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Hate speech, gender, social networks and political parties

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## D 4.1 REPORT ON LEGAL AND PUBLIC POLICIES PROPOSALS TO ADDRESS ANTI- GENDER HATE SPEECH

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## 1. Introduction

The objective with this report is to present proposals of public policies, legislation, and self-regulation to address *anti-gender hate speech* directed towards individuals, groups and the principle of equal value and equal rights for all, a fundamental principle of any democratic society. In addition, the report will also point out knowledge gaps and need for more research. The proposals are, to start with, based on the findings in the GENHA project and discussions with various stakeholders at workshops held in the five countries Germany, Hungary, Italy, Spain and Sweden during October 2021. They are moreover based on the presumption that hate speech is an act, which is or can be interlinked with other acts of violence exercised against women, groups of women, individual women or groups of people for their gender identity, gender expression or sexual orientation (in the project included in ‘gender’). As such this violence is a violation of the basic values of democracy. Additionally, anti-gender hate speech may silence some voices and hence, restricts freedom of expression. Thus, *anti-gender hate speech* is a form of violence

against women<sup>1</sup>, and others included in the concept of gender, and therefore, cyberviolence should be labelled in national and European legislations as a form of gender violence and violation of human rights. It also threatens basic democratic values such as freedom of expression and a diversity of voices.

The findings in the research project show that online hate speech (in general) is a severe problem which is only to some extent met with legal, political or self-regulatory measures. When the hate speech and other hate crimes are based on the grounds of sex or gender, there is a remarkable gap when it comes to initiatives taken. And, what is also apparent is that possible measures to combat such speech or other crimes, are often met with the argument that the (also important) democratic principle freedom of expression hinders such initiatives. This is not always the case, there are protection for individuals, groups and for democracy when the acts constitute an imminent risk for a vulnerable group of society, or a direct incitement to violence and/or hate to that group, and to some extent individual victims. However, women, as a group or as individuals, are rarely understood as a ‘vulnerable group’<sup>2</sup>, and therefore, are not seen as potential victims of these hate speeches that should have protection by law. However, during our research it was demonstrated that women, as individuals and as a group, are exposed to hate speeches and other hate crimes. And this digital violence is exercised against them on the grounds of their sex and/or gender. It is also demonstrated that these acts are connected to attacks on the basic ideas of democracy, the principle of equal value and equal rights for all. (See the previous reports of the GENHA project, [www.genha.eu](http://www.genha.eu)).

None of the five countries (Germany, Hungary, Italy, Spain or Sweden) involved in the GENHA project include anti-gender hate speech in the national legislation, i.e. within legislation framed as hate speech or hate crime. Some acts may be regulated as other types of crimes (see Report on the State of the Art on Anti-gender Hate Speech, 2020). Regulation on hate speech on other grounds are present, but *anti-gender* hate speech is not covered, despite several increasing calls to address such speech<sup>3</sup> and the fact that the Council of Europe’s definition of hate speech include also gender<sup>4</sup>. The findings also show that neither legal regulation nor self-regulation are sufficiently protecting individuals and groups from being exposed to anti-gender hate speech. What is also

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<sup>1</sup> This is the opinion expressed in the Council of Europe’s Gender Equality Strategy for 2014-2017, retrieved from: <https://rm.coe.int/1680651592>, as well as in the European Parliament resolution of 14 December 2021 with recommendations to the Commission on combating gender-based violence: cyberviolence (2020/2035(INL)), retrieved from: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0489\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0489_EN.html).

<sup>2</sup> To be defined as a vulnerable group, the group is implicitly considered as a minority group with certain characteristics that makes them vulnerable in comparison to the majority group. Even though women, identified as a group, are exposed to discrimination through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the reluctance to see women as a vulnerable group regarding hate speech is evident.

<sup>3</sup> See e.g. Promotion and protection of the right to freedom of opinion and expression, A/76/258, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2021.

<sup>4</sup> General Policy Recommendation no. 15 on combating hate speech, adopted on 8 December of 2015. European Commission against Racism and Intolerance (ECRI) (Council of Europe 2016) in <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

shown is a lack of public policies in EU and the five included member states to address anti-gender hate speech properly.<sup>5</sup>

The aim with the discussions with various stakeholders at workshops in each participating country team was to discuss online hate speech, especially the kind of hate speech that is targeting persons and groups on the grounds of sex/gender, gender identity and expression, and sexual orientation which has its foundation in an ‘anti-gender agenda’ directed towards ideas on gender equality from right-wing actors. The starting-point for the discussions were that such hate speech is not covered or is insufficiently covered by national legislation, public policies and self-regulation. The most prominent gap of such measures is the lack of protection for hate speech directed toward women on the basis of their sex/gender. The objective with the workshops was to receive input to one of the objectives with the GENHA project, namely to propose legislative, public policy and self-regulatory mechanisms to combat anti-gender hate speech, and, to identify knowledge gaps and propose future research needs.

Hate speech has been mainly focused as a violation of the right to honor, privacy and own image of the victims. Ultimately, it has also been recognized as a violation of the human dignity (in the cases where the victim was only an individual). But hate speeches may constitute violation of other human rights as the right to equality and non-discrimination, right to physical and moral integrity, right to freedom of expression or the right to vote and be elected, among others.

## **1.1. Disposition**

The proposals reported here are directed towards the national, the EU level, and the self-regulatory mechanisms, respectively. The legal and public policy proposals directed towards the national level differ, due to the different present legal and policy situation in each country. The legal and public policy proposals directed towards EU are shared and therefor presented jointly. The self-regulatory systems for the social media platforms are not restricted to certain jurisdictions or countries, therefor the proposals are listed jointly. The research proposals are not directed at any specific level (national or EU), hence they are also listed together.

The structure of the report is consequently as follows:

First, we start with the legal and public policy proposals directed at the national level (Ch. 2). Second, we present the legal and public policy proposals directed at the EU level (Ch. 3). Third, we present the self-regulatory systems proposals (Ch. 4). Fourth, we present

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<sup>5</sup> However, the Commission has proposed two legislative initiatives to upgrade rules governing digital services in the EU: the Digital Services Act (DSA) and the Digital Markets Act (DMA). They form a single set of new rules applicable across the whole EU to create a safer and more open digital space. And moreover, there is also a proposal to modify Article n°83 of the Treaty of Lisbon and extend the list of EU crimes to embrace hate speech and hate crimes on grounds of sex and gender, see more below.

proposals for more research (Ch. 5). Finally, a conclusion is provided (Ch. 6). In addition, an appendix with the programmes of the national workshops is attached.

## 2. Legal and public policy proposals directed at the national level

The proposals in this chapter (2) are directed at the national level. The present legal and policy situation varies between the countries; thus, the proposals differ as well. Therefore, the countries' proposals are presented separately, following an alphabetical order of the countries. The internal structure of the country specific sections may vary. Policies and legal measures are interlinked, a legal act might be the result of a policy but a policy does not always result in legislation. A policy may be valuable to address a problem and may be followed by other measures than legislation. It is not possible to be consequent through the report. However, in the end of the report (Ch. 6), a summary of the most urgent and widespread proposals is provided.

### 2.1. Germany

This chapter presents legal and public proposals from the German team. The focus here is on public policy proposals, as we assume that hate speech cannot be sufficiently regulated by the state<sup>6</sup> and that it is therefore necessary, in addition to the proposal, to make already existing laws on the regulation of hate speech more flexible and inclusive as well as to make access to certain messenger services, which cannot yet be regulated, more difficult. We present approaches that focus primarily on prevention measures as well as awareness, victim counseling, and empowerment programmes, which we believe are more responsive to the conflict dynamics of hate speech in social media than government regulation measures can be.

The current situation is that Germany has approved a considerable number of anti-discrimination laws and hate crime/speech laws. The most important issue within the German legal system is that there is no explicit mention to gender or sex bias, nor an explicit recognition in the last years. In 2021 and 2022, there are and will be several extensions of criminal codes, such as § 241 StGB, which includes threats against sexual self-determination and § 185 StGB including public insults and § 188 StGB defamations. From February 1, 2022, platform operators must delete threats of murder, rape and other serious hate crimes and have to report them to the Federal Criminal Police Office (BKA).<sup>7</sup> There are, in addition, in Germany some public initiatives and some prominent

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<sup>6</sup> Cf. Sponholz, L. (2018). *Hate Speech in den Massenmedien. Theoretische Grundlagen und empirische Umsetzung [Hate Speech in the Mass Media. Theoretical Foundations and Empirical Implementation]*. Wiesbaden: Springer VS; Ganesh, B. (2018). The Ungovernability of Digital Hate Culture. *Journal of International Affairs*, 71(2), pp. 30-49.

<sup>7</sup> Part of the legislative package to combat hate and hate speech of the Federal Ministry of Justice (BMJV). Available from: <https://www.bmjv.de/EN/FocusTopics/Legislative-package-combat-hate-hate-speech.html?nn=6427850>



governmental and non-governmental campaigns regarding online hate speech.<sup>8</sup> Sexism, hate crimes and hate speeches against LGBTQI+ persons and on the base of gender are also condemned in the new coalition contract between Social Democrats (SPD), Free Liberals (FDP) and the Greens (Bündnis 90/ Die Grünen). Preventive work with perpetrators is to be expanded and the coalition parties calls for a "strong alliance against sexism". To this end, it calls for, among other things, the nationwide and local implementation of confidential preservation of evidence that can be used in court.<sup>9</sup>

### **2.1.1. Legal proposals**

#### *Expansion of legal texts instead of the introduction of new laws*

In the current laws that are supposed to regulate the handling of online-based hate speech (NetzDG, Telemedia Act [Telemedien Gesetz], Interstate Broadcasting Treaty [Rundfunkstaatsvertrag], the Act to Combat Right-Wing Extremism and Hate Crime [Gesetz zur Bekämpfung von Rechtsextremismus und Hasskriminalität], as well as recent amendments and extensions of § 241 StGB, § 185 StGB are not sufficient to cover all forms of anti-genderist hate speech.

#### *Proposal:*

- Implementing new laws is often a long-term process. As these are often too rigid and lag behind social media dynamics, there is a need for more flexible and comprehensive legislative packages that cover a variety of victim groups and types of hate speech. An inclusive approach is needed that includes as many forms of hate speech and target groups as needed, such as LGBTQI+, women, but also other vulnerable groups. Therefore, existing laws, such as those mentioned above, should be expanded.

#### *Making access to platforms like Telegram more difficult*

It can be observed, that platforms such as Telegram are steadily gaining in importance and their user numbers increased dramatically over the last few years.<sup>10</sup> It is observable, that in such closed messenger groups, there is a wide range of anti-gender agitation and defamation, also by right wing actors and parties.<sup>11</sup> More and more users subscribe to

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<sup>8</sup> E.g. Amadeu Antonio Foundation, No Hate Speech Movement, Counter Extremism Project (CEP), Justice and Media – “Consequently against Hate” by the Bavarian State Ministry of Justice and the Bavarian Media Authority and “Tracking instead of just deleting” by the Media Authority of North Rhine Westphalia.

<sup>9</sup> Coalition contract SPD, Bündnis 90/Die Grünen and FDP (2021). Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit [Dare to make more progress. Alliance for Freedom, Justice and Sustainability], pp. 107, 115, 119-120, Retrieved from: [https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag\\_2021-2025.pdf](https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf)

<sup>10</sup> Iqbal, M. (2021). Telegram Revenue and Usage Statistics (2021). *businessofapps.com*, July 7<sup>th</sup> 2021. Retrieved from: <https://www.businessofapps.com/data/telegram-statistics/>

<sup>11</sup> Mosene, K. (2021). Antifeminismus und die Fortschreibung von Marginalisierungen in digitalen Räumen [Antifeminism and the Perpetuation of Marginalization in Digital Spaces]. *gender-blog.de*, October 7<sup>th</sup> 2021. Retrieved from: <https://www.gender-blog.de/beitrag/antifeminismus-digitale-raeume>; Focus (2021). Faselten von Bürgerkriegen und Impf-“Genoziden”: Generalstaatsanwalt prüft AfD-Chatgruppe [Mounded of civil wars and vaccine "genocides": Attorney General investigates AfD chat group]. *Focus.de*, December 2<sup>nd</sup> 2021. Retrieved from: <https://www.focus.de/politik/deutschland/geheime->

unregulated channels and are confronted with hate and agitation there. Since the state media authorities [Landesmedienanstalten], on the basis of the Media State Treaty [Rundfunkstaatsvertrag] amended in 2020, only have access to channels that list an imprint,<sup>12</sup> as is the case with journalistic media, they have no access to these platforms and a regulation is not possible.

*Proposal:*

- The general access to these platforms should be more regulated. On the legal side, this access regulation affects the State Media Treaty and the Telemedia Act, under which this type of (mass) communication is currently not yet considered. In the USA, for example, Apple is being sued by the "Coalition for a Safer Web" for removing the messenger service from the app store, since incitement and violence are spread there without control.<sup>13</sup> By removing these as yet unregulated platforms from their app range, App Store providers such as Apple and Google would make access more difficult and this would be a first step towards limiting the reach of these platforms.

*Privacy by Default: Facilitation of the blocking notice [Sperrvermerk] for the purpose of potential victim protection*

At present, it is possible to request address information from the registration offices for each registered person. The only exceptions are certain persons and occupational groups. An application to block this information is a) quite time-consuming and b) the majority of people living in Germany are not aware that there is such an obligation to provide information. Persons require currently the proof, "that facts exist that justify the assumption that the person concerned or another person may face a danger to life, health, personal freedom or similar interests worthy of protection as a result of information from the civil register" for a blocking notice.<sup>14</sup>

*Proposal:*

- To prevent potential victims of hate speech in the offline world, there should be a general information campaign to inform all persons in a low-threshold manner about the possibility of obtaining personal information from registration offices. In this context, this possibility of obtaining information should be greatly

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gruppe-in-telegram-chats-fantasiert-afd-bayern-ueber-buergerkriege-und-impf-genozide\_id\_24476795.html

<sup>12</sup> Czerulla, H. (2020). Medienstaatsvertrag: Die Idee vom regulierten Netz [State Media Treaty: The idea of a regulated network]. *Posteo.de*, November 5<sup>th</sup> 2020. Retrieved from: <https://posteo.de/news/medienstaatsvertrag-die-idee-vom-regulierten-netz>

<sup>13</sup> Laser, M. (2021). Apple: Nun droht auch Telegram der Rauswurf aus dem App Store [Apple: Now Telegram is also threatened with expulsion from the App Store]. *Netzwelt.de*, January 18<sup>th</sup> 2021. Retrieved from: <https://www.netzwelt.de/news/185163-apple-droht-telegram-rauswurf-app-store.html>

<sup>14</sup> Serviceportal B-W (2018). Melderegister – Auskunftssperre beantragen [Register of residents - request blocking of information]. *Stadt Freiburg im Breisgau*, May 2<sup>nd</sup> 2018. Retrieved from: <https://www.service-bw.de/leistung/-/sbw/Melderegister++Auskunftssperre+beantragen-4543-leistung-0.own.translation>.

restricted and the barriers to obtaining a block on information should be eased for potential victims of hate speech and other groups of people.<sup>15</sup>

### 2.1.2. Public Policy Proposals

#### *Reward system in schools for soft skills - understanding, courage, appreciation*

It can be stated that there is no comprehensive education in the areas of civil courage on the Internet at German schools. In addition to the frequently criticized lack of IT resources, there is a need for more exchange about forms of cyber bullying, forms of hate speech and how to deal with them in schools.

#### *Proposal:*

- The promotion of digital competencies must also include soft skills such as understanding, courage and appreciation. These skills can be applied and internalized through a reward system. Possible incentive systems for the successful implementation of digital appreciation in schools could include funding in which students are particularly committed to a valuing and respectful digital approach. One possible way of promoting this could be to establish and strengthen peer-to-peer programmes at schools, such as Inter-Nest-Cafés, in which students advise other students in a safe space and help them in dealing with any form of online hate and agitation.

#### *Low-threshold counseling services and hotlines*

There are already a number of counseling websites and telephone hotlines that victims of hate speech can turn to.<sup>16</sup> However, these are often difficult to find and corresponding offices are underfunded. Due to Germany's federalism, there are different types of contact points in the federal states and regions that people can turn to for initial contact.

#### *Proposal:*

- Therefore, there is a need for a standardized and low-threshold counseling service in all federal states that can be easily found on the Internet. Those affected can seek initial help there. This also requires regional and local contact points and comprehensively sensitized personnel who are familiar with legal situations and who know and can refer to the networking structures of civilian agencies as well as corresponding police offices in the relevant region.

#### *Intercultural and diversity support for victims on an institutional level*

In the event of a report against sexualized hate speech on the Internet, institutions such as the police are often the first point of contact, and in some cases lack sensitivity to the

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<sup>15</sup> Köver, C. (2019). 10 Beispiele, warum Auskunftssperren kein Luxus für wenige sein dürfen [10 examples why information blocking should not be a luxury for the few]. *Netzpolitik.org*, July 17<sup>th</sup> 2019. Retrieved from: <https://netzpolitik.org/2019/10-beispiele-warum-auskunftssperren-kein-luxus-fuer-wenige-sein-duerfen/>

<sup>16</sup> E.g. HateAid (2021). Kontakt zu HateAid [Contact to Hate Aid]. *hateaid.org*. Retrieved from: <https://hateaid.org/kontakt/>

issues of gender and diversity as well as intercultural competencies. Victims feel that they are not taken seriously, and structural problems surrounding hate speech are thus reproduced to a certain extent by the authorities due to a lack of competencies and soft skills. Online violence such as hate speech is often not considered as real violence.<sup>17</sup>

*Proposal:*

- Here it is necessary to carry out mandatory awareness and competence training at all levels and relevant institutions. This is the only way to ensure that those affected by hate speech receive adequate help and protection on the ground. In addition to this individual competence training, the corresponding framework conditions and structures in the authorities, offices and departments must also be improved so that the case workers and those assisting victims are supported by the system on site by means of supervision, technical infrastructures and collegial support at all institutional levels.

*Expansion of digital social work*

Due to the constant structural change in media use and the shift to digital spheres, there is also a need for active contact persons on the Internet who are familiar with counseling and community work and street working methods and can apply them competently in online contexts. Knowledge of online lifeworlds and competencies in digital youth work are essential for victim counseling, hate and incitement prevention, and support for (potential) offenders. The first civil society organizations such as Caritas are already offering first online projects in addition to established social work and first universities offers specialized study-programmes in digital social work. This approach must be expanded because young people and members of certain subcultures spend more and more of their time in online forums and social media, and traditional social work no longer reaches them.

*Proposal:*

- Extensive expansion of digital social work with a focus on cyber bullying, hate speech, and hate crimes can help reach old and new social work target groups. This requires more funding for the corresponding institutions on a state and federal level. This digital social work must be regionally and locally networked and active. In addition to providing support for victims, specializations here could include general prevention, de-escalation, and assistance for perpetrators of hate and incitement online. The primary goal here should be to promote an appreciative and deliberative online discourse in forums and platforms and to prevent potential hate speech.

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<sup>17</sup> Sobieraj, S. (2020). *Credible threat: Attacks against women online and the future of democracy*. New York: Oxford University Press.

### *Establishment of a comprehensive civil society network*

There is a multitude of national and regional offers of civil society networks focused on anti-gender hate that so far only support each other referentially and are only networked to a certain degree. Structures and funding are lacking for a comprehensive exchange. However, an extensive and financially secure network of all relevant civil society actors would be useful to ensure comprehensive and low-threshold services, which is not yet the case.

#### *Proposal:*

- A comprehensive civil society network that operates nationally down to the local level could be a low-threshold contact point for those affected but also for those involved. An independent institution, funded by the federal and state governments in equal parts, should initiate and coordinate this platform. As a multiplier, this platform would not only list all existing local, regional and national associations, networks, facilities and institutes in order to find appropriate institutions in a targeted manner, but also to connect the institutions themselves and to realize joint projects. This conglomerate of interests should be inclusive and thus include all types of initiatives against hate on the net, but also provide orientation as to which institution is specialized in which type of support, research and prevention. In addition to a register of all nationwide institutions, this platform should also independently provide low-threshold information and orientation services so that those affected persons know who they can turn to regarding which problem.

## **2.2. Hungary**

### **2.2.1. The chances of expert recommendations under undemocratic conditions**

The goal of this chapter is to identify the most pressing legal and policy issues connected to potentially harmful ‘anti-gender’ speech on social media in the Hungarian context, and to formulate recommendations based on the outcomes of an expert workshop organized in the framework of the GENHA project in November 2021 in Budapest. Importantly, the process of democratic backsliding that has taken place over the last decade led to a distorted political public in the country, while the increasingly authoritarian modes of governance disabled the meaningful exchange between decision-makers, civil society, and legal or scientific experts. Presently, there is a lack of systematic state thinking, and no public deliberation, knowledge sharing, and dialogue among stakeholders concerning most matters of public interest, including, but not limited to hate speech or social media regulation. On the contrary, leading politicians themselves engage in potentially harmful speech not only on social media but in government-controlled online and printed press, and even in the parliament (see more on that in the research results presented in the Report on the State of the Art on Anti-Gender Hate Speech, 2020 and the Report Anti-Gender Hate Speech in Populist Right-Wing Social Media Communication, 2021). However, there has been an intensive work and vivid dialogue among independent legal and policy

experts, as well as civil society and academics taking place in the country on possible state intervention in case a favorable political turn occurs. The following sections are based on these exchanges and insights, as well as our previous work within the GENHA research. Our recommendations point to the upgrading and enforcing of currently existing laws in the field of criminal law, civil law, media law and anti-discrimination law, as well as to the necessary withdrawal of problematic legal and policy changes in the last few years.<sup>18</sup>

### 2.2.2. **Enforcing and adhering to the existing legal framework dealing with hate speech**

Despite the increasingly undemocratic ruling in the country, there is still a well-defined legislative and institutional framework at place to provide legal remedy for offenses of hate speech on the individual and the group level (see Report on the State of the Art on Anti-Gender Hate Speech, 2020). Legal action can be taken with regards to both offline and online content, even though currently there are very few cases of the latter type, and almost none of them concern social media specifically.

While major changes in the current legal regulations in substantive law are not necessary, some amendments should be made in criminal law to give more protection to women as a group, and in civil law to give more protection on the grounds of ‘sex’, ‘gender identity’ and ‘sexual orientation’. More importantly, the application of the existing law in all fields should be consistent and predictable, and practices based on double standard, bias, and the bagatellising legal interpretation must be stopped. Furthermore, it must be avoided that laws that are meant to protect minority groups are used in a perverse way: *against* LGBTQI and feminist activists, or against politicians and public figures who raise their voice against ‘anti-gender’ hate speech. These concern all the domains of law in which hate speech is to be dealt with by the legislative, namely, criminal law, media law, anti-discrimination law, civil law and the constitution.

In **criminal law**, the different legal fora presently offer very different chances of successful legal challenge. In addition to ethnicity and race, Section 332 (c) of the Criminal Code specifies that “certain **societal groups**” sharing protected characteristics are also protected, explicitly referencing disability, **sexual orientation, and gender identity**. The wording “in particular” suggests that the list provided is non-exhaustive, as is affirmed by available jurisprudence. The law states clearly incitements to ‘violence’ and to ‘hatred’, but there is no reference, to incitement to ‘discrimination’. It is also argued that these criminal law provisions are severely under-used, and under-enforced. The few court cases that led to a sentence over the last decade were exclusively cases of racist hate speech. Most criminal reports about hate speech were rejected based on Constitutional Court arguments (the requirement of “clear and present danger”). Although the 4th amendment of the Fundamental Law aimed to break with the

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<sup>18</sup> To compose the following recommendations, we use parts of the *WP2 National Report* on the legal and public policy framework and case law in Hungary with some refinement.

Constitutional Court's consistently pro-free speech position and give more weight to the protection of human dignity, the changes brought about by the amendment are not reflected in legal practice. (WP2 HU report)

*Proposal:*

- Include gender and women among the protected grounds. The criminal provision of the Criminal Code on incitement against a community should include reference to incitement to discrimination.

In line with the **Fundamental Law** (*Art. 9 (5)*), the **Civil Code** on *Hate speech against a community* (*Art. 2:54 (5)*) contains a closed list of groups. Legal action can be pursued on the grounds of nationality, ethnicity, race, or religion, but not on sex, gender identity and sexual orientation. Hence, these provisions are not suitable to address sexist, homophobic and transphobic hate speech. (In the meantime, the 'Hungarian nation' is listed as a group, which implies that claims can also be brought up by members of the majority.) Furthermore, the number of cases is minimal, likely because most hate speech online comes from anonymous persons, and knowing the respondent is a prerequisite for launching a civil case. In the few cases launched by individuals about anti-LGBTQI or sexist speech, the courts found that openly discussing the sexual orientation of a person who does not qualify as a public figure is a violation of the right to privacy, but public figures must endure more.

*Proposal:*

- The list of protected groups in the Civil Code provisions on 'hate speech against a community' should be **non-exhaustive**. The statute of limitation for initiating cases should be extended to 12 months. The requirement of legal representation in civil proceedings should be abolished, as it is unnecessary and unjustified, and places a disproportionate burden on the claimant. (Article 19 report, 42-43).

The comprehensive anti-discrimination **legislation** (*Act no. CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities*) offers a broad and far-reaching protection against discrimination among others on the grounds of sex, family status, motherhood (pregnancy), sexual orientation and gender identity. The Act defines harassment as a "conduct violating human dignity related to the relevant person's characteristics" which implies prohibiting harassment committed not only against individuals but also against groups. It is important to acknowledge that statements made in public and/or made by public officials enact harassment which overlaps with some forms of 'hate speech'. Such public statements violate human dignity and create an intimidating, hostile, and offensive social environment. Therefore, the harassment provision can be applied in these cases. (Article 19 report, p 26)

*Proposal:*

- The provisions on **harassment** in the Equal Treatment Act should be amended. The Act should state that harassment can also be committed against groups; the



harassment provisions should apply to all statements of public officials made in public, also in circumstances that currently fall outside the limited scope of ETA (e.g. a public figure posting or commenting on social media that incites discrimination).

**Media laws** seem to offer more opportunities to legally challenge hate speech: there have been a few cases, where the Media Council found anti-LGBTI and sexist media content to be unlawful. The practice, however, is not consistent. Anti-minority hate speech is often targeting an individual who is (assumed to be) a member of a group, but these cases are often rejected by the Media Council because they are deemed to be “not against a community.” Media law cases especially reveal a double standard: the Media Council enforces a significantly lower threshold for anti-majority speech and is less likely to find a violation in public or pro-government media.

*Proposal:*

- The Media Council should develop and publish its own policy guidelines. The Council’s guidelines should limit the Media Council’s discretion in interpreting legal provisions on illegal media content and on applying its sanctioning powers. These guidelines should be regularly updated to reflect recent developments in case law related to the implementation of the Media Act and the Press Act, and the case law of the Constitutional Court and the European Court. The guidelines should be clear enabling predictable and coherent interpretation by the Media Council of the general principles contained in the law. It should help media outlets exercise their freedom of expression without any chilling effects due to potential vagueness of the law. The courts should remain the ultimate guarantors of the freedom of the press.

### 2.2.3. **Withdrawing undemocratic and discriminatory legislation**

The two-third majority based legislative power of the right-wing political regime in Hungary has introduced a number of legislative changes that directly or indirectly diminish the rights of women and gender equality achievements and question the rights and dignity of non-binary gender identity, and all kinds of gender equality advocates who are not in support of the ideological underpinnings of the regime. These do not only de-democratize the country but often actively contribute to the production of hate against gender equality advocates, women (especially in public role and with no rightwing political identity), and sexual minorities.

**Withdrawing the ban on the ratification of the Istanbul Convention.** The Hungarian government signed the Istanbul Convention in 2014, however, it has since then postponed its ratification. The tone of communication with regards to the ratification changed over time. While in the beginning several members of the government confirmed that they would sign, after a U-turn in 2017, they withheld support. The main argument against the Convention was that it uses the term ‘gender’ and thus gives space for more radical



demands in the future, such as choosing one's own gender identity. The Convention came to play an important role in the Government's alleged fight against foreign intruders and called out several times in government media's smearing campaigns. A Declaration on rejecting the Istanbul Convention was signed in May, 2020, under the title "*On the importance of the protection of the rights of women and children and on the rejection of acceding to the Istanbul Convention*" (2/2020. (V. 5.) OGY). The legal status of the Istanbul Convention has to be clarified. First, the political declaration of the National Assembly has to be revoked, which calls on the government not to recognise the bound of the Istanbul Convention. Then the process of ratification has to begin.

**Enabling the legal recognition of transgender people.** Under the title "*Changes of Certain Administrative Laws and Free Donation of Property*" the utterly discriminatory *Act. XXX of 2020. Article 33.* was accepted. According to this new law, the category of "sex" in official documents like birth certificates or identity document changes to "sex at birth," defined as the "biological sex determined by primary sex characteristics and chromosomes." This also means that individuals' identification documents would contain the same, unchangeable information. (Amnesty, 2020). The law must be withdrawn and transgender individuals must be allowed to choose the category of 'sex' in their official documents.

**Withdrawing the 9th Amendment to the Fundamental Law.** In Fall, 2020, the Hungarian parliament accepted an amendment to the Fundamental Law, which now stipulates that "the mother is female, the father is male" and that children have a right to their identity "in line with" their sex by birth (*Article L(1) of the Fundamental Law*). Although this new declaration would have little legal consequence in itself, it uses the argument of protecting children to open the possibility of passing laws that discriminate against people on the basis sexual orientation and gender identity (Stating the obvious. Reaction paper, 2019).

**Withdrawing discriminatory changes to the regulations on adoption.** In Fall, 2020, the government passed an expedited law (*Art. 100. § of Act nr. CLXV and Art. 104. § of Act nr. CLXV. of 2020*) that restricts adoption rights to married heterosexual couples. The Civil Code was amended by the following provision: '(1) Children can be adopted – with the exceptions of adoption by relatives and by the spouse of the parent, furthermore, in the cases as specified in article (4) – only by a married couple.' Similarly, to the amendment of the Fundamental Law, these laws were justified on the grounds of the rights and protection of children.

#### **2.2.4. Public policy regulatory proposals (including institutional development in the judiciary) of the social media**

The idea of a national intervention into social media regulation was flipped in Hungary in Spring, 2021. The *Digital Freedom Working group* was formed within the Ministry of Justice, which produced a white paper on the justifications for regulating Facebook on

the state level. However, after a ministerial coordination meeting, the process was seized, and the government announced that Hungary awaits the European-level regulation.

In the meantime, the *Hungarian Civil Liberties Union* (HCLU), a prominent human rights advocacy organization, which strongly advocates for the centrality of the freedom of speech norms, formulated a statement as a reaction to the government's announcement of possible interventory steps. Although the statement is rooted in the Hungarian national context, it contains valuable ideas for the principles of regulation on the European level as well.<sup>19</sup>

#### *Setting up an e-court system*

First and foremost, the leading expert group argues that regulatory measures on social media shall be based on the same fundamental legal principles as those pertaining to communication outside these platforms. This should embody the principle that any limitation to the freedom of speech should be proportionate on the online and offline media.

Considering the subject of social media regulation, it is essential to separate *illegal* and *legal, but harmful* contents, respectively. State interventions to remove social media content can only target illegal contents, whereas the removal of legal, but harmful content cannot be stipulated by the state. Classifications of illegal contents and the basis to order their removal shall be stipulated by legal acts. This is all ensured by the current Civil Code and Criminal Code in Hungary. It is also proposed that formal procedures of independent courts should judge both complaints by users regarding the removal of allegedly illegal contents by platform owners, and complaints against social media platforms failing to remove allegedly illegal content. Operators of platforms cannot undertake, as if replacing courts, activities to enforce or implement law, which requires the competence of lawyers, e.g. interpreting the Penal Code.

#### *Proposal:*

- It is timely and necessary to **set up specialized e-courts**, which possess distinctive knowledge on the operation of social media and are able and trusted to adjudicate complaints regarding hate speech and illegal content by both users and platform owners. This distinctive knowledge will ensure efficiency and legitimacy of the court decisions. The e-courts are based on judiciary procedures in which adjudication is completed by human actors (judges) instead of algorithms. The procedures do not require on-site hearings, the communication is conducted by electronic manner. By the same token, the public should be able to monitor the

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<sup>19</sup> Állásfoglalás a közösségi média platformok szabályozásának minimum sztenderdjéről. TASZ (Proposal on minimum standards of social media regulations.). Hungarian Civil Liberties Union (HCLU) 2021. <https://tasz.hu/cikkek/facebook-torveny-nem-a-cenzurarol-hanem-az-atlathatosagrol-kell-szabalyozast-alkotni>

deliberation and decision-making processes of these courts, so that counter-opinions are not misused or silenced.

### *Restoring the independence of the Equal Treatment Authority*

The **Equal Treatment Authority** (ETA) is an autonomous body whose duty is to ensure compliance with the Equal Treatment Act. In response to complaints, the Authority observes whether the principle of equal treatment has been violated, initiates court cases, and appoint sanctions. This has been an important forum to provide remedies for discrimination, even though the scope of the Authority covers only public authorities. Since the current regime is in power, the Authority has been gradually diminished. In Fall, 2020, the Hungarian Parliament's Justice Committee adopted *Bill T/13631*, which abolished its most important equality body, without any impact assessment or public consultation, and shifted its competences to the Commissioner for Fundamental Rights, which had previously failed to take action on severe cases of discrimination. Its activities were strictly restricted to carrying out public proceedings, it has not taken part in raising awareness on the social level, and it has minimised all its activity. The body of experts working for the Authority is reduced and replaced, and it no longer receives its funding on a separate budget line. Not only that this step was unnecessary and unjustified, it may also weaken human rights protection, according to legal experts and human rights NGOs in the country. (Statement by the Hungarian NGO coalition "Civilizáció", 2020).

#### *Proposal:*

- Restoring the independence of the Equal Treatment Authority. First, the independence of the Equal Treatment Authority has to be restored, then ex officio investigations of (online) hate speech has to be enabled.

### *Upgrading and supporting existing initiatives and setting up new programmes to target hate speech on social media*

Recently, there has been only a few sporadic initiatives aiming at enabling citizens to recognize and report hate speech content on social media, as well as to monitor instances of 'hate speech'. (Article 19, 2018). Most importantly, **The Internet Hotline Service** is operated by the National Media and Infocommunications Authority since 2011. The hotline notifies the content provider about the problematic content and refers to its liability by citing civil or criminal law, but it cannot impose sanctions, it can only call on the website or the service provider to remove illegal content. Reporting is allowed in a broad range of 'illegal and harmful' content, including, online harassment, paedophile content, racism and xenophobic content, however, it does not include sexism, homophobia and transphobia.

#### *Proposal:*

- Develop more programmes that enable citizens to recognize and report hate speech content on social media. Explicitly include sexism, homophobia and

transphobia as grounds of potentially ‘illegal and harmful’ content in the reporting options of the Internet Hotline Service.

### 2.3. Italy

In this chapter (2.3) we will present the proposals (legal and public at Italian national level) set out during the webinar titled “*Public and legal policies to deal with hate speech against gender stereotypes: what proposals?*”, held on 8<sup>th</sup> October 2021. During the webinar many proposals and recommendations to prevent and fight against hate speech in the Italian and European context came up, thanks to the intervention of experts who deal with the issue from different perspectives. In fact, speakers were with varied background and were able to engage in fruitful dialogue. Speakers included university researchers, members of the European Parliament, local Italian representatives, NGO activists, journalists, lawyers, police officers and victims.

The current situation is that there is no hate speech nor hate crime specific legislation. Hatred is mentioned in the legislation on discrimination, the “Mancino Law” focusing on racial, ethnic, national or religious bias, but it does not cover sex or gender discrimination. Hence, there is a lack of specific regulation on discrimination on grounds of gender, gender identity and/or sexual orientation. There is just a bill (A.C. 569 – the so called Zan Draft Law) to be examined by the Justice Commission of the Chamber of Deputies (28<sup>th</sup> July 2020) aimed to combat discrimination on the grounds of sexual orientation and gender identity by adding discriminatory acts based on sexual orientation and gender identity to discriminating situations on racial, ethnic, national or religious grounds.

However, there is a new draft law under consideration by the chambers. In the proposed DDL Boldrini (named after the Member of Parliament who proposed it) of 2021, it starts from Law 71 of 2017 on cyberbullying, but introduces measures to protect further offended persons. It also outlines a compliance path that website operators will have to follow, starting with the so-called ‘predicate offences’, including Articles 604 bis and ter of the Criminal Code: if they fail to do so, they will be subject to sanctions of up to EUR 5 million by the privacy authority. This means that the site operator must have user protection bodies in place and is heavily sanctioned if he does not comply. Secondly, it must be quick to respond.

The novelty of the draft is that it introduces a monitoring and intervention procedure through a self-regulatory body of the platforms that must verify the unlawfulness of the content of the report within twenty-four hours. Hence the obligation for platforms to have a very clear and extremely effective procedure that allows a user to report hate speech quickly. In essence, the innovation is to be able to report hate speech with a fast procedure characterised by well-defined steps. At this point, if the outcome is positive, a report must be made to the postal police within 12 hours, followed by the obligation of the site operator to remove or block the content within 24 hours. Also interesting is the fact that website operators have to periodically report to users on how many and which cases are

reported and what measures they have taken. Boldrini's text underlines that freedom of expression is a fundamental but not absolute right and not all forms of expression are lawful.

There are different public policies in different fields, hate crimes, the National LGBTI Strategy, hate speech and the social media field, showing that Italy has heterogeneous policies on discrimination, hate crimes, hate speech, gender and mass media but there is not one single law encompassing all these issues. It is also important to note there is a strong resistance in some areas of Catholicism to the advancement of gender-based policies. (See further Report of the State of the Art on Anti-Gender Hate Speech, 2020).

### **2.3.1. Legal proposals**

#### *The limitations of criminal justice and a need to a broad perspective*

A comprehensive and effective victim protection policy must go beyond criminal justice procedures. The issue of victims of hate speech cannot be separated from the point that the mere punishment of perpetrators is not enough to limit the phenomenon. The criminal justice system alone cannot counteract the spread of hate speech and, for this reason, there is a need for a real “victim care system”. Victims need to be protected from re-victimisation and need support. Victims must be taken care of physically and mentally; their fears and vulnerability must be addressed. Reparation for the damage suffered cannot only mean punishing the offender nor only putting them on trial.

This shift of paradigm would not only heal the “wounds” left in the victim and the peer group, but also aims to relieve society as a whole. Thus, the domain of victim support must be seen from a perspective not merely linked to the proceedings in criminal trials but in addition must cover the need to spread support services within the whole national territory.

In other words, it is necessary to recognise the feelings of those who suffer from many forms of behaviour linked to hate speech to provide effective care for the victims. Only by being conscious of the perception of the injustice suffered by the victims it will be possible to take appropriate action, because any jurisdiction over hate crimes must be aware of the dynamics and complexity of such acts.

#### *Freedom of expression*

With the aim of more widespread protection for victims of hate speech, it should also be necessary to use forms of regulation of online freedom of expression. Accordingly, although it is always essential to balance actions aimed at limiting hate speech with freedom of expression, this does not mean that freedom of expression cannot be restricted. In this regard, reference may be made to the judgment of the European Court of Human Rights, which ruled on 3<sup>rd</sup> October 2019<sup>20</sup> that the conviction of the appellant, a German

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<sup>20</sup> Application 55225/14, case of PASTÖRS v. GERMANY, Strasbourg, 3 October 2019.

Member of Parliament, for denying the existence of the Holocaust and the Auschwitz death camp, contrary to the values protected by the Convention, did not constitute a violation of his right to freedom of expression (Article 10 ECHR).

#### *Approval of the Zan Draft Law (DL)*

There is an urgent need to approve the Zan Draft Law (DL) which is still being discussed in the Italian Senate. This DL consists of modifications to two articles of the Italian Criminal Code to add discriminations on the basis of sexual orientation, gender, gender identity and disability to those that already exist (discriminations on the grounds of racial or ethnic origin, and religion) and already punishable under the article n°604bis of the Italian Criminal Code. This DL was presented to the Chamber of Deputies on 2<sup>nd</sup> May 2018 by Alessandro Zan, a member of The Democratic Party. This DL is being increasingly contested by both the right parties inside the Parliament and by various organizations of civil society as it should have been approved in July 2020, but did not happen. The article n°8 of this DL is particularly interesting because it deals with the implementation of active anti-discrimination policies which are not exclusively punitive. In fact, a national strategy plan for preventing and fight against discrimination on the grounds of sexual orientation and gender identity should be published every three years. This plan should contain objectives and measures related to education and training, work, security, also with reference to the prison situation, communication and media. This strategy should be drawn up with ongoing consultation including local administrations, professional and charity organizations committed to combat discrimination on the grounds of sexual orientation and gender identity. It should provide for specific measures aimed at preventing and fighting against violence and discrimination. Finally, article n°10 of the DL also provides for active and consistent monitoring of the phenomenon by the National Statistics Institute (ISTAT) with the aim of: a) verifying the enforcement of this law and the implementation of policies for combating discrimination and violence on racial, ethnic, national or religious grounds, or based on sexual orientation or gender identity; b) monitoring the extension of the phenomenon via a regular statistical survey carried out every three years. This survey should also measure opinions, discrimination and related violence and the characteristics of the population at risk of exposure to these behaviours.

#### *The need to criminalize in a specific way the online dimension of hate speech*

The need to criminalize in a specific way the online dimension of hate speech. This should be done amending the ongoing Zan DL.

#### *The need to introduce compulsory school and university curricula*

The need to introduce compulsory school and university curricula on gender issues, sexualisation, anti-discriminatory language and inclusive language education.



*The need to approve the DL regarding “Provisions for increasing transparency on the Web”.*

This Draft Law was presented to the Italian Senate on 28<sup>th</sup> February 2017, the discussion on which has not yet started. In fact, Italy, as the rest of Europe (except Germany due to The Network Enforcement Act), does not have a specific law to fight against the phenomenon of agitation and fake news on social media platforms. This DL should introduce two new articles in the Italian Criminal Code to punish: a) the publication or the dissemination of rumors, and false or misleading news through social media platforms aimed at disturbing public order; b) the dissemination of rumors and false news to cause social alarm or mislead part of the public; c) dissemination of hate campaigns or those aimed at jeopardizing the continuation of the democratic process in the country.

### **2.3.2. Public policy proposals**

*To create a national network*

The need to create a national network with the aim of putting together the various social actors to create a suitable coordination mechanism, as to say a national referral system. This system should be able to coordinate the concrete process of implementation of preventive and repressive measures to protect the potential victims, for example women and the LGBTQI+ community, and to criminalise hateful conduct against them. The process of dealing with the problems of hate speech can only be effective if all the professionals involved in the prevention and repression of this phenomenon are involved. These professionals include school staff, member of the legal profession (lawyers, judges), national and local police officers, social and healthcare workers. Finally, this integrated referral system should publicise its activities so that all bystanders can be aware of it and refer to it in case of need. The word “bystanders” equally include witnesses and victims. In fact, disapproval by bystanders can contribute to creating a supportive climate for victims and try to ensure that attackers understand the significance of social disapproval and desist from their aggressions. As a result of this kind of hate speech being adopted online, violence increases as well as social online approval.

*The need for a more effective rehabilitation of hate speech offenders.*

It is necessary to amend the Zan DL in order to include the obligation for the people sentenced for hate-related crimes to attend specific rehabilitation programmes at charity associations/public institutions before having the right to asking to have their sentence suspended. In fact, these mandatory rehabilitation programmes would raise awareness in the condemned also about the damage provoked to victims “only” through words.

### *The need to reduce the phenomenon of underreporting*

The need to reduce the phenomenon of underreporting<sup>21</sup> (and under-recording<sup>22</sup>) of hate speech and discrimination. To do this, our proposals are:

- provide regular training for police, prison officers and legal professionals working with OSCAD<sup>23</sup> to teach them how to treat a victim because each professional has obligations in respect of victims and witnesses. In addition, we must stress the need that Ministry of Justice should draw up a Code of practice for victims of crime. This Victims' Code of Practice for Victims should set out a minimum standard for services that must be provided to victims of crime by organizations
- create safe rooms where victims of hate speech and discrimination can be heard in a safe way (following the example of those set up for women and minors who are victims of domestic violence). Evoking "A Room of One's Own" by Virginia Woolf, these rooms should be furnished so that they are welcoming and comfortable for these people, also guaranteeing a reassuring climate from the point of view of how they are furnished
- implement the system of third-party reporting for people who have experienced hate speech/hate crime. Third-party reporting is an alternative way for people to provide a formal report, without having to go directly to the police station or start a criminal investigation. "Instead, the report is taken and kept by a community organization that is separate from the police. The community organization provides a redacted copy of the report to the participating police force (redacted means a copy with all identifying information about the survivor/victim removed)".

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<sup>21</sup> It means that people for various reasons not always report a suffered crime to authorities. According to the Crime Survey for England and Wales 2018 (<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/010096reasonsfornotreportingcrimetothepoliceyearendingmarch2018crimesurveyforenglandandwales>), some reasons for not reporting to the police are: police could not do anything, too trivial/not worth reporting, police not interested/bothered, private/dealt with themselves, inconvenient to report, reported to other authorities, no loss/damage, fear of reprisal, offender not responsible for actions, dislike or fear of the police. Being a victim is often accompanied by a sense of humiliation, of shame. In brief, underreporting has to do with: the lack of knowledge about the functioning of the judicial system and the consequences of the report; low confidence in authorities, the difficult to contact the police. See also: Shaw, D. (2014). Police fail to record one in five of all crimes reported to them, says report. Retrieved from: <https://www.bbc.co.uk/news/uk-30081682>

<sup>22</sup> Under-recording is the cause of underreporting. "The under-recording of crime is more than a question of getting the statistics wrong. If an offence isn't officially logged, it may not be investigated. And without a police inquiry there's no hope of finding the perpetrator and preventing other crimes" (<https://www.bbc.co.uk/news/uk-30081682>).

One of our speakers (Camilla Bencini) said during the webinar that "official data reported, for Italy, in 2019 just over a thousand cases for hate crimes, the United Kingdom spoke of more than 100 thousand cases". This does not mean that England is more racist than Italy, but because there is a problem with data collection by police forces that causes the data to go undetected. There is a lack of training and understanding of the phenomenon, a lack of prejudice indicators and a lack of political vision that needs to be addressed.

<sup>23</sup> OSCAD is the Italian Observatory for Security against Discriminatory Acts ([https://www.interno.gov.it/sites/default/files/allegati/oscad\\_english\\_version.pdf](https://www.interno.gov.it/sites/default/files/allegati/oscad_english_version.pdf)).



This gives greater control over the process to the victim – they can provide more information about the incident itself to police, but without having to identify themselves or start a formal police investigation and criminal justice process until they are ready to do so<sup>24</sup>

- implement online crime reporting. Furthermore, online crime reporting tools should make it easy for the victim to report hate speech/hate crime to police forces.

#### *Create a free psycho-therapeutic service*

The need to create in all Italian public health districts a free psycho-therapeutic service for LGBTQI+ people of all ages and for people who question their sexual orientation (following the example of the already existing family services).

#### *Establish municipal working plans in all Italian municipalities*

The need to establish municipal working plans in all Italian municipalities (or consortia of municipalities) to create local networks and take responsibility for actions in respect of the phenomena of gender-based violence and online hatred. These work plans should be centrally managed and coordinated by the National Association of Italian Municipalities<sup>25</sup> (ANCI).

## **2.4. Spain**

Laws and public policies have become more open to include discrimination on the grounds of sex and gender. However, there is still a lack of definitions of gender and sex in the Spanish legal system.

There are three regions (known as *autonomous communities*) in Spain with some public policies related to anti-gender hate speech: Catalonia, Madrid and Andalusia. These three Spanish regions have developed legislation relating to gender, gender identity, transsexual identity, women's right to a life free of sexist violence, sexual freedom, sexual orientation as well as police protocols about hate crimes.

The majority of the autonomous communities simply apply the most important national laws on non-discrimination on the grounds of sex and gender, but they lack an effective implementation of these laws. To secure their effectiveness, further decrees and norms are necessary to implement and provide budgets to these pieces of legislation. (See further Report on the State of the Art on Anti-Gender Hate Speech, 2020).

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<sup>24</sup> <https://publiclegalinfo.com/third-party-reporting/?lang=fr>

<sup>25</sup> On 1<sup>st</sup> January 2021, ANCI covers 7,107 Italian municipalities, representing 94% of all municipalities and thus reflecting its strong roots in Italy's social, geographical and cultural background (<https://www.anci.it/anci-e/>).

### 2.4.1. Legal proposals

#### *Proposals on criminal law*

Maintenance of the current article 510 of the Criminal Code (that defines hate crimes), with a more coherent interpretation given so far, in coherence with the inclusion in 2015 “for reasons of gender”.

The article was revised in 2015 and it was included hate crimes on the grounds of sex, sexual identity or orientation and gender (among other sources of discrimination). It was also extended:

- It includes the classical definition of hate speech requiring an imminent risk and/or use of the violence to consider hate speech as a hate crime and the victim to be a group.
- And it includes the attacks to the human dignity to a group or an individual belonging to that groups on the grounds of sex, sexual identity or orientation and gender (among other sources of discrimination).

Article 510 of the Criminal Code include:

1.The following shall be punished with a prison sentence of one to four years and a fine of six to twelve months:

- a) Those who publicly encourage, promote or incite, directly or indirectly, hatred, hostility, discrimination or violence **against a group** on the grounds of ..sex, sexual orientation or identity, gender”...
- b) Those who produce, elaborate, possess for the purpose of distributing, providing third parties with access, distributing, disseminating or selling writings or any other kind of material or supports that, due to their content, are suitable to encourage, promote, or directly or indirectly incite the hatred, hostility, discrimination or violence **against a group**... on the grounds of sex, sexual orientation or identity, gender”...
- c) Publicly deny, seriously trivialize or extol crimes of genocide, crimes against humanity or against persons and property protected in the event of armed conflict, or extol their perpetrators, when they have been committed against a group or part of it, or against a person determined by reason of their membership in the same, ... on the grounds of sex, sexual orientation or identity, gender”...

2.They will be punished by imprisonment from six months to two years and a fine from six to twelve months:

- a) Those who harm the dignity of people through actions that involve humiliation, contempt or discredit of any of the **groups** referred to in the previous section, or of a part of them, or **of any person** determined by reason of their membership in them...

b) Those who praise or justify by any means of public expression or dissemination the crimes that have been committed against **a group**, a part of it, or **against a specific person** by reason of their belonging to that group...

3. The penalties provided for in the previous sections will be imposed in the upper half when the events have been carried out through a social communication medium, through the Internet or through the use of information technologies, so that, that was made accessible to a large number of people.

In reality, victims of hate speech rarely press criminal charges. They do not identify themselves as victims of a crime, they fear the consequences, they lack trust on the justice administration, they have difficulties in providing proves, etc. And when they press criminal charges, the justice administration is not prepared and/or aware of these types of crimes. The few victims that press charges under this article are victims belonging to ethnic minorities or because of their sexual orientation. Women rarely press criminal charges of being victims of hate speech or hate crimes.

Another important limit of the criminal response to the anti-gender hate speech is that criminal law demands an individual and known perpetrator. In many of the anti-gender hate speech studied during this project, the perpetrator/s were unknown or an anonymous group of people, taking advantage of the anonymous possibilities of social networks and internet.

There has not been any case of political parties or political representative accused of hate speech on the grounds of sex, sexual identity or orientation, or gender so far, despite the Criminal Code modification in 2015. There have been some cases of individual politicians accused of hate crimes against some nationalities or ethnic minorities, with very different results (in some cases condemned and their freedom of expression limited and in some other cases acquitted because their freedom of expression was privileged during a political campaign).

In general terms, Spanish tribunals and judges do not follow the wider interpretation done by the European Court of Human Rights on hate speech as hate crimes (Case Feret vs Belgium, application no. 15615/07; Case Vejdeland and others vs. Sweden, Application no. 1813/07, or case Perinçek vs Switzerland, (Application no. 27510/08). They traditional Spanish case law has more to deal with the North American jurisprudence, that privileges the freedom of expression, especially in the political arena. Nevertheless, there is not a single case under the case law of the ECHR that deals specifically with hate speech against women, groups of women or individual women. There are only cases of hate speech on the grounds of sexual identity, sexual orientation.

Women are not considered a vulnerable group in Spanish society. Attacks to feminists or female public figures are not considered a source of discrimination, subordination, humiliation, hostility or hate.

*Proposals:*

- It would be necessary to include women as a potential vulnerable group in the Instructions of the State Public Attorney 7/2019 on article 510 of the Criminal Code.
- The aggravating circumstance of article 22.4 of the Criminal Code (“to commit a crime for motives of the sex, gender, sexual identity or sexual orientation of the victim”) should be applied to other crimes that do not fall under the definition of hate speech or hate crimes (attacks to the honour, privacy or image, physical attacks, threats, insults, illegal detention or slanders).

*Proposals on anti-discrimination law*

*Proposal:*

- To include into the anti-discrimination laws (on the grounds of gender, gender identity, gender expression and sexual orientation), administrative sanctions against hate speech against women, groups of women or LGTBI groups.

In Spain there is currently gender equality laws between women and men at national and at autonomous community level.

Hate speech against groups of women, or a woman on the grounds of her sex or gender should be included as a form of direct discrimination.

In Spain there is currently LGTBIQ non-discrimination laws at autonomous community level, but there is not a national law. There is a proposal of law but it seems to be very controversial its approval, because the feminism movement has been divided about a key concept of the law: to recognise or not the right of gender and sexual identity. Some feminists consider this would be an attack to the women as a group, and an appropriation of women’s demands and rights by other members of society.

There should be a national law on LGTBIQ non-discrimination at national level, where hate speech should be included as a form of direct discrimination to the group or to an individual belonging to that group.

Hate speech should be considered a discriminatory act, as long as it attacks the dignity of the victim, the honour, intimacy or image, the principle of equality and non-discrimination.

In those cases, the freedom of expression could be limited, when it crashes against other fundamental rights of the victim or victims.

The right to honour should be also entitled to a group (not only to an individual).

These laws can include administrative sanctions for the discriminatory acts:

- Economic sanctions
- Disqualification of the perpetrators of hate speech with public responsibilities
- Prohibition of access of perpetrators of discriminatory incidents
- Denial of public subsidies to perpetrators of discriminatory incidents or to organisations responsible of these discriminatory incidents.

#### *Proposals on constitutional level*

To exercise the preferential and summary procedure to protect fundamental rights as established in article 53 of the Spanish Constitution before the ordinary tribunals and once this finished and the fundamental right is still considered at risk, before the Constitutional Court (it has the ultimate word when interpretation the fundamental rights).

The fundamental rights included in this ordinary judicial protection are the right to equality and non-discrimination; right to life, moral and physical integrity; right to ideological and religious freedom; right to freedom; right to honour, personal and family privacy and own image; right to freedom of movement; right to freedom of expression; right to free association; rights to freely meet; right to vote and to be voted; right to access to the justice administration; right to education; right to trade unions; and right to conscious objection.

In the case of right to honour, personal and family privacy and own image, there is a specific law that regulates its protection: Organic Law 1/1982, 5<sup>th</sup> of May, of civil protection of the right to honour, personal and family privacy and own image.

#### *Proposal on precautionary measures in civil and administrative tribunals*

- To ask for precautionary measures in civil and administrative tribunals.

The Spanish law allows the possibility to adopt precautionary measures if the victim asks for them. These measures are always provisional before the demand, or during the trial, and their aim is to guarantee the rights of the victim, and the good development of the legal procedure (articles 726 and 727 of the Law 1/2000, of 7<sup>th</sup> January of Civil Prosecution).

Victims of hate speech do not look for a criminal condemn of the perpetrator. They just want to put an end to the digital violence they suffer. Precautionary measures may facilitate to stop that digital end, or impose certain restrictions on the perpetrators.

#### *Proposal on including anti-gender hate speech as a form of gender violence*

- To include anti-gender hate speech as a form of gender violence in the national legislation on gender violence.

Spain has a national law on gender violence and several autonomous communities have also their specific law on gender violence.

The current national law is named as the Organic Law 1/2004, of 28th December, on measures for the Integral Protection Against Gender Violence. However, then it only deals with a form of gender violence, the one exercised by the partner or former partner of a woman.

There is currently a project of a new law to reform this previous one. This new law on gender violence aims to adapt the legal commitments of the Spanish State under the Istanbul Convention, that was ratified by Spain in 2014 and entered into force this year. The definition of violence against women included in the Istanbul Convention is much wider, and it includes “a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

Some of the gender violence legislations of the autonomous communities have included digital violence as a specific form of gender violence, for example the Catalan Law 5/2008, of 22<sup>nd</sup> April, about the right of women to eradicate sexist violence in its article 4.2.f:

“Digital violence: consists of acts of gender-based violence and online misogyny committed, instigated, amplified or aggravated, in part or in full, with the use of information and communication technologies, social networking platforms, websites or forums, email and instant messaging systems and other similar media that affect the dignity and rights of women. These acts cause psychological and even physical damage; reinforce stereotypes; they damage dignity and reputation; violate women’s privacy and freedom of action; they cause him economic losses, and hinder his political participation and freedom of expression.”

Even if the autonomous communities do not have competencies in criminal or civil law, they have competencies on the organization of the public network to give assistance and support to the victims of gender violence (women’s shelters, legal and psychological aid, economic support and so on). Therefore the recognition of women victims of gender cyberviolence into their laws will have impact in the rights and benefits provided by public authorities.

#### *Legislation on funding political parties (condemned or sanctioned for abuses of right to expression)*

There is a law in Spain on public funding of political parties with parliamentary representation, the Organic Law 8/2007, of 4<sup>th</sup> of July, on financing political parties. It includes different sanctions applicable to the political parties when committing different

infractions against this law. It is not mentioned anywhere the possibility to impose sanctions when this political parties violate any fundamental right, or may abuse from any fundamental right (as the clause of abuse of right established in article 10.2 of the European Convention of Human Rights, regarding possible abuses of the freedom of expression). It only talks about possible legal consequences when there is a commission of a crime. But hate speech as a hate crime cannot be committed by a political party, because it is always required to be committed by an individual.

#### **2.4.2. Public policy proposals**

The inclusion of anti-gender hate speech as a form of cyberviolence of gender in the national legislation on gender violence; the inclusion of anti-gender hate speech as a form of direct discrimination in the national legislation on gender equality, and non-discrimination against LGTBI groups, may have a clear impact on the public policies.

It would give the legal basis to include:

- Education on anti-gender hate speech and hate crimes within the compulsory curriculum in primary and secondary education.
- National Observatories on Gender Equality and LGTBIQ non-discrimination that collect statistics and official data on incidents of anti-gender hate speech and hate crimes not included in the criminal records because the victims did not press charges.
- Surveys on victimisation, that may produce more reliable data on the prevalence of anti-gender hate speech within the Spanish society.

### **2.5. Sweden**

Online anti-gender hate speech is a severe problem in the Swedish society and elsewhere today and available means that could be used to combat such speech (and other hate crimes) are underused. Online anti-gender hate speech occurs in many forms and are produced by many, far from only political parties (as the focus of the GENHA project might imply) and moreover right-wing political parties. There is a pending proposal on a prohibition of racist organisations<sup>26</sup>, but such prohibition will probably not have any effect on anti-gender hate speech. Such hate speech is produced by a variety of individuals and groups.

Present legislation and public policies on hate speech and hate crime does not explicitly address sex/gender. Far-reaching attempts to combat online hate speech and other hate crimes do not include the situation when it is directed towards a specific sex/gender (which in practice often means women as exposed to such speech). This is despite the Swedish government's ambitions to be feminist and despite obligations that follows with

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<sup>26</sup> SOU 2021:27 Ett förbud mot rasistiska organisationer [Swedish Governmental Report: A Prohibition of Racist Organisations].



the ratification of international conventions that define hate speech as violence towards women.

Online anti-gender hate speech may be directed towards individuals and groups but it also relates to more general ideas that questions gender equality as a legal and political goal. The latter can be seen as an attack on the principle of equal value and rights of all and the right not to be discriminated against, fundamental for any democratic society. Hate speech may impact on the democratic debate, not only the victims for such speech but also others may be silenced and avoid to take part in the public debate. The perception of censorship is much more complicated than the relation between the state and the citizens, here it is relevant to talk about non-state-censorship and self-censorship. Thus, anti-gender hate speech can be seen as anti-democratic.

The current situation is that Sweden has a relatively long history of gender equality as an important constitutional norm and a political goal. Despite this, no provision regarding 'hate speech' or 'hate crimes' cover such acts (or non-acts) based on the grounds of sex and gender. Transgender identity and expression have been added to the protected grounds. And, there is a theoretical possibility to address sex/gender as an aggravated circumstance due to the open-ended list of grounds that constitute hate crime. This possibility has not been used, yet. Neither do the many initiatives and strategies in place. There is a governmental agenda against racism and xenophobia, anti-gender is not included.<sup>27</sup> Not a single one encompasses hate crime, anti-gender, *and* anti-extreme right parties. The governmental action plan on men's violence against women lacks a focus on on digital violence. However, in the action plan a new ground for aggravating circumstances is considered when the victim has a specific sex/gender or gender identity.<sup>28</sup> The connections between violent extreme right, anti-gender, hate speech and hate crimes, are not recognised as a threat against democracy or as a threat addressing individuals and groups. (See further Report on the State of the Art on Anti-Gender Hate Speech, 2020.)

### 2.5.1. Legal proposals

The question whether criminal law is the best way to address and combat anti-gender hate speech can be raised and was so at the workshop held by the Swedish team. Even though it is evident that a prohibition in law does not solve a social problem, criminal law is the most powerful (at first sight) available tool when the society wish to impact people's behavior. Through criminal law the society expresses what is perceived as unwanted and

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<sup>27</sup> A comprehensive approach to combat racism and hate crime 2017, <https://www.regeringen.se/informationsmaterial/2017/02/a-comprehensive-approach-to-combat-racism-and-hate-crime/>

<sup>28</sup> Åtgärds paket för att intensifiera arbetet mot mäns våld mot kvinnor [Action plan to intensify the work with men's violence against women] <https://www.regeringen.se/49d6ba/contentassets/ddda15ab99c042a0b66cd4e644ce85ae/atgardspaket-for-att-intensifiera-arbetet-mot-mans-vald-mot-kvinnor-210616-ch-1055.pdf>



despicable behavior. The symbolic value of criminalization is a very important aspect for the legitimacy of the system. There are various functions of criminal law, prevention and proportionate reaction are the most emphasized in the Swedish system. Even though a prohibition doesn't hinder all crimes to take place, criminal law is often seen as the primary solution to societal problems, this is particularly visible in these times. It could be noted that historically problems connected to gender inequality has not been handled in line with this rationality. Why it should not be used when it comes to anti-gender hate speech and other hate crimes is not obvious? Despite the challenges connected to the use of criminal law as a mean to solve societal problems, we urge that it must be consistently used.

Anti-gender hate speech (and other hate crimes) may be directed towards both individuals, groups and the principle of equal value and equal rights for all.<sup>29</sup> In extension such phenomena threaten democracy. The methods to agitate against someone or something are often a combination of various actions or non-actions, performed individually and/or together with others, organized or spontaneously, and with several purposes (to miscredit someone, to threaten someone, to silent someone, to spread hate against individuals and groups, to question the societal value and legal principle to strive for equal rights etc.). The means to combat such actions and non-actions urge for a combination of several measures, criminalisation is one of them. The proposals below are therefore not to be seen as sharp and separate, rather they should be considered together.

The following proposals are examples of normative statements and/or legal measures that could be taken, together or alternatively. The structure below is based on which interest is protected by criminal law, attacks which threaten *democracy*, which violates *women's rights* and which attack *groups* and/or *individuals*.

#### *Violations of democracy*

A premise for the proposals of legal and political measures is that *also* anti-gender hate speech and other hate crimes (no matter if online or offline) explicitly should be recognised as a violation of democracy, in line with such speech and crimes based on other grounds.

*Problem:* Two of several basic elements of democracy are freedom of expression and gender equality.<sup>30</sup> Freedom of expression is far more than an individual right. It serves the common good and secures a free exchange of opinions, a pluralism of information and a multiplicity of voices. The exercise of this freedom carries with it duties and responsibilities. The exercise may, according to both the Swedish constitution and international conventions such as The European Convention on Human Rights Art. 10,

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<sup>29</sup> See e.g. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedom.

<sup>30</sup> Bladini, M. (2020). Silenced voices. Online Violence Targeting Women as a Threat to Democracy. *Nordic Journal on Law and Society*, 3(2), pp. 1–42; Svensson, E.-M. & M. Edström, (2014). Freedom of expression vs. gender equality. *Tidsskrift for Rettsvitenskap*, 127(5), pp. 479–511.

be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are *necessary in a democratic society*. Gender equality, or equal rights for all, is considered as a necessary condition in a democratic society, according to the constitution and several international conventions. The most relevant here are the Convention on the Elimination of All Forms of Discrimination against Women (*CEDAW*) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) (The Istanbul Convention). Anti-gender hate speech violates the rights for women.<sup>31</sup> Despite this, when violations of gender equality (equal or human rights) as an element of democracy are at stake in the context of anti-gender online hate speech or other hate crimes in the Swedish context, the anti-gender element is excluded from what is considered as a violation of democracy.

Some examples of how Swedish criminal law handles violations of democracy are the following.

Hate speech based on the grounds of race, colour, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression (“agitation against a population group”, translation of the Swedish Criminal Code, Ch.16, section 8) is considered as an *offense against public order*. If the communication has particularly threatening or offensive content and is disseminated to a large number of people in a way that is liable to attract considerable attention, it may be considered as a ‘gross agitation against a population group’.

Moreover, there are general aggravating circumstances when assessing penalty value (Swedish Criminal Code, Ch. 29 section 2) in addition to what applies for each specific type of offences. Particular consideration is given to e.g. whether a motive for the offence was to insult a person or a population group on grounds of race, colour, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression, or another similar circumstance<sup>32</sup> (Ch. 29 section 2.9). If such aggravating circumstance is assessed, these offenses might be spoken of as ‘hate crimes’. What is of interest here is that one protected interest is democracy, expressed as the public.

Another aggravating circumstance is when an offence is committed against a person on grounds of them or a family member having held office as an elected representative at central, municipal or regional level, in the Sami Parliament or in the European Parliament (Ch. 29 section 2.9). The explicit purpose is to protect democracy and to react against attacks on democracy. The construction of the provision follows the provision above, i.e. it is considered an aggravating circumstance.

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<sup>31</sup> General Policy Recommendation no. 15 on combating hate speech, adopted on 8 December of 2015. European Commission against Racism and Intolerance (ECRI) (Council of Europe 2016) in <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>32</sup> The list is not exhaustive, in contrast to the provision in Ch. 16 section 8 agitation against a population group. This means that in theory such ‘another similar circumstance’ could include sex or gender. This has however never been considered in practice.

The perception of hate speech and other hate crimes as a violation of democracy is, in addition, showed by the fact that the Ministry of Justice recently gave the Swedish Police Authority a mission to combat ‘hate crimes’ (on the same grounds as above, excluding anti-gender hate crimes), labelled as ‘crimes against democracy’. The Authority is expected to develop and improve the work to combat hate crime and other crimes that threaten democracy.<sup>33</sup> The responsible Minister Mikael Damberg says in the press release<sup>34</sup> that hate crime can never be accepted in a democratic society. And, in order to combat hate crimes, a comprehensive view, long-sightedness and endurance are required. How the concept of hate crime is limited here is not made explicit, but when specific motives are mentioned in the press release, racism and hbtqi-hostility are the only addressed motives, not gender.

Hate speech and hate crimes are already considered as violations of democracy, as offending the public order and the principle of equal value and rights of all (including the right not to be discriminated against). And as such, they fall under public prosecution. This view should embrace also hate speech and hate crimes on basis of sex or gender. The motive for hate speech and hate crimes, to threaten or express contempt for a population group, is as severe as a violation of democracy also when the motive is to discredit a group based on sex or gender.

*Proposals:*

- Hence, we argue that anti-gender hate speech and other hate crimes should be considered as *violations on democracy*. The implications of such statement are that these phenomena should be included in the mentioned regulations (see below).
- We suggest a commission with the mission to investigate and review the present legislation of legal responsibility (including criminal legal responsibility) for bulletin board systems regarding online speech. The investigation should also include the question of criminal responsibility, for the offender and other possible subjects, such as the person responsible for the discussions taking place on the electronic bulletin boards (social platforms or specific part of such) and publisher in media cases.

*Anti-gender hate speech as a violation of women’s rights and as violence against women*

Anti-gender hate speech is increasingly considered as a violation of women’s rights and violence against women.<sup>35</sup> The main instrument addressing violence against women has

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<sup>33</sup> Regleringsbrev för budgetåret 2021 avseende Polismyndigheten, Ju2021/03101, 2021-09-02. The mission shall be reported late 2023.

<sup>34</sup> <https://www.regeringen.se/pressmeddelanden/2021/09/uppdrag-att-fortsatt-bekampa-hatbrott-och-brott-som-hotar-demokratien/>

<sup>35</sup> Bladini, M. (2020). Silenced voices. Online Violence Targeting Women as a Threat to Democracy. *Nordic Journal on Law and Society*, 3(2), pp. 1–42.

opened for such an interpretation increasingly in recent years (CEDAW).<sup>36</sup> The European Commission and the Council of Europe have also done so.<sup>37</sup> And, in addition, the Committee on Women's Rights and Gender Equality has in an opinion on the proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) suggested to take measures within the Act to protect from, and prevent, phenomena such as online violence, cyberstalking, harassment, hate speech and exploitation of women and girls.<sup>38</sup>

Anti-gender hate speech and other hate crimes based on sex or gender are a violation of women's rights and defined as violence against women. Sweden, like most of the countries in the world, is obliged to follow international and regional instruments requiring the states to take measures. According to the mentioned international instruments and initiatives, hate speech and other hate crimes directed towards women are a violation of women's human rights, and as such considered as violence against women.

*Problem:* The Swedish legislation on hate speech and other hate crimes does not at present include gender under the scope of criminal legal protection. Neither is an anti-gender motive considered as an aggravating circumstance (see Report on the State of the Art on Anti-gender Hate Speech, 2020). Although, various forms of abuse against women online, such as unlawful threats, sexual molestation and harassment, defamation and insulting behaviour are criminalised, but not as hate speech or hate crime.

One of the themes, discussed at the workshop, was whether the present provisions regarding hate speech and other hate crimes ought to protect also gender. The protection coming with the provision on hate speech has recently been extended to protect also transgender identity and expression (in addition to sexual orientation and the grounds race, color of skin, ethnicity and religious belief that consists of the original protection).<sup>39</sup> The extensions are based on acknowledged experiences of hate acts directed toward the identified groups. Today, we know that women are exposed to hate directed towards them on the bases of sex, with severe consequences. Why this problem is not met with the same measures used when hate is directed toward other groups, is problematic and detrimental to the obligations and commitments to achieve gender equality. One argument that has

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<sup>36</sup> See Art. 2b and 20, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

<sup>37</sup> General Policy Recommendation no. 15 on combating hate speech, adopted on 8 December of 2015. European Commission against Racism and Intolerance (ECRI) (Council of Europe 2016) in <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; Council of Europe Gender Equality Strategy 2018-2023, <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>. The strategy concerning 2014-2017 addressed the topic as well.

<sup>38</sup> FEMM-AD-693717\_EN\_2110119.

<sup>39</sup> E.g. The Swedish Women's Lobby has proposed that gender or sex (as such) should be covered, but this has not been the case so far, see <https://sverigeskvinnohobby.se/5-atgarder-for-att-motverka-rasism-och-kvinnohat/>

been important and influential to not include sex and gender, is that the provision historically has protected minorities and women is not a minority in this sense. However, from a power perspective, it is evidently so that women as a group are less powerful and as such oppressed.

Violence against women, especially when performed online, seems not to be taken as serious as it is. The implications are several. The protected interests vary among the provisions, such as the freedom (personal liberty and peace), right to life and health, and sexual integrity. The regulation is fragmented which make the violation based on sex or gender invisible in a systematic way, and it complicates the possibility to deal with the phenomena as an obstacle for public debate and a violation of democracy. Also, this makes it harder to present statistics. Another thing is that some of the offences do not fall under public prosecution.

#### *Proposals:*

- We suggest a commission with the mission to investigate and review all the various provisions related to anti-gender hate speech and other hate crimes, based on the statement that such phenomena are violations of women's rights and violence against women. One challenge for criminal law that should be taken in consideration is the inability to handle systematic and contextual aspects of social behavior. For instance, the effect of several seemingly minor abusive, or even non-abusive, acts and in case when several offenders organized and un-organized, address the same person. It could be included in the ongoing Action plan to intensify the work with men's violence against women.<sup>40</sup> The task would include such considerations and the question on how criminal law might better meet the systematic dimensions of anti-gender hate speech online.
- Extend the scope of hate speech and hate crime to include and protect also sex and gender, as a ground in agitation against a population group and as an aggravating circumstance, and
- a new anti-gender hate speech and hate crime offence could be introduced to protect individual women, in line with the offence 'gross violations of women's peace'.
- It should be considered to extend the protection for journalists and other professions important for democracy, in line with the protection that elected representatives have (Swedish Criminal Code, Ch. 29 section 2.9), as already discussed within the Government.

#### **2.5.2. Public policy proposals**

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<sup>40</sup> Åtgärds paket för att intensifiera arbetet mot mäns våld mot kvinnor [Action plan to intensify the work with men's violence against women]  
<https://www.regeringen.se/49d6ba/contentassets/ddda15ab99c042a0b66cd4e644ce85ae/atgardspaket-for-att-intensifiera-arbetet-mot-mans-vald-mot-kvinnor-210616-ch-1055.pdf>

### *A national plan against anti-gender hate speech*

The Swedish government has adopted several action plans or strategies that address hate speech and/or hate crimes, violence against women or extremism. The relevant plans and strategies are:

- a national plan against racism, similar hostility and hate crimes (Nationell plan mot rasism, liknande former av fientlighet och hatbrott, 2016),
- a 10-year national strategy to prevent and combat men's violence against women (Nationell strategi för att förebygga och bekämpa mäns våld mot kvinnor, 2016),
- an Action plan with measures to combat threats and hate toward journalists, politicians and artists (Handlingsplan Till det Fria Ordets försvar. Åtgärder mot utsatthet för hot och hat bland journalister, förtroendevalda och konstnärer, 2017),
- a national strategy against violent extremism (Nationell strategi mot våldsbejakande extremism, Ku2016/01651/D)

*Problem:* Anti-gender hate speech or other anti-gender hate crimes are not addressed in any of them, although all of them relates to the themes. A problem is that anti-gender hate speech (and other hate crimes) is, hence, that it is not recognized as a problem of its own.

*Proposal:*

- A national plan against anti-gender hate speech is proposed.

### *Online behavior on the school curriculum*

*Problem:* There seems to be a lack of knowledge and a presence of destructive communication norms online.<sup>41</sup>

*Proposal:*

- There is a need to introduce in school curricula knowledge of online behavior and how to avoid anti-gender hate speech and hate crimes in addition to and as a specification of non-discrimination and democracy.

### *Improved competence*

*Problem:* The process of dealing with the problems of hate speech can only be effective if all the professionals involved in the prevention and repression of this phenomenon are involved. The competence level of especially the professional groups school staff, member of the legal profession (lawyers, judges, prosecutors), national and local police officers, social and healthcare workers should be raised.

*Proposal:*

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<sup>41</sup> This is confirmed by studies performed by the Swedish Agency for Youth and Civil Society. Retrieved from:  
[https://www.mucof.se/search?search\\_api\\_fulltext=hat+kommunikation&type=All&sort\\_bef\\_combine=search\\_api\\_relevance\\_DESC](https://www.mucof.se/search?search_api_fulltext=hat+kommunikation&type=All&sort_bef_combine=search_api_relevance_DESC).

- To raise the knowledge level in the professional educational programmes as well as in various professional training programmes. Also, the professional guidelines and instructions should better address the themes.

*Dissemination of knowledge and campaigns to the public*

*Problem:* How the public could be better informed about unacceptable behavior online should be investigated. Also, who should be responsible for such campaigns must be reflected upon.

*Proposal:*

- Campaigns and wide-spread dissemination of what is unacceptable behavior online and the importance of reporting such behavior are proposed.

### **3. Legal and public policy proposals directed at the EU level**

#### **3.1. Legal proposals**

Some general thoughts important to point at are the following. The European Union should be responsible of preventive legal measures, rather than reactive legal measures (as it is the tendency at Member States level). It is very difficult to guarantee human rights at risk in the Internet and social networks when the violation has been done already.

The owners of the Internet providers and social networks are generally located in the United States, as is the case of Facebook and Twitter used in the present research, where the freedom of expression prevails, and when there is certain digital authoritarianism.<sup>42</sup> When the violation of the human right has occurred, it is very difficult to look for any type of responsibilities and legal remedies, because the asymmetry between the internet providers and the victim is huge. The potential law should prioritise the impact that overseas companies have on European countries. Accordingly, if they fail to adapt their policies and allow violations of the fundamental rights of each country - as well as the human rights - that hate speech attacks, they will not be able to operate on European territory.

The legal proposals at European level should be directed at enacting legislation to demand the technology to be compatible with the guarantee of the human rights.

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<sup>42</sup> Digital authoritarianism stands for the use of digital information technology by authoritarian regimes to surveil, repress, and manipulate domestic and foreign populations. See Polyakova, A. and Meserole, C., 2019. Exporting digital authoritarianism: The Russian and Chinese models. *Policy Brief, Democracy and Disorder Series* (Washington, DC: Brookings, 2019), pp.1-22.



### **3.1.1. The Istanbul Convention**

The need to update the Istanbul Convention<sup>43</sup> adding the phenomenon of hate speech/hate crime. To make explicit that the convention is applicable no matter if online or offline, a general provision stating that online hate speech is considered as violence against women and as violation of women's rights, is required. And, in the Chapter V (Substantial law), a new article should be inserted after article n°40 which might include the following provisions: "Parties shall take the necessary legislative or other measures to ensure that hate speech and hate crime are criminalized".

It would also be appropriate to add the definition of the concept of family (modifying article n°3 of definitions used for the purposes of the Convention) to clarify that the heteronormative family model is only one of the types of families existing in today's societies of the European Union Member States.

### **3.1.2. Article 83 of the Treaty of Lisbon**

The need to modify article n°83 of the Treaty of Lisbon and to extend the list of EU crimes to embrace hate speech and hate crimes on grounds of sex and gender. Although not all the EU countries have definitions in their criminal laws of violence against women and domestic violence (gender-based violence), article n°83 of the Treaty has opened up the definition of certain crimes as "eurocrimes". The European Commission Initiative *Extension of the list of EU crimes to hate speech and hate crime* (Ref. Ares (2021)1431474 - 23/02/2021) aim to trigger a Council decision to extend the list of EU crimes in Article 83(1) TFEU. The Commission President von der Leyen stressed that progress on fighting racism and hate is fragile and now is the moment to make change to build a truly anti-racist Union that goes from condemnation to action. She announced that the Commission will propose "to extend the list of EU crimes to all forms of hate crime and hate speech – whether because of race, religion, gender or sexuality." According to the Commission, once such a Council decision has been adopted, the Commission will have the competence to propose, in a second step, a legislative initiative – subject to an impact assessment – containing minimum standards providing for a strong common criminal law response to these phenomena.

The reason is that they are "particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis". To date, these areas of crime only include: terrorism, human trafficking, sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, cybercrime, and organised crime. For this reason, on 14<sup>th</sup> September 2021, the European Parliament called for online and offline gender-based violence to be treated as a eurocrime. MEPs adopted a legislative initiative demanding EU Member States legislations and policies to address all forms of violence and discrimination based on gender (against women and girls, but also against LGBTIQ+ people), whether offline or

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<sup>43</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, 12, April, 2011.



online. This would serve as a legal basis for a victim-centered EU Directive using the standards of Istanbul Convention and other international standards.<sup>44</sup> The sense of this legislative initiative is that EU needs more and better tools to combat gender-based violence, along with common legal definitions, standards and minimum criminal penalties. The problem is that a Treaty change requires the unanimous vote of the Council of the European Union and some countries are against this modification.

### **3.1.3. The Digital Service Act**

As it has been the case with the legislation on data protection, that demands certain levels of protection whenever dealing with personal data (to companies, individuals and public administrations), that preventive or risk-based model of legislation can be transposed to the internet and social networks. The Proposal for a Regulation on a Single Market For Digital Services (Digital Services Act) of 15 December 2020, attempts to be one step in that direction.

The need to approve the “Digital Service Act”<sup>45</sup> which provides the legal definition of the online dimension as a “public space”. In this way, Member States would be able to harmonise their internal legislation and would be obliged to adopt a 'real' definition of what happens in virtual spaces. The consequence would be that online behaviour would have a legal basis that treats it in the same way as behaviours occurring in the “traditional” (physical) public spaces.

The three main objectives of DSA are (1) to guarantee transparency regarding the operation of the platforms, (2) to guarantee the enforcement of fundamental rights on online and social media and (3) to guarantee the legal remedy for individuals against the decisions made by the platforms. In particular, there are some initiatives included in this proposal of Digital Act that are in line with some of the recommendations arising from the GENHA project:

- Easy and clear ways to report illegal content, goods or services on online platforms
- Due diligence obligations for platforms and stronger obligations for very large platforms, where the most serious harms occur
- Authorities will be better equipped to protect citizens by supervising platforms and enforcing rules together across the Union
- Transparency of the rules for content moderation
- Clear information on why content is recommended to users
- Users' right to opt-out from content recommendations based on profiling
- Platforms' participation in codes of practice as a measure to mitigate their risks

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<sup>44</sup> <https://www.europarl.europa.eu/news/en/press-room/20210910IPR11927/make-gender-based-violence-a-crime-under-eu-law-meps-say>

<sup>45</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en)

- Better access to data for authorities and researchers to better understand virality online and its impact with a view to lower societal risks

Still, there are some aspects that are not clearly included in the proposal of the Digital Services Act, along with some issues that have to be clarified before it takes effect:

- The relation between the limits of anonymity on the internet and social platforms and freedom of expression
- Accessibility and ways of traceability when violation of human rights take place on internet and social networks. Here the opinion of the Committee on Women's Rights and Gender Equality<sup>46</sup> should be taken in account.
- The fact that all European countries already have different laws concerning hate speech content and some countries even created their own platform regulations through national legislations before or in parallel with the European level policy-making process impose difficulties on the harmonization of national laws with the EU regulation. Questions occur, such as how the jurisdictional authority of national regulators will be determined or how definitional harmonisation on what counts as hate speech will be achieved.

The following points of the report of the European Parliament, LIBE Committee, Policy Department for Citizens' Rights and Constitutional Affairs on *Disinformation and Propaganda: Impact on the functioning of the rule of law and democratic processes in the EU and its Member State, 2021 update*, are particularly in accordance with the recommendations of the GENHA project:

- Neutrality is a key element for intermediaries, thus the DSA should oblige online platforms to maintain ideologically neutral services. This should include:
  - ensuring their algorithms do not systematically favour any political, ideological, or religious opinion, or give preference to content that is their own or by an affiliated company;
  - Nail down the human rights principle, thus the DSA should oblige online platforms to act expediently in order to respect fundamental rights, in particular the right to freedom of expression, freedom of information, equality and non-discrimination, privacy, and dignity. When removing content, platforms' decision should be informed by international standards of freedom of expression; the principles of legality, necessity and proportionality, privilege for matters of public interest, etc.
- Offer diversity and trustworthiness, thus Article 29 DSA should be completed in the sense that content recommendation algorithms ought to offer:
  - at least one option which is aimed at increasing diversity;
  - at least one further option to prioritise content that is found to be trustworthy by independent news organisations.

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<sup>46</sup> FEMM-AD-693717\_EN\_2110119.

- Only transparent and tested algorithms should be applied by very large online platforms (VLOPs) for platform manoeuvres that affect a large number of users, even if that means a slower pace of innovations (Disinformation and propaganda report, 2020, page 125 ).<sup>47</sup>

## **3.2. Public policy proposals**

### **3.2.1. The need to combine various initiatives regarding hate speech and hate crimes, gender violence and other related issues**

There are several initiatives related to anti-gender hate speech on the EU level and within the Council of Europe. However, the initiatives are fragmental and a joint strategy for combatting anti-gender hate speech and hate crimes is needed.

### **3.2.2. Collaboration between Member States**

No matter if the list of EU crimes is extended to all forms of hate crime and hate speech – whether because of race, religion, gender or sexuality, resources should be allocated for collaboration between e.g. the police authorities, the prosecution authorities, other social services to combat anti-gender online hate speech.

### **3.2.3. The need to collect, support and embrace good practices**

The *Ranking Digital Rights Initiative* is a well-established project led by an international civil society organisation. The project involves a so-called *Corporate Accountability Index*, an open dataset on companies' commitments and policies on freedom of expression and privacy. Additionally, the organization developed a roadmap for companies to operate internet platforms and services based on internationally recognized human rights standards.<sup>48</sup> This and similar initiatives should be supported and good examples collected in order to build a robust and internationally binding collection of good practices in the prevention of online hate speech and the respect for human rights in the online space.

### **3.2.4. The need to support independent civil society in enforcing the rights of social media users and developing awareness raising and educational programmes**

Civil society organizations have crucial role in at least two broader field of dealing with potential hate speech. First, in the absence of an adequate regulatory framework, it is often the task of civil society actors to enforce demands reflecting users' interests and keep them on the agenda. This includes monitoring the observation of the Code of Conduct of 2016, but also strategic litigation on behalf of citizens at court. Second, civil society actors also have a role in increasing the level of media literacy in nation states,

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<sup>47</sup> European Parliament, LIBE Committee, Policy Department for Citizens' Rights and Constitutional Affairs: Disinformation and Propaganda: Impact on the functioning of the rule of law and democratic processes in the EU and its Member State, 2021 update, available from: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3409279](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3409279)

<sup>48</sup> <https://rankingdigitalrights.org/about/challenge/>

that is the education about the conscious use of the internet and social platforms. Civil society actors should be encouraged and supported in their efforts to raise awareness and sensitivity on matters of free speech and hate speech. The role of women's rights and LGBTIQI organizations is essential in this work, as they could draw public attention on a so far less known type of harmful online content, namely 'anti-gender' speech.

Such support of civil society is of uttermost importance in member states characterized by serious democratic deficit, such as Hungary (see 2.2.). As in these countries political actors lack clear commitment to guarantee the freedom of speech and protection from hate speech online, it is often civil society alone that fulfills such essential tasks as media education or victim protection. In the meanwhile, these actors are facing prosecution themselves, when advocating on behalf of vulnerable communities and promoting human rights.

## **4. Self-regulatory system proposals**

### **4.1. Dialogue with the platforms and the potential of self-regulatory mechanisms**

A self-regulatory system is a mechanism that can be a complement to other means to balance between various interests and has potential to promote an open democratic debate. At the same time, the content of self-regulation is up to the private actors to decide. It is not necessarily so that the users and others have access to and influence over the self-regulation. Legislation is in a democratic view more accessible in forms of accessibility and control. However, a dialogue between the platform providers and democratic institutions and civil society might be of force to strive for a non-discriminatory climate and to combat anti-gender hate speech. The belief in social media as a platform for democratic debate is firm, at the same time as the awareness of how social media can be used to spread hate and to silent various individuals and groups. Probably, a combination of legislation and self-regulation and an open debate is a good way to approach anti-gender hate speech.

The *Hungarian Civil Liberties Union* (HCLU), a prominent human rights advocacy organization, proposes to consider social media companies as "quasi-states", since they bear the characteristics and conceptual elements of sovereignty, except for territoriality. The advantage of considering social media companies as states is that in this way they can be obliged to respect human rights, while if they are considered actors of the economy, they are endowed with rights, and regulation on the national context will never be successful. The obligation to comply with the Charter of Fundamental Rights of the European Union could encourage tech companies develop more effective self-regulatory mechanisms.

## **4.2. AI and human activity**

It should be acknowledged that hate speech perpetrated on social media platforms imply a 'suspended' dimension because contacts between haters and victims are not direct, but mediated by the media, consequently other people are invisible. This shall include that the possibility of offending other people becomes more immediate and feasible. The central point is the total lack of empathy for other users and the dehumanisation of potential victims, which allow people to express in such a way. Nowadays, different communication rules apply to social media platforms, different in comparison of the ones of "real life". "Spaces" on social media platforms where groups play their communicative roles and spread their values are different from each other, creating the opportunity to provoke social envy, which can lead to resentment. Social media platforms, such as Facebook, focus on negative contents to continuously attract users. The virtual environment, therefore, is not neutral at all, but contribute to enhance negative emotions, which are stronger than positive ones.

Once the negativity of an emotion is exalted, it is easier to feed off each other than to neutralise it. There are two types of techniques used on social media platforms to limit hate speech: a) artificial intelligence using algorithms to filter out some of the words considered violent or inappropriate. However, this method does not take into account irony, the ambiguity of words, the relationships between people; b) allowing users to report inappropriate/illegal content, so that it is removed from circulation. This could create a paradox related to the question of authority: in my role of being a Facebook user, I do not recognise the laws of democratic coexistence because I offend other people, but I am allowed to report to Facebook inappropriate/illegal content.

According to the outcome of the workshops, a valid self-regulation policy for digital platforms should not be delegated to artificial intelligence, which scope is currently limited. Moreover, the inflexible "behaviour" of digital algorithms could create the perverse effect of increasing the number of victimisation processes. Human control in this kind of analysis is essential in order to understand hidden conceptual meanings and relationships.

## **4.3. Implementation of working groups with informal mediators**

The sense of this proposal is that each social media platform would "employ" mediators, trained to recognize hate speech, who could interact with users when contents violate human dignity and lead to hate speech. These mediators should constantly monitor the pages of certain groups and act on the basis of defined lines of conduct.

#### 4.4. A regulatory framework combining self-regulation and legislation

A regulatory framework should be implemented both on a European and national basis, in line with the intention of *The Digital Service Act*, see above. The self-regulations of the main social networks should be complemented with obligations under binding legislation at European Level. We cannot expect private companies to guarantee and protect the human rights on social media platforms. Therefore it is necessary to take action on several levels and through various measures.

The negotiations on regulatory measures with the major platforms at the EU level can be defined as successful in some specific agreements. The major platforms such as Facebook and Twitter removed the majority of the flagged posts and tweets within 24 hours of notification.<sup>49</sup> However, there are no platform-specific regulatory measures and smaller platforms have not yet taken into responsibility.

Due to the social dynamics on the platforms and the behavior of Internet users, which adapts dynamically and flexibly to current developments, the EU also needs more dynamic and flexible monitoring and regulatory requirements. For example, many millions of users reacted to the Facebook blackout on the 6<sup>th</sup> of October by switching to Telegram<sup>50</sup> - a platform that is not yet regulated. Another unregulated alternative platform is VK (Vkontakte), commonly used by right-wing actors in Sweden. It is also apparent that more and more people and groups of people are using smaller, less wide-reaching platforms that are also not regulated and where people can become radicalized.<sup>51</sup> Since each platform also has a specific target audience, where users share postings to certain topics,<sup>52</sup> differentiated and platform-dependent regulatory measures are also needed here. In addition, not only platforms with strong reach such as Facebook, Instagram and YouTube should be regulated, but also smaller platforms with less reach that attract a very specific audience, such as Chan-platforms, Reddit or 9GAG.<sup>53</sup>

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<sup>49</sup> Scott, M. (2021). Social media companies remove less hate speech in 2021. *Politico.eu*, October 7<sup>th</sup> 2021. Retrieved from: <https://www.politico.eu/article/facebook-google-hate-speech-social-media-european-commission-transparency/>

<sup>50</sup> DerStandard (2021). Rekordzuwachs bei Messengerdienst Telegram durch Facebook-Ausfall [Record growth for messenger service Telegram due to Facebook outage]. *derstandard.at*, October 6<sup>th</sup> 2021. Retrieved from: <https://www.derstandard.at/story/2000130209061/rekord-zuwachs-bei-messengerdienst-telegram-durch-facebook-ausfall>

<sup>51</sup> Parent, G. (2020). The Dangers of Online Radicalization. A study of Incels. *VERGES: Germanic & Slavic Studies in Review*, 3(1). Retrieved from: <https://journals.uvic.ca/index.php/verges/article/view/19730>; Ayyadi, K. (2019). Glossar über die extrem rechte digitale Subkultur [Glossary about the extreme right digital subculture]. *Bell Tower News. Netz für Digitale Zivilgesellschaft*, April 19<sup>th</sup> 2019. Retrieved from: <https://www.belltower.news/rechte-cyberkultur-glossar-ueber-die-extrem-rechte-digitale-subkultur-84077/>

<sup>52</sup> Ka-Wei Lee, R., Hoang, T.-A., Lim, E.-P. (2017). On Analyzing User Topic-Specific Platform Preferences Across Multiple Social Media Sites. *WWW'17: Proceedings of the 26<sup>th</sup> International Conference on World Wide Web*, pp. 1351-1359. Retrieved from: <https://doi.org/10.1145/3038912.3052614>

<sup>53</sup> Ganesh, B. (2018). The Ungovernability of Digital Hate Culture. *Journal of International Affairs*, 71(2), pp. 30-49.

In a first step, all, as relevant defined platforms, should be observed in a systematic monitoring programme by independent (and perhaps scientific) institutions in order to develop appropriate platform-specific regulatory measures in a second step. We believe that interdisciplinary teams, user groups, civil society, and even NGOs are needed on each platform. So, they can determine which content should be tolerated online and which should not. Indeed, we believe there should be a "democratization" of what content should be shown.

#### **4.5. Access restrictions and limitations**

In the following, we present two approaches to formally limiting social media groups and restrictions on account opening and to prevention, respectively. Here, we focus on the one hand on the protection of minors and on the other hand on automated trigger warnings when certain terms and word stems are mentioned, which are intended to create awareness among users in the form of information boxes.

#### **4.6. Validation of social media accounts**

Identifying perpetrators of incitement on social media is currently made more difficult by anonymous registration. After a post or comment has been reported and prosecution ensues, then at best the IP address of the terminal device used can be identified, but not the person who has agitated.

In order to clearly assign social media accounts to persons in a criminal prosecution, stricter regulations for opening accounts are needed, i.e. as a national validation. An example from Germany is, since the compatibility of data protection and social media as well as the necessary public protection of identities are two relevant aspects, the amendment of the Federal Data Protection Act [Bundesdatenschutzgesetz (BDSG)] and the recently amended Network Enforcement Act [Netzwerkdurchsetzungsgesetz (NetzDG)] are required. On the one hand, the unique ID validation of an account makes it easier for law enforcement officers to investigate hate crimes, and on the other hand, the identity must be protected from other platform users by means of stricter data protection guidelines on the part of the platform operators. One condition that has already been discussed is the validation of accounts on certain social media platforms by means of a mobile phone number.<sup>54</sup> However, there is still the problem that there are prepaid card phones that can also be used for this purpose.

In order to avoid the "bot's army" more development in technology is required. Examples as "captcha" or "re-captcha" might be a way to explore. More focus is needed in the

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<sup>54</sup> Cf. Hutchinson, A. (2021). Would Identity Verification Improve Social Media Safety, and Reduce Instances of Trolling and Abuse? *Social Media Today*, March 12<sup>th</sup> 2021. Retrieved from: <https://www.socialmediatoday.com/news/would-identity-verification-improve-social-media-safety-and-reduce-instanc/596666/>



efficiency of that tool in order to protect social media of the anonymizations and machines accounts.

## **4.7. Prevention by regulation of content**

### **4.7.1. Platforms must ensure protection of minors**

The protection of minors has increased over the years. The Child Convention, national constitutional protection and other legislative and public policy measures address the exposition that minors are subject to. For instance, the new German General Data Protection Regulation states that age verification by social media must not be disproportionately burdensome. The operators of social networks are therefore not obliged to check IDs, but they have to moderate the content of their platform.<sup>55</sup> The age of users is therefore only checked by independently entering their birthday or by ticking a box. With this type of self-entry, the age check can easily be bypassed.<sup>56</sup> The danger that children and young people will be confronted with hate content or become victims of hate speech themselves cannot be ruled out.

Platform providers must ensure that when minors are on social networks, they do not come into contact with violence, hatred and incitement to hatred. This can be achieved through algorithm-based age restrictions, in which other Internet behavior determines the potential age of the user and makes inappropriate content inaccessible to the young person. This algorithm-based regulation<sup>57</sup> of content for protection would not conflict with the argument that free expression is at risk from regulation.

### **4.7.2. Automated info boxes when certain terms are used in posts and comments**

Most Facebook, Twitter, YouTube and Instagram users are involuntarily confronted with hate speech on certain anti-gender topics without being able to grasp the terms and intentions behind the comments, as there is often a meta-political level to organized hate postings.<sup>58</sup>

One way to protect social media users is to work with transparent information campaigns. When certain keywords appear in postings or comments, automated information boxes should appear that contextualize the terms. This requires an elaborate dictionary that

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<sup>55</sup> Cf. Klonick, K. (2018). The New Governors: The People, Rules, And Processes Governing Online Speech. *Harvard Law Review*, 13(6), pp. 1598-1650. Retrieved from: [https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670\\_Online.pdf](https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670_Online.pdf)

<sup>56</sup> Cf. Saferinternet (2018). Mindestalter: Ab wann dürfen Kinder WhatsApp, Instagram & Co. nutzen? [Minimum age: When are children allowed to use WhatsApp, Instagram & Co.?]. *saferinternet.at*, May 16<sup>th</sup> 2018. Retrieved from: <https://www.saferinternet.at/news-detail/mindestalter-ab-wann-duerfen-kinder-whatsapp-instagram-co-nutzen/>

<sup>57</sup> Cf. Balkin, J.M. (2018). Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation. *UC Davis Law Review*, 51, pp. 1149-1210. Retrieved from: [https://lawreview.law.ucdavis.edu/issues/51/3/Essays/51-3\\_Balkin.pdf](https://lawreview.law.ucdavis.edu/issues/51/3/Essays/51-3_Balkin.pdf)

<sup>58</sup> Cf. Strick, S. (2021). *Rechte Gefühle. Affekte und Strategien des digitalen Faschismus [Right-wing feelings. Affects and Strategies of Digital Fascism]*. Bielefeld: transcript.

explains words such as gender, ‘gender gaga’, ‘early sexualization’, etc. in simple language. In addition to the information content of these automated boxes, they should also represent a kind of trigger warning to protect vulnerable groups.

## **5. Research proposals**

Various scholarly conversations have been conducted within the GENHA project related to the results of the research so far, and presented in previous reports of the project. The conversations are devoted to original explorations of the political communication of right-wing radical forces on social media. Further, the national workshops also provided important insights to assess the findings of the project in the light of other academic, policy assessment, regulatory, and civil society knowledge articulated in recent documents and publications and beyond.

The research proposals listed below are based on the findings of the GENHA project and what was highlighted as knowledge gaps and research needs at the workshops.

### **5.1. Recommendations responding to the gaps in the literature**

The GENHA Report on State of the Art on Anti-Gender Hate Speech identified the most important research. The body of literature included in the report can be divided in two branches which are not connected to each other: literature on hate speech (mainly legal scholarship) and literature on anti-gender ideologies and its connection to right-wing and nationalist movements (mainly social science studies). The literature on hate speech does not concern anti-gender hate speech, probably due to the fact that the literature takes the present legislation as its starting-point, which, as already mentioned, does not protect from hate speech on the grounds of sex and gender. The literature is restricted to the present scope of hate speech.

#### *Proposals:*

- There is need for a broader scope and also, a connection between various hate behaviour directed towards women (sex/gender is not limited to women, but the problem addressed here is the phenomena of anti-gender hate speech that in practice hits women) as individuals, group and attacks on the very idea of equal value and rights for all (captured by the concept gender equality).
- There is also a need for development of theories and concepts. The phenomena are not conceptualized in the same way in various countries and this means that it is hard to compare the phenomena empirically and also the measures taken to deal with it in legislation and public policies.
- Further comparative research can and should investigate the following problems and possibilities of using social media for democratic politics by preserving the

freedom of expression and protecting the rights of various groups and equality norms in all domains of life.

## 5.2. Recommendations regarding stronger focus on the victim level

Most of the hate speech research to date has focused on issues of regulation and the content of hate speech: studies often describe the dynamics of hate speech, describe the types and forms of hate speech, and analyze the reasons for hate speech.<sup>59</sup> There are already a few studies on specific groups of people such as female journalists or politicians, but there is a lack of studies on more vulnerable groups and on people affected by hate speech from an intersectional perspective (INHS generally lists less than a dozen publications here).<sup>60</sup> The focus should increasingly be on the perspective of the victims<sup>61</sup> in order to learn more from their experiences.

*Proposal:*

- The victim perspective is not yet reached the focus of the hate speech research and should therefore be given greater prominence in future research. It would be helpful to work with gatekeepers who refer victims of online hate to researchers in order to collect chat histories and record the narratives of those affected. This would allow more relevant and comparative knowledge to be gathered in order to better develop victim protection and prevention programmes.

## 5.3. Recommendations regarding online harassment and violence against women

The type of hate speech that the GENHA project explored partially overlaps with a type of violence that the complex notion of *violence against women* articulates. Symbolic violence on the one hand portrays politically active women as angry, irrational, and power hungry and denies their competence as political actors due to their gender. This is often associated with highly sexualized images of female politicians in social media. These types of communication acts both from public and private actors and through public and personal accounts address these women. Female politicians who speak and act from a feminist perspective appear more likely to be attacked further as they challenge male dominance in multiple ways.<sup>62</sup>

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<sup>59</sup> Cf. Sponholz, L. (2018). *Hate Speech in den Massenmedien. Theoretische Grundlagen und empirische Umsetzung [Hate Speech in the Mass Media. Theoretical Foundations and Empirical Implementation]*. Wiesbaden: Springer VS, p. 28.

<sup>60</sup> International Network for Hate Studies (INHS) (2021). Online Library. Retrieved from: <https://internationalhatestudies.com/publications/>

<sup>61</sup> Cf. Matschke, A. (2016). Hate speech: "It's the victim's perspective that matters". *dw.com*, May 19<sup>th</sup> 2016. Retrieved from: <https://www.dw.com/en/hate-speech-its-the-victims-perspective-that-matters/a19265131>

<sup>62</sup> Krook, M.L. (2017). Violence Against Women in Politics. *Journal of Democracy* 28(1), pp. 74-88. Retrieved from: <https://www.journalofdemocracy.org/articles/violence-against-women-in-politics/>

*Proposals:*

- The understandings of legal, policy and human rights perspectives of anti-gender hate speech and violence against women may largely overlap but possible differences or divergence may deserve scholarly and policy research attention.
- An already published selection of research results reveal how women journalists are often subject to online harassment and how that causes damage to their identity and reputation. Perpetrators can use a combination of online and offline attacks. Misogynistic attacks create a chilling effect that silences these women professionals' voices online. Recent works that investigate this sort of abuse via Twitter and Facebook also explore how digital defense strategies, specifically established for journalists (e.g. TrollBusters, a platform for women journalists) can counter online hate with positive messaging and immediate rescue services.<sup>63</sup> Other forms of bottom-up, horizontal, solidarity and mutual support group formations should be research, monitored and supported by policy attention and resources.
- As a relatively recent phenomenon, *trolling* is seen as a hot topic of the Internet in the second decade of 21st century. This involves luring or baiting others to initiate pointless conversations on online forums to sabotage discussions and derive personal enjoyment from such disruptive behaviors. Trolling also involves offensive remarks, personal attacks and hostile and aggressive online behavior directed against others in order to provoke reactions (e.g., posting offensive comments on tribute pages), indicative of cyberbullying.<sup>64</sup> The fine line between political provocation and *cyber bullying* by intensive and targeted trolling should also be better understood for full a grasp of online aggression against women in public roles.
- Knowledge on online violence against women and cyberbullying should be discussed and understood together with hate related anti-gender political communication. Already available research data and knowledge from these two directions of research should be shared and fed to the protection of human rights and protection of women's rights policy operations.

### **5.3.1. More studies of unreported hate speech crimes**

Research currently has too little information on the quantity and sociodemographic background of perpetrators and victims of hate speech. Furthermore, the current police statistics are insufficient for research and the descriptive description of the hate speech

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<sup>63</sup> Vickery, J. R., & Everbach, T. (Eds.) 2018. *Mediating misogyny: Gender, technology, and harassment*. Springer.

<sup>64</sup> Mendonca, A., D'Cruz, P., & Noronha, E. (2021). Trolling in the Cultural and Creative Industries. In L. Ramos Salazar (Ed.), *Handbook of Research on Cyberbullying and Online Harassment in the Workplace* (pp. 46-71).

problem, as too few hate speech attacks are listed and broken down as such in the statistics.

*Proposal:*

- There is a need for more studies of unreported crimes regarding the different areas of hate speech. On the one hand, more descriptive research is needed regarding the quantity of actual perpetrators. The problem of bots and fake accounts continues to pose challenges to the platforms and the academia.<sup>65</sup> But also, on the other hand, police studies in the field of digital hate crime should be intensified and differentiated according to type of hate speech and target groups. The latter point goes hand in hand with the reform of police crime statistics, which to date have insufficiently differentiated by type of hate crime and social demographics.

There is in addition a need for more knowledge about both the typology of the perpetrators and the victims. There is some knowledge about the perpetrator and also about the victims but not sufficient.

*Proposal:*

- We need more knowledge on e.g., the following aspects:
  - a) Which characteristics do the perpetrators have?
  - b) What are the motives?
  - c) Do several perpetrators collaborate and if so, how in hate speech and other hate crimes directed toward specific victims?
  - d) What are the connections between hate speech and other hate crimes?
  - e) Who is attacked, in what role and in what way?
  - f) What are the consequences for the victims and how do they experience the hate directed towards them? There is need for more knowledge on ‘silencing processes’, i.e. how hate speech and other hate crimes make individuals and groups silencing and the consequences of this, not only for the individuals but for the whole society and for the democracy.

### **5.3.2. Focus on intercultural and comparative hate speech studies**

Currently, there are only a few comparative studies on hate speech in an intercultural context (For example: The International Network for Hate Studies (INHS) has no category on intercultural or comparative hate speech studies). Moreover, the resources of study findings from other cultural contexts are rarely considered for European and national studies.

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<sup>65</sup> Davis, T., Hindman, M., Livingston, S. (2019). Opinion: Facebook isn't ready for 2020. *The Washington Post*, August 14<sup>th</sup> 2019. Retrieved from: <https://www.washingtonpost.com/opinions/2019/08/14/facebook-says-election-meddling-wont-happen-again-it-just-did/>; Thielges, A. & S. Hegelich (2018). Falschinformationen und Manipulation durch social bots in sozialen Netzwerken [Misinformation and manipulation by social bots in social networks]. In Blätte, A., Behnke, J., Schnapp, K.-U., Wagemann, C. (Eds.). *Computational Social Science: Die Analyse von Big Data* (pp. 357-378). Baden-Baden: Nomos.

*Proposal:*

- Therefore, more cooperation with non-European researchers is needed to learn from other cultural contexts and to develop new innovative approaches for a common European hate speech research.

### **5.3.3. Intersectional perspectives**

The findings in the GENHA project and previous research together with the experiences of the participants of the workshops give that there is a need for intersectional perspectives on the phenomena of hate speech and other hate crimes. Such acts are not seldom based on several grounds, such as ethnicity, sexual orientation, sexual identity *and* sex/gender, and connected to certain political and nationalistic ideologies. The knowledge of such connections would improve the knowledge how to deal with the phenomena. Hate speech and other hate crimes should be studied in a broader context of democratic processes and values.

### **5.3.4. The ideological context**

There is a need for broad studies on the connection between societal changes and challenges and dislocations of opinion. What are the driving forces behind ideas that question the equal value and rights of all? How can such forces be met and dealt with? Can processes of exclusion and increasing inequality explain such transformations?

### **5.3.5. Empirical studies on the presence of hate speech**

There is a need for empirical studies on the presence of hate speech. We have indications that the problem is significant, that it hits children already in early age, and that many young people suffer from what happens online. We need more empirical studies that studies the phenomena broad (and not only restricted to what is regulated today).

In addition, we need more knowledge on the presence of the Police Authority on the internet and the competence to combat hate speech.

### **5.3.6. Self-regulation**

We need more knowledge on the self-regulatory systems and how they are implemented and upheld. The various platforms have their own code of conducts. Therefore, the European Commission's legislative initiative The Digital Services Act, with the aim to create a safer digital space in which the fundamental rights of all users of digital services are protected, is essential. It is urgent that the member states of EU implement this Act.

## **5.4. Recommendations responding to gaps in legal and policy action**

### **5.4.1. The perception of anti-gender hate speech**

Online anti-gender hate speech is today, by Council of Europe as well as European Parliament (see above), defined as a form of violence against women. However, this is

not fully implemented in the national legislation or public policies regarding violence against women. Besides political steps to fully implement this, we need more knowledge on the impact of this statement. Also, we need more knowledge on how to understand the digital violence against women theoretically and how it relates to more general agendas targeting gender equality as a goal for society expressed as a legal principle and a political goal.

*Proposal:*

- Implement in the national legislation or public policies the view increasingly adhered to in the international agenda on women's human rights that anti-gender hate speech is a form of violence against women.

**5.4.2. The concept of anti-gender and the broader politics of gender equality**

Both the country specific and the comparative parts of the GENHA research confirmed the need to scrutinize the broader problem of anti-gender talks, by identifying the partially separate fields of sexism, homophobia, and anti-genderism. To scrutinize these fields jointly is important, relevant, and justified by the actual communication practices. At the same time, it is important to be aware of not corresponding critical standpoints regarding whether sexism, homophobia, and anti-genderism should be treated separately from each other or not. Mixing women's rights and interests with equality claims made by the LGBTQI community under the umbrella term 'gender' may not serve well the women's rights agenda in their opinion, according to some voices. It is also important to explore, or at least consider by research such as GENHA, that stretched or overstretched use of the notion of gender, and in particular gender identity, is critiqued by some feminist and other groups, who identify as radical and/or leftist.

*Proposals:*

- Academics and policy-makers should be cautious when attempting to understand 'anti-genderism', and they should pay attention to avoid to label all critique on the concept of gender as hate speech. In sum, the wider politics of gender and critique of gender deserves due and linked attention.
- From another direction, the triadic classification of anti-gender speech was called for refinement by LGBTQI advocacy activists. They argued that hate speech against transgender people did not have a clear and dedicated place in the research, that is 'transphobia' was included partly in the notion of 'homophobia' and more often in the anti-genderism field. It was raised that 'transphobia' could perhaps count as a stand-alone category, since the populist right parties mainly target the 'T' from the LGBTQI community. However, as several experts agreed, 'transphobia' is a very divisive and contested territory even within the LGBTQI movement, thus, the regulation of what counts 'transphobic' speech is not easy.
- The problem of transphobia and critical discussions of trans-identity have been addressed previously but could deserve further research attention due to the fact



that the tensions around the notion of transphobia have got increased through recent highly mediatized academic appointment cases.

#### **5.4.3. Promote networking and platforms between academia and civil society**

Initial networking concepts are already available at the time of this report.<sup>66</sup> These projects focus on the transfer of knowledge between civil society and science with regard to hate on the Internet and are intended to provide impetus in both directions. As an example, the federal working group [Bundesarbeitsgemeinschaft (BAG)] "Against Hate on the Net [Gegen Hass im Internet]" is intended to offer recommendations for action based on evidence-based work. It is currently unclear what inclusive character this working group will have and what set of values will define its work. The goal should be to establish a network, which has been lacking up to now, that brings together all relevant actors from civil society, government and science in order to comprehensively bundle competencies on a micro, meso and macro level, to exchange experiences and knowledge and to offer platform-based research and victim support and empowerment.

##### *Proposal:*

- Civil society can serve as a gatekeeper to the field of online hate speech, facilitating data collection for researchers. Extensive cooperation for the purpose of participatory research, in which civil actors can also engage in the spirit of citizen science, can help to broaden research through new perspectives, facilitate data collection, and actively engage civil society in the fight against hate speech. In this regard, this network is intended to be a long-term project that also reinforces trust in science through regional networking. However, this long-term and thoroughly financed commitment should also promote civil society and provide a stable backup for victims of hate speech. To build it up, the first step is to identify relevant nodes and network them - by this we mean, on a national level, the state media institutions, the state centers for political education, actors such as HateAid, the Amadeu Antonio Foundation and others. In addition to a local and regional register, which lists actors from civil society and science, both offline and online structures should be connected, as well as the local with the EU level. The common EU canon of values should be the guiding principle and focus of the project. I.e. the problem hate is in the center and not the attributes of the agitation. Thus, the anti-hate-network shall have an inclusive character and offer all researchers and civil actors as well as churches, social workers, associations a platform for exchange, research and victim protection. The goal of the platform is to establish a netiquette that promotes plurality in the exchange of opinions but guarantees an appreciative discourse. The principle is a civilized language is used and that even in non-contradictory spaces without fear of agitation and defamation

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<sup>66</sup> Cf. Jorch, J. (2021). Forschung für die Zivilgesellschaft: Neues Projekt gegen Hass im Netz im Aufbau [Research for civil society: New project against hate on the web under construction]. *das-netz.de*, October, 14<sup>th</sup> 2021. Retrieved from: <https://www.das-netz.de/forschung-fuer-die-zivilgesellschaft-neues-projekt-gegen-hass-im-netz-im-aufbau>

can be communicated without people have to retreat into safe spaces. This can also be internalized on an EU level. This can be promoted with the participation of various media through national and EU campaigns, which can be supported by prominent representatives.

#### **5.4.4. Monitoring of hate speech initiatives and regulatory measures in consideration of case analysis**

There are a variety of anti-hate speech campaigns run by different initiatives on a national (GER: No-Hate-Speech.de, Zivile-Helden.de) as well as on an international level (EU: Hate Aid, No Hate Speech Youth Campaign). So far, there is no comparative data on the success of these offerings and whether the campaigns are effective and reach their target groups. Therefore, there is a lack of comprehensive evidence about the effectiveness and the targeting on a micro (individual) as well as macro level (groups of people).

##### *Proposals:*

- A comprehensive analysis of the effectiveness of previous regulatory measures and prevention and assistance offers at national and EU level. For this purpose, suitable evaluation analysis tools must be elaborated on the one hand, and the effectiveness of regulations on the micro level must be considered on the other. This can be achieved, among other things, through account monitoring, in which the effectiveness of regulatory measures is assessed on the basis of the analysis of individual cases of hate speech victims (case studies).
- Studies of the efficiency of various methods to combat hate speech, criminalization, use of anti-discrimination legislation, knowledge dissemination through campaigns and school curricula, action plans, self-regulation etc.

#### **5.4.5. Access to justice through court proceedings**

During the research, but especially after the workshop held with experts from different fields, we have realised we did not know what if really happening with those cases of anti-gender hate speech where the victims press charges. There is a lack of knowledge about the real effectiveness of the criminalisation of anti-gender hate speech.

It would be very important and analysis of how many cases of anti-gender hate speech on social networks arrive to the courts, and what happens in each case.

Likely it would be necessary to study if the victims of anti-gender hate speech have implemented any other non-criminal measures, such as the implementation of administrative sanctions or provisional measures, the right to be forgotten and other possible measures or legal strategies.

## **5.5. Recommendation responding to the question left open within the GENHA project**

One conclusion of the GENHA project is that hate speech effectively contributes to distracting and downsizing the spaces for deliberative political discussions. In order to judge whether this process is irreversible or not, one must scrutinize the interacting details of both right-wing political communication and the encounters between right-wing circles and their counter-publics. In this way, it could be explored if social media indeed only helps generating ever more powerful exclusionary communication and political imagery, or there are spaces, forces, and efforts that effectively resist to that.

### **5.5.1. Contribution of hate generating social media to the transformation of the public sphere**

All country teams in the GENHA project have observed that several right-wing message-makers and their domestic complexes invite both supportive and dissenting voices to their Facebook and Twitter based political communication. In this way, their traffic is directly enhanced by comments, reactions, and shares, and involves a divided public gathering in one communication space, at least temporarily. Whereas, in theory, this may contribute to political debate, *deliberation* and, most importantly, fighting against hate speech, it may also enhance the significance and communicative power of right-wing radical voices. Further, right-wing bubbles and counter voices can solidify *communication bubbles* which in a lack of strong autonomous and pluralistic media (e.g. in authoritarian and hybrid regimes) generate a fragmented public which is prone to embrace *disinformation*.

*Proposal:*

- The research methods used in GENHA revealed that by a detailed inquiry in the *comments sections* of the online media communication, one can explore more deeply the grand puzzles of *social media communication*. Most importantly, it is to explore the production of bubbles and closed complexes by enemy seeking communication in contrast to debates and provocations leading to democratic deliberation and pluralistic politics.

### **5.5.2. Implementation of the role of informal mediator within social media platform.**

The general objective of this new research project is to continue the GENHA project by performing an experiment to expose social groups to content streams shared on social media platforms with the intent to change the attitudes towards hate speech. The pilot experience would consist of the selection of two groups of people (representing similar samples, for example two groups of university students), that will be put together in Facebook/Twitter groups and be provided with two different types of flows of information. The aim is therefore to analyse attitudes of users on Facebook (or Twitter) groups once they are confronted with issues such as feminism or transgender people.

## 6. Conclusions

The findings and the presumptions of the GENHA research project were presented and discussed with the participants with valuable knowledge and experienced at the workshops. The objective was to identify proposals of public policies, legislation, and self-regulation to address *anti-gender hate speech* directed towards individuals, groups and the principle of equal value and equal rights for all, a fundamental principle of any democratic society. In addition, the objective was also to point out knowledge gaps and need for more research. The proposals are directed at various levels and stakeholders.

The national workshop held within the GENHA project with experts and interest groups formed an excellent opportunity to reflect and discuss legal and public policy proposals to combat anti-gender hate speech on social networks. The workshop allowed the possibility to discuss legal measures within criminal law but also legislation other than criminal law, as for example in the field of anti-discrimination law, administrative law, legislation of political parties, civil protection of human rights, or preventive legislation on internet and social networks compliance rules. Most of the legal proposals are however, targeting criminal law. What is important to notice is, however, that we need a systematic and coherent approach to anti-gender online hate speech. With such an approach the implications might go far beyond criminal law. And, what should also be kept in mind is the risks of too high expectations on what might be achieved with criminal law. From the workshops some general statements, in addition to the proposals listed above, came out clearly.

The workshops confirmed the findings in the GENHA project that anti-gender hate speech (and other hate crimes) is directed towards both individuals, groups and also toward the principle of equal value and equal rights for all. In extension such phenomena threaten democracy. The methods to agitate against someone or something are often a combination of various actions or non-actions, performed individually and/or together with others, organized or spontaneously, and with several purposes (to miscredit someone, to threaten someone, to silent someone, to spread hate against individuals and groups, to question the societal value and legal principle to strive for equal rights etc.). Awareness of and visualizing intersectional aspects are important. The means to combat such actions and non-actions urge for a combination of several measures, criminalisation is only one of them. The proposals listed above are therefore not to be seen as sharp and separate, rather they should be considered together.

Online anti-gender hate speech rarely falls under the criminal definition of hate speech or hate crimes and is scarcely addressed by public policies, neither on the national level nor on the EU level. This goes in specific for anti-gender hate speech targeting women as individuals as well as a group, and, in addition, the principle of equal value and equal

rights for all. The reasons for this are probably various. 'Women' as individuals or as a group are not considered as a minority or as a vulnerable group according to the criteria that the legislation requires. In addition, the messages are not always acknowledged as hate speech or hate crimes, but considered as indirect, ironic and as mere insults. Anti-gender hate speech directed against the principle of equal value and equal rights for all (gender equality) is not considered as connected to hate speech against individuals and groups. Moreover, the criminal response does not apply when the perpetrator is unknown or it is an undetermined collective, which is frequent in anti-gender hate speech against individual women.

The anti-gender hate speech in focus for the project from start was the speech that was produced by far-right movements, activists, and political parties, but the presence of anti-gender hate speech seems to be more broadly produced. In fact, one of the most important findings was that parties are relatively decent in their communication, but there is a whole conglomerate of the radical right-wing spectrum (public figures, media, NGOs) that participates in the production of hate. The laws on the freedom of expression and against hate speech demand all to comply – including politicians and political parties. This picture was confirmed by the participants at the workshops. The measures therefore should not be limited to far-right groups, due to the problem's broader scope.

The question whether criminal law is the best way to address and combat anti-gender hate speech can be raised and was so at several of the workshops. Even though it is evident that a prohibition in law does not solve a social problem, criminal law is the main available tool when the society wish to impact people's behavior. Through criminal law the society expresses what is perceived as unwanted and despicable behavior. The symbolic value of criminalization is a very important aspect for the legitimacy of the system. There are various functions of criminal law, prevention is the most emphasized. Even though a prohibition does not hinder all offenses, criminal law is often seen as the solution to societal problems, this is particularly visible in these times. It could be noted that historically problems connected to gender inequality has not been handled in line with this rationality. Why it should not be used when it comes to anti-gender hate speech and other hate crimes is not obvious? Despite the challenges connected to the use of criminal law as a mean to solve societal problems, we urge that it must be consistently used.

The European Union and the European Council have a special importance as enablers and driving forces when it comes to responses to online anti-gender hate speech and to take measures to combat the phenomenon. They have a special role to adopt preventive legal measures, rather than reactive legal measures (which is the role at the national level). The main legal instruments at the European level are e.g the Treaty of Lisbon and the Istanbul Convention. The pending proposal to modify article n°83 of the Treaty of Lisbon and to extend the list of EU crimes to embrace hate speech and hate crimes on grounds of gender (euro crimes definition) is urgent to fulfil. The Istanbul Convention should be updated to include the phenomenon of hate speech/hate crime. Also, the pending

proposals to upgrade rules governing digital services in the EU, the Digital Services Act (DSA) and the Digital Markets Act (DMA), should be adopted. The complementing self-regulatory mechanisms of the platforms should also be used more actively. Each social media platform could use working groups with informal mediators, trained to recognize hate speech. On the European level it could also be a mission given to an agency to monitor hate speech initiatives and regulatory measures in e.g. consideration of case analysis.

The findings of the GENHA project add to the knowledge on online anti-gender hate speech. However, the findings also show various knowledge gaps. More joint research programmes with the civil society are needed. And there is also a need for more studies of unreported crimes regarding the different areas of hate speech.

## APPENDIXES

In this section the workshop programmes are listed.

### GERMANY

For the national workshop, we asked for and were able to win over the *Evangelical Academy of Thuringia* as a cooperation partner from civil society, since it on the one hand conducts and promotes political education and on the other hand is very well networked with other civil actors, organizations and institutions. Since the state of Thuringia has a high percentage of AfD voters (last federal election in September 2021: 24%, thus the strongest vote), and a number of right-wing extremist and right-wing populist networks are located there, it seemed to make sense to us to hold the workshop there. We focused on the aspect of regulation from below, i.e. regulation by civil society. In this regard, we have defined some workshop questions for ourselves in advance, which are also reflected in the guiding discussion questions.

- *Create Awareness - Create linkages and exchanges between various stakeholders in academia, practitioners, and associations of interest.*
- *How can broad-based knowledge transfer succeed with few financial resources?*
- *Broad-based victim protection and empowerment - what can communities of interest contribute?*
- *What role can the (social) sciences play? E.g. public communication, policy papers, media cooperation?*
- *What measures can be taken by the civil society (counter speech, victim protection, flagging of hate speech etc.) and when do (state) regulations have to take effect?*

Therefore, we chose the workshop title: *"Regulation from the Bottom - Working Together to Combat Anti-Gender Hate Speech. Perspectives from science, civil society and politics"*.

In cooperation with Dr. Annika Schreiter (head of political youth education), we designed the two-day workshop from 14.10 to 15.10.2021 and jointly prepared an invitation list for potential guests from science, politics and civil society, who were invited by the academy administration. The workshop was scheduled at the *Zinsendorfhaus* in Neudietendorf, a conference and meeting center near Erfurt, the capital of Thuringia. All invitees received a brief presentation on the workshop, which was also listed on the website of the academy as well as on the website of the Federal Association of Evangelical Academies of Germany. The exchange of perspectives benefited from the heterogeneous composition, which ranged from communication sciences, social psychology, law and political science to social work and media pedagogy. For initial coverage, see the block article by co-organizer Annika Schreiter.<sup>67</sup>

Programme:

**Thursday 14<sup>th</sup> October 2021**

12:30-13:30 Lunch

13:30-14:30 Welcome, and getting to know each other

14:30-15:30 Input: Hate Speech, Gender, Social Networks and political Parties (by Claudia Wilhelm & Andreas Schulz)

15:30-16:00 Coffee break

16:00-18:00 Discussion rounds (moderated by Claudia Wilhelm & Andreas Schulz)

18:00-19:00 Dinner

19:00 Short films

**Friday 15<sup>th</sup> October 2021**

8:00-9:00 Breakfast

9:00-11:30 Future Workshop (moderated by Annika Schreiter)

11:30-12:30 Conclusion, Outlook, Feedback

12:30-13:30 Lunch

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**HUNGARY**

The event was organized part of the “Hate speech, gender, social networks, and political parties” (GENHA) project funded by the European Union’s Rights, Equality and Citizenship Programme. The topic of the discussion is the regulation of potential hate speech content on online media platforms, particularly on social media, with regards to anti-gender content (sexism, homophobia, antigenderism). Our goal is to prepare recommendations to public policies that aim towards a more robust regulation of social media or the transformation of the current regulatory framework and encourage the participation of the state and civil society in the prevention of hate speech content. We

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<sup>67</sup> Schreiter, A. (2021). Online-Hass gegen Frauen und LGBTQI+Personen: Regulation von unten? [Online hate against women and LGBTQI+people: Regulation from below?]. *Evangelische Akademie Thüringen*. Retrieved from: <http://www.ev-akademie-thueringen.de/blogartikel/online-hass-gegen-frauen-und-lgbtqi-personen-regulation-von-unten/>



evaluate the current legal, public policy, and civil society reactions to hate speech content in Hungary and point to the failures and shortcomings of handling such cases in practice. Then, we reflect on the chances of any intervention, considering that the main producer of anti-gender speech in the country is the government itself. Finally, we examine to what extent can a scientific study contribute to the refrainment of the regulatory framework.

**Participants:** social scientists with expertise on gender and/or political communication, legal professionals with expertise on online media, social media and social media regulation, representatives of civil society organizations focusing on women, LGBTI and media, EU officials, representatives of private sector companies focusing on research with social media data.

### **Hatred on social media – regulatory and policy frameworks in Hungary and the European Union**

**Date:** November 5, 2021, 10:00 – 16:30.

**Venue:** CEU Budapest, Nádor utca 15. Room: N15/101 and online on Zoom.

**Format:** Closed workshop with invited experts.

#### **Programme:**

9:50-10:00. Arrival.

10:00-10:10. Introduction of participants and the agenda.

10:10-10:30. The GENHA project and the main results of the empirical study on social media.

10:30-11:40. Legal and policy practices in handling (potential) hate speech content in political communication on social media in Hungary.

11:40-11:50. Coffee break.

11:50-13:00. The possibilities of regulating social media platforms and the limits of self-regulation. The chances of state intervention.

13:00-14:00. Launch break.

14:00-15:10. The mechanisms of victim protection. Social and civic awareness raising and media consciousness.

15:10-15:20. Coffee break

15:20-16:30. The role of scientific inquiries and civil society in shaping the response to hate speech content on social media.

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*ITALY:*

#### **Webinar on MS Teams**

**Public and legal policies to fight against gender stereotypical hate speech:**

**What are the proposals?**

**FRIDAY 8<sup>th</sup> OCTOBER 2021**

**Moderated by:** Raffaella Sette, full professor of “Sociology of law, deviance and social change”, scientific director of C.I.R.Vi.S.- SDE, coordinator of the master’s degree programme in “Criminological sciences for investigation and security”, University of Bologna

<p><b>Between 10:00 and 11:00 a.m.</b></p>	<p><i>Political parties and (extreme) right-wing actors in Italy: (hate?) speech on Facebook and Twitter profiles about women, abortion, the concept of a 'traditional' family, homophobia</i></p> <ul style="list-style-type: none"> <li>• <u>Raffaella Sette</u></li> <li>• <u>Sandra Sicurella</u>, Associate Professor of “Sociology of law, deviance and social change”, Department of Sociology and Business Law, University of Bologna</li> </ul>
<p><b>Between 11:00 and 11:15 a.m.</b></p>	<p>Break</p>
<p><b>Between 11:15 a.m. and 12:45 p.m.</b></p>	<p><i>Workshop organised by the National Network Against Hate Speech: “Recognising hate crimes, supporting Victims”</i></p> <ul style="list-style-type: none"> <li>• Moderated by: <u>Pierluigi Musarò</u>, Associate professor of “Sociology of Cultural and Communicative Processes”, Department of Sociology and Business Law, University of Bologna, coordinator of the National Network against Hate Speech</li> <li>• <u>Marco Bouchard</u>, President of Dafne Network Italy - network for supporting crime victims: “Hate crimes and victim support services”</li> <li>• <u>Sara De Vido</u>, Associate Professor of “International Law”, University Cà Foscari Venice: “The results of a mapping study for the European Commission”</li> <li>• <u>Camilla Bencini</u>, Cospe Department Italy Europe: “The impact of racist violence on communities and victim support”</li> <li>• <u>Alessandra Rossi</u>, coordinator of Gay Help Line – Gay Center, Rome: “Gay Help Line's experience in supporting hate victims due to sexual orientation, gender identity and gender role”</li> </ul>
<p><b>Between 12:45 and 1:45 p.m.</b></p>	<p>Break</p>
<p><b>Between 1:45 and 3:15 p.m.</b></p>	<p><i>The myth of “gender ideology” and hate speech</i></p> <ul style="list-style-type: none"> <li>• <u>Cirus Rinaldi</u>, associate professor of “Sociology of law, deviance and social change”, Department of Culture and Society, University of Palermo</li> </ul>

	<ul style="list-style-type: none"> <li>• Antonia Caruso, writer, screenwriter, trans/feminist activist, publisher</li> <li>• <u>Simone Alliva</u>, journalist</li> <li>• <u>Pina Picierno</u>, MEPs, European Parliament, Committee on Women's Rights and Gender Equality</li> </ul> <p>- <i>Discussion</i></p>
<b>Between 3:15 and 3:30 p.m.</b>	Break
<b>Between 3:30-5:00 p.m.</b>	<p><i>Public policy, criminal law, prevention or repression: what is the way forward?</i></p> <ul style="list-style-type: none"> <li>• <u>Elvira D'Amato</u>, former Deputy Chief of the State Police, former Director of the National Centre for the fight against online child pornography at the Postal Police Service, Officer of the Order of Merit of the Italian Republic, Councilwoman of the Municipality of Maiori (SA)</li> <li>• <u>Cinzia Brandalise</u>, lawyer, Bologna Bar, specialised in criminal and immigration law. Activist in the field of human rights at the European Court of Human Rights, lawyer for women victim support centers</li> <li>• <u>Silvia Benaglia</u>, Councilwoman for Culture, Relations with Local Associations and Neighbourhood Trade, and contact person for the delegated functions at the Union of Municipalities Savena Idice (BO) of Territorial Promotion and Tourism</li> </ul> <p>- <i>Discussion</i></p>
<b>Between 5 and 5:30 p.m.</b>	<p><i>Conclusions and further directions</i></p> <ul style="list-style-type: none"> <li>• <u>Sandra Sicurella</u></li> <li>• <u>Simone Tuzza</u>, PhD in Criminology, research fellow, Department of Sociology and Business Law, University of Bologna</li> </ul>

## SPAIN

### **WORKSHOP: Presentation of the preliminary results of the European project**

**GENHA "Hates speech, gender, social networks and political parties" and debate on legal and public policies proposals to prevent and respond in front of anti-gender hate speech in social networks.**

21st October 2021

Sala de Graus, Faculty of Law, Autonomous University of Barcelona

### **9:15 Presentation of the seminar**

9:30 - 11:00 Preliminary Results of the project GENHA: anti-gender hate speech by extreme right parties through social networks in Europe and in Spain.

Noelia Igareda (Associate professor in Philosophy of Law, Universitat Autònoma de Barcelona).

Adrián Pascale (Associate lecturer in Philosophy of Law. Universitat Autònoma de Barcelona).

11:00 - 11:30 Coffee-break

### **11:30 Prevention and response to anti-gender hate speech in Spain**

Moderator: Adrián Pascale

Víctor Hidalgo (Diversity Unit, Madrid Police)

Antoni Mansilla (Lawyer and coordinator of legal response of the Observatory against Homophobia of Barcelona)

Sara García Antúnez (Lawyer specialised in cybercrime and president of Stophaters Madrid)

13:00 Lunch

### **15:00 Legal and public policies proposals in front of anti-gender hate speech.**

Moderator: Noelia Igareda.

Paz Lloria García (Associate professor of Criminal Law, University of Valencia)

María Valvidares Suárez (Associate Professor in Constitutional Law, University of Oviedo)

Josep Cañabate (Assistant Professor in History of Law, Autonomous University of Barcelona)

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#### *SWEDEN*

The participants of the workshop, representing the research community and the civil society through NGOs, embodied a broad competence in the scholarly disciplines criminal law, civil law, philosophy of law, sociology of law, gender studies, philosophy and media, journalism and communication on online hate speech, freedom of expression and gender equality. In addition, several participants with practical knowledge and experiences of the problem anti-gender hate speech took part, such as women's organisation, online hate speech activists and organisations and other representatives in

the area of digital rights and internet issues. The participants valued the GENHA research as very important and useful and the findings so far confirmed their professional knowledge and experiences.

The findings from the GENHA research were presented for the participants. In short, they were formulated as:

- Gaps of knowledge and fragmented knowledge concerning online anti-gender hate speech.
- The concepts to capture the phenomena of anti-gender hate speech (and other hate crimes) are varying and transformative. The legal concepts and the concepts used in policies are not the same and when translated to other languages, the terms are not always commensurable.
- The Swedish legislation regarding hate speech and hate crime (NB: not legal terms) do not address sex/gender.
- The perception of freedom of speech, as an obstacle to deal with anti-gender hate speech, is simplified.
- Law and policies hardly recognize the serious effects of seemingly not so severe abuses and actions.
- Policies, legislation and self-regulation have various territorial and jurisdictional areas of application. In addition, the responsible actors are diverse, several legislative bodies and systems as well as private actors of varying kind.
- There is a connection between hate directed towards individuals, groups and ideas (in this specific context i.e. gender equality as a legal and political principle and value), however this connection is not recognized in law and policies on hate speech.

The objective for the discussions were to discuss various measures to deal with the problem of online anti-gender hate speech directed towards individuals and groups but also how it relates to more general ideas that questions gender equality as a legal and political goal. The latter can be seen as an attack on the principle of equal value and rights of all and the right not to be discriminated against, fundamental for any democratic society. Hate speech may impact on the democratic debate, not only the victims for such speech but also others may be silenced and avoid to take part in the public debate. The perception of censorship is much more complicated than the relation between the state and the citizens, here it is relevant to talk about non-state-censorship and self-censorship. Thus, anti-gender hate speech can be seen as anti-democratic.

The workshop was digital and held at two occasions, October 18<sup>th</sup> and 20<sup>nd</sup>, 2021.

#### PROGRAMME:

9.15 Welcome and short presentation of the project.

9.30 Presentation of 'Report on the state of the art on anti-gender hate speech'

Discussion based on the following questions:

- Is something missing in our report?

- Based on the report's results: what would be needed in the form of policies, legislation and research?

10.30 Pause

10.45 Continued discussion

12.00 LUNCH

13.00 Presentation of Empirical study, 'Report of self-regulation on Twitter and Facebook' and pilot study (Germany and Hungary).

Discussion based on the following questions:

- Existence of hate speech on social media?
- How does hate speech affect different actors?
- Legislation or self-regulation?

14.00 Paus

14.15 Continued discussion and summary

### **Participants Online workshop, Sweden**

*18 October 2021, 9–15*

- Oscar Björkenfeldt, PhD student, Sociology of Law Department, Lund University, [oscar.bjorkenfeldt@soclaw.lu.se](mailto:oscar.bjorkenfeldt@soclaw.lu.se)
- Karl Dahlstrand, senior lecturer, Sociology of Law Department, Lund University, [karl.dahlstrand@soclaw.lu.se](mailto:karl.dahlstrand@soclaw.lu.se)
- Lena Martinsson, professor, Gender studies, University of Gothenburg, [lena.martinsson@gu.se](mailto:lena.martinsson@gu.se)
- Mårten Schultz, professor, civil law, Stockholm University, [marten.schultz@juridicum.su.se](mailto:marten.schultz@juridicum.su.se)
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- Jacob Öberg, senior lecturer, criminal law, Örebro University, [jacob.oberg@oru.se](mailto:jacob.oberg@oru.se)
- Nordic Digital Rights and Equality Foundation, Thordis Elva, [thordiselva@thordiselva.com](mailto:thordiselva@thordiselva.com), [thordiselva@gmail.com](mailto:thordiselva@gmail.com)
- Näthatsgranskaren [Online hate reviewer], [kontakt@nathatsgranskaren.se](mailto:kontakt@nathatsgranskaren.se), Tomas Åberg
- Swedish Women's Lobby, representative, [info@sverigeskvinnolobby.se](mailto:info@sverigeskvinnolobby.se)

*20 October 2021, 9–15*

- Monica Burman, professor, criminal law, Umeå University, [monica.burman@umu.se](mailto:monica.burman@umu.se)
- Maria Edström, senior lecturer, Journalism, Media and Communication, University of Gothenburg, [maria.edstrom@gu.se](mailto:maria.edstrom@gu.se)
- Marta Kolankiewicz, senior lecturer, Department of Gender studies, University of Lund, [marta.kolankiewicz@genus.lu.se](mailto:marta.kolankiewicz@genus.lu.se)
- Maja Sager, assistant lecturer, Department of Gender studies, University of Lund, [maja.sager@genus.lu.se](mailto:maja.sager@genus.lu.se)

- David Brax, philosopher with an interest in hate crime, post doc at the Centre for European Research at the University of Gothenburg, [david.brax@genus.gu.se](mailto:david.brax@genus.gu.se)
- Jannike Tillå och Björn Appelgren. The Swedish Internet Foundation, [info@internetstiftelsen.se](mailto:info@internetstiftelsen.se)