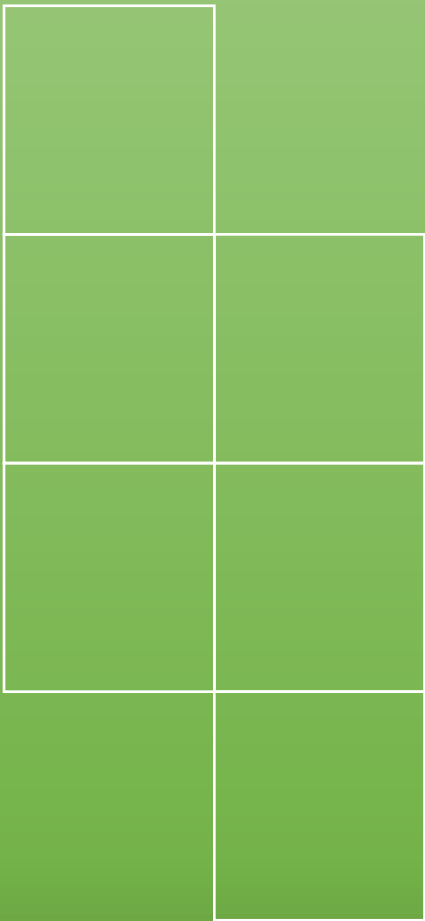


# 2018 REPORT ON HATE INCIDENTS IN THE BASQUE COUNTRY



Police  
Human rights  
Disrupting  
Hurt  
Etzaintza  
Violence  
Identity  
Hate speech  
Hate  
Incident  
Fear  
Hate speech  
Crime data  
Law  
Minorities  
Victimization  
Reporting  
Racism  
Harassment  
Disability  
Bias  
Incident  
Offender  
Hatred  
Violence  
Crime data  
Crime

# **2018 REPORT ON HATE INCIDENTS IN THE BASQUE COUNTRY**

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University of the Basque Country/Euskal Herriko Unibertsitatea  
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**Vitoria-Gasteiz/Leioa,**

**March 2019**



SEGURTASUN SAILA  
DEPARTAMENTO DE SEGURIDAD

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## ABBREVIATIONS

<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>ADA</b>	<i>Americans with Disability Act</i>
<b>ADL</b>	<i>Anti-Defamation League</i>
<b>AEDE</b>	Students for the Unity of Spain
<b>Sec.</b>	Section
<b>AP</b>	Provincial Court
<b>Art.</b>	Article
<b>Arts.</b>	Articles
<b>BAC</b>	Autonomous Community of the Basque Country
<b>CCIF</b>	<i>Collectif contre l'Islamophobie en France</i>
<b>CDA</b>	<i>Crime and Disorder Act 1998 (England and Wales)</i>
<b>CJA</b>	<i>Criminal Justice Act 2003 (England and Wales)</i>
<b>CMAS</b>	Municipal Shelter for the Homeless (Vitoria-Gasteiz)
<b>CNCDH</b>	<i>Commission Nationale Consultative des Droits de l'Homme (France)</i>
<b>CC</b>	1995 Criminal Code
<b>CPS</b>	<i>Crown Prosecution Service (England and Wales)</i>
<b>CSMU</b>	<i>Crime Statistics Management Unit (England and Wales)</i>
<b>CSEW</b>	<i>Crime Survey for England and Wales</i>
<b>CST</b>	<i>Community Security Trust</i>
<b>DILCRAH</b>	<i>Delegation Interministerielle a la Lutte Contre le Racisme, L'antisemitisme et la Haine Anti-Lgbt</i>
<b>Dr./a</b>	Doctor/a
<b>dirs.</b>	Directors
<b>FD</b>	Framework Decision
<b>DIN</b>	Investigation Proceedings
<b>DIP</b>	Preliminary Proceedings
<b>ECRI</b>	<i>European Commission against Racism and Intolerance</i>
<b>E.M.</b>	Explanatory Statements
<b>FELGTB</b>	National Federation of Lesbians, Gays, Transsexuals and Bisexuals
<b>FBI</b>	Federal Bureau of Investigation (United States of America)
<b>GES</b>	<i>Gabinet d'Estudis Socials (Catalonia)</i>
<b>HCSA</b>	<i>Hate Crime Statistics Act (United States of America)</i>
<b>ILGA</b>	International Lesbian, Gay, Bisexual, Trans and Intersex Association
<b>INE</b>	National Statistics Institute (Spain)
<b>INSEE</b>	<i>Institut National de la Statistique et des Études Économiques (France)</i>
<b>LeCrim</b>	Code of Criminal Procedure
<b>LESS</b>	<i>Law Enforcement Support Section (United States of America)</i>
<b>LFP</b>	Professional Football League (Spain)
<b>LGTB(I)</b>	Lesbians, Gays, Trans and Bisexuals and Intersexuals
<b>LO</b>	Organic Law/Act
<b>LSVD</b>	<i>Lesben- und Schwulenverband in Deutschland (Germany)</i>
<b>MEND</b>	<i>Muslim Engagement and Development (United Kingdom)</i>
<b>n</b>	Number of cases
<b>OAPA</b>	<i>Offences Against the Person Act 1861 (England and Wales)</i>
<b>ODIHR</b>	<i>Office for Democratic Institutions and Human Rights</i>
<b>IOM</b>	International Organization for Migration
<b>WHO</b>	World Health Organisation
<b>ONDRP</b>	<i>L'Observatoire National de la Délinquance et des Réponses Pénales (France)</i>
<b>ORIW</b>	Organization "Racism Islamophobia Watch"
<b>OSCE</b>	Forum for Security Cooperation in Europe
<b>PAB</b>	Fast-track procedure
<b>PP</b>	Partido Popular (conservative party - Spain)
<b>Prof.</b>	Professor
<b>RIAS</b>	<i>Recherche - und Informationsstelle Antisemitismus (Germany)</i>
<b>SETA</b>	Foundation for Social, Economic and Political Research (Turkey)
<b>SCRT</b>	<i>Service Central du Renseignement Territorial (France)</i>
<b>ss.</b>	Following
<b>SSMSI</b>	<i>Service Statistique Ministériel de la Sécurité Intérieure (France)</i>
<b>StGB</b>	<i>Strafgesetzbuch (German Criminal Code)</i>
<b>TGEU</b>	<i>Transgender Europe</i>

## INTRODUCTION

On **4 June 2018**, the first Report on Hate Incidents in the Basque Country (2017) was submitted to the **Basque Parliament** (Public Governance, Security and Institutions Commission). The Parliament express its commitment to the Report and ratified the expediency of its continuing to be published annually.

During its meeting on **26 December 2018**, the **Cabinet** of the Basque Government approved the *Partnership Agreement between the General Administration of the Autonomous Community of the Basque Country, through its Homeland Security Department (Ertzaintza), and the University of the Basque Country/Euskal Herriko Unibertsitatea, through the UNESCO Chair for Human Rights and Public Authorities, to produce an annual report on hate crimes in the Basque Country and a comparative analysis with Europe.*

That Agreement embodies and provides legal cover to that commitment with the ambition, first of all, that the Report should be an instrument with potential to improve medium- and long-term knowledge, prevention and the most effective eradication of this type of criminality. Furthermore, secondly, it seeks to facilitate coordination with legal operators and the aim is for the Report to contribute to transferring the experience of working with hate crimes to international authorities.

Pursuant to the Agreement, this second Report on Hate Incidents in the Basque Country therefore covers the period **1 January to 31 December 2018**. In the same way as the first, it addresses both potentially criminal incidents and those that could be an administrative offence and which due to their nature and circumstances have become known to the Basque Police Force (Ertzaintza). The structure of *2018 Report*, however, varies in two essential aspect with respect to its predecessor.

First, it dispenses with the need to repeat the section on the **terminology framework** to identify the protected collectives and on the benchmark legislative framework. That was already established in the first report and it was specified there that it would be the future benchmark with the exception of any aspects that may need nuances, corrections or expansions, in which case they would be expressly stated. However, that section has been added to this Report as a *Final Appendix* in order to facilitate its consultation.

Second, an extensive section has been included on the **shared reality of hate incidents and crime in Europe**. The Agreement includes the new aspect of preparing a specific and own report for the Basque Country on hate crimes that expressly incorporates:

*“(...) the relevant comparative analysis with the European situation in that regard. (...) with the weighting of the Basque reality compared to the European one being of special interest.” (Clause One).*

Therefore, after this introduction, **the Report is structured as follows:** information on and analysis of the hate incidents in 2018 (first point); the comparative study (second point); and a final block summarising and concluding. Those are followed by more instrumental (bibliography, index of figures) and information sections (Appendices I and II: major incidents in the press; extracts from the Reports, respectively, from the Chief Prosecutor of the BAC and from the General State Prosecutor’s Office and, finally, the aforementioned terminology section).

## 1. 2018 HATE INCIDENTS

### 1.1. Distribution of hate incidents

In 2018, 132 hate incidents were recorded in the Basque Country, 130 of which were crimes (98.48%) and 2 administrative offences (1.52%). *Figures 1 and 2* show the evolution of hate incidents and hate crime in the last 3 years, respectively.

Figure 1. Hate incident trends 2016-2018

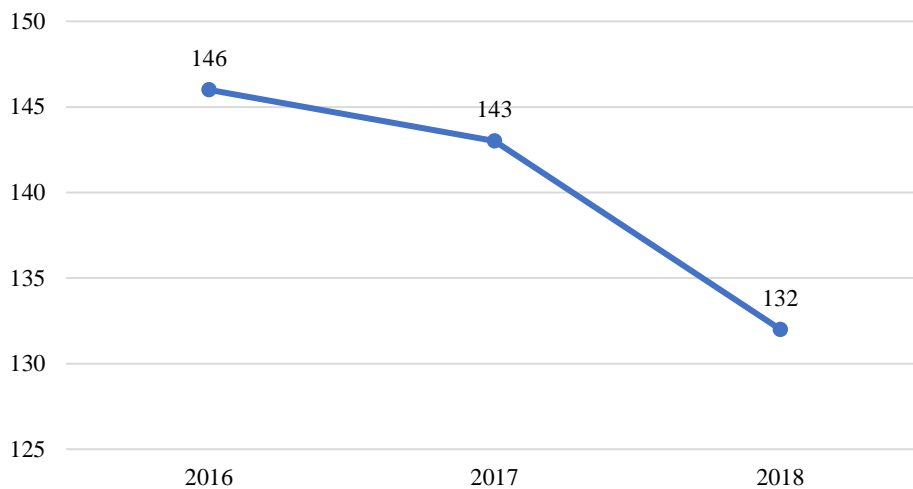
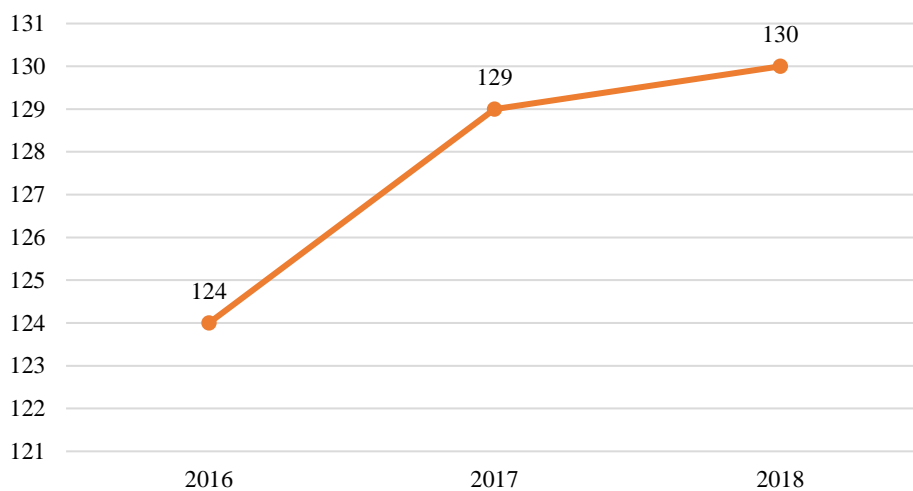


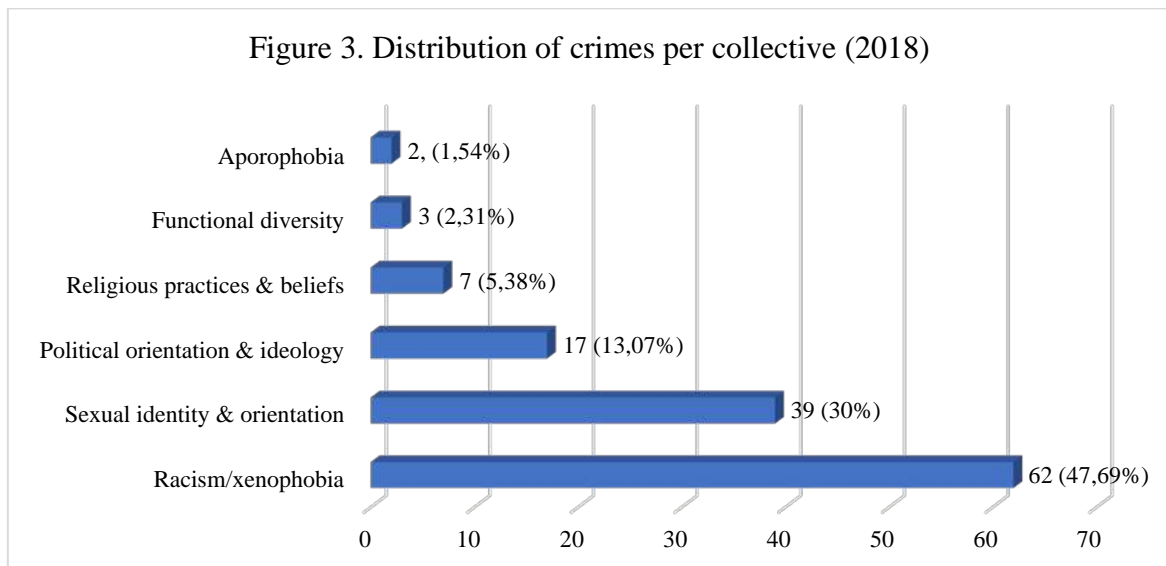
Figure 2. Hate crime trends 2016-2018



As can be seen in Figure 3, racist or xenophobic crimes accounted for 47.69% (62 cases) of the crimes recorded, while crimes relating to sexual identity and orientation represented 30% of



crimes (39 cases), a figure slightly higher than the one for 2017. In turn, the sphere of political orientation and ideology (17 cases), religious beliefs and practices (7 cases), functional diversity (3 cases) and aporophobia (2 cases) made up 22.31% of the crimes recorded, with these figures being practically identical to those for the previous year (Figure 4). Furthermore, it should be stressed that the two administrative offences occurred pursuant to Act 19/2007, of 11 July, against violence, racism, xenophobia and intolerance in sport. Moreover, no cases of multiple discrimination were recorded in 2018.



	ARABA	BIZKAIA	GIPUZKOA	OTHER PROVINCES	TOTAL	± (2017)	%
APOROPHOBIA	-	2	-	-	2	1	50%
FUNCTIONAL DIVERSITY	-	3	-	-	3	1	50%
POLITICAL IDEOLOGY/ORIENTATION	2	12	1	2	17	1	6,25%
SEXUAL IDENTITY/ORIENTATION	4	28	6	1	39	7	21,87%
RACISM/XENOPHOBIA	4	36	21	1	62	-9	-12,68%
RELIGION AND BELIEFS	-	2	5	-	7	0	0
<b>TOTAL</b>	<b>10</b>	<b>83</b>	<b>33</b>	<b>4</b>	<b>130</b>	<b>1</b>	<b>0,77%</b>

Figure 4. Hate crime trends per category (2016-2018)

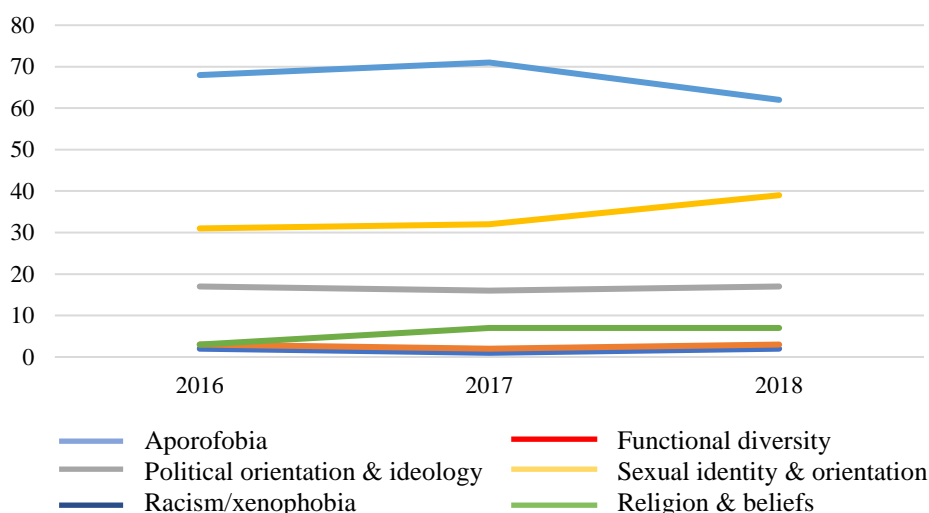
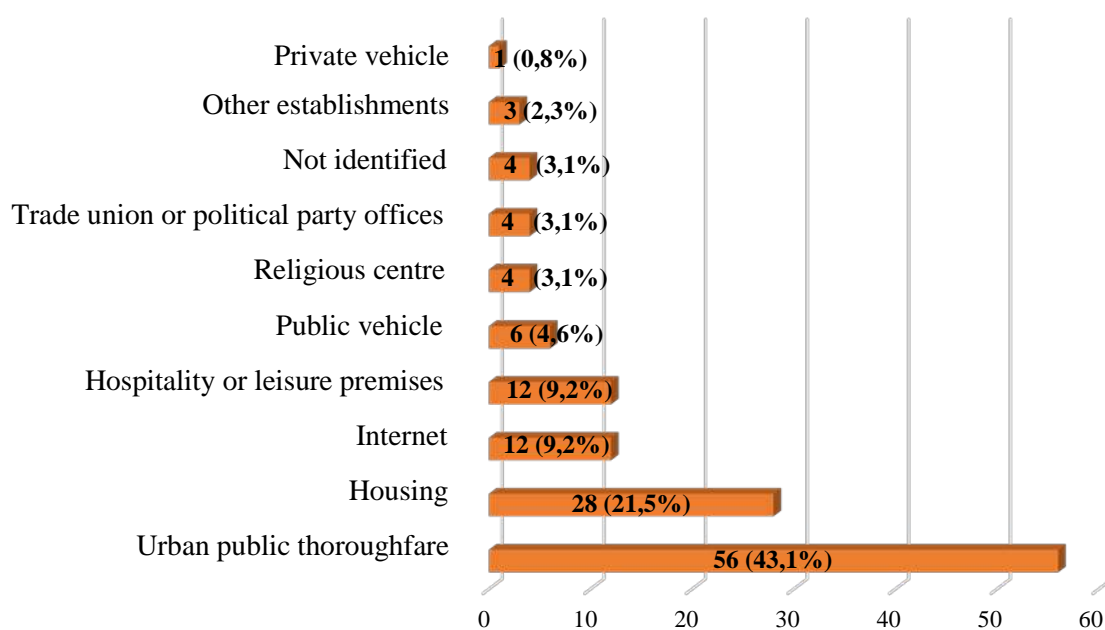


Figure 5 shows the distribution of crimes according to the location the incident occurred. As can be seen, urban public thoroughfares were the scene of the majority of the crimes recorded in 2018 (43%). Housing, however, accounted for 21.5% of the locations, a figure that was up on the one for the previous year. In contrast to the case of hospitality and leisure premises, which accounted for 9.2% of the crime locations, which was down on 2017. It should be noted that no incident occurred at a football stadium or sport facilities during 2018.

Figure 5. Distribution of crimes per location committed



Figures 6, 7 and 8 show the monthly, weekly and hourly distribution of the crimes, respectively.

Figure 6. Distribution of crimes per month(2018)

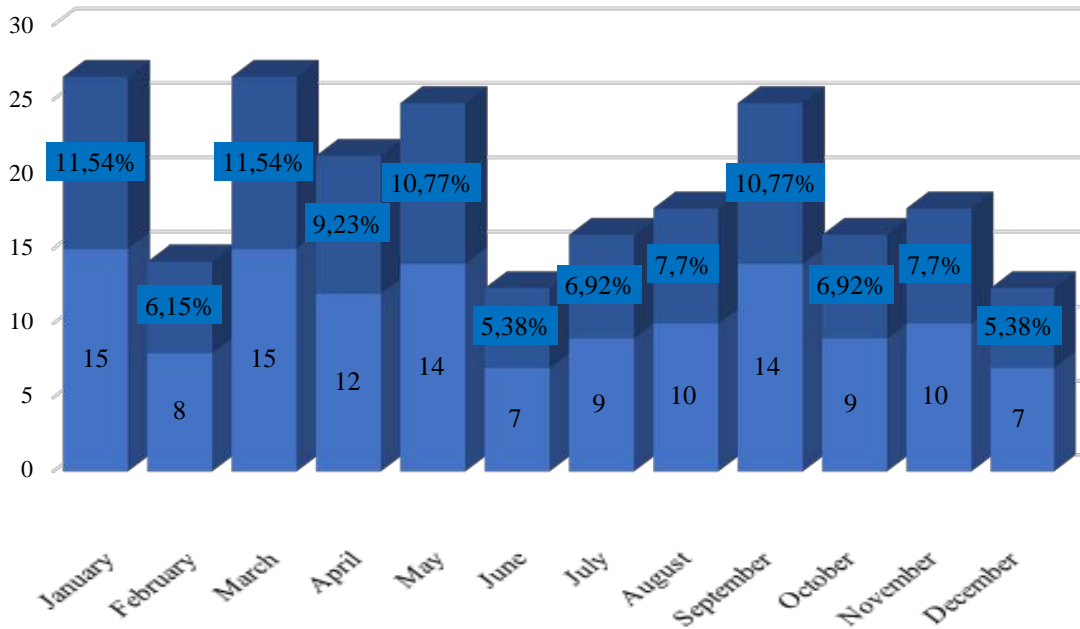


Figure 7. Weekly distribution of the crimes

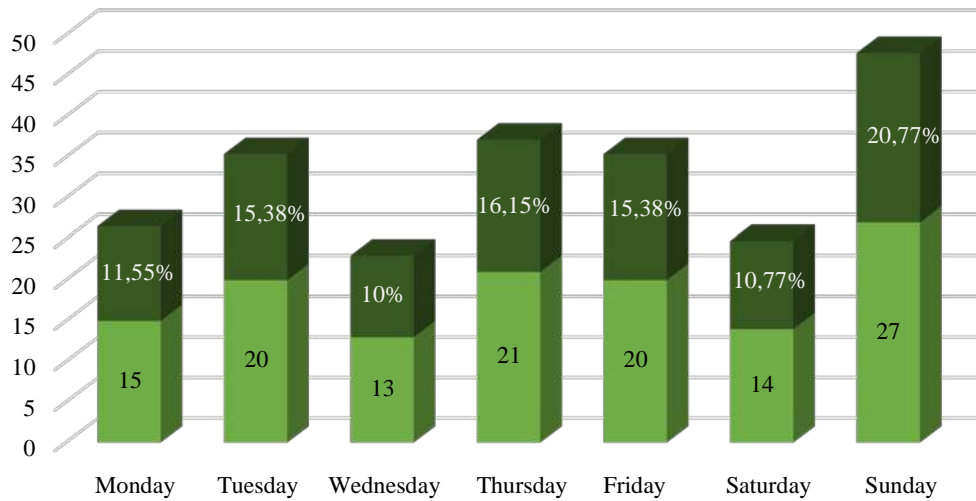
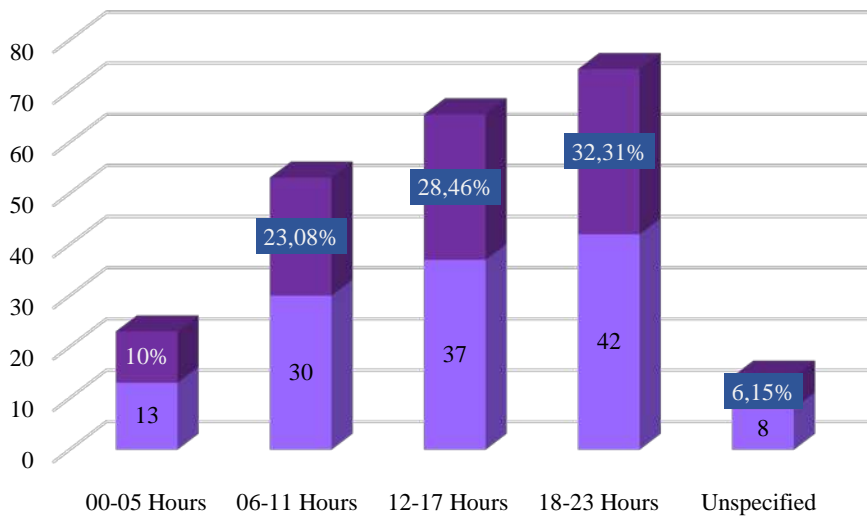
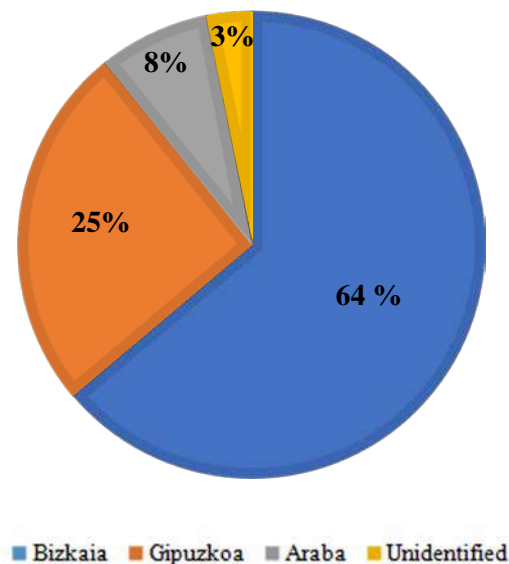


Figure 8. Hourly distribution of the crimes



As regards the distribution of the 130 crimes by province, *Figure 9*, Bizkaia accounted for nearly two thirds of the crimes ( $n=83$ ), while Gipuzkoa concentrated a quarter ( $n = 33$  of the crimes and Araba less than a tenth ( $n=10$ ). There were also the 4 shelved cases where the crime scene could not be identified.

Figure 9. Distribución de crimes per province (2018)



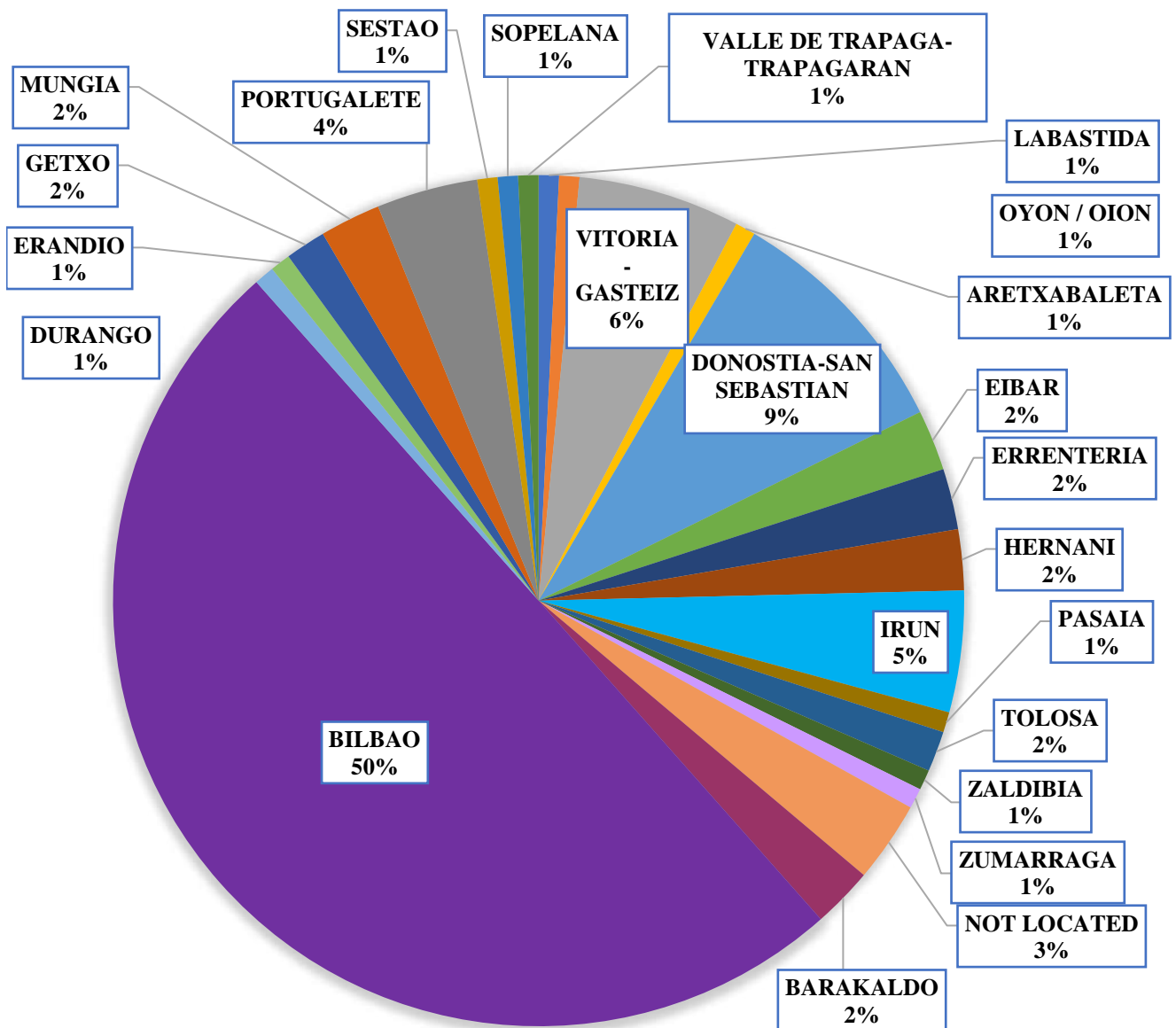
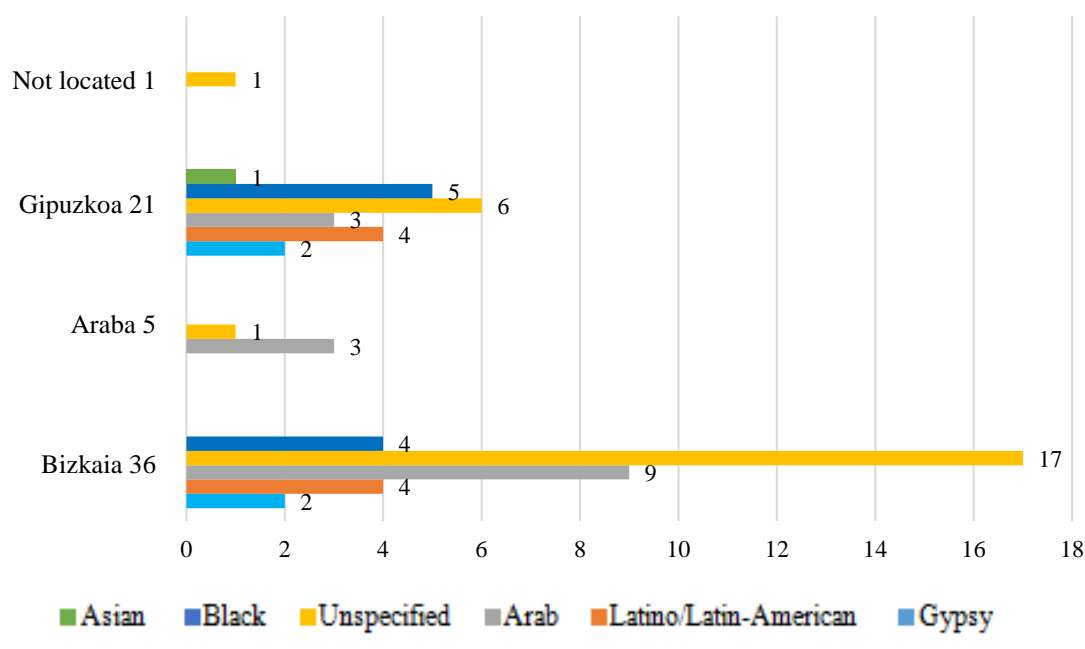


Figure 10 shows the distribution of hate crimes at municipal level, with special emphasis on the most populated municipalities of Bizkaia and of Gipuzkoa at local level. Portugalete with 5 crimes and Irún with 6 particularly stand out, along with the provincial capitals (Bilbao n=65; Donostia-San Sebastián n=12 and Vitoria-Gasteiz n=8).

On the other hand, the representativeness of the ethnic-racial collectives was as follows: Arab (n = 15; 24.2%), Asian (n = 1; 1.61%), Gypsy or Romani (n = 4; 6.45%), Black (n = 9; 14.52%), Hispanic/Latino (n = 8; 12.9%), Undisclosed (n = 25; 40,32%).

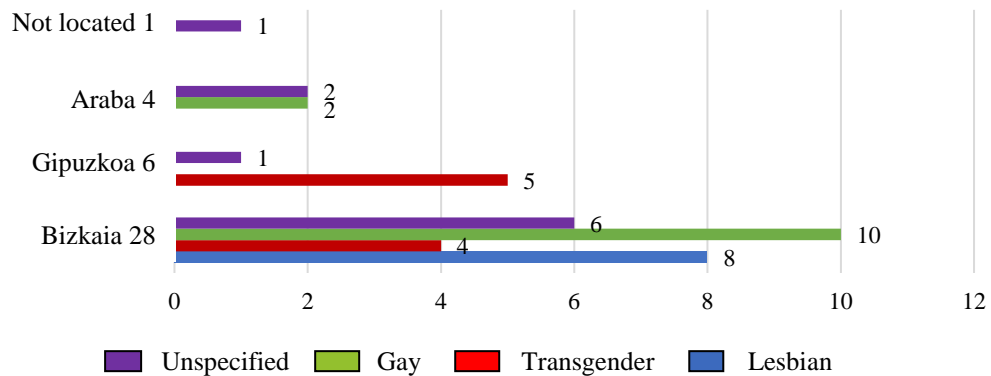
Figure 11 shows the provincial distribution of the 62 racism/xenophobic crimes. In keeping with previous years, Bizkaia continued to be the scene, for the third year running, of the majority of cases, with 32 out of the 62 recorded (58.06%), while Gipuzkoa yet again saw an increase in the number recorded with 21 cases (33.87%). Araba, in turn, recorded 4 cases, half the number in 2017 (3.05%). As regards the remaining case, it is not known where it was committed.

Figure 11. Distribution of racism/xenophobia crimes by Province of origin (2018)



As regards the crimes committed based on the sexual orientation and/or identity, Figure 12, Bizkaia continued to report nearly all the cases (n = 28; 71.79%), even though few cases were reported in 2018 than in the previous year. In Gipuzkoa, however, a larger number of cases were reported than in the previous year (n = 6; 15.38%). Araba, in turn, rose from 1 case in 2017 to 4 cases in 2018 (n = 4; 10.26%). In the same way as the previous collective, the location could not be pinpointed for one of the crimes. As regards the breakdown by collective, victimisation was divided relatively uniformly in the three main protected collectives of this category, namely, 8 crimes against lesbians, 9 crimes against transgender people, 12 crimes against gay men and 10 undisclosed.

Figure 12. Distribution of Sexual Identity/Orientation crimes by Province of origin (2018)



As regards the remaining collectives, the Ertzaintza recorded 17 cases impinging on political orientation and/or ideology: 2 in Araba, 12 in Bizkaia, 1 in Gipuzkoa and 2 not specified. With respect to religious beliefs and practices, the Ertzaintza noted 7 cases, 2 in Bizkaia and 5 in Gipuzkoa, 3 out of which were committed against Christians, 2 against Muslims and a further 2 who were not identified. Finally, 3 cases were recorded against people with functional diversity in Bizkaia and there were 2 cases of aporophobia also in Bizkaia.

### Administrative offences by province

As far as the 2 administrative offences recorded in 2018 are concerned, they were purely confined to sports events in the ideology framework. As can be seen in *Figure 13*, one of them occurred in Bizkaia (Bilbao), and the other in Araba (Vitoria-Gasteiz).

Figure 13. Administrative offences by Province (2018)

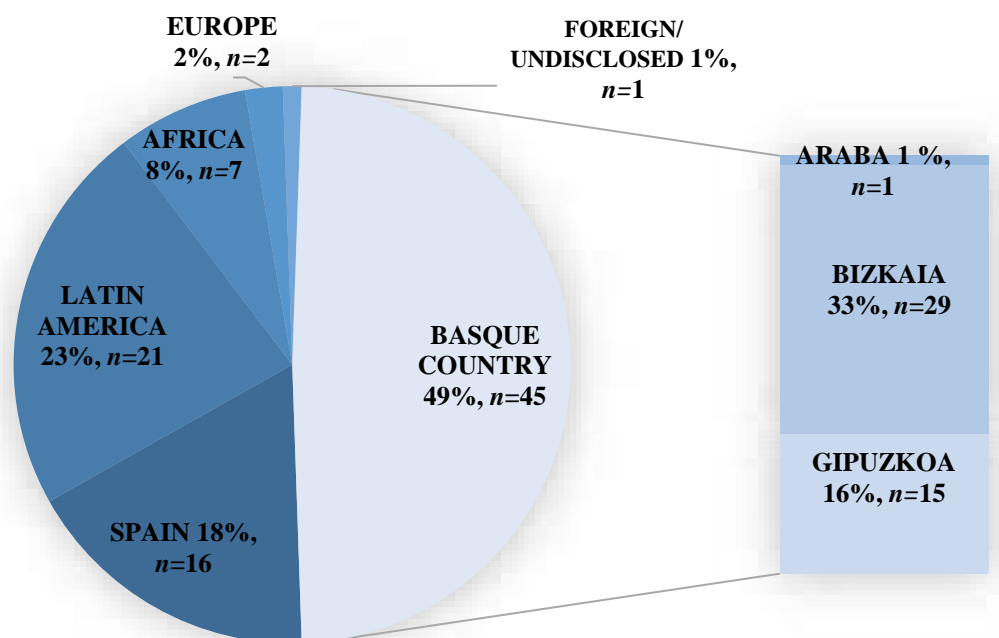


### 1.3. Distribution of arrests<sup>1</sup>

With respect to those under investigation, *Figure 14*, the vast majority were Spanish (66.3%): 61 under investigation out of the total of 92, 45 of whom were originally from the Basque Country (73.77%). On the other hand, 31 of the people under investigation were foreigners (33.7%), many of whom, 21 cases, were from Latin America (67.64%).

As regards the distribution by sex, 25 (27.17%) of the people under investigation were women and 67 men (72.83%). Furthermore, the average age was 41.7 and the age range was between 13 and 88.

Figure 14. Investigated by region of origin(2018)



Sex	(n)
Women	25 (25,17%)
Men	67 (72,83%)

Age $\bar{X}$
41,7

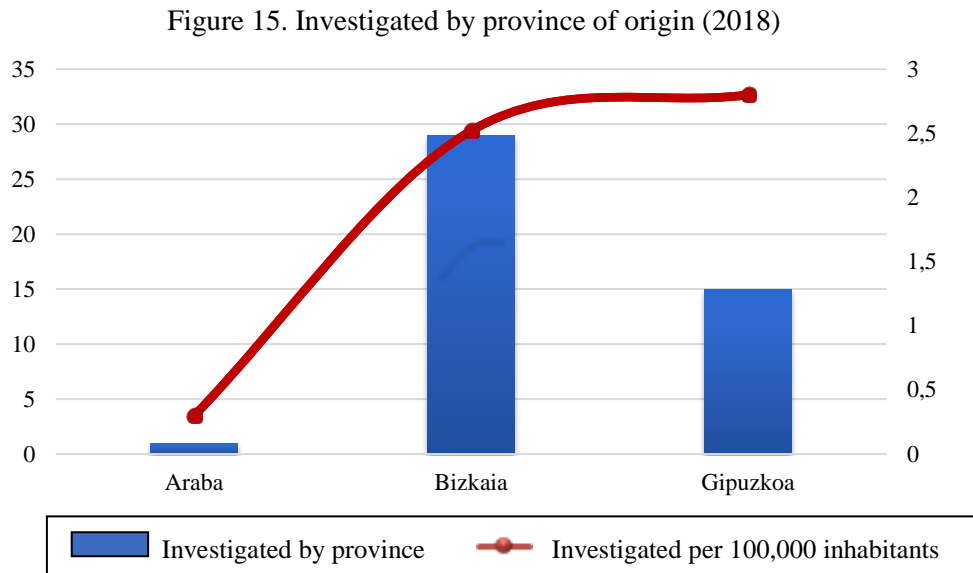
Nationality	(n)
Angola	1
Bolivia	2
Bulgaria	2
Chile	1
Colombia	5
Spain	61
Foreigner/Undisclosed	1
Honduras	1
Libya	3
Morocco	3
Nicaragua	7
Paraguay	1
Venezuela	4
<b>Total</b>	<b>92</b>

With respect to the province, *Figure 15*, the number of people under investigation from Bizkaia fell dramatically compared to 2017, with 29 under investigation – out of the 45 from the Basque Country- and a rate of 2.52 per 100,000 inhabitants. Another important change occurred in

<sup>1</sup> The people charged –or under investigation, after the Code of Criminal Procedure was reformed by Act 13/2015–, are those people considered to have committed a crime and with respect to which the Ertzaintza has started to investigate.

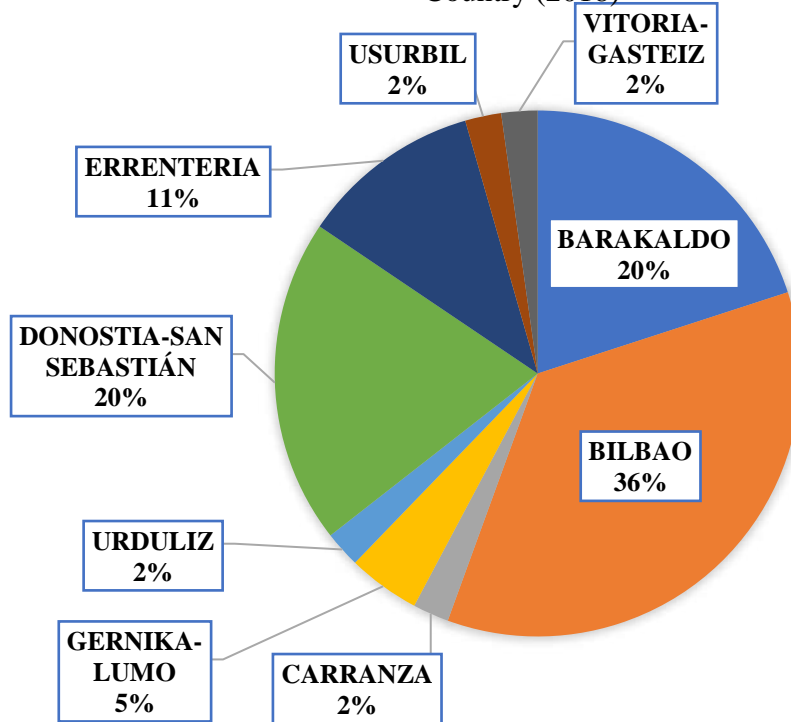


Araba, which dropped from 10 under investigation in 2017 to 1 in 2018, with a rate of 0.3 per 100,000 inhabitants. In Gipuzkoa, however, the number of people under investigation increased on the previous year, with 15 being investigated and a rate of 2.8 per 100,000 inhabitants.



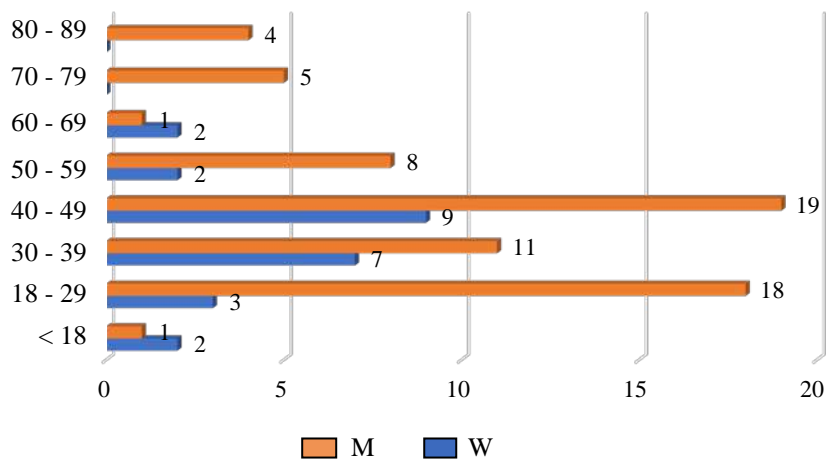
In turn, *Figure 16* shows the distribution of arrests at local level, where, for the third year running, the majority of the people under investigation came from the two main cities of Bizkaia in demographic terms, Bilbao ( $n = 16$ ) and Barakaldo ( $n = 9$ ). Particularly noteworthy is the high percentage of Barakaldo with respect to its population (100,000 inhabitants). However, contrary to the previous year, there was an increased in the number of people under investigation from some of the most populated municipalities of Gipuzkoa, namely, Donostia-San Sebastián ( $n = 9$ ) and Errenteria ( $n = 5$ ).

Figure 16. Investigated by town/city of origin in the Basque Country (2018)



As regards the age of the people under investigation, *Figure 17*, people aged between 40 and 49 (30.43%) and those between 18 and 29 (22.83%) predominated, respectively. With respect to the age brackets, childhood (0-9), adolescence (10-17) and old age (+60) accounted for nearly 16.31% of the cases, while the two remaining brackets, between 30-39 and 50-59, made up the remaining 30.43%.

Figure 17. Age of people under investigation



## 1.4. Distribution of the arrests

Figure 18 shows that a total of 29 men and no women, with an average age of 25.5, were arrested. The majority of those men, Figure 19, were aged between 18 and 29 (n=23, 79.31%), while the remainder was aged between 30 and 39 (n=6, 20.69%).

Twenty-three out of all the arrests were for crimes related to political orientation/ideology and the remaining 6 for aporophobia. These figures nearly doubled those for 2017; furthermore, they show greater disparity, as can be seen in Figure 20. Fifteen of the people arrested were from Bizkaia and 3 from Araba. Eight of the remaining 11 people arrested were from Russia and 3 from Poland.

Figure 18. Demographic profile of people arrested (2018)

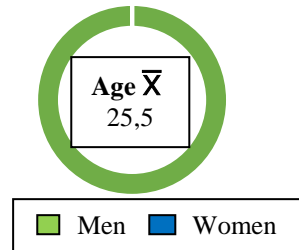


Figure 19. Age of people arrested (2018)

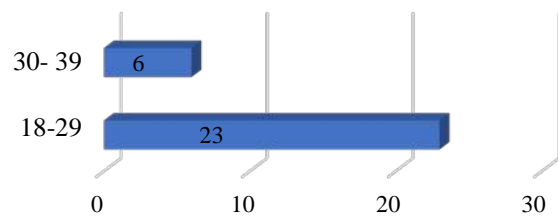
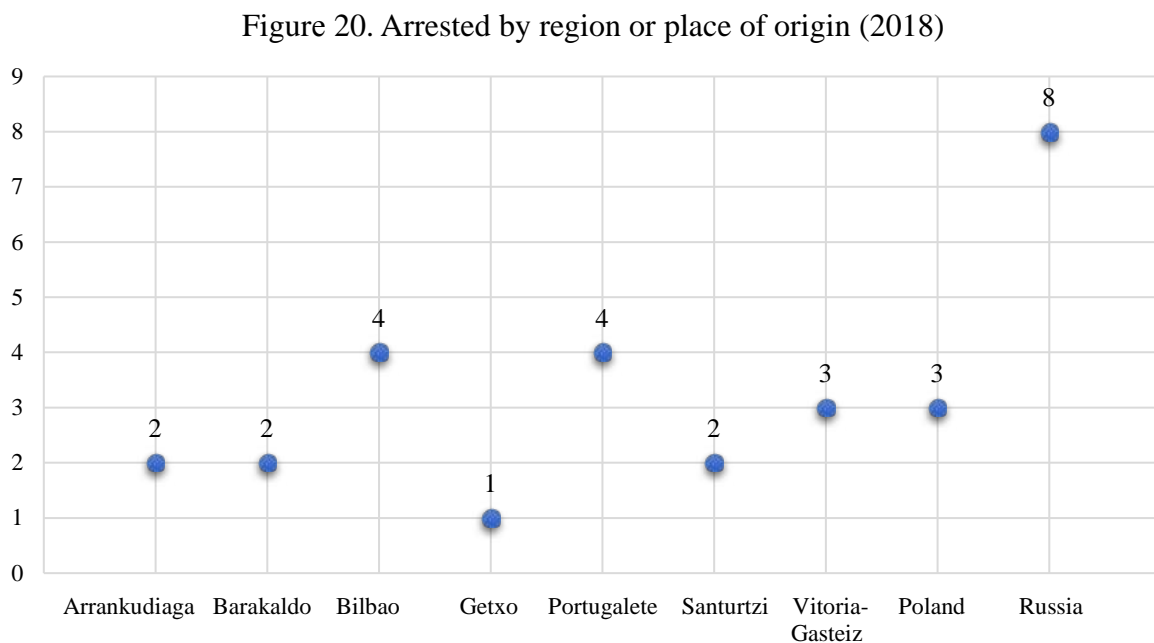


Figure 20. Arrested by region or place of origin (2018)

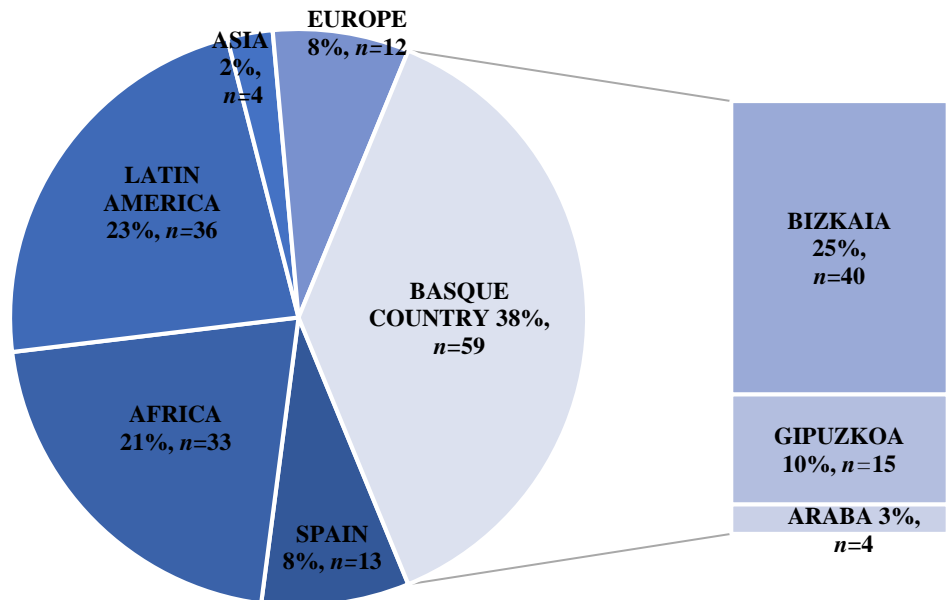


## 1.5. Distribution of the victimisations

As indicated in Figure 21, 45.86% of the victims were Spanish (72 out of 157 cases), the vast majority of whom, nearly 82% of the cases, were from the Basque Country (59 cases). On the other hand, foreign victims accounted for over half the victims (around 54%, 85 cases). As regards foreign victims, those from the Americas were the most victimised collective (22.9% of the victims), followed by the victims from Africa (21% of victims). Demographically, the average age was the same as for the previous year, 35 years old (the age range was between 10 and 71), and the gender distribution was 85 men (54%) and 72 women (46%).

Nationality	(n)
Afganistán	2
Angola	2
Argelia	4
Bolivia	1
Brazil	4
Cameroon	2
Chile	1
China	1
Colombia	12
Cuba	3
Ecuador	2
Spain	72
Guatemala	1
Honduras	3
Iraq	1
Morocco	20
Mauritania	1
Nicaragua	5
Paraguay	1
Perú	1
Republic of Guinea	2
Romania	4
Russia	1

Figure 21. Victims per place of origin (2018)



Sahara	1
Senegal	1
Turkey	2
Ukraine	5
Venezuela	2
<b>Total</b>	<b>157</b>

Sex (n)	
Women	72 (46%)
Men	85 (54%)

Age $\bar{X}$
35

With respect to the distribution of victimisations by province, *Figure 22*, Bizkaia accounted for 40 out of 59 victims from the Basque Country (67.8%), with a rate of 3.48 victimisations per 100,000 inhabitants. Gipuzkoa, on the other hand, had a rate of 2.08 (25.42%), and Araba 1.22 (6.78%).

Figure 22. Victims by Province of origin (2018)

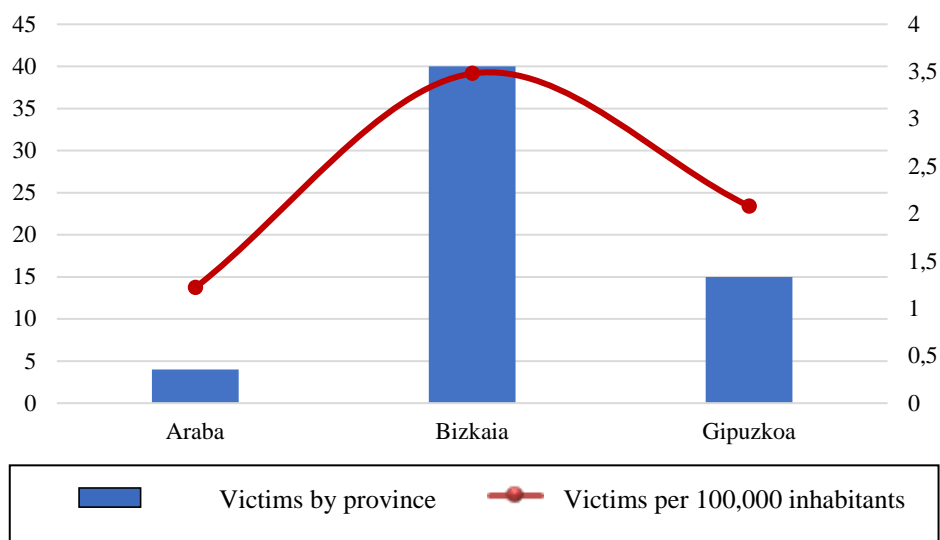
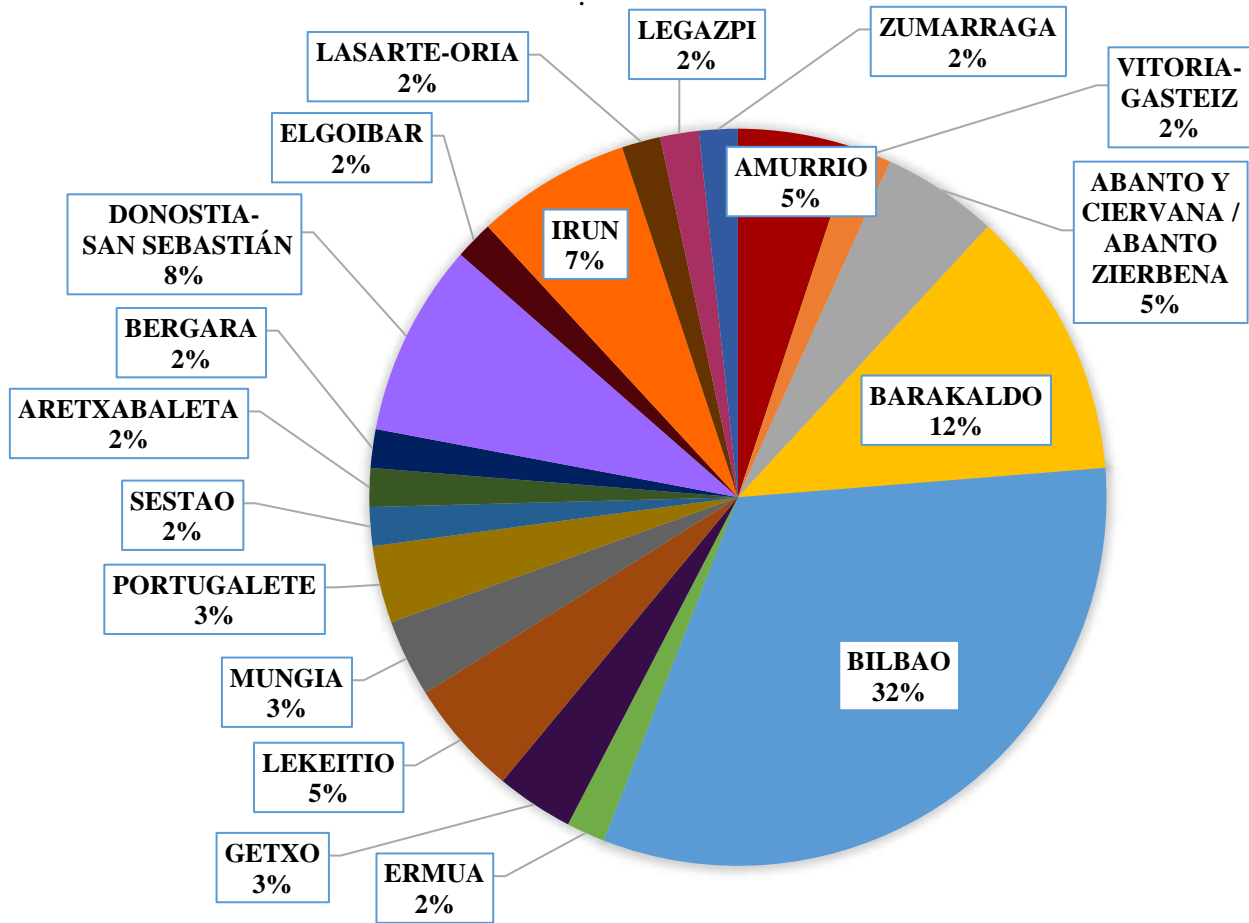


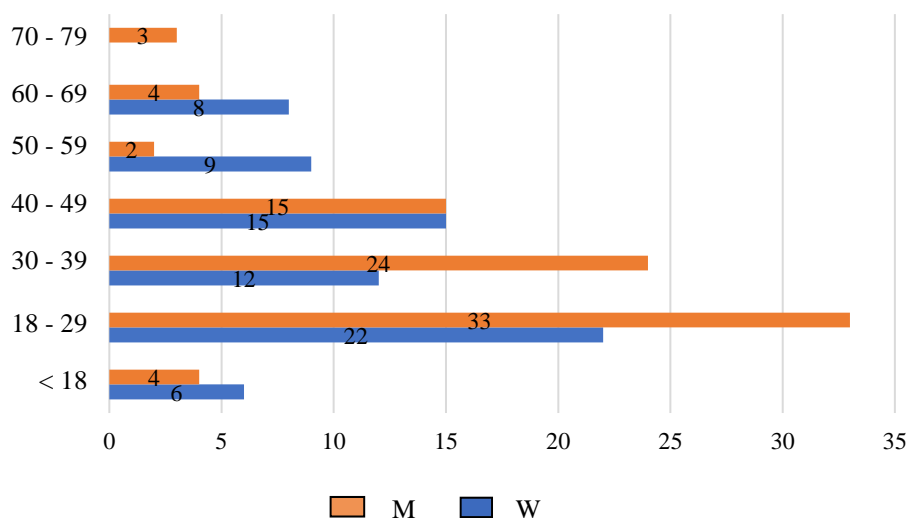
Figure 23 indicates the distribution of victimisations at municipal level, where Bilbao and Barakaldo stand out from the others (19 and 7 cases, respectively).

Figure 23. Victims by place of origin



As regards the age of the victims, Figure 24, 35% were young adults aged between 18 and 29. With respect to the age brackets, childhood (0-9), adolescence (10-17) and old age (+60) accounted for nearly 16% of the cases, while the two remaining brackets, between 30-39 and 50-59, made up the remaining 49%.

Figure 24. Age of the victims (2018)



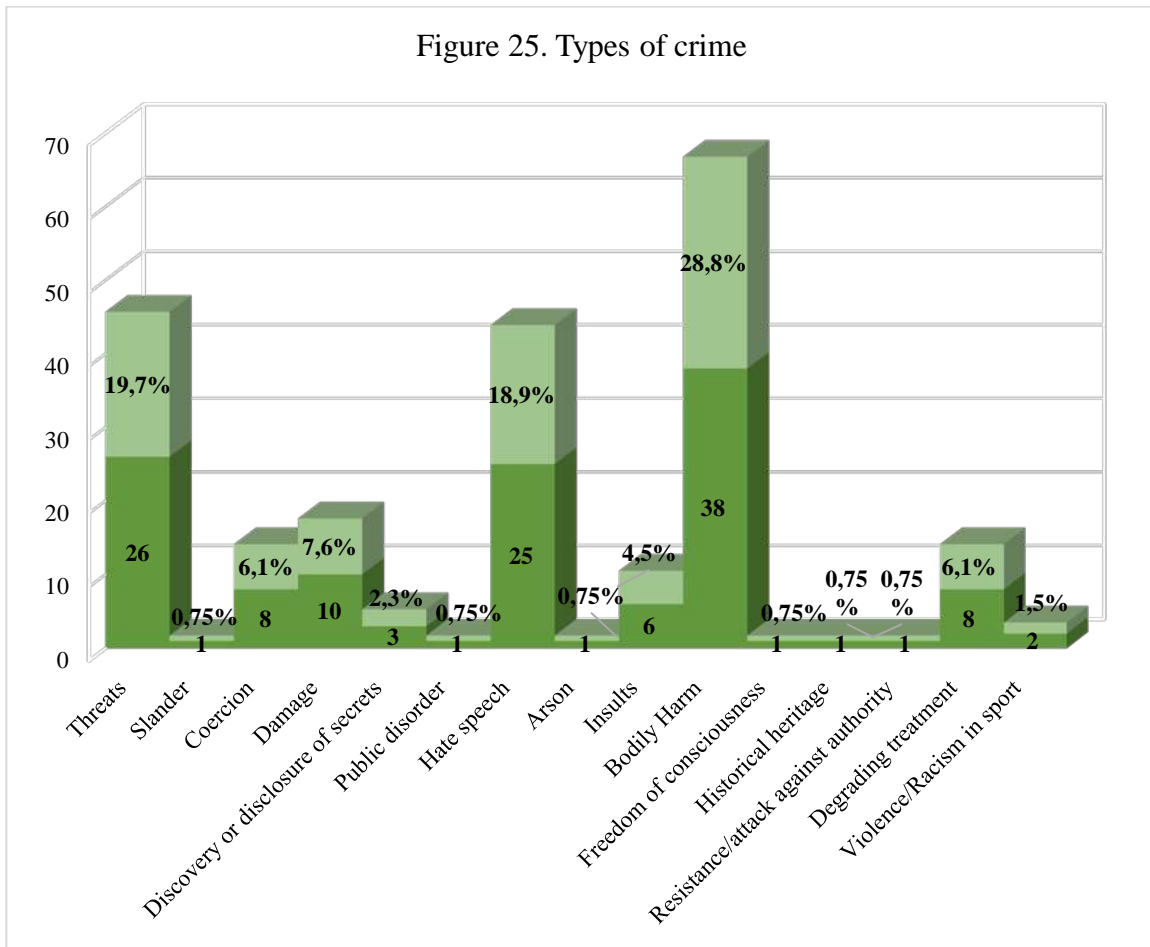
## 1.6 Classification of the hate incidents by type of crime

Figure 25 shows the distribution of the 132 hate incidents by type of crime, where particularly noteworthy are bodily harm (38 cases), threats (26 cases) and hate speech (25 cases).

In the same way as in previous years, the cases classified as hate speech have to be considered with care, due to the lack of legal outcome that they usually have. Furthermore, special mention should be made of the presence of 1 crime against freedom of conscience and religious convictions, other 3 cases of discovery or disclosure of secrets and 1 case of arson.

- **Threats:** Arts. 169, 170 and 171 CC.
- **Defamation:** Art. 206 CC.
- **Duress:** Art. 172 CC.
- **Damages:** Art. 263 CC.
- **Discovery or disclosure of secrets:** Arts. 197.5 CC.
- **Public disorders:** Art. 557 CC.
- **Hate speech:** Art. 510 CC.
- **Arson:** Art. 351 CC.
- **Insults:** Art. 209 CC.
- **Bodily Harm:** Art. 147 and 154 CC.
- **Freedom of Conscience:** Art. 522 CC.
- **Historical heritage:** Art. 321 CC.
- **Resistance/undermining authority:** Arts. 550 CC.
- **Robbery with violence:** Art. 242 CC.
- **Degrading treatment:** Art. 173 CC.

- **Violence/racism in the sport:** Act 19/2007, of 11 July, against violence, racism, xenophobic and intolerance in sport.



## 1.7. Conclusions

### 1.7.1. Total number of incidents

In 2018, 132 hate incidents were recorded in the Basque Country, **130 of which were crimes** (98.48%) and **2 administrative offences** (1.52%).

If we take into account that 124 criminal incidents were recorded in 2016 and that figure rose slightly in 2017 to 129, a certain stabilisation could be detected with a minimum upward trend. Therefore, as already established in the first Report, administrative infractions are divided into processing, presentation and assessment, as both their numerical figure (which can include a much greater number of incidents related to the principal) and their real dynamics (linked to



specific activity sectors such as, paradigmatically, sports events) makes them creditors of a consideration not comparable to potentially criminal incidents.

### 1.7.2. Target collective map of the incidents

The map of the target collectives affected by the criminal incidents stabilised with slight variations that do not affect the essential contours. The racist or xenophobic incidents accounted for 47.64% (62 cases) of the crimes recorded, slightly down on the previous year (-9 incidents: -12.68%), while the crimes related to sexual identity and orientation totalled 30% of the crimes (39 cases), a figure slightly up on 2017 (+7: +21.87%). In turn, the sphere of political orientation and ideology (17 cases), religious beliefs and practices (7 cases), functional diversity (3 cases) and aporophobia (2 cases), made up 22.31% of the crimes recorded, with those figures being practically identical to those for the previous year (*Figure 4*).

An *in extenso* consideration of the ethnic collective (racism, xenophobia, ideology, political orientation, beliefs and religious practices) accounts for 66.15% (66.66% including administrative infractions), i.e., two thirds of the hate map, with sexual orientation attacks practically accounting for the whole of the remaining third (30%). Aporophobia and functional diversity do not represent over 4% together.

### 1.7.3. Types of Crimes

**i. Prevalent groups.** The three groups of criminal incidents of bodily harm (38 cases: 29.2%), threats (26 cases: 20%) and hate speech (25 cases: 19.2%) are consolidated in this report as being the most numerous and far ahead of the following crime groups. The three together accounted for 68.4% of the crime incidents, i.e. two thirds of the hate map.

**ii. Violent incidents.** Bodily harm, nearly a third of the whole (38 cases: 29.2%), would be the core of the conducts that could possibility be aggravated in general, pursuant to criminal responsibility being modified by Article 22.4 CC.

Bodily harm, from its aggressive “with deeds” component (“hate crime” in its strictest sense) can be added to the crimes of damage (10), historical heritage (1), arson (1), even public disorders (1) and resistance (1), which would mean an *in extenso* percentage of up to 40%.

**iii. Hate crimes “with words”** (“*hate speech*” in the broadest sense). Hate propaganda incidents continued to be the majority, in contrast to hate crimes in the strictest sense (with deeds). If we add threats (26), hate discourse in the strictest sense (25), insults (6), slurs (1) and the

incident against religious sentiments (1), they stand at 45.3% (59) and even reach 57.6% (75) if general, but close categories, such as duress (8) and degrading treatment (8), are included.

The crime map is, therefore, in the same line as the previous report, with an “over-representation” of expressive conducts, practically 6 to 4, with respect to the potentially more serious violence of injurious conduct or its peripheral violence.

Finally, mention should be made of the presence of 3 cases of discovery or disclosure secrets.

#### *1.7.4. Crime scene, provincial distribution, people under investigation, arrested and victims.*

Urban public thoroughfares (43.1%) were the place where most hate crimes occur. For the third year running, Bizkaia recorded the majority of hate crimes (64%), mainly in Bilbao (50%) and Portugalete (4%). In that regard, the other provincial capitals, Donostia-San Sebastián (9%) and Vitoria-Gasteiz (6%), and the municipality of Irún (5%), stand out.

The majority of the 92 people under investigation were Spanish (66.3%), 73.77% of whom were from the Basque Country, mainly Bizkaia (64.4%). Those from Latin America (67.74%) stood out among foreigners under investigation. At municipal level, the majority of the people under investigation came from the main towns of Bizkaia, Bilbao ( $n=16$ ) and Barakaldo ( $n=9$ ), although the number under investigation from most of the most populated municipalities of Gipuzkoa, Donostia-San Sebastián ( $n=9$ ) and Errenteria ( $n=5$ ) increased.

In 2018, there were 29 arrests, the majority of whom were from the Basque Country (15 Bizkaia and 3 Araba). 45.86% of the victims were Spanish, 82% of whom were from the Basque Country. With respect to the foreign victims (54%), most were from the Americas (22.9%) and Africa (21%). The vast majority of victims from the Basque Country were from Bizkaia, mainly from Bilbao (32%) and Barakaldo (12%).

#### *1.7.5. The hate map of the Basque Country in the State context*

**i. Global data and target collectives.** In 2018, 132 hate incidents were recorded in the Basque Country, 130 of which were crimes (98.48%) and 2 administrative offences (1.52%). As regards the data for the Spanish State overall, and taking the 2017 Report on Trends in the Incidents Related to Hate Crimes in Spain as the starting point, 9.44% of the hate incidents reported to police authorities throughout the Spanish State (1,419 incidents, 11% more than in 2016) occurred in the Basque Country. In that regard and to put that data into context, at the end of 2017, the Basque Country had 2,194,158 inhabitants — Bizkaia (1.14 million inhabitants,

Gipuzkoa (0.71 million inhabitants) and Araba (0.32 million inhabitants) — of the 46,572,132 (INE, 2018).

In the case of Spain, special mention should be made of the 2017 increase in the percentage of crimes committed based on the main categories – racism/xenophobia and ideology – which accounted for two-thirds of the 1,419 incidents recorded, a trend that was not observed in the Basque Country. As regards, the affected collectives, even though racism/xenophobia was the most affected collective in both cases, it is noteworthy that that collective accounted for 47.69% of the incidents in the Basque Country, while that figure fell to 37% for Spain. Both at State and Autonomous Community level, the next most victimised collectives were political orientation or ideology (31.4% in Spain and 13.07% in the Basque Country), sexual orientation or identity (19.1% in Spain and 30% in the Basque Country) and religious practices/beliefs (7.3% in Spain and 5.38% in the Basque Country). With respect to the last collective (religious practices/beliefs), a nuance should be made regarding how cases are counted, as this category includes anti-Semitism in the report on the Basque Country, while it is considered a separate category in the report of the Spanish Ministry of the Interior, and therefore the data are not fully comparable. Furthermore, incidents related to the aporophobia and functional diversity collectives were recorded in both cases.

Consequently, the data recorded in the Basque Country did not highlight the existence of any significant increase regarding the detection of the phenomenon; something that can be seen in the State data compiled by the Ministry of the Interior in recent years (2013-2017).

With respect to the previous year, all the categories in the Ministry of the Interior's report on the Spanish State more or less tended to increase on the year before, except for Anti-Semitism, functional diversity (due to a change in the calculation methodology, as is explained in the report) and gender/sex discrimination categories, which decreased. In the Basque Country, however, the categories that most increased were aporophobia (from 1 to 2 incidents), functional diversity (up from 2 to 3 incidents) and sexual identity and orientation (from 32 to 37 incidents). On the other hand, the political orientation and ideological category saw a slight increase (6.35%) and religion and beliefs remained stable. Finally, the racism and xenophobia category fell 12.68%.

To conclude, it can be said that the most victimised collectives in both reports are racism/xenophobia, which predominated in both reports, ideology and sexual identity and orientation, which little victimisation being recorded in relation to the functional diversity and aporophobia collectives.

**ii. Types of crime.** With respect to the types of crime, bodily harm (19.5% in Spain and 28.8% in the Basque Country) and threats (7.8% in Spain and 19.7% in the Basque Country) stand out as the most prevalent types. Crimes against the Constitution (8%) and damages (7.7%) also stand out statewide, while hate speech (18.9%) and damage (7.6%) stand out in the Basque Country.

**iii. Others:** Victims, assailants, distribution, timeline and crime scene.

As regards the demographic profile of the victims, the majority were men in both reports (63.2% in Spain and 54% in the Basque Country) and aged between 18 and 70 (over 70% of the cases). With respect to the place of origin, it is surprising that 69% of the victims were Spanish in Spain as a whole, while that figure fell noticeably to 45.86% in the Basque Country, with nearly 82% were from the Basque Country. Furthermore, as regards foreign victims, the collectives that suffered most victimisation were the people from Africa (17% in Spain and 21% in the Basque Country) and those from the Americas (8.2% in Spain and 23% in the Basque Country). As regards the demographic profile of the assailants were concerned, the perpetrators of the hate incidents both in Spain and the Basque Country alike were adult-young men and Spanish citizens.

With respect to the time-space distribution of those incidents, the Ministry of the Interior's report shows that October and November were the months with the most incidents of this type recorded, with 197 and 166 incidents, respectively. In the Basque Country, however, January and March were the months with most incidents recorded, with 15 incidents each, followed by May (14 incidents) and September (14 incidents).

Finally, as regards the spatial pattern, many of the incidents both in Spain and in the Basque Country seem to have occurred in the urban public thoroughfare (34.39% in Spain and 43.1% in the Basque Country). In the private sphere, however, housing (21.21% in Spain and 21.5% in the Basque Country) and hospitality and leisure establishments (15.71% in Spain and 9.2% in the Basque Country) stood out, though to a lesser extent, as places where those incidents were committed.

## 2. COMPARATIVE ANALYSIS WITH EUROPE

### 2.1. Introduction

The Agreement seeks to guide the preparation of the Report to ensure that the shared presentation of the data and of the hate incident coping strategies is fundamentally appropriate. There can be no effective work in that regard without taking into account the international policy framework and, in particular in our case, at European level. It seems rather pointless to repeat that crime phenomena of the incidence that concerns us require joint strategies involving outreach and looking for synergies and partnerships, and also inspiring models and guidelines, in the closest legal and cultural circles. More specifically, apart from the common legislative frameworks (international law of European regional or universal human rights – Council of Europe, EU...-), empirical knowledge of the state of the art in our neighbouring countries is fundamental. As a full prevention and intervention policy can only be established if the diagnosis of the phenomenon is sound. And checking one's own legislative and empirical reality against the surrounding one is unavoidable to conduct that diagnosis.

However, such a shared reality comes up against a formidable obstacle that cannot be ignored: the embryonic, fragile state of the gathering – especially if official – of data on the subject. In other words: not only is there still a high degree of uncertainty when it comes to our accurately defining what hate crimes in legal terms are; not only does the empirical system to gather incidents across Spain or the Basque Country still need to be consolidated: not only must knowledge still be addressed of the traceability of the incidents from source, from there being reports to the police or legal authorities, to their possible processing through the full legal circuit (prosecutor's office, investigation, prosecution, sentencing, enforcement, etc.). The same problems are also to be found Europe-wide, country by country, with the aggravating circumstance that, depending on each domestic jurisdiction, the terms of reference are radically different when defining hate crimes, tracing the contours of the incidents and organising data collection. In short, comparability of the terms of reference is still very far from being near a threshold that would allow ordinary access work to consolidated sources of official data only then pending updating.

That being the case, the following methodological decisions have been taken.

First of all, **three benchmark countries** have been selected when establishing **an initial comparison phase**: The United Kingdom (and within it, essentially England and Wales), France and Germany. They are three countries that make up an unquestionable European benchmark due to their political and demographic weight; but also because they have a rich and extensive historical experience with respect to anti-discriminatory or hate crimes that, in fact, has influenced our legal tradition and the shaping of European empirical and legislative standards. From that last point of view, they are also three models with sufficient track records and with great capacity to influence the future shaping of legal frameworks and empirical collection systems.

Second, an explanation of their benchmark **legislative framework** will be given for each country in order to search for possible equivalences with the precepts of the Spanish Criminal Code. It is obvious that there could not be full equivalence and that, in some cases, the comparability may also seem almost impossible. However, the aim is, for the moment, to provide an overview of the functioning and differences of each legal system in the subject to identify the material – not formal – lines of equivalences. Lines to be traced using the key precepts in each system, its sense of protection and also considering the protected collectives. There will also be an informative block of **reference data sources on the empirical reality** of each country.

Third, and even though it still does not guarantee the comparability of the systems, the data will set out using the official sources that may currently be the most all-embracing in Europe: that of the **OSCE (Organisation for Security and Cooperation in Europe)**.

This will allow, to complete that block, not so much as conclusions to provide in the strictest sense, a term that is still very pretentious and outside the current status of empirical or normative sciences in this regard, but rather reflections that should be used to identify common strands, display the current phase of the countries in question, their progress, their challenges and to consider possible future developments.

## 2.2. France

### 2.2.1. Legislative equivalents

Standalone crimes and the aggravating circumstances on discriminatory grounds coexist in the French Criminal Code.

*Stand-alone crimes*, that is, those that already per se a reprehensible intrinsic motivation to the type in question.

- Articles 211-1 and 211-2 [**crimes of genocide**]: According to Article 211-1, genocide is the enforcement of a concerted plan aimed at the total or partial destruction of a national, ethnic, racial or religious group, or of a group determined on the basis of any other arbitrary criterion, one of the following actions are committed or caused to be committed against members of that group: a) wilful attack on life, b) serious attack on physical or psychological integrity, c) subjection to living conditions likely to entail the total or partial destruction of the group, d) measures aimed at preventing births and e) enforced child transfer. According to Article 211-2, direct and public incitement, by any means, to commit genocide will be punished, with the punishment being different depending on whether or not the incitement has led to acts in that regard. **Equivalence with the 1995 CC:** Crime of genocide (Article 607 CC) and incitement to commit the crime of genocide (Art. 615 CC).

**(A) Categories missing in Article 211-1 of the French Criminal Code with respect to Articles 607/615 CC:** Disability.

**(B) Categories missing in Article 607/615 CC with respect to Article 211-1 of the French Criminal Code:** Other arbitrary criterion.

**(C) Categories shared between Article 211-1 of the French Criminal Code and Articles 607/615 CC:** Religious, racial, ethnic and national group.

- Article 212-1 [**crimes against humanity**]: A crime against humanity is one of the following acts committed in the enforcement of a concerted plan against a civil population group as part of a systematic or widespread attack: a) wilful attack on life, b) arbitrary executions, c) slavery, d) deportation or enforced transfer of the

population, e) imprisonment or any form of serious deprivation of physical freedom f) torture, g) rape, forced prostitution, forced pregnancy, enforced sterilisation or any form of sexual violence of comparable gravity, h) persecution of any group or community on political, racial, national, ethnic, cultural, religious or gender/sexist grounds or due to any criteria universally recognised as unacceptable pursuant to international law, i) enforced disappearances, j) acts of segregation committed in the framework of an institutional regime of oppression and systematic domination of a racial group over any other racial group and with the intention to uphold that regime, k) other similar inhumane acts that intentionally cause great suffering or serious harm to the mental or physical integrity. **Equivalence with the 1995 CC:** Crimes against humanity (Article 607 *bis* CC).

**(A) Categories missing in Article 212-1 of the French Criminal Code with respect to Article 607 *bis* CC:** Disability.

**(B) Categories missing in Article 607 *bis* CC with respect to Article 212-1 of the French Criminal Code:** None.

**(C) Categories shared between Article 212-1 of the French Criminal Code and Article 607 *bis* CC:** Political, racial, national, ethnic, cultural, religious or gender/sexist grounds, other criteria.

- Article 225-1 and ss. [**crimes of discrimination**]: Specifically, according to Article 225-2, discrimination – defined in the previous articles, committed against an individual or legal entity is punished by imprisonment and a fine when it consists of: a) Refusal to supply goods or services, b) obstructing the normal exercising of an economic activity, c) refusal to hire, to sanction or to dismiss a person, d) refusal to accept a person for a training period. The protected categories would be the following (Article 225-1): origin, sex, family situation, pregnancy, physical appearance, specific vulnerability due to the economic situation, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, sexual morals or orientation, gender identity, age, political opinions, trade union activities, ability to speak in another language that is not French, belonging to a given ethnic group, nation, race or religion. **Equivalences with the 1995 CC:** Crime of discriminatory denial of benefits in the framework of business or professional activities (Article. 512 CC).



- (A) Categories missing in Article 225-1 of the French Criminal Code with respect to Article 512 CC.** Beliefs, reasons of gender.
- (B) Categories missing in Article 512 CC with respect to Article 225-1 and ss of the French Criminal Code:** Origin, pregnancy, physical appearance, economic situation, surname, place of residence, genetic characteristics, morals, gender identity, age, trade union activities, language, loss of autonomy.
- (C) Categories shared between Article 225-1 of the French Criminal Code and Article 512 CC.** Sex, family situation, state of health or illness, disability, sexual orientation, political opinions or ideology, being a member of an ethnic group, nation, breed, religion.

- Article 432-7 [**crime of discrimination**]: The discrimination defined in Article 225-1, committed in respect of an individual or legal entity by a person holding public authority or discharging a public service and in the discharging of that office or mission, is punished by imprisonment and a fine when it consists of: a) refusing the benefit of a right conferred by law, b) hindering the normal exercising of any given economic activity. Yet again, the protected categories would be the following (Article 225-1): origin, sex, family situation, pregnancy, physical appearance, specific vulnerability due to the economic situation, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, sexual morals or orientation, gender identity, age, political opinions, trade union activities, ability to speak in another language that is not French, belonging to a given ethnic group, nation, race or religion. **Equivalences with the 1995 CC:** Crime of discriminatory denial of a public service (Article. 511 CC).

- (A) Categories missing in Article 432-7 of the French Criminal Code with respect to Article 511 CC:** Beliefs, reasons of gender.
- (B) Categories missing in Article 511 CC with respect to Article 432-7 of the French Criminal Code:** Loss of autonomy, pregnancy, physical appearance, economic situation, surname, place of residence, genetic characteristics, morals, gender identity, age, trade union activities, language, nation.
- (C) Categories shared between Article 432-7 of the French Criminal Code and Article 511 CC.** Political ideology or opinions, religion, on ethnic grounds, race,

origin or national origin, sex, sexual orientation, family situation, illness or state of health, disability.

- Article 621-1 [**crime of humiliating or degrading sexist outrage**]: A sexist outrage is the fact of imposing on a person remarks or actions that have a sexual connotation and that affect such a person's dignity because of their degrading or humiliating nature or because they create an intimidating, hostile or offensive situation.

**Equivalence with the 1995 CC:** Degrading treatment crime (Article 173.1 CC). The aggravating factor of Article 22.4 CC has been applied to Article 173.1 CC on very few occasions. Even so, there are rulings in that regard. The categories protected by Article 22.4 CC include sex and gender. Art. 173.1 CC, separately, does not include any specific category in the criminal definition.

- Article R625-7 [**crime of non-public incitement**]: Aggravated fines punish incitement (committed in private) to discrimination, hatred or violence towards a person or group of people on account of their origin or their actual or supposed membership or non-membership of a particular ethnic group, nation, alleged race, religion, sex, sexual orientation, gender identity or those contained in Articles 225-2 (origin, sex, family situation, pregnancy, physical appearance, specific vulnerability due to the economic situation, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, sexual morals or orientation, gender identity, age, political opinions, trade union activities, ability to speak in another language that is not French, belonging to a given ethnic group, nation, race or religion) and 432-7 (previous grounds of discrimination, really defined in Article 225-1, but punished by Article 225-2). **Equivalences with 1995 CC:** Private incitement conducts and without expansive capacity in principle go unpunished.
- Article R625-8 [**crime of non-public defamation**]: Aggravated fines punish defamation (committed in public) against a person or group of people on account of their origin or their actual or supposed membership or non-membership to the following categories: particular ethnic group, nation, alleged race, religion, sex, sexual orientation, gender identity or other handicaps. **Equivalencies with the 1995 CC:**

Crimes of non-public insults and slander, both punished by fines (Articles 205-210 CC).

- (A) Categories missing in Article R625-8 of the French Criminal Code with respect to the crime of insults aggravated by Article 22.4 CC:** Anti-Semitism, ideology, beliefs, sexual identity, reasons of gender, illness, disability.
- (B) Categories missing in the crime of insults aggravated by Article 22.4 CC with respect to Article R625-8 of the French Criminal Code:** Gender identity, other handicaps.
- (C) Categories shared between Article R625-8 of the French Criminal Code and the crime of the insults aggravated by Article 22.4 CC:** Ethnic group, race, religion, sex, sexual orientation.

- Article R625-8-1 [**crime of non-public insults**]: Aggravated fines punish insulting (committed in public) of a person or group of people on account of their origin or their actual or supposed membership or non-membership of the following categories: particular ethnic group, nation, alleged race, religion, sex, sexual orientation, gender identity or other handicaps. **Equivalencies with the 1995 CC:** Crimes of insults, both punished by fines (Articles 208-210 CC).

- (A) Categories missing in Article R625-8 of the French Criminal Code with respect to the crime of insults aggravated by Article 22.4 CC:** Anti-Semitism, ideology, beliefs, sexual identity, reasons of gender, illness, disability.
- (B) Categories missing in the crime of insults aggravated by Article 22.4 CC with respect to Article R625-8 of the French Criminal Code:** Gender identity, other handicaps.
- (C) Categories shared between Article R625-8 of the French Criminal Code with respect to the crime of insults aggravated by Article 22.4 CC:** Ethnic group, race, religion, sex, sexual orientation.

Non-discrimination aggravating circumstance is another criminal technique used by the French legislator.

- Article 132-76 [**non-discrimination aggravating circumstance (1)**]: When the offence is preceded, accompanied or followed by written or spoken words, images, objects or actions of whatever nature which damage the honour or the reputation of the victim, or a group of persons to which the victim belongs, on account of their actual or supposed membership or non-membership of a given ethnic group, nation, race or religion, or which show that the facts have been committed against the victim for any of those reasons, the maximum of term of imprisonment is increased as indicated in this article.
- Article 132-77 [**non-discrimination aggravating circumstance (2)**]: When the offence is preceded, accompanied or followed by written or spoken words, images, objects or actions of whatever nature which damage the honour or the reputation of the victim, or a group of persons to which the victim belongs, on account of their actual or supposed sexual identity, the maximum of term of imprisonment is increased as indicated in this article.

This aggravating circumstance was only previously imposed when it was expressly envisaged for certain crimes, but after Act 2017-86, of 27 January 2017, relating to Equality and Citizenship, it is applicable to any crime (except for those to which this article expressly refers, such as, any crimes where aggravation is inherently included). **Equivalences with 1995 CC:** Aggravating circumstances of Article 22.4 CC.

- (A) **Categories missing in Article 132-76 and 132-77 of the French Criminal Code with respect to Article 22.4 CC:** Anti-Semitism, ideology, beliefs of the victim, sexual identity, reasons of gender, illness, disability.
- (B) **Categories missing in Article 22.4 CC with respect to Article 132-76 and 132-77 of the French Criminal Code:** Gender identity.
- (C) **Categories shared between Article 132-76 and 132-77 of the French Criminal Code and Article 22.4 CC:** Race, ethnic group, nation, religion, sex, sexual orientation.

Beyond the French Criminal Code, Act of 29 July 1881 on the Freedom of the Press deals with public expression crimes.

- Article 23 of the Act [**criminal offence of incitement to commit a crime**]: The persons punished as accomplices to an action qualified as a crime will be those who, either through their speeches, calls or threats uttered in public places and meetings, with the support of writings, prints, drawings, engravings, paintings, emblems, images or any other form of writing, speech or images, sold or exhibited in public places or meetings, or through placards or posters exhibited in public view, or by any means of communication to the public by electronic means, directly incite the author to commit the aforementioned action, if the provocation has been followed by an effect.

Article 24 of the Act [**crime of inciting hate, discrimination or violence**]: Those people will be punished who, through one of the means stated in the above Article [speeches, calls or threats uttered in public places and meetings, with the support of writings, prints, drawings, engravings, paintings, emblems, images or any other form of writing, speech or images, sold or exhibited in public places or meetings, or through placards or posters exhibited in public view, or by any means of communication to the public by electronic means] have caused the discriminate, hatred or violence towards a person or a group of persons for reasons of their origin or their affiliations or their non-affiliation to an ethnic group, nation, race, religion, sex, sexual orientation, gender identity or disability. **Equivalence with the 1995 CC:** Crime of inciting hatred (Article 510 CC).

**(A) Categories missing in Article 24 of the French Act with respect to Article 510**

**CC:** Anti-Semitism, ideology, beliefs, family situation, sexual identity, reasons of gender, illness.

**(B) Categories missing in Article 510 CC with respect to Article 24 of the French**

**Act:** Gender identity.

**(C) Categories shared between Article 24 of the French Act and Article 510 CC:**

Origin or national origin, ethnic group, nation, race, religion, sex, sexual orientation, disability.

- Article 32 of the Act [**criminal offence of defamation**]: Defamation<sup>2</sup> against people committed by one of the means envisaged in Article 23 [speeches, calls or threats uttered in public places and meetings, with the support of writings, prints, drawings, engravings, paintings, emblems, images or any other form of writing, speech or images, sold or exhibited in public places or meetings, or through placards or posters exhibited in public view, or by any communication to the public by electronic means] will be punished. Defamation committed by the same means against a person or group of persons due to their origin, whether or not they belong to a specific ethnic group, nation, race or religion, sex, sexual orientation, gender identity or disability will also be punished. **Equivalence with the 1995 CC:** Crime of insults (Articles 205-210 CC).

(A) **Categories missing in Article 32 of the French Act with respect to the insults crime aggravated by Article 22.4 CC:** Anti-Semitism, ideology, beliefs, sexual identity, reasons of gender, illness.

(B) **Categories missing in the crime of insults aggravated by Article 22.4 CC with respect to Article 32 of the French Act:** Origin, gender identity.

(C) **Categories shared between Article 32 of the French Act and the crime of the insults aggravated by Article 22.4 CC:** Ethnic group, race, religion, sex, sexual orientation, disability.

- Article 33 of the Act [**criminal offence of Insult**]: Any insult<sup>3</sup> will be punished committed by the same means against the authorities or persons established by Articles 30 [courts, tribunals, land, sea and air forces, constituted bodies and public administrations] and 31 [President of the Republic, one or more members of the Ministry, one or more members of any of the Chambers, a public civil servant, etc.] of this Act. Any insult will also be punished committed by the same means against a person or group of persons due to their origin, whether or not they belong to a specific ethnic group, nation, race or religion, sex, sexual orientation, gender identity or disability. **Equivalence with the 1995 CC:** Crime of insults (Articles 208-210 CC).

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<sup>2</sup> Any allegation or imputation of a fact which damages the honour or reputation of the person or body to whom the fact is imputed shall constitute defamation. Direct publication or publication by way of reproduction of such an allegation or imputation shall be a criminal offence, even if it is performed in a manner expressing doubt or if it refers to a person or body not explicitly named but whose identification is rendered possible by the terms of the speech, shouts, threats, writings or printed matter, placards or posters classified as criminal' (Article 29 of the Act).

<sup>3</sup> Any offensive expression, term of contempt or invective which does not include the imputation of any fact shall constitute an insult (Article 29 of the Act).

- (A) Categories missing in Article 33 of the French Act with respect to the crime of insults aggravated by Article 22.4 CC:** Anti-Semitism, ideology, beliefs, sexual identity, reasons of gender, illness.
- (B) Categories missing in the crime of insults aggravated by Article 22.4 CC with respect to Article 33 of the French Act:** Origin, gender identity.
- (C) Categories shared between Article 33 of the French Act with respect to the crime of insults aggravated by Article 22.4 CC:** Ethnic group, race, religion, sex, sexual orientation, disability.

### 2.2.2. Approach to the empirical reality

**i. Racism and governmental data.** The term “hate crime”, in the same way as in the Spanish Criminal Code, does not exist in French law. Consequently, the only option envisaged in its legislation that allows courts to punish those type of facts is regarding the offences committed on discriminatory grounds (origin/race, functional diversity, sexual orientation, trade union membership, etc.) among which those “race” and, by extension “ethnic grounds”, have been the main benchmark when progressing in the data collection system. Specifically, the entity tasked with collecting and systematising the data on these discriminatory grounds is the National Consultative Commission of Human Rights (CNCDH) regarding the fight against racism, anti-Semitism and xenophobia. This entity has been issuing reports since July 1990, when, given the need for greater knowledge about this phenomenon and, thus, to be able to combat it more efficiently, the French legislative branch has tasked the CNCDH with preparing an annual report for the Government on fighting all forms of racism. It should be stressed that that need is envisaged in the French Constitution of 4 October 1958, as its first article states that “France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion<sup>4</sup>.”

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<sup>4</sup> COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L’HOMME (CNCDH), “La lutte contre le racisme, l’antisémitisme et la xénophobie”, *Direction de l’information légale et administrative*, Paris, 2018, 412 pages. Online access: [https://www.cncdh.fr/sites/default/files/cncdh\\_rapport\\_2017\\_bat\\_basse\\_definition.pdf](https://www.cncdh.fr/sites/default/files/cncdh_rapport_2017_bat_basse_definition.pdf).

The latest CNCDH report, the twenty-eighth, contains the racism and xenophobia figures for 2017. Therefore, the Minister of National Education, the Ministry of the Interior and the Ministry of Justice annually inform the CNCDH on the statistical balance of its activity in the field of fighting against racism. Furthermore, this report also focuses on the monitoring of the recommendations made by the CNCDH in the previous years and the analysis and propositions of the CNCDH communicated to the Interministerial Delegate for the Fight against Racism, Anti-Semitism and Anti-LGTB hate of December 2017.

The progress reports of the Ministries of the Interior and Justice show the part of racism amounting to an offence. Furthermore, it should be noted that the Ministry of the Interior issues two complementary progress reports: on the one hand, the report from the Ministerial Internal Security Statistical Department (SSMIS), which reflects the real activity of the police and gendarmerie; and on the other hand, the one from the Central Service of Territorial Surveillance (SCRT), which allows the facts reports by the local counterparts to be monitored.

The 2017 SSMSI statistical progress report contains data on the procedures recorded by the police and gendarmerie on the basis of a set of infringements (crimes, offences and 4<sup>th</sup> and 5<sup>th</sup> class violations) defined in the Criminal Code as committed “on race, origin, ethnic or religious grounds”. In 2018, the police and gendarmerie recorded around 8,730 infringements explicitly related to race, origin, ethnic group and religion in Metropolitan France. Out of the aforementioned **8,730 infringements, 5,130 were considered to be crimes and offences (59%) and 3,600 were considered 4<sup>th</sup> and 5<sup>th</sup> class violations (41%)**. Even though it is true that the number of proceedings recorded dropped in comparison with the two previous years (approximately 11,000 proceedings in 2015 and 9,000 in 2016), that drop needs to be considered in the special context of 2015, where the peaks of racist violence happened in the weeks and months following the January and November attacks. However, the intensity following that type of peaks of violence after the attacks and attempted violence in France in 2016 (the Magnanville attack in June or the Nice attack and the Saint-Étienne-du-Rouvray murder of a priest in July) was lower.

In general, over 700 proceedings with racist characteristics are instigated each month. The structure of the racist litigation remains stable: **the vast majority of the offences (nearly 80%) are criminal or delinquent, and are regarding incitements, slander or insults**. Threats and blackmail (11%), attacking people (4%) and attacking property (2%) also stand out, although to a lesser extent.



As regards the profile, approximately 58% of the assailants and 55% of victims were men. As regards age, victims were generally people in the intermediate age range; in fact, 70% of victims were aged between 25 and 54. The apparent low representation of under 25s (around 11%, when they account for 30% of the population) may be due to a low report rate and therefore not to lower exposure to expressions of racism. In the case of assailants, however, even though young people were underrepresented (35% were under 35 years old, when they account for 66% of the population), the over 55s were overrepresented (they were 23% of the assailants, when they account for 6% of the population). Furthermore, around 9% were minors at the time of the incidents, a rate that varied according to the nature of the racist infraction in question (16% in the case of those prosecuted for attacks on property).

On the other hand, foreigners appear to be overrepresented in the victim count. In fact, 21% of the victims of crimes and offences were foreign. Mainly, the most affected collective were people from the African continent (17% are part of this collective, even though they account for under 3% of the population). As is logical, this overrepresentation is not reflected in the case of the assailants, as only 9% of them had been born outside French territory.

It should be noted that, from an environmental perspective, large conurbations seem to foster expression of racism: nearly two thirds of the aforementioned offences and crimes were concentrated in Paris (29%) or urban areas with over 200,000 inhabitants (34%). On the other hand, rural municipalities are the least affected by this type of racist incidents (6% of victims).

**ii. Court and Prosecution Figures.** In 2016, 7,664 legal cases were referred to the Public Prosecutor's Office, 45% of which (3,433 cases) were for insults and slander, 35% (2,693 cases) for threats and violence, 16% (1,263 cases) discriminations, and the remaining 4% attacks on property. In 2017, the number of people prosecuted, however, was 6,497, a figure that was up 27% on 2016. Furthermore, the majority of sentences were for offences of incitement to discrimination, hatred or violence, racist insults and defamation, and accounted for 74% of the punished offences.

**iii. Figures other than racism/xenophobia.** These figures are quite different of those reported by the SCRT, which also showed a downward trend over the last 3 years. Specifically, in 2017, there was a 15.78% drop (950 occurrences compared to 1,128 in 2016). However, a subtle reality seems to underline this downward trend, as even though it is true that the number of threats, which account for three-quarters of the occurrences reported, dropped notably in this last

year (-22.67%), actions are raising (+11.34%), which is particularly intense in the case of anti-Semitic actions and, to a lesser extent, the anti-Muslim ones.

It should be stressed that this report not only contains data on racist crime, but also provides an overview of other punished hatred crimes. First, it should be noted that crimes on discriminatory grounds in 2016 were 603, with the most victimised category being that of origin (race, ethnic group, nation or region), which suffered around 81.3% of crimes in 2016 (which, even though it was down on the previous year, accounted for around 81% of crimes, 490 offences). The second most victimised category, even though to a lesser extent than the above, is sexual identity and orientation, which accounted for around 15.2% of the crimes (92 offences). The other grounds of discrimination considered (trade union activities, functional diversity, sexual harassment and sex) make up 3.5% of the remaining crimes. “Custom” and “family situation” are also considered as grounds of discrimination, even though no crimes of that type have been recorded in the last two years.

In turn, the Interministerial Delegate for the Fight against Racism, Anti-Semitism and Anti-LGTB Hate (DILCRAH), with the help of the Ministerial Internal Security Statistical Department (SSMI) of the Ministry of the Interior, also compiles data and prepares an annual inventory on the victims of crimes and offences recorded by the law enforcement forces (police and gendarmerie) which are committed on the grounds of the real or alleged sexual orientation or gender identity of the victim(s)<sup>5</sup>. In this regard, in 2017 the police and gendarmerie recorded 1,026 homophobic or transphobic offences, 0.58% up on the previous year. Two hundred and sixty-two of all those offences were cases of sexual or physical abuse (25.6% of the occurrences). The victims of those offences were mainly men (73%) and youths (58% of victims were under 35). As regards the crime scene, 56.2% of the incidents occurred in urban areas with over 200,000 inhabitants. These figures are stable and show that anti-LGBT hate is stable over time.

**iv. Dark figure and surveys** Finally, the CNCDH, aware of the shortfall of the administrative statistics to exhaustively paint a picture of the situation in France, advocates to take into account the “dark figure” (unreported crimes) that affects their representativeness, as the number of known incidents is much lower than those really committed. In order to ensure a more precise approach and limit the impact of the sub-declaration, it uses other sociological sources such as the series of “Picture of Life and Safety” surveys. Those surveys, consisting of a face-to-face interview and an online survey, was started by the INSEE in 2007, in conjunction with the

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<sup>5</sup> DELEGATION INTERMINISTERIELLE A LA LUTTE CONTRE LE RACISME, L’ANTISEMITISME ET LA HAINE ANTI-LGBT (DILCRAH), “Stabilité du nombre de crimes et délits anti-LGBT”, *Secrétariat d’Etat chargé de l’Egalité entre les femmes et les hommes*, Paris, 2018, Online access: <http://uvyk.mjt.lu/nl2/uvyk/lz3z.html?hl=fr>

National Observatory on Crime and Criminal Justice (ONDRP), in order to establish the crimes that citizens could have suffered in the previous two years and to identify their subjective perception of insecurity. This survey is conducted with approximately 25,500 households of Metropolitan France in the first quarter of each year.

## 2.3. Germany

### 2.3.1. Legislative Equivalents

In Germany, hate crimes are, fundamentally, based on two precepts of the Criminal Code: on the one hand, the generic aggravating factor of § 46.2.1 StGB and, on the other hand, § 130 StGB, relating to speech hate<sup>6</sup>.

#### i. The generic aggravating factor of § 46.2.1 StGB

§ 46 of the German criminal code sets out a series of principles to establish the punishment, including the reference to aspects that may operate both to reduce and increase the penalty. Specifically, § 46.2.1 refers to the motives and targets of perpetrator, particularly to those that are racist or xenophobic in nature or any that are derogatory about people.

It is part of the consolidated and routine practice of German courts to qualitatively assess the motives of the offender, so that aggravating or mitigating circumstances are taken into account when ruling on the punishment, according to their social-ethical appraisal. Given the breadth of the legal construct, it is obvious that certain caution is required when making assessments only involving statements relating to the character of the offender, such as his/her “irredeemability” or “stubbornness” In fact, what is relevant is not so much the character traits of the person, but rather the motives and attitudes that can be proven to have occurred at the time of the incident.

Beyond these generic considerations, as regards the specific mention of racist or xenophobic grounds or any disparaging treatment of people, these were included in 2015 after a prolonged

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<sup>6</sup> Apart from those precepts, also see § 86a StGB, relating to the use of unconstitutional symbols, such as swastikas, different Nazi police or military uniforms, etc.

discussion of the appropriateness of introducing a specific reference that would make them more visible. Finally, in the explanatory memorandum, the legislator highlighted the importance of explicitly mentioning them in order to emphasise the basic coexistence values that question hate crimes. However, this change does not seem to have meant, in practice, a notable difference in the activity of the courts, given that prior to the 2015 reform, punishments were already being increased in the case of offences effected on the type of grounds referred to in § 46.2.1 StGB after its amendment.

The terms “racist” and “xenophobic” derive from Article 4 of Framework Decision 2008/913/JHA which describes acts defined by selection criteria of race, colour, religion, descent or national or ethnic origin of the victims and groups to which they belong. Racism is taken to include selection criteria referring to hereditary phenotypic traits, while xenophobia calls on a broader motivation that embraces aspects including, apart from the external appearance of the victim, his/her origin, language or type of conducts that are stigmatised or vilified for being considered alien, usually from the perspective of the cultural difference. The aggravating factor is applied in those cases when the behaviour of the perpetrator is accredited to be guided by his/her prejudices, denying the universality of the application of human rights and undermining the dignity of the victims. The “*other disparaging treatment of persons*” clause is taken to include conduct based on another type of forbidden discriminatory grounds, such as anti-Semitism, religion, disability, social status or sexual orientation of the victim.

The closest equivalence of § 46.2.1 StGB in the Spanish criminal justice system in the generic aggravating factor of Article 22.4 CC. However, it stresses that the legislative technique used reveals certain differences between both legal systems: while the Spanish legislation has included a highly meticulous and exhaustive list of grounds, a more generic construct that, nonetheless, is considered sufficient to protect the target collectives.

As it is a generic circumstance to establish the punishment, its sphere of action includes any crime of the special part of the Code, in a similar way to what occurs with the aggravating factor of the Spanish Criminal Code. **Equivalences with 1995 CC:** Aggravating circumstances of Article 22.4 CC.

- (A) Categories -expressly<sup>7</sup>- missing in § 46.2.1 StGB with respect to Art. 22.4 CC:** Anti-Semitism, ideology, beliefs, sex, sexual orientation, sexual identity, reasons of gender, illness, disability.
- (B) Categories – expressly - missing in Article 22.4 CC with respect to § 46.2.1 StGB:** Xenophobia, any other disparaging treatment of people, colour, descent.
- (C) Categories shared between § 46.2.1 StGB and Article 22.4 CC:** Race, religion, ethnic group or origin, national or national origin.

**ii. Hate speech**

§ 130 StGB considers the crime of incitement to hate (“*Volksverhetzung*”). It is a complex and rather convoluted type of crime that contains, essentially, the following structure and prohibited conduct:

- a) Incitement to hate, call to violence or adopting arbitrary measures with the potential of causing a breach of the peace. The protected collectives are religious, racial or national ones or those determined by their ethnic origin, parts of the population, along with individuals due to their belonging to one of the aforementioned groups or a part of the population, and must be subjects residing in Germany. It should be noted that groups of people that, transcending their individuality, and with certain stability or permanence, stand out from the other by means of certain shared characteristics, either on economic, social, political, ideological, professional or other types of grounds. The punishment to be imposed for each of those conducts would be three months and five years of imprisonment.
  
- b) The attack on human dignity by means of insulting, malicious contempt and defamation of the collectives mentioned in the above point, provided that the conduct has the potential to

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<sup>7</sup> “Expressly” refers here and in the rest of the documents to the categories that do not appear indicated as such in one or other precept, without prejudice to those categories effectively being observed by other more general ones.

cause a breach of the peace. The German Criminal Code also envisages imprisonment of between three months and five years for that conduction.

- c) If the incitement to hate, call to violence or adopting arbitrary measures, or the attack on human dignity by means of insulting, malicious contempt and defamation is disseminated in the written form (whether generalised or merely making it available to a minor) or resorting to the media or internet, without the conduct being likely to cause a breach of the peace, the punishment to be imposed will be three years in prison or a fine. The same punishment is also applied to produce materials with discriminatory propaganda content, their purchase and storage, if that conduct is carried out in order to use those materials to perform any of the propaganda conduct referred to at the start of the section (the incitement to hate, call to violence or adopting arbitrary measures, or the attack on human dignity by means of insulting, malicious contempt and defamation).
  
- d) Approval, denial or downplaying any of the conducts envisaged in § 6 of the Codes of Crimes against International Law (“*Völkerstrafgesetzbuch*”) performed under Nazi rule so that it is likely to jeopardise legal concord. This includes any form of approval, denial or downplaying of the genocide orchestrated by the State and also of individual actions performed against specific people, when they have been attacked for their status as members of a group, and not on personal grounds. The punishment envisaged for this type of behaviour is imprisonment of up to five years or a fine.
  
- e) Glorifying or justifying arbitrary or violent acts carried out under Nazi rule so that they harm the dignity of the victims and cause a breach of the peace. That speech has to refer to the most fundamental breaches of human rights, even though the exaltation or glorification of specific persons is also punished, provided that it is any of the main leaders that represented the essence of the Nazi regime to the point of being able to be identified as one of the people responsible for the most important decisions adopted then. This conduct is punished with a prison sentence of up to three years or, alternatively, with a fine.

The closest equivalent to § 130 StGB in the Spanish legal system would be Article 510 of the Criminal Code that, despite the differences between both precepts, show some clear parallels with respect to the German paragraph. **Equivalence with the 1995 CC:** Crime of inciting hatred (Article 510 CC).

- (A) Categories -expressly- missing in § 130 StGB with respect to Art. 510 CC:**  
Anti-Semitism, ideology, beliefs, family situation, national origin/nation/national group, sex, sexual orientation, sexual identity, reasons of gender, illness, disability.
- (B) Categories missing in Article 510 CC with respect to § 130 StGB:** Parts of the population.
- (C) Categories shared between § 130 StGB and Article 510 CC:** Race, religion, ethnic group or ethnic origin.

### 2.3.2. Approach to the empirical reality

In Germany, the central official benchmark as regards statistical data is that from the German Ministry of the Interior (“Bundesministerium des Innern, für Bau und Heimat”)<sup>8</sup>, which within the Political Motivated Violence general category (“*Politisch Motivierter Kriminalität*” – PMK) specifies a sub-category that is known as hate criminality (“*Hasskriminalität*”).

The general statistical approach to statistically motivated criminality is fundamentally in response to the post-war German political-legal design itself, where the emphasis on a militant democracy pays particular attention to clearly anti-democratic extreme movements. Based on the better historical experience of the Weimar Republic, overwhelmed by the intolerance of the political extremes and the subsequent rise of Nazism, institutional intelligence and surveillance mechanisms («*Verfassungsschutz*») of such movements have been consolidated, for the purposes that are of interest here, of which the statistical collection system is a further reflection.

Therefore, the politically motivated criminality category goes far beyond what is a core understanding of hate crimes in other comparative law circles. According to the definition in the 2017 *Verfassungsschutzbericht* report<sup>9</sup>, politically motivated crimes will be considered to be any

<sup>8</sup> Online access:

[https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/pks\\_node.html](https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/pks_node.html)

<sup>9</sup> In the 2017 Constitutional Protection Report (“*Verfassungsschutzbericht*”) of the Federal Ministry of the Interior, for the Construction and the Homeland (“Bundesministerium des Innern, für Bau und Heimat”), politically motivated discrimination is defined, on pp. 22-23, as “any criminal offence que meets the characteristics of the so-called crimes endangering the State, even when the political motivation cannot be established. The following criminal offences are considered as conventional crimes endangering the State: §§ 80 - 83, 84 - 91, 94 - 100a, 102 -104a, 105 - 108e, 109 - 109h, 129a, 129b, 130, 234a or 241a StGB”.

Crimes that may be committed in the sphere of everyday crimes (such as crimes of homicide, bodily injury, arson, resistance, damage) fall with the “politically motivated criminality” category, when an overall assessment of the de facto circumstances or the attitude of the perpetrator offers a base to infer that they have a political motivation, given

criminal precepts that belong to the conventional block of crimes against the State when the specific grounds in each case should be identified. Therefore, the police statistical databases for this type of crimes include a great many and wide variety of specific paragraphs of the German Criminal Code (§§ 80 bis 83, 84 bis 91, 94 bis 100a, 102 bis 104a, 105 bis 108e, 109 bis 109h, 129a, 129b, 130, 234a y 241a StGB) or other more general criminal precepts when the relevant grounds are identified. This general category rendered a general figure of 39,505 criminal incidents in this field, which can be broken down into 13,406 **propaganda crimes** (33.9% of the total political violence; 58.6% of the political violence of the extreme right<sup>10</sup>) and 3,754 **violent crimes** (particularly bodily harm: 2,066 incidents).

The most specific and restricted view of hate crimes (“*Hasskriminalität*”) in the strictest sense reduces the aforementioned figures to a global total of nearly 8,000 (7,913) incidents in 2017 with a maximum bracket of 10,086 if the total statistical totals are aggregated that are not identified as hate crimes, in general, but also according to the target collectives: xenophobic (6,166); anti-Semitic (1,412); racists (1,277); against other religions (27); against the social status (20); against sexual orientation (99); against the disabled (20); against Christians (20); against Islam (994); against gypsies (39); and against other ethnic origins (12).

The total hate crime figure (7,913) is sub-divided into five main strands from the general perspective of framing the type of ideology leading to politically motivated violence: namely, 7,170 incidents from the extreme right, 44 from the extreme left, 132 foreign ideologies, 22 religious ideologies and 346 not specified.

There is one aspect relating to specific crime types that must be noted: incitement crimes (“*Volkserhetzung*”), equivalent to Article 510 of the Spanish CC, came to a total of 3,309 incidents in 2017. Twelves crimes of manslaughter and/or murder (against life) –2 successful and 10 attempted- were recorded, along with over 2,000 bodily harm crimes (2,066) in a broad consideration of politically motivated delinquency.

In summary, the aforementioned data show that the gathering of data in the broad field of politically motivated crimes is in line with a key aspect of the political-legal identity of the post-

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its aim to influence the process to shape democratic will, to achieve or prevent political purposes, or when they are aimed at avoiding the implementation of political decision, against the free democratic order or any of its essential characteristics, against the permanence or security of the Federation or one of its States or result in members of constitutional bodies or any body of a federal state being unlawfully prevented from carrying out their duties, by means of the use of or acts preparing violence that endangers the German Federal Republic, are directed against a person on the grounds of their political ideology, nationality, ethnicity, race, colour, religion, view of the world, origin or external appearance, disability, sexual orientation or social status (the so-called hate crimes); offences are also included that are not directly aimed at a person, but rather against an institution or object in the aforementioned context.

<sup>10</sup> Particularly, the use of anti-constitutional symbols pursuant to precepts 86 and 86a StGB.



war German Federal Republic. Therefore, unlike the rest of the police statistical report, the system to gather and identify incidents is not “exit” (once the police investigation of the case is completed) but rather “entry” (“*Eingangsstatistik*”) that is, the time when the police authorities become aware of the crime so that they can deploy with the maximum efficiency the mechanism to alert to this type of activities.

This explains how, unlike other jurisdictions where hate crimes are configured from the mentality of protecting vulnerable collectives or anti-discriminatory approach, the main approach<sup>11</sup> behind and to understand these phenomena in Germany has a “political” (militant democracy) mentality as explained above.

Finally, emphasis should be made on the systematic differentiations that goes beyond the thematic fields of motivational inspirations (right- and left-wing extremists, foreign ideology, or with the stamp of religion) of the protection sub-categories (anti-Semitic, anti-gypsy, racist incidents, against ethnic origin, xenophobic, against Christianity, Islam or other religions, the social status, sexual orientation or disability) alludes to “violent” incidents (“*Gewalttaten*”). Crimes against life and bodily harm are at the heart of the latter and they also have a sort of alternative aggregate to the so-called propaganda crimes, such as general grouping of crime categories at a higher level to the mere study of each individual type of crime.

## 2.4. England and Wales

### 2.4.1. Legislative Equivalents

**i. Aggravated types.** Sections 28 to 32 of the *Crime and Disorder Act 1998* (CDA) contain *ex novo* aggravated types with respect to a closed list of common crimes contained, in turn, in different legislative provisions. Therefore, it is fundamental to consider the common crime corresponding to each aggravated type to provide a comprehensive view of the criminal behaviour whose aggravated version is to be respected in the CDA. This will be the only way to find equivalences or similar type of crime applicable to the systems of continental Europe. In principle, there are four main blocks of common crimes to which the CDA refers. The categories in question, following the order set by the CDA (Sections 29 to 32), are as follows: assaults, criminal damage, public order offences and harassment or stalking.

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<sup>11</sup> The origins of the alert system and its statistical reflect point to that direction, regardless of whether the data collection mechanism also allows -and is evolving towards- other data presentation profiles. See, *infra*, the filtering of the data collected by the OSCE.

- a) With respect to the **assaults** of Section 29 of the CDA, there are three crime strands where it will be possible, where applicable, to observe an aggravated type due to the hostility shown or the hostile motivation of the perpetrator.
- a.1)** “Malicious wounding” or “maliciously inflicting grievous bodily harm”, according to Section 20 of the *Offences Against the Person Act 1861* (OAPA). **Equivalence with the 1995 CC:** Actual bodily harm (Article 147 and ss. CC).
- a.2)** *Actual bodily harm*, according to Section 47 of the *Offences Against the Person Act 1861* (OAPA). **Equivalence with the 1995 CC:** Actual bodily harm (Article 147 and ss. CC (and, possibly, overlapping cases with the offence of making threats).
- a.3)** Common assault. Even though the CDA does not expressly specify to which section to turn, the following should be noted: Section 39 of the *Criminal Justice Act 1988* and Section 47 of the OAPA. **Equivalence with the 1995 CC:** Actual bodily harm (Article 147 and ss. CC (and, possibly, overlapping cases with the offence of making threats).
- b) Criminal damage, according to Section 1(1) of the *Criminal Damage Act 1971*. According to this section, the person is punished who without proper justification destroys or damages property or belongings of another with that intention or recklessly. **Equivalence with the 1995 CC:** Criminal Damage (Article 263 and ss. CC).
- c) “Public order offences”, according to Sections 4, 4A and 5 of the *Public Order Act 1986*. **Equivalence with the 1995 CC:** Crime of inciting hatred (Art. 510 CC), public disorder offence (Arts. 557 and ss. CP), offence of threats aimed at terrorising a collective (Art. 170.1 CC), etc.
- d) The crime of harassment, stalking, harassment causing a fear of violence or stalking causing fear of violence and serious alarm or distress, according to Sections 2, 2A, 4 y 4A of the *Protection from Harassment Act 1997*. **Equivalence with the 1995 CC:** *Stalking* (Art. 172 *ter* CC); as applicable, also possible crimes of threats or coercions, which were applicable prior to the recent incorporation of the crime of stalking.

All the prior type of common crimes become aggravated at the time of committing the crime, if the perpetrator shows hostility or the perpetrator was driven by hostility based on the victim really or allegedly belonging to a racial<sup>12</sup> or religious<sup>13</sup> group.

**ii. “Generic” aggravating factors when sentencing.** When the common crime is not one of the aforementioned, there are aggravating provisions in the phase of determining the punishment when the hostile motivation of the perpetrator or the showing of hostility is related to the race<sup>14</sup> or religion<sup>15</sup>, real or alleged (Section 145 of the *Criminal Justice Act* 2003), or with disability<sup>16</sup>, sexual orientation and transgender identity<sup>17</sup>, real or alleged (Section 146 of the *Criminal Justice Act* 2003). In practice, any crime is subject to Sections 145-146 of the CJA. In fact, even before this type of provisions were given a legislative presence, judicial practice already existed – and there is evidence – in that regard. In any event, the Europe Commission against Racism and Intolerance (ECRI) has already expressed its concern, - in that it is the last monitoring report on the United Kingdom at the time of writing, (2016) - , regarding the lack of information available about the application of Sections 145-146<sup>18</sup>. **Equivalences with 1995 CC:** Aggravating circumstances of Article 22.4 CC.

**(A) Categories missing in the CDA and CJA with respect to Article 22.4 CC:**

Anti-Semitism, ideology, beliefs, sex, sexual identity, reasons of gender, illness.

**(B) Categories missing in Article 22.4 CP with respect to the CDA and CJA:**

Transgender identity, colour, nationality.

**(C) Categories shared between the CDA and CJA and Article 22.4 CC:**

Race, religion, national origin or nation, disability, sexual orientation, ethnic group or ethnic origin.

**iii. Incitement.** The crimes relating to stirring up hatred, contained in Sections 17-29N of the *Public Order Act* 1986, are the only legislative twist or independent system with respected to

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<sup>12</sup> According to Section 28(4) of the CDA, racial group means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

<sup>13</sup> According to Section 28(5) of the CDA, religious group means a group of persons defined by reference to religious belief or lack of religious belief.

<sup>14</sup> The aforementioned definition of Section 28(4) of the CDA is already applied.

<sup>15</sup> The aforementioned definition of Section 28(5) of the CDA is already applied.

<sup>16</sup> According to Section 146(5) of the CJA, disability means any physical or mental impairment.

<sup>17</sup> According to Section 146(6) of the CJA, references to transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.

<sup>18</sup> Online access: <https://rm.coe.int/fifth-report-on-the-united-kingdom/16808b5758>

the types aggravated by the CDA and to the aggravated provisions when establishing the punishment (*standalone offences*). The protected categories are race<sup>19</sup>, religion<sup>20</sup> and sexual orientation<sup>21</sup>. Specifically, the crimes are as follows: a) Use of words, behaviour or display of written material (Sections 18 and 29B) b) Publishing or distributing written materials (Sections 19 and 29C) c) Public performance of a play (Sections 20 and 29D: d) Distributing, showing or playing a recording (Sections 21 and 29E: e) Broadcasting or including a programme in a cable programme service (Sections 22 and 29F) f) The possession of racially inflammatory material (Sections 23 and 29G). **Equivalence with the 1995 CC:** Crime of inciting hatred (Article 510 CC).

- (A) Categories missing in the *Public Order Act 1986* (incitement to hatred) with respect to Article 510 CC:** Anti-Semitism, ideology, beliefs, family situation, sex, sexual identity, reasons of gender, illness, disability.
- (B) Categories missing in Article 510 CP with respect to the *Public Order Act 1986* (incitement to hatred):** Colour, nationality.
- (C) Categories shared between the *Public Order Act 1986* (incitement to hatred) and Article 510 CC:** Race, national origin or nation, religion, sexual orientation, ethnic group or ethnic origin.

#### 2.4.2. Approach to the empirical reality

There is no unified recording system in England and Wales, given that the Home Office reports process the official statistics jointly in *Hate Crime, England and Wales Statistical Bulletin* (hereinafter, “*Statistical Bulletin*”), combining this information with the data of the *Crime Survey for England and Wales* (CSEW). The data presented in the *Statistical Bulletin* are periodically reviewed according to the standards of the *Code of Practice*<sup>22</sup>.

The detection of incidents in England and Wales has increased very significantly during recent years. It is important to point out here that the cases are recorded in such a way that the

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<sup>19</sup> Pursuant to Section 17 of the *Public Order Act 1986*, racial hatred means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

<sup>20</sup> Pursuant to Section 29A of the *Public Order Act 1986*, religious hatred means hatred against a group of persons defined by reference to religious belief and lack of religious belief.

<sup>21</sup> Pursuant to Section 29AB of the *Public Order Act 1986*, hatred on the grounds of sexual orientation means hatred against a group of persons defined by reference to sexual orientation (whether towards peoples of the same sex, the opposite sex or both).

<sup>22</sup> OFFICE FOR STATISTICS REGULATION, “Code of Practice for Statistics: Ensuring official statistics serve the public”, *UK Statistics Authority*, 2018, 38 pages. Online access: <https://www.statisticsauthority.gov.uk/wp-content/uploads/2018/02/Code-of-Practice-for-Statistics.pdf>

incident concept prevails over the crime one. Therefore, the evidence of a criminal offence is not a requirement for a hate crime to be recorded and thus any incident is included that is perceived by the victim or by any other person as motivated by the prejudice. Similarly, in the crime recording process, the police can allocate an aggravating factor to a crime, for example: alcohol, hate crime, online line or domestic abuse, etc. It is therefore possible to commit a crime with more than one aggravating factor, even those there is a lack of uniformity in the applicability of those criteria by the police and law enforcement. Even though between 43,000 and 47,000 hate incidents were recorded from 2011 to 2014, this number stood at nearly 55,000 in 2015, a trend that had steadily grew to the last period, 2017-2018, where the number of crimes exceeded 100,000 incidents, an increase of over 120% in barely five years. This change in trends has coincided with certain events such as the 2016 Brexit Referendum or the 2017 terrorist attacks that may have a moderating effect, and also with a refining of the police standards in the processes to investigate, oversee and record hate incidents. Special mention should therefore be made of two fundamental protocols, always from a pro-victim perspective, which have updated the previous standards and guide. First, the *National Standard for Incident Recording* (NSIR) produced by *National Policing Improvement Agency*<sup>23</sup>, which seeks to establish a systematic recording of the incidents. Second, a review of the general recording protocols of criminal statistics<sup>24</sup>. And, third, the *Hate Crime Operational Guidance* produced by the *College of Policing*<sup>25</sup>, a guide that succinctly and accessibly key aspects regarding hate crimes, such as their defining, relevant legislation, the key points in the monitoring and action taken with the affected collectives, and also includes instructions, practical tips and examples, among other issues.

In the last period, 2017-18, 94,098 incidents and a total of 100,102 acts motivated by bias were detected and were distributed as follows: 71,251 (76%) by race, 11,638 (12%) by sexual orientation, 8,336 (9%) by religion, 7,226 (8%) by disability and 1,651 (2%) by transgender identity. Given that the records consider the possibility of more than one motivating factor existing, the data do not show a normal proportional distribution. As regards the types of crime, over half (56%) of the hate incidents recorded by the police were disturbances of the peace, while

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<sup>23</sup> NATIONAL POLICING IMPROVEMENT AGENCY, “The national standard for incident recording (NSIR 2011), Instructions for Police Forces in England and Wales”, *Home Office*, 2011, 34 pages. Online access: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116658/count-nsir11.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116658/count-nsir11.pdf)

<sup>24</sup> HER MAJESTY’S INSPECTORATE OF CONSTABULARY (HMIC) (2014), “Crime-recording: Making the victim count. The final report of an inspection of crime data integrity in police forces in England and Wales”, *HMIC*, 2014, 126 pages. Online access: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/crime-recording-making-the-victim-count.pdf>

<sup>25</sup> COLLEGE OF POLICING, “Hate crime. Operational guidance”, *College of Policing*, Coventry, 2014, 132 pages. Online access <http://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf>

a third (33%) of the cases are violence against people, which means that 9 out of every 10 hate incidents recorded by the place came under these two categories.

Furthermore, the *Statistical Bulletin*, unlike other reports, explains the number of incidents that have an online component; however, it is still exploratory by nature and does not comply with the same quality standards as the other official statistics. In any events, it is interesting to consider how this indicator is distributed. In the recording process, apart from including at least one of the five main markers, the motives also have an additional marker to indicate whether it is an online hate crime. In 2017-18, 1,605 hate incidents with an online component were recorded, which can be broken down into the following different grounds (1,784): 928 race (52%, 2% of the total) 210 religion (11.8%, 3% of the total), 352 sexual orientation (19.7%, 4% of the total), 225 disability (12.6%, 4% of the total) and 69 transgender (3.9%, 6% of the total). The majority, 80% of the incidents, are facts related to violence against people, 14% public order and the remaining 6% are distributed into different categories.

On the other hand, the trend for the CSEW survey data is the opposite. Between 2015 and 2018, they estimated there were around 184,000 hate incidents a year which include one or several motives, while that figure was 307,000 between 2007 and 2009, which was a drop of 40%. Racial animosity was the most common grounds for the incidents between 2015 and 2018 with an average of 100,000 incidents, followed by disability with 52,000, religion with 39,000 and sexual orientation with 30,000; while, in the case of sexual identity, even though the figures have been collected since 2012-13, the CSEW indicates that few are still reported and it is not possible to provide a reliable estimate. The CSEW groups the incidents by type of offence into two categories: personal and household. The personal incidents are those that take place against the individual and are only related to the personal experience of the person surveyed, while household cover incidents against property that affect the family (robbery, damage, theft of vehicles, etc.). In recent years, 2015-2018, 58% of the incidents were personal and 42% household, with violence (46%) and damage (18%) prevailing. Furthermore, the hate incidents account for 3% of the total delinquency gathered by the CSEW and violent incidents 21% of the total. These differences are also present regarding the impact of the victimisation, the 13% of the total of the victims report that they are very affected by 36% of the hate crimes.

As has already been anticipated, according to the Home Office, there were 94,098 hate incidents recorded in the last year (2017/2018). However, the Crown Prosecution Service or CPS, in its annual report on hate crimes published for 2017/18, contains other figures that are not in line with the above, mainly because they follow other logics and data gathering criteria. In fact,

contrary to what happens with the Home Office, the information gathered by the Crown Prosecution Service is not official as it is not in line with the definition of what official statistics should be taken to mean according to the *Statistics and Registration Service Act 2007*. In any event, the Crown Prosecution Service envisages the figure of 14,151 completed hate crime prosecutions in 2017/18, with 11,987 of them ending in prison sentences (84.7%). In turn, the completed prosecutions ending in aggravated sentences in the sentencing stage totalled 7,784 (67.1%).

The global figure of completed hate crime prosecutions (14,151) can be broken down as follows:

- 11,061 hate crimes aggravated by **race** were prosecuted, with 9,450 (85.4%) resulting in a prison sentence. The percentage of cases that ended in an aggravated sentence specifically in the sentencing stage was 69.9%.

Furthermore 820 hate crimes aggravated by **religion** were prosecuted, with 691 (84.3%) resulting in a prison sentence. The percentage of cases that ended in an aggravated sentence specifically in the sentencing stage was 69.2%.

The following percentages regarding the main crime categories are provided as a joint reading of hate crimes aggravated by **race and religion**. By order of incidence, the figures are as follows: 86.8% offences against person, 7.9% public order offences, 2.2% criminal damage, 1.1% theft and handling, 0.5% robbery, 0.4% drug offences, 0.3% burglary, 0.1% homicide, 0.1% sexual offences and 0.1% fraud and forgery.

- 1,436 hate crimes aggravated by **homophobia** were prosecuted, with 1,219 (84.9%) resulting in a prison sentence. The percentage of cases that ended in an aggravated sentence specifically in the sentencing stage was 64.1%.

Furthermore 82 hate crimes aggravated by **transphobia** were prosecuted, with 63 (76.8%) resulting in a prison sentence. The percentage of cases that ended in an aggravated sentence specifically in the sentencing stage was 58.1%.

The following percentages regarding the main crime categories are provided as a joint reading of hate crimes aggravated by **homophobia and transphobia**. By order of incidence, the figures were as follows: 56.2% offences against persons, 32.8% public order offences, 4.6% criminal damage, 1.7% theft and handling, 1.5% drug offences, 1.2% robbery, 0.6% sexual offences, 0.3% homicide, 0.3% burglary and 0.2% fraud and forgery.

- 752 hate crimes aggravated by **disability** were prosecuted, with 564 (75%) resulting in a prison sentence. The percentage of cases that ended in an aggravated sentence specifically in the sentencing stage was 24.8%.

The following percentages regarding the main crime categories are provided as a joint reading of hate crimes aggravated by **disability**. By order of incidence, the figures are as follows: 48.1% offences against persons, 11.1% public order offences, 9.7% criminal damage, 9.3% theft and handling, 8% drug offences, 7.2% robbery, 3.2% sexual offences, 1.4% homicide, 0.7% burglary and 0.6% fraud and forgery.

Finally, 9 cases of stirring up hatred were processed with 8 of them ending in a prison sentence. The first of the cases included 8 crimes related to stirring up religious hatred, the second 8 crimes relating to stirring up religious hatred, the third 1 crime related to stirring up racial hatred and 1 religious hatred, the fourth 1 crime related to stirring up religious hatred, the fifth 1 crime related to stirring up racial and 2 religious hatred, the sixth 6 crimes related to stirring up religious hatred, the seventh 3 crimes related to stirring up religious hatred and the eighth 12 crimes related to stirring up hatred against the Muslim, Afro-Caribbean and Jewish communities.

Crimes against the elderly, aged 60 or over, are also included in the statistics, knowing that those offences may or may not be hate crimes depending on the facts of the specific case. In any event, the courts must take the factor of the vulnerability of the victim into account when sentencing to thus increase the severity of the crime. Thus, 3,295 offence against the elderly were prosecuted, with 2,753 resulting in a prison sentence (83.6%).

## 2.5. Comparative framework of official data according to the OSCE/ODIHR: France, Germany and the United Kingdom.

The Office for Democratic Institutions and Human Rights (ODIHR), answering to the Organisation for Security and Co-operation in Europe (OSCE), does not provide data on discrimination or hate speech, as it argues that is no sufficient consensus in the OSCE region regarding its criminal nature. Excluding the above, only penalty enhancement provisions on the grounds of prejudice and substantive offences that already include that aggravation in the type of crime are covered by that organisation. The generic term of hate crimes is used when referring to the official information that each country sends to the OSCE/ODIHR<sup>26</sup>. In short, there are criminal

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<sup>26</sup> Online access: <http://hatecrime.osce.org/what-hate-crime>



offences generally reported to the police and then prosecuted or brought before the courts within the judicial system of each country.

Yet the OSCE/ODIHR does not only pass on the official figures that the national authorities of the relevant State are tasked with facilitating to the organisation, but it also fosters the visibility of that information exclusively promoted by groups of the organised civil society. In general, it is complementary information to the official figures, which becomes particularly important when the official statistical data are not filtered and it is the only source of information. Apart from the above, there will be cases driven by prejudice that are only discovered through those platforms, as the victims does not want the police or any other authorities of the country to learn about the case. Furthermore, those organisations may also start from conflicting or simply different definitions on the standardised object of analysis of the OSCE/ODIHR. Be that as it may, it seems certain that such organisations are a more approachable and accessible authority to which the victims can turn. Therefore, the OSCE/ODIHR supervise that transfer of information and publishes it alongside the official information of each country. The list of contributors for 2017 included both national and regional organisations<sup>27</sup>. It should be noted that those cases exclusively gathered by civil society, international organisations and the Holy See is what the OSCE/ODIHR call hate incidents, without prejudice to their becoming hate crimes later on. At least as regards the hate incidents, the OSCE/ODIHR points out that they may have more than one motive and involve more than one crime type. They may also include more than one victim or more than one assailant, even though they continue to be recorded as a single incident. In any event, those events have not been necessarily and officially verified by the national authorities of each country<sup>28</sup> and we will therefore contain our analysis to the lines followed by the ones that have been verified. In other words, we will consider what the OSCE/ODIHR call and take to be hate crimes.

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<sup>27</sup> Specifically, the regional contributors for 2017 are: Anti-Defamation League (ADL), International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), International Organisation for Migration (OIM), European Association of Jehovah's Christian Witnesses, Kantor Centre for the Study of Contemporary European Jewry (Tel Aviv University), Observatory on Intolerance and Discrimination against Christians in Europe (OIDAC), Organisation of "Racism Islamophobia Watch" (ORIW), Foundation for Political, Economic and Social Research (SETA as its Turkish acronym), *Transgender Europe* (TGEU) and United Nations High Commissioner for Refugees (UNHCR).

As regards the national contributors, we will consider the cases of Spain, the United Kingdom, France and Germany. In Spain the contributors are: Federación Estatal de Lesbianas, Gais, Transexuales y Bisexuales (FELGBT), Gabinet d'Estudis Socials (GES), Observatorio Español contra la LGBTfobia, Observatorio Madrileño contra la LGTBfobia – Arcópoli, Observatorio para la Libertad Religiosa y de Conciencia (OLRC) and Unión de Comunidades Islámicas de España. In the United Kingdom: *Community Security Trust* (CST), *Galop*, *Muslim Engagement and Development* (MEND) and *Tell MAMA*. In France: *L'Observatoire de la Christianophobie* y *Collectif contre l'Islamophobie en France* (CCIF). And in Germany: *Lesben- und Schwulenverband in Deutschland* (LSVD) e.V y *Recherche - und Informationsstelle Antisemitismus* (RIAS). For a full list of all the States, see: <http://hatecrime.osce.org/2017-contributors>

<sup>28</sup> For further details, see: <http://hatecrime.osce.org/2017-faq>

As has already been stated, the OSCE/ODIHR has undertaken to and has been tasked with publishing a minimum comparative framework for all the participating states. Even though the appropriate nuances will be made according to the country in question, this general minimum framework for hate crimes include:

- A *numerus clausus* of **twelve categories of standardised types of crime**: homicide; threats and threatening behaviour; physical assault; damage to property; arson; incitement to violence; disturbance of the peace; theft and robbery; vandalism»; attacks against places of worship; desecration of graves; and unspecified.
- A *numerus clausus* of **nine standardised grounds of bias**: racism and xenophobia; bias against Roma and Sinti; anti-Semitism; bias against Muslims; bias against Christian; bias against members of other religions or beliefs; bias against other groups - Sex; bias against other groups – sexual orientation or gender identity; bias against other groups – people with disabilities.

### 2.5.1. OSCE/ODIHR: France. Hate crime figures

The OSCE/ODIHR's most recent statistical information on hate crimes in France, according to the data that that country's national authorities have sent to the organisation, is for 2017<sup>29</sup>. The total figure stands at 1,505 recorded hate crimes, with the Ministry of Justice, the National Consultative Commission for Human Rights, the police and the gendarmerie tasked to collect the data.

According to the different crime categories, arranged from largest to smallest according to the number of hate crimes, the aforementioned figure can be broken down as follows<sup>30</sup>: 800 threats and threatening behaviour; 530 bodily harm, including sexual violence; 123 damage to property; 37 unspecified, even though they are hate crimes that include the sub-categories of theft,

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<sup>29</sup> Access: <http://hatecrime.osce.org/france>

<sup>30</sup> Note that for each crime category, there will be a total number of hate crimes that, as will be discussed further on, are related to a single motive. However, anti-Semitism and bias against Muslims appear both as standalone and included within the racism and xenophobia. As explained, if each hate crime collected in the different crime categories is connected to a single motive, those hate crimes related to anti-Semitism and bias against Muslims are being duplicated unnecessarily. In order to avoid that, the data in the set of the report are only entered on the basis of one incident/motive for anti-Semitism and bias against Muslims, and discounting them from the total figures of the incident-motive for racism and xenophobia.

The OSCE/ODIHR itself is not immune to this problem and refers to the risk of the same piece of information being duplicated in the general statistics, which is due to the challenges facing the organisation each time that it has to interpret and verify the information received by each country. Online access: <http://hatecrime.osce.org/what-hate-crime/racism-and-xenophobia>.

robbery and burglary<sup>31</sup>; 10 arson; 4 homicide/murder, including attempted homicide/murder; and 1 desecration of the graves. As can be seen from the provided data, each of the hate crimes (1,505) was allocated a single type of prejudicial grounds, and it does not seem that there are multiple grounds or they are recorded in that regard. Therefore, the following breakdown is organised from larger to smaller according to the number of hate crimes. 623 were due to bias against groups that are defined according to the sexual orientation or gender identity, taken to include the categories of sex, sexual orientation and gender identity; 476 to racism and xenophobia, including incidents related to the real or alleged belonging to a religion; 311 to anti-Semitism and 95 to bias against Muslims.

Finally, the prevalence of the perpetrator's motives can vary when crossed with each of the crime categories on a more individualised basis:

- Out of the 800 crimes of threats and threatening behaviour: 323 were due to racism and xenophobia; 240 to sexual orientation or gender identity; 214 to anti-Semitism; and 23 bias against Muslims.
- Out of the 530 bodily injury crimes: 320 were due to sexual orientation or gender identity; 175 to racism and xenophobia; 29 to anti-Semitism; and 6 bias against Muslims.
- Out of the 123 crimes of damage to property: 64 were due to anti-Semitism and 59 to bias against Muslims.
- Out of the 10 cases of arson: 7 were due to bias against Muslims and 3 to anti-Semitism.
- Out of the 4 crimes of homicide/murder: 3 were due to sexual orientation or gender identity; and 1 to anti-Semitism.
- The only case of desecration of graves was due to racism and xenophobia.
- Finally, conclusive information cannot be extracted about the grounds in the case of the 37 unspecified crimes.

### **2.5.2. OSCE/ODIHR: Germany: Hate crime figures.**

The OSCE/ODIHR's most recent statistical information on hate crimes in Germany, according to the data that that country's national authorities have sent to the organisation, is for

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<sup>31</sup> Note that, furthermore, according to the OSCE/ODIHR, the sub-categories of damage to property and arson would be included within the unspecified incidents, even though what is really being duplicated is the marker as it is also seen among the main crime categories. We have strived here to avoid the aforementioned duplicity in the figures.

2017<sup>32</sup>. The total figure came to 7,913 hate crimes recorded by police authorities. Specifically, this task involves the federal and state police, along with Germany's Federal Statistics Office, which answers to the Federal Ministry of the Interior.

The OSCE reflects crime categories with a number of hate crimes that does not tie in with the aforementioned global figure. Specifically, arranged from largest to smallest according to the number of hate crimes, the aforementioned figure can be broken down as follows: 1,132 cases of bodily injured; 1,000 damage to property, which in this case include vandalism incidents; 354 threats and threatening behaviour; 30 of arson; 6 of homicide/murder; and 5 of desecration of graves. Given that each hate crime may have more than one prejudicial motive, the following classification has been organised from greater to smaller according to the number of hate crimes: 1,860 were due to racism and xenophobia; 268 to bias against Muslims; 233 to anti-Semitism; 114 to bias against groups defined according to the sexual orientation or gender identity; 68 to bias against Christians; 25 to bias against members of other religions or beliefs; 4 to bias against the disabled and 4 to bias against Roma and Sinti.

Finally, the prevalence of the perpetrator's motives can vary when crossed with each of the crime categories on a more individualised basis:

- Out of the 1,132 bodily injury crimes: 934 were due to racism and xenophobia; 70 to sexual orientation or gender identity; 51 to bias against Muslims; 33 to anti-Semitism; 28 to bias against Christians; 21 to bias against members of other religions or beliefs; 2 to disability; and 2 to bias against Roma and Sinti.
- Out of the 1,000 crimes of damage to property: 608 were due to racism and xenophobia; 181 to bias against Muslims; 163 to anti-Semitism; 23 to sexual orientation or gender identity; 15 to bias against Christians; 6 to bias against members of other religions or beliefs; 2 to disability; and 2 to bias against Roma and Sinti.
- From among the 354 crimes of threats and threatening behaviour: 265 were due to racism and xenophobia; 29 to bias against Muslims; 22 to anti-Semitism; 19 to bias against Christians; 15 to sexual orientation or gender identity; and 4 to bias against members of other religions or beliefs.
- Out of the 49 crimes of theft and robbery: 25 were due to racism and xenophobia; 10 to anti-Semitism; 6 to sexual orientation or gender identity; 5 to bias against Muslims; 2 to bias against Christians; and 1 to bias against members of other religions or beliefs.

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<sup>32</sup> Online access: <http://hatecrime.osce.org/germany>

- Out of the 30 cases of arson: 25 were due to racism and xenophobia; 2 to bias against Muslims; 2 to bias against members of other religions or beliefs; 1 to anti-Semitism; and 1 to bias against Christians.
- Out of the 6 crimes of homicide/murder: 4 was due to racism and xenophobia; and 2 to bias against Christians.
- Out of the 4 cases of desecration of graves: 4 were due to anti-Semitism and 1 to bias against Christians.

The German authorities have not provided OSCE with data on the number of hate crime and/or hate speech prosecutions or sentencing<sup>33</sup>. The OSCE database still shows an important shortcoming in this regard, which prevents the data from being broken down according to the generic aggravating factor or § 46.2.1 StGB and of the incitement of hatred of § 130 StGB. In September 2016, in relation to the politically motivated criminality under examination, a report from the German Human Rights Institute stated that the bringing of charges before the German courts was being gathered for statistical purposes, even though it was not public or, therefore, had been reported to the OSCE-ODIHR. However, the judicial assessment of the grounds of the crime was in an earlier stage, as there was not even any evidence that information had been gathered in the respect<sup>34</sup>.

The ECRI, in its fifth monitoring report on Germany published on 25 February 2014, recommended that the Germany authorities prioritised reforming their system for recording and following up the transphobe, homophobic and racist incidents to ensure that all cases involving such a motive are recorded<sup>35</sup>. In that regard, the recommendations for improvement were in three directions: 1) Refine the recording and control of incidents by police authorities; 2) Establish to what extent such incidents are reported to the prosecutor's office; and 3) Establish to what extent the incidents manage to overcome the crime barrier<sup>36</sup>. Such was the priority nature of the recommendation that it was subject to an interim follow-up by the ECRI, i.e., that entity undertook to assess again the implementation of those points by the German authorities. The ECRI conclusions in that regard, published on 28 February 2017, noted that the statistics on hate crime

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<sup>33</sup> Online access: <http://hatecrime.osce.org/germany>

<sup>34</sup> GERMAN INSTITUTE FOR HUMAN RIGHTS, "Implementation of selected OSCE commitments on human rights and democracy in Germany. Independent evaluation report on the occasion of the German OSCE Chairmanship 2016", *German Institute for Human Rights*, Berlin, 2016, pp. 19-20.

<sup>35</sup> EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), "ECRI report on Germany (fifth monitoring cycle)", *Council of Europe*, Strasbourg, 2014, § 56.

<sup>36</sup> Following, in turn, the content in EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), "ECRI General Policy Recommendation N° 11 on Combating racism and racial discrimination in policing", *Council of Europe*, Strasbourg, 2007, § 12.

did not specify the number of indictments or judgements. Specifically, the ECRI concluded that it is not possible to ascertain how many cases recorded by the police are transferred to the prosecution service and, ultimately, how many of them are referred as crimes<sup>37</sup>.

The correction of this information is envisaged for 2019, by when it is expected to be more permeable and accessible also for the different international, European regional and European organisations.

In January 2018, the first *Länder* or German federal state began to collect judicial statistics and send data to the Federal Office of Justice which is tasked with aggregating the figures. As we have said, national hate crime figures, and broken down by the relevant crime, are expected for the current year<sup>38</sup>.

### 2.5.3. OSCE/ODIHR: United Kingdom. Hate crime figures.

The OSCE/ODIHR's most recent statistical information on hate crimes in the United Kingdom, according to the data that that country's national authorities have sent to the organisation, is for 2017<sup>39</sup>. The total figure came to 95,552 hate crimes recorded by police authorities. Specifically, that task is carried out by the Association of Chief Police Officers (ACPO), the Crown Prosecution Service and the Home Office in England, Wales and Northern Ireland. In the case of Scotland, it is the responsibility of the Procurator Fiscal. Out of the 95,552 hate crimes, 94,098 related to England and Wales and 1,454 to Northern Ireland, excluding Scotland. Another qualifier of interest should be made, as over half the hate crimes recorded by the police would be public order offences, even though some of them are outside the hate crime framework standardised by the OSCE.

Referring directly to one of the legal systems that make up the complex map of the United Kingdom, the legal system of England and Wales or, simply, English Law, the police and other organisations of civil society, such as the *Community Security Trust* and *Tell MAMA*, have taken part in sharing information on the recording of this type of crimes which are then reflected in the OSCE as official monitoring information of the country. Even so, the crime categories are not specified and it is therefore not possible to offer any data in this regard. With respect to the perpetrator's motive, the following breakdown is organised from larger to smaller according to the

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<sup>37</sup> EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), "ECRI conclusions on the implementation of the recommendations in respect of Germany subject to interim follow-up", *Council of Europe*, Strasbourg, 2017, p. 6.

<sup>38</sup> In detail: FUNDAMENTAL RIGHTS AGENCY (FRA), "Hate crime recording and data collection practice across the EU", *FRA's Publications Office*, Luxembourg, pp. 52-54.

<sup>39</sup> Specifically, the information provided covers the period between April 2017 and March 2018.. Online access: <http://hatecrime.osce.org/united-kingdom>

number of hate crimes: 71,251 were due to racism and xenophobia<sup>40</sup>; 13,289 to bias against groups that are defined according to sexual orientation or gender identity, 11,638 refer to sexual orientation and 1,651 to transphobia; 7,226 to bias against the disabled; 2,965 to bias against Muslims; 1,916 to bias against members of other religions or beliefs<sup>41</sup>; 672 to anti-Semitism; and 264 to bias against Christians. In the light of the data provided, the final figure of all the hate crimes comes to 97,583 crimes. The quantitative difference with respect to the global figure of 95,552 hate crimes in the United Kingdom is due to crimes that contain more than one prejudicial motive.

Leaving on one side, the hate crimes recorded in police stations and/or other organisations of civil society and focusing on the judicial process, the OSCE/ODIHR considers 14,535 hate crimes prosecuted, 14,151 out of them in England and Wales and the remaining 384 in Northern Ireland. No reference is yet again made to Scotland. And in the sentencing phase, there were 11,987 hate crime sentences in England and Wales. In this phase, there is no data regarding Northern Ireland or Scotland.

## 2.6. Shared reflections

I. The analysed countries, benchmarks in crime prevention against racism, xenophobia and discrimination, reveal their inherent political-legal identity in their legislative structure but also in the systems for collecting empirical information. Not only are the political-criminal models different, but so are the information collection points.

Thus, Germany is a paradigmatic example of a political-criminal model that seeks to take a stand against political extremism as a reference point given the attempt to filter – and punish – the most dangerous conduct that can jeopardise democracy. Therefore, hate crimes represent a specific phenomenology within the general category of political motivation criminality, and that is expressed in statistical terms according to the specific characteristics and grounds of the ideological phenomena that report the incidents.

France, by comparison, follows a more anti-discriminatory model – not necessarily a criminal legal intervention one – where the conceptualisation of the incidents seeks to pick up on

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<sup>40</sup> This category can include any group that is defined according to the race, colour, ethnic or national origin, including the countries that make up the United Kingdom and Irish Travellers or gypsies. It also includes the people selected for being asylum seekers or refugees.

<sup>41</sup> This marker includes hate crimes committed against Buddhists, Hindus, Sikhs, members of other religions, atheists or people with other beliefs [*“members of other religions, on the basis of unknown or no religion (atheists)”*].

the most serious conduct that affect vulnerable collectives in an unjustified arbitrarily way. The administrative and investigation activity to detect incidents seems to deliver a much higher volume of potentially non-criminal (or with a minimum criminal seriousness) incidents recorded compared to the more serious incidents overall<sup>42</sup>.

Finally, the third of the countries envisaged in this report, the United Kingdom (England and Wales) reveals in its specific traits the major fact of being embodied in a common law legal system where it shares to a greater extent an understanding of the hate crimes in line with the criminal-political currents from the United States of America. Its recording system, which is the most sophisticated and successful in terms of results, owes its dynamics to a great extent to the institutional position and powers that the police authority has in the Justice Administration. Its political-criminal model, with greater dominance of the aggravated types of aggravation in sentencing, also reveals the influence of a more guaranteed-based tradition with respect to the freedom of expression in Continental Europe.

**II.** The huge political-criminal differences and their varied depth and maturity when recorded hate crime data does not prevent certain common characteristics or trends from being highlighted.

**II.1. LEGALLY PROTECTED COLLECTIVES.** The map of protected collectives, historically focused on ethnic groups harassed due to racism, xenophobia and anti-Semitism, has been expanded to include sexual aspects (sexual orientation, sexual identity, gender, etc.) and even further to other types of collectives identified by differential traits such as disability and other characteristics. This map of markers or target groups is going to be reflected in a trend to expand the prohibition sphere of the types of crime without that, so far, meaning uniformity either in the list or in the definition of those collectives.

**II.2. DATA COLLECTION BY COLLECTIVES.** That expandatory trend of the legal framework is an asymmetrical reflection of the results delivered by the different empirical collection systems so that the statistical data of the three countries studied record the greatest number of aggressive incidents for the ethnic group with an accumulate, in second place, of a significant band of incidents documented against the sexual group – particularly characterised by

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<sup>42</sup> Compare the data of incidents provided in the analysis of the empirical sources *supra* Section 2.2.2. with the data contributed by France to the OSCE that, expressly, cover discrimination and hate speech.



sexual orientation -, while the information collection on other collectives tends to be residual compared with the former.

**II.3. TRACEABILITY.** The data collection systems show greater strength at the level of recording police statistic incidents. The United Kingdom has more data to identify the traceability of the incident from the police authority to the prosecution and possible sentencing and enforcement. France or Germany, despite the endeavours in that direction, have still not seem to have reached the conditions to sufficiently determine that traceability. In the three cases, however, there are records – not necessarily coordinated – with relevant data not only of police incident but also of prosecutions.

**II.4. CRIMINAL TYPOLOGY.** There is a common trend to channel and strength the criminal-legal intervention procedure against hate crimes using mechanisms to aggravate the basic punishment (hate crime). In this regard, crimes against life and bodily harm play a central role, in qualitative terms, in the hate crime statistics. This trend was already dominant in quantitative terms in England and Wales.

In all jurisdictions, even in the Common Law tradition, a margin of aggressiveness that is generated and recorded through threatening behaviour in the widest sense is significant. Insulting and threatening conduct still seem to dominate quantitatively in continental Europe. However, the specific crimes of incitement to hatred, violence or discrimination, in the strictest sense (hate speech) are more dominant in continental Europe – particularly in Germany – than in the United Kingdom, where they represent a purely symbolic exception from the point of view of their jurisprudential applicative praxis given the records collected.

**II.5. OSCE.** The status of possible empirical comparability of the applicative praxis of the domestic jurisdictions regarding hate crimes is in a purely embryonic, precarious, initial phase. There has barely been any international cooperation and significant movement to narrow the gap regarding the data collection system and legislative differences. The OSCE's effort to collect data is a ground-breaking initiative. Its current state of development is still showing, however, structural difficulties to reach a final consensus at least in three points: in the processing, defining and recording the “ideological” incidents: in the standardisation and determination of crime collection categories and key collectives; and, finally, in the processing, defining and collection of the so-called hate speech.

**II.6. EXCURSUS: SPAIN AND THE OSCE.** The OSCE/ODIHR's most recent statistical information on hate crimes in Spain according to the data that that country's national authorities have sent to the organisation, is for 2017<sup>43</sup>. The total figure came to 1,419 hate crimes recorded by police authorities. Specifically, this work is carried out by the Mossos d'Esquadra (Catalan Police Force), Ertzaintza (Basque Police Force), Navarra Police Force, National Police Force and the Civil Guard. The information is centralised by the Secretary of State for Security of the Ministry of the Interior. Out of the above figure (1,419), 11 hate crimes are related to a form of aporophobia (fear of the poor) and 446 with ideology, which the OSCE/ODIHR does not assess as they are outside the minimum framework set up by the organisation for comparative purposes. In fact, even though there is not always a match between a participating state in the OSCE and information supplied by the OSCE, it is important to recall that this organisation does not prejudge or limit the perpetrator's motives that are collected for statistical purposes in each country, as this practice is strongly dependent on the state, regional or local needs of the participating state. In short, in the case of Spain, there will be 962 hate crimes subject to the subsequent analysis by the OSCE/ODIHR.

Even so, the crime categories are not specified and it is therefore not possible to offer any data in this regard. With respect to the perpetrator's motive, the following breakdown is organised from larger to smaller according to the number of hate crimes: 524 were due to racism and xenophobia; 271 to bias against groups defined according to the sexual orientation or gender identity; 103 to bias against members of other religions or beliefs, which covers all anti-religion, including those committed bias against Christian and Muslims; 35 to sex; 23 to bias against people with disability; and 6 to anti-Semitism.

In short: the data for Spain, once entered and filtered in the OSCE system, would reflect, given the reflections prior to this *Excursus*, a map with prevalence of the ethnic groups, a consolidated sector of sexual collectives and a residual record for other collectives. The OSCE system, in any event, does not yet allow in the case of Spain a disaggregated uptake by crime categories<sup>44</sup>.

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<sup>43</sup> Online Access: <http://hatecrime.osce.org/spain>

<sup>44</sup> See, however, MINISTRY OF THE INTERIOR (SPAIN), "Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España", Ministry of the Interior (Spain), 2017, 59 pages.; e *supra*, in this Informe, Section 1.7. Conclusions, Point 5.

### 3. SYNTHESIS: FINAL CONCLUSIONS

The essential results of this second report on hate incidents in the Basque Country shows a very similar map to the first one. Together they deliver an empirical snapshot of the police statistic that covers the incidents in 2016, 2017 and 2018. That map, pursuant to the trends in the Spanish State and to the compared European trends, shows a series of common structural elements that can be summarised in six points:

1. The collection of incidents aimed against ethnic collectives (race, ethnic group, national origin and, even, religion, beliefs and ideology) prevail
2. Incidents against sexual collectives are consolidated as the second level of abused collectives
3. Non-ethnic nor sexual collectives show a residual recording level
4. Bodily harm, as the most significant and serious category, account for nearly a third of the whole, establishing the emerging visibility of aggravated hate crimes, as a central point
5. Expressive hate incidents, propaganda, in line with the so-called hate discourse – criminalised- still have a very notable statistical presence and even exceeding the results of the countries of Continental Europe of our cultural circle
6. The incident collection system still does not have the track record of the countries studied in the comparative perspective but faces, essentially, the same challenges that can be summarised as two: the need to specify the benchmark applicative and legislative terms (definition and interpretation of hate crimes), particularly those on “ideological” grounds; and establishing the necessary statistical collection mechanisms and cooperation between the police, prosecutors and judicial authorities to achieve more detailed information regarding hate markers and above all with respect to the traceability of the incidents from their origin to the possible sentencing by the Justice Authorities.

## BIBLIOGRAPHY

- FUNDAMENTAL RIGHTS AGENCY (FRA), “Hate crime recording and data collection practice across de EU”, *Publications Office of the European Union*, Luxembourg, 2018, 104 pages  
Online access: <https://fra.europa.eu/en/publication/2018/hate-crime-recording> [Last accessed: 15/03/2019].
- BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, “Verfassungsschutzbericht 2017”, Bundesministerium des Innern, für Bau und Heimat, 2017, 359 pages.
- COLLEGE OF POLICING, “Hate crime. Operational guidance”, *College of Policing*, Coventry, 2014, 132 pages. Onlien access: <http://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf> [Last accessed: 15/03/2019].
- COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L’HOMME (CNCDH), “La lutte contre le racisme, l’antisémitisme et la xénophobie”, *Direction de l’information légale et administrative*, Paris, 2018, 412 pages. Online access: [https://www.cncdh.fr/sites/default/files/cncdh\\_rapport\\_2017\\_bat\\_basse\\_definition.pdf](https://www.cncdh.fr/sites/default/files/cncdh_rapport_2017_bat_basse_definition.pdf) [Last accessed: 15/03/2019].
- DELEGATION INTERMINISTERIELLE A LA LUTTE CONTRE LE RACISME, L’ANTISEMITISME ET LA HAINE ANTI-LGBT (DILCRAH), “Stabilité du nombre de crimes et délits anti-LGBT”, *Secrétariat d’Etat chargé de l’Egalité entre les femmes et les hommes*, Paris, 2018. Acceso online: <http://uvyk.mjt.lu/nl2/uvyk/lz3z.html?hl=fr> [Last accessed: 15/03/2019].
- EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), “ECRI General Policy Recommendation N° 11 on Combating racism and racial discrimination in policing”, *Council of Europe*, Strasbourg, 2007
- EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), “ECRI report on Germany (fifth monitoring cycle)”, *Council of Europe*, Strasbourg, 2014, 50 pages.
- EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), “ECRI conclusions on the implementation of the recommendations in respect of Germany subject to interim follow-up”, *Council of Europe*, Strasbourg, 2017, 7 pages.

GERMAN INSTITUTE FOR HUMAN RIGHTS, “Implementation of selected OSCE commitments on human rights and democracy in Germany. Independent evaluation report on the occasion of the German OSCE Chairmanship 2016”, *German Institute for Human Rights*, Berlín, 2016, 110 pages.

HER MAJESTY’S INSPECTORATE OF CONSTABULARY (HMIC), “Crime-recording: Making the victim count. The final report of an inspection of crime data integrity in police forces in England and Wales”, *HMIC*, 2014, 126 pages. Online access: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/crime-recording-making-the-victim-count.pdf> [Last accessed: 15/03/2019].

LANDA GOROSTIZA, Jon-Mirena, “El mapa de odio en el País Vasco. A la vez una reflexión sobre delitos de odio y violencia política en Euskadi, Catalunya e Irlanda del Norte”, *InDret: Revista para el Análisis del Derecho*, Nº 4, 2018, 29 pages.

LANDA GOROSTIZA, Jon-Mirena, *Los delitos de odio*, Tirant lo Blanch, Valencia, 2018, 152 pages.

LANDA GOROSTIZA, Jon-Mirena; GARRO CARRERA, Enara (dirs.), *Delitos de odio: derecho comparado y regulación española*, Tirant lo Blanch, Valencia, 2018, 323 pages.

MINISTRY OF THE INTERIOR (Spain), “Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España”, Ministry of the Interior (Spain), 2017, 59 pages.

NATIONAL POLICING IMPROVEMENT AGENCY, “The national standard for incident recording (NSIR 2011), Instructions for Police Forces in England and Wales”, *Home Office*, 2011, 34 pages. Online access: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/116658/count-nsir11.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116658/count-nsir11.pdf) [Last accessed: 15/03/2019].

OFFICE FOR STATISTICS REGULATION, “Code of Practice for Statistics: Ensuring official statistics serve the public”, *UK Statistics Authority*, 2018, 38 pages. Online access: <https://www.statisticsauthority.gov.uk/wp-content/uploads/2018/02/Code-of-Practice-for-Statistics.pdf> [Last accessed: 15/03/2019].

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## APPENDIX I: MAJOR INCIDENTS IN THE PRESS (2018). Summary of the cases by protected category

### RACISM/XENOPHOBIA:

- Three Turkish sailors attacked in Bermeo
- Attacks against the gypsy family known as “Los Pichis” in Vitoria-Gasteiz
- Masked men attack immigrants in the Rekalde district of Bilbao

### POLITICAL IDEOLOGY/ORIENTATION

- A student attacked on the Araba Campus of the UPV/EHU for allegedly wanting to set up a “for Spanish unity” group
- Cases related with welcoming prisoners, graffiti in their memory or TV programmes on their situation denounced by the PP or Covite
- Prosecution of tweeters who allegedly threatened and insulted Gabriel, the child ill with cancer and a fan of bull fighting.
- The case of the Alsasua youths accused of terrorism and hatred of the Civil Guard
- Rappers sentenced for glorifying terrorism

### RELIGIOUS PRACTICES/BELIEFS

- The case of the “Hontzak” txosna (bar stand) for its satire of Catholic rites

### SEXUAL IDENTITY/ORIENTATION

- Case of a homophobic attack during the local festivities

### PEOPLE WITH DISABILITY/FUNCTIONAL DIVERSITY

No prominent news item was located on this category

### APOROPHOBIA

- A homeless person attacked in Bilbao

## **1. RACISM - XENOPHOBIA**

- 1.1. “Los Pichis deny that any of its members were involved in the murder of Otxarkoaga”. DEIA, 24 January 2018
- 1.2. “Six masked men with stun guns attack three Turkish sailors in Bermeo”. EL CORREO, 2 February 2018
- 1.3. “Los Pichis again ask the authorities to ensure their safety in Gasteiz” DEIA, 7 February 2018
- 1.4. “Gypsy associations of Vitoria complain about the presence of “neighbourhood watch patrols” against Los Pichis in Asteguieta” EL CORREO, 5 February 2018
- 1.5. “Ordered to pay €150 for death threats against the head of SOS Racismo de Álava” EL CORREO, 21 March 2018
- 1.6. “Six masked men identified suspected of attacking immigrants in Rekalde” EL CORREO, 10 June 2018
- 1.7. “An anonymous source identifies the masked men who attacked Turkish sailors in Bermeo” EL CORREO, 9 July 2018
- 1.8. “The Local Council condemns “the violence and threats” in Asteguieta last week” EL CORREO, 19 November 2018

## **2. POLITICAL IDEOLOGY/ORIENTATION**

- 2.1. “Covite criticises EITB for a documentary on the children of ETA prisoners” EL CORREO, 10 January 2018
- 2.2. “Graffiti in memory of Oier Gómez, the late member of ETA, appears on the Victim Remembrance Centre” EL CORREO, 4 February 2018
- 2.3. “The Basque PP makes another standard against a tribute to an ETA prisoner in Durango” EL CORREO, 20 March 2018
- 2.4. “Three tweeters, including one from Éibar, for death threats to a child who loves bull fighting” EL CORREO, 8 August 2018
- 2.5. “The Alsasua accused but not for terrorism” EL CORREO, 1 June 2018
- 2.6. “New (and controversial) mural in Valencia in solidarity with the Alsasua convicts” EL MUNDO, 23 July 2018
- 2.7. “The Provincial Court again reduces a sentence for glorifying terrorism to the minimum for some rappers ” EL CORREO, 19 September 2018
- 2.8. “Masked men beat a student at the UPV in Vitoria for defending the unity of Spain” EL CORREO, 5 December 2018
- 2.9. “Security links two of the people arrested for beating the UPV student with “Álavés radicals” EL CORREO 13 December 2018
- 2.10. “Aske utziko dituzte EHUren Campuseko erasoagatik atxilotutako biak” BERRIA, 2018ko abenduak 13

## **3. RELIGIOUS PRACTICES/BELIEFS**

- 3.1. “The Public Prosecutor defends that freedom of expression does not cover Hontzak’s satire of Catholic rites” GARA, 18 March 2018

## **4. SEXUAL IDENTITY/ORIENTATION**

- 4.1. “A young man victim of a homophobic attack in the pub area of Sestao” EL CORREO, 3 July 2018



**5. PEOPLE WITH DISABILITY/FUNCTIONAL DIVERSITY**

No prominent news item was located on this category

**6. APOROPHOBIA**

6.1. “Three arrested for attacking and throwing a homeless person into a fountain in Doña Casilda park” GARA, 9 March 2018

# **1. RACISM / XENOPHOBIA**

## 1.1. “Los Pichis deny that any of its members were involved in the murder of Otxarkoaga”. DEIA, 24 January 2018

deia

Martes, 26 de febrero de 2019

Introduzca el texto

Inicio [BIZKAIA](#) [ATHLETIC](#) [DEPORTES](#) [SOCIEDAD](#) [POLÍTICA](#) [CULTURA Y OCIO](#) [OPINIÓN](#) [ALBISTEAK](#) | [blogs](#) | [hemeroteca](#) [G+](#) [Twitter](#) [Facebook](#)

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### 'Los Pichis' niegan que ninguno de sus miembros tenga algo que ver con el asesinato de Otxarkoaga

EFE - Miércoles, 24 de Enero de 2018 - Actualizado a las 13:22h

[G+](#) [Twitter](#) [Me gusta 0](#) [Compartir](#)

**OTXARKOAGA TAMBIEN SE MUEVE ASKI DA! IBASTAYA!**

Imagen de archivo de la manifestación que realizaron los vecinos de Otxarkoaga el viernes. (Foto: O. Martínez)

Portavoces de las dos familias gitanas con residencia en Bilbao y Gasteiz que conforman el clan conocido como "Los Pichis" han denunciado hoy que, tras el crimen de dos octogenarios en el barrio de Otxarkoaga, ha vuelto la "tensión ambiental" a sus lugares de residencia.

familias Canales-Coriés y Manzanares-

Más sobre Sucesos

- La Ertzaintza acumula 26 denuncias por abusos contra el exsalasiano de Deusto  
El alestado continúa abierto ante la previsión de nuevos casos
- La Fiscalía investiga el cierre repentino de la clínica dental en Barakaldo  
El pasado lunes cerró de forma unilateral y sin previo aviso a sus pacientes
- Detenido un joven en Leioa acusado de robar cartotas en una caseta de obras  
Estaba registrando prendas de vestir en unas obras del Ensanche de la localidad
- Condenado a cinco años por golpear y acosar a su expareja en Bilbao  
Además, deberá indemnizar a la mujer con un total de 74.000 euros
- Los afectados por el cierre de la clínica dental de Barakaldo tienen derecho a recuperar su historial  
El Colegio de Dentistas de recomienda "paralizar" los créditos solicitados

[Ir a Sucesos](#)

In a statement read out, both families expressed their “unquestionable” condemnation of the crime against the couple in their eighties in Otxarkoaga and announced legal actions against the media that have related the families with that incident.

They stressed that, after the crime, the members of both families are living “in fear” because after the first news spread, the “environmental” stress returned to the places where they live in Bilbao (the Ollerías neighbourhood) and Gasteiz (at the CMAS municipal centre).

## 1.2. “Six masked men with stun guns attack three Turkish sailors in Bermeo”. EL CORREO, 2 February 2018

### EL CORREO

#### Bizkaia

Costa Bermeo Gernika Lekeitio **Ondarroa** Markina Mundaka Playas de Bizkaia

## Seis encapuchados con pistolas eléctricas dan una paliza a tres marineros turcos en Bermeo



Eren, el joven que recibió los peores golpes. / E.C.

### Una de las víctimas perdió casi todos los dientes a causa de los golpes, aunque no le robaron nada

DAVID S. OLABARRI  Bilbao  
Viernes, 2 febrero 2018, 17:18     

Eren, Ahmet y Eyüp llegaron a Bermeo a bordo del carguero ‘Mv Muammer Yagci’, de bandera turca, a finales del pasado noviembre. Permanecieron en la localidad marinera apenas tres días en los que, según

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- 1 Una mujer de 25 años, evacuada en helicóptero tras caerse en una zona de rocas de la playa de Bakio
- 2 Exigen duplicar la frecuencia de la línea de Bizkaibus por Sollube
- 3 Begoña Abio aspira a recuperar la Alcaldía de Bakio al frente del PNV
- 4 Bakio renovará más de 130 buzones de sus enclaves rurales a lo largo de este mes
- 5 Mendata y Gernika calientan las brasas para celebrar mañana su ‘txitxiburduntzi’

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The three Turkish sailors arrived in Bermeo on board a cargo ship. They remained in the town for three days' leave and they were having a few beers in some bars on the last day. They were sitting on a bench in a park between 1.00 and 2.00 a.m. That was when “six or seven” masked men carrying stun guns appeared. And “without saying a word”, they began to attack the sailors. The attack is suspected to have been simply down to the racism of its perpetrators. The assailants did not take any of the victim's belongings.

### 1.3. “Los Pichis again ask the authorities to ensure their safety in Gasteiz” DEIA, 7 February 2018

deia

Martes, 20 de febrero de 2018

Introduzca texto

INICIO BIZKAIA ATHLETIC DEPORTES SOCIEDAD POLÍTICA CULTURA Y OCIO OPINIÓN ALBISTEAK

Euskadi Estado - Mundo Cbilarios Historias de los vascos Euskadi y Bizkaia en datos

Inicio > Sociedad > Euskadi

DENUNCIAN LAS PATRULLAS VECINALES

## Los "Pichis" vuelven a pedir que las instituciones garanticen su seguridad en Gasteiz

Reclaman poder entrar a la vivienda "sin presiones" desactivar la "campana de odio"

EFE - Miércoles, 7 de Febrero de 2018 - Actualizado a las 16:46h

Más sobre Euskadi

Las ciudades tendrán más z peatonales y el coche, men Aburto matiza que "hablar de l desaparición del vehículo priv demasiado radical"

Se busca talento  
Medio millar de estudiantes y graduados compen por hace uno de los más de cien trabaj ofertados

La patronal pide "flexibilida contratos de FP dual"

Buscan una serpiente africa peligrosa en las marismas d Hondarribia  
Sus colmillos de cinco centim inyectan una gran cantidad de peligroso veneno

LAB firma un preacuerdo de convenio para los comedore escolares

Una de las protestas en contra de la ocupación de la vivienda por parte de los 'pichis'

La familia Manzaneres-Cortés, conocida como los "Pichis", han remitido por tercera vez un escrito a distintas instituciones como la Fiscalía de la Audiencia Provincial de Araba y el Gobierno vasco para que garanticen su seguridad y el acceso a la vivienda de alquiler social que se les ha asignado en Gasteiz.

GASTEIZ. Esta familia ha comunicado a través de una nota de prensa esta iniciativa después de que ayer la Fundación Secretariado Gitano y la asociación gitana Gao Lacho Drom de la capital alavesa denunciasen las "patrullas vecinales" creadas en el barrio de Aslegieta,

Los Pichis are demanding to be able to enter the housing allocated to them “without pressures”, as it had been previously attacked, and for the “hate campaign to be stopped” by the powers-that-be “responsible for monitoring and curbing those practices”.

In that regard, they believe that those practices can be denounced and punished as hate crimes.

#### 1.4. “Gypsy associations of Vitoria complain about the presence of “neighbourhood watch patrols” against Los Pichis in Asteguieta” EL CORREO, 5 February 2018

Álava/Araba | Miranda Bizkaia Gipuzkoa Haro Entredós Especial: CASO DE MIGUEL

## Asociaciones gitanas de Vitoria denuncian la presencia de «patrullas vecinales» contra los "pichis" en Asteguieta



Vecinos de Asteguieta se manifestaron el pasado mes de diciembre. / BLANCA CASTILLO

Aseguran que es «un acto de racismo antigitano que se basa en el origen étnico de la familia y en un estereotipo que identifica con la delincuencia a todos los miembros de esta familia»

ELCORREO.COM  
Lunes, 5 febrero 2018, 16:34

Lo + leído

- 1 Cinco encapuchados asaltan la Apple en Vitoria y se llevan 10 en productos
- 2 El asesino de Marga pasará un 15 años en la cárcel
- 3 El restaurante Ikea pierde sus nueva Repsol
- 4 Emakunde pide «no relajarse» avances logrados en los últimos
- 5 La Diputación garantizará 15 d residencia para los dependien económico

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On Monday, the Gypsy Secretariat Foundation and the Gao Lacho Drom Gypsy Association of Vitoria complained about the presence of “neighbourhood watch patrols” in the Asteguieta neighbourhood to “stop a gypsy family for accessing its new social housing home” in the capital of Álava.

The Basque Government’s public housing company, Alokabide, has allocated the Manzanares Cortes family, known as “Los Pichis”, a social housing flat there that was attacked last December.

## 1.5. “Ordered to pay €150 for death threats against the head of SOS Racismo de Álava” EL CORREO, 21 March 2018

Álava/Álava | Miranda | Bizkaia | Gipuzkoa | Nara | Entrebos | Especial: CASO DE MIGUEL

### Condenado a pagar 150 euros por amenazar de muerte al responsable de SOS Racismo de Álava



Fede García en una rueda de prensa / RAFA GUTIÉRREZ

SOS Racismo ha asegurado que se trata de la primera sentencia condenatoria en Euskadi por amenazas en redes sociales

ELCORREO.COM  
Miércoles, 21 marzo 2018, 09:35

Un hombre perteneciente al colectivo "Delinkuentzia Kanpora" (Fuera delincuencia) ha sido condenado por el Juzgado de Instrucción número 2 de Bilbao a pagar 150 euros más las costas procesales por un delito leve de amenazas al responsable de SOS Racismo Araba, Federico García, al que envió mensajes de: 'Estás muerto' o 'Váis a morir'.

<<Gora Euskadi askatuta eta gora Abetxuko (Viva Euskadi libre y Viva

Lo + leído

El Correo | Álava/Álava | Top 50

- 1 Cinco encapuchados asaltan la tienda de Apple en Vitoria y se llevan 100.000 euros en productos
- 2 El asesino de Marga pasará un mínimo de 15 años en la cárcel
- 3 El restaurante Ikea pierde sus 'soles' en la nueva Repsol
- 4 Emakunde pide «no relajarse» tras «los avances logrados en los últimos años»
- 5 La Diputación garantizará 15 días en una residencia para los dependientes sin coste económico

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A man belonging to “Delinkuentzia Kanpora” (Stop Delinquency) has been ordered Bilbao’s No. 4 Examining Court to pay a €150 fine for the misdemeanour of threatening the head of SOS Racismo Araba (organisation fighting racism and xenophobia), Federico García, for sending messages of: “you’re dead” or “You are going to die”.

“Gora Euskadi askatuta eta gora Abetxuko (Long Live the Free Basque Country and Long Live Abetxuko”, confirmed the sentence in its message, alluding to the district of Vitoria that has witnessed tense incidents around the “Los Pichis” Manzaneres Cortés family, who moved into a flat there, and local neighbours demanded the family be evicted as they believed it was causing delinquency.

## 1.6. “Six masked men identified suspected of attacking immigrants in Rekalde” EL CORREO, 10 June 2018

**Bizkaia** | Margen Izquierda | Margen derecha | Duranguesado | Costa | Nervión Ibaizabal | Álava | Gipuzk

### Identifican a seis sospechosos de agredir encapuchados a inmigrantes en Rekalde



Una quincena de jóvenes inmigrantes duermen habitualmente en el frontón de Rekalde. / L. CALABOR

#### Un joven que sufrió una agresión en la cabeza con un palo presenta una denuncia ante la Policía Municipal

 **AINHOA DE LAS HERAS**  
Domingo, 10 junio 2018, 00:02

Agentes de la **Policía Municipal de Bilbao** identificaron en la madrugada del viernes a **seis jóvenes sospechosos** en la zona donde noches atrás un grupo de **encapuchados** había **amedrentado a varios 'sin techo'** de los que duermen en el frontón de **Rekalde**, según ha podido saber este periódico. Vestían prendas oscuras y se encontraban en las cercanías del parque en actitud vigilante sobre las tres de la madrugada, la misma hora a la que

**Lo + leído**

- 1 Buscan a un tres puñala
- 2 «Si no llego
- 3 Condenan a 200.000 e fallecido p
- 4 30 héroas
- 5 «¿Qué crím ver a mis ni

Ahora por ser si



3 f t ...

In the early hours of Friday, Bilbao Local Police Officers identified six young people acting suspiciously in the area when several nights previously, a group of masked men had intimidated several homeless people sleeping on the Rekalde Basque Pelota court.



The urban police force is continuing to investigating this organised group that threatens young Maghrebis. According to witnesses, there were twenty people dressed in black and wearing masks, who were carrying sticks, truncheons and a stun gun”.

### 1.7. “An anonymous source identifies the masked men who attacked Turkish sailors in Bermeo” EL CORREO, 9 July 2018

**EL CORREO**

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**Bizkaia**

Costa Bermeo Gernika Lekeitio Ondarroa Markina Mundaka Playas de Bizkaia

## Un anónimo identifica a los encapuchados que atacaron a marineros turcos en Bermeo



Eren. El joven de 25 años perdió casi todos los dientes por los golpes recibidos. / E. C.

El Consulado de Turquía envía a la Fiscalía una carta en la que se pone nombres a algunos de los supuestos autores de la paliza a unos jóvenes con pistolas eléctricas

 DAVID S. OLABARRÍ   
Lunes, 9 julio 2018, 08:40

El Consulado de **Turquía** ha remitido a la Fiscalía de Bizkaia una carta anónima que llegó hace apenas unos días a sus oficinas en **Bilbao**. Se trata

**Lo + leído**

El Correo Costa Top 50

- 1 Una mujer de 25 años, evacuada en helicóptero tras caerse en una zona de rocas de la playa de Bakio
- 2 Exigen duplicar la frecuencia de la línea de Bizkaibus por Sollube
- 3 Begoña Abio aspira a recuperar la Alcaldía de Bakio al frente del PNV
- 4 Bakio renovará más de 130 buzones de sus enclaves rurales a lo largo de este mes
- 5 Mendata y Gernika calientan las brasas para celebrar mañana su 'txitxiburduntzi'

Ahora por ser suscriptor de **EL CORREO** <sup>on+</sup>

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**UNA**

An anonymous tip off was sent to the Bilbao Consulate and this diplomatic office passed it on to the Prosecutor’s Office. There is no mention of the reason of the attack, but the document does

give the specific names and surnames of the people who bought the stun guns and who supposedly took part in the attack. The anonymous source refers to them as “criminals”.

### 1.8. “The Local Council condemns “the violence and threats” in Asteguieta last week” EL CORREO, 19 November 2018

## El Ayuntamiento condena «la violencia y las amenazas» vertidas la semana pasada en Asteguieta

Traslada su «apoyo y solidaridad a la comitiva municipal, encabezada por el teniente de alcalde» y «rechaza cualquier comportamiento discriminatorio de carácter xenófobo y homófobo»

ELCORREO

Lunes, 19 noviembre 2018, 18:02



El Ayuntamiento de Vitoria ha realizado una Declaración Institucional en la que muestra «su más absoluta condena y repulsa ante los acontecimientos» vividos el viernes en el barrio de Asteguieta, «no aceptando el uso de la violencia directa o indirecta para conseguir ningún fin».

Ante las «amenazas» vertidas también traslada su «apoyo y solidaridad a la comitiva municipal» –con el teniente de alcalde, el socialista **Peio López de Munain**, y la concejal de Convivencia, la peneuvista **Nerea Melgosa**, entre otros–, que se desplazó el pasado viernes a este pueblo de la zona rural de Vitoria. Por ello, «rechaza fervientemente cualquier comportamiento discriminatorio de carácter xenófobo y homófobo». Y anuncia que todas **aquellas conductas violentas constitutivas de delito serán perseguidas** y recibirán el tratamiento que corresponda.

El Consistorio vitoriano ha recordado que el pasado viernes una representación municipal acudió a Asteguieta para realizar **una visita**,

#### Lo + leído

El Correo Álava

1 Cinco encaj  
Apple en Vi  
en producti

2 El asesino d  
15 años en l

3 El restaurar  
nueva Reps

4 Emakunde  
avances log

5 La Diputaci  
residencia p  
económico

Ahora solo p  
ser suscripto  
**EL CORREO**

Estudio de  
Fotógrafos de o

## **2. POLITICAL IDEOLOGY/ORIENTATION**

## 2.1. “Covite criticises EITB for a documentary on the children of ETA prisoners” EL CORREO, 10 January 2018

Política

Elecciones Generales

Elecciones Forales y Municipales

Elecciones Europeas

### Covite carga contra EITB por un documental sobre hijos de presos de ETA



EITB

La asociación de víctimas critica que no se mencione el nombre ni los atentados cometidos por sus padres y se «blanquee» su historia

LORENA GIL

Miércoles, 10 enero 2018, 22:28



El Colectivo de Víctimas del Terrorismo, Covite, cargó este miércoles contra EITB por «poner la televisión pública al servicio de los intereses de la izquierda abertzale y del blanqueamiento de ETA». Las críticas de la asociación se producen después de que este martes por la noche la cadena emitiese un documental titulado ‘Los niños de la mochila’ en el que se

This Wednesday, COVITE – the Victims of Terrorism Collective criticised for “using the publicly-owned television company to serve the interests the nationalist left and the whitewashing of ETA”. The association’s criticism was in response to the channel showing the

“Los niños de la mochila” [Backpack children] documentary on Tuesday night on the situation of the children of ETA prisoners.

## 2.2. “Graffiti in memory of Oier Gómez, the late member of ETA, appears on the Victim Remembrance Centre” EL CORREO, 4 February 2018

El fin de ETA | El relato de las víctimas de ETA

### Aparecen pintadas en recuerdo del etarra fallecido Oier Gómez en el Memorial por las Víctimas



El centro amaneció con un mensaje en el que se podía leer 'Agur eta ohore gudari gaztea' (adiós y honor joven soldado). / EFE/ADRIÁN RUIZ DE HIERRO

**El centro condena el «sabotaje» cometido por «nostálgicos del terror» un día después de que un juez prohibiese el «último adiós» al exrecluso de la banda terrorista**

 DAVID S. OLABARRÍ   
Lunes, 4 febrero 2019, 00:00

El Centro Memorial de Víctimas del Terrorismo condenó ayer las **pintadas aparecidas en su sede en Vitoria** en recuerdo de un expreso etarra fallecido por enfermedad. Se trata del primer ataque de estas características que sufre la institución. Sus responsables denunciaron un «sabotaje» que,

**Lo + leído**

El Correo

El relato de las v

- 1 «Recuerdo coloco la pi
- 2 Vic, la bom juegos

Ahora por ser si



**Familyllustic**

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The Victims of Terrorism Remembrance Centre yesterday condemned the graffiti in memory of a member of ETA who had died after an illness that had appeared on its premises in Vitoria. The day dawned with the Remembrance Centre covered with different graffiti demanding “amnesty” for ETA prisoners and in “honour” to the group’s former inmate, Oier Gómez, who died from cancer at the end of January after being released in 2017 due to his illness. This incident happened

a day after a Vitoria court had banned the event to send off Gómez that had been organised for yesterday at a municipal Basque Pelota court in the capital of Álava.

### 2.3. “The Basque PP makes another standard against a tribute to an ETA prisoner in Durango” EL CORREO, 20 March 2018

Política | Elecciones Generales | Elecciones Forales y Municipales | Elecciones Europeas | J

## El PP vasco vuelve a plantarse ante un homenaje a un preso de ETA en Durango



Dirigentes del PP, en el recibimiento a Larrea en Durango. / IGNACIO PEREZ

### Varios cientos de vecinos reciben a Zumbeltz Larrea, excarcelado tras una condena de 15 años

 KOLDO DOMÍNGUEZ  
Martes, 20 marzo 2018, 08:56

Dirigentes del PP vasco, entre ellos su secretaria general, [Amaya Fernández](#), y la presidenta en Bizkaia, [Raquel González](#), protagonizaron en la tarde del lunes una nueva protesta contra el recibimiento a un preso de [ETA](#) en un pueblo de Euskadi. En este caso, los populares llevaron su rechazo hasta el centro de [Durango](#), donde se le brindó un homenaje al

On Monday afternoon, members of the Basque PP political party protested again against the welcome for an ETA prisoner in a town of the Basque Country. In this case, the PP members took their protest to the centre of Durango, where tribute was paid to the prisoner Zumbeltz Larrea, who had been released that morning after 15 years in prison. The presence of the PP members

heightened the tension. The local residents who were paying tribute to the former ETA prisoner then insulted Amaya Fernández and the PP politicians who they called “fascists” and shouted at them “to get out of here”.

#### 2.4. “Three tweeters, including one from Éibar, for death threats to a child who loves bull fighting” EL CORREO, 8 August 2018

Sociedad Sucasos Educación Salud Ciencia Entre fantasmas Motor

### Procesan a tres tuiteros, entre ellos una eibarresa, por desear la muerte a un niño con cáncer aficionado a los toros



Festival benéfico por Adrián celebrado enl 8 de octubre de 2016. / ARCHIVO

Las publicaciones en contra del menor, ya fallecido, se produjeron tras el homenaje que recibió el niño con el objetivo de recaudar dinero para sus cuidados oncológicos

SONIA ARRIETA  
Martes, 7 agosto 2018, 23:37

El juzgado número 5 de Alzira (Valencia) ha abierto una causa contra los tuiteros, Manuel Ollero Cordero, Bryan Eduardo Salinas Luna y Aizpea Etxezarraga, esta última de Eibar, por un delito de odio, debido a los

Court Number 5 of Alzira (Valencia) has started proceedings against the Tweeters Manuel Ollero Cordero, Bryan Eduardo Salinas Luna and Aizpea Etxezarraga, the latter from Eibar, for a hate crime, following the comments about Adrián Hinojosa, a child suffering from cancer and who was a fan of bull-fighting.

Adrián Hinojosa, who died in April 2017, received death threats through the social media from anti-bullfighting sectors after the tribute to the child on 8 October 2016 to raise money for his

cancer care. The court opened the case at the end of last July and prosecuted the three Tweeters for a hate crime to denigrate the minor.

## 2.5. “The Alsasua accused but not for terrorism” EL CORREO, 1 JUNE 2018

**EL CORREO**

Política | Elecciones Generales | Elecciones Forales y Municipales | Elecciones Europeas | Juicio del 'procés' | El fin de ETA

### Condenados los acusados de Alsasua pero no por terrorismo



Imagen del juicio. / ARCHIVO/ATLAS

**La Audiencia Nacional impone penas de entre dos y trece años a los ocho imputados**

MELCHOR SÁIZ-PARDO Madrid  
Viernes, 1 junio 2018, 17:29

La Sección Primera de la Sala de lo Penal de la Audiencia Nacional ha condenado a los 8 acusados de la agresión en Alsasua a dos guardias civiles y sus novias a penas que oscilan entre los 2 y 13 años de prisión por delitos de atentado a los agentes de la Autoridad, lesiones, desórdenes públicos y amenazas. La Sala rechaza las acusaciones de delitos terroristas al considerar que no ha quedado acreditada la finalidad terrorista de la acción y tampoco la vinculación de los acusados a Organización terrorista. Pero por la gravedad de los hechos y porque se cometieron por motivos ideológicos y de animadversión a la Guardia Civil, la Sala aplica las

**Lo + leído**

- 1 Muere Xabier Arzalluz a los 86 años
- 2 «La gente no sabía ni por qué estaba en ETA»
- 3 «¿Urkullu? Allí no hubo ningún mediador de nada», dice Rajoy
- 4 El Gobierno de Sánchez envía a Euskadi una propuesta con cinco nuevas transferencias
- 5 La Guardia Civil se preocupa por la seguridad del lehendakari

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Consíguelo en [guapabox.com](http://guapabox.com)

The First Court of the Criminal Division of the National High Court has sentenced the 8 people accused for attacking two civil guards and their girlfriends in Alsasua to between 2 and 13 years in prisons for crimes of attacking law enforcement officers, bodily injury, public disorders and threatening behaviour. The Court rejected the alleged terrorist crimes as it deemed that the terrorist aim of the action or the link of the accused with a terrorist organisation had not been accredited. However, due to the severity of the facts and because they were committed on ideological grounds



and hostility to the Civil Guard, the Court applied the aggravating factors of abuse of superiority and hatred and imposed the maximum sentences envisaged in the Criminal Code.

## 2.6. “New (and controversial) mural in Valencia in solidarity with the Alsasua convicts” EL MUNDO, 23 July 2018

### Nuevo (y polémico) mural en Valencia en solidaridad con los condenados de Alsasua

INMA LIDÓN Valencia 23 JUL 2018 | 07:29



El mural de Elías Taño en el muro del solar de Jesuitas, propiedad municipal. / ELÍAS TAÑO

- El artista Elías Taño pinta un muro municipal en presencia de las familias y Ciudadanos pide que sea borrado
- Un encapuchado borra parte del nuevo mural
- Joan Ribó cede un muro de Jesuitas para un alegato contra la condena de Alsasua

Un gran mural en solidaridad con los [ocho jóvenes condenados en Alsasua](#) por agredir a dos guardias civiles y sus parejas preside desde ayer el muro que rodea el solar municipal de Jesuitas. El artista [Elías Taño](#) advirtió hace unos meses de que a finales de julio volvería a coger los pinceles para [protestar por una sentencia que considera injusta](#) y que ya plasmó en un muro del barrio del Carmen que fue [borrado a las pocas horas](#).

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A large mural in solidarity with the eight youths convicted in Alsasua for attacking two civil guards and their partners is featured on the wall that surrounds the Jesuitas municipal plot. Several months ago, the artist Elías Taño warned that at the end of July he would take up his brushes again to protest a sentence that he considers unfair and which he had already painted on a wall in the El Carmen neighbourhood that was cleaned off just a few hours later.

The Valencia municipal cleaning contractor took the decision to clean it off, which exceeded its powers and which caused the Local Council to apologise to the artist and offer another wall for his work.

2.7. “The Provincial Court again reduces a sentence for glorifying terrorism to the minimum for some rappers” EL CORREO, 19 September 2018

**EL CORREO**

**Política** | Elecciones Generales | Elecciones Forales y Municipales | Elecciones Europeas

## La Audiencia vuelve a rebajar una condena por enaltecimiento del terrorismo e impone la pena mínima a unos raperos



La Sala de Apelación corrige la sentencia contra el grupo 'La Insurgencia' al entender que ETA y los GRAPO están desmantelados

EUROPA PRESS Madrid  
Miércoles, 19 septiembre 2018, 20:30

La Sala de Apelación de la Audiencia Nacional ha vuelto a corregir una sentencia de la Sala de lo Penal por enaltecimiento del terrorismo, ya que, al igual que en el [caso de Pablo Hasel](#), ha rebajado sustancialmente la [pena impuesta](#) a los raperos del grupo 'La Insurgencia': de dos años y un día al [mínimo legal de seis meses y un día de prisión](#).

The High Court’s Appeal Division has again adjusted a sentence of the Criminal Division for glorifying terrorism and has substantially reduced the punishment for the ‘La Insurgencia’ rappers: from two years and one day to the legal minimum of six months and one day in prison.

The Appeal Division has thus consolidated its doctrine of administering the lowest possible punishment when the charges are for glorifying terrorist organisations that are no longer active, such as GRAPO or ETA.

## 2.8. “Masked men beat a student at the UPV in Vitoria for defending the unity of Spain” EL CORREO, 5 December 2018

### EL CORREO

Álava/Araba

Miranda Bizkaia Gipuzkoa Haro Entredós Especial: CASO DE MIGUEL

## 15 encapuchados apalean a un alumno en la UPV en Vitoria por defender la unidad de España



Coches patrulla de la Ertzaintza en una intervención anterior en la Facultad de Letras, saldada con el registro de la 'ikasle gela'. / E. C.

El joven, al que le destrozaron la nariz y un pómulo, ha estado cinco días ingresado. La Ertzaintza busca a los autores

DAVID GONZÁLEZ

Miércoles, 5 diciembre 2018, 14:12



Una quincena de encapuchados apaleó la tarde del pasado viernes a un estudiante de la Facultad de Letras de **Vitoria**, presuntamente por querer formar, junto a otro reducido grupo de alumnos, una agrupación por «la unidad de **España**». Este chico, de sólo 19 años, **perdió el conocimiento a causa de la brutal paliza**. Se despertó en un hospital vitoriano. Le han

### Lo + leído

El Correo Álava/Araba Top 50

- 1 Segunda oportunidad para la «adicta a las compras» que hundió la pyme de Vitoria en que trabajó
- 2 La Final Four llena los hoteles en Vitoria y dispara los precios en Bilbao
- 3 Vitoria exhibe sus primeras máscaras
- 4 Los vecinos de la Avenida de Olárizu. «hartos» de los okupas
- 5 «Me atacaron por la espalda cuando salía con la recaudación del día»

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Limpieza de chimeneas José Manuel

**Limpieza de chimeneas José Manuel**  
Limpieza, reparación e instalación de chimeneas

Presupuesto

The beating, condemned by the UPV in a statement, has caused “shock” and “concern” among the academic staff and many students. The official statement took the strong line of “absolutely condemning the brutal attack”. In turn, the Basque university expressed “its full support for and solidarity” with the victim.

The attacked by the masked group occurred “after the meeting” in a classroom of the Campus in Vitoria between this young person and another seven students to create a new student association. It was going to be called AEDE, the acronym for Students for the Unity of Spain Group.

2.9. “Security links two of the people arrested for beating the UPV student with “Álavés radicals” EL CORREO 13 December 2018

EL CORREO

Álava/Araba

Miranda Bizkaia Gipuzkoa Haro Entredós Especial: CASO DE MIC

## Seguridad vincula a dos de los detenidos por la paliza al alumno de la UPV con «radicales del Alavés»



Patrullas de la Ertzaintza, durante una intervención en la Facultad de Letras de Vitoria. / D. C.

El tercer sospechoso, puesto en libertad este martes, ha cursado estudios en el campus de Álava. La Ertzaintza busca al resto de encapuchados que pegó al joven por defender la unidad de España

DAVID GONZÁLEZ

Jueves, 13 diciembre 2018, 00:01



Efectivos de la Ertzaintza detuvieron a lo largo de este martes a tres jóvenes sospechosos de participar en la [brutal paliza a un estudiante de la UPV el pasado 30 de noviembre](#). Según fuentes policiales, todos ellos están relacionados de manera directa con la colectividad en la

This Tuesday, Ertzaintza police officers arrested three young men suspected of taking part in the brutal beating of a UPV student on 30 November. The Basque Security Department has linked the people under arrest with a “radical group of Alavés”. They spent last night in police cells waiting to be brought before the Judge of the Number 4 Examining Court. Depending on their statements, the authority will decide if there is sufficient evidence to charge them with bodily harm or a hate crime.

## 2.10. “Aske utziko dituzte EHUren Campuseko erasoagatik atxilotutako biak” BERRIA, 2018ko abenduak 13

# berria

Gizartea Politika Ekonomia Mundua Iritzia Kultura Kirola Bizigiro Berria TB

Estilo liburua D. Garaz 21 gradt

Politika

## Aske utzi dituzte EHUren campuseko erasoagatik atxilotutako biak

Lesio eta gorroto delituak egotzi dizkiete, eta ezingo dute EHUren Arabako campusera gerturatu atxilotua astearte goizaldean askatu zuten, eta epailearen aurrera joan beharko du hark eskatzei



Ikasle bati egindako eraso salatzeko, astelehenean, EHU egindako elkarretaraztea. JAIZKI FONTANEDA / FOKU

2018ko abenduak 13

Ertzaintzak astearte arratsaldean atxilotu zituen hiru gazte, azaroaren 30ean EHUko ikasle batek salatutako erasoarekin lotuta. Gaur utzi dituzte aske azkenengo biak –20 eta 21 urte dituzte–, epailearen aurretik pasatu ondoren. Lesio eta gorroto delituak egotzi dizkiete, eta epaileak debekatu egin die biktimarengana

### Gehien irakurrial

- 1 "Viva España" Donostiako Par
- 2 «Batzuek gord gorrotoa azalea honet» IMANOL MAGRO EIZMENI
- 3 Forcadell: "Der funtsa da hitza behar duela"
- 4 Urrutiko intxa ONINTZA ENDEITA
- 5 Bixintxo Bilbao gordea duten g azalcratu du zi IMANOL MAGRO EIZMENI

The two people charged with assault on the UPV/EHU Campus have been released. Accused of bodily harm and hate crimes, they cannot approach the UPV/EHU Araba Campus.

### **3. RELIGIOUS PRACTICES/BELIEFS**

### 3.1. “The Public Prosecutor defends that freedom of expression does not cover Hontzak’s satire of Catholic rites” GARA, 18 March 2018

20/2/2019 La fiscal defiende que la libertad de expresión no ampara la sátira de Hontzak a los ritos católicos | Bilbo Hiria | BILBOTARRA

INFO | OPINIÓN | NAIZ+ | AGENDA |

**naiz** bilbotarra

13° Gasteiz

INFO EN DIRECTO

BILBOTARRON BILBO | KULTURA | KIROLAK | BILBO HIRIA

EL TIEMPO | BLOCS | ESQUELAS

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BILBO HIRIA

## La fiscal defiende que la libertad de expresión no ampara la sátira de Hontzak a los ritos católicos

La fiscal ha defendido en el juicio contra el secretario de Hontzak que la sátira a los ritos católicos que plasmó la comparsa libertaria en su montaje «Carnicerías Vaticanas», en Aste Nagusia de 2017, supone un escamio a la Iglesia, por lo que ha solicitado una pena de ocho meses de multa. La defensa ha insistido en la absolución, ya que esa parodia entiende que está amparada en el derecho a la libertad de expresión, no habiendo intención de humillar a los cristianos.

AGUSTÍN GOIKOETXEA @GOIKODEUSTU | 18/12/2018 12:44



La comparsa de Hontzak se prepara con humor el juicio. MARI SÁENZ | FOKU

IMPRIMIR  
ENVIAR

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NOTICIAS RELACIONADAS

Hontzak reivindica ante los juzgados la libertad de expresión y que «nos juzgue Cristo»

Juicio contra Hontzak por sus «Carnicerías Vaticanas»



EGUNEKO CAIAK - EKONOMIA - EUSKAL HERRIA - IRITZIA - KIROLAK - KULTURA - MUNDUA

The case against Galder Antón, the secretary of the Hontzak group, accused of an alleged crime against religious feelings for the “Vatican Butchers” decorated on the group’s txosna (bar stands run by groups of friends during fiestas) during the 2017 Aste Nagusia festivities, is pending sentencing at the No. 3 Criminal Court Bilbao. The prosecutor has asked for eight months’ fine (€1,440).

## **4. SEXUAL IDENTITY/ORIENTATION**



#### 4.1. “A young man victim of a homophobic attack in the pub area of Sestao” EL CORREO, 3 July 2018

EL CORREO

Bizkaia

Margen izquierda Barakaldo Portugalete Santurtzi Sestao Balmaseda Muskiz Trapagan

## Un joven sufre un ataque homófono en el recinto de txosnas de Sestao



Decenas de vecinos del municipio expresaron su rechazo a la conductas que atentan contra la dignidad de las personas. / FERNANDO GÓMEZ

La víctima, que ha denunciado los hechos ante la Ertzaintza, recibió dos puñetazos en el ojo y en la barbilla

HELENA RODRÍGUEZ

Martes, 3 julio 2018, 09:27



A. B., de 29 años y vecino de [Erandio](#), sufrió un ataque homófono la madrugada del pasado sábado durante las fiestas patronales de [Sestao](#). Según el parte médico, reflejado en la denuncia que ha interpuesto ante la Ertzaintza, sufre una contusión en la cabeza y sendas heridas en la barbilla y en el pómulo y la zona del ojo. La última ha necesitado puntos de aproximación. El documento no refleja, sin embargo, la rabia e impotencia

An individual followed him and began to insult him. “He said, among many other insults that I can’t remember, ‘you are a f\*\*\*\*\*ing queer and I am going beat the hell out of you,’ he explained. Neither he or the people with him had time to react.

## **5. PEOPLE WITH DISABILITY/FUNCTIONAL DIVERSITY**

**No prominent news item was located on this category**

# 6. APOROPHOBIA

## 6.1. “Three arrested for attacking and throwing a homeless person into a fountain in Doña Casilda park” GARA, 9 March 2018

INFO | OPINIÓN | NAIZ+ | AGENDA |

**naiz** bilbotarra

15° Donostia

INFO 7 EN DIRECTO

BILBOTARRON BILBO | KULTURA | KIROLAK | BILBO HIRIA

EL TIEMPO | BLOGS | ESQUELAS

**BILBO HIRIA**

### Tres detenidos por agredir y arrojar a una fuente del parque de Doña Casilda a un indigente

Agentes de la Ertzaintza han detenido esta madrugada a tres jóvenes acusados de un delito de «lesiones graves» y un delito de «odio» por agredir y arrojar a una fuente a un indigente en el parque Doña Casilda de Bilbo.

NAIZ | 09/03/2018 13:28 ACTUALIZADA: 13:43

Parque de Doña Casilda en Bilbo. (ARGAZKI PRESS)

La agresión a un indigente se ha producido a las 4.20 de la madrugada de viernes en el barrio de Indautxu en Bilbo. Según ha

**IMPRIMIR**  
**ENVIAR**  
108  
16

**NOTICIAS RELACIONADAS**

Reclaman al Ayuntamiento que se presente como acusación particular en la agresión a un sin hogar

**GARA** 2018/03/09

### El agresor de la hija de Sara Majareñas, liberado porque la prisión es «excepcionalísima»

El agresor de la hija de Sara Majareñas, liberado porque la prisión es «excepcionalísima»

LA CAN SERENA A UIN Y DELATA AL PSN

EGUNEKO GAIAK - EKONOMIA - EUSKAL HERRIA - IRITZIA - KIROLAK - KULTURA - MUNDUA

In the early hours of yesterday morning, the Ertzaintza arrested three youths – aged 20, 21 and 22 -, accused of causing serious bodily harm and a hate crime, after they attacked and threw a homeless person into the foundation of the pergola in the Doña Casilda Iturrizar Park.

## APPENDIX II: EXTRACT FROM THE 2018 REPORTS OF THE PUBLIC PROSECUTOR OF THE BAC AND OF THE GENERAL STATE PROSECUTOR'S OFFICE (2017)

### BASQUE AUTONOMOUS COMMUNITY (BAC)

This section considers, without being exhaustive, the activity of the courts and public prosecutors' offices of the Basque Country related to discrimination and hate crimes in 2017. The data provided below have been taken from the 2018 Report of the Public Prosecutor of the BAC<sup>45</sup> which, to quote the report, "has been produced using data obtained by the Public Prosecutors on a totally small scale, with an individually manual monitoring of the grounds".

#### 1. "Crimes to provoke, promote or incite hatred, including denial, trivialisation or glorifying genocide, envisaged and punishable in Article 510.1 of the Criminal Code"

##### 1.1. Legal proceedings instigated

There was one legal action brought in Bizkaia and 4 in Gipuzkoa, but none in Álava.

We only have details of the proceedings in Bizkaia, which are as follows:

"DIP [Pre-trial Proceedings] No. 2070/17 of No. 5 Examining Court of Bilbao: arising from Criminal Investigations nº 98/17 by the Public Prosecutor, which ended with the case being referred that led to these Pre-trial Proceedings. These proceedings are currently in the pre-trial phase (...)"

##### 1.2. Criminal Investigations brought by the Provincial Public Prosecutors

Criminal Investigations were underway in Bizkaia, 3 in Gipuzkoa and 2 in Álava.

In Bizkaia, the investigations instigated by the Provincial Public Prosecutor, which lead to the aforementioned Pre-trial Proceedings, were as follows:

"Criminal Investigations No. 98/17: On 20 July 2017, a complaint from KAMIRA – the National Federation of Gypsy Women Associations was filed with this Public Prosecutor's Office regarding a video on YouTube, dated 14 April 2016, which stated: "Los Pichis, the gang of thieves feared by the people of Bilbao. Los Pichis are a street gang that steal from houses and mug people in the streets of Santutxu and surrounding areas. The local residents are scared of them and the police are doing nothing despite the complaints about the group". That video led to several comments that allegedly constituted an offence of incitement to hatred and discrimination against gypsies (...)"

The following criminal investigations were brought by the Provincial Public Prosecutors\_

"DIN 79/17: The Victimas 3 de Marzo Association has notified the Araba/Álava Provincial Prosecutor's Office of the publications on the Association's Twitter by Falange Vasconavarra. On 21 November 2017, a message was published on the Falange Vasconavarra's Twitter with the following content: "there are some who expect to get

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<sup>45</sup>Chapter II, Section 5.12 entitled "Tutela penal de la igualdad y contra la discriminación", pp. 170-180

subsidies and live off old deaths, forgetting their recent murders” and publishing a photo of the Victimas 3 de Marzo Association’s premises in Vitoria.

Pursuant to the Order of 14 February 2018, the criminal investigations were shelved as there was not sufficient rational evidence of a crime of incitement to hatred or humiliation of victims of terrorism.”

“DIN 80/17: the Álava Provincial Prosecutor’s Office was notified of an alleged anti-gypsy hatred discrimination campaign against the family belonging to the gypsy clan known as “Los Pitxis” after the Manzanares Cortés family was allocated housing in the Asteguieta neighbourhood of Vitoria. As the result of the housing allocation, a banner with the slogan “Asteguieta is not racist. And what if this was your home” was hung from one of the balconies of the building.

As of the date of issuing the public prosecutor’s report, “the criminal investigation [continued] open pending the reports requested from the Ertzaintza and the Local Police in order to report to Álava Provincial Prosecutor’s Office on the demonstrations [being] held on Saturdays against the Manzanares Cortes and against their being allocated a home in the Asteguieta neighbourhood by Vitoria City Council.”

There are no further details about the Gipuzkoa criminal investigations.

## **2. “Crimes of harming the dignity of people by means of humiliating, belittling or discrediting, including glorifying and justifying hate crimes, envisaged and punishable in Article 510.2 of the Criminal Code”**

### 2.1. Legal proceedings instigated

There were 4 proceedings instigated in Bizkaia and 2 in Gipuzkoa. There are no data on Álava-

We only have details of one of proceedings instigated in Bizkaia, which are as follows:

“DIP nº 251 /17 of No.2 Examining Court of Gernika: The proceedings were brought pursuant to the complaint of a women, who is a member of the civilian staff at a military barracks in Gernika and who was born in Morocco, against the alleged offender, whose statement as a person under investigation has still to be taken. Between June 2016 and the date of the complaint (12 August 2017), after a problem between the husbands of both women, the alleged offender addressed the women making the complaint with phrases such as “F\*\*\*\*\*g Arab”, “you don’t even have anywhere to drop down dead”, “you’re from a country of thieves” and “you’re the embarrassment of the barracks, what was a soldier thinking of bring an Arab to live in a Spanish barracks”.”

### 2.2. Criminal Investigations brought by the Provincial Public Prosecutors

There were investigations underway in Bizkaia and others in Gipuzkoa. There are no data on Álava-

We only have details on the first:

“Criminal Investigations No. 138/17: On 27 November 2017, this Prosecutor’s Office received a document from the Honorary Consult of the Republic of Turkey in Bilbao, regarding events that allegedly constitute an attack on xenophobic grounds against three Turkish citizen, who were members of the crew of a cargo ship of that nationality moored in the port of Bermeo. The document was accompanied by the complaints made by those Turkish citizens to Bermeo Local Police, which filed the relevant Police Report No. 62/2017. The Consul’s document led to these investigations, agreed by the Order of 29

November 2017, during which a telephone call was made to the Consulate to inform the complainant of the intention to call the three victims to take their statements at this Prosecutor's Office. The Consul informed us that the three citizens who had been attacked were no longer on Spanish territory, as the most seriously injured victim had been transferred to a hospital in Istanbul and the other two were on their way to Italy. The scheduled taking of their statements was therefore cancelled.

The Bermeo Local Police Report No. 62/2017 was lodged with No. 1 Examining Court in Gernika, which instigated Pre-trial Proceedings No. 366/17 regarding the alleged committing of a crime causing bodily injury. The court also issued an order agreeing the Provisional Dismissal of the Proceedings pursuant to Article 641.2 of the Code of Criminal Proceedings.”

### 2.3. Prosecution Reports from the Provincial Public Prosecutor's Offices

There were 2 prosecution reports in Bizkaia. There are no data on Gipuzkoa and Álava.

“PAB [Fast-track procedure] No. 568/16 from the No. 6 Examining Court of Bilbao, classified as the following offences on 17 October 2017: A) a crime against the fundamental rights of Article 510.2 of the CC B) a crime of bodily injury envisaged in Article 147. 1 of the CC. C) an abuse misdemeanour, envisaged in Article 147. 3 of the CC.”

“PAB No. 501/17 from the No. 9 Examining Court of Bilbao: The compliant dated 30 August 2017 read: “When they were in Bilbao having travelled from Seville to attend the match between Athletic Club and Real Betis Balompié in football league's (LFP) national championship to be held at the San Mames Stadium on that same day, at around 12.45 of that day, the accused went to the Casco Viejo [old town] of Bilbao in the company of another person. They reached a square, where M.H. proceeded to unexpectedly went up to protected witness 1/17 who was quietly having a drink on a bar's sidewalk tables. The accused then attacked the dignity of that person by shouting at him: “you Gabilondo, listen to me”, “Arise Spain” [associated with Falangist ideology], ”you, are you an ETA supporter?” The accused then threw a glass of liquid over the victim and slapped him in the face. The victim then ran away and the accused followed him, kicking out at the victim but not actually making contact, which continuing to shout: “F\*\*\*\*\*g Gabilondo, I'm going to teach you a lesson, disgusting ETA supporter”, and the victim finally managed to get away to safety inside a bar.

In turn, S.L., also accused and driven by the same desire to damage the dignity of that person, recorded the attack on his mobile and sent it by WhatsApp to different individuals, when it quickly spread in the social media, mass media and mobile messaging services. It therefore had a great impact on the personal life of protected witness 1/17, who had to change his daily life, as he was terrified by the consequences of the attack.

The victim's face was bruised, but he did not go to a medical centre and has not expressly waived any compensation to which he could be entitled”.

(...)

The facts related were classified as a crime committed related to the fundamental rights envisaged in Article 510.2 a) and 3. of the Criminal Code as a multiple offence with Article 77.1 of the CC with an abuse misdemeanour envisaged in Article 147.3 of the Criminal Code.

The defence appealed as it argued that the facts according to the Court Order were an attack to damage the moral and physical integrity, but it was not a hate crime. (...) This

argument was dismissed by the Second Section of the HC – Court Order No. 90442 of 20 October 2017-, and therefore the “proceedings are pending referral to the relevant Criminal Court.”

#### 2.4. Rulings issued

There were 2 convictions as sought by the prosecution in Bizkaia. No data is available for Gipuzkoa and Álava.

“Conviction as sought by the prosecution No. 10/1, issued by the Criminal Court No. 2 of Bilbao on 25 January 2017: In this case, the accused violently rebuked the victims with expressions such as “go back to your country”, “this is not country, get out of here”, “hell! I am going to make sure you go” while the accused shook and pushed the victim, adding “that black asshole shouldn’t be here and he should go back to his bloody country” and “you shouldn’t be here, you son of a bitch, go back to your country”. And he was sentenced for a xenophobic crime.”

The facts of Article 147.1 of the CC were deemed to be constitutive of a crime on bodily injury.”

**3. “Crimes of any other nature when the unlawful action is carried out on racist, anti-Semitic grounds, or due to another type of discrimination arising from the ideology, religion or beliefs of the victim, or regarding the ethnic group, race or nation to which the victim belongs or due to their sex, sexual orientation, illness or disability, along with crimes committed against people living under the poverty threshold, which are known as *aporophobia*, resulting in the application of the aggravating factor envisaged in Article 22.4 of the Criminal Code.”**

In Bizkaia, this aggravating factor has been applied in two convictions as sought by the prosecution and in two rulings.

In Gipuzkoa, there is no record of the number of convictions in which it has been appreciated, but “the Public Prosecutor’s Office points out that the majority of the convictions as sought by the prosecution in Gipuzkoa have involved the application of the aggravating factor of Article 22.4 of the CC, as the investigation did not find any evidence leading to the application of Article 510.2 or Article 173 of the CC (...)”.

No data is available on Álava.

**4. “Threatening behaviour to certain groups of people envisaged and punishable in Article 170.1 of the CC”**

No activity in this regard in the courts and prosecutors’ offices of the Basque Country in 2017.

**5. “Crimes of torture for reasons based on some form of discrimination envisaged and punishable in Article 174.1, second paragraph of the CC”**

No activity in this regard in the courts and prosecutors’ offices of the Basque Country in 2017.

**6. “Offences against moral integrity envisaged and punishable in Article 173.1 of the Criminal Code, when the degrading treatment, seriously harming the moral integrity or the humiliating or hostile actions referred to in the aforementioned precept have their origin, among other causes, in discriminatory reasons based on the ideology, religion, race, nationality, sexual orientation, or illness of the victims or on similar motives”**

There is no record of any proceedings being heard for crimes of Article 173.1 of the CC in Gipuzkoa and Álava.

#### 6.1. Prosecution Reports from the Provincial Public Prosecutor's Office

There was a prosecution reports from the Bizkaia Public Prosecutor's Office:

“PAB 3531/14 of No. 10 Examining Court of Bilbao: The facts were classified as an offence against moral integrity envisaged and punishable in Article 173.1 of the Criminal Code (an offence whose regulation has not been amended in any way). An offence of mental harm envisaged and punishable in Article 147.1 of the Criminal Code (in force at the time of this classification). A misdemeanour of assault envisaged and punishable in Article 617 of the Criminal Code (in force at the time of the facts). Furthermore, the aggravating factor of Article 22.4 of the Criminal Code (discrimination of the grounds of sex) was applied (...)”.

In one case in Gipuzkoa, the Provincial Public Prosecutor's Office classified one of the facts as being constitutive of the crime of 510.2 a) CC and alternatively of 173.1 of the CC.

#### 6.2. Rulings issued

There was one ruling in Bizkaia, as part of the proceedings to which the above prosecution report comes under.

“Ruling No. 377/17 of 30 December 2017 issued by No. 3 Criminal Court of Bilbao in its Case 277/17: From the evidence gathered in the plenary session and with special reference to the testimony of the victim, the accused taking advance of his post and of the hierarchical position that he held in the company that he owned with respect to the complainant, continuously made disparaging remarks and humiliated the latter. Given his behaviour, the accused created a tense work environment for the compliant thanks to his humiliating and degrading treatment of her, with his shouting, comments with sexual overtones, touching and constant threats of dismissal if the victim complained about that treatment. This caused the complainant to suffer anxiety, which led to a depressive-anxiety disorder that required psychiatric and psychological treatment requiring for her health 84 days sick leave when she was certified unable to perform her usual duties, without sequelae. The facts prosecuted and found to be proven are legally constitutive of an offence against moral integrity, Art. 173.1 Criminal Code, of a mental harm offence, Art. 147.1 Criminal Code and a bodily harm misdemeanour, Art. 617.1 Criminal Code derogated by Act 1/2015, with being applicable the Fourth Transitional Provision of Act 1/2015. And the application of the aggravating circumstance envisaged in Art. 22.4 Criminal Code, discrimination on the grounds of sex in its text prior to Act. 1/2015 was sought, but that circumstance was not applied in the ruling, as it was deemed that it had not been sufficiently proven.”

### **7. Crimes against the religious sentiments envisaged and punishable in Articles 522 to 525 of the Criminal Code.**

There were one proceeding instigated in Bizkaia and none in Gipuzkoa and Álava.

“DIP (Pre-trial proceedings) n° 969/17 of No. 3 Examining Court of Bilbao: On 19 August 2017, a complaint was filed by an individual and representative of the Catholic Church,



relating to the decoration of a Txosna (bar stand during fiestas) located in the fairground. That decoration entitled “Vatican Butchers” featured Jesus Christ with different body parts as if it were a carcass cut up, and also surrounded with a variety of sausages and the phrase “hartzazu eta jan guztiok hontatik”. Hau nire gorputza data (“Take, eat: this is my body”). On 20 August 2017, the summary court issued an order to start preliminary investigations and the interim measure to remove the bar stand posters referring to Jesus Christ, along with the title Vatican Butchers.

The people under investigation sought dismissal as they argued that the content of the decoration was within a festive setting and it was for political and social satirical purposes, all of which came under freedom of expression. The case is currently pending the ruling of the Provincial Court on the appeal lodged by the Prosecutor’s Court, as the acting judge had accepted the arguments of the defence”.

## 8. “Crimes of discrimination in private or public employment envisaged and punishable in Article 314 of the Criminal Code”

There was one legal proceeding brought in Bizkaia and none in Gipuzkoa and Álava.

“DIP (Pre-trial proceedings) n° 1297/16 of No. 8 Examining Court of Bilbao: Even though the complainants, workers, in their complaint invoked this crime as they believed that their dismissal by the managers of the company where they worked was due to their being members of a trade union, and even though the Court instigated Pre-trial Investigations into that crime, it was established during the investigation that the dismissal had not been on discriminatory grounds.”

## 9. “Crimes of denial of private or public services envisaged and punishable in Articles 511 and 512 of the Criminal Code”

No activity in this regard in the courts and prosecutors’ offices of the Basque Country in 2017.

### BAC Summary

The following statistical summary has been prepared using the aforementioned data provided by the Public Prosecutor’s Office of the Basque Country:

#### 1. Instigated legal proceedings

Crime Type <sup>46</sup>	Bizkaia	Gipuzkoa	Álava
Threats to specific groups. Art. 170.1	–	–	–
Torture by discrimination. Art. 174	–	–	–
Job discrimination. Art. 314	1	–	–
Inciting hate/violence/discrimination. Art. 510.1	1	4	–
Disseminating offensive information. Art. 510.2	4	2	–
Denying services. Art. 511-512	–	–	–
Unlawful association for discrimination. Art. 515-5.º	1	–	–

<sup>46</sup> In keeping with the following section, the same descriptions of the types used by the General State Prosecutor’s Office in its 2018 Report

Against religious feelings. Art. 522-525	1	–	–
Genocide justification. Art. 607.2	–	–	–
Against moral integrity. Art. 173.	–	–	–
Crimes with aggravating factor. Art. 22.4.º	–	–	–
Others	–	–	–
Total Provinces	7	6	0
Total BAC	13		

## 2. Criminal Investigations brought by the Provincial Public Prosecutors

Crime Type	Bizkaia	Gipuzkoa	Álava
Threats to specific groups. Art. 170.1	–	–	–
Torture by discrimination. Art. 174	–	–	–
Job discrimination. Art. 314	–	–	–
Inciting hate/violence/discrimination. Art. 510.1	1	3	2
Disseminating offensive information. Art. 510.2	1	1	–
Denying services. Art .511-512	–	–	–
Unlawful association for discrimination. Art. 515-5.º	–	–	–
Against religious feelings. Art. 522-525	–	–	–
Genocide justification. Art. 607.2	–	–	–
Against moral integrity. Art. 173.	–	–	–
Crimes with aggravating factor. Art. 22.4.º	–	–	–
Others	–	–	–
Total Provinces	2	4	2
Total BAC	8		

## 3. Prosecution Reports from the Provincial Public Prosecutor's Offices

Crime Type	Bizkaia	Gipuzkoa	Álava
Threats to specific groups. Art. 170.1	–	–	–
Torture by discrimination. Art. 174	–	–	–
Job discrimination. Art. 314	–	–	–
Inciting hate/violence/discrimination. Art. 510.1	–	–	–
Disseminating offensive information. Art. 510.2	2	–	–
Denying services. Art .511-512	–	–	–
Unlawful association for discrimination. Art. 515-5.º	–	–	–
Against religious feelings. Art. 522-525	–	–	–
Genocide justification. Art. 607.2	–	–	–
Against moral integrity. Art. 173.	1	–	–
Crimes with aggravating factor. Art. 22.4.º	2	*	–
Others	–	–	–
Total Provinces	5	*	0
Total BAC	5*		

\* There specific number of prosecution reports in which the aggravating circumstance of 22.4 was applied was not available. The total calculation for Gipuzkoa and, therefore, for the BAC, could not be established.

#### 4. Rulings issued

Crime Type	Bizkaia	Gipuzkoa	Álava
Threats to specific groups. Art. 170.1	–	–	–
Torture by discrimination. Art. 174	–	–	–
Job discrimination. Art. 314	–	–	–
Inciting hate/violence/discrimination. Art. 510.1	–	–	–
Disseminating offensive information. Art. 510.2	2	–	–
Denying services. Art .511-512	–	–	–
Unlawful association for discrimination. Art. 515-5.º	–	–	–
Against religious feelings. Art. 522-525	–	–	–
Genocide justification. Art. 607.2	–	–	–
Against moral integrity. Art. 173.	1	–	–
Crimes with aggravating factor. Art. 22.4.º	2	–	–
Others	–	–	–
Total Provinces	5	0	0
Total BAC	5		

## SPAIN

The figures on the activity of the courts and public prosecutor's offices in Spain regarding discrimination and hate crimes in 2017, taken from the 2018 General State Prosecutor's Office 2018<sup>47</sup>, are reproduced below.

### 1. Legal proceedings monitored by the General State Prosecutor's Office:

Threats to specific groups. Art. 170.1 .....	32	
Torture by discrimination. Art. 174 .....	–	
Job discrimination. Art. 314 .....	2	
Inciting hate/violence/discrimination. Art. 510.1 .....	89	
Disseminating offensive information. Art. 510.2 .....	220	
Denying services. Art .511-512 .....	35	
Unlawful association for discrimination. Art. 515-5.º .....	1	
Against religious feelings. Art. 522-525 .....	14	
Genocide justification. Art. 607.2. ....	–	
Against moral integrity. Art. 173.1 .....	31	
Crimes with aggravating factor. Art. 22.4.º .....	271	
Others. ....	114	
Total .....	809	

**2. Criminal Investigat**

<sup>47</sup>Section on "Statistics" (12.6) with Chapter III, Section 12. *Delitos de odio y contra la discriminación*, pp. 831-832

**ions brought by the Public Prosecutor:**

Threats to specific groups. Art. 170.1 .....	6
Torture by discrimination. Art. 174 .....	–
Job discrimination. Art. 314 .....	–
Inciting hate/violence/discrimination. Art. 510.1 .....	101
Disseminating offensive information. Art. 510.2 .....	75
Denying services. Art .511-512 .....	12
Unlawful association for discrimination. Art. 515-5.º .....	–
Against religious feelings. Art. 522-525 .....	5
Genocide justification. Art. 607.2. ....	–
Against moral integrity. Art. 173.1 .....	4
Crimes with aggravating factor. Art. 22.4.º .....	43
Others. ....	1
Total .....	247

**3. Prosecution reports by the Public Prosecutor’s Office:**

Threats to specific groups. Art. 170.1 .....	–
Torture by discrimination. Art. 174 .....	–
Job discrimination. Art. 314 .....	–
Inciting hate/violence/discrimination. Art. 510.1 .....	14
Disseminating offensive information. Art. 510.2 .....	52
Denying services. Art .511-512 .....	5
Unlawful association for discrimination. Art. 515-5.º .....	4
Against religious feelings. Art. 522-525 .....	3
Genocide justification. Art. 607.2. ....	2
Against moral integrity. Art. 173.1 .....	21
Crimes with aggravating factor. Art. 22.4.º .....	52
Others. ....	–
Total .....	153

**4. Rulings:**

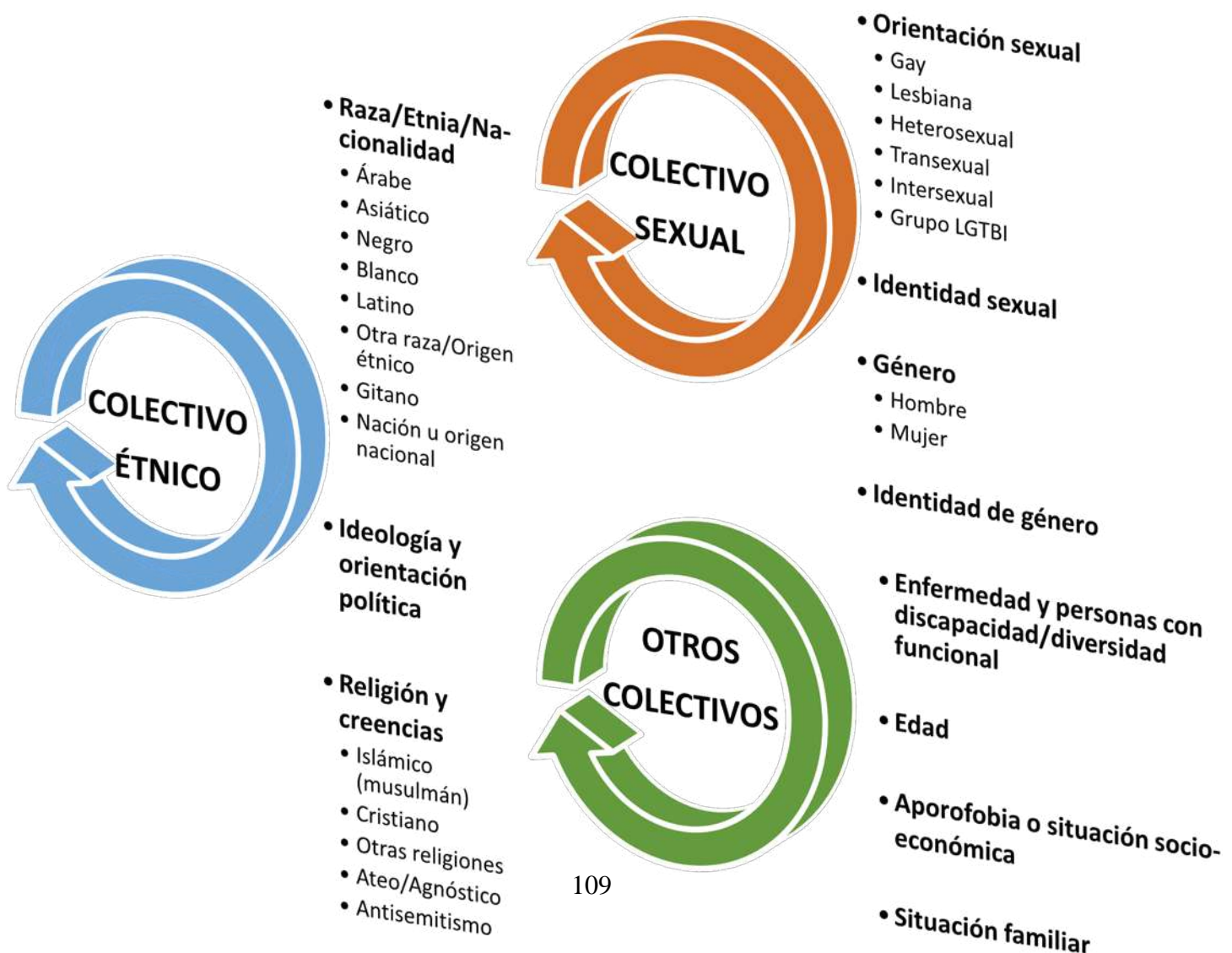
Threats to specific groups. Art. 170.1 .....	–
Torture by discrimination. Art. 174 .....	–
Job discrimination. Art. 314 .....	–
Inciting hate/violence/discrimination. Art. 510.1 .....	29
Disseminating offensive information. Art. 510.2 .....	18
Denying services. Art .511-512 .....	2
Unlawful association for discrimination. Art. 515-5.º .....	–
Against religious feelings. Art. 522-525 .....	1
Genocide justification. Art. 607.2. ....	–
Against moral integrity. Art. 173.1 .....	21
Crimes with aggravating factor. Art. 22.4.º .....	30
Others. ....	2
Total .....	103

**FINAL APPENDIX METHODOLOGIC AND TERMINOLOGICAL DEFINITION.  
(EXTRACT FROM THE 2017 REPORT ON HATE INCIDENTS IN THE BASQUE  
COUNTRY, SECTION 1)**

This section sets out, initially in graph format, and subsequently with argumentation, all the protected categories in connection with these kinds of incidents, and a brief summary of the legal precepts applicable to them. The presentation is intended to lay down a terminology framework to give the entire report homogeneity, accuracy and clarity. It also strives to provide a brief explanation of the methodological bases applied to draw up the Report.

**1. Classification proposals**

*1.1. Protected categories*



**BLOCK I**

**ETHNIC COLLECTIVE/RACIST AND XENOPHOBIC COLLECTIVE**

**GROUP i**

RACE / ETHNIC GROUP OR "ETHNIC TYPE"  
(ORIGIN, IDENTITY OR ETHNIC GROUP) / NATIONALITY

*Arab*

*Asian*

*Black*

*White*

*Latin*

*Other Race/Ethnic Origin*

*Gypsy*

*Nation or National Origin*

**GROUP II**

POLITICAL IDEOLOGY/ORIENTATION

**GROUP III**

RELIGION AND BELIEFS

*Islam (Muslim)*

*Christian*

*Other Religions*

*Atheist or Agnostic*

*Anti-Semitism*

**BLOCK II**

**SEXUAL COLLECTIVE**

**GROUP IV**

SEXUAL ORIENTATION.

*Gay*

*Lesbian*

*Heterosexual*

*Transsexual*

*Intersexual*

*LGTBI Group (Mixed Group)*

**GROUP V**

SEXUAL IDENTITY

**GROUP VI**

GENDER

*Male*

<i>Female</i>
<b>GROUP VI</b> GENDER IDENTITY
<b>BLOCK III</b>
<b>OTHER COLLECTIVES</b>
<b>GROUP VIII</b> ILLNESS AND PEOPLE WITH DISABILITY/FUNCTIONAL DIVERSITY
<b>GROUP IX</b> AGE
<b>GROUP X</b> APOROPHOBIA OR SOCIO-ECONOMIC SITUATION
<b>GROUP XI</b> FAMILY SITUATION

**1.2. Regulations government discrimination and hate crimes**

**I. Preceptos stricto sensu**

- Art. 22.4 CP
- Art. 170.1 CP
- Art. 174 CP
- Art. 510 y 510 bis CP
- Art. 515.4 CP

**II. Preceptos de complemento o funcionales**

- Art. 160.3 CP
- Art. 173.1 CP
- Art. 197.5 CP
- Arts. 522 a 526 CP
- Art. 607 CP
- Art. 607 bis CP
- Art. 611.6 CP

**DELITOS DE ODIO**

- Art. 314 CP
- Art. 511 CP
- Art. 512 CP

**DELITOS DE DISCRIMINACIÓN**

## 1.2. CRIMINAL LEGISLATION ON DISCRIMINATION AND HATE CRIMES

### I. HATE CRIMES

#### 1.1. Stricto Sensu precepts

- **Art. 22.4 CC** [aggravating circumstance of gender for discriminatory reasons]
- **Art. 170.1 CC** [crime of threats to terrorise a collective]
- **Art. 174 CC** [torture on discriminatory grounds]
- **Arts. 510 CC** [crime of incitement to hatred, hostility, discrimination or violence] **and 510 bis CC** [criminal liability of legal entities]
- **Art. 515.4 CP** [crime of conspiracy to encourage or incite discrimination, hatred or violence]

#### 1.2. Functional or Complementary Precepts

- **Art. 160.3 CC** [reproductive human cloning and selection of race]
- **Art. 173.1 CC** [degrading treatment]
- **Art. 197.5 CC** [discovery and disclosure of secrets affecting particularly sensitive personal data]
- **Arts. 522 to 526 CC** [crimes against freedom of conscience, religious sentiments and respect for dead:
  - a) conduct in relations to the exercise of religious freedom or freedom of worship (Arts. 522 and 523 CC).
  - b) Acts of desecration offending religious sentiments (Art. 524 CC).
  - c) Derisive conduct in relation related to religious freedom or freedom of worship (Art. 525 CC).
  - d) Desecration of graves and burial places, and profanation of bodies (Art. 526 CC).]
- **Art. 607 CC** [crimes of genocide]
- **Art. Article 607** [crimes against humanity]:
- **Art. 611.6º CC** [aggravated instances of inhumane and degrading practices involving outrages against protected persons in the event of armed conflict]

### II. CRIMES OF DISCRIMINATION

- **Art. 314 CC** [Employment discrimination].
- **Art. 511 CC** [Discriminatory refusal to provide of a public service]
- **Art. 512 CC** [Discriminatory refusal to provide a professional or business service]

## DISCRIMINATION AND HATE CRIME ADMINISTRATIVE LEGISLATION

Act 19/2007, of 11 July, against violence, racism, xenophobic and intolerance in sport [*BOE (Spanish Official Gazette) No. 166, of 12 July 2007, pages 29946 to 29964*].

Public Events and Recreational Activities Act 10/2015, of 23 December, [*B.O.P.V. (Basque Official Gazette) of 7 January 2016, No. 3*].

### 1. Positioning and explanation of the classification by categories



Comparative terminology classification references This section on the terminological delimitation of protected categories in hate incidents is based on statistics in databases supplied by the Ertzaintza police force.

Where necessary, however, further information was obtained from three conceptual frameworks or points of reference. First, from the 1990 *Hate Crime Statistics Act* (HCSA) (USA.), along with its more recent guide or explanatory manual, the *Hate Crime Data Collection Guidelines and Training Manual (2015)*<sup>48</sup>. The HCSA is held to be the first US federal law requiring information on these types of crimes to be compiled and published. Secondly, information has been drawn from domestic criminal regulations, specifically Articles 22.4 and 510 of the Spanish Criminal Code. This vision concentrating on two specific articles, in terms of implementation of terminology, is connected to a political-criminal response focusing on two major areas of action areas: aggravation of crimes through hatred, and the criminalisation of hate speech. Both these legislative trends are taken into account in our Criminal Code, and are thus represented by arts. 22.4 and 510 CP as the two maximum exponents of the trends<sup>49</sup>. The fact, however, that these articles are the main exponents of criminal laws against intolerance would not cover all articles geared towards this purpose. In fact, these two articles contain the most extensive and comprehensive categorised lists of protected groups in the entire Criminal Code, and thus it makes sense to focus our analysis of these precepts in this section.

In addition to the above, when necessary further allusions will be made to the latest Report on Trends in Incidents relating to Hate Crimes in Spain, produced by the Ministry of the Interior and publicly available since 8 June 2017<sup>50</sup>. The table below shows the main terminology differences used in the sources quoted.

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<sup>48</sup> LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", 68 pages.

<sup>49</sup> LANDA GOROSTIZA, *Los delitos de odio, passim*.

<sup>50</sup> MINISTRY OF THE INTERIOR, "Informe sobre la evolución", p. 13.

HATE CRIME STATISTICS	ERTZAINZA	CODIGO PENAL (1995)
<b>SINGLE-BIAS INCIDENTS</b>		
<b>RACE / ETHNICITY / ANCESTRY</b>	<b>RACISMO XENOFOBIA</b>	<b>MOTIVOS RACISTAS ETNIA, RAZA, NACIÓN, ORIGEN NACIONAL</b>
Anti-White	Blanca	
Anti-Black or African American	Negra	
Anti-American Indian or Alaska Native		
Anti-Asian	Asiática	
Anti-Native Hawaiian or Other Pacific Islander		
Anti-Multiple Races, Group		
Anti-Arab	Árabe	
Anti-Hispanic or Latino		
Anti-Other Race/Ethnicity/Ancstry	Raza/Etnia (Sin Esp.)	
	Gitana	

RELIGION	ORIENTACIÓN RELIGIOSA	RELIGIÓN O CREENCIAS
Anti-Jewish		
Anti-Catholic		
Anti-Protestant		
Anti-Islamic (Muslim)	Islamofóbico	
Anti-Other Religion	Otras Religiones	
Anti-Multiple Religions, Group		
Anti-Mormon		
Anti-Jehovah's Witness		
Anti-Eastern Orthodox (Russian, Greek, Other)		
Anti-Other Christian	Anticristiano	
Anti-Buddhist		
Anti-Hindu		
Anti-Sikh		
Anti-Atheism/Agnosticism/etc.		

SEXUAL ORIENTATION	ORIENTACIÓN SEXUAL IDENTIDAD SEXUAL	ORIENTACIÓN O IDENTIDAD SEXUAL
Anti-Gay (Male)		
Anti-Lesbian		
Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)		
Anti-Heterosexual		
Anti-Bisexual		

DISABILITY	DISCAPACIDAD Y ENFERMEDAD	ENFERMEDAD O DISCAPACIDAD
Anti-Physical		
Anti-Mental		

GENDER		RAZONES DE GÉNERO
Anti-Male		
Anti-Female		

GENDER IDENTITY		
Anti-Transgender		
Anti-Gender Non-Conforming		

	SEXO	SEXO
	<i>*Marcador actualmente no recogido.</i>	

	ANTISEMITISMO	MOTIVOS ANTISEMITAS

	ORIENTACIÓN POLÍTICA IDEOLOGÍA	IDEOLOGÍA

	POBREZA Y APOROFOBIA	

	EDAD	
	<i>*Todavía no operativa.</i>	

		SITUACIÓN FAMILIAR
<b>MULTIPLE-BIAS INCIDENTS</b>		

Finally, for the purposes of quantifying the compilation of hate crimes, it should be pointed out that the Ertzaintza had worked with the possible concurrence of up to two markers (for example, homosexuality and functional diversity/disability) as a maximum in a specific scenario. The FBI, on the other hand, disregards quantitative limitations, though not qualitative limitations, since it does not state the specific motivations pertaining to scenarios of multiple-bias incidents. The Report sets out to surpass both standards in the future. The fact that several protection characteristics may be associated with victims increases the likelihood of their victimisation, because this boosts their public exposure or visibility in relation to several types of prejudices. In other words, victims find it more difficult to melt into the background, and this renders them more vulnerable. Intersectionality is indeed an issue with much room for improvement, although at the present time it cannot be addressed across its full dimension due to the limitations inherent to the Report.

It is also clear that, from the point of view of policing, the greater the number of protected categories, the greater the difficulty in terms of proper identification of the category. This expansion of collectives may impair levels of trust and cooperation in victims, because some of them may feel that proper account will not be taken of the incident in which they are involved. Our approach in hate incidents, however, is pro-victim and supports the collectives affected, in such a way that police units must detect and monitor any hatred or hostility manifested in certain communities. Cooperation with the victim is inexcusable, and to this end our main concern must focus on an operational design to prioritise and maximise the exercise and enjoyment of Human Rights. Thus it may be appreciated that in this case it is not so much a rigid closed list of protected categories, but rather the intention of providing protection for any vulnerable groups present in the Autonomous Basque Community. This vulnerability is also represented by historical patterns of bias which, although they materialise on a small scale on a daily basis (consider micro-machoism, for example), entail a substantial impact on the victim and the community itself when they are considered cumulatively in their own context of secular domination.

### 1.2.2. Proposal of categories: general explanation

<b>BLOCK I</b>
<b>ETHNIC COLLECTIVE / RACIST AND XENOPHOBIC COLLECTIVE</b>
<b>GROUP I</b> RACE/ETHNICITY (ORIGIN, IDENTITY OR ETHNIC GROUP) / NATIONALITY
<i>Arab</i>
<i>Asian</i>
<i>Black</i>
<i>White</i>
<i>Latino</i>
<i>Other Race / Ethnic origin</i>
<i>Gypsy</i>
<i>Nation or national origin</i>

For the purposes of this report, hereinafter the term "ethnicity" employed in the Hate Crime Statistics Act (HCSA) will be considered to identify any of the following three concepts: "Ethnic Origin", "Ethnic Identity" or "Ethnic Group"<sup>51</sup>. In any case the FBI provides an understanding via the Hate Crime Data Collection Guidelines and Training Manual (2015), which contains operational definitions for the compilation of hate-fuelled incidents.

Racial bias is defined as a "preformed negative opinion or attitude toward a group of persons who possess common physical characteristics, e.g. colour of skin, eyes, and/or hair, facial features, etc., genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind, e.g., Asians, Blacks or African Americans, whites"<sup>52</sup>. Ethnicity bias is defined as "a preformed negative opinion or attitude towards a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry. The concept of ethnicity differs from the closely related term race in that "race" refers to grouping based mostly upon biological criteria, while "ethnicity" also encompasses additional

<sup>51</sup> A document co-published by the Spanish Ministry of Education, Culture and Sport expressly associates the terms "ethnicity" and "ethnic nature" "(...) in the specific sense of the cultural and historical identity of a person, based on the person's affiliation due to birth (or, in some cases, through marriage) to a certain ethnic group"\*. DADZIE, *Herramientas contra el racismo en las aulas.*, p. 109.

<sup>52</sup> "**Racial Bias**—A preformed negative opinion or attitude toward a group of persons who possess common physical characteristics, e.g., colour of skin, eyes, and/or hair, facial features, etc., genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind, e.g., Asians, Blacks or African Americans, whites" LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 11.

cultural factors”<sup>53</sup>. Finally, ancestry is conceived as "an ethnicity subcategory", i.e. "a preformed negative opinion or attitude toward a group of people based on their common lineage or descent"<sup>54</sup>. With respect to the term "race", there is awareness concerning its lack of any scientific basis, but it is employed because it is the term most frequently employed by the public at large. This allusion remains, moreover, a social construction, making it a practical tool for the purposes of compiling data<sup>55</sup>.

The Hate Crime Data Collection Guidelines and Training Manual (2015) elaborates further on the specific groups to be protected in the wake of the above definitions of racial and ethnicity bias. In this regard, the subcategory:

- **Arab** includes “a person having origins, and/or ancestry, in any of the Arabic speaking peoples of Lebanon, Syria, Palestine, Jordan, Iraq, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Egypt, Libya, Tunisia, Comoros, Algeria, Morocco, Sudan, Djibouti, Mauritania and Somalia<sup>56</sup>.

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<sup>53</sup> “**Ethnicity Bias**—A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry. The concept of ethnicity differs from the closely related term *race* in that “race” refers to grouping based mostly upon biological criteria, while “ethnicity” also encompasses additional cultural factors” LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 11.

<sup>54</sup> “**Ancestry Bias**—A preformed negative opinion or attitude toward a group of people based on their common lineage or descent” LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 11.

<sup>55</sup> The preference given in this report to the term "race" as a specific category, rather than "racism" or "xenophobia", has a greater dimension in addition to its practical nature. Racism and xenophobia are related, but are superimposed over racial issues. If we take race to mean the natural grouping of human beings with a number of common hereditary physical features, racism is not constructed by a logical superimposition, taking account of these phenotypical factors alone. A mutation has taken place which compels us to talk about new racism or subtle racism. Therefore racism does not solely or exclusively comprise racial groups (racism in the strict sense), but also ethnicities and cultures. In accordance with this broader concept, we wish to point out the ECRI's General Policy Recommendation 7 of 13 December 2002, among others, which defines racism as "(...) the belief that a ground such as "race", sex, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons (...)". It may therefore be concluded that racism goes beyond concepts that are strictly racial - i.e. phenotypical concepts - and is also present, though not necessarily, in other adjacent realities. Even beyond this transversality of racism, there can be no ignoring its aspect of intergroup superiority or inferiority which presupposes a right of historical domination with respect to another group. In this regard, the concept of racism links into structural aspects. We might say, on the other hand, that the term "race" is more aseptic and does not connote any invocation of supremacy or inferiority, but simply acts as a classifier to boost the operativity of the data handling that is required for our report. By way of a summary, as AGUILAR GARCÍA concludes, "racism constitutes a discriminatory belief and attitude which consists of considering the natural superiority of one group to another, in both its individual and institutional aspects"\*.

For further reading, see AGUILAR GARCÍA, "Manual práctico para la investigación", pp. 44-48. Nor should xenophobia be confused with racism, since this is more a feeling of rejection rather than an ideology of superiority. Xenophobia, in fact, focuses exclusively on that which is foreign, either real or perceived (unlike racism). It consists of fear, aversion, hatred, hostility or rejection - generally groundless and the product of a social construction - with regard to the unknown. In other words, towards the cultural baggage (culture, traditions, values etc.) of foreign agents. AGUILAR GARCÍA, "Manual práctico para la investigación", p. 48..

<sup>56</sup> “**Arab**—A person having origins, and/or ancestry, in any of the Arabic speaking peoples of Lebanon, Syria, Palestine, Jordan, Iraq, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Egypt, Libya, Tunisia, Comoros, Algeria, Morocco, Sudan, Djibouti, Mauritania, and Somalia” LAW ENFORCEMENT

- **Asian** includes "a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam"<sup>57</sup>.
- **Black** includes "a person having origins in any of the Black racial groups of Africa"<sup>58</sup>.
- **White** includes "a person having origins in any of the original peoples of Europe, the Middle East, or North Africa"<sup>59</sup>.
- **Latino** includes "a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race (...)" . In awareness of the marked Americanisation of this partial definition by the FBI, it seems clear that in the collective imaginary of the Basque population this category is associated with any links between a person and Latin America<sup>60</sup>.
- **Other Race / Ethnicity** includes a "person of a different race/ethnicity/ancestry than is otherwise included in this combined category" <sup>61</sup>.

The specific categories and subcategories into which the terms race, ethnicity and ancestry branch out in the HCSA fully match the terminology of the documentation used and published by the US Department of Trade's Census Bureau. It is, in fact, the US statistics census that is used by GARNER to demonstrate that the definitions of the umbrella categories used by the government agency are eminently geographic, focusing on specific countries or zones. This reference to the country of origin, in the genealogies of certain people, will go back several generations. Ethnicity is therefore constructed on the basis of race, in what may be termed the result of a conjunction of variables (religion, linguistic distinctions etc.) within an already racialised group. Thus, an ethnicity bias entails the disappreciation of the cultural component and of any variables into which this is broken down. In short, ethnicity is a construction which

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SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 12.

<sup>57</sup> "**Asian**—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam" LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 12.

<sup>58</sup> "**Black (...)**—A person having origins in any of the Black racial groups of Africa" LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 12.

<sup>59</sup> "**White**—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa" LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 13.

<sup>60</sup> **Hispanic or Latino**—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Includes people from Hispanic or Latino groups (...)" LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 12.

<sup>61</sup> "**Other Race/Ethnicity/Ancstry**—A person of a different race/ethnicity/ancestry than is otherwise included in this combined category" LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), "Hate crime data collection", p. 12.

co-exists alongside race, and operates in parallel on an underlying plane<sup>62</sup>. This statement is adopted in a somewhat qualified format, because according to AGUILAR GARCÍA the visible physical features which distinguish some groups from others may or may not be a component of a specific ethnic group<sup>63</sup>.

In short, the HCSA uses a methodology based on the phenotypical characteristics of a person as the main indicator employed by the perpetrator of a hate incident to link the victims themselves, or the victims in relation to the ancestors of whom they are the descendants, to a real or alleged specific geographic origin. Subsequently, the cultural component would break down the victims' origins into a recognisable format (homing in on variables such as religion, language, ideology, attire, customs, way of life etc.), presenting us with an ethnicity bias. The use of "ancestry" along with race and ethnicity, as the FBI indeed states, is considered redundant and unnecessary. Nor may the fact be ignored that the marker "nation" appears in the list of reasons stated in art. 22.4 CP and also in art. 510 CP. Art. 510 CP also refers to "national origin", although it may be concluded that both terms in fact refer to the nationality of the victim<sup>64</sup>. Adopting this point of view, ROIG TORRES points out that "including national origin considers discrimination arising from the present nationality and also the nationality at birth"<sup>65</sup>. However, we are also aware of the doctrinal discrepancies in relation to this issue, since authors such as DÍAZ Y GARCÍA CONLLEDO claim that "(...) national origin is not identical to nationality, and therefore even if a person changes their nationality, discrimination due to their national origin (even if they have lost the nationality linking them to this origin) is still possible (...) "<sup>66</sup>. . According to DÍAZ LÓPEZ, however, the issue generating controversy in this area is the interpretative issue: "(...) must this be understood in a more regulatory sense (as belonging to a State ruled by the same government, as in "Andorran nation" or in a cultural sense (as belonging to the same origin, with the same language and a common tradition, as in "Catalan nation") [?]" . In this writer's opinion, it would be proper to accept the former hypothesis, since referring to a cultural nation would be redundant and would be bereft of any content following consideration of ethnicity previously. Moreover, art. 2 CE<sup>67</sup> places "nationalities and regions" on the same level, and therefore giving some kind of priority to the former over the latter would be little less than arbitrary and groundless discrimination. In any case, this thesis terminates with the idea that "(...) through ideology or

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<sup>62</sup> GARNER, *Racisms*, pp. 44, 53 y 63.

<sup>63</sup> AGUILAR GARCÍA, "Manual práctico para la investigación", pp. 48 y 49.

<sup>64</sup> AGUILAR GARCÍA, "Manual práctico para la investigación", p. 56.

<sup>65</sup> ROIG TORRES, "Los delitos de racismo y discriminación", p. 1264.

<sup>66</sup> DÍAZ Y GARCÍA CONLLEDO, *Protección y expulsión*, pp. 323-324.

<sup>67</sup> Art. 2 SC: "The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards, and recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and solidarity among them all".

ethnicity, Article 22.4 CP may be applied to scenarios of hatred of autonomous community nationalities"<sup>68</sup>. This view is also shared by AGUILAR GARCÍA, since he notes that "(...) the nation concerned here [as we are referring to nation or national origin as a category] is solely and exclusively the nation in the judicial-constitutional sense, as stated by the Constitutional Court in Ruling 31/2010 of 28 June 2010"<sup>69</sup>. The ethnic "gypsies" group will also maintain the local presence in the autonomous community as assigned by the Ertzaintza, as deemed advisable by the social reality of the Basque Country. To this end, it will be sufficient to find some sort of connection of people to the marked cultural characteristics of the gypsy community to enable hate incidents to be classified. According to GARNER, the past history of nomad groups (including gypsies, inter alia), their origins, their cultural specifics and their common characteristics are particularly relevant for the groups themselves, which strive to combat representations of them produced by more powerful institutions such as the State and communication media<sup>70</sup>. For want of another definition in this regard, there follows a transcription of the ECRI General Policy Recommendation 13 on combating anti-Gypsyism and discrimination against Romany/Gypsies, adopted on 24 June 2011: "(...) anti-Gypsyism is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination".

<b>BLOCK I</b>
<b>ETHNIC COLLECTIVE / RACIST AND XENOPHOBIC COLLECTIVE</b>
<b>GROUP II</b> POLITICAL ORIENTATION AND IDEOLOGY

Political orientation may be understood as an ideological division, and protection of this may be justified by the historical context of certain countries. Partially echoing the definition of hate incidents for ideological reasons set out in the Report on Trends in Incidents relating to Hate Crimes in Spain. this entails action against individuals or groups on the basis of ideas essentially

<sup>68</sup> DÍAZ LÓPEZ, *El odio discriminatorio*, pp. 295-298.

<sup>69</sup> AGUILAR GARCÍA, "Manual práctico para la investigación", p. 56.

<sup>70</sup> GARNER, *Racisms*, p. 57.



shared by a sector of society in relation to aspects such as politics, science, economics, culture and morals<sup>71</sup> .

However, it seems logical and advisable to define ideology as referring exclusively to political hatred, and thus employ the "religion and beliefs" label (Group III) as referring to dogmas or doctrines in relation to divinity. This is the position taken up by DÍAZ LÓPEZ, who considers that "(...) "ideological motivation" includes cases in which perpetrators, supporting a certain mode of political organisation in the Spanish State, commit their crimes because the convictions of their victims differ in this respect"\*<sup>72</sup> . In this case, however, on the basis of the above the author explains the possible orientation of cases that could lead to confusion because they lie midway between political ideology and ethnicity. By way of example, if a hate crime is perpetrated against a Basque citizen - simply because this person is Basque - this would present us with two alternative judicial scenarios: 1. The scenario will concern "ideology and political orientation" (Group II) if the criminal act is based on "(...) beliefs in relation to organisation of the polis, either with the current status of the Spanish State as a parliamentary monarchy, its transformation into a totalitarian State, its mutation to a federal Republic, the dissolution and creation of other independent States, or any other forms of political organisation"\*. To sum up, when the emotion dependent on and stemming from the perpetrator's bias arises "(...) as a consequence of the "independentist nationalism" / "Spanish nationalism" dichotomy"<sup>73</sup> . The scenario will concern our "other race/ethnic origin" category (a marker in Group I), for example, when the emotion of hate towards the victim arises because the victim, by way of an example, "(...) was communicating in Basque (and this identified the victim as a member of Basque society)"<sup>74</sup> . Thus, aspects such as a common language or any other shared cultural characteristics forming the basis of a national minority's ad intra and ad extra identity and common sense of belonging to that minority will give rise to discriminatory ethnic queries. Greater reluctance emerges in furnishing protection to the State or Government, i.e. institutional protection (e.g. via the police), through hate incidents. This is a tempting option which is nurtured by certain social media, but it is inconsistent with the general framework of protection underlying the standards of human rights. In other words, it is ultimately a question of protecting the human rights of certain collectives, not the State. However, this does not mean that other existing means of enhanced and institutional protection are being questioned - consider, for example, the case of an attack on a figure of authority. In short, any

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<sup>71</sup> GARNER, *Racisms*, p. 57.

<sup>72</sup> DÍAZ LÓPEZ, *El odio discriminatorio*, p. 289.

<sup>73</sup> DÍAZ LÓPEZ, *El odio discriminatorio*, pp. 289-290.

<sup>74</sup> DÍAZ LÓPEZ, *El odio discriminatorio*, p. 290.

police officer may be victimised in hate crimes (e.g. racially motivated or sexually oriented) to the same extent as any other person, but he or she certainly will not need to boost this protection via criminal law through an autonomous category or, more precisely, through the interpretation of the ideological category at issue when attacked as an institutional representative of the security forces<sup>75</sup>.

<b>BLOCK I</b>
<b>ETHNIC COLLECTIVE / RACIST AND XENOPHOBIC COLLECTIVE</b>
<b>GRUPO III</b> <b>RELIGION AND BELIEFS</b>
<i>Islamic (Muslim)</i>
<i>Christian</i>
<i>Other Religions</i>
<i>Atheist / Agnostic</i>
<i>Anti-Semitism</i>

Religious bias is defined in the following terms by the *Hate Crime Data Collection Guidelines and Training Manual* (2015): “A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, e.g., Catholics, Jews, Protestants, atheists”<sup>76</sup>. However, taking into consideration the religious diversity existing in the Basque Country, the use of the later markers offered by the FBI is not recommended. Even so, the Ertzaintza shares with the FBI a certain similarity in some markers, while others could be included *ex novo* or their wording be merely adapted.

- In the specific case of the Islamophobic neologism included by the Ertzaintza, its use is highly controversial in the area in which we move, given that there is awareness concerning its lack of any scientific basis. In fact, its equivalence could also be assumed with the so-called new racism or cultural racism, which denotes intolerance not only towards Islamic or Muslim religion per se, but rather towards insurmountable cultural aspects that exceed it in dimensions<sup>77</sup> and which would place the Islamophobia marker within the ethnicity group, entering in conflict with other markers likewise included.

<sup>75</sup> LANDA GOROSTIZA, *Los delitos de odio*, pp. 100 y ss.

<sup>76</sup> “**Religious Bias**—A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being, e.g., Catholics, Jews, Protestants, atheists”. LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 13.

<sup>77</sup> GARNER, *Racisms*, p. 246.

The terminological use of the FBI is deemed to be closer to its inclusion within the religious orientation grounds. Thus, “Islamic (Muslim) is taken to be “A person who follows the monotheistic religion of Muslims, which includes belief in Allah as the sole deity and in Muhamad as his prophet. Practitioners of the Islamic faith follow the teachings of the Koran and practice the Five Pillars of Islam: praying, fasting during Ramadan, almsgiving, pilgrimage, and declaration of faith”<sup>78</sup>.

Nonetheless, the inclusion of the hate incident against Muslims could be valued in the future, even though it does not enter the religious markers in this case, but rather in a more appropriate group. And this would be motivated by the fact that many attacks against Muslims appear motivated by the political belief that they are a threat to security more than a fear or hate of Islam<sup>79</sup>.

- In contrast to the anti-Christian marker that appears in the Ertzaintza database, the FBI treats as separate the three main branches of the Christian faith: Catholic, Protestant and Orthodox. Furthermore, it includes a last category as a catch-all, known as “anti-other Christians”.

In the case of the BAC, the Ertzaintza has barely included hate incidents whose target is a Christian for the fact of being Christian. It would therefore be recommendable to combine the previous markers under the single formula of “Christian”. Thus, reference is made to the person who follows the religions based on the life and teaching of Jesus Christ. Thus, a hate incident of this type covers any opposition to Christians, to the Christian religion, or to the practice of Christianity (including any attack against Christians and against the representative figures of their belief)<sup>80</sup>.

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In fact, according to the quote from the Movement against Intolerance collected by AGUILAR GARCÍA,“(…) the concept [of Islamophobia] is improperly used to discredit or silence legitimate criticism of Islam, especially in relation to civil liberties and human rights (...). The dangerous and well-known "hypothesis" of the clash of civilisations is well fuelled by Islamophobia. It is precisely the discomfort generated by the term Islamophobia that leads some international and intergovernmental bodies, such as the OSCE to refer more specifically to "intolerance of and discrimination against Muslims"\*. However, a combined publication by the OSCE, the Council of Europe and UNESCO notes: “(...) it should be borne in mind that intolerance and discrimination against Muslims are closely linked to other forms of discrimination and can co-exist with feelings of rejection of immigration, xenophobia, racism, or gender bias. All this could multiply the forms of discrimination that some people suffer.”\* AGUILAR GARCÍA, "Manual práctico para la investigación", pp. 54-55.

<sup>78</sup> “**Islamic (Muslim)**—A person who follows the monotheistic religion of Muslims, which includes belief in Allah as the sole deity and in Muhamad as his prophet. Practitioners of the Islamic faith follow the teachings of the Koran and practice the Five Pillars of Islam: praying, fasting during Ramadan, almsgiving, pilgrimage, and declaration of faith” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 14.

<sup>79</sup> GITHENS-MAZER; LAMBERT MBE, “Islamophobia and anti-Muslim”, p. 17.

<sup>80</sup> ANDREU ARNALTE, “Conceptos generales”, p. 13.

- Furthermore, the category of “other religions” that both FBI and the Ertzaintza envisages would provide a framework for the remaining alternatives that could occur at a specific moment. In other words, referring to the person that follows other religions that have not been previously considered.
- Another category envisaged by the FBI is anti-atheist and anti-agnostic. While the first refers to “A person who does not believe in the existence of a deity”<sup>81</sup>, the second refers to “A person who believes that the existence or nature of an ultimate reality, such as a deity, is unknown, and probably unknowable”<sup>82</sup>. The inclusion of those two markers is justified because the whole potential phenomenology can thus be covered that the previous reference to “other religions” does not manage to understand. Therefore, “atheist or agnostic” is included as a single marker.

Finally, people who are currently identified as Jewish include the believers in Judaism and all those who trace their ancestors to the Jewish communities anywhere in the world. The FBI includes the category of *Jewish* in the HCSA, within the markers on religion while the *Hate Crime Data Collection Guidelines and Training Manual* (2015) already refers to *Jewish (Judaism)*. The latter establishes that Jewish is “A person who identifies himself or herself as a member of the religious and/or ethnic group that descended from the ancient Hebrews and is characterized by belief in one transcendent God who revealed Himself to Abraham, Moses, and the Hebrew prophets. Jewish religious practice is based on the Hebrew Scriptures (the “Torah”) and rabbinic laws and customs”<sup>83</sup>. The Ertzaintza directly includes anti-Semitism as a standalone category, which appears correct due to the complexity involved in an uncontroversial and unequivocal cataloguing of that collective. Furthermore, another explanation its autonomy lies in the indelible mark of Nazism in Europe and its markedly anti-Semitism.

From an anthropological perspective, the term Semitic is related with the peoples originally from the Middle East that speak a language belonging to the Semitic family which today should not only include the Hebrew people, even though it is thus universally accepted in the discriminatory framework in which we operate. Furthermore, another approach accepts as Jewish

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<sup>81</sup> “**Atheist**—A person who does not believe in the existence of a deity” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 13.

<sup>82</sup> **Agnostic**—A person who believes that the existence or nature of an ultimate reality, such as a deity, is unknown, and probably unknowable . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 13.

<sup>83</sup> “**Jewish (Judaism)**—A person who identifies himself or herself as a member of the religious and/or ethnic group that descended from the ancient Hebrews and is characterized by belief in one transcendent God who revealed Himself to Abraham, Moses, and the Hebrew prophets. Jewish religious practice is based on the Hebrew Scriptures (the “Torah”) and rabbinic laws and customs” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 14.

any believer of the Jewish religion. However, communities with very close ties and with a high degree of internal cohesion are formed among the believers of this religion. Hence, being Jewish also began to take on an “ethnic” meaning in reference to any person with *Jewish ancestors*. During recent centuries, many Jewish have ceased to be religious. Some have converted to other religions and others became atheists, but they continued to consider themselves “Jews” due to their descent or cultural affiliation. The following difficulty arrives from the fact that, even though they talk about an ethnicity, there is no awareness of a common identity; from the pre-Roman era, Jewish communities were formed in different countries in Europe, Africa and Asia, and in each place where they settled, they developed very different languages, traditions and every customs. In general, the phenomenon of anti-Semitism has adopted different forms and cover an exceptional combination of political, economic, cultural, religious and ethnic motives<sup>84</sup>.

Given the above, the previous definition of the *Hate Crime Data Collection Guidelines and Training Manual* (2015) for the notion of Jew is partially adopted, with it now being understood that with “anti-Semitism” we are referring to the intolerant rejection or bias towards the person who identifies him/herself as a member of the ethnic and/or religious group descending from the ancient Hebrews. As already stated, we are fully aware of the relative inaccuracy of such a work definition.

<b>BLOCK II</b>
<b>SEXUAL COLLECTIVE</b>
<b>GROUP IV</b>
SEXUAL ORIENTATION.
<i>Gay</i>
<i>Lesbian</i>
<i>Heterosexual</i>
<i>Transsexual</i>
<i>Intersexual</i>
<i>LGTBI Group (Mixed Group)</i>
<b>BLOCK II</b>
<b>SEXUAL COLLECTIVE</b>
<b>GROUP V</b>
SEXUAL IDENTITY

As far as the sexual collective is concerned, an initial framework is presented that will facilitate the collection of more detailed data on this group in the future.

<sup>84</sup> AGUILAR GARCÍA, “Manual práctico para la investigación”, p. 54.

The Ertzaintza does not make distinctions within this collective and the first categories used are the ones that the FBI complies within its conceptual definitions in the *Hate Crime Data Collection Guidelines and Training Manual* (2015). The latter refers to sexual-orientation bias as “preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived sexual orientation”, while “sexual orientation” is taken to be “(...)a person’s physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals”<sup>85</sup>. It should here be noted that a clear distinction must be made between sexual orientation and the sexual preference of each one, as the later would imply a certain resolve in the sexual choice<sup>86</sup>. Nonetheless, the *Hate Crime Data Collection Guidelines and Training Manual* (2015) does not include “sexual identity”, which succinctly can be taken to be the self-assessment (man-women) that is made regarding the corporeal, i.e., the own biological or physical characteristics (genitals, body shape, etc.), starting from which the sexual orientation would be defined. Moreover, following AGUILAR GARCÍA, as transpired from the Criminal Code, sexual identity refers to the “(...) set of sexual characteristics that make us genuinely different from other people: our sexual preferences, our feelings or our attitudes towards sex. It could just be said that it is the feeling of masculinity or femininity (with all the nuances required) that will accompany the person throughout their life, not always according to their biological sex or of their genitality”<sup>87</sup>.

Otherwise, the FBI sub-categories are as follows:

- Bisexual. People who feel physically, romantically, and/or emotionally attracted to both men and women <sup>88</sup>. However, more than the fact of bisexuality, it is likely that the bias in the majority of cases that is the real motive for the behaviour of the perpetrator is homosexuality. Therefore, it is disaggregated consideration is excluded for the moment for the purposes of this Report.

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<sup>85</sup> “**Sexual-Orientation Bias**–(noun) A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived sexual orientation.

**Sexual Orientation**–(noun) The term for a person’s physical, romantic, and/or emotional attraction to members of the same and/or opposite sex, including lesbian, gay, bisexual, and heterosexual (straight) individuals” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 15.

<sup>86</sup> AGUILAR GARCÍA, “Manual práctico para la investigación”, p. 59.

<sup>87</sup> AGUILAR GARCÍA, “Manual práctico para la investigación”, p. 60.

<sup>88</sup> “**Bisexual**–(adjective) Of or relating to people who are physically, romantically, and/or emotionally attracted to both men and women” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 16.

- Gay. People who feel physically, romantically, and/or emotionally attracted to people of the same sex<sup>89</sup>. The FBI then notes that, for operational purposes, the victim has to be a man when reporting an anti-gay hate crime incident.
- Lesbian. People who feel physically, romantically, and/or emotionally attracted to other women<sup>90</sup>. In this regard, the FBI is aware that many women express a greater preference to be referred to using the term of gay women, although its use is not envisaged for work purposes.
- Heterosexual. People who feel physically, romantically, and/or emotionally attracted to people of the same sex<sup>91</sup>.
- LGTBI Group (Mixed Group). The FBI also contemplates this marker, but uses it “(...)community organizations or events that serve lesbian, gay, bisexual, transgender, and allied people”<sup>92</sup>. An example that is given: “Late in the night, a group of individuals broke in to a local Lesbian, Gay, Bisexual, and Transgender (LGBT) Center. The group painted well-known and recognized LGBT epithets on the walls and stole the gay pride rainbow flag that was flown above the front door of the center.”<sup>93</sup>

In view of the above, transsexual and intersexual could be incorporated as new independent categories. “Transsexual” refers to the person that has the conviction and feeling of belonging to the opposite sex to the biological one. “Intersexual” refers to a person who is born with sexual anatomy, reproductive organs and/or chromosomic patterns that do not, necessarily, fit into the typical definition of men or women.

## BLOCK II

### SEXUAL COLLECTIVE

<sup>89</sup> “**Gay**–(adjective) Of or relating to people who are physically, romantically, and/or emotionally attracted to people of the same sex” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 16.

<sup>90</sup> “**Lesbian**–(adjective) Of or relating to women who are physically, romantically, and/or emotionally attracted to other women” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 16.

<sup>91</sup> “**Heterosexual**–(adjective) Of or relating to people who are physically, romantically, and/or emotionally attracted to people of the opposite sex” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 16.

<sup>92</sup> “**LGBT**–(noun) Common initialism for “lesbian, gay, bisexual, and transgender,” used here to refer to community organizations or events that serve lesbian, gay, bisexual, transgender, and allied people” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 16.

<sup>93</sup> “Late in the night, a group of individuals broke in to a local Lesbian, Gay, Bisexual, and Transgender (LGBT) Center. The group painted well-known and recognized LGBT epithets on the walls and stole the gay pride rainbow flag that was flown above the front door of the center” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 18.

<b>GROUP VI</b>
GENDER
<i>Male</i>
<i>Female</i>
<b>BLOCK II</b>
<b>SEXUAL COLLECTIVE</b>
<b>GROUP VII</b>
GENDER IDENTITY

According to the *Hate Crime Data Collection Guidelines and Training Manual* (2015), gender bias is “A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, i.e., male or female”<sup>94</sup>. However, when defining “gender”, it is used synonymously with sex, using a biological sense to refer to the markers included (male and female)<sup>95</sup>. Furthermore, the Report on Trends in the Incidents related to Hate Crimes in Spain<sup>96</sup> refers interchangeably to reasons of gender and sex. In fact, this also reflect certain symptoms of fragility, as it would openly contradict the spirit of Act 1/2015, whose Explanatory Memorandum explains that the incorporation of gender in the aggravating factor for discriminatory grounds of Art. 22.4 CC follows “(...) **gender**, understood in accordance with Council of Europe Convention No. 210 on preventing and combating violence against women and domestic violence, approved in Istanbul by the Committee of Ministers of the Council of Europe on 7 April 2011, as “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”, **can be a different cornerstone of discriminatory actions those referring to sex**” (Section. XXII, E.M. of Act 1/2015).

The joint use of sex and gender for the purposes of this Report would require that the logic behind their interchangeability be made clear *ex ante*, with two alternatives: 1) A purely biological sense used by the FBI and determined at the time of conception [XX and YY sex chromosomes, Y sex-determining chromosomes]; or 2) social categorisation, from which motivated crime arises “(...) because their behaviour [that of the man or the woman] offends

<sup>94</sup> “**Gender Bias**—(noun) A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, i.e., male or female” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

<sup>95</sup> “**Gender**—(noun) This term is used synonymously with sex to denote whether a newborn is male or female at birth, e.g., “it’s a boy” or “it’s a girl.”

**Male** – An individual that produces small usually motile gametes (as spermatozoa or spermatozoids) which fertilize the egg of a female.

**Female** – An individual of the sex that bears young or produces eggs”.

In LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

<sup>96</sup> MINISTRY OF THE INTERIOR, “Informe sobre la evolución”, p. 13.



mainstream thinking with regard to how one should act according to one's sex [in the biological sense]] (...)”<sup>97</sup>.

According to the *Hate Crime Data Collection Guidelines and Training Manual* (2015), gender bias is “A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, i.e., male or female”<sup>98</sup> As regards “gender identity”, it is defined as “A person’s internal sense of being male, female, or a combination of both; (...)”<sup>99</sup>. Therefore, we are facing a man-woman self-assessment based on aspects (values, conducts and roles) which have culturally shaped men and women throughout history. As the FBI points out, a transgender person may express his or her gender identity through certain characteristics, such as clothes, hair, voice, manners or behaviours that are not in line with certain of society’s expectations based on gender.

Furthermore, according to the FBI, the “transgender” marker refers to “Of or relating to a person who identifies as a different gender from their gender as determined at birth”<sup>100</sup>. In addition, is important to bear in mind that a transgender person may externally express his or her gender identity all the time, some of the time, or at no time. The FBI also describes “gender non-conforming” as “a person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup”<sup>101</sup>. However, how do we know how if hate incident is caused by one of the forms of expression of gender identity used by a transgender person or in by the simple dissatisfaction of social expectations of someone who does not conform to gender? There are different intersections where, while their distinction makes sense in theory, in practice this is a controversial issue. In principle, it is advisable to maintain gender identity and avoid the use of markers behind this group, thus avoiding possible overlaps.

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<sup>97</sup> MINISTRY OF EMPLOYMENT AND SOCIAL SECURITY, “La persecución penal”, p. 45.

It is a translation into Spanish of an ODIHR-OSCE practical guide, as the result of the collaboration between the Ministry for Foreign Affairs and Cooperation, the General State Prosecutor’s Office and the Immigration and Emigration General Secretariat of the Ministry of Employment and Social Security. Original Version: ODIHR/OSCE, “Prosecuting hate crimes”, 99 pages.

<sup>98</sup> “**Gender Identity Bias**—A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender nonconforming individuals” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

<sup>99</sup> “**Gender Identity**—(noun) A person’s internal sense of being male, female, or a combination of both; (...)” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

<sup>100</sup> “**Transgender**—(adjective) Of or relating to a person who identifies as a different gender from their gender as determined at birth” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 11.

<sup>101</sup> “**Gender Nonconforming**—(adjective) Describes a person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing or a man wearing makeup” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

### BLOCK III

#### OTHER COLLECTIVES

### GROUP VIII

#### ILLNESS AND PEOPLE WITH DISABILITY/FUNCTIONAL DIVERSITY

Disability is a standalone framework category for the HCSA, while the Ertzaintza includes it along with illness. The HCSA, furthermore, provides two sub-categories: *anti-physical* (physical disability) and *anti-mental* (mental or psychological disability). In that regard, the *Hate Crime Data Collection Guidelines and Training Manual* (2015) defines any disability bias as “a preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age, or illness”<sup>102</sup>. As regards mental disability, it is “any mental impairment or psychological disorder such as: organic brain syndrome, emotional or mental illness, and specific learning disabilities”<sup>103</sup>. Finally, physical disability refers to “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine”<sup>104</sup>.

Furthermore, although the *Hate Crime Data Collection Guidelines and Training Manual* (2015) does not specifically mention it, the Americans with Disability Act (ADA) provides a definition of a “disabled person”<sup>105</sup>. According to the ADA, a “disabled person” is someone::

- Who has a mental or physical impairment that substantially limits a “major life activity”
- Or who as a record of such an impairment
- Or is perceived as having such an impairment.

Art. 25 CC (recently reformed by Act 1/2015) defines disability as follows: “For the purposes of this Code, disability is understood as the situation of a person with permanent

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<sup>102</sup> **Disability Bias.**– A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age, or illness” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 9.

<sup>103</sup> **Mental Disability**–Any mental impairment or psychological disorder such as: organic brain syndrome, emotional or mental illness, and specific learning disabilities” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

<sup>104</sup> **Physical Disability**–Any physical impairment; any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine” . LAW ENFORCEMENT SUPPORT SECTION (LESS); CRIME STATISTICS MANAGEMENT UNIT (CSMU), “Hate crime data collection”, p. 10.

<sup>105</sup> ALTSCHILLER, *Hate crimes*, p. 354.

physical, mental, intellectual or sensory impairments that, when interacting with various barriers, may limit or prevent their full and effective participation in society on an equal basis with other” .

Article 25 CC also defines a person with disability as follows: ““Likewise, for the purposes of this Code, a person with a disability who is in need of special protection shall be understood to be a person with a disability who, whether or not his or her capacity to act has been judicially modified, requires assistance or support for the exercise of his or her legal capacity and to make decisión regarding his or her person, his or her rights or interests on account of his or her permanent intellectual or mental deficiency”.

It should be noted, however, that in some instances disability is an intrinsic sign of a specific disease or syndrome (e.g. some mental disorders require the presence of functional impairment for the diagnosis to be made), and in others it is a consequence of that disease or syndrome<sup>106</sup>. Thus, disability becomes “(...) a global term that reflects the different consequences than an illness, injury or congenital anomaly can have on the human operating, at the different levels”<sup>107</sup>. In this regard, disability can be both temporary and permanent, and both congenital and acquired, in the latter case because it is hereditary, or due to an accident, injury, old age or illness <sup>108</sup>. As can be noted, it should be stressed that there is specificity in the treatment of the term disability with respect to that of illness, which would justify delineate between one and the other. In short, disability may be caused by an illness, but this is not necessarily so. A further nuance to bear in mind is that, although "the World Health Organisation defines illness as the presence of a specific disease or condition", the truth is that “(...) as a discriminatory motivation the Criminal Code refers to discriminatory acts against people suffering from a lasting illness (such as HIV carriers, AIDS patients and people with hepatitis C ...).<sup>109</sup>. regardless of whether AIDS is included within any definition of illness or even disability, in our case it is not relevant for the purposes of compiling incidents caused by hate and discrimination, as both are in our index of categories in the same reference group (Group VIII).

Moreover, there is much debate as to the social acceptance of the notion of mental disability, amid arguments that psychiatric or mental disability belongs to the medical sphere<sup>110</sup>. As a result, psychosocial disability is also considered a particularly appropriate and interchangeable term, which may make sense in the context of the hate incidents concerning us, since it provides a social

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<sup>106</sup> Recogido en OMS, “Manual de recursos de la OMS”, p. 25.

<sup>107</sup> GONZÁLEZ VIEJO; COHÍ RIAMBAU; SALINAS CASTRO, *Amputación de extremidad inferior y discapacidad*, 2005, p. 4.

<sup>108</sup> ALTSCHILLER, *Hate crimes*, p. 354.

<sup>109</sup> ANDREU ARNALTE, “Conceptos generales”, p. 13.

<sup>110</sup> OMS, “Manual de recursos de la OMS”, p. 26.

perspective in the psychic differentiation acting as a better support for the protection of people who, without having any disability, suffer discrimination for this reason<sup>111</sup>.

### BLOCK III

#### OTHER COLLECTIVES

#### GROUP IX AGE

In addition to the Ertzaintza database, the age marker is included in the ODIHR/OSCE's influential but legally non-binding working definition<sup>112</sup>, which in turn is transcribed in the Report on Trends in Incidents related with Hate Crimes in Spain<sup>113</sup>. Thus, a hate crime is defined as any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership of a group that may be based on real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor<sup>114</sup>.

The “Hate Crime Laws. A Practical Guide” published by the OSCE in 2009 also includes age as one of the “frequently protected characteristics” in legislation addressing hate crimes, on the same level as gender, mental or physical disability, and sexual orientation. Above this level we only find the “most commonly protected characteristics” in legislation addressing hate crimes, i.e. race, national origin and ethnicity<sup>115</sup>. Authors such as HERRING also argue that there should be recognition of hate crimes perpetrated due to age<sup>116</sup>. In our search for a plausible definition around this marker we turn to CHAKRABORTI, who defines the term "ageism" as "prejudiced attitudes or discriminatory behaviour against the elderly"<sup>117</sup>.

<sup>111</sup> PALACIOS, *El modelo social de discapacidad*, pp. 348-349.

<sup>112</sup> The Office for Democratic Institutions and Human Rights (ODIHR), an institution of the Organisation for Security and Cooperation in Europe (OSCE), has worked hard to provide operational and influential tools for a large number of states in different continents (57 at present). The OSCE is the world's largest regional organisation addressing security-related concerns, as it was created for the purposes of preventing conflicts in and around Europe. Therefore, in line with its fundamental concern, it has also fostered an important standard for the comprehension of hate crimes.

<sup>113</sup> MINISTERIO DEL INTERIOR, “Informe sobre la evolución”, p. 62.

<sup>114</sup> “A hate crime can be defined as:

- (A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership of a group as defined in Part B.
- (B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor” . ODIHR/OSCE, *Combating hate crimes*, p. 12.

<sup>115</sup> ODIHR/OSCE, “Hate crime laws”, pp. 40 & 43.

<sup>116</sup> HERRING, “Elder abuse”, pp. 190 y 191.

<sup>117</sup> CHAKRABORTI; GARLAND, *Hate crime*, p. 161 .

**BLOCK III**

**OTHER COLLECTIVES**

**GROUP X**

**APOROPHOBIA OR SOCIO-ECONOMIC SITUATION**

The Report on Trends in Incidents relating to Hate Crimes in Spain defines the term aporophobia<sup>118</sup> as expressions and conducts of intolerance with reference to “hatred, disgust or hostility towards the poor, those with no resources and the helples”<sup>119</sup>. The reference to the "socioeconomic situation", which covers precariousness as an economic situation subject to discrimination, the causes of which can be found in begging or homelessness, also serves as a complement.

According to AGUILAR GARCÍA, since aporophobia is a new concept and is not contemplated as a reason for discrimination in the Criminal Code, it should be ascertained whether acts committed for this reason could be prosecuted and in most cases be considered demeaning and denigrating acts (Art. 173.1 CC)<sup>120</sup>.

**BLOCK III**

**OTHER COLLECTIVES**

**GROUP XI**

**FAMILY SITUATION**

The 2015 reform of the Spanish Criminal Code goes one step further than the provisions of DM 2008/913 and incorporates, among other protected categories, that of the "family situation" (art. 510 CP). Although there are very few doctrinal references in this regard, DÍAZ Y GARCÍA CONLLEDO offers a minimal interpretation, claiming that this allusion refers to "(...) the status of being single, married, separated, divorced, widowed, or in a situation of family co-habitation similar to marriage in de facto situations", and it also even seems possible for "(...) t the various forms of filiation"\* to be included<sup>121</sup>

### **3. Positioning and explanation of the legislative regulation of hate crimes and discrimination**

<sup>118</sup> For a short explanation on the coining of the term, see CORTINA ORTS, *Aporofobia, el rechazo al pobre*, pp. 17-27.

<sup>119</sup> MINISTRY OF THE INTERIOR, “Informe sobre la evolución”, p. 63.

<sup>120</sup> AGUILAR GARCÍA, “Manual práctico para la investigación”, p. 64.

<sup>121</sup> DÍAZ Y GARCÍA CONLLEDO, *Protección y expulsión*, p. 323.

Spain's Ministry of the Interior, in fact, quoted this in its 2016 Report on Trends in Incidents relating to Hate Crimes in Spain<sup>122</sup>.

In this regard the OSCE understands hate crime as "an offence under criminal law (...)".<sup>123</sup> It is entirely a different matter that this Report is based on a wider category which covers all hate incidents, regardless of whether or not they constitute a criminal offence. In this case, any act, irrespective of whether it constitutes a criminal offence, would be subsumed as a hate crime. This is merely a *prima facie* test of everything which has the appearance of a hate crime (actually a hate incident)).

It is also important to specify that hate incidents (or discrimination incidents) by association or error will be taken into account for statistical purposes. In the first case the action targets someone related to or in contact with one or more persons to whom the main conduct applies, although always for one of the reasons listed in the CP. In the second case, this is an erroneous assessment of the person by associating him or her with certain characteristics.

In addition, this Report uses a classification of hate crimes/incidents which groups them according to the express (or tacit) content of criminal categories. Thus account is taken of core or *stricto sensu* crimes and complementary or functional crimes<sup>124</sup>. The Ertzaintza had been classifying discrimination crimes in the wake of hate crimes, while in this joint Report the two categories are formally differentiated. The fact that the Spanish Criminal Code makes no explicit reference to discrimination crimes or hate crimes explains the different doctrinal lines of systematisation of the articles within these categories. Even so, the majority doctrine seems to demonstrate a position that tends towards separation, even if the explanation of the uniqueness of discrimination crimes with respect to hate crimes is substantially different. There are many examples of this phenomenon:

- According to OSUNA CEREZO, "these [discrimination crimes] are considered to be attacks on the legal right to equal treatment either directly or indirectly"<sup>125</sup>. Moreover, GÜERRI FERRÁNDEZ argues that "it is not sufficient for the crime to attack the principle of equality (discrimination crime: e.g. a crime against employees' rights), but, by their nature, hate crimes also constitute an attack on a person's dignity (e.g. a violent attack on a homosexual due to his sexual orientation)"<sup>126</sup>.

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<sup>122</sup> MINISTRY OF THE INTERIOR, "Informe sobre la evolución", p. 62.

<sup>123</sup> ODIHR/OSCE, "Combating hate crimes", p. 12 .

<sup>124</sup> LANDA GOROSTIZA, *Los delitos de odio*, pp. 45 y ss.

<sup>125</sup> OSUNA CEREZO, "Los delitos de odio", p. 65.

<sup>126</sup> GÜERRI FERRÁNDEZ, "La especialización de la fiscalía", p. 5.

- BERNAL DEL CASTILLO explains his position as follows: “(...) in the definition of other discriminatory offences, the harmful conduct is directed directly against a specific individual rather than against the groups with which he or she identifies and, in such cases, the legitimacy of the group or collective to feel that it is a passive object of that offence, unless expressly prescribed by law, remains secondary. I am referring in particular to crimes which in Spanish Criminal Law are classified by case-law as directly discriminatory, such as the denial of benefits or services for discriminatory reasons, or the crime of employment discrimination”<sup>127</sup>.
- On the other hand, according to DÍAZ LÓPEZ “(...) conceptual distinction has been made in our legal system between hate crimes (committed with "discriminatory motives") and discrimination crimes, where discrimination lies in the effects of the crime on the person discriminated against, not in the motivations of the perpetrator"; thus, discrimination crimes, in contrast to the motivational conception of hate crimes examined, would seek to objectively criminalise discriminatory conduct that "(...) would not be inspired by "discriminatory motives", because what constitutes a motive is precisely the existence of bias”<sup>128</sup>.

There are also opposing positions, largely motivated by the fact that the emotion of hatred referred to in hate crimes is at the epicentre of countless doctrinal discussions. Among the critics,, TAPIA BALLESTEROS refers to “(...) the necessary coincidence between the so-called hate crimes and the anti-discriminatory crimes envisaged in the 1995 Criminal Code, and the inadequacy of the term "hate crimes", confusing and inaccurate, as opposed to the term "anti-discriminatory crimes", which clearly describes the behaviour concerned and circumvents the relationship between feelings and criminal behaviour”<sup>129</sup>. Moreover, she also states that Spain's Ministry of the Interior accepts “(...) that hate crimes are actually the anti-discriminatory crimes provided for in the Spanish legal system since the adoption of the Criminal Code of 1995”<sup>130</sup>. In fact, the first paragraph of the introduction to the Report on Trends in Incidents relating to Hate Crimes in Spain explains that "the "hate crimes" terminology defines a category of conducts which present by way of a common denominator the presence of a motivational factor, hatred and discrimination”<sup>131</sup>.

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<sup>127</sup> BERNAL DEL CASTILLO, “Política criminal en España”, p. 382.

<sup>128</sup> DÍAZ LÓPEZ, *El odio discriminatorio*, pp. 97 y 102-103.

<sup>129</sup> TAPIA BALLESTEROS, “Identificación de las víctimas”, p. 360.

<sup>130</sup> TAPIA BALLESTEROS, “Identificación de las víctimas”, p. 358.

<sup>131</sup> MINISTRY OF THE INTERIOR, “Informe sobre la evolución”, p. 3.

In conclusion, the classificatory separation between hate crimes and discrimination crimes is not as controversial in terms of Spanish case-law as seems to transpire from the last contribution mentioned, which is clearly closer to exceptionality. However, the academic distinction proposed varies in its justification, and this is an aspect that does not have sufficient incidence to make elucidation necessary in this kind of report.

Ultimately, among the articles of the Criminal Code associated with hate crimes and discrimination, this Report only contains one article more than those already included by the Ertzaintza. This is art. 174 CP concerning torture carried out on the basis of some kind of discrimination. In this regard, TAMARIT SUMALLA states that "the reform of 25 November 2003 (LO 15/2003) introduced a new torture scenario, which alludes, in the subjective dimension of the act, to "any reason based on some kind of discrimination"\*, which is part of the trend initiated in 1995 towards the increasing recourse to Criminal Law as a weapon of anti-discrimination policy, which in this case somewhat blurs the profiles of the crime of torture. The precept does not refer to the grounds or difference on which discrimination may be based, for which the relationship stipulated in articles 22.4, 510, 511 and 512 CP is valid as a criterion"<sup>132</sup>

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<sup>132</sup> TAMARIT SUMALLA, "Artículo 174", p. 1221



(our bold type). In short, Article 174 of the CC appears in this report in the category of a precept in the strict sense of the term (or *stricto sensu*) in relation to hate crime.

### **1. By way of a synopsis**

This Report draws on - and analyses - the statistical sources of hate incidents collected and provided by the Ertzaintza. This initial report presents incidents which occurred in both 2016 and 2017 (from 1 January to 31 December) for the purposes of showing a minimum perspective of comparative evolution that may contribute to future reports on trends in this type of behaviour. The Report is based on three essential factors to organise presentation of the Basque Country's hate incident map.

**1. CRIME versus INCIDENT.** First of all, it was decided that information would be collected on the basis of the concept of "incidents" and not only "crimes" in the strict sense. The latter remains the essential point of reference, but due to the pro-active and pro-victim role of the police in a democratic society in swathes of offences submerged in crime's dark figure, a broader concept of incident is of the essence. This is because it permits the deployment of immediate address, assistance, information, prevention, prosecution of crime and the establishment of confidence with the victims and the community in an effective manner. This also serves as the basis for other bodies (the Prosecution, the Judiciary etc.) to ultimately determine the appropriate classification of conducts that may be considered proven in a process with all the guarantees and, in this case, criminal conduct with profiles that are not perfectly defined either by case-law or by emerging jurisprudential praxis, that may progressively provide greater legal certainty for the contours of the phenomenon.

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**2. PROTECTED COLLECTIVES** Secondly, the target and/or protected collectives are grouped according to three main sectors. The ethnic sector, the sexual sector and a third sector containing another type of collectives. The first two provide a response to historical logics that are recognisable and recognised not only in sociological terms, but also in judicial circles and in public anti-discrimination policies. The third contains sectors that are less visible in social terms and were drawn up as the targets of attacks in hate incidents which arrived somewhat later. The data that will be presented below also confirm that the collection of incidents reflects lower levels of aggressiveness, although hate crime against them should not be interpreted as less serious or less relevant, but rather as more concealed and obedient to other types of logic of aggression that will require particular visibility strategies in the future.

The broad outline of three macro-groups, however, establishes an organisational starting point, but gives way by means of the identification of a very wide variety of subcategories to a disaggregated presentation that enables the report to serve as an ad hoc information tool for more specific groups and for assumptions of polyvictimisation and intersectionality.

By way of a summary, the terminological proposal that will be used throughout this Report is addressed in detail in section "1.2. *Positioning and explanation of the classification by categories*".

The Report is structured around three thematic and all-encompassing sections, known as **blocks or collectives**. The first to be addressed is the ethnic collective (or racist and xenophobic collective in the broad sense), followed by the sexual collective. Finally, the generic formula of other collectives is used, although its name does not prejudge its importance with respect to the 38 other two, since it is a collective that is open to any other heterogeneous collectives which cannot be placed in the other two.

Behind these general frameworks, each of the blocks or collectives would include certain more specific **reference groups** that could also be redirected, by some sort of common link, to the ethnic, the sexual or other motivations unrelated to the previous one. Thus three groups may be distinguished in the ethnic collective: (i) race, ethnicity and nationality; (ii) ideology and political orientation; (iii) religion and beliefs. There are four reference groups in the sexual collective: (iv) sexual orientation; (v) sexual identity; (vi) gender; (vii) gender identity. Other collectives contain the following groups: (viii) illness and people with functional diversity/disabilities; (ix) age; (x) aporophobia or socio-economic situation; (xi) family situation. This Report thus presents a total of eleven identifiable and recognisable groups.

Finally, although this is not true for all of them, the reference groups are broken down into different **categories or markers**, thereby broadening the spectrum of possibilities. These categories determine more conclusively the specific conducts arising in hate incidents, at all times dependent on the different biases that exist, which in turn will be related to the parent group that encompasses them. Thus, markers are provided for the first and third reference groups within the ethnic collective. In the sexual collective, markers are only shown for the fourth and sixth reference groups. There are no additional markers for the last collective, and therefore for the reference groups it contains. The markers for the first group in relation to race, ethnicity and nationality are *Arab, Asian, black, white, Latino, other race or ethnic origin, gypsy and nation or national origin*. The markers for the third religion/beliefs group are *Islamic (Muslim), Christian, other religions, atheist or agnostic and anti-Semitism*. In the fourth group the markers are *gay, lesbian, heterosexual, transsexual, intersexual and LGBTI group or mixed group*. Finally, the sixth group concerning gender has the markers *man and woman*.

**3. CRIMINAL TYPOLOGY.** The third and final key factor in this Report is a reflection of the different typologies of criminality and administrative infringements. The global data do not make any distinctions, but the differentiation pointed out may allow us to draw up criminological profiles that place the hate incident according to different etiologies of activation or precipitation: propaganda crimes (Art. 510 CC, threats), aggravated crimes (Art. 22.4 CC), discriminatory crimes (Art. 511, 512, 314. CC), etc. Just as the categorisation of incidents in a purely preliminary manner as apparently unclassifiable in a given legal provision contributes to an overall final - aggregate - figure, a process of disaggregation analysis from that figure can display various descriptive maps (crimes in the strict sense as opposed to incidents in the broad sense; incidents and crimes against 39 various collectives; etc.) including those that are related to differentiated criminological logics. Such differences should contribute to the refinement and accuracy of information, but must never be interpreted or used in terms of relativising or trivialising the importance of certain conducts towards others, or of certain groups towards others.