

# HATE CRIMES AND HATE SPEECH:

## OVERVIEW OF THE SITUATION IN LITHUANIA

### *SUMMARY*



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In 2009, Lithuania transmitted the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA) into its national law, enshrining penalties for hate crimes and hate speech in the Criminal Code of the Republic of Lithuania (CC). For example, Article 129 CC (Murder), Article 135 (Severe Health Impairment), Article 138 (Non-Severe Health Impairment) have a qualifying characteristic – the intention to express hatred to a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views. Also, Article 170 CC prohibits incitement of hate (i.e. hate speech), and Article 60 CC establishes the motive of hatred as an aggravating circumstance during the perpetration of other criminal acts.

However, despite comprehensive legal regulation, hate speech and hate crimes are rarely reported and registered, even though research shows that such incidents remain a significant problem among vulnerable communities<sup>1</sup>. According to official hate crime statistics, 158 criminal acts were registered under Article 170 CC in 2010, in 2012 – 266, while only 28 criminal acts were registered in 2019. Additionally, the official statistics of how many reports of hate incitement cases or hate crimes were submitted are not publicly available.

**THE GOAL OF THE RESEARCH** is to identify the main obstacles limiting law enforcement officers from responding efficiently to hate crimes and hate speech, as well as to identify the main reasons why victims of hate crimes, i.e. members of vulnerable communities, do not report the aforementioned crimes, and to evaluate the state of public awareness of the issues at stake.

## HATE CRIMES AND HATE SPEECH: CONCEPT IN LITHUANIA

The concepts of hate crime and hate speech in Lithuanian law have been developing for a long time. They are based on recommendations of international organisations and the main documents regulating the methods of combating hate crimes. In 2000, the Criminal Code of the Republic of Lithuania was complemented by an article criminalizing incitement of hate on grounds of sex, race, nationality, language, descent, social status, religion, convictions, or views. This regulatory expansion was necessary for Lithuania to join the European Union in order to ensure the prohibition of discrimination and criminal liability for hate crimes. The recommendations and international documents discussed below led the concepts of hate crime and hate speech to change and expand, covering the grounds of sexual orientation, age, disability, as well as providing detail how hate incitement can be expressed.

The case-law of the European Court of Human Rights and the recommendations of international organisations played a crucial role in the identification of hate crimes and hate speech in Lithuania, as they specify the gaps in the implementation of the existing legislation and the desired functioning guidelines. Today, the concept of hate crimes covers several articles of the criminal code, whose content includes the motive of hatred.

Accordingly, hate crimes in the Criminal Code of the Republic of Lithuania (hereinafter referred to as CC) cover ridicule, expression of contempt, incitement of discrimination, violence, physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views (Article 170 CC). The characteristics of the definition of hate crimes are revealed by other articles of criminal law, regulating the prohibition of discrimination (Article 169 CC), creation and activities of the groups and organisations aiming at discriminating a group of persons or inciting against it (Article 1701 CC), public condonation of international crimes, crimes committed by the USSR or Nazi Germany against the Republic of Lithuania or inhabitants thereof, denial or gross trivialization of the crimes (Article 1702 CC), disturbance of religious ceremonies or religious celebrations (Article 171 CC), genocide (Article 99 CC), desecration of a grave or another place of public respect (Article 312 CC).

In early 2020, the Prosecutor General of Lithuania approved the pre-trial investigation methodological recommendations on the characteristics of conducting, organising, and leading investigations of hate crimes and hate speech<sup>2</sup> (hereinafter – the recommendations of the Prosecutor General) – they are considered to be the only legal act of the Republic of Lithuania which provides a definition of hate crime. It should be noted that the 2020 methodological recommendations amended the methodological recommendations “On the pre-trial investigation organisation, leading and conduct of criminal acts, committed on the grounds of racial, nationalistic, xenophobic, homophobic or other discriminatory motives”<sup>3</sup>, which had been approved 11 years ago and were outdated. The new recommendations of

2 Pre-Trial Investigation Methodological Recommendations on the Characteristics of Conducting, Organising, and Leading Investigations of Hate Crimes and Hate Speech Approved by Order of the Prosecutor General of the Republic of Lithuania No. 17.9-4265 on March 30, 2020 [“Lietuvos Respublikos generalinio prokuroro 2020 m. kovo 30 d. įsakymu patvirtintos ikiteisminio tyrimo dėl neapykantos nusikaltimų ir neapykantą kurstančios kalbos atlikimo, organizavimo ir vadovavimo jam ypatumų metodinės rekomendacijos Nr. 17.9-4265”]. Retrieved from: <[https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos\\_nusikaltimu\\_tyrimo\\_metodines\\_rekomendacijos.pdf](https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos_nusikaltimu_tyrimo_metodines_rekomendacijos.pdf)>.

3 “Methodological Recommendations on the Pre-Trial Investigation Organisation, Leading and Conduct of Criminal Acts, Committed on the Grounds of Racial, Nationalistic, Xenophobic, Homophobic or Other Discriminatory Motives Approved by Order of the Prosecutor General No. 12-14-40 on December 23, 2009 [“Generalinio prokuroro 2009 m. gruodžio 23 d. įsakymu Nr. 12.14-40 įsakymu patvirtintos metodinės rekomendacijos dėl nusikalstamų veikų, padarytų rasiniais, nacionalistiniais, ksenofobiniais, homofobiniais ar kitais diskriminacinio pobūdžio motyvais, ikiteisminio tyrimo organizavimo, vadovavimo jam ir atlikimo ypatumų”]. Retrieved from: <<https://www.prokuraturos.lt/data/public/uploads/2015/12/met-rek-del-neapykantos-2009-12-23.pdf>>.

the Prosecutor General defined hate crimes and explained the concepts in much greater depth, supplementing the regulations of the Criminal Code of the Republic of Lithuania.

Hate crimes, according to the new recommendations of the Prosecutor General, are considered to be all criminal acts, whose motives are hatred, bias and/or prejudice against a group of persons, distinguished by the characteristics of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views. It should be stressed that hate crimes can be directed not only at individuals, but also at their property or other objects important to a given community. As stated in the recommendations, hate crimes consist of two main elements: (i) an unlawful act, and (ii) hatred, bias and/or prejudice. It should be noted that the previous methodological recommendations distinguished preconceived, superstitious or stereotypical notions as motive, and the methodological recommendations approved in 2020 include bias in the motives. Moreover, the new recommendations clearly separate the definitions of a hate crime and hate speech. According to the mentioned legal act, it is recommended to separate hate crimes from hate speech on the basis of three main criteria: the nature, the danger and the proof of the offence.

Therefore, hate crimes in the legal framework of Lithuania are distinguished as self-standing criminal acts, their motive is identified as an aggravating circumstance or a qualifying characteristic. Such regulation in principle fulfils the requirements established by the European Union and international organisations. However, the most frequent classification is the coincidence of Article 170 CC and Article 284 CC, and in certain cases – only a violation of public order (Article 284 CC). Moreover, international organisations emphasize that there can be more motives than just hatred – bias, desire to take advantage of the disability of a person, preconceived notions and others. Additionally, national legal acts do not include all grounds of discrimination, such as skin colour, citizenship, and gender identity.

## INTERNATIONAL ORGANISATIONS' RECOMMENDATIONS TO LITHUANIA

The Republic of Lithuania has entered into clear and broad commitments and standards in the area of human rights by ratifying international conventions. Accordingly, international organisations and institutions, such as the United Nations Committee on the Elimination of Racial Discrimination (CERD), United Nations Human Rights Committee, the Committee of Ministers of the Council of Europe, the European Commission against Racism and Intolerance (ECRI), the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE), etc., periodically assess the implementation of these international commitments in Lithuania and submit recommendations.

The main conclusions of the recommendations of international organisations cover comments for Lithuania regarding the need to a) strengthen the fight against stereotypes and discrimination against socially vulnerable groups; b) ensure the collection, systemization, and publication of data and statistics on hate crimes and hate speech; c) work towards more efficient investigation of hate crimes and hate speech, and effective reaction to the reports of this type, one of the specified means being training of law enforcement officers.

The correct recording and compilation of hate speech and hate crimes remains a topical issue in the context of the Republic of Lithuania. Accurate identification of hate crimes, taking into account the specific aspects of these crimes against certain societal groups, as well as the provision of systemic support to victims in a way that reflects their needs are the main issues with hate crime in Lithuania which should be addressed by creating and implementing appropriate mechanisms. A positive trend, which

is named in all the reports on the implementation of international commitments in Lithuania, is visible – law enforcement agencies actively provide training<sup>4</sup> and pursue projects<sup>5</sup> to promote efficient response to hate crimes and hate speech. In the Prosecutor General's Office, meetings of prosecutors and representatives of various non-governmental organisations took place in 2019, where they exchanged their experiences and suggestions of cooperation and more effective hate crime investigation<sup>6</sup>. The new pre-trial investigation methodological recommendations on the characteristics of conducting, organising, and leading investigations of hate crimes and hate speech approved by the Prosecutor General entered into force on April 1, 2020<sup>7</sup>.

The aforementioned international organisations and institutions, which assessed the situation in Lithuania, note that there is room for improvement regarding the implementation of legal acts and the collection and compilation of statistics, but the legal framework of the Republic of Lithuania is considered to be comprehensive and appropriate, compliant with the assumed international commitments.

## HATE SPEECH: THE ANALYSIS OF LEGISLATION, PRE-TRIAL INVESTIGATIONS AND CASE LAW

Article 25 of the Constitution of the Republic of Lithuania declares that everyone shall have the right to have their own convictions and freely express them, no one must be hindered from seeking, receiving, or imparting information and ideas. Moreover, the freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order. It is important to note that the restriction on freedom of expression is enshrined in Article 25 as well. According to it, the freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, incitement of violence or to discrimination, as well as defamation and disinformation<sup>8</sup>.

There is no separate article of the Criminal Code dedicated to hate speech in Lithuanian legislation. These acts are covered by the acts described in Article 170 CC – incitement of hatred. Article 170 (2) CC establishes the criminal liability for those who publicly ridicule, express contempt for, urge hatred of or incite discrimination against a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views. The offender who publicly ridicules, expresses contempt for, urges hatred of or publically incites

4 My Government. The Ministry of the Interior of the Republic of Lithuania informational page. Further training on how to more effectively combat hate crimes [“Tęsiami mokymai, kaip veiksmingiau kovoti su neapykantos nusikaltimais”], 2019 [accessed on August 9, 2020]. Retrieved from: <<https://vrm.lrv.lt/lt/naujienos/tesiami-mokymai-kaip-veiksmingiau-kovoti-su-neapykantos-nusikaltimais>>.

5 The European Foundation of Human Rights informational page. At the Mid-Way Point of Project #WeAll – a Meeting with the Partners of the Project [“Projektui #MesVisi ipusejus – susitikimas su projekto partneriais”], 2020 [accessed on August 9, 2020]. Retrieved from: <<http://lt.ehr.eu/2020/06/05/projektui-mesvisi-ipusejus-susitikimas-su-projekto-partneriais/>>.

6 Public Prosecutor's Office of the Republic of Lithuania informational page. Hate Crime Investigation Discussed in the Public Prosecutor's Office. [“Prokuratūroje diskutuota apie neapykantos nusikaltimų tyrimą”], 2019 [accessed on August 9, 2020]. Retrieved from: <<https://www.prokuraturos.lt/lt/naujienos/prokuraturos-aktualijos/prokuraturoje-diskutuota-apie-neapykantos-nusikaltimu-tyrima/6526>>.

7 Prosecutor General's Office of the Republic of Lithuania. Pre-Trial Investigation Methodological Recommendations on the Characteristics of Conducting, Organising, and Leading Investigations of Hate Crimes and Hate Speech [“Ikitiesminio tyrimo dėl neapykantos nusikaltimų ir neapykanta kurstančios kalbos atlikimo, organizavimo ir vadovavimo jam ypatumų metodinės rekomendacijos”], 2020 [accessed on August 9, 2020]. Retrieved from: <[https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos\\_nusikaltimu\\_tyrimo\\_metodines\\_rekomendacijos.pdf](https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos_nusikaltimu_tyrimo_metodines_rekomendacijos.pdf)>.

8 The Constitution of the Republic of Lithuania. Valstybės žinios. 1992, No. 33-1014, Article 25.

discrimination by public statements, which provide specifically, arbitrarily, and not objectively chosen and stated information, opinions, facts, assessments, conclusions, etc., which express negative, scornful, demeaning views of the speaker towards specific groups of persons or the persons belonging thereto those groups.

Although the Criminal Code does not provide the definitions of ridicule, contempt, promotion of hatred, and incitement to discriminate, the Supreme Court of Lithuania has done so as case-law. These acts are defined by the court as follows<sup>9</sup>:

1. Ridicule – the violation of honour and dignity, depiction of a person or a group of persons as an object of ridicule.
2. Contempt – a very negative, disrespectful comment about a person or a group of persons, rejoicing over their misfortune or offences committed against them, etc.
3. Promotion of hatred – the imposition of fabricated information about a person or a group of persons which negatively describe them in the eyes of the public, create hostility or provoke intolerance towards a person or a group of persons.
4. Incitement to discriminate – a direct invitation or the indirect incentive to restrict the rights and freedoms of a person or a group of persons compared with other persons or their groups.

It should be noted that the criminal acts enshrined in Article 170 (2) CC are considered to be committed from the moment certain statements were made, i.e. it is not relevant whether any consequences arise because of such statements. In this context, reference shall be made to the case-law of the ECtHR, which has established that a direct instigation to commit certain violent or other criminal acts is not necessary to qualify the offence as incitement of hatred. Attacks committed by insulting, holding up to ridicule or slandering specific groups of the population is sufficient for the authorities to prioritise combating hate speech over the freedom of expression exercised in an irresponsible manner, which violates the dignity and safety of specific groups of the population<sup>10</sup>. The ECtHR has repeatedly held that discrimination based on sexual orientation is as serious (severe, dangerous) as discrimination based on race, origin or skin colour.<sup>11</sup> However, as revealed by the review of Lithuanian case-law, in such cases the courts require to determine a real danger to the values protected by the law.

The 2020 methodological recommendations of the Prosecutor General were probably the first to establish the definition and characteristics of hate speech so thoroughly. According to this legal act, hate speech is considered to be *the public dissemination (by word of mouth, in writing or other form) of information (ideas, opinions, known incorrect facts) which is used to ridicule, express contempt for, urge hatred for, incite discrimination, incite violence or a physical violent treatment of a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views*. It should be noted that in the case of hate speech, the prejudice, hatred and/or prejudiced attitudes are a crucial point to impose criminal liability, as in the absence of this motive the speech itself is not a criminal act. According to Article 16 (2) of the methodological recommendations, such acts *are characterised by usually being committed by linguistic means, i.e. in writing or by word of mouth, by making certain statements, using words or various inciting, discriminatory symbols (signs and other objects). Hate speech is not only words. It also includes video recordings, photos, and any other action or content*.

9 Order in criminal proceedings No. 2K-91-976/2018 of the Supreme Court of Lithuania on March 13, 2018.

10 See the ECHR decisions in cases *Feret v. Belgium*, petition No. 15615/07, *Vejdeland and Others v. Sweden*, petition No. 1812/07, *Beizaras and Levickas v. Lithuania*, petition No. 41288/15.

11 European Court of Human Rights. Judgment in the case *Vejdeland and Others v. Sweden*, May 9, 2012, petition No. 1812/07.

## CASE-LAW

The Lithuanian case-law relating to the incitement of hatred is still forming; therefore, there is a lack of uniform and detailed case-law. This leads to different results while classifying certain cases of hate speech. **To summarize the researched case-law, it is possible to distinguish these criteria used by courts to assess potential hate speech incidents:**

**1. Ultima ratio principle.** Criminal liability in a democratic society should be seen as the means of last resort, the final argument (*ultima ratio*), used in the preservation of protected legal assets and values in cases where less coercive measures cannot achieve the same goals. Currently, the position is that one laconic, unethical comment does not pose a real danger to the values protected by law that would necessitate criminal liability. However, it should be stressed that in such cases, persons who incite hatred are not held accountable in any other way.

**2. The determination of a real danger.** When recognizing or not recognizing certain public comments as incitement against any nation, racial, ethnic, religious or other group of persons, it is necessary to establish the reality of the emerging (potentially emerging) danger to the values protected by criminal law. It is not enough for criminal liability under Article 170 (2) and especially Article 170 (3) CC to result from an offensive, humiliating public statement, if it has no specific direct or indirect incitement of hatred, discrimination, violence or a physical violent treatment to a certain group of persons, which could pose a real danger to the values protected by law – dignity and equality. The absence of consequences as a necessary constituent element of the criminal act does not mean that the offence described in a formal composition (*formal corpus delicti*) does not have perilous consequences and that there is no need to investigate it at all. In each individual case, it is necessary to assess whether the actions of a person have reached such severity that allows for criminal liability to be imposed upon them. Generally, the case-law makes clear that a single comment might be unethical, amoral and not in accordance with the implementation of ethical freedom of expression, but does not reach the characteristics of the criminal acts established in the CC based on its severity. Although the severity criterion is not flawed in itself, but in the established case-law a real danger for protected values is required. Given that the formal criminal acts do not require consequences, and the courts have not determined the criteria of the determination of a real danger, it appears that the criterion, assessing the compliance of hate speech to Article 170 CC, is evaluated as problematic.

**3. The determination of systematic actions.** While classifying acts according to Article 170 (2) CC, it is crucial to determine whether the offensive, humiliating, discriminatory public statements of the offender were published not by chance on a singular occasion, but systemic in nature, i.e. the acts were repeated. Moreover, the comments of such content should be directed towards some undetermined group of readers or listeners in order to directly influence them. However, it should be noted that a wide range of persons whom the comment is directed at, is not enough for the act to be considered dangerous. An offensive comment alone is not enough for criminal responsibility to arise as well, if it has no specific direct or indirect incitement of hatred.

**4. The objective and subjective characteristics of criminal acts.** When addressing the issue of criminal liability in cases of hate crimes, SCL draws attention to the need to determine the objective and subjective characteristics. Therefore, when assessing whether a specific offence has the

characteristics of a hate crime and whether the committed offence meets the elements of the act prohibited by law, not individual characteristics of a criminal act, but a set of its objective characteristics should be assessed<sup>12</sup>. While assessing the characteristics in the case-law, Lithuanian courts distinguish these objective characteristics: the nature and content of the comments, the social tension, the severity of the acts, the situation in which and how the specific actions were taken, the surroundings in which the acts were committed, and the nature of the public reaction towards the committed acts; subjective characteristics: intent and its focus, the purposes and motives of the comments directed against a specific social group or person<sup>13</sup>.

## PRE-TRIAL INVESTIGATIONS

The application of the provisions of the Criminal Code on combating hate speech is currently problematic due to the lack of uniform case-law. Despite the large amount of online hate speech, pre-trial investigations are not initiated because they do not meet several criteria established by case-law – *danger and systematic nature*. However, it should be noted that the criteria developed in the Lithuanian case-law were criticised by the ECtHR in the judgment *Beizaras and Levickas v. Lithuania*, claiming that the case-law is not consistent in this regard, as sometimes the number of comments has a stronger influence on the assessment of the court, while in other cases only a single hateful comment is enough. Moreover, the ECtHR noted that while the number of comments can be a criterion when determining the sentence, one single comment of hate incitement is enough to prosecute. Consequently, it is not unreasonable to conclude that even one hate inciting comment is enough for authorities to take action.

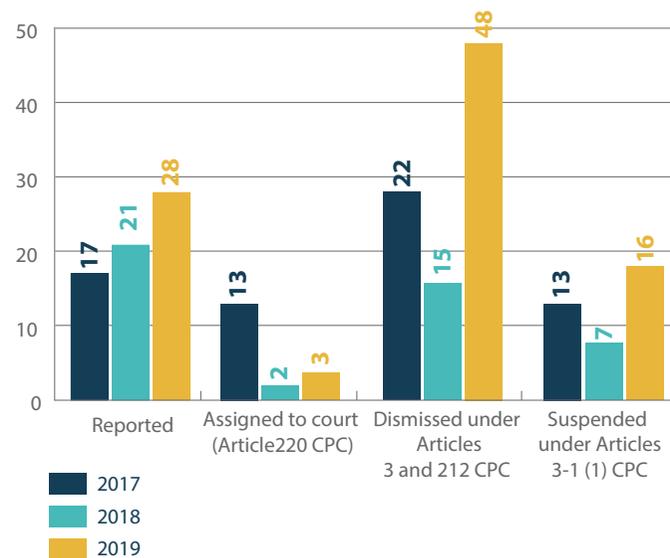
According to the official data of the Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania, 3 cases investigated under Article 170 CC reached the court in 2019, while the number of the reported cases was almost tenfold – 28. It is notable that in 2018 and 2017, these figures reached, respectively, 2 and 21, and 13 and 17 (see Figure 1). This implies that, compared to 2017, the number of cases assigned to court decreased slightly more than 4 times, despite the small increase of the number of reported criminal acts.

The cases of hate speech or hate incitement online are not presented separately in the official statistics; therefore, it is difficult to determine the actual prevalence of the phenomenon. It is possible to understand the situation better when considering the numbers provided by non-governmental organisations (the European Foundation of Human Rights, Lithuanian Gay League) and the reports of the Office of the Inspector of Journalistic Ethics.

<sup>12</sup> Analysis “The analysis of the cases of the application of criminal liability for hate crimes and hate speech” [„Baudžiamosios atsakomybės už neapykantos nusikaltimus ir neapykantą kurstančias kalbas taikymo atvejų analizė“], carried out in 2018 during the project “Response to hate crimes and hate speech” [„Atsakas į neapykantos nusikaltimus ir neapykantą kurstančias kalbas“] by the Ministry of the Interior of the Republic of Lithuania [accessed on August 9, 2020]. Retrieved from: <<https://vrm.lrv.lt/lt/veiklos-sritys/viesasis-saugumas-1/atsakas-i-neapykantos-nusikaltimus-ir-neapykanta-kurstancias-kalbas>>.

<sup>13</sup> NAVICKIENĖ, Žaneta and VELIČKA, Vilius. Analysis report on the application of criminal liability for hate crimes and hate speech (commissioned by the Ministry of the Interior) [„Baudžiamosios atsakomybės už neapykantos nusikaltimus ir neapykantą kurstančias kalbas taikymo atvejų analizės ataskaita (parengta Vidaus reikalų ministerijos užsakymu)“], 2019. [accessed on August 9, 2020]. Retrieved from: <[https://vrm.lrv.lt/uploads/vrm/documents/files/LT\\_versija/Viesasis\\_saugumas/Neapykantos\\_nusikaltimu\\_tyrimas\\_Ataskaita\\_2019.pdf](https://vrm.lrv.lt/uploads/vrm/documents/files/LT_versija/Viesasis_saugumas/Neapykantos_nusikaltimu_tyrimas_Ataskaita_2019.pdf)>.

Figure 1. The results of the analysis of criminal acts under Article 170 of the Criminal Code of the Republic of Lithuania in 2017-2019.



According to the data of the European Foundation of Human Rights, most hate speech comments found online do not lead to criminal liability due to the lack of systemic nature. According to the established case-law, a single offensive comment does not pose the danger level which is established as necessary to prosecute. However, such interpretation of the court was criticised by the European Court of Human Rights, noting that based on the provisions of the Criminal Code, the number of comments is not and cannot be the only criterion while assessing whether hateful comments pose a real danger to the values protected by law.

While administrative liability for incitement to hatred online is not currently applied, almost every other Lithuanian citizen would support it. Interviews conducted during the research show that the administrative process lacks certain technical measures which would in some cases make it impossible to identify the person writing hateful comments. However, in obvious cases, when the identity of the person is obvious (for example, on social media), additional technical measures would not be necessary, and it appears that administrative liability would be an effective and fast way to combat incitement of hatred online.

## HATE CRIMES: THE ANALYSIS OF LEGISLATION, PRE-TRIAL INVESTIGATIONS AND CASE-LAW

The analysis of the legal regulation of hate crimes in Lithuania has comprehensively revealed the possibilities of the classification of the hate motive. The Criminal Code of Lithuania identifies bias and the motive of hatred as a criminal act in itself, as an aggravating circumstance, and as a classifying characteristic. In this case, it must be held that the object, which is infringed by committing criminal acts, is the decisive criterion which allows identifying which classification should be applied.

Hate crimes are regulated in the Criminal Code of Lithuania. Contrary to hate speech, which is usually classified exclusively as Article 170 CC, the regulation of hate crimes covers several individual criminal acts, which may manifest as:

- a. Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons (Article 170 CC),
- b. Discrimination on Grounds of Nationality, Race, Sex, Descent, Religion or Belonging to Other Groups (Article 169 CC),
- c. Creation and Activities of the Groups and Organisations Aiming at Discriminating a Group of Persons or Inciting against It (Article 170<sup>1</sup> CC),
- d. Public Condonation of International Crimes, Crimes Committed by the USSR or Nazi Germany against the Republic of Lithuania or Inhabitants Thereof, Denial or Gross Trivialisation of the Crimes (Article 170<sup>2</sup> CC),
- e. Disturbance of Religious Ceremonies or Religious Celebrations (Article 171 CC),
- f. Genocide (Article 99 CC),
- g. Desecration of a Grave or Another Place of Public Respect (Article 312 CC).

It is not uncommon for these criminal acts to be classified as a coincidence with other crimes, e.g. Article 170 CC is often incriminated along with Article 284 CC, which imposes criminal liability for the violation of public order.

The motive of hatred and prejudice do not always correspond to the elements of a self-standing criminal act, thus individual cases apply:

- a. Aggravating Circumstances (Article 60 (1)(12) CC of the Republic of Lithuania): *“the act has been committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views”*;
- b. Qualifying characteristic of criminal acts (Articles 129 (2)(13); 135 (2)(13); 138 (2)(13)): *“in order to express hatred towards a group of persons or a person belonging thereto on grounds of age, sex, sexual orientation, disability, race, nationality, language, descent, social status, religion, convictions or views”*.

The 2020 methodological recommendations of the Prosecutor General, contrary to the Criminal Procedure Code, confirm that hate crimes have their own specific characteristics. The recommendations state that “in the cases of criminal acts when they obviously are or may be connected to racial, nationalistic, xenophobic, homophobic, religious or other discriminatory motivation due to the group affiliations of a person (victim) which are specified in the criminal law and these recommendations, **the initiation of a pre-trial investigation cannot be formalised** in pre-trial investigation bodies and the public prosecutor’s office by combining the making of the procedural decision only on the basis established in Article 166 (1)(1) of the Criminal Procedure Code and/or by requiring the information about the potentially committed criminal act not in the regular way (in writing) (but, for example, only orally, by phone or other electronic means of communication) from the person who submitted a written request (complaint, statement, including the recording of verbal information in a protocol-statement), if the person is obviously unwilling or refuses to do so due to the wish to not reveal their identity or other motives<sup>14</sup>. It follows from these recommendations that victims from socially vulnerable groups may avoid submitting reports on experienced hate crimes ; to avoid clearly naming their affiliation to a certain group, for example, revealing their sexual orientation. Thus, a proactive role of law enforcement officials during the registration and investigation of these crimes is crucial.

## LITHUANIAN CASE-LAW IN HATE CRIME CASES

The case-law of the Republic of Lithuania relating to hate crime is not abundant. The latency of these crimes, the small number of cases of this nature, as well as the complicated classification do not allow for a detailed analysis of the interpretation and application of the legal regulation of hate crimes in the Republic of Lithuania. However, examination of existing case-law revealed certain elements of the assessment of hate crime, as well as tendencies of classification of such offences .

It is noted that in case-law, the motive of hatred is followed by other criminal acts, which are often classified as violations of public order. In Lithuanian case-law, the cases where a hate crime is committed in a public place are consistently qualified as a coincidence of Articles 284 and 170 CC.

The Supreme Court of Lithuania has established clear criteria of hate crime classification in the cases where public order is violated, bodily harm or illness which is not serious is caused or hatred is incited. As noted in case-law, the crime established in Article 170 (3) CC is a minor crime, Article 138 (2)(13) – a crime of medium severity. The sanction of the provided act in Article 138 CC is stricter than the sanction in Article 284 because *if the act has the characteristics of a crime, which is more heavily penalized than the established violation of public order, this act is charged along with a violation of public order by applying the coincidence rules of criminal acts*<sup>15</sup>.

In some instances of the case-law, hate incitement in a non-verbal form is also attributable and assessed under Article 170 CC. For example, in 2013, Klaipėda Regional Court convicted a person under Article 170 (2) CC for intentionally hammering two pig’s ears on the front door of a former synagogue, thereby publicly ridiculing and inciting hatred against Jewish persons.

### The appropriate classification of hate crimes and the discovery of the motive of hatred remains

**a big issue when investigating these criminal acts. In Lithuanian case-law, a standard is being formed that the offender’s bias and incitement of hatred, which threatens the right to equal treatment, is to be classified under Article 170 CC, and in those cases when the crime is committed in a public space—as an ideal coincidence with Article 284 CC. The sparse Lithuanian hate crime case-law does not allow to identify tendencies when the motive of hatred should be assessed as an aggravating circumstance instead of a self-standing act. On the other hand, it should be noted that Article 170 CC is also applicable in such cases when the incitement itself does not happen, i.e. there are no other persons around, except for the offender and the victim. In such a case, in the opinion of the authors, the application of the qualifying and aggravating circumstances should be considered, and not Article 170 CC itself.**

## THE PROBLEMATIC ASPECTS OF HATE CRIMES IN LITHUANIA

The latency of hate crimes, their complicated legal classification and the lack of comprehensive statistics are considered to be the main problematic aspects of tackling hate crime in Lithuania. Although in recent years the trust in law enforcement authorities has increased in Lithuania, some hate crime statistics according to the affiliation to socially vulnerable groups of victims have been published and developments in case-law for applying Article 170 CC have been observed, it is obvious that these changes are only the beginning stages of implementing change and have not yet achieved the final objectives.

The lack of hate crime statistics is named as one of the main observations for Lithuania in almost all recommendations of international organisations. The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania publishes crime and pre-trial investigation statistics, but the data on criminal acts is classified under separate articles of the Criminal Code of the Republic of Lithuania; therefore, it does not cover those hate crimes which were recognized as such while applying the clause of a qualifying characteristic or an aggravating circumstance until 2018. Since 2018, the Information Technology and Communications Department also publishes statistics of criminal acts under Articles 169, 170, 170(1), 170 (3), as well as the qualifying characteristics of the act: Articles 129 (2)(13), 135 (2)(13), 138 (2)(13). The mentioned additions are assessed positively, but a significant part of hate crimes is still impossible to identify, as it is not reflected in the official statistics.

The regulation of hate crimes, according to the performed theoretical analysis, as well as the case-law and the recommendations of international organisations to Lithuania are not considered to be problematic aspects: the Lithuanian legislation covers criminal liability for hate crimes which fits the European standards, as well as the international commitments which Lithuania has entered as parts of various conventions. However, the latency of hate crimes, their complicated legal classification under the Criminal Code of the Republic of Lithuania and the lack of comprehensive statistics are identified as the main areas for improvement.

<sup>14</sup> Pre-Trial Investigation Methodological Recommendations on the Characteristics of Conducting, Organising, and Leading Investigations of Hate Crimes and Hate Speech Approved by Order of the Prosecutor General of the Republic of Lithuania No. 17.9-4265 on March 30, 2020 [“Lietuvos Respublikos generalinio prokuroro 2020 m. kovo 30 d. įsakymu patvirtintos ikiteisminio tyrimo dėl neapykantos nusikaltimų ir neapykantą kurstančios kalbos atlikimo, organizavimo ir vadovavimo jam ypatumų metodinės rekomendacijos Nr. 17.9-4265”]. Retrieved from: <[https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos\\_nusikaltimu\\_tyrimo\\_metodines\\_rekomendacijos.pdf](https://www.prokuraturos.lt/data/public/uploads/2020/04/neapykantos_nusikaltimu_tyrimo_metodines_rekomendacijos.pdf)>.

<sup>15</sup> Order in criminal proceedings No. 2K-359/2014 of the Supreme Court of Lithuania on October 14, 2014.

## HATE CRIME STATISTICS

It is difficult to assess the real situation of hate crimes in Lithuania. Although vulnerable groups frequently complain about numerous forms of discrimination that they experience, it is not significantly reflected in the official statistics regarding hate crime. The number of reported hate crimes is decreasing every year, and during the interviews with members of vulnerable communities it became apparent that not every person who experienced a certain assault or incident reported it to law enforcement. This is also confirmed by the data of international organisations: the Fundamental Rights Agency (FRA) has noted in more than one report that the victims and witnesses of hate crimes in EU member states do not want to inform law enforcement agencies of these crimes; therefore, these incidents are not prosecuted and are left unseen in the public sphere<sup>16</sup>. LGBT poll results, carried out by FRA in 2012, revealed that 39% out of 821 respondents in Lithuania have experienced psychological or sexual violence or a threat of such violence, but only 16% of them reported such hate crimes to the police.

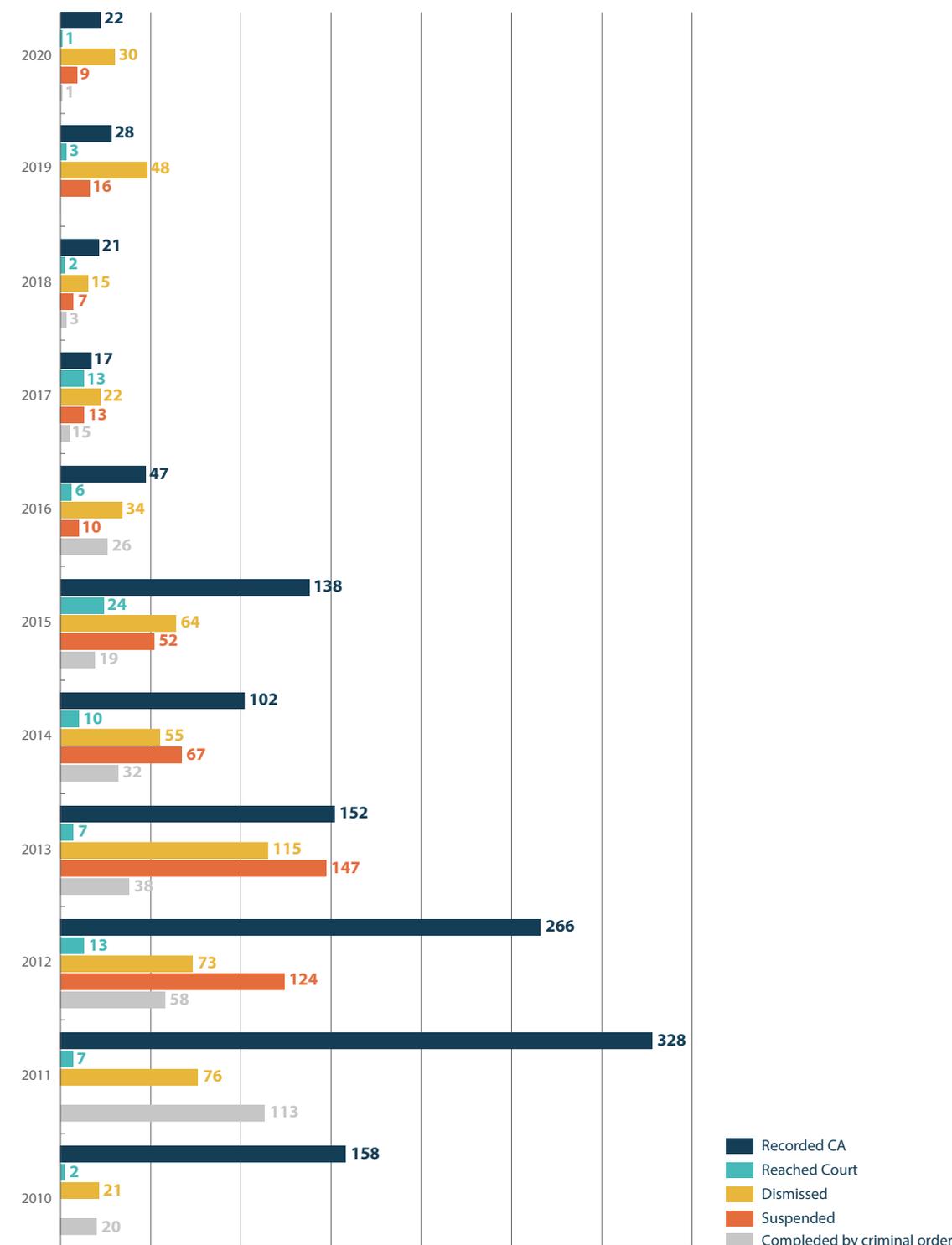
The report analysed Articles 99 (Genocide), 169 (Discrimination on Grounds of Nationality, Race, Sex, Descent, Religion or Belonging to Other Groups), 170 (Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons), 1701 (Creation and Activities of the Groups and Organisations Aiming at Discriminating a Group of Persons or Inciting against It), 1702 (Public Condonation of International Crimes, Crimes Committed by the USSR or Nazi Germany against the Republic of Lithuania or Inhabitants Thereof, Denial or Gross Trivialisation of the Crimes), 171 (Disturbance of Religious Ceremonies or Religious Celebrations), 312 (2) (Desecration of a Grave or Another Place of Public Respect) of the Criminal Code of the Republic of Lithuania. However, most of the recorded acts, as well as the decisions and refusals to initiate pre-trial investigations, were adopted under Article 170 of the Criminal Code of the Republic of Lithuania; thus, it was analysed the most extensively.

During the period of almost ten years, 1279 instances of hate incitement were recorded, but only 88 of them reached the court (see Figure 2). During the mentioned period, 553 investigations were dismissed and 445 were suspended. 315 cases were completed with a criminal order. It should be noted that the reports about committed criminal acts and the refusals to initiate a pre-trial investigation are not reflected in the statistics, as the Information Technology and Communications Department does not publish such data.

The data on social groups, which potentially had crimes committed against them, have been available only starting from 2017. In that year there were 17 criminal acts committed under Article 170 CC, 3 of which sought to express hatred on the grounds of race, 11 – nationality, 2 – sexual orientation and 1 for other characteristics. In 2018, 21 criminal acts were recorded, 2 of which were against a certain race, 5 – nationality, 9 – sexual orientation, and 5 for other characteristics.

In 2019, 28 hate incitement cases were recorded under Article 170 CC in Lithuania. 11 of them were against the LGBTI\* community, 8 – people of a different nationality, and 3 each against race, religion and other characteristics. Also, one criminal act committed to express hatred against a certain religion was recorded. According to data of the Register of Criminal Acts, 3 cases reached court under criminal acts established in Article 170 CC in 2019.

Figure 2. The dynamics of initiated pre-trial investigations of criminal acts, established in Article 170 of the Criminal Code of the Republic of Lithuania (Incitement against Any National, Racial, Ethnic, Religious or Other Group of Persons) and their decisions during 2010-2020 (I half).



16 FRA. European Union Agency for Fundamental Rights. *Making hate crime visible in the European Union: acknowledging victims' rights*, 2012 [accessed on August 9, 2020]. Retrieved from: <[https://fra.europa.eu/sites/default/files/fra-2012\\_hate-crime.pdf](https://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf)>.

A glance at the statistics of the last 10 years, as mentioned before, reveals a noticeable decrease of recorded hate crimes. For example, 328 criminal acts under Article 170 CC were recorded in 2011, while in 2019, only 28 were recorded (see Figure 1). In a study conducted in 2013, the Human Rights Monitoring Institute noticed that the leap of recorded criminal acts in 2011 may be connected to the increased public understanding of criminal liability for hate crimes, increased activity of law enforcement in this area and the published information about convicted persons in the media<sup>17</sup>. Moreover, it should be noted that Lithuania implemented the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA) in its national law in 2009, establishing the penalties for hate crimes and hate speech in the Criminal Code of the Republic of Lithuania.

However, while the number of recorded criminal acts, which has decreased by more than 10 times, may show progress in combating hate crimes, national and international organisations warn that the statistics do not reflect the real situation. According to experts, victims of hate crimes are reluctant to report such crimes, which, therefore, remain in the “grey zone”<sup>18</sup>.

It should also be noted that a problem of classifying criminal acts, such as hate crimes, potentially distorts the real hate crime situation in Lithuania. It is observed that in many cases hate crimes are classified as violations of public order under Article 284 CC, despite the obvious motive of hatred<sup>19</sup>. For example, an attack carried out against a citizen of Ecuador in the summer of 2018 was classified as a hate crime only after a public uproar, including an organised rally to protest against the incapacity of the police. In 2019, the offenders were convicted for violation of public order and incitement of hatred.

It is also extremely difficult to assess the extent of hate speech online. From the data of the Information Technology and Communications Department on the committed cases of hate incitement, it is impossible to distinguish how many of them were committed in public places, and how many – online.

17 The Human Rights Monitoring Institute. *Protection of Hate Crime Victims' Rights: the case of Lithuania*, 2013 [accessed on August 9, 2020]. Retrieved from: <[https://fra.europa.eu/sites/default/files/frc-2013-protection\\_of\\_hate\\_crime\\_en.pdf](https://fra.europa.eu/sites/default/files/frc-2013-protection_of_hate_crime_en.pdf)>.

18 ŠVARAITĖ, Izabelė. *How many hate crimes are really committed in Lithuania? [“Kiek Lietuvoje iš tiesų įvykdoma neapykantos nusikaltimų?”]*, 2017 [accessed on August 9, 2020]. Retrieved from: <<https://manoteises.lt/straipsnis/kiek-lietuvoje-tiesu-ivykdoma-neapykantos-nusikaltimu/>>.

19 NORMANTAITĖ, Kristina. *Response to hate crimes: the overview of the situation in Lithuania [“Atsakas į neapykantos nusikaltimus: situacijos Lietuvoje apžvalga”]*, 2017 [accessed on August 9, 2020]. Retrieved from: <<https://hrmi.lt/wp-content/uploads/2017/12/Atsakas-%C4%AF-neapykantos-nusikaltimus-2017-1.pdf>>.

## RESULTS OF SOCIOLOGICAL RESEARCH

During interviews with representatives of vulnerable communities it was revealed that people who have experienced hate crime feel humiliated and uncomfortable, they often avoid various places of gathering, begin to distrust their surroundings and other people. During the research it was also observed that hate crimes and hate speech affect not only the person against whom such acts are directed, but also the entire community. For this reason, as noticed by the respondents, various communities close off from the public and other communities, thus complicating their integration into the broader society.

The study has revealed that representatives of vulnerable communities who have experienced hate crime are often disappointed with the law enforcement response to the crime they have experienced. In some cases, police officers lacked sensitivity and empathy, were likely to question the experience of the victim and the motive of the crime. Moreover, several respondents complained about not being informed about their rights and the further course of the pre-trial process. For this reason, some representatives of the vulnerable communities were likely to think that there is no point in contacting law enforcement institutions. The common belief among the respondents was that the complaint will not lead to anticipated results. They also expressed a fear for their own safety or that of people close to them, a fear and distrust in the police, as well as a disappointment stemming from previous negative experiences with law enforcement.

During the research it was noticed that police officers are not likely to admit the mistakes committed by law enforcement. Although the respondents noted that every officer has basic knowledge of hate crimes, in practice there are cases when hate crimes are responded to and investigated by officers who lack competences in this area. Law enforcement officers are not specialised to work with hate crimes, moreover, police officers, contrary to prosecutors, do not have the ability to individually choose the topics of their further professional training. For this reason, it seems that in order to achieve the appropriate police officers' response to hate crimes, it is necessary to train as many officers who respond and investigate as possible and to raise the awareness of the public, which inevitably includes law enforcement officers as well.

The prosecutors who participated in the focus discussions expressed that they do not lack legal instruments in the area of hatred, but the classification of the acts, in their opinion, depends only on the police officers who respond to the crimes. On one hand, prosecutors do not gather primary evidence, which would reveal the motive of hatred. On the other hand, it may signal a transfer of liability to the responding and investigating officers, especially given that sometimes the motive of hatred is removed by the initiative of the prosecutor, who leads the pre-trial investigation.

A representative public opinion survey has revealed that 36% of the respondents claim to not have enough knowledge of hate crimes. Accordingly, 4 out of 10 Lithuanian citizens do not recognise situations connected to hate crimes and/or hate speech against persons on the grounds of their sexual orientation or ethnicity. It follows that educational-informational campaigns on hate crimes, their prevention and support to victims are needed in Lithuania.

Almost a third of people participating in the public opinion survey stated that they do not trust law enforcement and they would not contact them after experiencing a hate crime. Moreover, 44% of citizens do not think that hate crimes are a serious problem, which potentially symbolises the lack of policies and the casual attitude of law enforcement institutions towards hate crime in Lithuania.

## EXAMPLES OF GOOD PRACTICES

Projects implemented by Lithuanian state and non-governmental institutions suggest that the focus on hate crimes has recently become stronger. For example, in 2018, the Ministry of the Interior of the Republic of Lithuania, along with the Prosecutor General's Office of the Republic of Lithuania and the Office of the Inspector of Journalistic Ethics launched the project "Reinforcement of the Response to Hate Crimes and Hate Speech in Lithuania", financed by the Rights, Equality and Citizenship programme of the European Union (2014-2020). The project objectives were to ensure the application of effective liability for hate crimes and hate speech, to improve the understanding and knowledge on the impact of hate crimes and hate speech to communities, to solve the problem of the failure to inform about hate crimes and hate speech, and to intensify the fight against hate incitement online. The project "#NoPlace4Hate: Improving Institutional Response to Hate Speech in Lithuania on the prevention of hate crimes and hate speech", partially funded by the Rights, Equality and Citizenship Programme of the European Commission, was also launched by the Office of the Equal Opportunities Ombudsperson and the Office of the Inspector of Journalistic Ethics in 2020. The purpose of this project is to establish clear guidelines on processing complaints of hate speech within the criminal justice system, to build the capacity of competent public authorities in the area of hate speech prevention, to improve support to victims of hate speech, and to increase public awareness on how to recognize and react to hate speech.

A workgroup was launched by the Ministry of the Interior in February 2020, dedicated to increasing the effective response to hate crimes and hate speech in Lithuania. The group was entrusted to discuss the issues of increasing public awareness of hate crimes and hate speech, the promotion of dialogue with vulnerable communities, as well as other aspects of increasing the efficiency of combating hate crimes and hate speech. The group was also entrusted to prepare appropriate proposals; to observe how the international commitments of hate crime and hate speech prevention are met in the Republic of Lithuania, as well as preparing suggestions for their correct implementation; to compile and publish an annual report on the situation of hate crimes and hate speech in Lithuania, etc.

## RECOMMENDATIONS

### For the Seimas of the Republic of Lithuania:

1. Supplement the Criminal Code by including the motive of bias and add skin colour, citizenship, and gender identity as grounds of hate crime and hate speech.

### For the government and the responsible Ministries:

2. Initiate a support network for victims of hate crimes and ensure its appropriate funding.
3. Ensure the appropriate collection of statistics on hate crime, publish the detailed data not only of the conducted investigations, but also the number of reports.
4. Assess the possibility of administrative liability for hate speech and initiate the preparation of necessary legislation.
5. Provide continuous training for law enforcement officials and the judicial system officers of various ranks, as well as ensure the possibility to participate in the training voluntarily.
6. Initiate informational campaigns and changes of the education programme, which would raise public awareness on the concept of hate crimes and encourage victims and witnesses to report hate crimes.
7. Ensure effective online monitoring which would reduce the extent of online hate speech.
8. Ensure the continuous functioning of a work group dedicated to increasing the effectiveness of combating hate crimes and hate speech in Lithuania.

### For the Prosecutor General's Office:

9. Consult non-governmental organisations and representatives of vulnerable communities when updating or otherwise revising methodological recommendations on hate crimes.

### For the Lithuanian Police Department:

10. Initiate the development of an algorithm dedicated to responding to hate crimes.
11. Organise meetings of vulnerable groups of society and law enforcement officers, thus creating a closer connection with law enforcement institutions and increasing communities' trust in them.

