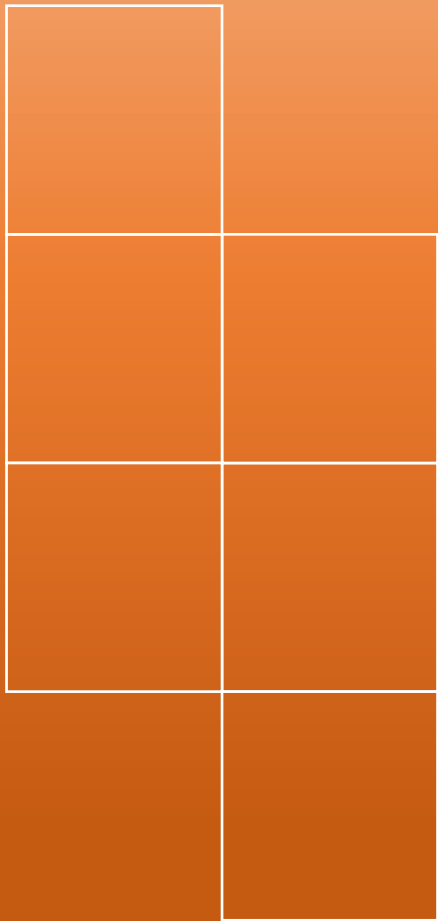


2019 REPORT ON HATE INCIDENTS IN THE BASQUE COUNTRY



Police
Human rights
Ertzaintza
Identity
Hate speech
Victimization
Reporting
Minorities
LGTBI Law
Crime data
Incident
Bias
Hate
Violence
Hurt
Disrupting
offender
Racism
Disability
Hatred
Hate crime

2019 REPORT ON HATE INCIDENTS IN THE BASQUE COUNTRY

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**Vitoria-Gasteiz/Leioa,
March 2020**



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ABBREVIATIONS

ACPOS	Association of Chief Police Officers in Scotland
AGIFUGI	Romani Association for the Future of Gipuzkoa
Sec.	Section
AP	Provincial Court
APNI	Alliance Party of Northern Ireland
art.	Article
arts.	Articles
BOE	Official Gazette of the State
CAPV	Autonomous Community of the Basque Country
CCOO	<i>Comisiones Obreras</i> trade union
CDA	Crime and Disorder Act 1998 (United Kingdom)
CEAR	Spanish Commission for Refugees
CHS	Criminal History System (Scotland)
CITE	Information Centre for Foreign Workers
CJNIO	Criminal Justice (No. 2) (Northern Ireland) Order 2004 (Northern Ireland)
CJSA	Criminal Justice (Scotland) Act 2003 (Scotland)
CLCS	Criminal Law (Consolidation) (Scotland) Act 1995 (Scotland)
CMS	Crime Management System (Scotland)
COPFS	Crown Office and Procurator Fiscal Service (Scotland)
CP	Criminal Code of 1995
CRMS	Contact Record Management System (Northern Ireland)
ICIS	Integrated Crime Information System (Northern Ireland)
INE	National Institute of Statistics (Spain)
IVPD	Interim Vulnerable Persons Database (Scotland)
JANI	Justice Act (Northern Ireland) 2011 (Northern Ireland)
LeCrim	Code of Criminal Procedure
LGTB(I)	Lesbian, Gay, Transgender and Bisexual and Intersex
LO	Organic Law
M	Million
n	Number of cases
NIHRC	Northern Ireland Human Rights Commission
OAPSA	Offences (Aggravation by Prejudice) (Scotland) Act 2009
OBFTCSA	Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012
OCMT	Occurrence & Case Management Teams (Northern Ireland)
POA	Public Order Act 1986 (United Kingdom)
PONIO	Public Order (Northern Ireland) Order 1987
PPS	Public Prosecution Service for Northern Ireland
App.	Appeal
RJ	Aranzadi Compilation of Jurisprudence
SCRS	Scottish Crime Recording Standard
ff.	following
STC	Sentence of the Constitutional Court (Spain)
STS	Sentence of the Supreme Court (Spain)
STORM	System for Tasking and Operational Resource Management (Scotland)
UUP	Ulster Unionist Party

INTRODUCTION

Since the 2017 Report on Hate Incidents in the Basque Country was presented at the **Basque Parliament** (Institutions, Security and Public Governance Commission) on **4 June 2018** and they ratified the commitment to and convenience of its annual continuance (subsequently instrumented through the corresponding Agreement¹) 2019 is the third consecutive year that this document has been produced.

First of all, it is important to point out that the Report aims at improving the knowledge, prevention and most effective eradication of hate crime in the medium and long term. Secondly, it seeks to facilitate the coordination with legal operators and contribute to transferring hate crime work experience to international authorities.

Therefore, this third Report on Hate Incidents in the Basque Country corresponds to the period **from 1 January to 31 December 2019** and, like the previous reports, it addresses both potentially criminal incidents as well as incidents which could involve an administrative offence which, due to their nature and circumstances, became known to the Basque Police Force (Ertzaintza).

However, the structure of the *2019 Report* includes some new features in addition to the permanent sections.

With regard to the consolidated sections, after this introduction, the **Report** provides information and analysis of the hate incidents of the year 2019 (first point) as well as a comparative study (second point). What is new this year is that this block deals with Scotland and Northern Ireland. Last year's 2018 Report reviewed the most relevant countries within the sphere of our legal culture (Germany, France, United Kingdom – England and Wales-), and now it seemed advisable to move on to two “federal” experiences so as to broaden our view. Scotland, due to its socio-economic situation; Northern Ireland, due to their population size; and both of them, due to the effectiveness

¹ In their session of 26 December 2018, the Government Council of the Basque Government approved the Collaboration Agreement between the General Administration of the Autonomous Community of the Basque Country, through the Department of Security (Ertzaintza), and the University of the Basque Country, through UNESCO Chair for Human Rights and Public Authorities, to produce an annual report on hate crime in the Basque Country as well as a comparative analysis with Europe.

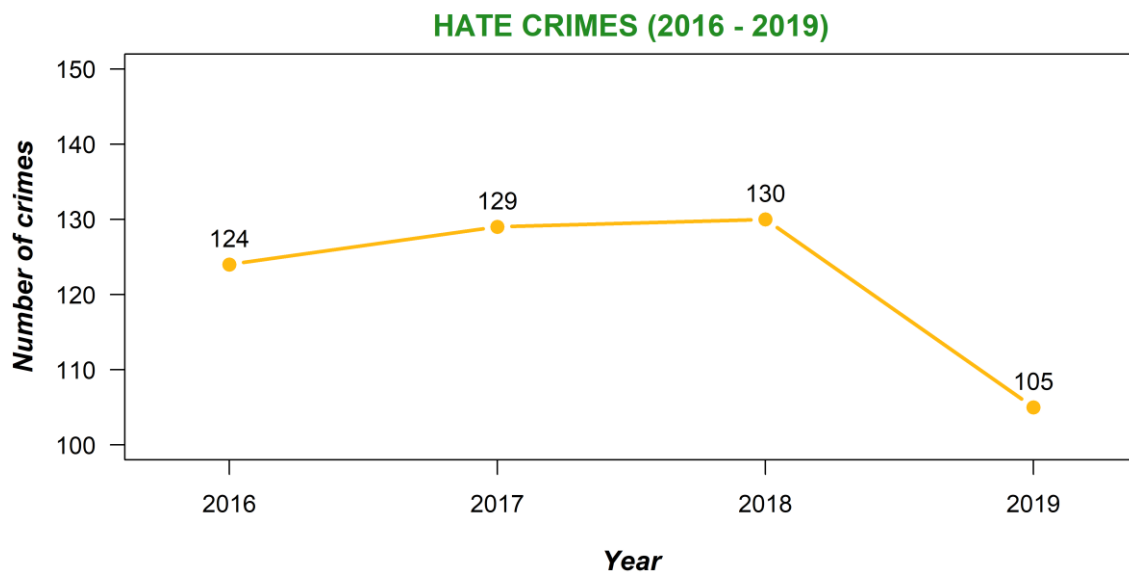
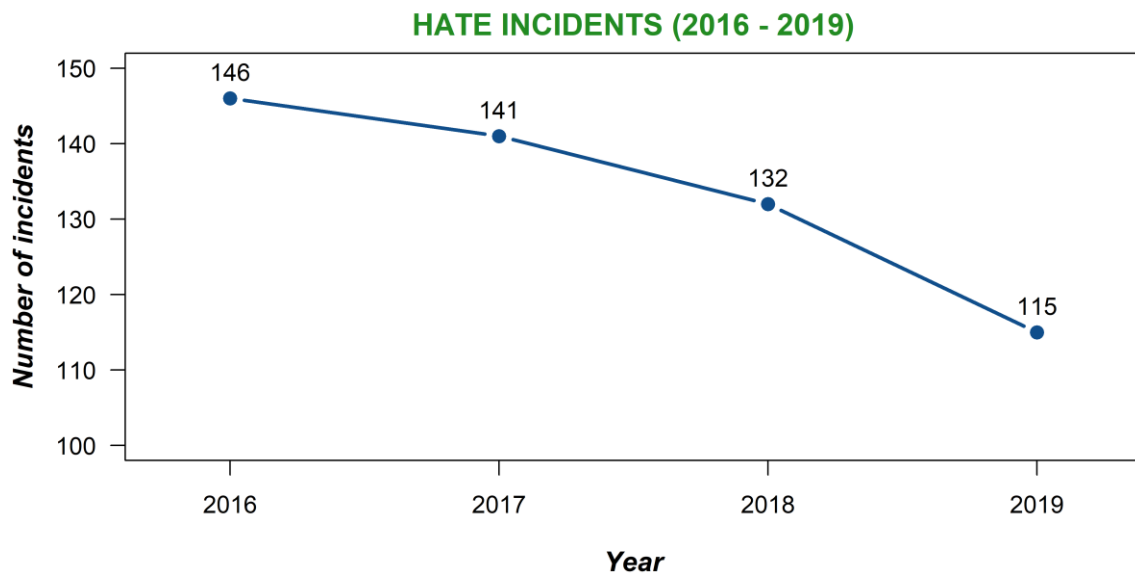
and consolidation of their empirical collection system within the United Kingdom, seemed to be two ideal points of reference.

Another new feature is section 3, which deals with an emerging subject of utmost importance: gender-based hate crimes. The aim is to explain the innovations that the hate regulations can bring when added to other precepts on protection from violence against women. This is a subject which has only recently been addressed by the case law and is not very consolidated, but which must be elucidated as soon as possible so as to settle its application in the future and view its functionality.

The Report ends with the usual final block of synthesis and conclusions, followed by the more instrumental sections (bibliography, list of figures) as well as the informational sections (appendix I and II: major cases in the press; extract from the Reports, respectively, of the Chief Prosecutor of the Basque Autonomous Community and the Prosecutor General of the State). It should be pointed out that this year some background information has been included in the press-related Appendix, to prevent misunderstandings.

1. HATE INCIDENTS IN 2019

115 hate incidents were recorded in the Basque Country in 2019², 105 of which were crimes (91.3%) and 10 administrative offences (8.7%). The following charts³ show the evolution of hate incidents and hate crimes in the last 4 years.



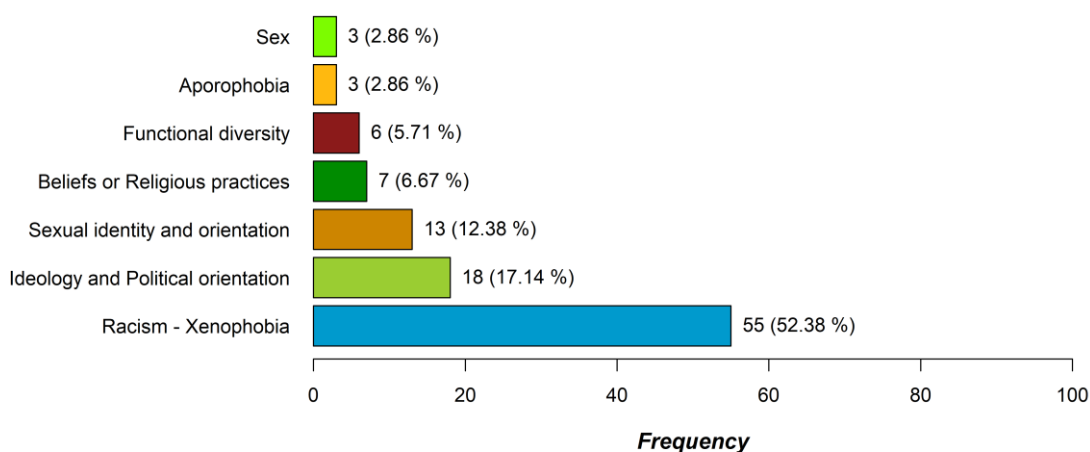
² The incidents included in this report are incidents recorded in 2019, regardless of whether they were committed that year or not. In fact, 5 of the crimes were committed in the three previous years (1 in 2016, 1 in 2017 and 3 in 2018).

³Erratum: The number of incidents recorded in 2017 was 141 and not 143 as recorded in the 2017 Report on Hate Incidents in the Basque Country and in the 2018 Report on Hate Incidents in the Basque Country.

1.1 DISTRIBUTION OF HATE CRIMES

As can be seen below, racist or xenophobic crimes, like in previous years, account for most of the crimes recorded ($n=55$; 52.4%), the figure being slightly lower than that of the previous year. These are followed by crimes against political orientation and ideology ($n=18$; 17.1%, a figure which is almost identical to that of the previous year) and against sexual identity and orientation ($n=13$; 12.4%, a figure which is considerably lower than that of the previous year). As for functional diversity ($n=6$), religious practices and beliefs ($n=7$), aporophobia ($n=3$) and sex ($n=3$), they account for 18.1% of the crimes recorded, these figures being very similar to those of the previous year. As for sex, it is necessary to point out that 2019 was the first year in which this variable was recorded independently; therefore, it is not possible to show its evolution.

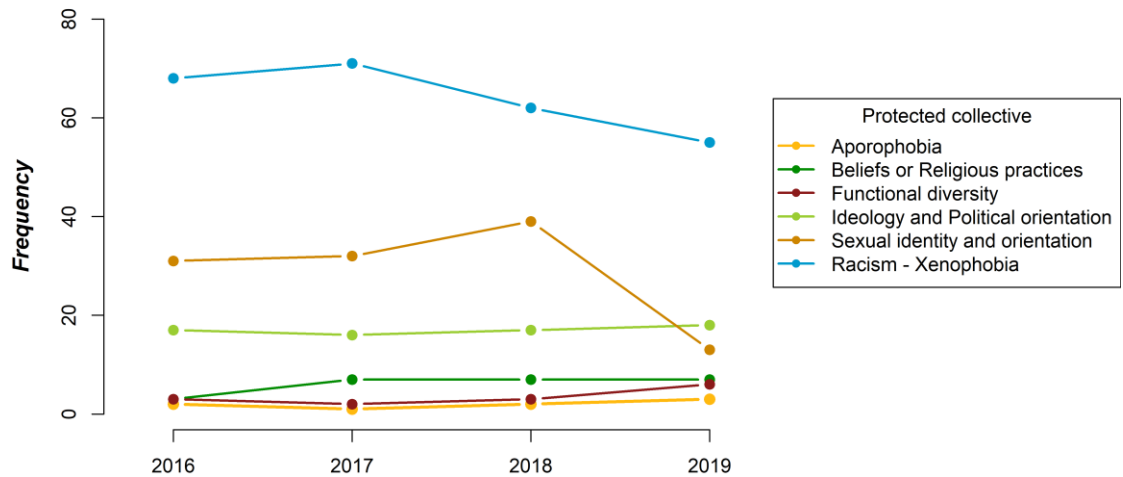
CRIMES PER PROTECTED COLLECTIVE (2019, N = 105)



	ARABA	BIZKAIA	GIPUZKOA	OTHER PROVINCES ⁴	TOTAL	+- (2018)	%
APOROPHOBIA	1	1	1	-	3	1	33%
SEX	-	1	2	-	3	-	0
FUNCTIONAL DIVERSITY	2	1	3	-	6	3	50%
RELIGIOUS PRACTICES/BELIEFS	1	4	2	-	7	0	0
SEXUAL IDENTITY /ORIENTATION	2	7	3	1	13	-26	-66.67%
POLITICAL ORIENTATION/IDEOLOGY	6	6	1	5	18	1	5.88%
RACISM/XENOPHOBIA	6	36	11	3	56	-7	-11.29%
TOTAL	17	56	23	9	105	-25	-%19.23

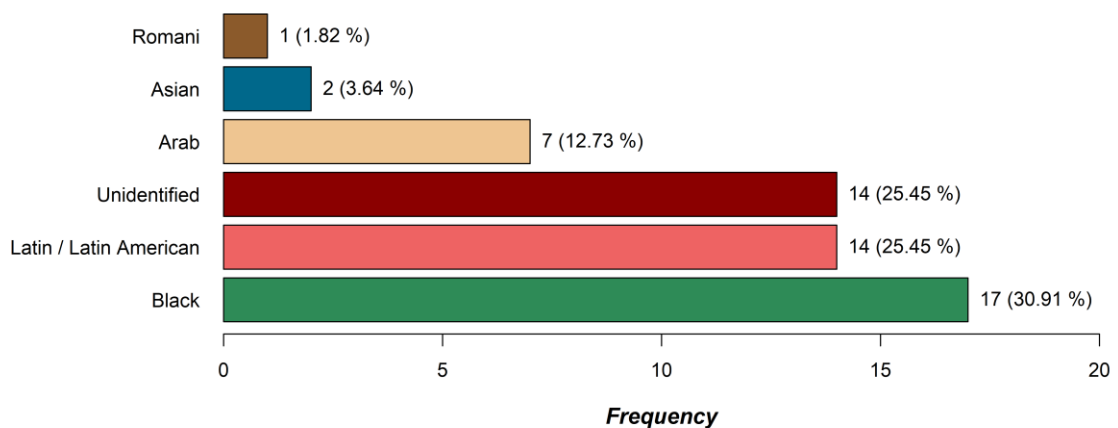
⁴“Other provinces” refers to those crimes which were committed in a location which has not been identified by the Ertzaintza. These crimes are mostly committed on the Internet.

CRIMES PER PROTECTED COLLECTIVE (2016 - 2019)



If we focus on the data relating to racist and xenophobic crimes, they can be broken down into the following groups: Arab ($n=7$; 12.73%), Asian ($n=2$; 3.64%), Romani ($n=1$; 1.82%), Black ($n=17$; 30.91%), Latin/Latin American ($n=14$; 25.45%), Unidentified ($n=14$; 25.45%).

RACISM - XENOPHOBIA CRIMES PER ETHNIC GROUP (2019, N = 55)

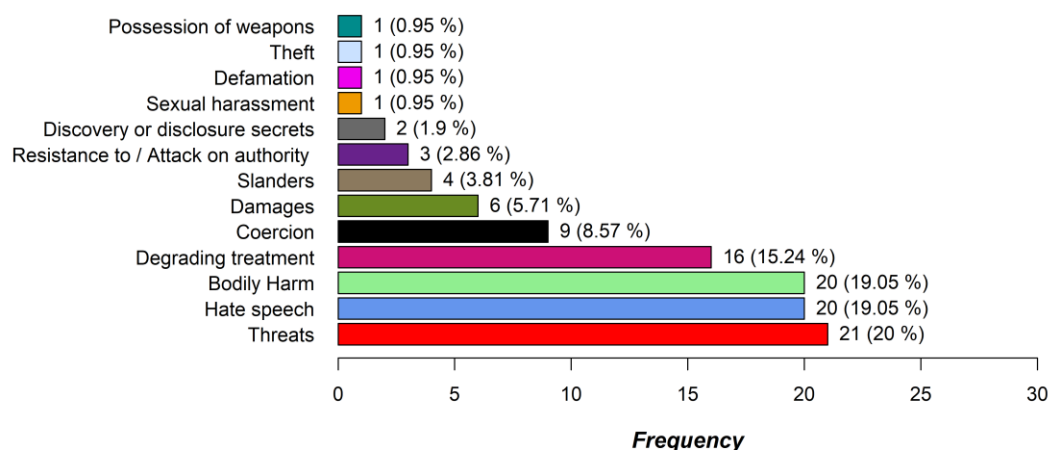


1.1.1 Classification of hate crimes by crime type

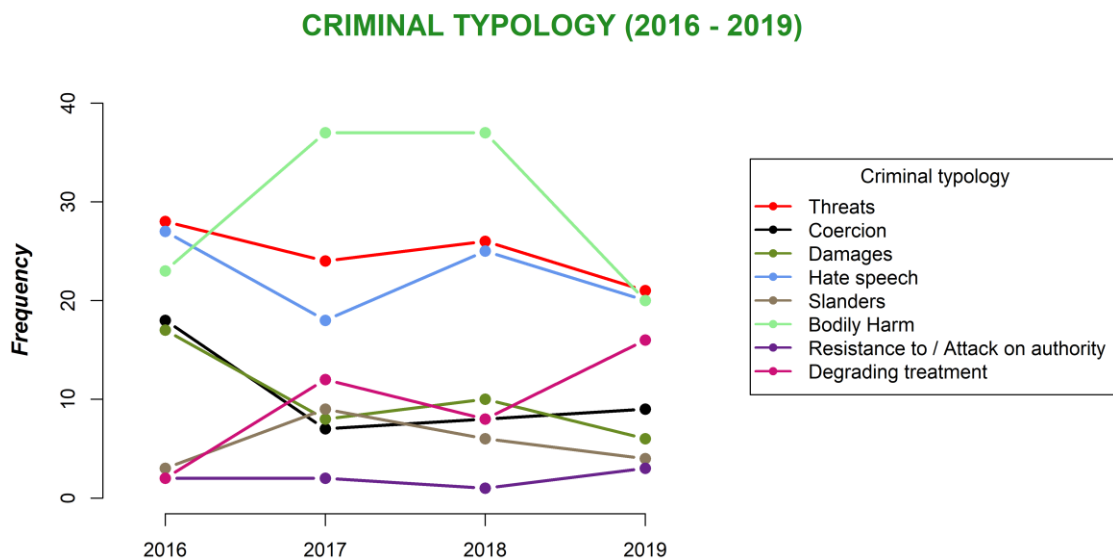
On the subject of the most prevalent crime types, the following chart shows that these are threats (21 cases), bodily harm (20 cases), hate speech (20 cases) and degrading treatment (16 cases). With regard to the first three crime types, it is worth noting that they are not as clearly prevalent as they were in previous years and have gone from representing two thirds of the hate map in 2018 (68.4%) to accounting for hardly more than half of it (58%). On the other hand, like in previous years, hate speech cases must be considered with reservations, due to the fact that they rarely make it far in the judicial process. Likewise, it is worth noting that there was 1 case of sexual harassment and 2 cases of disclosure of secrets.

- **Sexual harassment:** art. 184 CP.
- **Threats:** arts. 169, 170 and 171 CP.
- **Defamation:** art. 206 CP.
- **Coercion:** art. 172 CP.
- **Damage:** arts. 263 y 266 CP.
- **Disclosure of secrets:** art. 197 CP.
- **Hate speech:** art. 510 CP.
- **Theft:** art. 234 CP.
- **Slanders:** art. 209 CP.
- **Bodily Harm:** arts. 147 and 153 CP.
- **Resistance to / attack on authority:** art. 550 CP.
- **Possession of weapons:** art. 563 CP.
- **Degrading treatment:** art. 173 CP

CRIMINAL TYPOLOGY (2019, N = 105)



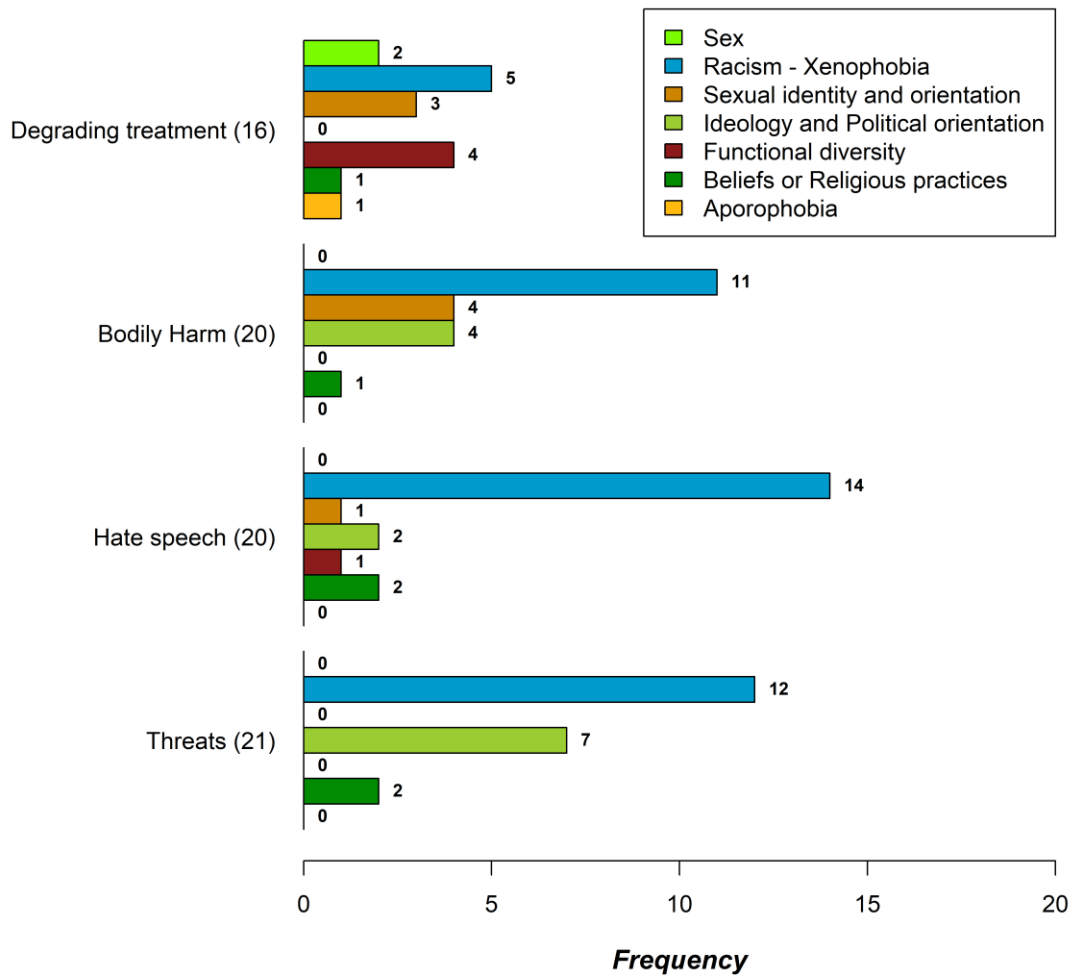
The following chart shows the evolution of crime types since 2016 to the present⁵. It can be seen that, whereas there is a trend towards stability in certain crime types (such as resistance to/ attack on authority), most of them show remarkable ups and downs. This is the case of bodily harm, which, after increasing considerably in 2017 and remaining the same in 2018, decreased sharply in 2019.



Below is a combination of the most prevalent crime types, i.e. threats, hate speech, bodily harm and degrading treatment, with the various groups, so as to know whether certain groups are more prone to suffering certain types of crime or not. Thus, the data show that race is the group which suffers these types of crime the most, being the victims of bodily harm, hate speech and threats, mainly. Likewise, it must be noted that political orientation and ideology is the second group which, by far, suffers the most threats. The lack of threats against sexual identity and orientation is also worth noting.

⁵The chart only shows those crime types with continuity over the years, that is, those types which have appeared in all the years surveyed, leaving aside those which only appeared in one or two of those years.

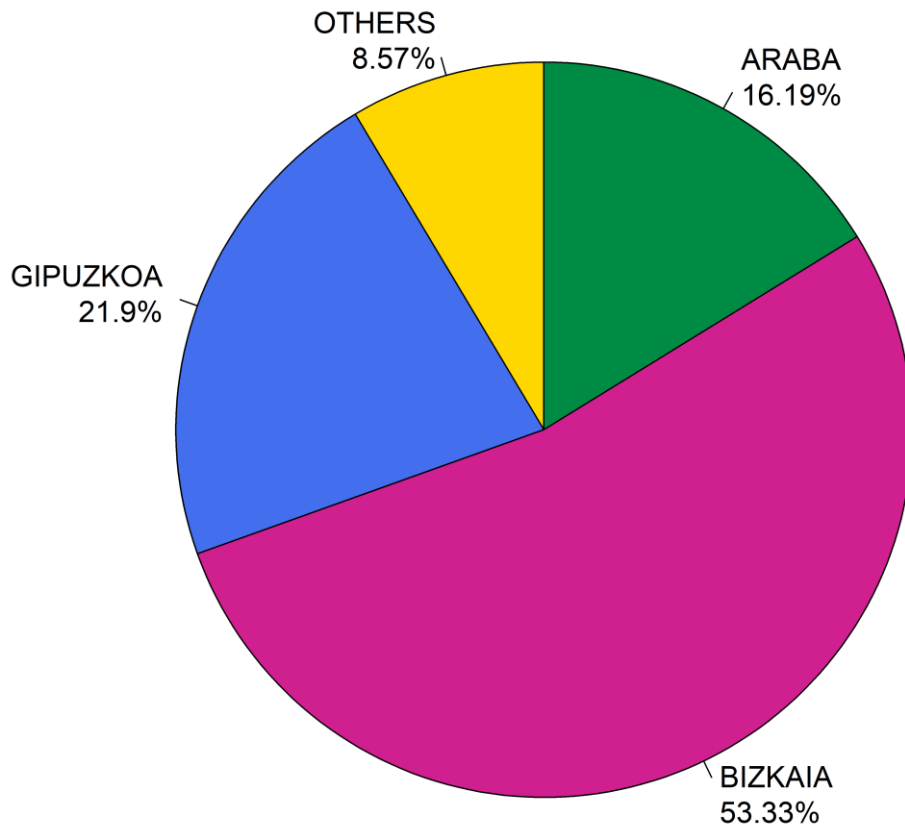
CRIMINAL TYPOLOGY BY PROTECTED GROUP (2019)



1.1.2. Spatial distribution of hate crimes

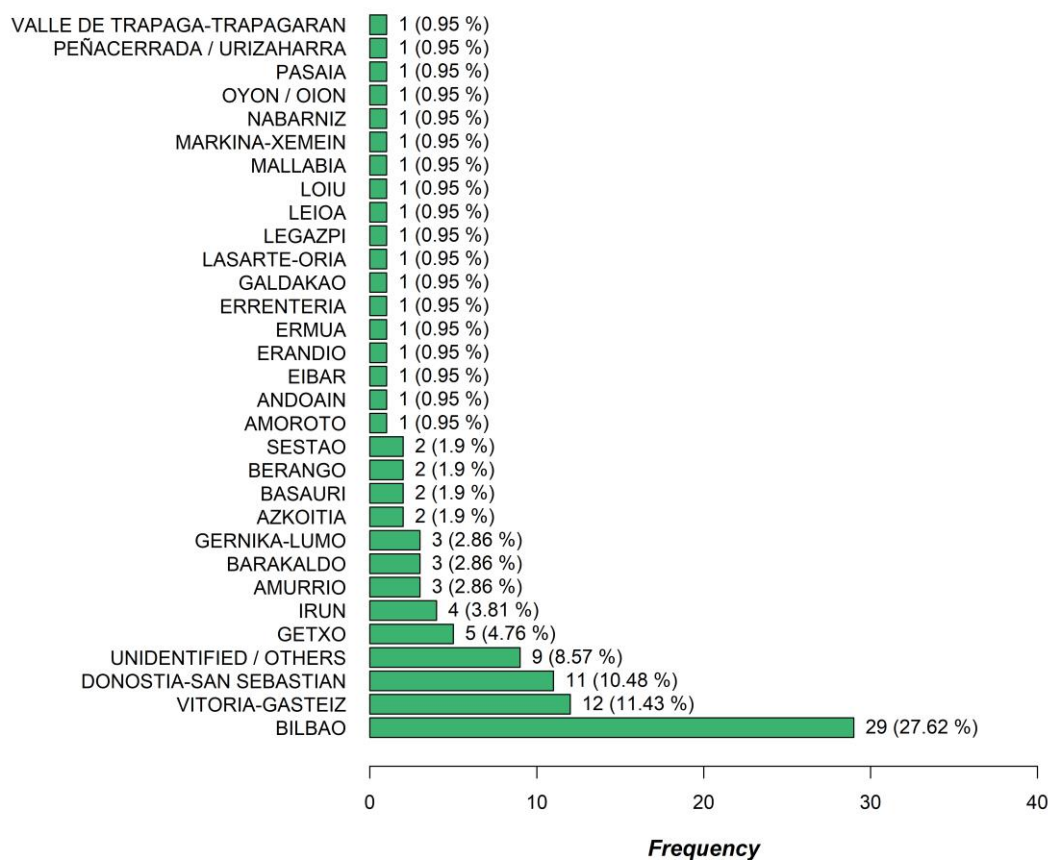
On the subject of the distribution of the 105 crimes in the historical territories, the following chart shows that Bizkaia accounts for more than half of the hate crimes ($n=56$), Gipuzkoa for one fifth of the crimes ($n=23$) and Araba for slightly more than one seventh ($n=17$). Likewise, there are 9 cases for which it has not been possible to identify the historical territory where they were committed.

DISTRIBUTION OF CRIMES BY HISTORIC TERRITORY (2019, N = 105)



Below is the distribution of hate crimes at the municipal level. The capitals of the historical territories stand out for the fourth year in a row: Bilbao ($n=29$), Donostia-San Sebastian ($n=11$) and Vitoria Gasteiz ($n=12$). Likewise, the municipalities of Getxo ($n=5$) in Bizkaia and Irun ($n=4$) in Gipuzkoa are also noteworthy.

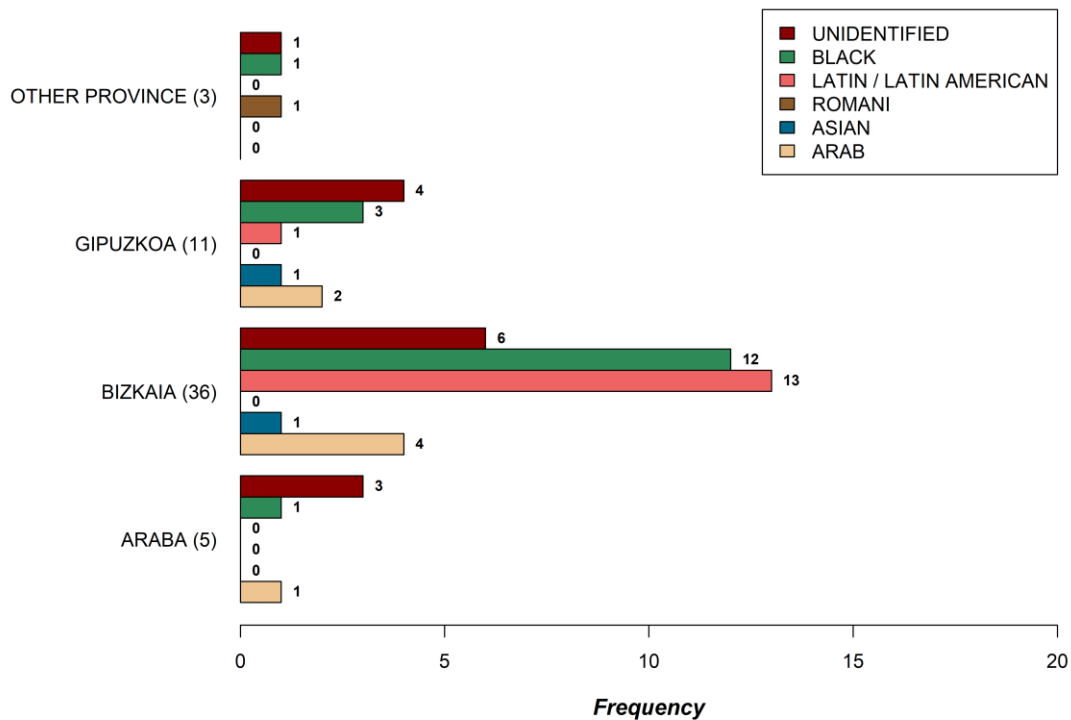
CRIMES BY MUNICIPALITY (2019, N = 105)



If we break down the territorial distribution of the 55 racist/xenophobic crimes, we see that, like in previous years, Bizkaia accounts for most of the cases for the fourth consecutive year, with 36 of the 55 cases recorded (65.45%), whereas the cases recorded in Gipuzkoa have decreased considerably, with 11 cases (20%), half as many as in 2018. Araba recorded 5 cases (9.1%), basically as many as in the previous year. On the other hand, there are three crimes for which the territory where they were committed has not been identified⁶.

⁶Of these 3 racist/xenophobic hate crimes, 2 were committed on the Internet (hence the impossibility of locating the territory where they were committed) and the other in a campsite.

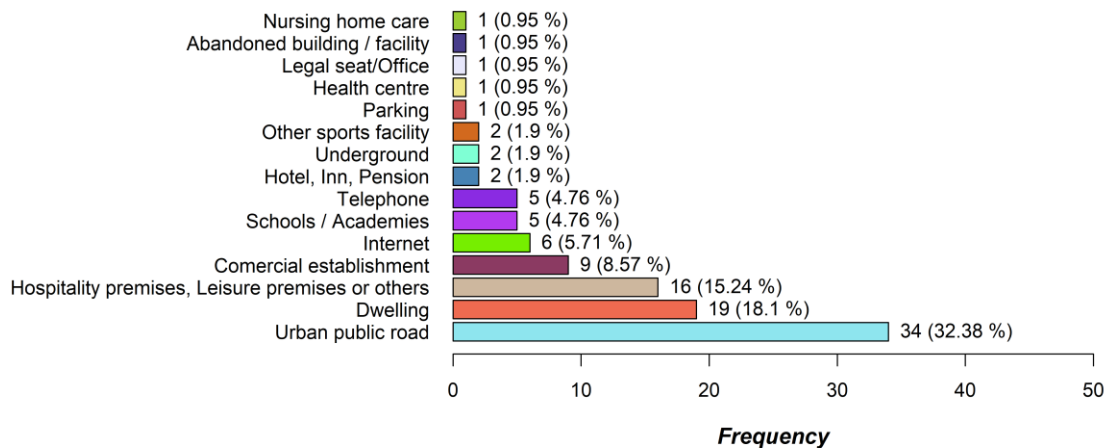
**RACISM / XENOPHOBIA CRIMES
BY HISTORIC TERRITORY OF ORIGIN (2019, N = 55)**



With regard to the 18 crimes recorded by the Ertzaintza relating to political orientation and/or ideology, 6 took place in Araba, 6 in Bizkaia, 1 in Gipuzkoa and 5 have not been located. As for the 13 crimes relating to the victim's sexual identity and orientation, 2 were committed in Araba, 7 in Bizkaia, 3 in Gipuzkoa and 1 has not been located. As for religious beliefs and practices, the Ertzaintza recorded 7 cases, 5 in Bizkaia and 2 in Gipuzkoa, 2 of which were committed against Christian people, 3 against Muslim people and 2 have not been identified. Likewise, 6 cases had to do with functional diversity: 2 in Araba, 1 in Bizkaia and 3 in Gipuzkoa. Finally, 3 hate crimes relating to aporophobia were recorded, 1 in each historical territory, as well as 3 cases relating to sex, 1 in Bizkaia and 2 in Gipuzkoa.

Finally, the following chart analyses the distribution of hate crimes according to the location where they were committed. As can be seen, urban public spaces account for one third of the locations, more specifically 32.38%. Homes⁷, however, represent 18.1% of the locations, a figure which is lower than that of the previous year. Hospitality and leisure premises, on the contrary, have risen significantly up to the third position in the chart (15.24%). A possible explanation for the higher number of hate crimes in these areas can be found in the routine activities of the victims, in such a way that the places which are most frequented by them in their daily lives, such as the area around their homes, are more likely to be the scene of the hate crime⁸.

CRIMES BY SITE (2019, N = 105)



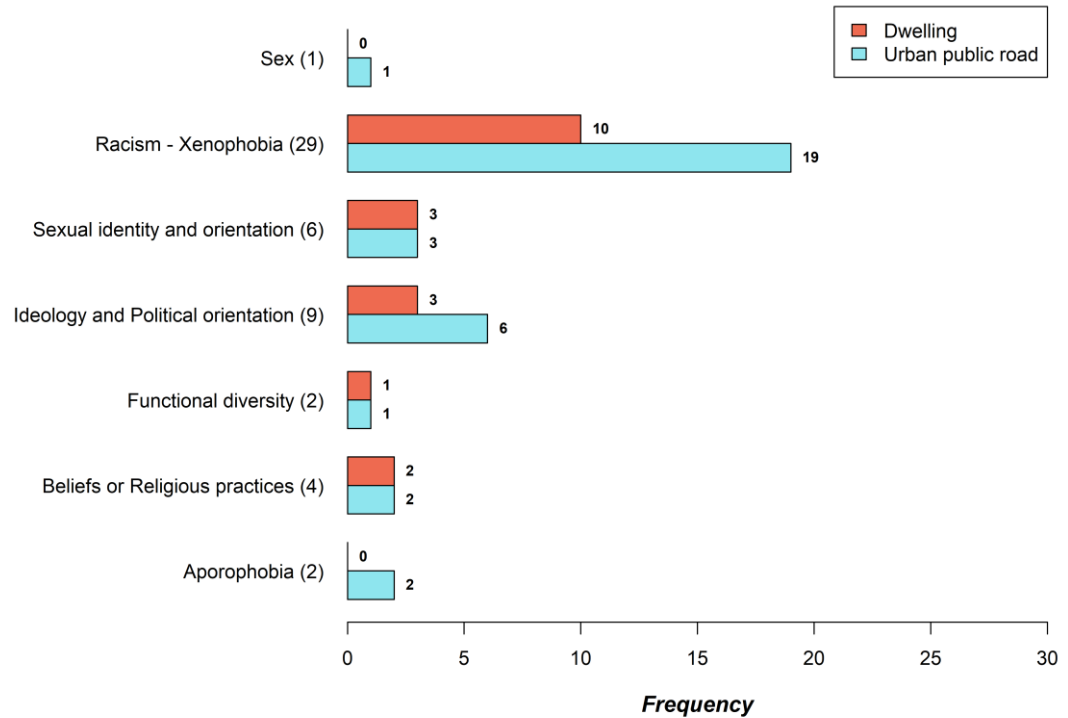
If only the data regarding the most common locations are taken into account, that is, urban public spaces and homes, the conclusion is that in both locations, the most

⁷ The term “home” must be understood in a broader sense, since it comprises both the home itself as well as the entrance to the building. In this case, the most habitual offenders are the neighbours (37%). Likewise, it must be noted that in three of the hate crimes relating to the sexual orientation of the victim (16%) the perpetrators were the victim’s relatives themselves, mainly the parents. Of special note is also the existence of an incident in which the perpetrator was the victim’s carer and another one in which the perpetrator was the tenant. In the rest of the cases (37%) there are no sufficient data to know the relationship of the victim and the offender.

⁸MCNEELEY, S./OVERSTREET, S. M., “Lifestyle-routine activities, neighbourhood context, and ethnic hate crime victimization”, *Violence and Victims*, Vol. 33, 2018, pp. 932-948.

common hate crimes are racism and xenophobia (55.9% in the case of urban public spaces and 52.6% in the case of homes).

CRIMES IN PUBLIC ROADS AND DWELLING BY GROUP (2019, N = 53)

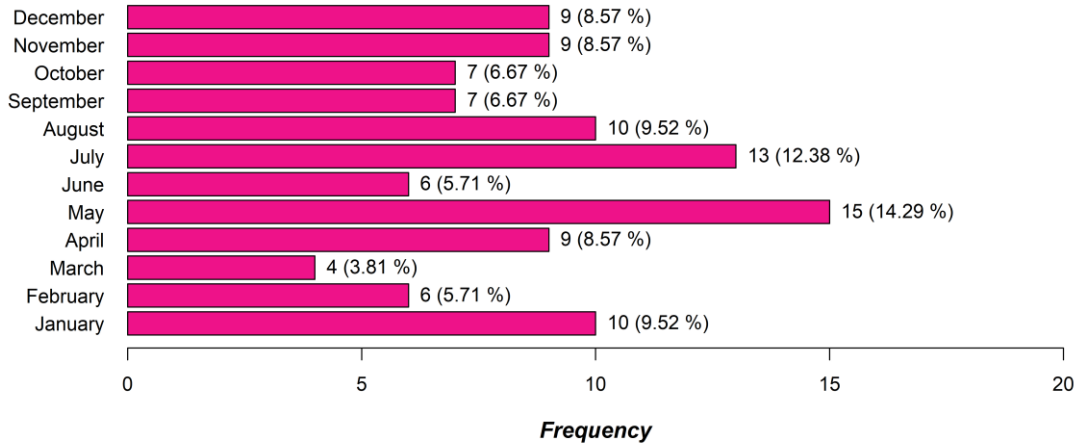


As for the 6 crimes committed on the Internet, 4 (67%) were related to the victim's political orientation and ideology whereas the 2 other cases (33%) were related to racism/xenophobia.

1.1.3. Temporal distribution of hate crimes

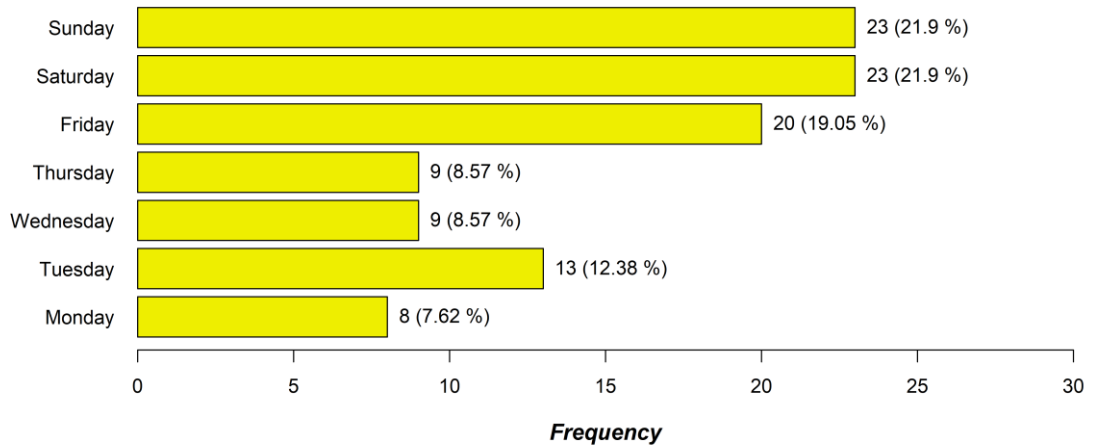
Below is the monthly, weekly and hourly distribution of crime. First of all, it can be said that the months in which more hate crimes occurred were May (14.39%), July (12.38%), January and August (9.52% each).

CRIMES BY MONTH (2019, N = 105)

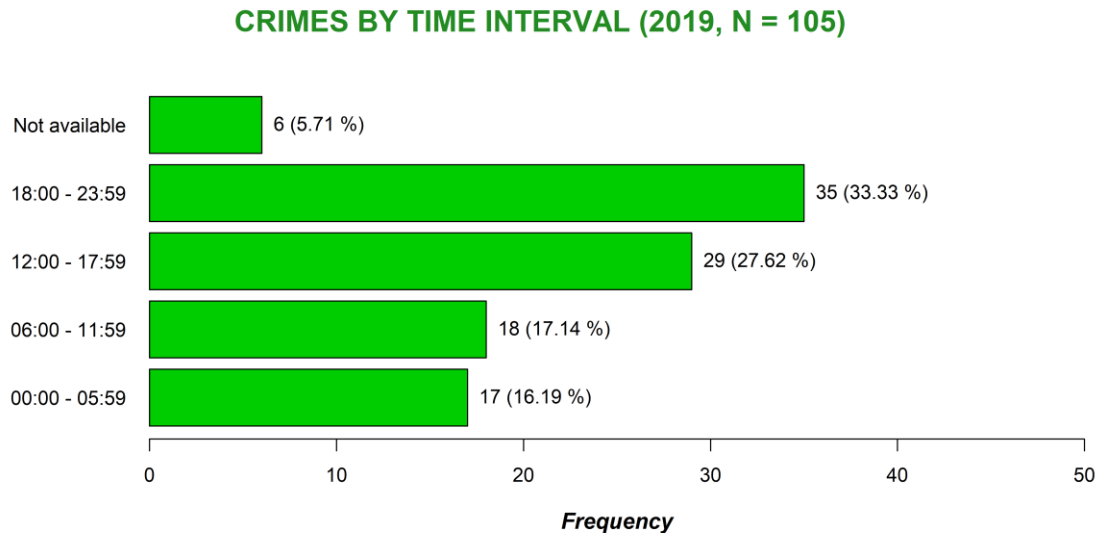


Secondly, the data regarding weekly distribution show that most hate crimes occur at the weekend: Friday (19%), Saturday (21.9%) and Sunday (21.9%). This can be due to the fact that on those days people spend more time outside, in places of entertainment, which increases the possibility that the victims and the potential offenders will meet.

CRIMES BY WEEKDAY (2019, N = 105)



Thirdly, as regards the hourly distribution, most hate crimes occur in the evening (60.9%). The explanation for this could be the same as that for the weekly distribution; in the evening there are more people in the street, either returning from work or carrying out different leisure activities (for example, going to pubs and shopping centres, doing sport, etc.) which makes it easier for victims and potential offenders to meet.



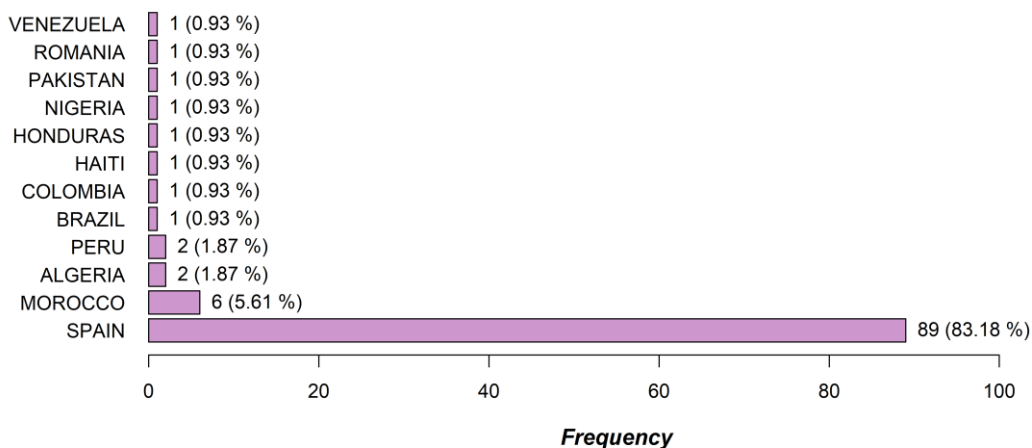
1.2. DISTRIBUTION OF CHARGES⁹

With regard to those charged¹⁰, the next chart shows that almost all of them are Spanish (83.2%): 89 of the total of 107, 69 of whom are from the Basque Country (77.5%). The rest of those charged, 18, are foreigners (16.8%), most of them from Africa (50%) and Latin America (38.89%).

⁹ Charged persons –or individuals under investigation, after the reform of the Code of Criminal Procedure by Organic Law 13/2015–, are those persons who have been charged with committing a crime and with regard to whom the Ertzaintza has opened an investigation.

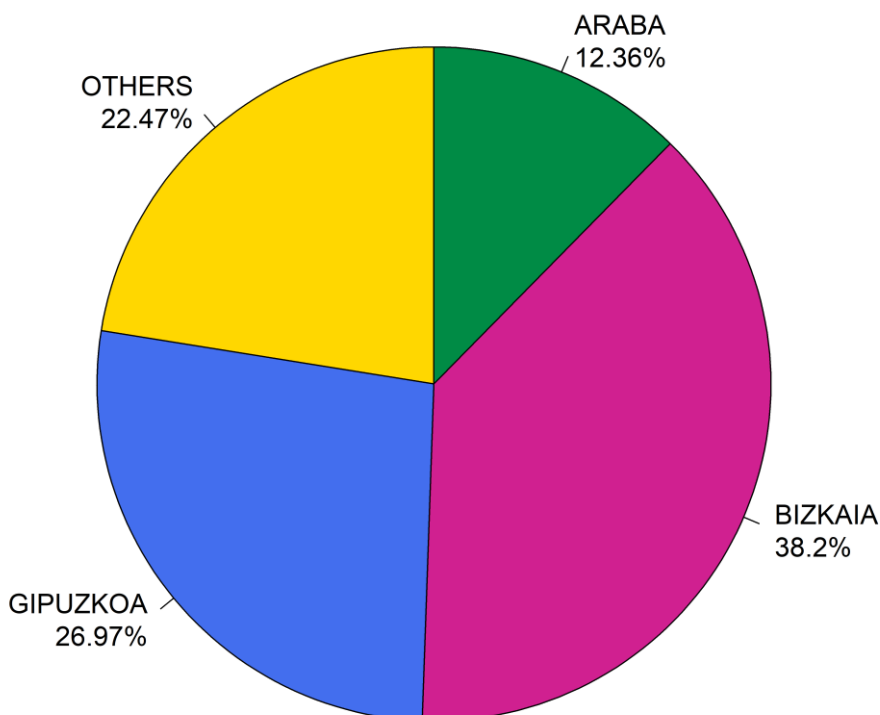
¹⁰The figures correspond to those charged who were identified by the Ertzaintza. It must be taken into account that in 19 of the 105 crimes, the perpetrator could not be identified and, therefore, he/she was not classified either as charged or as arrested. Likewise, there are many cases in which more than one person was charged/arrested for each crime.

CHARGED PERSONS BY COUNTRY OF ORIGIN (2019, N = 107)



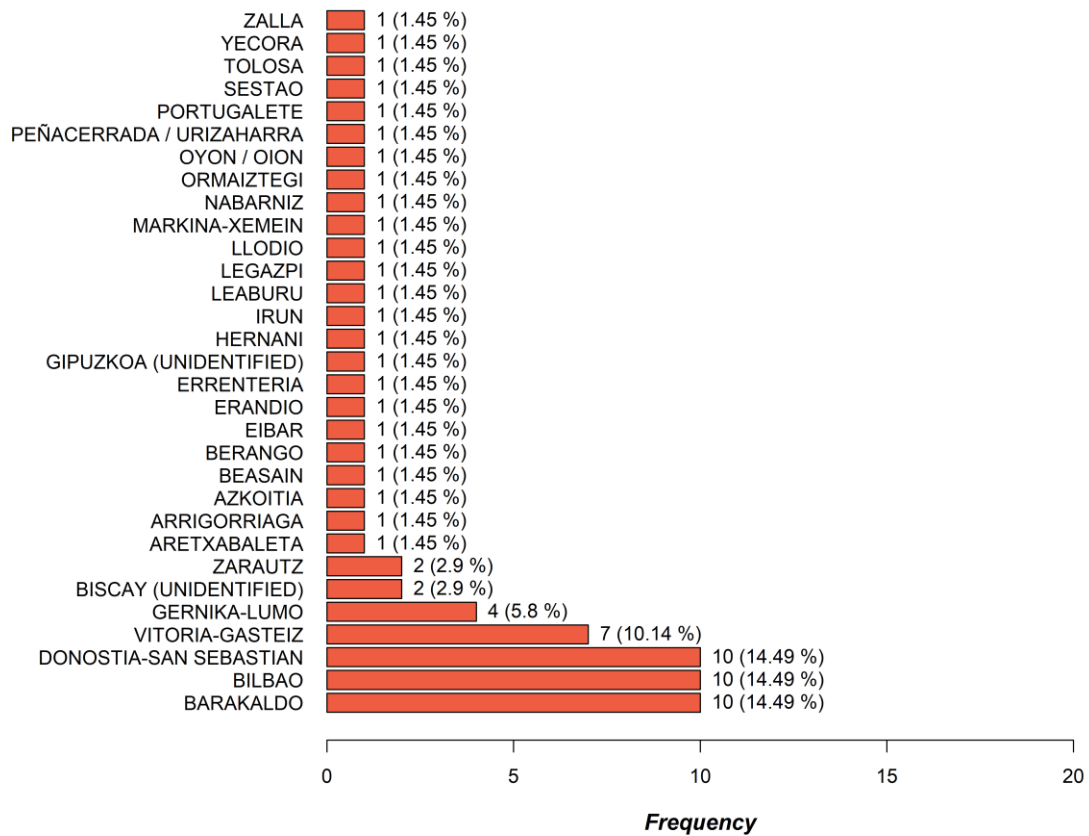
As for the historical territory of origin within the Spanish State, the number of charged persons who were from Bizkaia has increased considerably, representing almost one third of the total, with 34 charged persons –69 of whom were from the Basque Country (38.2%). Something similar happened in Gipuzkoa, where the number of charged persons from that historical territory has risen to one fourth of the total (26.07%). However, the most remarkable rise took place in Araba, where the number of charged persons went up from 1 in 2018 to 11 in 2019 (12.36%).

CHARGED PERSONS BY HISTORIC TERRITORY OF ORIGIN (2019, N = 89)



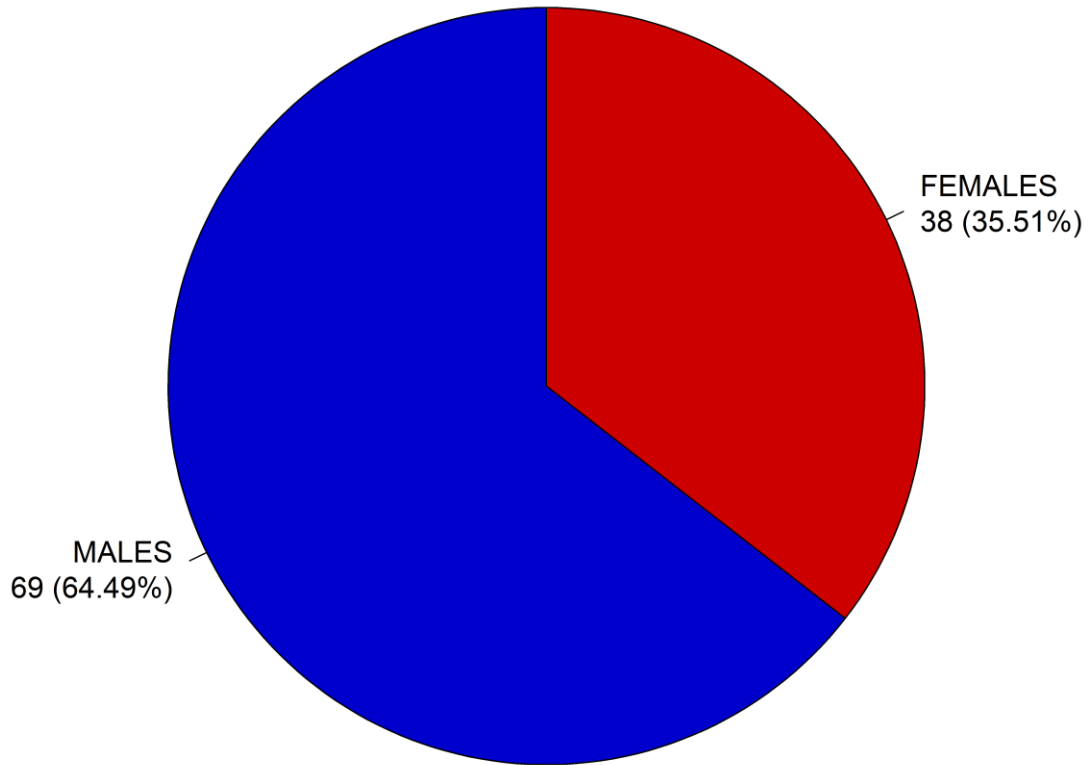
Below is the distribution of persons under investigation at the municipal level, which shows that, for the fourth consecutive year, the cities which stand out are the capital cities of the historical territories, Bilbao $n=10$, Donostia-San Sebastian $n=10$, and Vitoria-Gasteiz $n=7$, as well as two of the main cities of Bizkaia, that is, Barakaldo $n=10$ and Gernika-Lumo $n=4$.

**CHARGED PERSONS
BY MUNICIPALITY OF ORIGIN IN BASQUE COUNTRY (2019, N = 69)**



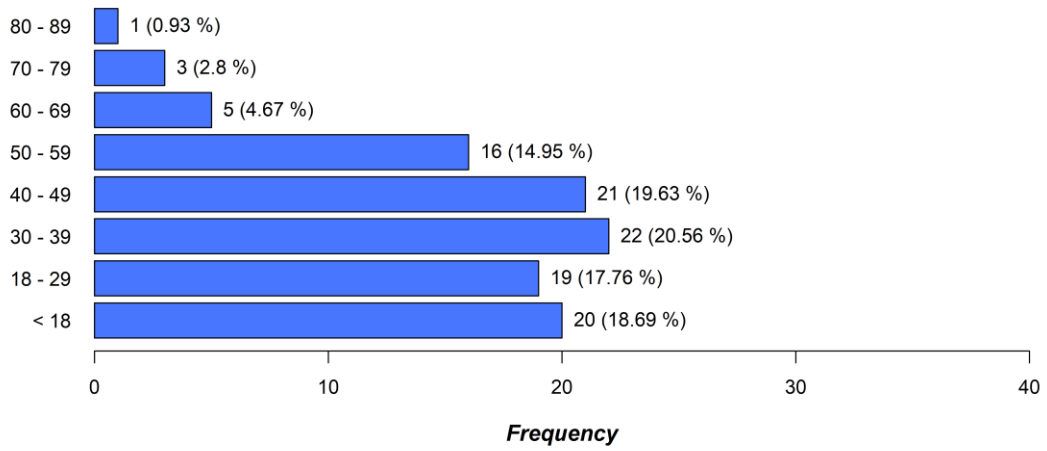
As for the distribution by sex, the following chart shows that 38 women (35.51%) and 69 men (64.49%) were charged in 2019. It is worth noting that the percentage of charged women has increased considerably as compared to the previous three years, when it stood far below 30%.

CHARGED PERSONS BY GENDER (2019, N = 107)



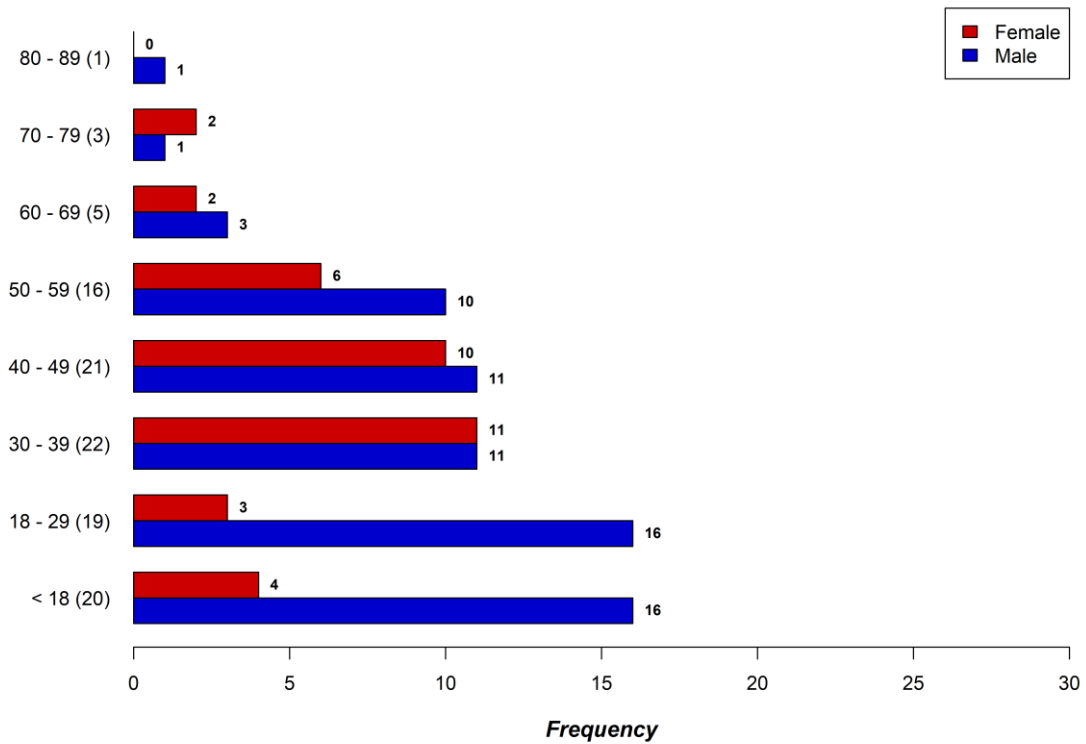
With regard to the age of those charged, the average is 36 years, and the range is between 9 and 86 years. Unlike in 2018, the charged persons are distributed in a more homogeneous manner among the following age groups: <18 years (18.69%), 18-29 years (17.76%), 30-39 years (20.56%), 40-49 years (19.63%) and 50-59 years (14.95%), which account for 91.59% of the cases. As for the rest of the age groups, people over 60 account for the remaining 8.4%. Likewise, it must be pointed out that the age group <18 years has almost septupled as compared to the previous year, going from 3 persons charged in 2018 to 20 in 2019.

CHARGED PERSONS BY AGE GROUP (2019, N = 107)



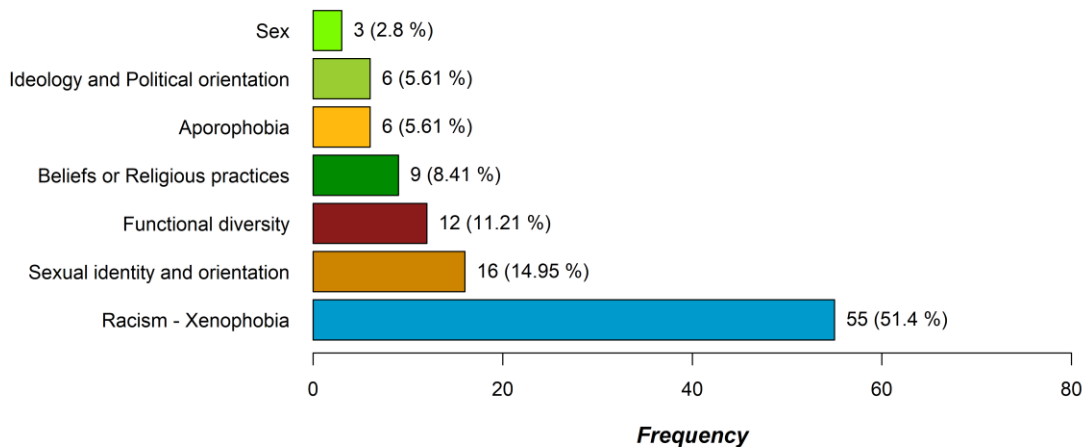
Furthermore, if those data are broken down by sex, we can see that men prevail by far in the 2 lowest age groups.

CHARGED PERSONS BY AGE GROUP AND GENDER (2019, N = 107)



Likewise, the following chart shows that most of the charges lie within the sphere of racism ($n=55$, 51.4%), followed by hate crimes relating to the victim's sexual identity and orientation ($n=16$, 14.95%), functional diversity ($n=12$, 11.21%), their religious beliefs and practices ($n=9$, 8.41%), their political orientation or ideology ($n=6$, 5.61%), aporophobia ($n=6$, 5.61%), or their sex ($n=3$, 2.8%).

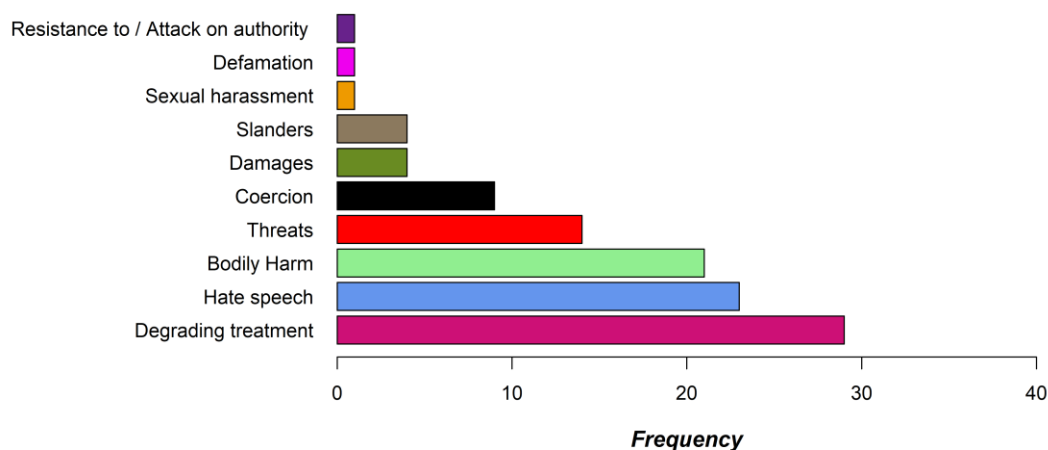
CHARGED PERSONS BY PROTECTED GROUP (2019, N = 107)



Finally, with regard to the distribution of those charged by crime type¹¹, it is noteworthy that most of the charges are related to degrading treatment (27.1%), followed by hate speech (21.5%) and bodily harm (19.63%). However, the number of charges relating to threats is much lower (13.08%), even though it is the most numerous type.

¹¹To have a global view of the number of offenders by crime type, it is also necessary to take into account the chart regarding arrested persons.

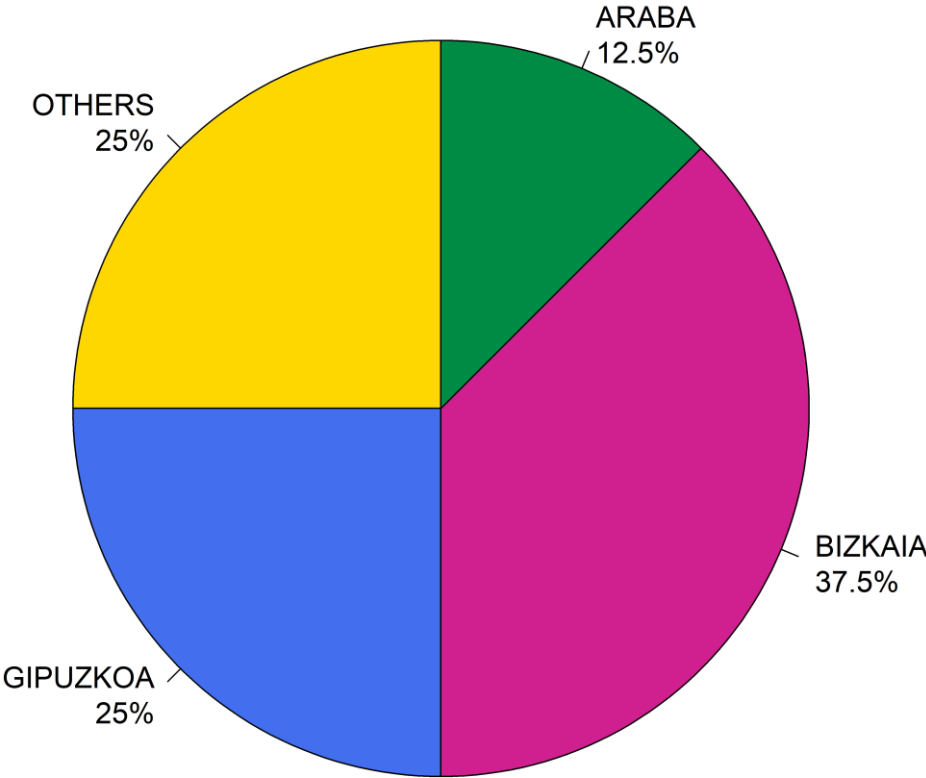
CHARGED PERSONS BY CRIMINAL TYPOLOGY (2019, N = 107)



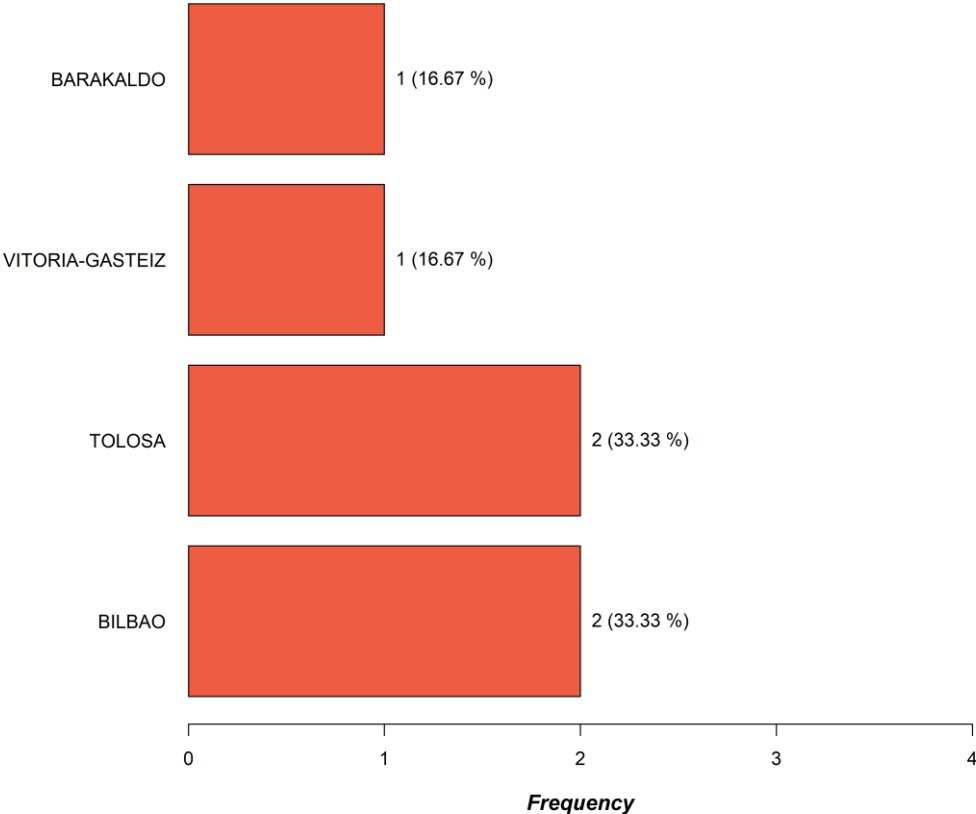
1.3. DISTRIBUTION OF ARRESTS

In 2019 the Ertzaintza arrested a total of 8 persons, a figure which is considerably lower than that of the previous year. Below is the analysis of the origin of the arrested persons. The figures show greater homogeneity, since all the arrested were of Spanish nationality and 75% of them were from the Basque Country. Half of the arrested Basque people were from Bizkaia (50%), especially from two of its most populated municipalities, Bilbao ($n=2$, 33.33%) and Barakaldo ($n=1$, 16.67%), whereas the others were from Tolosa, in Gipuzkoa ($n=2$, 33.33%) and from Vitoria-Gasteiz ($n=1$, 16.67%).

**ARRESTED PERSONS
BY HISTORIC TERRITORY OF ORIGIN (2019, N = 8)**

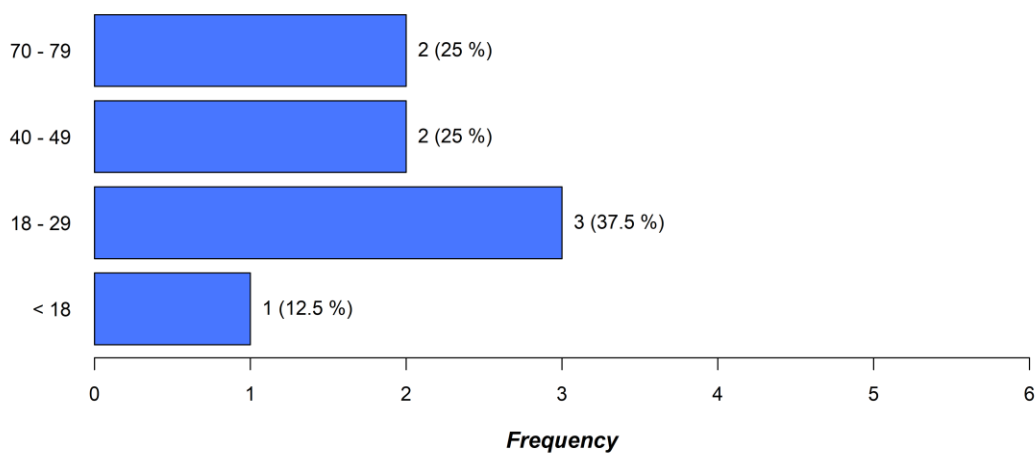


ARRESTED PERSONS BY MUNICIPALITY OF ORIGIN (2019, N = 6)



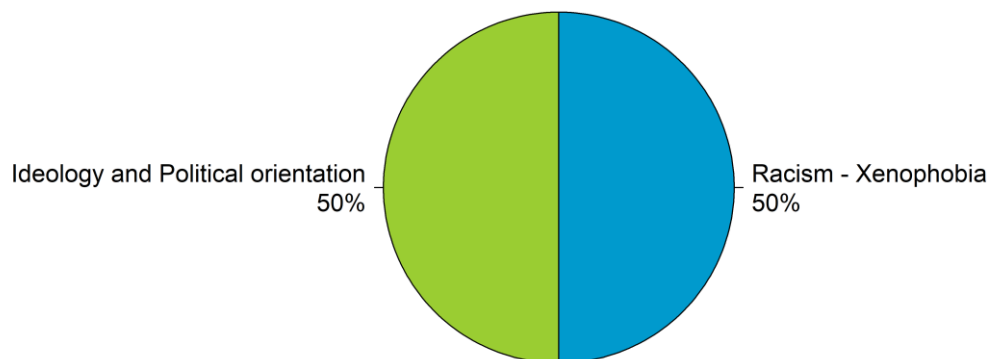
Demographically speaking, it must be noted that all the arrested were men, like in 2018. Their average age was 40 years and the age range was between 17 and 74 years. As for the distribution of the age groups, the following chart shows a slight predominance of those aged 18 to 29 (37.5%), but to a lesser extent than in 2018. As for the rest of the arrested persons, they can be distributed in the following age groups: under 18 (12.5%), 40-49 years (25%) and 70-79 years (25%). It must be pointed out that the last age group had not appeared before as far as the arrested are concerned.

ARRESTED PERSONS BY AGE GROUP (2019, N = 8)



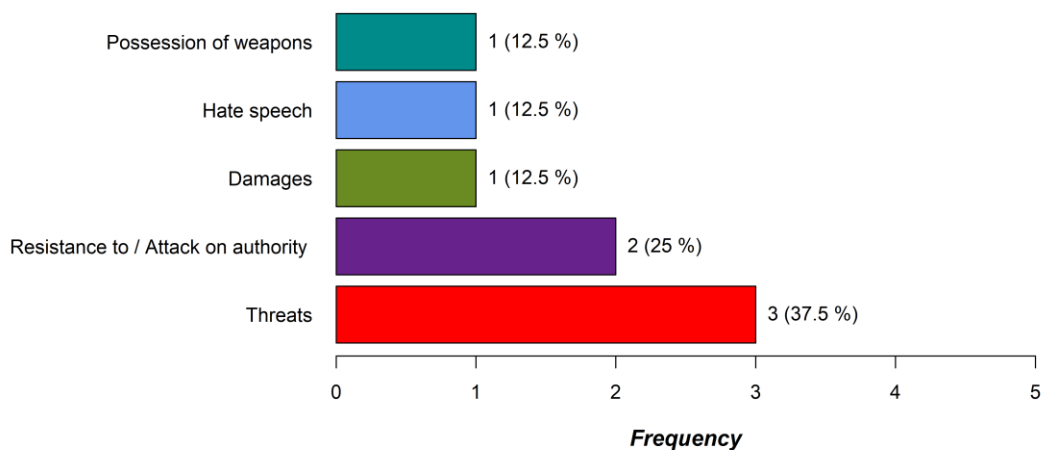
If we look at the categories with more arrests, we see that half of the arrests took place within the sphere of racism (50%) and the other half within the sphere of political orientation (50%).

ARRESTED PERSONS BY PROTECTED GROUP (2019, N = 8)



Finally, with regard to the distribution of the arrested by crime type, the following chart shows that threats (37.5%) and resistance to and/or attack on authority (25%) stand out as the types for which more people were arrested. Particularly noteworthy is the case of resistance to/attack on authority, as there were only 3 incidents of this type. Another remarkable fact is that there were no arrests for bodily harm, in spite of its being one of the most prevalent types of crime.

ARRESTED PERSONS BY CRIMINAL TYPOLOGY (2019, N = 8)



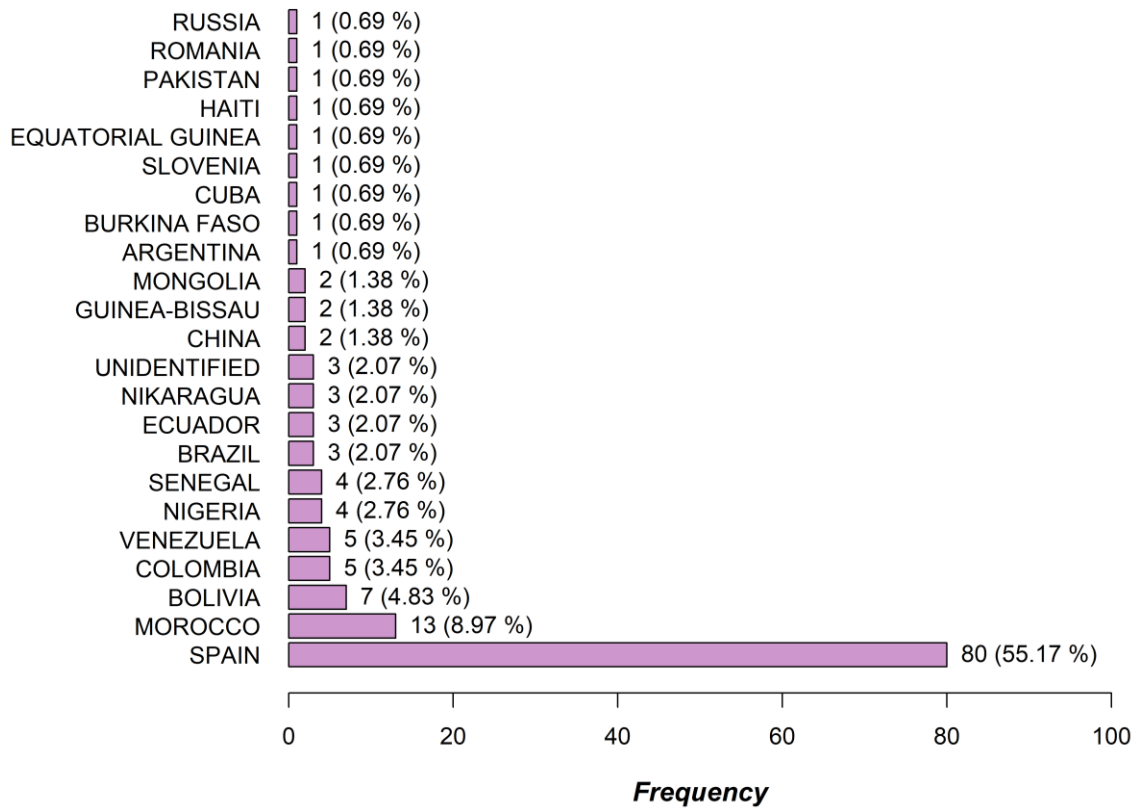
1.4. DISTRIBUTION OF VICTIMIZATIONS¹²

55.17% of the victims are of Spanish nationality (80 out of 145), most of whom, almost 78.75% of the cases, are from the Basque Country (63 cases). On the other hand, foreign victims account for less than the remaining half (around 44.83%, 65 cases). With regard to the latter, the victims from Latin America and Africa are the most numerous (19.3% and 17.2% of the victims, respectively). As for Africa, it is important

¹²In this case, as in the case of the people under investigation and the arrested people, the number of victims does not coincide with the actual number of hate crimes, for several reasons. On the one hand, in 5 of the cases it was not possible to identify the specific victim. On the other, some of the incidents had more than one direct victim.

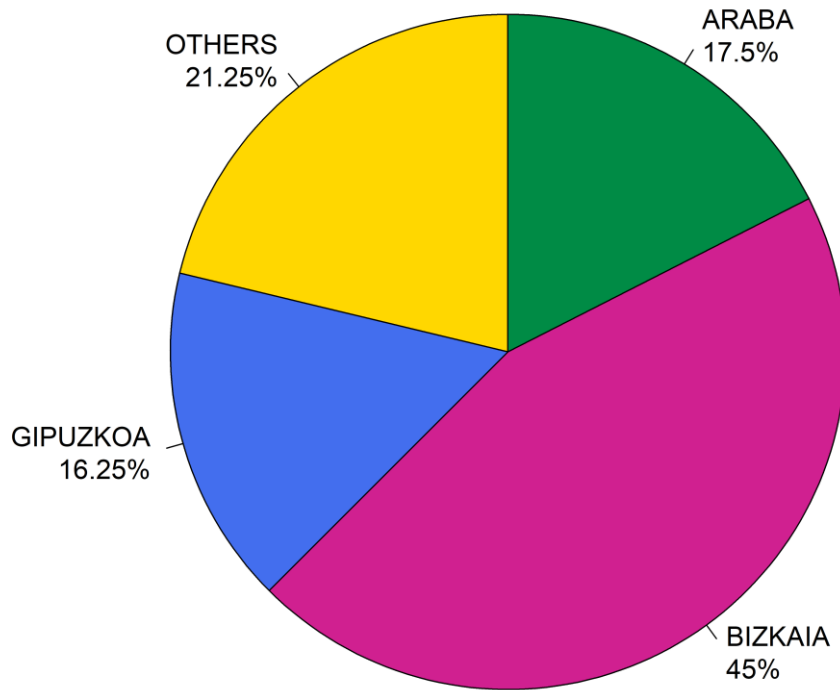
to highlight the strong presence of Moroccan victims, who account for 9% of the victims of hate crimes.

VICTIMS BY COUNTRY OF ORIGIN (2019, N = 145)

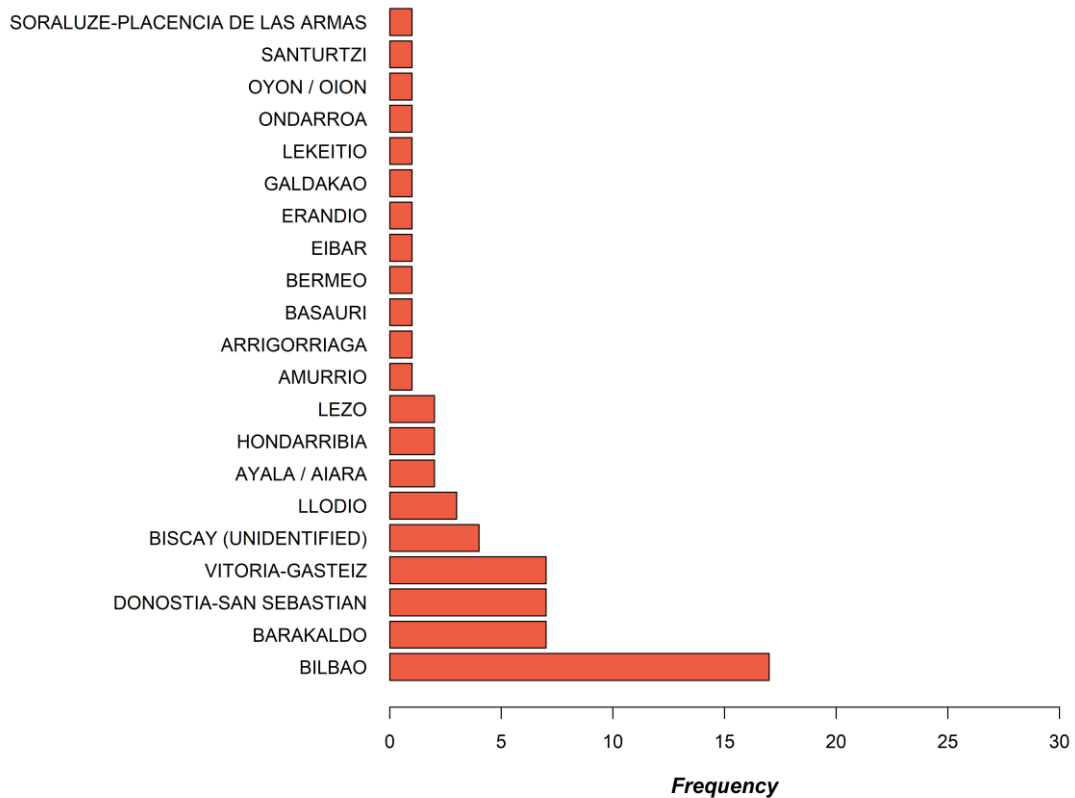


Below is an analysis of the distribution of victims by their historical territory of origin within the Spanish State. The data show that, once again, most of the victimizations ($n=36$) occurred in Bizkaia. The rest are similarly distributed among Gipuzkoa ($n=13$), Araba ($n=14$) and the rest of the State ($n=17$). If the data are broken down at the municipal level, we can see that, for the fourth consecutive year, Bilbao and Barakaldo (17 and 7 cases respectively) stand out from the rest, with figures which are almost the same as those of the year 2018. However, the other capitals of the historical territory (Donostia-San Sebastian, $n=7$; and Vitoria-Gasteiz, $n=7$) are also worthy of note this year.

**VICTIMS
BY HISTORIC TERRITORY OF ORIGIN (2019, N = 80)**

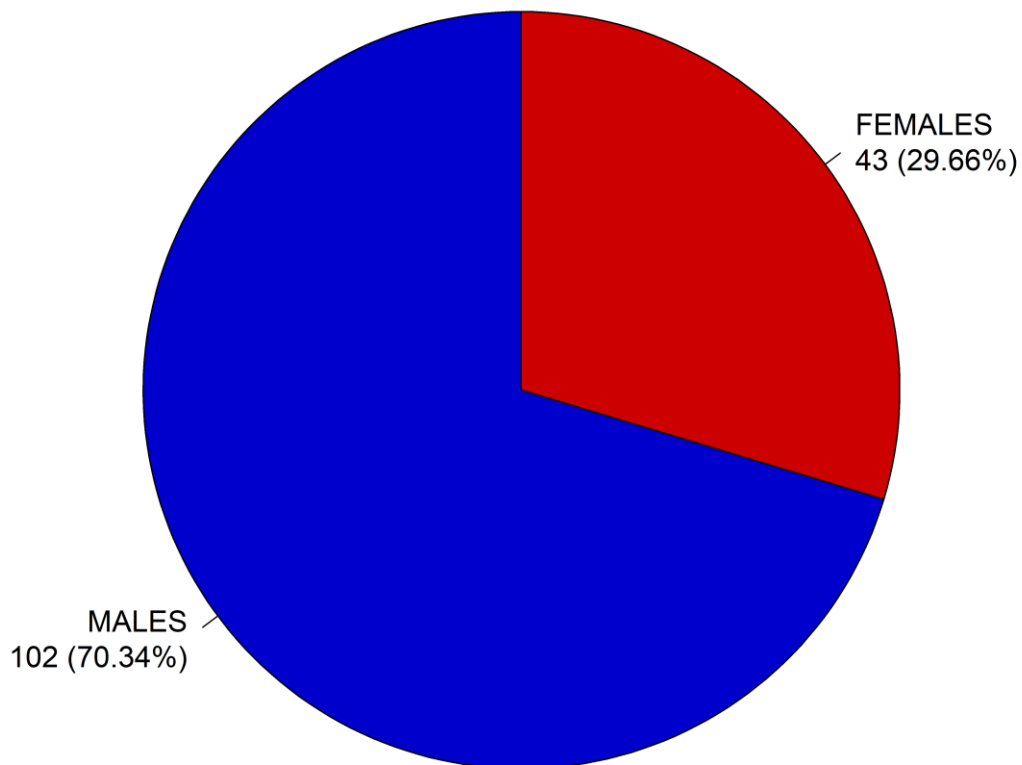


**VICTIMS
BY MUNICIPALITY OF ORIGIN IN BASQUE COUNTRY (2019, N = 63)**



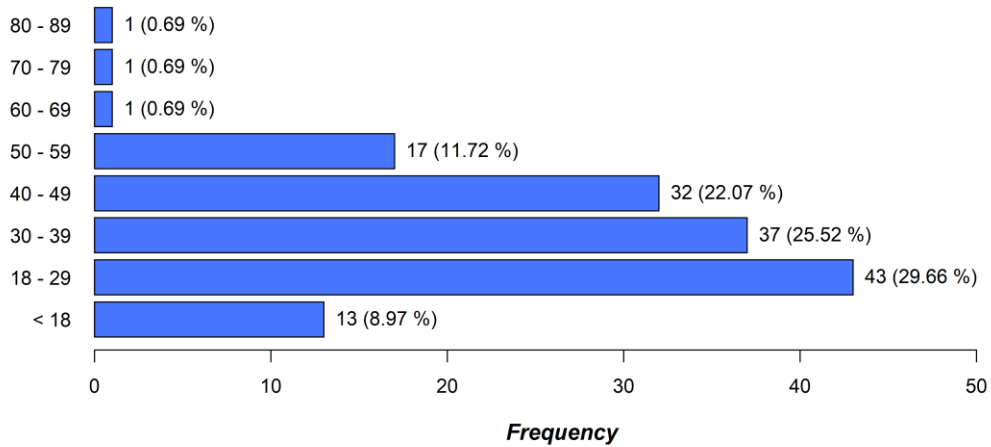
If we take into account the sex of the victims, we can see that most of the victims are men ($n=102$). Women, on the other hand, represent a lower percentage than in the previous year ($n=43$).

VICTIMS BY GENDER (2019, N = 145)



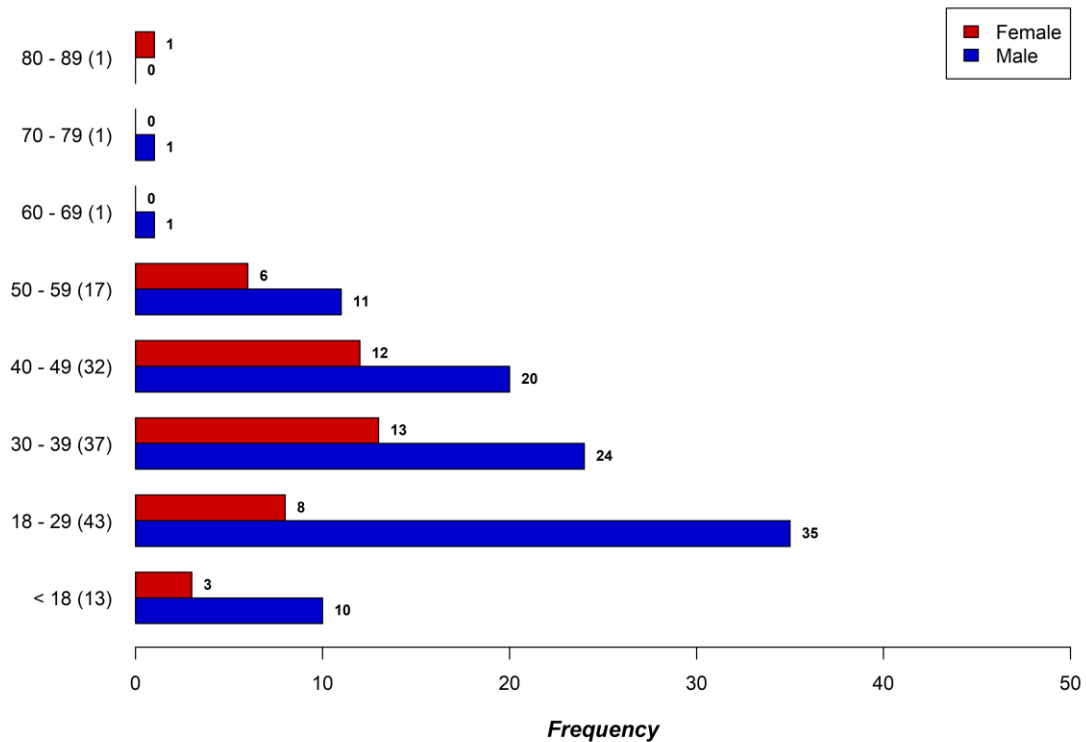
Demographically speaking, the average age is the same as in the previous year, 34.8 years, and the age range is between 8 and 80 years. More specifically, most of the victims are in the following age groups: 18-29 years (29.7%), 30-39 years (25.5%), and 40-49 years (22.1%). As for the rest of the age groups, the group between 50 and 59 accounts for 11.7% of the cases, whereas those under age account for 8.9%. Finally, the elderly (>60) account for the remaining 2.1%.

VICTIMS BY AGE GROUP (2019, N = 145)



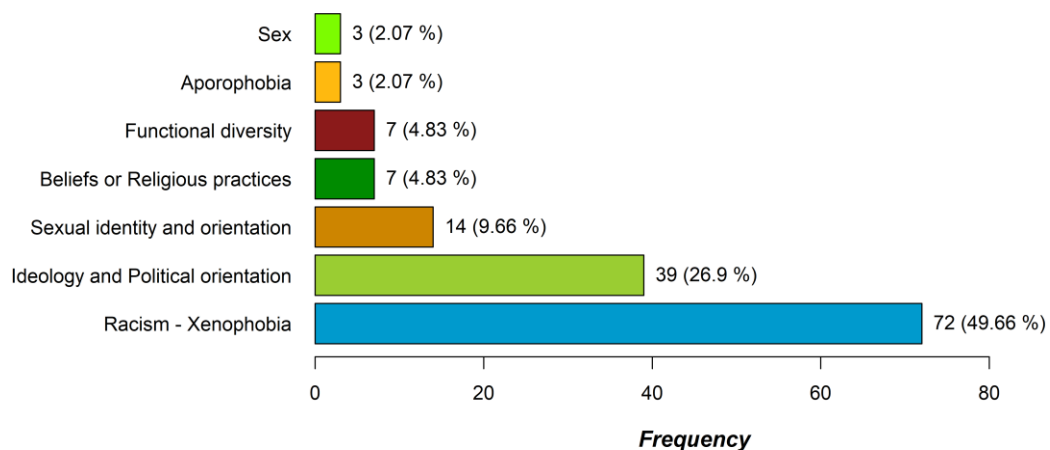
Nevertheless, if those data are broken down by sex, it can be seen that, as in the case of the persons under investigation, men prevail in the lowest age groups, mainly in the 18-29 group, where they are four times the number of women.

VICTIMS BY AGE GROUP AND GENDER (2019, N = 145)



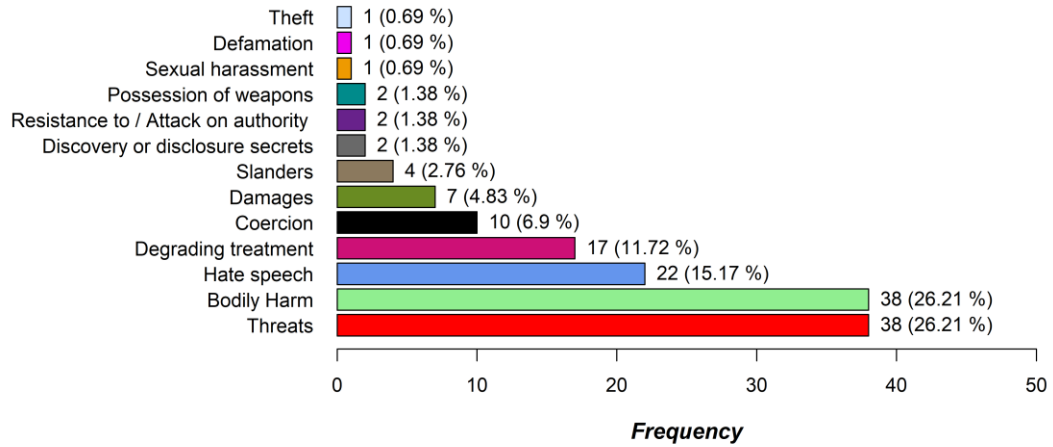
Moreover, as shown in the next chart, most victimizations occurred within the sphere of racism ($n=72$, 49.7%), followed by those victimizations resulting from the political orientation or ideology of the victim ($n=39$, 26.9%). With regard to the latter, it is surprising that the number of victimizations relating to political orientation and ideology is twice the number of crimes, something which only occurs with this group. In the third, fourth, and fifth places we find the victimizations committed on the grounds of the victim's sexual identity and orientation ($n=14$; 9.6%), and those committed on the grounds of their religious beliefs and practices ($n=7$, 4.8%) and on the grounds of functional diversity ($n=7$, 4.83%). Finally, aporophobia ($n=3$, 2.1%) and sex ($n=3$, 2.1%) are the spheres in which fewer victimizations have been recorded.

VICTIMS BY PROTECTED GROUP (2019, N = 145)



Finally, with regard to the distribution of the victims by crime type, the following chart shows that the victims who have suffered threats and bodily harm account for more than half of all victims (52.42%), nearly twice as many as the number of incidents of this type (38 victims in the case of the 21 threats and 38 victims in the case of the 20 bodily harm crimes). In the third and fourth place, we find hate speech (15.17%) and degrading treatment (11.72%), with numbers that are similar to the number of crimes of this type (22 victims in the case of the 20 hate speech crimes and 17 victims in the case of the 16 degrading treatment crimes). In the rest of the cases, there are fewer victims, probably due to their low incidence.

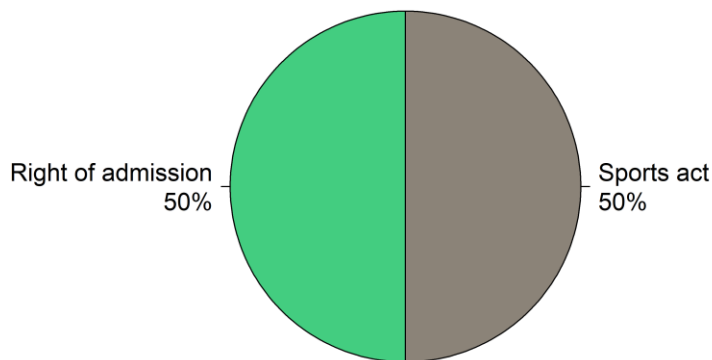
VICTIMS BY CRIMINAL TYPOLOGY (2019, N = 145)



1.5. DISTRIBUTION OF ADMINISTRATIVE OFFENCES

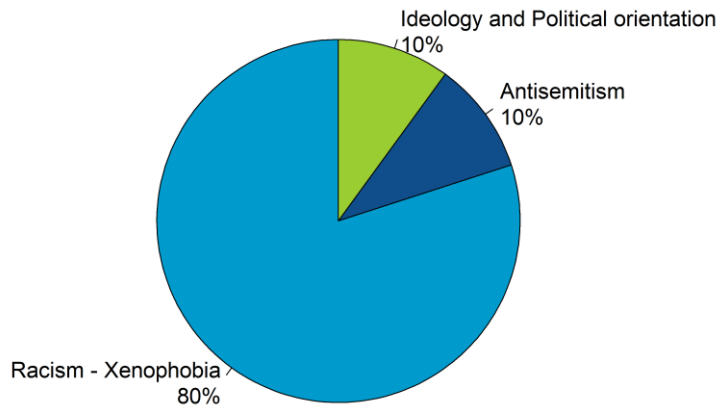
As we explained at the beginning, 10 administrative offences were recorded in 2019, 5 within the sphere of Act 19/2007, of 11 July, against violence, racism, xenophobia and intolerance in sport, and 5 in the sphere of the right of admission.

ADMINISTRATIVE OFFENCES (2019, N = 10)

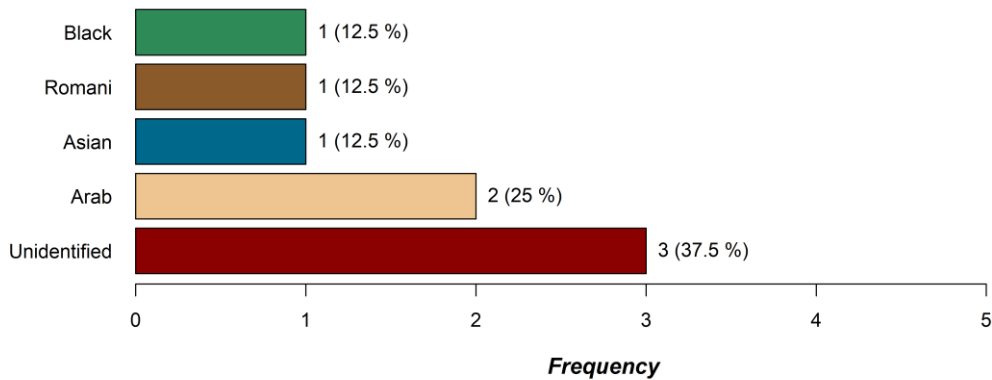


As can be seen below, most of these offences occurred within the sphere of racism-xenophobia (80%), whereas the other two administrative offences occurred in the sphere of ideology (10%) and anti-Semitism¹³ (10%). The offences related to racism-xenophobia can be broken down into the following groups: Arab ($n = 2$; 25%), Asian ($n = 1$; 12.5%), Romani ($n = 1$; 12.5%), Black ($n = 1$; 12.5%), Unidentified ($n = 3$; 37.5%).

**ADMINISTRATIVE OFFENCES
BY PROTECTED GROUP (2019, N = 10)**

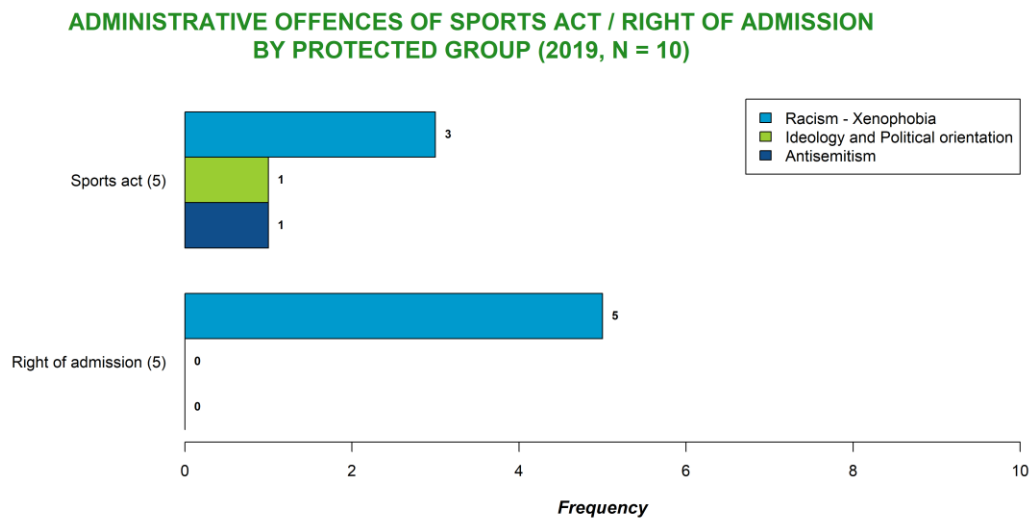


**RACISM - XENOPHOBIA ADMINISTRATIVE OFFENCES
BY ETHNIC GROUP (2019, N = 8)**



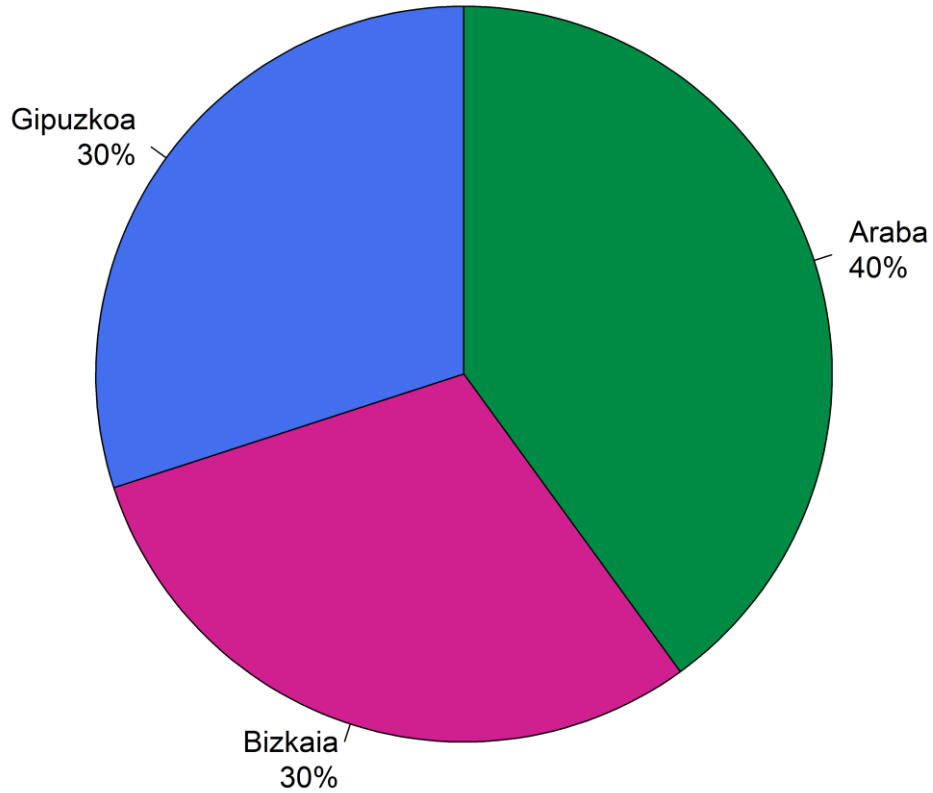
¹³The Ertzaintza records the category “anti-Semitism” as a standalone category, different from religious beliefs and practices.

Below is the distribution of protected groups by type, that is, depending on whether they are administrative offences relating to the sports law or to the right of admission. Thus, we can see that all the offences relating to the right of admission were based on the race/ethnicity of the victim, whereas there is more heterogeneity with regard to the protected groups in those offences relating to the sports law, although it also prevails in this group.

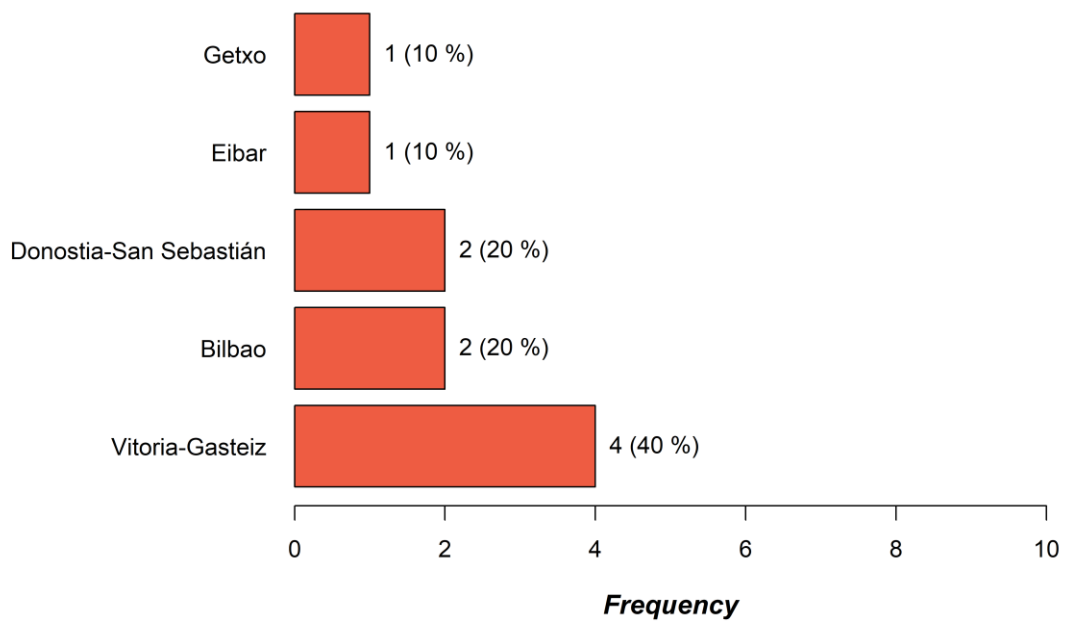


As for the spatial distribution of the administrative offences, it can be said that they are almost homogeneously distributed among the three Basque historical territories: Araba ($n=4$, 40%), Bizkaia ($n=3$, 30%), Gipuzkoa ($n=3$; 30%). To be precise, most of the offences were located in the capitals of the historical territories, Bilbao ($n=2$; 20%), Donostia-San Sebastian ($n=2$, 20%) and, mainly, Vitoria-Gasteiz ($n=4$; 40%). The rest are distributed among Getxo, Bizkaia ($n=1$, 10%), and Eibar, Gipuzkoa ($n=1$; 10%).

ADMINISTRATIVE OFFENCES BY HISTORIC TERRITORY (2019, N = 10)

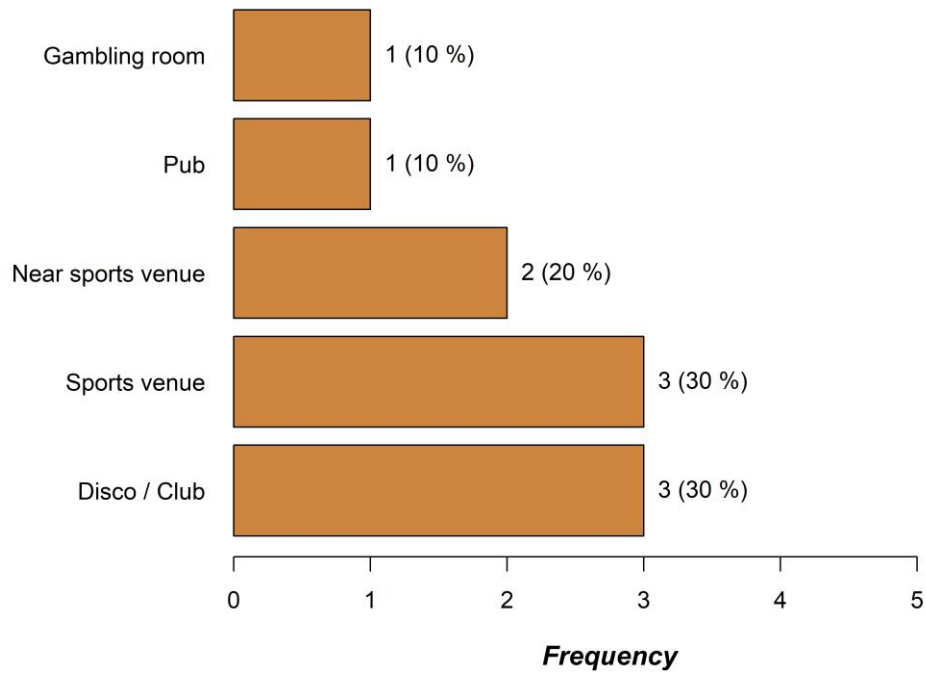


ADMINISTRATIVE OFFENCES BY MUNICIPALITY OF ORIGIN IN BASQUE COUNTRY (2019, N = 10)



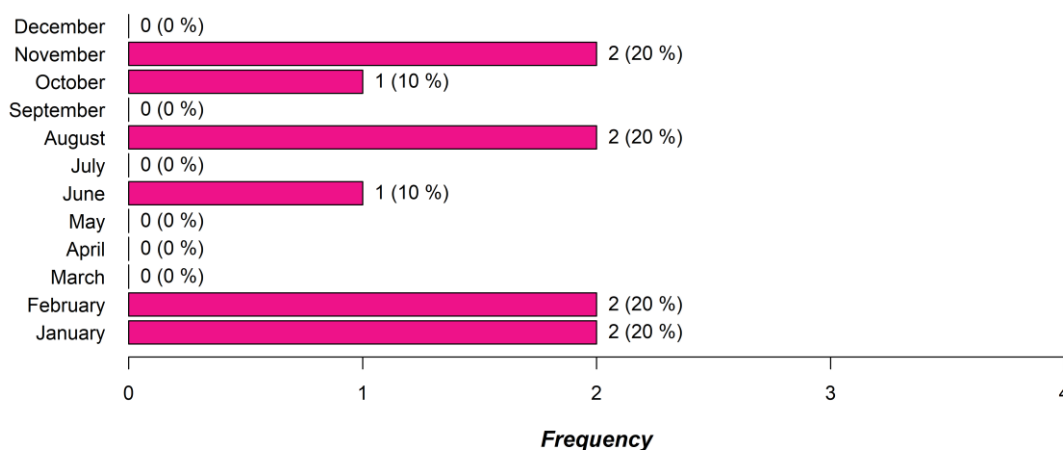
If we take into account the place where they were committed, it can be seen that most offences occurred in sports facilities and their surrounding areas ($n=5$; 50%) as well as in night clubs ($n=3$; 30%).

ADMINISTRATIVE OFFENCES BY SITES (2019, N = 10)



Finally, with regard to the temporal distribution, the offences are also distributed in an almost identical manner among the following months: January ($n=2$; 20%), February ($n=2$; 20%), June ($n=1$; 10%), August ($n=2$; 20%), October ($n=1$; 10%) and November ($n=2$; 20%).

ADMINISTRATIVE OFFENCES BY MONTH (2019, N = 10)



1.6. CONCLUSIONS

1.6.1. Total number of incidents

115 hate incidents were recorded in the Basque Country in 2019, 105 of which were crimes (91.3%) and 10 administrative offences (8.7%).

If we take into account that 124 criminal incidents were recorded in 2016, 129 in 2017 and 130 in 2018, a clear drop can be observed as far as incidents are concerned.

In this regard, as it was already noted in the first report, administrative offences are segregated as far as processing, submission and assessment are concerned, as they cannot be likened to potentially criminal incidents due to their numerical figure (which may include a much larger number of incidents related to the main one) and their actual dynamics (linked to specific activity sectors such as, paradigmatically, sports events).

1.6.2. Map of target groups of incidents

Racist or xenophobic incidents account for 52.4% (55 cases) of the recorded crimes, showing a slight decrease as compared to the previous year (-7 incidents: -11.29%). Political orientation and ideology represent 17.1% of the crimes (18 cases), with a slight increase as compared to the year 2018 (+1; 5.88%), whereas crimes relating to sexual identity and orientation account for 12.4% of the crimes (13 cases), a figure which is considerably lower than that of the previous year (-26: -66.67%). Moreover, religious beliefs and practices (7 cases), functional diversity (6 cases), sex (3 cases) and aporophobia (3 cases) account for 18.1% of the recorded crimes, which, except for aporophobia and sex (which did not exist as an independent category separated from sexual identity and orientation in 2018), show similar figures to those of the previous year.

The ethnic group considered *in extenso* (racism, xenophobia, ideology political orientation and religious beliefs and practices) represents 69.56% (77.39% including administrative offences), that is, three fourths of the hate map. By contrast, aporophobia, functional diversity and sex hardly represent more than 10% all together.

1.6.3. Crime types

i. Prevalent groups. Three criminal incident groups, i.e., bodily harm (20 cases: 19%), threats (21 cases: 20%) and hate speech (20 cases: 19%) continue to be the most numerous in this third report, at a considerable distance from the following groups, except for degrading treatment. All three together account for 58% of all criminal incidents, that is, more than half of the hate map, although they are still far from the three fourths they represented the previous year.

A review in detail of the degrading treatment group may be reflecting the doubts when carrying out an onsite classification of hate incidents which could lie within the diffuse context of threatening and abusive behaviour.

ii. Violent incidents. Bodily harm, representing almost one fifth of the total (20 cases: 19%), would be the benchmark for those conducts that will eventually be aggravated pursuant to the circumstance modifying criminal liability provided for in Article 22.4 CP. This year it has gone down to the lowest level of recording with percentages similar to those of the first year in which they were surveyed (2016).

If they are considered *in extenso* with other crimes likened to crimes committed “with deeds” (thus adding resistance and attack $n=3$; damage $n=6$ and even theft $n=1$) the percentage is almost 30% ($n=30$; 28.57%) of the potentially criminal incidents.

iii. Hate crimes “with words” («*hate speech*» in the broad sense). In contrast with hate crimes in the strict sense (with deeds), hate propaganda incidents continued to be the majority. If we bring together threats (21), hate speech in the strict sense (20), slanders (4), and defamation (1), they represent up to 43.8% (46) and they reach 67.6% (71) if we also include general but close categories such as coercion (9) and degrading treatment (16).

The crime map is therefore in line with the previous report, with a slightly higher “over-representation” of expressive conducts, 7 to 3, with respect to the potentially more serious violence of bodily harm or the violence around it.

1.6.4. Spatial-temporal distribution, persons under investigation, arrested persons and victims of hate crimes

For the fourth consecutive year Bizkaia is the province where most hate crimes were recorded (53.33%), mainly in Bilbao (27.62%) and Getxo (4.76%). The other capitals of the historical territories, Vitoria-Gasteiz (11.43%) and Donostia-San Sebastian (10.48%) as well as the municipality of Irun in Gipuzkoa (3.81%) are also noteworthy in this regard. As for the location where they were committed, urban public spaces (32.38%) is the location where most hate crimes are committed, followed by homes (18.1%).

A large number of these incidents take place during the weekend (Friday 19%, Saturday 21.9% and Sunday 21.9%). As for the time, most hate crimes take place in the evening (60.9%).

Most of those charged, 89, are Spanish (83.2%), 77.5% of whom come from the Basque Country, mainly from Bizkaia (49.3%). Among the foreign investigated persons, the most numerous come from Africa (50%) and Latin America (39%). At the municipal level, most of those charged come from the main cities of Bizkaia, Bilbao ($n=10$) and Barakaldo ($n=10$), but this year the number of charged people from the other capitals of the historical territories, Donostia-San Sebastian ($n=9$) and Vitoria-Gasteiz ($n=7$) is also remarkable.

Moreover, in 2019 there were 8 arrests, far fewer than in the previous year. They were all men of Spanish nationality and most of them were from the Basque Country (75%, 3 from Bizkaia, 2 from Gipuzkoa and 1 from Araba).

55.17% of the victims were of Spanish nationality, 78.75% from the Basque Country. As for the foreign victims (45%), the most numerous were those from Latin America (19.3%) and Africa (17.2%). Most of the victims from the Basque Country were from Bizkaia, mainly from Bilbao (27%) and Barakaldo (11%).

1.6.5. The hate map of the Basque Country within the context of the State

i. Global data and target groups. 115 hate incidents were recorded in the Basque Country in 2019, 105 of which were crimes (91.3%) and 10 administrative offences (8.7%). With regard to the data for the whole of the Spanish state, if we take the Report on the Evolution of Hate-Based Incidents in Spain for the year 2018¹⁴ as a starting point, 5.5% of the hate incidents which were reported to the police authorities

¹⁴MINISTRY OF THE INTERIOR, “Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España 2018” (Report on the Evolution of Hate Incidents in Spain 2018, *Ministry of the Interior – Government of Spain*, 2019, 58 pages.
Online access: <http://www.interior.gob.es/documents/642012/3479677/informe+2018/ab86b6d9-090b-465b-bd14-cfcdfccdfefbc>

throughout the Spanish state took place in the Basque Country (1,598 incidents, 12.6% more than in 2017). To put these data in context, it must be explained that at the end of 2018, the Basque Country had 2,199,088 inhabitants — Bizkaia (1.15M inhabitants, Gipuzkoa (0.72M inhabitants) and Araba (0.33M inhabitants) —of the 47,026,208 inhabitants of Spain (INE, 2020).

Consequently, the data recorded in the Basque Country did not show any significant increase with regard to the detection of the phenomenon, quite the opposite; something that can be seen in the data for the State compiled by the Ministry of the Interior in recent years (2013-2018).

In Spain, in 2018, there was an increase in the percentage of crimes committed in connection with the main categories, ideology and racism/xenophobia, which account for almost two thirds of the 1,598 incidents recorded, a trend which is starting to be seen in the Basque Country now. As regards the groups, it is surprising that the most affected group does not coincide in both cases: in the Basque Country racism and xenophobia is clearly predominant, with 52.4% of the incidents, followed by ideology, which accounts for 17.1% of the crimes; however, in Spain racism and xenophobia is surpassed by ideology, with 37.3% of the crimes, although it is closely followed by the latter, which accounts for 33.2% of the cases. Both at the level of the state and at the level of the autonomous community, the next most victimized groups are sexual identity or orientation (16.2% in Spain and 12.4% in the Basque Country) and religious beliefs/practices (4.9% in Spain if we add anti-Semitism and 6.7% in the Basque Country).

In the report of the Ministry of the Interior, all the categories show a more or less upward trend as compared to the previous year, except religious beliefs or practices and sexual identity and orientation, which have decreased. However, in the Basque Country, the categories which have undergone a greater increase are aporophobia (going from 2 to 3 incidents) and functional diversity (going from 3 to 6 incidents). Furthermore, political orientation and ideology showed a slight increase (5.88%); whereas religion and beliefs remained stable. Finally, racism and xenophobia decreased by 11.29% and

sexual identity and orientation by a considerable 66.67% (going from 39 to 13 incidents).

In conclusion, it can be said that the most victimized groups in both reports are racism/xenophobia, ideology and sexual identity and orientation, although the figures are quite different as far as the first two categories are concerned; little victimization was recorded with regard to aporophobia and sex.

ii. Crime types. As regards crime types, bodily harm (20% in Spain and 20% in the Basque Country) and threats (20% in Spain and 21% in the Basque Country) stand out in both reports as the most prevalent types, with basically identical percentages. Damage (17.4%) and crimes against the Constitution (17.4%) are also noteworthy at the level of the State, whereas hate speech (20%) and degrading treatment (15.2%) stand out in the Basque Country.

iii. Others: victims, offenders, spatial-temporal distribution and crime scene.

With regard to the demographic profile of the victims, in both reports most of them were men (63.5% in Spain and 70% in the Basque Country) aged between 18 and 50 (over two thirds of the cases). As for the place of origin, it is surprising that in Spain 74.6% of the victims were Spanish, whereas in the Basque Country this figure goes down to 55%, 79% of whom came from the Basque Country. Likewise, with regard to the foreign victims, the groups which suffered more victimization in both cases were those from Africa (12.6% in Spain and 17.2% in the Basque Country) and from America (7.9% in Spain and 19.3% in the Basque Country).

With regard to the demographic profile of the offenders, both in Spain and in the Basque Country, the perpetrators of the hate incidents were mainly men (84.5% in Spain and 66.96% in the Basque Country), young adults under 40 (73% in Spain and 56.52% in the Basque Country) and of Spanish nationality (79.7% in Spain and 84.35% in the Basque Country).

With regard to the spatial-temporal distribution of these incidents, the report of the Ministry of the Interior shows that the months in which more incidents of this type were recorded were August and November, with 166 and 177 incidents respectively. However, in the Basque Country, the months in which more incidents were recorded were May, with 15 incidents and July, with 13 incidents.

Finally, with regard to the spatial pattern, both in Spain and in the Basque Country, a large part of the incidents seem to take place in urban public spaces (35.9% in Spain and 32.4% in the Basque Country). As for the private sphere, homes (20.2% in Spain and 18.1% in the Basque Country) and hospitality and leisure establishments (13% in Spain and 15.2% in the Basque Country) are the most noteworthy locations where these incidents take place.

2. COMPARATIVE ANALYSIS WITH SCOTLAND & NORTHERN IRELAND

2.1. SCOTLAND

2.1.1. Legislative equivalents

Below is an updated descriptive framework for the Scottish legislation linked to hate crimes. It will be descriptive because the aim is to provide, without going into too much detail, a current view of the main instruments¹⁵ which will be used to discuss, in greater or lesser depth depending on the stage (e.g.: reporting to the police, police charges, prosecution by the prosecution service or sentencing by the Scottish courts), the statistical information which is collected, managed and published –on an official basis through the Scottish Executive – by the various authorities involved (police, prosecution and courts).

i. Standalone aggravated types. There is a special crime of racially-aggravated harassment in art. 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (CLCSA). This article was in turn created by the Crime and Disorder Act 1998 (CDA), whose art. 33 is only in force for Scotland. Unlike what happened in England and Wales in the immediately preceding Articles of the CDA (arts. 28-32), the crime we are dealing with is special because the prejudiced element is inherent to –or is incorporated into- the type (standalone offence). Therefore, it is not an ordinary offence liable to be aggravated later¹⁶. This structure which

¹⁵ All in all, Scotland maintains a long tradition as far as common law powers are concerned, which, over time has made it possible to appreciate aggravation factors in the sentencing stage. The legislation has been implemented on many occasions to supplement those powers. And even though the focus is on a specific legislation (hate crimes), as certain general aggravation mechanisms acquire relevance with regard to certain criminal types, these types may be properly clarified throughout the analysis of the empirical reality. In fact, it must be stated that common law offences are liable to be aggravated by generic statutory aggravations (e.g. breach of the peace, aggravated by means of art. 96 of the Crime and Disorder Act 1998).

¹⁶ It should be remembered that arts. 28 to 32 of the CDA, applicable in the English law, contain aggravated types which have been created ex novo with regard to a closed list of crimes which are in turn included in dispersed legislative provisions. Therefore, it is essential to resort to the basic crime corresponding to each aggravated type. See UNESCO CHAIR FOR HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “Informe de incidentes de odio de Euskadi 2018” (2018 Report on Hate Crimes in the Basque Country), *Eusko Jaurlaritza-Gobierno Vasco*, 2019, pp. 51-52.

provides autonomy to the type, race being the only protected category, has no equivalent for any other criminal types¹⁷.

The criminal behaviour included in art. 50A of the CLCSA deals with two approaches which involve two different crimes: (i) pursuing a racially-aggravated course of conduct which amounts to harassment of a person and is intended to amount to harassment of that person, or which occurs in circumstances in which it would appear to a reasonable person that it would amount to harassment of that person; (ii) acting in a manner which is racially aggravated and which causes, or is intended to cause, a person alarm or distress. In any case, in either of these two approaches, the crime is racially aggravated if (i) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person's membership (or presumed membership) of a racial group; or (ii) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group. Racial group is understood as the group of persons who are defined by reference to race, colour, nationality (including citizenship) or ethnic or national origin. As for the course of conduct, it requires a minimum of two different occasions to be considered as such. Finally, any expression or speech is also understood as conduct for these purposes. **Equivalences with the CP 1995:** Harassment offence of art. 172 ter CP + Aggravation of art. 22.4 CP.

(A) Categories which are –expressly¹⁸- missing in the CLCSA (art. 50A), with regard to art. 22.4 CP: Anti-Semitism, ideology, religion, beliefs, sex, sexual identity or orientation, reasons of gender, illness, disability.

(B) Categories which are –expressly- missing in art. 22.4 CP with regard to the CLCSA (art. 50A): Transgender identity, colour, nationality.

(C) Categories shared by the CLCSA (art. 50A) and art. 22.4 CP: Race, national origin or nation, ethnicity or ethnic origin.

¹⁷ However, its persistence is currently being questioned due to the difficulties it presents in practice. In fact, there are more general alternatives which could provide legal protection in a very similar manner and for the same type of behaviour. For further detail, analysing and advocating for repeal, see BRACADALE, L., “Independent review of hate crime legislation in Scotland. Final report”, *Scottish Government*, 2018, pars. 7.1-7.26. See also SCOTTISH GOVERNMENT, “One Scotland: Hate has no home here. Consultation on amending Scottish hate crime legislation”, *Scottish Government*, 2018, pp. 51-55.

¹⁸ With “expressly” here and hereafter we mean those categories which do not appear as such in one precept or the other, without prejudice to their having been effectively absorbed by other more general ones.

ii. “Generic” aggravation in sentencing. There are different provisions regarding aggravation in the sentencing stage. The aggravation with these characteristics, but for race-based reasons, are provided for in art. 96 of the CDA. According to this article, the offence is racially aggravated if (i) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim’s membership (or presumed membership) of a racial group; or (ii) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group. Racial group is understood as a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origin.

The religious prejudice aggravation, provided for in art. 74 of the *Criminal Justice (Scotland) Act 2003* (CJSA), maintain the wording in the same terms as above, but instead of a racial group they refer to a religious group, or a social or cultural group with a perceived religious affiliation. Religious group is understood as a group of persons defined by reference to their: (a) religious belief or lack of religious belief; (b) membership of or adherence to a church or religious organization; (c) support for the culture and traditions of a church or religious organization; (d) participation in activities associated with the culture and traditions of a church or religious organization. Finally, the aggravation relating to disability (art. 1) and sexual orientation or transgender identity (art. 2) are provided for in the *Offences (Aggravation by Prejudice) (Scotland) Act 2009* (OAPSA). They maintain the same double tracked structure provided for race and religion, disability being understood as any physical or mental impairment of any kind. Besides, a medical condition which has (or may have) a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment.

Equivalences with the CP 1995: Aggravation of art. 22.4 CP.

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| <p>(A) Categories which are -expressly- missing in the CDA (art. 96), CJSA (art. 74) and OAPSA (arts. 1 and 2) with regard to art. 22.4 CP: Anti-Semitism, ideology, beliefs, sex, sexual identity, reasons of gender, illness.</p> <p>(B) Categories which are -expressly- missing in art. 22.4 CP with regard to the CDA (art. 96), CJSA (art. 74) and OAPSA (arts. 1 and 2): Transgender identity, colour, nationality.</p> |
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(C) Categories shared by CDA (art. 96), CJSA (art. 74) and OAPSA (arts. 1 y 2), and art. 22.4 CP: Race, religion, national origin or nation, disability, sexual orientation, ethnicity or ethnic origin.

iii. Incitement to hatred. The offences and other provisions relating to incitement to racial hatred can be found in articles 17-29 of the Public Order Act 1986 (POA). These provisions are shared by the Scottish law or Scott's law and the English law, although –contrary to what happened in the latter¹⁹- the legal protection does not extend to any categories other than race. Therefore, the focus is restricted to racial hatred, inherent to the criminal types examined herein (standalone offences), which is defined as hatred against a group of persons which is defined by reference to race, colour, nationality (including citizenship) or ethnic or national origin (art. 17 of the Public Order Act 1986).

Furthermore, in a more individualized manner, those offences which are intended to –or which may- promote racial hatred are the following: a) The use of words or behaviour or display of written material (art. 18); b) Publishing or distributing written material (art. 19); c) Public performance of play (art. 20); d) Distributing, showing or playing a recording (art. 21); e) Broadcasting or including programme in cable programme service (art. 22); f) Possession of racially inflammatory material (art. 239). **Equivalences with the CP/1995:** Incitement to hatred (art. 510 CP).

(A) Categories which are -expressly- missing in the POA (arts. 17-29) with regard to art. 510 CP: Anti-Semitism, ideology, religion or beliefs, family situation, sex, sexual identity or orientation, reasons of gender, illness, disability.

(B) Categories which are -expressly- missing in art. 510 CP with regard to the POA (arts. 17-29): Colour, nationality.

(C) Categories shared by the POA (arts. 17-29) and el art. 510 CP: Race, national origin or nation, ethnicity or ethnic origin.

¹⁹ UNESCO CHAIR FOR HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “Report... op. cit., pp. 53-54.

2.1.2. Sectarianism and other possible forms of tackling political prejudice in the –current and future- legislation on hate crime

In 2018 the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (OBFTCSA), frequently referred to as antisectarian law, was repealed. This Act dealt with the offensive or threatening behaviour in football matches which is likely to incite -or would be likely to incite – public disorders. This behaviour involved: (i) expressing hatred of –or stirring up hatred against- a group of persons based on their membership (or presumed membership) of a religious group, a social or cultural group with a perceived religious affiliation, or a group defined by reference to their colour, race, nationality (including citizenship), ethnic or national origin, sexual orientation, transgender identity or disability; (ii) expressing hatred of, or stirring up hatred against, an individual based on the individual’s membership (or presumed membership) of a religious group, a social or cultural group with a perceived religious affiliation, or a group defined by reference to their colour, race, nationality (including citizenship), ethnic or national origin, sexual orientation, transgender identity or disability; (iii) behaviour that is motivated –wholly or partially- by malice and ill-will against persons in any of the previous subcategories; (iv) behaviour that is threatening; or (v) other behaviour that a reasonable person would be likely to consider offensive (art. 1).

Since this Act entered into force in 2012, the Scottish prosecution service prosecuted cases involving intra-Christian religious hostility (either anti-Roman Catholic or anti-Protestant) precisely under art. 1 of the Act. Before 2012, the practice was to prosecute a common law offence, such as breach of the peace, and add the statutory aggravation of religious prejudice²⁰.

While the repeal of the OBFTCSA was being enacted, different voices brought to the attention of the Scottish Parliament’s Justice Committee that, regardless of whether it came through or not, it would be advisable that the Scottish Government considered the introduction of a legal definition for the term sectarianism²¹. Therefore, the Commission of Justice

²⁰ BRACADALE, L., “Independent review...op. cit., par. 8.29.

²¹ For further information on the debate around the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill, see: <https://www.parliament.scot/parliamentarybusiness/Bills/105269.aspx> [Last accessed: 19/01/2020]. More specifically, see JUSTICE COMMITTEE, “Stage 1 report on the Offensive Behaviour at Football and

determined that this definition would pave the way for future parliamentarians or governments to bring forward laws which addressed this phenomenon. If the aim was to legislate on “sectarian behaviours” or similar terms in the future, it would be advisable to develop a definition of sectarianism for the Scottish legal system²². To that end, a working group was designated: the Working Group on Defining Sectarianism in Scots Law. This working group would have to assess the advantages and disadvantages of establishing said legal definition and, if appropriate, propose one. Their report²³ was presented to Parliament on 29 August 2018 and published on 14 November that year. But even before it was presented to Parliament, another report examining and assessing the *status quo* of the legislation on hate crimes in Scotland, by retired Judge Lord BRACADALE, was published on 31 May 2018.

BRACADALE’s independent report points out that the concept of sectarianism goes beyond hate crime and, in fact, terms such as “exclusion” or “discrimination” which are usually used to define what sectarianism is, prove that it is not restricted to the criminal sphere. Likewise, there are different currents of opinion on whether sectarianism is mainly a religious concept, a political and cultural concept, or rather a mixture of both. As for the definition of sectarianism, the judge omitted it, relying on the existence of a working group established to that end and, therefore, best suited to do so. Nevertheless, the judge claims that no gap in the law is created by the repeal of the OBFTCSA, since hostility towards sectarian identity is, as far as we know, different from hostility towards racial or religious groups. The debate arising from the conclusions by the group of experts, according to BRACADALE, will have to address how to tackle sectarian crimes and whether they must be classified as a form of hate crime or, on the contrary, they must be given *ad hoc* treatment. So far, a statutory aggravation could be applied

Threatening Communications (Repeal) (Scotland) Bill”, Scottish Parliamentary Corporate Body, 2018, pp. 57-62.

²² Nevertheless, it must be pointed out that there were already some definitions created by the Independent Advisory Group on Tackling Sectarianism in Scotland, a consulting group established by the Scottish Government in 2012 to provide independent and impartial advice on this theme, as well as on the actions which were expected so as to combat sectarianism. For example, a report in 2015 stated the following: “Sectarianism in Scotland is a mixture of perceptions, attitudes, actions, and structures that involve overlooking, excluding, discriminating against or being abusive or violent towards others on the basis of their perceived Christian denominational background. This perception is always mixed with other factors such as, but not confined to, politics, football allegiance and national identity”. See ADVISORY GROUP ON TACKLING SECTARIANISM IN SCOTLAND, “Tackling Sectarianism and its Consequences in Scotland: Final Report of the Advisory Group on Tackling Sectarianism in Scotland”, Scottish Government, 2015, pars. 2.13-2.14.

²³ WORKING GROUP ON DEFINING SECTARIANISM IN SCOTS LAW, “Final report of the Working Group on Defining Sectarianism in Scots Law”, Scottish Government, 2018, 32 pages.

to crimes characterized by religious prejudice. With regard to the political aspect which sectarian crimes may have, the judge concludes that hate crime should not extend to political identity²⁴.

In this same line, the judge also wonders whether the aggravation on racial or religious grounds must be activated if someone acts motivated by malice and ill-will towards political entities, but due to the victim being associated with them by virtue of their racial or religious group (for example, Jewish persons being targeted because of a perceived association with the State of Israel, or Muslim persons being targeted because of a perceived association with the Islamic State). BRACADALE concludes that it is not advisable to extend the protection provided by the anti-hatred legislation to political entities, as it would take the concept of “hate crime” too far and dilute its impact. To know whether a crime has actually been committed and aggravate it on the grounds of race or religion, in most cases, the observation of the conduct and the context in which it is engaged will indicate whether the circumstances are such that an offence is committed at all. The introduction of the aforementioned aggravation in the legislative debate would represent a move away from the principle of protected characteristics reflecting intrinsic personal characteristics, and would introduce complexity and uncertainty into the law. Finally, such aggravation would be open to interpretation and abuse for political ends, and open to change over time, depending on the political climate. Freedom of speech must be protected while at the same time preserving legitimate political criticism – e.g. to political entities or states- in a democratic society²⁵.

Going back to the report prepared by the *Working Group on Defining Sectarianism in Scots Law*, although in line with what was said by BRACADALE, it is considered that political opinions must not be included in any legal definition of sectarianism. An interesting example is provided to show its inappropriateness: “An attack on someone carrying an Irish/British flag could be identified as anti-Irish/British racism motivated by sectarianism rather than political bias”²⁶. Apart from that, it is stated that, from a criminalizing approach to the matter, some sectarian dimensions are captured by the existing fractured body of laws. And, as noted above,

²⁴ BRACADALE, L., “Independent review...op. cit., par. 8.34-8.39.

²⁵ BRACADALE, L., “Independent review...op. cit., pars. 3.40-3.49.

²⁶ WORKING GROUP ON DEFINING SECTARIANISM IN SCOTS LAW, “Final ...op. cit., p. 10 .

even the broad definition of “race” provided in the Scottish legislation on hate crime captures some elements of sectarian prejudice²⁷.

As for the convenience of it being included in the –fractured- Scottish legislation on hate crime, the working group concludes that a sectarian prejudice/hostility aggravation must be introduced, on the one hand, to capture its characteristic intersectional nature and, on the other, to introduce for the first time in the legal language a reality which –although under debate as far as its terms are concerned- is quite rooted in the Scottish society. The aggravation in which sectarianism is intended to be incorporated is that which would be used in sentencing, that is, the stage in which the penalty is determined, and for any crime. This innovative aggravation would be based on the demonstration of hostility based on perceived (a) Roman Catholic or Protestant denominational affiliation, (b) British or Irish citizenship, nationality or national origin, or (c) a combination of the above. The Scottish government, relying on the working group, has already advanced that the idea of a statutory aggravation for sectarianism is worth exploring and debating²⁸.

2.1.3. Synthesis of the evolution of the analysis of the empirical reality

In March 2007, among the publications on specific – and varied- topics which made up the «Crime and Justice» series, the Scottish government published the first statistical bulletin on racist hate incidents in Scotland²⁹. To this end, they centralized and collated the data from eight Scottish police forces, precisely those which used the definition of racist incident coined by Sir William MacPherson in the report on the murder of Stephen Lawrence in 1993³⁰. This definition

²⁷ For further detail, see WORKING GROUP ON DEFINING SECTARIANISM IN SCOTS LAW, “Final...op. cit., pp. 15-20.

²⁸ For further detail, see WORKING GROUP ON DEFINING SECTARIANISM IN SCOTS LAW, “Final...op. cit., pp. 23-32; SCOTTISH GOVERNMENT, “One Scotland... op. cit., pp. 26-27.

²⁹ All in all, it must be noted that since 1988 –and above all since the 90s- some Scottish police forces had already been recording racist incidents on their own account. These data, with considerable limitations, are obtained from the reports by Police Chief Constables published every year (*Chief Constables’ Annual Reports*). For further detail, see: CLARK, I./MOODY, S., “Racist crime and victimisation in Scotland”, *Scottish Executive Central Research Unit*, 2002, pp. 20-24.

³⁰ In the night of 22 April 1993, Stephen Lawrence, a black 18-year-old teenager, was brutally murdered while he was waiting at a bus station in London with a friend. The members of a group of five or six white youths started uttering racist insults before stabbing him. His murder was solely and unequivocally motivated by his being black. Following a period of public pressure due to the negligent and incompetent performance of the police, among some other unfortunate determinants which surrounded the case, in

was established with the aim of its being adopted not only by the police, but also by local governments and other agencies recording this type of incidents. To be precise, it referred to “any incident which is perceived to be racist by the victim or any other person [e.g. the witnesses or the victim’s family members]”. Moreover, following the recommendations of the MacPherson Report, incidents should be understood as those categorized both as crimes and non-crimes. Reporting or bringing the information regarding those facts perceived as racist to notice, as well as recording and investigating it, deserved equal commitment³¹. In line with the above, the statistical bulletin explained that incident had to be understood as “any communication by whatever means about a matter which comes to the police attention which they may be required to act upon”³².

Therefore, the key lies in the fact that the recording of incidents by the police is not limited to the discretion of the police officer, but to the victim or any other person having perceived that it has happened that way³³. The reporter cannot be demanded to provide corroborating evidence or justification to support such perception, and the police officer should

1997 it was agreed to entrust retired Judge Sir William MacPherson with an official inquiry. The result was a report –known as the MacPherson Report- of 335 pages published in February 1999. It raised the issue of the prevailing institutional racism and, also, the alarmingly defective investigation by London Police, against the ever-present backdrop of the racial component. From that moment, an unprecedented public and media attention was joined by the definite incursion of racism –and its latency or its violent manifestations- in the political agenda. MACPHERSON, W., “The Stephen Lawrence Inquiry: Report of an inquiry by Sir William MacPherson of Cluny”, HMSO, 1999, sections 47.12-47.14.

³¹ MACPHERSON, W., “The Stephen Lawrence Inquiry... op. cit., sections 47.12-47.14.

³² SCOTTISH EXECUTIVE, “Racist incidents recorded by the police in Scotland, 2003/04 to 2005/06”, *Scottish Executive*, 2007, section 3.6.

³³ The impact of the MacPherson Report published in 1999 had an immediate response in Scotland. In that same year, a working group made up of representatives of the *Association of Chief Police Officers in Scotland* (ACPOS) and the Scottish Government, amongst others, met to carry out a detailed examination of the implications the Report would have and the recommendations contained therein. It was all framed within a more general action plan called *Lawrence Report Action Plan for Scotland*, implemented in July 1999, containing good practice recommendations for the investigation of racist crimes. To develop these recommendations, the ACPOS published on 14 March 2000 their Race Diversity Strategy, supplemented on 1 August 2000 with a guidance manual aimed at the Scottish police. The manual, among other issues, made it clear that the definition of racist incident coined by William MacPherson removed any potential discretionary declassification of the incidents at the police reporting and recording stage. It also gave advice on a minimum standard for information to be compiled and stored and properly analyzed in the future, due to which it would serve as the basis for the work of the Scottish Criminal Statistics Committee. For further detail regarding the recommendations made in the Lawrence Report Action Plan for Scotland, as well as for these and other considerations regarding their subsequent development until February 2001, see SCOTTISH EXECUTIVE, “The Stephen Lawrence Inquiry. An Action Plan for Scotland”, *Scottish Executive*, 1999.

not even challenge directly the information provided. It is an objectified victim-centred approach³⁴, which, in principle, conveys the assumption that it contributes to increasing trust and confidence when reporting some facts which, at least from a first reading, are unquestionable *ad extra*. The truth, as is usually the case, is rather different. The number of incidents known by the police still is much lower than those actually committed³⁵. In any case, this approximation focused on the victim also involved a change in the system used by the Scottish police to record the incident. On 1 April 2004 they started using the so-called SCRS (*Scottish Crime Recording Standard*)³⁶ although before that, if the victim did not want a police investigation to be carried out, for some reason, the crime was not recorded.

Without going into further detail, in the months of April to March corresponding to the three years analyzed in this first bulletin (2003/04, 2004/05 and 2005/06) a total of 3,643, 4,546 and 5,124 racist incidents were recorded respectively. The report also contained the first breakdowns and prevalences regarding the police area or town where they were committed, the location where they were committed, the day of the week, the reporter, the number of crimes together with the crime types observed in the incidents, the rate of all recorded crimes in which there was sufficient evidence to consider bringing criminal action (even if later on, for various reasons, this did not take place), the ethnic origin of the victims/offenders, the main language of the victims/offenders, the age range and gender of the victims/offenders, the number of incidents in the two years immediately before which were reported to the police by the victim and finally the police action adopted with regard to the presumed perpetrator of the offence.

³⁴ AMNESTY INTERNATIONAL UK, “Tackling hate crime in the UK: A background briefing paper from Amnesty International UK”, *The Human Rights Action Centre*, 2017, p. 7.

³⁵ This black figure is recognized as a key factor with considerable influence on the number of recorded incidents. See, for example, the report of February 2019, published by the Scottish Government in collaboration with the Scottish police, on hate incidents. This report resorts to a more general victimization survey which, leaving aside the limitations inherent thereto (e.g. there is no information on hate crimes, but only on violent crimes and crimes against property, and even within these categories there are exceptions), its latest version -July 2019- shows an estimated rate of 35% as for the total number of crimes which are reported to the police. On the other hand, it has been a stable rate since 2008/09. SCOTTISH GOVERNMENT, “Developing information on hate crime recorded by the police in Scotland”, *Scottish Government*, 2019, p. 18; SCOTTISH GOVERNMENT, “Scottish Crime and Justice Survey 2017/18: Main Findings”, *Scottish Government*, 2019, pp. 5 and 33.

³⁶ For further detail, see the guide updated as of June 2019 on the SCRS, which contains a whole section devoted to hate crimes or incidents: SCOTTISH GOVERNMENT, “Scottish Crime Recording Standard and Counting Rules”, *Scottish Government*, 2019, pp. 43-48.

The following reports, published annually from 2009 onwards, also reviewed and – where appropriate- updated the information obtained in previous years so as to adjust it to the new data. Following the same organizational structure of the first one, the figures obtained provided the following total number of racist incidents recorded by the police: 4,519 (2004/05), 5,112 (2005/06), 5,322 (2006/07), 5,247 (2007/08), 5,145 (2008/09), 4,960 (2009/10), 4,911 (2010/11), 5,389 (2011/12), 4,628 (2012/13) and 4,807 (2013/14)³⁷.

In point of fact, the last of these statistical bulletins –published in November 2015-, in the section dealing with considerations for the future, stated that consideration was being given to the possibility of replacing and expanding the statistical bulletins on racist incidents to other protected categories. In other words, assessing the pioneering implementation of a new report on hate incidents which would not be limited to the racial element. The Scottish Government undertook to work with the Scottish police while the latter developed the information which was already in the incident recording system at that time³⁸. This system, known as IVPD (Interim Vulnerable Persons Database), was introduced in 2013 and was adapted to a national scale in 2014. But it is not actually a police recording system, as the SCRS could be, but rather an additional database where to include the incidents related to hate criminality. Even nowadays, it contains information on *“people who are suffering, or who are perceived to be suffering, some situational adversity and/or vulnerability which may affect their present or future well-being”*³⁹. This information, together with the fact that it was not being dumped manually following the collection of data from different collection systems used in Scotland, made it possible, as from 2016, to start shaping the horizon established by the Justice Analytical Services of the Scottish Government on the prospective transversal study of hate incidents.

³⁷ All the reports, from the first one, published in March 2007, to the last one, in November 2015, are available online: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubRacistIncidents>

³⁸ See: SCOTTISH GOVERNMENT, “Racist incidents recorded by the police in Scotland, 2013/14”, *Scottish Government*, 2015, sections 6.58-6.60; SCOTTISH GOVERNMENT, “Justice Analytical Services. Analytical Programme 2015-16”, *Scottish Government*, 2015.

³⁹ SCOTTISH GOVERNMENT, “Developing... op. cit., pp. 3 and 19.

2.1.4. Hate incidents (2018/19)

First of all, it should be pointed out that there is a very common distinction between «crimes» and «offences» for merely statistical purposes in the reports which will be dealt with below. While «crime» is normally used for the most serious criminal acts, «offence» is used for those for those which are not so serious. The seriousness refers, in turn, to the maximum sentence which can be imposed for that «crime» or «offence». Following the classifications or indications which are usually provided as an appendix to the reports which will be dealt with, it is possible to advance that most hate crimes will coincide with the term «offence», since it comprises a varied subgroup of crimes (called miscellaneous offences) containing, among others, assault, breach of the peace, threatening or abusive behaviour⁴⁰, stalking, racially aggravated harassment, racially aggravated conduct, etc. On the other hand, «crime» comprises, amongst others, homicide, serious assault⁴¹ or, for example, crimes against public order⁴².

The recording we are dealing with, even when carried out by the police, does not take place at the beginning. Below is a short description of the whole process followed by Scottish police officers to record the information on hate crimes. That is, the operating procedure from the moment an incident is reported to them to the moment they decide to bring charges and submit a report to the prosecution service.

⁴⁰ According to the provisions of art. 38 of the Criminal Justice and Licensing (Scotland) Act 2010, a person commits an offence involving threatening or abusive behaviour if: (a) behaves in a threatening or abusive manner; (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm; (c) intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm. This applies to behaviour of any kind, including, in particular, things said or otherwise communicated as well as things done, and behaviour consisting of a single act or a course of conduct. See SCOTTISH GOVERNMENT, “Developing... op. cit., p. 29.

⁴¹ Assault is a common law crime in Scotland. To correctly distinguish between assault or common assault and serious assault, the Scottish police uses the following definition: “An assault or attack in which the victim/reporter sustains injury resulting in detention in hospital as an inpatient, for the treatment of that injury, or any of the following injuries, whether or not detained in hospital: fractures, internal injuries, severe concussion, lacerations requiring sutures which may lead to impairment or disfigurement or any other injury which may lead to impairment or disfigurement”. See SCOTTISH GOVERNMENT, “Developing... op. cit., p. 29; SCOTTISH GOVERNMENT, “Scottish Crime Recording... op. cit., p. 117.

⁴² SCOTTISH GOVERNMENT, “Criminal proceedings in Scotland, 2017-18”, *Scottish Government*, 2019, pp. 99-103; SCOTTISH GOVERNMENT, “Recorded crime in Scotland, 2018-19”, *Scottish Government*, 2019 pp. 118-124.

a) Police procedure regarding hate incidents

Upon the first evidence regarding a potential incident, that information is entered into a system known as STORM (System for Tasking and Operational Resource Management). We can talk about STORM, at least since February 2018, as a command and control system used at a national scale by the Scottish police. As soon as the incident is entered into the system, it receives an initial classification which will be subject to variations as the investigation progresses. In fact, one of these first classifications will indicate whether it is an incident which includes a hate element or not. That is, instead of talking about a generic incident we now classify it as a hate incident. Moreover, as the investigation progresses, this incident can be registered in another independent system: CMS or Crime Management System. This system is used to manage crimes, not incidents, although the crimes recorded therein are associated to the incident registration number in the STORM. However, unlike the STORM, the CMS is not standardized and different police divisions may be using different alternative crime management systems.

When the police investigation comes to an end, the classification in the STORM system regarding the incident is updated. Up to six different codes may be assigned, one of which is whether there is eventually a hate element or not or whether the crime has been notified for it to be registered in the CMS or not. If there is a hate element, a new record must then be opened in the IVPD. As we advanced before, it is a national database where incidents related to hate criminality are entered. The IVPD, amongst other things, makes it possible to identify victims who have been so in more than one occasion or repeat offenders. All in all, the registration of the STORM incident number in the IVPD is still voluntary (to be precise, it is a field to enter free text); therefore, the exchange of information contained in the various systems or databases will not always be possible. In spite of this, it has been determined that the very design of the IVPD favours the extraction of data of higher quality. In fact, after several auto-matching tests and other manual checks it was established that at least 88% of the hate incidents recorded by the police in the second half of 2016/17 were registered in the IVPD. The statisticians of the Scottish Government and the Scottish Police considered this percentage to be sufficiently high with a view to data collection.

b) Empirical reality: Breakdown and information of interest.

The police recorded 6,736 hate incidents in the IVPD in 2017/18. This figure, although with fluctuations, is in keeping with that of the previous years (between 6,600 and 7.000)⁴³.

Not surprisingly, Glasgow (1,867) and Edinburgh (1,343) stand out from the rest and together account for 48% of all hate incidents in Scotland. According to the characteristic on which the aggravation of the crime at issue is based, 4,491 incidents (66.67%) correspond to race, 1,085 incidents (16.10%) to sexual orientation, 504 incidents (7.48%) to religion, 323 incidents (4.76%) to multiple aggravations (where the race-religion tandem prevails with 160 incidents), 274 incidents (4.06%) to disability and 59 incidents (0.87%) to transgender identity⁴⁴.

With regard to the crime types, threatening or abusive behaviour stands out above the rest. Of the 6,736 hate incidents of the year 2017/18, 3,031 were related to this offence (44.99%). In descending order from the largest to the smallest number of incidents, the racially aggravated conduct also stands out with 1,561 incidents (23.17%) as well as common assault with 886 incidents (13.15%) and the offences in art. 127 of the *Communications Act 2003* with 364 incidents (5.40%). Although all the previous incidents without exception are associated to the category «offences», in the category «crimes» we can highlight vandalism, for example, with 243 incidents (3.60%)⁴⁵.

Furthermore, the data can be broken down according to the prevalence of each protected category in crimes such as those above. However, it should be noted that a hate incident can be included in different categories if there has been multiple victimization. With regard to race, it has been present in 4,765 incidents, 1,705 of which were related to threatening or abusive

⁴³ In 2014/15 there were 7,029 hate incidents, in 2015/16 there were 6,786, and in 2016/17 there were 6,577. See SCOTTISH GOVERNMENT, “Developing... op. cit., pp. 19-20.

⁴⁴ All these figures have remained stable with very small variations since the year 2014/15, the first year in which data in this regard were provided. SCOTTISH GOVERNMENT, “Developing... op. cit., p. 21.

⁴⁵ SCOTTISH GOVERNMENT, “Developing... op. cit., pp. 22-23.

behaviour (35.78%), 1,561 to racially-aggravated conduct (32.75%) and 665 to common assault (13.95%). With regard to sexual orientation, it has been present in 1,224 incidents, 860 of which were related to threatening or abusive behaviour (70.26%) and 136 to common assault (11.11%). With regard to religion, it has been present in 711 incidents, 402 of which were related to threatening or abusive behaviour (56.54%). With regard to disability, it has been present in 308 incidents, 177 of which were related to threatening or abusive behaviour (57.46%) and 38 to the offences in art. 127 of the Communications Act 2003 (12.33%). With regard to transgender identity, it has been present in 82 incidents, 50 of which were related to threatening or abusive behaviour (60.97%) and 14 to common assault (17.07%)⁴⁶.

The total number of crimes recorded by the police in 2018/19 was 246,480, whereas the number of offences was 247,791⁴⁷. **With regard to racially aggravated harassment**, which, as noted above, is included in the category offences, in 2018/19 **there were 108 police records. As for racially aggravated conduct, there were 1,636 police records**⁴⁸. With regard to the rest of the offences (for example, assault, breach of the peace, etc.), as it is not expressly stated whether they have a specific aggravator incorporated or not, it is not possible to know the relevant data.

2.1.5. Other sources of official data

Although all the previous information is related to the recording of hate incidents at police headquarters, either with general or more sector-specific official reports, most of the reports which have been published do not have that approach. To be precise, the most generalized practice is to provide data on those hate incidents which are actually reported to the Crown Office and Procurator Fiscal Service (COPFS). And this Service publishes and disseminates annual reports which show the actual number of hate crime cases managed by them. Finally, at a later stage, it is possible to obtain data relating to aggravations associated to the main crimes committed by people who have already been sentenced. These are, in short,

⁴⁶ SCOTTISH GOVERNMENT, “Developing... op. cit., pp. 24-25.

⁴⁷ See SCOTTISH GOVERNMENT, “Recorded crime...op. cit., pp. 11-21 and 65-66;

SCOTTISH GOVERNMENT, “Criminal proceedings...op. cit., p. 9.

⁴⁸ SCOTTISH GOVERNMENT, “Recorded crime...op. cit., pp. 72 and 102.

disaggregated data which form part of a more extensive government report on criminal proceedings concluded at Scottish courts.

All in all, it is necessary to point out that any comparative analysis of the results from the different data sources available, which in turn are related to very different stages of the Scottish justice system, must be carried out with caution and without any conclusive automatism⁴⁹.

a) Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service or COPFS is organized by regions, in such a way that each region has an Area Procurator Fiscal and a certain number of local Procurator Fiscals who work for the Area Procurator Fiscal. It is usually the police who conduct the first investigation of the seemingly criminal actions so as to, where appropriate, bring charges and submit a report to the corresponding local Procurator Fiscal. It is in this first moment when the reports (of charges) received by the local Procurator Fiscals are centralized in a COPFS database. Without any need to know whether the fiscals finally prosecute or bring proceedings against someone, or even how they will manage the situation (for example, impose a fiscal fine as an alternative measure to bringing charges), only the data which are initially entered in the database will be developed and analyzed in the reports published⁵⁰. The first report was published in 2012, although it also has data from previous years (2006/07-2011/12). The latest available, on which we will focus, is the report for the year 2018/19⁵¹, which also helps data monitoring, as it contains the figures from previous years⁵². Another special feature of these reports is that they show the number of charges which have been reported to the COPFS, and not the number of people charged or the number of incidents on which the charges are based.

⁴⁹ SCOTTISH GOVERNMENT, “Developing... op. cit., p. 10.

⁵⁰ All of them are available online for consultation and monitoring: <https://www.copfs.gov.uk/publications/equality-and-diversity>

⁵¹ SCOTTISH GOVERNMENT, “Hate crime in Scotland 2018-19”, *Crown Office and Procurator Fiscal Service*, 2019.

⁵² They mainly contain data from the period between 2010/11 and 2018/19, since the most recent categories introduced by way of legislation (disability, sexual orientation and transgender identity) came into effect on 24 March 2010. Nevertheless, the report also maintains some minor considerations regarding previous years.

The total number of charges which either the police or other agencies reported to the COPFS was 4,616 in 2018/19⁵³. This figure is obtained by computing a charge in which there is more than one prejudice-based aggravator involved as just one single charge. However, the breakdown by protected categories is obtained by taking into account each category which is present in the facts separately and in their respective classification (for example, a black homosexual victim accounts for a racial charge and for a sexual orientation charge). Taking the above into account, in order of prevalence, we have racial crimes⁵⁴ with 2,880 charges, sexual orientation aggravated offences⁵⁵ with 1,176, religiously aggravated offences⁵⁶ with 529, disability aggravated offences⁵⁷, with 289 and transgender identity aggravated offences⁵⁸ with 40. This means that racial offences represent –or are present in- more than half of the charges, around 58.60%, whereas markers such as sexual orientation (23.93%), religion (10.76%), disability (5.88%) and transgender identity (0.81%) are quite far in quantitative terms.

All in all, it is fair to say that in 2018/19 the charges for racial offences reached a historical minimum since they started being computed for comparative purposes (2003/04). A more in-depth analysis will show that there has been a progressive fall in racially aggravated harassment and behaviour, currently with 1,205 charges (41.84%). Other racially aggravated offences, such as threatening or abusive behaviour or assault, have gone up. In total, these offences amounted to 1,675 charges (58.15%) in 2018/19. With regard to those charges which

⁵³ The totals for the previous years are the following: 5,332 (2010/2011), 6,053 (2011/12), 5,408 (2012/13), 5,658 (2013/14), 5,208 (2014/15), 5,334 (2015/16), 5,037 (2016/17) and 5,060 (2017/18).

⁵⁴ With regard to any charges for racially aggravated harassment and behaviour, according to the provisions of article 50A of the Criminal Law (Consolidation) (Scotland) Act 1995, of articles 18, 19 and 23(1)a of the Public Order Act 1986, or to any aggravation on racial grounds under the provisions of art. 96 of the Crime and Disorder Act 1998.

⁵⁵ With regard to the charges which include an aggravation by prejudice relating to sexual orientation under the provisions of art. 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

⁵⁶ With regard to the charges which include an aggravation by religious prejudice under art. 74 of the Criminal Justice (Scotland) Act 2003. Moreover, even though the last specialized report dates from June 2018, the Scottish Government has analyzed these charges in greater detail. For example, as pointed out with regard to the year 2017/18, Roman Catholicism accounted for the greatest number of charges, with a total of 319 (49.68%), followed by Protestantism and Islam, with 174 (27.10%), derogatory conduct towards Islam, with 115 (17.91%) and derogatory conduct towards Judaism with 21 (3.27%). With regard to the specific crimes to which the religious aggravation is added, the most noteworthy by far is threatening or abusive behaviour, with 502 charges (78.19%). For further detail, regarding these and many other considerations, see SCOTTISH GOVERNMENT, “Religiously aggravated offending in Scotland 2017-18”, Scottish Government, 2018.

⁵⁷ With regard to the charges which include an aggravation by prejudice related to disability under the provisions of art. 1 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

⁵⁸ With regard to the charges which include an aggravation by prejudice related to transgender identity under the provisions of art. 2 of the Offences (Aggravation by Prejudice) (Scotland) Act 2009.

include an aggravation by prejudice related to sexual orientation, with the exception of the year 2014/15, they have continued to rise. As for the charges which include an aggravation by behaviour based on religious grounds, it has been the lowest figure since 2004/05. With regard to charges which include an aggravation by prejudice related to disability, they have reached the historical maximum. Except for the year 2016/17, the charges for the previous reasons have been increasing year after year. And with regard to the charges which include an aggravation by prejudice related to transgender identity, there has also been an upward trend all along, with the exception of the year 2018/19.

Finally, another interesting piece of information in the report is the reference to how many of the charges entered by the COPFS in their database end up with the decision to commence court proceedings. To make this decision, the prosecutors must always abide by legal and evidential considerations⁵⁹, and –especially- public interest considerations⁶⁰. With regard to the category of racial crimes, of the 2,880 reported charges 2,325 (80.72%) ended up in court. Moreover, in some other 226 charges (7.84%) the original charge was dismissed but there was another charge against the same defendant and within the same case which could have used information contained in the first dismissed charge. In relative terms, we could be speaking of 2,551 charges (88.56%) which have resulted in court proceedings. Similarly, with regard to offences aggravated by sexual orientation, of the 1,176 reported charges 967 (82.22%) ended up

⁵⁹ As for the legal considerations, the prosecutors must make sure that the conduct constitutes a crime known to the law of Scotland and find out if there is any legal impediment to bring charges. They must also take into account, among other things, the obligations deriving from the *Human Rights Act 1998* and the *Scotland Act 1998*, which require prosecutors to act in a way which is compatible with the European Convention on Human Rights. As for the evidential considerations, there must be sufficient evidence to prove the essential facts of the case beyond any reasonable doubt. The prosecutor must also assess whether a court will allow the evidence to be considered. Finally, consideration must also be given to the reliability of the evidence, which involves an assessment of the quality of the evidence. The lack of reliability or veracity should also discourage the prosecutor from commencing proceedings. See CROWN OFFICE AND PROCURATOR FISCAL SERVICE, “Prosecution Code”, *Crown Office*, 2001, pp. 3-5.

⁶⁰ To overcome the public interest test, it is necessary to carry out an assessment of all the relevant factors, which will be more or less important depending on the circumstances of each case. Among other factors, consideration should be given to the following: (1) the nature and gravity of the offence; (2) the impact of the offence on the victim and other witnesses; (3) the age, background and personal circumstances of the accused; (4) the age and personal circumstances of the victim and other witnesses; (5) the attitude of the victim; (6) the motive for the crime; (7) the age of the offence; (8) mitigating circumstances; (9) the effect of prosecution on the accused; (10) the risk of further offending; (11) the availability of more appropriate civil remedy; (12) the ability of the court –in that specific case- to take certain action on conviction; and (13) if it is a general public concern, as well as local community interests. For further detail, see CROWN OFFICE AND PROCURATOR FISCAL SERVICE, “Prosecution... op. cit., pp. 6-8.

in court. Moreover, in other 103 charges (8.75%) the original charge was dismissed with the aforementioned possible consequences. Therefore, we could be speaking of 1,070 charges (90.98%) which have resulted in court proceedings. With regard to religiously aggravated offences, of the 529 reported charges 453 (85.63%) ended up in court. Moreover, in some other 41 charges (7.75%) the original charge was dismissed with the aforementioned possible consequences. Therefore, we could be speaking of 494 charges (93.38%) which have resulted in court proceedings. With regard to the offences aggravated by disability, of the 289 reported charges 243 (84.08%) ended up in court. Moreover, in other 14 charges (4.84%) the original charge was dismissed with the aforementioned possible consequences. Therefore, we could be speaking of 257 charges (88.92%) which have resulted in court proceedings. With regard to the offences aggravated by gender identity, it is just stated that of the 40 reported charges 29 (72.50%) ended up in court.

b) Scottish courts: Sentencing

In 2017/18 a total of 95,254 people were charged in Scotland, which gave rise to 82,716 sentences⁶¹. And within them there is a subgroup of aggravations –by disability, race, religion, sexual orientation and transgender- whose number of sentences is also broken down in the same annual -and general- report on the criminal proceedings concluded in Scotland⁶². Nevertheless, the data contained therein must not be associated only with aggravations which have actually been applied and have turned into sentences. There are also identifiers -on disability, race, religion, sexual orientation or transgender identity- which have been entered in a database as additional information for some charges which end up being judged. This database is called Criminal History System (CHS), and has been used by both the police and the prosecution service to record considerations of interest on the nature of the committed offence. Thus, there are aspects which are reflected in the legislation and have to be evinced in court (aggravations). And there are other aspects which just provide additional information which serve as a context for the charge, without their having to be evinced (identifiers). The following data, in principle, comprise all the aggravators/identifiers in the CHS. Having said this, in 2017/18 there were **650 sentences with a race indicator, 354 with a sexual orientation indicator, 249 with a religion**

⁶¹ SCOTTISH GOVERNMENT, “Criminal proceedings...op. cit., p. 4.

⁶² Although we are referring to the latest report available, published in January 2019, all of them are available online for consultation purposes: <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubCriminalProceedings>

indicator, 58 with a disability indicator and 12 with a transgender indicator. Whenever there was more than one indicator associated to the same proceedings, both were taken into account to calculate the final number in each of the categories.

The race indicator can be broken down into 518 sentences in which the convicted person was a man (79.69%) and 132 in which it was a woman (20.30%). With regard to the sexual orientation indicator, there are 295 sentences for a man (83.33%) and 59 for a woman (16.66%). With regard to the religion indicator, there are 231 sentences for a man (92.77%) and 18 for a woman (7.22%). With regard to the disability indicator, there are 41 sentences for a man (70.68%) and 17 for a woman (29.31%). With regard to the transgender indicator, there are 10 sentences for a man (83.33%) and 2 for a woman (16.66%).

As for the distribution by crime type of sentences with any of the previous indicators, most of the sentences are within a group of offences in which it is not possible to specify the number of sentences which can be attributed to each of them. These are the offences related to breach of the peace, threatening or abusive behaviour, stalking, offensive behaviour at football and threatening communications, the latter lying within the now repealed Offensive Behaviour at Football and Threatening Communications Act 2012. This group of offences represent 431 of the total of sentences with the race indicator (66.30%), 304 of the total with the sexual orientation indicator (85.87%), 203 of the total with the religion indicator (81.52%), 47 of the total with the disability indicator (81.03%) and 10 of the total with the transgender indicator (83.33%). These would be followed, on the one hand by common assault⁶³, and on the other, by a group of offences which includes, amongst others, racially aggravated harassment and racially aggravated conduct⁶⁴.

⁶³ Common assault with race indicator involves 104 sentences among the 650 which include this indicator (16%). The sexual orientation indicator involves 26 sentences (7.34%). The religion indicator involves 13 sentences (5.22%). The disability indicator involves 5 sentences (8.62%). However, the transgender indicator involves 1 sentence (8.33%).

⁶⁴ Here, for example, the race indicator involves 79 sentences of the 650 which include this indicator (12.15%).

2.2. NORTHERN IRELAND

2.2.1. Legislative equivalents

Below we will develop an updated descriptive framework on the Northern Irish legislation related to hate crimes. As in the Scottish case, we will not enter into details, subtleties or judicial interpretation; the only aim is to provide a solid background on the legal situation which, as an end in itself, plays a bridging role for the subsequent analysis of the empirical reality. As a distinctive feature, the Northern Irish law does not contain aggravated types or special types with an inherent aggravation. That is, there are no crimes created *ex novo* by means of an aggravation, as in the case of the English law⁶⁵, or offences equivalent to the racially aggravated harassment of the Scottish law or Scott's law⁶⁶.

i. **“Generic” aggravation in sentencing.** Northern Ireland has incorporated the same aggravating provisions in the sentencing stage as those existing in England and Wales⁶⁷, except for the fact that transgender identity has not been provided for. They are also very similar to those of Scotland⁶⁸, but with some differences regarding the terminology used and, above all, due to their not being dispersed in the legislation. Thus, according to art. 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004 (CJNIO), when considering the seriousness of the offence, the court must treat the fact as an aggravating factor if the offence has been aggravated by hostility. In turn, an offence will be understood as aggravated by hostility if (i) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group⁶⁹, a religious group⁷⁰ or a sexual orientation group⁷¹, or a

⁶⁵ UNESCO CHAIR FOR HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “Report... op. cit., pp. 51-52.

⁶⁶ See *above*, in this Report, section «2.1.1. Legislative Equivalents».

⁶⁷ UNESCO CHAIR FOR HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “Report... op. cit., pp. 52-53.

⁶⁸ See *above*, in this Report, section «2.1.1. Legislative Equivalents».

⁶⁹ “Racial group” is understood as the group of persons who are defined by reference to colour, race, nationality or ethnic or national origin (for example Scottish, English, Welsh and Irish). This concept includes the Irish Traveller community, but not the group of persons defined by reference to religious belief or political opinion (art. 2(5) of the CJNIO which refers to art. 5(1) and 5(3) of the Race Relations (Northern Ireland) Order 1997).

⁷⁰ “Religious groups” is understood as the group of persons defined by reference to religious belief or lack of religious belief (art. 2(5) of CJNIO).

disability⁷² or presumed disability of the victim; or if (ii) the offence is motivated –wholly or partly- by hostility towards members of a racial group, a religious group or a sexual orientation group and based on their membership of that group, or towards persons who have a disability or a particular disability. **Equivalences with the CP 1995:** Aggravation of art. 22.4 CP.

- (A) **Categories which are -expressly- missing in the CJNIO (art. 2) with regard to art. 22.4 CP:** Anti-Semitism, ideology, sex, sexual identity, reasons of gender, illness.
- (B) **Categories which are -expressly missing in art. 22.4 CP with regard to CJNIO (art. 2):** Colour, nationality.
- (C) **Categories shared between the CJNIO (art. 2) and art. 22.4 CP:** Race, religion or beliefs, national origin or nation, disability, sexual orientation, ethnicity or ethnic origin.

ii. Incitement to hatred. The offences and other provisions regarding incitement to hatred (stirring up hatred or arousing fear) can be found in articles 8-17 of the Public Order (Northern Ireland) Order 1987 (PONIO). Unlike the equivalent Scottish punitive scope, here hatred is not only related to race; its definition considerably expands the protected categories. In this case, “hatred” must be understood as hatred of a group of persons defined by reference to religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origin (art. 8).

Furthermore, in a more individualized manner, the offences which are intended –or likely to- stir up hatred or arise fear are the following: a) art. 9: use of words or behaviour or display of written material; b) art. 10: publishing or distributing written material; c) art. 11: distributing, showing or playing a recording; d) art. 12: broadcasting or including programme in cable programme service; e) art. 13: possession of matter intended or likely to stir up hatred or arouse fear⁷³. **Equivalences with the CP/1995:** Incitement to hatred (art. 510 CP).

⁷¹ “Sexual orientation group” is understood as the group of persons who are defined by reference to sexual orientation (art. 2(5) of the CJNIO).

⁷² “Disability” is understood as any physical or mental impairment (art. 2(5) of the CJNIO).

⁷³ For further detail, see: MCVEIGH, R., “Incitement to hatred in Northern Ireland”, *Equality Coalition*, 2018; NORTHERN IRELAND POLICING BOARD, “Thematic review of policing race hate crime”, *Northern Ireland Policing Board*, 2017, pp. 46-50.

- (A) **Categories which are –expressly- missing in the PONIO (arts. 8-17) with regard to art. 510 CP:** Anti-Semitism, ideology, family situation, sex, sexual identity, reasons of gender, illness.
- (B) **Categories which are -expressly- missing in art. 510 CP with regard to the PONIO (arts. 8-17):** Colour, nationality.
- (C) **Categories shared by the PONIO (arts. 8-17) and art. 510 CP:** Race, religion or beliefs, national origin or nation, sexual orientation, ethnicity or ethnic origin, disability.

2.2.2. Sectarianism and other possible forms of tackling political prejudice in the –present and future- legislation on hate crime

At present, the Northern Irish legal system is the only one in the United Kingdom which includes the term sectarianism in its legislation. The Justice Act (Northern Ireland) 2011 (JANI), in art. 37 provides for an offence in the case that a person, at any time during the period of a regulated match⁷⁴, engages or takes part in chanting which: (a) is of an indecent nature, (b) is of a sectarian or indecent nature, or (c) consists or includes matter which is threatening, abusive or insulting to a person by reason of that person’s colour, race, nationality (including citizenship), ethnic or national origin, religious belief, sexual orientation or disability. Chanting is understood as the repeated uttering of any words or sounds, whether alone or in concert with one or more others.

However, the word “*sectarian*” is used but is not defined at any time, in spite of some attempts which did not succeed due to the opposition in Parliament of the Ulster Unionist Party (UUP). The Minister of Justice at that time, David Ford, of the Alliance Party of Northern Ireland (APNI), always thought that sectarian chanting should be incorporated into the law in those terms, although it was also necessary to assume that the concept of sectarianism would be covered by the references to “religious belief” (Protestant and Catholic) and to “nationality” (British and Irish). It was the Commission of Justice that recommended the explicit inclusion of

⁷⁴ The reference to “*during the period of a regulated match*” is a reference to a period beginning one hour before the start of the match and ending 30 minutes after the end of the match. See art. 35 of the *Justice Act (Northern Ireland) 2011*.

sectarianism, as well as its definition. This way, sectarian chanting would be the chanting consisting of or including matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion, or to an individual as a member of such group. The initial lack of the term "national identity", as well as the doubts created by the inclusion of "political opinion" in terms of freedom of expression, or the uncertainty as to whether a first legal definition of sectarianism would be read across to other and subsequent legislation ended up by preventing the consensus which was required for the proposal to go ahead. In June 2011, the Department of Justice of the Northern Irish Government made it clear that, as there is no legal definition for sectarianism in the legislation, it would be for the judges and courts and other operators of the criminal justice system to develop and adopt a working definition of "sectarian chanting" and "sectarianism" in order to resolve the casuistry generated⁷⁵. Several years before, in 2005, a report of the Northern Ireland Affairs Committee already mentioned how surprising it was that the police had monitored thousands of sectarian incidents by then without there being an agreed definition, even outside the legal sphere. An Assistant Chief Constable of the PSNI admitted that the police had monitored those incidents on probably a less than scientific basis⁷⁶.

Even nowadays, the truth is that sectarianism⁷⁷ appears to be diluted in the articles of reference of the Northern Irish legislation on hate crimes. To be precise, the broad category which defines "hatred" in the Public Order (Northern Ireland) Order 1987 (art. 8), as well as the race group and religious group categories defined under art. 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004 filter, at least in practice, certain sectarian manifestations. The key lies in determining what working definition is going to be adopted as a starting point, since according to the above, the term sectarianism can exclusively refer to religious belief, or can also include prejudice based on nationality and/or political opinion, thus acting as a standalone category or as a sub-category of racism⁷⁸. According to what is understood by the Public

⁷⁵ JARMAN, N., "Defining sectarianism and sectarian hate crime", *Institute for Conflict Research*, 2012, pp. 1-2; BRACADALE, L., "Independent review...op. cit., par. 8.30; WORKING GROUP ON DEFINING SECTARIANISM IN SCOTS LAW, "Final ...op. cit., p. 16.

⁷⁶ NORTHERN IRELAND AFFAIRS, "Northern Ireland Affairs - Ninth Report", Northern Ireland Affairs Committee Publications, Session 2004/05. Online publication: <https://publications.parliament.uk/pa/cm200405/cmselect/cmniaf/548/54802.htm>

⁷⁷ For a broader view of this phenomenon in the context of Northern Ireland, see, due to its having been published quite recently, the following report: MORROW, D., "Sectarianism in Northern Ireland: A Review", *Community Relations Council (CRC)*, 2019.

⁷⁸ For further details, along this line, see JARMAN, N., "Defining... op. cit., pp. 2-8.

Prosecution Service for Northern Ireland (PPS), the offences motivated by sectarianism can be considered aggravated on the basis of race or religion depending on the circumstances of the case. Nevertheless, in those offences which may be considered in broad terms to be sectarian (for example, the offence in art. 37 of the JANI), the aggravation will not fall within either statutory category of race or religion⁷⁹.

Moreover, even if there is no legal definition, the PPS has generated their own operational or working definition, in such a way that they understand sectarian – hate – crime - as *“any crime which is perceived to be sectarian by the victim or any other person. (...) is a term almost exclusively used in Northern Ireland to describe crimes of bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican”*⁸⁰. Nevertheless, as JARMAN points out, no mention has been made of nationality or national identity in the previous definition, with the problems this can cause. Because this leads to a situation in which, if someone is attacked by reason of their religious background (Protestant or Catholic), or by reason of their political identity (Republican or Loyalist), the offence would be included as a sectarian hate crime; however, if the attack has to do with their nationality (British or Irish), it will be classified as a racist hate crime, since, as we have seen, the concept of racism in the legal system of Scotland or Northern Ireland is sufficiently broad to absorb this characteristic⁸¹.

As we will see soon, the PSNI registers hate crimes using the categories of race, homophobia (sexual orientation), sectarianism, (non-sectarian) faith/religion, disability and transphobia. This way, this distinction between “sectarian” hate crime and “faith/religion-based”

⁷⁹ PPS FOR NORTHERN IRELAND, “Statistical bulletin: Cases involving hate crime 2018/19”, *PPS for Northern Ireland*, 2019, p. 5; BRACADALE, L., “Independent review...op. cit., par. 8.33.

⁸⁰ See: PPS FOR NORTHERN IRELAND, “Statistical bulletin... op. cit., p. 23; PPS FOR NORTHERN IRELAND, “Hate crime policy”, *PPS for Northern Ireland*, 2010, p. 8

⁸¹ In view of this restrictive and incoherent definition, JARMAN recommends to adopt the following definition for sectarian hatred: *“any verbal, physical or other action that is negatively directed at, or perceived to be negatively directed at, a member of one of the two majority communities in and about Northern Ireland (defined by their religious background, nationality and/or political opinion as Catholic or Protestant, British or Irish, Nationalist or Unionist, or Republican or Loyalist or a combination thereof) by a member of the other majority community (defined by their religious background, nationality and/or political opinion as Catholic or Protestant, British or Irish, Nationalist or Unionist, or Republican or Loyalist, or a combination thereof)”*. JARMAN, N., “Defining... op. cit., pp. 9-10.

(non sectarian) hate crime involves a differentiated collection system which has no match in any other legal system of the United Kingdom. Therefore, focusing, for the time being, on the definitions of these two innovative categories as far as incident collection is concerned, sectarianism is understood as what was understood by the PPS: “(...) *sectarianism can also relate to other religious denominations, such as for example Sunni and Shiite in Islam*”. As for the faith or religious group category, it would be defined as “*a group of persons defined by reference to religious belief or lack of religious belief. This would include Christians, Muslims, Hindus, Sikhs and different sects within a religion. It also includes persons who hold no religious belief at all*”⁸².

2.2.3. Synthesis of the evolution of the analysis of the empirical reality

As stated in the Scottish case, the reporter, no matter whether it is the victim or not (for example, police officers, witnesses, family members, a civil society organization which knows details of the victim or the specific offence or is familiarized with hate crimes committed in that locality, etc.)⁸³, cannot be demanded to prove his/her perception of having suffered, witnessed or learnt about a hate crime. In this regard, an objectified perception-based recording standard is used. In other words, no evidential test is used at the time of reporting the facts. Nevertheless, if the hatred element is not apparent for the officers, the reporter can be asked about what makes him/her think it is so. That information provided by the reporter is recorded so as to assist in future lines of enquiry. The victim, in any case, can change his/her perception of the facts at a later stage and thus reconsider the original police record of the incident. Likewise, if it is clear for the officers that it is a hate incident (for example, information they already have about similar offences committed in that area and in the last few days), even when the reporter is

⁸² PSNI, “Incidents and crimes with a hate motivation recorded by the police in Northern Ireland”, *PSNI Statistics Branch*, 2019, p. 3; PSNI, “Trends in hate motivated incidents and crimes recorded by the Police in Northern Ireland 2004/05 to 2018/19”, PSNI, 2019, p. 4; BRACADALE, L., “Independent review...op. cit., pars. 8.31-8.32; PSNI, “User guide to police recorded crime statistics in Northern Ireland”, *PSNI*, 2018, p. 34.

⁸³ For example, it would not be appropriate to record an incident on the basis of the perception of a person or a group of persons who had no knowledge of the victim, the specific crime or the place where it was committed, and who may be responding to media or internet stories or who are reporting for a political or similar motive. PSNI, “User guide... op. cit., p. 35.

reluctant to admit it or he/she is just unaware, the officer will record the incident and state the reasons⁸⁴.

The PSNI uses the definition of hate crime as a reference to record non-crime hate incidents too. To be precise, hate crime is understood as “*any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic*”⁸⁵. This definition enables the PSNI to publish statistical information with regard to hate motivated incidents as well as crimes. And all the incidents which are reported to the police, either motivated by hate or not, are recorded following the common instructions which are provided to that end by the *National Standard for Incident Recording* (NSIR), where a more specific definition of hate incident can be found: “*Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate*”⁸⁶. As can be seen, this definition can be easily linked to the one established in the MacPherson Report.

The information on hate incidents and crimes has been collected and made public at different times, depending on the protected category. If we consider the incidents, as the difference between hate incident and hate crime took some time to be implemented in statistical reports, the police started to monitor racist incidents between 1996 and 1997. In 2000 it was the turn of homophobic incidents. The monitoring of data regarding sectarian, religion- or disability-based incidents did not start until 2004. It was precisely in September 2004 when the PSNI implemented a more comprehensive hate incident/crime collection system, which made the future identification of crime commission trends and patterns easier⁸⁷. For this reason, even if the PSNI had compiled data before, the method to collect information changed considerably rendering the data prior to 2004/05 incomparable. Therefore, the reports which have been prepared date back to that year for producing a comprehensive annual analysis of data. The incident input system which was then implemented is called Integrated Crime Information System (ICIS), although on 1 April 2007 it was enhanced by means of the police collection

⁸⁴ HOME OFFICE, “The National Standard for Incident Recording”, *Home Office*, 2011, p. 28.

⁸⁵ PSNI, “User guide... op. cit., p. 34.

⁸⁶ HOME OFFICE, “The National... op. cit., p. 28.

⁸⁷ See NORTHERN IRELAND AFFAIRS, “Northern... op. cit.

system which is currently in place and which is known as the Occurrence Management System or NICHE.

By years and categories, this is the summary regarding the number of hate incidents reviewed and updated⁸⁸: 2004/05 – 1009 incidents (race: 813; homophobia: 196), 2005/06 – 2,997 incidents (race: 936; homophobia: 220; faith/religion: 70; sectarianism: 1,701; disability: 70), 2006/07 – 3,113 incidents (race: 1,047; homophobia: 155; faith/religion: 136; sectarianism: 1,695; disability: 48; transphobia: 32), 2007/08 – 2,844 incidents (race: 976; homophobia: 160; faith/religion: 68; sectarianism: 1,584; disability: 49; transphobia: 7), 2008/09 – 2,864 incidents (race: 990; homophobia: 179; faith/religion: 46; sectarianism: 1,595; disability: 44; transphobia: 10), 2009/10 – 3,151 incidents (race: 1,034; homophobia: 175; faith/religion: 30; sectarianism: 1,840; disability: 58; transphobia: 14), 2010/11 – 2,571 incidents (race: 842; homophobia: 211; faith/religion: 21; sectarianism: 1,437; disability: 38; transphobia: 22), 2011/12 – 2,291 incidents (race: 694; homophobia: 201; faith/religion: 15; sectarianism: 1,344; disability: 33; transphobia: 4), 2012/13 – 2,483 incidents (race: 748; homophobia: 246; faith/religion: 28; sectarianism: 1,372; disability: 74; transphobia: 15), 2013/14 – 2,703 incidents (race: 976; homophobia: 280; faith/religion: 33; sectarianism: 1,284; disability: 107; transphobia: 23), 2014/15 – 3,430 incidents (race: 1,336; homophobia: 334; faith/religion: 84; sectarianism: 1,517; disability: 138; transphobia: 21), 2015/16 – 3,122 incidents (race: 1,215; homophobia: 343; faith/religion: 59; sectarianism: 1,352; disability: 134; transphobia: 19), 2016/17 – 2,515 incidents (race: 1,044; homophobia: 279; faith/religion: 65; sectarianism: 995; disability: 112; transphobia: 20), 2017/18 – 2,400 incidents (race: 1,025; homophobia: 267; faith/religion: 90; sectarianism: 879; disability: 101; transphobia: 38) and **2018/19 – 2,459 incidents (race: 1,124; homophobia: 281; faith/religion: 56; sectarianism: 865; disability: 100; transphobia: 33)**⁸⁹.

So far, the most recent information on record is a quarterly update published on 28 November 2019 which analyzes the data available between 1 October 2018 and 30 September

⁸⁸ All the reports are available online: <https://www.psni.police.uk/inside-psni/Statistics/hate-motivation-statistics/hate-motivation-statistics-archive/>. See also JARMAN, N., “Acknowledgement, recognition and response: the Criminal Justice System and hate crime in Northern Ireland”, in HAYNES, A./SCHWEPPE, J./TAYLOR, S. (Eds.), *Critical perspectives on hate crime*, Palgrave Macmillan, London, 2017, pp. 53-58.

⁸⁹ For further detail, see the latest annual report on trends in hate incidents/crimes: PSNI, “Trends... op. cit., 42 pages.

2019, with a total of **2,419 incidents**⁹⁰ (**race: 1,073; homophobia: 264; faith/religion: 51; sectarianism: 878; disability: 102; transphobia: 51**). Nevertheless, the data which will be analyzed in greater depth in the following section will be the data obtained from the annual statistical report (2018/19) rather than the data in this last quarterly report.

2.2.4. Hate incidents (2018/19)

a) Police procedure regarding hate incidents

Upon the first evidence regarding a potential incident, that information is entered into a Command & Control System or CCS of the PSNI or into the Contact Record Management System or CRMS⁹¹. The CRMS is a record of people's calls to the Contact Management Centre (CMC), a service used to prioritize the incoming calls from citizens and enable a more accurate police response. Nevertheless, all the records in the CRMS can be and usually are incorporated manually into the CCS. This initial record will have an appropriate closing code describing the incident⁹². Certain qualifiers will then be added to this code, with "hatred and prejudice" as a supra-category which covers the qualifiers for disability, race, etc. The other two supra-categories are the "non-prejudice-related qualifiers" (for example: alcohol, drugs, etc.) and "other optional qualifiers" (for example: domestic abuse, etc.)⁹³. These qualifiers, as can be seen, help describe different aspects and characteristics of the incident. Then, all these incidents –together with, where appropriate, the hate motivation associated to them- are automatically transferred from the CCS to the NICHE, a system which was specifically created for the PSNI to record and manage any incident⁹⁴.

⁹⁰ Even though this is the result which has been obtained, it is not advisable to add up the total of the incidents, since an unspecific number of them could respond to more than one motivation. Multiple motivation is not broken down in the report. PSNI, "Incidents and crimes... op. cit., p. 3.

⁹¹ Although this is not very usual, the incident can also be recorded directly in the Occurrence Management System, also known as NICHE.

⁹² For example: A report that someone has collapsed in the street may be opened as a "concern for safety". But, if that person or a witness state that there was a vehicle involved, the closing code will be under "transport". See HOME OFFICE, "The National... op. cit., p. 7.

⁹³ HOME OFFICE, "The National... op. cit., pp. 28-34.

⁹⁴ In fact, the hate marker can be applied in an independent manner to the incident and to the potential crime recorded within that incident. That is, an incident may have the "hate-motivation" qualifier/marker applied, but the crime within that incident may not necessarily have it too. See, PSNI, "User guide... op. cit., p. 35.

At this point, the incidents with closing codes which are related to crime -or at least potentially related to crime- are identified and flagged so as to be entered into a crime recording system. However, the assessment of the criminal evidence will be carried out by a team of people who have received training to that end, who are known as Occurrence & Case Management Teams or OCMTs. This team of professionals can contact the PSNI statistics service to discuss the most difficult or unusual circumstances and, if required, these queries can be forwarded to the Home Office for decision. Once the offence has been correctly assessed and validated by the OCMT, the incident is extracted from the NICHE to be included into an internal Management Information System, Case Management System or CMS. This is precisely the system from which the information is extracted to know how many police hate incidents end up being flagged as crime-related by the police themselves⁹⁵.

This information has also been published in the annual reports on hate incidents. For example, with regard to the year 2018/19 in the annual report, with 2,459 incidents recorded, **1,613 (race: 702; homophobia: 201; faith/religion: 23; sectarianism: 622; disability: 53; transphobia: 12) were identified as crimes**. Also with regard to 2018/19, but with regard to the quarterly update in which there were 2,419 incidents recorded, **1,629 (race: 696; homophobia: 180; faith/religion: 27; sectarianism: 638; disability: 64; transphobia: 24) were identified as crimes**.

b) Empirical reality: breakdown and information of interest

With regard to the data in the annual report⁹⁶ -on hate incidents/crimes- recorded above, it must be noted that sectarian hate incidents are the only incidents which have decreased in recent years since they reached their peak in 2009/10 (1,840 incidents). Moreover, the report indicates that in 2018/19, 4% of the total number of sectarian hate crimes were committed through attacks on symbolic premises. For this, the premises have to be the intended target of

⁹⁵ For the whole process described in detail, see: PSNI, “User guide... op. cit., pp. 23-24; NORTHERN IRELAND HUMAN RIGHTS COMMISSION, “Racist hate crime. Human rights and the Criminal Justice System in Northern Ireland”, *NIHRC*, 2013, p. 61.

The PSNI may not originally register some facts as a hate crime and a prosecutor may subsequently identify them as such. PPS FOR NORTHERN IRELAND, “Statistical bulletin... op. cit., p. 5.

⁹⁶ PSNI, “Trends... op. cit., 42 pages.

the attack and there is a closed list of premises which are taken into consideration to this end (for example, a church or chapel, or a school).

Moreover, the level of detail in the statistical tables provided is important. For example, they will contain data regarding the prevalence of specific crime categories⁹⁷, as well as the type of victim according to their ethnicity, nationality, age or sex. However, in some cases this information will not be available due to its being a very small sample.

Racist hate crimes (702): Noteworthy are the 184 (26.21%) crimes involving criminal damage to a dwelling, 127 (18.09%) assault without injury and 104 (14.81%) harassment. Of the 637 racist hate crimes against a person, the victim was white in 311 (48.82%), unknown ethnicity in 100 (15.69%), Asian in 83 (13.02%), mixed or other in 75 (11.77%) and black in 68 (10.67%). Of the 637 racist hate crimes against a person, the victim was British and Irish in 127 (19.93%), missing or unknown person in 99 (15.54%), Polish in 66 (10.36%) and Romanian in 52 (8.16%). Of the 637 racist hate crimes against a person, the age range with more crimes is 35-39 with 110 (17.26%), followed by 30-34 with 98 (15.38%) and 40-44 with 90 (14.12%). Of the 637 racist hate crimes against a person, the victim was a man in 395 (62%) and a woman in 240 (37.67%).

Sectarian hate crimes (622): Noteworthy are the 113 (18.16%) harassment crimes (61 of which correspond to intimidation), the 101 (16.23%) assaults with injury and assaults with injury on constable, and the 86 (13.82%) crimes involving damage to a dwelling. Of the 487 sectarian hate crimes against a person, the age range with more crimes is 25-29 with 69 (14.16%), followed by 35-39 with 67 (13.75%) and 20-24 with 55 (11.29%). Of the 487 sectarian hate crimes against a person, the victim was a man in 310 (63.65%) and a woman in 176 (36.13%).

Homophobic hate crimes (201): Noteworthy are the 55 (27.36%) harassment offences, the 44 (21.89%) assaults with intent to cause serious harm, assaults with injury and assaults with

⁹⁷ To know more about these categories, see PSNI, "User guide... op. cit., pp. 18-22.

injury to constable, and the 41 (20.39%) assaults without injury. Of the 191 homophobic hate crimes against one person, the age range with more crimes is 25-29 with 49 (25.65%), followed by 50-64 with 27 (14.13%) and 30-34 with 25 (13.08%). Of the 191 homophobic hate crimes against a person, the victim was a man in 137 (71.72%) and a woman in 52 (27.22%).

Disability-based hate crimes (53): Noteworthy are the 20 (37.73%) harassment offences, the 15 (28.30%) offences involving violence without injury, and the 13 (24.52%) criminal damage offences. Of the 53 disability-based hate crimes against a person, the age range with more crimes is 18-64 with 40 (75.47%), followed by under 18 with 13 (24.52%). Of the 53 disability-based hate crimes against a person, the victim was a man in 29 (54.71%) and a woman in 24 (45.28%).

Faith/religion-based hate crimes (23): Noteworthy are the 12 (52.17%) crimes involving criminal damage and the 9 (39.13%) violence against the person offences.

Transphobic hate crimes (12): Noteworthy are the 10 (83.33%) violence against the person offences.

Finally, it must be pointed out that the annual report –on hate incidents/crimes- also includes a section which has been prepared so as to be able to make a comparative analysis between Northern Ireland and England and Wales.

2.2.5. Other sources of official data: Public Prosecution Service for Northern Ireland and sentencing.

The Public Prosecution Service for Northern Ireland or PPS is organized by regions – two in this case- and each of them is headed by an Assistant Director or AD who keeps in contact both with the police and with the courts. The statutory aggravation of art. 2 of the

Criminal Justice (No. 2) (Northern Ireland) Order 2004 is used by the PPS as a reference so as to annually provide a series of data regarding hate crimes. The last report in this regard covered the period between 1 April 2018 and 31 March 2019, and was published on 15 August 2019. This report is extensive and transversal, since it analyses the number of cases which the PPS receives from the police and then specifies how many of them are prosecuted or result in a conviction. As previously noted, this report is based on the information of the PPS internal Management Information System, Case Management System or CMS.

In 2018/19 the PPS received 355 cases that the police had identified as hate crimes, each of which involved one or more persons. By protected category, 132 were related to race (37.18%), 110 to sectarianism (30.98%), 50 to homophobia (14.08%), 29 to faith/religion (8.16%), 18 to multiple motivation (5.07%), 11 to disability (3.09%) and 5 to transphobia (1.40%). According to the main crime type⁹⁸ involved, 222 cases (62.53%) were related to violence against the person, 55 (15.49%) to all other offence groups, 41 (11.54%) to public order and 37 (10.42%) to criminal damage. According to the final decision adopted by the prosecution, of a total of 432 decisions⁹⁹, it is noteworthy that in 190 the decision was not to prosecute (43.98%) and in 21 to adopt diversionary options and, thus, not to go to court (4.86%). In 179 (41.43%) the final decision was to prosecute and thus commence court proceedings.

The decision not to prosecute may be due to there not being sufficient evidence or to the fact that such decision would not be in the public interest. Both reasons are directly linked to two aspects of the same standard which must be passed as a usual practice of the PPS when making a decision. The first is the evidential test, and refers to the fact that there must be sufficient evidence to provide a reasonable prospect of conviction for each defendant and each criminal charge which is brought. Moreover, for the specific aggravation by hostility in sentencing, it must also be determined that the evidential test is passed. The second test to be considered, and only once the other test has been passed, is the public interest test. To be

⁹⁸ “Primary offence” is understood as the most serious offence in terms of the potential penalties in law. PPS FOR NORTHERN IRELAND, “Statistical bulletin... op. cit., p. 25.

⁹⁹ This is so because there may be more than one decision against any individual within the same case. The most important decision issued is taken into account. PPS FOR NORTHERN IRELAND, “Statistical bulletin... op. cit., p. 25.

precise, what must be assessed here is whether the public interest requires prosecution. This is important, for example, to determine whether it would be preferable to adopt other alternative options rather than strict prosecution. There is a non-exhaustive list of circumstances in favour of the decision to prosecute which the prosecutors should consider. One of these circumstances is, precisely, when the crime was motivated by hostility towards a person by reason of their race, religion, sexual orientation, etc.¹⁰⁰

As for the sentences, the data provided are divided into (1) cases which were dealt with in the Crown Court, and (2) cases which were dealt with either in a Magistrates' Court or a Youth Court. **In the first case, 13 offenders were convicted of at least one crime¹⁰¹, whereas in the second case the number was 155.**

2.3. CONCLUSIONS

Legislative framework. The criminal legislation on hate crimes in the Scottish legal system and the Northern Irish legal system is based on the generic aggravation in sentencing and a differentiated type relating to incitement to hatred. In the Scottish legal framework, these legislative techniques are joined by an independent type of racially-aggravated harassment; that is, the racial component is incorporated into a specific crime type from the start. Otherwise, following a similar wording logic with some specific differences in their terms, both legal systems provide for crimes to be aggravated by a mere demonstration of hostility towards the victim (objective approach) or by the crime being motivated by said hostility (subjective approach). In either of these approaches, the hostility will have to be referred to certain framework categories. And this is where the differences are more easily found. In Scotland, with regard to the aggravation in sentencing, protection is provided to race, religion, disability sexual orientation and transgender identity. With regard to incitement to hatred and the standalone harassment offence, only race is protected. However, in Northern Ireland, the aggravation in sentencing deals with the same categories established for Scotland except for

¹⁰⁰ For further detail, see PPS FOR NORTHERN IRELAND, "Hate crime... op. cit., pp. 16-24 y 45-48; PPS FOR NORTHERN IRELAND, "Code for prosecutors", 2016.

¹⁰¹ It should be mentioned that someone may have been acquitted of the hate aggravated offence but convicted of another offence. NORTHERN IRELAND, "Statistical bulletin... op. cit., p. 15.

transgender identity. With regard to incitement to hatred, race, religion, disability and sexual orientation are included.

«Race» and «religion categories». Both in Scotland as well as in Northern Ireland, the «race» or «racial group» category is defined in the legislation in a broad manner, since it includes references to colour, nationality –which in turn includes citizenship- and ethnic or national origin. On the other hand, «religion» or «religious group» includes the religious belief or the lack of it in Scotland and in Northern Ireland. In Scotland, the legislation also deals with the membership of or adherence to a church or religious organization, as well as the support for or participation in activities associated with the culture or traditions of a church or religious organization.

Sectarianism. At present, sectarian behaviour is not legally provided for as such in the Scottish and Northern Irish legislation on hate crimes. A different matter is that, depending on the definition adopted as a starting point, at least one part of its singular and intersectional nature may be absorbed by categories -not unintentionally expansive- such as race or religion.

In Scotland, the debate on the incorporation of sectarianism and, where appropriate, the best way to do it, within the hate crime category is a highly topical subject. In fact, it must be pointed out that since 2012 and until it was repealed in 2018, Scotland had a law widely known as the anti-sectarian law, even though it contained no reference to sectarianism and its scope of application was limited to chanting in regulated football matches. Since 2018 it has been sustained that, after it was repealed, there is no legal gap, since either sectarianism exceeds hate crime and its special nature is not –neither before nor after- absorbed by it, or the statutory aggravations related to racial/religious hostility act as a barrier or legal stopgap. Likewise, it is recommended that any definition of sectarianism does not include any reference to political opinions. Rather than political prejudice, we could be facing racism (for example: anti-Irish/-British) caused by sectarianism, but racism after all. But the Scottish Executive may be now considering the inclusion of prejudice/sectarian hostility as an aggravation in sentencing, providing the sectarian phenomenon with an *ad hoc* punitive reflection in the end.

In Northern Ireland sectarianism has legal coverage in art. 37 of the *Justice Act (Northern Ireland) 2011*, which deals with chanting in sports. However, it does not provide a definition of the term. Therefore, the judiciary has had to develop their own definition while at the same time facing a really wide variety of cases. Otherwise, with the exception of the above, sectarianism is diluted within the race and religion categories in a way similar to Scotland, thus partially absorbing the phenomenon and preventing impunity. Outside the legal sphere, the Northern Irish police do use sectarianism when recording hate incidents.

Hate incidents (police) and hate incidents (prosecution and judges/courts). Both the Scottish police as well as the Northern Irish police adopt an identical operating procedure when they are reporting a hate incident. There is a presumption of veracity when it is recorded, in such a way that the police officer has no discretion when recording the incident and cannot demand anyone to evince its having been committed. The latest data available are the following:

- **Scotland**

1.) Police: In 2017/18 there were **6,736 hate incidents recorded**. 6,413 (95.20%) of them had to do with a single protected category and 323 (4.76%) with a combination of them. Within the first group of incidents, but with regard to the total number, the prevailing category is race (4,491 – 66.67%), followed by sexual orientation (1,085 – 16.10%), religion (504 – 7.48%), disability (274 – 4.06%) and transgender identity (59 – 0.87%). Apart from that, threatening or abusive behaviour is also noteworthy due to its being connected with 3,031 of the total of incidents (44.99%).

2.) Prosecution: In 2018/19 **the total number of charges** which were reported by the police and other agencies to the prosecution service was 4,616 (without their being broken down by multiple victimization). If we take into account each category involved in each charge, the final figure is **4,914** (race: 2,880 – 58.60%; sexual orientation: 1,176 – 23.93%; religion: 529 – 10.76%; disability: 289 – 5.88%; transgender identity: 40 – 0.81%). With regard to the last figure, it can definitely be established that **4,017 (81.74%) charges ended up in court proceedings**.

3.) **Judges/Courts:** In 2017/18 there were **650 convictions with a race indicator, 354 with a sexual orientation indicator, 249 with a religion indicator, 58 with a disability indicator and 12 with a transgender indicator.** If, in the same proceedings leading to conviction, there are several indicators, both of them are taken into account in the previous data. Moreover, an indicator does not mean that we are dealing with a conviction for some statutory aggravation, but rather that account has also been taken of those indicators which are simply used to provide additional information of interest in the proceedings.

- **Northern Ireland**

1.) **Police:** In 2018/19 there were **2,459 hate incidents.** The prevailing category among them is race (1,124 – 45.70%), followed by sectarianism (865 – 35.17%), homophobia (281 – 11.42%), disability (100 – 4.06%), faith/religion (56 – 2.27%) and transphobia (33 – 1.34%). Moreover, there were **1,613 hate crimes** (race: 702 – 43.52%; sectarianism: 622 – 38.56%; homophobia: 201 – 12.46%; disability: 53 – 3.28%; faith/religion: 23 – 1.42%; transphobia: 12 – 0.74%). Apart from that, for example, with regard to racist hate crimes, we could point out the 184 (26.21%) crimes involving criminal damage to a dwelling and, with regard to sectarian crimes, the 113 (18.16%) harassment crimes.

2.) **Prosecution:** In 2018/19 the prosecution service received **355 cases related to hate crimes** from the police, with one or more people involved in each case. The prevailing protected category is race (132 – 37.18%), followed by sectarianism (110 – 30.98%), homophobia (50 – 14.08%), faith/religion (29 – 8.16%), disability (11 – 3.09%) and transphobia (5 – 1.40%). Moreover, 18 cases (5.07%) would have a multiple motivation. According to the final decision adopted by the prosecution, of a total of 432 decisions (since there may be more than one decision due, for example, to the different individuals within the same case), it must be noted that in **179 (41.43%) it was decided to bring charges and commence court proceedings.**

3.) **Judges/Courts:** In 2018/19 a total of **168 prosecuted persons were sentenced for at least one hate crime.**

3. GENDER-BASED HATE CRIMES AND GENDER-BASED VIOLENCE

3.1. INTRODUCTION

“Sex” and “gender” are two of the discrimination motives provided for in the aggravating circumstance of article 22.4 CP as well as in the incitation to hatred crime of article 510 CP, each of them being an independent protected category.

This year, the hate incidents caused by reason of sex and gender in our territory have been identified and quantified for the first time in this report. This had not been possible until now because no data for incidents with these characteristics were received in previous years.

This is partly due, as regards the “*sex-based*” discrimination motive, to the really low application of the aggravating circumstance of article 22.4 CP and of the incitement to hatred crime of article 510 CP by that reason, in spite of the fact that it has been provided for in the Criminal Code in force since it was enacted in 1995.

As for the “*gender-based*” discriminatory motive, it has been introduced recently through the reform in the Criminal Code under Organic Law 1/2015¹⁰², which modified the regulation of hate crimes under the influence of the Council of Europe Convention on preventing and combating violence against women and domestic violence, done in Istanbul on 11 May 2011 (hereinafter, Istanbul Convention)¹⁰³.

In the explanatory statement of Organic Law 1/2015 the introduction of “gender” as a discrimination ground was justified by establishing a distinction from the protected category

¹⁰² Organic Law 1/2015, of 30 March, amending Organic Law 10/1995, of 23 November, of the Criminal Code.

¹⁰³ Council of Europe Convention on preventing and combating violence against women and domestic violence, done in Istanbul on 11 May 2011, ratified by Spain on 18 March 2014, BOE No. 137, of 6 June 2014. The Istanbul Convention lists, among its general obligations for the States (Chapter III, Article 12), adopting “*the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men*”.

“sex”. In such a way that, the legislator, on the basis of the Istanbul Convention, identifies “gender” with *“the socially constructed roles, behaviours or activities and attributes that a society considered appropriate for women and men”* and “sex” with *“the biological and physiological characteristics that define humans as female and male”*.

In this regard, it can be said that the incorporation of “gender” as a protected category has brought about an interference between hate crimes and gender-based violence crimes, since the aggravating circumstance of article 22.4 CP and the incitement to hatred crime of article 510 CP, which used to define hate crimes in the strict sense, can now be applied in gender-based violence cases, a legal category which includes those crimes which will be analyzed in the second section hereof.

In conclusion, in spite of the fact that, until recently, male chauvinist criminal behaviour had been dealt with almost exclusively from a gender-based violence crime perspective, it must now be analyzed from a hate crime perspective.

3.2. GENDER-BASED VIOLENCE IN THE CRIMINAL LEGISLATION

3.2.1. The concept of gender-based violence in the criminal legislation

The criminal regulation of domestic violence began with the reform of the Criminal Code in the year 1989¹⁰⁴, which introduced the crime of habitual ill-treatment within the family.

At that time, gender-based violence was penalized through the so-called “domestic violence” or “violence within the family” crimes, considering that the violence suffered by women from their partners and former partners corresponded to the violence exercised on the weakest or most vulnerable members of the family, such as the violence exercised on minors, the elderly, the disabled...

¹⁰⁴ Organic Law 3/1989, of 21 June, updating the Criminal Code. BOE no. 148, of 22 June 1989.

This view was maintained until the enactment of Organic Law 1/2004, of 28 December, on Integrated Protection Measures against Gender Violence¹⁰⁵, which meant a break with previous models in the legal treatment of this violence due to the incorporation of the gender perspective.

Organic Law 1/2004 identifies gender violence as a sociological category with its own identity, describing it as an “*expression of discrimination, the situation of inequality and the power relations of men over women*”¹⁰⁶. From now on, it will be considered that “*the ultimate cause of the violence against women must not be sought in the nature of the family ties, but in the structural discrimination suffered by women as a consequence of the ancestral inequality in the distribution of social roles. Due to all this, gender violence must be distinguished from domestic violence*”¹⁰⁷. As MAQUEDA ABREU said in 2006, violence against women “*is not a biological or domestic issue but rather a gender issue*”¹⁰⁸.

However, Organic Law 1/2004 relied on a definition of gender violence limited to the domestic or family environment, including only the violence which “*is exercised on them by those who are or have been their spouses or with whom they maintain or have maintained similar affective relations, with or without cohabitation*”¹⁰⁹. This does not involve equating gender and domestic violence, since not all violence within the family is gender violence and not all gender violence takes place within the family, even if Organic Law 1/2004 has limited its definition to this sphere.

In this respect, in the aforementioned Istanbul Convention we can find a broader conception of this violence, which is defined, under the denomination “*violence against*

¹⁰⁵ Organic Law 1/2004, of 28 December, on Integrated Protection Measures against Gender Violence.

¹⁰⁶ Art. 1. of Organic Law 1/2004, of 28 December, on Integrated Protection Measures against Gender Violence.

¹⁰⁷ STS (Criminal Division, Section 1) no. 452/2019 of 8 October, RJ 2019\4020

¹⁰⁸ MAQUEDA ABREU, M. L., “La Violencia de Género: Entre el concepto jurídico y la realidad social”, *Revista Electrónica de Ciencia Penal y Criminología*, No. 8, 2006, page 2

¹⁰⁹ Art. 1. of Organic Law 1/2004, of 28 December, on Integrated Protection Measures against Gender Violence.

women”, as “any violence that is directed against a woman because she is a woman or that affects women disproportionately”.

Likewise, the Istanbul Convention specifically identifies the following as serious forms of gender-based violence against women: domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation. This convention was ratified by Spain in 2014.

In 2015, the Criminal Code was reformed under Organic Law 1/2015, and even though the spirit of Organic Law 1/2004 has been fully maintained, as all violent acts are considered to take place within the family, i.e. between partners or former partners, the gender-based discrimination has been introduced in the generic aggravation of article 22.4 and in the incitement to hatred crime of article 510 CP. This “*gender-based*” discrimination motive has been construed by the Supreme Court following the guidelines provided in the Istanbul Convention, having established that it is applicable “*to any attack on a woman, with a dominating effect, due to the fact that she is a woman*”, and not only to the violence exercised by a man on his female partner or former partner¹¹⁰.

Therefore, as the “*gender based*” discrimination motive is understood as applicable without restrictions to all women, just because they are women, the consideration of gender violence has been extended somehow from the criminal point of view.

In spite of this, due to the fact that Organic Law 1/2004 has not been reformed and still conceives gender violence as limited to the domestic or family environment, the measures in support of victims provided for therein are restricted to those women who victims of violence by their partner or former partner, and not for victims of other forms of gender violence, such as violence between persons who have no family or affective ties.

¹¹⁰ STS (Criminal Division, Section 1) no. 565/2018, of 19 November, RJ\2018\4957; STS (Criminal Division, Section 1) no. 99/2019, of 26 February, RJ\2019\826

Likewise, a doctrinal sector advocates for a broader conception of gender violence, in the understanding that it should include all gender-based violence, without the victim necessarily having to be a woman and the offender a man. In this respect MAQUEDA ABREU states that *“it must be taken into account that gender may have a more extensive meaning than that which is usually assigned to it ...as a standardization code which defines the differentiated female and male roles”* and understands that it could provide protection to other groups which are discriminated against due to the fact that *“they are outside the place which is assigned to them by the gender standardizing devices”, that is, “due to their non-standard gender behaviour”* as for example in the case of *“sexual workers, transvestites, drag queens and an undetermined etcetera...”*¹¹¹.

Finally, it must be said that Organic Law 1/2004 on Integrated Protection Measures against Gender Violence has been reformed under Organic Law 8/2015, of 22 July, amending the System of Protection of Children and Adolescents, expressly recognizing that the children of women who suffer gender violence are also direct victims of such violence, in spite of not having had any direct damage inflicted on their own person.

3.2.2. Gender-based violence crimes

Most of the conducts provided for among the so-called “crimes against persons” (Book I, Titles I to XII, both inclusive, of the current Criminal Code¹¹²), such as homicide, murder, sexual assault... as well as breach of sentence, may constitute a gender violence crime when perpetrated against a woman by her present or former partner (art 1. Organic Law 1/2004).

Considering a conduct as constituting gender violence has important consequences. Firstly, it involves the case being heard by a jurisdiction specializing in the subject¹¹³. Secondly,

¹¹¹MAQUEDA ABREU, M. L., “¿Necesitan un móvil discriminatorio las agravantes de sexo/género del art. 22.4 CP?”, in SILVA SÁNCHEZ J.M./QUERALT JIMÉNEZ J.J./CORCOY BIDASOLO, M./CASTIÑEIRA PALOU M.T. (coords), *Estudios de derecho penal: homenaje al profesor Santiago Mir Puig*, Bdef, Montevideo - Buenos Aires, 2017, pp. 713-714

¹¹² Organic Law 10/1995, of 23 November, of the Criminal Code

¹¹³ It is regulated in Organic Law 1/2004 of 28 December in articles 43 to 56. It is made up of the Courts for Violence against Women and the Sections specializing in gender violence within the Provincial Courts, which can hear civil cases in addition to criminal cases.

it enables the application of a special regulation in terms of precautionary measures, the determination of the sentence, as well as its enforcement¹¹⁴. Likewise, the victims can enjoy a number of special rights especially provided for the victims of this type of violence¹¹⁵.

In spite of the fact that any crime against a woman by her present or former partner may be considered a gender violence crime for the aforementioned purposes, there are crimes in the Criminal Code which are especially characterized as such, which will hereinafter be referred to as **gender violence crimes in the strict sense**.

Gender violence crimes in the strict sense contain the gender perspective by definition and, to be applied, they require the existence of a partner or former partner relationship between the victim and the offender. However, as we will see later on, these crimes do not only and exclusively punish gender violence, as certain crimes can also be applied in cases of domestic violence, more specifically, when the violence is exercised against the rest of the victims provided for in article 173.2 CP¹¹⁶.

¹¹⁴ Article 57 CP (reformed through Organic Law 15/2003 of 25 November) establishes the obligation to impose certain ancillary penalties in gender violence cases. Article 83.2 CP (reformed by LO 1/2015, of 30 March) establishes the obligation to impose certain prohibitions and duties if the serving of the sentence is suspended in gender violence cases, and the suspension will be conditioned to their fulfilment. Likewise, article 84 CP establishes the prohibition to make the suspension of the serving of the sentence conditional to the payment of a fine when between the victim and the offender there are economic relations derived from a marital, cohabitation or filiation relationship or from the existence of children in common. Finally, article 544 ter of the LECrim (introduced through Organic Law 27/2003, of 31 July) provides for a protection order which includes the possibility of adopting precautionary measures of a criminal and civil nature and grant the victim a comprehensive protection status, which also includes some other social assistance and protection measures. Likewise, certain specific features are also provided for in the regulation of provisional detention (503 LECrim).

¹¹⁵ These rights are regulated in Organic Law 1/2004 of 28 December and in Law 4/2015, of 27 April, on the Standing of Victims of Crime, which includes a number of special rights for the victims of gender violence.

¹¹⁶ Article 173.2 Criminal Code: “*Whoever uses habitually physical or mental violence against a person who is or has been his spouse or against a person who is or has been bound to him by a similar emotional relationship, even without cohabitation, or against their descendants, ascendants or biological, adopted or fostered siblings, either his own or those of the spouse or cohabitating partner, or against minors or incapacitated persons who live with him or who are subject to the parental authority, guardianship, care, fostership or safekeeping of the spouse or cohabitating partner, or against a person within any other relation by which that person is a member of the core family unit, as well as against persons who, due to their special vulnerability, are subject to custody or safekeeping in public or private centres...*”

Most gender violence crimes in the strict sense are aggravated crimes, that is, crimes based on conducts which are not specific to gender violence (such as bodily harm, coercion, etc), but which have been classified separately by the legislator by adding the gender perspective and establishing for them a greater penalty than that provided outside the gender violence context. Likewise, there are crimes which penalize specific gender violence or domestic violence conducts and are considered standalone types. However, there is no consensus on the doctrine regarding this consideration.

Not all conducts classified under a gender perspective were considered crimes from the start. The less serious ones, that is, those of lower intensity, were firstly classified as misdemeanours. However, after the reforms of the Criminal Code under Organic Laws 11/2003¹¹⁷ and 1/2004¹¹⁸, all violence in the domestic and gender-based sphere, regardless of their intensity and result, became crimes. Moreover, through subsequent reforms of the Criminal Code, the penalty provided for these special crimes has been increasing.

Having said that, in our current Criminal Code the following are considered gender violence crimes in the strict sense:

- **Aggravated bodily harm** (article 148.4 CP)¹¹⁹ which punishes bodily harm to a woman by her partner or former partner. It is regulated in the same article as ordinary bodily harm, but in a different section and with a higher prison sentence.
- **Occasional ill-treatment** (article 153.1 CP)¹²⁰ which punishes those conducts which cause physical or mental harm to the woman, without causing her the bodily harm provided for in article 148.4 CP, or without its being habitual, in which case

¹¹⁷ Organic Law 11/2003, of 29 September, on specific measures on citizen security, domestic violence and social integration of foreigners

¹¹⁸ Organic Law 1/2004, of 28 December, on Integrated Protection Measures against Gender Violence

¹¹⁹ This crime was introduced in the current Criminal Code through the reform Organic Law 1/2004 of 28 December

¹²⁰ This crime originates in the aggravated ill-treatment misdemeanour (the repealed article 617.2 CP), which became a crime under Organic Law 11/2003 of 29 September.

the repeated ill-treatment crime of art.173.2 CP would be applicable. Moreover, as it has already been said, it will be necessary that such conduct is against the woman by her partner or former partner.

Those especially vulnerable people who live with the offender are also provided for as victims of the crime.

The penalty includes, in addition to imprisonment or community service, deprivation of the right to own and carry weapons, as well as being barred from the exercise of parental rights, guardianship, care, safekeeping or fostership when the Judge or Court deem it appropriate.

Article 153.2 CP deals with the punishment for this same conduct within the sphere of domestic violence, that is, when it is against the rest of the victims provided for in article 173.2 CP. However, an increase in the penalty is provided for gender-based violence cases.

- **Aggravated minor threats** (article 171.4 CP)¹²¹ which punishes minor threats to the woman by her partner or former partner.

Those especially vulnerable persons who live with the offender are also provided for as victims of the crime.

The penalty includes, in addition to imprisonment or community service, the deprivation of the right to own and carry weapons, as well as being barred from the exercise of parental rights, guardianship, care, safekeeping or fostership when the Judge or Court deem it appropriate.

- **Aggravated minor coercion** (article 172.2 CP)¹²² which punishes minor coercion to the woman by her partner or former partner.

Those especially vulnerable persons who live with the offender are also provided for as victims of the crime.

¹²¹ This crime originates in the repealed aggravated misdemeanour of minor threats against the woman by her partner or former partner, which became a crime under LO 1/2004 of 28 December.

¹²² This crime originates in the repealed aggravated misdemeanour of minor coercion against the woman by her partner or former partner, which became a crime under Organic Law 1/2004 of 28 December.

The penalty includes, in addition to imprisonment or community service, the deprivation of the right to own and carry weapons, as well as being barred from the exercise of parental rights, guardianship, care, safekeeping or fostership when the Judge or Court deem it appropriate.

- **Repeated ill-treatment** (article 173.2 CP)¹²³ which punishes the repeated exercise of physical or mental violence on the partner or former partner.

Other persons who are bound to the offender by emotional, kinship or affinity relations and who may find themselves in a situation of vulnerability or helplessness, that is, the cases which constitute the so-called domestic violence, are also provided for as victims of the crime. This precept does not establish any punitive difference between gender-based violence and domestic violence. This fact, together with not mentioning the woman as the victim of the crime when the offender is the victim's partner or former partner, has brought about a doctrinal discussion on whether this crime has a gender perspective or not.

The penalty includes, in addition to imprisonment or community service, the deprivation of the right to own and carry weapons, as well as being barred from the exercise of parental rights, guardianship, care, safekeeping or fostership when the Judge or Court deem it appropriate.

- **Aggravated harassment** (article 172 ter)¹²⁴ which punishes harassment to the persons provided for in article 173.2 CP. As it refers to article 173.2 CP to identify the victims of the crime, it can be inferred, for the reasons stated in the section regarding repeated ill-treatment, that this crime does not make a distinction between gender-based violence and domestic violence either. Therefore, it is questionable whether this crime has a gender perspective or not.

It is penalized with imprisonment or community service.

¹²³ Repeated ill-treatment was introduced in the Criminal Code in the year 1989 under Organic Law 3/1989, of 21 June, and has suffered various changes up to its current wording. The most important modifications are: the introduction of mental violence, in such a way that those repeated conducts involving mental ill-treatment started to be considered a crime (1999), the introduction of some guidelines to interpret repeatedness (1999), the extension of the circle of victims to include former spouses and former cohabitators (1999) and the extension of the protection to non-cohabiting partners (2003).

¹²⁴ This crime was introduced in the current Criminal Code under Organic Law 1/2015, of 30 March

- **Aggravated minor slanders** (article 173.4 CP)¹²⁵ which punishes minor slanders against the persons provided for in article 173.2 CP. As it refers to article 173.2 CP to identify the victims of the crime, it can be inferred, for the reasons stated in the section dealing with repeated ill-treatment, that this crime does not make a distinction between gender-based violence and domestic violence either. Therefore, it is questionable whether this crime has a gender perspective or not.

It is penalized with imprisonment or community service. Likewise, a fine is added in some cases.

- **Specific aggravation for sexting** (article 197.7 CP)¹²⁶ which aggravates the penalty in the event of dissemination of images or recordings obtained in the place of residence or in any place outside the sight of any third parties against the partner or former partner. It is a form of the crime relating to discovery and disclosure of secrets. The status of the victim as being a woman is not specified in this crime either.
- **Aggravated breach of sentence** (article 468 CP)¹²⁷ which punishes the breach of the sentence or any other measure (safety measure, precautionary measure, driving ban or custody) in those cases in which they were imposed in criminal proceedings in which the victim is any of the persons referred to in article 173.2 CP. This crime does not make a distinction between “gender violence” and “domestic violence” either, since it refers to article 173.2 CP to identify the victims. Therefore, it is questionable whether this crime has a gender perspective or not. It is penalized with imprisonment.

In 2004, an unconstitutionality issue was reported to the Constitutional Court with regard to precept 153 CP, for breach of the principle of proportionality of the sentence, since minor gender violence conducts which used to be penalized as misdemeanours had been raised to the category of crime, which also affected the aggravated precepts of threats and minor

¹²⁵ This conduct became a crime under Organic Law 1/2015 of 30 March, as it had been classified as a misdemeanour up to then.

¹²⁶ This crime was introduced in the current Criminal Code under Organic Law 1/2015, of 30 March

¹²⁷ This crime was introduced in the current Criminal Code under Organic Law 1/2004, of 28 December

coercion. The Constitutional Court did not even give the issue leave to proceed and established, through Decree 233/2004 of 7 June¹²⁸, the suitability of the penalties, as they were measures which contributed to avoiding and eradicating gender violence.

Various unconstitutionality issues have also been raised in connection with those precepts reformed by Organic Law 1/2004 for infringement of the equality principle, and the courts have always ruled in favour of the constitutionality of the precepts, arguing that the punitive difference is based on the greater harm and the greater disvalue of the conduct when it is committed by the man against his partner or former partner, due to the objective meaning it acquires, as an expression of a structural gender inequality which undermines the dignity of the woman as a person¹²⁹.

Having said that, it should be noted that the most serious episodes of gender-based violence, such as sexual assault, homicide, murder or illegal detention, were left aside when classifying special gender violence crimes. In our current Criminal Code, for example, there is no such special crime as homicide with a gender perspective, the so-called femicide or feminicide, as it is the case in other countries.

3.2.3. General requirements for the application of gender-based violence crimes under the current case law

The general requirements for the appreciation of gender-based violence crimes are: a) the concurrence of expressive violence (bodily harm, coercion...) b) That the victim of the violence is a woman. c) That the offender is or has been her spouse or has been related to the woman by a similar relationship of affection even without cohabitation.

¹²⁸ATC (Plenary Session) no. 233/2004 of 7 June, RTC 2004\233

¹²⁹STC (Plenary Session) no. 59/2008 of 14 May, RTC 2008\59

With regard to requirements b) and c), in spite of the fact that no **requirement regarding the sex of the parties** can be inferred from the literal sense of the precepts, this requirement derives from Organic Law 1/2004 as well as the Istanbul Convention, which are the legal texts on which the current criminal regulation on gender violence is based. In this respect, the Supreme Court has established in a recent Sentence that: *“The exercise of violence must be rejected in any context and, if it takes place within an intimate partner relationship it will constitute gender violence if the man abuses the woman and domestic violence if it is the other way round, within the home”*¹³⁰.

With regard to the **special tie which must exist between the offender and the victim**, the precepts require that between them there must be or there must have been a marital relationship or “any other similar relationship of affection”.

According to the interpretation of the case law *“not every affective, romantic or intimate relationship can be defined as the same as a marital relationship”*. A minimum stability and consolidation in the situation is essential for the Supreme Court¹³¹. In this respect, it has been understood that the victims may include *“certain dating relationships, provided there is some obvious stability... not just occasional and sporadic meetings”*¹³². Likewise, as the type establishes, no cohabitation between the offender and the victim is necessary.

In view of the requirements established by the legislator for the application of these special types, it can be understood that the legislator establishes the **presumption that any violence by a man against his partner or former partner constitutes gender violence**, since no other special condition is required in the type for it to be applied.

This presumption is a controversial issue both in the case law and in the doctrine, especially in the case of minor aggressions or occasional ill-treatment (art 153, 171.4 and 172.2

¹³⁰STS (Criminal Division, Section 1) no. 217/2019 of 25 April, RJ\2019\1835

¹³¹STS (Criminal Division, Section 1) no. 1348/2011 of 14 December, RJ 2012\3357

¹³²STS (Criminal Division, Section 1) no. 697/2017 of 25 October, RJ 2017\4785

CP). This is illustrated by the fact that the Supreme Court has had differing views for many years in connection with this issue.

In some Sentences, the Supreme Court supported the argument that not every action involving physical violence within a couple causing a minor injury to the woman had necessarily and automatically to be considered gender violence and demanded the concurrence of a subjective element involving the man's intention to dominate the woman for the occasional ill-treatment crime to apply (art.153 CP)¹³³.

In other Sentences, from a more objective standpoint, it was required that the conduct took place within a male chauvinist context or that the aggressive action had "*connotations with the male chauvinist subculture*"¹³⁴.

However, on some other occasions, it was considered that Article 153.1 of the Criminal Code applied automatically, without any further enquiry regarding the intention or the context¹³⁵.

As for the Constitutional Court, from the first time that they ruled on the constitutionality of article 153 in 2008¹³⁶, they determined that the precept was in keeping with the Constitution, without the verification of any other objective or subjective subjugation or discrimination element not provided for in the type being required. In spite of this, they established that the greater disvalue which justified the application of the special type could not be appreciated every time that all the typical objective elements of article 153 concurred, and established that, for it to be so, the conduct had to be objectively expressive of a situation of discrimination and domination of the woman by the man.

¹³³STS (Criminal Division, Section1) no. 58/2008 of 25 January, RJ 2008\1563

¹³⁴STS (Criminal Division, Section 1) no. 1177/2009 of 24 November, RJ 2010\124; ATS (Criminal Division, Section1) of 31 July 2013, JUR 2013\304385

¹³⁵STS (Criminal Division, Section 1) no. 370/2009 of 6 April. RJ 2009\4833; STS (Criminal Division, Section1) no. 703/2010 of 15 July. RJ 2010\7352; STS (Criminal Division, Section1) no. 807/2010 of 30 September. RJ 2010\7656

¹³⁶ STC (Plenary Session) no. 59/2008 of 14 May, RTC 2008\59

In 2014 the position of the Supreme Court was defined through Sentence number 856/2014 of 26 December¹³⁷, in which any special intentionality requirement was ruled out, merely stating that, as the Constitutional case law had demanded, for article 153 to apply it was sufficient that the conduct had *“a substrate which evinces that the violence is framed within the context of a reprehensible conception implemented in cultural or social environments of male predominance over women”*.

Nevertheless, the Supreme Court went even further in this Sentence, establishing that: *“Only if it has been established or if there is evidence that the isolated or repeated violent episode is totally alien to this conception which is socially rooted, and that the abuse or injury is due to totally different reasons, there will be no basis for the differentiation in sentencing and the conduct will be penalized through the subsidiary types in which the female status of the victim does not represent an aggravation in sentencing. But, in principle, violence within that contextual framework per se, with no need for any special evidence, is linked to the conception that the criminal legislator intends to eradicate or at least to condemn”*.

Therefore, the Supreme Court has established the rebuttable presumption that the concurrence of disvalue is implicit in cases of violence by the man against his partner or former partner, in such a way that only if it is evinced that these circumstances are not present in the specific case, article 153 CP shall not apply. Therefore, these circumstances can only be understood as not present by way of exception.

The Supreme Court took the same position in Sentence number 677/2018 of 20 December¹³⁸, where, in the case of a mutual quarrel between a couple, article 153.1 CP was applied to him with regard to her and art 147.2 was applied to her with regard to him. Likewise,

¹³⁷STS (Criminal Division, Section1) no. 856/2014 of 26 December. RJ 2015\89

¹³⁸STS (Criminal Division, Section 1) no. 677/2018, of 20 December, RJ\2018\5819

this crime was also applied to a man who slapped her partner several times when she was semi-unconscious on the floor in a pub in Valladolid with the alleged intention to revive her¹³⁹.

This presumption has not led to so much discussion in the case of repeated ill-treatment, since the criminal action provided for by the precept is characteristic of gender violence, and it is almost impossible to dissociate it from a male chauvinistic context or from domestic violence.

3.3. GENDER-BASED HATE CRIMES

Since the incorporation of the “*gender based*” discrimination motive into the incitement to hatred crime of article 510 CP and the aggravating circumstance of discrimination of article 22.4 CP, these precepts are also applicable to cases of male chauvinist violence.

Having analyzed the scope of application of gender violence crimes in the strict sense, now we have to analyze in what cases it is appropriate to apply the aforementioned precepts which have recently incorporated the gender perspective.

The scope of application of the **gender-based incitation to hatred crime** (article 510 CP) is clearer and less controversial, since it deals with cases which have not been provided for from the gender-based violence perspective, such as hate speech. This crime involves a conduct consisting in publicly uttering expressions with discriminatory hate content towards women¹⁴⁰.

¹³⁹STS (Criminal Division, Section 1) no. 217/2019, of 25 April, RJ\2019\1835. In this Sentence, the Supreme Court resolved that the violence used, considering the context and the intensity of the attack, cannot be justified in any case and consequently, nor can it for the alleged reason of its being done to revive his partner. “*Moreover, this Division of the Supreme Court cannot support either, that the attack described in the proven facts be interpreted as a method for a man to "revive" his partner, or the other way round, because such interpretation is disproportionate and irrational, as has been stated, to the extent that he did not have to carry out that conduct which, at least, is included and subsumed in the criminal type of art. 153.1 CP*”.

¹⁴⁰STS (Criminal Division, Section 1) no. 72/2018, of 9 February, RJ 2018\420

However, the scope of application of the **aggravating circumstance of gender-based discrimination** (article 22.4 CP) is not so clear, since it is a circumstance which modifies the criminal liability which aggravates the penalty for any crime, provided the conduct lies within a gender-based discrimination context. Therefore, defining its scope of application is more difficult, not only due to its being a much more imprecise offence, but also because we already have criminal offences aggravated on the same grounds in our criminal legislation, as we will see below. Therefore, we must resort to the case law to understand in what cases the aforementioned precept can be applied.

To start with, in order to define the scope of application of the gender aggravation, we must take into account that, unlike gender violence crimes in the strict sense, which have been interpreted under the logic of Organic Law 1/2004, thus limiting their scope of application to the relationship between partners or former partners, the gender aggravation has been interpreted by the Supreme Court, on the basis of the definition established in the Istanbul Convention, as applicable to “*any attack against a woman with a domination effect just because she is a woman*”¹⁴¹. In this regard, the Supreme Court has also specified that “*the attacks on sexual freedom are a clear example where this aggravation can be found outside a relationship*”¹⁴².

With regard to the rest of the requirements for its application, it can be stated that the Supreme Court has followed the line of interpretation of 153 CP, and has not demanded any subjective elements not included in the type with regard to the male chauvinist domination intentionality of the offender. Nevertheless, to consider the generic aggravation applicable it will be necessary “*that the proven fact accounts for the typical relationship provided for in the aforementioned criminal types in such a way that the crime is understood as an objective expression of the discrimination which characterizes it. As for the subjective element, the awareness of such relationship together with the will to commit the crime will be sufficient*”. “*The offender may not be aware of the fact that he has a patriarchal and male chauvinistic conduct. What is*

¹⁴¹STS (Criminal Division, Section 1) no. 565/2018, of 19 November, RJ\2018\4957

¹⁴²STS (Criminal Division, Section 1) no. 452/2019, of 8 October, RJ 2019\4020

important is that the attacks within this perpetrator-victim relationship context result in discrimination and, when they are carried out, they are an expression of such situation”¹⁴³.

Unlike the interpretation carried out in connection with article 153 CP, no rebuttable presumption has been established in this regard. Therefore, for the application of the aggravation it will be necessary to prove, on a case by case basis, a situation of domination or an asymmetrical relationship between man and woman, and that, even though the man was aware of such situation, he committed the crime as an expression of that inequality and discrimination.

With regard to the **compatibility problems** which may exist between this new gender-based aggravation and the criminal offences already existing in our Criminal Code, firstly, it should be mentioned that our laws and regulations prohibit, under the *non bis in idem* principle, that an individual be penalized more than once on the same grounds. Therefore, the circumstances modifying the criminal liability cannot be appreciated if they have already been taken into account when describing the type; or when they are inherent to the crime, in such a way that, without their concurrence, the crime could not be committed (art. 67 CP, inherence principle).

The criminal types of gender violence in the strict sense are aggravated subtypes in which the gender perspective is already provided for and therefore, they cannot be applied the gender-based aggravating circumstance, since in that case, one same fact (the male chauvinist component) would simultaneously give rise to two aggravations¹⁴⁴.

Consequently, the aggravation of article 22.4 CP can only be applied in those violent actions which are not penalized with specific crimes which already provide for aggravation from the gender perspective, or in cases in which, in spite of there being a

¹⁴³STS (Criminal Division, Section 1) no. 99/2019, of 26 February, RJ\2019\826

¹⁴⁴STS (Criminal Division, Section 1) no. 99/2019 of 26 February, RJ 2019\826.

specific crime with a gender perspective, it cannot be applied due to the fact that there is no partner or former partner relationship between the victim and the perpetrator.

Likewise, in our legal system there is another circumstance which modifies the liability which can be applied to the cases of gender violence against the partner or former partner: kinship (art. 23 CP)¹⁴⁵. This circumstance is applied, in the aggravating mode, on the grounds of the family ties between the perpetrator and the victim, as long as these ties are provided for in the aforementioned article.

The Supreme Court understands that both circumstances are compatible, arguing that they are based on different grounds. The mixed circumstance relating to kinship is applied due to the ties existing between the perpetrator and the victim, whereas the gender aggravation is based on the motivation of the perpetrator when committing the crime (a male chauvinistic motive), or, where appropriate, on the greater harmfulness of the conduct, since it is the expression of a structural gender inequality which undermines a woman's dignity as a person¹⁴⁶.

Therefore, according to this interpretation, in the event that a man sexually assaults a woman with whom he did not have any bounds of kinship, within a male chauvinist context, only the gender-based aggravation shall apply. Nevertheless, if a man sexually assaults his wife, within the same male chauvinist context, both aggravations shall apply. However, the aggravations shall apply providing the criminal action is not punished through specific gender violence types because, in that case, neither of the two aggravations shall apply due to the *non bis in idem* prohibition.

¹⁴⁵Article 23 of the Criminal Code provides the following: “*If the aggrieved party is the spouse or a person who is or has been tied in a stable manner through a similar affective relationship, or an ascendant, descendant or sibling by nature or adoption of the offender or of his spouse or cohabitor, this circumstance can mitigate or aggravate the liability, depending on the nature, the motives and the effects of the crime*”.

¹⁴⁶STS (Criminal Division, Section 1) no. 707/2018 of 15 January. RJ 2019\64; STS (Criminal Division, Section 1) no. 565/2018 of 19 November, RJ\2018\4957

The *non bis in idem* principle will also apply if the gender discrimination aggravation is applied to incitation to hatred characterized by the same motive (art. 510 CP).

As for the “*sex-based*” discrimination aggravation, in spite of the fact that it is hardly ever applied, it has been identified with discriminatory hate contexts on the grounds of the biological or physiological condition of the person and the minor case law has interpreted sex-based aggravation as including both discrimination for being a man and discrimination for being a woman¹⁴⁷.

Some authors such as DÍAZ LÓPEZ have related it to misogyny-based crimes. In this respect, this author explains that: “*a chauvinistic individual may sexually harass a woman. However, the individual who deeply hates women will not normally want to have sex with them: the misogynistic individual may harass them, but not sexually, but for sex-related reasons*”¹⁴⁸. He adds that the discrimination motive relating to sex can be applied for example “*to someone who claims having committed a crime against a pregnant woman because he hates pregnant women*”.

However, another doctrinal sector considers that the discrimination relating to the sex of the victim and gender-based discrimination coincide in the reproach. In this regard, MAQUEDA ABREU concludes that “*sex does not act as a biological reality but carries an implicit reference to gender which is what, due to its power to construct and assign spaces, places women in that lesser role, of social subordination; therefore it could be said that together, sex and gender, express the same*”¹⁴⁹.

¹⁴⁷STSJ of the Valencian Community (Civil and Criminal Court, Section 1) no. 72/2018 of 29 June. JUR 2018\185316

¹⁴⁸DÍAZ LÓPEZ, J.A., *El odio discriminatorio como agravante penal: sentido y alcance del artículo 22.4.ª CP*, Civitas, Madrid, 2013, p. 298

¹⁴⁹MAQUEDA ABREU, M. L., “¿Necesitan un móvil discriminatorio... op. cit., p. 713

Finally, in addition to gender violence crimes and hate crimes, there other criminal offences which, in spite of not having a gender perspective by definition and their application not requiring a special condition as regards the victim and the offender, contain this element in their grounds or nature. This could be the case of forced marriages, genital mutilation, trafficking of human beings and crimes against sexual freedom.

In this respect, the Doctrine has discussed whether the application of the gender aggravation to these crimes involves an infringement of the *non bis in idem* principle due to the grounds of the aggravation being inherent to the crime or not. Nevertheless, this issue has not been settled by the case law.

3.4. THE REGULATION OF GENDER-BASED VIOLENCE IN THE AUTONOMOUS COMMUNITY

Criminal legislation is the exclusive competence of the State (art.149.1.6^a C.E.). Therefore, the Autonomous Communities cannot define crimes or their corresponding penalties.

In spite of this, they have regulated on gender violence using another approach: recognizing the rights of the victims with regard to assistance in the social, psychological, financial, legal, medical spheres, etc. and establishing certain obligations for public authorities and publicly-owned entities so as to eradicate gender violence.

In the Basque Autonomous Community the main regulatory instrument is Law 4/2005 of 18 February, for Equality of Men and Women, which devotes Chapter VII of Title III to “*Violence against Women*”. This law establishes its own definition of violence against women as “*any sex-based violent action which results in or is likely to result in physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in the public*

or in the private life". Therefore, the framework established by Organic Law 1/2004, of 28 December is enlarged.

The First Section of this Chapter VII establishes certain obligations for the public administration regarding research, prevention and training on gender violence issues.

The Second Section develops care and protection measures for the victims of domestic ill-treatment and sexual assault, such as: police protection, legal advice, psychological assistance, the creation of shelter flats and emergency services, economic benefits, special rights regarding housing, employability and education etc.¹⁵⁰

Likewise, article 43 of Chapter IV, Title III, establishes measures to eradicate sexist harassment and the obligation to guarantee the victims "*the right to urgent, free, specialized, decentralized and accessible legal and psychological assistance*".

Article 62 of Chapter VII, deals with the obligation of the Administration of the Autonomous Community to foster inter-institutional collaboration agreements with the rest of the Basque public administrations as well as any other relevant institutions, so as to encourage coordinated and effective action in domestic ill-treatment and sexual assault.

In this regard, different institutions or public administrations have produced Action or Coordination Protocols for the effective implementation of the Law on

¹⁵⁰ The report "Análisis de la Legislación Autonómica Sobre Violencia De Género" (Analysis of the Gender Violence legislation of the Autonomous Communities) produced by the Ministry of Equality of the Government of Spain contains specific actions and initiatives implemented by the Autonomous Communities in this regard. This report is posted on the website of the Ministry of Equality http://www.violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/colecciones/pdf/libro5_analisislegislacion.pdf

Integrated Protection Measures against Gender Violence as well as the Protection Order for the Victims of Domestic Violence¹⁵¹.

Finally, it should be mentioned that on 28 January 2020 the Government Council passed the Bill for the second amendment to this regulation¹⁵².

On the other hand, Basque Law 7/2015, of 30 June, on family relationships in cases of parental separation or break-up, establishes in article 11, as a protection measure for the children of women victims of gender violence, the inappropriateness or inadvisability of granting the individual or shared custody of the children, or a stay, relationship and communication schedule, to the parent who has been convicted for domestic or gender-based violence, or when there is well-founded evidence of the commission of such crime by the parent.

3.5. CONCLUSIONS

The “gender violence” concept has been understood and interpreted in various ways, even within the same discipline, and this is the case of the criminal law.

In this respect, up to the year 2004 gender violence had not been provided for as a legal category with an identity of its own in our criminal system, as it was considered to be included within domestic violence, that is, the violence which takes place within the context of a family relationship.

¹⁵¹They are posted on the website of the Administration of Justice in the Basque Country <https://www.justizia.eus/biblioteca/protocolos-de-actuacion-2>

¹⁵² The Bill can be found on the website of Emakunde (Basque Institute for Women) https://www.emakunde.euskadi.eus/contenidos/informacion/politicas_marco/es_ley_igua/adjuntos/proyecto_ley.pdf

With the enactment of LO 1/2004 of 28 December, on Integrated Protection Measures against Gender Violence, gender violence was given a definition of its own which included only those male chauvinist violent conducts against a woman by her partner or former partner. Specific criminal offences were also established to punish those cases, as well as a number of rights and measures aimed at providing a response for this phenomenon.

In spite of this, in 2014 Spain ratified the Istanbul Convention, which established a broader concept of this violence, including all violence against a woman “*because she is a woman or which affects women disproportionately*”. Under the reform of the Criminal Code in the year 2015 (Organic Law 1/2015, of 30 March) a new aggravating gender-based circumstance was introduced, which is interpreted by the Supreme Court on the basis of the gender violence concept established in the Istanbul Convention. In such a way that, it can be understood that, in the criminal legislation all male chauvinist conducts against any woman are actually considered to be gender violence in the broad sense, without the need for a special tie –partner or former partner- between the victim and the offender.

Nevertheless, as Organic Law 1/2004 has not been reformed, those cases in which gender violence has not been exercised by the partner or former partner do not have the same criminal protection, even if these conducts are penalized with aggravated penalties on the same grounds (on a gender basis). These cases are not tried by Gender Violence Courts and are not applied the special criminal legislation which applies to the gender violence cases provided for in LO 1/2004.

Nevertheless, the children of women victims of domestic gender violence do enjoy this special criminal protection, as they have been considered to be direct victims of this violence since 2015¹⁵³, in spite of their not having suffered any direct harm on their own person.

¹⁵³ Organic Law 8/2015, of 22 July, amending the protection system for children and adolescents.

Leaving aside the differences in treatment established by the current criminal legislation, what is essential, in any case, for the conduct to be considered gender violence in the broad sense, is that, as established by the case law, the violence be understood as an objective expression of discrimination and of the situation of inequality existing between men and women, without the concurrence of a will to dominate or discriminate by the perpetrator being required¹⁵⁴.

Therefore, what determines the application of the special gender violence regulation, as well as the appreciation of the aggravation is 1) the existence of a discriminated group in the alleged facts 2) that the conduct be an expression of that situation.

In this respect, the case law as well as the legislator in the Preamble of Law 1/2004 recognize the discrimination and the situation of inequality suffered by women “on the grounds of gender”. Therefore, what must be analyzed in each case is whether the subordination and discrimination of the woman can be observed in the context or in the specific violent conduct, claiming that the attack is an expression of that situation.

Having said that, if we take into account that the gender aggravation is a circumstance provided for hate crimes in general, the interpretation made in this specific context helps to better understand the basis of the aggravation in its entirety, and to complete the legal doctrine of hate crimes.

In this respect, in view of the existence of two interpretative approaches with regard to the basis of the penalty for hate crimes, and in particular, the aggravation of art 22.4 CP, that is, on the one hand, those who relate it to the fact that the conduct produces discriminatory effects -the specific motivation of the perpetrator not being important for these purposes (*discriminatory selection model*)- and, on the other hand, those who relate it to the fact that the perpetrator is driven by discriminatory reasons

¹⁵⁴STS (Criminal Division, Section 1) no. 677/2018, of 20 December, RJ\2018\5819; STS (Criminal Division, Section 1) no. 99/2019, of 26 February, RJ\2019\826

(*animus model*)¹⁵⁵, one may think that the position of the Supreme Court has been closer to the first model in the interpretation made in this context, since, as we have been saying, the high Court does not consider the specific motives of the perpetrator to be relevant when appreciating the crime; it is sufficient that the conducts be an objective expression of discrimination generating a situation of inequality and subordination of the woman.

Moreover, the aforementioned Sentence of the Supreme Court no. 99/2019, of 26 February, introduces a reflection on the criminal penalty in these cases by establishing the following: “*Such discrimination constitutes the basis of the qualifying aggravation of article 153.1 when the woman is or has been the perpetrator’s wife or has been tied by a similar affective relationship, even without cohabitation. To apply the aggravation in cases outside this intimate partner relationship, there must be at least an asymmetry in the relationship between the male perpetrator and the female victim reflecting the discrimination which is the basis of the higher criminal penalty*”.

Consequently, in spite of the fact that the wording of hate crimes describes the conduct as that committed “for discrimination reasons”, and this can lead us to think that it has been defined from the *animus model* conception, the position which the Supreme Court has been adopting lately is closer to the “discriminatory selection” model¹⁵⁶.

¹⁵⁵DÍAZ LÓPEZ, J.A., “Informe de delimitación conceptual sobre delitos de odio” (Conceptual delimitation report on hate crimes), *General Secretariat for Immigration and Emigration, Spanish Observatory of Racism and Xenophobia*, 2018, pp. 28-29

¹⁵⁶ An interesting sentence, beyond the interpretation made in connection with the gender discrimination motive, is the Sentence issued in the *Alsasua Case* (STS no. 458/2019, of 9 October), in which the application of the aggravating circumstance of discrimination for ideological reasons was dismissed, among other reasons, because the Civil Guard was not considered to be a discriminated or vulnerable group and, therefore, the conduct was not an expression of discrimination, in spite of the fact that there were individual votes which claimed just the opposite and took a stand for the “*animus model*”. In any case, this sentence is a particularly clear example of the existing interpretative unrest with regard to this issue and of how the debate on the criminal protection against gender violence is already influencing and interacting with interpretative proposals regarding other constellations of discrimination cases of a different type.

4. SYNTHESIS AND FINAL CONCLUSIONS

Taking a global view of the police statistics covering the incidents occurred in the years 2016, 2017, 2018 and 2019, this report on hate incidents in the Basque Country shows, as far as its essential results are concerned, a map which is quite similar to the previous ones (basically: the map of target groups; or the relationship between crimes with deeds and crimes with words) but there are also some differences which can still not be taken as consolidated trends but rather as a reflection of an empirical collection which still has large fluctuation levels (particularly with regard to the total number of incidents, with a slight downwards trend; and with regard to the relative representativeness of the various crime types).

According to a comparative analysis of the trends in Spain and in Europe, the map shows some common structural elements which can be summarized in six points:

1. The recording of incidents against the ethnic groups (race, ethnicity, national origin and even religion, beliefs and ideology) prevails.
2. Incidents against sexual groups have established themselves as the second level of abused groups.
3. Non-ethnic and non-sexual groups show a residual reporting level.
4. Bodily harm, as the most significant and serious category, accounts for between one fifth and one third (in the 2016-2019 period) of the total, establishing the emerging visibility of aggravated hate crimes as the focus of attention.
5. “Expressive” hate incidents, hate propaganda, in line with the so-called -criminalized- hate speech, still have a remarkable statistical presence even above the results of the continental European countries in our cultural circle (the relation of hate crimes “with words” as compared to hate crimes “with deeds” fluctuates from 6 to 4 up to a greater unbalance of 7 to 3).
6. The incident recording system still does not have the track record or the consolidation of key countries within the scope of comparison (Germany, England-

Wales, France)¹⁵⁷ but it basically faces the same challenges, which can be summarised as two:

6.1. One: the lack of accuracy in the definitions of reference and, particularly, the problem of ideology. It is necessary to specify the terms of reference for regulation and application (definition and interpretation of hate crimes) and, especially, the “ideological” motivation. In this respect, it is revealing that “sectarianism” only has a specific and standalone recognition as an ideological category in Northern Ireland. The debate is open in Scotland but there is some resistance to including it as a standalone category and a certain trend to “submerge” its constellations of cases as racist, xenophobic or ethnic incidents.

6.2. Two: deficiencies in the traceability. The establishment of the necessary statistical collection mechanisms as well as the cooperation between the police, the prosecutors and the courts are essential to achieve richer information with regard to hate markers and above all, with regard to the traceability of incidents from their origin to their eventual sentencing by the Administration of Justice. Something highly illustrative in this 2019 Report is that sub-state units such as Scotland (with over 5 million inhabitants) or Northern Ireland (with 1.8 million) show data and levels of cooperation between the police, the prosecutors and the courts which could be described as “exemplary” if we compare them to our domestic figures. To be precise, 6,736 police incidents were recorded in Scotland; 4,616 were referred to the Prosecution Service, which in turn ended up prosecuting 4,017 with 1,323 sentences in one year. 2,459 incidents were recorded in Northern Ireland in one year, 1,613 of which were potentially criminal, 355 were referred to the Prosecution Service, which prosecuted 179 and had 168 sentences. Leaving aside the fact that the data are not exactly a picture of the in-progress traceability of the same cases, but rather a still picture of the operational volume of activity, it shows a consolidated praxis of joint action (police-prosecution-courts) which provides soundness, credibility and transparency to the fight against hate crimes in those countries.

¹⁵⁷ See UNESCO CHAIR FOR HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “Report... op. cit., p. 30 ff. and p. 70.

7. The gender approach in hate crimes is an emerging field but it has enormous potential. And this is due to the fact that it shows that the gender issue is not restricted to the scope of intimate partner relationships or to the domestic scope but goes beyond and involves all types of constellations of cases in which there is an aggressive conduct against women. It is a reality that, under the current criminal legislation, hate crimes can be committed both with deeds (hate crime in the strict sense) and with words (criminalized hate speech) with an aggressive direction on gender grounds, regardless of whether the victim and the offender be partners, former partners or belong to the same domestic unit. The precise coining of the factual substrate which will have to accompany the appreciation of the aggravation is a highly topical and relevant challenge, as the gradual establishment of predictable and consistent keys for the interpretation and application of the modifying circumstance depends on it.

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ANNEX I

MAJOR CASES IN THE PRESS IN 2019

In this section there is a selection of hate incidents published in the newspapers of the Autonomous Community of the Basque Country, BERRIA, DEIA, DIARIO DE ALAVA, EL CORREO, GARA, NOTICIAS DE GIPUZKOA, as well as in the national newspapers which have or had an edition for the Basque Country: EL MUNDO, EL PAÍS, EL DIARIO.ES, in the year 2019. The search was carried out in their online formats and it must be noted that there was no information regarding the incidents concerned in the newspapers Deia, Diario de Noticias de Álava and Noticias de Gipuzkoa corresponding to the year 2019.

The journalistic review intends to show what reaches the society under the term hate crime/incident or hate speech through these printed media, beyond the legal precepts which determine the nature of these incidents.

These interpretations in the press are not necessarily validated by the team that has prepared this report, but must be understood as opinions expressed on that matter in leading articles or as a result of the information on events which are likened to alleged hate crimes carried out by third parties.

On many occasions, non-standard facts as alleged hate crimes or incidents, above all those of an ideological or political character.

Below, in the annex, we have summarized the cases grouped by the protected categories used throughout this report.

MAJOR CASES IN THE PRESS IN 2019

Summary of cases by protected category

RACISM-XENOPHOBIA:

- The Mayor of Vitoria-Gasteiz detects hate speech in the words uttered by a bus passenger against a black woman and protects the bus driver who was accused of being racist in the social media.
- The mother of a minor who died as a consequence of a beating in Donostia asks not to use what happened to blame migrants and spread hate messages against them.
- Racist insults on a train in Bilbao.
- A black young man is not allowed to enter a night club in Vitoria-Gasteiz.

IDEOLOGY/ POLITICAL ORIENTATION

- Member of Parliament Arzuaga files a complaint against Jusapol and Partido Popular for insults.
- Insults by the former Mayor of Vitoria-Gasteiz to EH Bildu candidate.
- The case of the young men from Alsasua accused of terrorism and hatred of the Civil Guard.
- The case of the protests for Albert Rivera's meeting in Errenteria.
- The Ospa Eguna case in Altsasu.
- Threats in the street against EH Bildu candidate, Andoni Rojo.
- Vox's lawsuit against Otegi.
- Conviction sentence for fascist attack in Plaza Nueva in Bilbao in 2017.
- Prison for three Jihadists for disseminating ISIS ideology propaganda on the Internet.
- Arrested for threatening Vox candidate for Bizkaia.

RELIGIOUS BELIEFS/PRACTICES

- The Spanish Association of Christian Lawyers reports the demolition of Francoist cross in Ondarroa to the Public Prosecution Office.
- The ECHR accepts the filing of the complaint against the artist who wrote "pederasty" with hosts.

SEXUAL ORIENTATION/IDENTITY

- The Government of Navarre plans to report the Hazte Oír bus for "hate crime".
- The Basque Government warns about speeches which encourage hatred against the LGTBI community.
- LGTBIphobic attacks by sectors of the Church and the right wing reported in the mobilizations.
- Child removed from custody of parents in Vitoria who beat him for being gay. EL CORREO 14 July 2019.

- Fascist and male chauvinist graffiti by the extreme right in the editorial office of Pikara in Bilbao.
- One year and a half prison sentence for the author of 'Tour de la Manada'.

PEOPLE WITH DISABILITY/ FUNCTIONAL DIVERSITY

- Tweeters prosecuted for allegedly threatening and insulting Gabriel, a child with cancer who was a bull-fighting fan.

APOROPHOBIA

No major news has been located with regard to this category.

1. RACISM-XENOPHOBIA

- 1.1. “Urtaran protects the bus driver accused of racism”. BERRIA 11 January 2019.
- 1.2. “The mother of the minor who died in Donostia asks not to blame migrants”. GARA 29 April 2019.
- 1.3. Racist insults on a train in Bilbao: “You are fucking Africans, fucking monkeys”. EL CORREO 11 July 2019.
- 1.4. “A young man reports his being refused entry into a night club in Vitoria for being black”. EL DIARIO.ES 21 December 2019.

2. IDEOLOGY/ POLITICAL ORIENTATION

- 2.1. “EH Bildu asks the Bureau for measures against PP’s insults to Julen Arzuaga” GARA 6 April 2019.
- 2.2. “You are a wretch and the sight of you sitting here makes me sick”, Maroto blurted out to EH Bildu candidate. EL CORREO 24 April 2019.
- 2.3. Covite renounces to sue for ‘terrorism’ and to appeal against the Altsasu sentence. GARA 27 April 2019.
- 2.4. “Arzuaga’s complaint against Jusapol is accepted whereas DyJ’s is rejected” GARA 9 June 2019.
- 2.5. “Albert Rivera asks the Public Prosecution Office to act against the radicals of Renteria for hate and assault” EL MUNDO 15 April 2019. “
- 2.6. “Rivera points at Ernai to the public prosecution office for the protests against his meeting in Errenteria”. GARA 18 April 2019.
- 2.7. The Public Prosecution Office will investigate the protests against Ciudadanos 14 May 2019.
- 2.8. The judge investigates an event against the Civil Guard in Navarre for hatred. EL PAÍS 12 August 2019.
- 2.9. The Public Prosecution Office sees the ‘Ospa Eguna’ in Alsasua as potential hate crime and asks the judge to prohibit it. EL MUNDO 29 August 2019.
- 2.10. Chivite claims that the “Ospa Eguna cannot be prohibited just because a group of the Civil Guard requests it”. GARA 29 August 2019.
- 2.11. An ‘Ospa eguna’ in Alsasua under surveillance and without incidents. EL CORREO 1 September 2019.
- 2.12. “The National Court sees the Ospa Eguna as “hate crime” and refers the case to the Court of Altsasu”. GARA 15 November 2019.
- 2.13. “Eight-month and six-month penalties agreed for the fascist assault in Plaza Nueva in Bilbao in 2017”. GARA 25 June 2019.
- 2.14. “The three alleged Jihadists arrested in Gipuzkoa committed to prison”. GARA 25 July 2019.
- 2.15. “Vox sues Otegi for a message regarding the inmate Iparragirre”. GARA 1 October 2019.
- 2.16. Andoni Rojo, EH Bildu candidate for Bizkaia, threatened in the street in Bilbao. GARA 6 November 2019.
- 2.17. Arrested for threatening Vox candidate for Bizkaia during the campaign. EL CORREO 29 November 2019.

2.18. Two of the eight people convicted for the assault in Alsasua leave Zaballa prison due to their having obtained Grade 3. EL CORREO 20 December 2019.

3. RELIGIOUS BELIEFS/PRACTICES

3.1. “Christian lawyers report the demolition of the Francoist cross in Ondarroa to the Public Prosecution Office”. GARA, 19 January 2019.

3.2. “The ECHR admits a complaint against the Spanish State for the exhibition with Holy Hosts of the artist Abel Azcona”. GARA 9 October 2019.

4. SEXUAL ORIENTATION/IDENTITY

4.1. “The Government of Navarre plans to report the Hazte Oír bus for ‘hate crime’” GARA 7 March 2019.

4.2. “The Basque Government warns about speeches which encourage hate against the LGTBI community, who report an ‘outdated’ legislation. EL MUNDO 17 May 2019.

4.3. Real measures asked for attacks caused by LGTBIphobia. BERRIA 18 May 2019.

4.4. Child removed from custody of parents in Vitoria due to their beating him for being gay. EL CORREO 14 July 2019.

4.5. The system hates us more that it hates the authors of the graffiti. BERRIA 31 October 2019.

4.6. “Violence has no gender”: the extreme right attacks the editorial office of Pikara in Bilbao again with fascist graffiti. ELDIARIO.ES 12 November 2019.

4.7. “The author of ‘Tour de la Manada’ sentenced to one year and a half imprisonment for attacking the victim’s moral integrity”. EL MUNDO 10 December 2019.

5. PEOPLE WITH DISABILITY/ FUNCTIONAL DIVERSITY

5.1. “Acquittal for the three tweeters who wished the death of the child with cancer who wanted to be a bullfighter”. EL CORREO 20 September 2019

5.2. “The prosecution appeals against the acquittal of the three tweeters who wished the death of the child who was a bullfighting fan” EL MUNDO 14 October 2019.

6. APOROPHOBIA

No major news has been located with regard to this category.

1. RACISM / XENOPHOBIA

Arrazakeria egotzi dioten autobus gidaria babestu egin du Urtaranek

Alkateak gorroto delitua antzeman du autobus erabiltzaile baten hitzetan, eta gogor kritikatu ditu



Tuvisa enpresa publikoaren autobus batean gertatu zen eraso arrazista, herenegun. JAIZKI FONTANEDA / FOKU

2019ko urtarrilak 11



«Autobus gidari batek arauak bete behar direla gogoraraztea ez da jokabide

BERRIAlagun izateko aukerak

BERRIAlaguna

BERRIAlagun harpidedun

BERRIAlagun iragarlea

Gehien irakurriak

1 Ituren eta Zubietako inauteriak turistifikatuz negozioa egitea egotzi diote Julian Iantzi

EDU LARTZANGUREN

2 Arrisku handiko 38 enpres:

A black woman and her daughter were reprimanded by the driver of the bus they were getting onto because the child was carrying an unfolded scooter. As can be seen in a video shared by a passenger of the bus on Instagram, the woman answered that the child had special needs and that they would fold it once inside the bus. As they were coming onto the bus the driver made the following comment “*what patience one must have with these...*”. The woman replied: “*patience with whom?*”. Then, the driver stood up and walked towards the woman and said that every day she got onto the bus with the scooter unfolded and that the next time she would not get on, to which the woman replied “*you are racist*”.

When the dispute was over, a passenger of the bus said: “I am a military man and I have been killing people like you for twenty years”. The mayor has condemned these words and has stated that “they can be considered a hate crime”. And he has stressed that “*a bus driver reminding that rules must be complied with is not a racist conduct*”.

1.2. The mother of the minor who died in Donostia asks not to blame migrants. **GARA 29 April 2019.**

EUSKAL HERRIA

La madre del menor fallecido en Donostia pide que no se culpabilice a los migrantes

Fátima Hacine-Bacha García, la madre de Santi, el menor de 17 años fallecido el domingo como consecuencia de una paliza propinada por varios jóvenes el viernes en Donostia, ha lanzado un mensaje contra el «odio» y ha pedido que no se utilice lo ocurrido para culpabilizar a los migrantes.

NAIZ | DONOSTIA | 2019/04/29



«Discordea hantekoa leiala harenen eragina izan da», (Gara a RUBIO FOC) ©

La madre del menor ha transmitido un llamamiento, en declaraciones a ETB, en favor de la convivencia, como respuesta a los numerosos mensajes difundidos, sobre todo a través de las redes sociales, en los que se subraya el origen de los siete detenidos por este caso.

Hacine-Bacha es hija de padre argelino y madre vasca, por lo que, explica, su familia «tiene muchos valores de distintas culturas».

Fátima Hacine-Bacha García, the mother of Santi, the 17-year-old who died on Sunday as a consequence of the beating by several young men on Friday in Donostia, has launched a message against «hate» and has asked not to use what happened to blame migrants.

The mother of the minor has made an appeal, in a statement to ETB, in favour of coexistence, in response to the numerous messages, above all in the social media, highlighting the origin of the seven persons arrested for this case.

Hacine-Bacha's father is Algerian and her mother is Basque, therefore, she explains, her family «has a lot of values from different cultures».

GOMENDATUTAKO ALBISTEA

INPRIMATU
BIDALI

1.4K

54

ERLAZIONATUTAKO
ALBISTEAK

El juez decreta
prisión provisional para
seis de los siete
detenidos por la
agresión de Donostia

Cientos de personas
se concentran en
Donostia en repulsa por
la muerte del menor
agredido



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PUBLIZITATEA



1.3. Racist insults on a train in Bilbao: “You are fucking Africans, fucking monkeys”. **EL CORREO** 11 July 2019.

Insultos racistas en un tren en Bilbao: «Sois unos putos africanos, unos putos monos»



EL CORREO
Jueves, 11 julio 2019, 12:48



«Sois unos putos monos para mí. Sois unos putos africanos, unos moros de mierda y unos negros». Estas son las palabras que una mujer dedicó a unos jóvenes durante el trayecto de un tren que se dirigía a Bilbao. Los hechos, según ha denunciado 'Es Racismo', se produjeron el pasado día 1 de julio sobre las 21.40 horas. Tal y como apunta la asociación, las víctimas

«You are fucking monkeys for me. You are fucking Africans, shitty moors and niggers ». These were the words that a woman said to some young men during a train journey to Bilbao. The incident, as 'Es Racismo' has reported, took place on 1 July at about 9.40 p.m. The association says that the victims were already on the train when the woman got on, and adds that she «is a teacher at a school in Deusto».

**1.4. A young man reports his being refused entry into a night club in Vitoria for being black.
EL DIARIO.ES. 21 December 2019.**

ELDIARIONORTE EUSKADI (/NORTE/)

Un joven denuncia que le prohíben entrar en una discoteca de Vitoria por ser negro

- ⊙ Denuncia que, cuando estaban haciendo fila, uno de los porteros les pidió el DNI y, al ver de dónde eran, les obligó a abandonar la cola y les dijo que el gerente del local "quería hablar con ellos"
- ⊙ "Es un poco chocante viendo la cantidad de mezcla y popurrí de nacionalidades que hay, que nos criamos todos con todos. Así que, que pase esto es muy fuerte", denuncia Abed
- ⊙ Este periódico se ha puesto en contacto con el gerente de la discoteca, que ha indicado que "no fue como él dijo que fue, no digo que no pasó algo, pero no lo que él dice"

Maialen Ferreira (/autores/maialen_ferreira/)

21/12/2019 - 17:45h



Abed, 24, is from Equatorial Guinea and arrived in Vitoria when he was 10. In the early hours of Friday he decided to go to the night club People with some friends. He reported that, when he was queuing, one of the doormen asked for their ID card and when he saw where they were from he told them to leave the queue and said that the manager "wanted to talk to them".

"We were going to pay for the ticket and they told us that we could not get in, neither I nor a friend of mine, who is also African, because two weeks or a month ago an African had caused trouble, they don't know who he is and now they say that no black person can get in. I talked to the owner and he said that he was going to show me a video of the African who had caused trouble and that that this was the reason why they don't let African people in", Abed reports in an Instagram video.

2. POLITICAL ORIENTATION / IDEOLOGY

2.1. “EH Bildu asks the Bureau for measures against PP’s insults to Julen Arzuaga”. GARA 6 April 2019.

GARA PAPERERAKO EDIZIOA Kriterio

2° Gasteiz

EGUNEKO GAIAK | EKONOMIA | EUSKAL HERRIA | IRITZIA | KIROLAK | KULTURA | MUNDUA | EGUR

2019/04/06

EUSKAL HERRIA

EH Bildu reclama a la Mesa medidas contra los insultos del PP a Julen Arzuaga

GARA | GASTEIZ

INPRIMATU
BIDALI



EH Bildu presentó ayer una protesta formal ante la Mesa del Parlamento porque «lo que tuvo que soportar Julen Arzuaga durante el debate de la ley de víctimas del Estado es inaceptable». La portavoz del grupo, Maddalen Iriarte, denuncia que «nada más tomar Arzuaga la palabra, las y los parlamentarios del PP se pusieron de pie haciendo aspavientos y entre gritos e insultos impidieron que pudiera continuar con normalidad su intervención, valiéndose para ello de la inacción y la pasividad de la presidenta de la Cámara». Iriarte entiende que «ante el comportamiento de la bancada del PP, ahora le toca a la Mesa tomar las medidas disciplinarias que correspondan según el Reglamento, y así se lo hemos pedido».

EH Bildu también pide a la Mesa que analice las medidas a adoptar contra los representantes del sindicato policial Jusapol presentes en

PUBLIZITATEA



PUBLIZITATEA



HEMEROTECA GARA H

HEMEROTECA GARA D



EH Bildu submitted a formal protest to the Parliament Bureau because «what Julen Arzuaga had to put up with during the debate of the Law for Victims of the State is unacceptable». The spokeswoman of the group, Maddalen Iriarte, reported that «as soon as Arzuaga took the floor, PP’s parliamentarians stood up and started making a fuss and, amid shouts and insults, they didn’t let him continue his intervention in a normal way, supported by the inaction and passivity of the President of the Chamber». Iriarte understands that «in view of the behaviour of the PP group, the Bureau must now take the appropriate disciplinary measures according to the Regulations, and that’s what we have asked them to do».

EH Bildu has also asked the Bureau to analyze the measures to be taken against the Jusapol trade union representatives who were present in Parliament at PP’s invitation, since «their threatening gestures were obvious from the beginning and prevented the normal development of the session».

2.2. “You are a wretch and the sight of you sitting here makes me sick”, Maroto blurted out to EH Bildu candidate. **EL CORREO 24 April 2019.**

Sondeos Resultados por provincias y municipios

«Eres un miserable y me repugna verte aquí sentado», le espeta Maroto al candidato de EH Bildu



Javier Maroto e Iñaki Ruiz de Pinedo han protagonizado el momento más tenso. /

RAFAEL GUTIÉRREZ

El cabeza de lista del PP y el de la coalición abertzale han protagonizado el momento más tenso del debate organizado por EL CORREO



ANDER CARAZO



At a debate organized by El Correo, former mayor Mr. Maroto in his first intervention said: «In the Basque Country there are people who commit crimes and still get aids (Guaranteed Income). But the blame does not lie on those who get the aids but on those who manage them. We gathered signatures, but the PNV quailed and PSE and Bildu were accomplices». Iñaki Ruiz de Pinedo (EH Bildu) answered: «either you are an ignorant or a manipulator. You hate the poor and that goes against real coexistence. You create hatred of the poor».

The PP candidate answered: «Bildu is a group of cowards, because they have remained silent. I'm not going to whitewash them. They cannot preach morality and ethics», he stressed. «You are the scum of politics. You, miserable coward. I'm not going to whitewash you. I am ashamed of sharing this space with you. You are unworthy of sitting here». «You are a wretch, the sight of you sitting here makes me sick», he concluded.

2.3. Covite renounces to sue for 'terrorism' and to appeal against the Altsasu sentence.
GARA 27 April 2019.

GARA

PAPERIZKO
EDIZIOA

5° D. Garazi

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

2019/04/27

EUSKAL HERRIA

Covite renuncia a pedir «terrorismo» y recurrir la sentencia de Altsasu

AITOR AGIRREZABAL | IRUÑEA

INPRIMATU
BIDALI



Covite ha confirmado a las defensas de los jóvenes de Altsasu que no recurrirá ante el Supremo la sentencia de la Sala de Apelaciones de la Audiencia Nacional española, rechazando solicitar «terrorismo», al igual que hiciese la Fiscalía. Así, dos años y medio después, renuncia a la tesis que llevó el caso a ser juzgado en Madrid.

Covite has confirmed to the counsels for the defence of the young men from Altsasu that they will not appeal to the Supreme Court against the sentence of the Appeals Chamber of the Spanish National Court and has refused to sue for «terrorism», as the Prosecution Office did too. Thus, two years and a half later, they renounce to the thesis which took the case to be tried in Madrid.

Covite's lawyer, Rubén Múgica, explained in a statement to Efe that this decision «is due to technical legal reasons» and not to «their dropping the case». According to him, part of the legal reform of the year 2015 established that «those sentences issued at first instance by the provincial courts and by the criminal division of the National Court are not directly appealable to the Supreme Court, but to an Appeals Chamber», which they had already done.

2.4. “Arzuaga’s complaint against Jusapol is accepted whereas DyJ’s is rejected”.
GARA 9 June 2019.

GARA | PAPEREZKO EDIZIOA

5° Maule

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

2019/06/09

EUSKAL HERRIA

Admitida la denuncia de Arzuaga contra Jusapol y rechazada la de DyJ

El TSJPV ha desestimado la querrela presentada por Dignidad y Justicia contra Julen Arzuaga por su discurso en el Parlamento de Gasteiz contra Jusapol, mientras que un juzgado de Gasteiz ha admitido la denuncia del parlamentario contra miembros del sindicato policial que acudieron al pleno.

IÑAKI IRIONDO | GASTEIZ

INPRIMATU
BIDALI

624 59

NO DELITO DE ODIO

Además de la inviolabilidad parlamentaria, el TSJPV advierte a Dignidad y Justicia de que el delito de odio es para proteger a colectivos vulnerables por su condición, entre los que no cabe considerar a los sindicatos de las FCSE.

DESORDEN

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PUBLIZITATEA

PUBLIZITATEA

HEMEROTECA GARA H

HEMEROTECA GARA D

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The High Court of Justice of the Basque Country has dismissed the complaint filed by Dignidad y Justicia against Julen Arzuaga for his speech in Parliament in Gasteiz against Jusapol, whereas a court of Gasteiz has accepted the complaint of the parliamentarian against the police trade union members who attended the plenary session.

Last 4 April the Parliament in Gasteiz held a plenary session in which the law for victims of violence of the State was passed. The session was attended, at PP’s invitation, by several members of Jusapol police trade union who had made statements and filed proceedings against that law which enables the recognition of victims of state violence, claiming that it makes a «fallacious» account of the events and «whitewashes the bloody history of ETA’s terrorism», and they vindicated «the honour of the FCSE (Spanish State Security Forces and Corps)».

2.5. "Albert Rivera asks the public prosecution office to act against the radicals of Renteria for hate and assault". **EL MUNDO 15 April 2019.**

POLÍTICA · Grupos radicales acosaron a los asistentes al mitin

Albert Rivera insta a la Fiscalía a actuar contra los radicales de Rentería por los delitos de odio y agresión

El presidente de Ciudadanos asegura que "quienes montaron lo de ayer son los socios de investidura de Sánchez"



Los vecinos de Rentería reciben a Albert Rivera con una 'cacerolada' Atlas

Albert Rivera ha instado hoy a la **Fiscalía** a que actúe de oficio contra los radicales *abertzales* que el domingo insultaron, agredieron y escupieron a los participantes del mitin de Ciudadanos en **Rentería (Guipúzcoa)**, que tuvieron que ser protegidos por un fuerte cordón policial de la **Ertzaintza** para evitar agresiones e incidentes más graves.

"I suppose the Prosecution Office will act ex-officio", said Rivera when asked by journalists, because "if they saw crime, as all Spanish people saw, hate crime, threats and attacks, they should take the appropriate measures".

The President of Ciudadanos assured that attacks such as those which took place on Sunday occur because the [PP](#) and [PSOE](#) governments, which were not expressly mentioned, "have fuelled nationalism", have given them all competences, education and public television". "Terrorism is over", he added, "but nationalism is there".

2.6. “Rivera points at Ernai to the public prosecution office for the protests against his meeting in Errenteria”. **GARA 18 April 2019.**

GARA | PAPEREZKO EDIZIOA | 2° Gasteiz

EGUNEKO GAIAK | EKONOMIA | EUSKAL HERRIA | IRITZIA | KIROLAK | KULTURA | MUNDUA | EGU

2019/04/18

EGUNEKO GAIAK

Rivera señala a Ernai ante la Fiscalía por las protestas ante su mitin en Errenteria

GARA | BILBO

INPRIMATU
BIDALI

El presidente de Ciudadanos, Albert Rivera, presentó ayer una denuncia ante la Fiscalía General del Estado por «delitos de injurias, amenazas y odio» relacionadas con las protestas del domingo en Errenteria, de las que hace responsable a Ernai.

La denuncia argumenta que lo sucedido en la localidad guipuzcoana, donde cientos de personas protestaron por el acto de la formación derechista, «no es un hecho aislado de concentración espontánea de personas descontentas con una idea o un partido político, sino que es una clara maniobra organizada del entorno de la izquierda abertzale, Ernai, y que según fuentes de la Hemeroteca pública aparece en 2013 como heredera de los movimientos Segi y Jarrai que ya fueron mmlegalizados».

PUBLIZITATEA

PUBLIZITATEA

HEMEROTECA GARA

HEMEROTECA GARA

The complaint claims that what happened in that town in Gipuzkoa, where hundreds of people protested for the event of the right-wing party, «is not an isolated fact involving the spontaneous gathering of people who are dissatisfied with an idea or with a political party, but a clear organized manoeuvre of the left-wing Basque nationalist environment, Ernai, which, according to sources in the public newspaper archive, was reported in 2013 as being the heir of the illegalized Segi and Jarrai movements».

Ciudadanos asked the Public Prosecution Office to find out who is behind the Twitter profiles in Ernai, «the IP's from where the hate proclamation was made», and asked that «their statement be taken as if they were under investigation due to their being the promoters and instigators of the violent acts at the meeting, as well as the publicity in the social media for the dissemination of the hate messages». He has also requested the recordings of the security cameras on the site.

2.7. "The Public Prosecution Office will investigate the protests against Ciudadanos".
BERRIA 14 April 2019.

AUZITEGIAK

Ciudadanosen aurkako Errenteriako protestak ikertuko ditu Fiskaltzak

Albert Rivera Ciudadanoseko presidentea aurkeztu zuen salaketa Gipuzkoako Probintzia Auzitegian, "irain, mehatxu eta gorroto" delituengatik. Ikerketa hasia du fiskalak.



Albert Rivera Errenterian, apirilaren 14an. © ANDONI CANELLADA/FOKU

2019ko maiatzak 16



Gipuzkoako Fiskaltzak ikerketa hasi du Ciudadanosek Errenterian (Gipuzkoa) egindako ekitaldiaren harira izandako protesten inguruan. Apirilaren 14ko ekitaldiaren ondoren, Albert Rivera Ciudadanoseko burua jarri zuen salaketa Gipuzkoako Lurralde Auzitegian, "irain, mehatxu eta gorroto" delituengatik.

**IKASBIDEA
IKASTOLA IPI**
(Durana)
D ereduko ikastetxe publikoa

ATEAK ZABALIK EGUNA:
HH-LH-DBH: Urtarrilak 25
HH2 BISITA: Urtarrilak 27

AURREMATRIKULA EPEA:
Urtarrilaren 27tik otsailaren 7ra

Gehien irakurriak

1 **Ituren eta Zubietako inauteriak turistifikatuz negozioa egitea egotzi diote Julian Iantzi**
EDU LARTZANGUREN

2 **Arrisku handiko 38 enpresa**
IGOR SUSAETA

3 **Europarlamentuko 38**

The President of Ciudadanos, Albert Rivera, filed a complaint at the Provincial Court of Gipuzkoa for slanders, threats and hate. The public prosecutor has decided to open an investigation and to that end he has asked the Ertzaintza for a report on what happened in Errenteria that day, so as to identify those who took part both in the event as well as in the protests.

2.8. “The Judge investigates an event against the Civil Guard in Navarre for hatred”. **EL PAÍS** 12 August 2019.

EL FINAL DE ETA >

El juez investiga por odio un acto contra la Guardia Civil en Navarra

De la Mata rechaza suspender el “Día del Inútil” de Etxarri Aranatz contra el instituto armado

FERNANDO J. PÉREZ

Madrid - 12 AGO 2019 - 11:04 CEST



Pintadas alusivas a los presos de ETA y a su liberación en el muro de una calle de Etxarri-Aranatz (Navarra). AP

El juez de la Audiencia Nacional José de la Mata ha abierto una investigación, que remitirá a

The [Judge of the National Court Jose de la Mata](#) has opened an investigation which will be referred to the Courts of Pamplona, for alleged hate crime regarding the so-called Inutillan Egune or “Dunce Day”, an event mocking the presence of the Civil Guard which was held last Friday during the festivities of [Etxarri Aranatz \(Navarre\)](#). The Judge therefore is taking action on a complaint by the association Dignidad y Justicia, which had requested the event to be suspended and asked for an investigation due to its alleged terrorist character.

De la Mata, after requesting the Public Prosecution Office for a report on the issue, refused to suspend the event, since he understood that freedom of expression must prevail and did not think that Dunce Day’s satirical parade and mockery of the armed force have the characteristics of a terrorist crime, as the complaint claimed. The Judge pointed out that, “in spite of the seriousness of these activities”, the term terrorist act “must be reserved for more serious infringements of the universal values of human dignity, freedom, equality and solidarity as well as the enjoyment of human rights and fundamental freedoms”.

2.9. The Public Prosecution sees the 'Ospa Eguna' in Alsasua as potential hate crime and asks the Judge to prohibit it. **EL MUNDO 29 August 2019.**

NAVARRA · Petición de la Asociación de la Guardia Civil Jucil

La Fiscalía ve un posible delito de odio en el 'Ospa Eguna' en Alsasua y pide al juez que lo prohíba

La jornada, conocida como "Día de la expulsión" de la Guardia Civil, está organizada por la izquierda 'abertzale'. María Chivite defiende que se celebra desde 2010 y "ni PP ni UPN lo ha prohibido"



Pintadas de la izquierda 'abertzale' en Alsasua. CARLOS GARCÍA POZO

La **Fiscalía** de la **Audiencia Nacional** solicitó hoy la prohibición de los actos previstos para este sábado en la localidad navarra de **Alsasua** dentro de la jornada denominada *Ospa Eguna* -que puede traducirse como *Día de la expulsión* o *Día del adiós*-, por entender que pueden ser constitutivos de delitos de enaltecimiento del terrorismo y de odio.

The Public Prosecution has asked for the prohibition of the event, in response to the request by the Professional Association of the Civil Guard and due to considering that «their only purpose» is «the humiliation, harassment and promotion of hate » to the members of this force, «one of the bodies which have been punished most harshly by ETA's criminal action» for five decades.

Therefore, they call for the prohibition of the event and demand «not to let it begin and take place» and to inform de Department of the Interior of the Government of Navarre about the need to adopt the measures which may be necessary to prevent its taking place.

2.10. “Chivite claims that the “Ospa Eguna cannot be prohibited just because a group of the Civil Guard requests it”. **GARA 29 August 2019.**

EUSKAL HERRIA

Chivite afirma que «no se puede prohibir» Ospa Eguna porque lo pida un colectivo de la GC

María Chivite, presidente de Navarra, ha señalado que «la democracia no puede prohibir un acto porque un colectivo o una asociación concreta estima que los participantes podrían cometer un delito» en relación con la petición de una asociación de la Guardia Civil para prohibir Ospa Eguna, que se celebrará este sábado en Altsasu.

NAIZ | 2019/08/29



La asociación profesional Justicia Guardia Civil (JUCIL) ha presentado sendos escritos a la Fiscalía del Tribunal Superior de Justicia de Navarra, la Fiscalía General del Estado y el Gobierno navarro, en los que pide a estas instituciones que suspendan la celebración de Ospa Eguna, que tendrá lugar el próximo 31 de agosto en Altsasu, al considerarla un «delito de odio».

Sin embargo, la presidenta navarra, María Chivite, ha afirmado que Ospa Eguna «se celebra desde el año 2010 y ningún Gobierno del PP ni de UPN lo ha prohibido». «Vale ya de la instrumentalización política», ha señalado la jefa del Ejecutivo foral, en una entrevista en RNE.

INPRIMATU
BIDALI

528

19

ERLAZIONATUTAKO
ALBISTEAK

La AN contradice a la
Fiscalía y no prohíbe el
Ospa Eguna de mañana

La Fiscalía pide a la
Audiencia Nacional que
prohiba el Ospa Eguna
de este sábado

The President of Navarre, Maria Chivite, has stated that the Ospa Eguna «has been held since the year 2010 and no Government, neither PP nor UPN, has ever prohibited it». «Enough of political instrumentalization», the head of the Regional Executive pointed out during an interview in RNE (Spanish National Radio).

Chivite insisted that her Executive «recognizes the work that both the Civil Guard and the National Police have carried out, do carry out and will carry out in our Community» and that she does not share «the spirit or the purpose» of the Ospa Eguna, but she specified that «democracy cannot prohibit an event just because a specific group or association considers that the participants could commit a crime».

2.11. An 'Ospa eguna' in Alsasua under surveillance and without incidents. **EL CORREO** 1 September 2019.

Un 'Ospa Eguna' en Alsasua bajo vigilancia y sin incidentes



Carteles contras las fuerzas de seguridad en una plaza de Alsasua. /

D. S. O.



DAVID S. OLABARRI

Domingo, 1 septiembre 2019, 00:19



Alrededor de un centenar de personas participaron ayer en Alsasua en el 'Ospa Eguna', **la jornada de protesta en la que se pide la marcha de la Guardia Civil y de las fuerzas policiales del municipio navarro**. La jornada había sido autorizada el viernes por el juez de la Audiencia Nacional Ismael Moreno después de que Dignidad y Justicia hubiese pedido su suspensión al considerar que «humillaba» a la Guardia Civil y podía incurrir en un

The event had been authorized on Friday by the Judge of the National Court, Ismael Moreno, after Dignidad y Justicia asked for its suspension since they considered that it «humiliated» the Civil Guard and could constitute a hate crime. The request was supported by the Public Prosecution Office. The Judge asked the law enforcement forces to control de acts. Yesterday, the police presence went unnoticed. No plain-clothes officers could be seen in the area where the main events were taking place: popular race, lunch, parade, concerts...

2.12. “The National Court sees the Ospa Eguna as “hate crime” and refers the case to the Court of Altsasu”. **GARA 15 November 2019.**

naiz:

Eguneratua: 15.51

7° Bildo

EUSKAL HERRIA

La AN ve «delito de odio» en el Ospa Eguna y remite la causa al juzgado de Altsasu

El juez de la Audiencia Nacional española Ismael Moreno ha enviado al juzgado de Altsasu la causa abierta contra el Ospa Eguna de este año al entender que puede haber un «delito de odio», castigado con entre uno y cuatro años de prisión. Descarta «enaltecimiento del terrorismo» o «humillación a las víctimas», como pretendía DyJ.

INPRIMATU
SIDALI

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NAIZ | 2019/11/15



Kaleira en el Ospa Eguna de Altsasu. (Iñigo URIZ / ARGAZKIO PRE)

La asociación ultra Dignidad y Justicia (DyJ) solicitó a la Audiencia Nacional que prohibiera la celebración del Ospa Eguna de este año en Altsasu, celebrado el pasado 31 de agosto, una petición que contaba con el apoyo de la Fiscalía pero que el juez Ismael Moreno rechazó.

El juez, sin embargo, ordenó a las FSE que vigilaran el acto, por si se cometiera algún delito. Ahora, «del examen de las diligencias practicadas», ha concluido que podría haberse incurrido en un «delito de odio», por lo que ha remitido la causa al juzgado de Altsasu.

Moreno ha descartado que se produjeran delitos de «enaltecimiento del terrorismo» o «humillación a las víctimas», como pretendía DyJ.

The ultra association Dignidad y Justicia (DyJ) had requested the National Court to prohibit the celebration of this year's Ospa Eguna in Altsasu, which was held last 31 August, a request that was supported by the Public Prosecution Office but rejected by the Judge Ismael Moreno.

However, the Judge ordered the Law Enforcement Forces to keep watch on the event, in case a crime was committed. Now, «after examining the record of the proceedings», he has concluded that a «hate crime» may have been committed and has referred the case to the Court of Altsasu.

In his decision, the Judge says that the Ospa Eguna is held with «popular meals, dances or parades with considerable popular participation but always with an underlying idea and a clear purpose, create and fuel an atmosphere of opposition to and rejection of the Civil Guard so that they leave the Basque Country and Navarre».

The Judge reproduces in his order the Civil Guard's report on the Ospa Eguna in which it is stated that the Ospa movement has become the main driver of the «ongoing harassment» of the members of the Civil Guard, their families and close friends.

2.13. “Eight-month and six-month penalties agreed for the fascist assault in Plaza Nueva in Bilbao in 2017”. GARA 25 June 2019.

naiz bilbotarra

2°
Gasteiz

BILBO HIRIA | KIROLAK | KULTURA | BILBOTARRON BILBO

BILBO HIRIA

Pactan penas de ocho y seis meses por la agresión fascista en la plaza Nueva de Bilbo en 2017

INPRIMATU
BIDALI

3.1K

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Manuel Herrera, el acusado de la agresión en la plaza Nueva en la previa del Athletic-Betis en 2017, no se ha desplazado hasta los juzgados de Bilbo, pero al igual que el imputado por grabar y subir el vídeo a las redes sociales, ha aceptado su participación en los hechos y han pactado con la Fiscalía penas de ocho y seis meses, respectivamente.

NAIZ | 2019/06/25



La Fiscalía pedía 18 de meses de cárcel para Manuel Herrera y uno de sus acompañantes por la agresión fascista en la plaza Nueva de Bilbo en 2017. Sin embargo, ambos han alcanzado un acuerdo con la Fiscalía y han aceptado penas de ocho y seis meses, respectivamente, además de abonar 3.000 euros de indemnización.

El principal acusado no se ha desplazado al Palacio de Justicia de Bilbo y, en principio, iba a declarar por videoconferencia. Herrera ha aceptado la pena de ocho meses de cárcel por un delito contra la integridad moral, tras alcanzarse un acuerdo entre las partes, y no por un delito de odio como planteaba la Fiscalía. Además, el otro acusado, que difundió la grabación en redes sociales, será condenado a seis meses de prisión.

7mm


The Public Prosecution Office requested 18 months imprisonment for Manuel Herrera and one of his companions for the fascist attack in Plaza Nueva in Bilbao in 2017. However, both of them have reached an agreement with the Prosecution and accepted eight-month and six-month penalties, respectively, as well as the payment of 3,000 Euros as compensation.

The video that went viral in the build-up to the match between Athletic and Betis in San Mamés football stadium shows the attacker approach a person who is sitting quietly on the terrace of an establishment in Plaza and blurt out «You, Gabilondo, Arriba España, are you pro-ETA?». And without waiting for an answer he pours the drink he was holding on him and beats him hard on the face. The victim stands up and flees while the attacker moves as if to chase him, amid the laughter of his companions.

**2.14. “The three alleged Jihadists arrested in Gipuzkoa committed to prison”. GARA
25 July 2019.**

naiz:

Eguneratua: 16.19

 5°
Maule

EUSKAL HERRIA

Ordenan el ingreso en prisión de los tres presuntos yihadistas detenidos en Gipuzkoa

INPRIMATU
BIDALI

La jueza de la Audiencia Nacional María Tardón ha enviado a prisión a las tres personas detenidas este martes en Gipuzkoa por propagar en internet el ideario del ISIS.

NAIZ | DONOSTIA | 2019/07/25

La jueza de la Audiencia Nacional María Tardón ha ordenado el ingreso en prisión de los tres presuntos yihadistas detenidos este pasado martes en Gipuzkoa acusados de propagar el ideario del Estado Islámico (ISIS) a través de las redes sociales.

El Ministerio del Interior español señaló, tras los arrestos, que los tres investigados por presuntos delitos de «adoctrinamiento» y «enaltimiento del terrorismo» formaban «un grupo homogéneo y cohesionado», y se habían introducido en los círculos salafistas del herrialde.

Según el Gobierno español, comenzaron como consumidores de propaganda que el ISIS publicaba a través de Internet y fueron aumentando su actividad virtual, pasando a ser ellos mismos los que difundían en sus redes sociales mensajes de incitación al odio y a la violencia.

Los tres son marroquíes de 27 años, que residían en Urretxu, Ibarra y Urnieta. Fueron detenidos por la Brigada Provincial de Información de Donostia, bajo la coordinación de la Comisaría General de Información de la Policía española, cuyos agentes registraron sus domicilios.

The Ministry of the Interior pointed out, after the arrests, that the three persons under investigation for the alleged crimes of «indoctrination» and «glorification of terrorism» were «a homogeneous and cohesive group», and had introduced themselves in the Salafist circles of the region.

According to the Spanish government, they started as consumers of propaganda published by the ISIS on the Internet and increased their virtual activity to the point that they themselves were the ones who disseminated messages of incitement to hatred and violence in their social media.

The three men are 27-year old Moroccans who lived in Urretxu, Ibarra and Urnieta.

2.15. “Vox sues Otegi for a message regarding the inmate Iparragirre”. GARA 1 October 2019.

GARA PAPEREZKO EDIZIOA 5° Donostia

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

2019/10/01

EUSKAL HERRIA

Vox se querrela contra Otegi por un mensaje sobre la presa Iparragirre

GARA | DONOSTIA

INPRIMATU
BIDALI

Vox presentó una querrela en la Audiencia Nacional contra el coordinador general de EH Bildu, Arnaldo Otegi, por publicar en su cuenta de Twitter un mensaje reclamando la excarcelación de Marixol Iparragirre tras haber agotado su condena en el Estado francés. Pese a ello, Iparragirre ha sido enviada al Estado español y encarcelada de nuevo para intentar imponerle nuevos castigos. Tanto EH Bildu como Sortu demandaron su liberación.

Vox trasladó a la AN que el 4 de setiembre, al conocer la noticia, Otegi publicó un mensaje en Twitter en el que le expresaba su «solidaridad» y añadía: «El nuevo escenario en nuestro pueblo no habría sido posible sin la contribución de Marixol. ¡Marixol y todos los demás en casa!». Un manifiesto que reclama su libertad incide en esta idea, recordando su implicación de primera línea en el cambio de ciclo.

Reiteradas condenas

En la querrela, Vox considera que Otegi es autor de un delito de «enaltecimiento del terrorismo» y otro de «odio».

«Las manifestaciones de Otegi son el reconocimiento personal y petición de reconocimiento social a una deplorable actividad delictiva», afirmó Vox en un comunicado, al mismo tiempo que aseguró que «no puede consentir que se dé la más mínima publicidad a un terrorista ni que sea ejemplo de actividad para lograr ningún objetivo, especialmente político».

Vox lodged a complaint at the National Court against the general coordinator of EH Bildu, Arnaldo Otegi, for posting in his Twitter account a message requesting the release of Marixol Iparragirre, after her having completed her sentence in France. In spite of this, Iparragirre has been sent to Spain and imprisoned again to try and impose new penalties.

Vox informed the National Court that, on 4 September, when Otegi heard the news, he posted a message in Twitter in which he expressed his «solidarity» and added: «The new scenario in our country would not have been possible without Marixol’s contribution. Marixol and all the others come back home! ».

In the complaint, Vox considers that Otegi has committed «glorification of terrorism» and «hate» crimes.

Otegi has been sentenced several times by the National Court for this type of accusation. Two of the sentences were annulled or declared unfair by the European Court of Human Rights: the sentence which penalized him for calling King Juan Carlos «head of torturers» and the «Bateragune» sentence.

2.16. “Andoni Rojo, EH Bildu candidate for Bizkaia, threatened in the street in Bilbao”. GARA 6 November 2019.

naiz:

Eguneratua: 15.51

3° Euzkara

EUSKAL HERRIA

Andoni Rojo, candidato de EH Bildu por Bizkaia, amenazado en plena calle de Bilbo

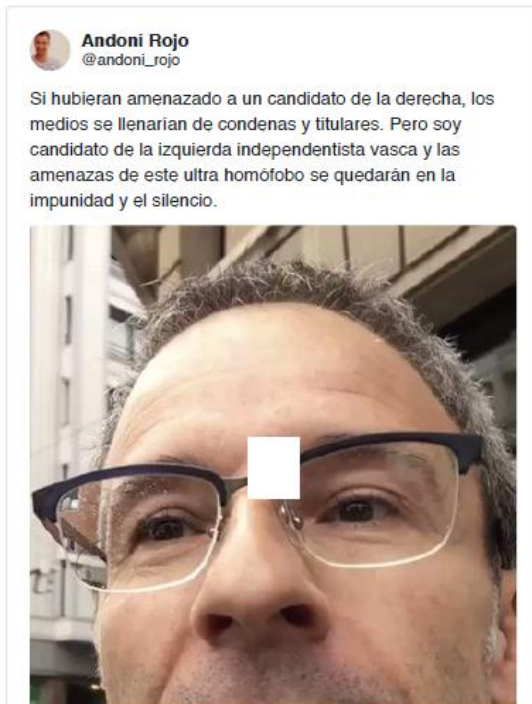
Andoni Rojo, tercero en la lista de la coalición al Congreso por Bizkaia, ha denunciado ante un juzgado las amenazas e insultos de los que ha sido objeto por parte de un desconocido en plena calle de Bilbo y que grabó con su móvil.

INPRIMATU
BIDALI

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NAIZ | BILBO | 2019/11/06



Andoni Rojo has explained that the incident took place some days ago when he was coming out of his party’s headquarters in Bilbao and this man approached him and started to threaten and insult him for ten minutes. The member of EH Bildu called the Ertzaintza, who came and identified the person who was threatening him. Later, Rojo lodged a complaint in court for «serious threats» and for «hate crime».

As one can see in the video, the stranger told Rojo that his «days are numbered» and insulted him with terms such as «Satan», «silly» or «fag».

2.17. Arrested for threatening Vox candidate for Bizkaia during the campaign. **EL CORREO** 29 November 2019

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

Detenido por amenazar a la candidata de Vox por Bizkaia durante la campaña



Imagen de la agresión sufrida por Vox en Sestao durante la campaña electoral. E / .c.

El hombre fue arrestado por la Ertzaintza acusado de atacar a Nerea Alzola durante un reparto de propaganda electoral en la zona de La Casilla



KOLDO DOMÍNGUEZ Bilbao
Viernes, 29 noviembre 2019, 16:50



Agentes de la Policía Nacional detuvieron el pasado miércoles en Bilbao a

Police officers arrested a 29-year-old man last Wednesday in Bilbao for **threatening Vox candidate to Congress for Bizkaia, Nerea Alzola**, during the past electoral campaign. The man has been charged with public disorder, threats, harm to the general electoral system and hate against members of a political group.

According to the information provided by the Government Delegation in the Basque Country, the incident in which the arrested person was involved took place in Plaza de la Casilla in the capital of Bizkaia last 2 November, when Vox party supporters were distributing electoral propaganda at a table. The young man spoke to them in a **violent and derogatory manner, threatening those presents and shaking** one of the persons who participated in the event. Moreover, he caused some damage to the table and destroyed most of the objects on it, as well as the tent under which it was situated.

2.18. Two of the eight people convicted for the Alsasua attack leave Zaballa prison due to their having obtained Grade 3. EL CORREO 20 December 2019.

Salen de la cárcel de Zaballa dos de los ocho condenados por la agresión de Alsasua al obtener el tercer grado



Una imagen del juicio. /

AGENCIAS

EUROPA PRESS

Viernes, 20 diciembre 2019, 13:47



Iñaki Abad y Aratz Urrizola, dos de los ocho jóvenes condenados por agredir a dos guardias civiles y sus parejas en Alsasua (Navarra) el 15 de octubre de 2016, han abandonado sobre las once y media de la mañana la cárcel de Zaballa **al obtener el tercer grado después de que el Tribunal Supremo rebajara sus condenas**. A la salida, sus padres han afirmado que sus hijos han vivido «una injusticia» y que «lucharán hasta que salgan

The judgment of the Supreme Court reduced Urrizola's sentence from 9 years' imprisonment to 4 years and 2 months, whereas Abad's penalty was reduced from 6 to 3 years and a half. Thus, both of them have already exceeded one fourth of their sentences, the minimum time to start requesting leaves. After the reclassification of the prison grade carried out this month by the management of the prison where they are serving their sentence --a step which is usually taken two months after the final judgement is rendered--, the two young men asked to be granted grade 3 and the Assessment Board granted it.

Abad and Urrizola were not the only persons convicted for the attack in Alsasua who had their sentences reduced. The review of the Supreme Court affected all of them, as it was considered that the hate discrimination aggravation and the abuse of superiority aggravation must not be applied in the case of attack on authority.

3. RELIGIOUS BELIEFS / PRACTICES

3.1. “Christian Lawyers report the demolition of the Francoist Cross in Ondarroa to the Public Prosecution Office”. GARA, 19 January 2019.

naiz:

Eguneratu: 16:29

5° Baiona

EUSKAL HERRIA

Abogados Cristianos lleva a la Fiscalía el derribo de la cruz franquista en Ondarroa

INPRIMATU
BIDALI

La Asociación Española de Abogados Cristianos ha anunciado este sábado que denunciará ante la Fiscalía el derribo de una cruz franquista en Ondarroa al considerar que su destrucción constituye «un delito de odio y otro contra los sentimientos religiosos».

NAIZ | ONDARROA | 2019/01/19



En una nota, la Asociación Española de Abogados Cristianos ha considerado que la destrucción de la cruz franquista en Ondarroa «es constitutivo de un delito de odio y otro contra los sentimientos religiosos, además de daños y dejación de funciones» por parte del Ayuntamiento.

La presidenta de la citada organización, Polonia Castellanos, ha criticado que el derribo de la cruz «fue a plena luz del día, duró varias horas y nadie hizo nada para frenarlo». A su vez, ha pedido la restitución «cuanto antes de un monumento de similares características».

A su juicio, una cruz «nunca puede vulnerar la ley de Memoria Histórica. En tal caso lo que puede vulnerar la ley serían las inscripciones que contenga y habría que estudiar cada caso de forma individual», ha apostillado.

The Spanish Association of Christian Lawyers has considered that the destruction of the Francoist Cross in Ondarroa «constitutes a hate crime and a crime against religious feelings, as well as damage and neglect of duties» by the Town Council.

The President of the aforementioned organization, Polonia Castellanos, has criticized that the demolition of the cross «was carried out in broad daylight, took several hours and no one did anything to stop it ». Moreover, she has asked to have it replaced «as soon as possible with a similar monument».

In her opinion, a cross «can never infringe the Historical Memory Law. In any case, what could infringe the law would be the inscriptions it may contain and each case should be considered on an individual basis», she added.

3.2. “The ECHR accepts a complaint against the Spanish State for the exhibition with Holy Hosts of the Artist Abel Azcona”. **GARA 9 October 2019.**

KULTURA

El TEDH admite una querrela contra el Estado español por la exposición con hostias consagradas del artista Abel Azcona

CARA | IRUÑEA

IMPRIMIR
ENVIAR



El Tribunal Europeo de Derechos Humanos (TEDH), con sede en Estrasburgo, ha admitido a trámite una querrela de la Asociación Española de Abogados Cristianos contra el Estado español en relación a la exposición en Iruñea del artista Abel Azcona, que formó la palabra «pederastia» con hostias consagradas. Se trata de «una de las mayores profanaciones de la historia de España», afirmó ayer la presidenta de la asociación, Polonia Castellanos, quien destacó que el TEDH admite a trámite sólo un 2% de los casos que se le presentan.

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Además, la fiscalía tiene demandas presentadas en juzgados de Mallorca y Barcelona por acciones similares de Azcona y otra presentada en Madrid ante la fiscalía especializada en delitos de odio.

En concreto, la citada asociación acusa al Estado español de no cumplir cuatro artículos del Convenio Europeo de Derechos Humanos.

The European Court for Human Rights (ECHR), seated in Strasburg, has accepted a complaint of the Spanish Association of Christian Lawyers against the Spanish State in connection with the exhibition in Iruñea of the artist Abel Azcona, who formed the word «pederasty» with Holy Hosts.

Moreover, the public prosecution has filed complaints in courts in Mallorca and Barcelona for similar actions carried out by Azcona and another one in Madrid to the Special Prosecutor’s Office for hate crimes.

Christian Lawyers resorted to the Court in Strasburg after the court decided to close « the desecration case without a trial ». Moreover, they reported that they are going to court again for alleged hate crime. They filed a complaint with the Public Prosecution Office against Abel Azcona for a tweet posted last 3 October in which he wrote: «A beautiful night to burn churches».

4. SEXUAL ORIENTATION / IDENTITY

4.1. “The Government of Navarre plans to report the Hazte Oír bus for ‘hate crime’”.
GARA 7 March 2019.

EUSKAL HERRIA

El Gobierno navarro prevé denunciar al autobús de Hazte Oír por «delito de odio»

INPRIMATU
BIDALI

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La consejera de Relaciones Ciudadanas e Institucionales del Gobierno de Nafarroa, Ana Olo, ha afirmado que el Ejecutivo tiene «preparada» una denuncia que presentará en caso de que el autobús de Hazte Oír, con el mensaje ‘Stop feminazis’, visite en los próximos días el herrialde.

NAIZ | 2019/03/07



El autobús de Hazte Oír, retenido a su paso por Barcelona. (ARRAN)

Ana Olo ha señalado, en respuesta a una pregunta de EH Bildu en el pleno del Parlamento, que Hazte Oír «plantea mensajes inaceptables en cualquier país que reconozca los derechos humanos». «Cuestionar la violencia de las mujeres, invisibilizarla, ningunearla para decir que es violencia doméstica es cuestionar los derechos humanos», ha indicado.

Así, ha señalado que, si el autobús visita Nafarroa solicitará que se investigue «lo que entendemos es delito de odio y discriminación» y pedirá medidas cautelares.

The Regional Minister for Citizen Relations, Ana Olo, has stated, in response to a question by EH Bildu at a plenary session in Parliament, that Hazte Oír «poses messages which are unacceptable in any country which recognizes human rights». «Questioning violence against women, hiding it, ignoring it to say that it is domestic violence is questioning human rights», she said.

Therefore, she pointed out that if the bus visits Navarre she will request an investigation of «what in our opinion is hate crime and discrimination» as well as precautionary measures.

- 4.2. "The Basque Government warns about speeches which encourage hatred against the LGBTBI community, who report an 'outdated' legislation". **EL MUNDO 17 May 2019**

El Gobierno vasco alerta de los discursos que alientan el odio contra el colectivo LGBTBI, que denuncia una legislación "obsoleta"

La Federación Estatal de Lesbianas, Gais, Transexuales y Bisexuales (FELGTB) asegura que carece de un catálogo de sanciones y no recoge las necesidades más importantes



La bandera del arcoiris en una manifestación en Vitoria. ARABA PRESS

El Gobierno vasco ha alertado de los **"crecientes discursos reaccionarios"** que "en base a principios pseudocientíficos y enmascarados como iniciativas de sanación" **sitúan al colectivo LGBTBI en el "ojo del huracán alentando el odio"**.

The Basque Service for Information and Assistance to the LGBTBI community, Berdindu, under the Executive of the Autonomous Community, has issued a statement on the occasion of the celebration on Friday of the International Day against Homophobia and Transphobia, commemorating the 17th of May, 1990, the date on which the World Health Organization (WHO) removed homosexuality from their list of disorders.

On this occasion, this public service has underlined the "increasing number of speeches" which, from "reactionary approaches" place the LGBTBI community in the "eye of the storm encouraging hatred" including those which "on the basis of pseudo-scientific principles and disguised as healing initiatives intend to perpetuate the pathologization of non-standard sexualities".

4.3. “Real” measures asked for attacks caused by LGBTIphobia. **BERRIA 18 May 2019.**

LGBTIfobiak eragindako erasoen kontra neurri «errealak» eskatu dituzte

Salatu dituzte hainbat erakunde politiko eta erlijiosok zabaldutako gorroto mezuak. EAEko araudia «zaharkituta» dagoela adierazi dute



EHGAMek deitutako protesta, atzo, Donostian. © JON URBE / FOKU

2019ko maiatzak 18



Aniztasun afektibo eta sexualaren kontrako gorroto erasoen harira, «konponbide material eta errealak» eskatu dituzte ehunka pertsonak Euskal Herriko kaleetan. LGBTIfobiaren aurkako nazioarteko eguna gogoan, hainbat mobilizazio egin ziren atzo. Horietan, ordezkari politikoei eskatu zieten ahalegin handiagoa egiteko eraso horien aurka.



Gehien irakurriak

1 **Ituren eta Zubietako inauteriak turistifikatuz negozioa egitea egotzi diote Julian Iantziri**
EDU LARTZANGUREN

2 **Arrisku handiko 38 enpresa**
IGOR SUSAETA

3 **Europarlamentuko 38**

They have reported the hate speeches disseminated by political and religious institutions. They have declared that the legislation of the Autonomous Community of the Basque Country is outdated.

Following the attacks against affective and sexual diversity, hundreds of people request “effective and real solutions” in the streets of the Basque Country. During the celebration of the Day against LGBTIphobia, there were demonstrations in which political representatives were asked for a greater effort against those attacks.

- 4.4. Child removed from custody of parents in Vitoria due to their beating him for being gay. EL CORREO 14 July 2019.

Retiran la custodia a unos padres en Vitoria que pegaron a su hijo por ser gay



Manifestación de apoyo al colectivo LGTBI en Vitoria. / Igor Martín

Ertzainas rescatan al menor de 16 años en plena paliza. «Le preferimos muerto», declaran los progenitores en el juzgado, que entrega al adolescente a la Diputación

[DAVID GONZÁLEZ](#) Domingo, 14 julio 2019, 18:22



Resulta fácil imaginárselo, **barruntando cómo decírselo a sus padres**. Durante semanas, quizá meses. En casa, en clase, con los amigos, su mente siempre sopesando. Y cuando por fin se armó del valor suficiente, la reacción recibida fue lo más parecido a

The victim is 16 years old. A few days ago some Ertzaintza officers rescued him from his parental home, a social rental home in Vitoria. He had marks all over his body and was shivering with fear. The whole family is of Pakistani origin. The teenager has been living in the capital of Alava for ten years.

Magistrates' Court No. 2 of Vitoria has imposed a restraining order on the parents to protect the teenager.

For that reason, Magistrates' Court No. 2, the court which is hearing the case, removed the boy from their custody on an immediate basis. He was referred to the Provincial Council of Alava, where he will be given the opportunity of a normalized life. At least until he comes of age.

4.5. “The system hates us more than it hates the authors of the graffiti”. **BERRIA 31 October 2019.**

IRANTZU VARELA. KAZETARIA ETA AKTIBISTA FEMINISTA

«Sistemak gehiago gorroto gaitu gu, pintaketan egileak baino»

Varelak sareetan aspalditik jasaten duen indarkeriak okerrera egin du azken asteetan, pintaketak egin eta intimitatea urratu baitiote. «Nekatuta» agertu da, eta nabarmendu du erasotzaileak «inpunitatez» ari direla.



MONIKA DEL VALLE / FOKU

2019ko urriak 31

Pikara aldizkariaren egoitzatik kalera begiratu du Irantzu Varela kazetari eta ekintzaile feministak (Portugaleta, Bizkaia, 1974), eta astelehenean eskuin muturreko talde batek leihotetan egindako pintaketa sexisten gainean auzolanean marraztutako irudiei erreparatu die: «Oso polita geratu da». Aste gogorak izaten ari dira Varelarentzat: urri hasieran agertu ziren haren aurkako lehen pintaketak, eta haren datu pertsonalak hedatu zituzten sare sozialetan. Esker onez mintzatu da iaso duen babesaz: «Honen alderik ederrena da iendeak maitasun pila bat

BERRIAgun izateko aukerak

BERRI

BERRI

BERRI

Gehien irakurriak

- 1 **Ituren eta Zubietako inauteriak turistifikatuz negozioa egitea egotzi diote Julian Iantziri**
EDU LARTZANGUREN
- 2 **Arrisku handiko 38 enpresa**
IGOR SUSAETA
- 3 **Europarlamentuko 38 diputatuk espetxe politika aldatzeko eskatu diete**

The violence that Varela has been suffering for some time in the social media has worsened in recent weeks since a extreme right-wing group sprayed the premises of *Pikara Magazine* with graffiti early in October and disclosed her personal information in the media. In addition to the harassment she suffers through phone calls.

4.6. “Violence has no gender”: the extreme right attacks the editorial office of Pikara in Bilbao again with fascist graffiti. **ELDIARIO.ES 12 November 2019.**

ELDIARIONORTE EUSKADI (/NORTE/)

"La violencia no tiene género": la ultraderecha vuelve a atacar con pintadas fascistas la redacción de Pikara en Bilbao

- ① En las pintadas escritas en ambas sedes se lee el mensaje "la violencia no tiene género" y el número 52, haciendo referencia a los 52 diputados obtenidos por Vox
- ② Los mensajes, al igual que en las pintadas fascistas de hace dos semanas, están acompañados de la firma de las juventudes del partido de extrema derecha Democracia Nacional
- ③ "Como advirtió la Ertzaintza con la anterior denuncia, esto no era un hecho aislado e iban a ir a más este tipo de mensajes fascistas y machistas", señalan desde Pikara

Maialen Ferreira (/autores/maialen_ferreira/)

12/11/2019 - 16:44h



1 de 3

21/1/20 18:46

"La violencia no tiene género": la ultraderecha vuelve a atacar co... <https://www.eldiario.es/norte/violencia-fascistas-redaccion-Pika...>
Pintada que dice "la violencia no tiene género" y la firma de DNJ en la sede de Pikara Magazine

El escaparate de la revista Pikara Magazine y la antigua sede de Faktoria Lila en Bilbao han amanecido este martes con pintadas en las que se lee el mensaje "la violencia no tiene género" y el número 52, haciendo referencia a los 52 diputados obtenidos por VOX (https://www.eldiario.es/politica/diputados-conseguido-Vox_0_962054462.html) tras las

“Violence has no gender”, a statement constantly repeated by Vox, is one of the new messages which have been sprayed on the walls of the premises shared by Faktoria Lila and Pikara Magazine for the second time in two weeks. And once again, the messages have been signed by youth from a fascist party. In their previous report, the Ertzaintza warned that this was not an isolated fact and that this type of fascist and male chauvinist messages would get worse. The entry of the extreme right in the institutions clearly legitimates hate speeches. The “a por ellos” (go for them) which was cheered in the night of the election is #APorTodas (go for it) and we are going to go for it against fascism", they said in a statement written by the editors of Pikara Magazine.

Just over two weeks ago, fascist messages with the same signature –as well as insults to the journalists- were spray-painted on the walls of both organizations. In view of this situation, instead of cleaning the window, the journalists decided to make an appeal to the neighbours under the name "we don't paint fascism, we go over it" so as to launch a joint message against fascism and the extreme right, covering the hate graffiti with anti-fascist messages.

4.7. “The author of ‘Tour de la Manada’ sentenced to one year and a half imprisonment for attacking the victim’s moral integrity”. **EL MUNDO 10 December 2019.**

naiz: Egurrenata: 15.51 2° Gasteiz

EUNAL HERRIA

La juez condena a año y medio de prisión al autor de la página web del ‘Tour de la Manada’

INFORMATU BIDA!

La titular del Juzgado de lo Penal número 1 de Iruñea ha condenado a un año y medio de prisión a un vecino de Madrid de 39 años que creó en diciembre de 2018 una página web de un denominado ‘Tour de la Manada’, en la que se publicaba el recorrido por las calles de la capital navarra seguido por los condenados por la violación grupal perpetrada en los santfermines de 2016.

NAIZ | 2019/12/10



Según informa el TSJN, de acuerdo con la postura de la acusación particular y en contra del criterio del Ministerio Fiscal, que había reclamado la absolución, la juez considera al procesado, R. S. M. M., autor de un delito contra la integridad moral y lo obliga a indemnizar a la víctima con 15.000 euros por el daño moral causado.

Al respecto, en la sentencia, que puede ser recurrida ante la Audiencia de Navarra, la juez destaca que, debido a la creación de la web, que se llevó a cabo entre los días 3 y 5 de diciembre de 2018, la víctima de la violación «lo agravado el trastorno de estrés post-traumático crónico que padece como consecuencia de los hechos sufridos el 7 de julio de 2016», por el que viene recibiendo tratamiento psicológico de forma continuada desde septiembre de ese año.

A raíz del visionado de la web, los síntomas de la perjudicada se exacerbaban, por lo que la mujer requirió de nuevo de la ingesta de medicamentos, de modo que hasta aproximadamente el mes de mayo de este año no ha podido recuperar «una cierta normalidad, que había alcanzado previamente a la apertura de la página».

En el juicio, celebrado el pasado 26 de noviembre, la acusación particular acusó al inculpado de sendos delitos contra la integridad moral y odio, por los que solicitó dos años de prisión, y un año, tres meses y un día de cárcel y una multa de 4.050 euros, respectivamente, así como una indemnización de 20.000 euros por el daño moral.

Por su parte, al igual que el Ministerio Fiscal, la defensa reclamó la absolución. Subsidiariamente, en el caso de que fuera condenado, abogó por la estimación de la atenuante de reparación del daño por haber ingresado 300 euros en el Juzgado de Instrucción número 4 de Iruñea, el órgano judicial que llevó la investigación, cuyo titular procesó al inculpado por este delito al apreciar indicios de un delito contra la integridad moral.

The Presiding Judge of Criminal Court number 1 of Iruñea has sentenced a 39-year-old man from Madrid to one year and a half imprisonment for creating, in December 2018, a website with a so-called ‘Tour de la Manada’, showing the route along the streets of the capital of Navarre made by those convicted for the group rape committed in San Fermin in 2016.

As the High Court of Justice of Navarre has informed, in agreement with the position of the private prosecution and against the opinion of the public prosecution, who had asked for his acquittal, the Judge considers that the defendant, R. S. M. M., is the perpetrator of a crime against moral integrity and orders him to compensate the victim with 15,000 Euros for the moral damage caused.

In this regard, in the sentence, which can be appealed against to the Court of Navarre, the Judge stresses that, due to the creation of the website, which took place between the 3rd and the 5th of December, 2018, «there was a worsening in the chronic post-traumatic stress disorder that the victim of the group rape suffers as a consequence of the events she suffered on 7 July 2016», for which she has been receiving continuous psychological treatment since September that year.

5. PEOPLE WITH DISABILITY / FUNCTIONAL DIVERSITY

5.1 Acquittal for the three tweeters who wished the death of the child with cancer who wanted to be a bullfighter. **EL CORREO 20 September 2019**

Sociedad Cumbre Cambio Climático COP25 Sucesos Educación Salud Ciencia M

Absuelven a los tres tuiteros que desearon la muerte al niño con cáncer que quería ser torero



Juicio contra los tres tuiteros / J. SIGNES

El Juzgado no aprecia delito de incitación al odio, contra la integridad moral ni de injurias graves

The Presiding Judge of Criminal Court No. 2 of Valencia has acquitted the three persons who were tried last Monday for writing offensive messages in the social media about a child with cancer who wanted to be a bullfighter, since he could not see a crime involving incitation to hatred, against moral integrity or serious slanders.

Although the judge describes some of the expressions posted as «despicable» or «disgusting», he does not see a crime involving incitation to hatred, against moral integrity or serious slanders, unlike the Public Prosecution, the private prosecution and the popular prosecution, who had asked for a penalty between one and three years imprisonment for those involved.

5.2. “The Prosecution appeals against the acquittal of the three tweeters who wished the death of the child who was a bull-fighting fan” **EL MUNDO 14 October 2019.**

PUBLICIDAD

TRIBUNALES

Fiscalía recurre la absolución de tres tuiteros que desearon la muerte a un niño aficionado a los toros

Considera que sus comentarios ofensivos dirigidos al menor, fallecido por un cáncer, constituyen un delito contra la integridad moral y les reclama un año de prisión y multa de 9.000 euros



Los tres tuiteros durante el juicio en Valencia. JOSE CUELLAR

La Fiscalía ha presentado un recurso contra los tres tuiteros que fueron **absueltos recientemente** de los delitos de odio y contra la integridad moral de un niño aficionado a los toros, fallecido por un cáncer en abril de 2017 y a quien desearon la muerte en redes sociales.

As recorded in the appeal, which EFE news agency has had the opportunity to see, the prosecutor specializing in hate crimes, **Susana Gisbert**, considers the three defendants to be responsible for a **crime against the moral integrity of the deceased minor** and asks for one year imprisonment for each of them and a joint compensation of 9,000 Euros for moral damages.

Although the Judge, in his judgement, described these expressions as "despicable" or "disgusting", **he did not see a crime involving incitation to hatred**, against moral integrity or serious slanders, unlike the Public Prosecution, the private prosecution and the popular prosecution, who asked for one to three years imprisonment for those involved.

"They are not deemed to be sufficient to be considered degrading treatment able to cause the serious impairment of moral integrity required by the type", the judgment states.

By contrast, the prosecutor points out that, in the proven facts, it is underlined that "the defendants made those statements **knowing that Adrián Hinojosa Morcillo was a minor**, had cancer and was a great bullfighting fan", and consequently, they request the application of article 173.1 of the Criminal Code (crime against moral integrity).

6. APOROPHOBIA

No major news has been found with regard to this category.

**ANNEX II. EXTRACTS FROM THE 2019
REPORT OF THE CHIEF PROSECUTOR OF
THE BASQUE AUTONOMOUS COMMUNITY
AND THE PROSECUTOR GENERAL OF THE
STATE (YEAR 2018).**

Below is a table with statistical data from the General Prosecutor of the State, listing the court proceedings regarding hate crime and discrimination in the Spanish Courts in the year 2018¹⁵⁸:

1. Court proceedings monitored by the Public Prosecution:

Threats to certain groups. Art. 170.1	39
Discrimination in employment. Art. 314	–
Incitation to hatred/violence/discrimination. Art. 510.1.	117
Acts of humiliation or justification of crime. Art. 510.2.	316
Refusal of service. Arts. 511-512	19
Unlawful association for discrimination. Art. 515.4.º.	1
Against religious feelings. Arts. 522-525	16
Against moral integrity. Art. 173.1	33
Crimes with aggravation. Art. 22.4.ª.	31
Others.	172
Total	744

2. Investigation proceedings opened at the Prosecutor's Office:

Threats to certain groups. Art. 170.1	3
Discrimination in employment. Art. 314	1
Incitation to hatred/violence/discrimination. Art. 510.1.	56
Acts of humiliation or justification of crime. Art. 510.2.	54
Refusal of service. Arts. 511-512	7
Unlawful association for discrimination. Art. 515.4.º.	1
Against religious feelings. Arts. 522-525	1
Against moral integrity. Art. 173.1	2
Crimes with aggravation. Art. 22.4.ª.	4
Others.	–
Total	129

3. Charges brought by the Public Prosecution Office:

Threats to certain groups. Art. 170.1	1
Discrimination in employment. Art. 314	–
Incitation to hatred/violence/discrimination. Art. 510.1.	15
Acts of humiliation or justification of crime. Art. 510.2	57
Refusal of service. Arts. 511-512	7
Unlawful association for discrimination. Art. 515.4.º.	–
Against religious feelings. Arts. 522-525	2
Against moral integrity. Art. 173.1	7
Crimes with aggravation. Art. 22.4.ª.	37
Others.	20
Total	146

¹⁵⁸ 2019 Report of the Public Prosecutor of the State (Year 2018), pp. 1062-1065. Available online: https://www.fiscal.es/memorias/memoria2019/FISCALIA_SITE/index.html [last access: January 2020].

4. Judgments:

Threats to certain groups. Art. 170.1	–
Discrimination in employment. Art. 314	–
Incitation to hatred/violence/discrimination. Art. 510.1.	9
Acts of humiliation or justification of crime. Art. 510.2	23
Refusal of service. Arts. 511-512	2
Unlawful association for discrimination. Art. 515.4.º	–
Against religious feelings. Arts. 522-525	1
Against moral integrity. Art. 173.1	7
Crimes with aggravation. Art. 22.4.ª	29
Others.	61
Total	133

As for the Public Prosecution Office of the Basque Autonomous Community, there is a section in their 2019 Report devoted to the criminal protection of equality and against discrimination¹⁵⁹. As they insist, at present there is no system for the collection and monitoring of hate crimes in the Administration of Justice. Therefore, the statistical data provided in the Report of the Public Prosecutor of the Basque Autonomous Community are not totally comprehensive. In this respect, the small number of cases listed in the 2019 Report as compared to those of the year 2018 which are listed in the following Table is particularly striking.

¹⁵⁹ 2019 Report of the Public Prosecutor of the Autonomous Community of the Basque Country (Year 2018), pp. 213-222. Available online: <https://www.fiscal.es/documents/20142/f17cf438-88a2-f77c-5edc-028750e5ef93> [last access: January 2020].

	Investigation proceedings	Court proceedings commenced	Charges brought	Cases pending trial	Judgments
Incitation to hatred, discrimination or violence (art. 510.1 CP)	1	1	0	2	1
Harm to a person's dignity by humiliation, disregard or discredit (510.2 CP)	4	0	8	2	8
Refusal of public or private services (arts. 511-512 CP)	0	1	0	0	0
Crimes against moral integrity (art. 173.1)	0	0	5 ⁱ	0	0
Crimes against religious feelings (arts. 522-525 CP)	0	3	0	0	0
Threats to certain groups (art. 170.1 CP)	2	2	0	0	0
Hate or discrimination aggravation (art. 22.4 CP)	0	0	6	0	1
<i>Prepared by us using the data contained in the 2019 General Report of the Basque Autonomous Community (year 2018)</i>					

ⁱThey correspond to five alternative types of crime for the crimes in art. 510.2 CP which appear above.