

Disability Hate Crime in Estonia, Latvia and Lithuania

Recommendations for stakeholders

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Violence and crime experienced by persons with disabilities is widespread across the world¹. Yet, in the Baltic countries there is a significant latency and lack of data and statistics with regards to persons with disabilities as crime victims, including hate crimes. In Country Reports developed under the project 'Police and NGO Cooperation to Combat Hate Crime in Estonia, Latvia and Lithuania', similar trends are indicated across all three Baltic countries, where states fail to recognise, record and investigate disability hate crimes.

In this publication, the term 'disability' is referred to as described in the UN Convention on the Rights of Persons with Disabilities: "disability is an evolving concept and results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others"². Additionally, a 'hate crime' is any criminal offence, which is committed with a bias motivation against people primarily because of their group affiliation, in this case – their disability. These Pan-Baltic recommendations were developed by experts, and disability NGOs were consulted in the process. The recommendations target different stakeholders, to promote a better understanding when tackling disability hate crimes.

These recommendations target three different stakeholder groups: 1) decision makers; 2) law enforcement and victim support services; 3) non-governmental organizations and the community of persons with disabilities. Some additional recommendations aim to raise awareness in the general public, about persons with disabilities and their human rights, including: respecting and promoting their dignity, decreasing stigmatization, promoting social inclusion and accessibility to all services, including access to justice and victim support.

A set of unique recommendations are provided for each Baltic country separately. Also general recommendations are compiled with regards to all three Baltic States, for reforming legal regulations, reshaping practices and raising awareness about the need for recognizing and adequately responding to disability hate crimes.

¹ https://www.who.int/disabilities/publications/violence_children_lancet.pdf?ua=1

² <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

Recommendations for decision makers:

- An in-depth analysis should be carried out using a broad consultation with the disability community. This should be used to appropriately regulate disability hate crime, including hate speech, with national legislation.
- Responsible national authorities should collect and analyse the data of violent crimes against persons with disabilities, including disability hate crime.
- The specific studies of Baltic countries should examine the experiences of people with disabilities, including experience of hate crimes, hate speech and discrimination.
- Multi-agency strategies should be developed on the national level to plan potential responses to cases of disability hate crime. Responses should be predicted to involve different groups, e.g. the police, victim support, social and health care services, housing providers (landlords), schools, and disabled people's organisations.
- People with disabilities themselves should be involved as the main experts in developing strategies to tackle disability hate crime.
- Ensuring accessibility of the justice system for persons with disabilities is an obligation under international and European legislation³. Police stations, courts, etc., all should be accessible to people with disabilities. Accessibility refers to physical accessibility (spaces accessible and comfortable to use, for example, for people with reduced mobility, blind, partially sighted persons, people with intellectual disabilities, etc.) and the system's operational accessibility (which includes awareness levels and training of professionals to be able to meet the needs of disabled victims and to be able to communicate with them and treat them with respect, also to be able to ensure the accessibility of all information). Justice systems should systematically conduct accessibility audits in order to estimate current needs and assess gaps in the provision of accessibility as described above.
- High quality victim support services should be ensured to all victims of hate crimes. They should be available, accessible, and user friendly to persons with different kinds of disabilities.

Recommendations for law enforcement authorities and victim support services:

- Training programs should be developed and trainings delivered for all relevant stakeholders/parties involved in tackling disability hate crime. Such training should in-

³UN Convention on the rights of persons with disabilities, art. 13; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

volve and ideally be led by people with disabilities themselves and their associated organisations as experts.

- Training programs should focus on a human rights-based approach, address any existing prejudice towards persons with disabilities amongst the police and other relevant professional groups; and focus on sensitivity, empathy, and communication skills. The latter is especially important when working with people who have individual speech, language and communication needs – the goal being to ensure that victims (and witnesses) feel that they have had a voice, that they have been heard and that they have had a chance to give their best evidence;
- The training program should also acknowledge, address and focus on prevention of power imbalances between professionals and victims or organisations representing victims.
- Police and all other relevant bodies should respond swiftly and effectively to disability hate crime and hate incidents. There should be clear legal provisions and practical, methodological guidelines for accurately recording all incidents, so that it would be possible to identify any patterns.
- Official data and statistics should be collected on specific ‘grounds of disability’ and crime recording databases should be inclusive of this information.
- It is recommended to determine and share best practice examples of investigating and ‘evidencing’ disability hate crimes among the Baltic countries, within Europe and beyond.
- Cooperation between law enforcement, victim support services and NGOs representing diverse disability groups, should be actively encouraged in order to efficiently facilitate the related goals.

Recommendations for non-governmental organizations and the community of persons with disabilities:

- Campaigns should be organised that empower people with disabilities and reduce a negative perception that violence experienced by disabled people is ‘normal’. It is important to ensure that all campaign documents, training materials, reports and any other information is available in multiple, accessible formats, (e.g. to include child-friendly, easy-to-read, Braille, and audio alternatives for written text, etc.).
- Disability organisations and people with disabilities can recognise possible cases of discrimination (especially in employment), but there is a lack of awareness and

knowledge about disability hate crimes. Support is needed for peer-to-peer work amongst people with disabilities and their organisations, to raise awareness of hate crimes. It is crucial to ensure opportunities for people to speak up about their experiences, and to be heard; information about what to do in order to report such a crime should be available and accessible.

- Awareness raising on the rights of people with disabilities and disability hate crime is also needed for a wider range of people and professionals. Family members, personal assistants, social workers, victim support workers, counsellors, crisis hotline staff and other frontline professionals, who work with people with disabilities, need information on how to recognize disability hate crime, how to support the victim of such violence, and how to behave when they become witnesses of hate crime.
- Awareness raising activities on the peculiarities of the justice system and support services are needed, in order to help persons with disabilities overcome their predominant distrust and fear, related to accessing justice and protecting their rights, as well as reaching out for support services.

Recommendations for awareness raising on disability hate crimes for the general public:

- A series of public campaigns to raise awareness of the characteristics of disability hate crime and its impact on victims (to include educational initiatives in schools), could be effective.
- Outreach to the general public is important in order to enable people to be more aware and dare to report violence against a person with a disability, as well as to appeal court decisions, whenever necessary.
- There is a need for individuals to act as community mediators in situations where a person with a disability is subjected to hate speech, which does not amount to crime and therefore cannot be investigated by the police, but which can have a significant impact on the quality of life of the person. For example, embarrassing neighbours, who often unjustifiably call the police, petitions from local residents, and campaigns to prevent the establishing of accommodation for persons with disabilities, or similar services in their neighbourhood.

Country Specific Recommendations

Lithuania

Legislation:

- In Lithuania, Criminal Code specifies that if a crime was committed with the intention to express hatred against a group of people or a member of that group on the grounds of their age, gender, sexual orientation, disability, race, ethnicity, language, descent, social status, religion, beliefs or opinions, it is deemed that motivation of a crime is considered an aggravating circumstance (Art. 60 par. 12) or a qualifying element of a criminal offence (art. 129, 135 and 138). As currently hate crimes against people with disabilities are hardly reflected in national crime statistics, it can be concluded that such a motive is not registered or taken into account within criminal investigations.
- With regards to disability, the Criminal Code has a separate notion of a 'helpless state' as a potential aggravating circumstance for any crime. Usually, disability is legally considered as a 'helpless state' in itself in each criminal act that is committed against persons with disabilities. The discussion on changing criminal law needs to start based on the newest standards and best practices for acknowledging and giving an active role to victims with disabilities rather than 'disabling' them on the grounds of 'helpless status'. Legal regulation should make it legally possible for each and every crime knowingly committed against persons with disabilities to be properly recorded as a hate crime or otherwise as a regular crime without the specific disability bias motive.
- Providing a clear definition of hate crimes in Lithuanian legislation; indicating that hate crimes are crimes committed with 'bias motivation' instead of simply 'hatred', is an essential step. The motive in committing hate crime is essential, whether the particular individual was selected as a target because he or she was identified as a member of a particular ethnic or religious group or as a person with disabilities. Introducing how and why the victim was chosen, and evidencing 'mixed motives' or a 'no bias' motive through proper investigation is essential.

- Providing a proportionate sanctions system for those who commit hate crimes and/or crimes with aggravating circumstances, where victims with disabilities were considered as having an actual/perceived disability, but which was not incidental to the offending, is essential.

Other recommendations:

- There is a lack of official, publicly available statistics about victims who are persons with disabilities. Official statistics do not distinguish the 'disability' grounds, which is simply included in the 'other signs' statistics. Thus there is a need for more comprehensive collection and disaggregation of statistics on persons with disabilities in the criminal justice system.
- In Lithuania, there has so far been no research or survey carried out focusing on the perspectives of persons with disabilities, as victims in the criminal system. Victimological research specifically with regards to victimisation of persons with disabilities should be carried out in Lithuania.
- To improve the recording of hate crimes, a list of disability hate crime indicators and motives should be established. Developing of processing tools such as flagging systems, algorithms and individual needs forms, is necessary to facilitate reporting and investigation.
- Persons with disabilities in Lithuania tend to not recognise hate crimes and are not able to identify that the offence against them might be a hate crime. Therefore, measures to improve hate crime reporting by victims is needed: through developing and publishing tools/guidelines, in different accessible formats; providing training, education (for the community and victims), promotion of crime reporting is needed both for persons with disabilities themselves, as well as relatives, carers, service providers, disability NGOs.
- Developing hate crime reporting forms in various accessible formats is needed to empower and make accessible the whole process of reporting.
- There are no victim support services in Lithuania that would act as a 'one-stop-shop' and provide integrated (i.e. emotional, psychological, legal) assistance to victims of all crimes, including hate crimes. The lack of integrated general support is one of the reasons why victims of hate crime hesitate to seek help. It is necessary to provide victim support services, primary/secondary state guaranteed legal aid, which is accessible and suitable for persons with disabilities.

- When providing victim support services, it is crucial to strengthen awareness-raising efforts and the training of police officers, health professionals and social workers, among others, with a view to supporting persons with disabilities who have been affected by violence, as indicated within Recommendations provided by international human rights bodies (UNCRC, CEDAW).
- To eliminate violence against women and domestic violence, it is necessary to ratify the Istanbul Convention of the Council of Europe. The Convention provides for active action by the State to prevent all forms of violence against women, including the protection of women, the support of victims and the prosecution of perpetrators. Thus, it would contribute to an effective investigation as well as prevention of hate crimes against women with disabilities.

Latvia

Legislation:

- Although the 2014 Criminal Law amendments should be generally viewed positively as they expand the protection of vulnerable groups (including persons with disabilities) against hate crimes and hate speech, the presence of the term ‘substantial damage’ in Sections 150 (1) hinders and causes problems with the application of the provision (in the cases of hate speech). There is a need for either specifying and explaining the notions of ‘substantial damage’ or deleting the concept altogether, to avoid different interpretations of the vague term.
- The Law on Administrative Liability will enter into force on 1 st July 2020. The Law defines hatred against persons with certain different characteristics as aggravating circumstance, such as “race, religion, nationality or any other clearly recognisable features”, however disability is not explicitly mentioned in Section 21. To combat bias motivation on the basis of disability, it is necessary to explicitly recognise disability as a potential aggravating circumstance in the Law.
- Bias motivation on the grounds of disability as aggravating circumstance should also be explicitly recognised and included in Section 48 of the Criminal Law.
- Women with disabilities are under higher risk to be subjected to physical and emotional domestic violence. The chances of violence are even higher if such women live in social and physical isolation. To eliminate violence against women and do-

mestic violence, it is necessary to ratify the Istanbul Convention of the Council of Europe. Considering that the Convention provides for active action by the State to prevent all forms of violence against women, including the protection of women, the support of victims and the prosecution of perpetrators, it will also contribute to an effective investigation of hate crimes against women with disabilities and to increased support for victims.

Recording of crimes:

- There is no available disaggregated data on persons with disabilities that are victims of crime, including hate crime. Official statistics and crime recording databases should include the grounds of 'disability'.
- Police officers lack expertise and knowledge to identify hate crimes and to qualify those as alleged hate crime, (they are not aware of what leads they should look for and what specific questions they should ask). Most likely a crime will not be investigated under the charges of hate crime if victims themselves do not indicate a possible link between the crime and their disability. To improve the recording of hate crimes, a list of disability hate crime indicators and motives should be established. The tag 'disability', 'religion', other grounds for the bias motive, etc. could be a 'red flag' that would encourage investigation of a crime as a hate crime and could be either confirmed or rejected during the proceedings.

Reporting of crimes:

- The effectiveness of police work also depends on the readiness of victims to report crimes to the police. Persons with disabilities in Latvia tend to not recognise hate crimes and are not able to identify that the offence against them might be a hate crime. They may also fail to recognise that speech directed against them due to their disability may be regarded as hate speech, which is punishable by law. The dependence of many people with disabilities on relatives, carers or service providers, is a significant obstacle that makes reporting very problematic and often impossible. Therefore, measures to improve hate crime reporting by victims and members of the general public should be undertaken by the police and NGOs. These can include:
 - cooperation between the Police and NGOs representing various disability groups;

as people with disabilities are often more likely to report a crime to a third party than directly to the police.

- to encourage reporting NGOs could develop easily accessible forms for hate crime reporting. This would also make it possible to collect informal data. Bringing together information from law enforcement and civil society presents a more complete picture of the prevalence and impact of hate crime on persons with disability.
- dissemination of information about the procedure of making complaints to the Police and support services (including in easy-to-read and sign language, using icons to help people with intellectual disabilities understand information).

Training:

- Training is necessary for Police officers, to ensure effective identification and investigation of hate crimes. Training should be entrusted to State Police Colleges, by engaging disability and victim support NGOs with experience in issues related to hate crimes. Training should also be organised for judges and prosecutors. Consideration should be given to multidisciplinary training, including not only basic information on types of hate crimes and groups subjected to intolerance, but also specific issues such as victim sensitive interviewing (including the tone of voice, eye contact, presence of a third person, interpretation, etc.), differences between different types of disability (especially difference between people with intellectual, psychosocial or cognitive disabilities), psycho-emotional support, crisis intervention and encouragement.
- Disability organisations and people with disabilities can recognise possible cases of discrimination (especially in employment), but there is a lack of awareness and knowledge about disability hate crimes. Awareness raising about the rights of people with disabilities regarding disability hate crime is necessary, including associated training for disability NGOs and people with a disability. Training should also be provided for crises hotline staff, to recognise potential 'hate crime/abuse indicators', when talking to people with disabilities who are seeking help via a victim hotline.

Estonia

Data collection and research

- Improving data collection about biased crimes against people with disabilities is required. The police data and the court statistics show only a fraction of the scope of violence and crime experienced by people with disabilities. The national government (e.g. Ministry of Justice) should analyse the number of cases reported and tried against the number of convictions, in cases of violent crimes against disabled people.
- Estonia should carry out a large scale survey, mapping experiences of violence, (including hate crime, harassment and other biased crimes) experienced by persons with disabilities. The barriers faced by disabled victims when accessing justice and victim support services should also be mapped.

Law and Policy

- Penal law reforms, including the decision to introduce hate crime offences into penal law (in Estonia such provisions do not exist) should be preceded by an in-depth analysis that takes into account the needs of disabled people and the views of the organisations representing disabled people.
- Providing adequate support services to families and carers of person with disabilities, which is one of the risks of domestic violence, should be prioritised.

Accessibility

- The justice system, including victim support services, police stations, courts, etc., should be accessible to persons with disabilities. This accessibility includes the training of professionals to be able to meet the needs of disabled victims and to be able to communicate with and treat persons with disabilities with respect.
- Also sign language interpreters, texts in easy-to-understand language, etc. should be available. The justice system should conduct accessibility audits to estimate the current needs and state of play regarding accessibility.

Changing attitudes, raising awareness

- Awareness raising activities on biased crimes against people with disabilities should be carried out. The main target groups are: legal professionals, victim support services, professionals providing services for disabled people and the wider public.
- Measures should be employed to help persons with disabilities and their close relatives or carers to overcome distrust and fear when accessing justice and protecting their rights.
- There is a need for campaigns which empower people with disabilities and also reduce perceptions that the violence experienced by them is a 'normality'.

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