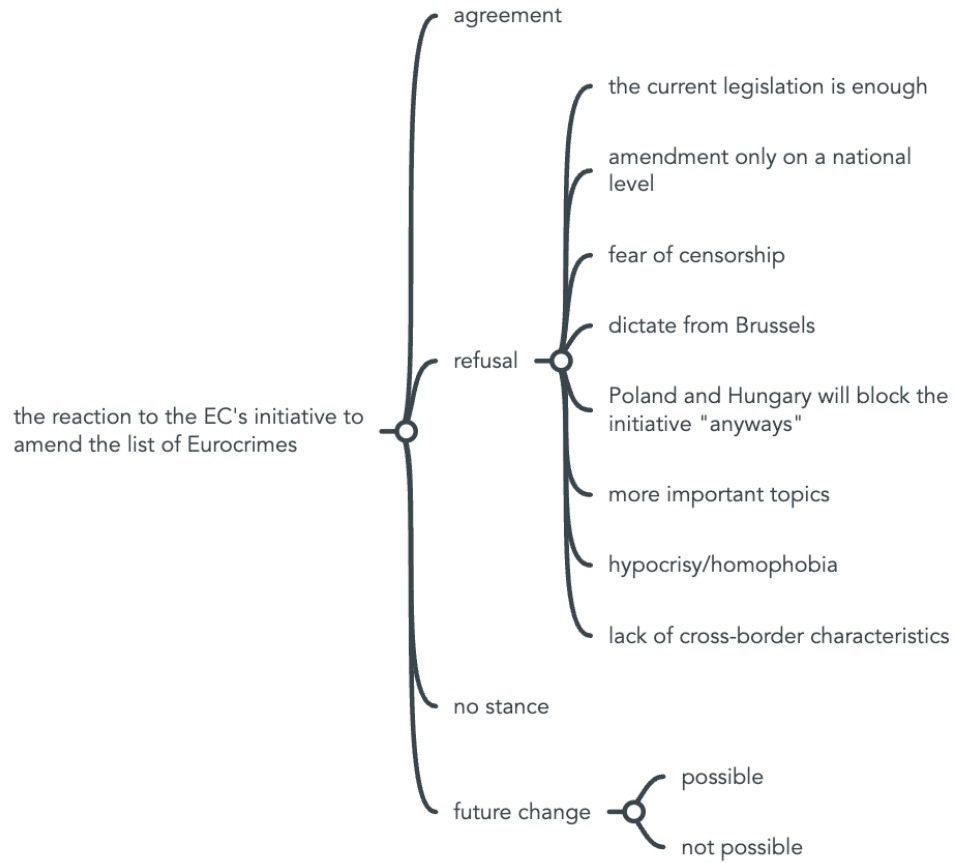
Codes	Description
MEP1	Czech member of the European Parliament; representative of a liberal political faction
EC1	Czech member of the European Commission
GOV1	representative of the Czech Ministry of Justice
GOV2	representative of governmental department on human rights
CSO1	member of a Czech platform advocating for hate-free society
CSO2	member of a Czech LGBTQI+ NGO; representative of the governmental Committee for LGBTI+ Rights
EXP1	lawyer advocating for a better protection of LGBTQI+ people
EXP2	researcher focusing on social geography and LGBTQI+ topics

Substantive Codes Trees

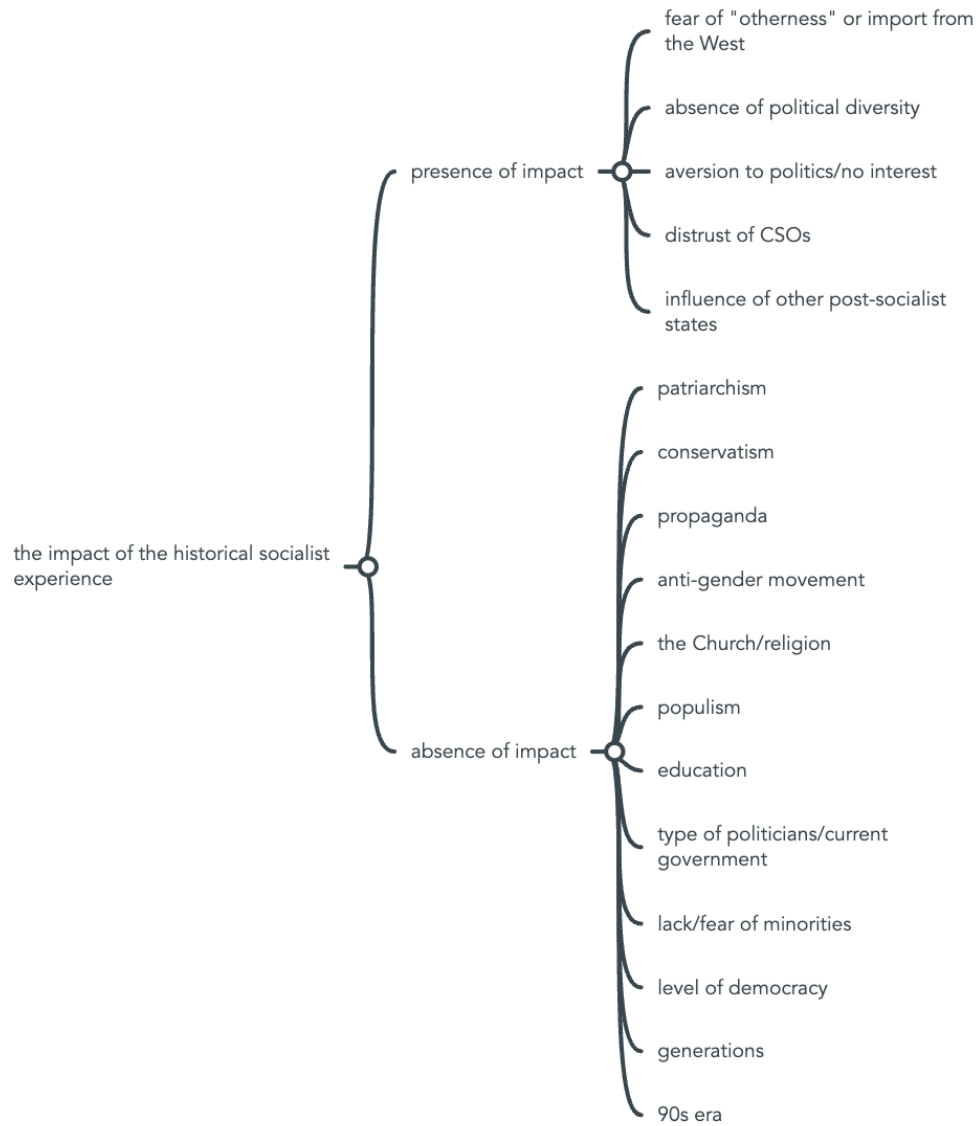
First Sub-Research Question



Second Sub-Research Question



Third Sub-Research Question



GDPR Form

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DATA CONTROLLER: *Kateřina Hlaváčková*, hlavackova.katerina@gmail.com, +420 603 502 278

SCIENTIFIC COORDINATOR: Prof. Laura Polverari

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The following are the specific research objectives:

- 1) To determine the level of protection of LGBTQI+ people against HS and HC in Czechia.
- 2) To describe the reaction of Czech political representation to the Commission’s Initiative on including HS and HC under the list of Eurocrimes.
- 3) To determine the impact of the historical socialist experience on the Czech government’s position.

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