



# REPORT ON HATE INCIDENTS IN THE BASQUE COUNTRY **2021**



The first part of the paper discusses the importance of the research and the objectives of the study. It then proceeds to a literature review, followed by a description of the methodology used. The results of the study are presented in the next section, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The research was conducted in a systematic and rigorous manner, following the principles of good research practice. The data collected was analyzed using appropriate statistical methods, and the results were presented in a clear and concise manner. The findings of the study are discussed in detail, and their implications for practice and policy are explored. The paper is well-structured and easy to read, and it provides a valuable contribution to the field of research.

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UNESCO Chair in Human Rights and Public Authorities  
University of the Basque Country (UPV/EHU)

**DIRECTION AND COORDINATION**

Prof. Dr. Jon-Mirena LANDA GOROSTIZA (Dir.)  
Prof. Dr. Enara GARRO CARRERA (Coord.)

**WORKING GROUP:**

Mikel ANDEREZ BELATEGI  
Bertha GAZTELUMENDI CABALLERO  
Iñigo GORDON BENITO  
Uxue MARTIN SILVA  
Lore MENDIZABAL ZUBIAURRE

Department of Security  
Basque Government

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*Euskadi,  
auzolana, bien común*





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# ABBREVIATIONS

<b>AGIFUGI</b>	Association for the Future of Gipuzkoa
<b>AP</b>	Provincial Court
<b>art.</b>	Article
<b>arts.</b>	Articles
<b>BOE</b>	Official Gazette of the State
<b>CAPV</b>	Autonomous Community of the Basque Country
<b>CC.OO.</b>	Comisiones Obreras trade union
<b>CEAR</b>	Spanish Commission for Refugees
<b>CENDOJ</b>	Judicial Documentation Centre
<b>CHS</b>	Criminal History System (Scotland)
<b>CITE</b>	Information Centre for Foreign Workers
<b>CNCDH</b>	Commission Nationale Consultative des Droits de L'homme (France)
<b>COPFS</b>	Crown Office and Procurator Fiscal Service (Scotland)
<b>CP</b>	Criminal Code of 1995
<b>CPS</b>	Crown Prosecution Service (England and Wales)
<b>CSEW</b>	Crime Survey for England and Wales
<b>ECRI</b>	European Commission against Racism and Intolerance
<b>INE</b>	National Institute of Statistics (Spain)
<b>INSE</b>	Institut National De La Statistique Et Des Études Économiques (France)
<b>LECrIm</b>	Code of Criminal Procedure
<b>LGTB(I)</b>	Lesbian, Gay, Transgender and Bisexual and Intersex
<b>LO</b>	Organic Law
<b>LOVG</b>	Organic Law on Integrated Protection Measures against Gender Violence
<b>M</b>	Million
<b>n</b>	Number of cases
<b>OCLCTIC</b>	L'Office Central de Lutte Contre la Criminalité Liée Aux Technologies de L'information et de la Communication (France)
<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>OSR</b>	Office for Statistics Regulation (United Kingdom)
<b>PMK</b>	Politisch Motivierte Kriminalität



# ABBREVIATIONS

<b>PHAROS</b>	Plateforme D'harmonisation, D'analyse, de Recoupement et D'orientation des Signalements (France)
<b>SAP</b>	Judgment of the Provincial Court (Spain)
<b>PPS(NI)</b>	Public Prosecution Service (for Northern Ireland)
<b>PSNI</b>	Police Service of Northern Ireland
<b>SCRT</b>	Service Central du Renseignement Territorial (France)
<b>SSMSI</b>	Service Statistique Ministériel de la Sécurité Intérieure (France)
<b>StGB</b>	Strafgesetzbuch (Germany)
<b>STS</b>	Judgment of the Supreme Court (Spain)



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# INTRODUCTION

This is the fifth report produced since the first Official Report on Hate Incidents in the Basque Country was presented at the Basque Parliament (Institutions, Security and Public Governance Commission) on **4 June 2018**. Therefore, we already have data for an **entire six-year period (2016-2021)**, which provides some perspective and consolidation to this instrument.

It is always important to reiterate that, to start with, this Report aims at improving the knowledge, prevention and most effective eradication of hate crime in the medium and long term. Moreover, it seeks to facilitate coordination with legal professionals and contribute to transferring the hate crime work experience to international authorities.

Therefore, this Report on Hate Incidents in the Basque Country corresponds to the period **from 1 January to 31 December 2021** and, once again, it addresses potentially criminal incidents as well as incidents that may involve an administrative offence which, due to their nature and circumstances, became known to the Basque Police Force (Ertzaintza), although the latter have been recorded in a limited manner. The outbreak of the pandemic had a direct and dramatic effect on nightlife and sports events, which are, in fact, the activity sectors in which administrative offences take place. For this reason, it is not possible to show a more accurate reflection of the reality of these offences.

Further to what has been said, *the 2021 Report has a well established structure but also some interesting new features*. Firstly, as in the last years, it provides information and analysis of the potentially criminal hate incidents of the year 2021 (first point). Secondly, it provides a comparative study with the European area (second point). This year, like last year, this section deals with an update of data from the most relevant countries within the sphere of our legal culture (Germany, France, England and Wales, Scotland and Northern Ireland), bringing together and updating the comparison perspective with regard to countries with a long tradition in this subject as well as large demographic weight (Germany, France, England/Wales), as well as countries that represent a federal experience closer to ours (Scotland and Northern Ireland). This way, the evolution of the data from these countries can be monitored in the light of the efforts already recorded in previous Reports.

Thirdly, this year the report also includes one of the new features that were added last year. It is a short analysis of the reports presented by the Erabe-rean Network, to be precise, a comparison of the data from 2020 and the data from 2019.

This year there is a new feature in the fourth point. It is a legal-criminological study on the 25 cases of accomplished homicide and murder against a woman by her male partner or ex-partner in the territory of the Basque



Autonomous Community in the years 2002-2020. The study is based on the analysis of the data gathered by the Ertzaintza and the content of the First Instance Judgments with regard to the aforementioned cases. The aim of this specific study is twofold. To start with, hate crime is getting closer, with regard to both its jurisprudential praxis as well as its political-criminal evolution, to the legal-criminal treatment of gender violence. There is a connecting bridge between both realities through the aggravation of article 22.4 of the Criminal Code which also includes “gender reasons”. The study of crimes against the lives of women in the Basque Autonomous Community seeks to trace the evolution of this criminal aetiology as well as the modification over time of the classification of the offences and the attention to this reality. The second aim has to do with traceability. A field such as homicide-murder allows us to keep track from the police information that is available to the end of the decision circuit with the appropriate judgment. This traceability exercise intends to be first “pilot” step to sow the seeds to extend the analysis pattern and check its potential with regard to other incidents.

Finally, the Report ends with the usual block of synthesis and conclusions, followed by the more instrumental sections (Bibliography, List of Figures) as well as the information sections (annexes 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).



# 01



## Hate incidents in 2021



279 potentially criminal hate incidents were recorded in the Basque Country in 2021<sup>1</sup>. 277 (99.28%) of those incidents are hate crimes and 2 (0.72%) administrative offences. In any case, it is important to view this figure with caution, since the situation created by the pandemic has affected the offences this report drew from: offences regarding sports events and the right of admission. These areas are mainly linked to the hospitality industry and nightlife and, as is known, in spite of the trend towards normalization as compared to the previous year, their activity has decreased considerably. The fact is that for the best part of that year it was not possible to hold sports events with public and the use of hospitality and nightlife premises was limited as a consequence of the restrictions on the opening and capacity of restaurants, thus reducing the chances of potential victims meeting offenders. As stated above, this distortion has made it advisable to view the administrative offences recorded in 2021 with caution.

Having said that, we are now going to focus on the analysis of the hate crimes recorded in 2021, leaving administrative offences for a later analysis. In this regard, the following chart shows the evolution of hate crimes in the last 6 years. As can be seen, the number of crime incidents has increased exponentially in the last two years. As we explained in the previous report, the experience of previous years in the collection and recording of data, the joint work of the Ertzaintza and the University of the Basque Country, together with the intensification of training has made it possible to change and improve the detection and centralization of the information regarding this type of incidents. That is the reason why there has been an increase in crime incidents that is attributable to greater police efficacy in their detection and recording. This scenario was already forecast in the previous reports: it is a sought-after scenario, since the report aims, amongst other things, to improve the awareness and the technical skills of those who carry out the proceedings regarding these incidents in order to reveal the dark figure. The increase, which is due to an improvement in the police activity onsite and the recording system, is positive and encouraging, to the extent that it allows bringing into light a more realistic picture that would otherwise remain hidden, with the resulting defencelessness and victimization of the target groups. Nowadays, police detection has improved and impunity has decreased accordingly in the Basque Country.

In any case, as we explained in the previous report, this step forward does not mean that we should pay no attention to the ups and downs<sup>2</sup> in the recording of hate incidents in order to find multi-causal explanations, since, even though the dark figure of these crimes is decreasing, it is still very high<sup>3</sup>, which

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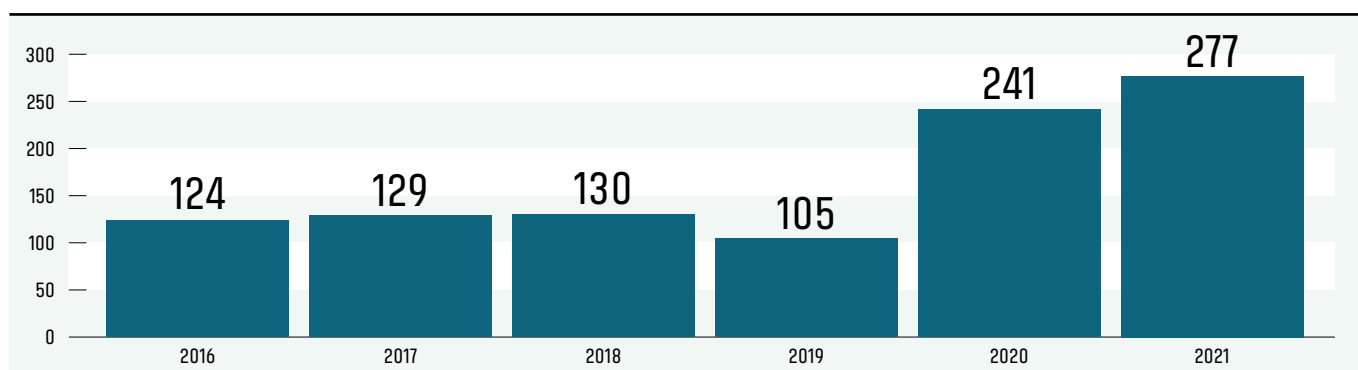
1. The incidents included in this report are incidents recorded in 2021, regardless of their having been committed during that year or not. In fact, 30 of those cri-

mes were committed in previous years, 8 in 2020, 4 in 2019 and 18 in 2018.



prevents knowing the true extent of victimization, or whether the number of hate crimes committed in 2020 and 2021<sup>4</sup> has actually increased that much. In fact, there is research that, on the basis of data from the European Fundamental Rights Agency (FRA), places that dark figure at around 80%, although there are differences between the various groups of reference<sup>5</sup>.

FIG. 1. HATE CRIMES (2016-2021)



2. Throughout this report it can be seen that there are ups and down in the recording of hate incidents and crimes, especially as regards the last years, as mentioned above. They must be viewed with caution due to the low number of cases recorded, as well as the limited value of police statistics. In fact, the precariousness of the issue as regards the recording of hate incidents and crimes seems to indicate a high dark figure. This is why the exponential increase experienced by the number of incidents recorded in 2020 and 2021 could be due, not only to an improvement in the data recording systems, but also to a possible increase in the trust of the target groups on the law enforcement forces or an improvement in the training of the Law Enforcement officers who record the complaints from these groups, amongst other reasons, and not necessarily to an actual increase in this criminal phenomenon. LANDA GOROSTIZA, J.M., "El mapa de odio en el País Vasco. A la vez una reflexión sobre delitos de odio y violencia política en Euskadi, Catalunya e Irlanda del Norte", *Indret: Revista para el Análisis del Derecho*, No. 4, 2018, p. 17. On the limited value of police statistics as the only source to know the actual extent of criminality, see GARCÍA SPAIN, E./DÍEZ RIPOLLÉS, J.M./PÉREZ JIMÉNEZ, F./BENITEZ JIMÉNEZ, M.J./CEREZO DOMÍNGUEZ, A.I./ (2010), "Evolución de la delincuencia en España: Análisis longitudinal con encuestas de victimización", *Revista Española de Investigación Criminológica*, Art. 2, No. 8, *passim*.

3. The dark figure of hate crime comprises those crimes that are not reported and, therefore, are not known to the Law Enforcement forces. VOZMEDIANO

SANZ, L./SAN JUAN GUILLÉN, C., *Criminología ambiental: ecología del delito y de la seguridad*. Editorial UOC: Barcelona, 2010, *passim*.

4. MASON, G./MAHER, J./MCCULLOCH, J./PICERING, S./WICKERS, R./MCKAY, C., *Policing hate crime: Understanding communities and prejudice*, Routledge, Oxon, 2017, p. 127.

5. This high dark figure, as stated in various reports, may be due to different reasons, such as the victims' reluctance and fear to report, or the lack of hate crime training of the public bodies in charge of recording and classifying the crimes. Moreover, there are incidents that are not reported to the police, but to other authorities, such as the Public Prosecutor's office or directly to the court on duty. This is why we should take into account other instruments that enable the gradual establishment of the dark figure, such as victimization surveys or reports by NGOs, such as Eraberean's Report (see section 3 of this report below), which provide data from different sources and supplement police statistics. ACHUTEGUI OTALAURRUCHI, P., "Victimización de los delitos de odio. Aproximación a sus consecuencias y a las respuestas institucional y social", *Journal of Victimology*, No. 5, 2017, pp. 36 and ff. See also, LANDA GOROSTIZA, J.M., "El mapa de odio... op. cit., pp 6 and ff.



# 1.1

## DISTRIBUTION OF HATE CRIMES

### 1.1.1. CLASSIFICATION OF HATES CRIMES BY PROTECTED GROUP

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As we see below, with regard to the map of groups, the percentages attributed to each group have undergone a profound transformation in the last year. Racist or xenophobic crimes account for most of the crimes recorded (n=162; 58.48%), like in previous years, the percentage being substantially higher than the year before, which can be partly due to the change in the incident recording system that was mentioned in the previous paragraph.

These crimes are followed by crimes against sexual identity and orientation (n=73; 26.35%) and against sex (n=17; 6.14%). In this regard, it must be pointed out that the crimes committed against the former (sexual identity and orientation) have increased considerably during the last year, consolidating their position as the second most victimized group, unlike crimes on the grounds of sex, which have hardly undergone any variation in number<sup>6</sup>. Nevertheless, it is worth noting, with regard to the latter group, that they have become the third most victimized group not due to the increase they have undergone, as mentioned above, but due to the sharp decrease undergone by the two groups that stood before them in the previous year, ideology and political orientation and functional diversity (n=10; 3.61% each), the first falling by almost two thirds and the second by more than half.

As for aporophobia (n=2) and beliefs and religious practices (n=3), they represent 1.81% of the crimes recorded.

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6. In any case, we should remember that this variable has only been recorded for three years, which prevents

us from appreciating the evolution, as it happens with the rest of the variables mentioned so far.



FIG. 2. CRIMES BY PROTECTED GROUP (2021, N = 277)

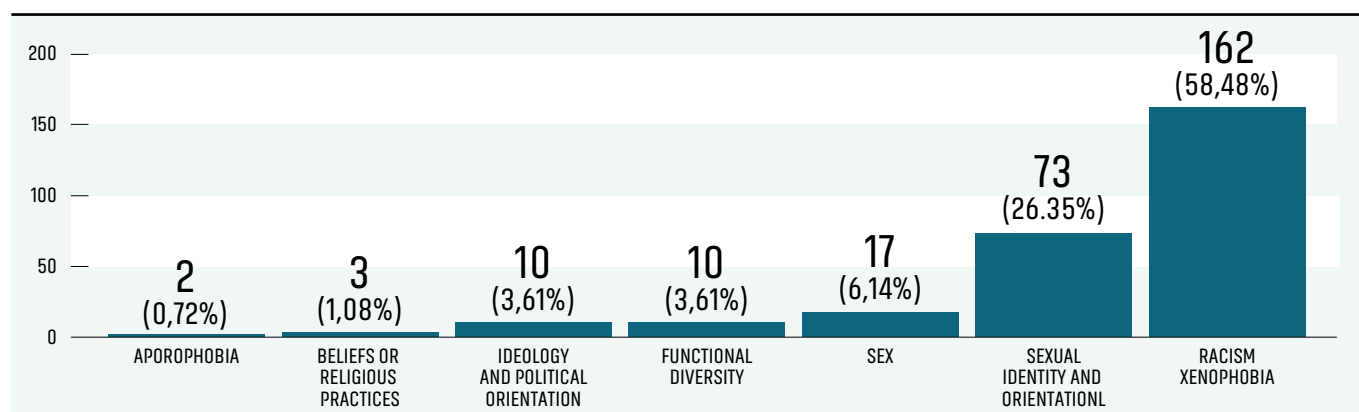
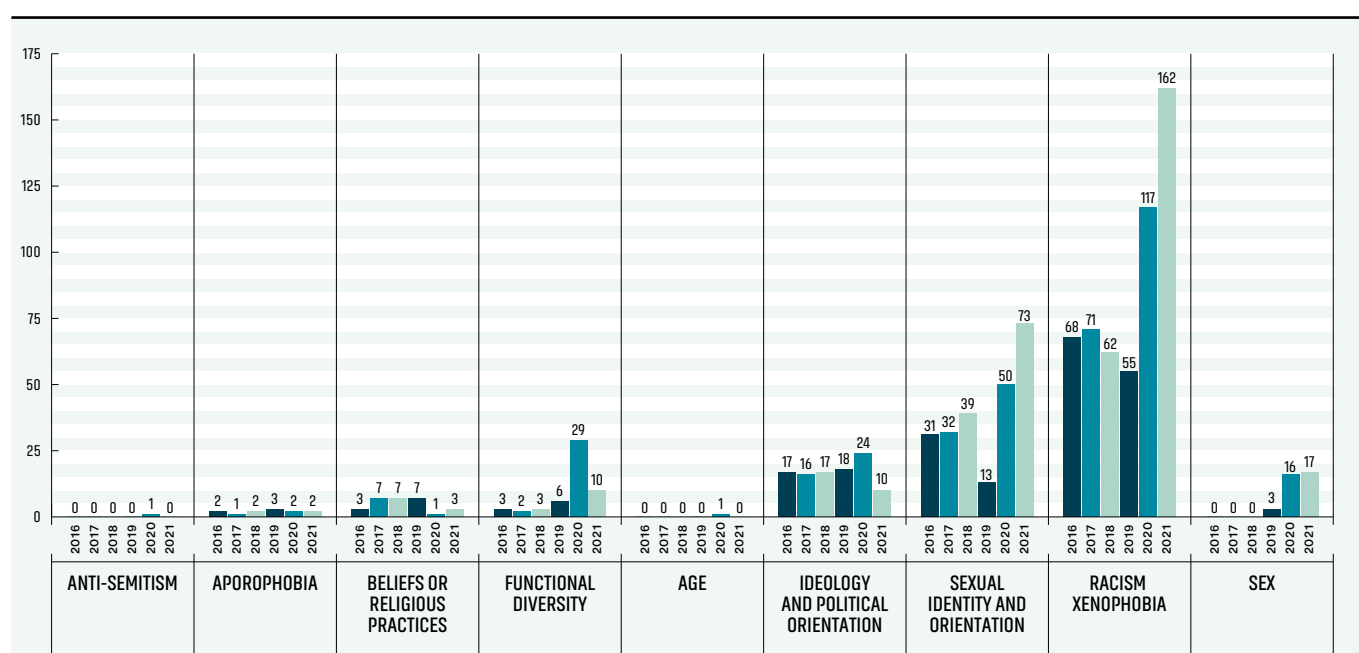


FIG. 3. CRIMES BY PROTECTED GROUP (2016-2021)

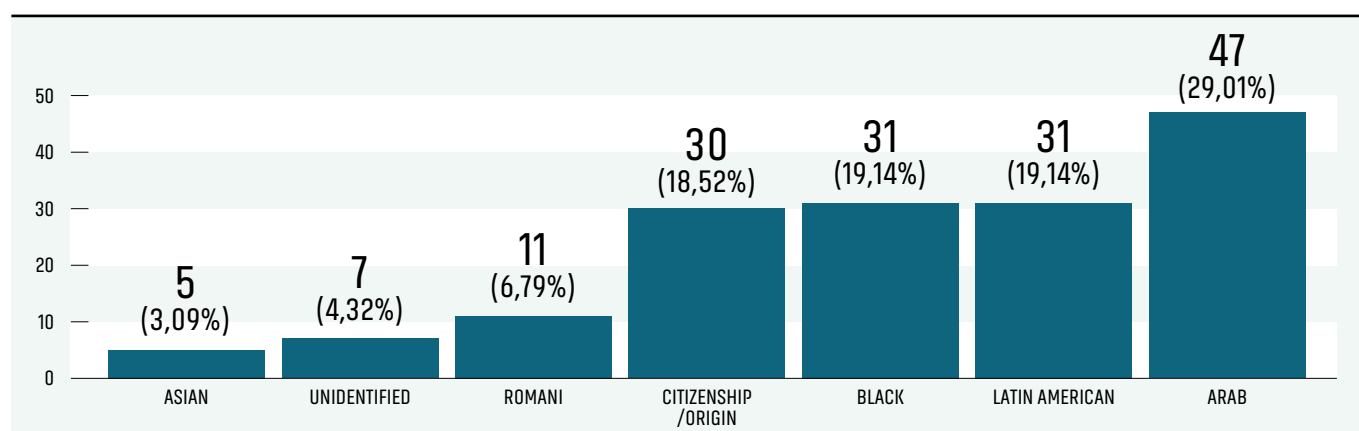


In view of the above we can conclude that the increase in hate crime this year focuses exclusively on crimes based on racial/ethnic discrimination as well as crimes based on sexual identity and orientation.



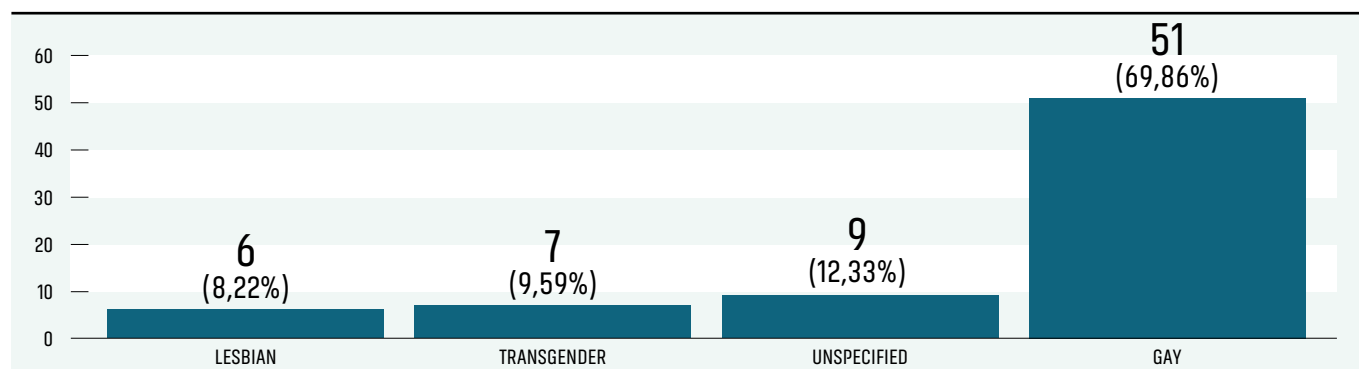
If we focus on the data related to racism and xenophobia, they can be broken down into the following groups: Arab (n=47; 29.01%), Asian (n=5; 3.09%), Romani (n=11; 6.79%), Black (n=31; 19.14%), Latin/Latin American (n=31; 19.14%), Citizenship/Origin (n=30; 18.52%) and Unidentified (n=7; 4.32%).

FIG. 4. **RACISM – XENOPHOBIA CRIMES BY ETHNIC GROUP (2021, N = 162)**



If we do this same with hate crimes against sexual identity and orientation, it can be seen that the most victimized group is undoubtedly the gay group (n=51; 69.86%), well above the rest.

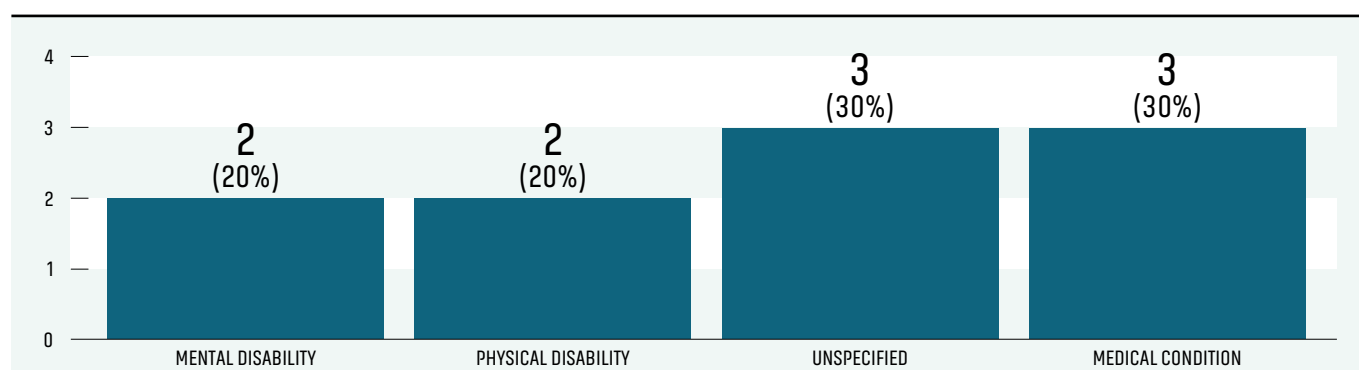
FIG. 5. **SEXUAL IDENTITY AND ORIENTATION CRIMES BY GROUP (2021, N = 73)**





Finally, as regards the persons who are victimized on the grounds of their functional diversity, victimization is homogeneously distributed among the different categories: mental functional diversity (n=2), physical functional diversity (n=2), medical condition (n=3) and unidentified (n=3).

FIG. 6. FUNCTIONAL DIVERSITY CRIMES BY GROUP (2021, N = 10)



### 1.1.2. CLASSIFICATION OF HATE CRIMES BY CRIME TYPE

On the subject of the most prevalent crime types, the following chart shows that standing out above the rest is bodily harm (98 cases), followed by threats (60 cases), coercion (28 cases), hate speech (20 cases) and degrading treatment (18 cases). However, the prevalence of the more serious crimes, such as bodily harm, must be viewed with caution since, according to research, many victims of less serious hate crimes think that “there is no much that the police can do” in relation to these types of crimes and, therefore, they are not reported<sup>7</sup>.

Moreover, in connection with hate speech, it is worth noting that it has slightly recovered the prevalence it used to have in previous years. In any case, as pointed out in previous reports, the cases classified as hate speech

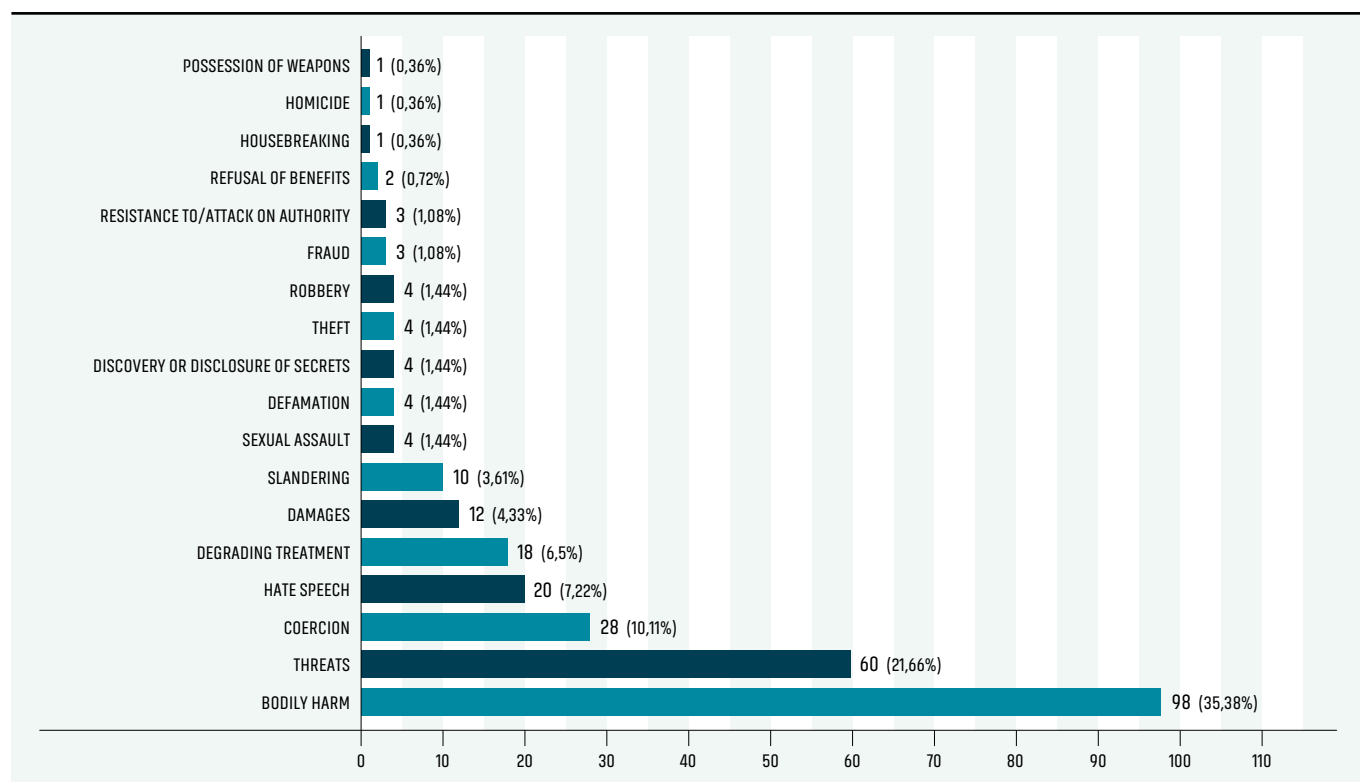
7. MASON, G./MAHER, J./MCCULLOCH, J./PICKE-RING, S./WICKERS, R./MCKAY, C., Policing hate crime, ... op. cit., p. 89



must be viewed with reservations, due to the fact that they rarely make it far in the judicial process.

Likewise, it is worth noting that there are 4 sexual assault cases (1 of them on a minor) and 1 homicide (not completed)..

FIG. 7. **CRIMINAL TYPOLOGY (2021, N = 277)**





The following table shows how the different crime categories have been grouped:

<b>SEXUAL ASSAULT:</b> arts. 181 and 183 CP.	<b>HATE SPEECH:</b> art. 510 CP.
<b>HOUSEBREAKING:</b> art. 202 CP.	<b>HOMICIDE:</b> art. 138 CP.
<b>THREATS:</b> arts. 169, 170 and 171 CP.	<b>THEFT:</b> art. 234 CP.
<b>DEFAMATION:</b> art. 206 CP.	<b>SLANDERING:</b> arts. 209 CP.
<b>COERCION:</b> art. 172 CP.	<b>BODILY HARM:</b> arts. 147 and 153 CP.
<b>DAMAGES:</b> art. 263 CP.	<b>RESISTANCE TO/ATTACK ON AUTHORITY:</b> arts. 550 and 556 CP.
<b>REFUSAL OF BENEFITS:</b> art. 511 CP.	<b>ROBBERY:</b> art. 242 CP.
<b>DISCLOSURE OF SECRETS:</b> art. 197 CP.	<b>DEGRADING TREATMENT:</b> art. 173 CP.
<b>FRAUD:</b> art. 248 CP.	<b>POSSESSION OF WEAPONS:</b> art. 563 CP.

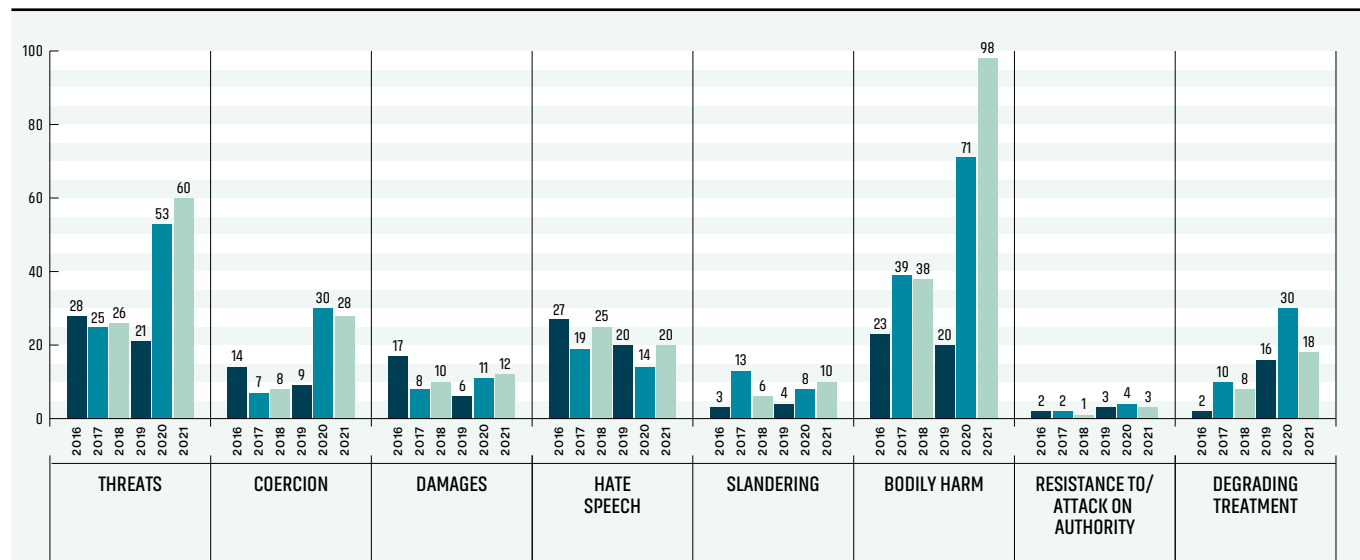
The following chart shows the evolution of crime types from 2016 to the present<sup>8</sup>. It can be seen that, whereas there has not been any significant variation in the commission of certain crimes, in spite of the increase in the number of cases recorded (as in the case of resistance to/attack on authority), most of the crimes show considerable ups and downs. This is the case of bodily harm, which, after increasing considerably in 2017 and remaining the same in 2018, underwent a sharp fall in 2019, and increased considerably again in 2020 and 2021. Something similar can be said about threats, which decreased in 2017, increased slightly in 2018, decreased again in 2019 and increased considerably in 2020, and continued increasing, albeit moderately, in 2021.

8. The chart only shows the crime types that have had continuity over the years, that is, the crime types that have appeared all the years under study, leaving out

those that only appeared one or two years.

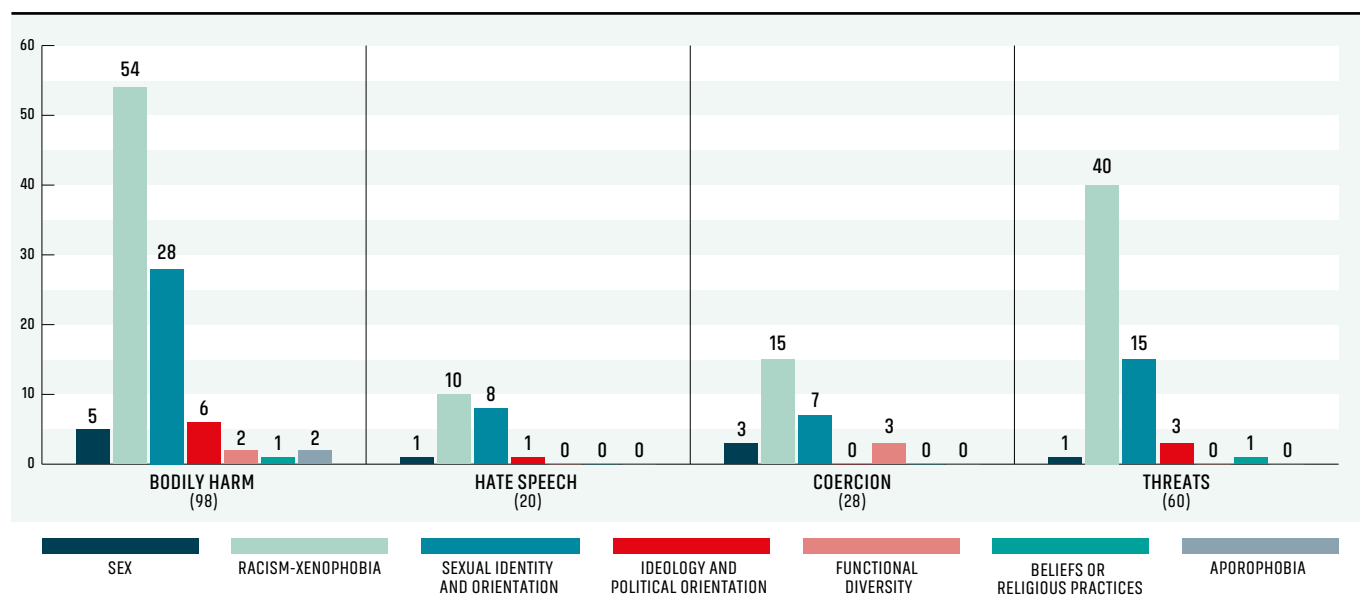


FIG. 8. CRIMINAL TYPOLOGY (2016-2021)



Below is the analysis of the most prevalent crime types, that is, threats, coercion, hate speech and bodily harm, with the different groups, in order to find out if certain groups are more likely to suffer certain types of crime than others. Thus, the data show that race is the group that most often suffers these types of crimes, being the victims of bodily harm, threats and coercion, mainly.

FIG. 9. CRIMINAL TYPOLOGY BY PROTECTED GROUP (2021)



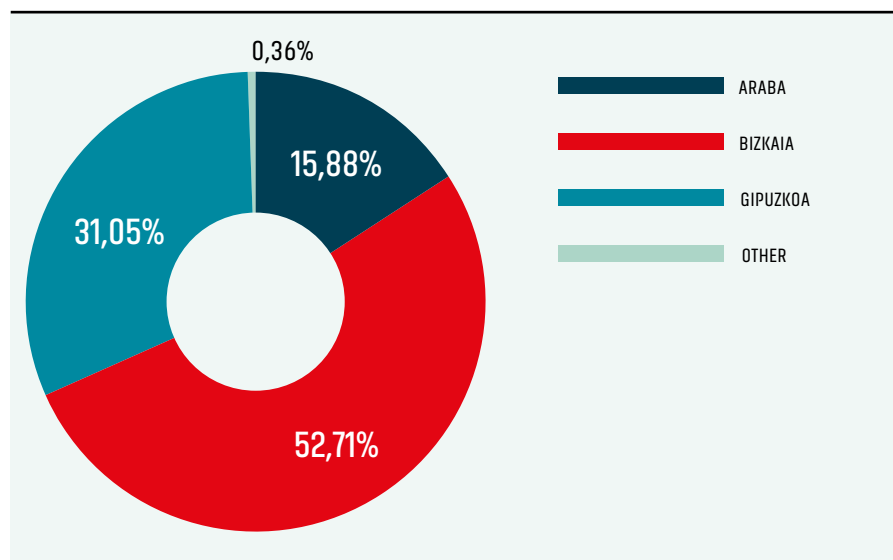


### 1.1.3.

#### SPATIAL DISTRIBUTION OF HATE CRIMES

As for the distribution of the 277 crimes in the historical territories, the following chart shows that Bizkaia accounts for more than half of the hate crimes (n=146), whereas Gipuzkoa accounts for one fourth (n=86) and Araba for a little less than one fifth (n=44). Likewise, there is 1 crime that took place in another province (in Cantabria, to be precise).

FIG. 10. CRIMES BY HISTORICAL TERRITORY (2021, N = 277)



Below is the distribution of hate crimes by municipality in the Basque Country<sup>9</sup>. The capitals of the historical territories stand out for the sixth consecutive year: Bilbao (n=46), Vitoria-Gasteiz (n=35) and Donostia-San Sebastian (n=16). Worthy of note are also the municipalities of Barakaldo (n=12), in Bizkaia, and, especially, Irun (n=32, with twice as many cases as Donostia-San Sebastian and just one third of its population), in Gipuzkoa. The prevalence of these municipalities is not surprising since, according to data from the National Institute of Statistics, Barakaldo is the second most populated municipality in Bizkaia and, together with Bilbao, accounts for 38.75% of the population<sup>10</sup>. The same can be said about Irun, which is the second most populated municipality in Gipuzkoa and, together with Donostia-San Sebastian,

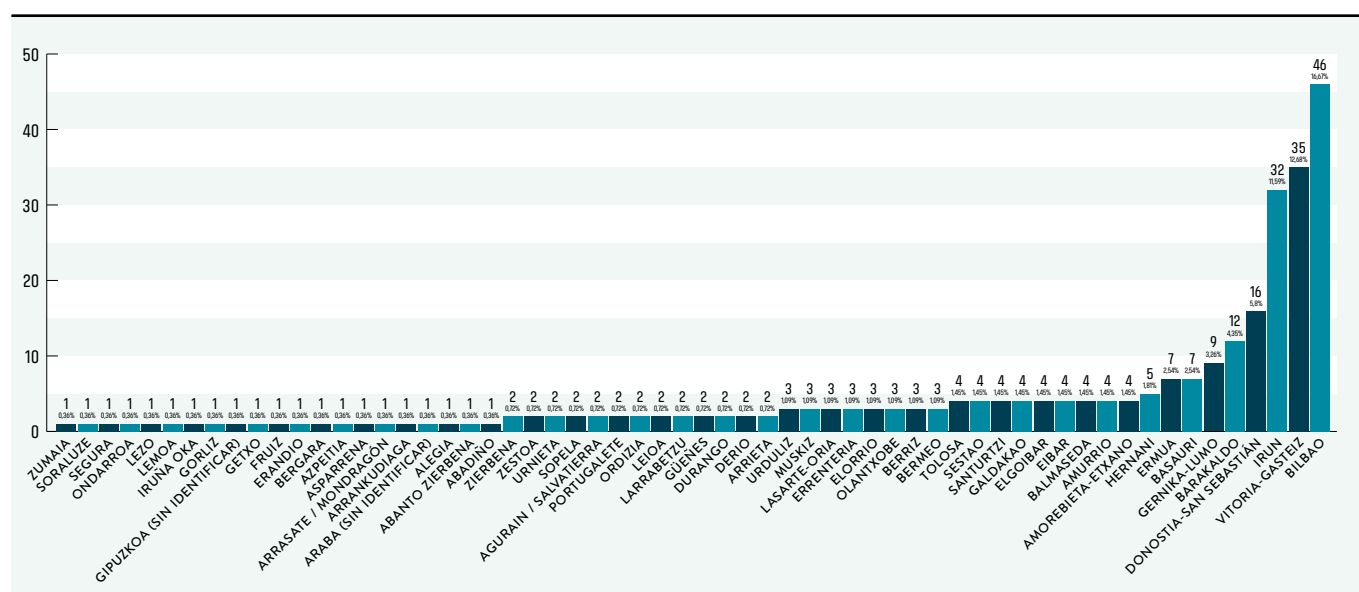
9. This chart only shows the crimes that took place in the Basque Autonomous Community, leaving out those that, in spite of having been recorded here, were just reported in this territory but not actually committed in the Basque Country.

10. For further information visit the website of the NATIONAL INSTITUTE OF STATISTICS (INE), which has the official population figures of Bizkaia available for consultation: <https://www.ine.es/jaxiT3/Datos.htm?t=2905>.



accounts for 34.58% of the population of that historical territory, and is also a transit-intensive space due to its being situated on the border with France<sup>11</sup>. This is in line with the research that shows that these crimes are usually committed in places with high volume, density or movement of people or lots of traffic<sup>12</sup>.

FIG. 11. **CRIMES BY MUNICIPALITY (2021, N = 276)**



If we focus exclusively on the 162 racist/xenophobic crimes, it can be seen that, in the line of the previous years, Bizkaia is the province with the most cases for the sixth consecutive year, with 86 of the 162 cases recorded (53.09%), whereas the cases recorded in Gipuzkoa have increased significantly, with 54 cases (33.33%), going up from just over one fourth of this type of incidents in 2020 to one third in 2021. Araba recorded 22 cases (13.58%), a similar figure to that of the previous year.

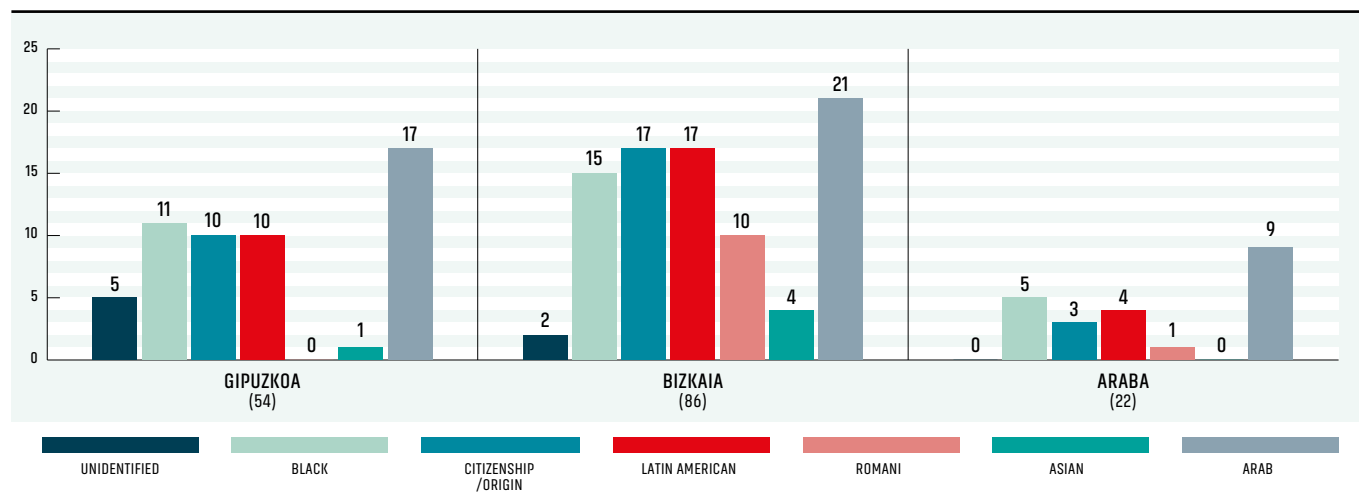
11. For further information, visit the website of the NATIONAL INSTITUTE OF STATISTICS (INE), which has the official population figures of Gipuzkoa available for consultation: <https://www.ine.es/jaxiT3/Datos.htm?t=2873#!tabs-tabla>.

12. IGANSKI, P, Hate crime and the city, Policy Press,

Bristol, 2008, passim.

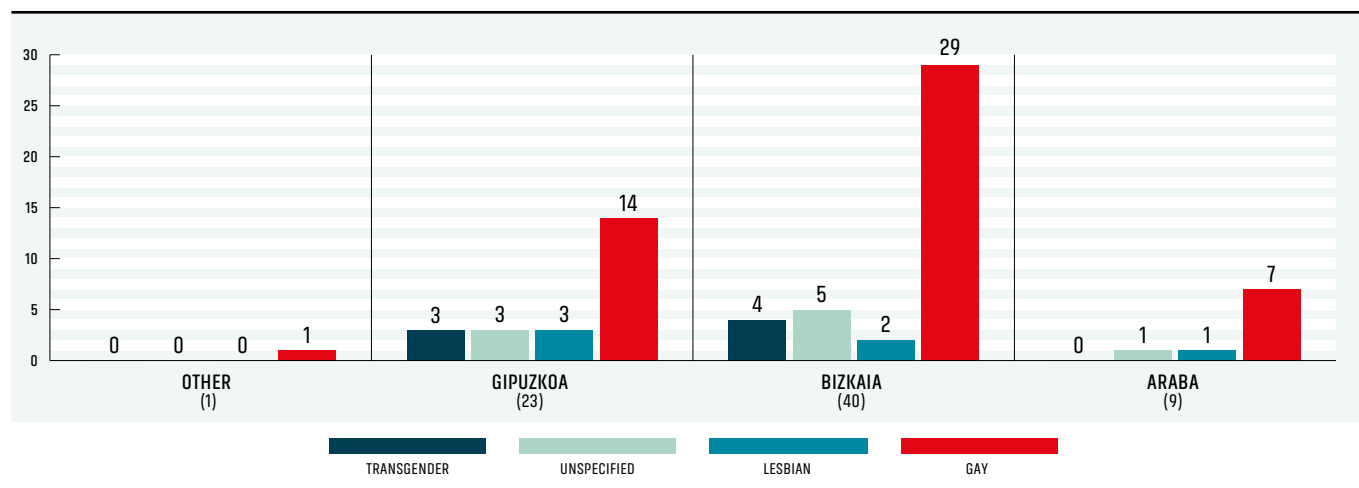


FIG. 12. RACISM – XENOPHOBIA CRIMES BY HISTORICAL TERRITORY AND ETHNICITY (2021, N = 162)



On the other hand, if we consider the 73 hate crimes committed on the grounds of the sexual orientation of the victim, it can be seen that most of the incidents took place in Bizkaia (54.79%) and Gipuzkoa (31.51%).

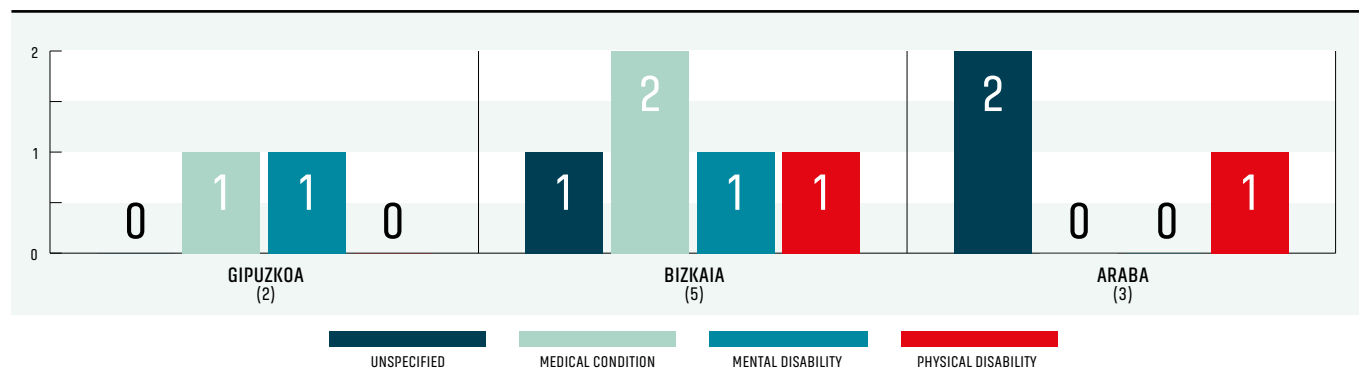
FIG. 13. SEXUAL IDENTITY AND ORIENTATION CRIMES BY HISTORICAL TERRITORY AND GROUP (2021, N = 73)



As for those crimes committed on the grounds of the functional diversity of the victim, half of them were recorded in Bizkaia (5 cases). Out of the remaining 5 cases, 3 took place in Araba and 2 in Gipuzkoa.



FIG. 14. FUNCTIONAL DIVERSITY CRIMES BY HISTORICAL TERRITORY AND GROUP (2021, N = 10)



With respect to the 10 crimes recorded by the Ertzaintza and motivated by ideology and/or political orientation, 4 took place in Bizkaia, 5 in Araba and 1 in Gipuzkoa.

The following summary table and the following chart show the historical territories where the hate crimes against the various groups were committed, as well as the variation with respect to the previous year in the case of the summary table.

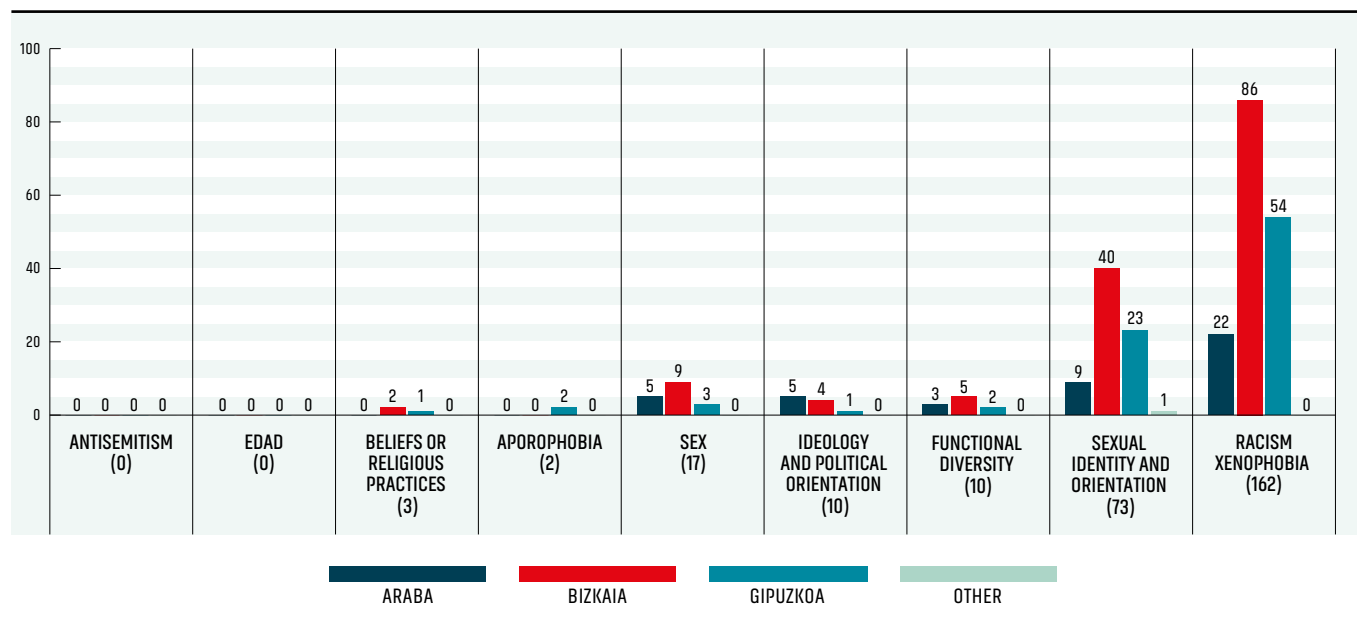
	ARABA	BIZKAIA	GIPUZKOA	OTHER <sup>13</sup> PROVINCES	TOTAL	+ - (2020)	%
ANTI-SEMITISM	-	-	-	-	0	-1	-100%
AGE	-	-	-	-	0	-1	-100%
BELIEFS/RELIGIOUS PRACTICES	-	2	1	-	3	2	33,33%
APOROPHOBIA	-	-	2	-	2	-	0
SEX	5	9	3	-	17	1	6,25%
IDEOLOGY/POLITICAL ORIENTATION	5	4	1	-	10	-14	-58,33%
FUNCTIONAL DIVERSITY	3	5	2	-	10	-19	-65,52%
SEXUAL IDENTITY/ORIENTATION	9	40	23	1	73	23	46%
RACISM/XENOPHOBIA	22	86	54	-	162	45	38,46%
TOTAL	44	146	86	1	277	36	%14,94

13. The term "Other provinces" refers to those crimes that were committed in a place that has not been identified by the Ertzaintza (for example, because they were committed on the Internet), as well as those cases in which the crime was committed in another province

but the complaint was filed in the Basque Country. In this specific case, as we mentioned above, the only case classified in this category is an incident that took place in Cantabria.



FIG. 15. CRIMES BY HISTORICAL TERRITORY AND GROUP (2021, N = 277)



The following chart also analyzes the distribution of hate crimes from the spatial point of view but, in this case, the focus is on the site where they were committed. As can be seen, public spaces account for over one third of the sites, to be precise, 39.71% of the cases.

In any event, one may as well wonder about the exact location of the crime scenes classified as “public spaces”. Even though some places may be classified as public spaces in the strict sense (such as streets, paths, parks, etc.), a number of studies have shown that what police statistics call public spaces are, on many occasions, places that are very close to the victim’s home<sup>14</sup>. This fact, that is, the fact that a high percentage of hate crimes take place at the victim’s home or in the surrounding area, is crucial, since in these cases the psychological impact derived from the attack can be more intense<sup>15</sup>, and can even affect the victim’s family<sup>16</sup>.

Homes account for 16.61% of the sites where crimes are committed. If we

14. See, in this respect, the research by MASON, G., “Being hated: Stranger or familiar?”, *Social & Legal Studies*, Vol.14, no. 4, 2005, pp. 593-594; and MCDEVITT, J./BALBONI, J./GARCIA, L./GU, J., “Consequences for victims: A comparison of bias- and non-bias-motivated assaults”, *American Behavioral Scientist*, Vol.4, no. 4, 2001, passim.

15. SCHEPPELE, K. L./ BART, P. B., “Through women’s eyes: Defining danger in the wake of sexual assault”, *Journal of Social Issues*, Vol. 39, núm. 2, 1983, passim.

16. CHAKRABORTI, N./GARLAND, J./HARDY, S. J., *The Leicester hate crime project: Findings and conclusions*. University of Leicester, Leicester, 2014, passim.



add the spaces referred to as “other dwellings or common areas”<sup>17</sup>, the total of hate crimes that took place in these spaces amounts to 22.39%. In the third place, we find establishments related to hospitality, leisure and the like, whose percentage is similar to that of the previous year, when it went down by half. It must be remembered that these are the establishments that have most suffered the restrictions related to the pandemic, since they had to apply restrictions of various types on many occasions throughout the year 2021. Therefore, it is not surprising that the percentage of crimes remains very low here.

In any case, a possible explanation to the above can be found in the routine activities of the victims, in such a way that the places that are most frequented by them in their daily lives, such as the area around their homes or the business establishments or food stores they usually go to, are more likely to be the scene of the hate crime<sup>18</sup>.

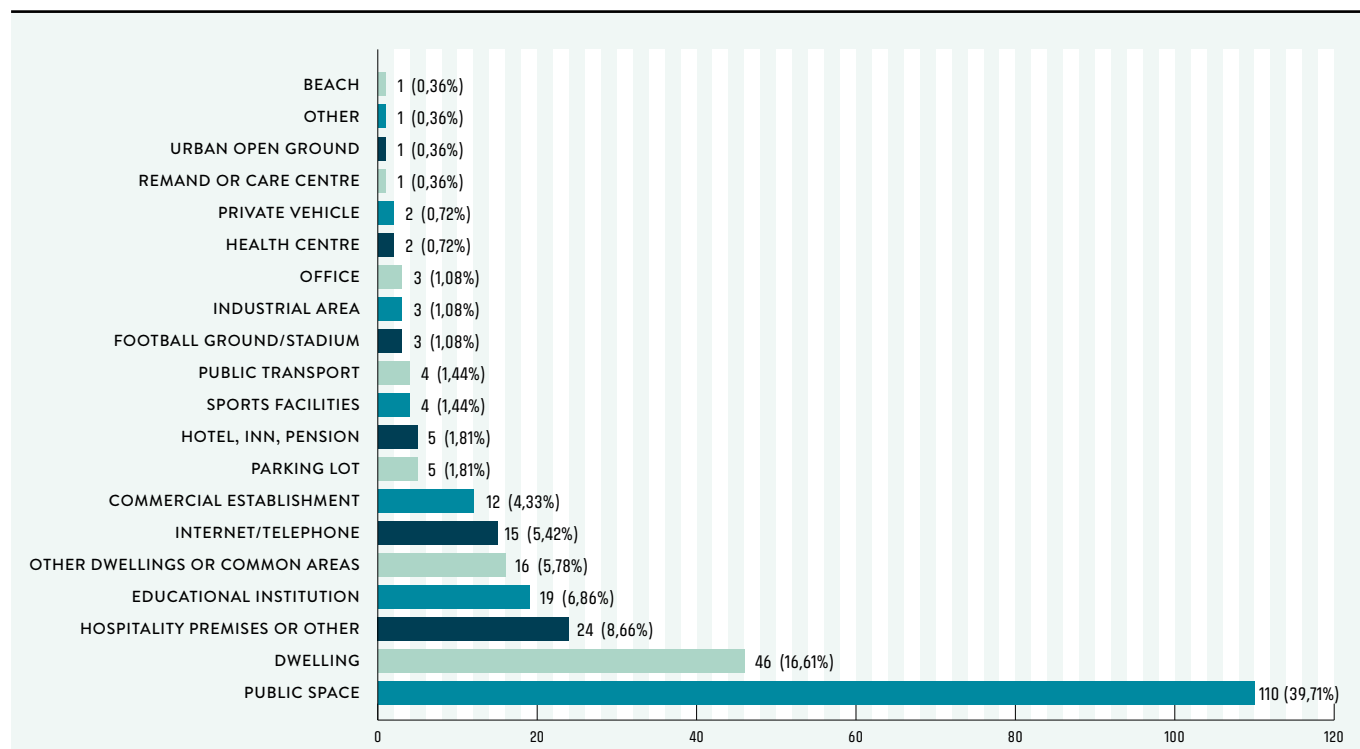
Of particular note is the fact that only 15 crimes were committed on the Internet and on the phone, accounting for 5.42% of all crimes, the Internet being the fourth place where more hate crimes had taken place the previous year. On the opposite side we find education centres, where the figure almost doubled in 2021, ranking fourth among the sites where more hate crimes were recorded.

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17. This section must be understood in the broad sense, since it comprises spaces close to the home itself, such as the building entrance, the stairs and landings, the mail box, etc.

18. MCNEELEY, S./OVERSTREET, S. M., “Lifestyle-routine activities, neighbourhood context, and ethnic hate crime victimization”, *Violence and Victims*, Vol. 33, 2018, p. 16 and ff.



FIG. 16. **CRIMES BY SITE (2021, N = 277)**

Below are the data regarding the sites where the crimes were committed by victimized group. To this end, a preferential place has been given to the most common crime scenes, that is, public spaces and homes. With respect to public spaces and homes, the conclusion is that in both places the most common hate crimes are racist and xenophobic crimes (57.27% in the case of public spaces and 65.22% in the case of homes). As stated last year, it is striking that, in the case of functional diversity, the place where most incidents of this type occurred is an education centre, as well as the fact that this is one of the places where sexist incidents and incidents against sexual identity and orientation usually occur (although to a lesser extent than in other places).



FIG. 17. CRIMES IN PUBLIC SPACES AND DWELLINGS BY GROUP (2021, N = 156)

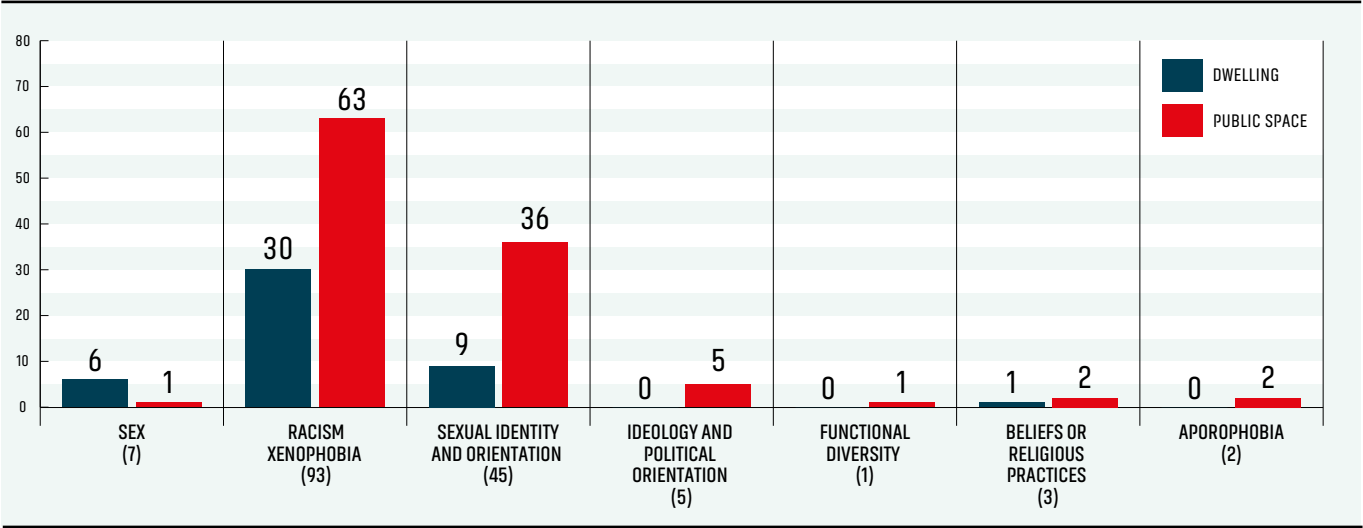
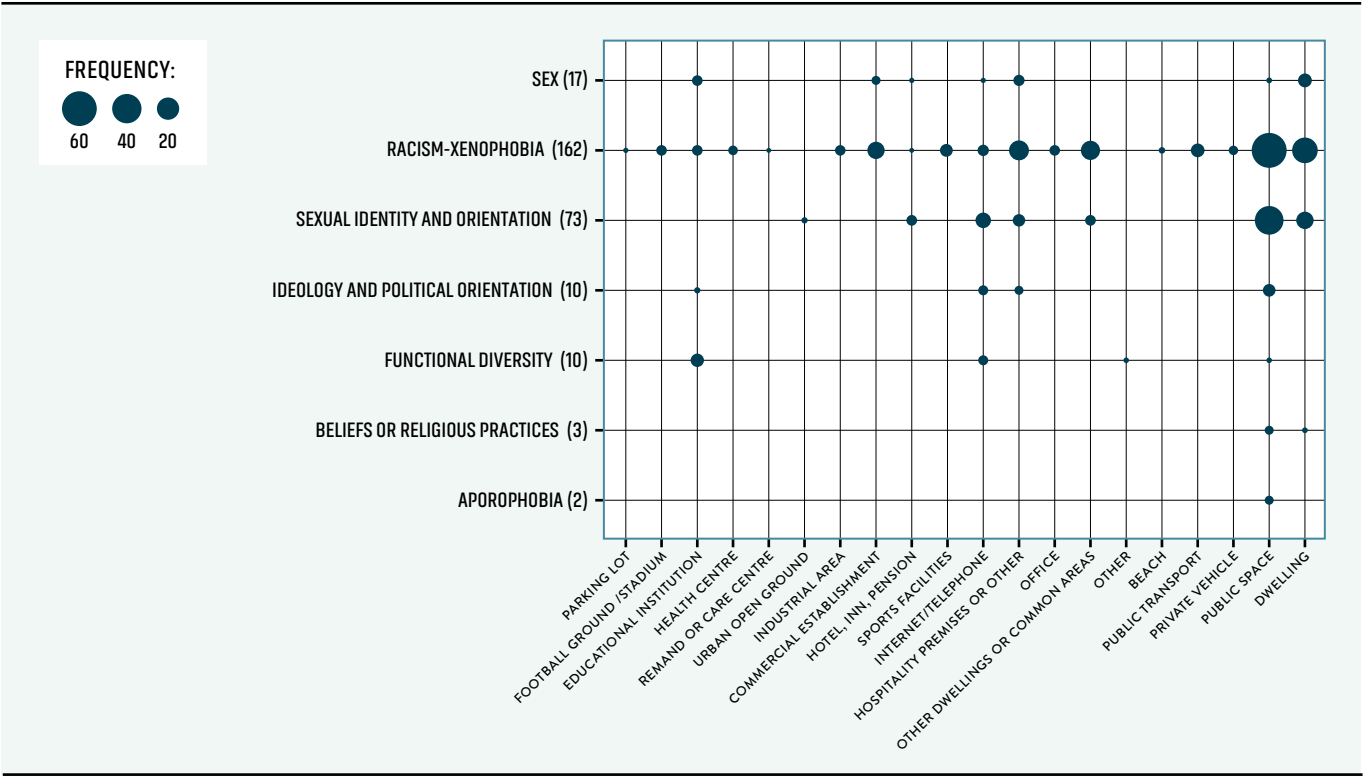


FIG. 18. CRIMES BY SITE AND GROUP (2021, N = 277)



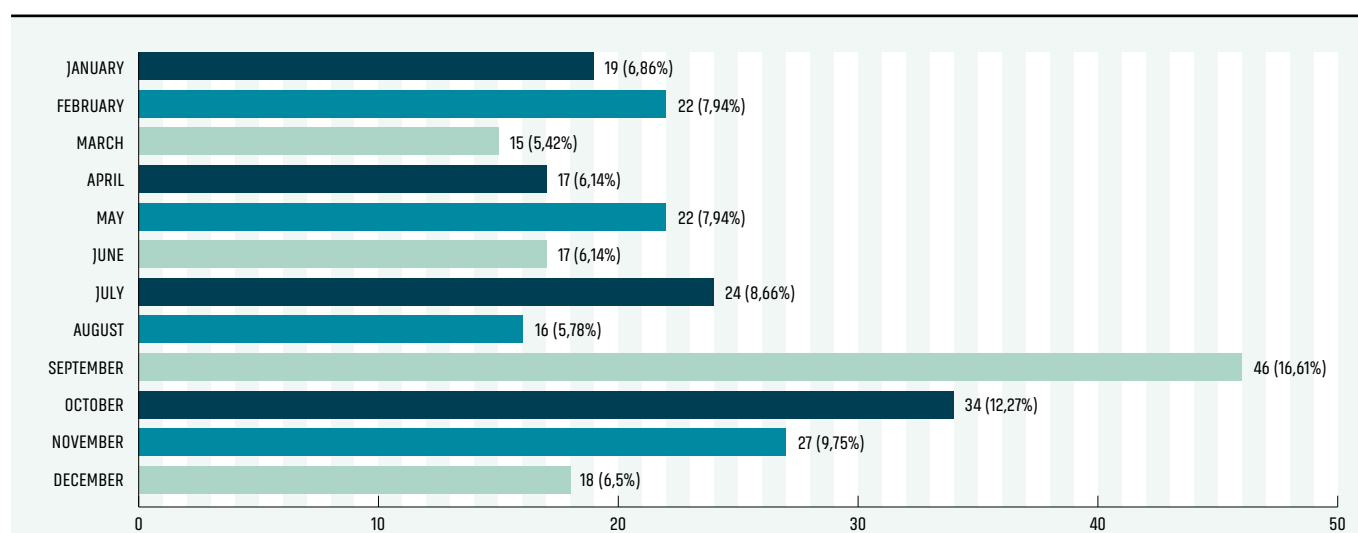


#### 1.1.4.

#### TEMPORAL DISTRIBUTION OF HATE CRIMES

Below is the monthly, seasonal, weekly and hourly distribution of crime. First of all, the months in which more hate crimes occurred are September (16.61%), October (12.27%) and November (9.75%).

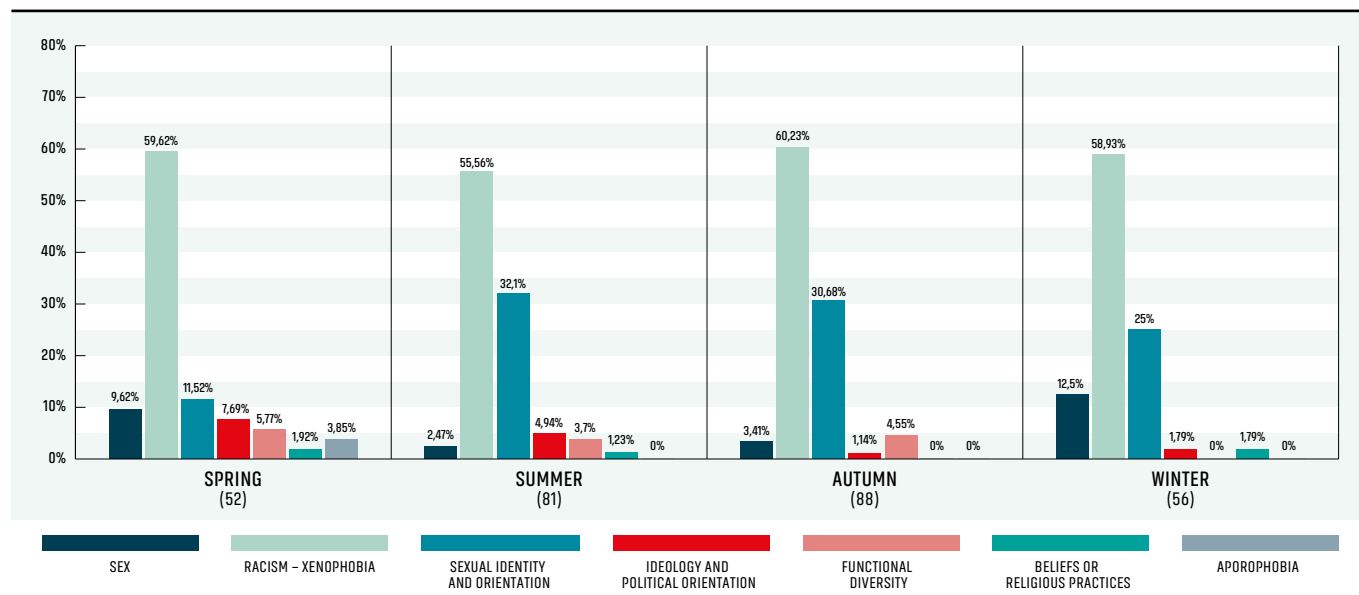
FIG. 19. CRIMES BY MONTH (2021, N = 277)



Secondly, there is an analysis of the distribution of crimes by season of the year in which they were committed and by group of reference. As can be seen, racist or xenophobic hate crimes prevail in all the seasons with a relatively homogeneous percentage. In any case, it seems that the analysis of seasons as the unit of reference has little impact, at least with regard to the reported incidents.

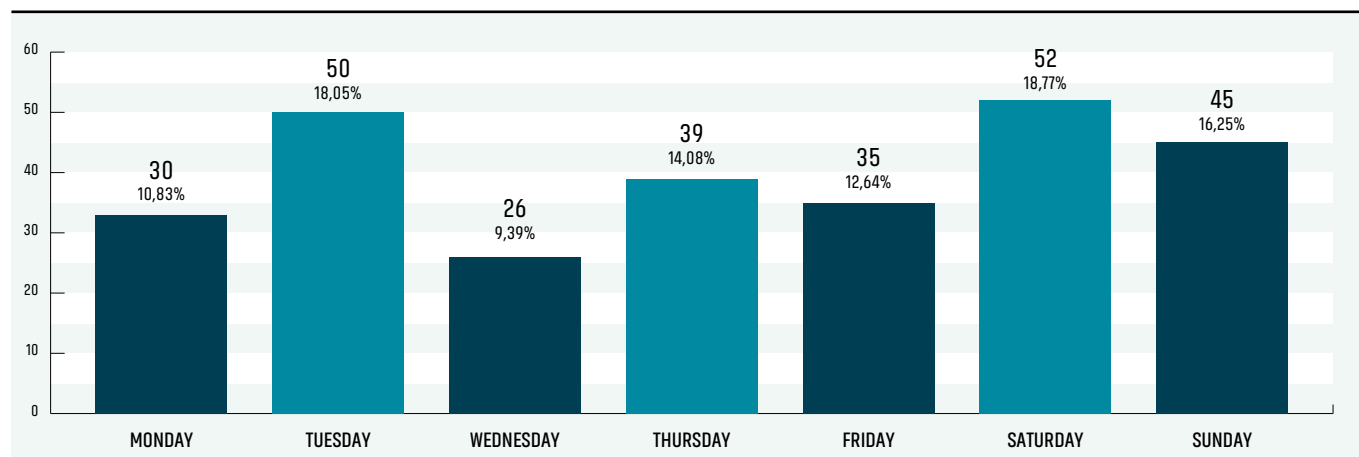


FIG. 20. CRIMINAL TYPOLOGY BY SEASON (2021)



Thirdly, the data regarding the weekly distribution show that most hate crimes occur on Saturday (18.77%), Tuesday (18.05%) and Sunday (16.25%). Therefore, it appears that one fourth of the hate crimes take place during the weekend. This can be due to the fact that on these days people spend more time outside their homes and go to shopping centres and leisure establishments, which increases the chances of victims meeting potential offenders.

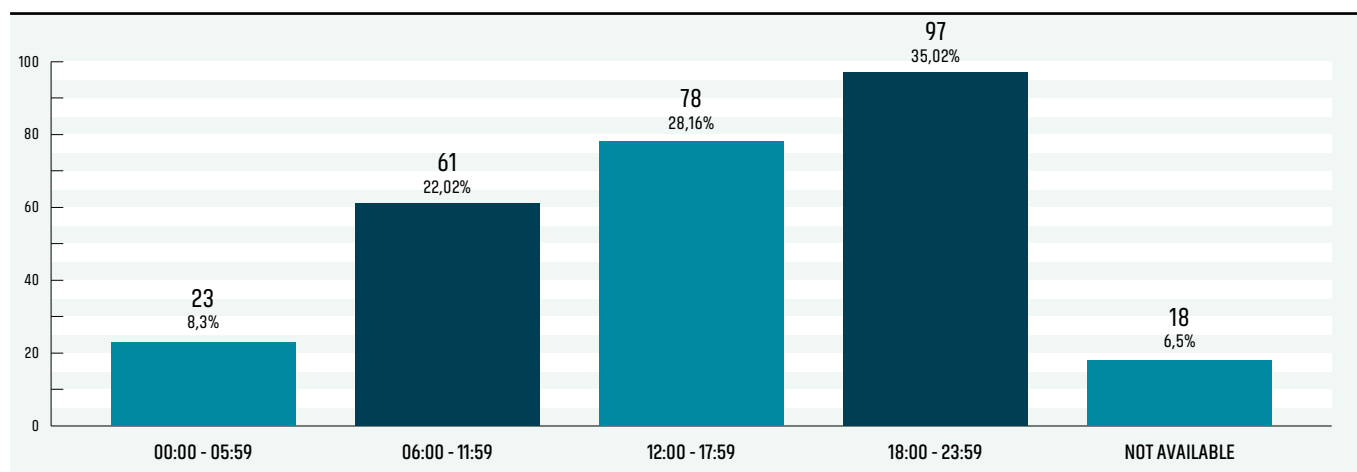
FIG. 21. CRIMES BY DAY OF THE WEEK (2021, N = 277)





Finally, as regards the hourly distribution, most crimes occur, once again, in the evening (63.18% between 12 p.m. and 12 a.m.), with a slightly higher percentage than the previous year. The explanation could be that it is precisely at this time when there is a higher volume or movement of people in the street, either returning from work or carrying out different leisure activities (such as going to pubs and shopping centres, doing sport, etc.), which makes it easier for victims and potential offenders to meet and clash.

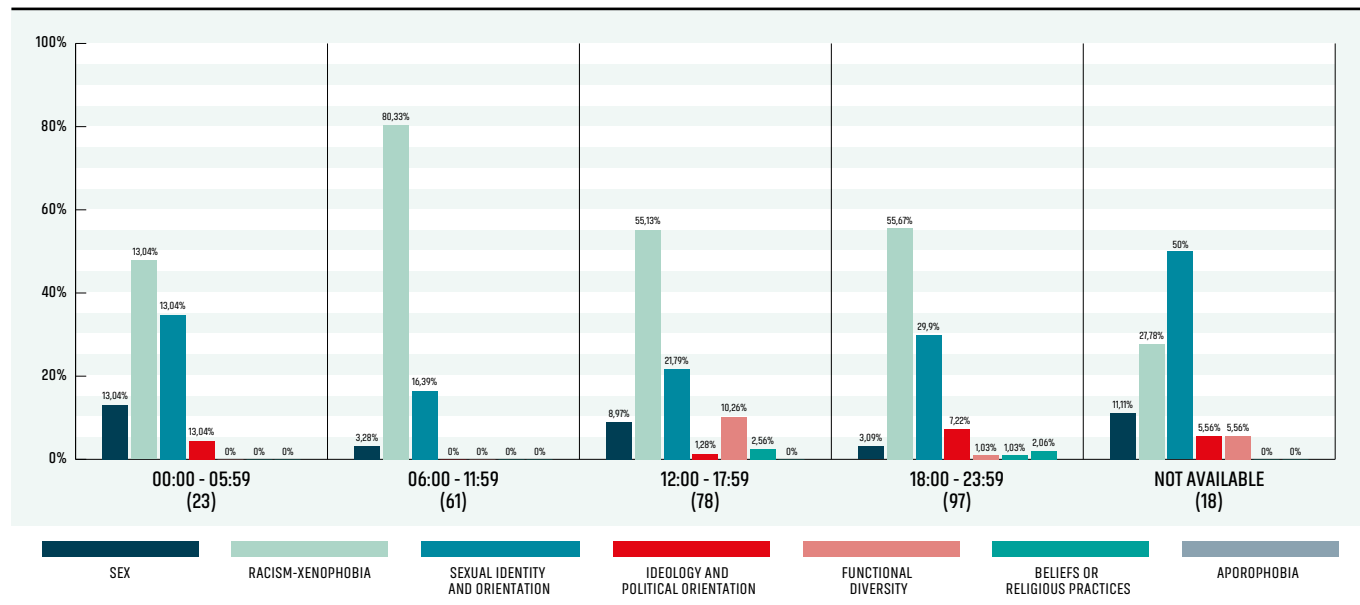
FIG. 22. **CRIMES BY TIME INTERVAL (2021, N = 277)**



If the time intervals are broken down by group of reference, it can be seen that the crimes based on a racist/xenophobic motivation prevail in all the intervals (with the exception of the Not Available interval), especially between 6:00-11:59, although the interval during which more racist crimes are recorded is between 18:00 and 23:59 (33.33% of the total). This interval, perhaps due to the reason stated in the previous paragraph, accounts for 39.7% of the hate crimes based on sexual identity and orientation, 70 % of the crimes based on ideology and political orientation and all the hate crimes based on aporophobia. As for functional diversity, it is noteworthy that in almost 80% of the cases it takes place between 12:00 and 17:59, which could be explained by the fact that most of these crimes take place at school and this time interval coincides with school hours.



FIG. 23. CRIMINAL TYPOLOGY BY TIME INTERVAL (2021)



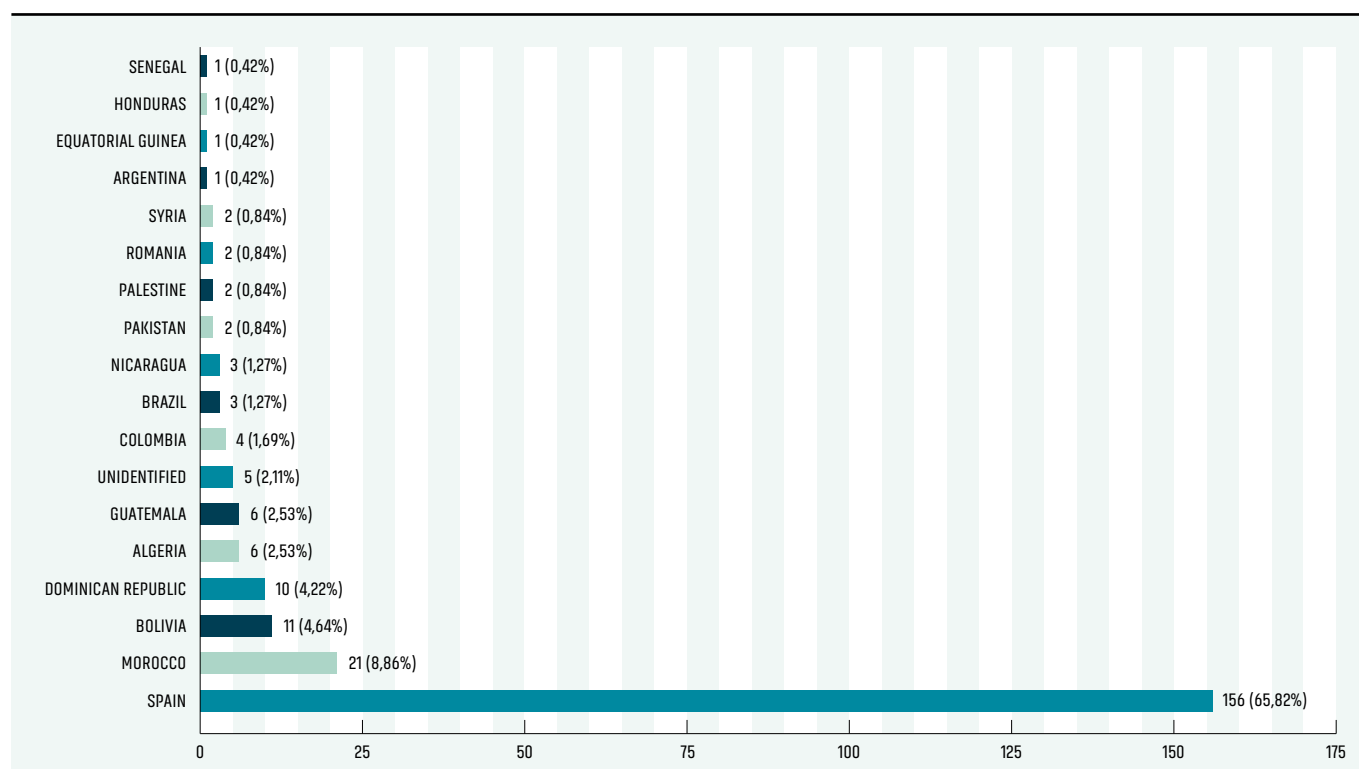


# 1.2

## DISTRIBUTION OF CHARGES<sup>19</sup>

With regard to the charged persons<sup>20</sup>, the following chart shows that more than half are Spanish (65.82%): 156 out of a total of 237, 127 of whom are from the Basque Country (81.41%). As for the rest of those charged, 81 are foreigners (34.18%), most of them from Africa (35.8%) and, to a lesser extent, from Central and South America (48.14%).

FIG. 24. CHARGED PERSONS BY COUNTRY OF ORIGIN (2021, N = 237)



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

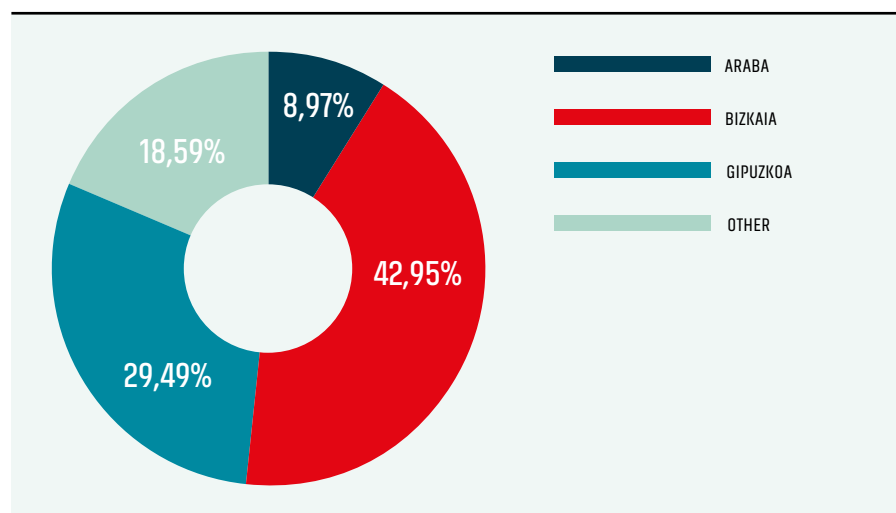
20. The figures correspond to charged persons who were identified by the Ertzaintza, regardless of their place of origin. It must be taken into account that in 101 of the 277 crimes the perpetrator could not be

identified (36.46%) and, therefore, he/she was not classified as either charged or arrested. Likewise, there are many cases in which more than one person was charged/arrested for each crime. Moreover, for the purposes of this research, those who have committed a hate crime and whose place of origin is situated in this historical territory but have not committed the hate crime in this territory will not be taken into account.



As for the historical territory of origin within the Spanish state, the charged persons from Bizkaia account for most of the cases (42.95%). Araba hardly accounts for one tenth of the cases recorded in 2021 (8.97%). However, in Gipuzkoa the charges represent one third of all the charges recorded in the Basque Country (29.5%).

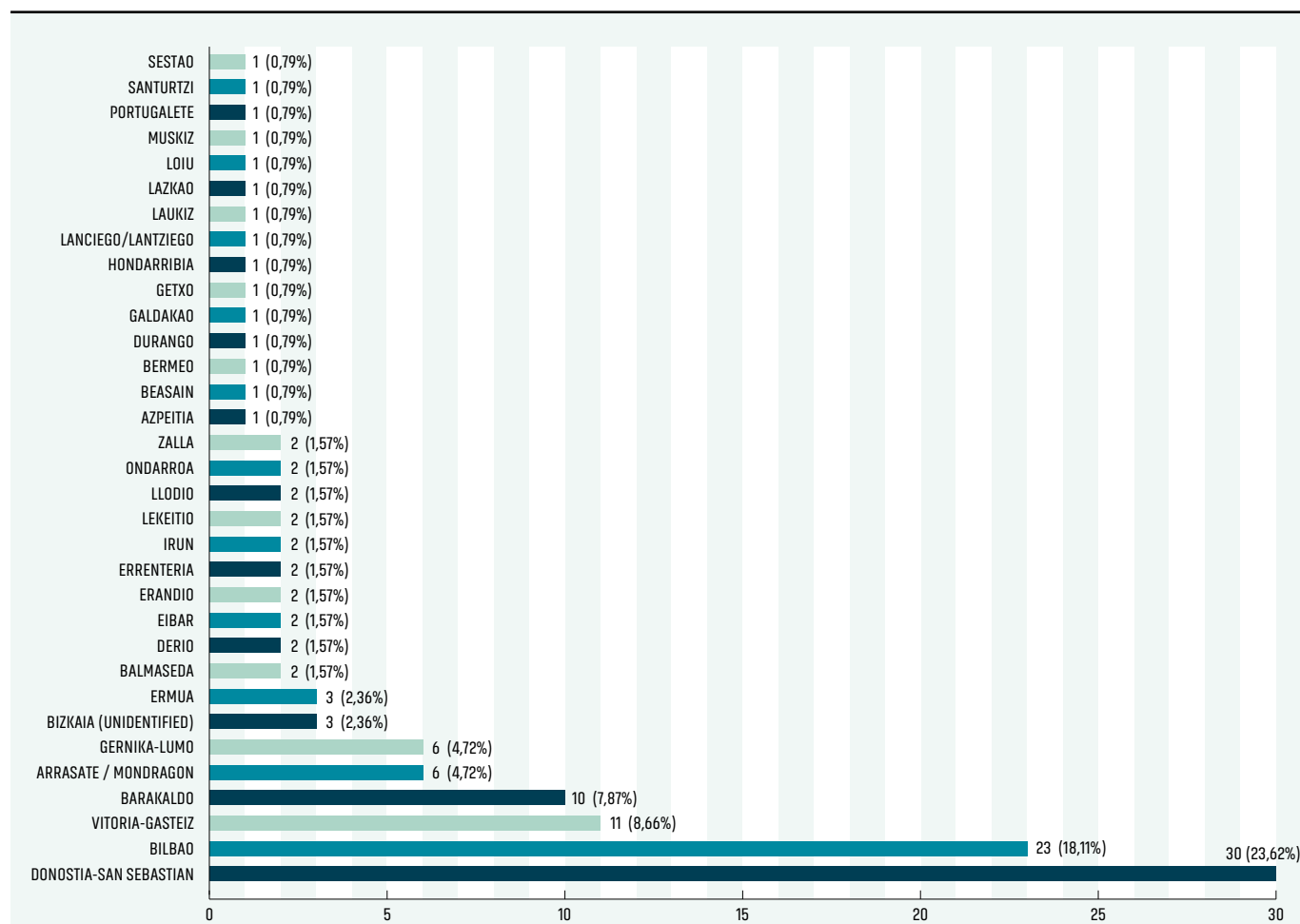
FIG. 25. CHARGED PERSONS BY HISTORICAL TERRITORY OF ORIGIN (2021, N = 156)





Below is the distribution of persons under investigation according to their municipality of origin in the Basque Country. For the sixth consecutive year, the cities that stand out are the capitals of the historical territories, Vitoria-Gasteiz (n=11), Bilbao (n=23) and Donostia-San Sebastian (n=30) as the most common municipalities of origin. Worthy of note is the increase in the latter, with a figure that is four times higher than that of the previous year. Moreover, it should also be noted that the number of charged persons from Barakaldo (n=10) is similar to the number of charged persons from Vitoria-Gasteiz.

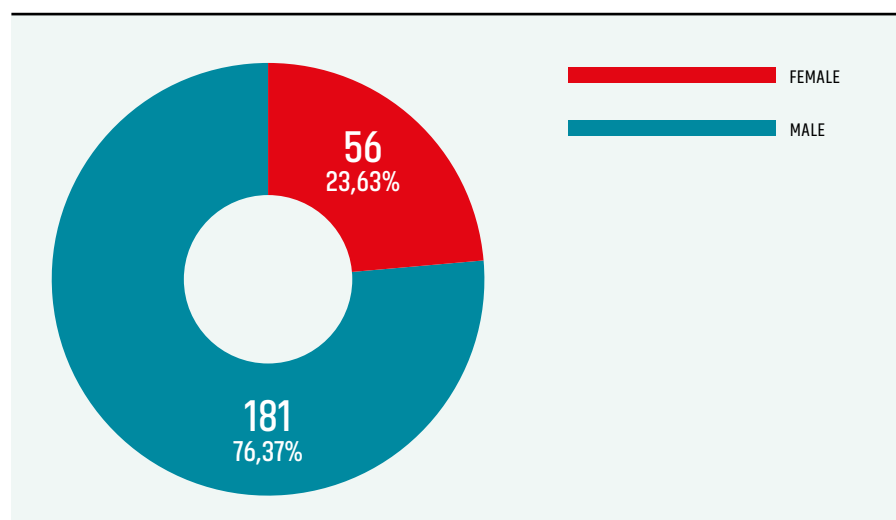
FIG. 26. CHARGED PERSONS BY MUNICIPALITY OF ORIGIN IN THE BASQUE COUNTRY (2021, N = 127)





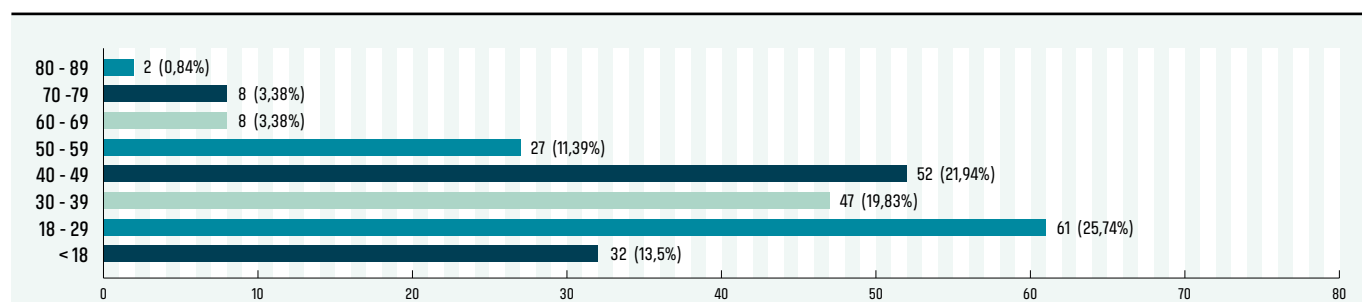
As for the distribution by gender, the following chart shows that 56 women (23.63%) and 181 men (76.37%) were charged in 2021. It is worth noting that the percentage of charged women continues with the downward trend that started in 2020.

FIG. 27. CHARGED PERSONS BY GENDER (2021, N = 237)



The average age of the charged persons is 35.7 years, and the age range is between 13 and 84 years. An increase of over a decade can be seen as compared to the previous year, especially with regard to the highest age range, back to the levels recorded in previous years. Charges are now distributed in a relatively homogeneous manner among the following ranges: 18-29 years (25.74%), 30-39 years (19.83%), 40-49 years (21.94%) and 50-59 years (11.39%), which represents 78.9% of the cases. As for the rest of the age groups, people over 60 account for the remaining 7.6%. Likewise, it must be pointed out that the age group <18 has doubled this year as compared to the previous year, going from 14 persons charged in 2020 to 32 in 2021 (13.5%).

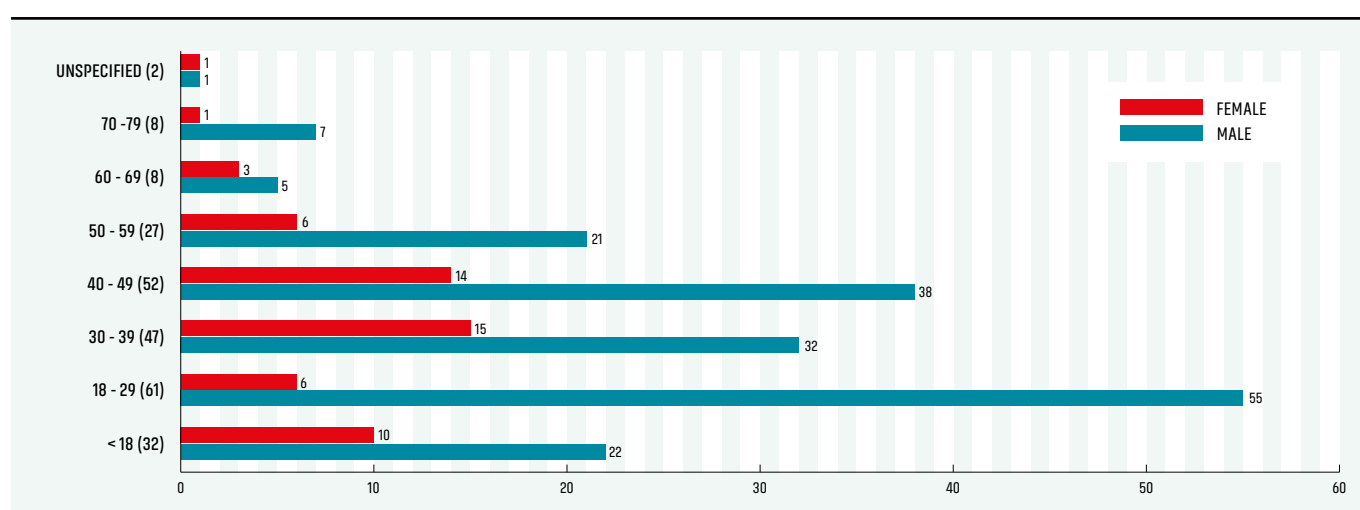
FIG. 28. CHARGED PERSONS BY AGE GROUP (2021, N = 237)





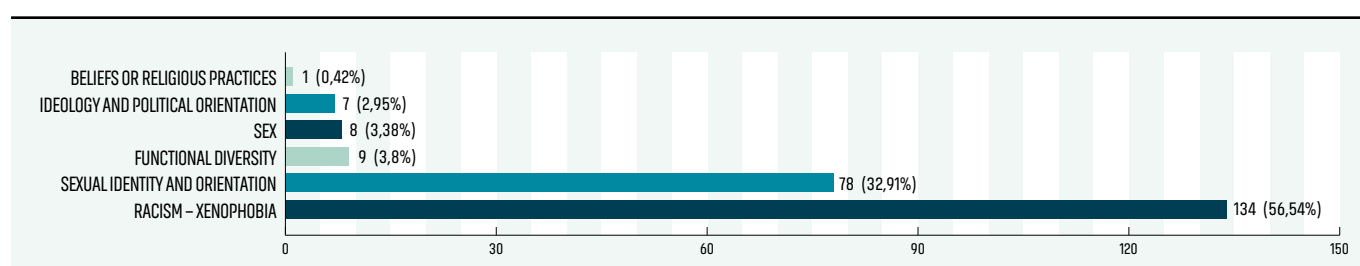
Furthermore, if these data are broken down by gender, we can see that men prevail by far in all the age ranges, except in the unspecified category. This predominance of men is especially remarkable in the age range 18 to 29, where the number of men is nine times the number of women.

FIG. 29. CHARGED PERSONS BY AGE GROUP AND GENDER (2021, N = 237)



Likewise, the following chart shows that most of the charges lie within the sphere of racism (n=134, 56.54%), which is not surprising if we take into account that a very similar percentage of hate crimes were committed on these grounds (58.48%). They are followed by those being investigated for hate crimes committed on the grounds of the victim's sexual identity and orientation (n=78, 32.91%).

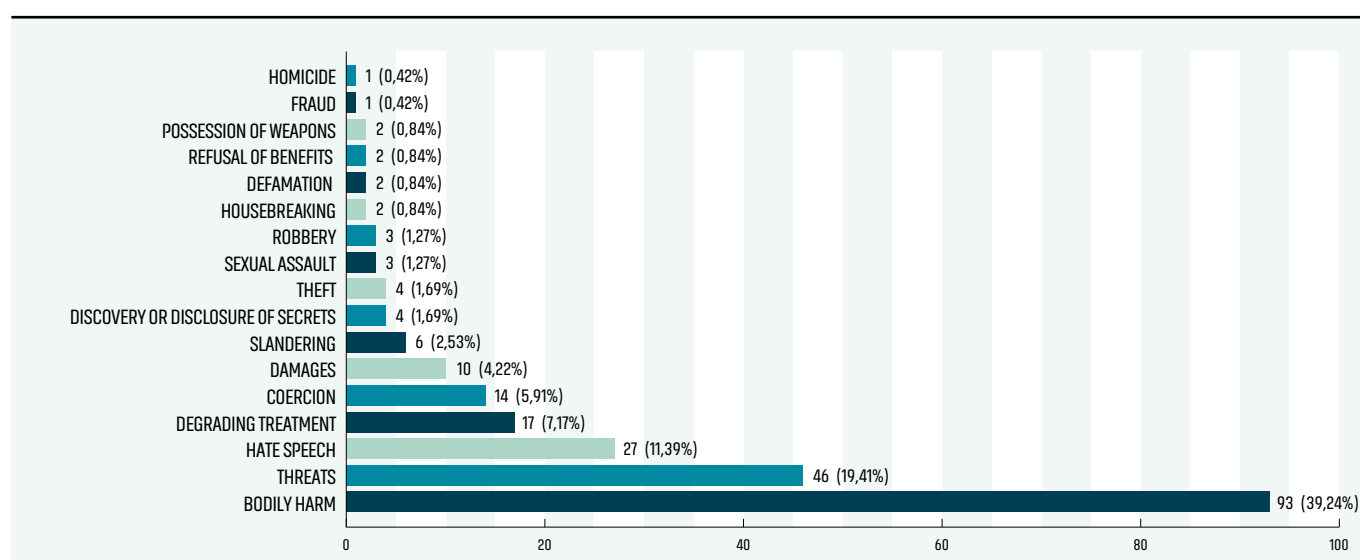
FIG. 30. CHARGED PERSONS BY PROTECTED GROUP (2021, N = 237)





Finally, with regard to the distribution of charged persons by crime type<sup>21</sup>, unlike the previous year, most of the charges were related to bodily harm (39.24%) which, as stated above, is the most prevalent crime category. As for the second and third place, we find those charged with threats (19.41%) and hate speech (11.39%).

FIG. 31. CHARGED PERSONS BY CRIMINAL TYPOLOGY (2021, N = 237)



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

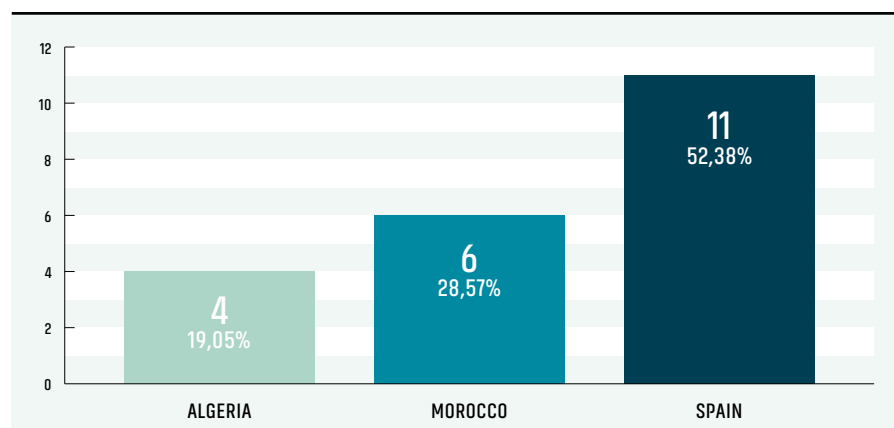


# 1.3

## DISTRIBUTION OF ARRESTS

In 2021 the Ertzaintza arrested a total of 21 people, less than half as many as the previous year. As for their origin, the figures show greater heterogeneity as compared to 2020, since almost half of those arrested are foreigners (n= 10, 47.62%), all of them from Algeria and Morocco (19.05% and 28.57% of the total).

FIG. 32. ARRESTED PERSONS BY COUNTRY OF ORIGIN (2021, N = 21)



Among the Spanish nationals arrested, 81.81% come from the Basque Country. The arrested persons of Basque origin are distributed homogeneously among the 3 historical territories (3 from each of them), especially from their capital cities (Vitoria-Gasteiz n= 3, Bilbao n= 2 and Donostia-San Sebastian n= 2).



FIG. 33. ARRESTED PERSONS BY HISTORICAL TERRITORY OF ORIGIN (2021, N = 11)

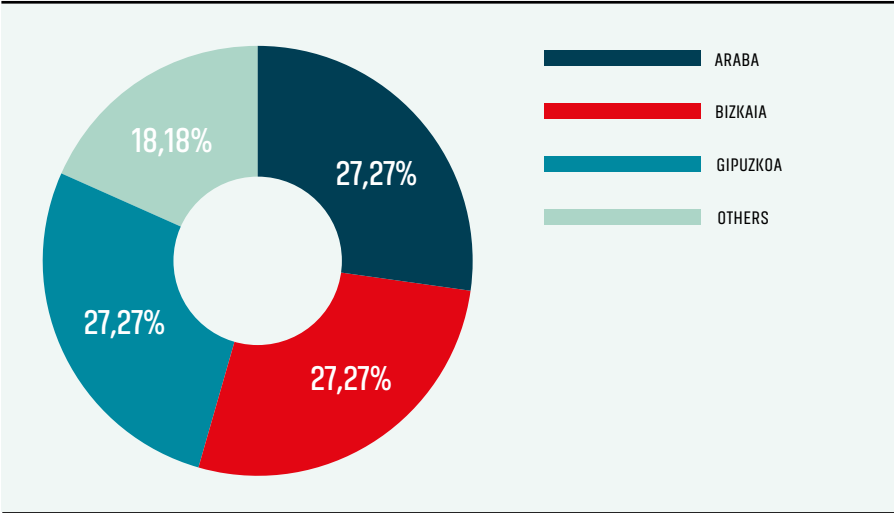
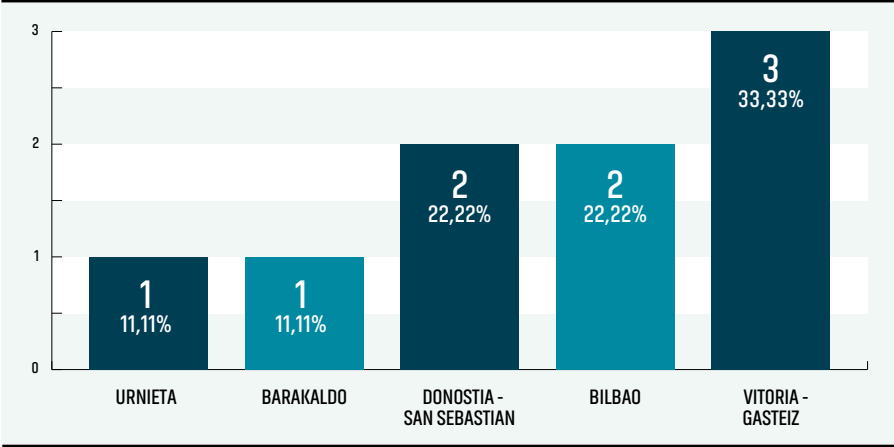


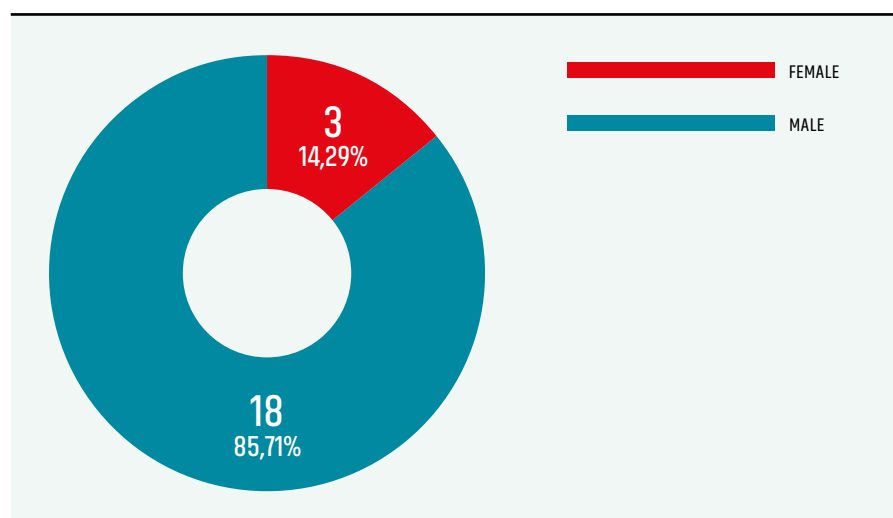
FIG. 34. ARRESTED PERSONS BY MUNICIPALITY OF ORIGIN IN THE BASQUE COUNTRY (2021, N=9)





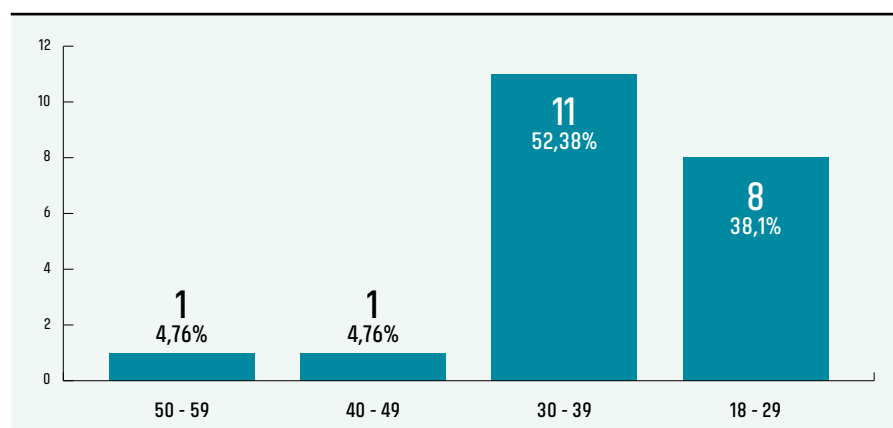
Demographically speaking, it must be noted that most of those arrested were men (85.71%), with a similar percentage to that of the previous year.

FIG. 35. ARRESTED PERSONS BY GENDER (2021, N = 21)



Their average age is 32.4 years, a much lower figure than that of the previous year, and the age range is between 18 and 56. With regard to the distribution of the age ranges, the following chart shows a significant prevalence of those aged between 30 and 39 (52.38%) and 18 and 29 (38.1%). As for the rest of the arrested persons, they are homogeneously distributed among the following age ranges: 40-49 (4.76%) and 50-59 (4.76%).

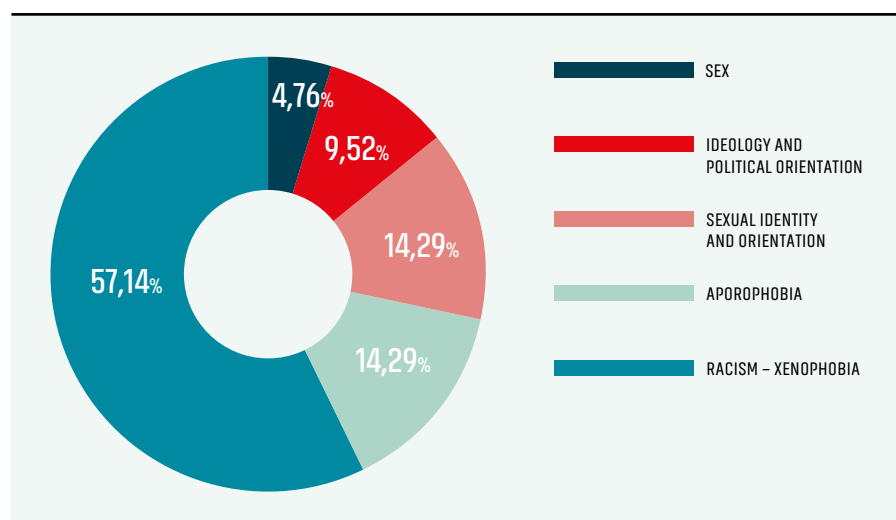
FIG. 36. ARRESTED PERSONS BY AGE GROUP (2021, N = 21)





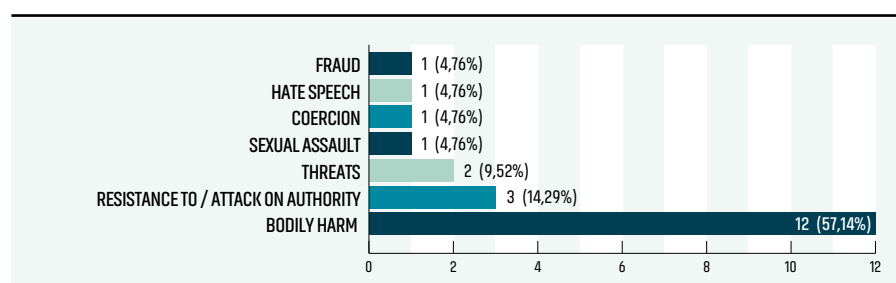
If we take a look at the categories with more arrests, we see that this year most of the arrests lie within the sphere of racism and xenophobia (57.14%).

FIG. 37. ARRESTED PERSONS BY PROTECTED GROUP (2021, N = 21)



Finally, with regard to the distribution of arrested persons by crime type, the following chart shows that bodily harm (57.14%) stands out as the type for which more people were arrested. Particularly noteworthy is the fact that there were only 2 arrests for threats, in spite of its being the second most prevalent crime type.

FIG. 38. ARRESTED PERSONS BY CRIMINAL TYPOLOGY (2021, N = 21)



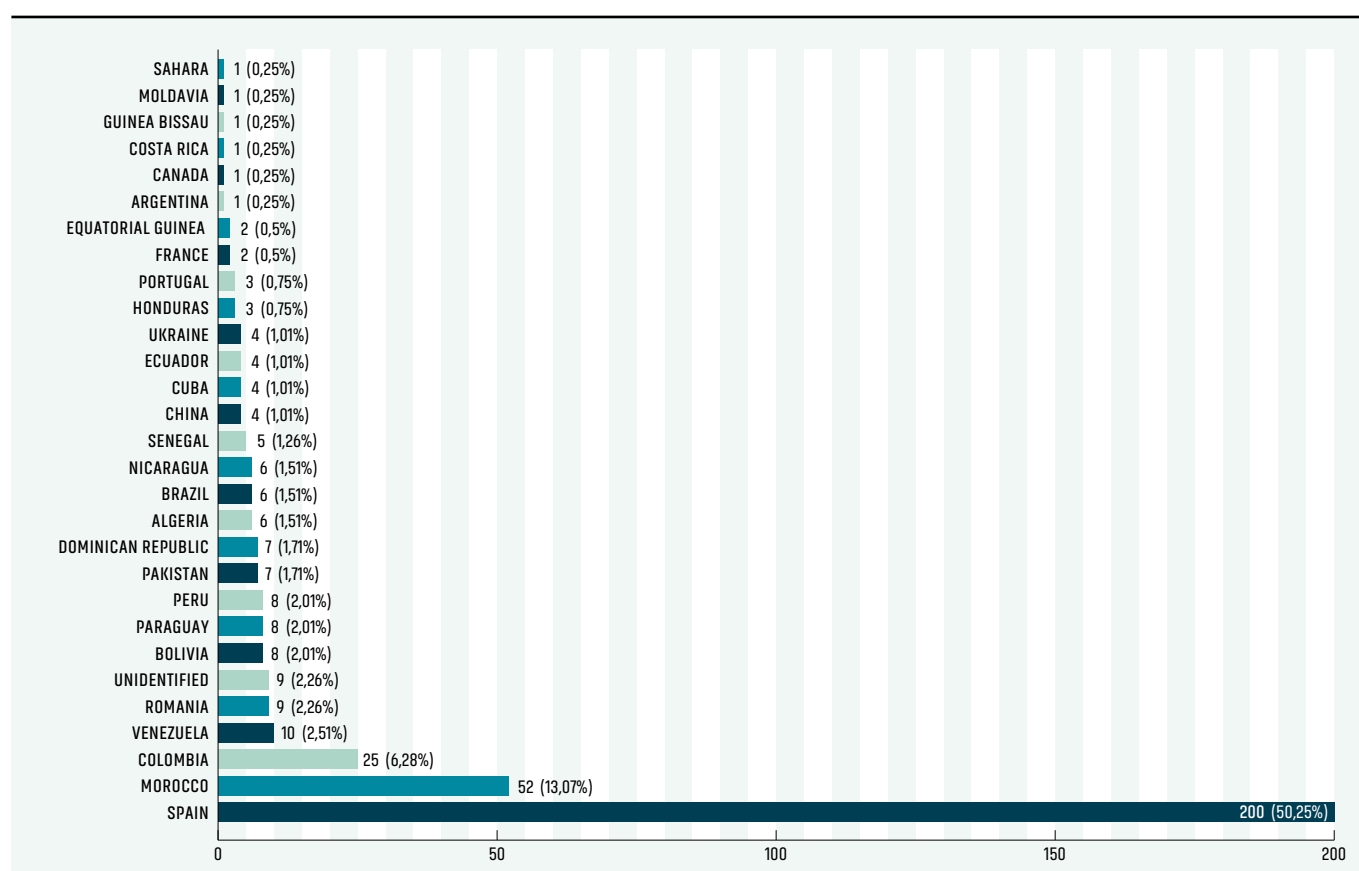


# 1.4

## DISTRIBUTION OF VICTIMIZATIONS<sup>22</sup>

50.25% of the victims are of Spanish nationality (200 out of 398), most of whom, almost 78.5%, are from the Basque Country (157 cases). On the other hand, foreign victims account for more than the remaining half (around 49.74%, 198 cases). With regard to the latter, the victims from Latin America and Africa are the most numerous (22.86% and 16.83% of all the victims respectively). As for the victims from Africa, like the previous year, it is important to highlight the strong presence of people of Moroccan origin, who account for 13.06% of the victims of hate crime.

FIG. 39. VICTIMS BY COUNTRY OF ORIGIN (2021, N = 398)



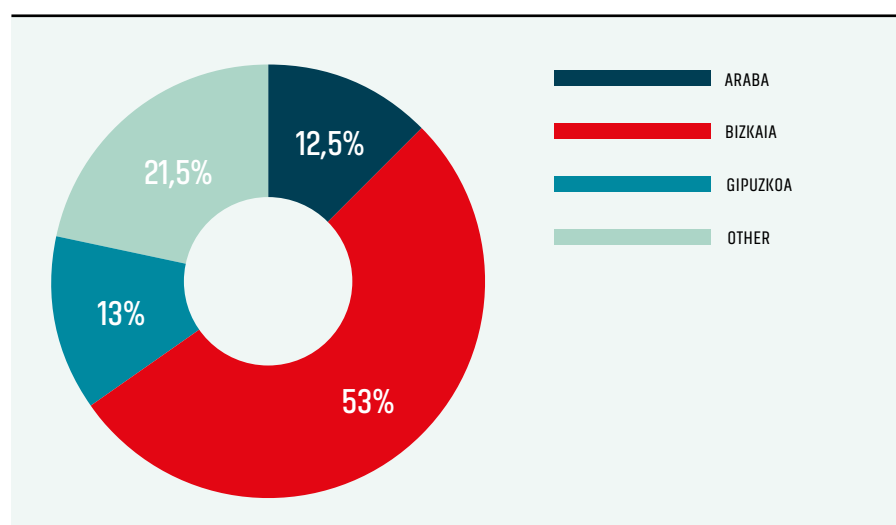
22. In this case, as in the case of the persons under investigation and the arrested persons, the number of victimizations does not coincide with the number of hate crimes, for several reasons. On the one hand, in 9

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.



Below is the analysis of the distribution of victims by their historical territory of origin within the Spanish state. The data show that Bizkaia is by far the province where most of the victimizations took place (53%). The rest are distributed between Gipuzkoa (13%), Araba (12.5%) and the rest of the State (21.5%).

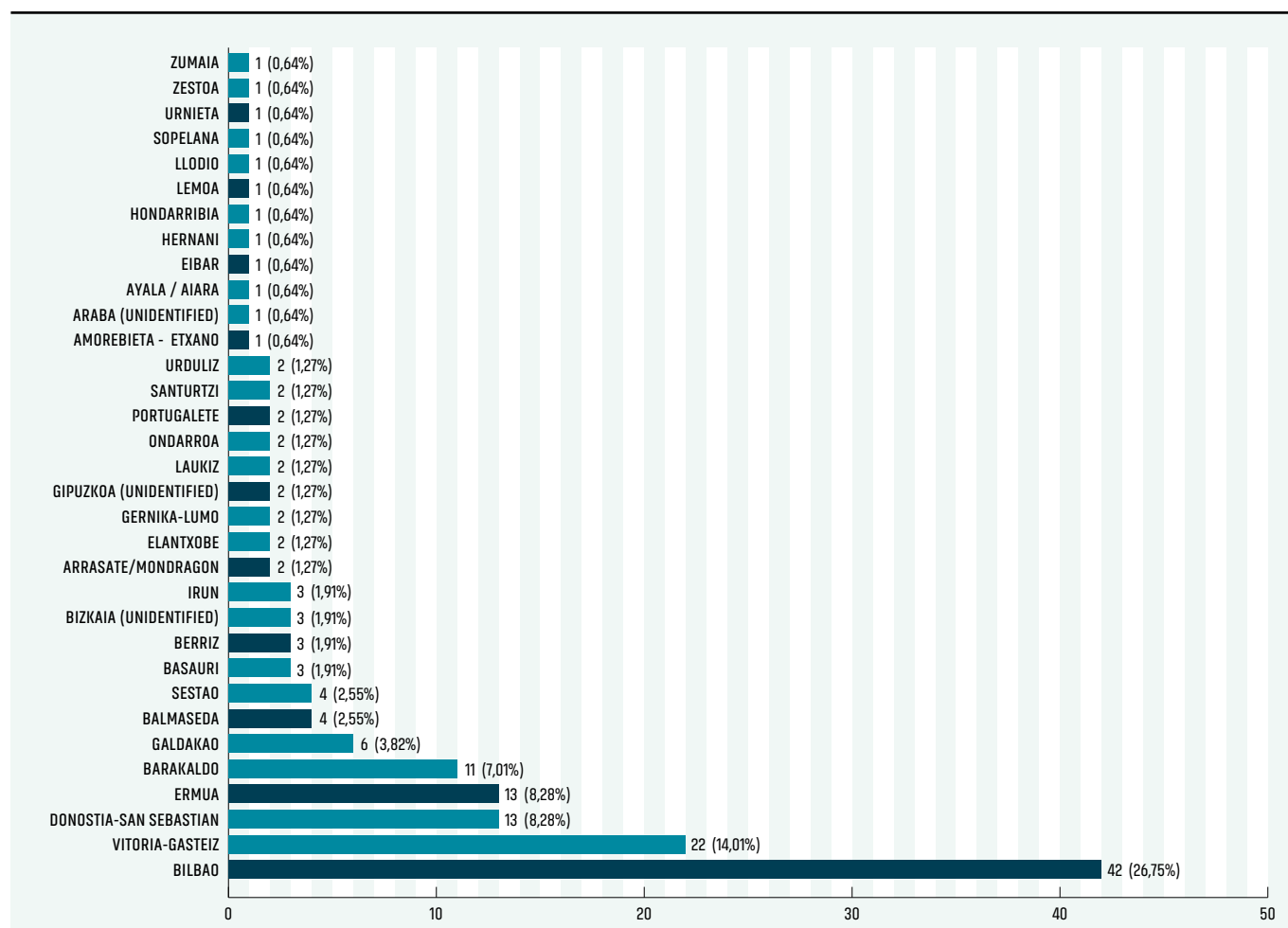
FIG. 40. VICTIMS BY HISTORICAL TERRITORY OF ORIGIN (2021, N = 200)



If the data are broken down by municipality, it can be seen that, for the sixth consecutive year, Bilbao (42 cases) and Vitoria-Gasteiz (22 cases, almost twice as many as the previous year) stand out from the rest. Moreover, like the previous year, Donostia-San Sebastian, (n=13) Ermua, (n=13) and Barakaldo (n=11) are also worthy of note this year.



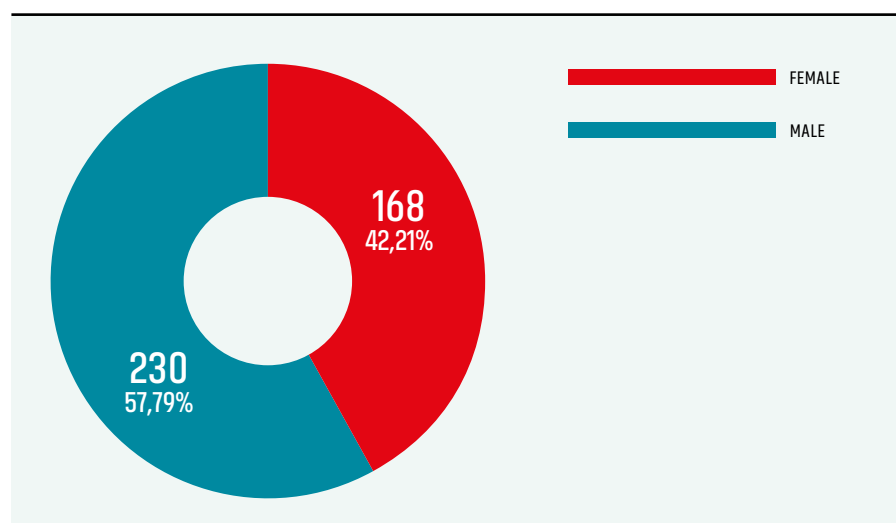
FIG. 41. VICTIMS BY MUNICIPALITY OF ORIGIN IN THE BASQUE COUNTRY (2021, N = 157)





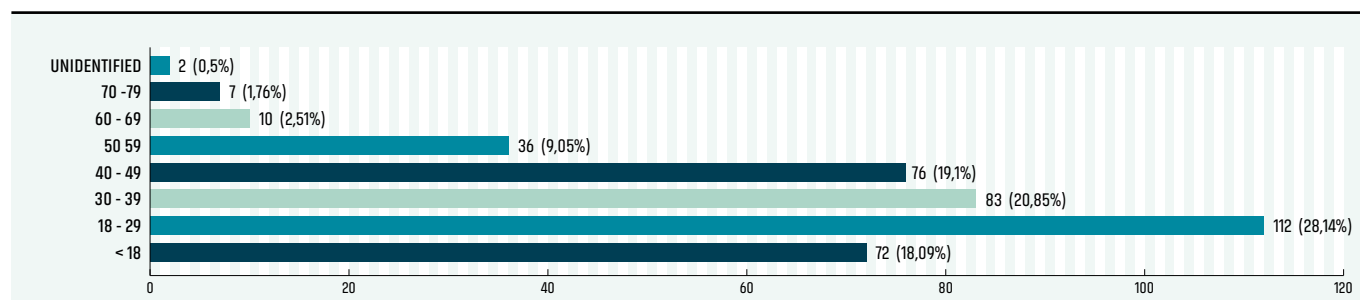
If we take into account the gender of the victims, we see that most of the victims are men (n=230), with both men as well as women (n=168) having a percentage quite similar to that of the previous year.

FIG. 42. VICTIMS BY GENDER (2021, N = 398)



Demographically speaking, the average age is 37.1, which is 9 years above the average in 2020. More specifically, most of the victims are in the following age ranges: <18 years (18.09%), 18-29 years (28.14%), 30-39 years (20.85%), and 40-49 years (19.1%). As for the rest of the age groups, the range between 50 and 59 accounts for 9.05% of the cases, whereas the elderly (>60) account for 4.27% (it has not been possible to identify the age of the remaining 0.5% of the victims). All in all, the age range is between 5 and 74 years.

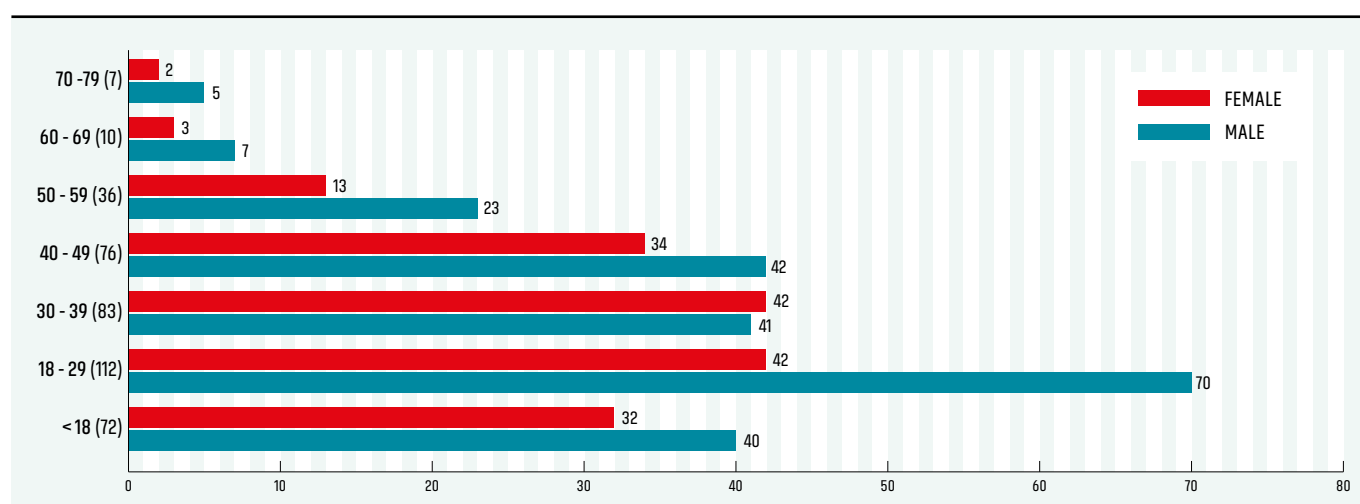
FIG. 43. VICTIMS BY AGE GROUP (2021, N = 398)





Nevertheless, if these data are broken down by gender, it can be seen that, as in the case of the persons under investigation, men prevail in the lowest ranges, mainly in the 18-29 years range. However, from that age range upwards, the percentage of men and women becomes increasingly even, to the point that women exceed men in the 30 to 39 age range.

FIG. 44. VICTIMS BY AGE GROUP AND GENDER (2021, N = 396)

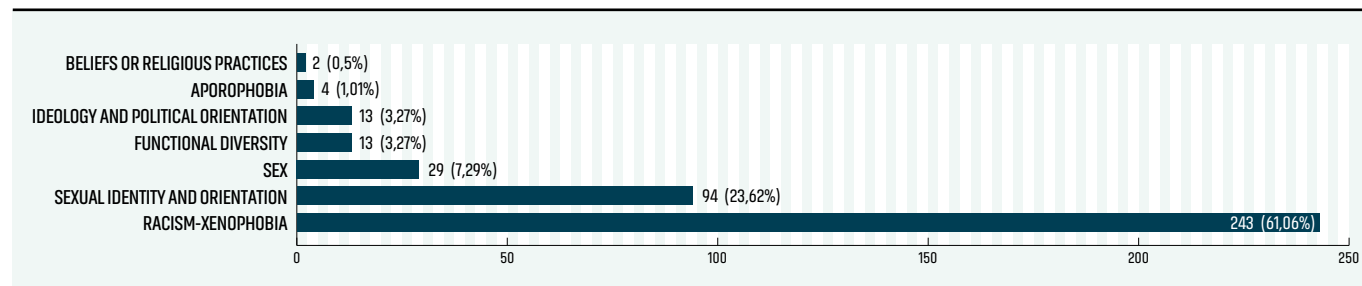


Moreover, as shown in the following chart, more than half of the victimizations occurred within the sphere of racism ( $n=243$ , 61.06%)<sup>23</sup>, followed by the victimizations resulting from the victim's sexual identity and orientation ( $n=94$ , 23.62%), which is logical if we take into account that these are precisely the groups that have suffered the most hate crimes in the last year. In the third, fourth and fifth places we find those victimizations committed on the grounds of gender ( $n=29$ , 7.29%), the victim's functional diversity ( $n=13$ , 3.3%), and ideology and political orientation ( $n=13$ , 3.27%).

23. In this regard, it must be pointed out that 63.8% of the persons victimized on the grounds of their race/ethnicity are of foreign origin, whereas the remaining 36.2% are of Spanish nationality.

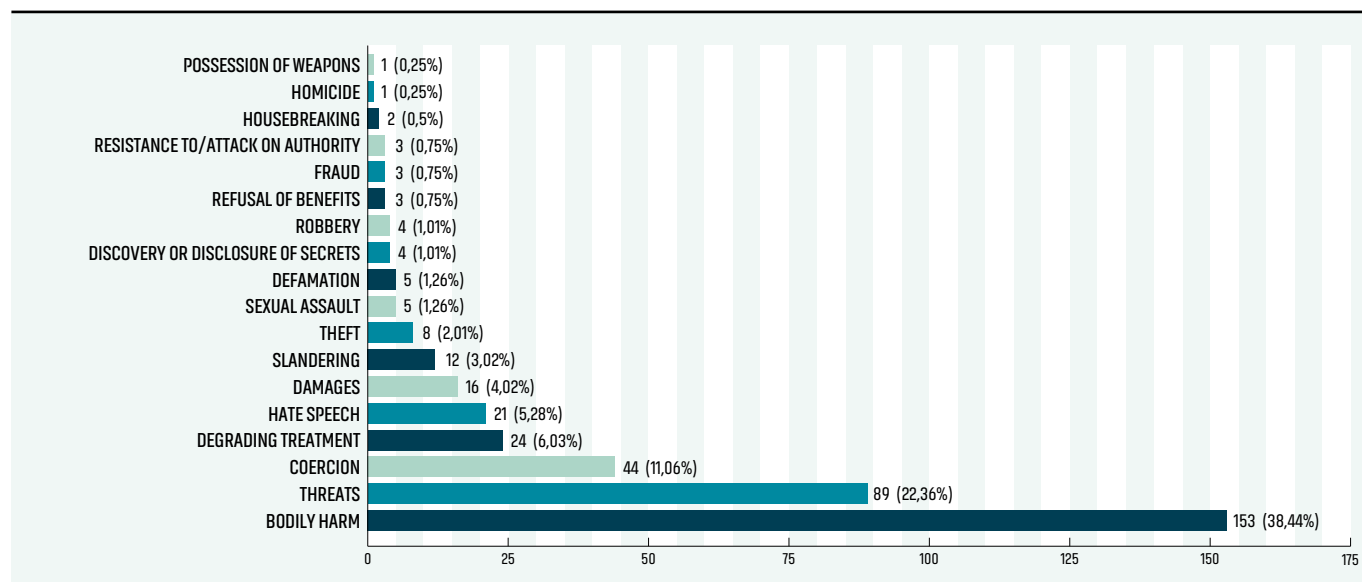


FIG. 45. VICTIMS BY PROTECTED GROUP (2021, N = 398)



Finally, with regard to the distribution of the victims by crime type, the following chart shows that those who have suffered threats (n=89, 22.36%) and bodily harm (n=153, 38.44%) account for more than half of the victims (60.8%). In the third, fourth and fifth places we find coercion (n=44, 11.06%), degrading treatment (n=24, 6.03%) and hate speech (n=21, 5.28%).

FIG. 46. VICTIMS BY CRIMINAL TYPOLOGY (2021, N = 398)





# 1.5

## DISTRIBUTION OF ADMINISTRATIVE OFFENCES

As stated above, 2 administrative offences were recorded in 2021, one in connection with the Law on Public Entertainment and Recreational Activities, more specifically, in connection with the right of admission, and the other within the sphere of Act 19/2007, of 11 July, against violence, racism, xenophobia and intolerance in sport.

With regard to the first administrative offence mentioned above, it is within the sphere of age and was committed on the Internet (but in connection with a restaurant; therefore, it can be said that the perpetrator is a legal entity) on 29 September (Wednesday), 2021, in Bilbao.

As for the second administrative offence, it is within the sphere of ideology and took place on 14 August (Sunday) in the street in Donostia-San Sebastian, the perpetrators being 2 men, aged 24 and 25, both of them from Gipuzkoa, more specifically from Donostia-San Sebastian and from Lezo, respectively.



# 1.6

## CONCLUSIONS

### 1.6.1.

#### **TOTAL NUMBER OF INCIDENTS**

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279 potentially criminal hate incidents were recorded in the Basque Country in 2021, 277 (99.28%) of which are hate crimes and 2 (0.72%) administrative offences. As mentioned above, it is important to view this latter figure with caution, since the situation generated by the pandemic affected two spheres (sports events and the right of admission linked to the hospitality and nightlife industries) whose use and enjoyment by citizens was limited as a consequence of the restrictions imposed to mitigate the impact of the SARS-CoV-2 pandemic.

If we consider that 124 criminal incidents were recorded in 2016, 129 in 2017, 130 in 2018, 105 in 2019 and 241 in 2020, a clear increase can be noticed in the last two years as regards the number of incidents. The extraordinary increase in these years is due to the change and improvement of the recording and classification system for these types of incidents at the level of the enquiry as well as the central absorption of statistical information.

This improvement is in turn the result of better training and a greater understanding of the phenomenon, which leads to more effective detection onsite, in quantitative as well as qualitative terms. The increase in incidents is therefore something positive and encouraging, as it allows bringing into light a more realistic picture that would otherwise remain hidden, with the resulting defencelessness and victimization of the target groups. Nowadays, in the Basque Country, police detection has improved and impunity has decreased accordingly.

In any case, it seems that the increase in incidents last year places us once again on a new global recording floor, which keeps showing an upward trend.

### 1.6.2.

#### **MAP OF THE TARGET GROUPS OF THE INCIDENTS**

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Racist or xenophobic incidents account for 58.48% (162 cases) of the recorded crimes, with a considerable increase as compared to the previous



year (+45 incidents: 38.46%). The sphere of sexual identity and orientation represents 26.35% of the crimes (73 cases, a figure that is considerably higher than last year, to be precise, 46%), whereas the crimes relating to sex account for 6.14% of all hate crimes (17 cases). In the fourth and fifth places we find hate crimes based on ideology and political orientation, and hate crimes based on the victim's functional diversity, each accounting for 3.61% of all hate crimes (10 cases). Aporophobia (2 cases), and beliefs and religious practices (3 cases), account for 1.81% of all the crimes recorded.

Notwithstanding the above, the quantitative increase in certain targets groups has not involved substantial changes in the groups map from the point of view of the relative weight of each group with regard to the rest. Thus, the ethnic group considered at length (racism, xenophobia, ideology, political orientation, beliefs and religious practices and anti-Semitism) represents 63.18%, that is, two thirds of the hate map, a figure which is slightly higher than that of 2020. Moreover, the percentage of the sex group considered at length (comprising those crimes motivated by sexual identity and orientation as well as gender identity)<sup>24</sup> has also increased, since it now represents 32.49% of the cases, that is, almost one third of the cases.

Therefore, the groups map continues with the trend observed in previous years, with the exception of ideology, which shows a significant drop, but we will have to wait for its future evolution in order to see whether it becomes a trend. A trend in this direction would reflect a thorough and desirable adjustment of the legal instrument to a strict application in accordance with the original parameters of protection of vulnerable groups. There have also been lower recording rates for the group of people with disabilities, which returns to the set of groups with the lowest detection levels.

### 1.6.3. CRIME TYPOLOGIES

#### I. PREVALENT GROUPS.

In this sixth report two groups of criminal incidents, bodily harm (98 cases: 35.38%) and threats (60 cases: 21.66%) continue to be the most numerous, at a considerable distance from the following criminal groups. Together they account for 57.04% of all criminal incidents, that is, more than half of the hate map. Moreover, it can be seen that hate speech (20 cases: 7.2%) has experienced a slight increase after decreasing the previous year.

24. UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, "2017 Report on Hate

Incidents in the Basque Country", Basque Government, 2018, p. 26 and ff.



## II. VIOLENT INCIDENTS.

Bodily harm, representing over one third of the total (98 cases: 35.38%), is, as mentioned in previous reports, the benchmark for those conducts that will eventually be aggravated pursuant to the circumstance modifying criminal liability provided for in article 22.4 of the Criminal Code. This year it was the highest figure ever recorded.

In any case, it must be pointed out that the most serious hate violence (i.e., murders, homicides, serious bodily harm, sexual abuse) is starting to give signs, although still incipient and weak (most incidents are still minor) of a greater presence in our community. Therefore, it would be advisable to pay special attention to the evolution of this type of incidents in future reports.

When considered at length with other crimes likened to crimes committed “with deeds” (thus bringing together homicide n=1, sexual abuse n=4, resistance and attack n=3; damage n=12; and even theft n=4, robbery n=4 and fraud n=3) the percentage almost reached 45.49% (n=129) of all 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 remain the majority. If we bring together threats (60), hate speech in the strict sense (20), slandering (10), and defamation (6), they account for up to 34.66% (96), and even reach 49.82% (138) if we also include general but close categories such as coercion (28) and degrading treatment (18). In any case, it is necessary to point out that the majority represented by these incidents is not as robust as in previous years, with a percentage that is even lower than that obtained in 2020, the lowest figure up to now.

As we have been informing since last year, a detailed consideration of the group of degrading treatment cases may be reflecting doubts when carrying out an onsite classification of hate incidents that could lie within the diffuse context of threatening, insulting and demeaning/contemptuous behaviour.

Therefore, the line drawn in the crime map this year is quite different from that obtained in the previous years, with an “overrepresentation” of expressive conducts much less noticeable than in previous years, basically 5 to 5, with respect to the potentially more serious violence involved in bodily harm or the violence around it.

This could mean that the recording system is becoming more adjusted, balanced and refined, with greater capacity to discern hate speech and the



part of it that may have criminal relevance. The system is working out the recording of crimes “with deeds” –and in particular- bodily harm and its “surrounding environment” as opposed to an excessive sensitiveness when dealing with incidents “with words”. However, it is still early to see a trend in this, in view of the variability of this data throughout the various reports.

#### **1.6.4.**

#### **SPATIAL-TEMPORAL DISTRIBUTION, PERSONS UNDER INVESTIGATION, ARRESTED PERSONS AND VICTIMS OF HATE CRIMES**

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For the sixth consecutive year Bizkaia is the province where the most hate crimes were recorded (52.71%). As for the municipality, hate crimes mainly occurred in Bilbao (16.61%) and Vitoria-Gasteiz (12.64%). The capital of the other historical territory, Donostia-San Sebastian (5.78%), as well as Irún in Gipuzkoa (11.55%) are also worthy of note in this regard. In any case, the low number of recordings in the capital of Gipuzkoa is remarkable. As for the place where the crimes are committed, urban public spaces (39.71%) are the sites where more hate crimes are committed, followed by homes (16.61%).

With regard to the temporal distribution, most incidents take place on Saturday (18.77%), Tuesday (18.05%) and Sunday (16.25%), especially in the evening (63.18%).

With regard to the charged persons, most of them, 156, are Spanish (65.82%), 81.41% of whom come from the Basque Country, mainly from Bizkaia (42.95%). Amongst the persons of foreign origin who were charged (34.18%), those coming from Africa (35.8%) and Latin America (48.14%) stand out from the rest. At the municipal level, most charged persons come from the capital cities of the historical territories, Bilbao (n=23), Donostia-San Sebastian (n=30) and Vitoria-Gasteiz (n=11).

Moreover, in 2021 there were 21 arrests, less than half the figure reported the previous year. Most of them were men of Spanish nationality (52.38%), and most of them came from the Basque Country (81.81%, 3 from each of the historical territories).

50.25% of the victims were of Spanish nationality, 78.5% from the Basque Country. As for the foreign victims (49.74%), those from Latin America and Africa were the most numerous (22.86% and 16.83% of the total, respectively). Most of the victims from the Basque Country are from Bizkaia, mainly from Bilbao (10.55%) and from Vitoria-Gasteiz (5.23%).



**1.6.5.****THE HATE MAP OF THE BASQUE COUNTRY  
WITHIN THE CONTEXT OF THE STATE**

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**I. GLOBAL DATA AND TARGET GROUPS.**

277 hate crimes were recorded in the Basque Country in 2021. With regard to the data from the whole of the State, if we take the 2020 Report on the Evolution of Hate Incidents in Spain<sup>25</sup> as the starting point, 15.8% of the hate incidents that were reported to the police authorities all over the State took place in the Basque Country (221 incidents, more than twice as many as the previous year). In this regard, to put these data into context, at the end of 2021, the Basque Country had 2,213,993 inhabitants – Bizkaia (1.15M inhabitants, Gipuzkoa 0.73M inhabitants and Araba 0.33M inhabitants) – of a total of 47,326,687 inhabitants of the State (INE, 2022).

Consequently, the data recorded in the Basque Country, relatively stable up to now, show a significant increase as far as the detection of the phenomenon is concerned; a trend that the state data collected by the Ministry of the Interior is starting to show.

Moreover, it is important to point out that this is the second year that the report drawn up by the Ministry of the Interior also includes the administrative offences committed in the State, which amounted to 67 in 2020.

In Spain, in 2020 the main categories, ideology and racism/xenophobia, accounted for almost two thirds (60.8%) of the 1,334 incidents recorded, a trend which is comparable to its global equivalent in the Basque Country. As for the distribution of the incidents by group, it is surprising that the most affected target groups do not coincide: in the Basque Country racism and xenophobia is clearly predominant, accounting for 58.48% of the incidents, followed by sexual identity and orientation, which account for 26.35% of the crimes. However, in Spain, racism and xenophobia is also the most affected category (34.6%), but sexual identity and orientation is surpassed by ideology, which accounts for 23.3% of the crimes, although it is closely followed by this group, which accounts for 19.8% of the cases. In the Basque Country, ideology hardly represents 3.61% of the cases, and this is indeed a clearly distinctive trend with regard to the State.

In the Report of the Ministry of the Interior fewer than half of the categories have undergone a more or less downward trend, as compared to the previous year, with the exception of sex/gender based discrimination, ge-

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25. MINISTRY OF THE INTERIOR, “Informe sobre la evolución de los incidentes relacionados con los delitos de odio en España 2020”, Ministerio del Interior -

Gobierno de España, 2021. (2020 Report on the Evolution of Hate Incidents in Spain, Ministry of the Interior – Government of Spain, 2021).



nerational discrimination, medical condition discrimination and anti-gypsism, which have risen to a greater or a lesser extent; and sexual orientation and gender identity, which remain stable. However, in the Basque Country the only categories which have increased are sexual identity and orientation (from 50 to 73 incidents), racism and xenophobia (from 117 to 162 incidents), beliefs and religious practices (from 2 to 3 incidents) and sex (from 16 to 17 incidents). On the other hand, aporophobia has remained stable, and functional diversity and ideology and political orientation have undergone a significant decrease (from 19 to 10 incidents and from 14 to 10 incidents, respectively).

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 differ substantially; on the other hand, little victimization has been recorded with regard to aporophobia, and beliefs and religious practices.

## **II. CRIME TYPOLOGIES.**

As for the crime types, bodily harm (18.8% in Spain and 35.4% in the Basque Country) and threats (23.3% in Spain and 21.7% in the Basque Country) stand out in both reports as the most prevalent types. Damage (8.1%) and slandering (5.5%) are also noteworthy at the level of the State, whereas coercion (10.1%), degrading treatment (6.5%) and hate speech (7.2%) stand out in the Basque Country. In any case, it must be pointed out that the recording of bodily harm in the Basque Country is almost twice as high as the average in the State.

## **III. OTHERS: VICTIMS, OFFENDERS, SPATIAL-TEMPORAL DISTRIBUTION AND SITE.**

With regard to the demographic profile of the victims, in both reports most of them were men (59% in Spain and 57.8% in the Basque Country) aged between 18 and 50 (more than two thirds of the cases, 72.7% in Spain and 68.1% in the Basque Country). As for the place of origin, it is surprising that in Spain 65.9% of the victims were Spanish, whereas in the Basque Country this figure goes down to 50.25%, 78.5% of whom came from the Basque Country. Likewise, with regard to the foreign victims, the groups that suffered more victimization in both cases were the persons from Africa (14.5% in Spain and 16.8% in the Basque Country) and from America (11.1% in Spain and 22.9% 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 (81.5% in Spain and 77.13% in the Basque Country), young-adults (under-40, 52.8% in Spain and 45.34% in the Basque Country) and of Spanish nationality (77.4% in Spain and 64.73% 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 June and July, with 158 and 148 incidents, respectively. However, in the Basque Country, the months in which more incidents were recorded were September, with 46 incidents and October, with 34 incidents.

Moreover, both in Spain as well as in the Basque Country, a large part of the incidents took place in public spaces (26.5 in Spain and 39.71% in the Basque Country). However, in the private sphere, homes (22.5% in Spain and 16.61% in the Basque Country) stand out, although to a lesser extent, as the places where these incidents were committed. It is noteworthy that Internet did not have much presence, either in Spain or in the Basque Country, as a place where crimes are committed.

A final consideration. The comparison State vs. Basque Country has always been done using data from the Report of the Ministry of the Interior, which, due to its being from a year before, always involves a “structural” jump, since we are dealing with different years. This eventual distortion is not as apparent as last year’s, but it is still quite remarkable if we consider that we are comparing periods of time that are quite different, i.e., the beginning of the pandemic and the situation of the pandemic in 2021. In any event, we think that the information provided is still useful, as the comparison methodology has remained identical since the reports were first produced.



# 02



**Comparative  
framework of  
updated official data**



The analysis of the international and comparative trends<sup>26</sup>, as mentioned in the previous report, allows the state of the question and the eventual progress of the domestic efforts to be contextualized and appropriately measured. Therefore, below is a comprehensive collection of available data aimed at showing the efforts made by countries that are relevant within the sphere of our legal culture in order to identify not just the police recording activity, but also its traceability. We can advance that it is still not possible to provide a complete traceability scenario with regard to any of the countries under analysis, but some progress has clearly been made in that direction that should be described, as it sets the tone for the future.

## 2.1

# UNITED KINGDOM

### 2.1.1. EMPIRICAL REALITY ACCORDING TO OSCE DATA

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The most recent statistical information provided by the Organization for Security and Cooperation in Europe (OSCE/ODIHR) on hate crimes in the United Kingdom, according to the data dumped by the national authorities of this country to the organization itself, is the information regarding the year 2020<sup>27</sup>. The total figure amounts to 125,848 hate crimes recorded by the police, which means a 17.98% increase as compared to the previous year. Of these 125,848 hate crimes, 124,091 were recorded in England and Wales (98.60%) and 1,757 in Northern Ireland (1.40%), leaving Scotland outside. More than half of the hate crimes recorded by the police involve public order offences. However, the particular crime categories have not been specified and, therefore, no other data have been provided in this regard.

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26. See recently LANDA GOROSTIZA, Jon-Mirena, "Delitos de odio y estándares internacionales: una visión crítica a contra corriente", Revista Electrónica de Ciencia Penal y Criminología (online) RECPC 2020 no. 22-19, passim.

27. Online access: <https://hatecrime.osce.org/united-kingdom>



With regard to the motive or motives of the perpetrator, there are disaggregated data regarding England and Wales and Northern Ireland. To be precise, there were a total of 131,466 prejudiced motives involved in the reported hate crimes. This means a 20.17% increase as compared to the previous year. However, it is the first time that the OSCE/ODIHR provides this type of data including Northern Ireland. The following classification ranks the prejudiced motives present in the hate crimes recorded by the police of England, Wales and Northern Ireland ranked from the most to the least prevalent:

#### **RACISM AND XENOPHOBIA (92,771; 70.57%).**

A 21.95% increase as compared to the previous year. Within this figure regarding the number of prejudiced motives, 92,052 correspond to England and Wales (99.22%) and 719 to Northern Ireland (0.77%).

#### **ANTI-LGBTI (21,675; 16.49%).**

A 17.96% increase as compared to the previous year. Within this figure regarding the number of prejudiced motives, 21,395 correspond to England and Wales (98.71%) and 280 to Northern Ireland (1.29%). Moreover, 18,596 of the crimes recorded in England and Wales were based on sexual orientation (86.92%) and 2,799 on transphobia (13.08%). On the other hand, 246 of the crimes recorded in Northern Ireland were committed on the grounds of prejudice based on sexual orientation (87.86%) and 34 on the grounds of transphobia (12.14%).

#### **DISABILITY (9,943; 7.56%).**

A 17.40% increase as compared to the previous year. Within this figure regarding the number of prejudiced motives, 9,885<sup>28</sup> correspond to England and Wales (99.42%) and 58 to Northern Ireland (0.58%).

#### **ANTI-MUSLIM PREJUDICE (2,703; 2.06%).**

A 12.50% drop as compared to the previous year. In general, according to the data gathered by the OSCE/ODIHR, the number of anti-religious motives in the United Kingdom amounts to 6,377, including anti-Muslim prejudice (2,703; 42.39%), anti-Semitic prejudice (1,288; 20.20%), anti-Christian prejudice (521; 8.17%) and prejudice against other religions or beliefs (2,565; 40.22%). In the case of the anti-Muslim prejudice, the aforementioned figure was obtained from the police forces of England and Wales; therefore, there are no data regarding Northern Ireland.

#### **OTHER RELIGIONS OR BELIEFS (2,565; 1.95%).**

A 54.33% increase as compared to the previous year. Within this figure re-

28. A mistake in the information provided by the OSCE/ODIHR, since the figure provided for England and Wales is exactly the same as the general count of recorded prejudiced motives (9,943), has been rectified.



garding the number of prejudiced motives, 1,865 correspond to England and Wales (72.71%) and 700 to Northern Ireland (27.29%). The 1,865 prejudiced motives regarding England and Wales include, amongst others, 650 prejudiced motives against «other religions», 174 against «non-believers» and 926 involving «no specified targeted religion». The breakdown of data for Northern Ireland is not known.

#### **ANTI-SEMITISM (1,288; 0.98%).**

A 6.89% increase as compared to the previous year. The figure of 1,288 prejudiced motives has been obtained from the police forces of England and Wales; therefore, there are no data regarding Northern Ireland.

#### **ANTI-CHRISTIAN (521; 0.40%).**

A 1.88% drop as compared to the previous year. The figure of 521 prejudiced motives has been obtained from the police forces of England and Wales; therefore, there are no data regarding Northern Ireland.

Leaving aside the hate crimes recorded by the police, the OSCE/ODIHR recorded **16,824 prosecuted hate crimes**, which represents a 19.68% increase as compared to the previous year. To be precise, 10,969 correspond to England and Wales (65.20%), 5,525 to Scotland (32.84%) and 330 to Northern Ireland (1.96%). As for the convictions for hate crimes, there were 9,510 in England and Wales, which means a 1.82% increase as compared to the previous year. Like the previous year, there are no data regarding Scotland and Northern Ireland in this regard.

### **2.1.2.**

#### **UPDATE OF OTHER DATA: SCOTLAND<sup>29</sup>**

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The Scottish police recorded 6,448 hate crimes in 2019/20<sup>30</sup>, a 1.91% increase as compared to the previous year. 3,969 of them included a race aggravation (61.55%), 1,314 a sexual orientation aggravation (20.38%), 501 a religion aggravation (7.77%), 301 a multiple aggravation (4.69%), 267 a disability aggravation (4.14%) and 96 a transgender identity aggravation (1.49%).

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29. In addition to what is included in this section, see also a summary with updated data regarding hate incidents in Scotland at ALLEN/ZAYED, "Hate crime statistics", House of Commons, 2021, pp. 44-49.

30. For further details about this and other data that will be set out below, see SCOTTISH GOVERNMENT, "A study into the characteristics of police recorded hate crime in Scotland", Justice Analytical Services (Scottish Government), 2021.



By crime type, the most remarkable are the hate crimes recorded as threatening or abusive behaviour, which account for over half of the total hate crimes (3,301; 51.19%). These are followed by racially aggravated conduct<sup>31</sup> (1,054; 16.35%). Finally, common assault is also at a quantitative distance from the rest of the crimes recorded as hate crimes (752; 11.66%). All the aforementioned categories are considered to be offences<sup>32</sup>. To be precise, 240,174 offences<sup>33</sup> were recorded in Scotland in 2020/21. According to the data for the year 2020/21, there were 1,706 offences of racially aggravated conduct, and only 76 offences of racially aggravated harassment<sup>34</sup>.

The number of charges<sup>35</sup> reported to the Crown Office and Procurator Fiscal Service or COPFS, either by the Scottish police or by other agencies, has increased by 4% as compared to the previous year. In 2020/21 there were a total of **5,525 charges for hate crimes**<sup>36</sup>, as compared to 5,219 in 2019/20. If we take into account the prejudiced aggravation included in those charges<sup>37</sup>, we find: race (3,285 aggravated charges); sexual orientation (1,580 aggravated charges); religion (573 aggravated charges); disability (448 aggravated charges); and transgender identity (46 aggravated charges).

Racially aggravated harassment and behaviour accounts for 1,245 racially aggravated charges (38%). The remaining 2,040 charges related to other racially aggravated crimes, such as threatening or abusive behaviour or assault, represent 62% of the total.

Finally, it is advisable to see how many charges end up with the prosecutors deciding to start Court proceedings. By category:

31. To be precise, this involves acting in a certain manner, which includes any expressive conduct that is racially aggravated and causes or is intended to cause another person alarm or distress.

32. It must be remembered that «crime» is used in this type of report to refer to different violations of the criminal law which are considered to be severe (for example, homicide or serious assault), whereas «offence» is used for other less severe violations (for example, breach of the peace or harassment). The severity is related to the maximum sentence that may be imposed.

33. However, the total number of crimes was 246,511 in 2020/21. For further details see SCOTTISH GOVERNMENT, «Recorded crime in Scotland, 2020-21», Scottish Government, 2021, pp. 10, 50, 79 and 81.

34. SCOTTISH GOVERNMENT, «Recorded...op. cit., pp. 54 and 97.

35. It must be remembered that it is not the number of charged persons or the number of incidents on which those charges are based, but the number of hate crime charges that are reported. Therefore, a single person

can have one or more charges reported. Likewise, it must be noted that each charge may involve more than one prejudiced aggravator. Therefore, when breaking down the data in accordance with the protected category, a single charge will be computed as many times as categories are involved (for example, a black homosexual victim counts as a race charge and a sexual orientation charge).

36. For further details about this and other data that will be developed below, see CROWN OFFICE & PROCURATOR FISCAL SERVICE, «Hate crime in Scotland 2020-21», COPFS, 2021.

37. That said, according to what is stated, 59% of the 5,525 charges for hate crimes had at least one racial aggravator, 29% a sexual orientation aggravator, 10% a religion aggravator, 8% a disability aggravator and 1% a transgender identity aggravator.



- 2,664 (81.09%) of the 3,285 racially aggravated charges ended up being prosecuted. Moreover, in some other 254 charges (7.73%) the original charge was dismissed, but there was another charge against the same person and within the same case that may have used information contained in the first charge that was dismissed. In more relative terms, we could be talking about 2,918 charges (88.83%) that have somehow resulted in court proceedings. Moreover, in some other 43 charges (1.31%) the final decision is not known yet, since the case is under investigation and/or assessment in order to determine how to proceed.
- 1,299 (82.21%) of the 1,580 sexual orientation aggravated charges ended up being prosecuted. Moreover, in some other 118 charges (7.47%) the original charge was dismissed with the possible consequences mentioned above. Therefore, we could be talking about 1,417 charges (89.68%) that have resulted in court proceedings. Moreover, in some other 13 charges (0.82%) the final decision is not known yet.
- 463 (80.80%) of the 573 religiously aggravated charges ended up being prosecuted. Moreover, in some other 49 charges (8.55%) the original charge was dismissed with the possible consequences mentioned above. Therefore, we could be talking about 512 charges (89.35%) that have resulted in court proceedings. Moreover, in some other 5 charges (0.87%) the final decision is not known yet.
- 368 (82.14%) of the 448 disability aggravated charges ended up being prosecuted. Moreover, in some other 28 charges (6.25%) the original charge was dismissed with the possible consequences mentioned above. Therefore, we could be talking about 396 charges (88.39%) that have resulted in court proceedings. Moreover, in some other 5 charges (1.12%) the final decision is not known yet.
- Finally, 32 (69.56%) of the 46 transgender identity aggravated charges ended up being prosecuted. Moreover, in some other 5 charges (10.87%) the original charge was dismissed with the possible consequences mentioned above. Therefore, we could be talking about 37 charges (80.43%) that have resulted in court proceedings. Moreover, in some other 2 charges (4.35%) the final decision is not known yet.

In 2019/20 charges were brought against a total of 85,726 persons in Scotland, which gave rise to 75,251 convictions<sup>38</sup>. Amongst them, **595 convictions had a race aggravator/indicator**<sup>39</sup> (a 5.41% drop with regard to 2018/19), **420 a sexual orientation aggravator/indicator** (a 17.98% increase), **230 a religion aggravator/indicator** (a 12.75% increase), **87 a disability aggravator** (a 2.25% drop) and **14 a transgender aggravator** (a 100% increase).



In 471 convictions, the convicted person to whom the racial aggravator/indicator applies is a man (79.16%), whereas in 124 it is a woman (20.84%). As for the sexual orientation aggravator/indicator, in 353 it is a man (84.05%) and in 67 it is a woman (15.95%). As for the religion aggravator/indicator, in 203 it is a man (88.26%) and in 27 it is a woman (11.74%). As for the disability aggravator/indicator, in 66 it is a man (75.86%) and in 21 it is a woman (24.14%). As for the transgender aggravator/indicator, in 12 it is a man (85.71%) and in 2 it is a woman (14.28%).

With regard to the distribution by crime type in which any of the previous aggravators/indicators is involved, most of the sentences have to do with a specific group of crimes (miscellaneous offences). The prevailing category –referred to as breach of the peace, etc.– includes breach of the peace, threatening or abusive behaviour, stalking, offensive behaviour at football and threatening communications. This subgroup accounts for 410 of the total convictions with the race aggravator/indicator (68.91%), 363 of the total convictions with the sexual orientation aggravator/indicator (86.43%), 202 of the total convictions with the religion aggravator/indicator (87.83%), 72 of the total convictions with the disability aggravator/indicator (82.76%) and 9 of the total convictions with the transgender aggravator/indicator (64.28%).

38. For further details about this and other data that will be set out below, see SCOTTISH GOVERNMENT, “Criminal proceedings in Scotland 2019-20”, Justice Analytical Services (Scottish Government), 2021.

39. Please note that the recorded data not only represent the legally recorded aggravators that have been proven and found in court, but also include other indicators regarding disability, race, religion, sexual orientation or transgender identity that help to better understand the context of a charge and add information that can play a key role when determining the

nature of the crime. In this database, known as Criminal History System (CHS), both the police as well as the prosecution may add these indicators at any time. Therefore, the following data represent a homogeneous volume of aggravators and indicators. Likewise, it must be noted that a conviction for a crime/offence to which more than one aggravator/indicator is added (for example, race and religion) will have both aggravators/indicators computed.



### 2.1.3.

#### UPDATE OF OTHER DATA: NORTHERN IRELAND<sup>40</sup>

The latest report published by the Police Service of Northern Ireland (PSNI) covers all those incidents or crimes with a hate motivation recorded by the police of Northern Ireland from 1 October 2020 to 30 September 2021<sup>41</sup>. Thus, before expounding on these data, it must be pointed out that in 2020/21 there were **2,982 hate incidents** (an increase by 31.02% as compared to 2019/20), involving a total of **2,099 crimes** (an increase by 34.29% as compared to 2019/20).

With regard to the race motivation, 1,231 hate incidents were recorded, involving 864 crimes. In greater detail, among the 1,231 racist hate incidents, the police recorded 730 involving one or more crimes (59.30%), whereas in 501 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (40.70%)<sup>42</sup>. As for the 864 racist crimes, they represent 0.9% of the total crimes recorded by the police in 2020/2021. Among them: 514 crimes lie within the category Violence Against the Person Offence, that is, 59.49%; 336 crimes correspond to the category Theft (including burglary) & Criminal Damage, that is, 38.89%; and 14 crimes correspond to the generic category All Other Offences, that is 1.62%. A large part of all these incidents (524 of 1,231; 42.57%) and crimes (361 of 864; 41.78%) were committed in the city of Belfast. With regard to the ethnicity of the victims of racist hate crimes, from the total of 801 racist crimes, in 312 the victim is White, 38.95%; in 192 the Ethnicity is Missing/Unknown Person, 23.97%; in 107 it is Asian, 13.36%; in 99 it is Black, 12.36% and in 91 it is Mixed/Other, 11.36%. By nationality of the victim, which, as we know, does not necessarily coincide with their ethnicity, the most remarkable are the UK and Ireland (173; 21.60%), Poland (81; 10.11%) and Romania (27; 3.37%).

With regard to the sectarian motivation, 1,102 hate incidents were recorded, involving 802 crimes. In greater detail, among the 1,102 sectarian hate incidents, the police recorded 714 involving one or more crimes (64.79%), whereas in 388 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (35.21%)<sup>43</sup>. As for the 802 sectarian crimes, they represent 0.8% of the total crimes recorded by the police in 2020/21. Among them: 433 crimes lie within the category Violence Against the Person Offence, that is, 53.99%; 343 crimes correspond to the category Theft (including burglary) & Criminal Damage, that is, 42.77%; and 26 crimes correspond to the generic category All Other Offences, that is, 3.24%. A large part of these incidents (348 of 1,102; 31.58%) and crimes (262 of 802; 32.67%) were committed in the city of Belfast.

40. In addition to what is included in this section, see also a summary with updated data regarding hate incidents in Northern Ireland at ALLEN/ZAYED, "Hate crime... op. cit., pp. 50-52.

41. Hereinafter, we will present a number of statistical data contained in PSNI, "Incidents and crimes with a hate motivation recorded by the Police in Northern Ireland. Update to 30th September 2021", Police Service of Northern Ireland (PSNI) Statistics Branch, 2021. Note that this is a quarterly report that replaces the previous reports of the same kind. Moreover, there is an annual report— with a more detailed analysis (for example, age and sex of the victim)— which was also published in November 2021 but is based on data obtained during the last financial year, that is, from 1 April 2020 to 31 March 2021. For this latter report, which will be occasionally referred to as a footnote, see: PSNI, "Trends in hate motivated incidents and crimes recorded by the Police in Northern Ireland 2004/05 to 2019/20", Police Service of Northern Ireland (PSNI), 2021.

42. According to the annual report based on the financial year (April 2020-March 2021), 993 racist hate incidents were recorded involving 719 crimes. Among the 993 racist hate incidents, the police recorded 616 involving one or more crimes (62.03%), whereas in 377 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (37.96%).

43. According to the annual report based on the financial year (April 2020-March 2021), 934 sectarian hate incidents were recorded, involving 674 crimes. Among the 934 sectarian hate incidents, the police recorded 592 involving one or more crimes (63.38%), whereas in 342 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (36.62%).



With regard to the homophobic motivation, 401 hate incidents were reported, involving 265 crimes. In greater detail, among the 401 homophobic hate incidents, the police recorded 218 involving one or more crimes (54.36%), whereas in 183 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (45.63%)<sup>44</sup>. As for the 265 homophobic crimes, they represent 0.3% of the total crimes recorded by the police in 2020/21. Among them: 211 crimes lie within the category of Violence Against the Person Offence, that is, 79.62%; 47 crimes correspond to the category of Theft (including Burglary) & Criminal Damage, that is, 17.73%; and 7 crimes correspond to the generic category of All other Offences, that is, 2.64%. A large part of all these incidents (150 of 401; 37.41%) and crimes (96 of 265; 36.23%) were committed in the city of Belfast.

With regard to disability, transphobia and faith/religion motivation, the data reported in this quarterly report are more modest. With regard to disability, 119 hate incidents were recorded, involving 78 crimes<sup>45</sup>. With regard to faith/religion, 66 hate incidents were recorded, involving 53 crimes<sup>46</sup>. With regard to transphobia, 63 hate incidents were recorded, involving 37 crimes<sup>47</sup>.

**44.** According to the annual report based on the financial year (April 2020-March 2021), 366 homophobic hate incidents were recorded, involving 246 crimes. Among the 366 homophobic hate incidents, the police recorded 204 involving one or more crimes (55.74%), whereas in 162 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (44.26%).

**45.** According to the annual report based on the financial year (April 2020-March 2021), 90 hate incidents related to disability were recorded, involving 58 crimes. Among the 90 hate incidents related to disability, the police recorded 49 involving one or more crimes (54.44%), whereas in 41 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (45.55%).

**46.** According to the annual report based on the financial year (April 2020-March 2021), 39 hate crimes

related to faith/religion, involving 26 crimes. Among the 39 hate incidents related to faith/religion, the police recorded 25 involving one or more crimes (64.10%), whereas in 14 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (35.90%).

**47.** According to the annual report based on the financial year (April 2020-March 2021), 71 transphobic hate incidents were recorded, involving 34 crimes. Among the 71 transphobic hate incidents, the police recorded 31 involving one or more crimes (43.66%), whereas in 40 the circumstances surrounding the incident did not allow to conclude whether a crime had been committed (56.34%).



The last report available<sup>48</sup> is the report produced by the Public Prosecution Service for Northern Ireland (PPS), which covers the period between 1 April 2020 and 31 March 2021. According to this report, the PPS received **330 cases<sup>49</sup> that the police had identified as hate crimes** (a 4% drop with regard to 2019/20). By protected category, following police classification criteria, 106 cases were related to race (32.12%), 86 to sectarianism (26.06%), 54 to homophobia (16.36%), 39 to faith/religion (11.82%), 26 to multiple motivations (7.88%), 13 to disability (3.94%) and 6 to transphobia (1.82%). If we take the primary offence<sup>50</sup> into account, 212 cases (64.24%) were classified as Violence Against the Person Offence, 44 (13.33%) as Public Order Offence, 40 (12.12%) as Criminal Damage and 34 (10.30%) as All Other Offence Groups.

Furthermore, since there may be more than one person involved in each case, the decision to bring formal charges against someone may also be addressed to any of those persons. Therefore, the following classification refers to the most severe decision made with regard to all those persons involved in a case received by the PPS<sup>51</sup>. Altogether, 360 decisions were recorded. From the most to the least severe, **13 decisions (3.61%) involved an indictable prosecution against persons for them to be tried at the Crown Court<sup>52</sup>, 170 (47.22%) involved a summary prosecution against persons for them to be tried at Magistrates' Courts<sup>53</sup>, 32 (8.89%) involved the adoption of alternative measures** (for example, a formal warning that further measures will be taken if another crime of this type is committed) so as not to go to court (diversion), and 145 (40.28%) involved a decision for no prosecution, either because there is no sufficient evidence or because prosecuting would go against the public interest. If we focus on the summary prosecution, due to its being the decision that involves the greatest number of people, **95 defendants were convicted** for at least one crime<sup>54</sup> [race: 35; sectarianism: 23; homophobia: 14; faith/religion: 9; various motives: 7; disability: 5; transphobia: 2], which means a conviction rate of 69.85%. Moreover, 12 defendants were acquitted (8.82%), whereas with regard to the remaining 29 defendants (21.32%) there were some other circumstances (for example, the defendant died, the charges were dropped, etc.).

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48. Hereinafter, all statistical references must be understood as references to PPSNI, "Statistical bulletin: cases involving hate crime 2020/21", Policy and Information Unit. Public Prosecution Service for Northern Ireland (PPSNI), 2021.

49. Please note that these cases may involve one or more persons each.

50. The primary offence will usually be that related to the most serious offence, to be determined according to the possible criminal sanctions to be imposed under the law.

51. That is, all the hate motivated incidents that have been marked as such by the police of Northern Ireland will be taken as the point of reference.

52. Although they can occasionally act as second instance, it is a superior or senior court that tries serious criminal cases at first instance.

53. They are inferior courts to which less serious criminal issues are presented at first instance.

54. When talking about people convicted of at least one offence, it must be taken into account that some defendants may have been charged with different offences, and that this category also comprises –where appropriate– those defendants that have been acquitted of the hate motivated offence but convicted of another offence.



Finally, with regard to data related to cases in which a prosecutor considers that an offence aggravated by hostility has been committed in accordance with a legal provision rather than a police definition, as was the case above, 260 decisions were recorded. Once again, from the most to the least severe, **15 decisions (5.77%) involved an indictable prosecution against persons for them to be tried at the Crown Court, 150 (57.69%) involved a summary prosecution against persons for them to be tried at Magistrates' Courts, 18 (6.92%) involved the adoption of alternative measures so as not to go to Court (diversion), and 77 (29.61%) involved a decision for no prosecution.** If we focus on the summary prosecutions, **90 defendants were convicted** for at least one crime [race: 46; religion: 24; sexual orientation: 11; various motives: 8; disability: 1], which means a conviction rate of 77.59%. On the other hand, 9 defendants (7.76%) were acquitted, whereas with regard to the remaining 17 defendants (14.65%) there were some other circumstances (for example, the defendant died, the charges were dropped, etc.).

#### 2.1.4.

#### UPDATE OF OTHER DATA: ENGLAND AND WALES<sup>55</sup>

A more comprehensive, although not problem-free, image of the statistical information on hate crimes in England and Wales will be obtained if we deal with two sources of official data that are quite different and have their own limitations.

To start with, the Crime Survey for England and Wales (CSEW)<sup>56</sup>. It is a face-to-face victimization survey that provides information about the personal experiences of those residing in England and Wales. To this end, data from the last three annual surveys are combined in order to obtain a larger sample and make more reliable estimates<sup>57</sup>. The most recent data available are still those regarding the combination of data corresponding to the surveys of 2017/18, 2018/19 and 2019/20<sup>58</sup>.

Even though it is just an estimate, the combined data recorded by the CSEW (2017/18 to 2019/20) point to 190,000 annual hate crime incidents.

55. In addition to what is included in this section, see also a summary of updated data of hate incidents in England and Wales at ALLEN/ZAYED, "Hate crime...op. cit., pp. 5-43.

56. The data from the CSEW are part of the Home Office's reports on hate crimes. Therefore, any reference to the CSEW must hereinafter be understood as a reference to the latest report available in that respect: HOME OFFICE, "Hate crime, England and Wales, 2020 to 2021", Home Office, 2021.

57. The problem of this type of combined data is that they intend to reflect more general long-term trends.

Moreover, even though in theory they cover data that may not have come to the attention of the police, the truth is that the CSEW does not cover crimes against businesses or institutions, crimes against people who do not reside in England and Wales (for example, tourists) or are under 16, or those crimes classified as victimless, to refer to those criminal offences in which, on many occasions, there is no identifiable individual, such as public order offences.



This represents 3% of all crime-related incidents (6.1 million) on which the CSEW focuses. Likewise, 47% of all the hate crime incidents recorded by the CSEW were reported to the police. By categories, around 104,000 incidents per year were due to the perpetrator's attitude with regard to the victim's race, 50,000 incidents to the victim's disability, 42,000 to the victim's religion, 23,000 to the victim's sexual orientation and 7,000 to the victim's gender identity<sup>59</sup>. By crime type, it is noteworthy that the victim of a hate crime incident is more likely to suffer a personal crime than a household crime<sup>60</sup>. Thus, whereas personal crimes represent 59% (120,000 incidents)<sup>61</sup> [violence without injury, 28%; violence with injury, 17%; theft from person, 7%; robbery, 5%; other theft of personal property, 2%], household crimes represent 41% (70,000 incidents)<sup>62</sup> of the total [criminal damage, 20%; burglary, 10%; vehicle-related theft, 5%; other household theft, 5%; bicycle theft, 1%]. In any case, 27% of the victims of household crimes suffered at least another revictimization for the same type of hate crime incident in the last year, as compared to 16% of the personal crimes.

Secondly, after analyzing some data from the CSEW, we can also refer to police recorded hate crime data. This information differs from the information provided by the CSEW, amongst other things, in the fact that it is published on a yearly basis and covers all those cases that were left outside the victimization survey<sup>63</sup>. Therefore, focusing on the latest data available (2020/21)<sup>64</sup>, the police from England and Wales recorded **124,091 hate crimes**, which represents an increase by 9% when compared to 2019/20. Knowing that the reasons for each of those crimes can be varied, the total amounts to 119,868 motivational factors involved in the aforementioned 124,091 crimes. By order of prevalence, we find the following categories: race (85,268 – 71.13%), sexual orientation (17,135 – 14.29%), disability (9,208 – 7.68%), religion (5,627 –

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58. The next publication of figures by the CSEW is expected for 2023, but it could be delayed because the face-to-face survey was suspended due to public health restrictions during the Covid-19 pandemic. Hereinafter, we will briefly refer to what has already been set out in UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, "2020 Report on Hate Incidents in the Basque Country", Basque Government, 2021, pp. 53-54.

59. Note that it adds up to more than 190,000 hate crime incidents, due to the fact that the victim may have indicated that the crime was motivated by more than one protected category.

60. Personal crimes are crimes against the individual and only relate to this individual's own personal experience and not that of others in the same household. Household crimes involve damage or theft in a property and involve any other person who may be living in the same place.

61. Bearing in mind that the victim may have been so for more than one protected category, which results in more incidents than the aforementioned 120,000, see the following breakdown of data according to protected category: race (66,000), religion (30,000), disability (27,000), sexual orientation (19,000) and gender identity (4,000).

62. Bearing in mind that the victim may have been so for more than one protected category, which results in more incidents than the aforementioned 70,000, see the following breakdown of data according to protected category: race (39,000), disability (23,000), religion (12,000), sexual orientation (4,000) and gender identity (3,000).



4.39%)<sup>65</sup> and transgender (2,630 – 2.19%). By crime type, more than half of all the hate crimes recorded by the Police of England and Wales –including the Greater Manchester Police– were public order offences (52%). However, public order offences represent only 10% of all the crimes that can be reported to the police to be recorded, beyond the specific hate crime category. Next, we find violence against the person offences (40%) and criminal damage and arson (5%). After a police enquiry was carried out, 91% of the crimes classified as hate crimes by the police were assigned a final result<sup>66</sup> (the remaining 9% is awaiting for the enquiry to be completed in order to have the result assigned). 10% of all the hate crimes resulted in charges/summons. By crime type, 12% of the public order offences resulted in charges/summons, as well as 8% of the violence against the person offences and 7% of the criminal damage and arson offences.

63. However, it involves twice the risk. To start with, unlike the CSEW, these data do not have the National Statistics status awarded by the UK Statistics Authority –through bodies for which they are accountable– when the statistics concerned are in compliance with the Code of Practice for Statistics. This is the only way to meet the highest reliability, quality and value standard of the statistical information that is provided. Secondly, it is necessary to remember that a large number of hate incidents are not known to the police, with the considerable loss this involves when trying to find out the actual incidence of hate criminality. See OFFICE FOR STATISTICS REGULATION (OSR), “Code of Practice for Statistics. Ensuring official statistics serve the public”, UK Statistics Authority, 2018.

64. Data from different territorial police forces, with the exception of the Greater Manchester Police, which was not able to provide data for 2020/21. Hereinafter, we will deal with statistical data from HOME OFFICE,

“Hate crime, England and Wales...op. cit.

65 To be precise, considering the 6,377 hate crimes on religious grounds recorded by the police (including the Greater Manchester Police this time), further information has been provided with regard to 5,948 (93%). In each of the 5,948 hate crimes on the grounds of religion, more than one perceived religion of the victim of that crime may have been involved. Taking this into account, it can be pointed out that in 45% of the hate crimes on the grounds of religion, the victim was perceived as Muslim, whereas in 22% the victim was perceived as Jewish.

66. It must be noted that only 26 police forces –of the 44 possible– in England and Wales have provided appropriate data in this respect.



The Crown Prosecution Service (CPS) is in charge of providing the number of formal charges brought for hate crimes in England and Wales. To be precise, **10,679 charges for hate crimes** were filed in 2020/21<sup>67</sup> which represents a 2.5% drop as compared to 2019/20. The result of the 10,679 charges filed was a **conviction in 9,263**, which means a conviction rate of 86.7%. More specifically:

- Of the 8,202 charges filed in connection with race (76.80% of the total charges filed), 7,115 resulted in a conviction, which means a conviction rate of 86.7%.
- Of the 1,744 charges filed in connection with homophobia (16.33% of the total charges filed), 1,555 resulted in a conviction, which means a conviction rate of 89.2%.
- Of the 362 charges filed in connection with religion (3.39% of the total charges filed), 294 resulted in a conviction, which means a conviction rate of 81.2%.
- Of the 292 charges filed in connection with disability (2.73% of the total charges filed), 236 resulted in a conviction, which means a conviction rate of 80.8%.
- Of the 79 charges filed in connection with transphobia (0.08% of the total charges filed), 63 resulted in a conviction, which means a conviction rate of 79.7%.

Finally, it must be noted that the report comprising the data for 2019/20 or 2020/21 that enables to know the crime types behind the charges for hate crimes filed by the CPS has not been published yet<sup>68</sup>.

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67. Hereinafter, any reference must be understood as a reference to: CPS, "CPS data summary Quarter 4 2020-2021", CPS, 2021. Link: <https://www.cps.gov.uk/publication/cps-data-summary-quarter-4-2020-2021>.

68. See the file with all the reports published so far at the following link: <https://www.cps.gov.uk/publication/hate-crime-reports>



## 2.2

# FRANCE

### 2.2.1. EMPIRICAL REALITY ACCORDING TO OSCE DATA

The most recent statistical information on hate crimes in France handled by the OSCE/ODIHR, according to the data dumped by the national authorities of that country, is the information for the year 2020<sup>69</sup>. The total figure amounts to **2,672 hate crimes** recorded by the police, which represents a 1.21% increase with regard to the previous year. In addition to this, some other **3,531 crimes involving incitement to hatred or violence, defamation or public slander** were referred to the OSCE/ODIHR, but «most of them» fall outside the definition provided by that organization about what must be understood as hate crime. In this case, the increase was 3.58% with regard to the previous year.

With regard to the motive or motives of the offender, there are disaggregated data, but it is stated that there may be some duplicities between categories<sup>70</sup>. Bearing this in mind, there are a total of 3,998 prejudiced motives involved in the hate crimes recorded. This represents a 10.46% drop with regard to the previous year. The following classification lists the prejudiced motives present in the hate crimes recorded by the French police ranked from the most to the least prevalent:

#### **RACISM AND XENOPHOBIA (1550; 38,77%).**

A 16.02% increase with regard to the previous year.

#### **ANTI-LGBTI (1,063; 26.59%).**

A 12.94% drop with regard to the previous year<sup>71</sup>.

69. Online access: <https://hatecrime.osce.org/united-kingdom>

70. As has been the case year after year, the data regarding «racism and xenophobia» also include other data regarding crimes committed on the grounds of actual or alleged affiliation to a religious group. Therefore, in spite of the fact that anti-Semitic, anti-Muslim and anti-Christian incidents are recorded separately, they have also been added to the racism and xenophobia category. However, when the total figures regarding anti-Semitic, anti-Muslim and anti-Christian incidents are provided, it is stated that they have also been re-

corded under racism and xenophobia and, therefore, «they may appear» twice, but not much else is said in this regard.

71. Please note that in 2019 the category was «gender-based hatred», which included prejudiced motives based on sex and gender, as well as prejudice based on sexual orientation and gender. In 2020, the new «anti-LGBTI hatred» category covers the prejudiced motives based on sexual orientation and gender identity.



**ANTI-CHRISTIAN (813; 20.33%).**

A 22.72% drop with regard to the previous year.

**ANTI-SEMITISM (337; 8.43%).**

A 51.16% drop with regard to the previous year.

**ANTI-MUSLIM (235; 5.88%).**

A 51.61% increase with regard to the previous year.

As for the specific crime types, note should be taken of the inclusion of data regarding crimes that directly fall outside the scope of the definition of hate crime used by the OSCE, as well as some other duplicities. Therefore, it should not come as a surprise that the number of hate crimes recorded by the police in 2020 far exceeds 2,672. Taking these limitations into account, below are the crime figures for the different crime types used by OSCE/ODIHR. The classification below has been ordered from the highest to the lowest incidence of the different crime types:

**THREATS AND THREATENING BEHAVIOUR (1,842; 46.07%).**

A 5.83% drop with regard to the previous year. According to the prejudiced motive, racism and xenophobia (964; 52.33%) is the most prevalent motive, followed, by anti-LGBTI (426; 23.13%), anti-Semitic (245; 13.30%), anti-Muslim (163; 8.85%) and anti-Christian (44; 2.39%).

**UNSPECIFIED (933; 23.24%).**

A 256.11% increase with respect to the previous year. According to the prejudiced motive, anti-Christian (769; 82.42%) is the most prevalent motive, followed by anti-Semitic (92; 9.86%) and anti-Muslim (72; 7.72%).

**PHYSICAL ASSAULT (707; 17.68%).**

A 26.28% drop with regard to the previous year. According to the prejudiced motive, we find anti-LGBTI (419; 59.26%) and racism and xenophobia (288; 40.73%).

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72. This would be the case of the acts of hate speech, which fall within the category of threats/threatening behaviour.

which falls within the category of physical assault.

73. For example, it is not clear to what the extent the category of sexual assault differs from sexual violence,



**INCITEMENT TO VIOLENCE (273; 6.83%).**

A 114.96% increase with regard to the previous year. According to the prejudiced motive, we find racism and xenophobia (160; 58.61%) and de anti-LGTBI (113; 41.39%).

**DAMAGE TO PROPERTY (204; 5.10%).**

An 81.87% drop with regard to the previous year. According to the prejudiced motive, we find racism and xenophobia (138; 67.65%) and anti-LGTBI (66; 32.35%).

**SEXUAL ASSAULT (39; 0.97%).**

There is not an equivalent crime type in the year 2019. The prejudiced motive is equivalent to anti-LGTBI (39; 100%).

Finally, the OSCE/ODIHR still does not provide any data regarding the number of hate crimes prosecuted or the convictions issued in France.

**2.2.2.****APPROXIMATION TO THE EMPIRICAL REALITY: OTHER DATA**

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The latest edition of the report of the National Consultative Commission on Human Rights (CNCDH)<sup>74</sup>, the thirtieth, comprises data for the year 2020 with regard to racism and xenophobia. To this end, every year, the Ministry of National Education, the Ministry of the Interior and the Ministry of Justice inform the CNCDH about the statistical balance of their activity within the sphere of the fight against racism. Likewise, this report also focuses on the implementation of the recommendations made by the CNCDH in previous years and the analysis and proposals of the CNCDH reported to the Inter-Ministerial Delegate to Combat Racism, Anti-Semitism and Anti-LGTB Hatred in December 2020.

The progress reports of the Ministry of the Interior and the Ministry of Justice serve to show the part of racism that is an offen-

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74. COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME (CNCDH), "La lutte contre le racisme, l'antisémitisme et la xénophobie", CNCDH, Paris, 2021.



ce. Likewise, it must be pointed out that the Ministry of the Interior presents two complementary reports: on the one hand, the report of the Ministerial Statistical Service for Internal Security (SSMSI), which shows the actual activity of the police and the gendarmerie; on the other hand, the report of the Central Service of Territorial Intelligence (SCRT), which allows to monitor the facts reported by their local counterparts. To this we have to add the data recorded by the Platform for Harmonisation, Analysis, Cross-referencing and Referral of Reports (PHAROS), under the Central Office for Combating Information and Communication Technology Crime (OCLCTIC/SDLC), which provide a more comprehensive view of the anti-discrimination situation in France, as they include hate crimes and discriminatory behaviours committed online.

The statistical report of the SSMSI for the year 2020 includes data regarding the proceedings recorded by the police and the gendarmerie with regard to a set of infringements (crimes, offences and 4th and 5th class violations) defined in the Criminal Code as committed «on the grounds of race, origin, ethnicity or religion». That year, the police and the gendarmerie recorded around **11,338 infringements explicitly related to race, origin, ethnicity and religion** over the French territory. Out of the aforementioned 11,338 infringements, 5,511 were considered crimes and offences (48.6%) and 5,827 were considered 4th and 5th class violations (51.4%).

After two consecutive years with drops (4% between 2017 and 2018 and 11% between 2016 and 2017), and an 11% increase between 2018 y 2019, there has been a slight 2% drop with regard to the previous year. This drop must be viewed in connection with the evolution of a more or less favourable context for the development of racist actions. The years 2015 and 2016 were marked by two particularly deadly attacks in France, which reverberated in the following months by bringing about the commission of infringements based on the (actual or alleged) origin, ethnicity, nationality, race and religion of the victim, especially after the Charlie Hebdo and Hyper Cacher attacks in January 2015. However, in 2017 some crime types (criminal damage, slandering, bodily harm,



etc.) experienced a considerable decrease, which contributed to the global fall recorded in previous years. To a lesser extent, the same can be said with regard to 2018, where the slight decrease in the events recorded that year is due to the fall in the offences involving provocation, slandering and defamation.

2020 will be remembered for the exceptional context of the health crisis as a consequence of the Covid-19 pandemic, and was also marked by two periods of national confinement of the French population (from 17 March to 10 May and from 30 October to 14 December). This is the reason why, during these periods, most of the crime indicators recorded are quite atypical. We cannot ignore the fact that the confinement has had a significant impact on the conditions to file complaints and has also prevented some forms of crime to take place within the context of the confinement, whereas it has reinforced the commission of other types of crime. Consequently, the statistical balance of the SSMSI itself invites us to interpret the data with caution, bearing in mind the aforementioned special context of the year 2020.

In this regard, in 2020 there was a remarkable increase in certain types of crime (24% in threats and blackmail) whereas other crimes experienced a considerable decrease (1% in discrimination offences and 16% in attacks on property). In the specific case of crimes committed on the grounds of ethnicity, nationality, race and (actual or alleged) religion, they decreased by 3% between 2019 and 2020. Most of these crimes are violent acts that do not entail incapacitation (68%), followed by violent acts that cause incapacitation for a period of up to 8 days (27%) and, finally, violent acts that cause incapacitation for a period of time longer than 8 days (4%).

Violations also experienced a considerable increase by 12% in 2020, after having experienced a 21% increase in 2019.

However, the structure of the racist disputes remains stable: most of the criminal infringements involve provocation, slandering or defamation (64%). To a lesser extent we find



threats and blackmail (22%) and attacks on people (6%).

With regard to the profile, approximately 70% of the offenders and 58% of the victims were men. Nevertheless, as far as the offenders are concerned, it must be noted that female offenders are remarkably overrepresented (30%, as compared to 17% female offenders identified by the police forces in 2020). With regard to the age, the victims were usually middle-aged; in fact, 71% of the victims were between 25 and 54 years of age. The apparent low representation of people under 25 (around 16%, when they represent 30% of the population) and people over 55 (around 13%, when they represent 33% of the population) can be due to a low tendency to report, especially in the case of young people, rather than to a lower exposure to racist statements. However, in the case of the offenders, even though young people were also underrepresented (32% were under 35, when they represent 63% of the people charged with other types of crime), people over 55 were overrepresented (27% of the offenders, when they represent 7% of the people charged with other types of crime).

Also, foreign people are overrepresented in the victim count. In fact, 19%<sup>75</sup> of the victims of crimes and offences were foreigners. Basically, the most affected group were the people from the African continent (14% are part of this group, in spite of their representing approximately less than 3% of the population). As it is logical, this overrepresentation cannot be seen in the case of the offenders, since only 9% of the offenders had been born outside the French territory. It must be noted that, from the point of view of the setting, as mentioned in previous reports, large agglomerations seem to encourage racism: almost two thirds of the aforementioned offences and crimes took place in Paris (27%) or in urban areas with more than 200,000 inhabitants (42%). By contrast, rural municipalities are the least affected by this type of racist incidents (6% of the victims).

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75. In this respect, the CNCDH report itself states that it would be interesting to tell how many of those victims of French nationality descend from immigrants or are second-generation immigrants. The victimization survey "Cadre de vie et sécurité" has found that migrant

people and their descendants are more likely to suffer an offence of this type than French nationals.



Focusing on the prosecution and the courts, in 2019 (no data regarding 2020 have been published so far) 7,283 cases reached the Prosecution Service (10% more than in the previous year), for which 6,386 persons were prosecuted. Out of all the prosecuted persons, 47.7% (3,043 cases) were prosecuted for slandering, defamation and incitement to hatred; 39.5% (2,523 cases) for attacks on people; 10.1% (643 cases) for discrimination and the remaining 2.8% for attacks on property. Likewise, 843 racist or racially aggravated infringements were sanctioned in 2019.

In addition to all the above, it is also possible to find some data beyond racism/xenophobia, more specifically in connection with religious minorities. These figures are quite different from those reported by the SCRT, which have also shown a downward trend in the last year, after experiencing an increase in 2019. To be precise, in 2020 there was a 26% decrease altogether. However, this decrease was not general for all groups; whereas anti-Semitic acts decreased by 52% (339 acts in 2020 as compared to 687 acts in 2019), Islamophobic acts experienced a 52% increase (234 acts in 2020 as compared to 154 acts in 2019)<sup>76</sup>.

The Inter-ministerial Delegation to Combat Racism, Anti-Semitism and Anti-LGTBI Hatred (DILCRAH), with the help of the Ministerial Statistical Service for Internal Security (SSMI) of the Ministry of the Interior, also compiles data and prepares an annual inventory regarding the victims of crimes and offences recorded by the law enforcement forces (police and gendarmerie) and committed on the grounds of the actual or alleged sexual orientation or gender identity of the victim(s). In this regard, the police and the gendarmerie recorded in 2020 1,590 homophobic or transphobic infringements, 15% less than the previous year. Of all these infringements, slandering represents 31% of the infringements recorded, followed by infringements involving physical or sexual abuse (26% of the acts). The victims of these infringements were mostly men (72%) and young (60% of the

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76. COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME (CNCDH), "La lutte contre... op. cit.



victims were under 35). As for the place where they were committed, 37% of them took place in urban areas with more than 200,000 inhabitants<sup>77</sup>.

If we focus exclusively on the **hate crimes committed on the Internet** according to the PHAROS platform, there were 23,525 complaints for crimes of this type in 2020 (8.1% of all the complaints for offences committed on the Internet, which amount to 289,590). Most of the complaints involve xenophobic or discriminatory slandering and defamation (49.4%), followed more and more closely by public incitement to hatred and racial, ethnic or religious discrimination (39.1%) and public incitement to hatred and discrimination on the grounds of the sexual orientation of the victim (6.6%). The most common media to commit these offences year after year are the social media, particularly, Twitter, which received 10,144 complaints for this type of incidents in 2020.

Finally, the CNCDH, aware of the insufficiency of the administrative statistics to outline a comprehensive state of the question in France, suggests taking into account the “dark figure” that affects their representativeness, since the number of known incidents is much lower than the number of those actually committed. In order to complete this approximation and limit the impact of the understatement, they use other sources of sociological character, such as the series of surveys «Framework of Life and Security» (Cadre de vie et sécurité). These surveys, comprising a face-to-face survey and an online survey, were created in 2007 by the INSEE, in collaboration with the National Observatory of Crime and Criminal Justice (ONDRP), in order to find out the criminal offences of which citizens may have been victims in the previous two years and identify their perception of subjective insecurity. This survey is conducted in the first quarter of each year in approximately 25,500 households of the metropolitan France<sup>78</sup>.

With respect to hate crimes, the latest edition of this survey,

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77. MINISTÈRE DE L'INTERIEUR, “Crimes et délits anti-LGBT enregistrés par les forces de police et de gendarmerie en 2019”, Ministère de l'intérieur, Paris, 2020, Online access: <https://www.interieur.gouv.fr/Interstats/Actualites/Info-rapide-n-17-Baisse-du-nombre-de-victimes-de-crimes-ou-de-delits-anti-LGBT-enregistrees-par-les-forces-de-securite-en-2020>

tats/Actualites/Info-rapide-n-17-Baisse-du-nombre-de-victimes-de-crimes-ou-de-delits-anti-LGBT-enregistrees-par-les-forces-de-securite-en-2020



published in 2019, does not provide much data. Firstly, the data regarding discriminatory slandering mentioned in the report of the previous year has not been updated. Moreover, they state that in the 710,000 cases of violence outside the home in cases of theft and the 1,805,000 cases of threats recorded, 12% and 13 respectively had a discriminatory character (that is, racist, xenophobic, homophobic or sexist)<sup>79</sup>.

## 2.3

# GERMANY

### 2.3.1.

#### EMPIRICAL REALITY ACCORDING TO OSCE DATA

The most recent statistical information handled by the OSCE/ODIHR on hate crimes in Germany, according to the data dumped to the organization by the national authorities of this country, is the information regarding 2020<sup>80</sup>. The total figure amounts to **10,240 hate crimes** recorded by the police, which means a 19.28% increase with regard to the previous year. As specified, the 10,240 hate crimes include «some» hate speech offences that will not be taken into account for a subsequent breakdown by category, as they fall outside the definition provided by

78. COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME (CNCDH), "La lutte contre... op. cit.

79. SERVICE STATISTIQUE MINISTÉRIEL DE LA SÉCURITÉ INTÉRIEURE, Résultats de l'enquête «Cadre de vie et sécurité», 2019: Victimation, délinquance et

sentiment d'insécurité, Ministère de l'intérieur, Paris, 2019 Online access: <https://www.interieur.gouv.fr/Interstats/L-enquete-Cadre-de-vie-et-securite-CVS/Rapport-d-enquete-Cadre-de-vie-et-securite-2019>

80. Online access: <https://hatecrime.osce.org/germany>



this organization with regard to what must be understood as hate crime.

With regard to the motive or motives of the offender, there are disaggregated data. However, it is pointed out that a single hate crime may involve more than one prejudiced motive. Therefore, cases with multiple motivations are computed in all the categories involved in a specific incident. Keeping that in mind, there were a total of 13,950 prejudiced motives involved in the hate crimes recorded. This represents a 465.01% increase with regard to the previous year. The following classification ranks the prejudiced motives present in the hate crimes recorded by the German police from the most to the least prevalent:

**RACISM AND XENOPHOBIA (9,420; 67.53%).**

A 470.56% increase with regard to the previous year.

**ANTI-SEMITISM (2,351; 16.85%).**

A 761.17% increase with regard to the previous year.

**ANTI-MUSLIM (1,026; 7.35%).**

A 395.65% increase with regard to the previous year.

**ANTI-LGBTI (578; 4.14 %).**

A 133.06% increase with regard to the previous year.

**GENDER<sup>81</sup> (204; 1.46%).**

No equivalent category in 2019.

**ANTI-CHRISTIAN (141; 1.01%).**

A 147.37% increase with regard to the previous year.

**ANTI-ROMANI (128; 0.92%).**

An 884.62% increase with regard to the previous year.

**DISABILITY (65; 0.46%).**

A 983.33% increase with regard to the previous year.

**OTHER RELIGIONS OR BELIEFS (37; 0.26%).**

A 164.29% increase with regard to the previous year.

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81. This category also includes hate crimes committed with prejudiced motives based on gender identity.



Below is the number of crimes committed according to the different crime types handled by the OSCE/ODIHR. The following classification ranks the various crime types from the most to the least prevalent:

**UNSPECIFIED (11,150; 79.93%).**

There was no equivalent crime type in 2019. According to the prejudiced motive, the most prevalent category is clearly racism and xenophobia (7,520; 67.44%), followed by anti-Semitism (2,032; 18.22%), anti-Muslim (804; 7.21%), anti-LGBTI (387; 3.47%), gender (147; 1.32%), anti-Romani (111; 0.99%), anti-Christian (69; 0.62%), disability (59; 0.53%) and other religions or beliefs (21; 0.19%).

**PHYSICAL ATTACK (1,100; 7.88%).**

A 10.33% increase with regard to the previous year. According to the prejudiced motive, the most prevalent category is clearly racism and xenophobia (814; 74%), followed by anti-LGBTI (109; 9.91%), anti-Muslim (66; 6%), anti-Semitism (51; 4.64%), gender (35; 3.18%), anti-Romani (9; 0.82%), anti-Christian (7; 0.64%), disability (6; 0.54%) and other religions or beliefs (3; 0.27%).

**DAMAGE TO PROPERTY (1,050; 7.53%).**

An 11.7% increase with regard to the previous year. According to the prejudiced motive, the most prevalent category is clearly racism and xenophobia (643; 61.24%), followed by anti-Semitism (209; 19.90%), anti-Muslim (111; 10.57%), anti-Christian (37; 3.52%), anti-LGBTI (35; 3.33%), gender (9; 0.86%), anti-Romani (3; 0.28%) and other religions or beliefs (3; 0.28%).

**THREATS AND THREATENING BEHAVIOUR (561; 4.02%).**

A 41.31% increase with regard to the previous year. According to the prejudiced motive, the most prevalent category is clearly racism and xenophobia (388; 69.16%), followed by anti-Semitism (45; 8.02%), anti-Muslim (42; 7.49%), anti-LGBTI (41; 7.31%), anti-Christian (24; 4.28%), gender (10; 1.78%), other religions or beliefs (6; 1.07%) and anti-Romani (5; 0.89%).

**THEFT/ROBBERY (45; 0.32%).**

A 45.78% drop with regard to the previous year. According to the prejudiced motive, the most prevalent category is clearly racism and xenophobia (23; 51.11%), followed by anti-Semitism (9; 20%), anti-LGBTI (6; 13.33%), anti-Christian (3; 6.67%), gender (3; 6.67%) and anti-Muslim (1; 2.22%).

**GRAVE DESECRATION (22; 0.16%).**

A 15.79% increase with regard to the previous year. According to the preju-



diced motive, the most prevalent category is clearly racism and xenophobia (11; 50%), followed by anti-Semitism (5; 22.73%), other religions or beliefs (4; 18.18%), anti-Muslim (1; 4.54%) and anti-Christian (1; 4.54%).

**ARSON (16; 0.11%).**

A 5.88% drop with regard to the previous year. The category racism and xenophobia (16; 100%) lies behind all the hate crimes included in the arson crime type.

**HOMICIDE/MURDER (6; 0.04%).**

A 62.50% drop with regard to the previous year. The categories racism and xenophobia (5; 83.33%) and anti-Muslim (1; 16.67%) lie behind all the hate crimes included in the homicide/murder crime type.

Finally, la OSCE/ODIHR still does not provide data regarding the number of hate crimes prosecuted or the convictions issued in Germany.

**2.3.2.****APPROXIMATION TO THE EMPIRICAL REALITY: OTHER DATA**

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In Germany, the official central benchmark for statistical data is the German Ministry of the Interior («Bundesministerium des Innern, für Bau und Heimat»), which, within the general category Politically-Motivated Violence («Politisch Motivierte Kriminalität» – PMK), specifies a sub-category that is known as hate criminality («Hasskriminalität»).

As regards the broadest category of politically-motivated crimes, according to the latest Verfassungsschutzbericht 2020<sup>82</sup> report, they are defined as all those criminal precepts within the conventional block of crimes against the State<sup>83</sup>, even if the political motivation cannot be determined in individual cases. This general category helps to understand a global figure of 44,692 politically motivated criminal incidents in 2020, including 15,275 propaganda crimes (34.2%) and 3,365 violent crimes<sup>84</sup> (7.5%)<sup>85</sup>. Thus, the number of politically-motivated crimes in Germany in 2020 increased by approximately 8.54% as compared to the previous year.

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82. BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Verfassungsschutzbericht 2020", Bundesminister des Innern, für Bau und Heimat, Berlin, 2021.



There were 23,604 criminal incidents within politically motivated right-wing criminality (52.81%; an increase by almost 5.65% with regard to the previous year), 13,659 of which were propaganda crimes. As for the rest, 10,971 incidents fall within politically-motivated left-wing criminality (24.55%; an 11.39% increase), 477 within religious ideology (1.07%; a 12.24% increase) and 1,016 within foreign ideology (2.27%; a 46.44% drop). Finally, 8,624 criminal incidents (19.30%; a 29.41% increase) cannot be allocated to any of the previous categories<sup>86</sup>.

Altogether 32,924 criminal offences with an extremist background were recorded. That is, events in which there is some evidence to consider that they were aimed at violating constitutional principles that are essential for democracy; that is, fundamental democratic principles. Out of these 32,924 extremism-motivated crimes, 22,357 fall within politically-motivated right-wing criminality (67.90%; a 5.01% increase with regard to the previous year), 6,632 within politically-motivated left-wing criminality (20.14%; a 2.84% increase), 409 within politically-motivated criminality based on religious ideology (1.24%; a 12.98% increase) and 661 within politically-motivated criminality based on foreign ideology (2%; a 51.18% drop). Finally, 2,865 offences with an extremist background (8.70%; a 42.04% increase) could not be allocated to any of the previous categories<sup>87</sup>.

The most restricted and specific view of **hate crimes** («Hasskriminalität») in the strictest sense reduces the aforementioned figures to a global total of **10,240 incidents** in 2020. This means a 19.28% increase with regard to the previous year. According to the target groups, but including possible multiple motivations<sup>88</sup>, we find the following: xenophobia (9,420), foreignness (5,298), racism (2,899), anti-Semitism (2,351),

83. It must be remembered that the following crime types are considered conventional crimes against the State: §§ 80 - 83, 84 - 91, 94 - 100a, 102 - 104a, 105 - 108e, 109 - 109h, 129a, 129b, 130, 234a or 241a StGB. The category "politically-motivated criminality" may also include crimes that may be committed within the sphere of everyday crime (such as, for example, homicide, bodily harm, arson, resistance or damage), when a global assessment of the circumstances or the attitude of the offender provide a base to infer that they have a political motivation, due to the fact that they are aimed at influencing the process to shape democratic will, achieve or prevent political purposes, or are aimed at preventing the implementation of political decisions, are against the free democratic order or any of its essential characteristics, against the permanence or the security of the Federation or one of its States, or result in members of constitutional bodies or any body of a federal state being unlawfully prevented from carrying out their duties, through the use of violence or actions to prepare for violence, which involve a danger for the Federal Republic of Germany, are directed against a person on the grounds of their political ideology, nationality, ethnicity, race, colour, religion, view of the world, origin or external appearance, disability, sexual orientation or social status (the so-called hate crimes); it also includes events that are not directly aimed against a person, but rather against an institution or object within the framework of the aforementioned context. BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Verfassungsschutzbericht 2020..." op. cit., pp. 24-25.

84. Of these 3,365 violent crimes, 1,785 correspond to bodily harm and 16 to crimes against life (amongst them, 13 attempted and 3 completed). BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Politisch motivierte Kriminalität im Jahr 2020. Bundesweite Fallzahlen", Bundesminister des Innern, für

Bau und Heimat, Berlin, 2021, pp. 5-6.

85. For these and other data that will appear below, see a summary at BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Verfassungsschutzbericht 2020..." op. cit., p. 25.

86. See: BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Verfassungsschutzbericht 2020..." op. cit., p. 26; BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Politisch motivierte Kriminalität im Jahr 2020..." op. cit., pp. 2-3.

87. See: BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Verfassungsschutzbericht 2020..." op. cit., p. 25; BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Politisch motivierte Kriminalität im Jahr 2020..." op. cit., p. 19.



Islamophobia (1,026), sexual orientation (578), anti-German (222), sexual and gender identity (204), social status (164), anti-Christian (141), anti-Romani (128), hate crimes (98), other ethnicity (71), disability (65) and other religion (37)<sup>89</sup>.

Finally, a figure regarding a specific crime type should be highlighted: the German police recorded **5,840 incitement crimes** (Volksverhetzung) in 2020<sup>90</sup>.

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88. Therefore, the sum of all the areas will not lead to the global figure for hate incidents that has just been pointed out (10,240).

89. BUNDESMINISTERIUM DES INNERN, FÜR BAU UND HEIMAT, "Politisch motivierte Kriminalität im Jahr 2020..." op. cit., p. 7.

90. See: <https://de.statista.com/statistik/daten/studie/157434/umfrage/polizeilich-erfasste-faelle-von-volksverhetzung-seit-1996/>



## 2.4

# SUMMARY AND COMPARATIVE REFLECTIONS

### HATE INCIDENTS (POLICE) AND HATE CRIMES (PROSECUTORS AND JUDGES/COURTS)

Below is a brief summary of the updated data corresponding to the comparative frame of reference (United Kingdom, France and Germany), including the data provided by the OSCE.

#### 2.4.1. UNITED KINGDOM

##### 2.4.1.1. OSCE

**POLICE.** 125,848 hate crimes were recorded in 2020. 124,091 of them relate to England and Wales (98.60%) and 1,757 to Northern Ireland (1.40%). No data have been provided about Scotland. Within the 124,091 hate crimes related to England and Wales there were 131,466 prejudiced motives involved, which can be broken down in the following way: racism and xenophobia (92,771), anti-LGTB (21,675), disability (9,943), anti-Muslim (2,703), other religions or beliefs (2,565), anti-Semitism (1,288) and anti-Christian (521).

**PROSECUTION.** A total of 16,824 hate crimes were prosecuted in 2020. 10,969 of them relate to England and Wales (65.20%), 5,525 to Scotland (32.84%) and 330 to Northern Ireland (1.96%).

**JUDGES/COURTS.** 9,510 convictions for hate crimes in England and Wales in 2020. No data have been provided about Scotland and Northern Ireland.



### 2.4.1.2. OTHER DATA

#### • SCOTLAND

**POLICÍA.** 6,448 hate crimes were recorded in 2019/20. 6,147 (95.33%) of them fall within a single protected category and 301 (4.69) within a combination of them. Within the first group of incidents, but with regard to the total figure, the prevailing category is race (3,969 – 61.55%), followed by sexual orientation (1,314 – 20.38%), religion (501 – 7.77%), disability (267 – 4.14%) and transgender identity (96 – 1.49%).

**PROSECUTION.** In 2020/21 the total number of charges reported to the Prosecution service by the police and other agencies is 5,525 (without duplication for multiple victimization). If we take into account each category involved in each charge (with duplication for multiple victimization), the prevailing category is race with 3,285 charges, followed by sexual orientation with 1,580, religion with 573, disability with 448 and transgender identity with 46.

Within the racially aggravated charges, it is known for sure that at least 2,664 (81.09%) ended up being prosecuted. Within aggravated by sexual orientation, 1,299 (82.21%) ended up being prosecuted. Within the 573 charges aggravated by religion, 463 (80.80%) ended up being prosecuted. Within the charges aggravated by disability, 368 (82.14%) ended up being prosecuted. Within the 46 charges aggravated by transgender identity, 32 (69.56%) ended up being prosecuted.

**JUDGES/COURTS.** In 2019/20 there were 595 convictions with a racial aggravator/indicator<sup>91</sup>, 420 with a sexual orientation aggravator/indicator, 230 with a religion aggravator/indicator, 87 with a disability aggravator/indicator and 14 with a transgender aggravator/indicator.

#### • NORTHERN IRELAND

**POLICE.** 2,982 hate incidents were recorded in 2020/21. The prevailing motive was race (1,231), followed by sectarianism (1,102), homophobia

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91. Please note that if there are several aggravators/indicators in a single case resulting in conviction, they are all taken into account and recorded in the data. Moreover, their having an indicator does not mean that we are dealing with a conviction for some statutory aggravator. It means that those aggravators that simply provide additional information of interest in

the proceedings have also been taken into account. This information can be dumped by the police and by the prosecution service. In short, a conviction for a crime to which more than one aggravator/indicator is added (for example, race and religion) will imply that both aggravators/indicators be computed.



(401), disability (119), faith/religion (66) and transphobia (63). Moreover, there were **2,099 crimes linked to those incidents** (race: 864; sectarianism: 802; homophobia: 265; disability: 78; faith/religion: 53 and transphobia: 37).

**PROSECUTION.** In 2019/20 the prosecution service received **330 cases related to hate crimes** from the police. Each case involved one or more people. By protected category the most prevailing is race (106 – 32.12%), followed by sectarianism (86 – 26.06%), homophobia (54 – 16.36%), faith/religion (39 – 11.82%), disability (13 – 3.94%) and transphobia (6 – 1.82%). Moreover, 26 cases (7.88%) were linked to multiple motivations.

According to the final decision adopted by the prosecution service, we find two different types of data.

Firstly, those data related to the decision to bring charges having as a reference all those hate-motivated incidents that have been classified as such by the Police of Northern-Ireland police. Out of a total of 360<sup>92</sup>, **13 decisions (3.61%) involved bringing charges against people for them to be tried before the Crown Court (indictable prosecution).** However, **170 decisions (47.22%) involved bringing charges against people for them to be tried before a Magistrates' Court (summary prosecution).**

Secondly, we find those data related to the decision to bring charges having as a reference all those incidents in which a prosecutor understood that a hate crime aggravated by hostility in accordance to a legal provision (rather than a police definition), had been committed. Out of a total of 260, **15 decisions (5.77%) involved bringing charges against people for them to be tried before the Crown Court (indictable prosecution).** However, **150 decisions (57.69%) involved bringing charges against people for them to be tried before a Magistrates' Court (summary prosecution).**

**JUDGES/COURTS.** If we focus on the summary prosecutions, due to its being the decision that involves the most people, the following differentiated data were recorded for 2020/21.

With respect to the data related to the decision to bring charges having as a reference all the hate-motivated incidents that were classified as such by the police of Northern-Ireland, **95 defendants were convicted** for at least one crime [race: 35; sectarianism: 23; homophobia: 14; faith/religion: 9; various motives: 7; disability: 5; transphobia: 2].

92. Note that there may be more than one decision due to, for example, different individuals within the same case.



As for the data related to the decision to bring charges having as a reference all those incidents in which a prosecutor understood that a crime aggravated by hostility, in accordance with a legal provision (rather than a police definition), had been committed, 90 defendants were convicted for at least one crime [race: 46; religion: 24; sexual orientation: 11; various motivations: 8; disability: 1].

## • ENGLAND AND WALES

**POLICE.** 124,091 hate crimes were recorded in 2020/21, as well as 119,868 motivational factors involved in the aforementioned crimes. By category, ranked from the most to the least prevalent, we find: race (85,268 – 71.13%), sexual orientation (17,135 – 14.29%), disability (9,208 – 7.68%), religion (5,627 – 4.39%) and transgender (2,630 – 2.19%).

**PROSECUTION.** 10,679 charges for hate crimes were filed in 2020/21. By category, ranked from the most to the least prevalent, we find: race (8,202 – 76.80%), homophobia (1,744 – 16.33%), religion (362 – 3.39%), disability (292 – 2.73%) and transphobia (79 – 0.08%).

**JUDGES/COURTS.** In 2020/21, within the 10,679 charges filed, 9,263 ended up in a conviction. To be precise: 7,115 resulted in a conviction in connection with race; 1,555 resulted in a conviction in connection with homophobia; 294 resulted in a conviction in connection with religion; 236 resulted in a conviction in connection with disability and 63 resulted in a conviction in connection with transphobia.

## 2.4.2. FRANCE

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### 2.4.2.1. OSCE

**POLICE.** 2,672 hate crimes were recorded in 2020<sup>93</sup>. Bearing in mind that there may be some duplicity between categories, they can be ranked from the most to the least prevalent as follows: racism and xenophobia (1,550), anti-LGTBI (1,063), anti-Christian (813), anti-Semitism (337) and anti-Muslim (235).

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93. 3,531 crimes involving incitement to hatred or to violence, defamation and public slander could be added to these crimes but, even though they were re-

ported to the OSCE/ODIHR, most of them do not fit the definition provided by this organization on what hate crime is.



**PROSECUTION.** No data have been provided.

**JUDGES/COURTS.** No data have been provided.

#### 2.4.2.2. OTHER DATA

**POLICE.** In 2020 there were 11,338 infringements explicitly related to race, origin, ethnicity and religion in the whole of the French territory. Amongst them, 5,511 were considered crimes and offences (48.6%) and 5,827 were considered 4th and 5th class violations (51.4%). Moreover, 234 islamophobic acts, 339 anti-Semitic acts and 1,590 homophobic or transphobic infringements were recorded.

**OTHER ENTITIES.** If we focus exclusively on the hate crimes committed on the Internet according to the PHAROS platform, 23,525 complaints for crimes of this type were recorded in 2020.

**PROSECUTION:** In 2019 the total number of cases related to race, ethnicity, origin and religion that reached the Prosecution Service was 7,283. Among them, 6,386 people were eventually prosecuted. There are no data with regard to the rest of the groups.

**JUDGES/COURTS:** In 2019, there were 843 convictions based on the race aggravator. There are no data with regard to the rest of the groups.

### 2.4.3. GERMANY

#### 2.4.3.1. OSCE

**POLICE.** 10,240 hate crimes were recorded in 2020. In one part of all these hate crimes recorded<sup>94</sup> there were 13,950 prejudiced motives involved, which can be broken down in the following way: racism and xenophobia (9,420), anti-Semitism (2,351), anti-Muslim (1,026), anti-LGTBI (578), gender (204), anti-Christian (141), anti-Romani (128), disability (65) and other religions or beliefs (37). 10,240 hate crimes were recorded in 2020. In one part of all these hate crimes recorded there were 13,950 prejudiced mo-

<sup>94</sup> The 10,240 hate crimes recorded include «some» hate speech crimes that will not be computed for a breakdown by category. Also, a single crime may be recorded with more than one prejudiced motive.



tives involved, which can be broken down in the following way: racism and xenophobia (9,420), anti-Semitism (2,351), anti-Muslim (1,026), anti-LGTBI (578), gender (204), anti-Christian (141), anti-Romani (128), disability (65) and other religions or beliefs (37).

**PROSECUTION.** No data have been provided.

**JUDGES/COURTS.** No data have been provided.

#### 2.4.3.2. OTHER DATA

44,692 politically-motivated criminal incidents were recorded in 2020, including 15,275 propaganda crimes (34.2%) and 3,365 violent crimes (7.5%). Moreover, 23,604 criminal incidents fall within right-wing politically motivated criminality (52.81%), 10,971 within left-wing politically motivated criminality (24.55%), 477 within religious ideology (1.07%) and 1,016 within foreign ideology (2.27%). Furthermore, 8,624 criminal incidents (19.30%) cannot be allocated to any of the previous categories.

The more restricted and specific view of **hate crimes** («Hasskriminalität»), as a sub-category of politically-motivated violence («Politisch Motivierte Kriminalität» – PMK), reduces the previous figures to **10,240 incidents** in 2020. According to the target groups, but counting possible multiple motivations, it is possible to establish the following ranking from the most to the least prevalent: xenophobia (9,420), foreignness (5,298), racism (2,899), anti-Semitism (2,351), islamophobia (1,026), sexual orientation (578), anti-German (222), sexual and gender identity (204), social status (164), anti-Christian (141), antigypsyism (128), hate crimes (98), other ethnicity (71), disability (65) and other religion (37)

The **incitement crimes** (Volksverhetzung) recorded by the German police amounted to **5,840** in 2020.



# 03



**Reports from the  
Eraberean network**



This section seeks to make an analytical diagnosis of the Reports published by the Eraberean network. The aim, as stated in the previous Report<sup>95</sup>, is to identify to what extent the incidents in this report contain information that is comparable to the incidents recorded by the police, not in order to assess data that respond to a logic that is different from the police logic but rather to lead the police “antennas” that pick up police as well as other incidents towards a scenario of greater cooperation in the necessary unveiling of the dark figure.

The Eraberean network was established in 2015 in order to achieve equal treatment and non-discrimination in the sphere of public policies and in the Basque civil society. It comprises representatives from the Basque Government and associations working on three areas of focus: migrant people, Romani people and the LGTBI community. To be precise, these associations are: Aldarte, CEAR Euskadi, Red Cross, Gao Lacho Drom, CITE-CC.OO Bizkaia, Errespetuz, Kale Dor Kayiko, Nevipen, AGIFUGI, Gehitu and SOS Racismo Gipuzkoa.

These entities cover the three provinces of the Basque Autonomous Community and act like antennas to detect discrimination situations and hate crimes on the grounds of membership of the aforementioned three groups and to assist people and groups that have experienced these situations.

The data obtained are then entered in the computer application of the Eraberean network and included in their annual activity report. In accordance with this report<sup>96</sup>, 63 people were assisted in 2020, 2 fewer than in 2019: 25 people in Bizkaia (-7, as compared to 2019), 25 people in Araba (+6, as compared to 2019), and 13 people in Gipuzkoa (-1, as compared to 2019). Most of these cases were dealt with as possible discrimination cases based on the ethnicity, nationality or origin of the victim (70%), to be precise, 51% of all the cases involve discrimination against migrant people, whereas 19% involve discrimination against Romani people. Moreover, 30% of the cases involve discrimination against a person because they belong to the LGTBI community. These figures are very similar to those of the previous year (47.7%, 23.1% and 29.2%, respectively). It must also be pointed out that the existence of signs of discrimination was confirmed in 85% of the cases, a slight decrease with regard to 2019 (when this figure stood at 92.5%).

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95. UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “2020 Report on Hate Incidents in the Basque Country”, op. cit., pp. 79-82.

96. ERABEREAN, NETWORK FOR EQUAL TREAT-

MENT AND NON-DISCRIMINATION, “2020 Report of activity of the network”, Basque Government, Department of Employment and Social Policies, Vitoria-Gasteiz, 2021.



Most of the discrimination recorded in 2020 was direct discrimination (85%; 87% in 2019), that is, situations that promote discriminatory treatment towards specific persons or groups, as stated in the report, whereas the remaining 15% was indirect discrimination, that is, situations in which a rule or practice, apparently neutral, places the subject at a disadvantage. Along this line, it must be pointed out that most of the discrimination took place in the private sphere (56%), although to a lesser extent than in 2019 (63.1%). Within the private sphere, most of the discrimination took place in the home (23.3%), although to a lesser extent than in 2019, when this figure stood at 39%. As for the public sphere, in 2020 most of the discrimination took place within the spheres of law enforcement (22.7%) and health (18.2%), whereas in 2019, the main spheres were health (25%) and the public space (20.8%).

With regard to the rights that were violated, the most significant are the right to physical integrity and the right to privacy (24.5% each). The percentages of the violations of the different rights have changed with regard to the previous year; with violations of the right to privacy representing 40% of the cases, followed by the right to housing in the second place, with 23.1% (17% in 2020) and physical integrity in the third place (12.3%).

With regard to the profile of the assisted people, some improvement has been observed in the recording of data. For example, as far as age is concerned, it can be said that most of them are young adults aged between 18 and 40 (83.4%), whereas this figure only amounted to 53.8% in 2019. This can be due to the fact that the age of almost one fourth of the assisted people (24.6%) was not recorded that year.

Moreover, with regard to gender, in 2020, 54% of the assisted people were women, 38% men and 8% non-binary. In this regard, the changes in the various percentages are quite significant, as in 2019 the number of women and non-binary people who were assisted was much lower (34% and 2%, respectively), and the number of men was much higher (45%). Besides, the gender of 18% of the people was not recorded.

To complete the profile, it must be added that 55% of the assisted people were from the Spanish State in 2020 (62.3% in 2019). Among the foreigners, the most remarkable are those from Maghreb and Latin America (16% and 18% of the total, respectively, as compared to 14.8% and 11.5% in 2019). Nevertheless, if these data are broken down according to the group, it can be seen that 100% of those who suffered anti-Romani discrimination and 78.9% of those who suffered anti-LGTBI discrimination were of Spanish nationality, whereas that percentage goes down to 25% in the case of those who suffered discrimination on the grounds of their migrant origin.



In any case, as the Network itself states in their Report for the year 2016, the data provided cannot be said to represent the reality of the discrimination existing in the Basque Autonomous Community on the grounds of the victim's nationality, origin, ethnicity, sexual identity and orientation and gender<sup>97</sup>. Likewise, they do not provide a close insight of the reality of hate crime in this territory either, since there are probably many discrimination cases that do not meet the requirements to be considered hate crimes. Nevertheless, as stressed last year, their data have an important feature, as they help to show this reality from the point of view of the associations that work closely with these groups, even though it would be great to have the information expanded on several fronts<sup>98</sup>.

In short, it should be borne in mind, as stated in the previous report, that most of the research done on hate incidents in our context has been based on official data, which, as we all know, are very limited as a consequence of the high dark figure this type of incidents suffer<sup>99</sup>. This is why it is essential to produce reports from a different approach, such as the associational approach, in order to expand the scope of the information to those incidents that do not reach the police.

We must not forget that a more comprehensive view of the anti-discrimination situation with information from associations that, as mentioned above, have a more direct and regular contact with minority groups, can also help to guide the public policy in this respect, so as to combat and prevent this phenomenon that directly undermines the plural coexistence on which the social and democratic rule of law is based<sup>100</sup>.

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97. ERABEREAN, NETWORK FOR EQUAL TREATMENT AND NON-DISCRIMINATION, "2016 Report of activity of the network", Basque Government, Department of Employment and Social Policies, Vitoria-Gasteiz, 2017, p. 45.

98. See in this regard, UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINITZA, "2020 Report on Hate Incidents in the Basque Country", op. cit., pp. 79-82.

99. In this regard, the European Union Agency for Fundamental Rights -hereinafter FRA-, places the dark figure of hate crime at around 80% on average,

although the figure changes depending on the group of reference. In the case of racist and xenophobic hate crimes, it rises to 82%, whereas in the case of those committed for homophobic reasons it drops to 70% approximately. ACHUTEGUI OTALAURRUCHI, P., "Victimización de los delitos de odio. Aproximación a sus consecuencias y a las respuestas institucional y social", *Journal of Victimology*, No. 5, 2017, pp. 33 and 62.

100. AGUILAR GARCÍA, M. Á. (dir.), "Manual práctico para la investigación y enjuiciamiento de delitos de odio y discriminación", *Centre d'Estudis Jurídics i Formació Especialitzada*, 2015, pp. 17 and 79.



# 04



## **Study of judgments for gender-based homicide and/or murder by partners or ex-partners in the Basque Autonomous Community**



As stated in the introduction, this edition of the report includes a legal-criminological study carried out on 25 cases of completed homicide and murder of women by their male partner or ex-partner in the territory of the Basque Autonomous Community between 2002-2020.

The inclusion of this block in this annual report on hate incidents is relevant for several reasons. Firstly, as both sex and gender are elements that are expressly provided for in the aggravating circumstance of art. 22.4 CP, if a person was selected as a victim on these grounds, this would potentially give rise to the commission of a hate crime. This fact brings up a possible intersection between hate crimes (the subject matter of this report) and gender-based violent crimes (which usually take the form of violence against women in its multiple manifestations). Both the former as well as the latter have traditionally been understood and addressed as separate phenomena, which, to some extent, is due to the controversial conceptual delimitation of the “gender violence” construct. The fact is that, as in the Spanish criminal legal system gender violence was limited to the violence exercised by the partner, it did not seem easy or natural to fit it within the set of hate crimes, as a reality that is usually associated with the interchangeability of the victim. In spite of this, and considering that, in recent years, courts have started to apply the aggravator of art. 22.4 CP in cases of gender violence, it seems appropriate to carry out a small-scale pilot study that selects the most serious cases (homicides and murders) committed in the Basque Autonomous Community and analyses how they evolved in court. The limited number of cases and the impact caused by their severity has undoubtedly made it easier to trace them and obtain valuable information that can be seen (and this is another potential feature of this study) as an example of what extending the traceability to the rest of the hate incidents could represent and provide to the preparation of this annual report.

The study was prepared by analysing the data gathered by the Ertzaintza and the contents of the judgments delivered at first instance in connection with the 25 cases selected.

Consequently, this report does not analyze the cases of domestic violence, murder or homicide against women who were not the perpetrator’s partner or ex-partner, or the cases in which the victim did not die.

When preparing this work, we used as a reference the report “*Análisis de las Sentencias dictadas en el año 2018 relativas a homicidios o asesinatos por violencia de género y doméstica*” (Analysis of Judgments delivered in 2018 regarding gender-based and domestic violence homicides or mur-



ders) prepared by the Observatory against Domestic and Gender-Based Violence of the General Council of the Judiciary, which was supplemented with the analysis of the police data recorded by the Ertzaintza.

In spite of the fact that 38 fatal victims of gender-based violence have been recorded in the Basque Autonomous Community from 2002 to this date, this report analyzes 25 cases where it has been possible to trace data from the police enquiry to the delivery of the judgment.

Access to police data has been possible thanks to the collaboration of the Ertzaintza, who have provided ad hoc data to prepare this report. Court rulings were obtained from the public database CENDOJ (Spanish Judicial Documentation Centre), whose traceability was possible due to the small number of existing cases.



# 4.1

## PROFILE OF VICTIMS AND VICTIMIZERS

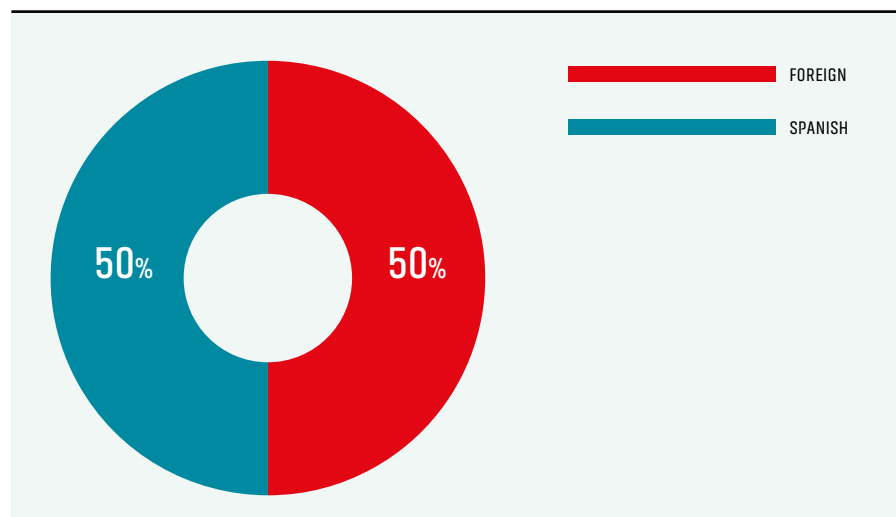
Although the study is based on the analysis of 25 cases, the identity of the perpetrator is known in only 24 of the cases, as one of the criminal proceedings resulted in acquittal for the accused.

### 4.1.1. ORIGIN

#### PERPETRATORS

Out of the 24 cases in which the accused was finally convicted, in 12 the perpetrator is of Spanish origin whereas in the other 12 he had been born abroad.

FIG. 47. ORIGIN OF THE ACCUSED (2021, N=24)





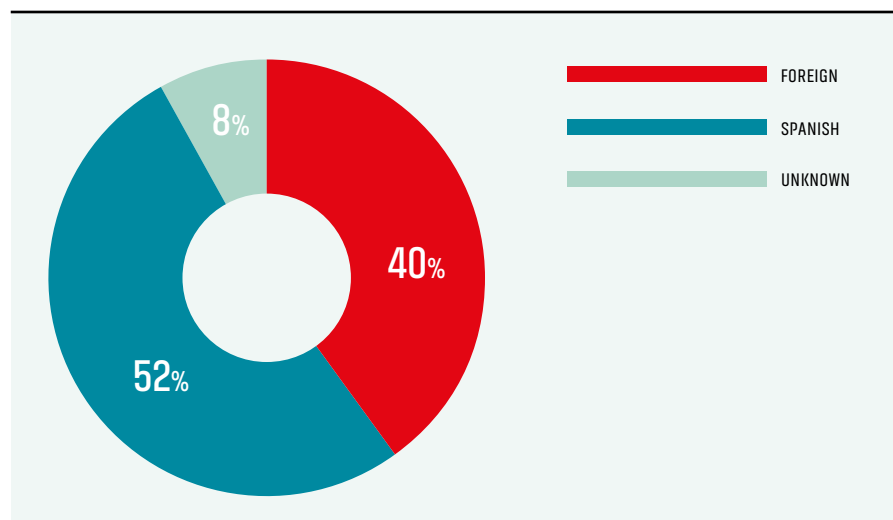
With regard to the foreign accused, 6 came from America (South America and the Caribbean Islands), 4 from Europe (Rumania, Portugal and Belgium) and 2 from Africa (Morocco and Nigeria).

There are hardly any data regarding the administrative situation of the foreign accused at the time when the events took place. Only in 2 of the Judgments it is mentioned that the foreign accused was a legal resident at the time of the events.

### VICTIMS

We know the origin of only 23 of the 25 victims. 13 of them had been born in Spain and the remaining 10 in a foreign country.

FIG. 48. ORIGIN OF THE VICTIMS (2021, N=25)



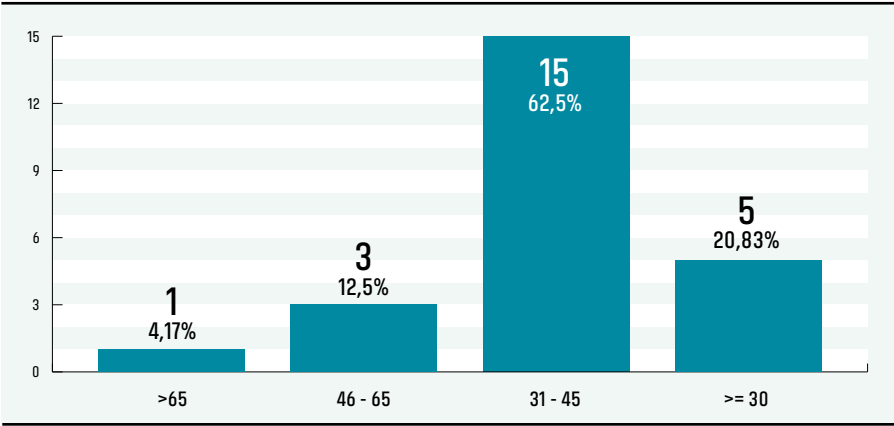
6 of the foreign victims came from America (South America and the Caribbean Islands), 2 from Europe (Rumania) and 2 from Africa (Sierra Leone and Nigeria). One of these women was in an irregular situation at the time of the events, 4 of them were legal residents and the administrative situation of 5 of the victims is not known.



4.1.2.  
AGE

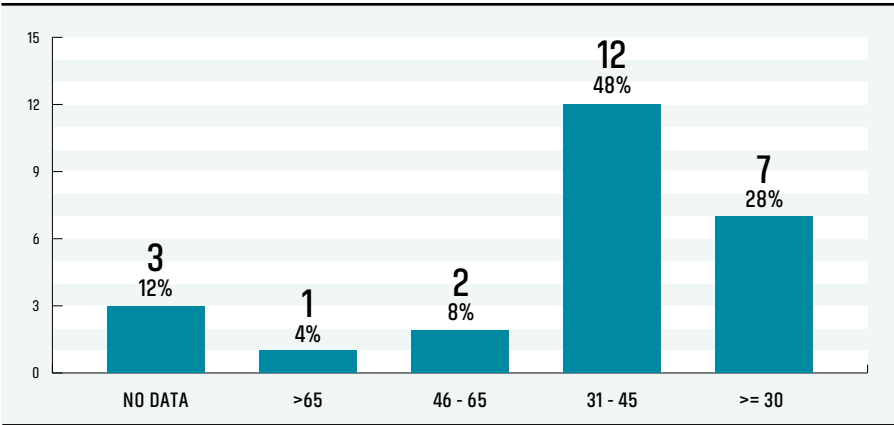
The average age of the 24 accused is 39.

FIG. 49. AGE OF THE ACCUSED (2021, N=24)



Bearing in mind that only the age of 22 of the victims is known, the average age of these women is 37.

FIG. 50. AGE OF THE VICTIMS (2021, N=25)





4.1.3.  
INTIMATE RELATIONSHIP AND COHABITATION

The percentage of crimes in which the victim and the victimizer **were in an emotional relationship** or partnership is 66.7% (16 cases), as compared to 33.3% in which the relationship had already ended.

In 5 of the 16 cases in which the victim and the victimizer were in an emotional relationship, it is specified that the victim had announced her intention to separate or stop cohabiting before the deadly event.

Moreover, in 5 of the 8 cases in which the victim and the victimizer were not in an emotional relationship at the time of the events, it is stated that it had been the victim’s decision to bring it to an end.

**Marriage and romantic relationship with cohabitation** is the type of bond that more often ties, or tied before the events, the victim and the victimizer, this bond being the case in 10 of the cases under analysis.

FIG. 51. EXISTING LINK BETWEEN THE VICTIM AND THE ACCUSED (2021, N=24)

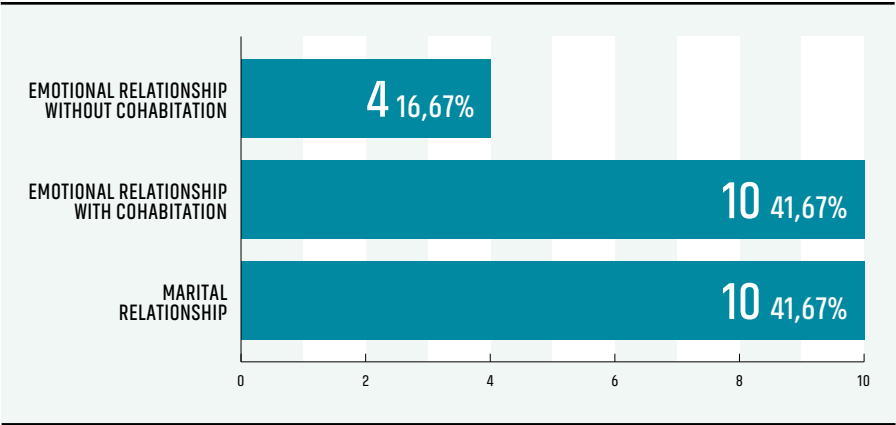
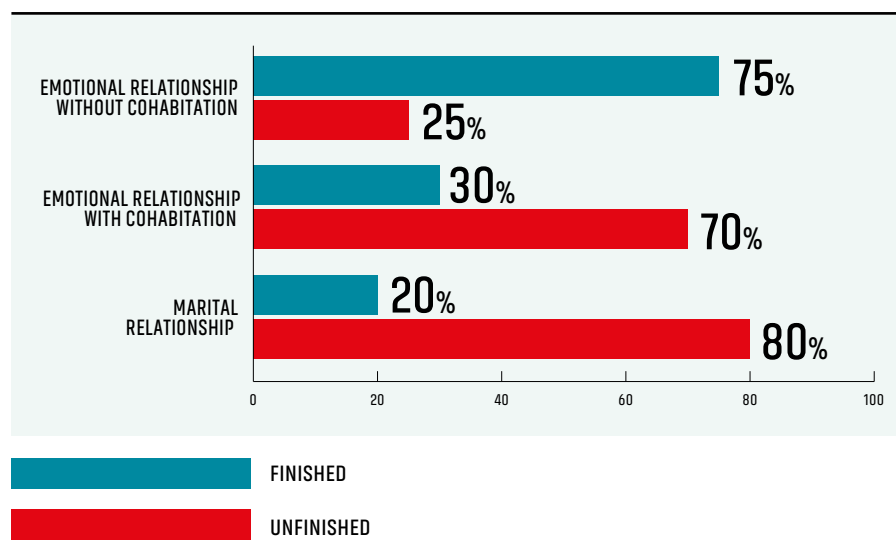




FIG. 52. EXISTING LINK BETWEEN THE VICTIM AND THE ACCUSED (2021, N=24)



One of the romantic relationships that tied the victim and the victimizer was outside the marriage on the part of the accused<sup>101</sup>.

#### 4.1.4. ORPHAN CHILDREN AND MINORS

Within the framework of the 25 cases under analysis, there are 40 children who lost their mother due to the homicide or murder committed by her male partner or ex-partner.

22 of these 40 children of the victims were under age at the time of the events, and 10 were under 10<sup>102</sup>. 14 of these minors were the sons or daughters of the perpetrators. In this regard, 13 of the women (52% of the victims) had dependent children at the time of the events.

9 of these minors were direct witnesses of the events and 3 of them were at home when the events took place.

101. SAP Araba (Section 2) Jury Court no. 333/2017 of 21 December.

102. The age of 4 of the minors is not recorded in the judgments.



## 4.2

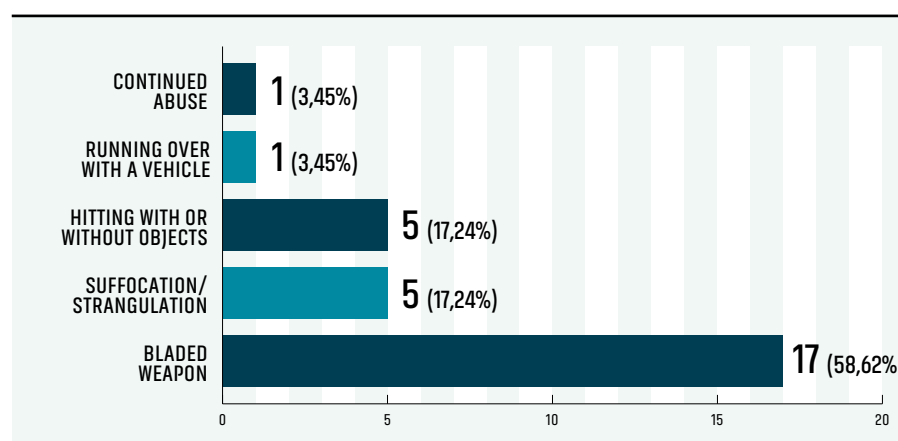
# CHARACTERISTICS OF THE CRIMES

### 4.2.1. METHOD USED

A **bladed weapon** was the method most commonly used by the perpetrators of the homicides or murders of their female partners or ex-partners.

Bearing in mind that in some of the cases they used more than one method to cause the victim's death, the following CHART represents the number of cases in which each method was used:

FIG. 53. METHOD USED BY THE PERPETRATOR (2021, SENTENCES=25, N=29)

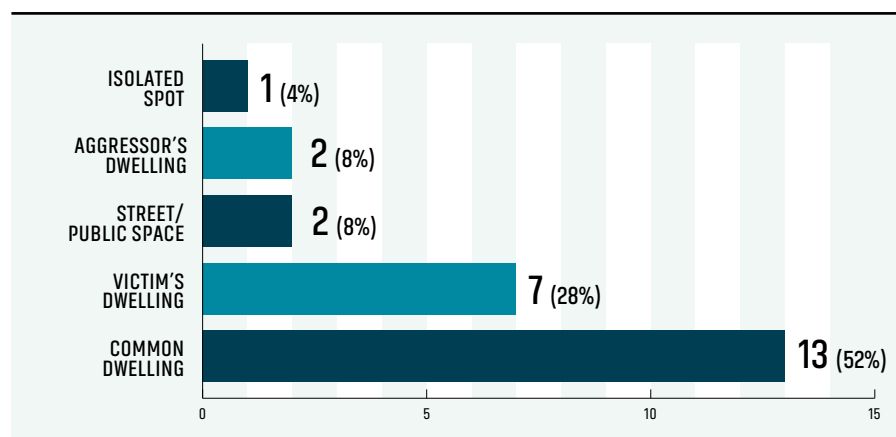


### 4.2.2. PLACE WHERE THE CRIME WAS COMMITTED

88% of the cases took place inside a home. To be precise, the **common home** was the place where the crime was committed in 13 cases, and the crime took place in the **victim's home** in 7 cases.



FIG. 54. DISTRIBUTION OF CASES ACCORDING TO THE PLACE OF THE CRIME (2021, N=25)

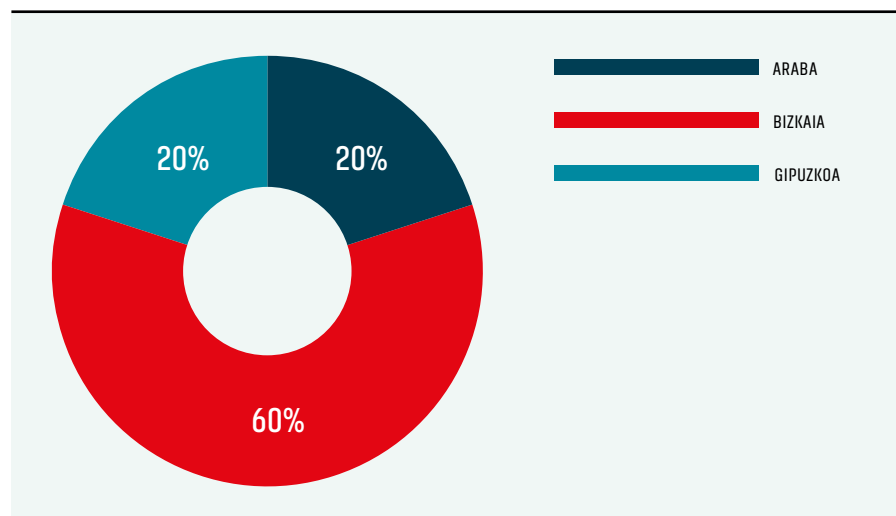


In one of the cases the attack started in the victim's home and ended on a road where she was run over<sup>103</sup>.

#### 4.2.3. TERRITORIAL DISTRIBUTION

**Bizkaia** is the province where more cases have taken place.

FIG. 55. DISTRIBUTION OF CASES BY AUTONOMOUS COMMUNITY (2021, N=25)

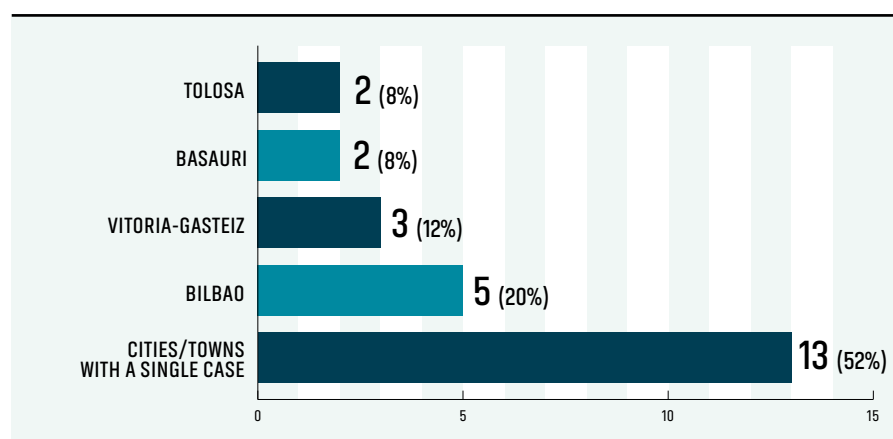


103. SAP Bizkaia (Section 1) Jury Court no. 34/2018 of 26 April.



The following chart shows the cities or towns of the Basque Autonomous Community where there was more than one case:

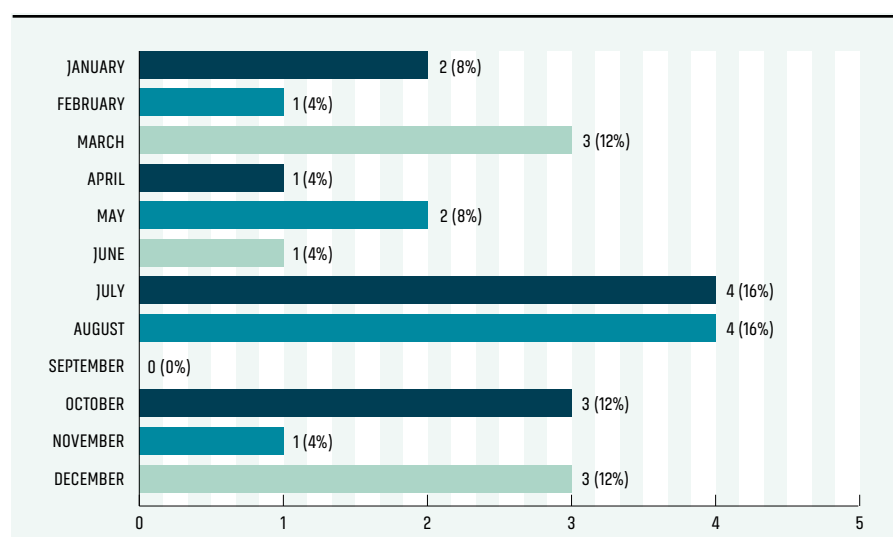
FIG. 56. **CITIES OR TOWNS (2021, N=25)**



#### 4.2.4. DISTRIBUTION BY MONTH

July and August are the months when more cases took place.

FIG. 57. **TEMPORAL DISTRIBUTION OF CASES BY MONTH (2021, N=25)**



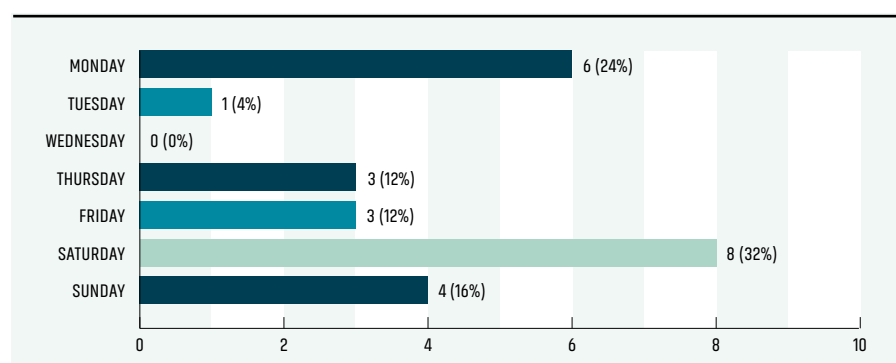


#### 4.2.5.

##### DISTRIBUTION BY DAY OF THE WEEK

The day of the week that has more often been involved is **Saturday**, the highest percentages occurring at or around the weekend.

FIG. 58. TEMPORAL DISTRIBUTION OF CASES BY DAY OF THE WEEK (2021, N=25)

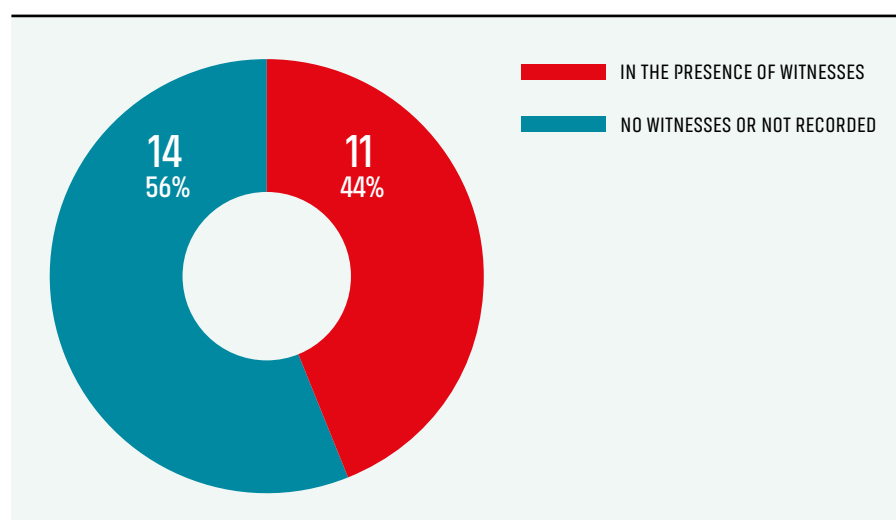


#### 4.2.6.

##### WITNESSES

In 11 of the 25 Judgments under analysis it is stated that the death of the victim took place in front of witnesses.

FIG. 59. DISTRIBUTION OF CASES BASED ON THE PRESENCE OF WITNESSES OF THE EVENTS (2021, N=25)



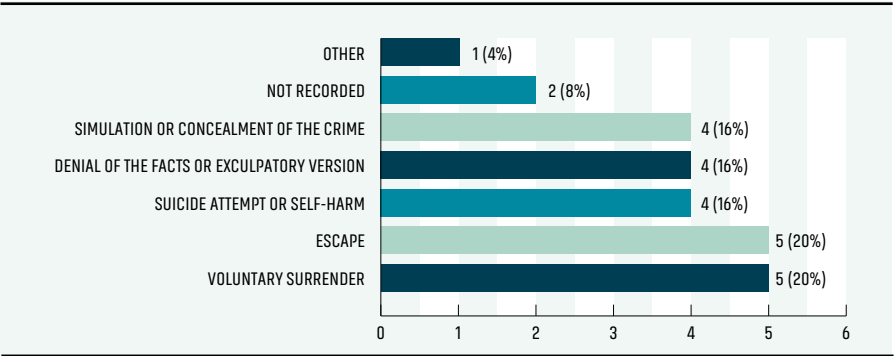


In 6 of the 11 Judgments the children witnessed the events. Other people close to the victim witnessed the events in 3 of the Judgments and neighbours or passers-by in 4 of them. Additionally, people close to the perpetrator were witnesses in 2 of the Judgments.

4.2.7.  
RESPONSE OF THE ACCUSED

22 of the 24 judgments of conviction record the response of the accused once the homicide or murder had been committed. One of the cases had two of the responses shown in the following chart:

FIG. 60. RESPONSE OF THE ACCUSED AFTER THE CRIME  
(2021, SENTENCES=24, N=25)



In 5 of the Judgments the response was a voluntary surrender, either by approaching police officers directly or by confessing to what happened to a person they trusted who reported it to the police with no opposition on the part of the perpetrator. As will be seen below, confession was considered a mitigating circumstance in 3 of these 5 cases.

In 4 Judgments the accused carried out actions aimed at simulating or concealing the crime, by simulating that the victim had had a car accident in 2 cases (in one of them the simulation was not completed because he was arrested before) and simulating that the victim had suffered an overdose in 1 case . In another case the perpetrator caused a

104. SAP Bizkaia (Section 1) Jury Court no. 34/2018 of 26 April; SAP Bizkaia (Section 1) Jury Court no. 18/2010 of 19 March. 105. SAP Bizkaia (Section 6) no. 78/2011 of 9 November.



fire to pretend that he himself had been the victim of another crime<sup>106</sup>. Two of the defendants who carried out actions aimed at concealing the crime confessed to the crime when they suspected they were going to be caught. One of them unsuccessfully tried to kill himself before confessing. In one of the cases, relatives of the perpetrator helped to simulate or conceal the crime<sup>107</sup>.

In 5 of the Judgments **the defendant fled the scene**. In 2 of the 5 cases the defendant turned himself over to the police shortly after, when he was aware of the fact that he was being sought or he was going to be easily caught.

In the case in which the events were classified as manslaughter, the Judgment states that the defendant went “pub touring” after having committed the crime and did not flee the area, as he thought that nothing had happened to the victim.

In 2 Judgments, the defendant tried to **commit suicide** after having caused her partner’s or ex-partner’s death, and in 2 other Judgments the defendant **harmed himself**, due to which he had to go to hospital, but the judgment does not label it as a suicide attempt. In 2 of the cases, the defendant confessed to the crime after having recovered in hospital.

In 3 judgments, as there were no eyewitnesses, the accused **denied his participation** and maintained it at the oral proceedings, where he was found guilty due to the existence of some other incriminating evidence. Nevertheless, one of them admitted committing the crime in an initial informal statement to the police, but later, at the oral proceedings, he denied having confessed. In another case, the accused denied having caused the victim’s death and said that the woman had “stabbed herself”, but he did not maintain this exculpatory version at the Oral Proceedings<sup>110</sup>.

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106. SAP Bizkaia (Section 2) Jury Court no. 56/2016 of 28 October.

107. SAP Bizkaia (Section 6) no. 78/2011 of 9 November.

108. SAP Gipuzkoa (Section 1) Jury Court no. 420/2011 of 3 November.

109. SAP Araba (Section 2) Jury Court no. 333/2017 of 21 December; SAP Bizkaia (Section 6) Jury Court no. 28/2016 of 14 April; SAP Bizkaia (Section 6) no. 47/2007 of 10 May.

110. SAP Bizkaia (Section 6) no. 34/2013 of 7 June.



#### 4.2.8. MOTIVATION

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In 22 of the 24 conviction judgments under analysis, the **attack is expressive of the situation of domination of the man over the woman**.

In 10 of the judgments, the reason that triggered the criminal event is the intention or decision of the victim to separate or end the relationship, which was not accepted by the accused. Moreover, in 2 of the Judgments, the victims were in a new relationship, which caused a jealous reaction in the accused and was also a key factor for the criminal event<sup>111</sup>.

In 3 of the judgments the event that triggered the criminal action is the fact that the victim had taken a position against that of the defendant in decisions regarding the children<sup>112</sup>, getting a bank loan<sup>113</sup> or certain amounts of money that the victim claimed from the defendant<sup>114</sup>. Two of the judgments stated that there had been an argument for these reasons before the events.

In 9 of the judgments the homicide or murder marks the culmination of the systematic violence inflicted by the defendant on the victim due to his jealous and aggressive character. In some of the cases the defendant had unfounded suspicions about a possible romantic relationship that the victim might have, or about the possibility of his not being the father of the child that his wife was expecting<sup>115</sup>.

Only in two of the cases the events did not involve an attack for discriminatory gender-based reasons. In one of them, as stated in the judgment, “the argument that resulted in the deadly outcome was not caused by that past romantic relationship but for the ownership of a camping stove”<sup>116</sup>.

In another judgment, it was proven that the events were triggered by a delusional reaction that the defendant suffered, which made him think that his girlfriend was part of a plot organized against him, as, on the days before the murder, he had told his mother that she “is an infiltrator, she is not the person on her ID card”<sup>117</sup>.

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111. SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June; SAP Araba (Section 2) Jury Court no. 333/2017 of 21 December.

112. SAP Bizkaia (Section 6) no. 64/2011 of 30 September.

113. SAP Bizkaia (Section 2) Jury Court no. 56/2016 of 28 October.

114. SAP Bizkaia (Section 1) Jury Court no. 18/2010

of 19 March.

115. SAP Bizkaia (Section 6) no. 68/2006 of 29 June.

116. SAP Gipuzkoa (Section 1) Jury Court no. 420/2011 of 3 November.

117. SAP Bizkaia (Section 1) Jury Court no. 80/2016 of 9 December.



## 4.3

# HISTORY OF ABUSE AND PROTECTION MEASURES IN EFFECT

In 7 of the judgments it is stated that the victim had **previously reported the accused** for actions related to gender violence, and two of the victims had filed two complaints respectively.

5 of the 9 court proceedings opened against the defendants had resulted in convictions, and the convicted offenders had been prohibited from communicating or approaching the victim as an additional penalty. This prohibition had not been complied with by one of the accused before the murder, which had given rise to a conviction for breach of sentence<sup>118</sup>.

3 of the court proceedings that had been opened in connection with the complaints were closed due to the fact that the victims refused to bring the appropriate civil and criminal actions<sup>119</sup>. In another case the proceedings were still open at the time of the murder and a protective order had been issued<sup>120</sup> to protect the victim.

It should be mentioned that, due to these circumstances, in 2 of the judgments, in addition to homicide or murder, the defendant was also convicted for habitual abuse, and in 4 of them for breach of sentence or precautionary measure, since it was in effect at the time of the death.

According to the data provided by the Ertzaintza, it can be noted that this Police Force had carried out a risk assessment on these 7 women and precautionary measures had been taken to protect them.

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118. SAP Bizkaia (Section 6) no. 107/2006 of 13 November.

119. SAP Araba (Section 2) no. 117/2009 of 20 April; SAP Gipuzkoa (Section 1) no. 187/2014 of 12 June.

120. SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June.

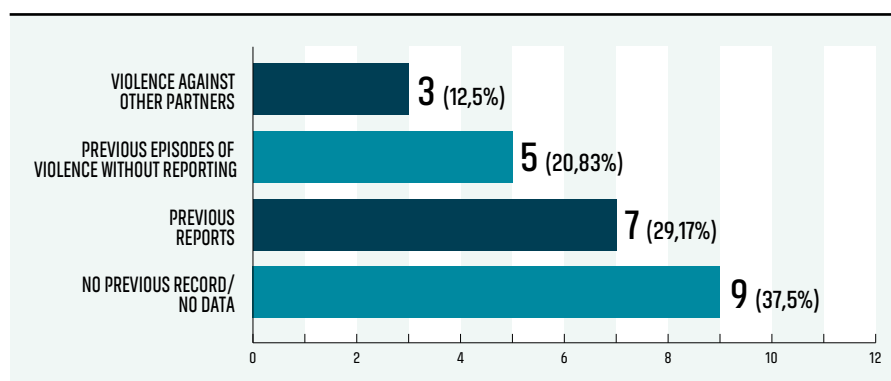


The risk had been rated as “special” or “high” for 3 of the victims, and as “basic” for the other 4. The protective measures adopted by the police involved training the women in self-defence, random checks by phone and the assignment of a telephone called “bortxa telephone” equipped with a GPS tracker<sup>121</sup>. This later measure had not been established in the case of two of the women whose risk status had been assessed as “basic”.

Moreover, in 5 judgments it is stated that there had been previous episodes of gender violence carried out by the accused against the victim, who did not file a complaint for the events<sup>122</sup>.

Finally, one of the judgments mentions the existence of a **previous conviction of the accused due to his having abused a previous partner**<sup>123</sup>. However, according to data from the Ertzaintza, 2 other defendants had a police record for gender violence in connection with other previous partners<sup>124</sup>. In two of the cases there were no reports of previous episodes of gender violence against the victim.

FIG. 61. CASES WITH A HISTORY OF ABUSE (2021, N=24)



Consequently, in 58%<sup>125</sup> of the cases under analysis there were previous indications of risk that pointed to the need to protect these women from potential gender-based violence incidents.

121. These telephones, in addition to fulfilling the basic aim of providing immediate connection with the Ertzaintza by voice communication, also provide additional information about the location of the victim, in such a way that her security is thus reinforced.

122. SAP Bizkaia (Section 6) Jury Court no. 28/2016 of 14 April; SAP Bizkaia (Section 1) Jury Court no. 18/2010 of 19 March; SAP Araba (Section 2) no. 155/2010 of 22 April; SAP Bizkaia (Section 6) no. 108/2008 of 15 October; SAP Bizkaia (Section 2) Jury Court of 14 May 2004.

123. SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June.

124. There is no police information available with regard to two of the victims whose judgments are the subject matter of this study.

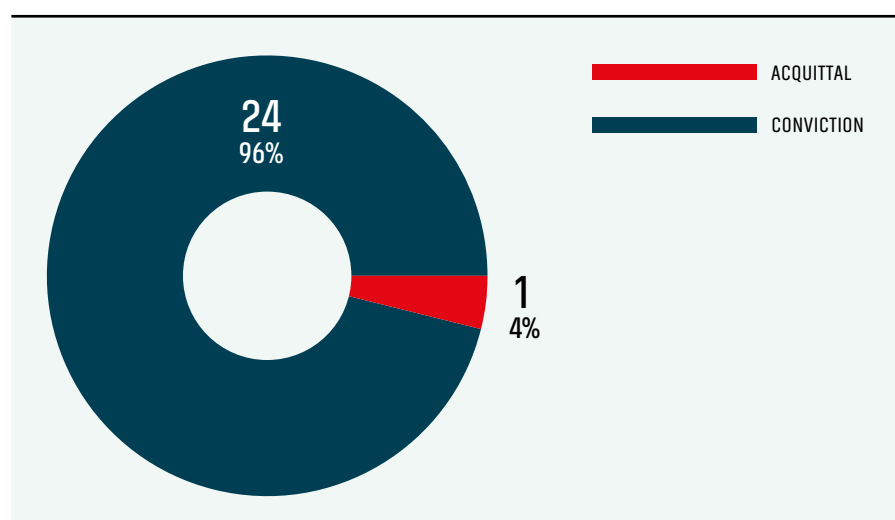
125. Calculated bearing in mind that one of the accused who had a police record for gender-based violence in connection with other partners has already been included within the percentage of cases in which the victim had reported the accused before.



## 4.4 JUDGMENT

24 of the 25 judgments (96% of the judgments) under analysis, regarding the cases of homicides and murders of women by their male partners or ex-partners in the Autonomous Basque Community, are **convictions**.

FIG. 62. DISTRIBUTION OF CASES ACCORDING TO THE RULING (2021, N=25)



Consequently, in spite of the fact that the study is based on the analysis of 25 cases, there is information available on the perpetrator of just 24 of them.

In the judgment of **acquittal**<sup>126</sup>, the events were classified as homicide under art. 138 C.P., since it was evinced that the victim had died due to mechanical asphyxia caused by another person, but it was not possible to prove that the accused had been the perpetrator, due to the lack of objective evidence (DNA traces, prints) pointing to his participation. The defendant was the victim's romantic partner and was inside the home with her at the time of the events.

<sup>126</sup>. SAP Bizkaia (Section 2) Jury Court no. 28/2018 of 31 May.



# 4.5 CRIMINAL PROCEEDINGS

## 4.5.1. PARTIES TO THE PROCEEDINGS

A popular prosecution had been brought in 23 of the judgments and in 21 of the judgments those affected by the crime had brought a private prosecution, together with the popular prosecution and the public prosecution.

FIG. 63. DISTRIBUTION OF CASES ACCORDING TO INTERVENING PARTIES  
(2021, N=25)

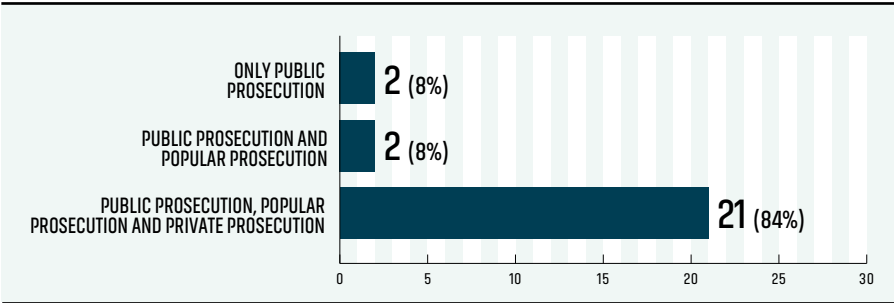
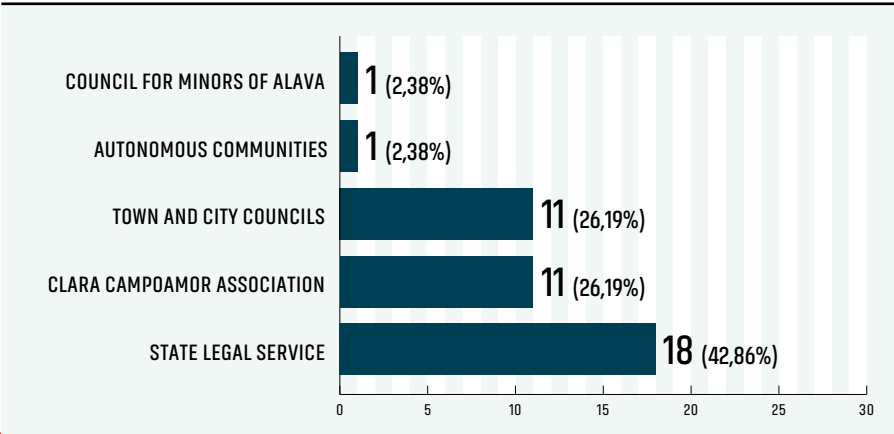


FIG. 64. INSTITUTIONS THAT HAVE EXERCISED POPULAR PROSECUTION  
(2021, SENTENCES=25, N=42)

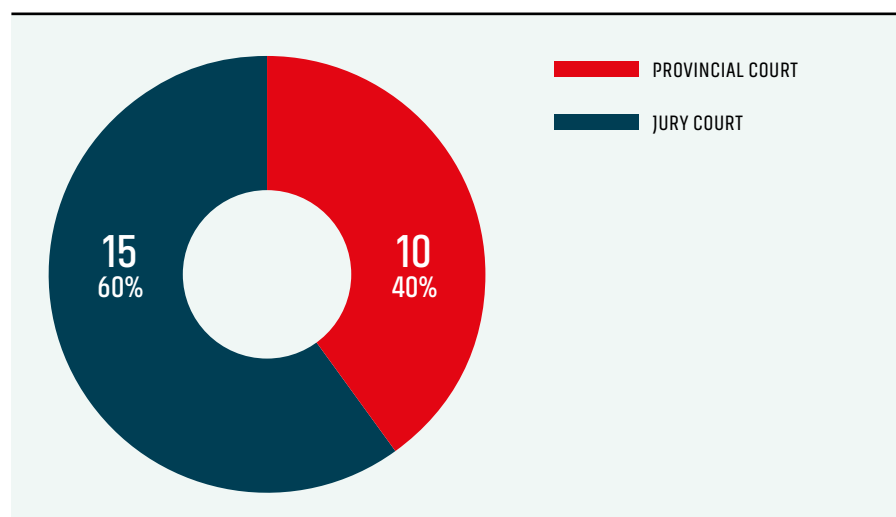




#### 4.5.2. TRIAL COURT

In 15 of the judgments the judging body was the Jury Court, whereas in the other 10 judgments the events were tried by the appropriate Provincial Courts.

FIG. 65. NUMBER OF CASES BY TRIAL COURT (2021, N=25)



The Jury Court is, under article 1 of Organic Act 5/1995, of 22 May, the competent court to hear cases for homicide and murder, housebreaking or threats. However, the Jury Court has no jurisdiction to hear other crimes that could have been committed by the perpetrator and are being investigated in the same proceedings, such as: habitual abuse, breach of sentence, bodily harm or sexual crimes.

Article 5.2 of the Organic Act on the Jury Court, in those cases in which one person has committed several crimes, only allows extending the jurisdiction of the Jury Court in order to try crimes over which they have no jurisdiction when “some of the crimes were committed in order to perpetrate others, *facilitate their execution or seek their impunity*”.

As the aforementioned requirement was not met, some of the cases in which the perpetrator had been charged with homicide or murder as well as other crimes over which the Jury Court had no jurisdiction were tried by the Provincial Courts<sup>127</sup>.



Nevertheless, the Supreme Court, through an agreement reached at a non-adjudicatory session of the Second Chamber in the year 2017, has established new criteria in connection with the jurisdiction of the Jury Court, establishing, in this regard, amongst other issues, that *“When a single person is charged with several criminal offences committed simultaneously in a single space and time and the Jury Court is competent to try one of them, these offences will be considered connected by analogy with the provisions of 5.2.a) of the Organic Act on the Jury Court; therefore, if they have to be tried in a single proceeding, the Jury Court shall maintain its jurisdiction over the matter”*.

In Judgment of the Provincial Court of Bizkaia (Section 6) no. 108/2008 of 15 October, in spite of his having been charged with and convicted for homicide only, the competent court was the Provincial Court.

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127. Nevertheless, in other cases, in spite of the fact that the crimes did not fall within the jurisdiction of the Jury Court, they were tried by this body: SAP Gipuzkoa (Section 1) Jury Court no. 65/2012 of 15 February; SAP Gipuzkoa (Section 1) Jury Court no.

234/2012 of 22 May; SAP Bizkaia (Section 1) Jury Court no. 18/2010 of 19 March; SAP Bizkaia (Section 6) Jury Court no. 28/2016 of 14 April; SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June.



## 4.6

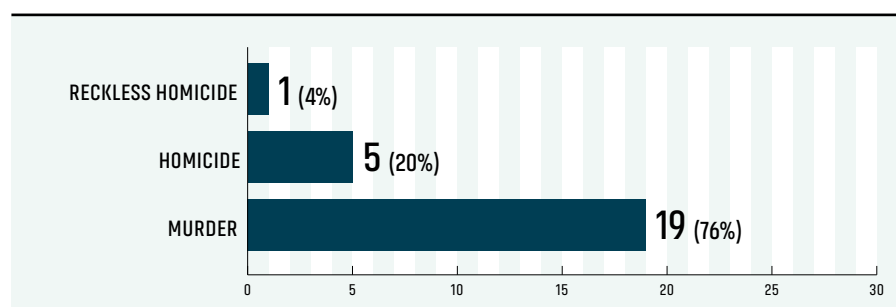
# CRIMINAL CLASSIFICATION

### 4.6.1.

#### DEATH OF THE PARTNER OR EX-PARTNER

In 19 of the 24 conviction judgments, it was considered that in the manner of death there were circumstances that aggravate the facts being tried and determine, under article 139 of the CP, their being classified as murder. Moreover, in 5 of the judgments, the facts were classified as homicide and in 1 case as reckless homicide.

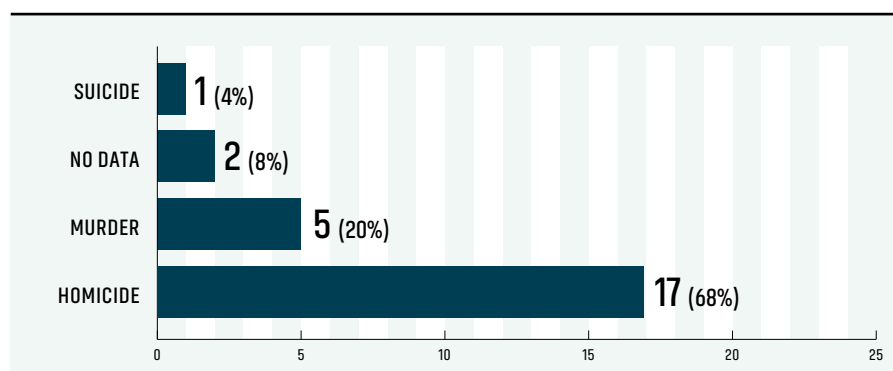
FIG. 66. DISTRIBUTION OF CASES ACCORDING TO CRIMINAL CLASSIFICATION (2021, N=25)



If we take into account the initial classification made by the Ertzaintza, it can be seen that in 14 of the cases in which there was a conviction for murder, this force had initially classified the facts as homicide.



FIG. 67. DISTRIBUTION OF CASES ACCORDING TO POLICE CLASSIFICATION (2021, N=25)



In 18 of the 19 Judgments in which the facts were classified as murder (95% of the conviction judgments for murder), **malice aforethought** was a determining element or one of the determining elements for the classification, which involves committing a crime using means, manners or forms that directly tend to ensure the result, without the victim being able to defend herself.

The circumstances that have been taken into account to consider there had been malice aforethought were, amongst others: that *“the attack was by surprise or unexpected and there were no signs of struggle”*<sup>128</sup>, that *“the defendant totally prevented the victim from defending herself or asking for help”*<sup>129</sup>, that *“the perpetrator had made sure that she would not resist due to the daze”* he had previously caused through mechanical asphyxia<sup>130</sup>, as well as having caused the death *“by stabbing her from the back and holding her head, in such a way that the victim was not able to defend herself”*<sup>131</sup>.

The Provincial Court of Bizkaia discarded malice aforethought in Judgment number 28/2016 of 14 April 2016 due to *“her resistance to the attack as a result of which there were traces of the defendant’s DNA under the victim’s fingernails”*, and in Judgments number 64/2011<sup>132</sup> and number 78/2011<sup>133</sup>, since the *“unexpected element necessary for the circumstance of malice aforethought”* was not present.

128. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.

129. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.

130. SAP Bizkaia (Section 2) Jury Court no. 56/2016 of 28 October.

131. SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June.

132. SAP Bizkaia (Section.6) no. 64/2011 of 30 September.

133. SAP Bizkaia (Section 6) no. 78/2011 of 9 November.



Likewise, in recent years, when analysing the facts from a gender perspective, other additional circumstances have been taken into account to assess the chances the victim had of defending herself such as: the fact that the murder was carried out “*while the victim was alone at home*”<sup>134</sup>, as well as a “*context of family violence that placed the defendant in a conscious position of superiority with regard to the deceased*”<sup>135</sup>.

However, in other previous judgments, the same circumstances led to conclusions that were completely the opposite, as the gender perspective was not taken into account, establishing the following: “*taking into account that, according to the statement of the Municipal Police officers, the victim had reported other similar episodes, it is easy to think that the attack of the defendant did not take her totally by surprise*”<sup>136</sup>.

The aggravating circumstance of cruelty was found in 3 of the 19 Judgments, and both circumstances, malice aforethought and cruelty, were present in two of the Judgments<sup>137</sup>. It is considered that there is cruelty when the perpetrator deliberately and inhumanely increases the victim’s pain when causing her death.

Cruelty was found in a case in which the defendant made 8 small cuts on the victim’s neck before causing her death<sup>138</sup>, in a case in which the defendant inflicted forty-two injuries with an edged weapon to the victim when she was still alive and only four of them caused her death<sup>139</sup>, as well as a case in which the defendant repeatedly beat the victim all over her body before striking the brutal blows that finally caused her death<sup>140</sup>.

In connection with the classification of reckless homicide, Judgment of the Provincial Court of Gipuzkoa number 420/2011 of 3 November classifies the events as reckless homicide because it was considered that “*the blow (stab on the left side of the neck) by the defendant did not have the direct intention to cause Mrs. Alejandra’s death and he did not imagine (or assume) that possibility*”<sup>141</sup>.

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134. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.

135. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.

136. SAP Bizkaia (Section 1) Jury Court no. 18/2010 of 19 March.

137. SAP Araba (Section 2) Jury Court no. 342/2014 of 1 October; SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June.

138. SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June.

139. SAP Araba (Section 2) Jury Court no. 342/2014 of 1 October.

140. SAP Bizkaia (Section 6) no. 78/2011 of 9 November.

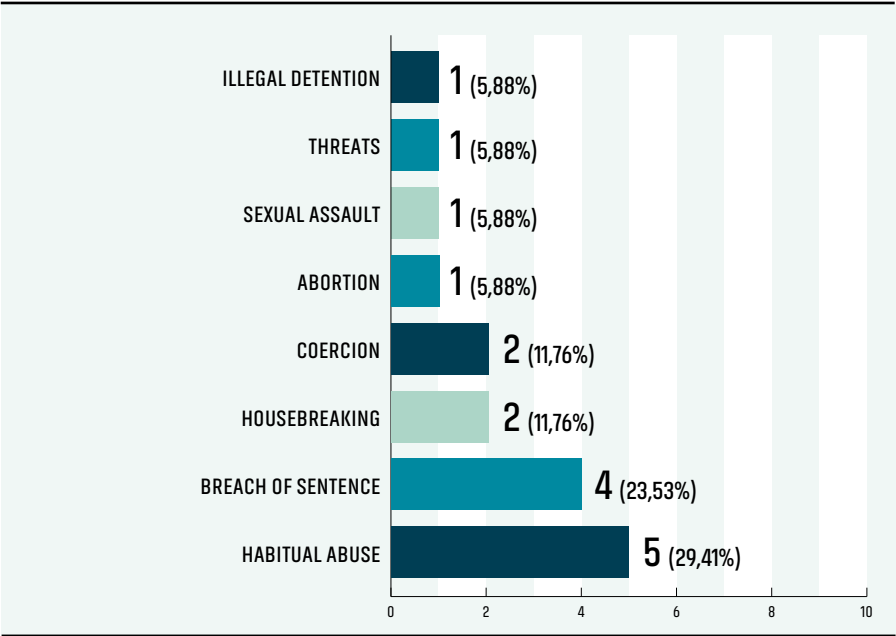
141. SAP Gipuzkoa (Section 1) Jury Court no. 420/2011 of 3 November.



4.6.2. OTHER CRIMES AGAINST THE PARTNER OR EX-PARTNER

In 11 judgments the perpetrator of the homicide or murder was also convicted for other crimes committed against the same person:

FIG. 68. CASES WITH CONVICTIONS FOR OTHER CRIMES (2021, SENTENCES=11, N=17)



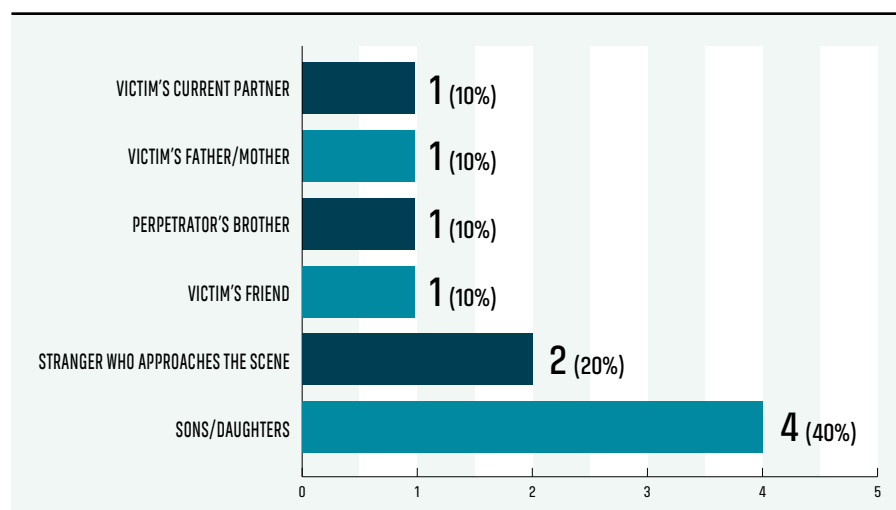
An important difference can be noticed between the initial classifications made by the Ertzaintza and that made in court in connection with habitual abuse, since the Ertzaintza initially recognized this crime in 11 of the cases whereas the events were classified according to this crime only in 5 of the Judgments.

4.6.3. CASES WITH MULTIPLE VICTIMS

In 9 cases in which the perpetrator caused his female partner or ex-partner's death he also committed other crimes against the following persons at the same time:

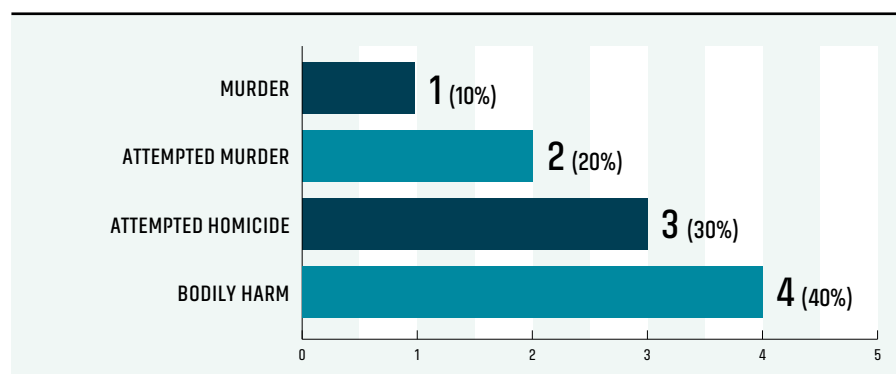


FIG. 69. CASES WITH OTHER VICTIMS (2021, SENTENCES=9, N=10)



The crimes that were committed were the following:

FIG. 70. CASES WITH OTHER VICTIMS BY CRIME (2021, SENTENCES=9, N=10)



Attempted homicide is the crime that the defendant committed against the victim's son or daughter in 3 of the cases<sup>142</sup>, and it took place when the children were 16, 19 and 30, the 30-year-old having a disability rating of 40% at the time of the events.

142. SAP Gipuzkoa (Section 1) no. 187/2014 of 12 June; SAP Bizkaia (Section 6) no. 64/2011 of 30 September; SAP Gipuzkoa (Section 1) Jury Court no. 234/2012 of 22 May.



In 1 of the judgments the crime against the victim's daughter was the mental harm caused by her having witnessed her mother's murder when she was 2 years old<sup>143</sup>.

#### **4.6.4. OTHER CONVICTED PERSONS**

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In 1 of the judgments, in addition to the person who had been charged with the murder, his mother and brother were also convicted, since they allowed the accused to continuously beat his partner to death while they were present or at least in the same house, and their conduct was considered omission of the duty to prevent crimes<sup>144</sup>.

In another case, in spite of their not having been convicted, the testimony of some friends of the defendant's was withdrawn due to their having given false testimony, in order to try and cover him up by not telling what actually happened in their witness statement<sup>145</sup>.

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143. SAP Bizkaia (Section 1) Jury Court no. 18/2010 of 19 March.

144. SAP Bizkaia (Section 6) no. 78/2011 de 9 November.

145. SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June.



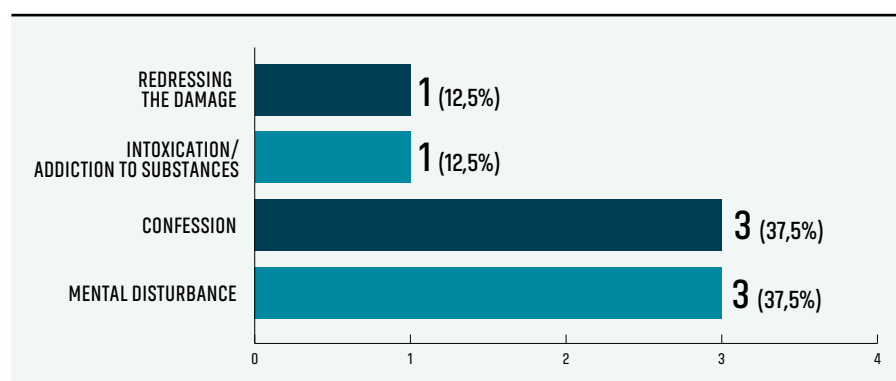
## 4.7

# CIRCUMSTANCES MODIFYING CRIMINAL LIABILITY

### 4.7.1. MITIGATING CIRCUMSTANCES

8 circumstances modifying liability mitigated the criminal liability of the perpetrator in the 24 conviction judgments under analysis. Mental disturbance and confession were the most frequent mitigating factors, each of them having been found in 3 of the judgments

FIG. 71. APPLICATION OF MITIGATING CIRCUMSTANCES (2021, SENTENCES=24, N=8)



**Mental disturbance** was found in a Judgment in which it was proven that at the time of the events the defendant was suffering a delusional reaction caused by the personality disorder with schizophrenic traits he suffered. This made him develop “a delusion which was mainly focused on two former classmates for whom he had feelings of resentment, hostility and polarized revenge and which made him think that they, es-



*pecially Bienvenido, were the brains behind a plot against his person, a plot in which, around the time of the events, he had included his girlfriend Emma.”*<sup>146</sup>

In connection with this mitigating factor, the Provincial Court of Araba, in Judgment number 155/2010 of 22 de April, 2009, reduced the penalty provided for homicide to which the defendant had been sentenced by one degree, as they understood that he suffered “*a paranoid personality disorder, pathological jealousy*”, and extended the application of the mitigating factor to the abuse, arguing that “*in chronological terms... the abuse lasted ten years, in such a way that both (mental illness and psychological violence) seem to be inextricably linked*”.

The same mitigating factor was found in Judgment of the Provincial Court of Araba number 117/2009 of 20 April, as it was understood that there was evidence that the defendant “*was under the influence of alcohol and drugs*” at the time of the events.

As for the mitigating factor of **confession**, it was found in two Judgments in which the defendant willingly confessed to having committed the crime to the police officers<sup>147</sup>, as well as a case in which the defendant told his sister what had happened, let her call the police and waited at home until the police arrived. He then confessed to the crime and handed the weapon<sup>148</sup>. Nevertheless, this mitigating factor was not found in two cases in which the defendant’s confession took place indirectly, that is, through another person who phoned to tell what had happened without his objecting to it<sup>149</sup>.

With regard to the mitigating factor of **redressing the damage**, it was found in only one Judgment, in which the defendant judicially consigned 36,000 Euros as compensation for the damages to the minors<sup>150</sup>. Nevertheless, the mitigating factor was not found in a similar case in which the defendant deposited 26,000 Euros for the minors in the consignment account and donated to them the part of the family home that corresponded to him, paying that part of the mortgage, on the grounds that “*in no case can minor children be compensated for the murder of their mother and the consequence it entails, that small children with their whole life ahead have to live without her*”<sup>151</sup>.

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146. SAP Bizkaia (Section 1<sup>a</sup>) Jury Court no. 80/2016 of 9 December.

147. SAP Bizkaia (Section 6) no. 64/2011 of 30 September; SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.

148. SAP Araba (Section 2) Jury Court no. 342/2014 of 1 October.

149. SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June; SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June.

150. SAP Bizkaia (Section 6) no. 107/2006 of 13 November.

151. SAP Bizkaia (Section 1) Jury Court no. 34/2018 of 26 April.



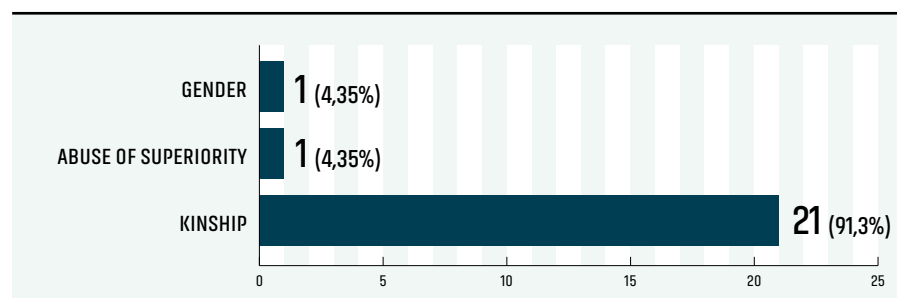
The mitigating circumstance of serious addiction to the consumption of alcoholic beverages can be found in the Judgment of the Provincial Court of Gipuzkoa number 420/2011 of 3 November, as it was understood that the addiction had a slight effect on the defendant's capacity to understand the reality and act at the time of the events.

In spite of the fact that other types of mitigating factors were alleged by the defence, such as "having acted due to causes and stimuli that produced a fit, blindness to reason or another passionate state" or "the defendant having acted that way for cultural reasons", none of them was accepted in the judgments, under the argument that for a fit to have mitigating effects *"it must take place within a certain ethical sense, since his conduct and stimuli cannot be protected under the law when they rely on an antisocial attitude condemned by the predominant social conscience"*<sup>152</sup> and that *"Regardless of the habits of a family or race, the right to life, equality and non-discrimination on the grounds of sex are constitutional rights recognized to all human beings merely because of their being so; and no frontal attack or violation thereof can be allowed on the basis of a particular "culture"*<sup>153</sup>.

#### 4.7.2. AGGRAVATING CIRCUMSTANCES

In addition to malice aforethought and cruelty, which determined the events to be classified as murder in 19 of the judgments, other circumstances aggravating the defendant's criminal liability were found in the judgments under analysis. The mixed circumstance of kinship in its aggravating mode was found in 21 judgments, and the aggravating factor of acting for gender discrimination reasons as well as the aggravating factor of abuse of superiority were found in just one judgment each

FIG. 72. APPLICATION OF AGGRAVATING CIRCUMSTANCES (2021, SENTENCES=24, N=23)



152. SAP Gipuzkoa (Section 1) Jury Court no. 65/2012 of 15 February.

153. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.



The **aggravating factor of kinship** was found when there was or had been an intimate relationship between the victim and the victimizer. In one of the cases it was a relationship out of the marriage on the part of the defendant<sup>154</sup>. However, in 2 of the judgments this circumstance was not found due to the intimate relationship between the victim and the offender not being solid and intense<sup>155</sup>. Additionally, in one of the judgments it was not applied in spite of the victim and the victimizer being married<sup>156</sup>.

The Provincial Court of Bizkaia, in Judgment number 34/2018, found the **aggravating factor of acting for gender discrimination reasons**, which was introduced in the Criminal Code through the reform carried out under Organic Act 1/2015<sup>157</sup>, since it was evinced that *“the acts committed by the accused, Jesus Carlos, are related to Inocencia being a woman, that is, a situation in which the man expressed domination, control and treated women as inferior.”*

In spite of the fact that the aggravating circumstance of acting for gender discrimination reasons has been provided for in the Criminal Code since it was enacted in 1995, it was not applied in any of the judgments. In Judgment of the Provincial Court of Bizkaia 64/2011 it is stated that it was requested by the prosecution, claiming that the defendant, after causing the victim's death, said out loud *“this is what happens when a woman tries to go over a man”*. Nevertheless, it was not admitted, alleging that *“this aggravating circumstance demands a clear, precise and intentional expression of the will or motivation based exclusively on sexist motives and in this case this exclusive sexist motivation did not exist, as the attack took place during an argument between the accused and Hortensia, an argument that had started before between the accused and the victim, Hortensia, for family reasons and, more specifically, when the accused stabbed Hortensia, the argument had to do with issues related to the youngest child, Paulino”*.

Finally, the Provincial Court of Bizkaia, in Judgment number 78/2011 of 9 November, applied the **aggravation of abuse of superiority** on the basis of the defendant's physical superiority and the fact that the victim was alone at home and no one could defend her, alleging that the circumstances could not be included in the aggravating factor of malice aforethought since it was not an unexpected conduct.

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154. Judgment number 333/2017 of 21 December of the Provincial Court of Araba.

155. SAP Bizkaia number 47/2007 of 10 May; SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June.

156. SAP Bizkaia (Section 6) no. 68/2006 of 29 June.

157. Organic act 1/2015, of 30 March, amending Organic Act 10/1995, of 23 November, of the Criminal Code.



#### 4.7.3.

#### EXEMPTING CIRCUMSTANCES

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No exempting circumstances were found.

## 4.8 ESTABLISHED PENALTIES

Each crime has a **main penalty** associated, which, depending on the type of crime, may involve deprivation of freedom, deprivation of other rights or a fine, and includes an open penalty framework that establishes a minimum and a maximum as regards its length or quantification. Consequently, imposing a penalty requires assessing the circumstances modifying the criminal liability (mitigation, aggravation, exemption or incomplete exemption) taking the degree of execution and participation into account, as well as the other circumstances concurring in the events, in order to determine or individualize the specific penalty in accordance with their severity.

In the case of homicide or murder, the main penalty to be imposed is **imprisonment**, whose penalty framework, in the case of homicide, ranges from 10 to 15 years, and in the case of murder, in its basic mode, from 15 to 25 years. Nevertheless, it must be taken into account that the basic type of murder was punished with a prison sentence from 15 to 20 years until the Criminal Code was modified in 2015<sup>158</sup>.

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

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Additionally, a new aggravated mode of murder was introduced in the reform of the Criminal Code in 2015 (article 140 CP), which applied, amongst others, in the following cases: *“1st That the victim is under sixteen years of age, or is an especially vulnerable individual due to age, illness or disability. 2nd That the deed takes place following a criminal offence against sexual freedom committed by the perpetrator against the victim”*<sup>159</sup>.

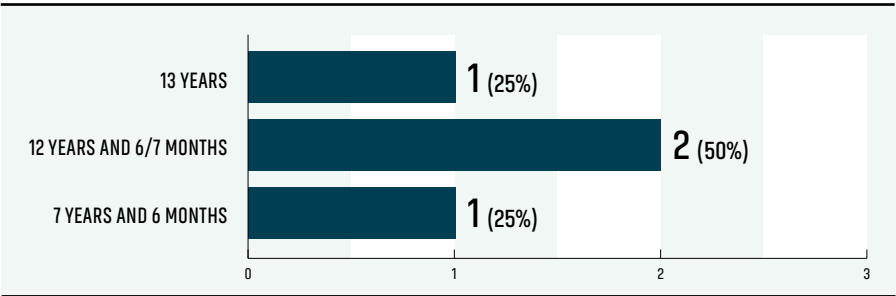
The penalty for this aggravated mode of murder is revisable permanent imprisonment, which was also introduced by the aforementioned reform, and which involves imposing a penalty of imprisonment for an undetermined and revisable length of time. The person sentenced to this penalty can be released when a number of conditions and terms are met.

Additionally, the Criminal Code provides for the imposition of **additional penalties** whose application may be mandatory or discretionary for the Judge or the Court.

4.8.1.  
PRISON SENTENCES FOR HOMICIDE

In the 4 judgments involving homicide, the average length of the prison sentences imposed for this crime is 11.4 years, that is, 11 years and 5 months.

FIG. 73. PRISON SENTENCES IMPOSED FOR HOMICIDE (2021, SENTENCES=4)



In the Judgment in which the events were classified as **reckless homicide**, the prison sentence imposed was for 3 years and 6 months.

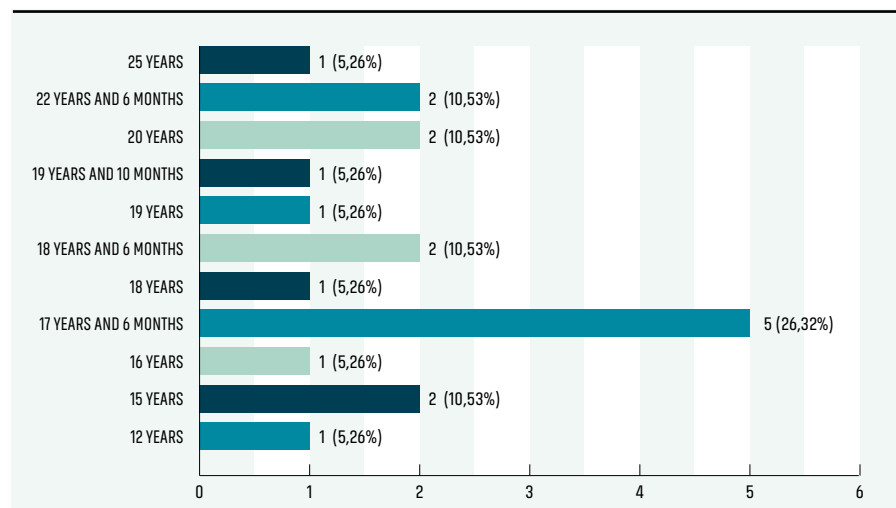
159. The penalty is also revisable permanent imprisonment when the murder is committed by an individual belonging to a criminal group or organization; or when those accused of murder have been convicted for the death of more than two people.



#### 4.8.2. PRISON SENTENCES FOR MURDER

In the 19 judgments in which the perpetrator was convicted for murder, the average length of the prison sentences was 18.4 years, that is, 18 years and 5 months.

FIG. 74. PRISON SENTENCES IMPOSED FOR MURDER (2021, SENTENCES=19)



The penalty of **revisable permanent imprisonment** was not applied in any of the Judgments, as, in spite of the fact that there were cases in which the circumstances could have given rise to its application, they had taken place before the reform. For example, the case which resulted in SAP Bizkaia number 47/2007 of 10 May, in which the accused sexually assaulted the victim before murdering her, or in the case which resulted in SAP Bizkaia number 56/2016 of 28 October, in which the defendant also murdered the victim's mother, who was 88 years old.

#### 4.8.3. INDIVIDUALIZATION OF THE PENALTY

After applying the general rules to determine the penalty (arts. 61-72 of the Criminal Code) in connection with the degree of execution and participation or the circumstances modifying the criminal liability (point 7), the courts must establish the exact penalty, in a motivated manner, in view of "the personal circumstances of the criminal and the greater or lesser severity of the fact" (66.1.6 of the CP).



In accordance with the aforementioned circumstances, in Judgments such as SAP Bizkaia (Section 1) Jury Court no. 34/2018 of 26 April, the Court opted for the maximum penalty as it was understood that the events involved “*special cruelty*” in view of the “*violence, rage and brutality*” used by the perpetrator, as well as “*the harm that the defendant caused with his conduct, especially to his minor children... who will find out the circumstances in which it took place, as well as the fact that the person who carried it out was their own father*”<sup>160</sup>. In this regard, the brutality used by the perpetrator and the suffering caused to the victim were reasons given in several Judgments to justify the aggravation of the penalty above the minimum penalty established for the crime<sup>161</sup>.

In the same line, in others Judgments, it was not considered appropriate to determine the penalty in its minimum degree when the murder was committed in front of the minor children, or when the defendant showed little empathy towards the victim and kept justifying his actions at all times<sup>162</sup>.

Moreover, in judgments such as SAP Bizkaia (Section 2) Court Jury no. 56/2016 of 28 October and SAP Gipuzkoa (Section 1) Jury Court no. 234/2012 of 22 May, one of the reasons to consider that the conduct deserved greater criminal reproach was the fact that the attack had taken place “*within the sphere of gender violence*”. This Judgment added that this type of violence “*is the most brutal symbol of the existing inequality in our society*”<sup>163</sup>. Likewise, SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June establishes the following: “*the event took place within the context of a (former) couple, where there had been other episodes of harassment and attacks that had given rise to previous complaints, which makes us consider the event more serious, as it responds to a mistaken conception of belonging and domination over women that should have been left behind in our society by now and greatly increases the social reproach of the conduct.*”.

Other Judgments refer to the treacherous manner in which the death was caused to consider that the conduct deserves greater criminal reproach<sup>164</sup>.

Judgments such as la SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June opted for the **minimum penalty** due to the fact that the perpe-

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160. SAP Bizkaia (Section 1) Jury Court no. 34/2018 of 26 April.

161. SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June; SAP Bizkaia (Section 6) no. 78/2011 of 9 November.

162. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December; SAP Araba (Section 2) Jury Court no. 342/2014 of 1 October; SAP Bizkaia (Section 6) no.

64/2011 of 30 September.

163. SAP Bizkaia (Section 2) Jury Court no. 56/2016 of 28 October.

164. SAP Araba (Section 2) no. 117/2009 of 20 April; SAP Bizkaia (Section 6) no. 47/2007 of 10 May.



trator collaborated in the subsequent clarification of the facts. The Court stated that *“Although sending that text message does not actually involve the mitigating circumstance of confession, (as it was not done before the authority) it will be taken into account for the purposes of the individualization of the penalty”*<sup>165</sup>. Likewise, SAP Bizkaia (Section 1) Jury Court no. 18/2010 of 19 March takes into account that *“in spite of the fact that he did not admit the facts, he did collaborate to a certain extent to clarify them from the very beginning”* when individualizing the penalty.

Likewise, the previous consumption of alcoholic beverages or other drugs was taken into account in several judgments to justify the minimum penalty<sup>166</sup>, such as, for example, SAP Gipuzkoa (Section 1) no. 187/2014 of 12 June, which establishes that *“Even though it has not been proved that the defendant had his volitional or intellectual capacities sufficiently impaired due to his previous intake of alcohol, the truth is that the consumption of alcohol in the preceding hours can be taken into account when individualizing the penalty”*. Moreover, SAP Araba (Section 2) no. 117/2009 of 20 April establishes that *“the effect on the mental capacities of the perpetrator cannot be underestimated, as a result of a relevant abuse of alcohol and several drugs in the hours prior to the crime, which undoubtedly had an effect on his behaviour”*.

#### 4.8.4.

#### ADDITIONAL PENALTIES FOR HOMICIDE AND MURDER

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The following additional penalties were also imposed on the convicted person for homicide and murder against their partners or ex-partners<sup>167</sup>:

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<sup>165</sup>. SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June.

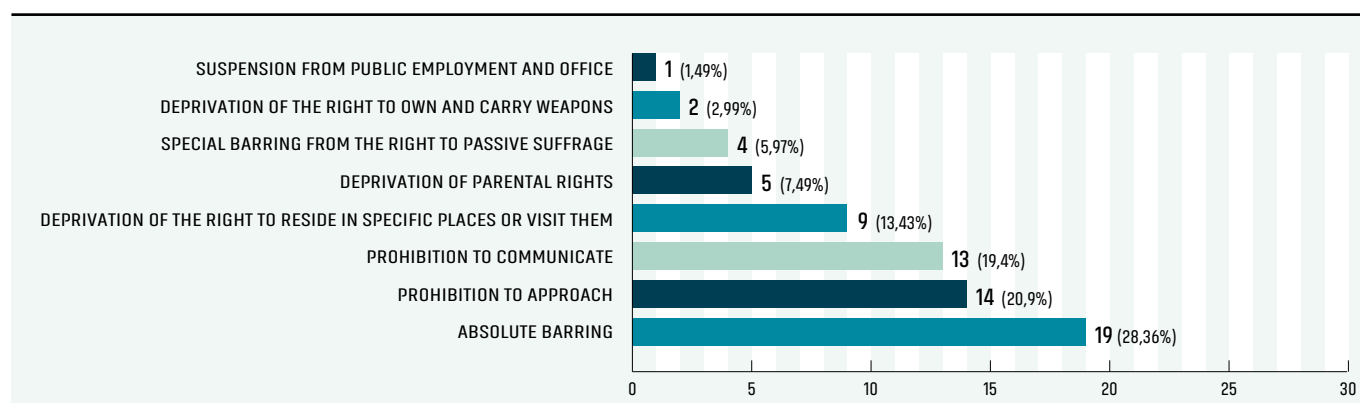
<sup>166</sup>. SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June; SAP Gipuzkoa (Section 1) no. 187/2014 of 12 June; SAP Araba (Section 2) no. 117/2009 of 20

April; SAP Bizkaia (Section 6) no. 107/2006 of 13 November.

<sup>167</sup>. We must take into account that more than one additional penalty associated to the main penalty can be established for each case.



FIG. 75. CASES WITH IMPOSITION OF ADDITIONAL PENALTIES  
(2021, SENTENCES=24, N=67)



Barring has to be included in the conviction and was imposed on the convicted person as a penalty in addition to the penalties established for homicide and murder in 23 of the 24 judgments.

According to the Criminal Code, a prison sentence of 10 years or more must bring along the **absolute barring** of the convicted person during the time of the sentence. This is the reason why it was imposed on 19 of the judgments (79% of the cases with a conviction judgment). In 3 of the judgments, in spite of the fact that the length of the prison sentence was over 10 years, absolute barring was not included in the sentence.

The **special barring from the right to passive suffrage** was imposed in 4 of the judgments, in two where the main penalty was a prison sentence under 10 years and in two in which the absolute barring was not included in spite of the fact that the main penalty was over 10 years. In one of them, **suspension from any public employment or office was imposed** together with the special barring from the right to passive suffrage.

As for the **prohibition to approach the victim or her relatives, as well as their dwelling** provided for in art. 48 of the Criminal Code, whose application is mandatory in this type of crimes when “they are committed against someone who is or has been the spouse or the person who has been bound to the convict by a similar intimate relationship even if there has been no cohabitation”, it was established in 14 Judgments in connection with the prison sentence imposed for the homicide or murder of the partner or ex-partner.

The **prohibition to communicate with the victim or her relatives** was included in 13 Judgments, and the **deprivation of the right to reside in specific places or visit them** in 9 judgments.



The additional penalty involving **barring or depriving the convicted person of his parental rights**<sup>168</sup> was imposed in 5 of the Judgments, in spite of the fact that the perpetrator was the father of the minors who had lost their mother in 9 of the Judgments.

The decision to deprive the convicted person of his parental rights was adopted in cases in which the minors were present at the time of the events (Provincial Court of Araba, in Judgment number 342/2014), as well as in cases in which this did not occur (Judgment number 34/2018 of 26 April 2018 of the Provincial Court of Bizkaia), arguing that *“The harm that he could cause to his children was completely irrelevant for him, as he placed his own well-being as a priority over the suffering caused to his own children, which must necessarily bring along the deprivation of his parental rights”*.

Nevertheless, in Judgment number 333/2017 of 21 December of the Provincial Court of Araba the adoption of restraining measures and deprivation of parental rights was considered inadequate in one case in which the minors were not present at the time of the events, based on the fact that *“the aforementioned claim has not been justified in any manner and more precisely, in a possible risk for them, as required by the aforementioned case law. What is more, in the case of their daughter, Virginia, she is totally unaware of what happened and the accused has shown affection towards her”*.

Finally, **deprivation of the right to own or carry weapons** was established in connection with the penalties imposed for homicide and murder in 2 judgments.

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168. The difference between the penalty of deprivation of and barring from exercise of parental rights is established in article 46 of the Criminal Code. Barring from exercise of parental rights involves the suspension of the exercise of parental rights during the term of the

sentence (temporary character) whereas deprivation of parental rights involves the loss of entitlement thereof (permanent character). In both cases, those rights held by the offspring with regard to the convicted person shall subsist.



## 4.9

# SECURITY MEASURES ESTABLISHED

Security measures are another legal consequence of the crime, which in practice may supplement or substitute the penalties. Security measures are imposed in accordance with how dangerous the subject may be, which can be revealed through a criminal offence.

### 4.9.1.

#### SECURITY MEASURES INVOLVING DEPRIVATION OF FREEDOM

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The Criminal Code provides for the possibility of imposing security measures involving deprivation of freedom on those defendants who have been declared exempt from criminal liability in accordance with the exempting circumstances provided for in articles 20.1 to 20.3, that is, in those cases in which the defendant had a (non-transitory) mental anomaly or (transitory) disorder or an addiction or absolute intoxication due to consumption of alcoholic beverages, toxic drugs or other substances that cause similar effects.

In those cases in which these circumstances give rise to incomplete exemption, due to the defendant having his cognitive and volitional capacities impaired but not annulled, the security measure involving deprivation of freedom can be imposed together with the prison sentence.

In Judgment of the Provincial Court of Bizkaia no. 80/2016 of 9 December, in which incomplete exemption for mental disorder was applied, as there was sufficient evidence that the defendant suffered a delusional reaction on the date of the events, in addition to the 12-year prison sentence and the appropriate additional penalties, he was sentenced to **confinement in a psychiatric hospital** under a closed regime to receive psychiatric treatment for a period of 15 years.



Under article 99 of the Criminal Code, in those cases in which the penalties and the security measures involving deprivation of freedom concur, the Judge or Court shall order the fulfilment of the measure, which shall be credited in the sentence.

#### **4.9.2.**

##### **SECURITY MEASURES NOT INVOLVING DEPRIVATION OF FREEDOM**

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The reform of the Criminal Code carried out under Organic Act 1/2015 included Article 140 bis, providing for the possibility of imposing a probation measure on individuals convicted of one or more homicides or murders.

The **probation measure** was imposed in 2 of the Judgments under analysis (Judgment number 34/2018 of 26 April 2018 of the Provincial Court of Bizkaia and Judgment of the Provincial Court of Bizkaia no. 80/2016 of 9 December) for 10 years once the prison sentence has been served.



## 4.10

# CIVIL LIABILITY

The 24 conviction judgments under analysis make pronouncements on the subject of civil liability. 16 judgments awarded compensation for the children of the victim, 11 for the parents, 6 for the siblings and 1 for the victim's romantic partner.

The amounts awarded for civil liability *ex delicto* were heterogeneous. With regard to the criteria used to determine them, in 9 of the judgments they used the scale or system to assess damages caused to people in traffic accidents as a guide, pointing out that some increase over the initially established amounts would be advisable, on the basis of the greater pain (psychological damage) suffered in this type of conduct. In one of the judgments it is stated that the aforementioned increase in these cases must stand between 10 % and 30% above what is established. In the remaining Judgments the psychological damage suffered was assessed without using any guiding criteria.

The circumstances that were taken into account when assessing the psychological damage, in connection with the amount awarded to the children, were the following: age of the victim, dependence of the child with regard to the victim (due to their being a minor, young or disabled<sup>169</sup>), the existence of cohabitation or not, the fact that the victim had a paid job, that the death was caused by their own father, having witnessed the homicide/murder, psychological consequences suffered, other consequences as a result of the event (geographical removal to live with other relatives<sup>170</sup>, having to live in children's homes, financial loss etc.).

En el caso de los progenitores y hermanos, han influido las siguientes variables: edad de la víctima, la existencia de convivencia, los lazos de afecto

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169. SAP Gipuzkoa (Section 1) no. 187/2014 of 12 June.

170. SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December.



In the case of the parents and siblings, it was influenced by the following variables: age of the victim, existence of cohabitation, existing love bonds, dependence with regard to the victim (financial, physical etc.), the fact that they took charge of the orphaned minors, psychological consequences, etc.

Moreover, they applied the rogation principle governing the subject matter of the “ex delicto” civil action, under which the amount cannot exceed what was requested by the parties.

COMPENSATION CHILDREN	
Total compensated	37
Average	101.189,19
Highest compensation	300.000
Lowest compensation	20.000

COMPENSATION PARENTS	
Total compensated	16
Average	67.112,87
Highest compensation	200.000
Lowest compensation	8.806

COMPENSATION SIBLINGS	
Total compensated	13
Average	26.923
Highest compensation	60.000
Lowest compensation	10.000

COMPENSATION OTHERS	
Total compensated	1
Average	92.000
Highest compensation	92.000
Lowest compensation	92.000



# 4.11

## 11. CONCLUSIONS

### A. LACK OF IMPUNITY

Almost all the judgments were conviction judgments and established significant prison sentences for the perpetrator. The characteristics of this crime contribute to the events being easily cleared up in most cases.

### B. SIMILAR DATA TO THOSE OF THE STATE

The data regarding the profiles of the victims and the victimizers, as well as the characteristics of the homicides and murders are very **similar to those of the State**.

COMPARATIVE DATA	BASQUE COUNTRY 2002-present	STATE <sup>171</sup> 2003- present
Average age of offenders	39	46.4
Nationality. Spanish offenders	50%	66.2%
Nationality. Foreign offenders	50%	33.8%
Average of cases in which there was cohabitation	62%	60.7%
Existence of marriage bond	42%	48.2%
Percentage of victims who leave orphan minors	52%	56%
Most frequent place of the offence	Home	Home
Most frequent method used	Bladed weapon	Bladed weapon
Most frequent month in which the offence takes place	July-August	July
Most frequent day of the week in which the offence takes place	Saturday	Sunday
Percentage of cases with previous complaint	29%	24.7%

171. GENERAL COUNCIL OF THE JUDICIARY, Report on fatal victims of gender-based and domestic violence by their partners or ex-partners. Year 2019, December 2020.

ce by their partners or ex-partners. Year 2019, December 2020.



### C. IMPORTANT PERCENTAGE OF VICTIMS WITH PREVIOUS INDICATIONS OF RISK

In general, gender-based violence incidents that take place in the couple are not isolated events but framed within a process of control, domination and submission in which the woman is subjected to physical, psychological, sexual or economic violence in a continuous manner. This makes it possible that women at risk or victims of this violence be detected and protected from their abusers.

Therefore, it is essential to have effective and appropriate detection and protection mechanisms in order to prevent as many episodes as possible. In this regard, special attention must be paid to previous complaints by the victims as well as previous episodes of this type, since they are highly significant indicators, as shown in section 4. Likewise, according to the data from the Ertzaintza, the intake of alcoholic beverages or other types of substances is also significant, in view of the fact that 4 of the perpetrators of the homicides or murders fit this type of profile.

In the same way, the considerable number of fatal victims whose situation of risk had already been identified – which can be seen in section 4 – show the need to improve the protection mechanisms existing in the current system.

### D. USE OF THE GENDER PERSPECTIVE IN RECENT CASE LAW

Since 2018<sup>172</sup> the Supreme Court has established the need to use the gender perspective in the interpretation of criminal laws.

In connection with the increase in malice aforethought, the use of the gender perspective has made it possible to start considering the situation of subordination of women in general and the situation of habitual abuse a specific woman may have undergone when assessing to what extent her chances of defending herself were lessened within the context of an attack by her partner or ex-partner.

This interpretation trend has had an impact on the case law of the Basque Provincial Courts and, in Judgments such as SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December, the gender perspective was used in the interpretation of this element, as we analyzed in section 6.1 above.

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172. STS 247/2018 of 24 May; STS 119/2019 of 6 March.



The gender perspective has also had an impact on the Criminal Code, and proof of this is the recent incorporation of the gender discrimination motive into the aggravating circumstance of art. 22. 4 of the Criminal Code, which deals with the so-called hate crimes<sup>173</sup>. Using the gender violence concept established in the Istanbul Convention<sup>174</sup> as a basis, the aforementioned aggravation lies in the greater harm caused by a conduct when it is directed against a woman due to her being a woman or as a manifestation of the domination of men over women.

In the Criminal Code there are crimes that are especially characterized as gender-violence crimes in the strict sense, whose elements include the existence of a marital or similar intimate relationship, even without cohabitation, between the victim and the perpetrator, as is the case in the crimes provided for in articles 148.4, 153.1, 171.4, 172.2. The gender aggravation is not compatible with these criminal figures to the extent that they have already been aggravated on the same grounds.

However, when classifying these special gender violence crimes, the most severe episodes of this violence were left aside, such as for example the crimes against life, to which the gender aggravation can be applied due to their being punished through ordinary crimes.

Thus, since 2015 the Supreme Court has been applying the gender aggravation to homicides and murders committed within the framework of a present or past intimate relationship as a manifestation of gender violence. Moreover, as opposed to the interpretation that had been so far in connection with gender violence crimes in the strict sense, this aggravation is understood to be applicable even in cases of attacks not carried out on the partner or ex-partner, which, in fact, leaving aside whether it is appropriate or not, has led to an extension of the gender violence concept by including all violence which objectively expresses a situation of discrimination and domination “on the grounds of gender” of a man over a woman.

With regard to the Judgments analyzed in the study, due to the relatively recent incorporation of this figure in the Criminal Code, the gender aggravation was applied in one of them, but it must be noted that the

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173. Since the incorporation of the “gender based” discrimination motive into the aggravating circumstance of discrimination of article 22.4 CP in 2015, an aggravation that characterizes hate crimes, chauvinistic criminal conducts must be analyzed not only from the perspective of gender violence crimes, but also from the perspective of hate crimes, and both categories, which had so far been dealt with and identified

in an independent manner, are now interconnected or related.

174. Convention of the Council of Europe on preventing and combating violence against women and domestic violence, done in Istanbul on 11 May 2011.



events of only 3 of the Judgments took place after its coming into effect in 2015<sup>175</sup>. In the other 2 judgments it was not applied, since one of them was an acquittal and the other dealt with a case in which the homicide was committed as a consequence of a delusional reaction of the perpetrator. Nevertheless, considering the current regulation and case law, the gender aggravation could have been applied in most of the cases under analysis, where the attack was expressive of situation of domination of the man over the woman – a circumstance that was verified in 22 of the judgments in section 3.8-, if the events had taken place after the aforementioned aggravation came into effect.

In this regard, it should be mentioned that, before the incorporation of the gender aggravation, the fact that the attacks carried out under mistaken conceptions of ownership and domination over the woman deserved greater criminal reproach had already started to be taken into account in connection with cases of homicide and murder committed within the sphere of gender violence, and some of the judgments under analysis imposed more aggravated penalties on these grounds, as seen in section 8.3.

The aggravation of acting for discriminatory reasons related to gender has been in place since the enactment of the Criminal Code in 1995 but, as stated in Judgment of the Provincial Court of Bizkaia no. 64/2011 – analyzed in section 9.5-, it has been interpreted in such a way that it is considered to be applicable only in cases in which a misogynistic or purely sexist motive has been observed in the conduct of the defendant, which does not concur, in the strict sense, in most male chauvinistic crimes.

Finally, it is positive that the judgments under analysis do not contain any exempting or mitigating circumstance legitimating or exempting the perpetrators of these crimes due to their having acted that way “for cultural reasons” or “for reasons and stimuli that produced a fit, blindness to reason or another passionate state” as has sometimes been the case.

#### **E. INCREASING TENDENCY TO IMPOSE ON THE DEFENDANT THE PROHIBITION TO APPROACH AND COMMUNICATE, AS WELL AS THE DEPRIVATION OF PARENTAL RIGHTS ON THE CHILDREN IN CASES OF GENDER VIOLENCE WITH FATAL CONSEQUENCES**

The special **barring** from exercise of parental rights, guardianship, care, safekeeping or fostership as well as the **deprivation of parental rights**

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175. Organic Act 1/2015, of 30 March, amending Organic Act 10/1995, of 23 November, on the Criminal Code.



may be imposed as the main penalty – in the case of a fixed list of crimes – or as an additional penalty – in the case of any crime, provided the parental rights are directly related to the crime.

When the events analyzed in the judgments took place (2002-2016), the barring or deprivation of parental rights had not been established in the Criminal Code as a main penalty for homicide or murder. Consequently, it was not a main penalty in any of them.

It was applied as an additional penalty in 5 of the Judgments, in spite of the fact that the perpetrator was the father of the children who had lost their mother in 9 of the Judgments. The reason is that the application of this penalty is discretionary and the relation between the parental rights and the crime as well as the subsequent application of the additional penalty is at the discretion of the judge.

It should be mentioned that, until 2010, the barring or deprivation of parental rights had not been expressly provided for as an additional penalty in arts. 55 and 56 of the Criminal Code – regulating the catalogue of additional penalties that can be imposed – and their application was discussed in those cases in which the main penalty involved imprisonment for at least 10 years. Nevertheless, through Organic Act 5/2010 it was expressly provided for as a potential additional penalty for any type of main penalty, provided the aforementioned connection was in place. This meant that the application of these additional penalties gained importance in criminal proceedings, thus leaving behind the time when the parties almost unavoidably had to resort to civil proceedings as their application was exceptional in criminal proceedings<sup>176</sup>.

The barring or deprivation of parental rights does not affect the right of parents and minors to be together and communicate. To limit these rights one must resort to the **prohibition to approach and communicate**, provided for in article 48 of the Criminal Code, whose application regime is provided for in article 57 of the Criminal Code.

Under article 57, in criminal offences of homicide or murder “*committed against a spouse or former spouse, or against a person who has been bound to the convict by a similar intimate relationship, even without cohabitation*” it is mandatory to apply the prohibition to approach the victim or those relatives or people that the judge or the court may determine in the Judgment, as well as their dwellings and workplaces. Additionally, this prohibition to approach expressly includes the suspension of

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176. VALEIJE ÁLVAREZ, Inma, “Las penas de privación e inhabilitación de patria potestad desde la perspectiva de la jurisprudencia del TEDH 1391”, in ABEL SOUTO, Miguel; BRAGE CENDÁN, Santiago B.; GUINARTE

CABADA Gumersindo, Estudios Penales en Homenaje al Profesor José Manuel Lorenzo Salgado, Tirant Lo Blanch, Valencia, 2021, p. 1394.



the “*visitation, communication and stay rights that, where appropriate, might have been recognized by a civil judgment, until the full service of the sentence*” of the convict with regard to his offspring, and this can be applied in cases of gender violence even if they have not been the direct victims of the attack.

In this regard, Circular 2/2004 of the State Prosecutor’s Office establishes that the suspension of the convict’s visitation or communication with regard to his offspring must be resolved by the judge at his own discretion, in view of the “circumstances of the perpetrator and the offence” and respecting the principle of the “best interest of the minor”, without its application being mandatory for the Judge as a literal interpretation of the legal precepts may lead to think.

Consequently, as the imposition of barring or deprivation of parental rights and suspension of visitation and communication are decisions to be taken by Judges and Courts, there have been dissimilar positions in connection with the imposition of these penalties by the Basque Courts. This has been closely linked to the changes in criteria that have taken place in the case law of the Supreme Court on this matter.

Until 2015, the Supreme Court had taken a reluctant position towards establishing barring or deprivation of parental rights as an additional penalty in cases of gender violence. In addition to the legality problems that it raised before the reform of 2010, the harm that the children who had lost their mother could suffer if they were also separated from their father was taken into account in the best interest of the minor. Additional evidence was required to prove a conduct of neglect of the duties inherent to the parental rights so as to understand that the crime committed by the father against the mother was directly related to the father-child relationship.

Nevertheless, in Judgment number 568/2015 of 30 September, the Supreme Court adopted a favourable position towards the application of the aforementioned additional penalty in cases of gender violence punished with a penalty of at least ten years (ex art. 55 CP) and stated that “*the presence of the minor during the attack on the mother by the father was going to have a negative long-term effect on the development of the minor if the parental rights are maintained, which therefore makes it incompatible; hence, there is no reasonable justification for the decision*



of the Court of instance” not to withdraw parental rights<sup>177</sup>.

Likewise, the High Court took a stand in favour of the application of the penalty of deprivation of parental rights even in cases in which the events had not taken place in the presence of the minors, when they were serious crimes: *“It is not necessary that the minor be attacked directly for this penalty to be imposed, as the attack on this minor’s mother by their own father with the clear intention to kill her determines the imposition of the penalty of deprivation of parental rights”*. To which they added that *“it is hardly compatible that the person who has tried to take his daughter’s mother’s life is suitable to educate the minor and provide her with a comprehensive education”*<sup>178</sup>.

These judgments are based on the assumption that serious gender violence cases, such as the homicides and murders under analysis, regardless of the minors being present during the events or not, are irreparable attacks on their moral integrity, which totally clashes with the parental duty of ensuring the welfare and the comprehensive education of the children. Consequently, in the best interest of the minor, it is deemed appropriate that this type of measures be adopted in the criminal proceedings rather than wait for them to be applied in civil proceedings.

In the same line as above, Basque Provincial Courts increasingly tend to impose on the defendant the prohibition to approach and communicate, as well as the deprivation of parental rights with regard to the victim’s children in gender violence cases with a fatal outcome. However, there are still recent judgments in which this has not been resolved (SAP Araba Jury Court no. 333/2017 of 21 December).

Recently, under Organic Act 8/2021 on Comprehensive Protection of Children and Adolescents against Violence, article 140 bis of the Criminal Code has been modified by introducing the mandatory imposition of the penalty of deprivation of parental rights as the main penalty for those convicted with intentional homicide or murder when the perpetrator of the crime and the victim had a son or daughter in common and when the victim is the son or daughter of the perpetrator, adding that the same penalty will be imposed when the victim is the son or daughter of the perpetrator with regard to other sons and daughters, should there be any.

In most of the cases in which the Criminal Code establishes the barring

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177. STS (Criminal Court, Section 1) no. 568/2015 of 30 September.

178. STS (Criminal Court, Section 1) no. 452/2019 of 8 October.



or deprivation of parental rights as the main penalty, it is established in a discretionary manner, and the Judge or Court must decide whether to impose it or not in accordance with the best interest of the child. Consequently, this modification has involved a major change, since, for the first time, it has established its mandatory application by the Judge or Court.

Finally, it should be mentioned that both the suspension of parental rights as well as the suspension of visitation, stay, relationship or communication may also be resolved as precautionary measures in criminal proceedings (arts 65 and 66 LOVG<sup>179</sup>). The reform of the Criminal Code in 2015 also established the Judge or Court's obligation to decide on the manner in which the stay, relationship or communication of the person who has been convicted of gender violence will be carried out with regard to the minors dependent on him, as well as the adoption of the necessary measures to guarantee the safety, integrity and recovery of the minors and the woman, regularly checking their evolution.

It has not been possible to analyse the adoption of the aforementioned precautionary measures in this study, as this information is not recorded in the court judgments that are available.

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179. Organic Act 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence.



## **F. NEED TO UNIFY CRITERIA WHEN DETERMINING THE COMPENSATION AWARDED FOR CIVIL LIABILITY**

As analyzed in section 12, the amounts of the civil liability awarded are heterogeneous and the criteria used to determine them have changed.

In spite of the fact that no clear quantitative difference has been observed between the judgments in which the amounts were established using the indicative scale and those in which the amount was established without using that indicative scale or criterion, for legal security reasons and in order to prevent differences, the criteria used to determine the civil liability ex delicto should be standardized.

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# 4.12

## SENTENCIAS ANALIZADAS

SAP Bizkaia (Section 2) Jury Court no. 28/2018 of 31 May
SAP Bizkaia (Section 1) Jury Court no. 80/2016 of 9 December
SAP Bizkaia (Section 1) Jury Court no. 34/2018 of 26 April
SAP Bizkaia (Section 2) Jury Court no. 336/2016 of 27 December
SAP Bizkaia (Section 2) Jury Court no. 56/2016 of 28 October
SAP Araba (Section 2) Jury Court no. 333/2017 of 21 December
SAP Bizkaia (Section 6) Jury Court no. 28/2016 of 14 April
SAP Araba (Section 2) Jury Court no. 342/2014 of 1 October
SAP Gipuzkoa (Section 1) Jury Court no. 191/2014 of 26 June
SAP Bizkaia (Section 6) no. 34/2013 of 7 June
SAP Gipuzkoa (Section 1) no. 187/2014 of 12 June
SAP Bizkaia (Section 1) Jury Court no. 48/2012 of 11 June
SAP Bizkaia (Section 6) no. 78/2011 of 9 November
SAP Gipuzkoa (Section 1) Jury Court no. 420/2011 of 3 November
SAP Gipuzkoa (Section 1) Jury Court no. 65/2012 of 15 February
SAP Bizkaia (Section 6) no. 64/2011 of 30 September
SAP Gipuzkoa (Section 1) Jury Court no. 234/2012 de 22 de mayo

### FINAL NOTE:

A formal request was sent to the Superior Court of Justice of the Basque Country (September 2021) so as to have the information regarding the judicial records that are the subject matter of this section extended, but at the time of its final drafting no response had been received in that regard.



# 05



**Synthesis and  
final conclusions**



If we take a global look at the data in the police statistics covering the incidents occurred between 2016-2021, this last report on hate incidents in the Basque Country displays, as far as the essential results are concerned, a very similar map to that of the previous years, with incidents against ethnic groups consolidating their position as the most prevalent, followed by incidents against sexual groups. But this map also reflects some emerging trends. Thus, it seems that the increase in the number of recorded incidents, which started last year and has been confirmed this year, places us in a new global recording floor, still on an upward trend; the over-representation of crimes with words (hate speech) over crimes with facts has been slightly corrected; and the recording of bodily harm has increased, with its severity apparently starting to do so too.

This map, in a subtler way and in keeping with the trends in the Spanish state and the comparative European trends, displays a number of common structural elements that can be summarized in six points:

1. Like in previous years, the prevailing incidents recorded are those against ethnic groups (2/3 in the broad sense: race, ethnicity, national origin and even religion, beliefs and ideology). But within these groups, ideological incidents require particular consideration. Ideology tends to not be recorded as a core element in the configuration of target groups in the comparative spectrum. However, it is one of the prevailing groups (23.3 %) in Spain. In the Basque Country its percentage is considerably lower (3.61%) when compared to the entire State, which does represent a distinctive trend in this regard<sup>180</sup>.
2. The incidents against sexual groups strengthen their position as the second most attacked groups. However, after the last reforms of the Criminal Code (Organic Act 8/2021), delimitation problems are likely to arise in this area in the future due to technical-legal configuration difficulties related to the need to discriminate between sexual identity and orientation, but also between (reasons of) gender and sex.
3. Non-ethnic and non-sexual groups maintain a residual level of recording with clear difficulties to take these incidents out of the black figure.
4. Bodily harm, as the most significant and serious category, represents between one fifth and one third of the total (in the 2016-2020 bracket),

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180. For example, in Navarre, ideological hate incidents represent around 42% of the incidents recorded between 2016 and 2020. UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES, "2016-2020 Report on Hate Incidents in the Basque Country", Government of Navarre, 2021, p. 8; and for the State please

see MINISTRY OF THE INTERIOR, "2020 Report on the evolution of incidents related to hate crime in Spain", Ministry of the Interior – Government of Spain, 2021, p. 17.



establishing the emerging visibility of hate crimes, of aggravated deeds, as the focus of attention. This year, their recording in the Basque Country reached the highest collection rate (35.38%) twice as high as the rate in the State (18.8% in Spain and 35.38% in the Basque Country). Moreover, it must be pointed out that the most serious hate violence (murder, homicide, severe bodily harm...) starts to show signs –still weak and initial- of being increasingly present in the Basque Autonomous Community<sup>181</sup>.

5. “Expressive” hate incidents, propaganda incidents, in line with the so-called -criminalized- hate speech, have lost the remarkable statistical presence they used to have (the ratio of hate crimes “with words” and hate crimes “with facts” has varied from a 7 to 3 ratio to the current 5 to 5 ratio).

This could indicate that the recording system is becoming more adjusted, balanced and refined, with greater capacity to discern hate speech and the part of it that may have criminal relevance. The system is working out the recording of crimes “with deeds” –and in particular- bodily harm and its “surrounding environment” as opposed to an excessive sensitiveness when dealing with incidents “with words”. However, it is still early to see a trend in this, in view of the variability of this data throughout the various reports.

6. From the comparative point of view, considering those countries (Germany, United Kingdom, France) with a historical tradition and greater consolidation as far as the recording of hate incidents is concerned, the conclusions reached can be summed up in three points:

**6.1. Data recording by groups.** The comparative European data recording experience basically maintains the same image offered in recent years<sup>182</sup>. Once again, the recording of hate incidents against the different groups that make up the ethnic-racial/xenophobic category stands out from the rest. To be precise, the group defined according to the race of the victim is the most noteworthy. This category is way ahead of the others throughout the different stages that take place after the incident is detected and recorded by the different formal social control authorities (police, prosecution and

181. It is now the second consecutive year in which there has been an attempted homicide in the Basque Country. Please see UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “2020 Report on Hate Crimes in the Basque Country”, op. cit., pp. 12-13.

182. UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “2018 Report on

Hate Crimes in the Basque Country”, op. cit., p. 67; UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “2019 Report on Hate Crimes in the Basque Country”, Basque Government, 2020, p. 114; UNESCO CHAIR IN HUMAN RIGHTS AND PUBLIC AUTHORITIES/ERTZAINZA, “2020 Report on Hate Crimes in the Basque Country”, op. cit., pp. 75-76.



judges/courts). That is, the number of incidents, number of charges and number of convictions maintain some symmetry with respect to the prevalence of race. In general, again, the “sexual” group (homophobia, transphobia...) strengthens its second position as far as the victimized groups are concerned. Sexual orientation also seems to consolidate its position as the main benchmark within this group. In comparison, the information regarding the rest of the groups seems to remain residual.

**6.2. Traceability.** Even though it is hardly comparable, we must say that the information provided by the countries within the Anglo-Saxon cultural sphere (England and Wales, Scotland and Northern Ireland) is much more transparent and refined than the information from the countries in continental Europe (France and Germany). An example of this could be Germany, which has only recently –that is, as of 1 January 2019– generalized and centralized the recording of data at the national level on the prosecution of hate crimes in the Länder. And, still, in 2020, a human rights body of the Council of Europe such as the ECRI questioned their not having received any clarification from the German authorities on whether, in addition to the substantial improvement in the internal recording of data, it could be possible to carry out a traceability exercise in order to closely monitor each hate crime. Mention is made of a lack of clarity and of redoubling the efforts in this direction. In any event, even in common law jurisdictions, we would be talking about stages (for example police and courts) that return data (for example, number of hate incidents recorded and number of prosecutions or convictions resulting from those incidents) that are not necessarily coordinated or traceable.

In any case, considered as a whole, the figure of prosecutions and convictions is more consolidated and has more traceability elements in Great Britain, as a more advanced model. For example, in England and Wales the number of charges for hate crimes in 2020/21 represents around 10% of the total incidents recorded. Among these charges, in approximately 80% of the cases the defendants were found guilty of one or more hate crimes (that is, around 7% of the total incidents initially recorded ended up in a conviction).

**6.3. OSCE.** The data absorbed by the OSCE from the national authorities are largely affected by all the internal traceability problems. The information dumped by this organization seems to lack homogeneity and coherence in terms of empirical comparability between countries. All this undoubtedly weakens considerably any attempt to throw a general reflection, or even to reflect trends that can be so-



me how confronted. The lack of data is quite remarkable, but even the different global figures that are returned are an obvious indication of the state of internal development and refinement of each country as far as the recording and monitoring of incidents are concerned.

Beyond the comparative view, it is advisable to conclude this section with two final considerations:

Firstly: hate and gender crimes. The gender perspective required introducing in the Criminal Code a figure that enabled the aggravation of any gender violence for which no specific aggravation was provided, as in the case of the homicides and murders under analysis. This became possible in 2015, when a new figure was introduced within the general aggravation that defines the so-called hate crimes. Linking the aggravation of gender violence conducts to hate crimes has led to extending its scope of application so as to cover any conduct that has been caused by or has had discriminatory effects on the basis of gender. This aggravation basis is beyond what Organic Act 1/2004 understands as gender violence, which limits its scope of application to male chauvinistic violent conducts against women by their partners or ex-partners.

Consequently, on the one hand, linking the aggravation of gender violence conducts to hate crimes has had a positive effect, as it has enabled the aggravation of male chauvinistic criminal conducts whose victims were men or women who were not partners of the offenders and their being recognized as part of the gender violence. However, linking gender violence to hate crimes has also brought confusion, at both the theoretical as well as the practical level, when establishing what must be the specific scope or application of this new aggravation. The study in this report traces this reality with regard to homicides-murders, showing the difficulties and the potential analysis of the cases from the police incident to their closing by (first instance) judgment. In any event, the way to integrate “gender-based hate crimes” into the general statistics on hate crime and hate crime into the statistics on gender-based violence will eventually have to be clarified –and decided.

Secondly: data recording, traceability in the Basque Country and improvement areas. For this report to progress towards a traceability study, the information from the Prosecution Service as well as the Judiciary should improve considerably, so as to have the figures for prosecutions and convictions. It would also be advisable to include the data recorded by local police forces, starting perhaps with the information generated in the capital cities of the historical territories.

In any event, this study shows the analysis of the public data from the



Prosecution Service, which can be summarised as follows: With regard to the judicial information regarding hate crimes for the whole of the State, in 2020 there was a remarkable decrease (approximately 42%) in the number of court proceedings identified by the Prosecution Service.

In this context, the data provided by the Office of the General Prosecutor of the State seem to indicate a consolidation of the upwards trend shown by crimes with discrimination aggravation (art. 22.4), which quantitatively equal the block of crimes related to hate speech (art. 510.1 and 2, arts. 522-525). Moreover, the Report of the General Prosecutor of the State informs of the “bad situation” of the recording and monitoring of hate crimes in the judicial system, which prevents having a reliable image of the number of proceedings brought or the court decisions made in that regard and, least of all, the traceability of hate incidents. It should be noted that in the Basque Country, the 2021 Report of the Chief Prosecutor has stopped providing statistical data on court proceedings regarding hate crimes this year.



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# A1

## **ANNEX I.**

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**Major cases in  
the press in 2021**



## INTRO:

In this section there is a selection of how hate incidents have been reflected on the pages of the newspapers published in the Autonomous Community of the Basque Country, BERRIA, DEIA, DIARIO de NOTICIAS de ÁLAVA, EL CORREO, EL DIARIO VASCO, GARA, NOTICIAS DE GIPUZKOA, as well as in the national newspapers which have or used to have an edition for the Basque country: EL MUNDO, EL PAÍS, ELDIARIO.ES, in the year 2021. The search was carried out in their online formats and it must be noted that there was no information regarding these incidents in the newspapers El País, Eldiario.es or in the headlines of Grupo Noticias, but in this case the reason is that their digital files still had not been updated with the information after 2020 when this report was prepared.

The journalistic review intends to show what reaches 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, the different headings show that events do not fully conform to the norm as alleged hate crimes or incidents; this happens, above all, with those of an ideological or political character. In this edition we can see that the high number of cases grouped in this section does not represent the constellation of cases recorded in 2021 but most of them respond to the newspapers' preferred coverage of certain events of political character.

Below, in the annex, we have summarized the cases grouped by those protected categories used throughout this report. It must be noted that, according to the review carried out, no remarkable information has been found in the following categories of protected groups: Religious practices or beliefs; Aporophobia, Sex-Gender and Disability or functional diversity.



## Major cases in the press in 2021

### SUMMARY OF CASES BY PROTECTED CATEGORY

#### RACISM-XENOPHOBIA:

- Williams told the Judge that he felt «humiliated» by the racist insults
- SOS Racismo calls to gather at a trial for a racist attack
- The Ertzaintza asks to bring charges against the young woman involved in the attack in El Batán for «simulating the crime»
- The false attack in Gasteiz was described as «brutal» in spite of the fact that Begoña L.V. only had abrasions
- We, gypsy women, cannot even go shopping at ease

#### IDEOLOGY/POLITICAL ORIENTATION

- Three people under investigation for hate messages against the Ertzaintza officer who died in the River Urumea make a statement
- Erkoreka accuses the Basque nationalist left wing of «bordering» hate crime against the Ertzaintza
- Erkoreka denounces Ernai's «hatred» of the Ertzaintza after new attacks on batzokis
- Esan points to Ernai once again and defines them as the «Hitlerjugend» of the Basque nationalist left wing
- The Public Prosecutor's Office files the complaint for hatred criticised by EH Bildu and EP-IU
- Ernai claims there was no crime because the Police is not a vulnerable group
- Erkoreka states that there is no evidence of inappropriate practices carried out by Ertzaintza officers
- Bildu accuses Erkoreka of «inventing crimes» and of Ernai's harassment of the Ertzaintza
- The extremist woman who attacked a young PP member faces penalties of up to 4 years in prison for hate crime
- The PP raise their tone and accuse the «Basque school» of generating «an atmosphere of hatred towards Spanishness»
- The young woman arrested in Gasteiz will in the end be accused of «hate crime»
- The woman under investigation for «hatred» denies the attack and knowing that Garcia was a PP member
- Bildu says they are concerned about «hate crimes»
- Iturgaiz warns that the PP will not be «intimidated» by the attacks
- Urkullu rules out an increase in hate crimes in the Basque Country and states that now «more incidents are reported»
- Death threats in Vitoria against a retired Ertzaintza officer with graffiti at the entrance of his building
- Two years imprisonment in Morocco for a person arrested in Basauri for terrorist threats



## SEXUAL ORIENTATION/IDENTITY

- The association Naizen reports the attack on a transsexual minor
- Fourteen attacks against the LGBTI community have been reported in Araba
- The LGBTI+ Observatory for Bizkaia, Gipuzkoa and Araba has been established
- Nine people under investigation for homophobic attack on a young man in Basauri
- «We must not stop fighting», underlines the young man who was beaten in the homophobic attack in Basauri
- The attackers face an offence of bodily harm with the hate aggravator
- Gehitu asks the Prosecutor's Office to investigate the homophobic video of the young men from Donostia in Twitch
- A 23-year-old man in critical condition after being beaten by a group in an outdoor booze party in Amorebieta
- Transgender woman raped in Gasteiz
- Homophobic attack suffered by a young man in Amurrio
- Another homophobic attack in Gasteiz
- Arrested in Irun for harassing, threatening and insulting a waitress due to her sexual condition

# Racism / Xenophobia



## 1.1

### Williams told the judge that he felt «humiliated» by the racist insults

GARA 17 March 2021





According to EFE news agency, quoting judicial sources, Iñaki Williams appeared on Wednesday as a witness in the proceedings brought against two Espanyol supporters who shouted racist abuse at him. They have been accused of shouting «scornful abuse at him, with the clear intention of humiliating him and undermining his dignity for racist reasons».

In the statement given to the Judge by videoconference, the Athletic forward denounced that he had felt «humiliated» and outraged by the racist taunts he heard when he was leaving the field after being substituted.

The complaint was admitted last November by Magistrates' Court number 2 of Cornellà at the request of the Public Prosecutor for Hate Crimes in Barcelona. Three people were identified by the Mossos d'Esquadra after examining the images. One was under age and the other two were summoned to the police station. One refused to make a statement and the other did not appear, as was the case again at the hearing held this Wednesday.

## 1.2

### **SOS Racismo calls to gather at a trial for a racist attack**

GARA 17 March 2021



This Wednesday, 17 March, the Courthouse situated in Buenos Aires Street in Bilbao will hold a trial for a racist attack that took place in Mungia in 2017. In view of this, the platform SOS Racismo has called to gather at 11.30 a.m.



at the entrance of the courthouse to support the victim and protest against «racist brutality».

According to the information provided to NAIZ by the anti-racist association, the attack took place in May 2017, when a group of 6 or 7 people insulted and attacked a black man. The victim had to be treated in hospital for serious injuries, after which he filed a **complaint for a hate crime**.

«We want to denounce the psychological and physical consequences of this type of attack as well as give our support to the victim who has been bearing the burden of this attack for 3 years now», SOS Racismo has stated.

Likewise, they hope that there is a «good resolution» by the Court, that the attack does not go unpunished and can therefore be taken as an « exemplary case» for other racist attacks.

### 1.3

#### **The Ertzaintza asks to bring charges against the young woman involved in the attack in El Batán for «simulating the crime»**

El CORREO 3 November 2021





The Ertzaintza does not believe the 30-year-old woman who reported being attacked by four young men «of North African origin» in the early hours of Sunday, 24 October, near her parents' home, in El Batán, after spending the evening out. The investigation by Group 6, a specialized unit, disproves the girl's version, who had been called to make a statement on three occasions due to the existence of «contradictions» and «inconsistencies» in her account of the facts. On Tuesday, the autonomous police filed charges against her at the Courthouse for «crime simulation» -that is, a false complaint-, which could result in a symbolic prison sentence and a fine.

As EL CORREO website advanced, the police investigation observed up to five major «contradictions» in the successive appearances of the young woman in various media –such as this newspaper- describing the group attack. According to her testimony, the strangers followed her, approached her shouting «fascist» at her and threatening «to destroy that pretty face of yours» before attacking her.

## 1.4

### The false attack in Gasteiz was described as «brutal» in spite of the fact that Begoña L.V. only had abrasions s

GARA 24 November 2021



Begoña L.V., the former Vox candidate who reported a false attack, accusing young North African men last 24 October in Gasteiz, only had «abrasions» and «scratches» when she went to Santiago Hospital's Emergency



Department that morning. This did not prevent the media and institutions who echoed her story, which was questionable from the very beginning due to the obvious political overtone, from speaking almost unanimously about a «brutal attack», carried out with «great violence».

This description helped the complaint to have a major impact in the media the following days, much above that of other similar cases, usually sexist attacks.

To be precise, Vox leader, Santiago Abascal, wrote in a tweet: «Again. Those bastards were from North Africa. And they smashed the young woman's face due to her not having it covered».

The actual severity of the injuries was disclosed by 'El Correo' on Thursday. Apparently, her scratches were the result of the young woman falling or hitting herself on her way home early in the morning, since the images examined by the investigators show her «staggering» in several places or bumping into a paper bin.

## 1.5

### We, gypsy women, cannot even go shopping at ease

GARA

**GAURKOA**

## Las gitanas no podemos ir tranquilas ni de compras

En octubre de 2019, trece niñas gitanas y tres educadoras de la asociación Amuge fueron al cine en el centro comercial Zubiarte de Bilbao. A la salida, entraron en una tienda de ropa y se dieron cuenta de que un vigilante de seguridad las seguía por los pasillos. Cuando bajaron a otra planta, otros dos trabajadores de Prosegur las persiguieron. Las educadoras sintieron impotencia, las niñas miedo y rabia; fueron conscientes de que habían sido perseguidas solo por ser gitanas.

Lo denunciaremos públicamente, escribimos a Prosegur, nos informamos de qué posibilidades teníamos de denunciarlo en un Juzgado. Y ahí, una vez más, nos dimos cuenta de que las normas

PUBLIZITATEA



Article 510 of the Criminal Code does not provide for everyday racism –it only provides for «directly or indirectly fostering, promoting or inciting ha-



tred, hostility, discrimination or violence against a group, a part thereof, or against a certain person for belonging to such a group»– and the Equal Treatment Act is still not a reality. Therefore, in these cases, the only resource we have is to fill in a complaint form, which does not reach the court. That was the drop that broke the camel's back. Our colleagues from SOS Racismo Bizkaia told us about testing, a research technique that they have used to show the discrimination towards racialized people in such contexts as nightlife, estate agencies and employment offers.

Thus, from 26 October to 15 November, we organized groups of volunteers, gypsy as well as non-gypsy women of similar ages who went into fifteen supermarkets and five shopping centres in Bizkaia to compare the different treatment they received from the staff and the private security at the stores. In sixteen of them, that is, 80% of the visits, the gypsy volunteers suffered criminalizing attitudes that the non-gypsy volunteers did not have to face at any time. Every day the testing was carried out there was persecution and discrimination, without exceptions. Each of the fourteen gypsy women who participated in the investigation suffered some incident at some time.

The employees at the stores followed us along the corridors, removed the ham from the counter at the delicatessen department, asked for reinforcement when we went through the perfume department, called Security because they thought we were taking too much time looking at clothes, made comments to each other such as «Uff, are they still here?» in front of us.



## Ideology / Political orientation



### 2.1

**Three people under investigation for hate messages against the Ertzaintza officer who died in the River Urumea make a statement**  
DIARIO VASCO 1 March 2021



This morning three people have testified at Magistrates' Court number 5 of Donostia. They are being investigated as perpetrators of alleged hate crimes, due to their having written messages against the Ertzaintza officer who died when he fell into the River Urumea in December and against the officer who survived the accident. A fourth person under investigation has not been able



to testify because he lives in Castellon and is expected to testify by video-conference in the near future. The police investigation is still open and more people could still be reported.

The Department of Security reported that these types of hate messages were going to be investigated and the police union, Erne, filed a complaint with the Public Prosecutor's Office of the Basque Country, which was then derived to Gipuzkoa, where proceedings were initiated. Yesterday, the judge summoned the first three young men under investigation, who are aged between 20 and 30 and live in the neighbourhood of Intxaurren, Donostia, in Hondarribia and in Oiartzun respectively.

Consulted sources point out that they have all showed remorse and said they regretted the messages they had shared and never imagined that they would cause any harm with them. In said messages, most of which were shared through Instagram, they said things such as «one down», with regard to the officer who had died, they rejoiced at his death and also wished the death of the other Ertzaintza officer who had survived, insulting them both as well as the police force.

## 2.2

### Erkoreka accuses the Basque nationalist left wing of «bordering» hate crime against the Ertzaintza

EL CORREO 15 May 2021

#### Erkoreka acusa a la izquierda abertzale de «lindar» el delito de odio con la Ertzaintza

EH Bildu denuncia la «violencia» de la Policía vasca tras provocar varios heridos en las cargas contra las juventudes de Sortu





Even though the relationship between PNV and EH Bildu is going through a time of maximum tension and any friction could cause a fire, the subject that has been flaring tempers for several months now is the activity of the Ertzaintza. This was seen again yesterday during the Parliament's control session, in which the sovereignist coalition demanded an explanation from the Regional Minister of Security for the police charges that took place a week ago during the demonstrations called by Ernai in Bilbao and Vitoria. The accusations of «lack of control» and the actions of the Mobile Brigade being «violent and arbitrary» were responded to by Josu Erkoreka, who warned the Basque nationalist left wing that they were «bordering» hate crime against the autonomous police, who they have been «targeting» time and time again.

At the Department of Security as well as within the Autonomous Police there is considerable uneasiness over the situation. In December several patrols were received in the Old Quarter of San Sebastian with fireworks and screws when they went to disperse an outdoor “booze” party and Erkoreka accused the Basque nationalist left wing of being «behind» the incidents. In February, Arnaldo Otegi said that the Ertzaintza was far from being a «democratic police force» and, in March, that «a large part of the population rejects» the police force.



## 2.3

### Erkoreka denounces Ernai's «hatred» of the Ertzaintza after new attacks on batzokis

EL CORREO 16 mayo de 2021

#### Erkoreka denuncia el «odio» de Ernai a la Ertzaintza tras nuevos ataques a batzokis

El consejero de Seguridad, que ya tuvo un encontronazo con Bildu el viernes, pide el cese del «hostigamiento» y anuncia una investigación



Pintadas en el batzoki de Elorrio. / PNV

‘PNV lotu txakurrak’ (PNV tie your dogs up), ‘Zer egingo duzue psikopata hauekin?’ (What are you going to do with these psychopaths?), ‘Biolentzia, zuena’ (Violence, yours). The appearance in the early morning of new graffiti against the Ertzaintza on the facade of the batzokis (PNV social offices) in Ondarroa and Elorrio has led the Vice-President and Security Minister of the Basque Government to denounce this Sunday the campaign of «unacceptable and reprehensible harassment» by Sortu’s youth wing, whose signature appears in some of the graffiti against the Basque police.

Josu Erkoreka published the photos showing slogans against the Ertzaintza in his social media. PNV’s Bizkai Buru Batzar (Regional Council of Biscay) had distributed them some hours before together with a release in which they denounced the «coercion» their offices have been suffering in recent days. At least six have suffered sabotage since Friday.

The vice-president, Mr. Erkoreka, went a step further than his party and



assured that the incidents at the batzokis «are just a few examples of Ernai spreading their hatred against the Ertzaintza». «To what extent are they trying to go back to stages that have already been left behind?», he asked before announcing that the autonomous police has opened an investigation.

## 2.4

### Esan points to Ernai once again and defines them as the «Hitlerjugend» of the Basque nationalist left wing

GARA 19 May 2021

**Esan vuelve a apuntar a Ernai, a quien define como «Hitlerjugend» de la izquierda abertzale**

El sindicato de la Ertzaintza Esan ha denunciado una «campaña de acoso» de lo que llama las «Hitlerjugend» de la izquierda abertzale, en referencia a Ernai, a quien ya denunció por un supuesto «delito de odio».




PUBLIZTATEA

PUBLIZTATEA

**RKLAMATU**

Egin klik zure kalte-ordaina kalkulatzeko

PUBLIZTATEA

The Ertzaintza Union, Esan, has denounced a «harassment campaign» by those they call the «Hitlerjugend» of the Basque nationalist left wing, in reference to Ernai, who had already been reported by them for alleged «hate crime».

Esan, the Ertzaintza Union, has issued another statement where they point to the Basque nationalist left wing and, more specifically, to Ernai, whom they accuse of «organizing a harassment and smear campaign». The union, which refers to the youth organization within the Basque nationalist left



wing as «Hitlerjugend» (Hitler Youth), had already filed a complaint in February for alleged «hate crime».

This time, they state that «the attacks only show the incompetence of those who, in an attempt to open a debate regarding the Basque police model, lack the political skill to do so without using social tensioning or threatening methods that were thought to be a thing of the past».

Likewise, they consider it «mean, false and disgusting to brand all members of the Basque Police as aggressive, fascist, racist, against Basque language or anti-Basque». And add that it «demonstrates the poor level of those who said that “they had been born to win” but are constantly being defeated».

## 2.5

### The Public Prosecutor’s Office files the complaint for hatred criticised by EH Bildu and EP-IU

GARA 27 May 2021



The Public Prosecutor’s Office of Araba is filing Josu Erkoreka’s Security Department’s complaint against Ernai for a «hate crime» accusation. EH Bildu described Lakua’s decision as «nonsense» and Elkarrekin Podemos-IU, as «not very wise». Ernai speaks about «criminalization» to divert the attention from PNV’s performance in the Government.



## «NONSENSE»

Maddalen Iriarte stated that «this is political and legal nonsense that could very well have very serious consequences for some young people in this country. Instead of solving their problems, the Government is lying and attacking young people as well as the sovereignist left wing».

## «NOT VERY WISE»

The spokeswoman for Elkarrekin Podemos-IU, Miren Gorrotxategi, pointed out that «hate crime» was introduced to protect vulnerable groups and using it to protect the authorities or the government «does not seem to be very wise».

The Public Prosecution Department of the Provincial Court of Araba has opened an investigation against Ernai for alleged «hate crime» against the Ertzaintza, after –as had been previously reported by NAIZ on Tuesday– the Security Department managed by Josu Erkoreka sent an official report including material such as posters, signs and various messages disseminated by the youth organization following the police charges against their peaceful demonstrations on 7 May.

## 2.6

## Ernai claims that there was no crime because the Police is not a vulnerable group

BERRIA 28 May 2021

ERNAIAREN AURKAKO IKERKETA

### Ernaik esan du ez dagoela deliturik, Polizia ez delako talde zaurgarri bat

Arabako Fiskaltzak ikerketa bat abiarazi du Ertzaintzaren aurkako ustezko gorroto delituengatik. Antolakundeak adierazi du polizia gehiegikeria salatzea ez dela delitua, eta «kriminalizazioa» salatua du



Ernai gazte antolakundeak Denostian egindako ageraltia, atzo. ANDONI CANELLADA / FORU



Kozinatu eta destatu  
**Iker Markinez** sukaldariak  
egunkarian argitaratu dituen  
errezetak zeure etxean



Gehien irakurriak

1 «Orain ditugun txertoak



The Public Prosecutor's Office in Araba, at the request of the Department of Security of the Basque Government, is investigating the youth organization Ernai for alleged hate crime against the Ertzaintza. This is the first time that Iñigo Urkullu's government has taken hate crime to the Prosecutor's Office. The youth organization has pointed out that hate crime is a tool created to protect the most vulnerable groups and «the Ertzaintza, who hit young people, workers and migrants with truncheons» are not a vulnerable group. In her appearance in San Sebastian yesterday, Ernai's spokeswoman, Izar Hernando, explained that reporting police abuse cannot be considered a hate crime; what is more, she said that exercising control over the Police and rethinking the model is an exercise that «any democratic country must do».

The Basque Government has reported and sent to the Prosecutor's Office the graffiti, posters and messages that have appeared in Ernai's name in recent weeks as they consider them to be hate crime. This crime sanctions those who promote «discrimination, hate or violence» against a group or a person due to their belonging to a certain race, ideology, religion or ethnicity: it carries a prison sentence of between one and four years. It is not the first time that this crime against the police has been investigated and there are sentences that, in the same line as Ernai's interpretation, question the existence of a hate crime against the police. In fact, the sentence issued by the Territorial Court of Tarragona (Catalan Countries) within the framework of a complaint of the same kind, denied the existence of a hate crime against the police, alleging that «various sentences have understood that police and public officers cannot be considered victims of hate crime since they are not a vulnerable group».



## 2.7

## Erkoreka states that there is no evidence of inappropriate practices carried out by Ertzaintza officers

BERRIA ekinaren 21a

### Erkorekak dio ez dela ertzainen jarduera desegokien frogarik

Gorroto gertakarien 2020ko txostena aurkeztu dute Eusko Legebiltzarrean. Jaurfilutzak Emaitzen kontra egindako salaketa eta Ertzaintzaren jokamoldea ere hizpide izan dituzte



Erakunde, Gobernantza Publiko eta Seguratasun Batzordean aurkeztu zuten txostena, atzo, Gasteizen.  
JOSU TXABARRI / IREKIA



#### Gehien irakurriak

- 1 «Orain ditugun txertoak jarri eta jarri ibiltzeak ez du babes maila handituko»

A study on hate incidents carried out by the Unesco Chair on Human Rights and Public Authorities and the University of the Basque Country has been presented at the Basque Parliament. The study examines hate incidents that took place in 2020 and the Chair's Director, Jon Mirena Landa, informed about this, but the subsequent interventions focused on other issues. The spokespersons of the parliamentary groups discussed the complaint of the Basque Government's Department of Security against Ernai as well as the performance of the Ertzaintza. With regard to this last item, the Regional Minister for Security, Josu Erkoreka, pointed out that those who accuse the Ertzaintza of discriminatory attitudes must present «clear facts» and so far there is no «evidence» in that regard.

The report has been presented at the Basque Government's Commission for Institutions, Public Governance and Security. Elkarrekin Podemos-IU's MP, Iñigo Martinez, mentioned the controversy developed in recent weeks with regard to hate crime and the behaviour of the Ertzaintza, and asked whether it was a «coincidence» that this controversy has been fostered right now, when the report was going to be presented. «It is unfortunate to try to distort an issue on which such good work has been done and in which there has been so much agreement by presenting the Police as a vulnerable group that can be the victim of hate crime», he said.



## 2.8

**Bildu accuses Erkoreka of «inventing crimes»  
and of Ernai's harassment of the Ertzaintza**

EL CORREO 24 June 2021

**Bildu acusa a Erkoreka de  
«inventarse delitos» y el acoso de  
Ernai a la Ertzaintza**

Ocho integrantes de las juventudes de Sortu declaran en los juzgados por las manifestaciones de mayo que derivaron en un presunto delito de odio a la Policía vasca que investiga la Fiscalía



Maddalen Iriarte, portavoz parlamentaria de EH Bildu. / BLANCA CASTILLO

Eight members of Ernai testified this Thursday morning after participating in the demonstrations called by the youth wings of the Basque nationalist left last month in Bilbao and Vitoria, which led to a number of incidents, police charges and a campaign of harassment against the Ertzaintza that the Public Prosecutor's Office of Araba is now investigating to see whether they had committed alleged hate crime. The vice-president and Minister of Security, Josu Erkoreka, was the first to imply that the perpetrators of the threatening graffiti and posters against the autonomous police could have broken the law, which has led to his permanent clash with EH Bildu.



The latest chapter took place today. At the entrance of the courthouse in Bilbao, the spokeswoman for the sovereignist coalition, Maddalen Iriarte, accused Erkoreka of «inventing crimes» in order to place the focus on Ernai, and said that attributing hateful attitudes to the Basque nationalist left wing youth is «nonsense» as they «were only demonstrating to claim their rights and the implementation by the Government of public policies that would improve their situation». A position that was also defended by one of the young men who were summoned to declare: «We took to the streets because it is impossible to leave home and because of the extremely high rate of unemployment ».

## 2.9

### **The extremist woman who attacked a young PP member faces penalties of up to 4 years in prison for hate crime**

EL MUNDO 7 September 2021

## **La radical que agredió a un joven del PP se enfrenta a penas de hasta 4 años de cárcel por un delito de odio**

La Fiscalía de Álava eleva la gravedad del puñetazo contra Ander García que le propinó la joven de 20 años tras llamarle "facha" y gritar 'gora ETA'





The Public Prosecutor's Office of Araba has modified the criminal type with which they intend to punish the attack by a 20-year-old woman against Ander Garcia, the young member of the Basque PP party and has categorized it as hate crime. Garcia attended the speedy trial held this morning at the Courthouse in Araba in which the offender was initially going to be tried for minor assault. Hate crime is penalized with a prison sentence of 1 to 4 years and a fine of 6 to 12 months, according to article 510 of the Criminal Code.

The 20-year-old woman who assaulted Ander Garcia in a night club in Victoria last Saturday could go to prison for alleged hate crime. The woman approached Garcia to confirm that he was a PP member, called him 'fascist' and shouted 'Gora ETA' as she punched the PP member and Legutiano candidate in the 2019 municipal elections in the face.

## 2.10

**The PP raise their tone and accuse the «Basque school» of generating «an atmosphere of hatred towards Spanishness»**  
EL CORREO 8 September 2021

### **El PP eleva el tono y acusa a la «escuela vasca» de generar «un clima de odio a lo español»**

El consejero Bildarratz reivindica la labor de los docentes y evita el cuerpo a cuerpo con los populares aunque critica el «ejemplo» que dan «algunos partidos»





The controversy over a series of hate crimes in the Basque Country shook the world of politics on Wednesday. On this occasion, the reason was a statement given by the President of the PP in Araba that opened a can of worms. Iñaki Oyarzábal raised the tone and charged against Basque education by stating that it «generates an atmosphere of hatred towards Spanishness». He added that this atmosphere was behind the latest attack suffered by a member of his party in Vitoria. His words were counterattacked by the Regional Minister of Education, the PNV member Jokin Bildarratz, who defended the «tremendous» work done by teachers in favour of coexistence and placed the focus on other social areas: «Schools can't do it alone», he said.

Ander Garcia Oñate, aged 21 and PP candidate for Mayor in the municipality of Legutio, Araba, in the latest elections, was assaulted last Saturday by a 20-year-old woman who punched him while she shouted «son of a bitch», «fascist», «fucking PP» and hailed ETA. Oyarzábal was clear in that regard: «There are young people who go out feeling an intense hatred that someone should explain why this is so», he stated in Radio Euskadi.

## 2.11

### The young woman arrested in Gasteiz will in the end be accused of «hate crime»

GARA 7 September 2021

#### La joven detenida en Gasteiz será acusada finalmente de «delito de odio»

Este martes se anunciaba un juicio rápido en Gasteiz contra una joven detenida por la Ertzaintza acusada de golpear a un miembro del PP en una discoteca. A petición de la Fiscalía, se ha suspendido para dar paso a un proceso por «delito de odio».



PUBLIZIATEA





The 20-year-old woman arrested on Saturday in Gasteiz under the accusation of hitting a PP member will finally face proceedings for «hate crime». This could carry penalties between one and three years in prison.

The only version about what happened is that offered by this member of the PP party, Ander Garcia, and backed up by several witnesses. It took place at the entrance of a night club in Gasteiz, when, according to the young man, he was approached by the woman who hit him while she alluded to his political affiliation.

The young man was later arrested by the Ertzaintza and the Regional Minister of Security, Josu Erkoreka, has said that «it all points to political reasons».

As has been customary in recent weeks, in addition to the institutional condemnation of the event, some forces, headed by PP leader Carlos Iturgaiz, have tried to point to EH Bildu and Sortu.

## 2.12

### The woman under investigation for «hatred» denies the attack and knowing that Garcia was a PP member

GARA 13 de septiembre

#### La investigada por «odio» niega la agresión y que conociera que García era del PP

La declaración de la joven detenida en Gasteiz hace nueve días ha permitido acceder al fin a su versión, radicalmente diferente a la de Ander García Oñate dice que no le golpeó y que no tenía conocimiento de su filiación política.



PUBLICITATIA



PUBLICITATIA



The statement of the young woman arrested in Gasteiz nine days ago has finally allowed us to know her version, which is totally different from that of Ander Garcia Oñate: she says that she did not hit him and that she was not aware of his political affiliation.

During the last eight days the complaint of a member of PP in Gasteiz, called Ander Garcia Oñate, has gone viral. He says that he was attacked at the entrance of a night club by a 20-year-old woman who was later arrested by the Ertzaintza. Their statement in court on Monday has finally allowed us to know the woman's version, which is totally different from what has been monopolising all the space in the media. Thus, according to what has been leaked, as neither of them has wanted to make a statement, the young woman admits that she did insult him but denies hitting him. And also stresses that she did not know that he has a PP member.

Garcia Oñate assured from the start that he was punched unexpectedly and without any previous exchange of words, and added that some of those present in the area shouted «Gora ETA». The facts are finally being investigated as a possible hate crime by decision of the Public Prosecutor's Office, after a speedy trial of the young woman was announced and subsequently cancelled.

## 2.13

### Bildu says they are concerned about "hate crimes"

EL MUNDO 22 September 2021

## Bildu dice que le preocupan los "delitos de odio"

Cinco días después de apoyar a Parot, abre negociaciones formales con el Gobierno





The Government formally opened negotiations with EH Bildu on Wednesday with the hope to gain their support to get the Budgets approved during a bilateral meeting at the Congress, headed by the Minister for the Presidency, Félix Bolaños, which was described as «friendly» and «positive» by the nationalist left wing party.

The meeting served to maintain bridges and bring positions closer together with regard to the accounts and the Government's legislative agenda for the next months. However, EH Bildu also took the opportunity to raise an unexpected subject. They prompted the Executive to react against «hate speeches», a problem that the party led by Arnaldo Otegi blamed exclusively on the «extreme right».

Thus, EH Bildu asked the Government representatives to «take a firm stand to face and prevent the proliferation and normalization of these messages due to the increasing risk they involve for the rights and freedoms of all citizens», as sources of the nationalist party pointed out at the end of the meeting.

## 2.14

### 2.14 Iturgaiz warns that the PP will not be «intimidated» by the attacks

CORREO 29 September 2021

#### Iturgaiz advierte de que el PP no se dejará «amedrentar» por las agresiones

Los populares arropan a los tres jóvenes que han sido atacados en Vitoria en los últimos años y denuncian el «odio» que existe en las calles



PP members support the three young men who have been attacked in Vitoria in recent years and denounce the «hatred» in the streets.



David Chamorro's voice still breaks when he talks about the brutal beating that a group of hooded people gave him in the UPV campus in Vitoria. «I still go to university and remember that the last thing they called me before I lost consciousness was 'fucking Spaniard'. The faculty remains the same and there is no freedom. Only those who think the same as the nationalist extremist left wing can express themselves», he said. Chamorro participated yesterday in an event in Vitoria organized by the Basque PP party to support their younger members, those who suffer harassment from the violent sectors. Next to him was Ander Garcia, who was attacked earlier this month at the entrance of a night club; and Iñaki Garcia Calvo, who suffered a similar episode in May. The three incidents took place in the capital. «You are the youth that this land needs», Carlos Iturgaiz said.

## 2.15

### **Urkullu rules out an increase in hate crimes in the Basque Country and assures that now «more incidents are reported»**

EL CORREO 26 November 2021

## **Urkullu descarta un aumento de los delitos de odio en Euskadi y asegura que ahora «se denuncia más»**

El lehendakari defiende que el incremento de casos se debe «a una mejora del sistema de detección» y «de la mayor eficacia» de las fuerzas de seguridad





The Lehendakari claims that the increase in the number of cases is due to «an improvement in the detection system» and the «greater efficacy» of the police forces.

241 hate crimes were recorded in the Basque Country in 2020, according to data from the Ertzaintza, and, so far this year, this type of crime has increased by 7%. «Now there is more reporting, more cases that go public», said the Lehendakari, Iñigo Urkullu, who has ruled out that this is causing an increases sense of insecurity in the Basque Country. The leader has thus responded to the president of the Basque PP, Carlos Iturza, during the control plenary session of the Basque parliament, who had assured that the data are «a cause for alarm».

«Most of us, Basques, are tolerant and respectful, but the Basque Country is far from being a paradise», Iturza criticised. According to reports of the autonomous police, almost half of the hate crimes are racist or xenophobic attacks, 21% are related to the sexual orientation of the victims, 12% were aimed at people with functional diversity and 10% were committed for ideological reasons. «The Basque Country is in the lead with respect to hate crime in Spain, only behind Melilla», he said.



## 2.16

## Death threats in Vitoria against a retired Ertzaintza officer with graffiti at the entrance of his building

EL CORREO 1 December 2021

### Amenazan de muerte en Vitoria a un ertzaina jubilado con una pintada en el portal de su casa

El antiguo agente ya ha presentado denuncia por un posible delito de odio. «Esta gente sobra de nuestra sociedad, que pidan perdón y cesen ya estos ataques», reclama el sindicato policial Erne



La pintada aparecida esta mañana de miércoles en el edificio donde reside el exertzaina con su familia. / BAE

The retired officer has already filed a complaint for possible hate crime. «These people are not needed in our society, they should apologize and stop these attacks», claims the police union Erne

Like in those years when ETA and their followers imposed the law of terror. This Wednesday morning, when a retired Ertzaintza officer was leaving home, he found a threatening graffiti at the entrance of his building, situated in the neighbourhood of San Martin, in Vitoria. The graffiti reads 'Zipayo muerto' (dead sepy) in reference to his former occupation and is accompanied by a circle that looks like a bulls' eye.



The 'target' of the message has already filed a complaint at the police station situated in Portal de Foronda, in the capital of Araba. The perpetrator or perpetrators could be prosecuted for hate crime if they are located by the autonomous police. Moreover, the victim has also asked the City Council of Vitoria to send a cleaning team to remove the graffiti. The officer lives there with his family.

Erne, the majority union in the autonomous police, has harshly condemned this anonymous attack that reminisces of other times which seemed to have been left behind. "These people are not needed in our society. If they really want to live with the rest of the society, they need to apologize and stop these attacks», they claimed.

## 2.17

### **Two years imprisonment in Morocco for a person arrested in Basauri for terrorist threats**

EL CORREO

#### **Dos años de prisión en Marruecos para un detenido en Basauri por amenazas terroristas**

Estaba obsesionado con cometer acciones violentas contra intereses y personas marroquíes





He was obsessed with committing violent actions against Moroccan interests and people.

The Moroccan justice has sentenced a man arrested by the National Police in Basauri in March for terrorist threats to two years in prison and a fine of one thousand dirham. During the enquiries carried out in Spain, the police forces verified that the arrested person was obsessed with committing violent actions against Moroccan interests and people, and continuously published his own videos inciting and justifying the commission of terrorist acts.

To be precise, he published videos where he threatened and encouraged people to commit extremely harsh crimes through his numerous social profiles. The Moroccan press also reported on the operation and the expulsion of Faisal Al Bahloul, alias 'Boukhkouna', who they define as a pro-Polisario activist.

## Sexual orientation / Identity



### 3.1

#### The association Naizen reports the attack on a transsexual minor

BERRIA 12 February 2021

#### Adingabe transexual bati eraso egin diotela salatu du Naizen elkarteak

Lau adingabek transexuala izateagatik iraindu eta jo egin zuten, Iruherriko parke batean. Salaketa jarri dute lesioengatik eta gorroto delituagatik.



Naizen elkartearen aurkezpen ekitaldia, 2019an, Donostian. © GORKA RUBIO / FOKU



#### Gehien irakurriak

1 «Orain ditugun txertoak larri eta larri libltzeak ez du



Four minors insulted him and beat him on the grounds of his transsexuality in a park in Pamplona. A complaint has been filed for injuries and hate crime. The association of families of transsexual minors, Naizen, has reported that last Sunday a minor from the association was assaulted by other four minors in a park in Pamplona when he was playing with his friends. They insulted him for being transsexual, threw him onto the ground and kicked him several times. The family has filed a complaint with the Regional Police for injuries and «hate» crime.

According to Naizen, the minor is afraid to go out, as he fears meeting his attackers. The association has expressed their condemnation of any attack on any person.

## 3.2

### Fourteen attacks against the LGTBI community have been reported in Araba

BERRIA 13 May 2021

**LGTBI kolektiboaren aurkako hamalau eraso salatu dituzte Araban**

Ikusgune Gasteizko LGTBifobiaren aurkako behatokiak txosten bat egin du, LGTBifobiaren aurkako egunaren harira. Transen aurkako gorroto diskurtsoak areagotu egin direla salatu dute.



LGTBifobiaren kontra egindako elkarretaratze bat, Gasteizen. © RAUL BOGAJO / FORUJ

Kozinatu eta dastatu **Iker Markinez** sukaldariak egunkarian argitaratu dituen errezetak zeure etxean

LGTBifobiaren kontra egindako elkarretaratze bat, Gasteizen.

**Gehien irakurriak**

1 «Orain ditugun txertoak jarri eta jarri ibiltzeak ez du habes maila handituko»

Ikusgune, the Observatory against LGTBIphobia in Vitoria-Gasteiz, has prepared a report on the occasion of the Day against LGTBIphobia. They denounce the increase of hate speeches against trans people.

Discrimination, insults, expressions of contempt, physical violence... Four-



teen attacks against the LGTBI community were reported in Araba from May 2020 to April 2021, according to the report presented today by Ikusgune, the Observatory against LGTBIphobia in Vitoria-Gasteiz. Last year's report recorded 25 attacks; therefore, the number of attacks against sexual and gender diversity has decreased. Ikusgune explained that this decrease has been closely linked to the pandemic: «It has hindered the reporting of violent situations and there have been no spaces where many attacks usually take place: parties, leisure...». They have denounced the increase in hate speech against transsexual people. «This type of message must be stopped. Hate speech is the preliminary stage to hate crime».

### 3.3

#### The LGTBI+ Observatory for Bizkaia, Gipuzkoa and Araba has been established.

BERRIA 2021ko ekainak 28



The aim is to prevent hate crime, achieve equality and present a bill to the Basque Government.

The LGTBI+ Observatory has been established in Bizkaia, Gipuzkoa and Araba. Nine associations related to the community make up the research group: Aldarte, AMPGYL, Bizigay, Errespetuz, Gaylespol, Gehitu, Izanez, LGTBerri and Naizen. The new observatory aims at stopping hate crime and achieving equality. To this end, they intend to draw up a bill or draft law. It has been presented today in Bilbao by Sarai Montes and Mikel Oribe, Chair



and Vice-Chair of the LGTBI+ Observatory, respectively.

The Observatory highlighted some information from the Report on Hate Crime in Basque Autonomous Community: Hate crimes related to the LGTB+ Community tripled in 2020. As an example, they pointed out to the homophobic attacks that have taken place in recent weeks. In addition to condemning and denouncing these attacks, they think that the Observatory can also serve to prevent: «We will analyse the attackers, their motivations, their influences and their environments to eradicate LGTBphobia and discrimination in order to be able to create effective detection, prevention and repair mechanisms», Montes pointed out.

### 3.4

#### Nine people under investigation for homophobic attack on a young man in Basauri

GARA 9 June 2021



The Ertzaintza and the Local Police of Basauri are investigating nine young men as the alleged perpetrators of a group attack on a young man last Sunday, as confirmed by the Basque Department of Security on Tuesday.

The Local Police of Basauri was called in the early Sunday morning due to an



attack that a group of people were carrying out on a young man in the area of Bizkotxalde Park in Basauri. Then, in collaboration with the Ertzaintza, who opened an enquiry for alleged bodily harm, it was possible to identify nine young people, aged between 18 and 27, who are under investigation for allegedly participating in the aforementioned attack. There is no information of any arrests.

This Wednesday morning, the Regional Minister of Security, Josu Erkoreka, said on the radio that he felt «truly devastated» by what happened. And he has tweeted it with a hashtag alluding to hate crimes.

In an interview in Radio Popular, he argued that once all the material is available, it will be provided to the judicial authorities, but, in his opinion, «we are probably dealing with bodily harm with hate aggravation».

### 3.5

#### «We must not stop fighting», underlines the young man who was beaten in the homophobic attack in Basauri

GARA 9 June 2021



**«No hay que dejar de luchar», subraya el joven agredido en el ataque homóforo de Basauri**

«Hoy he sido yo, pero cualquier día puede ser otro», ha lamentado Ekain este miércoles, tras prestar testimonio en la comisaría de la Ertzaintza de Basauri. Colectivos sociales han convocado una manifestación para este jueves, a partir de las 19.00.

**Ertzaintzako albisteak**

Nueve personas investigadas por la agresión homófila a un joven en Basauri

Los partidos de la Cámara de Gasteiz llaman a la Fiscalía a actuar tras la agresión de Basauri

Ekain, the 23-year-old man from Basauri who was given a beating last Sunday by a group of young people due to his sexual orientation, made a statement on Wednesday at the Ertzaintza police station in this town of Bizkaia. Outside the police headquarters he spoke with the media and gave an ac-



count of what had happened. He said he was with a friend at around 2 a.m. last Sunday in Bizkotxalde park when another young man approached them and started telling him that he «made him feel sick, that he was a fucking faggot» and that he had to go.

Ekain refused to leave and retorted that «if he felt upset by me, he was the one that had to go». According to his account of the facts, his attacker then punched him and he felt other blows from behind, which were supposedly given by the rest of the members of the group.

### 3.6

#### **Gehitu asks the Prosecutor's Office to investigate the homophobic video of the young men from Donostia in Twitch**

EL DIARIO VASCO 2 July 2021

### **Gehitu pide a la Fiscalía que investigue el vídeo homófobo de los jóvenes donostiarras de Twitch**

La Diputación ha mostrado también su «rotunda condena» ante esta agresión y ha afirmado que «el odio y las amenazas contra las personas LGBTIQ+ no tienen cabida en Gipuzkoa»



Gehitu, the Association who protects the interests of the gay, lesbian, transgender, bisexual and intersexual in the Basque Country, has requested



the use of a firm hand with the young people from Donostia who recently had a homophobic conversation with a high content of verbal violence in the audiovisual streaming platform Twitch. The organization, by means of a statement, has asked the Public Prosecutor, «especially the delegated prosecutor for hate crimes and discrimination, to open an enquiry to investigate the facts»

The video in which these young people openly speak about «how many homosexuals you are able to punch down», «how many you are able to kill», «there is no vaccination for them -homosexuals-, they are sick», has provoked a huge outpouring of indignation in the society of Gipuzkoa, who wonder how people who are so young can think that way in the year 2021.

### 3.7

#### **A 23-year-old young man in critical condition after being beaten by a group in an outdoor booze party in Amorebieta**

EL CORREO 28 July 2021

### **Un joven de 23 años en estado crítico tras una paliza grupal en un botellón de Amorebieta**

Sufre lesiones en la cabeza y el ataque ocurrió el domingo de madrugada





A 23-year-old man was brutally beaten in the early morning last Sunday in a public park in Amorebieta. According to El Correo, the victim, who lives in Lemoa, was beaten with bottles and sticks and punched by several young people who surrounded him while some recorded the beating –it was subsequently posted on social media-.

His critical condition kept him in the Resuscitation Unit of Cruces Hospital. «He is struggling between life and death», his «devastated» friends told El Correo yesterday. The victim, whose initials are A. I., suffers serious traumatic brain injury, amongst other injuries, after the group assault, according to people close to him.

### 3.8

#### Transgender woman raped in Gasteiz

GARA 4 August 2021

## Violan a una mujer transexual en Gasteiz

Una mujer transexual denunció ayer haber sido víctima de una violación el pasado domingo en el barrio de Abetxuko de Gasteiz. La Policía local confirmó esta denuncia de cuya investigación de

A transgender woman reported yesterday that she had been raped last Sunday in the neighbourhood of Abetxuko in Gasteiz. The local police confirmed this complaint that is being investigated by the Ertzaintza.

The LGTBI+ Observatory of the capital of Araba, Ikusgune, placed themselves at the disposal of the victim and gave her all their support.

With this attack Ikusgune has already recorded fifteen incidents since May, four more than those recorded since the same month last year. Seven are related to hate speech, four are assaults and the other four discriminatory behaviours.

In a statement they warned that there is a «serious LGTBI+phobic surge», and stressed that «it is now more necessary than ever to double the efforts to put an end to the discourse that precedes the attack ».



«Hate messages and assaults hide a message to an entire group and that is the reason why these facts question the entire society», Ikusgune underlined.

### 3.9 Homophobic attack suffered by a young man in Amurrio

GARA 13 August 2021



The Ertzaintza has confirmed that shortly after 10 p.m. on Thursday a young man reported he had been assaulted in Amurrio and that they had opened an enquiry to find out what had happened, without giving any other details in that regard. According to some media, the attack took place in a pub and included physical assault together with homophobic expressions.

The Town Councils of Amurrio as well as Aiara have expressed in institutional statements their «absolute rejection and indignation at the homophobic attack» and have called a demonstration to protest against these hate crimes in the square of Amurrio at 6 p.m.

Both councils have approved almost identical condemnation statements, in which they place all the existing municipal resources at the disposal of the victim and state that these types of acts «involve a serious attack against dignity as well as physical and moral integrity and, consequently, entail a serious and intolerable violation of human rights».



### 3.10

## Another homophobic attack in Gasteiz

GARA 7 September 2021



A man has reported in his social media that last Saturday he suffered a homophobic attack near Fueros, in Gasteiz. The victim had left a pub and was walking towards that street when a man shouted «hey, fucking faggot». When he turned to see who it was, the attacker punched him in the face, knocking him onto the ground.

In view of the increase in male chauvinistic and LGBTI+phobic attacks, the Euskadiko Gazteriaren Kontseilua (EGK) has claimed for justice for every attack as well as for free justice to report hate crimes. «In fact, in most cases those who suffer the attack do not have sufficient resources to hire lawyers and many cases are lost due to the lack of resources, they warned».

Moreover, EGK think it is necessary to go further in researching and updating data for these cases, since they consider that «to carry out real prevention» it is essential «to have an accurate image of the reality». In this regard, they also claim for the provision of human and economic resources for the observatories of this violence.



### 3.11

#### Arrested in Irun for harassing, threatening and insulting a waitress due to her sexual condition I

EL DIARIO VASCO 11 October 2021

### Detienen a un hombre en Irun por molestar, amenazar e insultar a una camarera por su condición sexual

El arrestado, de 32 años, es un cliente que tenía prohibida la entrada al establecimiento por causar molestias en diversas ocasiones



Ertzaintza officers have arrested in Irun a 32-year-old man accused of a hate crime and serious resistance to police officers, after he repeatedly threatened and insulted the waitress at an establishment due to her sexual condition.

A man has been arrested in Irun for repeatedly harassing, threatening and insulting a waitress due to her sexual condition.

The incident took place in the evening last Sunday when the victim was working in a café in Irun and a customer who had previously been banned from entering due to his having caused trouble on several occasions went inside.



The woman asked him to leave the premises but he refused several times. Two Ertzaintza officers who were inside told the customer that he had to leave the premises, which he eventually did.

However, twenty minutes later he returned and tried to stay in the café on two other occasions, without the police being present, during which time he threatened and insulted the waitress due to her sexual condition.



# A2

## **ANNEX II.**

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**Extracts from the 2021 reports of the chief prosecutor of the basque autonomous community and the general prosecutor of the state (year 2020).**



The section regarding “hate crimes and discrimination” of the 2021 Report of the General Prosecutor of the State maintains basically the same structure as in previous years<sup>183</sup>. Compared to the year 2019, the number of prosecuted cases decreased considerably, which can be attributed to the situation of home confinement caused by the health crisis. Within the framework of this global decrease, there has been a considerable increase in hateful or discriminatory conducts in the media or through ICTs, without any data being provided in this regard.

A new feature is the information regarding the cases recorded by the Office of the General Prosecutor of the State in 2020. The Delegated Prosecutor for Hate and Discrimination Crimes received 34 reports or complaints, mainly for crimes related to hate speech. Out of the 34 cases reported, 19 were referred to the appropriate territorial prosecutor’s office and 15 were filed *ad limine*<sup>184</sup>.

The Report highlights once again the “bad situation” of the system for recording and monitoring judicial hate crime data<sup>185</sup>. As stated in previous years, it is a priority problem and one of the lines of action of the Delegated Prosecutor should be the “implementation of an issue register in the branches or sections of the territorial prosecutor’s offices, homogenous for all of them and with relevant data, for it to provide a more accurate insight of the criminal reality on which work is being done and guide the actions of the Public Prosecution Department”. In addition to the creation of provincial records, there should be a centralized repository where all indictments should be recorded as well as the judgments issued in the proceedings regarding hate crimes.

In connection with the above, emphasis is placed on the deficiencies of the different computer applications used for judicial recording and the problems to locate and monitor proceedings as well as the poor quality of the data provided by the recording systems. On many occasions, the recording and control of the proceedings by territorial prosecutors is carried out “personally and manually” and “in internal records not integrated into the general applications”<sup>186</sup>. In this regard, it is noteworthy that the recording applications do not have any specific field to locate the judicial proceedings where the aggravating circumstance of art. 22.4 of the Criminal Code is applicable. Moreover, the Report indicates that, even if the proceedings are located, the recording applications do not provide sufficient data about them, such as the origin of the proceedings or the discriminatory motiva-

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183. Memoria de la Fiscalía General del Estado de 2021 (Ejercicio 2020), pp. 1077-1094. Accesible en línea: <https://www.fiscal.es/documents/20142/ddc76e26-b5e3-4793-1cbb-8cadbe0818a1> [último acceso: febrero de 2022].

184. *Ibíd.*, p. 1083.

185. *Ibíd.*, p. 1080.

186. *Ibíd.*, p. 1081.



tion that was ascribed. Therefore, the Prosecutor insists that it is necessary to improve and standardize the recording applications of the Administration of Justice and that, in the meantime, an internal and unified recording system should be implemented in the Public Prosecution Department.

Finally, it should be pointed out that the Report mentions the need for an adequate conceptual delimitation of hate crime and the erroneous connection with other types of crime not related to the discriminatory motivation. Thus, mention is made of certain “expression” crimes such as slander against the Crown, slander against the institutions of the State or offences or insults to Spain. Also, the crimes included in the hate crime and discrimination speciality (see the table below) that protects the legal assets of “equality as one of the highest values of the legal order (art. 1 Spanish Constitution), the right to non-discrimination (art. 14 Spanish Constitution) and human dignity (art. 10 Spanish Constitution)”<sup>187</sup>.

Below is the table of statistical data recorded by the General Prosecutor of the State in his Report, listing the court proceedings regarding hate crime and discrimination in the Spanish Courts in the year 2020<sup>188</sup>.

## 1. PROCEEDINGS MONITORED BY THE PUBLIC PROSECUTION:

Threats to certain groups. Art. 170.1	20
Torture by public official for discrimination reasons. Art. 174.	2
Discrimination in employment. Art. 314	-
Incitement to hatred/violence/discrimination. Art. 510.1	91
Acts of humiliation or justification of crime. Art. 510.2	170
Refusal of benefits. Arts. 511-512	12
Unlawful association for discrimination. Art. 515.4	2
Against religious feelings. Arts. 522-525	5
Against moral integrity. Art. 173.1	29
Crimes with aggravation. Art. 22.4.	300
Others.	44
<b>Total</b>	<b>675</b>

187. Ibid., p. 1082.

188. Ibid., pp. 1087-1088.



**2. ENQUIRIES OPENED:**

Threats to certain groups. Art. 170.1	18
Torture by public official for discrimination reasons. Art. 174.	1
Discrimination in employment. Art. 314	2
Incitement to hatred/violence/discrimination. Art. 510.1	84
Acts of humiliation or justification of crime. Art. 510.2	55
Refusal of benefits. Arts. 511-512	5
Unlawful association for discrimination. Art. 5154	1
Against religious feelings. Arts. 522-525	1
Against moral integrity. Art. 173.1	11
Crimes with aggravation. Art. 22.4.	37
Others.	21
<b>Total</b>	<b>236</b>

**3. CHARGES BROUGHT BY THE PUBLIC PROSECUTION::**

Threats to certain groups. Art. 170.1	3
Torture by public official for discrimination reasons. Art. 174.	–
Discrimination in employment. Art. 314	–
Incitement to hatred/violence/discrimination. Art. 510.1	20
Acts of humiliation or justification of crime. Art. 510.2	47
Refusal of benefits. Arts. 511-512	1
Unlawful association for discrimination. Art. 5154	–
Against religious feelings. Arts. 522-525	–
Against moral integrity. Art. 173.1	12
Crimes with aggravation. Art. 22.4.	52
Others.	–
<b>Total</b>	<b>135</b>



**4. JUDGMENTS:**

Threats to certain groups. Art. 170.1	2
Torture by public official for discrimination reasons. Art. 174.	–
Discrimination in employment. Art. 314	–
Incitement to hatred/violence/discrimination. Art. 510.1	14
Acts of humiliation or justification of crime. Art. 510.2	27
Refusal of benefits. Arts. 511-512	1
Unlawful association for discrimination. Art. 5154	–
Against religious feelings. Arts. 522-525	2
Against moral integrity. Art. 173.1	7
Crimes with aggravation. Art. 22.4.	46
Others.	45
<b>Total</b>	<b>144</b>

With regard to the data recorded the previous year (2019), it is worth mentioning the sharp decrease (-42%) in the number of cases recorded under the category of “cases monitored by the Public Prosecution” which shows the judicial proceedings that have been located during the current year. The decrease is much less noticeable in the number of enquiries opened by the Public Prosecution (-13%), charges brought (-7%) and judgments issued (-13%). As for the crime modes, the upward trend of crimes with discriminatory aggravation (art. 22.4) has consolidated and they are quantitatively equal to the crimes related to hate speech (art. 510.1 and 2, arts. 522-525).

As for the Public Prosecutor’s Office of the Basque Autonomous Community, their 2021 Report (year 2020) contains a section regarding the criminal protection of equality and against discrimination<sup>189</sup>. The 2021 Report does not include, unlike in previous years and for unknown reasons, data regarding judicial proceedings initiated, charges brought, judgments issued and enquiries opened by the Public Prosecution in the Basque Autonomous Community. They just state that in 2020, in contrast to the general trend, there was a “considerable increase” in the number of criminal proceedings initiated and charges brought, which “shows that the efforts made in the control of proceedings, as well as in the sensitization and awareness of the issue are proving successful”<sup>190</sup>. Likewise, the most common discriminatory

189. 2021 Report of the Chief Prosecutor of the Basque Autonomous Community (year 2020), pp. 230-233. Accessible online: <https://www.fiscal.es/>

documents/20142/d56892da-49c4-0ad3-979e-ee-ce69d70045 [last accessed: February 2022].



motives would be race or ethnicity, sexual identity, nationality or national origin, ideology and disability.

In the same line as the Report of the General Prosecutor of the State, the Prosecutor of the Basque Autonomous Community insists on the impossibility of monitoring the criminal proceedings related to hate crime and discrimination. With the exception of Bizkaia, where the Magistrates' Courts record the hate crime reports drawn up by the Ertzaintza under a specific category, the Courts of Araba and Gipuzkoa do not have that option<sup>191</sup>. It is pointed out that, in these territories, some hate crime reports drawn up by the Ertzaintza are classified as proceedings to prosecute minor offences (threats, coercion or bodily harm) in which the aggravation of art. 22.4 could be applicable but they usually end up in a stay of proceedings or an acquittal.

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190. *Ibíd.*, pp. 232-233.

191. *Ibíd.*, pp. 232-233.











*Euskadi, auzolana, bien común*

EUSKO JAURLARITZA



GOBIERNO VASCO

eman ta zabal zazu



Universidad  
del País Vasco

Euskal Herriko  
Unibertsitatea



## **ERRATUM**

**On page 148 of the report, the references of 8 of the analysed Judgments have been erroneously not included:**

SAP Bizkaia (Section 2) Jury Court no. 28/2018 of 31 May

SAP Bizkaia (Section 1) Jury Court no. 80/2016 de 9 December

SAP Bizkaia (Section 1) Jury Court no. 34/2018 de 26 April

SAP Bizkaia (Section 2) Jury Court no. 336/2016 de 27 December

SAP Bizkaia (Section 2) Jury Court no. 56/2016 de 28 October

SAP Araba (Section 2) Jury Court no. 333/2017 de 21 December

SAP Bizkaia (Section 6) Jury Court no. 28/2016 de 14 April

SAP Araba (Section 2) Jury Court no. 342/2014 de 1 October