

Thematic analysis of the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

## **HATE CRIMES AND OTHER HATE-MOTIVATED INCIDENTS AGAINST LGBTI PERSONS IN ALBANIA**

**NATIONAL REPORT**

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The opinions expressed in this paper are those of the authors and do not necessarily reflect the official policy of the Council of Europe.

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## Executive summary

### **Section I: Legal, political and institutional context**

Currently, Albania has a legal framework to address SOGI hate crimes based, but needs greater enforcement. The Law on Protection from Discrimination provides a definition of hate speech. Official guidelines for police, prosecutors and courts define hate crimes and hate-motivated incidents in line with international standards, but it is unclear how often these definitions are used in practice. National and international institutions have called for changes in the criminal law to provide full protection for all hate crime victims and to guarantee equality between protected bases. The National Action Plan for LGBTI Persons includes measures to address hate speech and crimes and strengthen the capacities of relevant institutions. There is no coordination mechanism specifically dedicated to preventing and combating hate crimes, but gender officers and LGBTI contact persons within police directorates collaborate with CSOs and international partners.

### **Section II: Data collection**

Hate crimes against LGBTI persons are reported to be widespread in Albania, but only 21 cases were reported to the police between 2018 and 2021. Albania does not have a comprehensive system for recording and monitoring hate crimes. Hate crime statistics are not published regularly and more efforts are needed to collect and publish such data.

### **Section III: Reporting, investigation and punishment**

The investigation and punishment of hate crimes are not effective. Some measures have been implemented to facilitate reporting, but these are insufficient. In some cases, NGOs assist victims in reporting and provide legal support. Guidelines for police and prosecutors provide a framework for investigating and prosecuting hate crimes, but awareness of available rights and support is low among LGBTI persons and trust in authorities is low. Some victims have described hostile attitudes and an unsupportive environment when reporting to the police.

### **Section IV: Victims' rights**

The law of criminal procedure in Albania recognizes SOGI as a specific basis of vulnerability. Victims have access to support services, including assistance from victim coordinators in prosecutor's offices and free legal aid. A special emergency accommodation center called STREHA is operated by an LGBTI community organization and is the only non-public shelter where transgender persons are accommodated. Outside Tirana, access to victim support services is limited due to funding gaps and a lack of trained personnel.

### **Section V: Protection against anti-LGBTI hate crimes in detention facilities**

The law provides that convicted persons belonging to certain social categories, including LGBTI persons, should be treated taking into account their specific needs. It is unclear whether transgender persons are routinely housed separately from other people, but an NGO report details a case in which a trans person was held in solitary confinement for two years. There are no specific strategies to address violence against LGBTI persons in custody, but some aspects of rights, diversity and discrimination are covered in the professional training of personnel in detention facilities.

### **Section VI: Awareness raising and training**

LGBTI legal awareness of their rights is often insufficient, but there are growing efforts to raise public awareness of anti-LGBTI violence and hate speech. Cooperation between the police and LGBTI organizations has improved in recent years. Hate crime training has been provided to the police, criminal justice professionals and other services, but many initiatives are project-based and dependent on international donor funding, which affects their sustainability. Increasing the capacity of professionals to implement existing legal and policy frameworks and improving the sustainability of training and awareness-raising efforts are priority areas.

## Introduction

### A. Background of the thematic review of Recommendation CM/Rec(2010)5

This report is part of a project to provide thematic analysis of the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states<sup>1</sup> on measures to combat discrimination on grounds of sexual orientation or gender identity<sup>2</sup>.

This project was initiated by the Council of Europe at the beginning of 2021. It aims to provide support for ongoing efforts to advance dialogue at the national level on certain issues considered important for the advancement of the human rights of LGBTI persons. To date, in addition to Albania, Romania and France have also volunteered to participate in this thematic review and use this opportunity to advance their national reform process.

### B. Scope of the report

#### Recommendations CM/Rec(2010)5

Current thematic review<sup>3</sup> focuses on section A entitled "Hate crimes" and other hate-motivated incidents of Recommendation CM/Rec(2010)5. This section falls under the general title entitled "Right to life, security and protection from violence". According to paragraphs 1 to 5 of Section A, "Member States shall ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator of the crime; (...) [They must also ensure that (...) a motive of bias related to sexual orientation or gender identity may be taken into account as an aggravating circumstance; [they should take appropriate measures to ensure that victims and witnesses of "hate crimes" related to sexual orientation or gender identity and other hate-motivated incidents are encouraged to report these crimes and incidents; [they must take appropriate measures to guarantee the safety and dignity of all persons in prison or otherwise deprived of their liberty, including lesbian, gay, bisexual and transgender persons (...); [and finally, they must ensure that relevant data is collected and analyzed on (...) "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity".

Therefore, the content of this report is anchored in these recommendations. It is also guided by reference texts on the subject of hate crime, such as the definition of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE ODIHR) and considers the evolving interpretation of human rights standards (see below).

#### What is hate crime? What are "other hate incidents"?

There is no unified definition of hate crime at the international level. However, a reference definition is provided by the OSCE ODIHR: its a non-legally binding definition, still it refers to hate crimes as criminal acts motivated by bias or prejudice against particular groups of people<sup>4</sup>. Hate crimes are considered to involve two elements: a conduct that qualifies as a criminal offense and a

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<sup>1</sup> See the text of the Recommendations available in different languages: <https://www.coe.int/en/web/sogi/rec-2010-5>

<sup>2</sup> From here SOGI.

<sup>3</sup> The current review is part of the thematic reviews of the second cycle of Recommendation CM/Rec (2010)5. The first review was completed in 2021 and concerned the legal gender recognition.

<sup>4</sup> See "What is hate crime?" at <https://hatecrime.osce.org/>.

bias motivation. Consequently, a hate crime is understood to occur when a perpetrator has intentionally targeted an individual or property associated with - or even perceived to be a member of - a group that shares a protected characteristic, among which sexual orientation, gender identity and expression.

In addition to hate crime, Recommendation CM/Rec(2010)5 refers to "other hate-motivated incidents": from the Explanatory Report of the Recommendation states that these "include any incident or act - whether defined by national legislation as criminal or not - against people or property involving a chosen target because of his real or perceived affiliation with or membership in a group. The term is broad enough to cover a range of intolerance manifestations from low-level bias motivated incidents to criminal acts.

While the main focus of this report is on hate crime, other "hate-motivated incidents" will also be considered in relevant sections. The report will also consider the understanding and practice of local authorities in relation to these issues.

### **C. What are the applicable international standards?**

Hate crime has been dealt with by a number of international bodies inside and outside the Council of Europe (CoE) system.<sup>5</sup> The following paragraphs will focus on the state's obligations to address hate crime, which may be derived from the relevant jurisprudence of the European Court of Human Rights (hereinafter the Court). Other relevant international instruments (EC recommendations, relevant EU legal acts and OSCE ODIHR instruments) also have further detailed measures to combat hate crime. They are also mentioned in this section.

#### **1. The case law of the European Court of Human Rights**

The Court's case law has developed the doctrine of "positive obligations" to carry out an effective investigation of hate crimes. From these positive obligations, it follows that the member states of the Council of Europe impose additional, procedural and substantive obligations on them when dealing with such crimes. The following paragraphs explain how the Court developed the positive duty of state authorities to investigate the bias motives of a criminal offense when there are indications of its existence, how this duty was subsequently applied to cases involving LGBT persons,<sup>6</sup> including cases of crimes committed by private parties. It discusses cases where the discriminatory motive is by association and when mixed motives and interwoven biases are involved. This section also covers the state's obligation to protect against anti-LGBTI hate crimes in detention facilities.

#### ***The state's positive duty to uncover the ulterior motive of a crime, including crimes committed by private parties and the police, and the need for an appropriate legal response***

The Court clearly ruled that according to Article 2 of the ECHR (right to life), state authorities have the procedural obligation to conduct an effective criminal investigation "capable of determining the

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<sup>5</sup> While the catalog of protected grounds under international human rights law may not explicitly mention sexual orientation and gender identity, it is generally accepted that international human rights law applies to individuals discriminated against under SOGI. This application is based on the interpretation of the treaty bodies on the basis of sex and their inclusion of some of the SOGI grounds under the "other status" provisions contained in the UDHR, ICCPR and ICESCR.

<sup>6</sup> References to "LGB", "LGBT", or "LGBTI" follow the wording of the Court's decisions.

cause (...) and identifying the persons responsible with the aim of their punishment".<sup>7</sup> In *Nachova and others v. Bulgaria* (2005), the Court went further: for the first time, it derived from Article 14 of the ECHR (non-discrimination) a special duty of the state to investigate and unmask the bias motivation of a crime if there are such indications (racial motivation in that particular case)).<sup>8</sup>

This "positive principle of duty" that initially focused on the racist motivation of crime has been extended to other bias motives, including sexual orientation. This principle has not only been applied taken in conjunction with Article 2 of the ECHR, but it also extends to Article 3 (prohibition of torture and inhuman and degrading treatment) and in some cases to Article 8 (right to respect for private life and family<sup>9</sup>), thereby helping to further identify the scope of states' duties in relation to hate crimes under the ECHR.

In some key decisions, the Court has dealt with **the failure of law enforcement to "unmask" biased hate crimes** when there are indications of violence motivated or influenced by the sexual orientation of the victim.<sup>10</sup> In these cases, the authorities' duty to provide protection from hate-motivated violence and to address it fell not only under the procedural aspects of Article 3, but were also part of the authorities' duty to ensure the right under Article 3 without discrimination according to Article 14.

In *Identoba v. Georgia* (2015), thirteen individual applicants alleged that the authorities had failed to protect them from violent attacks in the context of a peaceful demonstration in Tbilisi in May 2012 to mark the International Day Against Homophobia (IDAHO). Authorities were also reported to have failed to effectively investigate the incident and its possible discriminatory motive. In concluding that there was a violation of Article 3 read in conjunction with Article 14, the Court referred to the widespread negative attitudes against members of the LGBTI community in some parts of Georgian society as detailed in various reports, notably by the CoE Commissioner for Human Rights. He also referred to the warnings given by the march organizers to the police about the possibility of conflicts. Furthermore, the Court noted that the Georgian authorities failed to investigate the homophobic motive of the attack, despite its national legislation providing that discrimination based on sexual orientation and gender identity should be treated as an aggravating circumstance.<sup>11</sup> The failure of the authorities to conduct a timely and objective investigation into

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<sup>7</sup> *Menson and Others v. UK* (Application No. 47916/99), admissibility decision, 6 May 2003. In that case, the Court finds that there were serious defects in the handling of the racist attack on Michael Manson. However, noting that the perpetrators had been convicted, the Court ruled that "the legal system of the respondent State demonstrates with skill (...), its ability to apply the criminal law against those who unlawfully took the life of another, regardless of racial origin of the victim". In light of this and other reasons, the Court declared the case inadmissible.

<sup>8</sup> *Nachova and others v. Bulgaria* (Application No. 43577/98 and 43579/98, ECtHR), July 6, 2005. In this case, the Court concluded that the authorities had failed in their duty under Article 14, taken together with Article 2, to take all possible steps to investigate whether or not discrimination may have played a role in the killing of two Roma fugitives by the military police during the arrest attempt. In other words, this conclusion is based on a breach by the Bulgarian authorities of their procedural duty to investigate and not on a finding of a racist motive that would have substantial grounds.

<sup>9</sup> See for example, *R.B v Hungary* (App. No. 64602, April 2016) concerning the failure to investigate the harassment and violence of a Roma person by demonstrators during an anti-Roma rally. The Court concluded that the facts of the case did not have the minimum level of severity required to qualify as degrading treatment (Article 3), but that there had been a violation of the right to respect for private and family life under Article 8: since the abuse suffered was directed against the applicant for her belonging to an ethnic minority, this behavior necessarily affects the private life of the applicant, in the sense of ethnic identity, according to the meaning of Article 8 of the ECHR.

<sup>10</sup> As explained by the Court in *Nachova and others v. Bulgaria* (see above) and *Bekos and Koutropoulos v. Greece*, (Application No. 15250/02), 13 December 2005 in the context of racially motivated violence: "The obligation of the respondent state to investigate the possible racist undertones of a violent act is an obligation to use best efforts and not an absolute one. Authorities must do what is reasonable in the circumstances to gather and secure evidence, explore all practicable means of discovering the truth, and render fully reasoned, impartial and objective decisions, without neglecting the dubious facts that may be indicative of a racially motivated violence.

<sup>11</sup> *Identoba and others v. Georgia* (Application No. 73235/12, ECtHR), August 12, 2015.

attacks on the LGBT community in the *Identoba* case was again referred to in a case where LGBTI demonstrators who participated in the IDAHO demonstration the following year were attacked by a mob (see *Women's Initiative Supporting Group and others v. Georgia* (2021)).<sup>12</sup> The Court found a violation of Article 3 taken in conjunction with Article 14 as well as a violation of Article 11 for failing to take measures to protect LGBT demonstrators from the mob who chanted homophobic insults and physical threats, despite being aware of the risks associated with the event. The Court further explained that it could not rule out the possibility that the unprecedented scale of violence was influenced by the failure of the authorities to conduct a timely and objective investigation into the attacks on the LGBTI community during last year's event that was the subject of its judgment in *Identoba v. Georgia*.

In another similar case concerning homophobic violence following an annual Pride March (*M.C. and A.C v. Romania* (2016)), the Court found that the authorities had not only delayed the investigation, but had also failed to take "reasonable steps"<sup>13</sup> to examine the role played by possible homophobic motives behind the attack. This led the Court to conclude on a violation of Article 3 taken in conjunction with Article 14.

The court also reviewed the lack of investigation and the steps taken **to unmask the homophobic motives of the police force** in *Aghdgomelashvili and Japaridze v. Georgia* in (2020).<sup>14</sup> The case concerned a police raid on the office of a lesbian, gay, bisexual and transgender organization in Tbilisi, during which the police insulted and threatened the applicants, subjecting them to physical and mental abuse with clear homophobic and/or transphobic overtones and had humiliated them through strip raids. Noting that the investigation had been prolonged, the court ruled that the respondent state had failed to properly investigate the case, highlighting "the inability or unwillingness of the Georgian authorities to examine the role played by homophobic and/or transphobic motives in the alleged abuse of the police" and stated that the behavior of the police officers was not in line with respecting their human dignity. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention under its substantive aspect, taken in conjunction with Article 14 (prohibition of discrimination) and a violation of Article 3 under its procedural aspect, taken in conjunction with Article 14.

In its case law, the Court also extended the positive duty of states to carry out an effective investigation of the possible motivation of bias in **cases involving private individuals** instead of state authorities (see *Šečić v. Croatia* (2007)<sup>15</sup>, *Angelova and Iliev v. Bulgaria* (2007)<sup>16</sup> for cases concerning

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<sup>12</sup> *Women's Initiative Supporting Group and others v. Georgia* (Application No. 73204/13 and 74959/13), December 16, 2021.

<sup>13</sup> For what is meant by "reasonable steps", see *M.C. and A.C v. Romania* par 103: "When investigating violent incidents such as ill-treatment, state authorities have the duty to take all reasonable steps to unmask any possible discriminatory motive, which the Court concedes is a difficult task. The respondent State's obligation to investigate possible discriminatory motives for a violent act is an obligation to use best endeavors, and is not absolute. The authorities must do whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination (see *Nachova and Others v. Bulgaria* [GC], Nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII; *Members of the Gldani Congregation of Jehovah's Witnesses and Others*, §§ 138-42, cited above; and *Mudric v. the Republic of Moldova*, No. 74839/10, §§ 60-64, 16 July 2013, recently reiterated in *Identoba and others*, cited above, § 67)."

<sup>14</sup> *Aghdgomelashvili and Japaridze v. Georgia* (Application No. 7224/11, ECHR), 8 October 2020.

<sup>15</sup> *Šečić v. Croatia*, (Application No. 40116/02, 31 May 2007, par. 67). The *Šečić* case concerns an attack by a skinhead group on the applicant resulting in severe bodily harm and hospitalisation. The applicant alleged that the Croatian authorities had failed to undertake a thorough investigation of this attack and that this failure related to his Roma origin. Recalling its ruling on *Nachova*, the Court insisted that, when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and stated that this was "true also in cases where the treatment contrary to Article 3 of the Convention is inflicted by private individuals".

<sup>16</sup> *Angelova and Iliev v. Bulgaria* (Application No. 55523/00, 26 July 2007).

the failure to adequately investigate a racist attack by private individuals; this positive duty in cases involving private persons was also repeated in relation to cases of homophobic violence (see the above-mentioned case, MC and AC v. Romania (2016) par. 109).

In addition to considering whether the bias motive of a hate crime was unmasked, the Court also addressed **the legal response given by the domestic courts.**

In *Sabalić v. Croatia (2021)*,<sup>17</sup> The Court held that the State had failed to fulfill its procedural obligations under Article 3 of the Convention in conjunction with Article 14 in relation to the violent attack against the applicant motivated by her sexual orientation. The court held that the misdemeanor proceedings against the applicant's aggressor had not addressed the hate-crime element of the offense and had resulted in a derisory fine. According to the Court, the domestic authorities had acted contrary to their duty to fight impunity for hate crimes, which are particularly destructive to basic human rights.

In a case concerning a homophobic murder of the applicant's 26-year-old son by secondary-school students (*Stoyanova v. Bulgaria (2022)*)<sup>18</sup>, the court accepted that the authorities had clearly established the homophobic motivation behind the attack. However, it held that there had been a violation of Article 14 taken together with Article 2 due to inadequate legal consequences in the Bulgarian courts. This, according to the Court, is due to the fact that the Bulgarian criminal law had not properly equipped the courts to respond. The Court noted that, under the Bulgarian Criminal Code, murder motivated by hostility towards the victim on account of his or her actual or presumed sexual orientation was not aggravated or otherwise treated as a more serious offence. Therefore, under Article 46 (binding force and implementation), the Court found that Bulgaria had to ensure that violent attacks motivated by hostility towards the victim's actual or presumed sexual orientation were treated as aggravated in criminal-law terms (see also below, Hate crime legislation: aggravating circumstances and compelling sanctions, page 8).

### ***Associative discrimination***

The court has further developed the positive duty of state authorities to investigate and unmask the bias motivation of an offence for cases of associative discrimination. In *Škorjanec v. Croatia (2017)*<sup>19</sup>, the Court further explained that the duty to effectively investigate and prosecute possible bias also applies in cases where the victim of a criminal offense is targeted not because of the person's actual or perceived personal status or characteristics but because of the alleged association or affiliation with another person with that actual or perceived personal status.

### ***Mixed motive and mixed bias***

Unmasking the bias motivation of a hate crime can be complicated by the fact that many perpetrators will have mixed motivations and mixed biases. The court ruled that for an act to be classified as a "hate crime", it need not be based solely on the characteristics of the victim. In *Balázs*

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<sup>17</sup>*Sabalić v. Croatia* (Application No. 50231/13), 14 January 2021.

<sup>18</sup>*Stoyanova v. Bulgaria* (Application No. 56070/18), June 14, 2022.

<sup>19</sup>*Škorjanec v. Croatia* (Application No. 25536/14) 28 March 2017: The case concerned two perpetrators of a racist attack who were prosecuted and convicted of a hate crime against the applicant's partner, who was of Roma origin. However, although the applicant was beaten and suffered physical injuries, the perpetrators were not charged with a racially motivated crime against her, as the prosecuting authorities argued that, not being Roma themselves, there was no indication that they had attacked her out of racial hatred.

v. Hungary (2015)<sup>20</sup>, the Court found that "perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude towards the group to which the victim belongs" (par. 70)

***State obligation to provide protection against anti-LGBTI hate crimes***

***in detention facilities***

In its case law, the Court established the state's responsibility to prevent and address potential risks of hate crimes in detention facilities, including in the context of violence between prisoners (Article 3 of the ECHR). In particular, the Court considered whether the administration of the detention facilities took reasonable steps to eliminate those risks and to protect the applicant from that abuse, as part of the States' obligation to protect an individual from ill-treatment. This includes launching a prompt and effective investigation into allegations of ill-treatment by other prisoners and guards.<sup>21</sup> The following paragraphs focus on the alleged lack of or inadequate safeguards taken against the risks of anti-LGBTI hate crimes in detention facilities.

In *Stasi v. France* (2011)<sup>22</sup>, the applicant, a gay male prisoner complained that he was the victim of ill-treatment by other prisoners, particularly because of his homosexuality, and argued that the authorities had not taken the necessary measures to ensure his protection. However, in this case, the Court did not reach the conclusion that there was a violation of Article 3: The court found that the criminal provisions in force provided the applicant with effective and sufficient protection against physical harm. Moreover, the Court held that in the circumstances of the case, the authorities had taken all reasonable steps to protect the applicant, such as transferring to another cell, allowing him to shower alone and being systematically accompanied by a guard (par. 96).

The Court also considered the extent to which the measures taken to protect the safety and dignity of an applicant at risk in prison are adequate. For example, in the case of *X v. Turkey* (2012)<sup>23</sup>, the Court held that placing a homosexual male detainee in solitary confinement and in inadequate conditions for more than eight months to protect him from inmates was not justified and only constituted a violation of Article 3. In that case, the Court was also not convinced that the justification for the detainee's exclusion from prison life was based on the protection of the applicant's physical well-being, but based on his sexual orientation and concluded that the applicant had suffered discrimination on the grounds of sexual orientation by the prison authorities (par. 57).

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<sup>20</sup>Balázs v. Hungary (Application No. 15529/12), 20 October 2015.

<sup>21</sup> See, for example, *Premininy v. Russia* (Application No. 44973/04, 10 February 2011). The case concerns the alleged ill-treatment of a pre-detainee, suspected of accessing a bank's online security system, by his fellow inmates and prison guards. The court held that the authorities knew or should have known that an applicant was suffering or at risk of being ill-treated by his fellow inmates, but failed to take reasonable steps to eliminate those risks and to protect the applicant from that abuse. It concludes in a violation of Article 3 in relation to the failure of the authorities to fulfill their positive obligation to adequately ensure the physical and psychological integrity of Mr. Premininy and in relation to the ineffective investigation of Mr. Premininy's allegations. It was also concluded in a violation of Article 5 § 4 (right to liberty and security).

<sup>22</sup>*Stasi v. France* (Application No. 25001/07, 20 October 2011).

<sup>23</sup> *X v. Turkey* (Application No. 24626/09, 9 October 2012).

## 2. Other relevant international instruments

### *Hate crime legislation: aggravating circumstances and compelling sanctions*

Some EC documents have recommended that the bias motive of a criminal offense be considered as an aggravating circumstance when determining the sanction. When it comes to the bias motive related to sexual orientation and gender identity, Recommendation CM/Rec(2010)5 states explicitly that "Member States should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance" (see par. 2).

Following the adoption of CM/Rec(2010)5, the European Commission against Racism and Intolerance (ECRI) began examining discrimination and intolerance against LGBT persons in its fifth country monitoring cycle. (2012-2018<sup>24</sup>) and to Intersex persons in its sixth monitoring cycle (2019). In this context, ECRI has reviewed the criminal legislation of the CoE member states and its implementation, including LGBT-phobic crime, especially in the light of the General Policy Recommendation (GPR) no. 7 on National Legislation to Combat Racism and Discrimination (revised in 2017)<sup>25</sup>: That recommendation states that member states may prohibit, in addition to racial discrimination, other forms of discrimination such as those based on gender, sexual orientation and other grounds (see explanatory memorandum page 12).

**As ECRI itself pointed out, the recommendations "should not be taken separately from the Council of Europe and other international standards"**<sup>26</sup>. **Yogyakarta Principles+10** (2017) although not binding, for example, they emphasized the need to "take into account developments in the law (...) and its application to the particular lives and experiences of persons of diverse sexual orientations and gender identities over time and in diverse regions and countries". They also recognize "the diverse and intertwined bases of gender expression and sexual characteristics."<sup>27</sup>

Several other Council of Europe bodies have recently addressed the issue of hate crime against LGBTI persons more clearly, particularly with regard to the need for hate crime legislation to include the grounds of sexual characteristics and gender expression. This is the case of the Parliamentary Assembly, which Resolution 2417 (2022) combating rising hate against LGBTI persons in Europe calls on member states in particular to: "14.1 amend criminal legislation as necessary to ensure that its provisions with respect to hate crimes clearly cover all offences committed against a person or group of persons based on their sex, sexual orientation, gender identity, gender expression and sex characteristics, provide for proportionate and dissuasive sanctions, protect victims' rights and make provision for them to receive compensation; and 14.2 make motivations based on sex, sexual orientation, gender identity, gender expression and sex characteristics an aggravating circumstance for all ordinary offences".

Currently, EU law criminalizes hate crime and hate speech only if it relates to a limited set of protected characteristics such as ethnicity (see Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means

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<sup>24</sup> See Summary of ECRI Country Recommendations on LGBT Persons, Fifth Monitoring Cycle available at: <https://rm.coe.int/5th-cycle-ecri-recommendations-on-lgbt-issues/16809e7b66>

<sup>25</sup> See ECRI's GPR No. 7: <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>.

<sup>26</sup> See ECRI's fact-sheet on LGBTI issues, available here: <https://rm.coe.int/ecri-factsheet-lgbti-issues/1680a1960a> (page 4).

<sup>27</sup> See Yogyakarta Principles+10 (2017) page 4, available here: [https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

of criminal sanctions). The Victims' Rights Directive requires EU states to treat victims of anti-LGBTI hate crime as deserving of special protection (see also below). However, a further step to increase protection against LGBTI hate crimes is now expected with an initiative<sup>28</sup> to expand the list of "EU crimes" on hate speech and hate crimes on grounds other than racism and xenophobia, in particular because of sex, sexual orientation, age and disability, and to combat these "on a common basis".<sup>29</sup>

### ***Hate crime reporting and data collection***

Relevant international standards emphasize the need to collect robust data on hate crimes. This includes Recommendation CM/Rec(2010)5 which states that "relevant data should be collected and analyzed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity". GPR No. 11 (2007) of ECRI refers to the necessity "to develop a reliable system for the recording and monitoring of racist incidents" (par. 68).

In the context of the EU, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards for the rights, support and protection of victims of crime (hereinafter the Victims' Rights Directive) emphasized that "systematic and adequate statistical data collection is recognized as an essential component of effective policy-making in the field of rights set out in this Directive" and asks member states "to" communicate to the Commission the relevant statistical data related to the application of national procedures on victims of crime (paragraph 64).

OSCE participating States in the OSCE have made a specific commitment to collect data on hate crimes and to take appropriate measures to encourage victims to report hate crimes.<sup>30</sup> As a result, the OSCE ODIHR maintains information from OSCE participating States, civil society and intergovernmental organizations about hate crimes, including its dedicated section on anti-LGBTI hate crimes.<sup>31</sup> In 2020, 21 participating countries<sup>32</sup> provided such information. The 2019 hate crime report published by the OSCE ODIHR found that "sexual orientation or gender identity" was the third most common ground among the reported hate crimes (18.35%), an increase compared to 2018 (14.61 %).

At the same time, the under-reporting of hate crimes has been identified over the years as a persistent barrier to effectively tackling hate crime.<sup>33</sup> Only a small number of victims report hate-motivated incidents to the police<sup>34</sup>. Additionally, law enforcement officers may not recognize

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<sup>28</sup> See the Communication from the Commission to the European Parliament and the Council on "A more inclusive and protective Europe: expanding the EU list of hate speech and hate crime" available here:

[https://ec.europa.eu/info/sites/default/files/1\\_1\\_178542\\_comm\\_eu\\_crimes\\_en.pdf](https://ec.europa.eu/info/sites/default/files/1_1_178542_comm_eu_crimes_en.pdf)

<sup>29</sup> In its communication, the Commission noted among other things the need to address the actual fragmentation of the existing criminal framework for hate speech and hate crime among EU member states. According to the Commission, such fragmentation leads to "a lack of equal conditions for individuals who may fall victim to hate speech and hate crime."

<sup>30</sup> Decision of the OSCE Ministerial Council No. 9/09 on combating hate crimes, <https://www.osce.org/cio/40695?download=true>

<sup>31</sup> See the section dedicated to anti-LGBTI hate crime here: <https://hatecrime.osce.org/anti-lgbti-hate-crime>.

<sup>32</sup> These are: Andorra, Belgium, Canada, Croatia, Cyprus, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Lithuania, Netherlands, Poland, Spain, Sweden, Ukraine, United Kingdom, United States of America.

<sup>33</sup> See for example, Hate crime recording and data collection practice across EU countries, EU Fundamental Rights Agency, 2018 [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-hate-crime-recording\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf), see also Encouraging hate crime reporting – The role of law enforcement and other authorities, EU Fundamental Rights Agency, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-hate-crime-reporting\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-hate-crime-reporting_en.pdf).

<sup>34</sup> According to a finding from FRA's 2019 survey of LGBTI persons in the EU and North Macedonia and Serbia, fear or lack of trust in the police appears as a major reason for not reporting, particularly among LGBTI and Jewish respondents, and especially in relation to violent hate crimes (24% and 25%, respectively). LGBTI victims of bias-motivated attacks indicated that their fear of a homophobic or transphobic response from the police was a reason for not reporting, with substantial differences between countries surveyed (EU average, 25%).

certain incidents stemming from bias or lack the means to flag them as hate crimes. Recommendation CM/Rec(2010)5 addresses the issue and recommends that states ensure that "law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses." (par. 3).<sup>35</sup> In its monitoring work, ECRI emphasized the importance of cooperation with equality bodies and the LGBTI community in these trainings and the need to evaluate their impact.<sup>36</sup>

### ***Victims' rights***

Several instruments have addressed the importance of victims of crime (including hate crime) having a genuine opportunity to seek compensation. The minimum standards are set in this direction:

At the level of the Council of Europe, **Recommendation of the Committee of Ministers (2006)8 on Victim Support Services**<sup>37</sup> includes several principles to guarantee the recognition and effective respect of the rights of victims without discrimination. It describes measures for this purpose, such as the establishment and coordination of dedicated victim support services and the training of their staff, victims' access to relevant information to their case and access to legal aid.

At EU level, **Victims' Rights Directive**<sup>38</sup> aims "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings" (Article 1). The Victims' Rights Directive refers to all victims of hate crime on an equal footing and recognizes victims of hate crime as particularly vulnerable victims who require individual assessments to identify their specific protection and support needs (Article 22). It also encourages States to raise awareness of victims' rights as set out in this Directive, in particular by cooperating with civil society and other stakeholders in awareness campaigns, research and educational programs (Article 26). According to Article 27, EU member states must transpose the Directive's requirements into their respective national legal order by 16 November 2015. In 2020, the Commission published a report on the level of transposition of the directive in EU member states<sup>39</sup> and in March 2022, a consultation was launched to identify possible ways to strengthen existing victims' rights as part of the EU Strategy on Victims' Rights (2020 – 2025).<sup>40</sup>

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See A Long Way to Go for LGBTI Equality, EU Fundamental Rights Agency, 2020, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf).

<sup>35</sup> Based on the CoE's standards for investigating hate crime, see the Council of Europe manual Policing Hate Crime Against LGBTI Persons: The professional police response training is designed for police trainers, investigators, managers, hate crime officers and frontline police officers." <https://rm.coe.int/prems-030717-gbr-2575-hate-crimes-against-lgbti-web-a4/1680723b1d>.

<sup>36</sup> See in addition to GPR no. 10 paragraph 6 and GPR no. 15 paragraph 10(h) of ECRI on the training of public officers, see Compilation of ECRI Country Reports Recommendations pertaining to LGBT persons, fifth monitoring cycle, §§ 94-100.

<sup>37</sup> RECOMMENDATION **Rec(2006)8** of the Committee of Ministers to member states on assistance to crime victims approved by the Committee of Ministers on 14 June 2006 at the 967th meeting of Deputy Ministers, available at: <https://rm.coe.int/16805afa5c>.

<sup>38</sup> Directive 2012/29/EU of the European Parliament and of the Council of October 25, 2012, which establishes minimum standards on the rights, support and protection of victims of crime and replaces the Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>.

<sup>39</sup> See the Report from the Commission to the European Parliament and the Council on the implementation of the Victims' Rights Directive. As of the date of publication of this Report, 16 member states have not fully transposed the Victims' Rights Directive and infringement procedures for these countries are ongoing (Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Romania, Slovenia, and Slovakia). See the full report here: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:188:FIN>.

<sup>40</sup> For more information: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0258>.

#### **D. Methodology and report structure**

This report was drawn up by national experts, in cooperation with international experts. The drafting process has benefited from input, support and guidelines from the European Governmental LGBTI Focal Points Network (EFPN), the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), Working Group on SOGI (GT-ADI-SOGI) and its monitoring NGOs.

The report is based on a wide range of information, using international and national sources. Civil society reports, surveys or publications of international agencies, academic articles and research are all included in the report.

As part of the report process, a national roundtable was held on September 23, 2022, bringing together a wide spectrum of interlocutors including government officers, law enforcement officers, Prosecutors, High Judicial Council representatives, Ombudsman, Commissioner for Protection from Discrimination and civil society representatives. The information gathered and the views expressed, especially by LGBTI persons, during this roundtable were reflected in this report.

In addition to providing a brief summary of the principles set out in Recommendation CM/Rec(2010)5 and highlighting the applicable standards of international human rights law, the report is divided into six sections. It provides an overview of the legal, political and institutional context relating to hate crime based on SOGI (Section I), it discusses data collection issues (Section II), reporting, investigation and punishment (Section III), victims' rights (Section IV). It also covers protection against anti-LGBTI hate crimes in detention facilities (Section V) and devotes a specific section to measures taken to raise awareness and provide training to handle anti-LGBTI hate crimes (Section VI). Examples of positive reforms (so-called "best practice examples") are highlighted in a separate document (reference) and can be read together with this report with the aim of stimulating discussion and providing further guidance.

## Section I - Legal, institutional and political framework

### A. Legal and political context

#### 1. Scope of work

Hate speech is a disturbing and growing phenomenon in Albania. LGBTI persons are one of the groups most victimized by hate speech. Some persons of the LGBTI community such as transgender, intersex and LGBTI asylum seekers are the most discriminated<sup>41</sup> Social Media Victimization is disturbing.<sup>42</sup> It is for this reason that the National Action Plan for LGBTI People (2021-2027) addresses measures to guarantee protection and security for LGBTI+ persons and their special categories.<sup>43</sup> Data collection, reporting, investigation and prosecution of hate crimes, including the enforcement of criminal sanctions, are addressed in this plan.<sup>44</sup>

Hate crimes are provided for by the Criminal Code (CC) which is set according to the hybrid model. The motive of hatred, including sexual orientation and gender identity (SOGI) is included in the content of a few articles such as: in Article 253 (violation of the equality of citizens); sexual orientation, without gender identity, is provided for in Article 265 (incitement of hatred or strife); Article 266 (incitement to national hatred) does not mention SOGI. The criminal offenses provided for in the Criminal Code committed due to SOGI are considered as criminal offenses committed under aggravating circumstances.<sup>45</sup>

The Criminal Code does not contain any definition of hate crimes. Their definition, including hate crimes against LGBTI persons, can be found in guidelines for the police, prosecution and courts. Manual<sup>46</sup>The LGBTI Hate Crimes Investigation defines a hate crime as a criminal act with a biased motive. There are two essential elements of hate crimes: a) a criminal offense has occurred and b) the perpetrator of the criminal offense has committed it based on a biased motive. According to the aforementioned handbook, "hate crimes against LGBTI persons are bias-motivated criminal acts. They are hate crimes when the victim, building or target of the crime is selected because of their real or perceived relationship, allegiance, affiliation, support or membership of an LGBTI group. There must be a reasonable suspicion that the motive of the perpetrator of the criminal offense is SOGI, the gender expression or sexual characteristics of the victim"<sup>46</sup>. Whereas, incidents with hate motives are events, acts or displays of intolerance that are carried out with a biased cause (motive) that may not reach the threshold of hate crimes, because there is insufficient data to present them in court as evidence of a criminal offense or biased motive, or because the act itself may not constitute a criminal offense under local legislation.<sup>47</sup>

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<sup>41</sup> See the evaluation report of the National Action Plan for LGBTI People in the Republic of Albania, published by the Ministry of Health and Social Affairs and the Council of Europe, Tirana, 2021, pg. 13.

<sup>42</sup> See: Beyond definitions - a call for action against hate speech, CPD and Council of Europe publication, November 2021, pg. 24. <https://www.kmd.al/wp-content/uploads/2021/11/Manual-shqip.pdf>.

<sup>43</sup>See: National Action Plan for LGBTI+ People (2021 – 2027), pp. 25-26. See: <https://rm.coe.int/lgbti-nap-2021-2027-alb/1680a574af>.

<sup>44</sup>The National Action Plan for LGBTI+ People (2021 – 2027) uses three terms when talking about effective justice and criminal law improvements: hate speech, hate crimes and violence against LGBTI persons.

<sup>45</sup>Added by Law 144/2013.

<sup>46</sup>See: Manual<sup>46</sup>Investigating hate crimes against LGBTI people, Council of Europe publication, 2020, pp. 33-34.

<sup>47</sup>ibid., pp. 33-34.

Instruction no. 17/2020 of the Prosecutor General<sup>48</sup> defines as hate-based criminal offense all the acts that meet the two criteria: a) are provided by the criminal law as a criminal offense; b) committed for biased motives, among which SOGI. The instruction clarifies that victims are attacked because of belonging or suspected belonging to a certain group; such acts may be directed against one or more persons or against property.

The definition of hate-based violence is expanded in the document "Minimum standards for social care services for LGBTI+ people in public and non-public residential centers in Albania". According to this definition, "an LGBTI+ individual may be a direct victim of physical, psychological, emotional, sexual (including violence and/or sexual harassment), verbal, financial, socio-cultural abuse, and/or exclusion (or threat of exclusion) from material inheritance, or /and family memory and narrative, or may be subject to threats of private information disclosure, or threat of abuse, to themselves or to their biological or adopted children, or to any other relative, or may be threatened or be the victim of the destruction of any kind of property. Threats of violence, or violence itself can occur in the family, in the community, at school, at work or on the street, in social networks, or in traditional media, in private or public institutions, in private or public premises, by family members, or by relatives, or from acquaintances or strangers, or from lovers/partners or ex-lovers/ex-partners, spouses/ex-spouses, or/from cohabitants, service providers, administration employees, educators, doctors, nurses, police officers, colleagues, journalists, and/or by anyone else in a systematic, isolated or random manner, with or without intent. Threatening or coercing them not to expose their sexual orientation, gender identity, gender expression or sexual characteristics in public is also a form of violence against LGBTI+ persons".<sup>49</sup> According to the drafters of this guideline, expanding the concept of hate-based violence helps in addressing cases and determining service needs.

On the other hand, the lack of a unified concept of hate crimes can make it difficult to distinguish hate speech, hate-motivated incidents from hate crimes by the victim and the perpetrators. Consequently, hate crimes will not be reported to the competent body; LGBTI victims may create an unfair perception of the results and investigations of the reported case; victims' mistrust of institutions will increase and hate crimes will go unpunished.

The Law on Protection from Discrimination (LPD) provides the definition of hate speech and provides for new forms of discrimination such as: intersectional discrimination, associative discrimination), multiple discrimination, structural discrimination, incitement or assistance to discrimination, declared intent to discriminate, concern, instruction to discriminate, segregation, discrimination of a person due to appearance or sex characteristics, victimization and severe forms of discrimination.<sup>50</sup> However, a recent study has highlighted that there is no consolidated attitude in practice regarding hate speech in the criminal field.<sup>51</sup>

Above, although there are definitions of hate speech or specific forms of hate crimes in various documents, they are not unified. Therefore, such issues would be advisable to be part of the training of employees dealing with hate crimes.

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<sup>48</sup> Article 7 of General Instruction No. 17, dated 23.12.2020 of the Prosecutor General "Investigation and effective criminal prosecution of criminal offenses of domestic violence, violence against women and hate-based violence".

<sup>49</sup> "Minimum standards for social care services for LGBTI+ people in public and non-public residential centers in Albania", approved by the Ministry of Health and Social Protection, page 10.

<sup>50</sup> Added by Law No. 124/2020 For some amendments and supplements in Law No. 10221, dated 4.2.2010 "On protection against discrimination".

<sup>51</sup> Beyond definitions - a call for action against hate speech, CPD and Council of Europe publication, November 2021, cited work, pg. 101.

## 2. Criminal legal framework

Although criminal legislation is generally considered good, studies/evaluations carried out by academic researchers<sup>52</sup> and NPOs<sup>53</sup> pointed out that the criminal policy against hate crimes is not effective and the rights of the victims are not guaranteed in practice. In addition to the need for the correct understanding and application of the law, criminal legislation needs to be improved in several aspects. Recommendations for its improvements have been addressed by the Commissioner for Protection from Discrimination (CPD), the Ombudsman (AP), local and international organizations such as the European Commission against Racism and Intolerance (ECRI).<sup>54</sup> For example, the Criminal Code does not provide for gender identity in its Article 265; Article 266 of the Criminal Code does not provide for the incitement of violence; the articles on crimes with racist motives and xenophobia through the computer system (Articles 84/a, 119/a, 119/b of the Criminal Code) do not provide for SOGI; violation of equality due to SOGI in the private sector is not punishable under Article 253 of the Criminal Code. There is discriminatory language in the naming and content of some provisions for sexual crimes (the term "homosexual" is used in Articles 100, 101, 102/a, 103, 104, 105, 106, 107 of the Criminal Code).<sup>55</sup> Although the cases of cohabitation/marriage between Albanian and foreign citizens have increased, the general provisions of the CC regarding the implementation of the criminal law for criminal offenses committed by foreign citizens do not include crimes motivated by SOGI.

As aforementioned the legal deficiencies in the criminal code need to be addressed to bring the criminal legislation in full compliance with international standards and that no form of hate crime goes unpunished.

### B. Institutional response and cooperation

The National Action Plan for LGBTI People (2021-2027) foresees measures that address hate speech and crimes and strengthening the capacities of the institutions charged by law to prevent and combat them. There is no coordination mechanism with representatives of the ministries dedicated to the prevention and combating of hate crimes<sup>56</sup>, but there are several structures that are engaged in the field. For example, the Inter-institutional Thematic Group on Social Inclusion and Protection monitors the implementation of the Action Plan, including information, awareness-raising activities and responses to hate crimes.<sup>57</sup> The network of gender officers established at the ministry level and at the local level addresses the issues of different social groups, including LGBTI persons.<sup>58</sup>

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<sup>52</sup> National Scientific Conference "Issues of theory and practice on the protection of victims' rights in the criminal process", organized by the Faculty of Law, University of Tirana, December 2019. <https://fdut.edu.al/wp-content/uploads/2019/01/konferenca-PER-SHTYP-FINAL.pdf>.

<sup>53</sup> Assessment of the obstacles faced by the LGBTI community in obtaining legal services and access to justice, study conducted by STREHA, Tirana, 2018. See: [https://issuu.com/strehalgbt/docs/streha\\_-\\_aksesi\\_ne\\_drejtesi](https://issuu.com/strehalgbt/docs/streha_-_aksesi_ne_drejtesi).

<sup>54</sup> Albanian criminal legislation has been the object of monitoring by ECRI in the 4th and 5th monitoring rounds. In the reports on Albania, ECRI recommends criminal legislation revision. See: reports for Albania: <https://rm.coe.int/fourth-report-on-albania-albanian-translation-/16808b54e4> and <https://rm.coe.int/fifth-report-on-albania-albanian-translation-/16808b54e9>.

<sup>55</sup> In 2018, the PINK Embassy has recommended several legal amendments and improvements. See: Monitoring report of the National Action Plan for LGBTI People (2016-2020), cited work, pg. 2.

<sup>56</sup> In 2021, the Pink Embassy has asked the Albanian Government to establish the Office of the National Coordinator for LGBTI Rights. Statement of the PINK Embassy, July 17, 2021. See: <https://www.pinkembassy.al>

<sup>57</sup> Order no. 15, dated 22.10.2018 of the Prime Minister, "On taking measures for the implementation of the broad sectoral/intersectoral approach, as well as the establishment and operation of the integrated sectoral/intersectoral mechanism".

<sup>58</sup> See: Evaluation Report of the LGBTI Action Plan, 2016-2020, pg. 20.

Contact persons for LGBTI persons have been appointed and are functioning in all district police directorates.

The Ombudsman (AP) and the Commissioner for Protection from Discrimination (CPD) are committed to combating hate speech and protecting the rights of LGBTI persons<sup>59</sup>.<sup>60</sup> In 2019, the Ombudsman, the Commissioner for Protection from Discrimination, the Audiovisual Media Authority (AMA) and the Albanian Media Council created the Alliance against Hate Speech.<sup>61</sup> The Alliance aims to promote diversity and awareness of the general public, to promote cooperation with partner organizations and agencies in the fight against discrimination and hate speech; to support partners in identifying effective mechanisms to combat hate speech based on European practices and standards; and identify mechanisms for improving information sharing and staff training. "Alliance without Hate" has a common agenda and a 3-year action plan.

The Assembly of Albania, as a legislative body that exercises parliamentary control, is engaged in addressing hate speech.<sup>62</sup> The annual resolutions of the Assembly of Albania for the assessment of the CPD activity for 2020 and 2021 have emphasized the need to increase the CPD role for monitoring, preventing and punishing hate speech against LGBTI persons in the public and private sector.<sup>63</sup> However, hate speech by public officers is pronounced, especially in political debates. The commitment of elected officers is still low in terms of preventing and combating hate speech and crimes against LGBTI persons. The public response and their distancing from the hate speech used is weak.

Civil society, including civil society organizations (CSOs) representing LGBTI persons as well as international partners are active and cooperate with institutions in order to prevent and combat hate speech and crimes. Police cooperation with NPOs representing NPOs has been expanded and strengthened, mainly in the field of training, manual drafting, and information exchange.<sup>64</sup>

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See: <https://rm.coe.int/evaluation-report-2016-2020-en-al/1680a3ac4b>.

<sup>59</sup> In addition to the state budget, institutions have funds from international donors and partners such as the EU and the Council of Europe in the field of preventing discrimination. Horizontal Facility II is a joint program financed by the European Union and the Council of Europe and implemented by the Council of Europe. One of the components of the program is the fight against discrimination and the protection of the rights of vulnerable groups (including LGBTI, minorities and Roma).

<sup>60</sup>Article 61 of the Constitution of the Republic of Albania.

<sup>61</sup>See: The Memorandum of Cooperation on Combating Hate Speech was signed in December 2019.

<https://www.coe.int/sq/web/tirana/-/no-hate-alliance-a-joint-approach-against-discrimination-and-hate-speech>.

The alliance is supported by two projects of the joint program of the EU and the Council of Europe "Horizontal Instrument for the Western Balkans and Turkey 2019-2022", respectively the Project "Promotion of Diversity and Equality in Albania" and the project "Freedom of Expression and Media (JUFREX)".

<sup>62</sup> The Civil Society Forum organized by the Parliament of Albania with representatives of the LGBTI community (2018) established cooperation bridges between parliamentarians and LGBTI organizations; the adoption of the Code of Conduct for MPs (2018) prohibits discriminatory language; Resolution for recognizing and supporting the activity of human rights defenders; and the Action Plan enables the support and strengthening of the cooperation of institutions, civil society and LGBTI organizations.

<sup>63</sup> Resolution on the evaluation of the activity of the Commissioner for Protection from Discrimination for 2020. See: <https://www.parlament.al/Files/Akte/20210608100001Rezoluta%20e%20KMD-s%C3%AB%20dt.%203.6.2021.pdf> and Resolution on the evaluation of the activity of the Commissioner for Protection from Discrimination for 2021. <https://www.parlament.al/Files/Projekte/20220607094115rezoluta%20e%20KMD,%20dt.%2030.5.2022.pdf>

<sup>64</sup> The information was received from the State Police, diversity sector through e-mail communication, dated 07.07.2022. During 2020-2022, NPOs representing the LGBTI community (LGBTI Alliance, PINK Embassy/LGBT PRO, OMSA) together with the Diversity Coordinator in the General Directorate of the State Police and the Council of Europe have held a series of meetings with police officers in local directorates regarding the protection of the LGBTI community from hate crimes.

Despite positive developments, the response to hate speech and crimes against LGBTI persons needs to be strengthened, especially by public officers. Institutional cooperation should be expanded and consolidated, especially at the local level. The participation of representatives of the LGBTI community in decision-making should be encouraged and all facilities should be created to avoid barriers. The implementation of policies against hate crimes against LGBTI persons provided for in the National Action Plan need to be systematically implemented and monitored by responsible and independent mechanisms.

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## SECTION II DATA COLLECTION

### **CM/Rec(2010)5, Section I.A.5**

*"Member States should ensure that relevant data are collected and analyzed on the prevalence and nature of discrimination and intolerance based on sexual orientation or gender identity, and in particular on 'hate crimes' and hate-motivated incidents related to sexual orientation or gender identity."*

#### **A. Hate crime recording**

International standards require states to collect and analyze data on the level and forms of discrimination due to SOGI, also on hate crimes and incidents motivated by SOGI. Official statistics in Albania contain few data on hate crimes and their perpetrators, but no data on victims and their motives. The number of criminal proceedings and convictions for hate crimes as a whole is low.<sup>65</sup> During 2018-2021, 21 cases of hate crimes against LGBTI community persons were reported to the police.<sup>66</sup> For the period January-November 2022, the police reported 8 cases of crimes of incitement to hate or strife and racist/xenophobic motives, but there is no data on how many of them are motivated by SOGI.

The State Police has the obligation to collect data on hate crimes based on the standard procedure approved regarding the generation of statistics in the system and according to the manual for hate crimes investigation.<sup>67</sup> Starting from 2021, the prosecution is obliged to collect data on 56 criminal offenses that the latter has considered as hate crimes. In the statistics form, an open section named "other crimes" is provided where other hate-motivated criminal offenses can be recorded. Also, the statistics must be published according to the methodology defined in a general instruction of the Prosecutor General.<sup>68</sup> In reality, the statistics of the prosecution, courts, probation service, prisons and the National Institute of Statistics (INSTAT) do not contain data on hate crimes for SOGI motives.<sup>69</sup>

Referring to the reports of the Commissioner for Protection from Discrimination, the number of appeals about hate speech or discrimination due to SOGI is low. During 2021, the Commissioner has examined four cases with the object of using hate speech against the LGBTI community<sup>70</sup>. In one

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<sup>65</sup> The Prosecution has registered 29 criminal proceedings for the criminal offense of hate during 2017-2021. See: Annual reports of the Prosecutor General on the state of criminality.

[https://www.pp.gov.al/Dokumente/RAPORTE\\_T\\_PROKURORIT\\_T\\_P\\_RGJITHSH\\_M/](https://www.pp.gov.al/Dokumente/RAPORTE_T_PROKURORIT_T_P_RGJITHSH_M/). During 2016-2020, there was only 1 (one) person convicted for the criminal offense of inciting hatred or strife between nationalities, races and religions. See: Static yearbooks published by the Ministry of Justice at: <https://drejtesia.gov.al/statistika/>.

<sup>66</sup> Hate crimes against LGBTI persons by year: 6 cases in 2018, 4 cases in 2019, 6 cases in 2020 and 5 cases in 2021. The information was sent by e-mail on July 7, 2022.

<sup>67</sup> Article 17 and 18 of the General Instruction of the Prosecutor General no. 17, date 17.12 2020, cited work.

<sup>68</sup> Ibid.

<sup>69</sup> ECRI, in its 5th report on Albania, recommended that the authorities conduct studies and systematic data collection regarding the lack of tolerance and discrimination due to SOGI, including a general survey on attitudes regarding LGBT issues. See: Report on Albania, 5th round, ECRI, Council of Europe, 2015, paragraph 99, pg.34. The report is accessible at: <https://rm.coe.int/fifth-report-on-albania-albanian-translation-/16808b54e9>. ECRI, in its 6th report on Albania, recommends that the authorities create a comprehensive monitoring system for hate speech incidents. See: Report on Albania, 6th round, paragraph 25 and 26, pg. 15. The report is accessible at: <https://rm.coe.int/report-on-albania-6th-monitoring-cycle-translation-in-albanian-/16809e8240>.

<sup>70</sup> Annual report 2021, Commissioner for Protection from Discrimination, Tirana, 2022, pg. 51-52. See: <https://www.kmd.al/wp-content/uploads/2022/05/Raporti-KMD-2021.-OK-1.pdf>.

case, the Commissioner found the use of hate speech against the LGBTI community by a religious representative and leader. Also, the Commissioner has issued two decisions on discrimination due to SOGI or sex characteristics.<sup>71</sup> During 2020, the Commissioner reviewed two appeals about hate speech against the LGBTI community) and one *ex-officio* case due to sexual orientation. For one case, where discrimination was alleged due to belonging to a particular group and gender identity, the Commissioner decided to suspend the procedure because the case is related to the decision-making of judicial bodies.<sup>72</sup> During 2019, the Commissioner gave 12 decisions regarding *ex-officio* appeals/cases, where discrimination was alleged due to SOGI, of which five discrimination decisions; a non-discrimination decision; and six non-acceptance decisions.<sup>73</sup>

Despite the lack of official data on criminal offenses motivated by SOGI and the few cases reported to the institutions charged with the law, studies and surveys by NPOs show that incidents and motivated hate-crimes by SOGI are widespread in Albania. For example, according to a study, during 2018, 421 cases of hate-based violence due to SOGI or sex characteristics were reported to the LGBTI Alliance.<sup>74</sup>; of which 285 cases were physical, psychological and sexual violence against LGBTI girls and women (125 cases were transgender women).<sup>75</sup> During 2019, 304 cases of violence were reported to the LGBTI Alliance, of which 206 cases were against LGBTI women (transgender women are the most affected). According to the CPD study (2021), 46% of the interviewed LGBTI persons claimed to have been personally exposed to hate speech.<sup>76</sup> According to another study, 72.2% of the respondents report that they were victims of violence, attacks with weapons or hard objects; 12.5% of them indicate that they have been pushed, hit or pulled because of their LGBTI+ status; 9.5% of respondents report that they were subjected to violence in the form of beatings, while the rest report alternative forms of violence, such as dismissal from the workplace, kicking, damage, theft, expulsion from religious premises and ridicule.<sup>77</sup> Another study notes that about 34% of those interviewed report that they have been harassed and insulted because of SOGI; about 35% report that they do not feel accepted by some persons, about 32% notice that some persons have something against them, and about 28% report that they have been threatened or attacked because of their sexual orientation.<sup>78</sup> A study on violence during the period of the pandemic caused by COVID 19, showed that 30 of the respondents of the LGBTI community stated that they experienced psychological violence and were bullied, 4 of them were physically abused; 5 of them were sexually harassed, and 1 of them was abandoned and experienced disinterest from the family.<sup>79</sup>

Despite institutions obligation to record and publish statistics on hate crimes against LGBTI persons, there is still no unified system that collects, processes and generates reports on hate crimes due to

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<sup>71</sup> The CPD submitted 8 decisions, for *ex-officio* appeals/cases, where discrimination was claimed (2 discrimination decisions, in 1 case he stopped the investigative procedures after the effectiveness and purpose, for which the investigative procedure had been initiated was achieved; 4 non-discrimination decisions; and 1 non-acceptance decision). See: Annual report 2021, cited work, pg. 51-52.

<sup>72</sup> Ibid., pg. 44 and 49.

<sup>73</sup> Annual report 2020, Commissioner for Protection from Discrimination, Tirana, 2021, pg. 45. See: <https://www.kmd.al/wp-content/uploads/2020/05/Raporti-vjetor-2019-KMD.pdf>

<sup>74</sup> The LGBTI Alliance is a local organization that represents and supports the LGBTI community with services.

<sup>75</sup> Implementation of the Sustainable Development Goals in the Albanian Context, LGBTI+ Perspective, published by ALEANCA LGBTI, October 2020, pg. 14. See: <https://www.aleancaalgbt.org/lajme/194-implementimi-i-objektivave-te-zhvillimit-te-qendrueshem-ne-kontekstin-shqiptar-perspektive-lgbti>.

<sup>76</sup>Beyond definitions - a call for action against hate speech, CPD and Council of Europe publication, cited work, pg. 53.

<sup>77</sup> Discrimination and violence based on sexual orientation and gender identity, Summary of questionnaire data with members of the LGBTI+ community, published by ALEANCA LGBTI, Tirana, 2021. The study was conducted online.

<sup>78</sup> LGBTI community needs evaluation report, STREHA Center publication, 2020 p.40.

<sup>79</sup> LGBTI Community situation during the Covid-19 pandemic. LGBTI ALLIANCE

SOGI. This approach is not in line with international standards. Consequently, the gap between victim survey data and official hate crime data is large. Several promotional meetings were held with representatives from the SOGI Department at the Council of Europe to provide technical support through activities for the exchange of best practices between the police, prosecutors, judges, but also representatives of institutions, for data collection and recording on hate crimes. These practices are positive and should be shared with all employees who have to record hate crime statistics. Informative and awareness-raising activities have also been developed by NPOs that represent LGBTI persons and/or work in the field of human rights.<sup>80</sup>

## **B. Methodological aspects of collecting and recording official statistics**

Personal data, including SOGI, enjoy special protection from the Constitution of the Republic of Albania, the legislation in force for the protection of personal data and other laws<sup>81</sup>. Public and private authorities that collect, process, maintain and publish data must comply with the law on the protection of personal data. These rules do not prevent the collection and publication of statistical data in order to recognize criminality, its trends, to prevent and fight stereotypes and to support victims in their reporting.<sup>82</sup>

Not all institutions have adopted methodological rules for recording hate crime statistics, including those against LGBTI persons. The existing rules are not standardized. Hate crime statistics are not computerized. For example, the Prosecution does not have a functional statistical computer system.<sup>83</sup> Also, another order of the Prosecutor General for keeping and reporting data on cases involving juveniles does not provide for the collection of data on criminal offenses committed by juveniles according to motives.<sup>84</sup> The guideline of the Minister of Justice for the compilation of court statistics does not contain any obligation to collect data according to motives and aggravating circumstances.<sup>85</sup> The High Judicial Council (HJC) has approved the guidance for keeping statistical data related tables to court productivity and efficiency, but the approved formats do not allow the collection of data on hate crime cases.<sup>86</sup>

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<sup>80</sup> Following the report, information is given on the contribution of NPOs in relation to strengthening the capacities of institutions charged with the law to prevent and investigate hate crimes.

<sup>81</sup> Law no. 9887, dated 10.3.2008 "On the protection of personal data:" amended, Article 7, letter "d" provides that the processing of sensitive data is done only if the data is processed for historical, scientific or statistical purposes, under appropriate protective measures.

See: [https://www.idp.al/wp-content/uploads/2020/03/Ligj\\_Nr.9887\\_datë\\_10.3.2008\\_i\\_ndryshuar.pdf](https://www.idp.al/wp-content/uploads/2020/03/Ligj_Nr.9887_datë_10.3.2008_i_ndryshuar.pdf).

<sup>82</sup> Article 18 of General Instruction no. 17/2020 of the Prosecutor General.

<sup>83</sup> Information provided by the representative of the Prosecutor's General Office in response to the request for information in the context of report compilation.

<sup>84</sup> Order of the Prosecutor General no. 124, dated 24.09.2020 "On determining the form of recording and the manner of keeping and reporting statistical data of cases with juveniles in the prosecution at the first instance courts with general jurisdiction"

See: [https://www.pp.gov.al/Legjislacioni/Akte\\_Nenligjore/Urdhra\\_te\\_Prokurorit\\_te\\_Pergjithshem/](https://www.pp.gov.al/Legjislacioni/Akte_Nenligjore/Urdhra_te_Prokurorit_te_Pergjithshem/)

<sup>85</sup> Guide No. 4, dated 15.04.2019 "For filling out statistical data".

See: <https://drejtesia.gov.al/wp-content/uploads/2019/04/Udhezim-per-plotesinin-e-formateve.pdf>

<sup>86</sup> Decision no. 47, dated 11.02.2021 of the High Judicial Council; for the approval of the guidance for keeping and completion of tables with statistical data for the effect of measurement and-monitoring of the productivity and efficiency of the courts". <http://klgj.al/wp-content/uploads/2021/03/vendim-nr.-47-date-11.02.2021-for-the-approval-of-the-> "guidance-for-keeping-and-completion-of-tables-with-statistical-data-for-the-effect-of-measurement-and-monitoring-of-the-productivity-and-efficiency-of-the-courts".pdf

There is no functional integrated data system in Albania that enables data on cases managed in the justice system at all stages.<sup>87</sup> The integrated data system for juvenile matters has been created and is functioning,<sup>88</sup> but no report has been published yet. Currently, work is being done on the integration of the data systems of various institutions and their computerization.

As above, the Albanian institutions have not fulfilled the obligation defined in paragraph 5 section I.A. of CM/Rec(2010)5 Recommendation. Cooperation between prosecutors' offices and NPOs representing LGBTI persons needs to be consolidated in areas such as: increasing knowledge and capacities for the investigation of hate crimes due to SOGI, for studying the motives of hate crimes, for supporting victims, etc.<sup>89</sup>

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<sup>87</sup> Law 115/2016 "On governance institutions of the justice system, Article 92 provides for the establishment of an information technology system for the justice system. This system is not yet operational.

<sup>88</sup> Law no. 37/2017, Code of Criminal Justice for Children, Article 136 and 137.

<sup>89</sup> Article 16 of the General Instruction no. 17/2020 of the Prosecutor General foresees the obligation for heads of the general jurisdiction prosecution to cooperate with NPOs.

## SECTION III: Reporting, investigation and punishment

### **CM/Rec(2010)5, Section I.A.1**

- 1. "Member States shall ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator of the crime; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished to avoid impunity."*
- 2. "Member States must ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance."*

### **A. Reporting**

LGBTI victims can report a criminal offense motivated by SOGI to the police, prosecution or the court. The Code of Criminal Procedure (CCP) defines the manner of reporting and the entities that have the right or are obliged to report a criminal offense.<sup>90</sup> Reporting can be verbal or written or by physical presence. The anonymous report is not recognized by the Criminal Code, with the exception of the case when a document constitutes material evidence or is made by the defendant (Article 194 of the Criminal Code). The CCP does not provide for a special procedure for reporting hate crimes by LGBTI persons, but certain categories of victims such as minor victims or victims of sexual violence or trafficking enjoy some additional rights. Thus, an LGBTI person who is a minor victim or a victim of sexual violence or trafficking can be interrogated by recording the testimony with the audio-video system, etc. in order to avoid his/her contact with the perpetrator of the crime. The victim has the right to receive free legal assistance from the moment of reporting; she is informed in writing about her rights and receives assistance, if necessary.<sup>91</sup>

Several measures have been taken to overcome barriers to reporting hate incidents and crimes to the police. A contact person for LGBTI persons has been appointed in every police directorate in the country. The victim coordinator is part of the structure of each first instance jurisdictional prosecution and assists victims, including LGBT victims, as well as witnesses in reporting cases and during criminal proceedings. Several NPOs representing the LGBTI community<sup>92</sup> or human rights organizations assist victims when reporting a crime or incident, provide legal advice and support to the victim, including victims of sexual violence.<sup>93</sup>

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<sup>91</sup> According to a study carried out by ALLIANCE LGBTI+, 45.1% of the interviewees claim that they are not aware of the existence of laws that protect their rights. Of the persons who report that they know the existence of the acts, it is noted that the respondents do not know and have not read the content of the main legal acts that protect their rights in the amount of 69.8%. See: Discrimination and violence based on sexual orientation and gender identity, Summary of questionnaire data with members of the LGBTI+ community, cited work.

<sup>92</sup> STREHA Center. For more: <https://strehacenter.org/get-support/>.

<sup>93</sup> For example, the Albanian Helsinki Committee (AHC) offers legal services, victim support, free legal aid, follow-up of cases reported to the police or judicial authorities, legal advice and opinions. TLAS offers legal assistance and services for intersex persons, primary and secondary legal assistance, drafting protocols for the treatment of intersex persons, etc. TLAS is lobbying for the rights of intersex people and protecting them from all forms of violence. The Pink Embassy offers counseling and assistance to children, including LGBTI persons, hate crime victims. For more: <https://ahc.org.al/>, <https://www.tlas.org.al/sq/projekte>, <https://www.pinkembassy.al>.

Equality bodies also contribute to encouraging reports of hate incidents and hate crimes against LGBTI persons. An application "CPD App" was launched by the Commissioner for Protection from Discrimination (2021) that serves to report cases of hate speech and hate crimes and to inform the public about anti-discrimination in Albania. The use of the mobile online system by LGBTI victims is optional. The National Platform "Report: hate speech and crimes" launched by the National Platform for a Safer Internet<sup>94</sup> and Pink Embassy in May 2022<sup>95</sup> enables the reporting of hate speech, identification and removal of materials from all platforms and social networks. The platform does not allow anonymous reporting. The ALO 116-111 service<sup>96</sup> is the National Helpline of the Council for Children that functions as a unique service for free counseling and referral services for children for all cases of violence or abuse against children whether in the form of physical, emotional or sexual violence, including children belonging to the LGBTI community.

Albanian legislation provides for internal tools that can be used by equality bodies in protection of the rights of victims of discrimination, including LGBTI victims. For example, the Commissioner for Protection from Discrimination has the right to file lawsuits on cases related to collective interests. The Commissioner and the Ombudsman have the right to present a written opinion (friendly opinion) when requested by the court in a case that is alleged to be for discrimination or violation of human rights, both independent institutions have the power to set the Constitutional Court in motion when, during their activity, they find that the law or normative act violates the fundamental rights and freedoms of individuals.

Despite the positive developments in the field of legislation and established mechanisms, a significant part of LGBTI persons lack information about the laws that protect them from discrimination, violence and the existing mechanisms.<sup>97</sup> As noted above, the level of reporting cases of violence or other forms of hate due to SOGI to the police is low.<sup>98</sup> Some of the victims who reported the crime were faced with hostile attitudes and unpleasant environment in the institutions or the victims were not provided with a copy of the report. A whistleblower from the transgender community was forced by the police officer to withdraw the complaint. Only a small proportion of reported cases have been resolved.<sup>99</sup> Analysis of court decisions (2013-2020) on equality and non-discrimination, carried out by CPD,<sup>100</sup> indicated that there are few court decisions related to SOGI.

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<sup>94</sup> The platform enjoys partner status with Facebook, Instagram, Tik-Tok, Snapchat, WhatsUp, Youtube, etc.

<sup>95</sup> For more: <https://www.pinkembassy.al/shqiperi-nga-sot-nje-platforme-kombetare-per-te-raportuar-gjuhen-dhe-krimet-e-urrejtjes>.

<sup>96</sup> For more: <https://alo116.al/>.

<sup>97</sup> 45.1% of the persons who responded affirm that they are uninformed about the existence of laws and mechanisms for LGBTI rights protection. Discrimination and violence based on sexual orientation and gender identity, cited work.

<sup>98</sup> According to a study conducted by LGBTI ALLIANCE in 2020, 2.98% of LGBTI persons surveyed have experienced incidents of discrimination and hate crime and 5.8% of them have reported the case to the police while 3.1% have referred it to the CPD.

<sup>99</sup> According to the report of the STREHA Center, out of 421 cases of violence and discrimination reported to the STREHA Center, during 2018, only 3 cases were referred to the Police and they were not properly followed up by the latter, while during 2019, 34 cases out of 304 cases of violence and discrimination reported to the LGBT Alliance have been referred to the competent bodies (5 reported the violence to the head of the institution where the act occurred, 15 to the Police, 10 to the CPD and 4 cases to the Ombudsman. Based on subsequent data, only 4 of the cases reported to the state structures (12%) have been resolved. See: Implementation of the Sustainable Development Goals in the Albanian Context, LGBTI+ Perspective, cited work. pg. 26.

<sup>100</sup>The principle of equality and non-discrimination, Analysis of judicial practice 2013-2020, publication of the Commissioner for Protection from Discrimination, pp. 16-17. The analysis can be found at: <https://www.kmd.al/wp-content/uploads/2022/01/Analize-e-Praktikes-Gjyqsore-per-Barazine-dhe-Mosdiskriminimin-2013-2020.pdf>.

Consequently, the impact of equality bodies on the treatment of victims of hate crimes is difficult to assess.

Lack of information affects reporting of hate crimes and access to services. Also, lack of a victim-reporting or witness-friendly environment undermines victims' confidence and inhibits the reporting of hate incidents and crimes. On the other hand, not reporting the case or withdrawing the victim from further pursuing it does not enable real recognition of hate crimes against LGBTI persons; victims do not benefit from legal guarantees and hate crimes and their perpetrators do not receive appropriate punishment.

## B. Hate crime investigation

The law provides for equal treatment, respect for the dignity of each victim and consideration of their individual needs. Specific rules for the investigation of hate crimes are provided in several approved guidelines such as: guidelines for police, prosecution and court authorities regarding the investigation of hate crimes;<sup>101</sup> the manual "Investigation of hate crimes against LGBTI people"<sup>102</sup>, the guide on "Policing hate crimes against LGBTI people";<sup>103</sup> and the guide of the Prosecutor General for the investigation and effective criminal prosecution of criminal offenses of domestic violence, violence against women and hate-based violence"<sup>104</sup>. Application of manuals and guidelines is mandatory. The manuals and guidelines of the Prosecutor General provide the evidence that must be collected in cases where the motive of hatred towards the LGBTI person is not apparent. For example, the circumstances related to the victim, the perpetrator, the time and place of the crime, the victim's perception of the perpetrator's actions, the brutality of the attack, the lack of other motives, the perpetrator's behavior, etc. are the indications or the facts that must be collected to prove that the criminal offense was committed due to SOGI.<sup>105</sup>

Victims of hate crimes, including LGBTI persons, can complain about police officers behavior or when their rights are violated to the Police Oversight Agency.<sup>106</sup> Anonymous appeals are accepted and verified by the Agency, depending on the content of the information provided by the complainant.<sup>107</sup> Every person, including the LGBTI victim, has the right to complain about the judge or prosecutor behavior to the High Inspector of Justice.<sup>108</sup> Administrative investigation of a violation may be initiated *ex officio* by the Inspector based on public data or provided by a thematic inspection.

The cooperation of the prosecution body with civil society organizations is regulated in the instructions of the PP<sup>109</sup>, which instructs the head of the prosecution to encourage cooperation for trainings, in the drafting of protocols and strategies, as well as handling hate-based violence cases. The directive imposes an obligation to respect the rights of the victim and to cooperate with other agencies in order to provide the necessary services to victims of hate-based violence.

Victims' surveys show that despite the legal framework, prompt, professional investigation and unmasking of hate motives has not always been possible and victims are not satisfied with the way their appeals/denunciations are handled. The faith of victims in justice needs to increase. The cooperation of justice system bodies with NPOs, including those representing LGBTI persons, needs to be strengthened and concretized in initiatives that contribute to the effective reporting and investigation of hate crimes against LGBTI persons. The contribution of NPOs and international partners in increasing investigative capacities and victim-centered justice is necessary.

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<sup>101</sup>Understanding Hate Crimes: A Handbook for Albania, OSCE/ODIHR publication 2012.

See: <https://www.osce.org/odihr/104164>.

<sup>102</sup> Investigating hate crimes against LGBTI people: Training manual for a professional police force, published by CoE, Tirana. See: <https://rm.coe.int/manual-trajnimi-krimet-e-urrejtjes-forca-policore/1680a20633>.

<sup>103</sup><https://www.coe.int/sq/web/tirana/-/new-guide-and-support-to-policing-hate-crimes-against-lgbti-community-in-albania>

<sup>104</sup> Instruction no. 17, dated 17.12 2020 of the Prosecutor General.

<sup>105</sup> Ibid., Article 9.

<sup>106</sup> Law no. 128/2021 on the Police Oversight Agency.

<sup>107</sup> Law 128/2021, Article 24, paragraph 9.

<sup>108</sup> Law 115/2016 on governing bodies of the Justice system, Article 194.

<sup>109</sup> Article 16 of instruction no. 17/2020 of the Prosecutor General.

### Case from practice

Citizen E.M., complained that on dt. 16.06.2021 was violated due to transgender status by a group of young people. He claimed that money and some personal items were stolen from his wallet. EM reported the incident at police station no. 2, Tirana. The complainant evidenced that he was not aware of any notification and the rights recognized by the Law (Article 58/a of the CCP) and requested the legal assistance of the AHC to be informed and legally represented before these authorities.

On 22.09.2021, the AHC, with a power of attorney from the victim, addressed the Prosecution Office at the Court of First Instance in Tirana, requesting information on the phase in which the criminal proceedings were taking place. In the answer given, the Prosecution Office at the Court of First Instance in Tirana informed the AHC that after the completion of the investigative actions, the suspension of the criminal proceedings was decided in November 2021. The appellant did not appeal the decision.

*The case was handled by the Albanian Helsinki Committee (AHC), a human rights organization in Albania.*

### 3. Procedural policies and punishment

The majority of criminal offenses with hate motives are mainly prosecuted, while for some others (minor injury, some sexual offenses)<sup>110</sup>, criminal prosecution can only be initiated at the request of the victim. For LGBTI victims this may create additional burdens and may influence their non-reporting. Reporting is done in writing or verbally.

Another barrier for victims is bringing evidence to the investigation. Although, the investigation *prima facie* of bias motives is an obligation for the prosecutor, there is no data on SOGI motive investigations. In the few cases reported by LGBTI persons, the investigation has been ineffective<sup>111</sup>. The lack of unmasking of hate motives due to SOGI, highlights the need for training in investigative techniques, gathering evidence and proving biased motives.

Regarding hate crimes punishment, international standards require that sentencing policies should take into account hate motives as an aggravating circumstance. For almost all hate crimes, the Criminal Code provides imprisonment. According to the law, the amount of punishment is increased based on the dangerousness of the criminal offense, the perpetrator, the degree of guilt as well as mitigating and aggravating circumstances.<sup>112</sup> Some articles of the Criminal Code provide for the additional increase of the penalty over the main penalty, for some criminal offenses where the victim (including LGBTI victims) is a child, a woman, a person who has no opportunity to defend himself, or because of the manner the criminal offense was committed.<sup>113</sup> For hate crimes, the Prosecutor General directive stipulates that prosecutors must request punishment aggravation.<sup>114</sup> According to the Criminal Code, it is not allowed to apply the mitigating circumstance for hate

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<sup>110</sup> Criminal prosecution begins at the request of the victim for the criminal offenses provided for in Articles 59 and 284 of the Criminal Code.

<sup>111</sup>See: Implementation of the Sustainable Development Goals in the Albanian Context, LGBTI+ Perspective, cited work. pg. 26.

<sup>112</sup>Article 47, paragraph 2 of the Criminal Code.

<sup>113</sup> In such cases, the penalty is increased by ¼ of the given penalty.

<sup>114</sup> Instruction no. 17/2020, Article 12, paragraph 3.

crimes "the offence was committed motivated by motives with positive moral and social values".<sup>115</sup> Also, the court may suspend the application of conditional release during a certain period of the duration of the sentence.<sup>116</sup>

Although the law is generally good, the investigation and punishment of hate crimes is not effective. Although the law stipulates that respect for victims' rights and non-discrimination are elements of the periodic evaluation of magistrates,<sup>117</sup> there is no data on whether there are evaluations of hate crime cases. As above, the authorities have not fully fulfilled the obligations set out in paragraph 1 of section I.A of CM/Rec (2010) Recommendation for effective investigations and for no perpetrator to remain unpunished.

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<sup>115</sup>Article 48, paragraph 2 of the Criminal Code.

<sup>116</sup> According to Article 65/a of the Criminal Code, the court can also decide to set a security period, which extends for the time limit from three quarters of the sentence given by the court to the full duration of the criminal sentence, during which parole is not allowed when one of the circumstances provided by the law is proven. Among them are mentioned the circumstances when the punishment for the criminal offense is more than five years; when the offense was committed by taking advantage of family or cohabitation relationships or from motives related to gender, race, religion, nationality, language, political, religious or social beliefs.

<sup>117</sup> See Law no. 96/2016 on the status of judges and prosecutors in the Republic of Albania, Article 75 &4.

## SECTION IV - VICTIM'S RIGHTS

### **CM/Rec(2010)5, Section I.A.3**

*"[...] for this purpose, member states shall take all necessary steps to [...] provide appropriate assistance and support to victims and witnesses."*

#### **A. Legal provisions and policies regarding victims' rights**

The Code of Criminal Procedure (CCP) enshrines the principle of equality before the law and the protection, respect for personal freedoms and LGBTI victims' rights.<sup>118</sup> The law has specific provisions for LGBTI victims. They enjoy all the rights enjoyed by a victim and some additional rights enjoyed by victims of discrimination, when they are children, victims of sexual violence or trafficking. Specific rules are provided for witnesses' protection.

Victims, including victims for SOGI motives who have been declared discriminated against by decision of the competent body, receive free legal aid, regardless of their income and wealth, in criminal, civil administrative and family cases; exemption from payment of court fees and court expenses; exemption from the obligation to prepay the enforcement fee of the execution order.<sup>119</sup> Victims, including victims due to SOGI who are victims of sexual abuse or victims of human trafficking or juveniles enjoy additional rights (for example, place of questioning of the victim, audio and video recording of the question, lack of contact with the perpetrator, court hearings closed to the public). As stated above, victims are assisted and helped by victim coordinators during the criminal proceedings phase.

Legal aid is provided by the center set up by the Ministry of Justice and the legal aid centers operating in some municipalities; from NPOs and legal centers near Higher Education Institutions that have signed agreements with the Ministry of Justice.<sup>120</sup> The online service for legal assistance "Juristi online" and the toll-free telephone number 08001010<sup>121</sup> offer advice to any person, including LGBTI persons. Free legal advice for LGBTI persons is also available from the PINK Embassy through the national line of Counseling for LGBTI teenagers (line 116111). Legal assistance during investigations and in court is provided by licensed lawyers. Victims, including LGBTI victims, have at their disposal a legal aid manual published online which provides information on legal aid and the procedures for obtaining it<sup>122</sup> and publications prepared by various NGOs.

In addition to legal aid, the law provides for the victim's right to services and assistance during the criminal process. Several shelters have been established for victims of domestic violence, victims of trafficking and potential victims of trafficking such as: Shelter for Victims of Domestic Violence, Center for Victims of Sexual Violence (LILIUM) and other centers managed by the state and/or NPOs.<sup>123</sup> A special center for LGBTI victims (STREHA) is managed by an NPO representing the LGBTI community. The STREHA center is the only non-public center where transgender people are housed.

<sup>118</sup> Law 35/2017, dated 30.3.2017, has aligned Albanian legislation with Directive 2012/29/EU.

<sup>119</sup> Law no. 111/2017 "For legal aid guaranteed by the state", Article 11, letter "h" and Article 58, letter "ç", "g" and "gj".

<sup>120</sup> See: <https://www.drejtesia.gov.al/ndihma-juridike-e-garantuar-nga-shteti/>

<sup>121</sup> See: <https://ndihmajuridike.gov.al/index.php/online/>

<sup>122</sup> See: <https://drejtesia.gov.al/wp-content/uploads/2020/08/Manual-Ndihma-Juridike-NEW.pdf>

<sup>123</sup> In Albania there are 22 types of specialized support services. 7 emergency shelters were added during the period 2016-2020: 1 National Counseling Line (116 117) and 1 Center for the treatment of sexual assault crises ("Lilium"). For more please refer to: Implementation of the National Strategy on Gender Equality and its Action Plan 2016-2020, Evaluation Report, published by the Ministry of Health and Social Protection, December 2020, pg. 26. The data is up to 2020.

Minimum standards were adopted for social care services for LGBT people in public and non-public residential centers.<sup>124</sup> The Barnahus model for treating victims of sexual violence has begun to be implemented by a local NPO.<sup>125</sup> The mechanism for coordinating the work of institutions for the referral of violence and victim rehabilitation assistance, including LGBTI victims, has been established. In addition, the protocols for the management of violence<sup>126</sup> and sexual violence<sup>127</sup> cases have been approved.

According to the law, the trial is public, but the court can order the trial behind closed doors<sup>128</sup>. This is an option that can be applied in cases of LGBTI victims. The law provides for a summary judgment<sup>129</sup> when requested by the defendant and he pleads guilty. When the court accepts the request, the penalty is reduced by 1/3. The law provides that the victim has the right to appeal the decision. The application of this procedure in cases of hate crimes, including those against LGBTI persons, needs to be carefully evaluated by the court. The acceptance of the summary judgment does not enable the review of the civil lawsuit in the criminal process. This creates an additional barrier for LGBTI victims.

Trial by agreement is a new form of trial in criminal proceedings<sup>130</sup>. In the case of hate-based violence, the Prosecutor General instruction defines the prosecutor's obligation to carefully evaluate the circumstances, advantages and disadvantages of this trial and instructs prosecutors to involve to the guilty plea the fact that the offense was committed motivated by discriminatory motives. The victim has the right to file a civil lawsuit in the criminal process, and in the case of a trial with an agreement, compensation is part of the agreement. In cases of trial by agreement, the acceptance of biased motive on the part of the author must be proven.<sup>131</sup>

The personal data of victims of hate crimes, including those due to SOGI are protected by law; their publication, photographs, public statements regarding the victim's identity are prohibited. The victim and/or the legal representative, the prosecutor has the right to request that the trial be conducted behind closed doors or that the questioning of the victim be done with special techniques if the data must be used in the judicial process and their publication may harm the

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<sup>124</sup> Approved by Instruction no. 252, dated 18.05.2021 of the Minister of Health and Social Protection.

<sup>125</sup> See: National Center for the Protection of Children and Youth from Sexual Violence

<sup>126</sup> Decision no. 327, dated 2.06.2021 of the Council of Ministers "On the mechanism of coordination of work between the authorities responsible for the referral of cases of violence in family relations, as well as its procedure for supporting the rehabilitation of violence victims".

<https://shendetesia.gov.al/wp-content/uploads/2021/07/VKM-Nr.-327-datë-2.06-00000002.pdf>

<sup>127</sup> Protocol for the Management of Cases of Sexual Violence among Adults, at the local level through a coordinated multi-sectoral approach, 2021, <https://shendetesia.gov.al/wp-content/uploads/2021/09/Protokolli-i-menaxhimit-te-rasteve-te-dhunes-seksuale-version-final.docx>

<sup>128</sup> Article 340 of the Criminal Procedure Code.

<sup>129</sup> Article 403- 406 of the Criminal Procedure Code. Summary judgment does not apply to criminal offenses for which the law provides for life imprisonment.

<sup>130</sup> Trial by agreement is provided by the Criminal Code for criminal offenses for which the law provides for a maximum sentence of no more than 7 years of imprisonment. It can be proposed by the prosecutor, the defendant, or his special representative on the conditions for the admission of guilt and for determining the sentence. This request is made before the judicial hearing begins. The agreement is made in writing and the Defendant pleads guilty. The agreement includes, among other things, the type and amount of punishment that the parties agree upon, in case the victim is legitimized as a civil plaintiff, her written consent for the number of damages awarded by the defendant. After signing the agreement, the prosecutor notifies the victim or her heirs. A conditional plea agreement is unacceptable. Added by Law no.35/2017.

<sup>131</sup> Article 10 and 14 of Instruction no. 17/2020 of the Prosecutor General.

interests of the victim.<sup>132</sup> One of the problems encountered in practice is the publication of victims' data, their reposting from online portals, audiovisual media and social networks. The Audiovisual Media Authority (AMA) is revising the Broadcasting Code for audiovisual media and the draft has addressed victim protection, including LGBTI and preventing and combating hate speech,<sup>133</sup> but online media still remains unregulated or self-regulated.

The annual reports of the Directorate of Free Legal Aid do not contain data on requests and the number of persons who have requested and benefited from free legal aid for issues related to hate crimes. There is no data on whether legal aid workers and lawyers have been trained in relation to the LGBTI community rights.<sup>134</sup> Also, victims, including LGBTI victims, have the right to benefit from the necessary services and assistance. There is no record of whether victims have benefited from it in the few cases handled by the court.

## **B. Implementation issues**

The National Action Plan for LGBTI People (2021-2027) envisages legislative improvements in the criminal law and other laws, training of professionals on hate crimes and strengthen confidence in victims to report, monitoring the implementation of LGBTI victims' rights, access to justice and equal treatment, and strengthening services.<sup>135</sup>

A handbook for professionals promoting the rights of LGBTI+ persons in their communities<sup>136</sup> comes to the aid of employees of local government employees who have an obligation to provide services to hate crime victims. However, the studies carried out by NPOs point out problems related to access to justice, such as not informing the victim about the progress of the criminal proceedings and her rights to a regular legal process.<sup>137</sup>

Although the law provides for the right to free medical, psychological and legal services, protection for minor LGBTI victims and victims of trafficking, in practice not all victims can benefit from the services due to their absence in the territory, lack of necessary personnel or lack of information about the rights and services that the LGBTI victim can benefit from.<sup>138</sup> Studies have highlighted that at the local government level there are no employees dedicated to LGBTI persons, but the gender officer in the municipality is in charge of all categories of persons in need, including LGBTI persons. The necessary services are not spread throughout the territory, there are funding deficiencies and a lack of specialized human resources; overloading of structures due to carrying many responsibilities, overlap of competences, employees need to know and apply the standards of

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<sup>132</sup> Article 17 of Instruction no. 05/2018 of the Prosecutor General.

<sup>133</sup> <http://ama.gov.al/rishikimin-i-kodit-te-transmetimit-si-nevoje-e-zhvillimit-te-tregut-audioviziv/>.

<sup>134</sup> See: Annual reports of legal aid guaranteed by the state at: <https://ndihmajuridike.gov.al/index.php/publikime/>.

<sup>135</sup> National Action Plan for LGBTI people (2021-2027), cited work, pp. 25-27.

<sup>136</sup> See: <https://strehacenter.files.wordpress.com/2022/07/toolkit-streha.1.pdf>.

<sup>137</sup> 50.5% of the interviewees declare that they have no further information after the initial denunciation of the case. 7.1% state that the issue has not yet been resolved despite the denunciation. Only 13 individuals or 4.4% say that the case has been solved, while 1.4% of the total number indicate that the case is in process and a solution is expected. Study carried out by the LGBTI Alliance in 2020. See: <https://www.aleancalgbt.org/lajme/76-diskriminimi-dhe-dhuna-me-baze-orientimin-seksual-dhe-identitetin-gjinor>.

<sup>138</sup> OMSA, one of the organizations representing the LGBTI community, has signed an agreement with the Municipality of Tirana to promote equality and protection from discrimination. Only two members of the LGBTI community have requested housing and assistance with food and social services and employment from the municipality. The information is provided by OMSA obtained in the preparation of this report.

treatment of victims; services are dependent on donor support.<sup>139</sup> Some categories such as transgender people, intersex people and their needs are less recognized. Although they are more at risk of being hate crime victims, knowledge about their needs and services is not enough.<sup>140</sup>

As mentioned above, Albanian legislation provides guarantees for victims, including LGBTI victims. Several services have been established to support and assist LGBTI victims, mainly in Tirana. Although the possibilities for establishing services for LGBTI victims in other cities of Albania exist among the Social Fund, services are still lacking in certain territories.

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<sup>139</sup> Study of the evaluation of the LGBT community needs in Albania, cited work, and the monitoring report of the national strategy on gender equality (2016-2020), cited work.

<sup>140</sup> Several activities have been developed to recognize and protect transgender and intersex people. For more see: the exhibition "Being transgender in Albania", organized by the PINK Embassy in Albania, 2021, the publication "How to support your intersex children" and the Medical Protocol for the Evaluation of Intersex Children, TLAS publications. For more: <https://www.tlas.org.al>

## SECTION V - PROTECTION AGAINST HATE CRIMES IN DETENTION FACILITIES AND PRISONS

### **CM/Rec(2010)5, Section I.A. 4**

*"Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons."*

### **A. Measures taken for security and dignified treatment of the person deprived of liberty**

According to the law, detained and convicted persons belonging to certain social categories, including LGBTI persons, must be treated taking into account their specific needs and supported for their reintegration into society.<sup>141</sup> The law does not define specific rules for LGBTI persons rooming. But like any other person, he/she can request the system in the rooms.<sup>142</sup>

The research does not show that there is a specific strategy that addresses violence against LGBTI prisoners, but there are programs to protect every pre-detainee and convict from self-harm and from violence by other convicts. Regarding segregation, the law provides specific rules for segregation as a preventive measure and for special supervision, which is the most severe disciplinary measure, in cases of committing severe disciplinary violations.<sup>143</sup> The research does not result in specific rules for LGBTI persons. The imposition of these measures for each prisoner is based on the assessment of the Convict Risk Assessment Commission. The law provides control mechanisms such as: immediate notification of the prosecutor, the general director of prisons, the prisoner and his defenders. The decision can be appealed in court. This regime does not apply to women and juveniles.

### **B. Implementation issues**

The lack of special rules for the placement of LGBTI persons, including transgender or intersex persons, makes it unclear how transgender or intersex persons are placed in sections. According to the report of the LGBTI Alliance organization, a transgender member was kept in isolation for a period of 2 years, which coincides with the period decided by the Court as a measure for serving the sentence due to the lack of specialized structures for handling such cases and the legal vacuum regarding gender identity recognition.<sup>144</sup>

### **C. Available appeal mechanism**

The appeal mechanism is an opportunity to address the needs, problems and violations of the rights of LGBTI persons deprived of their liberty and who are placed in an institution. In addition to the internal appeal/complaint review mechanisms, there are some external mechanisms where the

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<sup>141</sup> Article 5, paragraph 9 and Article 13, paragraph 1 of the Law no. 81/2020 "On the rights and treatment of those sentenced to imprisonment and pre-trial detainees", Article 5, paragraph 9 and Article 13, paragraph 1.

<sup>142</sup> Article 33, paragraph 3 of Law No. 81/2020.

<sup>143</sup> Article 63 of Law No. 81/2020.

<sup>144</sup> Implementation of the Sustainable Development Goals in the Albanian Context, LGBTI+ Perspective, cited work. pg. 29.

prisoner can submit an appeal/complaint such as: The National Torture Prevention Mechanism at the Ombudsman<sup>145</sup> which accepts requests/appeals from prisoners, or their legal representatives, organizations that exercise this right, after prior consent has been given by the prisoner, etc. <sup>146</sup>. Commission for the Execution of Criminal Decisions,<sup>147</sup> human rights organizations that monitor prisons, the Subcommittee for Human Rights in the Parliament of Albania have the right to handle letters/appeals and monitor detention facilities and prisons. Requests/appeal can be addressed to international organizations, domestic and foreign non-profit organizations that monitor prisons, the prosecutor or the court of the country where the criminal decision is executed, as well as persons who have the right to visit the institution.<sup>148</sup>

The lack of specific rules in the General Prison Regulations for the placement of LGBTI persons, including transgender persons, may harm the safety and dignity of LGBTI persons. The prevention of abuse forms against LGBTI persons in institutions, the execution of criminal decisions and the fair implementation of segregation measures need a specific regulation in the protocols for the prevention of violence and other forms of abuse against prisoners. Topics on diversity, treatment of prisoners, safety and risk prevention are provided in initial and continuing training, but there is no evidence of specific training that addresses all the rights of LGBTI prisoners. Information and training sessions regarding the rights and treatment of LGBTI persons and especially transgender and intersex persons are necessary for staff at all levels.

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<sup>145</sup> Article 81 of Law No. 81/2020.

<sup>146</sup> Article 83 of Law No. 81/2020.

<sup>147</sup> Law no. 79/2020 "On the execution of criminal decisions", Article 77.

<sup>148</sup> Article 51 of Law No. 81/2020.

## SECTION VI – AWARENESS CAMPAIGNS AND TRAININGS

### **CM/Rec(2010)5, Section I.A.3**

*[...] for this purpose, Member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents [...].”*

#### **A. Awareness raising measures**

The first national study published by CPD<sup>149</sup> (2021) contains national level data on hate speech and acceptance of the LGBTI community. Other studies and surveys conducted by NPOs provide data on the level of acceptance of the LGBTI community in society, including acceptance by political parties and youth engaged in political forums;<sup>150</sup> experiences, types, areas where discrimination is more prevalent, knowledge of rights, laws and protection mechanisms of LGBTI persons. According to a survey conducted by the LGBTI Alliance (2020), respondents report high levels of discrimination. Almost 98% of respondents report constant insults, ridicule and humiliation due to their LGBTI status<sup>151</sup> 66% of the respondents stated that they would not feel comfortable if their children had teachers belonging to the LGBTI community, among whom 23% would withdraw their children from school.<sup>152</sup>

A broad information and awareness campaign is being developed against hate speech and crimes, including against LGBTI persons with the support of international partners, mainly the Council of Europe, the European Union or individual countries. Meetings with parents, pupils and students, or adults, in Tirana and districts<sup>153</sup> have been held and continue to be held. Publications and spots have been prepared and published online for parents' awareness to accept the LGBTI child.<sup>154</sup> In May 2022, the 13th Diversity Festival for LGBTI Rights in Albania was organized. The exhibition "Being transgender in Albania" opened in Durrës and continued in other cities.<sup>155</sup> Within the framework of IDAHOT 2022, a series of activities took place throughout the country, organized by LGBTI organizations, local and international institutions and partners<sup>156</sup>. TiranaPride was organized on May 21, 2022 with a large participation of representatives of civil society, institutions, international organizations and diplomatic missions. A podcast was prepared and published on LGBTI persons in Albania and their protection from hate crimes.<sup>157</sup> In March 2022, the campaign against hate speech with the motto "Block the hatred. Share the love" was launched, supported by the Council of

<sup>149</sup> Beyond definitions - a call for action against hate speech, cited work.

<sup>150</sup> The opinion of LGBTI Albanians: Politics and Representation, OMSA Publishing and Victory Institute, 2018. See: <http://omsalbania.org/index.php/portfolio-item/mendimi-i-shqiptareve-lgbti-politika-dhe-perfaqesimi/>.

<sup>151</sup> See: monitoring report of the action plan for LGBTI people (2016-2020), p. 14.

<sup>152</sup> The LGBT Alliance conducts annual surveys regarding the experience of discrimination of LGBTI persons. The survey points out that the general attitude of the respondents towards LGBTI is negative. The survey was conducted in the framework of the awareness campaign of the EU/CoE joint program, "Enhancing the Effectiveness of the Albanian System of Human Rights Protection and Anti-discrimination".

<sup>153</sup> For more: <https://fdut.edu.al/2022/05/13/homofobia-dhe-krimet-e-urrejtjes/>

<sup>154</sup> Parents of LGBTI+ persons in Europe: Tell It Out! Council of Europe publication, 2021. See: <https://rm.coe.int/thuajebotim/1680a2b428>. A series of spots with the slogan "I am your child" were prepared and posted by OMSA and published on social networks, supported by UNWOMEN Albania, Awen Network, and UN Albania.

See: <https://twitter.com/omsalbania?lang=en>. And

<sup>155</sup> See: <https://www.pinkembassy.al/po-respektit-jo-homofobise>.

<sup>156</sup> See: <https://www.coe.int/en/web/tirana/-/idahot-calendar>

<sup>157</sup> See: <https://www.pinkembassy.al/en/pink-embassy-presents-its-first-podcast-11th-lgbti-diversity-festival>.

Europe.<sup>158</sup> The campaign is ongoing across the country. Campaigns against hate speech are being organized by human rights NPOs, and the LGBTI community.<sup>159</sup>

The Commissioner for Protection from Discrimination and the Ombudsman, and NPOs have held and are continuing meetings in each local directorate on the implementation of the manual for officers who perform procedural investigative actions in the investigation of hate crimes. They are active in information campaigns, raising awareness and addressing legal solutions against hate speech, hate crimes and violence against LGBTI persons.

Awareness campaigns have involved elected officers, public officers and political parties. An online forum was organized regarding hate speech especially by political leaders against LGBTI persons<sup>160</sup> (May 2021); a survey of young people from youth political forums regarding the approach of political parties to the LGBTI issue; and <sup>161</sup> meetings with MPs and representatives of youth political forums to address hate speech. The first Political Parties Programme Handbook was prepared and distributed to the deputies of the Assembly of Albania.<sup>162</sup>

Despite the many activities developed, information and awareness about the rights of LGBTI persons in schools and in higher education institutions are still far from the needs. The legal education of LGBTI persons about the laws and their protection mechanisms is not at the appropriate level. The voice of victims and witnesses of hate speech and crimes needs to be heard. There is no national report on hate crimes. There is a need for a periodic evaluation of the obstacles faced by police officers and prosecutors in detecting hate motives. Public response to hate speech in online media is weak. Distancing public officers and elected officers from the use of hate speech and public condemnation of it is rare. The communication of elected officers at the local and central level with NPOs representing LGBTI is not systematic. Informative and sensitization activities organized by the institutions themselves are few and not systematic, as well.

## **B. Staff training**

### **1. Initial and ongoing training programs**

Initial and ongoing training is a right and an obligation for police officers, magistrates and professionals who come into contact with victims, including LGBTI persons.<sup>163</sup> The trainings are offered by the relevant institutions, financed by the state budget and/or in cooperation with local organizations and international partners. All institutions must develop the trainings according to the approved annual programs, based on the evaluation of staff needs, and recommendations of local and international monitoring mechanisms of LGBTI organizations.

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<sup>158</sup> See: <https://www.coe.int/sq/web/tirana/-/anti-hate-speech-campaign-block-the-hatred-share-the-love-launches-in-tirana>

<sup>159</sup> See: <https://www.coe.int/sq/web/tirana/promotion-of-diversity-and-equality-in-albania>.

<sup>160</sup> See: <https://www.lgbti-era.org/news/era-and-omsa-hold-online-forum-hate-speech-albania>

<sup>161</sup> Political Participation of LGBTI People: A Guide for Albanian Political Parties, published by OPEN MIND SPECTRUM ALBANIA (OMSA), Tirana, December 2020, and supported by the Council of Europe. See: <https://twitter.com/OMSAalbania>

<sup>162</sup> Ibid.

<sup>163</sup> Article 85, paragraph 4 of the Law for the State Police.

The Security Academy<sup>164</sup> offers training, specialization and qualification of employees of State Police structures at all levels. Diversity and the rights of the LGBTI community is part of the Security Academy curriculum. Several documents have been drawn up and approved for the training of the state police. Guide on Policing Hate Crime against LGBTI people (2018),<sup>165</sup> is included as a module in the initial and ongoing training at the Security Academy. Practical information booklet on policing hate crimes against the LGBTI community (2021),<sup>166</sup> provides practical information for police officers. The LGBTI<sup>167</sup> Hate Crime Investigation Manual is a manual for trainers and police officers, police chiefs, prosecutors, hate crime officers or grassroots police officers in Council of Europe member countries. The manual is part of the initial and ongoing police training curriculum.

The School of Magistrates is responsible for the initial and ongoing training of magistrates. Ongoing education training takes place according to the program drawn up in cooperation with the High Judicial Council and the High Prosecution Council and is mandatory<sup>168</sup>. The Prosecutor's General Guidelines set out the main areas of training for prosecutors, judicial police officers and victim coordinators.<sup>169</sup> Magistrates' participation in ongoing training is mandatory and a criterion for their evaluation.<sup>170</sup> In terms of training programs for magistrates, they contain topics related to hate crimes and same-sex rights.<sup>171</sup> The thematic project-program of the ongoing education program for the 2021-2024<sup>172</sup> academic year focuses on anti-discrimination and LGBTI issues in particular. From the searches on the official website of the School of Magistrates, some data was collected about the trainings carried out on hate crimes. In December 2020, a training took place regarding the victim of the criminal offense, as the subject of the criminal process"<sup>173</sup>. In 2021, online trainings "Rights of the LGBTI community" have been developed.<sup>174</sup> The LGBTI Alliance in cooperation with the Netherlands Helsinki Committee has organized trainings for prosecutors and judges regarding the handling of hate crimes against LGBTI.

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<sup>164</sup> Article 37 of the Law "For the State Police".

<sup>165</sup> See: <https://www.coe.int/sq/web/tirana/-/new-guide-and-support-to-policing-hate-crimes-against-lgbti-community-in-albania>.

<sup>166</sup> The brochure was drafted by the Netherlands Helsinki Committee in cooperation with the Security Academy, see: <https://www.historiaime.al/wp-content/uploads/2021/03/PoliceBrochure-AL-correct.pdf>.

<sup>167</sup> The manual was drafted by the Council of Europe and was translated into Albanian in 2020.

See: <https://rm.coe.int/manual-trajnimi-krimet-e-urrejtjes-forca-policore/1680a20633>

<sup>168</sup> Article 5, paragraph 2 and 3 of the Law no. 96/2016 "On the status of judges and prosecutors in the Republic of Albania".

<sup>169</sup> Instruction no. 5/2018 and 17/2020 of the Prosecutor General.

<sup>170</sup> One of the criteria for evaluating ethics is the impartiality of the magistrate, among others in relation to the respect of the issues of groups in need, including the issues of gender equality and minorities, is measured based on indicators such as the use of discriminatory language, etc. Article 75, paragraph 4 of Law no. 96/2016.

<sup>171</sup> Analysis of the thematic ongoing training program for September 2019- July 15, 2020.

See: [https://admin.magjistratura.edu.al/uploads/Programi\\_Tematik\\_2019\\_2020\\_e1b0e48629.docx](https://admin.magjistratura.edu.al/uploads/Programi_Tematik_2019_2020_e1b0e48629.docx).

<sup>172</sup> Several training topics on the rights of LGBTI persons and hate crimes are planned, such as: discrimination based on sexual orientation, the practice of the ECtHR and the approach of the Albanian courts; the methods of constitutional interpretation and reasoning for the protection of basic rights and freedoms in an approach with equality and non-discrimination. The testing method of non-discrimination, in relation to the test of proportionality, inevitability and the doctrine of effectiveness. Constitutional jurisprudence and international courts; the rights of the LGBTI community; the right to information and protection of personal data; cybercrime and acts of a racist and xenophobic nature carried out through computer systems, including social networks and the LGBTQ community, etc.) etc.

See: [https://admin.magjistratura.edu.al/uploads/Projekt\\_Program\\_2021\\_2024\\_d1e2490b41.docx](https://admin.magjistratura.edu.al/uploads/Projekt_Program_2021_2024_d1e2490b41.docx)

<sup>173</sup> See: <https://www.facebook.com/Shkollaemagjistratures/>. Notice posted on December 7, 2020.

<sup>174</sup> Trainings developed by the School of Magistracy in cooperation with the Netherlands Helsinki Committee with a focus on national, European and international standards, hate crimes; Albanian legislation: general overview and difficulties; the role of the police, prosecution, judiciary and lawyers; the role of the victim and the respondent, including NGO participation, compensation and recovery; practical cases and how they go in court, etc.

See: <https://www.facebook.com/Shkollaemagjistratures/>. Notice posted on September 30, 2021.

Regarding prison staff training, it is not clear if there is a dedicated module for the treatment of LGBTI persons.<sup>175</sup> The staff of prisons or sections where special categories of prisoners are placed, including LGBTI, must be specialized in the relevant field, continuously trained, and their employment must take into account, as far as possible, the needs and characteristics of prisoners in the institution, as well as respecting gender equality.<sup>176</sup>

The training programs made public on the institution's official website indicate that they are part of the initial and ongoing training of prison staff and treat several topics related to security, treating prisoners with dignity, issues of communication, ethics and professional standards of conduct, diversity and discrimination, prevention of cases of violence, self-harm and respect for prisoners' rights.<sup>177</sup> There are some training manuals for staff, but it is not clear if there is any specific manual for dealing with LGBTI persons. The trainings are offered by the Prison Staff Training Center or in cooperation with the Security Academy for prison police training,<sup>178</sup> in cooperation with local and international partners, including LGBTI NPOs<sup>179</sup>.

Probation service employees are trained by the Albanian School of Public Administration (ASPA) or may be organized in cooperation with the School of Magistrates or local or foreign organizations and/or agencies accredited to provide training.<sup>180</sup> Specialized ongoing training is required for specialists charged with the supervision of special categories, including LGBTI persons. From the conducted research, no information was found about the training program and topics related to the treatment of LGBTI persons.<sup>181</sup>

As for lawyers, the initial and ongoing training of lawyers is provided by the School of Advocacy.<sup>182</sup> Lawyers who provide secondary legal aid services must carry out specific training, i.e., also for persons who are discriminated against due to SOGI<sup>183</sup>. It is not clear whether the initial training program for lawyers has topics that address the rights of LGBTI persons, hate crimes or the rights of their victims.<sup>184</sup> From the study of the ongoing program for lawyers, no training on non-discrimination and the rights of victims of hate crimes was found.<sup>185</sup>

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<sup>175</sup> The training modules are: legal, security, communication, health, emergency, use of force and management modules.

<sup>176</sup> Article 30, paragraph 4 of Law No. 81/2020.

<sup>177</sup> The annual training program for prison and detention system employees, 2020, pp. 5-10.

See: <https://dpbsh.gov.al/trajnime/plani-vjetor-i-trainimeno/>. Module: Module 1 and 3 of training for prison personnel

<sup>178</sup> Decision no. 881, dated 28.10.2020 of the Council of Ministers and memorandum of cooperation between the Ministry of Justice and the Ministry of the Interior regarding prison police training.

<sup>179</sup> On the official website of the General Directorate of Prisons, in the "Training" column, the following are published: the manual, the training program, the annual training plan and the annual report of the completed trainings. See: <https://dpbsh.gov.al/>

<sup>180</sup> 2. Articles 15-17 of the Law no. 78/2020 "On the organization and operation of the probation service".

<sup>181</sup> See: <https://www.dhka.org.al/index.php/trajnimet/kalendari-i-arsimit-ligior-vazhdues>

<sup>182</sup> Article 55 of the Law no. 55/2018 "On the profession of lawyer in the Republic of Albania".

<sup>183</sup> Article 54, paragraph 2 and 3 of Law no. 55/2018.

<sup>184</sup> The topics included in the program are: jurisprudence and criminal legislation related to stalking and femicide; the principle of equality and non-discrimination in the jurisprudence of the Constitutional Court of RA, proportionality and the protection of human rights in the constitutional trial, the principle of due process in the jurisprudence of the Constitutional Court of Albania; the defendant and the role of the defender in the criminal process; victims in the criminal process, Declaration of procedural rights. See: <https://www.dhka.org.al/index.php/shkolla-avokatiseshkolla-online>.

<sup>185</sup> Ongoing training topics for 2021, see: <https://www.dhka.org.al/index.php/hyrie/njoftime/203-njoftim-8>.

## 2. Implementation in practice

During 2018-2022, trainings were held for State Police employees of all levels and throughout the country.<sup>186</sup>, training of trainers,<sup>187</sup> training while exchanging experiences with colleagues from other countries handling hate crimes against LGBTI persons on the police response to hate crimes as well as to discrimination against LGBTI persons and the handling of such cases;<sup>188</sup> meetings between the police and NPOs representatives to exchange information and discuss cooperation..<sup>189</sup> In November 2021, a meeting of the Council of Europe in cooperation with the police and NPOs representing the LGBTI community was organized in several districts. The Commissioner for Protection from Discrimination has developed training in cooperation with the State Police Directorate. Many trainings and activities with the state police are supported by the Council of Europe.

Cooperation between state institutions and civil society in the field of enhancing the capacities of the state police has been strengthening, although the state police has not signed any agreement with the NPOs representing the LGBTI community. There is a good will on the part of the state police to cooperate with organizations representing the LGBTI community (this issue is addressed in section 1), equality bodies, local NPOs and international partners. There is no complete database published with data on trainings, projects, areas of training and the number of beneficiaries of trainings related to diversity and hate crimes.

Regarding the training of magistrates and judicial police officers, there is no complete data on the number of persons trained by the School of Magistrates and/or NPOs or international organizations, if in each prosecutor's office there are officers and prosecutors specialized in SOGI cases and if they apply the knowledge gained from the trainings in practice. There is no data of whether there is a dedicated module addressing non-criminalization and hate crimes.

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<sup>186</sup> Some of the developed trainings: In 2018, 150 police officers were trained to identify and address hate crimes against LGBTI persons; In March 2021, the LGBTI Alliance and Pro\_LGBTI conducted a training for police officers on LGBTI issues; in 2022, a series of meetings and trainings were held with Police leaders, on the successful investigation and effective prevention of homophobic and transphobic hate crimes. See: Annual review of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe and Central Asia 2022, ILGA Europe, 2022, cited work. The trainings during 2022 were carried out by the State Police with the Council of Europe within the Horizontal Facility Program for the Western Balkans and Turkey.

<sup>187</sup> 40 police officers of the Security Academy were trained by the Netherlands Helsinki Committee, the LGBT Alliance and Pro LGBT. See: Implementation of the Sustainable Development Goals in the Albanian Context. e. Perspective, cited work. pg. 27.

Annual review of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe and Central Asia 2022, ILGA Europe, 2022, cited work.

Trainings carried out by the State Police with the Council of Europe within the Horizontal Facility Program for the Western Balkans and Turkey.

<sup>188</sup> 50 police officers were trained by exchanging experiences between the two countries of the Netherlands and Albania on police response to hate crimes as well as LGBTI discrimination; representatives of law enforcement bodies and LGBTI activists from Albania and Kosovo gathered in Tirana (March 2022) to share their respective practices in handling hate crimes against LGBTI persons. The information was forwarded by GDSP in the framework of the drafting of the report, July 2022, see: <https://www.coe.int/sq/web/tirana/-/law-enforcement-agencies-and-civil-society-activists-from-albania-and-kosovo-exchange-on-countering-hate-crime-s-practices>.

<sup>189</sup> In 2021, the PINK Embassy organized a consultation with the heads of Tirana police stations, CPD and the contact person of the General Directorate of the State Police to discuss a better cooperation between them and the provision of training and support. In November 2021, a meeting of the Council of Europe in cooperation with the police and NPOs representing the LGBTI community was organized in Vlora, Korça, Elbasan, Kavaja and Fier. See: <https://www.coe.int/sq/web/tirana/-/new-guide-and-support-to-policing-hate-crimes-against-lgbti-community-in-albania>.

Regarding the training of prison personnel, based on the Strategic Plan for the development of the penitentiary system (2019-2022)<sup>190</sup>, during 2019-2021, 4322 employees (first, mid and senior level employees, multidisciplinary groups) were trained on topics such as: mental health problems, suicides, risk assessment, etc. The trainings are developed by the Training Center in partnership with local and international organizations.<sup>191</sup> Training plan for 2022<sup>192</sup> does not contain specific training for LGBTI persons, but the modules contain topics on human rights, the rights and treatment of detainees and prisoners, on admission, security, ethics and communication, on communication, ethics and professional standards of conduct, diversity and discrimination provided during training of first and mid-level personnel.<sup>193</sup> Currently, the GDP cooperates with the Security Academy in training in special issues of security management and human rights and local and international partners (CoE, OSCE, Albanian Helsinki Committee, Netherlands Helsinki Committee, European Penitentiary Training Academies Network (EPTA), European Commission, US Embassy in Tirana, etc.).

Despite the progress made for information and sensitization, increasing the capacities of professionals, improving laws and by-laws, establishing special structures or handling LGBTI issues, many initiatives related to the prevention and combating of hate crimes, including those due to SOGI are based on projects that are supported by donors. Their sustainability depends on funding from international partners. The positive experiences of cooperation between local and central level institutions and NPOs representing LGBTI persons should be recognized and promoted throughout the country.

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<sup>190</sup> The strategic plan was drawn up in 2019 with the support of the British Embassy, Tirana.

<sup>191</sup> Trainings were held within the framework of the Council of Europe; project "Horizontal Support for the Western Balkans and Turkey", implemented by the EC, of the projects implemented by the OSCE, the Netherlands Helsinki Committee, the US Embassy, the Albanian-Swedish Juvenile Justice Program, etc.

<sup>192</sup> See: <https://dpbsh.gov.al/wp-content/uploads/2022/06/Plani-Vjetor-i-Trajnimeve.pdf>.

<sup>193</sup> Module 1 and 3 of training for prison personnel.

## Conclusions

Hate speech is a disturbing and growing phenomenon. LGBTI persons are one of the most discriminated groups and hate speech victims. The most serious form of hate is SOGI hate crimes or because of sex or appearance characteristics. Hate crimes are provided for in the Albanian Criminal Code. Criminal legislation and victims' rights, including those of victims of hate crimes, have improved over the past two decades. However, the Criminal Code needs additions and clarifications to better address hate crimes and those due to SOGI or sexual characteristics.

Preventing, investigating and punishing hate crimes due to SOGI requires data collection. The rules for collecting, processing and publishing data on hate crimes are partial and each institution has adopted such rules; data on hate crimes are fragmented, non-standardized. The lack of a unified, integrated computerized system does not allow for tracking the progress of the investigation of hate crimes at all stages from reporting to the final decision of the court. Also, standardization of hate crime data collection rules based on motives, including SOGI, is necessary.

Real recognition of hate crimes due to SOGI depends on their reporting. This reporting is at low levels, compared to the data showing the surveys of victims. The lack of trust in law enforcement institutions, the justice system and the lack of knowledge of the law by LGBTI persons makes the victim report such cases to NPOs that represent the LGBTI community. On the other hand, the lack of a clear definition for hate-motivated incidents and a standard definition of hate crimes due to their registration by all institutions affects the real lack of recognition of hate crimes and addressing the needs for capacity building of the investigation of hate motives.

Online reporting between the platform created by the Commissioner for Protection from Discrimination and reporting by civil society organizations supporting LGBTI victims is a positive step that should be encouraged. Criminal proceedings are primarily an option that should be better implemented by the prosecution body. Despite the good legal basis, the investigation *prima facie* of biased motives by the prosecution is still far from the standards. The criminal justice system is still not effective in preventing and investigating hate crimes and proving hate motives.

In terms of data on victims, including those of hate crimes, the law prohibits the publication of personal and sensitive data, but does not prevent the collection and publication of statistics respecting personal data. Although the law is good, the publication of data of victims in contact with the police and justice system and their reposting by online portals, audiovisual media and social networks is a problem that must be addressed as soon as possible.

Positive steps have been taken in relation to victim support such as: appointing a contact person for the LGBTI community in each police department, the special structure that addresses diversity issues at the General Directorate of the State Police, victims' coordinators at [every first instance prosecutor's office with general jurisdiction, shelters and services provided by institutions and some NPOs for LGBTI victims, free legal aid for victims, approval of minimum standards for social care services for LGBT+ people in public and non-public residential centers, the mechanism for coordinating the work of institutions for violence referral and victim rehabilitation assistance, and the protocols for the management of violence and sexual violence cases.

The small number of cases prosecuted, investigated and sent to court for hate crimes does not allow assessing the effectiveness of the criminal policy in force. But from the few cases reported, the investigation has been ineffective.

There are no records of cases for which legal aid was requested for discrimination or hate crimes. There is no up-to-date register of trained lawyers and staff. The establishment of a periodically updated database is necessary.

Shelters for victims of domestic violence, of sexual violence and for LGBTI victims are concentrated in Tirana. Lack of services throughout the territory, lack of contact persons in all municipalities; the overload and structure at the local level, overlapping of competences, insufficient human and financial resources need to be addressed.

Unstable financial resources, insufficient human resources means that LGBTI victims do not receive the necessary services and their rights are not guaranteed in practice. Increased funding from the state budget and provision of sufficient human resources needs to be addressed. Victim services should be financed from the state budget and should not be dependent on donors.

The lack of necessary professional capacities for the rights of LGBTI persons and the treatment of hate crime victims, including for SOGI motives, as well as the mentality of a part of administration employees and the private sector dictates the need for training, information and awareness campaigns, especially outside Tirana.

Protection from acts of hatred due to SOGI in detention facilities and in prisons is generally regulated by the legislation in force. The General Regulations of Prisons do not contain detailed rules to address the rights of LGBTI persons in relation to placement in cells, prevention of bullying, or protection from sexual harassment or abuse. Despite the few cases of LGBTI persons being released from prison, some specific rules need to be provided in the General Regulations of Prisons and institutions' regulations.

Awareness raising and training of employees of law enforcement institutions, at the central and local level, for creating a friendly environment for victims, for the effective investigation and punishment of hate crimes and proving biased motives is an obligation for the institutions. The drafted manuals will have to be known and implemented by all employees. Training of employees to prevent and combat hate crimes, including against LGBTI persons, should be part of initial and ongoing training modules where they are missing or absent or when the programs do not contain sufficient information.

The role of civil society, in particular of organizations representing LGBTI persons, has been growing. Cooperation between institutions and NPOs representing LGBTI persons needs to be consolidated. These organizations have experience and expertise in addressing the many needs of LGBTI persons in improving reporting, recording hate crimes, victim support and assistance, staff training, information and public awareness.

It is time to take the initiative to address hate speech in audiovisual media and online media. The AMA has already begun the process of addressing hate speech in audiovisual media, but online media remains unregulated. The Alliance Against Hate Speech is a good opportunity to address hate speech in all areas, especially online media.

The Commissioner for Protection from Discrimination and the Ombudsman are active in addressing hate speech and crimes. Some powers provided by the law need to be implemented more like lawsuits for matters of common-interest, friendly opinions for the courts.

Activities in the field of education are based on projects implemented by NPOs or within international days such as the International Day against Homophobia and many of them are financed by donors. There is a need for a more consistent approach to information and education, including improvements in curricula and teacher training regarding hate speech and LGBTI rights. Monitoring the National Action Plan for LGBTI People is a good opportunity to dynamically address information needs.

Awareness campaigns with elected and public officers is a positive experience, but in its first steps. Cooperation with local elected officers and parliamentarians needs to be strengthened, and the latter will have to distance themselves and publicly condemn cases of hate speech.

In addition to awareness raising, information and campaigns against hate speech and crimes, training and specialization of personnel of institutions in contact with LGBTI persons is important. Legislation regarding initial and ongoing education is good, but their programs and plans need to be reviewed, diversity issues, language and hate crimes, their effective investigation and punishment need to be better and clearly addressed in the plans and teaching programs.

In addition to support from local and international partners, funding of training programs from the state budget needs to increase and be sustainable. Establishing a database of professionals trained/specialized in hate speech and hate crime issues is necessary. The lack of a database related to training affects the correct forecasting of training needs and the planning of the necessary budgets.

The cooperation of institutions with NPOs representing the LGBTI community and other local and international organizations in the preparation of manuals, guidelines and the provision of training and information sessions for professionals is good. This cooperation needs to be consolidated and expanded with all institutions, including the governing bodies of the justice system.

Finally, the implementation of the National Action Plan for LGBTI Community People, its full funding and effective monitoring is a good opportunity to address the issues identified in this report.

## Recommendations

Below are some recommendations per area.

### Legal framework

- Revising the criminal legislation to bring it in line with international standards and to reflect the new concepts of discrimination provided for in the law on protection from discrimination. Revising the legislation is recommended to be done during a broad consultation process with equality bodies, civil society organizations, and representatives of LGBTI persons.
- The establishment of a group of professionals, civil society representatives and experts to address hate speech, hate crimes with SOGI motives among legal initiatives and revision of secondary legislation is recommended.
- Having a standardized understanding of the notion of "hate-based incident" and "hate crime" and their fair application by all legal professionals, public and private sector workers, NPOs and the LGBTI community.

### Institutional response and cooperation

- Institutionalizing cooperation between law enforcement bodies, governing bodies of the justice system, equality bodies and civil society in order to better address hate speech and hate crimes, including against LGBTI persons.
- Establishing a network of contact persons, where there are none, trained on LGBTI issues at the local level.
- Strengthening cooperation between institutions, including parliamentarians and municipal councilors with representative organizations of the LGBTI community;
- Increasing the engagement of public officers in preventing the use of hate speech, public condemnation of its use and supporting causes in defense of the LGBTI community.
- Awareness campaigns for the public and institutions, especially at the local level and outside Tirana with the aim of cooperation between them and fighting the barriers that prevent the reporting of hate crimes;
- Consolidating institutional cooperation and response to hate speech and hate crimes, addressing hate speech and hate crimes, especially online.
- Increasing the participation of NPOs, including NPOs that represent LGBTI persons in decision-making, including in the Assembly of Albania.
- Consolidating the police cooperation with NPOs representing LGBTI persons and promotion of positive models.
- Consolidating the cooperation of the governing bodies of the justice system, law enforcement institutions, the Chamber of Advocates of Albania and the Directorate of Free Legal Aid with NPOs that represent LGBTI persons with the aim of exchanging information, drafting informational and training materials, increasing capacities for the rights of LGBTI persons, overcoming barriers to investigating hate motives and increasing access to justice.

### Data collection

- Conducting a national study of hate crimes in order to know the situation, trends, motives, effectiveness of the criminal policy, reasons for reporting and non-reporting and the perception of the victims about the behavior of the police and the justice system.

- Carrying out periodic surveys to know the level of victimization from hate crimes and hate-based violence due to SOGI.
- Defining a standard concept of hate crimes and hate incidents for the effects of collecting and processing statistics and their computerization accompanied by the training of personnel responsible for collecting and processing statistics is recommended.
- Putting the integrated data system into operation, populating timelier and quality data from all institutions and publishing data in a friendly and transparent format for the public. Integrated data systems enable the collection and processing of data on hate crimes against LGBTI persons, not only when the motive is included in the content of the article, but also hate crimes for SOGI motives are classified as crimes committed under aggravating circumstances.
- Cooperation of institutions with equality bodies and NPOs representing LGBTI persons in order to improve statistical indicators, encouraging victims to report hate crimes against LGBTI persons.
- Awareness of responsible employees about the importance and need of implementing a standard methodology based on international standards for the collection, processing and publication of hate crime statistics against LGBTI persons.

### Reporting, investigation, proceeding and punishment

- Strengthening the capacities of police contact persons, victim coordinators in relation to hate crimes, including against LGBTI persons in relation to the treatment of victims.
- Increasing the capacities of police officers, judicial police and prosecutors and judges for the *ex-officio* investigation of hate crimes and *prima facie* discriminatory motives when they are not apparent and the implementation of a proportionate punishment.
- Effective handling of any reports of hate crimes and respect for the dignity and rights of the victim.
- Implementing a penal policy of punishment proportionate to the high risk of hate crimes, including against LGBTI persons.
- Dynamic follow-up of the implementation of the instructions of the Prosecutor General regarding the effectiveness of hate crime investigations by the special structure for monitoring the implementation of the instructions, at the Prosecutor General Office.
- Evaluation of the approach of professionals regarding the rights of LGBTI persons, the obstacles encountered in the investigation of biased motives and their addressing, guaranteeing the rights of LGBTI persons.
- A more pro-active role of the Commissioner for Protection from Discrimination in exercising the right to sue in cases of collective interest and to give friendly opinions in courts in cases of hate speech and hate-motivated incidents against LGBTI persons.
- Systematic evaluation of the efficiency of criminal policy for hate crimes, including for SOGI by researchers from the academic world in addition to the studies carried out by the institutions themselves.

### Victims' rights

- Implementation of the measures of the National Action Plan (2021-2027) regarding the information and awareness of persons and employees of the administration at the local level about the rights of LGBTI victims.

- Establishing a system for registering cases where LGBTI victims have benefited from legal aid and support services.
- Establishing a register of lawyers specializing in the protection of victims, including LGBTI victims, their training on hate crimes, good practices and ECtHR jurisprudence.
- Encouraging the High Judicial Council and the High Prosecution Council to emphasize respect for the rights of victims of hate crimes, including LGBTI persons, in the periodic evaluation of magistrates. This approach will influence the awareness of magistrates for effective investigations and prosecutions of SOGI hate crimes.
- Practitioners' recognition and implementation of international model guidelines developed in the field that include model standards for supporting hate crime victims.
- Assessing the capacities of social services for hate crimes victims at the local level, determining human and financial resource needs and meeting them.
- Increasing staff capacities in local units and where local structures are weak, strengthening cooperation with NPOs that provide services in the field and signing cooperation agreements between them.

### **Protection from hate crimes against LGBTI people in detention facilities and prisons**

- Revision of the General Regulation of Prisons and regulations of institutions with the aim of providing specific rules for the placement of LGBTI persons in institutions, separation in rooms, prevention of bullying, abuses and violence by other convicts and staff.
- Drafting of protocols containing specific guidelines for limiting the risks of violence and forms of abuse against LGBTI prisoners.
- Specific training of first, mid-level personnel and multidisciplinary groups on the rights of LGBTI persons, admission to the institution, placement in cells, prevention of forms of abuse by other convicts and the staff of the institution.
- Strengthening cooperation with civil society organizations representing the LGBTI community and local and international partners for staff training related to the treatment of LGBTI persons deprived of their liberty.

### **Awareness campaigns and trainings**

- Designing a school communication strategy for the rights of the LGBTI community and the prevention of hate speech.
- Periodic evaluation of the perception of LGBTI persons in contact/conflict with the law and discussion of the findings with the governing bodies of the justice system and main professionals at the base.
- Strengthening the capacities of public administration officers at the local and central level for the prevention of hate speech and crimes among the programs offered by the School of Public Administration in cooperation with organizations that have knowledge in the field.
- Revising/updating initial and ongoing education curricula on hate crimes, focusing on the victim, including LGBTI victims.
- Training of professionals based on needs assessment, in particular for investigation methods, interviewing, assessing the needs of the victims, getting to know the updated jurisprudence of the ECtHR on hate crimes and protecting the victims.
- Training planned according to a program approved and financed by the state budget and in cooperation with local and international partners is recommended.

- Engagement of LGBTI organizations within the Legal Education Network for the implementation of the Public Legal Education Strategy in order to inform the public and professionals about the rights of LGBTI persons and the prevention of hate speech and crimes.
- Consolidation of communication established between organizations representing LGBTI persons and the Assembly of Albania; increasing the participation of NPOs that represent LGBTI persons in decision-making at the local level and in the Assembly of Albania.
- Encouraging elected officers and public officers to distance themselves in cases of hate speech and monitoring parliamentary language and the implementation of the Code of Conduct of the Deputy and the conduct of officers altogether with the implementation of the Code of Ethics of the officer.