ARENAS

ANALYSIS OF AND RESPONSES TO EXTREMIST NARRATIVES

Comparative Analysis National & European Laws

Document **mapping commonalities and specific differences** in the urban legal system in **Italy, Spain and Latvia**

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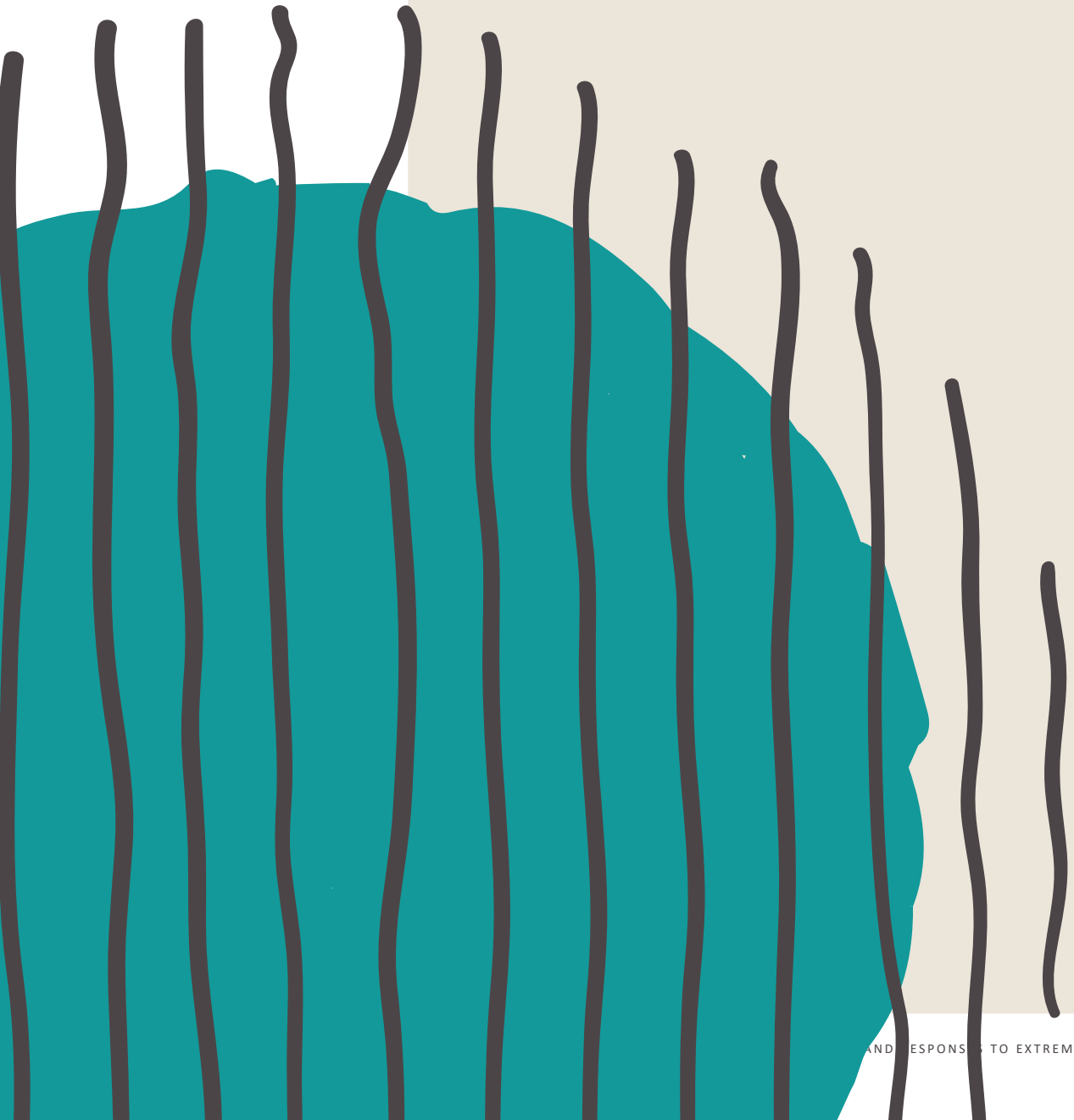

01
Introduction & Objectives of The Report

***Extremist narratives**, as defined in the ARENAS project[1], constitute a polarising and radical form of discourse that exacerbates divisions between social groups. They seek to delegitimise and marginalise the 'out-group', perceived as a threat, while drawing a distinction with the 'in-group', which embodies the identity of those advancing the discourse.*

Unlike traditional hate speech, which often focuses on direct and visible discrimination, extremist narratives employ a broader array of **rhetorical strategies** to foster division, such as oversimplification and emotional manipulation. These techniques make their messages more accessible and compelling to a wider audience.

As Corrado Fumagalli[2] observes, such narratives are not mere anomalies; rather, **they are an integral part of the political rhetoric of many extremist movements and parties**, which employ strategies such as dichotomous categorisation (us vs. them), the simplification of complex issues, and the use of **caricatures and stereotypes** to demonise the out-group. This approach enables the dissemination of negative messages in the form of "narratives" that appear rational but are profoundly polarising.

Such rhetoric transmits **pre-existing societal prejudices** and fuels discourses and behaviours with discriminatory effects. Hatred towards "the other" becomes normalised and rendered justifiable and rational, leading to aggression in the name of social defence.

All of this impacts the social and political landscape, **reinforcing xenophobic, sexist, and discriminatory attitudes.** Online hate has also demonstrated a direct connection with Eurosceptic discourse, where criticism of the European Union is exploited to incite discrimination and divisions among citizens, undermining fundamental democratic values. For this reason, political discourse is central to the ARENAS project, as it can propagate extremist narratives that shape social perceptions of specific groups and trigger divisions and conflicts.

In the digital context, the spread of hate speech has intensified, driven by the rapid dissemination of disinformation and discriminatory messages, making the distinction between the online and offline worlds increasingly irrelevant, as they now appear entirely interconnected. The global and

[1] Postigo Fuentes, A. Y., Kailuweit, R., Ziem, A., & Hartmann, S. (2024). Defining Extremist Narratives: A Review of the Current State of the Art. ARENAS Project. Zenodo. https://doi.org/10.5281/zenodo.13927429

[2] Fumagalli, C. (2019). *Discorsi d'odio come pratiche ordinarie* [Hate speech as ordinary practices]. Biblioteca della libertà, LIV, 2019 gennaio-aprile, n. 224 • ISSN 2035-5866 DOI 10.23827/BDL_2019_1_3

instantaneous reach of such platforms has raised even more pressing questions about how to balance the right to freedom of expression with the need to protect minority rights.

From a **legal perspective**, this report specifically addresses **hate speech**, defined as a discourse that incites hatred, violence, or discrimination against individuals or groups based on specific characteristics (such as ethnicity, religion, or gender). The decision to focus on hate speech stems from the fact that extremist narratives, while relevant socially and politically, do not constitute a **distinct legal category**. Legally speaking, extremist narratives acquire significance primarily when they **produce effects analogous to those of hate speech** (namely, inciting hostility or discrimination against targeted groups). Therefore, by examining hate speech, this report effectively explores the legal implications of **extremist narratives**, highlighting how their rhetorical strategies can foster discrimination, marginalization, and even violence.

As will be examined, the law does not rely solely on criminal law tools, nor should it be confined to a purely punitive function. However, in practice, the legislation of various states currently employs **criminal law instruments** to address the most severe forms of extremist narratives, when they manifest as hate speech.

The regulation of extremist narratives takes the form of limitations on freedom of expression, implemented through a balancing approach when such narratives incite hatred or violence or produce discriminatory effects. These limitations come into play when extremist narratives exceed the boundaries of free speech as protected by democratic laws, often with tangible consequences for social cohesion or security. We must not forget the concrete effect that discourse has on social reality: if we protect discriminatory practices in the name of the "free and open exchange of ideas" they will continue to reinforce power hierarchies and serve as a tool for one social group's domination over another[3]. **Protection against hate speech is, in fact, also a protection of freedom of expression for those who would otherwise be discriminated against and silenced by the abuse of this right and the violent use of language, imagery, and other forms of expression.**

The aim of this report is to **investigate how different states utilise criminal law to combat hate speech by comparing the legislation of the three countries under study** (**Spain, Italy, and Latvia) and the judicial interpretations provided by their courts concerning the limits of freedom of expression in cases of hate speech**.

The study will begin by explaining the decision to focus on incitement to hatred and discrimination based on gender, sexual orientation, and gender identity. Among the three macro-categories identified by ARENAS (gender, nation, and science), this report primarily selects **gender** as its central focus **for the same reasons explained in the first report's foreword (see D5.1 by WP5 leader Béatrice Fracchiolla)**.

It will then examine the international and, more specifically, **European legal framework** to assess how these regulations influence national legislation and whether a **common European bases** exists that could serve as a basis for harmonising legal approaches.

[3] See on this: MacKinnon, C. A. (1996). *Only words*. Harvard University Press.

Subsequently, the report will discuss key cases from the **Court of Justice of the European Union (CJEU)** before moving on to an analysis of the **European Court of Human Rights (ECtHR) case law**. The ECtHR has adopted a "militant democracy"[4] approach, limiting certain forms of expression to safeguard democratic principles, while remaining acutely aware of the fundamental debate surrounding freedom of expression and the constraints imposed on hate speech.

The analysis will then move on to the legal frameworks of various European countries, providing a general overview of the main countries within the **ARENAS consortium**. A uniform legal framework to address the phenomenon of hate speech is lacking, and the specific grounds for hate speech prohibition vary depending on the country in question.

Focusing on the three case study countries, the report will first present a general overview of gender equality and LGBTIQ+ rights in each nation. This will be followed by an examination of their **legal frameworks**, an **analysis of key judicial interpretations** from higher courts regarding freedom of expression limitations, and a **review of selected significant cases** related to hate speech involving misogyny or homo-transphobia.

By reconstructing these **concrete cases**, the conclusions will take into account the findings from the **analysis of the three countries** and compare them. **The ultimate goal is to provide insights into the most effective ways to counter extremist narratives at both the European and national levels and to identify policy recommendations that may be useful for legal practitioners and policymakers**.

[4] The term "militant democracy," which will be revisited later, was introduced by the German jurist Karl Loewenstein in 1937 to describe a democratic system that adopts active measures to protect itself from forces aiming to subvert its fundamental principles: Loewenstein, K. (1937). *Militant Democracy and Fundamental Rights, I and II*. American Political Science Review, 31. Although the ECtHR does not explicitly use this term, its jurisprudence reflects an approach aimed at protection of the democratic order which has been described as "militant democracy." For example, see the article by Luigi Daniele Daniele, L. (2017). *Per una democrazia tollerante, anziché 'militante*'. Diritto Penale Contemporaneo. Retrieved from https://archiviodpc.dirittopenaleuomo.org/upload/4311-daniele1017.pdf, which critically analyses the ECHtR's approach in this context.

02 Why Focus on Gender

02
Why Focus on Gender

*Within the three broad categories identified and studied in the ARENAS project (Gender, Nation, Science), the **gender**[5] category has been selected for this report on hate speech. The decision to focus this report on **hate speech based on sex, gender, gender identity, and sexual orientation** stems from the relatively limited attention these issues receive in national and supranational regulations compared to other traditional grounds of discrimination.*

While other types of gender discrimination - such as workplace and wage discrimination, as well as violence against women gender-based discrimination - has long been a subject of conceptual and legislative study, **hate speech targeting women and the LGBTIQ+ community still does not receive systematic attention comparable to that directed at phenomena like racism, antisemitism, or xenophobia**. The European Union Agency for Fundamental Rights (FRA), although periodically monitoring hate speech in the media and political discourse (e.g., FRA 2016a reports), does not comprehensively address these issues. In 2012, the FRA conducted a specific study on violence against women, highlighting that such violence is a cross-cutting phenomenon in all countries, regardless of social class or economic conditions, though differences emerge concerning the specific forms of violence and the circumstances of the victims[6]. During a hearing before the Commission, a representative of the Fédération Internationale des Femmes des Carrières Juridiques[7] observed that "despite the severity of the offenses and their consequences (especially in cases of repeated attacks, which generate anxiety and compromise the victims' quality of life), **sexist speech is often underestimated, being considered less serious compared to other forms of hate speech".**

Nonetheless, both women and LGBTIQ+ communities are clearly subjected to manifestations of hatred akin to those affecting racial and religious minorities. It becomes even more challenging to address discrimination and hate that is not based on a single factor, but rather on multiple intersecting factors that can no longer be distinguished or separated[8]. In this sense, is not possible

[5] It is worth recalling that, as LGBTIQ+ studies show, the concept of gender now refers to a broader and more complex cluster of issues, including, among others, the problematization of sexual and gender binarism, as well as the critique of the idea that there exists a fixed and predetermined correspondence between a particular sex, a specific gender, and a certain sexual orientation.

[6] Aspects already recognized and formalized in the Istanbul Convention, signed in 2011.

[7] The International Federation of Women in the Legal Career (FIFCJ), a non-governmental organization (NGO) of women lawyers, founded in Paris in 1928.

[8] Multiple discrimination, in the strict sense, instead differs from intersectional discrimination because they occurs when a person is discriminated against on the basis of multiple factors, but each act of discrimination takes place one at a time, in different situations. This does not pose challenges in terms of judicial protection because each discriminatory factor pertains to separate conduct that can be captured using a monocategorical approach. See: T. Makkonen (2002), *Multiple, Compound and Intersectional Discrimination: Bringing the Experiences of the Most Marginalized to the Fore*, Turku, Finland: Abo Akademi University.

to fight discrimination based on **gender and sexual orientation** while ignoring **other factors of oppression** and without considering **how different forms of discrimination intersect in shaping individuals' experience**. This is what the American legal scholar Kimberlé Williams Crenshaw highlighted in the late 1980s[9] when she introduced the term "**intersectionality**": the idea that **layers of privilege and oppression are interdependent**, and that different facets of an individual's identity – such as ethnicity, class, gender, sexual orientation, and physical or mental abilities – can originate distinct forms of discrimination. From a legal standpoint, **an intersectional approach**[10], which takes into account the complexity of social reality, encourages courts and legislators to acknowledge these overlapping identity factors, rather than examining each dimension of discrimination in isolation makes easier to promote effective legal protections.

Gender-based hate speech is also deeply rooted in a **patriarchal culture** that legitimizes, sustains, and justifies it, constituting a form of violence against women and perpetuating gender discrimination. Such speech spreads widely, particularly online, contributing to the silencing of those targeted. It derives from a culture of discrimination expressed through language and does not spare women involved in politics. Sexist speech is often normalized, dismissed as mere jokes or casual banter, especially on the internet, diminishing its perceived severity. As Martha Nussbaum observes: "*brutal and oppressive discrimination based on race is considered unacceptable in the global community; but brutal and oppressive discrimination on the basis of sex is often seen as a legitimate expression of cultural differences"*[11]*.*

The Council of Europe's 2019 Recommendation on Combating Sexism highlighted this gap, emphasizing that hate speech based on ethnicity or religion is generally recognized as contrary to international and European human rights standards, whereas hate speech against women does not receive equivalent recognition. Notably, although sexist hate speech is acknowledged by soft law instruments and an increasing number of national laws as a form of gender-based violence, its failure to be explicitly classified as a prohibited act risks enabling its normalization.

Amnesty International Italy's 2024 Hate Barometer[12] presents alarming data: on Facebook, the highest incidence of problematic content pertains to immigration, with six out of ten posts being offensive, discriminatory, or constituting hate speech (36.7% specifically categorized as hate speech). Women's rights and LGBTIQ+ rights follow, with 44% of content classified as problematic, of which 19% and 15%, respectively, constitute hate speech. The right to protest is also a concern, with four out of ten posts deemed problematic, and 15.6% inciting hatred, discrimination, and/or violence. On X (formerly Twitter), solidarity or humanitarian activities are most targeted, followed by Roma

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[9] Crenshaw, K. (1989). *Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics*. *University of Chicago Legal Forum, 1989*(1), 139–167.

[10] See Atrey, S. (2019). *Intersectional discrimination*. Oxford University Press; Bello, B. G. (2020). *Intersezionalità: Teorie e pratiche tra diritto e società* [Intersectionality: Theories and practices between law and society]. Milan, Italy: FrancoAngeli; Bello, B. G., Lykke, N., Moreno Cruz, P., & Scudieri, L. (Eds.). (2022). *Doing intersectionality in explored and unexplored places*. AG About Gender, *11*(22): https://riviste.unige.it/index.php/aboutgender/article/view/2104.

[11] Martha C. Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership (Cambridge, MA: Harvard University Press, 2006), p. 260.

[12] Amnesty International Italia. (2024). *Il barometro dell'odio 2024: Delegittimare il dissenso [*Hate Barometer 2024*:* Delegitimizing Dissent*]*. Amnesty International Italy. Retrieved from https://www.amnesty.it

communities, immigration, and women's rights at 36%, with 18% constituting hate speech. Looking at individual Facebook posts that generated the highest number of problematic comments and instances of hate speech, it is notable that all were published by political figures. Regarding the analysis of content posted on Twitter, positive or neutral posts account for 29.6%, non-problematic negative posts for 46.7%, and problematic posts for 23.9%, including 2.8% categorized as hate speech. **The primary targets of problematic comments are women**, **followed by** individuals with a migratory background and **members of the LGBTIQ+ community**. The overall percentage of problematic content is higher on X(ex-Twitter), standing at 24% compared to 15% on Facebook. However, the rate of hate speech remains the same on both platforms: 3%. The most targeted group continues to be women (6.4% of problematic content is directed at an individual or group based on their gender, with more violent language used against them), followed by the LGBTIQ+ community (1.9%) and individuals with a migratory background (1.6%). Amnesty also highlights how hate speech can have devastating effects on the mental and physical health of those targeted and denounces its **use as a tool to delegitimize dissent and silence activism**.

The role of politicians and institutions in the normalization and stereotyping of discriminated groups is not to be underestimated, as they often exploit such narratives for propagandistic purposes. Numerous examples can be found in political and institutional discourse where offensive and discriminatory language is used against women and sexual minorities. A prominent case is the phenomenon known as **"Transvestigation,"**[13] which comprises alleged "investigations" driven by prejudiced, homophobic, and transphobic beliefs aimed at "exposing" a supposed "gender inversion among elites." This conspiracy theory claims that many prominent figures, including celebrities and political leaders, hide their "true" gender, resulting in the widespread circulation of fake news. Among the most notable allegations are those targeting the wives of heads of state and politicians, who are baselessly accused of being transgender.

A recent instance of this narrative concerns Brigitte Macron, wife of French President Emmanuel Macron. Candace Owens, a U.S. commentator known for her support of former President Trump, claimed in a podcast followed by millions that Brigitte Macron is actually a man. The video, which went viral with over a million views, was later removed from YouTube for violating its policies on offensive content. In March 2024, faced with the growing spread of this theory, Emmanuel Macron publicly defended his wife. The origins of these accusations trace back to 2021, when journalist and anti-vaccine activist Natasha Rey published an article in the French far-right magazine Faits et Documents, dedicating an entire issue to Brigitte Macron. Rey later amplified these allegations during a YouTube livestream with a psychic, further spreading the theory within the so-called "fashosphere," a term denoting informal far-right blogs and platforms. Both Rey and the psychic were sued and convicted for defamation. However, legal measures proved insufficient to curb the expansion of this phenomenon.

Similar theories have previously been employed to **discredit** other **public figures**, such as Michelle Obama. In 2014, a YouTube documentary titled "Undeniable Proof that M. Obama is a Man" widely

[13] *Transvestigation* is a term used within certain online communities to describe a conspiracy theory which claims that various public figures are secretly transgender.

disseminated these accusations. Among the primary amplifiers of such theories was Alex Jones, founder of the controversial portal InfoWars, notorious for promoting conspiracy theories. Recently, Elon Musk decided to reinstate Alex Jones and InfoWars' accounts on the platform X (formerly Twitter), from which they had been previously banned for violating offensive content policies.

These attacks pursue a dual objective: on one hand, to discredit political opponents by spreading false information about their personal lives, undermining their credibility and trustworthiness; on the other hand, to **perpetuate transphobic and homophobic stereotypes** that target already vulnerable categories, further amplifying discrimination and marginalization.

Another example are the debates surrounding the **Istanbul Convention**, adopted by the **Council of Europe in 2011**, that hold particular significance. These discussions have often been characterized by reluctance to acknowledge gender-based violence as a transnational and structural phenomenon, deeply rooted in social and cultural norms. **The Convention represents the first legally binding international instrument aimed at preventing and combating violence against women and domestic violence**. It has been ratified by 38 countries, including Italy, Spain and, more recently, Latvia. However, some Member States have chosen not to complete the ratification process and have opposed the European Union's accession to the Convention. Despite this, as of October 1, 2023, the Convention officially entered into force across the EU, although the decision was not unanimous. For example, Italian Members of the European Parliament from *Lega* and *Fratelli d'Italia* abstained, with the head of the *Fratelli d'Italia* delegation citing objections both to the majority voting method and to the content of the Convention, expressing concerns that it might be exploited in connection with so-called **"gender issues**.". These forms of resistance once again illustrate the difficulty of engaging in discussions on such topics without ideological polarisation and conflict.

The Convention notably defines, for the first time in a legal text, **gender as a socio-cultural construct**, distinct from biological sex, which influences the roles of women and men in society. The attack, on a theoretical level, targets this concept of "**gender",** because it is seen as undermining the natural origin of sexual differences and the complementarity of the sexes. Particularly in Eastern European countries, but not exclusively, the debate has focused on the perceived introduction of a "gender ideology" deemed incompatible with traditional values. In Latvia, for instance, there is concern that accepting such concepts could compel the state to recognise same-sex marriage or other rights related to gender identity, conflicting with the constitutional definition of family and marriage.

The **battle against the so-called "gender theory**" or "gender ideology," waged on various fronts – both online and offline - narratives that blend anti-feminist theories with the defence of Christian roots, portraying feminism and gender studies as threats to the heteronormative model of family and reproductive rights. For instance, the recent document issued by the Vatican's Dicastery for the Doctrine of the Faith, titled **Dignitas Infinita**, describes "gender theory" as extremely dangerous. It states that "attempts in recent decades to introduce new rights, not entirely consistent with those originally defined and not always acceptable, have given rise to an ideological colonization, with

gender theory playing a central role. This theory is extremely dangerous as it erases differences under the pretence of making everyone equal"[14].

Such narratives hinder the recognition of the rights of women and sexual minorities and obstruct the fight against patriarchal systems. They infiltrate public debate and, as will be shown, even influence legislation and the legislative process. A recent example is the exclusion of references to abortion rights and the downgrading of references to LGBTIQ+ rights during G7 events under the leadership of the Italian government headed by Giorgia Meloni.

Within these narratives, **stereotypes** play a crucial role as forms of **generalization**[15] that ascribe certain traits to specific social groups, disregarding their complexity and individual differences, and reinforcing oversimplified ideas.

Law is an **inherently a deeply ambiguous tool in its relationship with inequalities and social stereotypes:** although it can provide protective instruments, it tends to **reproduce structural hierarchies and discriminations linked to patriarchal social models**. While formally neutral, the law is actually built around masculine identity models (heterosexual, white, affluent), and thus reproduces the dominant social and cultural structures, implicitly incorporating roles and expectations that marginalize other subjects[16]. In fact, stereotypes not only shape perceptions by attributing generalized characteristics to certain social groups (**descriptive aspect**), but they also prescribe specific social roles considered appropriate or expected (**prescriptive aspect**). Moreover, stereotypes can themselves become **constitutive**, as legal norms often actively construct and reinforce identities and roles, thereby influencing individuals' behaviour and experiences[17]. This happens, for instance, through representations of women as mothers, caregivers, or vulnerable subjects, often reflected in norms that appear protective but in reality, perpetuate conditions of disempowerment and marginalization[18].

We adopt here the perspective that **stereotypes, in the legal context, can never be neutral**, as their use always has negative effects on the individuals involved[19]. A legal stereotype stigmatizes, reducing the complexity of an individual to a simplified and artificial image, also preventing decisions from being based on the specific characteristics of the person. It standardizes, serializes, and arbitrarily assigns qualities and roles, hindering the possibility of a personalized and truly fair judgment.

Gender stereotypes are pervasive not only in political discourse and among lawmakers but also in the judicial system, influencing the decisions of judges, prosecutors, and lawyers. These biases

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14 https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20240402_dignitas-infinita_it.html#

15 Schauer, F. (2003). *Profiles, probabilities, and stereotypes*. Cambridge, MA: Belknap Press of Harvard University Press.

16 Parolari, P. (2019). Gender stereotypes, discrimination against women, and vulnerability as disempowerment: Reflections on the role of law. *AG About Gender – International Journal of Gender Studies, 8*(15), 90–117. https://doi.org/10.15167/2279-5057/AG2019.8.15.400.

17 Cook, R. J., & Cusack, S. (2010). *Gender Stereotyping: Transnational Legal Perspectives*. Philadelphia, PA: University of Pennsylvania Press.

18 Fanlo Cortés, I., & Poggi, F. (2019). *With or without law. Law and gender inequalities* [Editorial]. *AG About Gender – International Journal of Gender Studies, 8*(15).
Retrieved from: https://riviste.unige.it/index.php/aboutgender/issue/view/36

19 Giolo, O. (2024). *La critica femminista degli stereotipi di genere nel diritto: concezioni, usi, funzioni, retoriche*. [The feminist critique of gender stereotypes in law: Conceptions, uses, functions, and rhetoric]. In Giolo O & Bernardini M. G. (Eds.), *Giudizio e pregiudizio: gli stereotipi di genere nel diritto* [Judgment and prejudice: Gender stereotypes in law]. Giappichelli Editore.

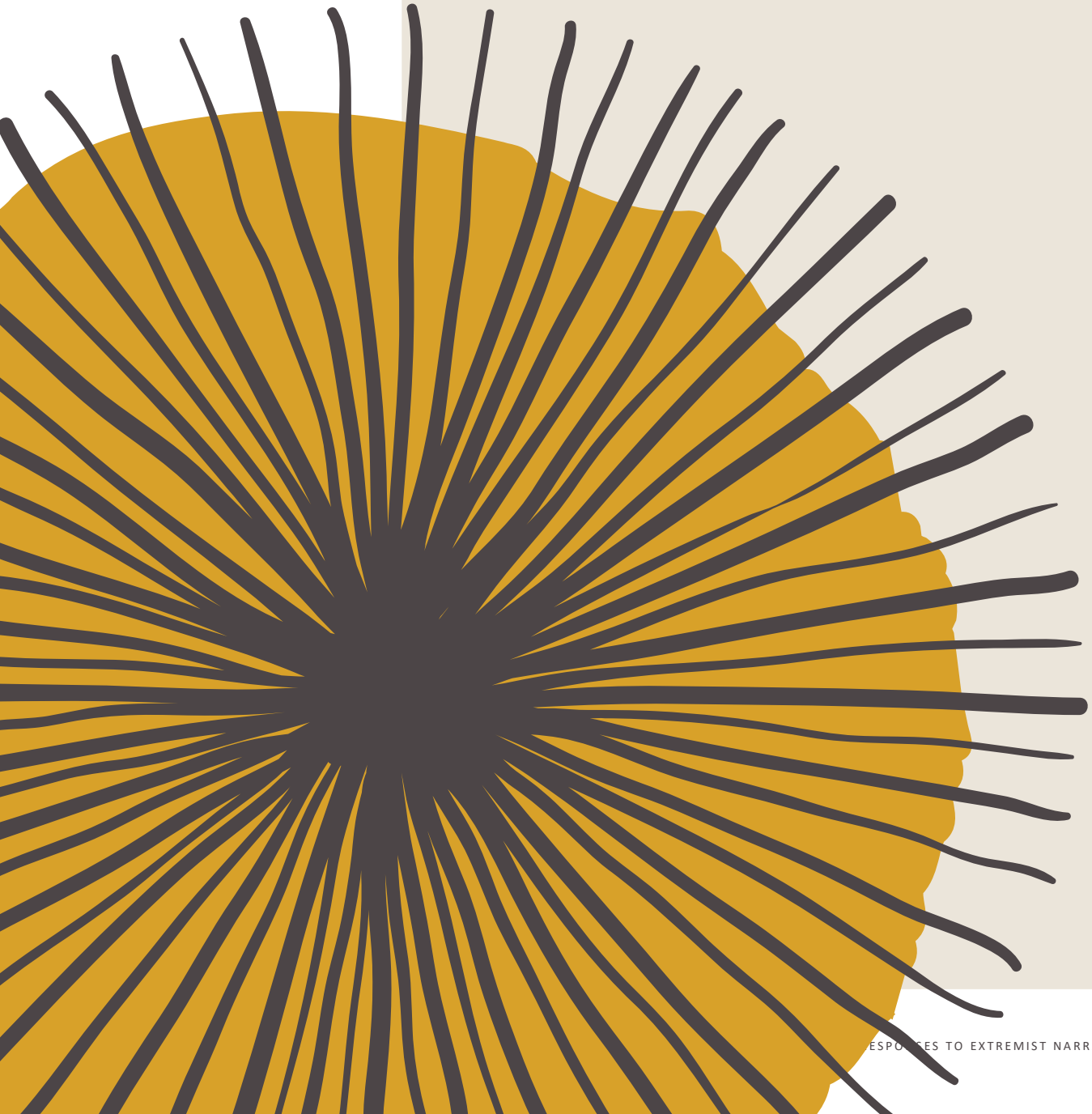
lead to decisions or behaviours that downplay the severity of gender-based violence or justify discriminatory conduct. Stereotypes influence the law in various ways: from the creation of legal norms to their interpretation, from the reconstruction of facts in trials to the argumentative logic that leads to judicial decisions. Their most apparent function is simplification, but they are also instruments of oppression that reproduce forms of discrimination, reaffirming the subordination of specific social groups and subjectivities that do not conform to dominant frameworks. In the judicial process, stereotypes are often used to undermine the credibility of individuals who deviate from prevailing social norms. This is the case of testimonial injustice, theorized by Miranda Fricker[20], which affects those who have traditionally not held positions of power and who, as a result, see their words and claims devalued or ignored.

A particularly illustrative example, as will be further analysed, is the use of victim-blaming language in cases of sexual violence, as demonstrated in certain Italian and international judicial rulings where factors such as the victim's clothing, behaviour, or private life were considered relevant to the judgment. Compounding this issue is the often-inadequate training of legal professionals on these topics, which further hinders a comprehensive understanding of the power dynamics underlying discrimination and hate speech.

[20] Fricker, M. (2007). *Epistemic injustice*: Power and the ethics of knowing. Oxford University Press.

03

International and European Legislation



03
International and European Legislation

The right to freedom of expression and its limitations concerning hate speech and discriminatory messages is governed by both national and supranational legal sources. This necessitates a brief overview of the principle of the hierarchy of legal norms, a fundamental legal principle that establishes an order among different legal provisions to ensure consistency and clarity in the application of laws. This system of priority allows for the determination of which rule prevails in cases of conflict between provisions of different ranks. Higher-ranking sources, such as constitutions or international treaties, take precedence over lower-ranking ones, such as ordinary laws or administrative regulations. At the international and supranational level, this hierarchy also includes European Union law, which supersedes national laws in areas within the Union's competence.

Legal norms are further distinguished between **binding** and **non-binding rules**, depending on their enforceability and the effect they have on states or individuals subject to them. Binding norms are those that impose legal obligations or grant rights in a mandatory manner. States, or in some cases individuals, are required to comply with them, and violations result in legal consequences such as sanctions, nullity, or other forms of liability. Evident examples include ratified international treaties, national laws, or European Union regulations, which are directly applicable in Member States and must be fully respected.

Conversely, non-binding norms, while not imposing legal obligations, play a significant role in international and supranational law. These instruments often express principles, guidelines, or policy recommendations. Although they lack binding force, these norms can influence domestic legislation, guide public policies, and provide parameters for legal interpretation.

In the European context, the distinction between binding and non-binding norms is clear: for example, the European Convention on Human Rights (ECHR) and European Union regulations represent binding norms, while Council of Europe recommendations or voluntary codes of conduct adopted by digital platforms to combat hate speech are examples of non-binding instruments.

3.1. International framework

The **Universal Declaration of Human Rights**, adopted by the United Nations General Assembly in **1948,** establishes the principle of **equality and non-discrimination in Article 2** and guarantees protection against any form of discrimination and incitement to discrimination in **Article 7.** This principle is one of the pillars of international law:

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

The Declaration adopts a broad formulation, avoiding a specific list of grounds for discrimination.

Article 30 of the Declaration is also significant and has been applied in the European context to limit certain cases of hate speech. It prohibits the abuse of rights by stating:

"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

While the Declaration is a statement of principles and not directly binding, its provisions have become part of customary international law and are universally recognized. Although it does not formally impose obligations, it serves as an important tool for setting standards for the protection of fundamental rights.

The **International Covenant on Civil and Political Rights (ICCPR)**, signed in New York in **1966** and implemented in Italy through Law No. 881 of 1977, is a multilateral United Nations treaty signed and ratified by 168 countries worldwide. It serves as a key international reference point for the prohibition of all forms of hatred. Article 20 of the ICCPR requires states to prohibit any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Signatory nations are obliged to adhere to this requirement.

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW**), adopted in **1979** by the United Nations General Assembly, is often described as an international bill of rights for women. It consists of a preamble and 30 articles, defining what constitutes discrimination against women and establishing a framework of national-level actions to eliminate such discrimination. The Convention defines discrimination against women as:

"... any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field."

There is no direct reference to "hate speech" or "incitement to hatred" as such. However, the Convention obliges States to: "***eliminate negative stereotypes and harmful cultural practices, which are often linked to discrimination and gender-based violence***."

Additionally, Article 5 of the Convention requires measures: "***to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either sex or on stereotyped roles for men and women.***"

Furthermore, Article 7(1)(h) of the **Statute of the International Criminal Court (ICC**) establishes that persecution against any identifiable group or community, based on political, racial, national, ethnic, cultural, religious, or gender-related grounds – or for other reasons universally recognized as impermissible under international law – constitutes a crime against humanity if committed in connection with any act referred to in the same article or with any crime within the jurisdiction of the Court.

In the framework of international law, the **United Nations Special Rapporteur on Freedom of Expression**, Frank La Rue[21], highlighted an essential distinction among three categories of expressions:

- **Expressions constituting crimes under international law**, which require criminal prosecution.
- **Expressions that are harmful, offensive, or objectionable**, which, while not necessitating criminalization by states, may be subject to civil sanctions.
- **Expressions that do not fall under any legal sanctions** but raise concerns due to their impact on tolerance and mutual respect.

The so-called "Rabat Test," developed within the framework of the **2012 Rabat Plan of Action[22]** on the prohibition of incitement to national, racial, or religious hatred, analyses key factors to assess the potential impact of hate speech and the associated risks:

1. **Context**: It is essential to analyse the speech within the prevailing social and political context at the time it was expressed and disseminated, in order to evaluate the likelihood that certain statements incite discrimination, hostility, or violence against the targeted group.
2. **Position or social status of the speaker**: Another crucial factor is the status or reputation of the speaker or the entity disseminating the message, particularly regarding their influence in the public sphere.
3. **Intent of the speaker**: Negligence and recklessness are not sufficient to constitute an offense under **Article 20 of the ICCPR (International Covenant on Civil and Political Rights)**, as the provision refers to "incitement" rather than merely distributing or circulating material.
4. **Content of the speech**: The content is one of the central aspects in court decisions and a key element in determining incitement. Content analysis may include the degree of provocation,

[21] Report presented to the United Nations General Assembly in 2011. The full report can be accessed here: https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/A.66.290.pdf

[22] The Rabat Plan of Action was promoted by the United Nations High Commissioner for Human Rights (OHCHR) within the UN system and was developed through a series of regional consultations in 2012. Its primary objective is to provide clear criteria to distinguish between speech protected under freedom of expression and speech that constitutes incitement to hatred, in accordance with international human rights law. It also aims to clarify the conditions for the application of Article 20 of the International Covenant on Civil and Political Rights (ICCPR), which obliges States to prohibit incitement to hatred while ensuring that freedom of expression is not unduly restricted. See: https://www.ohchr.org/en/freedom-of-expression.

the immediacy of the speech, as well as its form, style, and the nature of the arguments used, along with the balance (or lack thereof) in the presented perspectives.

5. **Extent of the speech**: The assessment must consider the public nature of the speech, the means of dissemination, the frequency, volume, and reach of the communications, the recipients' ability to respond to the incitement, and whether the statement (or material) was shared in a restricted setting or was widely accessible to the general public.
6. **Likelihood and imminence**: It is not necessary for an act of incitement to result in immediate action for it to be considered an offense. However, a certain degree of harm must be identifiable. This means that courts must determine whether there was a **reasonable probability** that the speech would successfully incite actual action against the targeted group, recognizing that the causal link must be sufficiently direct.

3.2. European legal references

European law, in balancing the right to freedom of expression with the need to prevent hatred and discrimination, requires measures to counter the spread of hate speech, recognizing such discourse as a threat to democracy and a danger to fundamental rights such as human dignity. However, shared criteria for identifying and penalizing this type of speech are lacking, varying according to the context and making it challenging to establish a common framework for addressing it. The difficulty in defining hate speech uniformly is evident in the differing legal formulations adopted by national systems, particularly regarding incitement to violence or hatred. The criminal codes of European Union Member States employ different terminologies and application criteria, reflecting diverse approaches. Key points of divergence include the significance attributed to the intent of the perpetrator, the relevance of context, the choice of communication medium, and the foreseeable consequences of the speech in question.

Below, we briefly outline the legal pillars underpinning national regulations and the judicial rulings that will be analysed later.

The **Council of Europe first defined the concept of hate speech in 1997** through a recommendation, describing it as encompassing **all forms of expression that spread, incite, promote, or justify racial hatred, xenophobia, antisemitism, or other forms of hatred based on intolerance**. This includes intolerance expressed in the form of aggressive nationalism and ethnocentrism, discrimination, and hostility against minorities, migrants, and persons with a migrant background. This broad formulation was refined in 2015 with an additional political recommendation against racism and intolerance, paving the way for protection against hate speech based on all aspects of personal identity. However, these are political recommendations and therefore not legally binding.

The recommendation recognizes hate speech as:

“The act of stirring up, promoting, or encouraging, in any form, denigration, hatred, or defamation against a person or group, as well as subjecting a person or group to harassment, insults, negative stereotyping, stigmatization, or threats, and the justification of all these forms or expressions of hatred, based on race, skin colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation, and other personal characteristics or status.”

The **OSCE (Organization for Security and Cooperation in Europe)**, an organization encompassing 57 participating states across three continents – North America, Europe, and Asia – affecting over one billion people, has developed a classification distinguishing between "hate crimes" and "hate speech":

- **Hate crimes** refer to criminal acts driven by prejudice and targeting individuals or groups based on their personal characteristics.
- **Hate speech**, on the other hand, concerns expressions of thought that convey disdain toward individuals or specific groups, inciting contempt, discrimination, or violence.

From a legal perspective, hate speech refers to expressions that manifest a profound sense of aversion, hostility, or discrimination against an individual or group, often based on personal characteristics such as race, religion, sexual orientation, gender, or ethnicity. While such expressions may not in themselves constitute a crime, they occupy a grey area where the law must balance freedom of expression with the protection of human dignity and public order. Conversely, hate crimes involve criminally relevant conduct, as they entail offensive or violent acts intentionally directed against a victim chosen based on discriminatory prejudice, thus necessitating the application of repressive measures.

The **European Convention on Human Rights (ECHR)**, adopted in 1950 by the 13 founding Member States of the Council of Europe, holds fundamental importance in addressing hate speech. Article 14 of the ECHR, titled “Prohibition of Discrimination,” establishes that the enjoyment of the rights and freedoms set forth in the Convention must be secured without discrimination on any grounds, including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

Article 10 of the Convention is equally significant in discussions about hate speech. Its first paragraph guarantees the right to **freedom of expression**:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises."

However, the second paragraph clarifies the limited and non-absolute nature of this right, specifying the criteria for imposing restrictions:

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

Article 14 prohibits discrimination, stating that:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status."

Also relevant is **Article 17**, which prohibits the **abuse of rights** and echoes Article 30 of the Universal Declaration of Human Rights. It provides:

"*Nothing in this Convention may be interpreted as implying for any State, group, or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

The articles of the ECHR bind the Member States of the Council of Europe that have ratified the Convention, including Italy, Spain, and Latvia.

With the advent of the internet, the Council of Europe has extended its efforts to combat online hate speech. In 2003, it adopted the **Additional Protocol to the Budapest Convention on Cybercrime**, which obliges Member States to introduce criminal sanctions for racist or xenophobic material disseminated through computer systems. This instrument aims to address the rapid and global dissemination of hate speech via the internet. However, the protocol does not address discriminatory content against women or sexual minorities. In this regard, the **Council of Europe's Committee of Ministers**, through Recommendation No. 5 of 2010, urged to:

"Adopt appropriate measures to combat all forms of expression, particularly in the media and on the internet, that can reasonably be understood as likely to incite, propagate, or promote hatred or other forms of discrimination against lesbian, gay, bisexual, or transgender persons."

The recommendation emphasizes that such measures must necessarily comply with the fundamental right to freedom of expression, as set out in Article 10 of the ECHR and the case law of the European Court of Human Rights (ECtHR).

Subsequently, the **2019 Recommendation of the Council of Europe's Committee of Ministers on Preventing and Combating Sexism** highlighted how sexism constitutes a continuum of violence that produces discrimination, intimidation, and fear. The recommendation identifies hate speech as one step in this continuum, potentially preceding more severe forms of violence.

As regards the **European Union**, it should first be noted that, with the Lisbon Treaty of 2009, the EU assumed the legal commitment to adhere to the ECHR. The right to human dignity and the prohibition of discrimination constitutes fundamental principles recognized by the treaties and case law.

- **The Treaty on European Union (TEU):** Article 2 establishes that human dignity is one of the founding values of the Union.
- **The Charter of Fundamental Rights of the European Union**:
  Article 1 affirms the inviolability of human dignity.
  Article 11 establishes that everyone has the right to freedom of expression, including the freedom to hold opinions and the freedom to receive and impart information and ideas without interference by public authorities and regardless of frontiers.
  Article 21 prohibits any form of discrimination based on race, sex, ethnic origin, sexual orientation, or other personal characteristics.
  Article 52 further sets out the conditions under which limitations are permissible: *"Any limitations on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others."*

Council Framework Decision 2008/913/JHA obliges Member States to punish conduct involving public incitement to violence or hatred based on racism or xenophobia. It also includes the dissemination of materials that promote such conduct. The regulation allowed Member States the discretion to adopt criminal laws aimed at suppressing xenophobic and racist crimes. However, this framework decision does not specifically mention gender as a category to be protected from incitement to hatred or violence, limiting its scope to specific groups and excluding other forms of discrimination, such as those based on sexual orientation or gender identity.

With **a resolution adopted by the European Parliament on May 24, 2012,** on the **fight against homophobia in Europe,** Member States were called upon to ensure "the protection of lesbians, gays, bisexuals, and transgender people from homophobic hate speech and violence and to ensure that same-sex couples enjoy the same respect, dignity, and protection as the rest of society." It also urged "Member States and the Commission to firmly condemn homophobic hate speech or incitement to hatred and violence and to ensure that the freedom of expression guaranteed by all human rights treaties is effectively respected." The resolution noted that in Latvia, a member of the Riga City Council had recently proposed a bill to ban "homosexual propaganda" to prevent the Baltic Pride march scheduled for March 2012. On this occasion, the European Parliament reiterated its

support for a revision of the framework decision on racism and xenophobia to include the crime of homophobia and a comprehensive roadmap to ensure equality without discrimination based on sexual orientation and gender identity.

The proliferation of **online hate speech** has also led the European Union to develop specific strategies to address the phenomenon. Among the main initiatives was the European Union Internet Forum of 2015, which brought together Member States, tech companies, and other institutions to identify systems to curb the dissemination of hateful or violent content online. The **Code of Conduct** to combat online hate speech, **signed in 2016** by tech giants such as Facebook, Microsoft, Twitter, and YouTube, requires the rapid assessment and removal of discriminatory content within 24 hours of notification. Digital operators are encouraged to include a clear definition of hate speech in their regulations and explain the ways such content is sanctioned. Successive monitoring results[23] have shown significant progress: as early as 2018, approximately 70% of content reported as illegal hate speech was removed by participating platforms, with response times within 24 hours in 81% of cases. It should be noted that the Code of Conduct does not replace the law: it refers to the definition of "illegal" provided by Framework Decision 2008/913 but leaves it to companies to enforce the rules within their own networks.

The 2018 Audiovisual Media Services Directive (AVMSD) obliges Member States to adopt effective measures to counter the dissemination of illegal content through video-sharing platforms. This includes not only content that violates Framework Decision 2008/913/JHA but also content that incites hatred based on the grounds established by Article 21 of the EU Charter of Fundamental Rights (thus including sex, sexual orientation, age, and disability).

These initiatives complement the **EU's 2020-2025 Action Plan against Racism**, the EU Strategy to Combat Antisemitism, and the LGBTIQ+ Equality Strategy 2020-2025, which address hate in all its forms, including those based on sexual orientation, gender identity, and other protected characteristics. These strategies emphasize the importance of ensuring a strong and uniform criminal response to hate motives beyond racism and xenophobia.

The Gender Equality Strategy 2020-2025 defines specific actions to combat gender-based violence, with a particular focus on women and girls. In parallel, the EU is working on a proposal for a directive aimed at preventing and combating violence against women and domestic violence. These initiatives recognize that gender-based hatred and entrenched gender bias represent specific forms of hate incitement that require targeted legislative action. Misogynistic incitement, as well as crimes motivated by misogyny, are noted for being deeply rooted in systemic prejudice against women. In September 2021, the European Parliament adopted a legislative resolution urging the Commission to include gender-based violence among the new areas of crime listed under Article 83(1) of the TFEU.

[23] Data available at: https://eucrim.eu/news/application-code-conduct-countering-illegal-hate-speech-online-positive.

The Digital Services Act (DSA), presented in December 2020, came into force in 2023 and was **extended to all online platforms in February 2024**. With this legislation, the European Union has made a significant step toward regulating illegal content and hate speech. The DSA aims to update the regulation of the digital sector, introducing a European system for reporting and removing illegal content. The law requires platforms to enable users to easily report illegal content and access appeal mechanisms if their reports are not adequately addressed. It specifically calls for clear commitments to combating online gender-based violence and targeted measures to address disinformation, with a particular focus on electoral periods, greater transparency in content moderation, and minimum standards for the protection of fundamental rights, inspired by international human rights conventions. The DSA represents a step forward in digital regulation, imposing stringent obligations on platforms to ensure transparency, security, and the protection of fundamental rights. It establishes that platforms with more than 45 million users, known as Very Large Online Platforms (VLOPs), are subject to stricter rules to prevent the dissemination of disinformation and hate speech. Innovations include mechanisms for promptly removing content and responding to crises, such as pandemics or conflicts. Among the most innovative provisions of the DSA is the ability of the European Commission to conduct formal inspections and sanction platforms in cases of non-compliance. Penalties can reach up to 6% of the platform's global turnover or, in the most severe cases, result in temporary service suspension. Recent investigations have addressed alleged violations by X-Twitter regarding disinformation (December 2023) and TikTok concerning child protection and advertising transparency (February 2024). Its success, however, will depend on effective monitoring by Member States and the ability to balance freedom of expression with the need to prevent harmful and illegal content.

A very recent update, as of January 20, 2025, concerns a **revision of the 2016 Code of Conduct**, integrated to combat online hate speech, which has been welcomed by the European Commission and the European Digital Services Committee within the regulatory framework of the Digital Services Act. The new revision aims to **strengthen enforcement mechanisms for reporting hate speech**, requiring platforms to provide detailed data on the outcomes of their measures, distinguishing between different forms of incitement to hatred based on race, ethnicity, religion, gender identity, or sexual orientation.

Another key improvement seeks to address one of the gaps in the 2016 Code through new mechanisms for reviewing and contesting the designation of flaggers in "controversial cases", alongside more structured cooperation with experts and civil society. However, discussions continue regarding the voluntary nature of adherence to the Code if **integrated into the DSA**, and the potential **consequences for platforms that choose not to comply**.

04

Limits to Freedom of Expression in European Case Law: Court of Justice and ECtHR

04

Limits to Freedom of Expression in European Case Law: Court of Justice and ECtHR

The rulings of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) have established the limits of freedom of expression conceivable in a democracy and serve as a model for national judges.

4.1. Court of Justice of the European Union (CJEU)

The CJEU has issued several key rulings concerning discrimination based on sexual orientation and gender identity, helping to define the limits of freedom of expression in relation to hate speech. Two significant cases are cited below:

Asociația Accept v. Consiliul National pentru Combaterea Discriminării No. C-81/12

Date: April 25, 2013

Context: The case has its origins in a set of events that occurred in Romania. A sports executive and well-known shareholder of a football club (FC Steaua Bucharest) publicly declared that he did not wish to hire homosexual footballers, describing **homosexuality as incompatible with the team's values**. Asociația Accept, an organization defending the rights of LGBTIQ+ individuals, denounced these statements as **discriminatory under Directive 2000/78/EC[24], which prohibits employment discrimination based, among other things, on sexual orientation**. The National Council for Combating Discrimination (CNCD) recognized that such statements constituted harassment but imposed only **a warning**, considering that it could not apply a financial penalty due to the expiration of the six-month limitation period.

[24] Directive 2000/78/EC of the Council of the European Union, adopted on 27 November 2000, establishes a general framework for equal treatment in employment and occupation. It aims to combat discrimination based on religion or belief, disability, age, or sexual orientation in the workplace, ensuring equal opportunities for all individuals within the European Union.

The Curtea de Apel București asked the CJEU to clarify:

1. Whether such public statements can be considered direct discrimination under Directive 2000/78, even if made by a person without formal legal representation powers.
2. Whether the burden of proof under the Directive can require the employer to demonstrate the absence of discrimination without violating the right to privacy.
3. Whether the national sanctioning system, which provides only a warning in case of prescription, is compatible with the Directive, which requires effective, proportionate, and dissuasive sanctions.

Decision: The court **recognizes the discrimination resulting from the defendant's words**, ruling that **public statements, even if made by a person without formal representation powers, can constitute discrimination if that person is perceived as representing company policy**. It is not necessary for an actual hiring process to be underway for Directive 2000/78 to apply. When elements suggest the presence of discrimination, the employer must prove that there was no violation of the principle of equal treatment. However, this burden cannot require the employer to collect evidence infringing on privacy rights, such as information about employees' sexual orientation. **A system that only provides a warning**, without the possibility of imposing financial penalties due to the expiration of the limitation period, **does not meet the requirements of effective, proportionate, and dissuasive sanctions** as provided by Article 17 of Directive 2000/78.

Judgment NH v. Associazione Avvocatura per i diritti LGBTI – Rete Lenford No. C-507/18

Date: April 23, 2020

Context: The case arose from a request for a preliminary ruling[25] from the Italian Court of Cassation. The Tribunal of Bergamo had condemned a lawyer (Taormina) following statements made during a radio broadcast, in which he asserted that he would not use the services of homosexual individuals in his law firm. A series of statements were made, progressively encouraged by the interviewer, to support his general hostility toward a certain category of people, to the extent that he would not want them around him in his professional office, nor in any hypothetical selection of collaborators, even though no job selection process was open or planned at the time of the statements. The Tribunal ordered NH to pay the Association EUR 10,000 in damages and to publish an extract of the ruling in a national newspaper.

[25] The preliminary ruling is a mechanism through which national judges of EU Member States can request clarifications from the Court of Justice of the European Union (CJEU) regarding the interpretation of EU law or the validity of Union acts, when doubts arise during a case. This instrument is essential to ensure that EU law is applied uniformly across all Member States. However, the CJEU does not decide the specific case; it only provides guidance on how to interpret the legal provision or assesses the validity of an EU act. Once the ruling is received, it is up to the national judge to resolve the dispute based on the interpretation provided by the Court.

The case reached the Court of Cassation, which decided to suspend the proceedings and refer two preliminary questions to the CJEU:

1. Whether an association composed of lawyers specializing in judicial protection of individuals with different sexual orientations, which states in its statute the objective of promoting respect for their rights, can be entitled to bring legal action, including for damages, in the presence of facts deemed discriminatory against said category.
2. Whether the case should fall within the scope of the anti-discrimination protection provided by Directive 2000/78, which prohibits discrimination in employment and occupation.

Decision: The Court of Justice ruled that statements made in public contexts, such as audiovisual broadcasts, are relevant as they can dissuade potential candidates from applying for jobs. Even in the absence of an ongoing hiring process and outside strictly professional contexts, such **statements may constitute discrimination if they discourage access to employment for certain categories of individuals**.
The national court must consider factors such as the speaker's status and the nature and content of the statements. The Court acknowledged that freedom of expression (Article 11 of the Charter of Fundamental Rights) is not absolute and can be limited to pursue legitimate objectives such as protection against discrimination. It cannot, therefore, be used as a shield to justify discriminatory statements that infringe on fundamental rights.

Directive 2000/78 allows Member States to enable associations like Rete Lenford to take legal action to uphold the collective rights of discriminated groups, even in the absence of a specific victim. The entitlement to bring legal action is linked to the statutory objectives of the association and its commitment to LGBTIQ+ rights, with the final decision resting with the Member States.

4.2. European Court of Human Rights (ECtHR)

Handyside v. United Kingdom

Date: December 7, 1976

Context: This historic case originated from a complaint filed on April 13, 1972, by Richard Handyside, a UK citizen. Handyside, the owner of a publishing house based in London, argued that UK authorities had violated his right to freedom of expression by convicting him for publishing the book "The Little Red Schoolbook," aimed at an adolescent audience (ages 12 – 18). The book included controversial content on sexuality, pornography, and drug use, deemed "obscene" under the **Obscene Publications Acts of 1959 and 1964**. The court noted that the book contained useful aspects, such as accurate information on contraception, sexually transmitted diseases, and abortion. However, these positive elements were "diminished" by the book's overall tone and context, which, according to the court, lacked balance and promoted potentially harmful messages

for young people in a delicate phase of their development. One example was the phrase: "Your teachers are not always right. Challenge the rules if you find them unfair," a suggestion considered explicitly permissive and potentially "subversive" toward school and parental authority. The book also proposed that every school should have at least one condom vending machine and described pornography as "a harmless pleasure" if not taken too seriously, suggesting that "you might find good ideas to try." This section, despite an initial warning, was followed by descriptions of images and acts potentially harmful, such as "people hurting each other for sexual satisfaction." The court found that such content could encourage inappropriate or even illegal behaviour. Following a series of critical media articles and multiple complaints to the prosecutor, authorities raided the publishing house, seizing copies of the book and related materials. The case was then brought before the ECtHR, which was asked to determine whether the conviction violated **Article 10 of the Convention**, which protects freedom of expression, except for limitations necessary to protect public morality, national security, or the rights of others.

Decision: The ECtHR affirmed that **freedom of expression protects even speech that "offends, shocks, or disturbs," as such expressions are essential in a democratic society that thrives on pluralism**. **However, freedom of expression is not an absolute right**: the Court recognized the possibility of restrictions to protect fundamental values and granted states a **wide margin of appreciation** in determining which expressions to limit, especially when balancing freedom of expression with the protection of public morality. In this specific case, the Court did not consider Handyside's conviction a violation of **Article 10**, as it deemed the restriction proportionate to the need to protect minors, concluding that the United Kingdom had acted within acceptable limits.

The **Handyside judgment** became a reference point for subsequent case law. Although not a direct hate speech case, the principle of the **"margin of appreciation"** has often been invoked in later rulings concerning incitement to hatred. In this area, the ECtHR has since developed a more **restrictive approach**, justifying stricter limitations when speech incites hatred, discrimination, or undermines the rights of others, aiming to ensure uniform human rights protection standards. The concept of **"pressing social need"** introduced in Handyside is now used to justify **stricter restrictions** against discriminatory or hate-inciting speech. The Court applies **a case-by-case balancing test**, assessing whether limitations on freedom of expression are necessary and justified, thus building a legal framework to **protect vulnerable groups**.

Vejdeland v. Sweden

Date: February 9, 2012

Context: Three members of a youth association distributed **leaflets** by placing them on or inside students' lockers in a secondary school, criticizing the school for presenting **homosexuality** as "good and normal" and instead describing it as a "**deviant sexual tendency**" and a "sexual deviation" that had "a morally destructive effect on the foundations of society." The leaflets also claimed that

homosexuality was one of the main reasons for the spread of **HIV and AIDS** and that the **"homosexual lobby" was attempting to normalize paedophilia**. The Swedish Supreme Court convicted the defendants for **agitation against groups** through **threatening and derogatory speech based on sexual orientation**, as provided by Swedish law. The Supreme Court acknowledged the applicants' right to express their views while emphasizing that, **in addition to freedoms and rights, individuals also have duties, one of which is to avoid unjustifiably offensive statements that violate the rights of others**.

Decision: The ECtHR **found no violation of Article 10** and upheld the applicants' conviction for **hate speech**, emphasizing that **freedom of expression cannot justify statements that offend human dignity**. The Court reaffirmed its established case law on the fundamental value of freedom of expression in a democratic society and the obligation to tolerate opposing, shocking, or disturbing ideas (see **Handyside**). However, it added that, in this case, the **exact words** used in the leaflets went beyond merely offensive expressions to become **undoubtedly grave and harmful**, constituting **an unjustified attack on the reputation of the LGBTIQ+ community** and, therefore, unnecessary in a democratic society. The Court provided **important clarifications** to define **collective hate speech**, emphasizing the **subjective element** as a key factor. **"Hate speech does not necessarily require an act of violence or another criminal act. Attacks against individuals through insults, ridicule, or slander targeting specific population groups are sufficient for authorities to prioritize combating racist speech over the irresponsible exercise of freedom of expression"** (this had already been stated in the ECtHR judgment **Féret v. Belgium, July 16, 2009**[26]).

For the first time, the Strasbourg Court applied the same requirements and standards to anti-LGTBI hate speech as it does to other forms of hate speech, such as racist and xenophobic discourse, firmly stating that "discrimination based on sexual orientation is as serious as discrimination based on race, birth, or skin colour[27]**".**

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[26] **Féret v. Belgium – July 16, 2009:** In the well-known Féret case, the president of a Belgian political party (*Front National*), acting as editor-in-chief of the party's newspaper, published multiple messages and campaigns advocating for the segregation of immigrants and refugees, the prioritization of Belgian citizens over foreigners in the provision of public services, and even linking immigration to crime and terrorism. As a result of these actions, he was convicted under a 1981 Belgian law prohibiting racist and xenophobic behaviour. The ECtHR ruled that Féret's actions were not protected under Article 10 of the European Convention on Human Rights, upholding the conviction imposed by Belgian authorities. After reaffirming its well-established doctrine on the importance of freedom of expression as a fundamental element of a democratic, open, and pluralistic society, the Court acknowledged that political speech requires a high level of protection and that political parties have the right to express their opinions in public, even if such opinions may shock or disturb part of the population. However, the Court also stressed that this must be done with particular caution to avoid statements that promote segregation or discrimination and create a hostile social climate against certain groups, particularly in the context of election campaigns, where candidates' positions tend to become rigid, and slogans or stereotypical formulas take precedence over reasoned arguments.
Furthermore, the Court noted that such messages were addressed to the general public, sometimes reaching uninformed segments of the population, and that incitement to discrimination was considered a threat to social cohesion and democracy.

[27] See, for example, Smith and Grady v. United Kingdom, nos. 33985/96 and 33986/96, § 97, ECtHR 1999-VI: the case was based on two separate applications in which the applicants argued that the investigations into their homosexuality and their subsequent dismissal from the Royal Air Force, solely due to their sexual orientation, constituted a violation of Article 8 of the Convention (right to respect for private life). Additionally, they claimed that the UK Ministry of Defence's policy towards homosexuals in the armed forces violated Articles 3 (prohibition of inhuman or degrading treatment), 10 (freedom of expression), and 14 (prohibition of discrimination). Jeanette Smith joined the Royal Air Force in 1989 as a nurse and was investigated after an anonymous source informed

In addition to the humiliating and offensive content of the propaganda, the Court also considered other circumstances: the leaflets were placed in students' lockers without their consent or opportunity to decide whether they wanted them or not; the recipients were young individuals still in their formative years, at an impressionable age; and those responsible for the acts were not students of the school and had no authorized access to it.

Talpis v. Italy No. 41237/14

Date: March 2, 2017

Context: This case concerned a Moldovan woman who was a victim of **domestic violence** by her husband, aggravated by his alcohol abuse. In 2012, she **reported physical abuse** against herself and her eldest daughter, but authorities failed to take effective preventive measures. Despite multiple complaints and medical documentation proving the violence, investigations were **slow and lacked preventive action**.

In November 2013, her husband, armed with a knife, killed their youngest son, who tried to defend his mother, and attempted to murder the applicant. Only after the tragedy was the husband sentenced to life imprisonment for **murder, attempted murder, and abuse**.

Decision: The ECtHR found that the Italian authorities' inaction violated their positive obligations under Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held Italy responsible for its failure to effectively address violence against women, highlighting the persistence of discriminatory stereotypes and biases. **It found that the slow investigations and lack of protective measures were influenced by gender stereotypes.** The Court noted that the authorities' inaction was **not merely administrative but a reflection of cultural attitudes tolerant of domestic violence**.

The ruling also referenced **Italy's obligations under international law, particularly the Istanbul Convention, which requires States to eliminate gender stereotypes and adopt a gender-sensitive approach in preventing and combating violence against women.**

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the military authorities of her homosexuality. After admitting her relationship with a civilian woman, she was subjected to intrusive interrogations and subsequently dismissed in November 1994. Her service was described as exemplary.
Graeme Grady, on the other hand, had been in the Royal Air Force since 1980 and had reached the rank of sergeant before his homosexuality became known. Following reports and extensive interrogations, he admitted his sexual orientation and was dismissed in December 1994. His service was also described as loyal and of high standard.

Additionally, Italy was found in violation of Article 14 (prohibition of discrimination). Following the Talpis judgment, in 2018, the CSM (Italian Judicial Council) adopted guidelines for handling gender-based and domestic violence cases.

Beizaras and Levickas v. Lithuania No. 41288/15

Date: January 14, 2020

Context: In 2014, a **same-sex couple posted a photograph** of themselves kissing on their Facebook page. The photo was accessible not only to their friends on Facebook but also to the general public. According to the applicants, the purpose of publishing the photograph was to publicly announce the beginning of their relationship. The photograph went viral online, receiving over 2,400 'likes' and more than 800 comments. The applicants claimed that most **comments incited hatred and violence against LGBTIQ+ individuals**, with many directly threatening them. They expressed fear of retaliation if they personally filed a complaint. The comments later reported to the Lithuanian authorities included, among others:

- *"I feel like vomiting – they should be castrated or burned."*
- *"You are sick, go hide in basements. I sincerely hope that while walking in the street, someone smashes your head."*
- *"They should be exterminated."*
- *"Trash! Gas chamber for both of you."*

The **LGL Association** filed a complaint with the General Prosecutor's Office, requesting criminal proceedings for **thirty-one specific comments** under the Criminal Code provisions on **incitement to hatred and discrimination**. However, the District Prosecutor of Klaipėda decided not to initiate a preliminary investigation, arguing that while the comments were ethically questionable, they did not constitute a criminal offense.

Decision: The ECtHR found **discrimination based on sexual orientation**, which also constituted a violation of the right to private and family life, under Article 14 in conjunction with Article 8, as well as a violation of the right to an effective remedy under Article 13, due to the judiciary's failure to fulfil its positive obligation to ensure the enjoyment of rights established under the ECtHR, materialized in the refusal to provide an effective response to the complaint.

The Court emphasized the protection of vulnerable minorities, recognizing that hate speech not only directly affects them but also undermines democracy itself. It also acknowledged that **the Internet plays a crucial role** in increasing public access to news and facilitating the spread of information. For this reason, the **potential impact of media platforms** is a key factor in assessing the **duties and responsibilities** of those publishing certain content**. Regarding hate-fuelled**

comments, particularly those inciting murder, the Court stressed that they must be taken seriously.

Furthermore, the Court stated that while the protection of the traditional family is, in principle, a legitimate and pressing reason to justify differential treatment, the State may adopt a broad range of measures to pursue this objective. The State is free to choose the type of measures aimed at protecting the family and ensuring respect for family life. However, in doing so, it must consider evolving perceptions of social issues, relationships, and civil status, acknowledging that there is no single way to live one's private or family life. **Attitudes or stereotypes prevailing in a given period cannot justify discrimination based solely on sexual orientation or restrict the right to private life protection.**

Lilliendahl v. Iceland

Date: May 12, 2020

Context: In 2015, the **Icelandic municipal council** approved a proposal to **strengthen education and counselling in schools for individuals identifying as lesbian, gay, bisexual, or transgender**. The decision made headlines and sparked a broad public debate, during which the applicant made controversial comments. He was later convicted by national courts and fined approximately €800 for **comments posted on a radio broadcast, where he referred to *"sexual deviance"* and described the municipal council's proposal as *"disgusting"***.

Decision: For the first time, the **ECtHR examined hate speech** through an **extensive analysis**, dividing the concept into **two categories**:

1. **The most serious forms of hate speech**, falling under **Article 17** (prohibition of abuse of rights), are always excluded from the protection of **Article 10**.
2. **Less severe forms**, which the **Court does not entirely exclude from Article 10 protection** but allows **Member States** to restrict based on the **content of the expression and the manner in which it was conveyed**.

In this second category, the Court included not explicit incitement to violence or criminal acts but attacks against individuals through insults, ridicule, or defamatory statements targeting specific population groups. **In these cases, courts must decide on a case-by-case basis and, depending on the context, whether to prioritise freedom of expression or whether the severity of the statements justifies a limitation**. This legal reasoning reflects the complexity and sensitivity of addressing hate speech due to the lack of a binding European legal framework covering gender- and sexual orientation-based incitement to hatred, as well as the absence of a universally recognised definition of hate speech and comprehensive regulation of online communication. **The ECtHR case**

law provides a unifying perspective, playing a crucial role in setting guiding principles and common standards and promoting the harmonisation of legislation.

In this case, the **Icelandic Supreme Court** argued that using the terms *kynvilla* (sexual deviance) and *kynvillingar* (sexual deviants) to describe **homosexual individuals**, especially when paired with a **clear expression of disgust**, made the applicant's comments **likely to promote intolerance and hatred** towards homosexuals. The ECtHR found no reason to depart from the Icelandic Supreme Court's conclusion that the applicant's comments were "**serious, gravely offensive, and prejudicial**", and therefore, no violation of Article 10 was found.

J.L. v. Italy No. 5671/16

Date: May 27, 2021

Context: The applicant, an Italian woman, reported a case of **gang rape** that occurred in July 2008. In a judgment dated January 14, 2013, the Florence Court convicted six of the seven defendants for inducing a person in a state of physical and psychological inferiority to engage in or endure sexual acts, an offense punishable under Article 609-bis in conjunction with Article 609-octies of the Italian Penal Code. However, they were acquitted of the charges of sexual violence by coercion, as defined under Article 609-bis. In a ruling dated March 4, 2015, filed on June 3, 2015, the Florence Court of Appeal acquitted the six defendants convicted at first instance.

The applicant argued that value judgments expressed about her private life (protected under Article 8 of the ECHR) had a significant influence on the outcome of the trial, and that the judges chose to condemn her private life rather than judge her aggressors. She also claimed to have been discriminated against on the basis of gender, asserting that the acquittal of her aggressors and the negative attitude of national authorities during the criminal proceedings were the result of gender bias. She invoked Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 8.

Decision: The ECtHR condemned Italy, emphasizing that the language and approach used by the Court of Appeal judges were victim-blaming and influenced by gender stereotypes. The Court noted several passages in the Florence Court of Appeal's judgment that referred to the applicant's personal and intimate life, violating her rights under Article 8.

Specifically, the Court found that the **references made by the Court of Appeal to the applicant's red lingerie "displayed" during the evening, as well as comments regarding her bisexuality, romantic relationships, and occasional sexual relations before the events**, **were unjustified**. **Likewise, the Court deemed inappropriate the Court of Appeal's observations on the applicant's "ambivalent attitude towards sex," which were inferred, among other things, from her artistic choices.** Furthermore, the Court found **deplorable and irrelevant** the Court of Appeal's assessment of the applicant's decision to report the events, which it interpreted as a desire to "stigmatize" and

suppress a "questionable moment of fragility and weakness," as well as references to her **"non-linear life."**

The Court recognized that States have an obligation to protect victims of sexual violence, both by ensuring effective investigations and proceedings and by **guaranteeing that judicial language and approach do not perpetuate sexist stereotypes or blame victims**. In doing so, the Court noted that the seventh report on Italy by the United Nations Committee on the Elimination of Discrimination Against Women and the GREVIO report highlighted the persistence of stereotypes about women's roles and societal resistance in Italy toward gender equality. Moreover, both the UN Committee and GREVIO pointed out Italy's low rate of criminal proceedings and convictions, which contributes to victims' lack of trust in the criminal justice system and explains the country's low reporting rate for such crimes. However, the Court held that the **language and arguments used by the Court of Appeal reflected prejudices about women's roles in Italian society, which could impede the effective protection of victims' rights, despite the presence of a satisfactory legislative framework**.

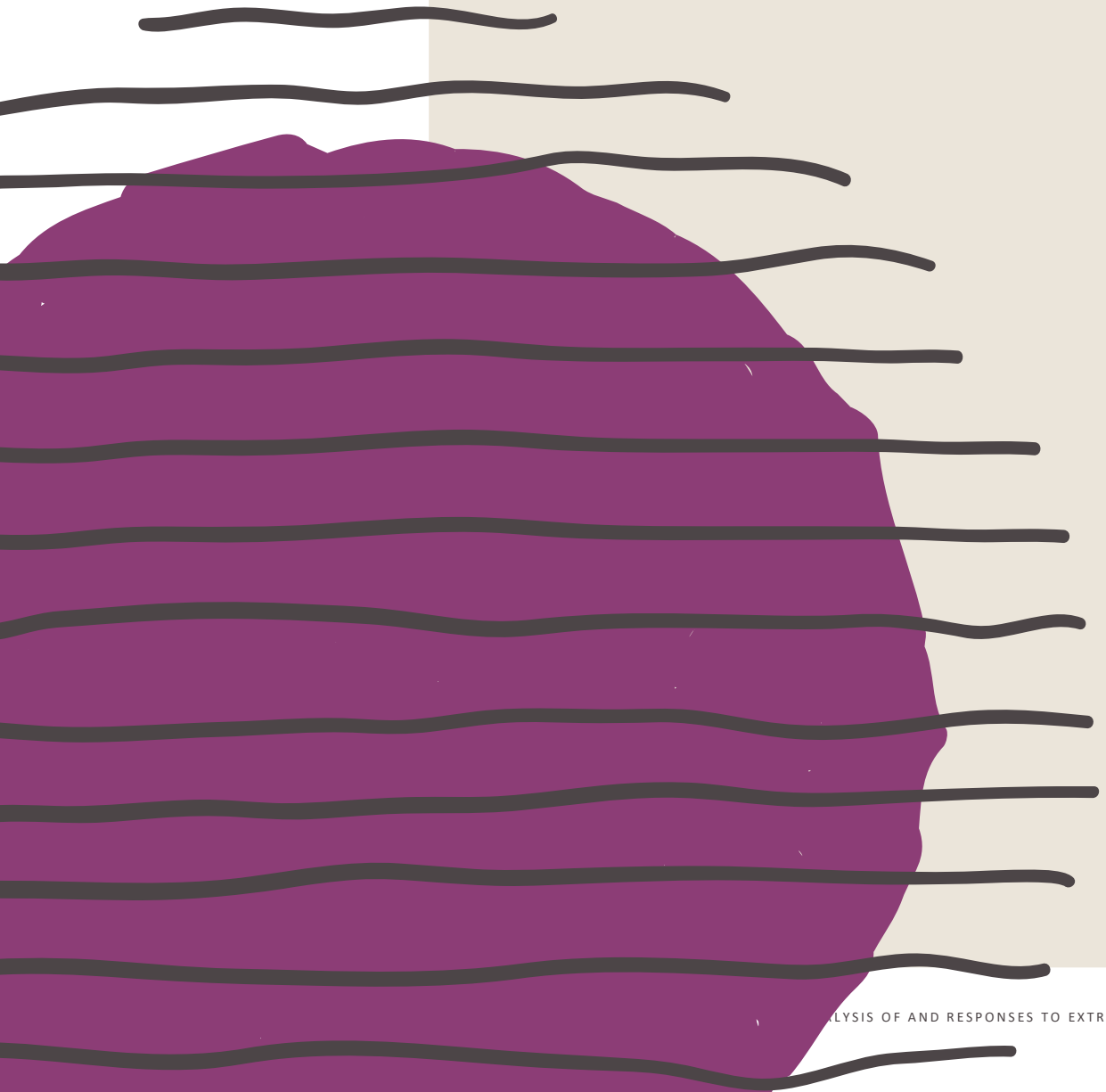
The Court strongly affirmed that **"criminal prosecution and punishment play a crucial role in the institutional response to gender-based violence and in combating gender inequality.** It is therefore essential that judicial authorities **avoid reproducing gender stereotypes in court decisions, minimizing gender-based violence, and exposing women to secondary victimization by using victim-blaming and moralizing language that discourages victims' trust in the judicial system"**.

The ruling stressed the importance of a gender-sensitive judicial approach, promoting respect for the dignity of violence victims through neutral and respectful judicial language.

Dissenting Opinion: There was **only one dissenting opinion**, signed by Judge **Wojtyczek**, who held that **there was no violation of Article 8**. Notably, the **presiding judge denied the presence of gender stereotypes** in the decision, pointing out that *"in this case, the Florence Court of Appeal ruled in a panel of three judges who met gender balance criteria (two women, including the reporting judge, and one man)."* Furthermore, Judge Wojtyczek underscored the **"overestimation" of criminal law as a tool to address human rights violations**, in contrast to the **extrema ratio principle** attributed to it in **liberal democracies**.

05

The Three Case Studies and the Consortium Framework



05

The Three Case Studies and the Consortium Framework

Following the transposition of Council Framework Decision 2008/913/JHA by the Member States of the European Union, incitement to hatred based on race, skin colour, religion, descent, national, or ethnic origin has been classified as a crime in all Member States. However, some states have extended their legislation to include additional protected characteristics, demonstrating a broader commitment to combating hate speech.

Specifically, addressing the countries the countries considered by the **ARENAS consortium**, we can observe that Belgium, Cyprus, Croatia, Finland, France, **Latvia**, Portugal, Slovenia, Spain and Hungary, have explicitly criminalized incitement to hatred based on sexual orientation. This protection is now a common feature of a significant portion of the European legal landscape.

Regarding hate based on gender or sex, Belgium, Cyprus, Croatia, France, Portugal, Slovenia, and **Spain** have introduced specific provisions defining it as a crime. Furthermore, gender identity is included in the legislation of **Spain,** France, Croatia, Cyprus, Hungary and Portugal. while sexual characteristics are explicitly protected only in Belgium. In parallel, Croatia, Germany, **Latvia,** Hungary, Slovenia and Finland have opted for broader formulations of hate speech legislation. These countries do not rigidly define the protected characteristics, leaving room to address offenses against any minority group or segment of the population requiring protection. For example, German law criminalizes incitement to hatred not only against specific racial or religious groups but also against “segments of the population” sharing common characteristics.

This study focuses on three European countries: **Spain, Italy, and Latvia**. Despite belonging to the same civil law tradition, these countries offer an interesting comparative perspective, as they present significant differences in their approaches to protecting the rights of women and LGBTIQ+ individuals. Italy and Spain represent two consolidated democracies of Western Europe, geographically and culturally close.

Spain is generally considered to be one of the most progressive countries in Europe regarding the rights of women and LGBTIQ+ individuals. The approval of the Ley de Igualdad (2007) and specific legislation against gender-based violence, such as Ley Orgánica 1/2004, has enhanced the protection of women and promoted greater social awareness of the need to combat stereotypes and discrimination. **The Ley Orgánica 1/2023**, approved in Spain on 28 February 2023, introduced significant reforms in the field of **sexual and reproductive health**, updating the previous 2010 legislation. The mandatory **reflection period before undergoing voluntary termination of pregnancy** (VTP) **has been abolishe**d, and under the new law, girls aged 16 and 17 can now access VTP without the need for parental or legal guardian consent, thereby expanding the recognition of their decision-making capacity regarding reproductive health. Additionally, the law establishes a national **register of conscientious objectors** among medical staff to ensure that objection does not hinder access to VTP, a common issue in healthcare settings where the majority of doctors declare themselves as objectors.

However, Ley 1/2023 does not focus solely on VTP. It also **introduces new rights**, such as paid **menstrual leave** for women suffering from debilitating menstrual pain and **specific leave entitlements for workers who undergo an abortion**. Furthermore, the law strengthens sexual education programmes in schools and **promotes information on contraception, reproductive health, and the prevention of gender-based and sexual violence**.

In the LGBTIQ+ sphere, Spain was one of the first countries in the world to introduce **marriage equality (2005**), ensuring full parity of rights for same-sex couples and allowing adoption by same-sex couples. The **Ley 4/2023**, approved in Spain on **28 February 2023**, represents a fundamental reform in the protection of the rights of **trans people** and the **LGBTIQ+ community**, placing the principle of **gender self-determination** at its core. It allows individuals aged **16 and over** to rectify their sex and name in civil registers through a simple declaration of intent. Notably, the law also excludes the possibility of **conscientious objection** in matters of gender rectification, ensuring that no public official can refuse to process such requests on personal or ideological grounds.

Naturally, gender stereotypes and inequalities persist even in this context: women are still often portrayed as primarily responsible for domestic tasks, and their presence in positions of power remains limited[28]. According to Eurostat, in 2021, Spanish women earned on average about 9% less than men – a lower gender pay gap than the European average (12.7%), yet still significant[29].

In **2019**, **10.8%** of women reported having experienced some form of **partner violence** in the previous **12 months**, and **1.8%** reported incidents of **physical or sexual violence** during the same period. It is estimated that between **55% and 65%** of these cases go unreported to the authorities[30].

[28] In 2024, women held 39.2% of board seats in IBEX-35 companies, marking a sharp increase from less than 20% a decade ago. However, top leadership positions remain predominantly male: only 12.1% of board presidencies are held by women. https://www.ine.es/uc/tF9DwJAMi1

[29] Data available on: https://ec.europa.eu/eurostat/databrowser

[30] González-Álvarez, J. L., López-Ossorio, J. J., Urruela, C., & Rodríguez-Díaz, M. (2019). Integral Monitoring System in Cases of Gender Violence: VioGén System. Behavior & Law Journal, 4(1), 29 – 40.

Despite progress, **stereotypes portraying LGBTIQ+ individuals**[31] as "different" or "non-conforming" to traditional family models remain present, especially in more conservative regions. In 2022, 459 cases were recorded, accounting for about a quarter of all **hate incidents** (second only to racist crimes). The trend is increasing (+4% in total hate crimes compared to 2021) and reflects a greater visibility of the phenomenon[32]. A notorious case is the murder of Samuel Luiz: in July 2021, this young man was beaten to death in A Coruña by a group of attackers, who assaulted him while shouting "maricón" (a homophobic slur). The homophobic motive was officially recognized in court: in 2025, four defendants were sentenced to a total of over 74 years in prison, with the hate crime aggravating factor for sexual orientation applied to the main perpetrator. Samuel's murder – attacked "for being gay" – sparked mass protests across Spain and abroad, demonstrating the deep collective impact of such crimes.

In Italy, the rights of women and sexual minorities have made significant progress in the country's republican history, but the path to full equality is still hindered by cultural resistance. The ratification of the Istanbul Convention in 2013 marked a significant step in the fight against gender-based violence, although the implementation of its provisions remains partial.

It is also important to highlight the **concluding observations on Italy's seventh report**, published on **July 4, 2017**, by the **United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)**, which stated:

"*The Committee notes the efforts of the State party to combat discriminatory gender stereotypes by promoting the sharing of domestic and parental responsibilities and addressing stereotypical portrayals of women in the media, strengthening the role of the Institute for Advertising Self-Regulation. However, it expresses concern over 'the deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society, perpetuating traditional roles of women as mothers and homemakers, thereby undermining their social status and limiting their educational and career opportunities.*'"

A similar concern had also been raised by **GREVIO**[33] in its **2020 report** on the **implementation of the Istanbul Convention in Italy**, where it highlighted the alarming **"persistence of stereotypes in court decisions on cases of violence."**

Abortion is legal and provided by the universal Italian healthcare service, but the high percentage of conscientious objectors among hospital staff puts this right at risk. An investigation carried out

[31] In 2021, the Spanish Ministry of the Interior recorded 466 crimes related to homotransphobia, marking a 67% increase compared to the 278 cases reported in 2019. However, it is estimated that these figures represent only a fraction of the actual phenomenon, as many victims do not report the incidents they experience. According to the European Union Agency for Fundamental Rights, in Spain, only 7% of victims of homotransphobic crimes file a report, compared to the 10% European average.

[32] '*Informe sobre la evolución de los delitos de odio en España 2022*, Comisión de Seguimiento del II Plan de Acción de Lucha contra los Delitos de Odio 2022-2024.

[33] GREVIO is an independent body composed of representatives from the signatory states, specifically tasked with monitoring the implementation of the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (commonly known as the Istanbul Convention) within the signatory countries. As part of its final assessment report, GREVIO provides recommendations aimed at ensuring that national legislation and its practical application increasingly align with the objectives of the Convention.

by the Associazione Luca Coscioni (2021) has underlined that of around 1.000 hospitals in Italy, 112 violate in some way the right to a safe abortion: in 72 hospitals, 80-100% staff are conscientious objectors; in 22 hospitals: 100% staff are conscientious objectors, and in 18 hospitals: 100% gynaecologists are conscientious objectors[34]. In April 2024, a draft law was approved by the Italian Senate introducing "third-party experts in maternity support" (i.e., pro-life activists) in family planning clinics, a situation that is causing some alarm in society.

Regarding the LGBTIQ+ community, Italy introduced civil unions in 2016 (Cirinnà Law) but remains one of the few Western European countries not to recognize marriage equality. Only married heterosexual couples can adopt a child, except for some special conditions (adoption of a disabled child). Only heterosexual couples can adopt the child's partner (stepchild adoption). Only heterosexual couples can have access to assisted reproductive technology. The lack of clear legislation against homophobia and transphobia and the failure of draft laws aimed at addressing these issues highlight the **persistence of stereotypes associating homosexuality with threats to traditional values, fuelled by conservative movements and certain media narratives.**

Latvia presents a more recent democratization process and several peculiarities stemming from its history, heavily influenced by the context of Eastern Europe. **During the Soviet period, Latvian law was significantly shaped by socialist legal traditions.** With independence in 1991, the country undertook a reform process to align with European standards, restoring the 1922 Constitution and integrating new legislation.

On **30 November 2023**, the **Latvian Parliament** passed a law approving the ratification of the **Istanbul Convention**. This ratification was accompanied by a declaration emphasizing that the Convention's purpose is to protect women from all forms of violence and to prevent, punish, and eradicate violence against women and domestic violence.

GREVIO has encouraged Latvia to proceed with the ratification of the Convention to strengthen protection and prevention measures against gender-based violence in the country, and the Permanent Representative of Latvia to the Council of Europe deposited the instrument of ratification on January 10, 2024. The Convention entered into force **on 1st May 2024**.

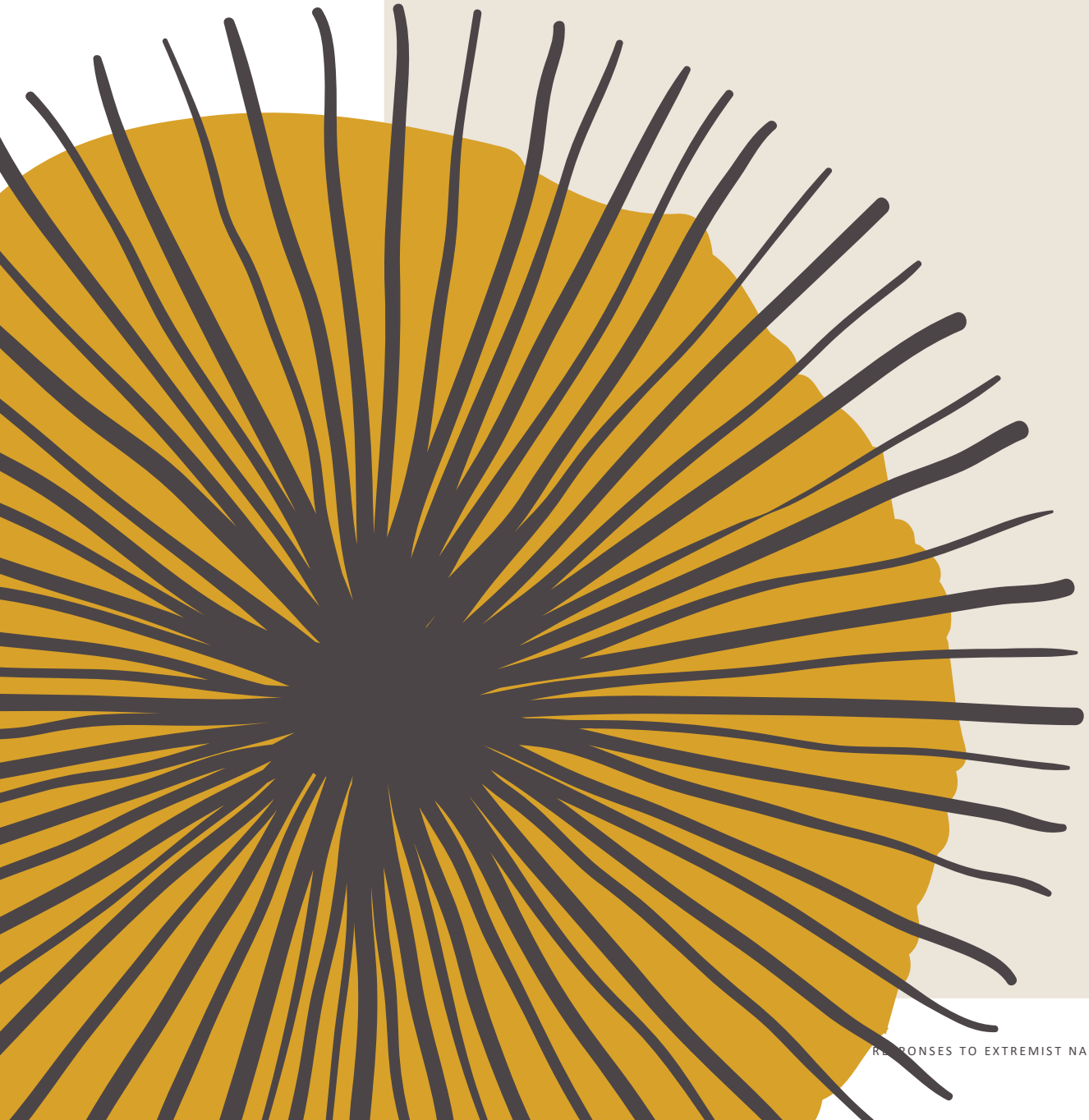
[34] https://www.associazionelucacoscioni.it/cosa-facciamo/aborto-e-contraccezione/legge-194-mai-dati?_gl=1*peam1w*_up*MQ..*_ga*MjQ1NTU1ODE4LjE3MTU0OTg0Mjc.*_ga_QQMZLR1HRV*MTcxNTQ5ODQyNi4xLjAuMTcxNTQ5ODQyNi4wLjAuMA.

Despite that, especially on issues such as LGBTIQ+ rights and gender equality, a deeply conservative culture emerges, effectively hindering the implementation of more inclusive policies. Stereotypes depicting women primarily as mothers and family caretakers are widespread, influencing public policies and judicial decisions. In Latvia, abortion is legal up to the 12th week of pregnancy upon the woman's request, as established by the Sexual and Reproductive Health Law of February 19, 2002. A pro-life campaign called "Par dzīvību" (For Life) was launched on August 1, 2012, with the aim of "raising public awareness on issues related to life and family".

Regarding LGBTIQ+ rights, Latvia stands out for its decidedly conservative approach. **On 9 November 2023**, the Latvian Parliament voted to **legalise same-sex civil unions for the first time**, allowing couples to register partnerships and access certain rights, such as hospital visitation and some tax and social security benefits. This milestone follows the election of Latvia's first openly gay president, Edgars Rinkēvičs, earlier in the year. However**, full inheritance remains excluded**, and the Latvian Civil Law provides that **'person(s) who are not married to each other may not adopt one and the same child'**. However, the Civil Law allows adoption not only to married couples but also for a **single person**, and the procedures do not foresee considering sexual orientation among the factors analysed when establishing the suitability of the potential parent for adopting a child. **The Constitution explicitly defines marriage as a union between a man and a woman**, effectively blocking any attempt to expand rights. In 2021, ECRI recommended the establishment of a specialised unit within the State Police to strengthen trust with vulnerable groups and address the under-reporting of racist and homo-/transphobic hate crimes[35].

[35] European Commission against Racism and Intolerance (ECRI). (2021). ECRI Conclusions on the Implementation of the Recommendations in Respect of Latvia: Subject to Interim Follow-Up (CRI(2021)26). Council of Europe. Retrieved from https://www.coe.int/ecri

06 Spain



06
Spain

4.3. Legislation

Spain has one of the most extensive and stringent legal frameworks in Europe against hate speech.

Article 20 of the Spanish Constitution guarantees **freedom of expression**, recognizing the right to freely express and disseminate thoughts, ideas, and opinions, as well as the freedom of information and artistic and scientific creation. However, it imposes certain **limitations** to protect rights such as **honour, privacy, personal image, and the protection of minors**, ensuring that freedom of expression does not infringe upon these principles.

Article 14, for its part, enshrines the principle of **equality** and the prohibition of **discrimination**. It affirms that all citizens are **equal before the law**, with no distinctions based on **birth, race, sex, religion, opinion, or other personal or social conditions**. This principle underpins the policies for protecting fundamental rights in Spain.

In the online sphere, Spain has not adopted a specific national law but combats hate speech through established protocols. The Policía Nacional and the Guardia Civil have **specialized units** (*Brigada de Delitos de Odio*) that **monitor social media and receive reports**, including via the *AlertCops* app. Spanish law allows illicit online content to be blocked or removed by judicial order; providers that fail to cooperate may be held liable for aiding and abetting. Additionally, **Ley 34/2002** (*Servicios de la Sociedad de la Información*), which transposes the **EU e-Commerce Directive**, establishes that intermediaries are not required to actively filter content but must remove illegal content when made aware of it. Recently, Spain has created the **Spanish Observatory on Hate Crimes** and signed agreements with NGOs and digital platforms to improve the reporting and rapid removal of racist and xenophobic content online.

On the civil level, Spain allows victims to **join criminal proceedings as civil parties** to seek damages. Additionally, various NGOs (e.g., *Movimiento contra la Intolerancia*) collaborate with prosecutors and can initiate collective complaints.

The **Criminal Code** contains a detailed and extensive **Article 510**, which penalizes several offenses. **The grounds for hate include gender, sexual orientation, and disability.** Penalties are increased if the acts are disseminated **through the media, the Internet, or information technologies**, or if the acts create **insecurity or fear among group members.** Additional sanctions include **the removal of content from the Internet and the blocking of websites disseminating such content.**

According to **Article 510.1**, the following are punishable by imprisonment of one to four years and a fine of six to twelve months:

1. Those who **publicly encourage, promote, or incite**, directly or indirectly, **hatred, hostility, discrimination, or violence** against a group, part of a group, or a specific person because of their membership in that group, **based on racist, antisemitic, or other motives related to ideology, religion or beliefs, family situation, ethnic group membership, race, nation, national origin, sex, sexual orientation or identity, gender, illness, or disability.**
2. Those who **produce, create, possess for distribution purposes, provide third parties access to, distribute, disseminate, or sell writings** or any other type of material or media that, by their content, are suitable for encouraging, promoting, or inciting hatred, hostility, discrimination, or violence against a group or an individual, based on the same grounds listed above.
3. Those who **publicly deny, trivialise, or glorify acts of genocide, crimes against humanity, or crimes committed in armed conflicts** against a group or individual based on their membership, for reasons such as **racist, antisemitic, anti-Roma, gender, or aporophobia,** when such acts promote or foster a **climate of violence, hostility, or discrimination.**

The **second paragraph** punishes, with imprisonment of six months to two years and a fine of six to twelve months:

1. Those who **harm the dignity of individuals through actions that humiliate, diminish, or discredit** one of the groups mentioned above or a specific person because of their membership, based on **racist, antisemitic, anti-Roma, gender, or other motives.** It also applies to those who produce or distribute material suitable for seriously humiliating or discrediting individuals based on their group membership.
2. Those who **glorify or justify crimes committed against a group or individual** based on their membership in that group, **for reasons such as racist, antisemitic, anti-Roma, gender, or aporophobia**[36]**,** or those who participated in their execution, when these acts promote a **climate of violence, hostility, or discrimination.**

The **third paragraph** states that penalties are imposed in their upper range when acts are **committed via social communication media, the Internet, or through information technologies,** making them accessible to a **large audience.**

If the acts, considering their circumstances, are likely to disturb public peace or create fear among group members, the fourth paragraph specifies that penalties may be increased to the next level.

[36] Aporophobia (from the Greek áporos, "without resources") refers to the aversion, fear, or rejection of poor or socially marginalized individuals, specifically because of their poverty. The term was coined by Spanish philosopher Adela Cortina to highlight how discrimination often stems not from ethnicity or origin alone, but from economic exclusion.

The fifth paragraph mandates special disqualification for educational, teaching, sports, and leisure professions for a period of three to ten years, in proportion to the severity of the crime and the number of offenses committed.

The sixth and final paragraph (510.6) requires judges or tribunals to order the destruction, deletion, or disabling of materials related to the offense. When offenses are committed through information technologies, the court orders the removal of content or, in the case of internet portals disseminating such material, the blocking or suspension of the service.

The typical formulation of **Article 510 of the Criminal Code** is now broader than the one contained prior to the reform introduced by **Organic Law (LO) 1/2015.** The former **Article 510.1 of the Criminal Code** referred to those who "provoke discrimination, hatred, or violence against groups or associations" for reasons related to **racism, antisemitism, ideology, religion, or beliefs,** among others. After the reform, additional references were introduced, such as **membership in a 'nation'** (in addition to "national origin"), the category of **'gender,'** the inclusion of **'sexual identity,'** and the replacement of the term **'handicap'** with **'disability.'** The previous **Article 510.2** of the Criminal Code criminalized a type of **collective insult** (those who, "with knowledge of its falsehood or reckless disregard for the truth, disseminate offensive information about groups or associations" for discriminatory reasons).

Following **LO 1/2015,** of March 30, **Article 510.2(a)** now contains two distinct offenses:

- On the one hand, behaviours that appear to evoke the original discriminatory collective insults or collective hate speech ("those who harm the dignity of individuals through actions that involve humiliation, contempt, or discredit...").
- On the other hand, a new offense punishes the **chain dissemination of such collective hate speech** or the **chain distribution of offensive hate speech** ("producing, preparing, possessing for distribution purposes, providing third parties access to, distributing, disseminating, or selling writings or any other type of material or media that, by their content, are suitable for harming the dignity of individuals by representing severe humiliation, contempt, or discredit...").

Article 510.2(b) was entirely introduced by **LO 1/2015.** As recognized in **Circular 7/2019,** of May 14, from the State Attorney's Office, regarding guidelines for the interpretation of hate crimes defined in **Article 510 of the Criminal Code,** "the criminalization of these behaviours is not a requirement of **Framework Decision 2008/913/JHA**[37]". Thus, the **2015 criminal legislator,** by introducing this criminal offense of glorification and justification of hate crimes, goes **beyond what is required by European legislation,** to the extent that **leading legal scholars** have highlighted the difficulty of interpreting this offense in a manner consistent with freedom of expression. They have questioned

[37] Council Framework Decision 2008/913/JHA, of November 28, 2008, on combating certain forms and expressions of racism and xenophobia by means of criminal law], which only requires the punishment of the justification of specific crimes" ,p. 55681.

its constitutionality and even asserted that it openly conflicts with the constitutionally guaranteed **freedom of expression under Article 20 of the Spanish Constitution.**

For this reason, judicial interventions have become urgent, providing particularly precise guidelines for interpreting this offense to align its application as closely as possible with **constitutional doctrine on the institutional dimension of freedom of expression and information.**

The current Criminal Code, in article 22.4, establishes a **general aggravating circumstance** applicable to all types of offenses committed by the perpetrator driven by **specific motivations**, particularly when the offense is committed:

*"for racist, antisemitic, or other discriminatory reasons relating to the ideology, religion or beliefs of the victim; their ethnicity, race, or nationality; their **sex, age, sexual or gender orientation or identity; gender-based reasons**; aporophobia (hostility towards the poor) or social exclusion; illness or disability suffered by the victim, regardless of whether such conditions or circumstances actually apply to the person subjected to the offense."*

6.2. Interpretations in court decisions

The **Constitutional Court**, in **Judgment 112/2016 of June 20 (**STC 112/2016, June 20)**,** held that the **right to freedom of expression** can be **limited**, particularly in cases where statements incite **violence**. The Court asserted that in **democratic societies**, it may be deemed necessary to **penalize or even prevent** forms of expression that **spread, promote, or justify hatred based on intolerance**.

The Court stated that **"the judicial function"** in such cases is to "*assess, considering the circumstances, the expression of the ideas conveyed and the surrounding conditions – whether the prosecuted behaviour constitutes a legitimate or illegitimate exercise of the fundamental right to freedom of expression and, consequently, whether it is justified by the overriding value of freedom or, conversely, whether the expression violates the rights and dignity of the individuals it refers to*.**"** Each case must be **examined individually**.

A **limitation of a fundamental right** can only be justified **if another constitutional good or value is at risk or has been harmed**. This aligns with the **principle of offensiveness or harm**, which is particularly relevant **when the response to such harm is provided by the criminal justice system**.

The ruling repeatedly emphasizes the **"peculiar institutional dimension of freedom of expression"**, describing it as a guarantee for **"the formation and existence of a free public opinion,"** which makes it **"one of the pillars of a free and democratic society."** Consequently, the Court underscores the necessity of ensuring that this freedom **"enjoys a broad channel for the exchange of ideas and opinions,"** one that must be **"sufficiently generous to develop without restriction, meaning without timidity and without fear"**.

Acts of glorification and justification can only be prohibited **"***to the extent that they can be considered an incitement to hatred because they promote or encourage, even indirectly****, a situation of risk for people, the rights of third parties, or the very system of freedoms*.**"**

These two **requirements** - the **objective element** of **creating a risk to individuals** and the **subjective element** of **indirect incitement to commit** - must be met for acts of glorification and justification to be criminally sanctioned in a manner compatible with the constitutional protection of freedom of expression under Article 20 Constitution. These principles were incorporated into Supreme Court case law in Judgment STS 378/2017, May 25**.**

Prior to the **reform of Organic Law 1/2025**, legal scholarship and case law had developed **different interpretative positions** regarding the **term "provoke"** contained in the legislation.

The **Barcelona Court**, in **Order 892/2016 of November 29**, summarized the different interpretative positions regarding the interpretation of the term **"provoke"** in the context of **hate speech** under Spanish law:

1. One interpretation equates provocation to discrimination, hatred, or violence under Article 510.1, aligning it with the preparatory acts of provocation defined in Article 18.1 of the Penal Code. According to this position, *"provoking discrimination, hatred, or violence"* implies that it is **necessary to prove, in each specific case, that an act inciting the commission of a crime has been committed**.
2. Another interpretation considers that the dissemination of discriminatory or violent ideas, or the glorification of acts and doctrines that indirectly justify such ideas, may be punishable, provided that there **is a real risk of influencing others to commit a crime**. In this view, the criminalization of speech requires proof of genuine hostility, meaning that there must be an element of aggression in the speech. This interpretation holds that the direct generation of hostile attitudes among the audience must **constitute a "prelude to violence**." As a result, **there must be a real and imminent danger – not just a hypothetical or remote one – of generating violent or discriminatory acts against the targeted group.**
3. A third interpretation suggests that **all conduct involving the dissemination of racist or xenophobic ideas should be punishable, even if it does not necessarily lead to violence**.

From a constitutional perspective, this last interpretation does not align with the Spanish constitutional framework, which does not adopt a model of "militant democracy". It is argued that **the mere dissemination of ideas should never, in itself, constitute a criminal offense**. Otherwise, criminal liability would arise without actual harm or risk to any legal interest, simply based on the possibility that someone might be persuaded by the speech and adjust their future behaviour accordingly. Therefore, it is necessary to distinguish between the dissemination of ideas (which is not punishable) and expressive conduct that violates the rights and interests of others. However,

this distinction raises a further issue: **Is a generic and abstract incitement sufficient to be criminalized, or must there be a concrete provocation of illegal actions?**

As observed by **Justice Holmes in Gitlow v. New York (1925)**, *"Every idea is an incitement, in the sense that it is offered to be believed and, if believed, to be acted upon."* **If generic incitement were criminalized, the right to freedom of expression would be severely undermined**. This approach would essentially align with the third interpretation that considers mere idea dissemination as criminal. Consequently, there must be a direct and public incitement to commit illegal actions.

This **intermediate approach** is situated **between positions (a) and (b)**. **It asserts that, for speech to be criminalized, there must be a real and effective risk that it will incite criminal acts. This assessment must consider the circumstances of the case, and incitement must meet the requirements of specificity, capability, and imminent danger**.

Supreme Court STS 646/2018, December 14

The Supreme Court has clarified that **Article 510 of the Spanish Penal Code defines hate crime in a way that does not require the actual generation of a specific danger, but does necessitate the potential to create a serious risk**.

The court identified Article 510 as the archetype of hate speech: *"The Spanish legal system has responded to this form of aggression against social coexistence by incorporating multiple provisions – **perhaps too many** – under the broad category of **hate speech**. Among these, Article 510 of the Penal Code serves as the **paradigmatic reference for prosecuting hate speech offenses**."*

Referring to ECtHR case law, the Supreme Court emphasized the need to consider all relevant circumstances of each case to prevent the excessive criminalization of speech protected under freedom of expression. When evaluating the danger and risk posed by glorification, justification, and incitement to hatred, the Court held:

*"The European Court of Human Rights (...) has repeatedly emphasized that **freedom of expression is limited in cases of hate speech**. Therefore, courts must assess contextual factors, including **the nature of the message, the medium of expression (oral or written), the speaker's intent, the impact of the content, and the proportionality of the sanction** to avoid excessive application of criminal penalties. These offenses are **circumstantial** and must be interpreted in light of the **social realities at the time of enforcement**."*

In the specific case at issue, the Supreme Court ruled: *"The statements included in the facts of the case are not justified by freedom of expression and may be considered offensive to social coexistence. However, their severity does not rise to the level of criminal liability, as they were isolated expressions, their dissemination was unintentional, and their impact was minimal. Given their*

limited reach and effect, despite their inappropriate nature, they do not constitute a criminal offense."

Key Elements for Criminal Liability Under Article 510 of the Penal Code:

- **The conduct must be directed either at an entire collective or at specific individuals clearly targeted due to their belonging to a protected group.**
- **The impact must extend beyond the direct recipient of the message, creating fear, insecurity, and a sense of threat within the entire group.**

In Judgment 646/2018, the Supreme Court referred to the "generation of a danger to coexistence**"**.

"The conduct not only intimidates the individual recipient but also instils fear in the entire group to which they belong, leading to harm to dignity, insecurity, and a sense of threat."

Article 510.1(a) and (b) of the Penal Code provides a **closed list of protected categories** (e.g., **race, sexual orientation, etc.**) and establishes that criminal liability arises **when hate speech is directed against individuals based on their membership in these vulnerable groups (e.g., Black individuals, homosexuals, etc.)**.

Supreme Court Judgment STS 47/2019, February 4

This ruling reaffirmed **STS 646/2018**:

- "First, the perpetrator must select their victims based on intolerance and within the **vulnerable groups referenced by the law**."
- "Hate crimes are characterized by a **specific animus** driving the perpetrator to commit the offense, thereby excluding motivations unrelated to hostility. The animus consists of hatred toward individuals or groups defined by their skin colour, ethnic origin, religion, disability, ideology, sexual orientation or identity, or victim status. These individuals form **an identifiable group**, allowing for the categorization of specific types of victims."
- "Furthermore, these crimes are highly **circumstantial, requiring an assessment based on the social reality at the time the law is applied**."

Additionally, Article 510 of the Penal Code is a provision that falls within the category of offenses committed in the exercise of fundamental rights and public liberties. Speech can serve as an ideal medium to create a scenario of public distrust, endangering the normal use and enjoyment of rights by vulnerable segments of the population.

Constitutional Case law: STC 35/2020, February 4

Constitutional case law, aligning with **ECtHR case law**, has emphasized the **necessity of evaluating the specific circumstances** of each case in order to **assess the likelihood of risk or danger** posed by such messages. Certain key criteria have been identified:

*"Not only is the literal content of the words spoken important, but also the meaning or **intention** with which they were used, their context, and the **surrounding circumstances**. It is evident that language generally allows for multiple interpretations. For the purpose of establishing criminal liability in cases of this nature, it is essential to clearly determine **which of the possible meanings was intended in each specific instance**."*

The **evaluation of these surrounding circumstances is so crucial** that failure to conduct such an analysis **directly results in a violation of freedom of expression**:

- *"The Court holds that the conviction did not sufficiently satisfy the **requirement of a prior assessment as to whether the prosecuted conduct constituted an exercise of the fundamental right to freedom of expression**. It denied the necessity of evaluating, among other factors, the communicative intent of the defendant, the authorship, the context, and the circumstances of the transmitted messages."*

In cases where conduct is directed at third parties, its capacity to impact those third parties must be demonstrated. Therefore, in the absence of such capacity, the Constitutional Court is unequivocal:

- *"This Court cannot but agree (...) that **not every excessive exercise of the right to freedom of expression, nor the mere existence of a feeling of hatred, automatically transforms the prosecuted conduct into a criminal offense**."*
- *"The contested decision, by omitting any reasoning on this point and expressly refusing to assess the intentional, circumstantial, contextual, and even pragmatic-linguistic elements that influenced the dissemination of the messages in question, clearly falls within the criminal judge's interpretation of the subjective scope of the offense. However, it fails to take into account elements that, given the circumstances, were indispensable in the prior assessment required for the protection of freedom of expression as a fundamental right.*

6.3. Relevant cases

Judgment of the Criminal Court of Palma de Mallorca No. 419/2012

Date: December 10, 2012

Context: The case involved a former municipal councillor and her collaborator. Between late 2005 and early 2006, the defendant uploaded an animation titled *The Naked Woman* on the website of the political party *Agrupación Social Independiente (ASI)*. The video depicted **a completely naked woman who could die in twenty different ways**, including being run over by a dog, hit by a glass pane, crashing into obstacles, falling off a cliff, being struck by volcanic lava, stepping on a landmin**e**, and other grotesque and violent situations. Before each scene, a message prompted **the user to *"choose"* how the woman should die**, actively involving the viewer.

The video, publicly available, sparked strong public outrage. Protests led to the Balearic Institute for Women formally requesting the party to remove the video, deeming it an **attack on women's dignity**. However, the party president and former municipal councillor decided to keep the content online until January 2006, when it was finally taken down.

Decision: The defendants were **convicted of incitement to hatred, discrimination, and violence** under **Article 510 of the Spanish Penal Code**.

The reasoning behind the judgment is particularly significant as it provides a **detailed reconstruction of case law and legislation on gender equality and discrimination against women**, adopting a **gender-sensitive approach**.

The nature of the content was deemed **destructive to women's dignity**, as it *"not only attacks her dignity and her right to be treated as equal to men"* but, as the Court pointed out, it **constituted a criminal incitement to violence**:

"In this representation, the woman is objectified, reduced to the sole purpose of dying, as the game serves no other function except to cause the death of other women, such as in the case of Whoopi Goldberg, the elderly woman, or the extremely obese woman lying on the ground, naked from the waist down, whose buttocks become the cause and instrument of the cyclist's death."

"The woman demonstrates her unworthiness of life, as she never attempts to avoid obstacles or survive – such as by swimming when she falls into the river."

The content **perpetuated discriminatory and degrading stereotypes against women**:

"The woman is depicted as a mass with two disproportionately large breasts, to the point of obstructing her vision – a metaphor for a woman blind to life. All of this clearly denotes a contemptuous intent toward the image of women, who, we recall, are completely naked – sic – for reasons unrelated to the activity depicted in the animation, which is riding a bicycle."

Additionally, the ruling explicitly rejected the notion that the animation could be considered **dark humour**:

"One might ask," the Court wrote, ***"whether it would be considered dark humour if the victims were minors – even if clothed – Arabs, Africans, South Americans, disabled persons, etc. The***

answer is clearly no because there is widespread awareness that such an animation would be criminal. However, when it involves a woman, it is not. This is because, historically, violence against women has been socially accepted as non-criminal. Certain sectors of society fail to recognize women's equality and their right not to be discriminated against as rights equally enjoyed by other citizens*. Therefore, animations like this may seem to these sectors to be harmless, mere examples of dark humour, or legally inconsequential, when in reality, the opposite is true."*

Sanctions: Each defendant was sentenced to:

- **1 year and 6 months of imprisonment**
- A 12-month fine, with a daily rate of €50**,** with subsidiary personal liability in case of non-payment
- Special disqualification from the right to stand for election (passive voting rights)
- Suspension from employment or public office
- Special disqualification from holding public office, professions, industries, arts, or commercial activities for the same duration as the principal sentence
- Express conviction to pay court costs

Judgment of the Provincial Court of Madrid No. 676/2017

Date: October 30, 2017

Context: This case involved two young men walking in Madrid with two other individuals. They encountered the victim, who was walking with a group of friends, and began mocking him, imitating his manner of speech in a derogatory manner, before physically assaulting him. During the attack, they stated that they did it because *"he is a faggot and he deserves it."*

Decision: The Court confirmed that the **assault was motivated by prejudice against the victim's sexual orientation**, convicting the defendants under **Article 510.2 of the Penal Code** for a **hate crime**. According to the Provincial Court of Madrid**,** such words constitute *"humiliating, contemptuous, or degrading expressions"* directed at the victim due to his **homosexuality**, thereby attacking his dignity and the principle of equality and non-discrimination. The conduct was driven by the subjective aim of humiliating and demeaning the victim; the intentional element in this case was indisputable, as there was **not merely a risk of violence but an actual violent act**, providing **clear evidence of a hate crime**.

Sanction:

- **8 months of imprisonment**

- Special disqualification from the right to stand for election (passive voting rights) for the duration of the sentence
- 7-month fine**,** with a daily rate of €5**,** with subsidiary personal liability under Article 53 of the Penal Code in case of non-payment
- Special disqualification from engaging in teaching, sports, and recreational activities for three years

Judgment of the Provincial Court of Madrid No. 762/2017

Date: December 29, 2017

Context: In February 2016, a journalist and director of the online newspaper *Hispanidad.com* published a **video on YouTube equating homosexuality with paedophilia**, titled *"Sodomy and pederasty are two branches of the same tree."* The author accused homosexuals of committing **the vast majority of paedophilia cases**, referring to both as *"anti-Christian and inhuman degenerations."* He argued that these behaviours stemmed from a separation between love and sexuality, a concept he claimed contradicted fundamental Christian principles. The video remained on YouTube until March 26, 2016**,** accumulating 2,160 views.

The video triggered strong reactions, as its **offensive and discriminatory content caused outrage in the LGBTIQ+ community and civil society**. **The author was accused of violating** Article 510.2 of the Spanish Penal Code**,** which punishes actions that undermine human dignity through expressions of contempt, humiliation, or denigration based on sexual orientation, religion, gender, and other protected characteristics**.** Initially, the case was handled by Criminal Court No. 16 of Madrid, which ruled that **the statements exceeded the limits of free speech, constituting a direct offense to the dignity of homosexual individuals**. The defendant was sentenced to **6 months of imprisonment**.

The defendant appealed, arguing that the 2015 reform of Article 510.2 should not have been retroactively applied, as the events occurred before the reform took effect. He also claimed that the video's intended context was a critique of paedophilia within the Catholic Church, without the intention of harming homosexual individuals.

Decision: The Court ruled that there was **no retroactive application of the law**, as the **2015 reform did not create a new offense** but merely **expanded the scope of an existing one** while reducing the applicable penalties. The **Provincial Court reiterated that freedom of expression is not an absolute right** but **must respect the rights guaranteed by other fundamental legal norms**.

In this case, the video's content was **objectively degrading and discriminatory** toward homosexuals. The statements, such as *"inhuman degenerations"*, were deemed **gravely offensive and without any scientific basis**. The defendant was convicted of incitement to collective hatred under Article

510.2 of the Penal Code. The Court ruled that the video constituted an inadmissible attack on human dignity**,** as well as a violation of the right to equality and non-discrimination based on birth, race, sex, religion, opinion, or any other personal or social condition. The **expressions used in the video contained an "unbearable dose of contempt and discredit, intolerable in a legal system and society based on respect for human dignity and individual freedom"** and that they were made *"with the clearest intention of humiliating"* homosexual individuals.

The Court **fully upheld the lower court's ruling**, **emphasizing that this was** a **clear example of the unlawful use of free speech to promote discrimination**.

Sanction: The Court confirmed the sentence of:

- **6 months of imprisonment**, with special disqualification from standing for election **(**passive voting rights) for the duration of the sentence
- 6-month fine, with a daily rate of €10, with subsidiary personal liability of one day of imprisonment per two unpaid quotas
- Conviction to pay court costs

Judgment of the Supreme Court No. 72/2018

Date: February 9, 2018

This is the only conviction issued by the Supreme Court under the current formulation of Article 510.1(a), following High Court Judgment No. 2/2017.

Context: The defendant, an adult with no prior criminal record, published a series of tweets between December 2015 and January 2016 on **Twitter**, where he maintained two accounts with approximately 2,000 followers. The tweets included statements such as:

- *"53 women killed by male chauvinist gender violence this year. Seems too few with all the whores around."*
- *"2015 ends with 56 women killed. Not a great result, but we did our best. Let's double it in 2016. Thanks."*
- *"I've already prepared the explosives to make a mess tonight in Sol. Happy New Year, Allah is great."*
- *"All that's missing is a terrorist attack in Madrid, some Spaniards dead, and we'll have had a fantastic 2015."*

Following these posts, the Social Media Monitoring Unit of the Police (Grupo de Redes II) received reports from outraged citizens, particularly regarding his **tone on gender-based violence**. Formal complaints were filed on January 1, 2016, at the Santa Cruz de Tenerife police station and on January

3, 2016, at the Zamora police station by different individuals. Although **Twitter suspended the first account**, the defendant **continued posting similar content** from a second account, including:

- *"We don't see attacks like 9/11 anymore. These jihadists are useless. If they have to massacre people, they should do it in style. Come back, Bin Laden."*
- *"She was a feminist, and she threw herself into the river because women get wet for equality."*
- *"I like fucking against the counter and the stove, so I put women in their place twice."*
- A shared image of a woman with the caption: *"I've already abused her. You're next."*

1. Decision: High Court Judgment No. 2/2017 – Criminal Chamber

The **High Court** convicted the defendant of:

- **Apology for terrorism** under **Article 578 of the Penal Code** (**1 year imprisonment**)
- **Incitement to hatred against women** under **Article 510.1 of the Penal Code** (**1 year imprisonment**)

The Court ruled that social media publications cannot be considered mere "jokes" or "dark humour," as they glorify terrorist acts and denigrate women, promoting discrimination and hostility toward them. The statements reflect a discriminatory vision of women, portraying them as inferior to men and relegating them to a subordinate status. **The explicit call for increasing the number of women murdered further highlighted the severity of the crime**.

Upon appeal, the defence challenged the application of Articles 510 and 578, arguing that the defendant lacked the specific intent (dolo) required for conviction, asserting that simply making such statements did not necessarily imply intent.

2. Decision: Supreme Court Judgment No. 72/2018

The Supreme Court upheld the conviction for incitement to hatred (Article 510.1(a)) and applied the aggravated subtype under Article 510.3, due to the wide dissemination of the messages online. However, the Court acquitted the defendant of glorification of terrorism (Article 578 CP), ruling that hate speech (Article 510 CP) encompasses more than general offenses.

This case **illustrates the strict stance Spain takes on hate speech**. The **Supreme Court** emphasised that:

"Article 510 CP punishes those who promote discrimination, hatred, or violence against groups or associations based on protected grounds. The central element of the offense is the expression of

epithets, adjectives, or phrases containing a message of hatred in a generic form. This offense is ***structured as a risk-based crime,*** *where the act of communicating hateful messages, itself suffices to establish liability under international conventions that have shaped the criminalization of hate speech."*

Such international conventions criminalise hate speech regardless of whether it leads to direct action, considering that the mere dissemination of hate speech is harmful to coexistence, said the Court that. also referenced a **key Constitutional Court ruling (Judgment 112/2016, June 20, 2016)**:

"The Constitutional Court has outlined the limits of this conflict. After highlighting the fundamental nature of freedom of expression, it also acknowledges the restrictions on such a right, particularly for expressions that encourage violence. ***In democratic societies, it may be deemed necessary to punish and even prevent forms of expression that propagate, promote, or justify hate based on intolerance****."*

Regarding the **subjective element of criminal liability under Article 510**, the Supreme Court clarified that **intent must be inferred from the content of prior statements**, ensuring that:

- The act was **voluntary**
- It was **not a result of an uncontrolled or spontaneous reaction**

The Court found that the fact that the tweets were published on different dates was decisive, proving that the actions were deliberate. The continuous pattern of publishing hateful content demonstrated the defendant's intent to disseminate aggression and hostility. The Court ruled:

"The content of the statements reveals the aggressiveness of the expressions and the presence of hatred, as they reference situations where the defendant desires encounters with women whom he refers to in aggressive terms within a gender-based context *(Article 510.1(a) CP). Moreover, the Supreme Court applies the aggravating factor under Article 510.3, considering the intended projection of the message, as its transmission occurred via social networks."*

Sanction:

- **2 years and 6 months imprisonment**
- 9-month fine, with a daily rate of €40
- Subsidiary personal liability**:** 1 day of imprisonment per every 3 unpaid fine instalments

This ruling remains a landmark precedent in Spanish case law on hate speech.

Madrid Provincial Court Judgment n. 625/2019

Date: November 21, 2019

Context: This case involved **insults against a transgender person in the process of transitioning**, whose gender identity was male. The defendant approached the victim, asking for a cigarette and referred to him using the expression "guapa" (a feminine form in Spain). The victim promptly replied that he was no longer a woman and requested not to be addressed in that way. The situation escalated into a verbal confrontation. The defendant uttered statements such as:

- "You are not a man; you don't have a dick or anything."
- "You're a woman, you're not a man, pull out your dick and prove it."

The exchange of insults was followed by a physical assault. The Criminal Court of Madrid acquitted him of all charges on January 14, 2019, ruling that **there was insufficient evidence to prove that the assault had a discriminatory motive**, and **the events occurred in a context of mutual argument, ruling out the explicit intention of targeting the dignity of the transgender group**.

The verdict was appealed, arguing that the insults were a clear example of hate speech and that the physical assault following the insults also aimed to humiliate the victim for their gender identity. The appellants requested that the man be convicted of a hate crime under Article 510.2.a of the Penal Code and for bodily harm.

Decision: The Court of Appeal upheld the acquittal, clarifying that the insults could not be isolated from the general context of the discussion, which was characterized by mutual offenses. **To establish a hate crime, it must be demonstrated that the offensive expressions explicitly aim to**:

- **Diminish the dignity of a vulnerable group;**
- **Create a climate of hostility or justify future aggression**.

"Since in this case there was a reciprocal exchange of insults, it was not possible to isolate the phrases or expressions uttered by the defendant and interpret them as a collective insult aimed at diminishing the dignity of a specific vulnerable group (the "target group"), with the objective of segregating the group to justify its inferiority and legitimize future aggression. In other words, for a violation to be established, such expressions must have an impact of such intensity as to pose an aggressive potential against the "target group" in terms of existential security. The "General Recommendation 15 of the Council of Europe Against Intolerance" highlights that the specific circumstances in which hate speech is used must be considered, particularly the context of the situation. The Court emphasized that the collective insult under Article 510.2.a is "aimed at diminishing the dignity of a specific [target] vulnerable group that seeks to segregate a group to justify its inferiority and validate future aggression," meaning it must produce an effect of such

intensity as to pose an aggressive potential against the "target group" in terms of existential security [...], requiring the presence of the subjective element of acting for discriminatory reasons.".

Sanction: None

Madrid Provincial Court Judgment n. 7/2020

Date: January 8, 2020

Context: In 2017, a user **commented on a news post on the Twitter** account of the Antena 3 Noticias channel, which reported: "***The first victim of gender-based violence of the year*** *dies after being stabbed by her partner*," with the following words:

"ALGO HABRÁ HECHO LA MUY ZORRA, UNA MENOS. Y BASTA DE TANTO CULPAR A LOS HOMBRES, COÑO, SUS RAZONES TENDRÍA. #BASTAFEMINAZISMO." ("She must have done something, that whore. One less. Stop blaming men all the time, damn it, he must have had his reasons. #EnoughFeminazism.")

The message, posted on a widely used social network, sparked outrage due to its derogatory nature towards the victim and its attempt to justify the crime. The author was accused of an offense against fundamental rights and public freedoms, punishable under Article 510.2.b) of the Penal Code, which penalizes the dissemination of messages inciting discrimination, hatred, or violence.

Decision: Through a fast-track procedure, the Madrid Provincial Court convicted the defendant under Article 510.2.b), 3, and 5 of the Penal Code, ruling that the **defendant's message "denigrated the memory of the deceased woman" and intended "to excuse and justify the recent murder committed by a man against a woman with whom he had a relationship, and which had gained significant media attention, given its coverage by a widely followed news outlet and a social network with millions of users."** This case represents the only conviction for the offense under Article 510.2.b), first paragraph, which punishes the risk of exalting and justifying hate crimes (even without actually creating a violent climate). The Court considered the comments as a **clear example of hate speech, aimed at justifying violence against women**. Although no aggravating circumstances were present, the severity of the statements and their dissemination on a widely used platform motivated the ruling.

Sanction:

- **Prison sentence of 15 months and 1 day**.
- Disqualification from exercising passive voting rights for the duration of the sentence.
- Fine of 9 months, with a daily quota of 5 euros.
- Subsidiary personal liability in case of non-payment, pursuant to Article 53 of the Penal Code.

- Special disqualification from engaging in educational, teaching, sports, and leisure-related professions or activities for a period of 4 years and 3 months.
- Explicit conviction to pay procedural costs.

Judgment No. 113/2024 of the Audiencia Provincial de Barcelona (Third Section), issued on February 12, 2024.

This is a plea agreement judgment (settlement during the trial phase) issued by a panel presided over by Judge Emma Sánchez Gil[38].

Context: The case originates from proceedings before the Juzgado de Instrucción No. 21 of Barcelona and was decided in the second instance by the Audiencia Provincial. The defendant, through Twitter (which was still called that at the time, now X), publicly disclosed the victim's transgender identity – a person she knew – without the victim's consent, accompanying the victim's photo with the insulting epithet "prototipo de maricón con tetas" ("prototype of a f**t with tits", a derogatory slur). This exposed the victim to public ridicule within her entire social and professional environment, which had until then been unaware of her gender history.

Decision: The Prosecution (Fiscalía) and the civil party argued that the defendant acted with clearly discriminatory and offensive intent, driven by "animadversión" (hostility) toward non-operated transgender people. According to the indictment upheld in the judgment, the defendant was "driven by the purpose of publicly humiliating the victim". Specifically, the Prosecutor's Office emphasized that, through the incriminating tweets, the defendant not only violated the dignity of the individual victim but also of the entire group of transgender women who had not undergone surgery, manifesting contempt toward them. The prosecutorial thesis classified this as incitement to hatred and transphobic hate speech, rather than mere personal opinion, given the mocking intent and the public context (social network). The judgment underlines that the defendant's "scornful expressions related to gender identity" demonstrate a "clear intent to ridicule the victim, generating feelings of humiliation and violating her dignity."

The judges emphasize that the defendant denied the victim her identity as a woman, referring to her with masculine and homophobic terms ("maricón" in Spanish is a severe homophobic insult), precisely because she was not surgically transitioned. The court found that such denial of gender identity caused the victim severe moral distress.

The case was classified as a hate crime under Article 510.2(a) of the Spanish Criminal Code (offenses against fundamental rights), committed in ideal concurrence with a crime against moral integrity under Article 173.1 CP, which sanctions degrading treatment and severe harm to a person's moral integrity. The judges also noted the generalized intent of the defendant: from her social media pages, a pattern of messages emerged in which she "repeatedly denies transgender people without

[38] Although the full text of the judgment is not published on the CGPJ website, it is summarized in institutional databases: for instance, Cápsula Informativa No. 6/2024 of the Barcelona Prosecutor's Office provides its key details: Cápsula%20informativa%20%206-2024-%20Transfobia-%20Redes%20Sociales.pdf

genital reassignment the gender they identify with", referring to them derogatorily as "travestis, hombres o lesbianas con pene" ("transvestites, men, or lesbians with penises"). This demonstrates a deep-seated hatred toward the entire group of non-operated trans individuals, further aggravating the discriminatory nature of the offense.

The judgment innovatively affirms that "the mere act of denying a trans person the gender they identify with – when done in a derogatory manner – can constitute a hate crime." It presents a clear legal stance: publicly questioning a transgender person's gender identity out of contempt equates to violating the dignity of a historically marginalized group, thereby constituting the offense under Article 510.2 CP.

Sanction: The court applied the cumulative penalties for the formal concurrence of offenses. Under the judgment, the defendant was sentenced to six months in prison (suspended sentence) and six months of fines for these offenses, in addition to accessory penalties.

The sentence has been welcomed by human rights organizations and LGBTIQ+ advocacy groups, who describe it as a **"historic ruling"** in the fight against online transphobia. According to the **Observatorio contra la LGBTIfobia**, the verdict highlights the judges' intention to **create a deterrent against transphobic insults on social media**.

Some legal experts have observed that **AP Barcelona Judgment 113/2024 strengthens the broad interpretation of Article 510 of the Criminal Code**, confirming that it covers **not only classic hate speech (public incitement to violence or hatred) but also individualized derogatory expressions that humiliate a victim based on their membership in a protected group**.

It is worth noting that the **convicted person herself belongs to the transgender community** (she identified as a **"post-operative transsexual woman"** and was a sympathizer of the far right). This confirms that **even a person belonging to a minority can be responsible for hate against that same minority (*internalized hate*)**, and that the legal system does not **distinguish based on the perpetrator's identity in hate crime cases** – what matters is the **objective conduct and its harmful potential**.

Additionally, it is significant that the **Court also imposed on the defendant a re-education course on equality and non-discrimination**, emphasizing **not only the punitive but also the educational purpose of the sanction**.

Therefore, in **Spain**, we can generally observe that the level of tolerance for potentially offensive expressions is quite low when they target protected groups or incite hostility. Both **constitutional and Supreme Court case law** have repeatedly confirmed that hate speech is **not covered** by the freedom of expression guaranteed under **Article 20 of the Spanish Constitution**, and the general trend is to **firmly repress** manifestations of hate through criminal penalties. A notable example is

the aforementioned 2018 case, in which the **Tribunal Supremo** convicted a Twitter user for **inciting hatred against women** and sentenced them to **2 years and 6 months in prison (plus a fine)** due to the **wide online dissemination** of the content.

Overall, Spain maintains a **strict legal framework** where criminal repression of **hate speech is extensive** and complemented by **educational measures** (awareness campaigns) and **proactive police monitoring** (online surveillance). This approach prioritizes **the protection of vulnerable groups** over a broad interpretation of freedom of expression.

07

Italy

07
Italy

7.1. Legislation

Article 21 of the Italian Constitution protects **freedom of expression**. It states that:

"Everyone has the right to freely express their thoughts through speech, writing, and any other means of dissemination. The press cannot be subject to authorization or censorship**."**

However, the same article sets **limits** to this freedom, prohibiting publications that are contrary to public morality and allowing the **seizure of press materials** only by a **reasoned judicial order** (except in cases provided for by the press law).

The prohibition of **discrimination** is established by **Article 3** of the Italian Constitution, which affirms, in its first paragraph, the **principle of formal equality**. It provides that:

"All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions."

The second paragraph of the same article, on the other hand, affirms the principle of **substantive equality**, establishing that obstacles that **de facto** hinder such equality must be removed:

"It is the duty of the Republic to remove economic and social obstacles which, by limiting the freedom and equality of citizens in practice, prevent the full development of the human person and the effective participation of all workers in the political, economic, and social organisation of the country".

Despite that, Italy is among the few countries that do not have **specific legislation addressing discrimination based on sexual orientation.** This legislative gap persists despite the normative evolution initiated in the 1960s, particularly with the ratification of the **International Convention on the Elimination of All Forms of Racial Discrimination (1966)** and the subsequent enactment of **Law No. 654 of 1975.** Originally aimed at combating racial discrimination, this law has undergone several amendments over time but does not explicitly include protections against **homophobia and transphobia.**

In its original wording, **Article 3**, paragraph 1, **of Law No. 654 of 1975** punished with imprisonment the **dissemination of ideas based on racial hatred, the incitement to discrimination, and acts of violence for racial, ethnic, or national reasons.** However, this provision raised concerns about a potential conflict between the **prohibition of discrimination (Article 3 of the Constitution)** and the

freedom of expression (Article 21 of the Constitution), particularly due to the vagueness of expressions such as "dissemination of ideas" and "incitement."

With **Law No. 205 of 1993,** known as the **"Mancino Law,"** significant changes were introduced. On one hand, penalties were reduced; on the other, the legislation was extended to include **religious discrimination.** The law also differentiated between penalties for the **mere dissemination of discriminatory ideas** and the **incitement or commission of violent acts.** Additionally, the Mancino Law introduced a new criminal offense concerning the display of symbols or emblems of discriminatory organizations during public gatherings, as well as an aggravating circumstance for crimes committed with the intent of discrimination or hatred.

Subsequently, with **Law No. 85 of 2006, Article 3 of Law No. 654 of 1975** was further amended. Punishable conduct was redefined: "dissemination of ideas" became "propaganda of ideas based on racial or ethnic hatred," while "incitement" was replaced by "instigation," introducing stricter criteria for qualifying punishable behaviour. According to case law, the term "propaganda" implies systematic organization capable of influencing a broad audience, thereby narrowing the scope of criminal liability. Similarly, the term "instigation" requires a minimum degree of influence on others' conduct, avoiding penalties for the mere expression of an opinion.

With the entry into force of **Legislative Decree No. 21/2018,** provisions previously contained in special laws were incorporated into the Criminal Code, integrating **Article 3 of Law No. 654/1975** through the introduction of **Article 604-bis.**

Article 604-bis of the Criminal Code, titled **"Propaganda and instigation to commit crimes for reasons of racial, ethnic, and religious discrimination,"** currently penalizes the following actions:

- **Propaganda of ideas based on racial or ethnic superiority or hatred,** as well as the **instigation or commission of acts of discrimination** for racial, ethnic, national, or religious reasons. These actions are punishable by imprisonment of **up to one year and six months** or a fine of **up to €6,000.**
- **Instigation or commission of acts of violence or provocation to violence** for the same reasons, punishable by imprisonment of **six months to four years.**

Additionally, the article provides for **increased penalties (imprisonment of two to six years)** if the propaganda, instigation, or incitement involves the **denial, grave minimization, or glorification of the Holocaust or crimes of genocide, against humanity, or war crimes,** as defined by **Articles 6, 7, and 8 of the Rome Statute of the International Criminal Court,** provided there is a concrete risk of dissemination.

Since there is no **specific provision prohibiting discriminatory speech based on sex, gender, gender identity, or sexual orientation,** some cases can rely on protections granted primarily by the **Constitution (Article 3**) and **other provisions of the Criminal Code, like Article 61** of the Criminal Code, which considers as an aggravating circumstance the commission of an act "for abject motives".

Article 595, which addresses the crime of **defamation**, is applicable when hate speech targets individuals or specific groups with statements that damage their reputation:

"*Anyone who, outside the cases provided for in the previous article, offends the reputation of another by communicating with multiple people shall be punished by imprisonment of up to one year or a fine of up to €1,032.*

If the offense consists of attributing a specific fact, the penalty shall be imprisonment of up to two years or a fine of up to €2,065.

If the offense is committed through the press or any other means of publicity, or in a public act, the penalty shall be imprisonment of ***six months to three years*** *or a fine of* ***not less than €516".***

The previous article, referred to in paragraph 1, included the crime of "ingiuria"[39], which was repealed in 2016. In this context, the **presence or perception of the offense by the victim** remains relevant, as the previous provision referred to an offense against "the honour or decorum of a present person." Today, only a **monetary penalty starting at €100** is provided for such cases.

Regarding **freedom of expression online**, Italy has **not yet adopted** special laws comparable to **Germany's NetzDG**. Instead, **general rules apply**, meaning that an **illegal statement published on social networks is treated like any "public manifestation" for criminal purposes**.

Online platforms in Italy benefit from the **"hosting provider" liability regime** established by the **EU e-Commerce Directive (Legislative Decree 70/2003)**: they are **not required to conduct prior filtering** but must **remove illegal content after receiving a notification from the authorities**.

7.2. The Scalfarotto and Zan Draft Laws

In this context, draft law no. 1052 of September 19, 2013, known as the "Scalfarotto Draft Law," represented an attempt to address the legislative gap. The text, approved by the Chamber of Deputies but not enacted into law, proposed extending Law No. 654 of 1975 to include crimes motivated by homophobia and transphobia. The proposal aimed to include, among the factors of discrimination penalized, those based on sexual orientation and gender identity, by adding the

[39] In the Italian legal system, ingiuria was historically classified as a criminal offence consisting in offending a person's honor or dignity through words, gestures, or other means, in their presence (Codice penale, Art. 594). Unlike defamation (diffamazione), which concerns harm to reputation in the eyes of third parties, ingiuria addressed direct verbal or behavioral insults.

words "or based on homophobia or transphobia" to Article 3 of Law No. 654 of 1975, thus equating these motives with racial, ethnic, and religious ones.

To reconcile the repressive measures with the need to safeguard freedom of thought, the draft law introduced paragraph 3-bis to Article 3, stating that acts do not constitute discrimination if they involve "the free expression of beliefs or opinions consistent with the pluralism of ideas, provided they do not incite hatred or violence." Article 2 of the draft law required ISTAT to periodically conduct surveys on discrimination and violence, with particular attention to the most vulnerable groups. Despite its approval in the Chamber of Deputies, the draft law was not converted into law.

More recently, in **2021**, the debate reignited around **the Ddl Zan**, a legislative proposal aimed at combating gender-based discrimination and violence. Like the Scalfarotto Draft Law, the Zan Draft Law was also discussed but ultimately blocked. It proposed extending Article 604-bis and Article 604-ter, which address aggravating circumstances for crimes committed "for the purpose of discrimination or hatred based on ethnicity, nationality, race, or religion" or to facilitate the activities of organizations, associations, movements, or groups with the same aims. The proposal sought to add new categories to the list of possible discriminatory motives, such **as sex, gender, sexual orientation, gender identity, and disability.**

The draft law also aimed to **define the concepts of sex, gender, sexual orientation, and gender identity** to ensure greater precision in the criminal law[40], addressing key criticisms raised during the debate, and, to safeguard the right to free expression (Article 21 of the Constitution), specified that the list of punishable actions would exclude the propagation of ideas. Under the current law, propaganda remains punishable only if the offense involves ideas based on racial or ethnic superiority or hatred but would have limited liability to incitement to commit acts of discrimination or violence or acts of provocation to violence.

A specific provision was included to **clarify the relationship between the reform and the right to express one's opinions.** The article titled "pluralism of ideas and freedom of choice" stated that: "For the purposes of this law, the free expression of beliefs or opinions, as well as lawful behaviours consistent with the pluralism of ideas or freedom of choice, are preserved, provided they do not give rise to a concrete risk of discriminatory or violent acts."

Lastly, the draft law contemplated a **series of non-criminal measures** aimed at raising public awareness and promoting respect and inclusion in this area, such as the establishment of a national day against homophobia, the development of a comprehensive strategy for prevention, and the establishment of specialized centres to provide legal, psychological, health, and social support to victims. It also required ISTAT to conduct a statistical survey at least every three years on population

[40] Nevertheless, it should be noted that these definitions remain contested and complex, particularly the one concerning "gender identity." For further analysis, see: Fanlo Cortés, I. (2021). *Il DDL Zan e il nodo dell'identità di genere* [The DDL Zan and the issue of gender identity]. *GenIUS – Journal of Sexual Orientation and Gender Identity Legal Studies*, 2, 37–50.

attitudes to aid the implementation of policies against racial, ethnic, national, religious, sexual orientation, or gender identity-based discrimination and violence.

However, the reference to gender identity was deemed controversial and heavily criticized. In the heated debate surrounding the draft law, it seems that rhetorical narratives, prevalent in public and political discourse across Europe, influenced the outcome more than considerations about the appropriateness of using criminal law as a tool. As of today, Italy lacks specific protections against incitement to hatred based on gender and sexual orientation.

In the absence of these integrations, insults or incitements against LGBTIQ+ people remain punishable only if they constitute other offenses (e.g., **defamation aggravated by hatred** or **generic incitement to commit a crime** if specific acts of violence are encouraged). In the **civil/administrative sphere**, there are anti-discrimination provisions (e.g., Legislative Decree 215/2003 on equal treatment regardless of race or ethnic origin) that allow victims or associations to take action against discriminatory acts, obtaining injunctive relief or compensation. However, their application against pure hate speech is limited to cases where the message constitutes, for example, **discriminatory harassment in a defined context** (workplace, services, etc.).

7.3. Interpretations in court decisions

Italian case law, as already seen with the ECtHR and Spanish courts, has also examined the limits of freedom of expression in cases of discriminatory speech. In the following cases, the Supreme Court has undertaken interpretative efforts to define the limits of freedom of expression within the Italian legal system. Although these cases do not involve discrimination based on gender or sexual orientation, which is the focus of this report, the conclusions reached by the judges are considered significant in determining the criteria for assessing whether and when the restrictions on freedom of expression are applicable, and therefore in which cases such limitations should be considered legitimate.

Supreme Court Judgment No. 31314 highlighted the **balance between freedom of expression and the prohibition of discrimination,** focusing on the context and nature of the contested conduct. The decision was based on the finding that activities conducted through a political program and a website promoted ideas of racial superiority and discriminatory behaviours.

The Court stated: "***The interpretation of normative elements must be carried out by the judge considering the context in which the individual conduct occurs, ensuring the balance between the principles of equal dignity and non-discrimination with that of freedom of expression, and thus emphasizing the need to ascertain the actual danger of the act."***

The ruling clearly distinguished between freedom of expression and behaviours that exceed constitutional limits, specifying that: "*Racial or ethnic hatred is constituted not by any generic feeling of antipathy or rejection but only by a sentiment capable of creating a concrete danger of discriminatory behaviours*."

As previously noted, **the absence of specific legislation often leads to reliance on the offense of defamation to address discriminatory speech based on gender, sexual orientation, or gender identity**. The Italian Supreme Court has extensively debated the legitimacy of imposing a custodial sentence for defamation.

The European Court of Human Rights (ECtHR) had already addressed the issue in Belpietro v. Italy (2013) and Ricci v. Italy (2013), supporting the principle that imprisonment should only be applied in exceptional circumstances. In Belpietro v. Italy, the ECtHR reiterated the **incompatibility of Article 10 of the ECHR with the imposition of a custodial sentence**, even if suspended, on a journalist convicted of failing to exercise editorial control under Article 57 of the Italian Penal Code, stating that the case lacked "**exceptional circumstances justifying such a severe sanction**" (ECtHR, Belpietro v. Italy, September 24, 2013). This principle was reaffirmed in Ricci v. Italy soon after (ECtHR, October 8, 2013).

In the **Sallusti case (2012)**, which sparked significant public debate in Italy, the Supreme Court initially upheld the "conventional legitimacy" of a custodial sentence for defamation through the press involving false news, considering such cases among the "exceptional circumstances" identified by the ECtHR. However, the **ECtHR intervened again in 2019**, reiterating that **imprisonment for press-related offenses is only compatible with Article 10 ECHR in exceptional cases, such as hate speech or incitement to violence**. Since such circumstances were absent in this case, the custodial sentence was deemed unlawful.

Following yet another ruling from the **ECtHR**, the **Italian Constitutional Court** also addressed the issue (**Order No. 131/2020**), raising a constitutional legitimacy question regarding Article 595 of the Penal Code and Article 13 of the Press Law No. 47 of 1948. The Court deferred its decision for a year, urging the legislature to reform the sanctioning system by ensuring:

- The avoidance of undue intimidation of journalistic activities.
- Adequate protection of individual reputation.
- A balanced system of rights protection.
- **The restriction of imprisonment to cases of exceptional gravity, such** as **hate speech and incitement to violence**.

The Constitutional Court emphasized that **the balance between freedom of expression and reputation protection "cannot be considered fixed and immutable," as it must adapt to the rapid evolution of technology and communication methods**.

The **Italian Supreme Court (Judgment No. 13993/2021)** subsequently affirmed that, under Article 10 ECHR, the imposition of a custodial sentence (even if suspended) for defamation committed outside journalistic activity through rapidly amplifying communication channels (such as the internet) is legitimate when **exceptional circumstances** involve severe violations of fundamental rights, such as **hate speech or incitement to violence**.

The **Constitutional Court finally ruled in Judgment No. 150/2021**, declaring the unconstitutionality of Article 13 of the Press Law in the part where it mandated both imprisonment (from one to six years) and a fine (not less than 258 euros) for aggravated defamation through the press. The Court found this provision violated the principle of proportionality and freedom of expression under Article 21 of the Constitution and Article 10 ECHR, stating:

"***The provision of imprisonment has an intimidating and suppressive effect on the democratic oversight function of journalism in contemporary pluralist systems***."

However, the Court upheld the constitutionality of **Article 595, paragraph 3, of the Penal Code**, where it provides for imprisonment (six months to three years) **as an alternative** to a fine (not less than 516 euros**), considering that imprisonment should only be applied in "exceptional cases," such as hate speech and incitement to violence or intentional disinformation campaigns**.

The **Supreme Court (Judgment No. 12199)** further examined the limits of the **exemption for political criticism under Article 51 of the Penal Code**, stating that **while political critique enjoys broad protection, it must not become a personal attack infringing upon moral integrity** (Cass. pen., Sez. V, September 14, 2020, No. 31263). **The exemption applies when expressions constitute strong dissent rather than defamatory attacks** (Cass. pen., Sez. V, June 13, 2014, No. 46132).

According to these principles, the offense of defamation under Article 595 of the Penal Code may be established when the boundaries of the necessity to assert and disseminate political ideas are exceeded, turning political debate into an opportunity to damage the reputation of opponents.

In such circumstances, statements could not be classified as an exercise of the right to criticism, not even in its extreme form, towards ideas or behaviours of others. Indeed, the expression of biased or non-objective opinions would rather amount to derogatory statements or personal attacks that harm the dignity and reputation of others.

7.4. Relevant cases

Order of the Rome Tribunal

Date: February 23, 2020

Context: The **Facebook** platform removed the profiles of several administrators of numerous pages linked to the organization **"Forza Nuova."** The administrators were accused of creating and managing dozens of pages aimed at propaganda and recruitment in favour of Forza Nuova, publishing content – including on their private profiles – that, according to the opposing party, incited hatred and discrimination, thus violating contractual clauses and community standards designed to limit the disruptive and violent effects of such messages. This justified the termination of the contract and the **removal of profiles used to share content contrary to Facebook's Community Standards**. The petitioners argued that Facebook's conduct was unlawful as it violated their fundamental right to freedom of expression. They also contested the claim that they had disseminated hate speech and demanded the reinstatement of all their profiles and pages they administered.

Decision: The appeal was rejected, ruling that Facebook's conduct was legitimate in compliance with general terms and Community Standards, as well as the European Code of Conduct and national and supranational regulations regarding the limits of expression due to the prohibition of discrimination. The court found that it was **lawful for Facebook to close profiles and pages of organizations and political movements deemed "hateful" after repeatedly flagging and deleting illicit content**. Moreover, **the Tribunal emphasized Facebook's role in preventing the "viral" spread of hate speech or discrimination and its impact on human rights**.

Facebook's Standards define a "hate organization" as: *"Any association of at least three people organized with a name, sign, or symbol that promotes an ideology, statements, or physical actions against individuals based on characteristics such as race, religious belief, nationality, ethnicity, gender, sex, sexual orientation, severe illnesses, or disability. ... We do not allow the sharing of symbols representing any of the above organizations or individuals unless for condemnation or discussion purposes. We do not allow content that praises the above organizations, individuals, or their actions. We do not allow the coordination of support for any of the above organizations, individuals, or their actions."*

The Rome Tribunal upheld that Forza Nuova fell within this definition, citing, among other factors, **hate speech directed at the LGBTIQ+ community.** For example, in statements protesting against the? Gay Pride in Piacenza: *"The provincial secretariat of Forza Nuova announces that on Saturday, May 30, we will not stand idly by during the Gay Pride. These are times when normalcy is made to be shameful, and perversion is made to be a source of pride. They want to take away children's right to have a father and a mother as nature teaches. We, as the only guardians of the traditional family and life, are ready to fight with all our might against this ideological chaos and moral disorder."*

Or in Rimini, where **homosexuality was associated with paedophilia**: *"We know of progressive thinkers and scientists from the new continent who are pushing for the theory that paedophilia is a sexual orientation, not a crime, to become common thought. It is also no secret that behind paedophilic tendencies lies latent or hidden homosexuality, as evidenced by countless public statements from members and associations of the 'homosexualist' universe in support of the perverse and criminal paedophilic sexual practice."*

The Rome Tribunal further referenced the European Court of Human Rights (ECtHR), which emphasized that online platforms have even greater duties and responsibilities when dealing with hate speech or messages that incite hatred or aim to disseminate discriminatory ideas. **If such messages are spread through the internet, the risks to human rights are even more severe**. The Tribunal reconstructed ECtHR case law on hate speech, affirming:

"Incitement to hatred does not necessarily require reference to acts of violence or already committed crimes, as prejudices directed at individuals by insulting, ridiculing, or defaming certain segments of the population and isolating specific groups – especially vulnerable ones – or inciting discrimination are sufficient for domestic authorities to prioritize the fight against racist speech over irresponsibly exercised freedom of expression, which offends the dignity and security of these parts or groups of the population.(...)Secondly, identifying incitement to violence, according to ECtHR case law, involves several indicators, with particular emphasis on the manner of communication, the language used in the aggressive expression, the context in which it is placed, the number of people to whom the information is addressed, the status and quality of the author of the statement, and the vulnerability of the recipient. (...) In summary, the ECtHR excludes the need to restrict freedom of expression in a democratic society when promoting values essential to human rights protection, especially in the presence of threats or restrictions against them. Instead, it considers state punitive intervention legitimate and necessary in the presence of hate speech aimed at suppressing the principles of equality and freedom."

Sanction:

- Ordered to pay legal costs

Supreme Court Judgment No. 42643/2004 (Fifth Criminal Section)

Date: November 3, 2004

Context: The case originates from the publication in the weekly magazine *Eva Express Tremila* of certain photographs taken during a fashion show, accompanied by a critical comment regarding the political candidacy of one of the women portrayed. The images, taken from a particular angle, exposed some intimate parts of the presenter, leading to accusations of **defamation and violation of personal dignity**. The defendants appealed to the Supreme Court against the ruling of the Milan Court of Appeal, which had upheld their convictions for defamation. The photographer contested his liability, arguing that he had merely sold the photos to a news agency without influencing their

selection or use. The director of the magazine, on the other hand, challenged the aggravated defamation charge and invoked the right to report and satire.

Decision: The Court ruled that publishing photographs taken without consent, depicting intimate parts of the complainant, was inherently capable of **harming the woman's dignity and reputation**. The dissemination of these images, removed from their original context (a fashion show), conveyed a **deliberately malicious and humiliating impression**.

The Court emphasized that satire cannot become a personal attack based on sexist stereotypes or the humiliation of women, noting that the accompanying comment had a derogatory intent, aimed at devaluing the victim as a political candidate, reducing her to a sexual object:

"The appellant argues that this assertion, even if damaging to reputation, still constitutes an exercise of the right to report and satire. However, it would be a rather strange concept of democracy that would authorize considering as a journalistic right the act of furtively peeking between the legs of women in politics. Meanwhile, it is certainly an expression of crude and outdated machismo that attempts to define a woman's worth solely in sexual terms."

The Court further ruled that satire cannot be reduced to mere insults based on clichés, lacking any connection to the actual conduct of the criticized person. **This approach was deemed offensive, sexist, and devoid of any public interest purpos**e. The Supreme Court dismissed the appeals and upheld the conviction. Both defendants were found guilty of defamation for violating the complainant's right to honour, dignity, and reputation.

Sanction: monetary fine

Supreme Court Judgment No. 10393/2013 (Fifth Criminal Section)

Date: March 6, 2013

Context: This case concerns **defamation via press, radio, and television broadcasts**. The defendant was the host of a radio programme and the licensee of a broadcasting station. The legal proceedings stemmed from allegedly defamatory statements made against public officials, entrepreneurs, and other local figures in the context of criticising the political-administrative management of the municipality of Altamura. The defendant was accused of using **derogatory expressions and suggestive metaphors**. The Bari Court of Appeal partially amended the first-instance ruling, dismissing some charges due to lack of formal complaints, while upholding the defendant's criminal liability for continuous defamation under Article 595 of the Italian Penal Code, aggravated by the use of mass media.

Decision: The Supreme Court rejected the appeal, confirming the defendant's criminal liability for continuous defamation and the resulting obligation to compensate the civil parties.

The Court underscored that the right to criticism must be exercised while respecting the truth and maintaining an appropriate tone. **The use of irony, satire, or hyperbole does not justify gratuitously offensive or reputation-damaging expressions**.

Additionally, the Court condemned the use of epithets such as ***"puppet, doormat of the black man"*** **to describe female political figures.** These terms, commonly used to denote a person as lacking individuality and being subject to the will and strategies of others, were deemed **especially defamatory in a cultural context still influenced by gender biases**. The ruling stated:

*"**Such characterisation, when directed at a female subject engaged in politics – a traditionally male-dominated field despite modern constitutional principles – assumes an even greater defamatory impact, given the historical hostility and lack of benevolence toward women in the political sphere**."*

Sanction:

- Compensation for damages
- Reimbursement of legal expenses in favour of civil parties

Supreme Court Judgment No. 50659/2016 (Fifth Criminal Section)

Date: October 18, 2016

Context: A man filed a complaint after being referred to as **"homosexual"** during a judicial proceeding, perceiving the term as offensive. The defendant contested both the offensiveness of the term and the necessary intent (*dolo*) required for the crime of defamation, arguing that in the contemporary context, the expression does not carry a derogatory meaning.

Decision: The Court ruled that for defamation to be established, the communication must damage the victim's reputation within a specific social context. In this case, **the term "homosexual" is not inherently offensive according to current linguistic and social evolution**.

The Court observed that the term, **now commonly used as a neutral descriptor of sexual orientation, does not carry an inherent negative judgment**, unlike deliberately derogatory epithets. While the defendant's conduct may have violated the victim's right to personal identity, the Court clearly distinguished between two legal domains: offense to reputation (of criminal relevance) and violation of personal identity (of civil nature).

Although referring to someone's sexual orientation may have affected the victim's self-perception, this alone was not sufficient to constitute the crime of defamation. **The ruling emphasised that language and social perception are crucial factors in determining whether an expression is offensive or neutral. The Court highlighted social and cultural evolution as a key element in excluding the intrinsic offensiveness of the term "homosexual."** Notably, the judgment implicitly recognises **the role of language in normalisation and social inclusion**. The neutral character attributed to the term serves as an indicator of social progress, but the Court acknowledged that **context and intent could still render it harmful**.

Sanction: none

Supreme Court Judgment No. 30545/2021 (Fifth Criminal Section)

Date: August 4, 2021

Context: A **stalking** case involving **gender-based discrimination and sexual orientation bias** against the victim. The defendants, one of whom had previously been in a relationship with the victim, engaged in a **campaign of harassment**, which included sending numerous derogatory messages referencing the victim's **sexual orientation** in a contemptuous manner, using terms such as **"lesbian" and "whore."**

The harassment escalated with the creation of a WhatsApp group whose name was specifically intended to ridicule the victim in the workplace, leading to a violation of her privacy. The lower court had ruled that jealousy could not justify the criminal conduct of the accused. Instead, it classified the actions as a form of gender-based violence, emphasizing that the **repeated references to the victim's sexual orientation were intended to attack her identity and subject her to social stigmatization**.

Decision: The Supreme Court dismissed the defence's argument that jealousy could be considered a mitigating factor. The ruling clarified that jealousy cannot constitute a motive of particular moral or social value under Article 62, No. 1 of the Penal Code, nor can it justify severe criminal conduct such as stalking. On the contrary, the Court found that the defendants' actions were aggravated by their intent to target the victim based on her sexual orientation, emphasizing the serious nature of discriminatory offenses directed at the victim. The Court's reasoning underscored that gender identity is a fundamental aspect of personal dignity, which is protected under Italian Constitutional Court case law (Judgments No. 221/2015 and No. 180/2017).

Gender identity was defined as the individual's self-perception as a man or woman, which does not necessarily align with their biological sex assigned at birth. **The Court reinforced the principle of self-determination and the rejection of stereotypes, emphasizing that gender identity cannot justify discriminatory conduct**. Significantly, the Court pointed out that **the defendants shared the same gender identity as the victim**, **making them fully aware of the profoundly harmful nature of their attacks**, which were aimed at **stigmatizing and denigrating a specific sexual orientation**.

The Supreme Court referenced **European Court of Human Rights (ECtHR) case law**, highlighting that effective criminal legislation against hate speech contributes to protecting freedom of expression in a democratic society. The ruling cited cases such as Vejdeland and Others v. Sweden (2012) and Beizaras and Levickas v. Lithuania (2020). These cases emphasize the duty of states to implement measures to combat discrimination and hate speech, particularly against individuals based on their sexual orientation. Furthermore, **the judgment reaffirmed that gender-based violence is not limited to physical attacks, but also includes conduct aimed at demeaning a person's sexual or gender identity.** In this case, **the victim's sexual identity was weaponized to subject her to public humiliation**, which was further amplified **by the workplace setting**.

Sanction: the Court upheld the appellate ruling, sentencing each defendant **to four months' imprisonment,** reduced due to the abbreviated trial procedure**.**

Supreme Court Judgment No. 25759/2022

Date: July 5, 2022

Context: The Supreme Court addressed a case dating back to 2014, involving Simone Pillon, a well-known politician, former **Lega senator**, and at the time of the events, **National Councillor of the Forum of Family Associations**. The case originated from statements made by Pillon during public meetings and debates with students, in which he accused the **LGBTIQ+ association Omphalos** and its members of engaging in propaganda celebrating homosexuality or involving minors in exhibitionist/erotic activities. The defendant **spread false claims about the association's activitie**s, portraying the informational material distributed during a student assembly – focused on the prevention of sexually transmitted diseases – as pornographic. He further alleged that the association was engaged in the **"inculcation of gender ideology,"** seeking to make people believe that **"being gay is wonderful, something to try."**

During a speech at the **Forum of Family Associations**, later uploaded to **YouTube**, Pillon spoke under the title: **"*Will we still be able to say mom and dad*?"**. His remarks included:

- References to the **"eager arms of the Arcigay group"**
- Suggestions that **"boys interested in these topics and seeking acceptance... well, I don't want to go into details of how they will be welcomed... but they provide all the contacts, the website, etc."**

Following a conviction in the first instance, the Perugia Court of Appeal acquitted Pillon, ruling that his statements were protected political criticism within the broader debate surrounding the Cirinnà Draft Law, which sought to establish civil unions for same-sex couples in Italy.

Decision: The Supreme Court overturned the acquittal, **recognizing that the statements had caused harm to the honour and reputation of the association.**

The Court **rejected the defence argument** that the statements fell within the **right to political criticism**, emphasizing that:

*"**The inherent limit to the exercise of the right to criticism is that it must be tied to a core of truth, must not devolve into personal attacks aimed at undermining another's moral standing, and must not convey hateful discrimination based on personal characteristics of those involved."***

The Court ruled that **an attempt to derail a legislative proposal**, which was not even directly related to the specific context, **could not justify** remarks designed to **distort and stereotype** the association and the **LGBTIQ+ movement** as a whole. **The defendant's comments falsely attributed motives of recruitment and homosexual proselytism to an association whose actual mission was to combat discrimination and promote social inclusion.**

A key aspect of the ruling was the Supreme Court's **analysis of European Court of Human Rights (ECtHR) case law on hate speech**. The **ECtHR**, as cited by the Supreme Court, has established that:

- Under **Article 10(2) ECHR**, restrictions on freedom of expression are justified where **"tolerance and respect for the equal dignity of all human beings are the foundation of a democratic and pluralistic society."**
- Therefore, **"in some democratic societies, it may be necessary, as a matter of principle, to sanction or even prevent any form of expression that spreads, incites, promotes, or justifies hatred based on intolerance."**

Additionally, the **ECtHR has emphasized the responsibility of politicians** when speaking in public:

"It is fundamental that politicians avoid comments that could encourage intolerance."

While exceptions to freedom of expression must be interpreted narrowly, hate speech cannot be shielded under Article 10 ECHR, particularly when it targets minority groups in a discriminatory manner.

The Supreme Court noted that in some cases, the ECtHR had ruled that:

- **Freedom of expression should not be restricted in a democratic society** if it **promotes human rights values**, particularly when those rights are **under threat or restriction**.
- Conversely, **punitive state intervention is justified and necessary when speech serves to suppress fundamental human rights principles**.

Despite Italy's lack of specific hate speech legislation related to gender, gender identity, and sexual orientation, the Supreme Court relied on ECtHR case law to assess the offensive and discriminatory nature of certain speeches. In this case**,** the Supreme Court **annulled** the acquittal and **remanded the case to the Court of Appeal for a new decision**.

In **December 2022**, the **Florence Court of Appeal convicted the defendant**, ordering:

- A fine of €1,500
- Compensatory damages of €30,000

However, the crime was declared time-barred due to the statute of limitations, which Pillon did not waive.

Supreme Court Judgment No. 39770/2023

(Cass. pen., Sez. V, Sent. No. 39770, Pres. Vessichelli, Rel. Brancaccio)

Date: June 15, 2023

Context: In January 2017, the defendant **published a series of statements on her personal blog**, including **explicit criticisms of the LGBTIQ+ movement**, accusing it of **"increasingly spreading paedophilia."**

Decision: The Supreme Court **convicted the defendant** under **Article 595 of the Italian Penal Code** for having **"offended the honour and reputation of people of homosexual orientation."**

A key aspect of the ruling is the Court's **broad interpretation of defamation**, recognising that **collective subjects** – provided they are **identifiable and determined** – can also be protected under defamation law.

The Court redefined "honour" not only as an individual right but also as a legal interest of a social or collective nature:

"*Denigratory expressions (in this case, the accusation of increasingly spreading paedophilia) constitute the crime of defamation whenever the reference to the subject is concretely used as a synthetic expression of logical-subjective-individualizing connection, aimed at representing with a single term all the legal associations or de facto entities that, recognized as part of the activist movement and identifiable as such, engage in political and social activities to protect the rights of those who belong to the homosexual, transgender, or otherwise gender-fluid community."*

In this case, **two specific LGBTIQ+ associations**, which had filed as **civil parties**, were awarded damages. The Court conducted a **detailed reconstruction of the elements constituting defamation (Article 595 IPC)** and **the limits of the right to criticism**, emphasising that the **defamatory nature of a statement must also be assessed in light of "the sociological and historical dynamics in which it is inserted."**

To **determine the existence of the crime**, the judge must verify:

- **The negative, derogatory, and thus damaging meaning of a term to the "objective honour" of a person or entity.**
- **How the term is perceived in a given sociological and historical context.**

The Court highlighted that the defendant was fully aware of the meaning of the word "paedophilia", which is unequivocally understood in society as highly offensive. In the context of her statement, she explicitly suggested that the LGBTIQ+ movement promotes such an orientation, a claim that carries clear criminal relevance. The ruling further clarifies that offensive and discriminatory expressions targeting specific social groups – such as women or sexual minorities – can be legally relevant, even in the absence of specific hate speech legislation.

Sanctions: The Supreme Court upheld the ruling of the Court of Appeal, which had sentenced the defendant to:

- A fine of €1,500.
- Compensation for damages to the civil parties.
- An immediately enforceable provisional payment of €2,500 for each civil party.
- Payment of procedural costs and reimbursement of legal representation expenses for the civil parties.

By **rejecting the appeal**, the Court confirmed the defendant's liability and reinforced the principle that **hate speech against minority groups can be prosecuted under defamation laws.**

To sum up, we can say that **Italy generally applies moderate criminal sanctions for hate speech** (imprisonment in very few cases, often commuted to alternative penalties or conditionally suspended, and fines of a few thousand euros). **On the civil level**, public figures targeted by hate speech sometimes seek damages or file defamation lawsuits: courts recognize non-pecuniary damages for discriminatory offenses against reputation. **Civil or administrative measures** (content removal, compensation, injunctions) may be applied alongside criminal sanctions on a case-by-case basis, but there is no comprehensive law requiring platforms to swiftly remove hate speech content; enforcement relies on voluntary cooperation or judicial orders.

08 Latvia

08
Latvia

8.1. Legislation

The Constitution of Latvia (*Satversme*), adopted on February 15, 1922, forms the foundation of the national legal system. **Article 100** of the Constitution guarantees the right to **freedom of expression**, stating that "everyone has the right to freedom of expression, including the right to freely acquire, hold, and disseminate information and opinions. Censorship is prohibited" (*"Ikvienam ir tiesības uz vārda brīvību, tostarp tiesības brīvi iegūt, paturēt un izplatīt informāciju un savus uzskatus. Cenzūra ir aizliegta"*).

However, freedom of expression is not an absolute right. It can be subject to limitations when necessary to protect national security, public order, public health and morals, or the rights of others. However, the same article 100 excludes speech that conflicts with laws protecting honour and the rights of others, and above all, **Article 116** of the Satversme allows freedom of expression to be limited to protect the rights of other persons (**general limitation clause**). **Article 91** states: "All people in Latvia are equal before the law and the courts. Human rights shall be exercised without any discrimination." This provision ensures that all citizens are **treated fairly and without discrimination**, providing the constitutional foundation for the protection of fundamental rights in the country. In this context, the Latvian legislature has introduced specific regulations aimed at preventing and penalising **hate speech**.

The Criminal Code (Krimināllikums) contains several provisions related to combating incitement to hatred, including **Article 149**, which pertains to *violations of the prohibition of discrimination*, addressing discrimination based on “grounds of racial, national, ethnic, or religious affiliation or violations of the prohibition of other types of discrimination, if significant harm has been caused thereby”.

Article 78 of the Criminal Code is included in **Chapter IX**, titled *"Crimes Against Humanity, Peace, War Crimes, and Genocide"*, and criminalises actions aimed at inciting hatred or enmity based on nationality, ethnicity, race or religion.

The original 1999 version was titled: *Violation of National and Racial Equality, Restriction of Human Rights*. In 2014, it was modified to *Incitement to National, Ethnic, Racial or Religious Hatred*.

The current version, in force since 2014, states:

*Any person who commits acts directed toward triggering **national, ethnic, racial or religious hatred or enmity** is punishable by deprivation of liberty for up **to three years**, or by temporary deprivation of liberty, or by probationary supervision, or community service, or a fine.*

*The same acts, if committed by a group of persons, or by a **public official or a responsible employee** of a company/organization, or if committed using an **automated data processing system** – are punishable by deprivation of liberty for up to **five years**, or by temporary deprivation of liberty, or by probationary supervision, or community service, or a fine*.

*The act provided for in Paragraph 1, if it is associated **with violence or threats**, or if committed by an **organised group**, is punishable by deprivation of liberty for up to **ten years**, with or without probationary supervision for up to three years.*

Thus, we observe harsher penalties for hate speech, particularly when spread through digital means and social media, reflecting the growing prevalence of online hate speech and extremist-inspired violence. A law of 17 December 2020 updated the sentencing options in Article 78. It **replaced** the term *"piespiedu darbs"* (compulsory labour) in the first two paragraphs with **"probācijas uzraudzību"** (probationary supervision) **un "sabiedrisko darbu"** (community service).

This change, which took effect in 2021, means that instead of a generic forced labour penalty, courts can now impose **probation supervision** or **community service** as separate alternatives alongside imprisonment or a fine.

So, article 78 primarily covers **racial, ethnic, and religious hatred**, reflecting the traditional focus on these categories. In **Latvia**, this is particularly relevant due to historical and social dynamics, as it addresses the protection of both the **Latvian majority** and the **Russian-speaking minority**, which has historically been a source of tension.

Since 2014, however, Latvia has also introduced Article 150 of the Criminal Law – Incitement of Social Hatred – found in **Chapter XIV** of the Special Part of the Criminal Code, titled *"Crimes Against Fundamental Rights and Freedoms of the Person"* (*"Noziedzīgi nodarījumi pret personas pamattiesībām un pamatbrīvībām"*), to cover additional characteristics. Paragraph 1 penalizes incitement to hatred or enmity against a person or group based on **gender, age, disability, or "any other characteristic"** (a residual category), if such incitement causes **substantial harm**.

As with Article 78, Article 150 prescribes penalties that vary based on the severity and circumstances of the offense. "**Substantial harm"** (būtisks kaitējums) is a prerequisite for liability under the basic offense in Article 150, and the law itself does not rigidly define "substantial harm" in this Article, but Latvian law provides general criteria in the transitional provisions: substantial harm is established if the offense results in either sufficiently large material damage or "significantly endangering other legally protected interests"

In hate speech cases under Article 150, it is typically the latter – a significant threat to legally protected interests such as equality, human dignity, or public order – that must be shown. For example, the law specifies that if no quantifiable loss is involved, substantial harm exists when important rights or interests protected by law (like constitutional rights to equality) are seriously

endangered. This threshold means not every biased remark is criminal; the act must reach a level of seriousness where it notably harms societal interests or the rights of the targeted group.

Article 150 is divided into three parts: the basic offense (part 1) requiring substantial harm, and aggravated forms (parts 2 and 3) for offenses by officials, groups, via automated systems, or involving violence or threats. **In the aggravated scenarios (e.g. organized or violent hate incidents), the law does not require separately proving substantial harm, as the circumstances are deemed inherently serious.**

The inclusion of the substantial harm requirement in Article 150 serves to limit criminal liability to cases of tangible social danger, avoiding the criminalization of isolated or trivial expressions of bias on grounds like gender or age. The legislative intent was to ensure that only conduct causing real harm to public order or to the rights of others is treated as a crime, thereby protecting freedom of expression in borderline cases. In practice, this threshold has indeed acted as a filter: authorities often decline to prosecute one-off hateful remarks under Article 150 if they conclude that the necessary social harm is not present. For instance, from 2016 – 2020, a majority of police refusals to open hate speech cases were justified by "absence of substantial harm" under Article 150.

This indicates that mere biased or offensive statements (e.g. a single sexist or ageist comment) typically do not trigger criminal liability unless they escalate to something that truly endangers societal values or the targeted group's rights. The apparent purpose of requiring substantial harm is therefore to reserve criminal enforcement for serious instances of hatred – for example, coordinated campaigns of misogynistic abuse or hate incidents that create real risks to the security or dignity of the targeted group. Legal commentators note that "substantial harm" in such contexts often means a significant threat to legally protected interests (like equality or fundamental rights) rather than economic loss.

Notably, incitement of racial/ethnic hatred under Article 78 has no such harm requirement, reflecting that those offenses are per se considered serious.

Article 150 has undergone significant changes in scope and wording since its inception. When the Criminal Law was first enacted, Article 150 was originally titled "Violation of equality of persons based on their attitude toward religion". In its initial form (effective 1999), Article 150 covered religious discrimination and hate: it criminalized direct or indirect restriction of rights or granting of advantages based on a person's attitude to religion (or atheism), as well as "offending a person's religious feelings or inciting hatred because of their attitude toward religion or atheism", punishable by up to 2 years imprisonment. This early version did not require proof of any specific harm – it was a broadly defined offense combining religious discrimination and blasphemy-like conduct. Notably, the penalty structure was milder than for racial hatred (Article 78) and the provision was placed in a different chapter (crimes against personal rights/freedoms).

Legal commentators criticized this arrangement as illogical and a remnant of Soviet-era law – pointing out that religious hate was treated more leniently than racial hate, and that the old Article 150 conjoined two disparate concepts (insult to religious feelings and incitement of religious hate).

These critiques set the stage for reform. Major amendments in 2013 – 2014 reshaped Article 150. A comprehensive Criminal Law amendment on 13 December 2012 (effective 1 April 2013) revised many penalty sections; for Article 150, it adjusted the sanctions (introducing short-term detention as a punishment) and deleted the offense of "religious ritual disturbance" (former Article 151) as part of decriminalizing certain minor religious offenses. The core content of Article 150, however, still pertained to religion until the next set of changes. The turning point came with the 25 September 2014 law "Grozījumi Krimināllikumā" (Amendments to the Criminal Law), which gave Article 150 its current content and title "Incitement of social hatred and discord". These amendments, effective 29 October 2014, removed religious hatred from Article 150 and transferred it to Article 78 (which now covers incitement based on nationality, ethnicity, race, or religion).

In place of the old religious focus, Article 150 was redefined to address hatred or discord related to other characteristics – explicitly listing gender, age, disability, or "any other features" as protected categories. The law does not explicitly mention **sexual orientation**, but **Latvian case law has interpreted Article 150 broadly**, extending it to **homophobic speech** by considering **sexual orientation as an "other personal characteristic."**

The new three-part structure (basic offense with harm in part 1 and aggravated offenses in parts 2 and 3) was modelled after Article 78's structure but with the added harm threshold in part 1.

The title was changed from a narrow "violation of equality on religious grounds" to a broader "incitement of social hatred and enmity", reflecting the expanded protected groups and the focus on hate-incitement.

As of the latest reforms, there have been discussions about possibly removing the "substantial harm" clause to improve enforcement (given concerns that it impedes hate speech prosecutions), but no such amendment has been adopted yet. Article 150 thus stands as the product of a 2014 overhaul, representing Latvia's attempt to balance the punishment of hate-motivated offenses against social groups with safeguards against over-criminalization.

The current version of Article 150, titled *"Incitement to Hatred and Social Enemity"*, reads as follows:

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 the deprivation of liberty for a period of **up to one year** or temporary deprivation of liberty, or probationary supervision, or community service, or 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 is committed using an **automated data processing system**, the applicable punishment is the deprivation of liberty for a period of **up to three years** or temporary deprivation of liberty, or probationary supervision, or community service, or fine.*
3. *For the act provided for in Paragraph one of this Section, if it is **related to violence or threats**, or the criminal offence provided for in Paragraph one of this Section, if it has been committed by an **organised group,** the applicable punishment is the deprivation of liberty for a period of up to **four years** or temporary deprivation of liberty, or probationary supervision, or community service, or fine*.

It is evident that the penalties under Article 150 are generally lower than those prescribed by Article 78, which focuses on hatred based on nationality, ethnicity, religion or race.

Article 48 of the Criminal Code regulates the **aggravating circumstances** to be considered during sentencing, including cases where "the crime was committed for racist, national, ethnic, or religious motives, or out of social hatred." This means that if a crime is motivated by hatred towards, for example, a particular racial, ethnic, national, or religious group, such a motive may be considered an aggravating circumstance by the judge. However, it should be noted that **sexual orientation or gender identity are not explicitly mentioned** in this list, and international organizations, such as the ECRI of the Council of Europe, have recommended to include them. Before 2014, this aggravating factor applied exclusively to violent crimes. Since 2014, its scope has been extended to include **any criminal offense**, such as **workplace discrimination** or **defamation**.

Article 2352.1 of the **Latvian Civil Law (Civillikums)** grants individuals the right to take legal action to **retract information that damages their reputation and dignity** unless the disseminator proves its truthfulness. If such information is published in the **press**, it must be retracted in the same medium. If included in a **document**, the document must be replaced. In other cases, the court determines the retraction procedure. Additionally, if a person's reputation and dignity are unlawfully harmed **orally, in writing, or through actions**, they are entitled to **financial compensation**, with the amount determined by the court.

One of the few examples of concerning **homophobic statements** was **I.K. vs. MP L.O, where, on April 25, 2006**, the **Jūrmala City Court** rejected **I.K.'s claim** because L.O. in his statement have not named the applicant but have spoken about homosexual persons in general, thus the applicant has not ground to ask for compensation for violation of his personal honour and dignity.

8.2. Interpretations in court decisions

Latvian authorities and courts interpret Article 78 **broadly**, covering **any activity intended to incite hatred**. According to the Supreme Court of Latvia, the law's scope implicitly includes related characteristics like **language** – hate directed at someone's language (for example, Russian vs. Latvian language) is considered covered under national or ethnic origin.

The offence outlined in **Article 150** of the Criminal Code has a **material structure**, as one of its essential elements is the occurrence of concrete consequences, namely, the causation of **significant harm**.

Article 23 of the Criminal Code establishes that:

Liability for an offence provided by the Criminal Code that has caused significant harm applies if the offence has resulted in one of the following consequences:

1. **Material damage has been caused that, at the time of the offence, was not less than the amount of five monthly minimum wages established in the Republic of Latvia, and other legally protected interests were also endangered;**
2. **Material damage has been caused that, at the time of the offence, was not less than the amount of ten monthly minimum wages established in the Republic of Latvia;**
3. **Other legally protected interests have been significantly endangered.**

Latvian courts interpret Article 150 strictly, often emphasising the need to prove the intent to incite hatred and the occurrence of substantial harm for a conviction under Part 1. The case law shows that courts require direct intent – the perpetrator must consciously intend to stir up hatred or discord against the group in question. As for "substantial harm," it is treated as an "evaluative concept" shaped by court practice; judges assess on a case-by-case basis whether the offender's actions significantly endangered the protected interests (e.g. the equality and fundamental rights of the target group or public tranquillity). The Latvian Supreme Court (Senate) has clarified that an infringement of constitutional rights (such as the right to equality) inherently counts as a "significant endangerment" under the substantial harm criterion.

The concept of **"significant harm"** is an evaluative term whose meaning is defined by judicial practice. The **Criminal Department of the Senate of the Supreme Court of Latvia**, in its decision of **September 1, 2008**, case no. **12330002307**, stated that:

"The violation of rights guaranteed by the Constitution is in any case considered a significant threat to the rights and interests of the person under Article 23 of the law 'On the Validity and Application of the Criminal Code.'"

Subsequently, in the decision of **September 29, 2016**, case no. **11816003310**, concerning the determination of significant harm in the context of the offense under **Article 145** of the Criminal Code, the Criminal Department clarified that:

"Not every violation of rights guaranteed by the Constitution of the Republic of Latvia is, in itself, considered significant harm under Article 23 of the law 'On the Validity and Application of the Criminal Code,' without a specific evaluation of the violation. Significant harm must be determined based on evidence examined in court, evaluating the nature and content of the threat to interests, the characteristics of the injured party, and their attitude towards the specific threat."

Regarding the importance of different protected interests, the Latvian court also refers to principles established by the **European Court of Human Rights (ECtHR)**. In its judgment of **February 9, 2012**, in the case *"Vejdeland and Others v. Sweden"*, application no. **1813/07**, paragraph 55, the Court stated:

"The Court emphasizes that discrimination based on sexual orientation is as serious as discrimination based on race, origin, or skin colour."

To establish the offense of **incitement to social hatred** under **Article 150** of the Criminal Code, **Latvian case law** requires that:

1. **The act is public** (e.g., statements in the media, social networks, public rallies).
2. **There is a concrete risk of violence or discrimination.**
3. **The perpetrator's intent is to incite hatred and social division.**

According to the **Latvian Supreme Court**, **significant harm** occurs when:

1. **Incitement to hatred results in discriminatory acts** (e.g., dismissals, denial of services).
2. **Statements create a climate of hostility and fear within society.**

However, **court cases** have revealed challenges in **applying penalties** for incitement to social hatred due to the difficulty in **proving direct harm**.

8.3. Relevant cases

Riga Regional Court, Case No. 11840003108 (K04-73-10/10)

Date: August 18, 2010

Context: The case concerns an individual who, through the publication of numerous comments on various web portals, openly expressed hostile, aggressive, and discriminatory opinions against several social groups and ethnic minorities. His statements targeted homosexuals, police officers, Jews, Russians, and other ethnic minorities, while also expressing clear support for the ideology of **National Socialism** and **racism**, even going as far as **justifying the Holocaust genocide**.

On various portals, the defendant expressed his adherence to the principles of National Socialism and his disdain for democracy, which he described as a "2,500-year-old utopia," instead praising the "most progressive ideas of the 20th century" linked to the National Socialist state. In his comments, he **incited violence against sexual minorities**, claiming that **"gays should be eliminated"** and that **Pride events "would become fun if machine guns were used."** He also used anti-Semitic expressions such as **"if society is Judenfrei, these mistakes will be eliminated"** and justified racism by stating that it is **"a good and necessary thing."**

On a portal dedicated to the LGBTIQ+ community, the defendant further incited discrimination, asserting that the real issue was not LGBTIQ+ rights marches but the **very existence of LGBTIQ+ individuals**, who **"should be eliminated."** He also expressed hatred towards Russians, calling them **"occupiers"** and claiming that he would work his entire life to make them disappear from Latvia.

In court, the defendant admitted to being the author of the comments published on the various portals but argued that such statements fell fully within his **right to freedom of expression,** protected by **Article 100** of the **Latvian Constitution**. He also dismissed the charges, claiming that the proceedings were the result of a **"political manoeuvre"** orchestrated against him by non-governmental organisations such as **dialogi.lv**, which he labelled as a **"Soros organisation,"** and that the real reason for the trial was the incompatibility of his views with the dominant ideology in Latvia. He denied having incited hatred or violence, claiming that he had simply expressed personal opinions.

The **Riga Regional Court** subjected the defendant's comments to analysis by two experts – one from the **State Language Agency** and **Dr. A. Judins** – who concluded that the published content displayed a **clearly hostile, mocking, and aggressive attitude** toward various social and racial groups, also expressing **support for racism** and the **ideology of National Socialism**.

The Court reiterated that **freedom of expression is not unlimited** and cannot be invoked to justify statements that incite hatred and violence. It referred to national and international legal standards, including:

- **Article 100** of the **Latvian Constitution** on freedom of expression,
- **Article 10** of the **European Convention on Human Rights (ECHR)**, which allows for restrictions on freedom of expression when necessary to protect public order and the rights of others,
- The **Universal Declaration of Human Rights**, and
- The **UN International Covenant on Civil and Political Rights**, which explicitly prohibits all forms of racial discrimination.

The Court emphasised that the defendant's comments not only **offended the targeted minorities** but also promoted ideologies dangerous to social cohesion, such as the **justification of the Holocaust** and the **legitimisation of violence against ethnic and sexual minorities**.

A further **psychological evaluation** determined that the defendant suffered from **mixed personality disorders** and **regressive-type delusions** – a condition that, while not excluding **criminal liability**, was considered a **mitigating circumstance**.

The court found the defendant **guilty** of the crime of **inciting racial, national, and ethnic hatred** under **Article 78, Part 2** of the **Latvian Criminal Code**.

Sanction: The Court imposed a **two-year prison sentence**, with the sentence **suspended** and a **two-year probationary period** applied.

Riga Regional Court, Case No. 11840002711 (K04-0233-11/20)

Date: December 27, 2011

Context: This case concerns an incident of **ethnic hate speech** on the social platform **Draugiem**, where a user, a member of the discussion group *"Fourth People's Awakening"*, posted a comment containing **violent and discriminatory expressions** against the **Russian-speaking community** in Latvia.

The incriminating comment read: *"We could burn those Russian speakers like dolls...(damn)"* and continued with the statement: *"And we really need to. If this is hate speech, I'm doing it 100%... Those bastards are just stealing jobs from Latvians and forcing normal people to leave the country."*

The content of the message clearly expressed **discriminatory and violent intent** directed towards a significant **ethnic minority** within Latvian society, thereby fuelling prejudice and inciting hostility. During the trial, the defendant **admitted guilt** and acknowledged posting the incriminating comment. However, it emerged that his actions were motivated by a **previous personal conflict** with a group of **Russian-speaking youths**. The **prosecutor** argued that while there had been a prior conflict, this did not justify the severity of the offense. The defendant had responded to a **minor incident** with an act of **hate incitement**, deemed significantly more socially dangerous.

Despite the prosecutor's objections, the Court chose **not** to consider the previous incident as a mitigating factor, focusing solely on the defendant's conduct and the **seriousness** of the published comment.

The **Latvian Language Agency** provided an analysis of the **linguistic and semantic content** of the comment, confirming its **discriminatory** and **violent** nature.

Based on this expert opinion and the gathered evidence, the Court found the defendant **guilty** of committing a **serious and intentional crime** under **Article 78, Part 2** of the **Latvian Criminal Code**, which criminalises incitement to **national, ethnic, and racial hatred**.

A key element in the ruling was the **aggravating factor** of using an **automated data processing system**, namely **the internet**. The Court emphasised that Latvian lawmakers recognise the **high social danger** posed by **hate speech** disseminated via **social media** and online platforms, as such content has an amplified potential to reach a broad audience and negatively impact **social cohesion**.

The Court also highlighted that the defendant's statements went beyond merely expressing a personal opinion; they constituted a **clear incitement to violence and discrimination** against a specific ethnic group.

Decision: Although the Court acknowledged the gravity of the offense, it considered **mitigating factors** related to the defendant's **personal circumstances**, such as his **minor status** at the time of the offense, the **absence of a criminal record**, and his **admission of wrongdoing** during the trial.

Sanction: The Court sentenced the defendant to **three months of imprisonment**, suspended with **one year of probation**.

Riga City Northern District Court, Case No. 11840000612 (K32-0202-13/6)

Date: January 3, 2013

Context: On **January 12, 2011**, **ZR**, while at home, posted a comment under an article titled *"Police Arrest Organized Group Suspected of Desecrating Jewish Graves"*, published on the news portal www.apollo.

Although the comment acknowledged that **desecrating graves** was a sin, it contained **offensive and discriminatory statements** against the **Jewish community**. The text read: *"Desecrating graves is a sin, but not those of people who have put themselves in God's place and, throughout their existence, have caused so much devastation to humanity that it's hard to believe they still survive."*

This message, posted in response to an article about **antisemitic vandalism**, raised concerns for its potential to **incite racial hatred** and **discrimination**, as it could be interpreted as an **implicit justification** for such criminal acts.

During the trial, the defendant, **ZR**, reached a **plea agreement** with the **prosecutor**, fully admitting guilt for committing a crime under **Article 78, Part 2** of the **Latvian Criminal Code**, which penalizes **incitement to racial or national hatred**. The agreement stipulated a sentence of **six months of imprisonment**, with the sentence **suspended** and **six months of probation**.

This strategy allowed the defendant to avoid serving the actual prison sentence while still acknowledging the **seriousness of his conduct**.

Decision: The **Riga Northern District Court** approved the agreement between the parties, confirming the defendant's **guilt** and the **adequacy** of the proposed penalty. The Court stressed that the published comment was **inherently discriminatory** and **capable of fostering national hatred and social discord**.

The Court specifically noted that the comment:

- Contained **indirect justifications** for the **desecration of Jewish graves**, downplaying the severity of the act and implying that the victims **deserved such treatment**.
- Expressed **open contempt** for the **Jewish people**, using arguments that echoed **historical antisemitic stereotypes** used to justify discrimination and violence.
- **Incited ethnic conflict**, contributing to the deterioration of interethnic relations and legitimising **hatred** based on **national** or **religious** identity.

The Court also referenced national and international legal norms limiting **freedom of expression**, highlighting that the right to voice opinions **cannot** be invoked to justify **hate speech**. Specific references included:

- **Article 100** of the **Latvian Constitution** protects **freedom of expression** but allows restrictions to safeguard **public order** and **the rights of others**.
- **Article 10** of the **European Convention on Human Rights (ECHR)**, permitting limits on expression in the presence of **hate speech**.
- **Article 19, paragraphs 1 and 2**, of the **UN International Covenant on Civil and Political Rights**, recognising freedom of expression while allowing restrictions when necessary to respect others' rights or to protect public safety.

The Court found that the comment – posted under an article about the desecration of Jewish graves (which were vandalised with swastikas and symbols associated with **Nazi crimes against Jews**) – constituted an **indirect approval** of such criminal acts, thereby contributing to the **spread of racist ideologies**.

Sanction: The Court approved the plea agreement, sentencing **ZR** to **six months of imprisonment**, **suspended** with **six months of probation**. This decision reflected the Court's intention to **condemn discriminatory behaviour** while recognising the defendant's **admission of guilt** and the absence of further violent or repeated offenses.

Latvian Supreme Court, Case No. 11840002515 (SKK-316/2018)

Date: July 5, 2018

Context: On **August 15, 2015**, the defendant, dissatisfied after encountering a **Black man** during a visit to the **"F1" fitness centre**, posted a comment on **Facebook** from his laptop containing **openly racist and offensive remarks**.

In the post, the defendant described the encounter as a *"disgusting surprise"* and linked the Black man's presence to diseases such as **Ebola**, **AIDS**, and **swine flu**, stating: *"Those monkeys have a much higher immunity than white men! DISGUSTING that they let them in!"* The post also included a photo of a Black man found online.

During the investigation, additional evidence emerged supporting the hypothesis of **racist intent**: a search of the defendant's residence uncovered **21 A4 sheets** with the word *"NIGGER"* crossed out with a red line. Moreover, the defendant had sent emails to the fitness centre expressing dissatisfaction with the presence of Black people at the facility. The trial court initially **acquitted** the defendant of the charge under **Article 78, Part 2** of the **Latvian Criminal Code**, finding that the alleged crime was not substantiated. However, following an **appeal** by the **prosecutor**, the **Court of Appeal** overturned the initial ruling, finding the defendant **guilty** of **incitement to racial hatred**. The Court sentenced the defendant to **28 days of temporary detention** to be served in a **medical facility** for a **mandatory psychiatric evaluation**.

The Court emphasized that the defendant's statements were not mere personal opinions but constituted a **direct attack** on a specific **ethnic minority**, aimed at promoting **prejudice** and **racial hatred**. The use of **derogatory language** and **discriminatory insinuations** was deemed capable of fostering a climate of **hostility and intolerance**. The defendant and his lawyer subsequently filed an **appeal to the Supreme Court**, arguing the absence of direct intent and challenging the evidentiary assessment.

Decision: The **Latvian Supreme Court**, in reviewing the case, clarified that the **subjective element** of the crime under **Article 78** requires **direct intent**. For the offense to be established, it is insufficient for the defendant to have merely expressed **discriminatory opinions**; it must be proven that he did so with the **deliberate aim** of **inciting hatred or discrimination**. The Court highlighted that the **content analysis** of the statements is crucial in assessing whether the message is capable

of **inciting hatred**. Elements such as the **form**, **style**, and **provocative nature** of the statements are essential in determining **intent**.

The Supreme Court found that the **Court of Appeal** had correctly evaluated the evidence, considering not only the incriminating post but also the **emails** sent to the fitness centre, which demonstrated a clear **discriminatory intent**. The Court further emphasized that the use of **racial stereotypes** and **denigrating language** violates the principle of **equality** enshrined in **fundamental human rights**. Having found no procedural violations under **Articles 574 and 575** of the **Criminal Procedure Law**, the **Supreme Court** upheld the **Court of Appeal's ruling** and dismissed the defendant's appeal.

Sanction: The defendant was sentenced to **28 days of temporary detention**, to be served in a **medical facility** for a **mandatory psychiatric evaluation**.

Applications of Article 150

There are very few judgments of conviction or acquittal based on Article 150 of the Latvian Criminal Code. Courts have convicted individuals under Article 150 primarily in egregious cases – often those involving calls to violence or other aggravated elements. For example, a Talsi District Court judgment (10 January 2018) found a defendant guilty under Article 150 for social media posts urging physical violence against persons due to their sexual orientation.

Talsi District Court, Case No. 11380026317 (K36-0023-18)

Date: January 10, 2018

Context: On May 17, 2017, an individual (Person A) residing in Dundaga participated in a discussion on the social network Facebook, posting an offensive and discriminatory comment directed against sexual minorities. The content of the comment included expressions that denied the rights of LGBTIQ+ individuals, referred to violent punishments, and suggested that in an Islamic state, they would be executed. The comment further described LGBTIQ+ people as a "privileged minority" and implied that they deserved hostile treatment. The aggressive tone culminated in an explicit call to "shame these moral cripples and their defenders everywhere" and to "line them up against the wall and be done with it," thereby fuelling direct and public hate speech.

During the trial, the defendant partially admitted guilt, claiming that the comment was not intended to incite violence. According to his version, he was merely exercising his right to freedom of expression within a democratic context. The defendant justified the comment as a reaction in support of a Christian photographer who had refused to provide services to a lesbian couple. However, he acknowledged that the final phrase of the comment, which incited insults against sexual minorities, was inappropriate.

Decision: The Talsi District Court determined that the defendant acted with direct intent, consciously targeting a specific social group (sexual minorities) with the aim of inciting hatred and

contempt. Based on Article 150 of the Latvian Criminal Code, the Court found that the right to freedom of expression does not protect forms of speech that incite hatred. In particular, phrases such as “line them up against the wall and be done with it” and “shame these moral cripples everywhere” were deemed explicit calls for discrimination and social hatred. The Court emphasized that hatred is a persistent sentiment characterized by aggressive and hostile attitudes toward individuals or social groups, and the comment in question embodied exactly this intention. With this ruling, the judge of Talsi confirmed that the phrase “**for any other characteristic**” contained in **Article 150 of the Latvian Criminal Code** (offense of incitement to hatred) should also be understood as **including sexual orientation.**

Moreover, the Court highlighted how such statements not only directly offend members of the LGBTIQ+ community but also contribute to fostering hostile attitudes and creating social divisions, undermining the principles of tolerance and social cohesion. The Court examined the case law of the European Court of Human Rights (ECtHR), including the criteria for determining when freedom of expression can be restricted. The case of *Vejdeland and Others v. Sweden* was cited, confirming that incitement to hatred based on sexual orientation is not protected under Article 10 of the Convention.

Kristīne Garina, founder of the non-governmental organisation “Mozaīka,” which advocates for the improvement of the legal situation of LGBTIQ+ individuals in Latvia, reported that citizens frequently report incidents of violence and discrimination to her association. However, the police often try to dissuade victims from filing complaints, arguing that such actions will not lead to anything, as it would be difficult to trace the perpetrators, and the legal process would be too complicated.

For victims of threats, receiving this kind of response from the authorities is deeply demoralising, creating the impression that their situation is not considered serious or worthy of legal protection.

The defendant was found guilty of committing an offense under Section 150, Part 3 of the Latvian Criminal Code, which punishes hate speech. However, considering the minor nature of the crime, the Court decided to exempt the defendant from punishment, applying the provisions set out in Section 58, Part 1, and Section 59, Part 3 of the Criminal Code. The Court thus acknowledged the seriousness of the statements but considered that they had not caused such harm to public order as to justify an actual criminal conviction.

Sanction: The defendant was exempted from imprisonment and subjected to alternative corrective measures.

In at least one case, dated December 15, 2021, the **Zemgale District Court** (Aizkraukle division) found the defendant guilty of expressing hate speech based on gender and sexual orientation, accompanied by references to violence and threats. Specifically, the judgment establishes that the defendant engaged in actions aimed at inciting hatred and discord against individuals based on their gender and sexual orientation, "associated with violence and threats," and therefore convicted them under Paragraph 3 of Article 150 of the Criminal Code. The Zemgale Court recognised that the

defendants “performed acts aimed at inciting hatred and discord on the basis of the victim’s gender and sexual orientation,” in incidents that involved threats or violence. Notably, hate crimes targeting LGBTIQ+ individuals have been explicitly brought under Article 150. Latvian authorities have affirmed that bias-motivated attacks or speech against LGBTIQ+ persons (when not falling under separate discrimination provisions) should be qualified as “social hatred” offenses under Article 150.

The courts thus treat homophobic or sexist hate incidents as within Article 150’s scope, provided the legal elements (intent and harm or aggravated circumstances) are proven. However, judicial practice also illustrates the challenges: Many borderline cases never reach conviction because prosecutors or courts find the “substantial harm” unproven.

For instance, isolated abusive remarks without wider impact are frequently deemed insufficient for criminal charges – law enforcement may classify them as minor public order violations (administrative offenses) rather than hate crimes.

Human rights reports highlight that the harm and intent requirements are sometimes used as grounds to refuse starting criminal proceedings for hate speech.

Hanovs c. Lettonia

Date: July 18, 2024

Context: This case concerns an appeal filed by Professor **Deniss Hanovs**, who was attacked in **2020 in Riga** along with his partner in a **homophobic assault** involving **homophobic insults and physical violence**.

The perpetrator – who was identified and interrogated – admitted to acting out of hostility toward the public displays of affection between the gay couple. However, the authorities merely sanctioned him for "hooliganism" (a minor offense) with an administrative fine, avoiding classifying the incident as a hate-motivated crime. Latvian authorities refused to classify the assault as a hate crime, arguing that the perpetrator’s actions were "only directed at Hanovs" (the individual victim) and were not intended to incite hatred against sexual minorities as a group. In the case of dismissal, the prosecutors concluded that the “constituent elements” of the hate crime were lacking, as the perpetrator was not deemed to have intended to incite general hatred, nor did the act have sufficient public resonance to influence others’ opinions. The reasoning behind the ruling – the absence of proof of a discriminatory *animus* directed against a group in a broad sense – frequently appears in hate crime investigations in Latvia, given the restrictive wording of Article 150.

Decision: The Court of Strasbourg found that Latvian authorities had failed to adequately protect the victim or prosecute the assault as a hate crime, ruling that there had been violations of Articles 3 and 8 of the Convention, in conjunction with Article 14 (non-discrimination). The Court

condemned this lenient response, stating that it "trivialised" a clear homophobic attack and contributed to a sense of impunity. While noting that the applicant had not suffered serious physical injuries, the judges emphasised that a homophobic assault triggered by the sight of two affectionate partners constitutes, in itself, an affront to human dignity, transforming "a moment of intimacy into one of fear and trauma."

The Court then assessed the response provided by the Latvian authorities, finding it insufficient and incompatible with their conventional obligations. Given the clear evidence that the assault was motivated by the victim's sexual orientation, the authorities should have rigorously applied the available criminal law mechanisms to properly account for the "homophobic nature of the attack" and ensure the identification and appropriate punishment of those responsible. This did not happen in the present case. Instead, the police and the prosecution adopted an excessively restrictive interpretation of hate crime legislation, resulting in J.P. never being formally charged or prosecuted for the homophobic assault. Rather than initiating criminal proceedings for an offense that reflected the discriminatory nature of the act, the State resorted to an administrative procedure, which the Court found to be incompatible with Latvia's commitment to effectively combat homophobic violence.

This approach was inadequate in two ways: first, it completely failed to address the element of hatred, neither sanctioning nor even acknowledging the discriminatory motivation behind the attack; second, the penalty imposed was manifestly lenient, both in relation to the objective gravity of the act and in absolute terms, as it was the minimum statutory sanction available. The trivial nature of the penalty (€70 fine) and the legal classification adopted effectively downplayed the hate-motivated assault, equating it "to a minor public order disturbance" (akin to a drunken altercation). The Court **awarded a compensation of 10,000 euros.**

The judgment highlights an **issue with the application of Article 150 of the Latvian Criminal Code**. Since the provision punishes incitement to hatred only if it causes "būtisks kaitējums" (substantial harm), this "substantial harm" threshold makes it difficult to prosecute hate crimes. In practice, many investigations under Article 150 are closed because authorities consider the "būtisks kaitējums" requirement unmet. For example, a European report points out that the requirement to prove substantial harm under Article 150 is "hard to prove.) [41].

This difficulty in application is so significant that, according to academic research, since the introduction of Article 150, there had been no recorded convictions in Latvia under its first and second paragraphs, precisely due to the "difficulties in establishing substantial harm" required by the provision. The Latvian Ombudsman also acknowledged this issue, urging as early as 2019 for a review of the wording of Article 150, specifically recommending the removal of the term

[41] Safe To Be: A Workshop Guide for Law Enforcement on Anti-LGBTIQ+ Hate Crimes, available on: https://www.lumi.be/sites/default/files/safe-to-be-toolkit_INTERNATIONAL.pdf#:~:text=Peace%2C%20War%20Crimes%20and%20Genocide%E2%80%9D,and%20Freedoms%20of%20a%20Person%E2%80%9D

"substantial harm" to make its application more effective – a proposal that was later debated in Parliament.)[42].

Investigators often cite two main reasons for not proceeding under Article 150 in cases of alleged hate-motivated crimes: the absence of substantial harm caused by the act; the difficulties in proving the specific intent to incite hatred or discrimination. The latter aspect relates to the mens rea (intent) requirement under Article 150 – specifically, the necessity to demonstrate that the perpetrator acted to foster hostility toward a group.

As a result, many cases of homophobic insults or assaults are downgraded or dismissed by Latvian investigative authorities, citing both the lack of "substantial harm" and the difficulty in proving the specific intent to incite hatred.

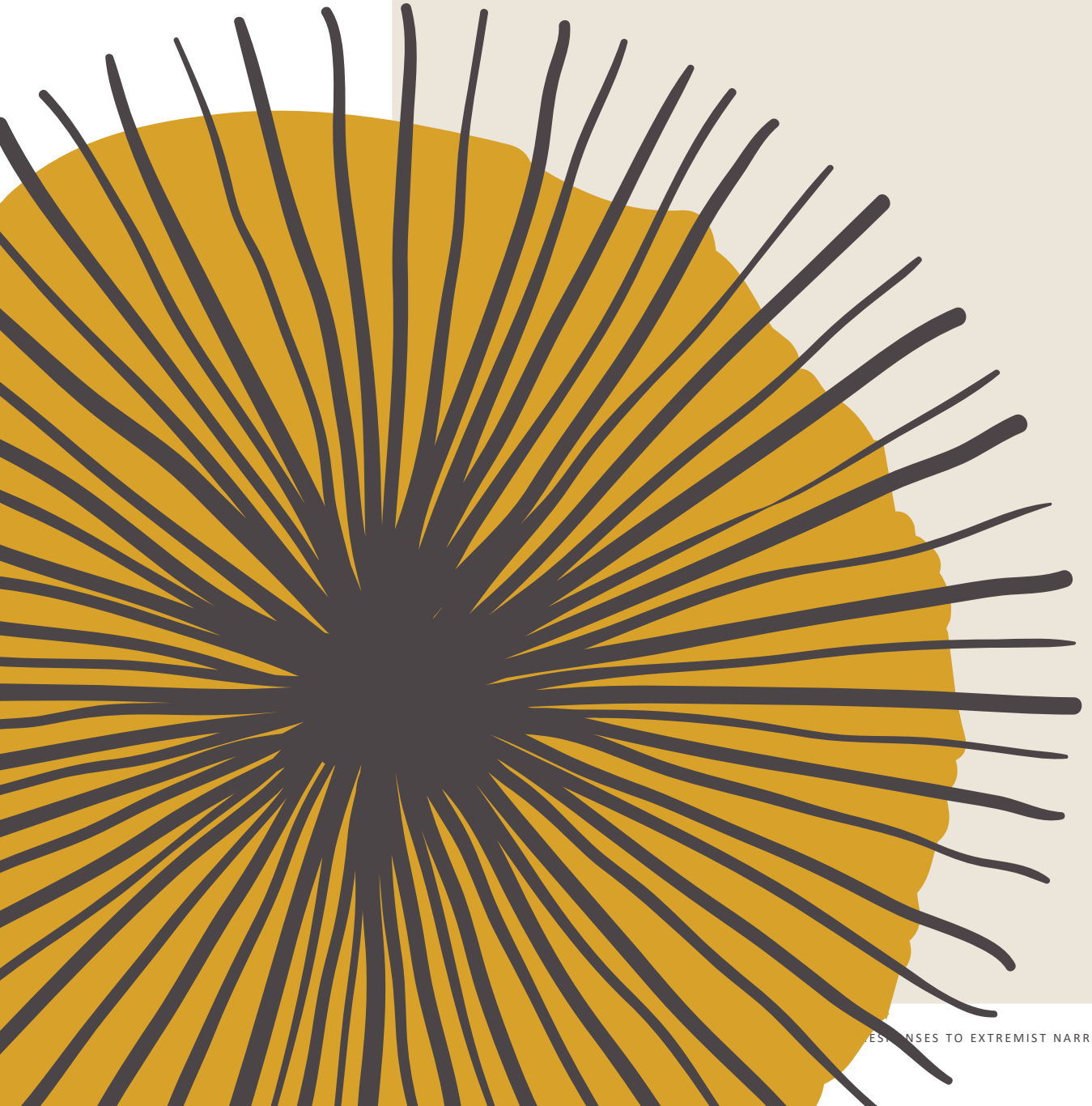
A **document from the Latvian Ministry of Justice, dated October 13, 2023,** addresses the legal classification of hate crimes against the LGBTIQ+ community and aims to strengthen their treatment as criminal offenses rather than mere administrative violations. According to the Latvian Criminal Code, hate crimes must be prosecuted under **Article 78** (racial, ethnic, and national hatred), **Article 149** (prohibition of discrimination), and **Article 150** (social hatred). The latter is particularly relevant for crimes against LGBTIQ+ individuals, as it includes incitement to hatred based on gender, age, and sexual orientation, as already recognised in several court rulings.

The circular refers to the **"Rabat Criteria"** formulated by the United Nations, which assess the severity of hate speech and help align Latvia with international standards. The Ministry promotes **specialised training** for law enforcement and judiciary officials and participates in **European projects** such as **CALDER** (*"Capacity Building and Awareness Raising to Prevent and Reduce Intolerance in Latvia"*), within which a **study and guidelines on hate crimes and hate speech** have been developed.

[42]OMBUDSMAN OF THE REPUBLIC OF LATVIA, ANNUAL REPORT 2021, annual_report_2021_1652184031%20(1).pdf

09

Conclusions And Recommendations



09
Conclusions and Recommendations

9.1. Comparative analysis of the data collected in the three countries

	Italy	Spain	Latvia
Constitutional protection	Freedom of expression is constitutionally protected by Art. 21; Article 3 of the Constitution prohibits discrimination.	Freedom of expression is protected by Article 20, the prohibition of discrimination in Article 14 of the Constitution.	Freedom of expression is constitutionally protected by Article 100, with possible limitations to protect other rights permitted by Article 116; the prohibition of discrimination is contained in Article 91.
Criminal legislation	Article 604-bis of the Penal Code punishes propaganda and incitement to commit crimes motivated by racial, ethnic, and religious discrimination; currently, no specific legislation exists punishing hate speech based on gender or sexual orientation. Specific draft laws (Scalfarotto, Zan) intended to extend protection have not been approved.	Article 510 of the Penal Code specifically punishes public incitement to hatred based on sex, gender, sexual orientation, and gender identity with imprisonment and fines.	Article 150 of the Criminal Code punishes incitement to hatred based on gender, age, disability, or "any other characteristic" (among which, according to case law, sexual orientation), but unlike Article 78 (incitement to racial, ethnic, and religious hatred), Article 150 requires proof of a "substantial harm" ("būtisks kaitējums")
Protection of LGBTIQ+ rights	LGBTIQ+ rights are partially recognised through “civil unions” (Cirinnà Law, 2016); no equality marriage or adoption rights for same-	LGBTIQ+ rights are fully recognised, including equal marriage, adoption permitted, and gender self-determination (Ley Orgánica 4/2023).	Civil unions were introduced in 2023 for same-sex couples; marriage explicitly defined by the Constitution as between a man and a

	Italy	Spain	Latvia
	sex couples or single individuals.		woman, excluding adoption for same-sex couples, which remains permitted for individuals (single).
Women's rights and gender equality	General legislative protection, there are no longer legal inequalities between men and women. Abortion is based on the right to health rather than on the right to self-determination.	Strong legislative protection and specific measures against gender discrimination and violence against women. Abolition of the mandatory reflection period before voluntary termination of pregnancy (Ley Orgánica 1/2023).	Specific measures for protection and gender equality are still insufficient. Limited legislative measures specifically addressing gender discrimination. Legal abortion up to the 12th week.
Ratification of Istanbul Convention	Ratified in 2013; incomplete implementation with persistent gender stereotypes (GREVIO).	Ratified in 2014 with effective implementation and widespread cultural consensus.	Ratified in January 2024, entered into force in May 2024 with reservations; implementation still ongoing.
Relevant Case Law	The ECtHR highlighted persistent gender stereotypes and inadequate judicial responses (Talpis v. Italy, J.L. v. Italy). National courts have attempted to reference ECtHR case law to ensure protection against gender- or sexual orientation-based hate speech (despite the absence of specific legislation) when it constitutes defamation. A significant case is the conviction of Senator Pillon for defamation against an LGBTIQ+ association.	Supreme Court (no. 72/2018, 2018): a highly significant precedent exemplifying the strict treatment applied to incitement of hatred against women, resulting in an exemplary sentence of two and a half years imprisonment for misogynistic tweets.	The difficulty in proving the "substantial harm" required by Article 150 renders responses ineffective: the ECtHR deemed these inadequate in one important judgment (Hanovs v. Latvia). There is an almost complete absence of convictions for gender- and sexual orientation-based hate speech, also due to frequent case dismissals resulting from failure to meet the "substantial harm" requirement.

	Italy	Spain	Latvia
Effectiveness of Rights	Gender-based violence and stereotypes are still widespread, along with discrimination against LGBTIQ+ individuals. Practical access to abortion is sometimes hindered by the widespread presence of conscientious objectors among doctors and health-care providers (70%-80% in some regions).	Persistent gender-based violence, high number of hate crimes against LGBTIQ+ individuals (459 cases in 2022, the second most frequent category after racism). Gender pay gaps decreasing, High public awareness, yet recent events highlight ongoing intolerance (e.g., the murder of Samuel Luiz in 2021).	Persistent homophobia and widespread gender stereotypes hinder the enforcement of regulations. Significant gender pay gaps. Practical access to abortion is often impeded by pro-life campaigns and limited public awareness. Homophobic attacks are rarely prosecuted as hate crimes, highlighting systemic deficiencies and fostering a general climate of impunity.

The comparative research conducted across Italy, Spain, and Latvia highlights significant commonalities and country-specific differences within their respective urban legal systems concerning extremist narratives. The analysis has revealed several deeply-rooted similarities among these diverse legal frameworks, providing grounds to affirm the existence of a potential European consensus regarding the legal response to extremist narratives, despite notable differences in national contexts.

The three countries examined – **Italy, Spain, and Latvia** – share a common framework of principles but present significant differences in legislation against **hate speech**. All of them provide constitutional protection for freedom of expression and, simultaneously, a prohibition of discrimination: for example, Art. 21 of the Italian Constitution guarantees the free expression of thought and is balanced by the principle of equality and non-discrimination established by Art. 3. Similarly, Spain protects freedom of expression in Art. 20 of the Spanish Constitution (CE) and prohibits discrimination in Art. 14, whereas Latvia guarantees freedom of expression in Art. Article 100 of its Constitution provides possible limitations aimed at protecting the rights of others, and establishes the prohibition of discrimination in Article. 91.

This constitutional foundation in each country outlines, from the outset, **the necessity of balancing freedom of speech with the protection of dignity and the rights of minorities**, a task that then falls upon the national courts in the application stage.

On the level of **criminal legislation**, however, significant divergences emerge. In **Italy**, the key offence is the one provided for by **Art. 604-bis** of the Criminal Code, which punishes propaganda and incitement to commit crimes for reasons of **racial, ethnic, and religious discrimination**. This implies that, currently, the Italian legal system **does not expressly sanction incitement to hatred based on gender or sexual orientation**, a gap that the legislator has attempted to fill with specific legislative proposals (the Scalfarotto and Zan draft laws), thus far without success. In the absence of these additions, insults or incitements against LGBTIQ+ persons remain punishable only if they constitute other offences (e.g. defamation aggravated by hatred or general incitement to commit crimes if specific acts of violence are incited).

In the **civil/administrative sphere**, there exist anti-discrimination provisions (e.g. Legislative Decree 215/2003 on equal treatment irrespective of race or ethnic origin), which enable victims or associations to take action against discriminatory acts, obtaining injunctive relief or compensation. However, their application against pure hate speech is limited to cases where the message constitutes, for instance, discriminatory harassment within a defined context (employment, services, etc.).

In **Spain**, by contrast, criminal legislation is broader: Article 510 of the Spanish Criminal Code punishes a wide range of conduct involving public incitement to hatred, hostility, discrimination, or violence, expressly including as grounds for hatred **sex, gender, sexual orientation, and gender identity.**

The penalties provided for in Spain range from one to four years' imprisonment, which may be increased if the offences are committed through the media or the Internet, and may also include additional measures such as **the removal of online content or the blocking of websites** that disseminate hate speech.

Latvia represents a separate case: only recently has it extended the punishability of hatred to other groups beyond ethnic/racial ones. Indeed, its Criminal Code distinguishes between incitement to hatred based on nationality, ethnicity, race, or religion (severely punished under **Article 78 CC**), and incitement based on **gender, age, disability, or "any other characteristic"** (an expression under which, through judicial interpretation, sexual orientation is also included), provided for by **Article 150 CC**. The latter was introduced recently and, unlike Article 78, requires proof of "**substantial harm"** for the offence to be established. This additional requirement raises the evidentiary threshold, thereby making it de facto more difficult to prosecute hate speech linked to gender or sexual orientation.

While in all three countries incitement to racial/ethnic hatred is clearly sanctioned – also in compliance with international and EU obligations – there is therefore **heterogeneity in the protection afforded to other groups targeted by hate speech**: Spain stands out for extensive criminal protection (including gender and sexual orientation), Italy shows a **legislative gap** still waiting to be filled, and Latvia adopts a gradual approach with less severe or conditional penalties for the newly protected categories.

Beyond legislation, the **role of national courts** is crucial in interpreting these provisions in balance with freedom of expression. In **Italy**, despite the absence of a specific offence punishing hatred based on gender or sexual orientation, the Courts have attempted to fill this void by drawing inspiration from European principles. **The Court of Cassation**, for instance, explicitly referred to the case law of the European Court of Human Rights (ECtHR) on hate speech to support the punishability of severely **offensive and discriminatory expressions**, even in the absence of an ad hoc criminal offence. Emblematic in this sense is the *Pillon* case, in which an Italian senator was convicted for **defamation** against an LGBTIQ+ association, with the Court of Cassation invoking Strasbourg's principles on incitement to hatred to give criminal relevance to those harmful expressions. This "interlegality" approach demonstrates how Italian judges tend to cooperate with **supranational levels**, applying the balance between freedom of expression and protection of minorities according to European standards. Nevertheless, punishability remains excluded in cases where hate speech does not involve motives mentioned by criminal legislation nor constitutes a different offence (e.g. defamation).

Spain, having more detailed legislation, has seen its judiciary rigorously apply these provisions in certain extreme cases. Spanish case-law has demonstrated a firm stance towards hate speech: in 2018, the Supreme Court sentenced a defendant **to two and a half years of imprisonment** for inciting violence against women on Twitter, emphasising that messages of this kind – already in themselves contrary to civil coexistence – constitute a concrete danger and must be repressed to protect society.

In another case, online posts justifying a femicide were sanctioned, confirming judges' willingness to punish even the glorification of gender-based violence. In 2016, the Spanish Constitutional Court likewise endorsed these restrictions, stating that freedom of expression may be limited for speeches that incite violence or hatred, deeming it necessary "to sanction and even prevent forms of expression that propagate, promote, or justify hatred based on intolerance".

In Latvia, on the other hand, the effectiveness of the legal framework is weakened by application difficulties: judicial authorities encounter problems in prosecuting hate crimes under Article 150 CC precisely because of the complexity of proving the "substantial harm" required by the provision. The near absence of convictions for hate speech based on gender or sexual orientation in Latvia has also been subject to criticism at the European level – for instance, the ECtHR, in the case *Hanovs v. Latvia*, noted insufficient state responses in the face of serious episodes of incitement to hatred. This indicates a more cautious (if not lax) approach by Latvian judges in sanctioning hateful narratives, likely influenced both by the restrictive wording of the domestic provision and by a social context in which gender and LGBTIQ+ issues struggle to be recognised as priorities.

In conclusion**, convergences and divergences** coexist within the three legal systems. All the countries recognise, at least in principle, that **certain hate speech falls outside the protection of freedom of expression and threatens democratic values**, thus justifying punitive state intervention.

On the other hand, there are marked differences: **Spain** stands out due to its comprehensive legislative framework and rigorous judicial application (albeit concretely resulting in numerically few judgments) against gender-based hatred and hatred towards sexual minorities; **Italy** presents an intermediate situation, with courts actively punishing episodes of hatred by drawing on European principles, yet with legislative gaps still to be filled; **Latvia,** despite having made formal progress, remains further behind in effectively repressing expressions of hatred other than those based on ethnicity, likely reflecting a **different socio-legislative sensitivity**. Nevertheless, these national differences are embedded in a broader European dialogue, in which judges and legislators look at each other's experiences and at supranational guidelines to tackle the complex phenomenon of extremist narratives, balancing this with the protection of fundamental freedoms.

9.2. Is there a European consensus on the applicable remedies?

At the **European level**, both the Council of Europe and the European Union have made efforts to harmonise the legal treatment of hate speech, although speaking of a true "**European consensus**" on applicable remedies requires some clarification. Within the framework of the Council of Europe, the Strasbourg Court (ECtHR) has developed consolidated case law recognising the **legitimacy of restricting freedom of expression when it is abused to propagate hatred**. The ECtHR indeed adopts a "militant democracy" approach, emphasising that "tolerance and respect for the equal dignity of all human beings constitute the foundation of a democratic and pluralist society," and that it may be necessary, in a democratic society, to **sanction or prevent expressions that disseminate or justify hatred based on intolerance**.

In numerous rulings, the ECtHR has excluded hate speech from the protection of Article 10 of the Convention, and thus hate speeches are not protected by this article. Frequently, the Court applies **Article 17** (prohibition of abuse of rights) of the Convention to declare **inadmissible applications submitted by individuals convicted for hate speech:** in substance, the Court considers that these individuals are instrumentalising freedom of expression for purposes incompatible with the Convention’s values.

This jurisprudential line provides European states with a solid basis for action: there is a **European consensus on the fact that freedom of expression is not absolute,** and that the protection of human dignity can justify restrictions aimed at limiting it. A common model that, as previously seen, allows, for example, the Italian Court of Cassation to refer explicitly to European case law precisely in order to delimit what falls outside the free expression of thought and instead **constitutes punishable hate speech.**

At the same time, the ECtHR continuously recalls that **restrictions on freedom of expression must be applied cautiously**: exceptions must be interpreted restrictively, and each limitation must respond to a *"pressing social need*" and be proportionate. In other words, at the European level, there is consensus on the principle that hatred cannot disguise itself as opinion with impunity, but there is equally an awareness of the risks inherent in excessive crackdowns, which might stifle democratic debate. The ECtHR thus strikes a careful balance: on the one hand, it grants States a wide margin in sanctioning hate speech (even denying the Convention's protection in the most extreme cases, specifically through Article 17, which excludes abuses of rights from protected rights); on the other hand, it monitors that such restrictions do not degenerate into arbitrary censorship, reiterating that freedom of expression also protects ideas "that offend, shock or disturb," and that limitations must be justified and strictly necessary in a democratic society.

This jurisprudential balance is in itself a **common European basis**, as it is shared by judges from different countries and provides uniform standards (e.g., the proportionality test, the notion of social necessity, attention to context and the speaker's intent).

Regarding the **European Union**, harmonisation efforts have mainly focused on **criminal law**, though with a scope limited by the varying political and cultural orientations of member states. A fundamental step was Council Framework Decision 2008/913/JHA, by which the EU required states to criminalise certain severe forms of incitement to racial and xenophobic hatred. This instrument has effectively established a **core consensus**: today, all EU countries (partly due to this act) criminalise incitement to hatred based on race, ethnic origin, or religion, recognising its threat to social cohesion.

However, the Framework Decision – resulting from compromise – did **not explicitly include other grounds of hatred such as gender or sexual orientation**, areas where disagreement among governments was (and partly remains) greater. Only some member states have independently extended criminal protection to these categories (as seen with Spain, joined for instance by France and several Northern European countries), whereas others – like Italy – have not (yet) done so.

Consequently, **there is currently no full normative alignment regarding which groups should be protected from hate speech**: sexual orientation is explicitly covered only in some national legislations, and the same applies to gender identity. **The absence of unanimous consensus** on this matter has also prevented the EU, so far, from elevating hate speech to a European-level criminal offence: indeed, including incitement to hatred in the list of "Euro-crimes" under Article 83 TFEU would require unanimity among Member States, which has not been reached. This does not imply, however, that the EU remains inactive; instead, a **multi-level strategy** has emerged. On the one hand, the EU intervenes through **indirect or sectoral regulatory instruments**, such as the recent Digital Services Act (DSA), which sets uniform obligations for online platforms in managing illegal content, including hate speech. Entered into force in 2023, the DSA requires large web intermediaries to take prompt action to remove hate speech and disinformation, explicitly including a "***clear commitment to combating gender-based violence.***" This represents an attempt to **harmonise "remedies**" in the digital realm, overcoming fragmentation in national measures (such

as Germany's NetzDG) and establishing common standards of responsibility for tech companies. Concurrently, since 2016, the European Commission has promoted a voluntary Code of Conduct with major internet platforms to counteract online hate speech, leading to shared practices of quicker moderation of illegal content. These initiatives signal an increasing convergence on the **idea that addressing hate speech must involve private actors and soft-law instruments**, and not solely state criminal law.

Another aspect of European consensus concerns **policy recommendations and standards set by the Council of Europe**. Bodies such as the European Commission against Racism and Intolerance (ECRI) and the Committee of Ministers of the CoE have issued guidelines and recommendations to states aimed at combating hate speech. For example, Recommendation CM/Rec(2019)1 defined sexism as a form of harmful expression, encouraging both legal and educational measures to counteract it. Although non-binding, these texts contribute to forming a shared ground of principles increasingly incorporated by member states into their own policies.

Consider also project-based collaboration at the European level, such as that pursued by "***The Future of Free Speech***" project, which created a case law database on hate speech – used also for this report – that is useful for judges, civil society, and policymakers. This reflects the desire to share knowledge and experiences, signalling a convergence among diverse national realities.

Despite these advancements, substantial challenges to full normative convergence remain. Historical and cultural differences among states weigh heavily: for instance, countries with a strong tradition of absolute protection for free speech (or wary of restrictions due to past repressive regimes) may be reluctant to expand criminal provisions against hate speech. Conversely, other states, with more recent sensitivity to the issue (perhaps following violent extremist episodes or internal social changes), adopt stricter legislation. Countries like Latvia or Poland have been more hesitant, reflecting weaker domestic social consensus on LGBT issues. Italy faces particular political and cultural conditions (such as Vatican influence), which have slowed the adoption of laws on homotransphobia.

Thus, at present, one cannot speak of a full **de jure** European consensus but rather an evolving **de facto** consensus: moral condemnation of anti-LGBT hate speech is now widespread in European institutions, and more states recognise its seriousness by equating it with racism, even if some legal systems have yet to translate this consensus into specific norms. This European mosaic complicates the establishment of identical binding standards. **Recent developments, however, indicate a common trend toward extending protections**, supported by landmark rulings from the ECtHR (Strasbourg has, for the first time, equated homophobic hate speech with racist hate speech, recognising the seriousness of homophobic insults in Vejdeland v. Sweden). Following the very recent judgment in Hanovs v. Latvia (2024), Latvia, for instance, will need to adjust its practices (if not laws) to avoid future violations, thereby moving closer to the standards of more proactive states.

Therefore, one can affirm the existence of a **core of shared values**, based on the incompatibility of hate with European democratic principles, though applicable "remedies" are not yet fully uniform: some legal systems favour vigorous criminal instruments, others combine civil sanctions and educational programmes, while yet others partly delegate to the ethical codes of digital platforms. The future challenge will be to translate this value-based consensus into **harmonised legal instruments**, overcoming political resistance and interpretative differences to ensure effective and similar protection for victims of hate speech across Europe, ensuring that propagators of hate encounter a clear condemnation everywhere while respecting each country's democratic particularities.

9.3. The Role of Law and the Issues of Criminal Law

In the author's opinion, the law can and should play a crucial role in countering hatred and extremist narratives in general, but **it is necessary to be wary of an excessive reliance on criminal law as an exclusive instrument**. Traditionally, legal intervention against hate speech manifests itself through sanctions: criminal laws that punish those who spread racial, ethnic, religious hatred, etc. This represents the **punitive and deterrent aspect of the law**: the threat of punishment aims to deter acts of incitement to hatred. However, the law can also have a promotional role, influencing social behaviours. The philosopher Norberto Bobbio spoke precisely about the **promotional function of legal norms**[43], which can serve not only as a tool for regulation and social control but also to encourage certain behaviours as a means to promote changes and transformations in society.

Legal norms help shape social norms; for instance, the mere fact that certain speech is classified as criminal by the legal system sends a clear signal to the community about its negative value. Over time, this can encourage a shift in collective perceptions, stigmatising racist or homophobic expressions previously tolerated. This is what we call the **performative function** of law: it defines the boundaries of acceptable speech in public spaces, helping redefine common sense about what is acceptable[44]. An effective example of this transformative use of law, according to legal scholar and attorney Catherine MacKinnon, is provided by the fight for the recognition of **workplace sexual harassment**[45]: acts that previously were perceived by the women themselves as merely annoying but harmless became unacceptable after their unlawfulness was recognised, making both those who performed them and those who suffered them aware of their wrongfulness. The **legal qualification** of an act, therefore, is essential in this sense for its **social perception**, **bringing it out from a normality** that prevents recognition of the harm[46]. A serious regulatory effort, especially when accompanied by consistent public condemnation by institutions, can help ensure that increasingly more people view hate speech as intrinsically reprehensible, not merely because it is

[43] See N. Bobbio, *On the Promotional Function of Law*, Rivista trimestrale di diritto e procedura civile, XXIII (1969), pp. 1312-1329. This essay later gave rise to the book: Bobbio, N. (1977). *Dalla struttura alla funzione. Nuovi studi di teoria del diritto.* Edizioni di Comunità.
[44] The concept of performativity, originally introduced by the English philosopher John Langshaw Austin in *How to Do Things with Words* (1962), is used not only in linguistics but also in legal sciences and philosophy of law.
[45] MacKinnon, C. A. (1979). *Sexual Harassment of Working Women: A Case of Sex Discrimination*. New Haven, CT: Yale University Press.
[46] Facchi, A. (2012). A partire dall'eguaglianza. Un percorso nel pensiero femminista sul diritto [Starting from equality. A journey through feminist legal thought]. *AG About Gender – International Journal of Gender Studies*, 1(1), 118–150. Retrieved from http://www.aboutgender.unige.it/ojs

prohibited, but because it contradicts shared ethical principles. However, for this function to truly be effective, the legal norm must obviously be at least partly rooted in existing social consciousness.

Recourse to criminal law, moreover, **inherently has limitations and risks**, which demand a cautious approach. Firstly, there is a need to **protect freedom of expression**: every criminal provision in this area must be calibrated very carefully so as not to infringe upon the fundamental constitutional principle of freedom of thought and expression. This requires that hate speech crimes be defined with **precision and specificity**, in compliance with the principle of legal certainty in criminal law, and confined to **conduct that genuinely causes harm**. Excessive legislative vagueness could easily become fertile ground for arbitrary interpretations, potentially suppressing critical or uncomfortable expressions under the label of "hate." As a UN Special Rapporteur noted, it is crucial that hate speech laws have clear formulations and provide **safeguards against abuses**; otherwise, there is a risk they will be interpreted expansively and selectively by authorities.

In non-democratic regimes such as Russia, for instance, laws against extremism have been observed to target dissenting minorities and even the LGBTIQ+ community itself. However, even in liberal democracies, vigilance is necessary to ensure that criminal actions address only genuine acts of hatred and do not become instruments to silence legitimate dissent. Recently, even in the democratic United States, anti-discrimination laws (such as those against antisemitism) have been utilised to suppress dissent and target university protests. The balance with freedom of expression thus remains extremely delicate: excessive repression could create a “chilling effect” on public debate, causing people to remain silent out of fear of legal consequences, thus damaging pluralism and freedom of thought.

This need for regulatory clarity was well understood in the Italian debate surrounding the (failed) reform: the Zan Draft Law, for instance, included precise definitions of *sex, gender, sexual orientation, and gender identity* precisely to ensure greater certainty in criminal provisions and to address criticisms of vagueness raised in public debate. Moreover, it explicitly excluded the propagation of ideas from the scope of punishable conduct, thereby safeguarding the free expression of beliefs and opinions not directly capable of provoking discriminatory or violent acts. This safeguard clause aimed to draw a clear boundary between **offensive opinions** (albeit reprehensible) and **genuine incitement to hatred**, limiting criminal intervention solely to cases where words could pose a concrete danger. Despite such precautions, some margin of discretion inevitably remains in this delicate area, leaving judges responsible for assessing on a case-by-case basis when an expression crosses the threshold from mere opinion into harmful conduct against others' rights. The cited Spanish case law also confirms this approach: the Constitutional Court has reiterated that it is up to the judge, considering context and circumstances, to assess whether certain conduct represents legitimate exercise of freedom of expression or whether it oversteps this boundary, infringing upon the dignity and rights of targeted individuals – a situation which "*must be examined on a case-by-case basis*."

On the one hand, as previously stated, criminally sanctioning hate speech can **signal the legal system's condemnation of certain behaviours and symbolically protect targeted minorities**. On the other hand, **it is necessary to avoid the risk of "pan-criminalisation" and to carefully assess whether responding to verbal violence with the violence inherent in criminal law is both useful and necessary**.

A second set of problems concerns the **effectiveness** and **possible unintended sociological consequences** of criminal law when addressing complex social phenomena such as hatred. A repressive approach predominantly targets the most blatant and overt forms of hatred – such as explicit racist insults uttered by individuals from lower socio-cultural backgrounds – often leaving more subtle and covert forms unpunished (perhaps conveyed through rhetorical allusions and linguistic codes: what we term, within the ARENAS project, extremist narratives). This can create a paradox: the targets of criminal law end up being the most marginalised individuals (who express their resentment crudely), while charismatic leaders who foster misogynistic or homophobic sentiments frequently remain beyond the reach of criminal liability.

Moreover, hyper-regulation through criminal law can even prove **counterproductive**, generating side effects such as **secondary victimisation** or the radicalisation of perpetrators. A response perceived as censorious can reinforce persecution narratives, enabling those spreading hateful ideas to portray themselves as *martyrs of free speech*, exploiting imposed sanctions to attract further attention and support.

In this sense, there is a risk of portraying **homophobes or racists as victims of an oppressive system**, paradoxically reinforcing their message among certain sectors of society. The case of public figures positioning themselves as champions of absolute "free speech" (for instance, Elon Musk) exemplifies this phenomenon, exploiting the idea that *non-conforming thought* is subject to some form of censorship. Given this risk, it is essential that lawmakers and judges act with balance**, restricting criminal law intervention to only the most severe cases**. It must be ensured that **the law itself does not become an instrument of oppression or further polarisation**. The principles of the rule of law – legality, proportionality, extrema ratio – should guide every intervention: criminal sanctions must remain a last resort, used only when truly necessary to protect fundamental interests endangered by hatred.

Additionally, the **difficulty of enforcement** must be considered: in the digital age, the enormous volume of content generated every minute makes it unrealistic to criminally prosecute every offence or instance of online hate speech. Police enforcement and judiciary resources are limited, and authorities often struggle to keep pace: many reports never reach court, and even when they do, the process is slow compared to the viral speed at which hatred spreads online. The transnational nature of the internet further complicates matters (who authored the post? From which country? Does our law apply? How to notify an individual across the globe?). This creates a **vast grey area** of de facto impunity, where criminal sanctions become the exception rather than the rule, making the real impact of criminal law often little more than **symbolic.**

A further consideration is that criminal law alone is **insufficient** and inevitably proves ineffective in addressing the underlying issues of hate manifestations. If a law merely prohibits certain behaviour without the majority of people understanding or sharing the reasons behind it, it risks remaining ineffective. A criminal provision that is not supported by **parallel internalisation** of its underlying value is perceived merely as an authoritarian imposition, an exercise of state dominance. Practically, this scenario also presents several problems: limited willingness to report violations (as society does not perceive them as serious), sporadic or reluctant enforcement by authorities, and widespread circumvention of the rule. Consequently, most cases do not reach the courts (due to non-reporting or investigative difficulties), or judges apply restrictive criteria, **leaving the law largely unenforced**.

In **Italy**, on the other hand, where a specific provision is lacking, existing offences such as defamation, threats, or private violence aggravated by hatred (base motives pursuant to Article 61(1) of the Criminal Code) have been employed to prosecute clearly harmful conduct. This jurisprudential workaround addresses certain cases but does **not cover all instances of hatred not amounting to other crimes**. Furthermore, relying on common aggravated offences might present hatred as a secondary element, whereas discriminatory intent is the core issue the law aims to target. In short, **neither the absence nor the existence of an ad hoc criminal provision guarantees success on its own**: much depends on how the law is applied and integrated into a broader strategy.

It is not coincidental that the most effective legal systems (such as Spain's) complement criminal law with **integrated policies** (training for police and law enforcement agencies, statistical monitoring, victim support, etc.). It should be noted, however, that this occurs within the context of a different and more open society. As can be inferred from the brief analysis of general policies regarding LGBTIQ+ rights and women's rights in the three countries, Spain prioritises the **advancement of rights** even before introducing criminal sanctions: equal marriage for same-sex couples has existed since 2005, adoption by homosexual couples is permitted, and policies pursue gender equality by granting equal parental leave for each parent. In short, the existence of specific criminal provisions addressing gender-based and sexual-orientation-based hate speech appears more as a symptom rather than the cause of a particular sensitivity to the issue. Italy, on the other hand, remains one of the few European countries that currently does not criminalise discrimination based on sexual orientation through a dedicated legal provision. Moreover, unlike other legal systems, Italy has yet to recognise adoption rights for LGBTIQ+ individuals, either for singles or couples, nor has it permitted surrogacy for male couples or access to artificial insemination for female couples. Furthermore, Italy is notably behind even in parliamentary and public debate regarding these topics. Thus, before resorting to criminal intervention, it might be preferable to advocate for the implementation of these fundamental rights. Similarly, other less responsive legal systems (such as Latvia in the context of anti-LGBT hate) suffer not only from normative limitations but also from political and social unwillingness to actively combat hatred.

European case law maintains that the criminal approach is permissible and sometimes required, but always within a framework protective of fundamental rights. The ECtHR, as previously mentioned, generally considers the repression of hate speech compatible with the Convention but

emphasises that the ECHR sets **minimum common standards**, leaving States the freedom to provide even higher levels of rights protection.

For instance, in Italy, Article 21 of the Constitution theoretically ensures an even broader freedom of expression than that guaranteed by Article 10 ECHR, necessitating particular caution from Italian lawmakers to avoid violating their own fundamental charter. Therefore, any criminal intervention must pass both domestic constitutional scrutiny and external conventional scrutiny.

In essence, **criminal law**, if isolated from other measures, **risks being ineffective** (as it acts only retrospectively and on a few exemplary cases) or triggering unintended consequences. Conversely, the role of law in a broader sense is more extensive: it includes both repressive responses and the promotion of a culture of rights, victim support, and preventive regulation of contexts (such as the internet) where hatred proliferates. However, an **intersectional perspective** reveals that legal interventions must also account for the complex ways in which oppression operates. Hatred, discrimination, and violence are not monolithic phenomena but are shaped by **intersecting power structures**, **including gender, race, class, sexuality, and disability**. **Criminal law, if not framed within this broader understanding, risks reproducing the very inequalities it seeks to address.**

Oppressive structures do not function in isolation; they reinforce one another. As we said, **stereotypes are often not mere biases but active instruments of subordination** that sustain and naturalize hierarchies. Gendered and racialized stereotypes, for example, influence the credibility of victims and the interpretation of their experiences within the legal system. Women, particularly those from marginalized backgrounds, could see their claims dismissed or minimized due to deep-seated narratives that depict them as either unreliable or hypersexualized. Similarly, hate crimes against racial minorities, LGBTIQ+ individuals, and other vulnerable groups could be downplayed or ignored because the legal framework is still predominantly structured around **dominant perspectives** that fail to account for multiple and overlapping forms of discrimination.

Thus, the **preventive and protective role of law** must go beyond simply punishing individual perpetrators. It must dismantle the systemic mechanisms that **normalize** hate and discrimination in the first place. This means challenging the **structural conditions** that make certain groups more vulnerable to harm, addressing **economic inequalities, social exclusion, media representations**, and the institutional biases embedded in legal practice itself.

Only within this **comprehensive and intersectional vision** does recourse to criminal law retain legitimacy and utility – as an *extrema ratio* within a **multifaceted strategy** that prioritizes **education, community-based initiatives, and structural reform** over mere punitive measures. Law, in this sense, must be more than a reactive force; it must assume the responsibility of **transforming the very conditions that enable and perpetuate oppression.**

9.4. Policy Recommendations

From the reflections presented above, it emerges that effectively addressing extremist narratives and hate speech requires an **integrated strategy**, in which criminal law is accompanied - and *preceded* – by other types of measures. Below are some operational recommendations for legislators and policymakers aimed at enhancing responses to the phenomenon while attempting to avoid the issues identified - recommendations that are nonetheless insufficient on their own and should be understood considering the broader discussion above, within the framework of a more pervasive fight against economic inequalities and social exclusion:

- **Normative and internal policy improvements:** National legislators should address existing legal gaps in protection against incitement to hatred. This entails extending criminal laws against hate incitement to all relevant forms of discrimination. For example, Italy could resume the interrupted legislative path of the Zan Draft Law by introducing into the Criminal Code prohibitions against incitement to hatred based on gender, sexual orientation, and gender identity. Latvia could consider amending Section 150 of its Criminal Code to explicitly mention sexual orientation and gender identity among protected characteristics, thereby eliminating interpretative ambiguities. Similarly, other European countries that have not yet done so should consider expanding the scope of protected groups to achieve a more uniform level of protection across the continent. In doing so, it is essential to ensure the **technical quality of legislation**: clearly defining key terms (hatred, violence, discrimination, etc.), delimiting punishable conduct, and establishing punishment thresholds that target the most severe cases (e.g., explicit calls for violent acts or systematic hate campaigns).
  It is also necessary to shift the focus from a single-factor approach to **a structural and intersectional perspective**, in which law (and public policy) recognize and address situations where multiple axes of disadvantage intersect and reinforce one another.
  Furthermore, consistent with criminal law's ultima ratio principle, **diversifying sanctions** should be considered. **Imprisonment is generally not an appropriate response**, especially for speech and expressions (even if violent and discriminatory). For hate speech offences unaccompanied by actual violence, alternative sanctions such as proportionate fines, community service, or educational programmes may be more effective in rehabilitating offenders and preventing them from becoming scapegoats. Thus, **legislation should expressly allow non-custodial measures for hate speech offenders**, prioritising educational paths and dialogue with affected communities.
  Policymakers should also clearly define the boundaries of punishable hate speech, avoiding vague formulations that could encroach on legitimate, albeit controversial, opinions. **Safeguard clauses protecting freedom of expression** should be included in legislative texts, specifying that moderate criticisms or discussions on public interest topics are not criminal offences, provided they do not constitute incitement to hatred. This approach, aligned with ECtHR case law, ensures legislation withstands constitutional challenges and is perceived as fair by the public. Concurrently, it should be emphasised that the law protects victims and democratic coexistence: regulating hate speech is not about censoring dissent but

preventing verbal extremism from undermining the equal dignity of all and creating a climate of intimidation against minorities. Legislators should clearly communicate this message to consolidate social consensus around hate speech countermeasures.

Simultaneously, **extra-criminal measures** should be strengthened: victims of hate speech should have access to civil or administrative legal remedies. Independent authorities (such as equality commissions or anti-discrimination authorities) could be empowered to impose financial penalties or order the removal of illegal content, offering faster and more targeted protection compared to lengthy criminal proceedings. Civil law tools – such as moral damage claims or injunctions to cease harmful behaviour – can also protect hate speech victims and require the removal of harmful content, with lighter evidentiary burdens and without criminal convictions or custodial sentences.

Another normative aspect concerns **data collection and monitoring**: legislators should establish mandatory statistical reporting of hate speech crimes and incidents, following the Zan Draft Law's model of mandating periodic ISTAT studies on discriminatory attitudes in the country. Effective European consensus requires data comparability and continuous monitoring. States are recommended to establish specific registration systems for hate speech and hate crimes related to gender and sexual orientation. Currently, many cases escape official statistics because they are classified under other offences. Adopting uniform classification categories (such as those provided by OSCE-ODIHR) and publishing annual reports on the number and outcomes of anti-LGBT and sexist hate cases would enhance transparency and enable policy impact assessment. At the EU level, establishing a European hate speech observatory (enhancing FRA's role) could support states through comparative analysis and exchange of good practices. Accurate data supports evidence-based policymaking and measures intervention effectiveness.

Finally, on internal public policy, **promoting fundamental rights** alongside hate suppression is essential: expanding civil rights (such as equal marriage and recognition of same-sex families) and fully implementing international human rights conventions (such as the Istanbul Convention, ratified but sometimes not fully implemented) creates an inclusive institutional environment that undermines the fertile ground for hate narratives. In other words, before punishing hatred, the State should ensure **substantial equality and dignity** for marginalised groups, thus culturally delegitimising the foundations upon which hatred thrives.

- **Role of digital platforms and public policy measures**: Effectively combating narrative extremism and hate speech necessitates actively involving social media companies and major internet platforms, generally. Enhanced co-regulation and self-regulation should be encouraged, for instance by urging all platforms to adopt clear and accessible **anti-hate codes of conduct**, **ideally with uniform standards**. Currently, moderation policies vary significantly among platforms: some, such as Facebook and Instagram, have relatively stringent moderation policies, whereas others have become more permissive, as in the case of X (formerly Twitter), since its acquisition by Elon Musk. Given these varying standards,

there is a risk that users banned for hate speech on more stringent platforms will migrate to more lenient ones.

A harmonisation of policies, possibly promoted at the European level through a dialogue – not always straightforward – with companies, might attempt to reduce *forum shopping* by online extremists. Some states, for example, have chosen to intervene through binding regulations; the case of Germany is emblematic, as the Network Enforcement Act (NetzDG, 2017) obliges large platforms to remove manifestly illegal content (including racist insults, threats, etc.) within 24 hours under penalty of significant fines. Similarly, the EU Commission, through the **Digital Services Act (DSA)**, effective from 2024, among other measures, mandates platforms to establish transparent and rapid procedures for managing illegal content, including hate speech, with oversight by national and European authorities. Its entry into force provides a shared regulatory framework of accountability: it will be crucial for national regulators to apply it rigorously, monitoring compliance with transparency obligations and the swift removal of illegal content. These measures mark a trend towards greater accountability of platforms in content moderation, recognising that pure **self-regulation may be insufficient**.

Nevertheless, it is worth examining the innovative effort by the META group with the **Oversight Board**, an independent body of experts serving as a private "court" to decide on controversial moderation cases. Beyond algorithm-driven content checks following user reports on policy violations, this genuine private tribunal has been established, comprising technology, human rights, and legal experts from around the world. Particularly interesting is that, in addition to deciding appeals (by selecting specific cases) and publishing these decisions, the tribunal provides guidance to Meta, urging the company to address potential gaps, for instance, by modifying internal guidelines for human moderators. The tribunal issues binding decisions that Facebook, Instagram, and Threads must implement. However, this raises a critical legitimacy issue, as it is a private tribunal making decisions on sensitive and complex matters, requiring consideration of numerous factors and careful balancing.

One recommendation could be to **involve public authorities** or digital rights watchdogs in supervising these mechanisms, for example, by establishing a future European body to oversee moderation decisions (modelled after a social network Ombudsman) ensuring consistency with fundamental rights. Additionally, collaboration between law enforcement and platforms could be strengthened: protocols could facilitate reporting illegal hate speech and collecting digital evidence to swiftly prosecute severe cases or promptly remove harmful content. Platforms might also contribute financially to digital literacy initiatives and civic flagging programmes (where trained users identify hate speech to aid its removal).

In other words, internet governance regarding hate speech must be **a shared responsibility**: neither an excessively repressive state unilaterally censoring the web nor complete laissez-faire by tech companies is desirable. Clear rules are necessary (as the DSA has begun to implement), but a continuous multi-stakeholder dialogue is also essential to adapt these rules to the evolving landscape of platforms and online communication. Traditional mass media (press, TV), for their part, could adopt ethical codes rigorously prohibiting discriminatory expressions by journalists or in programming. Similarly, political parties and

public institutions could adopt codes of conduct: for instance, many European parliaments have internal regulations censoring offensive or racist language during debates.

- **International Cooperation and Exchange of Best Practices:** The response to hate speech cannot be confined within national borders. Strengthening cooperation at both the European and global levels is recommended. Within the EU, it would be beneficial to renew discussions on including hate crimes in the list of Eurocrimes, particularly in currently unprotected areas (such as anti-LGBTIQ+ hate), seeking political compromise possibly limited to extreme cases. Concurrently, European guidelines on proportionality in sanctions for hate speech could be developed to avoid excessive disparities: currently, as noted, penalties range from 1 – 4 years of imprisonment in Spain to a maximum of 2 years with fines in other countries; partial harmonisation of sentencing frameworks could facilitate cross-border judicial cooperation (extradition, enforcement of penalties, etc.). At the Council of Europe level, the initiative to create a **Hate Speech Case Database** should be supported and expanded: this would facilitate awareness of relevant decisions across countries, allowing national judges to cite precedents from other jurisdictions, thus enhancing the existing "inter-legality". Sharing best practices is crucial: for example, the Spanish training programmes mentioned could be showcased at the OSCE or EU as replicable models; Germany could share experiences from NetzDG, highlighting successes and limitations; Nordic countries, which focus on rehabilitation and financial penalties, could offer **alternative approaches compared to imprisonment**. Transnational civil society also plays a significant role: European networks of anti-racism or anti-homophobia NGOs can coordinate parallel campaigns across multiple countries (as is already the case with the Council of Europe's *No Hate Speech Movement*).

- **Training, awareness, and prevention**: Alongside legal reforms, investments in educational and preventive measures are required, acknowledging that narrative extremism is rooted in social attitudes which law alone cannot eradicate. It is recommended to implement multi-level educational programmes: in schools, introducing modules on digital citizenship education, respect for differences, and recognition of hate speech to develop critical awareness from childhood. At a broader societal level, public awareness campaigns can increase **understanding of the harms** caused by extremist narratives and deconstruct stereotypes fuelling hatred (for example, campaigns against linguistic sexism, homophobia in workplaces, etc.). It is crucial to culturally delegitimise hate, demonstrating that it is not an "opinion" but a form of violence harming the entire community. Institutions could declare national days or symbolic initiatives (such as the Day against Homophobia already proposed in the Zan Draft Lae) to draw public attention to the issue and encourage informed debate. Professional training in these fields also plays a pivotal role: specific training courses for judges, law enforcement personnel, and lawyers concerning hate speech and online extremism case management are recommended. A central component of such training should involve the **deconstruction of stereotypes, through interactive workshops, the analysis of real cases, and awareness-raising activities**. By critically examining and

addressing underlying stereotypes, legal professionals can achieve fairer and more equitable judicial decisions, thus ensuring more effective protection of the rights of marginalized and vulnerable groups. The Spanish experience offers a useful starting point: since 2012, Spain's Ministry of the Interior has implemented training programmes for security forces, action protocols for police, and guides to support victims. It established a National Office against Hate Crimes and launched Action Plans incorporating training, prevention, and support measures. Replicating such models in Italy, Latvia, and other European countries would be beneficial: specialised police units for hate crimes, dedicated prosecution offices, and guidelines for effectively identifying and prosecuting online hate should be developed. Continuous monitoring of the internet and social media is equally critical; in Spain, the Observatory against Racism and Xenophobia monitors social networks, including cases of gender-based hate. A similar Observatory in each country could collect reports and trends, collaborating with platforms to swiftly remove illegal content.

In terms of situational prevention, fostering the creation of **counter-narratives** is essential: encouraging social campaigns and alternative narratives actively opposing hate messages with positive inclusion messages. This can involve influencers, NGOs, local communities, and youth in digital activism projects responding in real-time to toxic online trends. Counter-speech represents a non-coercive alternative to silencing hate speech, involving responses with opposing messages: refuting falsehoods, **dismantling stereotypes**, and highlighting positive voices within targeted communities. Institutions can facilitate this process by amplifying NGO-organised anti-hate campaigns, funding artistic or narrative projects promoting tolerance, or simply ensuring each hate speech incident is publicly stigmatised. A firm and immediate reaction from influential figures (politicians, celebrities, influencers) can significantly delegitimise hate speech in the eyes of the public. Unfortunately, we often witness legitimisation of hate speech, producing the opposite effect. Concurrently, victim support must be enhanced: ensuring those targeted by hate feel less isolated and better protected. For example, platforms exist where users can report offensive content and receive assistance, or online solidarity networks that overwhelm hate speech with waves of supportive messages for victims.

Hate must be combated not only by punishing its perpetrators but by reducing the number of those who embrace or tolerate it, and this objective requires continuous education and widespread awareness. We must indeed **always remember that hate speech represents only the tip of the iceberg of a deeper structural issue characterized by entrenched dynamics of domination and marginalization affecting certain groups**. A population made more aware of the structural roots and harmful impacts of hate speech will not only be less likely to engage in or tolerate such behaviour, but also more inclined to socially condemn it, thereby lessening the burden on criminal sanctions, ultimately generating broader and more enduring social change.

There is an absolute necessity, therefore, **to integrate repressive measures with promotional ones**. Every new law against hate should be accompanied by investments in education, culture, and welfare. For example, if a gender hate crime is introduced, it should be simultaneously complemented by an educational plan in schools focusing on respect,

sexual education, and gender identity. If platforms are required to remove content, European *media literacy* project should also be promoted to teach users how to recognise and report online hate. Only this comprehensive vision will prevent the law from becoming an empty shell. As previously noted, any programme aimed at combating violence must consider the cultural references that generate and justify it, meaning that **social and cultural policies** are as integral to the solution as legal norms. Tackling hate speech and extremist narratives requires a **holistic and intersectional approach**. Criminal law has the role of drawing an unbreachable red line – clearly marking that those inciting hate cross the boundaries of legality – but it cannot operate in isolation. Such legal intervention must be complemented by a broader framework of measures, including cultural education aimed at fostering tolerance, systematic monitoring of digital environments, comprehensive support for victims, and sustained international cooperation. The ultimate goal is to build a community in which **the social and educational fabric increasingly marginalises and stigmatises the use of hate as a means of expression**. The dynamic balance between the protection of rights, freedom of expression, and combating discrimination represents the central challenge that law and society must face in the era of global communications and increasing polarisation. The proposed recommendations aim precisely at **seeking a shared response at a European level,** to mitigate the impact of hate narratives and strengthen democratic values.

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