

# LIFECYCLE OF A HATE CRIME

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**COUNTRY REPORT FOR LATVIA**

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## FOREWORD

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The following work presents, in detail, the findings of in-depth primary and secondary research conducted over two years tracing the *Lifecycle of a Hate Crime* in selected EU Member States. The research was undertaken in five jurisdictions within the EU - Ireland, England and Wales, Latvia, the Czech Republic and Sweden in which contrasting approaches to the prosecution and punishment of hate crime are evident.

This year marks the tenth anniversary of the adoption by the EU Council of the *Framework Decision on Combatting Certain Forms and Expressions of Racism and Xenophobia (2008/913/JHA)*. Article 4 of the Framework Decision provides that for offences other than incitement to violence or hatred, “Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties”.

In some of the jurisdictions examined, the national legislative framework underpinning hate crime may be considered robust. In others, laws may be limited, with measures to tackle only inchoate offences such as prohibitions on hate speech or incitement to violence. Less clear is the practical application of these laws, of how and in what manner crimes with a hate or bias element come to be prosecuted, and whether and why they may be overlooked or downgraded to generic offences.

To provide greater understanding of the operational realities of the treatment of hate crime in the criminal justice process researchers gathered experiential accounts of these laws ‘in action’ from criminal justice professionals including lawyers and judges. Research teams also sought to investigate and document the differences in both victims’ and offenders’ experiences of the criminal justice system. In doing so, the research aims to provide a more holistic understanding of the ‘lifecycle’ of a hate crime, from reporting to prosecution to sentencing, in order to identify gaps and good practices in the application of laws. The findings as set out here will shed new light on measures to combat hate crime for a wide range

of stakeholders, including police, policy makers, lawyers, judges, victim support services, and civil society organisations working with victims and offenders. This work is accompanied by a detailed comparative analysis of the situation across the five selected EU Member States.

The *Lifecycle of Hate Crime* Research Consortium comprises the following organisations:

- Hate and Hostility Research Group, University of Limerick (Ireland)
- IN IUSTITIA (Czech Republic)
- Irish Council for Civil Liberties (ICCL)
- Latvian Centre for Human Rights
- Umeå University (Sweden)
- University of Sussex (United Kingdom)

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Liam Herrick  
*Consortium Leader*

## SUMMARY

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Recent years have seen positive, but at the same time insufficient developments in combatting and preventing hate crimes in Latvia. Changes have predominantly taken place in the legislation, largely as a result of Latvia's international obligations. In Latvia, much attention is paid to the incitement of hatred issues, particularly on the Internet, which have also been impacted by different foreign and domestic political events, such as the conflict in Eastern Ukraine, migration, etc. while public information about hate crimes is rare.

The 2014 Criminal Law amendments which envisage criminal liability for incitement to social hatred on grounds of gender, age, disability and other characteristics, should be generally viewed positively as they expand the protection of vulnerable groups against hate crimes and hate speech. Although the list of protected characteristics is open, nevertheless, the legislator by explicitly naming a characteristic or a specific group sends a signal that manifestations of hatred against the group are unacceptable in Latvia. Despite the surveys in Latvia and wider European Union, which indicate high levels of homophobia in Latvia, there was insufficient political commitment by the parliament to include sexual orientation among protected characteristics.

While racist motive was made aggravating circumstance already in 2006, and "national, ethnic and religious motive" was added in 2014, allegedly to bring the Latvian legislation in line with Article 4 of Framework Decision 2008/913/JH on combatting certain forms and expression of racism and xenophobia by means of criminal law, this provision has never been applied in practice. Thus, the transposition can be considered as formal as some of the leading criminal law experts have not been able to provide sufficient clarification for its application.

Training of police officers to identify and investigate hate crimes has increased. The signing of an agreement between the OSCE/ODIHR and the State Police in Latvia in December 2014, trainings organized in co-operation with the State Police College and NGOs, as well as the guidelines

on hate crime identification and investigation issued by the State Police in August 2018, are welcome developments. However, the training of the representatives of law enforcement bodies and judicial bodies is irregular and not systematic.

Official data about hate crimes and incitement to hatred cases are limited, the number of opened criminal proceedings during the year remain small. Unofficial statistics compiled by NGOs, such as the Latvian Centre for Human Rights and the Association of LGBT and their friends “Mozaika” indicate a higher number of crimes motivated by race, xenophobia and homophobia than those that come to the attention of national authorities. There remains very serious concern about the unwillingness of hate crime victims to report hate crimes to the law enforcement authorities.

Although the legislation provides for a significant range of victims’ rights which have also been expanded through the transposition of the EU’s Victims’ Rights Directive, support to victims in practice remains inadequate. Latvia has no special support programmes for hate crime victims and overall, the country falls behind in general victim support structures and programmes compared with most EU Member States. For the first time, in 2015 the Latvian government granted state funding for social rehabilitation services to adult victims of violent crimes.

The financial support by the government and selected municipalities to different civil society projects aimed at promoting tolerance and combatting hate crimes and hate speech has increased, nevertheless it remains small. This hinders NGOs from planning long-term and sustainable projects.

In recent years there have also been several research projects about different aspects of hate crimes and hate speech. Both the research conducted by the Ombudsman’s Office in 2016 and the research conducted by the Latvian Centre for Human Rights in 2017 within the framework of the current project (30 police officers, prosecutors, judges and defence counsels were interviewed) address a range of topical issues related to the identification, investigation, prosecution and trial of hate crime and incitement to hatred cases. These include a need for government strategy to tackle hate crimes and hate speech, need for regular training, including multi-disciplinary training of the law enforcement and judicial sector, measures that would encourage and increase hate crime reporting by the victims. They also analyse gaps in the implementation of criminal law provisions, issues related to the selection of external experts and criteria

for external expert opinions (an issue that has been unresolved for over a decade) in incitement to hatred cases and call for information campaigns to promote tolerance.

Many of the issues addressed by the research are not new, however, their resolution will not be successful without the commitment of relevant national authorities, sustained government support and adequate understanding that hate speech and hate crimes can strike at the very fundamentals of the Latvian society.

Anhelita Kamenska  
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## A. The Latvian legal system<sup>1</sup>

Latvia's legal system belongs to the continental (Romano-Germanic) law system. Latvia's law was significantly influenced by German (and subsequently Roman) law, especially in areas of civil, administrative and constitutional law. The Constitution (*Satversme*), adopted in 1922, was drafted using the Weimar Constitution, the constitutions of German states, and the Constitution of France as primary models.

The most important source of law in Latvia is legal acts, which can be divided into two categories: external and internal. External legal acts are universally binding. The main types of external legal acts are laws, regulations of the Cabinet of Ministers, and binding regulations of local municipalities. Internal legal acts bind only the issuing state institution. Examples of internal legal acts are statutes, instructions and recommendations.

The hierarchical system of legal acts in Latvia is the following: 1) the Constitution; 2) laws, 3) regulations of the Cabinet of Ministers; 4) binding regulations of local authorities. International and EU legal norms are applied in accordance with their ranking in the hierarchy of external regulatory enactments. In cases of conflicts between Latvian and international/EU statute of the same legal force, the international/EU law or provision must be applied.

### Court system

Latvia has a three-tier court system consisting of Supreme Court (*Augstākā tiesa*); regional courts (*apgabaltiesas*); and district and city courts (*rajonu pilsētu tiesas*).

The Supreme Court is comprised of three departments: the Department of Civil Cases, the Department of Criminal Cases and the Department of

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1 Guide to Latvian Legal System and Legal Research (2012), available at: [http://www.nyulawglobal.org/globalex/Latvia\\_Legal\\_Research.htm](http://www.nyulawglobal.org/globalex/Latvia_Legal_Research.htm).

Administrative Cases. The Supreme Court is the highest court instance in Latvia and its judgments cannot be appealed. The Supreme Court is cassation instance in all cases, unless the law states otherwise.

There are six regional courts in Latvia. The regional court is a court of first instance for civil and criminal cases that according to the law are within its competence. The regional court is instance of appeal when administrative, criminal and civil cases have been tried in the district (city) courts. In the appeal, three judges try the case.

There are 35 district (city) courts in Latvia. District courts are the first instance for civil, criminal and administrative cases as set by the law. Civil, criminal and administrative cases with a few exceptions are tried by one judge. Particularly complicated criminal and administrative cases can be tried by three judges.

Until 2004, administrative cases were tried along with civil cases, but on 1 February 2004, administrative courts were added to the Latvian court system. Administrative court system consists of three levels: the Administrative District court, the Administrative Regional court, and the Administrative law department within the Senate of the Latvian Supreme Court.

Besides the courts mentioned, there is the Constitutional Court of the Republic of Latvia, which implements constitutional review by hearing cases on the compliance of laws and other legislative acts with the Constitution ("*Satversme*").

Latvia's Prosecution Office is a uniform, centralized three-tier system, consisting of the Prosecutor General's Office, regional and district (or city) prosecution offices. Such a structure corresponds to the Latvian three-tier judicial system. Public Prosecutor's Offices form part of the court system. This means that they operate independently of the legislative and executive branches.

## **B. The Latvian criminal justice system**

Criminal procedure is governed by the Criminal Procedure Law (CPL) 2005. Certain important aspects may also be found in the Constitution, as well as international treaties or other legal acts. The right to fair trial is enshrined in Article 92 of the Constitution and states: "Everyone has the right to defend their rights and lawful interests in a fair court. Everyone shall be presumed innocent until their guilt has been established in accordance

with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel.”<sup>2</sup> Criminal Procedure Law includes a separate chapter “Basic Principles of Criminal Proceedings,”<sup>3</sup> including equality (Art. 8), guaranteeing of human rights (Art. 12), the prohibition of torture (Art.13), right to the completion of criminal proceedings in a reasonable term (Art. 14), right of the adjudication of a case in court (Art. 15), presumption of innocence (Art. 19), right to assistance of a counsel (Art. 20), right to compensation for inflicted harm (Art. 21), court adjudication (Art. 22), etc. It is considered that the European Convention on Human Rights has made a strong impact on due process regulation in the area of criminal procedure law in Latvia.<sup>4</sup> Criminal law is governed by the Criminal Law of the Republic of Latvia 2008 and the Sentence Enforcement Code 1963 (with numerous amendments).

Latvian criminal procedure has more characteristics of an inquisitorial system, although there are features of an adversarial system, particularly at the stages of court hearings. Despite the fact that the CPL states that cases have to be heard in a court on the basis of adversarial principles, the court must not restrict itself to the evidence provided by the parties, but must seek to establish the truth. A judge will get involved, e.g. if the defendant represents himself/herself without a defence counsel and the court has doubts about the person’s guilt. During the pre-trial investigation stage, no features of an adversarial criminal justice system are found so that this stage of criminal procedure is essentially inquisitorial. Since Latvian criminal procedure has more inquisitorial than adversarial characteristics, it is regarded as a mixed system.

Criminal law is part of public law. Criminal Law governs criminal offences and respective punishments, while the Criminal Procedure Law regulates the various stages of the criminal procedure, terms, evidence, investigative actions, rights and obligations of persons involved in criminal proceedings. The underlying principle under the Latvian Criminal Law is presumption of innocence, which means that one is considered innocent until proven guilty.

The police are responsible for the collection of admissible evidence and disclosure of crimes.

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2 Latvijas Republikas Satversme (1992). Chapter VIII. Fundamental Rights, at <https://likumi.lv/doc.php?id=57980>

3 Criminal Procedure Law (2005), Law Chapter 2 Basic Principles of Criminal Proceedings, in Latvia at <https://likumi.lv/doc.php?id=107820>

4 Mits, Mārtiņš (2016). The European Convention on Human Rights and Democratisation of Latvia. RGSL Paper Series no 16, p.33, at [http://www.rgsl.edu.lv/uploads/files/Mits\\_4\\_final.pdf](http://www.rgsl.edu.lv/uploads/files/Mits_4_final.pdf)

The tasks of the Office of the Public Prosecutor in a pre-trial investigation are laid down in Article 2 of the Law on the Office of the Public Prosecutor. The Office of the Public Prosecutor supervises the investigative field-work of the investigative authorities and other bodies; arranges, leads and carries out pre-trial investigations and gives the investigative authorities instructions for the conduct of their criminal investigations; initiates and conducts criminal prosecutions; protects the rights and legitimate interests of persons and the state; in cases prescribed by law, submits a document instituting proceedings or an application in court. According to Article 36 (1) of the Law on Criminal Procedure, a public prosecutor supervises and carries out investigations, prosecutes, argues accusations on behalf of the state and performs other functions in criminal proceedings. Based on the documents received prosecutors evaluate all evidence existing in a case and decide whether to bring or drop charges against a person.

Nevertheless, in a recent report about the quality of pre-trial investigation in the state police in 2017, the State Audit Office concluded that the quality of investigations is also hampered by insufficient qualifications and inadequate supervision of police investigators by the prosecutors. Both police and prosecutors interviewed during the audit acknowledged that the prosecutor provides guidance when so requested by the police investigator. The report concludes that the cooperation between investigators and prosecutors should be improved, and prosecutors' involvement in supervising investigators' work should be increased throughout the whole investigation period.<sup>5</sup>

In practice, it is also not uncommon for police investigators to dissuade victims from filing complaints due to pressure to achieve higher crime clearance rates.<sup>6</sup>

The role of the defence is to provide an offender with legal advice and defend him/her during the pre-trial stages of their criminal proceedings, and in the court. The lawyer has no power to conduct investigations of his/her own, but s/he can ask the investigator to order specific investigation activities to be carried out.

Victims can play an active role in criminal trials. They can, for example, influence investigations by submitting applications, and demand

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5 Latvia, State Audit Office (2017). State Audit Office – Pre-Trial Investigations Hampered by Problems in Investigators' Qualifications, Work Organisation and Monitoring. Press Release, 10 October, in English at <http://www.lrvk.gov.lv/en/state-audit-office-pre-trial-investigations-hampered-problems-investigators-qualification-work-organisation-monitoring/>

6 Ruķere-Bērziņa, I., Avota I., Grūbis (2012) N., Tošovskis, M (2012). Uz sabiedrību vērstis policijas darbs Latvijā 2009.–2012. Pieredze un nākamie soļi, p.17, at [http://www.vp.gov.lv/faili/sadalas/VP\\_gramata\\_LV.pdf](http://www.vp.gov.lv/faili/sadalas/VP_gramata_LV.pdf)

compensation for the harm they suffered without the need to resort to separate civil proceedings. The victim may also present his/her opinion about the sentence and where appropriate, appeal against the judgment in defendant's case.

In criminal cases, judges hear accusations brought against persons and take decisions on the validity of those accusations. Judges may acquit innocent persons or declare persons guilty of a criminal offence and impose a penalty on them.

### **C. Legislative Framework for Hate Crime**

#### **Formal state position in relation to Art 4/Framework Decision and the Victims' Directive**

Latvian hate crime legislation is comprised of several articles in the Criminal Law. It includes general penalty enhancement (aggravating circumstances clause, Section 48 (1) 14). Sections 78 (incitement to racial, ethnic, national, religious hatred) and 150 (incitement to social hatred) are used to address both hate speech and hate crimes, even if the provisions have been designated to address incitement to hatred.

Leading criminal law experts and Latvia's Supreme Court have explained that, for instance, in a case of a racially motivated desecration of a grave, if the intent of the offender is to incite hatred then the crime is qualified under Section 78 and Section 228 as an aggregation of criminal offences.<sup>7</sup>

According to some experts, Sections 78 and 150 whose structure have their roots in the former Soviet Criminal Code and are found in criminal codes of a number of former Soviet republics, are to be understood as incitement to hatred as the basic *corpus delicti*, with violence considered simply as an additional tribute, i.e. as a method of incitement to hatred. Thus, violence, threat to violence, etc. is treated as an aggravating circumstance for incitement to hatred.<sup>8</sup>

Regarding Article 4 of the Council Framework Decision 2008/913/JHA on combatting certain forms and expressions of racism and xenophobia by means of criminal law, Latvia stipulates in its Criminal Law that racist

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7 Supreme Court of the Republic of Latvia (2012). Court Practice in Criminal Cases Concerning Incitement to National Ethnic and National Hatred, p.13, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>

8 Verkhovskiy, Alexander. Criminal Law on Hate Crime, Incitement to Hatred and Hate Speech in OSCE Participating States - The Hague: SOVA Center, 2016, pp. 22-23.

motivation shall be considered an aggravating circumstance. The law was amended by the parliament in October 2006, however it was not done in relation to the Council Framework Decision. The provision was included unexpectedly in the third reading and without any debate.<sup>9</sup>

On 25 September 2014, the parliament added “national, ethnic or religious” in addition to “racist” motivation among aggravating circumstances.<sup>10</sup> Xenophobic motive has not been included among aggravating circumstances. A report by the Ministry of Justice in 2014 drafted prior to the amendments notes that “in order that those applying the CL provisions, do not interpret Criminal Law of Section 48 (14) 1) narrowly and to ensure full compliance of the CL with Article 4 of Framework Decision 2008/913/JH and to observe the consistency with the terminology used in Section 78 of CL, it is necessary to amend Section 48 (14) 1) by recognising racist, national, ethnic or religious motive as an aggravating circumstance.”<sup>11</sup> As evidenced by the practice, by autumn 2017 the provision has never been applied.

On 18 February 2016, the Latvian parliament amended the Criminal Procedure Law,<sup>12</sup> which introduced a new status of a “specially protected victim” (*īpaši aizsargājams cietušais*), also applicable to persons who have suffered as a result of a criminal offence that was possibly motivated by race, national origin, ethnicity or religion. Instead of choosing the individual assessment of a crime victim as suggested by the Directive, Latvia opted for listing six categories of crime victims eligible for the status. In addition to the rights of the victims of all categories of crime, the amendments also determine the specific rights of the victim with such a status, e.g. victim has the right to request the court that his/her participation or taking of statements be done via video/audio conference<sup>13</sup>, the victim has the right, with the authorisation of an official conducting proceedings to have a trusted person participate in criminal proceedings, etc. The amendments were aimed at implementing the requirements of the EU Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime.<sup>14</sup>

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9 Criminal Law (*Krimināllikums*), Section 48 (1) para 14, 17.06.1998, available in Latvian at <http://likumi.lv/doc.php?id=88966>

10 *ibid.* Section 48 (1) para 14.

11 Ministry of Justice (2014). Information Report on Legislative Framework Concerning Liability for National or Ethnic Incitement to Hatred, Calls to Liquidate Independence of the State or Undermine Territorial Unity and Degrading of State Symbols (*Informatīvais ziņojums par tiesisko regulējumu attiecībā uz atbildību par nacionālā vai etniskā naida izraisīšanu, aicinājumu likvidēt valstisko neatkarību vai graut teritoriālo vienotību un valsts simbolu zaimošanu*), <http://tap.mk.gov.lv/mk/tap/?pid=40312823>

12 Amendments to the Criminal Procedure Law (*Grozījumi Kriminālprocesa likumā*), Section 96.<sup>1</sup> available in Latvian at <https://likumi.lv/doc.php?id=280784>

13 *Ibid.*, 96.<sup>1</sup>

14 Reference to all the EU Directives, including Directive 2012/29/EU which was at the basis of amendments, can be found at the end of the the Criminal Procedure Law.

## Other international obligations

### UN CERD

Latvia submitted a combined fourth and fifth periodic report to CERD in 2002. Latvia's next periodic report to CERD was due on 14 May 2007. The Latvian government finally submitted that report in August 2017 following a ten-year reporting delay.<sup>15</sup>

### UN ICCPR

The UN Human Rights Committee (HRC) published concluding observations in respect of Latvia in April 2014.<sup>16</sup> It expressed concern at reports of racist speech, acts of violence and discrimination against vulnerable groups, including Roma and lesbian, gay, bisexual and transgender persons, and at a reported increase in incidents of violence against minorities in recent years. The Committee was also concerned at the inadequate application of the legislative framework against hate crime with respect to lesbian, gay, bisexual and transgender persons. The Committee also expressed concern at allegations of insufficient hate crime recording, monitoring, investigation and prosecution. It called upon Latvia to:

- (a) Strengthen its strategies to fight against racially motivated crimes and counter the use of racist discourse in politics and in the media;
- (b) Implement criminal law provisions aimed at combatting racially motivated crimes, punish perpetrators with appropriate penalties and facilitate the reporting procedure for hate crimes;
- (c) Define incitement to violence on grounds of sexual orientation or gender identity as a criminal offence.

### UPR

On 26 January 2016, the UN UPR working group reviewed Latvia's government report on the human rights situation in Latvia and published a draft report on 3 February. A significant number of countries made recommendations concerning hate crimes.<sup>17</sup>

15 United Nations Human Rights Office of the High Commissioner. Reporting Status for Latvia, at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=LVA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=LVA&Lang=EN)

16 UN Human Rights Committee (2015). Concluding Observations on the Third Periodic Report of Latvia, 7 December, CCPR/C/LVA/CO/3, at [http://ccprcentre.org/files/documents/CCPR:C:LVA:CO:3:Add\\_1.pdf](http://ccprcentre.org/files/documents/CCPR:C:LVA:CO:3:Add_1.pdf)

17 United Nations General Assembly (2016). Draft report of the Working Group on the Universal Periodic Review. Latvia. Unedited Version. Human Rights Council Working Group on the Universal Periodic Review Twenty-fourth session Geneva, 18-29 January 2016. A/HRC/WG.6/24/L.12 [http://www.upr-info.org/sites/default/files/document/latvia/session\\_24\\_-\\_january\\_2016/a\\_hrc\\_wg.6\\_24\\_l.12.pdf](http://www.upr-info.org/sites/default/files/document/latvia/session_24_-_january_2016/a_hrc_wg.6_24_l.12.pdf)

Latvia is encouraged to:

- strengthen the implementation of criminal law provisions aimed at combatting racially motivated crimes
- prosecute those responsible/punish perpetrators
- organise training courses relating to hate crimes for officers of law enforcement and the judicial system and raise public awareness about hate crimes to encourage them to report them
- consider as a crime all acts of violence, regardless of the harm that they cause, in addition to specifically punishing violence based on sexual orientation or gender identity; consider legislative and administrative measures to combat violence on the basis of gender identity or sexual orientation
- adopt legislation that explicitly recognizes homophobic and transphobic motivation for a criminal offence as an aggravating circumstance in its criminal law;
- work towards implementing Resolution 16/18 of the Human Rights Council concerning combatting intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief;
- enhance its efforts aimed at preventing and combatting and bringing to justice perpetrators of hate crimes, as well as acts of racism, xenophobia and discrimination against vulnerable groups, including LGBTI individuals
- continue efforts to prevent racist violence and discrimination against vulnerable groups, including Roma, by fighting racially motivated crimes and countering the use of racist discourse in politics and the media

### **European Commission against Racism and Intolerance (ECRI)**

The Fourth Report on Latvia<sup>18</sup> by ECRI was published in 2012, while its interim report was published in 2014.

In its Fourth Report, ECRI notes that racist motivation has never been found to constitute an aggravating factor “even when the existence of such motive was self-evident”, and that cases show that racist motivation is “not always taken into account and point to persisting low awareness and sensitivity towards these types of offences.”<sup>19</sup>

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18 European Commission on Racism and Intolerance, *ECRI Report on Latvia (fourth monitoring cycle)* (Council of Europe 2012) available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf>

19 European Commission on Racism and Intolerance, *ECRI Report on Latvia (fourth monitoring cycle)* (Council of Europe 2012) available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf> para 13-18.

ECRI particularly noted further training was required “in order to raise the police’s awareness and sensitivity towards racist crime and their capacity to qualify racist crime independently, without referring the matter to an expert.”<sup>20</sup> ECRI recommended that authorities “step up their efforts” to train judges, prosecutors and police officers on the issue, with a view to “raising the capacity of police officials and judges to qualify independently racist crime, without referring the matter to an expert.”<sup>21</sup>

ECRI recommended that an awareness campaign in this regard be carried out. It also recommended educational and awareness raising activities be carried out to address the issue of the presence and activities of right wing extremist and skinhead groups in Latvia.

ECRI conducted its 5<sup>th</sup> cycle monitoring visit to Latvia in November 2018. The 5th round reports focus on four main themes common to all countries. These are: legislative issues, hate speech, violence and integration policies. The reports also deal with topics specific to each country and, in particular, with follow-up to the interim recommendations adopted in the 4th cycle. LGBT issues are addressed in the 5th round when they arise in connection with themes such as hate speech, violence and discrimination.<sup>22</sup>

### **Council of Europe Commissioner for Human Rights**

On 13 December 2016, the Council of Europe Commissioner for Human Rights Nils Muižnieks published his report on Latvia following the visit to the country from 5 to 9 September.<sup>23</sup> The Commissioner raised concerns about inadequate responses to homophobic and transphobic crime and hate speech. He recommended that sexual orientation and gender identity be explicitly included among the prohibited grounds for discrimination and encouraged the application of the existing legal framework with full consideration of the protection needs of LGBTI persons. The Commissioner urged the authorities to expand the list of aggravating circumstances in the Criminal Law by including homophobia and transphobia and organise continuous trainings for the police, prosecutors and judges to ensure

20 European Commission on Racism and Intolerance, *ECRI Report on Latvia (fourth monitoring cycle)* (Council of Europe 2012) available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf> para 29.

21 European Commission on Racism and Intolerance, *ECRI Report on Latvia (fourth monitoring cycle)* (Council of Europe 2012) available at <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf> para 16.

22 European Commission on Racism and Intolerance, p.3 <https://www.coe.int/t/dghl/monitoring/ecri/About/ENG%20Leaflet%20ECRI.pdf>

23 Council of Europe, Commissioner for Human Rights (2016), *Report by Nils Muižnieks following his visit to Latvia, from 5 to 9 September 2016, Strasbourg, Council of Europe, 13 December 2016*, available in English at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2954116&SecMode=1&DocId=2392328&Usage=2>

effective investigation, prosecution and punishment of hate crimes and hate speech against all vulnerable groups, including LGBTI persons.

### **History and development of hate crime legislation**

The Criminal Law, in force since 1 April 1999, contains several provisions that criminalise intentional acts aimed at the incitement to hatred on racial, national origin, ethnic and religious grounds, and prohibits discrimination.<sup>24</sup>

#### *Soviet period*

The origin of the provisions can be dated back to the Soviet period when the Supreme Soviet of the USSR adopted the Law on Criminal Liability for Crimes against the State, and two different types of crime – propaganda aimed at the incitement to racial and national hatred and discrimination on the grounds of racial and national origin were placed in one clause. The provisions of the USSR law were fully copied in the Criminal Code of the Latvian SSR. The provisions were ideological in nature - the existence of discrimination was never recognised in the USSR, whilst expressions of ‘nationalist sentiment’ were qualified as anti-Soviet propaganda.

In the end of 1980s, due to national conflicts in various parts in the Soviet Union, which led to interethnic violence, the relevant article was amended and included four separate criminal offences:

- Incitement to national and racial hatred
- Debasing of national honour and dignity
- Restriction of rights based on national and racial grounds
- Other racially motivated attacks, e.g. associated with violence and threats

Seven years after the re-establishment of independence, in June 1998, Latvia adopted a new Criminal Law. The same provision was largely retained, whereby racist crimes remained included in one article criminalising racist speech, racist discrimination and other racist crimes until 2007.<sup>25</sup>

On 12 October 2006, the parliament unexpectedly, without any discussions, amended the Criminal Law by including racist motive as a general aggravating circumstance.<sup>26</sup> Despite the promising amendment, which

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24 Section 78 (Violation of National or Racial Equality and Restriction of Human Rights); Section 150 (Violation of Equality Rights of Persons on the Basis of Their Attitudes towards Religion);

25 Kamenska, A., Brands-Kehris, I. (2008). *Combatting Hate Crimes in Latvia: Legislation and Police Practice*. Riga: Latvian Centre for Human Rights, p. 11-12, at [http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida\\_noziegums\\_ENG\\_Internetam.pdf](http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida_noziegums_ENG_Internetam.pdf)

26 Law “Amendments to the Criminal Law” (Likums “Grozījumi Krimināllikumā”), Section 48 (1) 14, adopted on 12.10.2006, in force since 15.11.2006. *Latvijas Vēstnesis*, 174 (3542), 01.11.2016.

should have paved way for the distinction between hate speech and other types of racially motivated crimes, until autumn 2017 there has been no case when it has been applied.

On 25 September 2014, the parliament added “national, ethnic or religious” in addition to “racist” motivation among aggravating circumstances (Section 48, Paragraph 1, Clause 14).

Section 78, which envisages criminal liability for “incitement of national, ethnic and racial hatred” was also amended to include “religious” hatred or enmity and to exclude the notion of “intentional” as a qualifying circumstance. The amendments also introduced greater differentiation of severity of offences and relevant sanctions. Article 78 (1) of the Criminal Law deals exclusively with “incitement” (i.e. no violence and no group or institutional aspect). Article 78 (2) covers acts committed by “a group of persons, or a state official or a responsible employee of a company or an organisation” or using “automated data processing system” (i.e. – the Internet), and provides for imprisonment of up to five years, or community service or a fine. Article 78 (3), covers the same crime of incitement if it is “associated with violence or threats” or if committed by an “organised group”, and provides the harsher punishment – up to 10 years of imprisonment, with or without probationary supervision for a term up to three years.

At the end of 2012, the Prosecutor General E. Kalnmeijers sent a letter to the Minister of Justice, whereby he drew attention to the fact that Euro Pride 2015 in Riga could possibly induce protest actions, including different manifestations of hate, and thus called upon the law enforcement institutions to take measures to counter such unlawful activities.

In 2014, the parliament amended Section 150, replacing former incitement of religious hatred by “Incitement of social hatred and enmity”. The provision follows a similar structure as the incitement to racial/ethnic/national hatred provision, and also criminalises both hate speech and hate crimes on grounds of person’s gender, age, disability or any other feature, however, requiring that in cases of incitement to hatred (Section 150 (1, 2) substantial harm to be caused by such act.<sup>27</sup> Despite the fact that surveys indicate high levels of intolerance against the LGBT in Latvia, there was not sufficient support in the parliament to include explicitly sexual orientation among protected characteristics.

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27 Latvia, Criminal Law, Section 150, at <https://www.vestnesis.lv/ta/id/88966-kriminallikums>

## **Protected categories in legislation**

The Latvian legislation includes the following characteristics as protected categories: race, ethnicity, national origin, and religion. Gender, age and disability were added in 2014, and the list of protected characteristics is left open. Sexual orientation may be subsumed under “other characteristics”, but currently there is no case law supporting it, however, a case was pending with a district court in autumn 2017. As evidenced by the first court decision on incitement to hatred against migrants in 2017, migrants can also be subsumed under “other characteristics.”<sup>28</sup>

Until 2007, the law included the terms of “race” and “national origin.” In court practice, the term “race” is most often equated with person’s skin colour, while in the cases of “ethnic” and “national origin” the use of the terms is not consistent, they may be used as synonyms, or “national origin” being understood as nationality.<sup>29</sup>

## **Special victim protections specific to hate crime**

Until 2016 Criminal Procedure Law amendments introducing “a special status victim”, which include victims of allegedly racially, ethnically and religiously motivated crimes and some specific rights of such victim, aimed at implementing EU Victims’ Directive, there have been no special victim protections specific to hate crimes.

Latvia has generally lagged behind most EU Member States in terms of crime victim support. It does not have a national victim support service. Support to specific groups of victims of crime began to be provided due to different international treaty obligations. State funded support services were initially available to children (since 2000), among adult victims of crime - victims of trafficking (since 2006). There is neither a state agency nor an NGO providing comprehensive services at national level. Several NGOs provide some assistance to victims of generic crimes, however, they have remained dependant on the availability of state and non-state funding.

In accordance with the amended Law on Social Services and Social Assistance adopted by parliament in November 2010, social rehabilitation services to adult victims of violence were to be provided from 1 January 2011<sup>30</sup>, but due to the economic crises and subsequent budgetary

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28 Tukums District Court, Case Nr. 11390001416, K 37-0083/17, 15.02.2017

29 Supreme Court of the Republic of Latvia (2012). Court Practice in Criminal Cases Concerning Incitement to National Ethnic and National Hatred, p.32, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

30 Law on Social Services and Social Assistance (Section 8 on transitional provisions), available in Latvian at <http://www.likumi.lv/doc.php?id=220146>

constraints, they were regularly postponed until 1 January 2015 (Section 17.1).<sup>31</sup> On 1 January 2015, Latvia, for the first time, allocated state funding for social rehabilitation services to the adult victims of violence.<sup>32</sup> The type, scope and content of social rehabilitation services funded by the state, the conditions for the receipt and granting of services are specified by the Cabinet of Ministers Regulations No.790 “Regulations for the provision of social rehabilitation services to adult persons who suffered from violence or committed violent acts”.

In 2015, EUR 554,541 were allocated for the costs of social rehabilitation services, including EUR 353,180 for the provision of social rehabilitation services to adults who have suffered from violence and EUR 195,437 for the provision of social rehabilitation services to adults who committed violent acts.<sup>33</sup> On 1 January 2016 a toll-free helpline (116006) began operating for all victims of crime. The line is operational from 7 am until 10 pm.<sup>34</sup>

A small number of organisations provide some support to the victims in cases of hate crimes. However, their experience is limited. There are only a small number of cases reported to the NGOs and their response is not systematic – it depends on specific circumstances of the case (verbal slur, threat, damage to property, physical violence), the preferences of the victim (to report to the police or not, to pursue the case with the court or not, etc), information available to the organisation (about rights, opportunities and procedures) as well as the resources available to the organisation at the moment (own capacity – including financial and human resources, cooperation with psychologists, lawyers, contacts with other NGOs or state bodies, including law enforcement agencies).

## D Case law on hate crime

In 2012, the Supreme Court of Latvia commissioned an overview of court practice in applying Section 78, 150 and 48 (1) 14 on incitement to national, ethnic and racial hatred, which also include cases of racist

31 Law on Social Services and Social Assistance, in Latvian at <http://www.likumi.lv/doc.php?id=68488&from=off>

32 Clause 31 of the Paragraph 1 of the Article 13 of the Social Services and Social Assistance Law

33 Initial impact assessment (annotation) the Cabinet of Ministers Regulations No.790 “Regulations for the provision of social rehabilitation services to adult persons who suffered from violence or committed violent acts” (*Ministru kabineta noteikumu Nr. 790 “Sociālās rehabilitācijas pakalpojumu sniegšanas kārtība vardarbībā cietušajām un vardarbību veikušajām pilngadīgajām personām” sākotnējās ietekmes ziņojums (anotācija)*), 23 December 2014, available in Latvian at: <http://likumi.lv/doc.php?id=271251>.

34 Ministry of Justice (*Tieslietu ministrija*) (2015). “Toll-free support telephone line 116006 will be available to the victims of crime” (*“Noziegumos cietušajiem būs pieejams bezmaksas atbalsta tālrunis 116006”*). Press release, 28 July 2015, available in Latvian at: [www.tm.gov.lv/lv/aktualitates/tm-informacija-presei/noziegumos-cietusajiem-bus-pieejams-bezmaksas-atbalsta-talrunis-116006](http://www.tm.gov.lv/lv/aktualitates/tm-informacija-presei/noziegumos-cietusajiem-bus-pieejams-bezmaksas-atbalsta-talrunis-116006)

violence. None of the cases reviewed included the application of ‘racist motive’ in determining punishment or Section 150. The overview also includes recommendations.<sup>35</sup>

The overview concludes that Sections 78 and 150 do not cover all “hate crimes”. The second [currently third] paragraph include a qualifying feature “violence”, “threat” which in court practice is most frequently referred to crimes against person’s health. If the offenders, led by racist motive have committed other criminal offences, e.g. destruction of property, then in court practice such activities are qualified as conceptual aggregation of criminal offences according to Section 78 and Section 185 (destruction of property). The Criminal Law also includes Section 48 “Aggravating Circumstances”, whereby part 1 (14) provides that committing of crime with a racist motive is an aggravating circumstance. The Supreme Court report draws attention that “in practice, it is necessary to separate cases when a hate crime should be qualified as conceptual aggregation of criminal offences and when it should be qualified only, e.g. under Section 185 taking racist motivation as an aggravating circumstance in determining the punishment.” If the racist motivation can be identified in crime committed by the offender, but his/her aim has not been to instigate national hatred or the objective side of the offence does not manifest itself in instigating racial, ethnic and national hatred the crime should be qualified only under the provision of the Criminal Law Section 185 and Section 48 1) (14) should be applied in determining the punishment.<sup>36</sup>

The report also notes that Supreme Court Criminal Case Chamber, in evaluating whether the suspect’s motive was racist, has offered a broad formulation of the concept of racism: racism is a conviction that such factors as race, skin colour, language, religion, national or ethnic belonging may be the basis for the contempt of an individual or a group of individuals or an opinion that an individual or individuals are superior than other individual or individuals.<sup>37</sup> It clarifies that in Criminal Law (Article 78 on instigation of racial, ethnic and national hatred), the Latvian legislator has introduced an autonomous division and explanation of terms by separating the terms “race”, “national origin” and “ethnic origin” instead of an encompassing definition “race” provided by sources of international law, e.g. CERD. However, the scope of protected groups in the Criminal Law and

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35 Supreme Court of the Republic of Latvia (*Latvijas Republikas Augstākā Tiesa*). Court Practise in Criminal Cases about Incitement to National, Ethnic and Racial Hatred (*Tiesu prakse krimināllietās par nacionālā, etniskā un rasu naida izraisīšanu*). Rīga: 2012, 51 p.

36 Ibid. p.26

37 Supreme Court Criminal Case Chamber, Case Nr 11511001005, 4 April 2007.

Convention remains the same, and the Criminal Law provides for a more detailed enumeration of protected groups. Until 2007, the law included the terms of “race” and “national origin.”

In court practice, the term “race” is most often equated with person’s skin colour, while in the case of “ethnic” and “national origin” the use of the terms is not consistent, they may be used as synonyms, or “national origin” being understood as nationality.<sup>38</sup>

For instance, Riga Regional Court, in the case of an assault of black Ruandan citizen by two youths concluded that “[...] aiming to incite racial hatred R.V. and A.Z., both being under alcohol intoxication, violating principles of racial equality, in a group of persons, in loud voices expressed rude, full of expletives accusations about P.D. skin colour and his racial background and told to leave Latvia.”<sup>39</sup>

In another case a group of youths belonging to a skinheads gang attacked a black US citizen. The court established that “by standing near the place of the assault, by expressing his attitude towards what was happening and indicating the object of the attack, E.Ž. shouted in English “Latvia is white country!”<sup>40</sup>

Incitement to ethnic hatred has been evoked in connection with anti-Russian comments,<sup>41</sup> desecration of Jewish graves,<sup>42</sup> cases of incitement to national hatred with hateful comments against Roma, Russians, Jews<sup>43</sup>, and Latvians.<sup>44</sup> In some cases, the court has established incitement to ethnic and incitement to national hatred in cases of anti-semitic comments<sup>45</sup> without specifying the use of terms.

The Supreme Court report underlines that international legal sources do not provide specific guidelines on how to distinguish between these concepts and recommend that such definitions be determined by their national context. It considers that the hate crime guidelines elaborated by the OSCE ODIHR include the meanings of both concepts “national” and “ethnic” used in the Latvian legislation. According to the guidelines they

38 Supreme Court of the Republic of Latvia (2012). Court Practice in Criminal Cases Concerning Incitement to National Ethnic and National Hatred, in Latvian at <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/kriminaltiesibas/>.

39 Riga Regional Court Criminal Case Division, Case Nr. K 04-0113-07/18, 30 January 2007.

40 Riga Regional Court Criminal Case Division (*Rīgas apgabaltiesas Kriminālietu tiesas kolēģija*), 31 March 2006.

41 Cēsis District Court (*Cēsu rajona tiesa*), Case Nr. 11840003914, 12 May 2015.

42 Riga Regional Court Criminal Case Division (*Rīgas apgabaltiesas Kriminālietu tiesu kolēģija*), Case Nr. 11094119210/Nr.KA040-119-15/19, 26 January 2015.

43 Valmiera District Court (*Valmieras rajona tiesa*), Case Nr. 11840003614/K39-0250/15, 7 May 2015.

44 Riga City Latgale District Court (*Rīgas pilsētas Latgales priekšpilsētas tiesa*), Case Nr. 11840001013/K29-0439-14/8, 6 June 2014.

45 Riga District Court (*Rīgas rajona tiesa*), Case nr. 11840005213/K33-0049-15/9, 6 January 2015.

often have overlapping meanings as “national origin” can sometimes be used to mean “citizenship”<sup>46</sup>, but it can also mean ethnic origin or cultural affiliation to a certain section of the society.

The legal doctrine has established that the subjective side of crimes under Section 78 is composed by direct intent.<sup>47</sup> If law enforcement institutions do not establish direct intent in person’s or group of persons’ actions or statements that correspond to the objective side of the crime, the offender (s) cannot be called to criminal responsibility. The report notes that the absence of direct intent is the most frequent reason for the termination of criminal proceedings in cases opened under Section 78. In a case involving an assault by several youths against an African American, a regional court concluded that “the criminal case was initially investigated and forwarded to court as a hooliganism case. However, after the case was sent back to eliminate drawbacks, it was repeatedly submitted to court under different charges but with the same evidence. Due to the above, the court could not conclude about the extent they were involved in radical, including skinhead, movements. In order to establish the racist motivation of the assault the court took account of their submissions to the police where they pleaded guilty.”

The Supreme Court report highlights that in evaluating a person’s direct intent, not only statements of the accused, but also other circumstances should be paid attention to, such as 1) the person’s conduct during the commission of the crime and the context of crime, 2) victim statements, 3) witness statements, 4) links of the accused with hate organisations, 5) changes of statements by the accused during pre-trial investigation and trial. It provides examples of cases where courts have drawn upon the different elements characterising the subjective side (intent) of the crime.<sup>48</sup>

## **E Policy documents**

There are no general policy documents accompanied by actions plans specifically addressing hate crimes. A number of policy documents make a passing reference to the issues.

### **Police policy**

On 4 August 2017, the State Police Commissioner approved the “Guidelines for State Police Officers on the Identification and Investigation of Hate

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46 Hate Crime Laws. A Practical Guide. OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2009, p. 42-43, at <http://www.osce.org/odihr/36426?download=true>

47 Krastiņš Uldis, Liholaja, Valentina, Niedre Aivars. “Krimināllikuma komentāri. 3.grāmata.” Rīga: “AFS”, 1999, p.25.

48 Ibid. p.26

Crimes"<sup>49</sup>. The guidelines are intended for state police officers to assist them with the identification and the investigation of crimes under several articles of the Criminal Law (Section 78), Section 48 (14), and Section 150. There is no public information about any specific guidelines used by the Security Police. The guidelines distinguish between several articles of the Criminal Law, those falling under the jurisdiction of the State Police (Section 150 - incitement to social hatred/hate crimes motivated on grounds of gender, disability, age and other features) and those under the jurisdiction of the Security Police (Section 78 – hate crimes/speech with religious, ethnic, national, racial motive). They draw attention to the investigative activities that need to be undertaken and required proof, initial criminal procedural activities to be conducted concerning hate crimes in public places, and on the Internet as well as provide examples of hate crime cases that have reached courts.

The guidelines attempt to provide examples where racist (ethnic, national, religious motive) is applied as an aggravating circumstance and were as a special offence under Section 150.

*For, instance, a person is inflicted intentional medium bodily injuries because he is a Muslim. However, the offender does not intend to incite hatred while the crime motive is victim's religious affiliation. In that case the offence is to be qualified by Section 126 of the Criminal Law, but religious motive (in line with the Section 48 (1) 14) shall be applied as aggravating circumstance.*

*If the offender in an analogous situation leave some public note at crime scene "beat the muslims" such conduct shall be considered as provoking religious hatred and qualified as incitement to hatred (Section 78)*

In the investigation of such cases the suspect's and victim's opinion should be taken to objectively assess the subjective side of the crime (intent). The suspect's conduct during the commission of the crime should be evaluated and the context in which crime was committed, victim statements, witness statements, suspects linking with hate organisations, changes in suspect's statements. Proving subjective side (intent) must be paid special attention the beginning of the investigation.

The police guidelines also refer to OSCE/ODIHR hate crime indicators concerning the victim, the property targeted, the offender, including his/

49 State Police (*Valsts policija*) (2017). Order nr. 3487 of 4 August 2017 of State Police Commissioner "Guidelines for State Police Officers on the Identification and Investigation of Hate Crimes" (*Vadlīmijas "naida noziegumu" identifikācijai un izmeklēšanai*), <http://www.vp.gov.lv/?id=811&topid=811&said=642>

her conduct, timing and location of incident. The guidelines also suggest the initial steps (criminal procedural activities) to be taken in case of hate crimes in public places.

On 22 December 2014, Latvia's State Police and OSCE/ODIHR concluded a memorandum on the introduction of training against hate crimes in programmes of law enforcement agencies. In the beginning of 2015, a working group was set up to prepare for the organization of a seminar Training against Hate Crimes for Law Enforcement (TACHLE). In June 2015, OSCE/ODIHR in co-operation with the State Police College conducted a 3-day "train the trainers" course<sup>50</sup> and, in September, half day training for chiefs of structural units of the State Police took place.

### **Prosecution policy**

There is no prosecution policy in Latvia concerning hate crimes.

### **Judicial policy**

Apart from the overview of court practise by the Supreme Court of Latvia in applying Section 78 on incitement to national, ethnic and racial hatred, which also include cases of racist violence, there is no judicial policy concerning hate crimes in Latvia. According to the Criminal Procedure Law,<sup>51</sup> the status of a "specially protected victim" (*īpaši aizsargājams cietušais*) is also applicable to persons who have suffered as a result of a criminal offence that was possibly motivated by race, national origin, ethnicity or religion. In addition to the rights of the victims of all crimes, a specially protected victim has the right to request the court that his/her participation or taking of statements be done via audio/videoconference,<sup>52</sup> the victim has the right, with the authorisation of an official conducting proceedings to have a trusted person participate in criminal proceedings,<sup>53</sup> etc. The amendments also foresee that the person directing proceedings can also confer this status on a victim who is especially vulnerable as result of damages inflicted by crime and is not protected from threats, repeat or revenge. This may also potentially include victims of crimes motivated by other biases.<sup>54</sup> However, as the law was amended in 2016 and all registered cases have been incitement to hatred cases, none of the provisions have been applied in practise.

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50 OSCE (2015). OSCE/ODIHR trains Latvian police to deal effectively with hate crimes, 5 June, at <http://www.osce.org/odihr/162591>

51 Amendments to the Criminal Procedure Law (*Grozījumi Kriminālprocesa likumā*), Section 96.<sup>1</sup>, available in Latvian at <https://likumi.lv/doc.php?id=280784>,

52 *Ibid.*, Section 99 (2).

53 *Ibid.*, Section 96.<sup>1</sup> (5)

54 *Ibid.*, 96.<sup>1</sup> (2)

## Offender management (post conviction) policy

There is no offender management policy in relation to hate crimes in Latvia.

## F Statistical Analysis 2011-2016

Police recorded hate crime

In Latvia, the Security Police (*Drošības policija*), which is one of the three national security agencies, has general jurisdiction over the investigation of crimes falling under Section 78 as it is included in Chapter IX (Crimes against Humanity, War and Peace) of the Criminal Law. In hate speech cases falling under the Section 78 the initial investigation is conducted by the Security Police, however in the cases of racist incidents, including violent racist crimes, occurring in the 'street' the initial investigation, is conducted by the State Police, and then forwarded to the Security Police. In cases falling under Section 150 (incitement to hatred and hate crime cases on grounds of gender, age, disability and other features), the investigation is conducted by the State Police.

No comprehensive system of registering crimes with hate motive has been developed. Data on racially and religiously motivated crimes (Section 78) are collected by the Security Police, while those under Section 150 are collected by the State Police and sent electronically to the Ministry of Interior Information Centre. Security Police provides data upon request. Annual crime statistics are publicly available on the website of the Informational Centre of the Ministry of Interior and includes the number of cases classified by the Sections of Criminal Law and by administrative districts in Latvia.<sup>55</sup>

If a criminal offence is qualified according to the Section 48, (1) 14, Section 78, 149<sup>1</sup>, 150 or 151, additionally the following information regarding the victim and the person whose death resulted from the criminal offence shall be included: skin colour; ethnicity; denominational affiliation.<sup>56</sup>

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<sup>55</sup> Iekšlietu ministrijas Informācijas centrs. Kriminālā statistika, <http://www.ic.lem.gov.lv/lv/node/109>

<sup>56</sup> Rules of the Cabinet of Ministers Nr. 850 (14.09.2010.) „On Regulations on Criminal Procedure Information System”, Paragraph 12., available at <http://likumi.lv/doc.php?id=217945>

### *Opened criminal proceedings under Section 78 of the Criminal Law, 2011-2016*

	2010	2011	2012	2013	2014	2015	2016
Total number of reported cases <sup>57</sup>	6	12	18	22	13	11	6
Total number of opened criminal proceedings	26	34	34	36	27	24	
<i>Incitement to hatred</i>							
Internet	6	10	14	20	11	9	6
printed media, tv, video, public statements		1	4	1	1		
<i>Hate Crimes</i>							
Graffiti		1			1	2	
Destruction of property					1		
Violence	0	0	0	1	0	0	
Number of refusals to open criminal proceedings	20	22	16	14	14	13	

Source: Written responses by the Security Police to the Latvian Centre for Human Rights.  
Table and division of cases – Latvian Centre for Human Rights

In 2015, the State Police opened criminal proceedings in one case under Section 150, while in 2016, the number of cases was five, and 2017 - in at least two cases. There have been no cases when Sections 48, (1) 14 and Section 149<sup>1</sup> have been applied. The statistics do not differentiate between hate speech and hate crimes.<sup>58</sup>

At least one case involved incitement to hatred against migrants on Facebook. Migrants are not mentioned among protected characteristics, but may be subsumed under “other features.” On 15 February 2017, Tukums District Court sentenced a 24-year-old local man to 160 hours of community service for posts on Facebook calling for violence against migrants.<sup>59</sup>

<sup>57</sup> Both the number of cases when criminal proceedings were opened and when refused.

<sup>58</sup> Information Centre of the Ministry of Interior (*Iekšlietu ministrijas Informācijas centrs*), Crime statistics 2016, Sections 78, 150

<sup>59</sup> Tukums District Court, Case Nr. 11390001416, K 37-0083/17, 15.02.2017

### *Racist violence*

The first cases of racist violence in Latvia were officially recorded only in 2005, and included representatives of visible minorities, including a US embassy official, tourists, an NGO representative, and a rabbi of Riga Jewish community. There have been only over a dozen officially known cases involving racially motivated assault or attempted assault,<sup>60</sup> and initially police struggled in handling such cases due to lack of experience in recognising and investigating such crimes, and low awareness of the impact of racist crimes on victims and communities. Cases were qualified as hooliganism or petty hooliganism without adequately examining the racist motives of the offenders. In several cases, when no substantial injuries had been caused to the victim, the case was closed. Following media and public criticism, the police qualified violent crimes under incitement to hatred provision of Section 78, and 4 cases were prosecuted as racially motivated crimes under Section 78.2.<sup>61</sup> This approach, whereby the police handle cases of racial violence under incitement to hatred provision has continued. In 2007, the first racist crime against Roma was officially recorded in Latvia.<sup>62</sup> There has been only one case of racist violence reported to the police from 2010-2016.

### Official victimisation survey data

There have been no national victimisation surveys that have included questions on the experiences of victims of hate crimes. A victimisation survey was commissioned by an NGO in 2012 as part of an EU funded project on victim's rights, but did not include questions related to hate crime.<sup>63</sup> Some other national surveys include questions on crime victimisation but are not published regularly.

In Latvia, the EU Fundamental Rights Agency's 2008 European Union Minorities and Discrimination Survey (EU-MIDIS), which surveyed 23,500 respondents with an ethnic minority or immigrant background, included Russians who are the largest minority group in the country. Only 1% of Russians surveyed in Latvia though that a perceived racist incident

60 Latvia, Kamenska, A., Brands-Kehris, I. (2008). *Combatting Hate Crimes in Latvia: Legislation and Police Practice*. Riga: Latvian Centre for Human Rights, p.31, at [http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida\\_noziegums\\_ENG\\_Internetam.pdf](http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida_noziegums_ENG_Internetam.pdf)

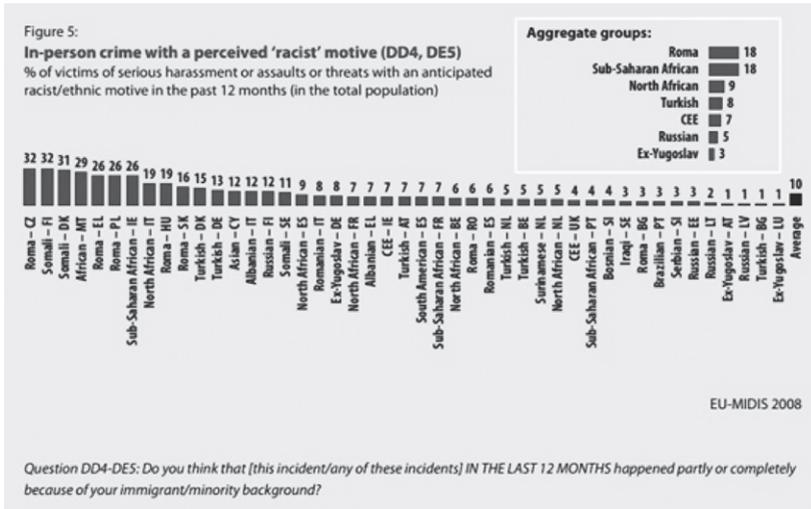
Latvian Centre for Human Rights (2015). *Pārskats par attīstību nauda noziegumu un nauda runas novēršanā* p.27, in Latvian at [http://cilvektiesibas.org.lv/media/attachments/19/11/2015/Parskats\\_Naida\\_noziegumi.pdf](http://cilvektiesibas.org.lv/media/attachments/19/11/2015/Parskats_Naida_noziegumi.pdf)

61 Kamenska, A., Brands-Kehris, I. (2008). *Combatting Hate Crimes in Latvia: Legislation and Police Practice*. Riga: Latvian Centre for Human Rights, p. 31-32, at [http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida\\_noziegums\\_ENG\\_Internetam.pdf](http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida_noziegums_ENG_Internetam.pdf)

62 Rīgas apgabaltiesas Kriminālietu tiesas kolēģija/Case Nr. 11088236107, 17 February, 2009.

63 Providus (2012), *Latvijas iedzīvotāju viktimizācijas aptauja*, p. 71. [http://providus.lv/upload\\_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizācijas\\_petijums\\_Fieldex\\_2012\\_Final.pdf](http://providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizācijas_petijums_Fieldex_2012_Final.pdf)

happened because of their ethnic background (compared to 10% EU average).<sup>64</sup>



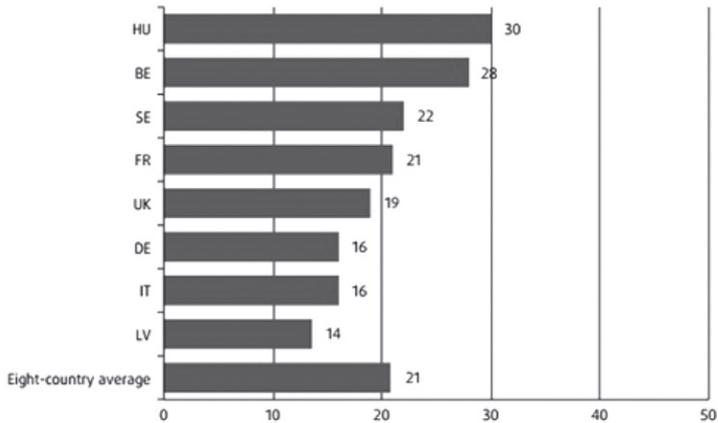
### Anti-semitic crimes

According to the 8-country (Belgium, France, Germany, Hungary, Italy, Latvia, Sweden, and the United Kingdom) survey on discrimination and hate crime against Jews conducted by the Fundamental Rights Agency (FRA) in 2013, 44 per cent of the respondents considered anti-Semitism to be ‘a very big’ or ‘a fairly big problem’ in Latvia (14% and 30%, respectively). The majority of respondents in Latvia consider the desecration of Jewish cemeteries (56%) as ‘a very big’ or ‘a fairly big problem’ in the country. According to the survey, 14 per cent of Latvian respondents have personally experienced at least one incident of anti-Semitic verbal insult or harassment, and/or a physical attack in the past 12 months and 26 per cent have witnessed other Jews being verbally insulted and/or physically attacked. Only 14 per cent of respondents are aware of the existence of laws against incitement to violence or hatred against Jews.<sup>65</sup>

64 FRA (2012), EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime, available at: <http://fra.europa.eu/en/publication/2012/eu-midis-data-focus-report-6-minorities-victims-crime>  
[http://fra.europa.eu/sites/default/files/fra-factsheet\\_hatecrime\\_en\\_final\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-factsheet_hatecrime_en_final_0.pdf)

65 European Union Agency for Fundamental Rights (2013), Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of anti-Semitism. Available in English: [http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states_en.pdf)

Figure 8: Personal experience of verbal insults or harassment and/or a physical attack(s) which was due to being Jewish, in the past 12 months, by EU Member State (%)



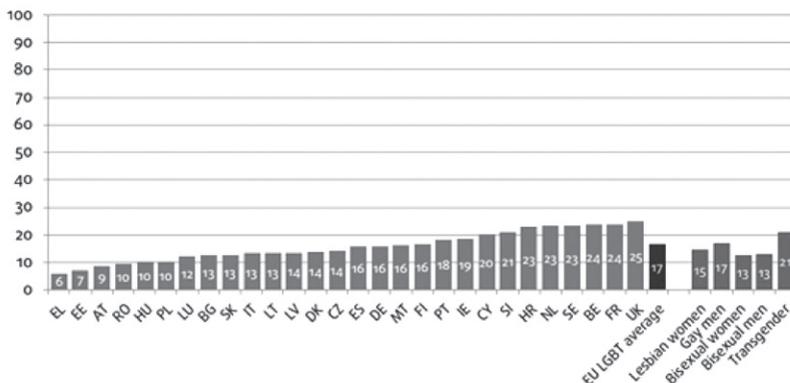
Questions: B09a. In the LAST 12 MONTHS, have you personally experienced any of the following incidents in [COUNTRY], for any reason?  
 B09b. In your opinion, did any of these incidents happen BECAUSE you are Jewish [verbal insults/harassment; physical attack]?  
 Notes: N=5,847.  
 Source: FRA, 2013

### Anti-LGBT

In a FRA LGBT Survey in the EU countries and Croatia (2012), respondents in Latvia thought that assaults and harassment against LGBT were very widespread (12%), fairly widespread (29%), fairly rare (38%), very rare (10%) and do not know – 12%. Of those respondents in Latvia who said they experienced violence in the 12 months preceding the survey, the majority (54 %) thought that the last such incident happened partly or entirely because they were perceived to be LGBT. This is slightly lower than the EU average (59%).<sup>66</sup> The numbers of violent attacks and threats per 1,000 respondents in Latvia was 353 (EU average – 262). The reporting rates for the most recent incident of hate-motivated violence was 14% (EU average – 17%).<sup>67</sup>

<sup>66</sup> Fundamental Rights Agency (2012). EU LGBT survey European Union lesbian, gay, bisexual and transgender survey. Main Results, p.58, at [http://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results\\_tk3113640enc\\_1.pdf](http://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results_tk3113640enc_1.pdf)  
<sup>67</sup> *ibid.* p.67

Figure 44: Last hate-motivated incident reported to the police, by country and by LGBT group (%)



Question: FA1\_5. Do you think the LAST incident of physical/sexual attack or threat of violence in the past 12 months happened partly or completely because you were perceived to be [category on the basis of A3 or A4]? Yes.  
 FA1\_11. Did you or anyone else report it to the police? Yes.

Note: Categories for self-identification in A3 and A4 included transgender, transsexual, woman with a transsexual past, man with a transsexual past, gender variant, cross dresser, queer, lesbian, gay, bisexual or other.

Base: EU LGBT survey respondents who were physically/sexually attacked or threatened with violence in the previous 12 months partly or entirely because they were perceived to be LGBT.

Source: FRA, EU LGBT survey, 2012

### Civil society mechanisms and reported hate crime

Unofficial data collection on hate crimes by civil society remains limited.

According to the Report on homophobic and transphobic hate crimes and incidents in Latvia in 2013, the Association of LGBT and their colleagues at MOZAIKA (*LGBT un viņu draugu apvienība MOZAIKA*) recorded 18 cases of possible hate incidents, violence and discrimination in Latvia on grounds of sexual orientation or/and gender identity. Although the police were contacted in two cases, no official reports were filled due to the alleged lack of professional attitude by the police officers.<sup>68</sup> There have been no new reports published until October 2017.

According to a survey among foreign students about racist accidents conducted by the Riga Stradins University in August 2014, 4% of students (38 out of 1003 students) experienced racist incidents and all the incidents remained unreported. Of those who experienced racist incidents, 72% experienced racism as verbal abuse or hate speech, 12% as physical assault,

68 Zalitis K., Elijase A., Association of LGBT and their friends MOZAIKA (2014), *Report on Homophobic and Transphobic Hate Crimes and Incidents in Latvia 2013*, Riga, available at: [http://cilvektiesibas.org.lv/site/record/docs/2014/07/09/2013\\_hate\\_crime\\_report\\_fin\\_MOZAIKA\\_ILGA\\_Copy.pdf](http://cilvektiesibas.org.lv/site/record/docs/2014/07/09/2013_hate_crime_report_fin_MOZAIKA_ILGA_Copy.pdf).

4% as damage of property/vandalism, and 12% as something other (not specified). The perceived motive of incidents was: religion (5 cases or 15%); race (22 cases or 67%); gender (3 cases or 9%); sexual orientation (3 cases or 9%).<sup>69</sup>

#### Number of prosecutions, convictions

Despite the small number of cases in Latvia, statistics concerning the number of investigations, prosecutions and convictions vary in different reports, including those submitted in government reports to different international organisations.<sup>70</sup> Individual cases are difficult to follow through at different stages of criminal proceedings. The statistics do not distinguish between hate crimes and incitement of hatred cases.

Year	Opened criminal cases	Prosecuted	Sentenced
2016	11	7	1
2015	11	1	6
2014	13	7	9
2013	22	0	8
2012	18	2	2
2011	12	1	2

Source: Court Information System, [https://tis.ta.gov.lv/tisreal?Form=TIS\\_STAT\\_071](https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_071)  
ODIHR, Latvia <http://hatecrime.osce.org/latvia>

Data are collected by the Ministry of Interior, law enforcement agencies, the Department of Analysis and Management of the Prosecutor General's Office, the Courts Administration unit of the Ministry of Justice and the Security Police of the Republic of Latvia. Data are not made publicly available.

There were no cases when enhanced penalty was imposed.

#### Research

In the end of 2016, the Ombudsman's Office published findings of research "On Practical Problems Concerning the Identification of Hate Speech and

69 Rīga Stradins University (2014). "Promoting the integration of students studying in Latvia and decrease of discrimination of foreign students" (*Latvijās studējošo saliedētības veicināšana un ārzemju studentu diskriminēšanas mazināšana*), study conducted from October 2013 till March 2014, available at [http://politika.lv/article\\_files/2656/original/RTU-SP\\_atskaite\\_FINAL.pdf?1406891350](http://politika.lv/article_files/2656/original/RTU-SP_atskaite_FINAL.pdf?1406891350)

70 See data submitted to the OSCE, Universal Periodic Review.

71 No longer publicly accessible since autumn 2017.

Hate Crimes in Latvia” authored by a staff member of the Office.<sup>72</sup> The research was conducted in response to the increasing topicality of the issues of hate crimes due to the refugee issue in Europe, online hate, activities of certain organisation against specific groups in society, scope of hate crimes and incitement to social hatred. The purpose of research was to undertake an analysis of the Latvian legislation in line with international standards, in terms of the effectiveness of legal framework (Criminal Law) in Latvia in cases of hate crimes/speech, if necessary, to improve legal regulations as well as provide recommendations in addressing the shortcomings. During research the Ombudsman’s Office requested information from the Security Police about hate crimes/speech under Section 78. Information about Section 150 and 149.<sup>1</sup> was requested from 42 State Police precincts and written responses were received from 36. Questions concerned police awareness about specific articles related to hate crimes/speech, their application and the scope of protected groups.<sup>73</sup> The author also interviewed two heads of State Police regional precincts and briefly examined approaches in handling hate crimes in the UK and Sweden. The report identifies various shortcomings and includes recommendations, such as urging the police officers to pay special attention to the investigation of hate motive during the investigation stage; that police officers should be able to recognise elements of hate speech and hate crime without the evaluation of an outside expert; criteria for experts and expertise should be elaborated for situations when such expert opinion is necessary; comprehensive training should be provided to law enforcement, in cases of hate crimes/hate speech special attention should be provided to the protection of victims, and reporting about hate crimes by victims should be facilitated.

### ***Civil Society***

In autumn 2016, the NGO Latvian Centre for Human Rights conducted interviews with the representatives of 11 NGOs, migrants and conducted an anonymous online survey of foreign students studying in Latvia about their experiences concerning different manifestations of intolerance (hate speech, hate crimes, discrimination, etc.). 135 foreign students from EU, EEA member states and third countries) took part in the survey.

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<sup>72</sup> Ombudsman (*Tiesībsargs*) (2016). Problematic Aspects of the Identification and investigation of hate speech and hate crimes in the Republic of Latvia (*Naida runas un naida noziegumu atpazīšanas un izmeklēšanas prakses problēmaspekti Latvijas Republikā*), in Latvian at [http://www.tiesibsargs.lv/uploads/content/publikācijas/naida\\_noziegumu\\_un\\_naida\\_runas\\_izmeklesana\\_lv\\_2016\\_1496214733.pdf](http://www.tiesibsargs.lv/uploads/content/publikācijas/naida_noziegumu_un_naida_runas_izmeklesana_lv_2016_1496214733.pdf), 116 p.

<sup>73</sup> Letter of the Ombudsman’s Office to police units of 8 June 2016. On file with the Latvian Centre for Human Rights.

The survey was undertaken, as information had been received from various sources in recent past about an increasing number of visibly different foreign students being subject to different forms of intolerance. In 2016 / 2017 foreign students make up 11% of entire student population. At Riga Stradins University, foreign students constitute 22% of the student population. In 2016, Latvia also began relocating asylum seekers from Greece and Italy, and according to an opinion poll around 78% of the public in the end of 2015 were against Latvia receiving refugees as agreed under the EU relocation plan.

According to the results of the survey, almost 2/3 of the respondents or 68% have been either victims (33 %) or witnesses of hate speech, hate crimes or discrimination, or have heard about such incidents from the others. The most common form of intolerance is verbal insults/harassment (62%), such as name calling, using denigrating names, asking to leave Latvia, offensive comments about people's ethnic background, skin colour, language, religion, sexual orientation, etc. NGO/migrant representatives and students indicated that such attitude is frequent in public places, such as streets (44%), public transport (23%), cafes and bars (10%), in higher educational establishments (9%), including by staff, shops (6%).

In 13% of cases, respondents were victims of a physical attack or an attempted attack or they had heard that other were victims of such attacks, 5% had been threatened with violence. Victims include foreign students and asylum seekers with darker skin. In at least two cases, attacks were on grounds of sexual orientation.

Hate incidents have allegedly occurred due to victim's skin colour/ race (36%), ethnic origin / xenophobia (25%), language (22%), religion (6%), sexual orientation (5%) and gender (5%). Several respondents mentioned harassment of women wearing traditional Muslim headscarves. Respondents also mentioned that talking in a foreign language occasionally drew aggressive comments. In many cases, respondents mentioned incidents involving several hate motives, e.g. skin colour and religion, skin colour and gender, language, ethnic origin and sexual orientation.

86% of students have not reported hate incidents, including half of those who were subject to physical violence. Most believe that these incidents (especially verbal insults/harassment) are not serious enough to be reported. Some do not trust the police, some do not believe reporting will change things, while some have become used to such incidents.

Victims mention several reasons for not reporting physical attacks, one of them perception that reporting to the police in case of violence would not help a foreigner and that the police would be more responsive to claims from locals. Unsuccessful past attempts to turn to the police were also mentioned, when the police refused to accept a complaint or failed to react in an appropriate manner. Information about such cases spreads among foreigners and students impacting on their willingness to report about the incidents to law enforcement. Respondents also cited fear of adverse consequences, unwillingness to attract publicity to themselves and concern that the police would share same views with the offender.

Concerning asylum seekers, NGO representatives spoke of asylum seeker reluctance to report violence and threats of violence due to fears that such claims would impact on the outcome of their case. The majority of surveyed students (80%), NGO/migrant representatives are not informed about where to report hate crime/speech and discrimination cases and where to turn for help.

## APPENDIX

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### Criminal Law

#### Section 48. Aggravating Circumstances

- (1) The following may be considered to be aggravating circumstances:
  - 14) the criminal offence was committed due to racist, national, ethnic or religious motives;
- (2) Taking into account the character of the criminal offence, may decide not to consider any of the circumstances mentioned in Paragraph one of this Section as aggravating.
- (4) A circumstance which is provided for in this Law as a constituent element of a criminal offence shall not be considered an aggravating circumstance.

#### Section 78. Triggering of National, Ethnic and Racial Hatred

- (1) For a person who commits acts directed towards triggering national, ethnic, racial or religious hatred or enmity,  
the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.
- (2) For a person who commits the same acts, if they are committed by a group of persons or a public official, or a responsible employee of an undertaking (company) or organisation, or if it is committed utilising an automated data processing system,  
the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine.
- (3) For committing the act provided for in Paragraph one of this Section, if it is related to violence or threats or if it is committed by an organised group,

the applicable punishment is deprivation of liberty for a term up to ten years, with or without probationary supervision for a term up to three years.

**Section 150. Incitement of Social Hatred and Enmity**

- (1) For a person who commits an act oriented towards inciting hatred or enmity depending on the gender, age, disability of a person or any other characteristics, if substantial harm has been caused thereby, the applicable punishment is temporary deprivation of liberty or community service, or a fine.
- (2) For the criminal offence provided for in Paragraph one of this Section, if it has been committed by a public official or a responsible employee of an undertaking (company) or organisation, or a group of persons, or if it committed using an automated data processing system, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.
- (3) For the act provided for in Paragraph one of this Section, if it is related to violence or threats or if it is committed by an organised group, the applicable punishment is deprivation of liberty for a term up to four years or temporary deprivation of liberty, or community service, or a fine.

## **PRACTICE (INTERVIEWS)**

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### **Methodology**

A total of 30 interviews were conducted with state police officers (10), prosecutors (7), judges (6) and defence counsels (7) working in the capital Riga, Liepāja, Tukums, Jelgava, Ogre, Valmiera, Cēsis and Gulbene from 30 August 2016 until 21 September 2017. Several interviewees had changed their legal profession and had dealt with hate crimes as a police officer and a defence counsel, a prosecutor and a defence counsel, a judge and a prosecutor. For instance, three of the interviewed defence counsels had earlier worked as prosecutors. Security Police, who are responsible for investigating crimes under Section 78 (racist/religiously motivated crimes/incitement to racial/religious hatred), refused to participate in the interviews. A significant amount of fieldwork time involved attempts to secure access to respondents. Demographic information: of the 30 respondents, 16 were women and 14 men. 16 persons (prosecutors, judges, defence counsels) refused to be interviewed, citing various reasons for the refusal, such as having dealt with only one case, the case was handled a significant number of years ago, the case was pending, etc.

### **Lawyers (Defence counsels)**

Initially a request was sent to the Latvian Council of Sworn Advocates with a request to help identify lawyers with experience in representing clients in hate crime cases. The Council forwarded the letter to all the sworn advocates, however none of them responded. The Council explained the lack of response due to defence counsel overload and possibly - research topic.

Through available court decisions, LCHR identified 13 lawyers who had experience with cases under Section 78. Six of the defence counsels agreed to be interviewed. The rest of the lawyers refused the interview as they had had only one case or it was too long time ago or they felt they had nothing to say about it. Several lawyers who initially agreed or promised to consider giving the interview later avoided LCHR phone calls and emails.

## **Judges**

In order to identify judges who have dealt with hate crime cases, an official letter was sent to all district courts (first instance), regional courts and the Supreme Court to suggest judges who have dealt with hate crime cases and would agree to be interviewed. 34 courts were contacted throughout Latvia. Many courts replied that they had not dealt with hate crimes cases, while 12 judges were suggested for an interview. Of those, 7 judges were interviewed. Three judges refused the interview because they had dealt with only one case where they confirmed the decision on plea-bargaining between a prosecutor and an offender. One judge refused to be interviewed as the proceeding are ongoing. Two refused without an explanation.

## **Prosecutors**

In order to identify prosecutors who worked on incitement to hatred cases, an official letter was sent to prosecutors' offices in all the Latvian regions. 3 prosecutors were suggested by prosecutors' offices and interviewed. One prosecutor was suggested by another respondent prosecutor, while others were identified through court decisions and contacted by the LCHR. Among the seven prosecutors interviewed, one was a senior prosecutor, one – a prosecutor from the regional prosecutor's office. Interestingly, two prosecutor's offices that responded to the LCHR's request indicated that the supervision and the prosecution of criminal proceedings of hate crimes are not within the jurisdiction of district level prosecutor's office.

## **Police**

### *Security Police*

An official letter was sent to the Security Police (responsible for crimes under Section 78) with a request to nominate police officers for interviews. A letter was received whereby the Security Police leadership refused interviews citing "that is one of the state security institutions and that in line with the Section 17 para 1 of the Law on the State Security Institutions the current and former personnel are prohibited from disclosing information without the authorisation of the head of the institution that has become known to them or they have access to in connection with the fulfilment of their duties. The activities of the Security Police in implementing their tasks in all significant national institutional activities is closely related to the processing of information that is or can be subject to the status of classified information, as well as the protection and the

use of such information for national security purposes. In view of these competencies, the resources, modus operandi of the institution are subject to certain secrecy. In line with the above mentioned, the Security Police will not provide information that is connected with the methodology and tactics which are connected with investigation of specific crimes.”<sup>74</sup>

### *State Police*

An official letter was sent to the State Police Commissioner, and a response was received whereby four police officers were suggested for an interview. Other police officers were identified by the LCHR. Of the interviewed 10 state police officers – two are heads of a police precinct, one – head of the department of the police precinct, five – deputy heads of department of the police precinct, one – senior inspector and one inspector.

### **Offenders**

The public court database on the number of offenders convicted for crimes under Section 78, 150 was checked. In the last five years no offender has received a prison term, hence the Latvian Prison Administration was not contacted. In order to identify offenders who have been convicted of hate crimes and have been placed under the supervision of the probation service or have been sentenced to community service a request was sent to the State Probation Service who identified two individuals. One of the individuals refused, one initially agreed and then refused.

### **Victims**

An overwhelming majority of cases registered under Sections 78, 150 have been incitement to hatred cases on the Internet without a concrete victim. In the last seven years, only two cases of violent hate crimes have been registered by the Latvian police. As Latvia has no national victim service, several non-governmental organisations working with victims of crime were contacted to verify whether they have had hate crime victims among their clients. NGOs working with migrants, refugees, ethnic and religious minorities were also contacted. After conducting an anonymous online survey among foreign students in autumn 2016, whereby 130 individuals responded and of those 13% acknowledged that they themselves have been victims or witnesses of hate crime, or have heard from others about such cases, LCHR sent letters in Latvian and English to student councils of several universities in Latvia. All student councils responded by saying

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<sup>74</sup> Letter of the Security Police No 21/2697 in response to the Letter of the LCHR 2017-22 of 22 May 2017.

that the information had been disseminated among foreign students. In two cases, LCHR received e-mails from victims who initially wanted to participate in interviews, however, did not respond to further e-mails. In the end of August 2017, LCHR sent repeated letters to the student councils. Despite the efforts, no individual responded. LCHR attempted to contact two more persons who had complained to the police, however, there was no response.

The interviews were conducted by Dr. Ēriks Treļš, lecturer at Riga Stradins University and State Police College (former Head of Department of Riga Region Central Police Precinct). Recommendations and conclusions include his contribution.

### **Experience in investigating/prosecuting/defending/presiding over cases where a defendant has been accused of (charged with) a hate crime**

Of all 20 interviewed prosecutors (7), judges (7) and defence counsels (6), all but one, have had the experience in dealing with crimes under Section 78 (racist, religiously motivated crimes/incitement to racial<sup>75</sup>/religious hatred). Moreover, with a few exceptions, the majority of cases have been incitement to racial/religious hatred cases on the Internet as comments to the articles on Internet news sites, social networks, or in some cases – printed media. Only a small number of the interviewees have dealt with racist crimes.

Among interviewed prosecutors, six out of seven have had experience with crimes under Section 78 - around 25 cases in total. All cases, except one concerning the desecration of Jewish graves, have been connected with the incitement to racial, ethnic, religious<sup>76</sup> hatred. The number of cases among prosecutors have ranged between one and two cases, four and in one case – up to 10. All interviewed judges and defence counsels have dealt with crimes under Section 78, most of them have had only one or two cases.

None of the judges, prosecutors or defence counsels have dealt with cases under Sections of 149.<sup>1</sup> and 150 of the Criminal Law. There has neither been a case involving Section 14 (48) (racist<sup>77</sup>, ethnic, national, religious<sup>78</sup> motive as an aggravating circumstance). One of the judges noted that in 20

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<sup>75</sup> The Criminal Law also includes ethnic/national motive.

<sup>76</sup> The first case involving religious hatred was prosecuted in 2016.

<sup>77</sup> Since 2006.

<sup>78</sup> All three since 2014.

years since she has been working as a judge she has not dealt with a case where national, ethnic, racist or religious motive has been applied as an aggravating circumstance.

As the Security Police who is responsible for the investigation of racist/ religiously motivated crimes and incitement to racial/religious hatred refused to participate in interviews, State Police officers were interviewed instead. Since 2014, the State Police is responsible for investigating the so-called incitement to social hatred cases, which criminalise hate crimes/hate speech on grounds of age, disability, gender and other features. "Sexual orientation" and "migrant" may be subsumed under "other features." State Police is also responsible for the initial investigation of racist/religiously-motivated crimes that take place "in the street" before the case is being transferred to the Security Police.

Of the 10 interviewed State Police officers, five have had had experience with criminal proceedings that were opened under Section 150 on social hatred (against LGBTI, migrants), while two had had experience with crimes under Section 78 (racially/religiously motivated). The experience has ranged from one case to a larger number of cases, including refusals (in one case 3-4, in another up to ten) to initiate criminal proceedings. In some cases when the officers were being interviewed the investigation was still pending. One interviewed officer has had significant experience since he began working in the police in 1994, and he has had to deal a lot more with Section 78 crimes. While they are under the jurisdiction of the Security Police, at the stage when these incidents are registered at the police precinct, they are investigated until the beginning of criminal proceedings and before the decision is being taken to transfer the case to Security Police.

### **A recent case involving a hate crime prosecuted/defended/presided over/investigated**

Responses varied as to the description of recent cases. In some cases proceedings were pending or the case had been appealed and the relevant professional could not describe the case in detail. Some cases had taken place 7-10 years ago.

Nearly all described cases by the stakeholders concerned incitement to hatred on the Internet, some cases included marginal printed right-wing publication. In a number of cases the offenders had pleaded guilty and concluded a plea bargain with the prosecutor.

In two cases, the defendants were acquitted, in all other cases mentioned in the interviews the punishment was not connected with imprisonment. The offenders were either sentenced to community service or suspended imprisonment. Older cases concerning a racially motivated attack against an Afro-American who sustained bodily injuries<sup>79</sup>, two cases concerning the desecration of Jewish graves, included some period in pre-trial detention by offenders.

In a significant number of cases, the stakeholders (prosecutor, judge, defence) were satisfied with the outcome.

*“In both cases there were convictions with suspended imprisonment. Was satisfied with the result. The main thing was not punishment, but the fact that the defendants had come to the conclusion that they should not conduct themselves in that manner and that before expressing their opinion, they should give it a thought what consequences it will have on the specific group, on that section of the public which would read it and what message you send.”*  
(T 141)

In all incitement to hatred cases, printed comments on Internet news sites, media, social networks, IP addresses provided by Internet service providers, confiscated computer hardware, complaints by individuals served as evidence. External expert opinion (e.g. by an academic, an NHRI/NGO representative who specialised in hate crime cases) is considered as the basis of evidence. Nevertheless, the quality of expert opinion is sometimes questioned not only by defence, but also other stakeholders.

In hate speech cases that have fallen under Section 78 of the Criminal Law the Security Police have generally requested external expert opinions in assessing whether an incitement to racial or national hatred has occurred. The Criminal Procedure Code determines on what basis expertise can be requested, cases when such expertise is mandatory, the types of expertise, expert opinion, etc. Experts may be requested in cases when issues relevant to criminal procedure necessitate research, which requires special knowledge in the field of science, technology, art and craft. (Section 194). Expert opinion in hate speech cases is not mandatory. The decision to request expertise is taken by the investigator. Complex expertise is requested when experts from different fields are required to research a case (s) for the purposes of identification of an issue relevant to criminal procedure. An expert issues a written opinion which includes

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<sup>79</sup> 2006

information on the research methodology and results, explanation provided by the authors. The types of expertise that have been assigned in hate speech cases have varied – linguistic, human rights, philosophical, journalistic, and the choices made in favour of one or the other areas of expertise is not always clear. In several cases complex expertise has been assigned. Representatives of different fields from the University of Latvia, the University's Human Rights Institute within the Law Faculty, the Ombudsman (formerly the National Human Rights Office), the State Language Agency, and NGOs – the Latvian Centre for Human Rights, the Centre for Public Policy "Providus" – have provided expert opinions. However, no specific criteria have been developed for selecting the experts.<sup>80</sup>

Several reports<sup>81</sup> over a period of almost a decade reiterate that no criteria have been elaborated either for the selection of experts or expertise required in cases of hate speech. According to the Ministry of Justice report in 2014, the Ministry of Interior deemed the capacity of the Security Police in investigating crimes under Section 78 sufficient. It nevertheless noted that expert opinion is sought by the Security Police to forward criminal proceedings to prosecutor's office for indictment. The report also questions the usefulness of the expertise conducted as expert opinion can be challenged because of expert's educational background and his/her socio-political activities. The report also notes the low and the declining number of experts.<sup>82</sup>

*"Concerning evidence – the expert thought that freedom of expression had been violated. That is the point, we, prosecutors, ourselves,... we do not invent anything. We rely on what people knowledgeable about human rights say... I think it is very important what people from the outside tell you about international law. How it is. Let us not be naive. We have little knowledge about that. Thus, if specialists tell you that ... with legislation, that European Union has determined, that it does not mean that I as a prosecutor came to the conclusion that you are right and that we are finishing with the case. So*

80 Kamenska, A., Brands-Kehris, I. (2008). Combatting Hate Crimes in Latvia: Legislation and Police Practice. Riga: Latvian Centre for Human Rights, at [http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida\\_noziegums\\_ENG\\_Internetam.pdf](http://cilvektiesibas.org.lv/media/attachments/30/01/2012/Naida_noziegums_ENG_Internetam.pdf)

81 Ibid., Ombudsman (*Tiesībsargs*) (2016). Problematic Aspects of the Identification and investigation of hate speech and hate crimes in the Republic of Latvia (*Naida runas un naida noziegumu atpazīšanas un izmeklēšanas prakses problēmaspekti Latvijas Republikā*), in Latvian at [http://www.tiesibsargs.lv/uploads/content/publikācijas/naida\\_noziegumu\\_un\\_naida\\_runas\\_izmeklesana\\_lv\\_2016\\_1496214733.pdf](http://www.tiesibsargs.lv/uploads/content/publikācijas/naida_noziegumu_un_naida_runas_izmeklesana_lv_2016_1496214733.pdf)

82 Ministry of Justice (2014). Information Report on Legislative Framework Concerning Liability for National or Ethnic Incitement to Hatred, Calls to Liquidate Independence of the State or Undermine Territorial Unity and Degrading of State Symbols (*Informatīvais ziņojums par tiesisko regulējumu attiecībā uz atbildību par nacionālu vai etniskā naida izraisīšanu, aicinājumu likvidēt valstisko neatkarību vai graut teritoriālo vienotību un valsts simbolu zaimošanu*), <http://tap.mk.gov.lv/mk/tap/?pid=40312823>

*our only problem now are these expert opinions, and I think now it is maybe even more difficult because I doubt whether we have this methodology, that they are now all on court expert register. (P 128)*

In one case, whereby the police traced an offender calling for violence against migrants on Facebook within two hours the screenshot of comments was sufficient evidence.

*“In this case the suspect did not deny his guilt and co-operated. There was no information from “Facebook” or computer or other devices. Everything was based on me having made screenshot and saved it as the comments were later deleted from “Facebook.” I sent it to initial investigator as basis to start working on criminal proceedings.” (P 155-156)*

Only one interviewed police officer recalled a racially motivated crime when bodily injuries were inflicted to a black man who had perceived it as a racially motivated crime, and criminal proceedings were opened under Section 78. He also acknowledged that there have not been many cases that have led to criminal proceedings. *“There have, of course, been materials where racial and ethnic motive may have been present, but there have been no criminal proceedings. (P 151)*

### **Legislation most commonly used in cases where there is evidence of identity-based prejudice during the commission of an offence**

All interviewed prosecutors, judges and defence counsels highlight that Section 78 (racist/religiously motivated hate crimes/incitement to racist/religious hatred) is the most widely applied article as it has been in the Criminal Law for a considerable period of time. All the interviewed stakeholders also note that these are predominantly incitement to hatred cases on the Internet.

At the same time, one of the judges noted that *“such [hate] crimes are rather frequent, however, criminal proceedings are opened rather rarely. They are not reported.” (J 125)*

Section 149.<sup>1</sup> (prohibition of discrimination) and Section 150 (incitement to social hatred on grounds of age, gender, disability and other features) have been rarely applied. Section 150 in its current wording was introduced in 2014. Most stakeholders could not recall Section 48 (1) 14, which provides for racist motive as aggravating circumstance being applied.

Almost all interviewed stakeholders are of the opinion that the presence of “substantial damage” in Sections 149.<sup>1</sup> (1), 150 (1) hinders and causes problems with the application of the provision.<sup>83</sup>

*“There has been no case opened under Section 149.<sup>1</sup>, and the Section 150 is applied very rarely. Because there is the requirement for substantial damage, therefore the offence requires that consequences must have occurred – substantial damage, which is more difficult to prove.” (P 126)*

*“The definition of significant damage is provided for in the Transitional Provisions of the Criminal Law “It requires that not only material losses should be inflicted but also other rights and interests protected by the law breached and so on. For instance, if I have posted a comment that persons with disability disturb my life and so on, if we think logically then substantial harm cannot be caused to a group of persons. One person, one physical person, can be inflicted substantial damage, but how to calculate that in respect of a group? Where is an algorithm that we can use as guideline? How? Do we take a calculator and count... how many persons with disability we have in whose case it would be applicable and then who has been inflicted substantial damage and who has not? Who read the comment and who did not. If attitude changed towards them – how to follow it through. It is mission impossible.” (J 124)*

*“The main problem perceived with substantial damage is [...] how to identify the damage and how to prove. Because it is not against one specific person. And if it has been in a virtual world, we cannot say that there has not been damage, but how to measure that damage and who specifically has suffered damage... This is a problematic issue” (P133)*

Several judges mentioned that they had dealt with discrimination cases in employment disputes and they are dealt with in civil proceedings. One of the defence counsels was of the opinion that the crime of discrimination was not typical for the region.

One of the prosecutors considers that one of the reasons why there are fewer cases concerning other Criminal Law provisions because of the pressure on prosecutors to achieve results – convictions:

*“Our system is such, the office works well, when there are the so-called results, guilty verdict and that is what the prosecutor’s office is working on. No one is hiding that. Thus, the prosecutor’s office forwards the case to court. Everyone wants to feel comfortable in court and therefore it is simpler to terminate and*

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<sup>83</sup> In cases of violent crimes it is not required, only in incitement to hatred cases.

*find... some shortcomings in the case, rather than forward it to the court and go. One must be a real fighter to go.” (P 2, 128)*

Several interviewees think the reason why Section 150 is less frequently applied is that

*“the society is not so intolerant against people due to their age, gender, disability and other features, therefore, even if there are more cynical and incorrect comments,... this question is not so heightened on a national level. I think usually [...] if the government wants to sweep certain unpleasant events under the carpet [...] they again and again raise the national question, minorities, immigrants, etc. I think that is why this racial, ethnic, national hatred prevails over social hatred.” (J 124)*

Due to limited experience, several police officers could not answer which of the Criminal Law articles with hate or bias motives were most frequently applied. Two police officers underline that Section 78 has been applied most frequently as it has been in the Criminal Law for a long time. Others indicate that it is in the jurisdiction of the Security Police and consider that the Security Police has significant experience in handling racially motivated crimes. Some police officers have had experience in handling cases under Section 150 as it is in the jurisdiction of the State Police. However, as the provision appeared in 2014, the experience remains limited. Interviewed police officers indicated that the non-discrimination provision (Section 149.1) has never been applied in their work. Most also stressed that they would not know what crime had to be committed for the provision to be applied, as in the cases of violation of the prohibition of discrimination Administrative Offences Code is applied.

*“Concerning Section 149.<sup>1</sup> – proving substantial damage remains the difficulty. There has been no explanation as to what is to be understood by substantial damage, particularly in the case of incitement of hatred on the Internet, as in the understanding of Criminal Law substantial damage is usually associated with material losses.” (P0 152).*

### **Co-operation between police and prosecutors in prosecuting hate crimes**

Co-operation between the police and prosecutors was described more in general terms rather than specifically about hate crimes by all stakeholders, which can be attributed to a small number of cases and limited experience.

The interviewed prosecutors evaluated the co-operation between the Security Police and prosecutors as successful. Some prosecutors noted that co-operation is the same as in any criminal proceedings.

One prosecutor highlighted that more should be done in collecting other evidence rather than relying on the admission of guilt by the offender:

*“On improvements – all depends how qualified is the police officer. We know that there is turnover, some who get better ‘trained’, they aim higher, they try to join the prosecutor’s office or court or elsewhere. Improvement – perhaps work more with other evidence, not only rely on the person pleading guilty. As we were taught in the [Police] academy, if the person admits guilt it does not mean that there is no need to collect evidence, because in one moment he can say, I did not say that, I was under duress, and then we have no other evidence left.” (P 129)*

9 out of 10 police officers deemed the co-operation between the police and prosecutor’s office as positive. Supervising prosecutor was working jointly with the police officer, instructions were given on how to proceed, how to collect evidence in order to prove the case. One police officer noted that joint training should be organised for both prosecutors and police so that there is a common understanding about concepts and borderlines as police and prosecutor did not share the same view concerning “substantial damage” as required in Section 150.

*Such cases are rare and, of course there is co-operation. Our office has very good co-operation with district prosecutor’s office. In the case where I am responsible, I went to the supervising prosecutor and we discussed what he sees in this case and what I do as an investigator and what is the plan and actions. (P0 145-146)*

*The co-operation was good, although the prosecutor’s office did not share our view that the case is to be terminated. However, during their supervision all differences were settled. Joint training should be organised for both prosecutors and us so that we have a common understanding about concepts and borderlines. (P0 155-156)*

Judges consider the co-operation between the police and prosecutors as generally satisfactory as without co-operation there would be no result in court. Police and prosecutors co-operate in line with procedure fixed in the Criminal Procedure Law, each fulfilling their own functions. Personal relations, more that lawyer’s professional knowledge often appeared to influence co-operation. One judge highlights that co-operation is

unsatisfactory, but attributed it to general situation rather than only hate crimes cases. .

### **Assessment of the effectiveness of the current (hate crime) legislation in ensuring that offenders are prosecuted for their prejudice-motivated crimes in court**

All interviewed police officers except for one found the current legislative framework generally satisfactory. Nevertheless, almost all indicated shortcomings in the existing legislation and their application. Some police officers indicated that there should be greater court practise in order to better understand the specific features of hate crime. Many reiterated the concern about the proof of “substantial damage” in incitement to social hatred (Section 150) and discrimination (Section 149.<sup>1</sup>) cases.

*“There should be more specific information so that it is clear to an ordinary police inspector. When the inspector receives the complaint so that it is clear to him and the higher authority (prosecutor’s office) what is to be understood by substantial damage in relation to Section 150.” (P0 149)*

Several police officers highlight the problem with appropriate qualification of anti-migrant crimes/speech, when those need to be qualified as racist crimes and when as incitement to social hatred.

*“The supervising prosecutor qualified it according to Section 78 and the case was forwarded to the Security Police. The Security Police sent it back, so that there was the division between Section 150 and Section 78. It finally ended up with the Prosecutor General taking a decision in our case.” (P0 154)*

*Regarding “our” article there is lack of clarity concerning “substantial damage.” There is no unanimous opinion what substantial damage is and what it is not. We were in touch with the prosecutor, they also have their own understanding what “substantial damage” is in incitement to social hatred cases and what not. Perhaps there should be guidelines as to what is meant by racial, ethnic, national, religious discrimination, perhaps there should be concrete examples for better understanding. (P0 153)*

*“The last nuances about substantial damage is that there is also mention of “other interests protected by the law that have been violated”. That again is the issue of evaluation and understanding. (P0 155-156)*

All the interviewed prosecutors generally consider the legislative framework as sufficient and effective. Concerning Section 78 (racially/ religiously motivated crimes/racist/religiously motivated hate speech) all

prosecutors noted that the provision is sufficient and effective. Concerning other provisions (Section 150, 149.<sup>1</sup>) several prosecutors noted the need for improvement. One prosecutor indicated that the construction of the provisions should be changed that would make it easier to prove substantial damage and that the term “other protected interests” is clarified.

*“I think the legislative framework is effective. On Section 78 of the Criminal Law – the sanctions, they are not light. About other sections, perhaps 149<sup>1</sup> and 150 needs to be changed, that might be about substantial damage, when other interests have been breached. It is clear about substantial damage in monetary terms, however, in case of protected other rights and interests, there is nothing fixed, and it is the interpretation of the person conducting proceedings, and whether the court will agree to it.” (P 126)*

Five of the judges consider the regulatory framework effective, while two judges consider legislative framework not effective. Both highlight that Sections 149.<sup>1</sup> (non-discrimination) and 150 (incitement to social hatred) require essential damage to be proven, which significantly restrict the application of the provision.

### **Whether the structure or the content of the current hate crime legislation raise any practical or procedural problems in relation to charging/prosecuting/defending/presiding over cases of alleged hate crime**

The process of proving the fact that a hate crime has been committed is highlighted by a significant number of stakeholders as one of the problems in this category of cases. Several prosecutors emphasise that the difficulties are caused by the need to prove the subjective side – an offender’s intentional wish to cause consequences, namely to incite hatred. The motive of the crime is to incite hatred, which is difficult to prove. If the person does not plead guilty, the crime is difficult to prove in court.

*“talking about the subjective side, if any of the defendants who does not plead guilty says that he has not wanted to do it, that his aim has not been to incite hatred, and that he has done it because of anger.”*

*“The victim says the defendant called names. Then there are five defendants, who all say ‘no we did not say anything’ ... If this is an organisation, it is a different issue, one should look at the aims of the organisation, whether there are any symbols drawn, or other activities... (P 129)*

Another prosecutor noted the difficulties in proving the objective side: *“On the objective side, if we have substantial damage, then we have to prove the objective side.”*

One prosecutor saw problems in expert opinions, and he voiced no need for expert opinion in these cases, as all judges, prosecutors are lawyers and can decide for themselves.

Almost all judges noted certain problems with expert opinions. One of the judges indicated that there may be certain challenges because sometimes one needs to examine and evaluate historical facts for the court to understand why certain [racist, anti-Semitic] words that have been used and have been drawn attention to by the [external] expert are really incitement to hatred. The judge acknowledged the complexity of the issue:

*“I must be honest I took and read additional history to understand why it is as told by the expert. I had to be convinced myself that there have been certain events, which serve as a reason why such things cannot be said. That in-depth was lacking ... That, for instance, in my case, I lacked knowledge and understanding about historical facts.”* (J 123)

One of the interviewed judges considers that the law must be simple, clear and without any specific restrictions as the dispute is often about the issues related to the interpretation of legal norms.

*“Problems are in that sense how to choose (select) the right methods, how to fix and prove that that incitement to hatred has taken place or the offence is linked to hostile/biased views or motives.”* (J 124)

Another interviewed judge indicates that procedural problems exist as there must be intent, the individual must be aware of the consequences and foresee them. Hate crime cannot occur unintentionally or carelessly. There must be intent.

### **Whether the current legislation provides adequate provisions for the defence of those accused of hate crimes**

All interviewed police officers, prosecutors, judges and defence counsels indicated that the legislative framework allows persons who have the right to defence to exercise their rights in hate crime cases, that irrespective of the gravity of crime committed, individuals enjoy equal access to defence.

One prosecutor thinks that the current construction of the law favours the defendant:

*“The way the current law is constructed they (defendants) have it easier to win and have the right to realise their defence. Because for prosecutor and investigator it is more difficult prove that they had the intent. And because of the presumption of evidence, then all doubt should be interpreted in favour of the defendant.”* (P 134)

Several defence counsels noted that the legislation foresees plea bargain, and in several cases the defendant pleaded guilty and concluded an agreement with the prosecutor without the examination of evidence.

One defence counsel noted that sometimes *“the client thinks that acquittal is complete victory. However, to achieve that, it is not so much the merit of the defence counsel, but errors of the law enforcement or prosecutors. Several errors have to occur on the other side, e.g. no features of the criminal offence, unprofessional prosecution, judge’s lack of understanding about the issue). ... No one has the professional courage to terminate the case, all rely on old time practises, if the prosecutor goes to court, the court will somehow support him.”* (DC 138).

### **The effectiveness of current hate crime legislation/sentencing guidelines is/are in ensuring that hate crime offenders are sentenced appropriately for their crimes?**

There are no sentencing guidelines for judges concerning hate crimes. While many stakeholders consider the current hate crime legislation sufficiently effective in ensuring that hate crime offenders are sentenced appropriately for their crimes, a significant number also draw their attention to the severity of sanctions in incitement to hatred cases.

From 2007 until 2014, racist comments on the Internet could only be punishable by imprisonment of up to ten years. In most cases the offenders have been sentenced to suspended imprisonment ranging from six months to two years with or without a probation period. From 2014, certain racially/religiously motivated crimes were re-qualified and additional sanctions, such as community service and fines, short term custody were introduced.

*“The sanctions could have been different,, one should take into account the person. If these are minors – 16,17, 18 years olds, what can you take from him*

*and it is clear that sometimes he does not understand what organisation he has joined and what his task is. In my experience I have not had offenders who have been older than 20.” (P 129)*

The severity of sanctions is also questioned by some defence counsels as is the practice of sentencing to suspended imprisonment.

*“I think about the teenagers from the age of 14. For them, of course, if there was administrative punishment, which would foresee community service and his future life would not be ruined.” (DC 138)*

Some judges and defence counsels question the effectiveness of the legislation underlining that not all actions should necessarily be criminalised as many areas in Latvia are overly criminalised. They suggest that cases related to non-discrimination and incitement to social hatred could possibly be resolved by Administrative Offences Code. Several interviewees (police officers, defence counsels) suggest that administrative liability needs to be introduced for anonymous comments on the Internet or “if there is no substantial damage, then we can try to introduce some article there or supplement the existing ones.” The defence counsels also call for the differentiation of offenders who write a comment in a moment of anger and those who do that in an organised and systematic manner.

*“Where is the borderline when a person can be called to administrative responsibility and when his activities should lead to criminal punishment? Substantial damage which is currently included and that has always caused big concern in its practical application. Perhaps when adopting the law everything was clear from the point of view of the legislator, but in practise substantial damage is included in many other crimes and the biggest discussions and arguments have always been about it. It is very difficult to work on it in practise.” (J 124)*

One prosecutor questions the different sanctions foreseen for racially/ religiously motivated crimes/incitement to racial/religious hatred (more severe) and those intended for other hate crimes/hate speech.

*“In connection with Section 150 (1), I see similarities with Section 78 (1) and there paragraph one does not require substantial damage. But Section 150 para 1 requires substantial damage. Perhaps we should think. In one case this is conduct aimed at inciting national hatred, in the other it is incitement to hatred on grounds of age, gender and disability. I think both should be equal. And therefore, perhaps substantial damage should be removed. (P 140)*

One of the interviewed judges highlighted lack of uniform practise concerning punishment in hate crime cases and supported research in that respect.

*"In two different cases the same type of punishment is sometimes imposed. For one comment "A good Latvian is a dead Latvian" the judge imposed a two year suspended imprisonment, while in another case where the person had commented some 20 times, and in the end the punishment was the same – suspended imprisonment – two years. And the offender's attitude did not change substantially." (J 131)*

One defence council believes that in certain cases the lengthy criminal proceedings themselves are a sufficient punishment.

**In your experience, can you identify any common (legal or evidential) factors that you feel increase the likelihood of a defendant being convicted or acquitted of a hate crime?**

Most answers by stakeholders concerned incitement to hatred cases, nevertheless some also referred to hate crimes.

Different factors were highlighted by judges and prosecutors, such as proper identification of crime, sufficient evidence, expert opinions in incitement to hatred cases, proof of defendant's intent, etc. Some judges do not see any specific factors and consider each case individual requiring examination of specific circumstances of the case.

*"It would be essential to initially properly identify the features of a criminal offence and how to investigate them, e.g. not to continue the investigation about hooliganism, while it is clear from the circumstances of the case that these are racially motivated actions." (J 123)*

*"A person can be sentenced on the basis of sufficient evidence, nobody can be sentenced for opinions, emotions. Expert opinion is essential, however, it cannot be the only one and above others. There was a case where legal analysis was conducted in connection with war crimes. Historical, too. Those are necessary. Specialist's opinion is necessary, but it is not cast in stone. That should be evaluated in combination with other evidence acquired in the case. (J 133)."*

For several prosecutors and judges the common thing in these cases is "establishing and proving intent and aim both for conviction and acquittal," "proving the subjective side – intent would be key, the person's own attitude towards what has been committed."

A prosecutor and a defence counsel questioned the quality of expert opinion in incitement to hatred cases and supported the view that expert opinions and the qualification of experts should be questioned and appealed. The need for proper qualifications and expert selection criteria was also stressed

**Do you think that the legislation should be amended in any way to improve their enforceability?**

Most of the interviewed stakeholders see no need for the changes in the legislation, however some suggestions are made. Most suggestions reiterate the need for the clarification of the understanding of “substantial damage” in Sections 150 and 149.1.

Several police officers highlight the difficulties concerning the application of Section 150 (1) – *“Something should be changed in connection with Section 150 as it is very difficult to prove and understand essential damage on social networks and what is meant by it and how it should be applied. I suggest removing “essential damage” and aligning it with Section 78 so that there is formal content of the criminal offence. If there is essential damage it should be applied to a victim. If is against a group on the Internet (links or comments), it is very difficult to prove and understand who the damage has been inflicted. (P0 148)*

Several police officers underlined that the enumeration of protected features is sufficiently broad.

*“It is not realistic to enumerate all. We can further add refugees, after two years another issue will be topical, then there will be immigrants or other groups. The main thing that it is a group, and that there is some initial clarity and other protected characteristics mean that it is an open-ended formulation.” (P0 155-156)*

*“Latvia which is part of continental law should not aim at naming all protected grounds... One should look at those in the context of Satversme (the Latvian Constitution) and international treaties. (P0 147)”*

Another police officer suggested that *“perhaps some other groups could be listed, e.g. homeless persons or somebody of the kind.” (P0 149)*

A police officer suggested that that both criminal law provisions (Section 78, 150) dealing with crimes with hate/bias motivation should be placed in one Criminal Law chapter so that crimes committed under these articles be investigated by one and the same institution.

None of the judges see the need for changes in the legislation. 3 of 7 judges think that the application concerning substantial damage (Section 150) should be improved and that the legislator should explain and define what substantial damage is and how it can be applied in hate crime cases.

One of the judges questioned whether the prohibition of discrimination should be criminalised as the provision is difficult to apply (J 124).

All interviewed prosecutors, except one, agreed that the legislative framework is sufficient and should not be amended. Nevertheless, there were prosecutors who supported changes concerning substantial damage. One prosecutor considered amending the Law on Court Experts as there are few experts concerning hate crimes and it is not entirely clear what expertise they are conducting (P 128). One prosecutor highlighted:

*“Section 78 was amended. Prior to the changes there was a provision which included “intentional” acts aimed at racial, national, ethnic, religious incitement to hatred. The word was dropped, however, this crime can be committed only with direct intent. On the one hand, “intentional” has been deleted, while on the other hand, nothing changes.”* (P 142)

### **What, if anything, might help prosecutors/defence lawyers/judges/police to improve the way they prosecute/defend/preside/investigate cases involving hate crimes**

None of the interviewed stakeholders see the need for new criminal justice policy, including prosecution policies. A significant number of interviewed judges, prosecutors, police officers and defence counsels support the need for training, including multi-disciplinary training that would bring together the police, prosecutors and judges. Guidance manuals are also seen as a helpful aid.

Police officers think that the main focus should be on the training in order to understand how to collect evidence. 8 out of 10 interviewees indicated that training is very necessary and should be conducted by people who know and understand the field. The aim of the training should be about uniform understanding about the concepts and terminology and should target the police, prosecutors and judges.

*“To investigate these cases, experience is necessary. It can be done by training how to act in such cases. There is no literature in Latvian (in specific crime area) where one could find what needs to be investigated.”* (P0 147)

One of the two police officers who thought that there was no need for training highlighted that there are very few registered hate crime incidents and thought that it may as well be due to people not complaining to the police.

All the interviewed police officers indicated that guidelines would be necessary and very helpful in hate crime investigation – what should be done, when the victim has submitted a complaint or a person who has the information about the incident to be able to act without delay.

*“Guidelines would be necessary for the Criminal Police as Criminal Police deals with all criminal proceedings and as there is little practice it would be good to know how to proceed to collect all necessary evidence to call a person to criminal responsibility.” (P0148)*

6 of 7 prosecutors consider training necessary and helpful due small number of hate crime cases and their specific nature. Five of seven prosecutors think that guidelines/handbook would be necessary as an aid. Two prosecutors believe that there is no need for guidelines as there is a compilation of court cases by the Supreme Court in 2012.

*“Training is always good for prosecutors as there are not many such cases and these are really specific cases. And training would be good not only for prosecutors, but also police and courts. Although there is the compilation of court practise in hate crimes cases by the Supreme Court in 2012, if there was a handbook, why not.” (P 126)*

*“On guidelines/handbook – it won't do any harm. The more scientific articles there are or some guidelines, or compilation of court practise, we are all “for” it. That makes our life easier.” (P 141)*

5 of the 7 interviewed judges believe that special training would improve proceedings in hate crime cases, while two do not consider it necessary due to the small number of cases. Five judges believe that it is necessary to have guidance manuals on how to try hate crimes cases while two believe that the analysis of court cases by the Supreme Court is sufficient and helpful, and no guidelines are needed. One of the judges suggested that a compilation of case law of the European Court of Human Rights, case law from other countries on hate crimes would be helpful in order to see when it has been established that a hate crime has occurred. One judge highlighted that systematic training about these issues would be needed, similar to the regular training on other types of crimes, such as human trafficking. Training would also involve the analyses of cases, which would

allow the identification of problem areas. Some judges also acknowledged lack of sufficient information about these crimes, thus highlighting the role of an external expert who has provided opinions in many cases concerning incitement to hatred.

### **Other issues**

One of the judges acknowledged that racial and national hatred is a rather widespread problem.

*“Perhaps it is not spoken openly about. In our city there was an Afro American teacher of music. She was walking in the street and boys (those were kids) ... and [name] calling... I do not know, but perhaps administrative liability could help in such offences. Perhaps in such cases administrative and not criminal sanctions could be sufficient and that would be more effective. And these would be simpler and less costly proceedings. Education is also necessary. There is historic prejudice ... against specific national groups, for instance, Jews. It is not spoken openly about, but it exists.” (J 125)*

Some of the interviewees also reflect their own concerns, fears, lack of information about potential new arrivals in Latvia against the backdrop of migration crises in Europe as well as prejudice against the LGBTI.

*“This is unusual, frightening for people here. Watching the news. What is on TV, mass media, news about their actions. What they write in Germany, that women are raped and so. Of course, as a mother, I have daughters, I also think about that. If they are here in masses, [you know] how big Latvia is. One doesn’t need many of them in the streets. Then I started thinking how to get my child to school safely. Prejudice, yes. This is the other extreme as we are all people. Do you, not thinking about law, do you not get such silly thoughts? Each has it somewhere, somehow, but that does not necessarily mean that I harbour hate against them, that I despise them and I will go against them or anything else. This is fear, prejudice, it is fear, not knowing, not understanding. One fears what is not known, what is unknown.” (J 133)*

*“I think sometimes people create problems where they are not. I do not understand all those [gay] prides. Many things can be resolved without that, which is unnecessary.” (P 128)*

Several judges stressed the need for public education and making people aware of the consequences of their action which may lead to criminal liability. A prosecutor also highlighted the need for general public to be better informed about hate crimes legislations, as many know about the

existence of Section 78, but most do not know about Sections 150 and 149.1 and that they can submit a complaint.

### **Conclusions and Recommendations**

1) All 30 interviewees, except one, had had the experience in handling crimes under Section 78 or 150. Judges, prosecutors, defence counsels had dealt with cases under Section 78 (incitement to religious, national, ethnic, religious hatred), however the overwhelming majority of cases were incitement to hatred cases. State Police officers had dealt or were involved in pending cases under Section 150 (incitement to social hatred; hate crimes/speech on grounds of gender, age, disability, other characteristics). None of the interviewees had had the experience in dealing with cases involving racist, national, ethnic or religious hatred as an aggravating circumstance (Section 48 (1) 14). The majority of interviewees had dealt with 1-2 cases.

2) The understanding of hate crimes in Latvia is largely reduced to incitement to hatred as comments, posts or publications on the Internet. There has been only one officially recorded case of racist violence in the last seven years. Limited experiences with hate crime cases impacted on the quality of responses concerning hate crimes.

3) Co-operation between the police and the prosecutors is described generally without in-depth description of co-operation in hate crime cases, which may be explained by small number of cases. Overall, in most cases, the co-operation is deemed positive.

4) A significant number of interviewees drew attention to a range of practical and procedural problems linked to establishing *corpus delicti* in hate crime cases. In criminal law *corpus delicti* is understood as an aggregation of objective and subjective features that are necessary and sufficient to recognise an unlawful activity as a specific crime. Features of *corpus delicti* may be divided into two groups: objective and subjective features. In criminal law four features of *corpus delicti* are distinguished: object of criminal offence, objective side of the offence, subject of criminal offence, and subjective side of the offence. The subjective side of the offence is person's internal attitude towards objective reality in external word. In Criminal Law theory the following features of the subjective side of crime are distinguished: guilt in the form of intent or negligence, motive and purpose (aim). The *corpus delicti* of Sections 78 and 150 envisage the presence of intent as subjective element. Incitement to hatred from

the subjective side always is intentional act and is characterised by direct intent. The guilty party is aware that his/her conduct is directed towards incitement of hatred and wishes it. The establishment of intent has been raised by the interviewees as one of the problematic issues in hate crimes.

5) In Section 150, the punishable act is defined as activity aimed at incitement to social hatred on grounds of gender, age, disability or any other characteristic if substantial damage has been inflicted. The requirement for substantial damage is also included in the non-discrimination provision of Section 149.<sup>1</sup> Nearly all interviewees were of the opinion that the requirement for essential damage hinders the application of both Criminal Law provisions. The majority of interviewees proposed improvements by specifying and explaining the notions of “substantial damage” and “other interests protected by the law” to avoid different interpretation.

6) In accordance with the Section 34 of the Criminal Procedure Code, the person conducting proceedings (police investigator, prosecutor, judge) can request an opinion from a person who is not an expert of official expert bodies, but whose knowledge and practical experience is sufficient for conducting expertise. In conducting expertise in cases involving incitement to racial, ethnic or religious hatred (Section 78) and incitement on grounds of gender, age, disability or any other characteristics (Section 150) the expert should possess significant knowledge and practical experience on issues related to international human rights standards, criminal law, etc. Several interviewees highlighted absence of criteria in selecting experts and requirements for expert opinion. The issue of selection criteria and requirements has been discussed over a decade, nevertheless none of the responsible institutions has taken up the initiative to elaborate the requirements.

7) Until 28 October 2014, cases of incitement to racial, ethnic and/or national hatred on the Internet were punishable by imprisonment of up to 10 years. The current legislation in force foresees punishment for incitement to hatred cases – imprisonment up to five years, short term custody (15 days to 3 months), community service or a fine (Section 78 (2)). The majority of interviewees were positive about the punishment imposed by judges and considered legislation in force sufficiently effective for the hate crime offenders to be sentenced for hate crimes. In cases concerning online hate judges have generally imposed suspended imprisonment with probation supervision. In recent years, there have been a growing number of cases of plea bargains.

8) In 2005-2006, cases were registered in Latvia which were not always qualified as “hate crimes”, but as hooliganism (Criminal Law Section 213 (1)) or hooliganism connected with bodily injuries (Section 213 (2)). In responding to the question concerning the effectiveness of hate crime legislation to the extent it ensures that those committing hate crimes are sentenced for hate crimes, several interviewees emphasises that they can distinguish acts listed in Sections 78 and 150 from other crimes in the Criminal Law.

9) The effectiveness of police work also depends on the readiness of victims to report crimes to the police. State Police and Security Police leadership should undertake measures to improve the hate crime reporting by victims and members of general public. They can include dissemination of information about the procedure of taking and examining complaints by State and Security Police. Possibilities should be provided for online reporting of hate crimes to existing police accounts or be creating new ones. Police should react to such reports without delay as initial investigation and ability to identify hate motive is key in hate crimes. Responsible authorities should also conduct monitoring to identify and investigate incitement to hatred cases on the Internet. Securing evidence is key in cases of incitement to hatred on the Internet.

10) The majority of interviewees consider hate crime legislation as effective and do not see the need for new amendments. Proposals for the improvement of legislation are predominantly linked to the explanation of the notion of “essential damage” or its removal from Sections 149<sup>1</sup> and 150. At the same time a number of interviewees suggested various legislative proposals for consideration.

11.1) Several interviewees proposed introducing administrative liability for public insults or denigration of persons on racial, ethnic, religious grounds, as well as grounds of gender, age, disability or other features.

11.2) Legislation currently in force foresees different sanctions for crimes under Section 78 and Section 150. The jurisdiction of these crimes also differs and they are placed in different chapters of the Criminal Law. Section 78 crimes are investigated by Security Police while Section 150 crimes are investigated by the State Police. The interviewees proposed several solutions to overcome the divisions. One suggestion concerns equating the sanctions envisaged for the commission of hate crimes/incitement to hatred on grounds of gender, age, disability and other characteristics to sanctions envisaged for racist crimes. Another

suggestion concerns the placing of both Sections in one Criminal Law chapter.

11.3) On 25 September 2014, Criminal Law was amended to add national, ethnic, religious motive to racist motive as aggravating circumstance. Nevertheless none has been used in practise. Clarification should be provided concerning its use. The legislator should also consider the proposal of expanding the scope of motive to identity-based crimes as aggravating circumstance.

12. The majority of interviewees (except one defence counsel) are of the opinion that the existing legislative framework allows persons who have the right to defence to exercise those rights.

13. On 4 August 2017 the State Police issued Guidelines on the Identification and Investigation of Hate Crimes. Most interviews were conducted before the adoption of the document. The majority of interviewees supported the need for the elaboration and use of guidelines, handbook, compilation of court practise and other materials in their work.

14. The majority of interviewees indicated that training was necessary for the State Police officers to ensure effective identification and investigation of hate crimes. Training should be organised for newly recruited police officers and also those with significant work experience in law enforcement bodies. Training is also necessary for both rank-and-file officers as well as senior staff, including police leadership in territorial units. Training should be entrusted to State Police College by engaging NGOs with experience in issues related to hate crimes. Training should also be organised for judges, prosecutors and defence counsels. Consideration should be given to multi-disciplinary training.

## DECEMBER 2017

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Latvian Centre for Human Rights  
Umeå University *(Sweden)*  
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LATVIAN CENTRE FOR HUMAN RIGHTS

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