

## Summary

Online hate speech, threats and other forms of online harassments has become an integral part of people's everyday lives. It is so widespread that it poses a threat to the democratic process as actors in the public space may choose to remain silent to avoid the hatred and threats that may follow the posting of an article, photo or film highlighting a social problem. Thus, online hate speech is having a profound impact on people and the community, sometimes with serious consequences for the ability of individuals to communicate and act freely in society. However, many victims do not even know they are victims of an illegal activity, and many people in the Nordic countries do not believe the police can do anything about the violations. The latter concern is true to some extent. The current uncertainty in the Nordic countries regarding what is illegal and what is not and how different types of violations should be dealt with can be observed not only among the victims but also in the entire law enforcement sector. This is a great dilemma with very unfortunate effects on people's legal security.

This report gives a summary of how the issue of online hate speech, threats and other harassments is handled legally in the Nordic countries. The assessment is based on gender, which means that it applies a gender and gender equality perspective to explore whether online hate, targeting men and women, is regulated in law in a way that gives them equal opportunities to take legal action or seek compensation for damages. The report also includes a review of central research and reports at the Nordic level. The following questions have guided the writing of the report:

- What knowledge is available in the Nordic countries regarding gender-related online hate speech, threats and other harassments?
- What do the legal regulations look like in the Nordic countries and what actions and means of resistance are available to victims of gender-related online hate speech, threats and other harassments? What forms of online hate speech, threats and other harassments currently fall just outside the Nordic legal frameworks?
- What legal and policy changes would allow for more effective efforts against gender-related online hate speech, threats and other harassments?

## Knowledge Review – What Do We Know?

Online hate speech, threats and other harassments with a hate crime motive occurs in both the public debate and people's everyday life and targets both public figures and private persons. The violations are related to factors such as ethnicity, disability, skin colour, gender, nationality, political affiliation, religion and sexual orientation. A few studies suggest that the violations in the public debate are particularly related to political affiliation, ethnicity, religion and gender.

Several studies show that people who participate in the public discourse within their occupational domains, e.g. journalists, politicians, scientists, writers and artists, are particularly exposed to online hate speech, threats and other harassments. What is especially alarming is that these professionals seem to be exposed to violations with increasing frequency and intensity and that they say this is impacting their choice of

topics and perspectives in their work. A survey found that one in seven journalists had considered changing professions due to the rampant online hate. When it comes to authors and artists, those who address social issues are particularly vulnerable to attacks.

Several studies indicate that online hate speech, threats and other harassments targets women and men to similar extents. However, all studies point to differences in the types of violations women and men experience. Men are more likely to fall victim to attacks that involve threats and references to their profession and competence, whereas women are more likely to be exposed to sexist and sexually charged offences. Some studies show that women who participate actively in public life are attacked twice as often as their male counterparts. People who represent ethnic minorities commonly experience negative comments related to gender, body, skin colour, ethnicity and religion. Studies also show that some topics provoke more hatred than others. Examples include refugee policy/integration, gender equality, feminism and religion.

Studies also show that mostly men engage in online hate speech, threats and other harassments. Other reports add nuances to the picture by showing that the perpetrators range from well-educated women and university students to family fathers and people with low levels of education. This partly has to do with the fact that online hate speech, threats and other harassments comprises many different types of attacks, from saying that somebody is ugly to continuous persecution of certain individuals or groups, death threats and child pornography. Thus, the people who commit these acts do not comprise a homogenous group. However, men are overrepresented among perpetrators of online hate directed to journalists or violations of the more organised type.

The answer to the question of what effects hate, threats and other violations might cause is as diverse as the phenomenon itself, but some general claims can indeed be made and are important to point out. Online hate has implications at the individual, group and societal levels. It can be assumed that all victims experience some type of discomfort. Yet, women report that they experience discomfort in response to attacks to a greater extent than men. There are indications that the vulnerability of journalists influences their news reporting by discouraging them from addressing certain topics and perspectives. Many studies also show that the hostile online environment keeps many individuals from participating in the public discourse. This should be considered in relation to the finding that certain topics, such as integration and refugee policy as well as gender equality issues, tend to trigger more hate and harassments and that certain groups are particularly exposed to attacks. This could ultimately lead to the silencing of some voices and hence to an effect where freedom of speech is a reality for some but not others.

### **Knowledge Gaps and Needs**

There are still major gaps in knowledge regarding the gender-related online hate speech, threats and other harassments. A few Nordic research projects have explored who are exposed to what online, as well as who the perpetrators are. However, as the research questions, methods, delimitations and definitions of central concepts have varied, the research results to date are difficult to compare and draw general conclusions from. Thus, there is a need for closer collaboration between the Nordic countries in order to develop knowledge based on similar methods and conceptual platforms.

When it comes to the exposure that people involved in the public debate experience, some research focusing on politicians, artists, public debaters and journalists has been conducted. A minor share of the studies has addressed the gender perspective. Several factors indicate that exclusionary norms interact in ways that make certain groups particularly vulnerable. Thus, there is a clear need for an intersectional analysis.

There are some studies that deal with the causes and effects of online hate speech, threats and other harassments, and hence to some degree with who the perpetrators are. Yet as they are relatively few and vary in focus, there is a great need for additional contributions. There is also limited research on the impacts of online hate speech, for both individuals and society at large.

## **Legal Regulation of Online Hate Speech, Threats and Other Harassments**

The regulation of online hate speech, threats and other harassments in the Nordic countries is not limited to national contexts, as their responsibilities are regulated in international conventions dealing with people's right to freedom from discrimination, right to privacy and freedom of expression. These international commitments influence the balance between people's freedom of speech and a government's obligation to criminalise or otherwise regulate certain actions to protect citizens from discrimination and privacy violations and to ensure everybody's freedom of expression.

### **Legal Protection against Hate Crimes**

Hate speech is regulated as a specific crime in all Nordic countries and thereby offers legal protection to certain defined grounds. These include race, ethnicity, skin colour, nationality, religion and sexual orientation. The Finnish legislation is open to the inclusion of grounds other than those listed explicitly. Disability is protected in Finnish and Norwegian law, and gender identity is implicitly covered in Finland and Iceland. Gender, age, social status and political or other opinion fall outside the legal provisions of all Nordic countries. However, the Finnish legislation theoretically offers protection of these groups, although this possible extension has never been tested in court. Worth noting is also that the Icelandic legislation concerning editorial responsibility covers violations based on gender and social status.

It is possible in all Nordic countries, although not explicitly in Icelandic law, to use a hate crime motive to increase the severity of a penalty for an offence, such as in cases of unlawful threats or defamation. Norwegian law offers explicit protection of particularly vulnerable groups, whereas the wording is neutral in the other countries. In this part of the regulation of hate crime, all countries have a legal construction involving a list of examples of protected groups and therefore offer a possibility to protect additional groups. A few reviews of rulings indicate that it is practically impossible to discern whether the courts have taken advantage of this opportunity or not. This means that we are not aware of any cases where such a broad interpretation of the provisions has been made.

In all Nordic countries, the provisions relating to hate crimes are applied relatively infrequently. In Iceland, however, there has been a recent increase in the number of trials, and active efforts regarding these types of offences are underway in the other

Nordic countries. For example, Norway is involved in a project concerning the way in which the police administer reports and registration of hate crimes.

There is an uncertainty in the Nordic countries regarding how the provisions criminalising hate crimes should be applied and where to draw the boundaries in relation to freedom of expression, and consequently the provisions are rarely used. This means that the practical protection is limited for all groups, and currently non-existent for victims of violations based on gender, age, social status and political affiliation. This should be considered in relation to the research showing that online hate speech targeting women is largely related to gender.

### **Legal Protection against Threats**

In order for a threat to be considered a criminal offence, it must be of a certain magnitude. In Finnish and Swedish law, the threshold is set very high, but for example threats to burn down somebody's home or to rape or kill somebody fall within the framework of criminal law in all Nordic countries.

Studies show that the types of online violations that boys are most likely to experience, such as threats of physical violence or death, are covered by the national laws. Thus, young boys enjoy relatively strong legal protection. Girls and young women are often exposed to threats to disseminate nude photos of them, i.e. threats to violate their personal integrity. If a girl is only exposed to such a threat but does not give in to it, the situation is not considered criminal in Finnish and Swedish law. The reason for this is that the provisions regarding *olaga hot* concern the protection of a person's life and health, and possibly also extensive damage of property. However, in Denmark and Iceland, the situation may fall under the legal concept of *trusler*, and Norwegian law clearly covers the described situation.

If the threats are realised, other types of crimes may come into questions, including unlawful coercion and sexual coercion or other sexual offences. In all the Nordic countries, there are applicable regulations on financial compensation when unlawful threats are made, which means that the described threats to disseminate nude pictures can qualify the victim for economic compensation in Danish, Norwegian and Icelandic law.

### **Legal Protection against Repeated Violations**

Norwegian and Finnish law offer the strongest protection against repeated violations of a person, as the provisions also cover repeated acts that are not considered criminal individually. Examples include the sending of encouraging text messages and virtual flowers to somebody against that person's will. In Sweden, unlawful persecution (*olaga förföljelse*) is considered criminal if the behaviour encompasses some previously criminalised acts. In Denmark, *stalking* is illegal only if it violates a restraining order. Icelandic law also includes such a provision, together with the criminalisation of repeated criminal acts within the framework of close relationships.

### **Legal Protection against Sexual Violations of People's Integrity**

As regards the dissemination of images of sexual nature that violate the featured person's integrity (non-consensual/revenge pornography), the interpretation and application of the Swedish, Finnish and Icelandic legislations are characterized by uncertainty. In Iceland and Sweden, the provisions are designed for completely different situations and need to be updated. It should be noted in this context that a legislative process is ongoing in Sweden, aiming to strengthen the protection of personal inte-

grity, especially in relation to online activities. The Finnish legislation is of a later date, but its application remains subject to some degree of uncertainty. In Danish law, this type of conduct is criminalised but the legal provisions are rarely applied. Taking intimate photos without the featured person's consent is illegal in Denmark, Finland and Sweden. Norway (and to some extent Iceland) instead outlaws the dissemination of such pictures. The Nordic legislations seem to consider sexual harassment and online flashing acts of sexual molestation.

Attempts to persuade someone to carry out sexual acts involving threats to disseminate sexual images are considered acts of unlawful threats or unlawful coercion, but may also be considered sexual offences. Sexual coercion is punishable in Finnish, Icelandic and Swedish law. In Norwegian law, rape includes online violations. This interpretation has also been made in practice in Sweden and Finland. In Danish and Icelandic law, rape requires physical contact, but in a recent Icelandic case, the question was raised of whether a threat to spread intimate images unless the featured person would engage in sexual activity could be considered attempted rape.

Children enjoy relatively good legal protection in the Nordic countries. Grooming – or the act of contacting children with a goal to persuade them to engage in a sexual relationship – is illegal in all Nordic countries. Danish law does not treat it as a separate crime but rather as attempted child rape. The possession and dissemination of sexual images can be treated as a child pornography offence.

### **Online Hate Speech, Threats and Other Harassments and the Issue of Responsibility**

The perpetrators of online crimes are often difficult to identify, as they often make use of fake user accounts, anonymous user profiles and similar methods. These measures make it difficult to identify the physical persons behind the acts or to obtain information about the user from the respective service provider. Besides the individual who is directly behind the online hate speech, it is currently difficult to hold the respective website editor/moderator accountable for the published material. However, there are a few legal possibilities to hold an editor or moderator responsible, but these are mainly designed based on traditional media and not on the current situation with online news reporting, which means that the editorial responsibility rarely is applied. As regards criminal liability in relation to acts committed on social media or in online comment fields, Swedish legislation offers the opportunity to hold the social media/comment field provider accountable if the direct perpetrator cannot be prosecuted. This possibility could but currently does not seem to be taken advantage of in practice.

A shared challenge for all Nordic countries is the vast amount of online hate speech, threats and other harassments that occurs in the news media's discussion threads, and that has led several media outlets to shut down their comment fields.

## **Conclusions and Recommendations**

The Nordic countries are characterised by strong protection of people's freedom of expression. There is also a certain level of protection against statements that involve hate speech and other personal attacks that de facto may imply restrictions of said freedom if they are allowed in the public debate. In light of the online hate speech, threats and

other harassments addressed in the present report, it is clear that such restrictions are well justified. In order to ensure freedom of expression for groups who are already vulnerable at a structural level and have less opportunity to make their voices heard, there is a need of restriction of what adversely affects their freedom of expression. The criminal regulation included in this report is an example of precisely such restrictions. By means of these criminalisations, the Nordic countries prescribe which statements and actions cannot be defended with reference to the right of freedom of expression.

However, the legal protection against online hate speech, threats and other harassments does not appear to be entirely satisfactory at present. The report points to several areas where the application of law and regulation should be reviewed, of which the editorial responsibility for electronic bulletin boards and social media is one.

Women, more often than men, fall victim to repeated personal attacks online – which when considered individually do not seem particularly serious but when seen in their full context can pose a major problem. Therefore, there may also be reason for the other Nordic countries to consider the Finnish and Norwegian legislations in order to strengthen the legal protection of those who are subject to repeated violations. This type of contextualisation as a basis for the legal provisions may also be of relevance for a review of the legal protection enjoyed by journalists, politicians, scientists and others who are victims of organised violations of various magnitudes. These voices are important to protect from a democracy perspective. It is therefore particularly alarming that these professionals seem to be experiencing increasing rates of online hate and that the frequency and intensity of the attacks seem to increase in connection with certain topics and thus to be directed towards certain voices. Since the online hate speech, threats and other harassments they face is of structural nature and sometimes organised but at the same time produced by multiple individuals, the attacks appear in a legal context as isolated and maybe less serious acts and are often not recognized properly by the legal system. Perhaps these acts should be considered in their full context, as something greater than each separate offence.

Women experience violations that are more strongly characterised by sexism, sexual threats and harassment, and that therefore are more personally than professionally oriented. If the online hate speech, threats and other harassments concerns somebody's gender, or for that matter age, social status or political views, the victims currently cannot count on benefitting from any legal protection. There is therefore reason to include protection of people who are attacked due to their gender in the hate crime legislation. In view of the observation that women are particularly affected by online hate speech, threats and other harassments related to gender and that the Nordic countries see gender equality as important, it is noteworthy that no Nordic country offers people legal protection against gender-related hate speech.

All Nordic countries offer legal protection against violations based on somebody's skin colour, ethnicity, race, religion, nationality and sexual orientation. Such violations can be classified as a hate crime. Finnish and Norwegian law offers protection when online hate speech targets a person due to that person's disability, and when the violations concerns somebody's gender identity there is a potential for protection under Finnish and Icelandic law. These rules may serve as protection against hate crimes, but it is rarely possible to discern in past judgments whether the rules are being applied. An insight provided by the present report is therefore that the existing legislations could be used more explicitly, partly to ensure the protection but also to make use of the sym-

bolic value of criminal law and show that these types of violation are not acceptable.

It is the responsibility of the Nordic countries to keep individuals and institutions from restricting people's freedom of expression. Whether the countries hitherto have been sufficiently active in ensuring genuine freedom of expression also online is therefore a relevant issue. The assessments in this report, of both the available knowledge and the legal regulations, show that there is a need for continuous efforts in the field, not least with respect to the ability of the legislation and application of law to keep up with the rapid developments in the online world.

Based on the assessments herein, the following points may guide a continued discussion and the development of measures to combat gender-related online hate speech:

#### **Prepare Legislative Changes**

- Update the legal regulations to ensure it includes serious personal attacks that occur online, in particular non-consensual pornography and other serious violations of people's integrity.
- Consider adding gender to the hate crime legislation.
- Review the responsibility of providers of online communication platforms.
- Look into how journalists, elected officials (who already enjoy special protection in Denmark), researchers and culture workers can be offered improved legal protection, especially when targeted with organised hate campaigns.

#### **Procedures for Dealing with Online Hate Speech**

- Review the law enforcement procedures for the handling of reported online hate speech in general and hate crimes in particular.
- Educate police officers and prosecutors about online hate speech, threats and other harassments in general and hate crimes in particular. Expected effects of this include that the police and prosecutors will have the courage to pursue cases that are only implicitly covered by the respective hate crime legislation.
- Use the existing regulation related to hate crimes more explicitly and consistently in court cases. This will improve the opportunities for follow-up, make visible how the protection is applied and highlight the symbolic value of criminal law.

#### **Initiatives to Collaborate**

- Review the possibility of developing ethical codes of conduct/rules for media providers and users – preferably at Nordic level and also in dialogue with international actors.
- Initiate Nordic cooperation between policy areas and organisations that can assist in the prevention work. This may include review of legislation and procedures as well as information material about current legislation to target groups with the ability to make a difference.

- Initiate discussions at Nordic level on the work against gender-based online hate speech in order to address issues related to legal regulation in international contexts. Several problems related to the investigation of offences transcend national borders and require cooperation – between policy areas and nations.
- Initiate discussions regarding cooperation on international legal assistance in relation to online crimes. This is connected to procedural challenges related to the fact that online hate speech often transcends national boundaries.

### Research

- Initiate in-depth, Nordic comparative research that is based on the same types of material, methods etc., preferably with a focus on:
  - Victims and perpetrators.
  - Effects/consequences, especially in relation to women's and men's acting space.
- Initiate research with an intersectional perspective. Explore how different power structures interact and characterise the online hate speech that occurs in a Nordic context. What are the consequences for the victims? How does the legal regulation relate to online hate speech that involves several interrelated dimensions, such as sexism and racism?